

Brantley v. McMichael

Supreme Court of Georgia

March 3, 2014, Decided

S14A0254.

Reporter

295 Ga. 42; 755 S.E.2d 741; 2014 Ga. LEXIS 177; 2014 Fulton County D. Rep. 956; 2014 WL 820603

BRANTLEY v. McMICHAEL.

SUBSEQUENT HISTORY: Reconsideration denied April 10, 2014.

Prior History: Wills. Jasper Superior Court. Before Judge Prior.

Disposition: [***1] Judgment affirmed.

Core Terms

first trial, new trial, trial court, proceedings, pre trial motion, eliminated, Probate

Headnotes/Syllabus

Headnotes

Georgia Advance Headnotes

GA(I) (1)

Civil Procedure. > Justiciability. > Mootness.

Because the propounder's motion for new trial was granted with regard to the first trial of the case, any questions relating to the motions for summary judgment and judgment notwithstanding the verdict relating to that first trial were rendered moot, and the propounder's attempt to challenge the trial court's rulings on those motions relating to the first trial of the case after the case was tried again was without merit.

Counsel: *Thomas F. Jarriel*, for appellant.

Martin L. Fierman, Stephen R. Morris, for appellee.

Judges: MELTON, Justice. All the Justices concur.

Opinion by: MELTON

Opinion

[*42] [**742] MELTON, Justice.

On January 23, 2009, Darrell Brantley filed a Petition in the Superior Court of Jasper County to probate a July 1, 2008 Will that had allegedly been executed by Michael Jones ("Mr. Jones"), who died on December 9, 2008. The Administrator of Mr. Jones' estate, Hope [*43] Phillip McMichael, filed a Caveat to Brantley's Petition, which the Probate Court granted. Brantley appealed the ruling in McMichael's favor, and the case was transferred to the Superior Court of Jasper County for de novo review. In the Superior Court, Brantley filed a Motion for Summary Judgment, which was denied. McMichael then filed another Caveat, and, following a November 14-15, 2011 jury trial, the jury ruled in favor of McMichael. Brantley then filed a Motion for New Trial and a Motion for Judgment Notwithstanding the Verdict. Brantley failed to argue the judgment n.o.v. issue at the hearing on his Motion for New Trial, and the Motion for New Trial was granted on September 26, 2012. Thereafter, the Motion for Judgment n.o.v. was argued on January 29, 2013, and it was denied on February 4, 2013. This case was subsequently tried again to [***2] a jury, which again found in favor of the Caveator, McMichael. Brantley now appeals, arguing that the trial court erred in denying his Motion for Judgment n.o.v. relating to the first trial of this case, and that the trial court erred in denying the Motion for Summary Judgment that he filed before the first trial. For the reasons that follow, we affirm.

In light of the specific procedural posture of this case, Brantley's arguments relating to the evidence considered by the Superior Court with respect to both his Motion for Summary Judgment and his Motion for Judgment n.o.v. are misplaced. Indeed, *GA(I)* (1) because Brantley's Motion for New Trial was *granted* with regard to the first trial of this case without Brantley having sought or obtained a ruling on his Motion for Judgment n.o.v., and because Brantley's Motion for Summary Judgment had already been rendered

irrelevant at that point due to the first trial having been completed, any questions relating to the Motions for Summary Judgment and Judgment n.o.v. relating to that first trial were moot. As this Court has made clear, “[t]he grant of a new trial eliminates *everything* which is pending in the old trial. When a new trial is granted, the effect is to set aside *all* proceedings in the old trial.” (Emphasis supplied.) *Reagan v. Reagan*, 221 Ga. 173, 174 (143 SE2d 736) (1965). As soon as Brantley’s Motion for New trial was granted, all proceedings relating to that first trial, [***3] which would necessarily include the pretrial Motion for Summary Judgment and the Motion for Judgment n.o.v. from the first trial, were eliminated. See *id.* In other words,

just as the pretrial Motion for Summary Judgment relating to the first trial became a nullity following the grant of Brantley’s Motion for New Trial, “[t]he pending motion for judgment notwithstanding the verdict in the case at bar [also] became a nullity when [the trial] court ordered that a new trial be had.” *Id.* Accordingly, Brantley’s attempt to challenge the trial court’s rulings on these Motions relating to the first trial of this case at this point in the proceedings is without merit.

[*44] *Judgment affirmed. All the Justices concur.*