

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

Motion Docket 330. Beers Construction Company, et al., v. Atlanta Gift Mart, L.P.

Beers Construction Company and Allison-Smith Company have moved this court to enter an order, pursuant to this court's Rule 40 (b), directing the State Court of Fulton County that it has no jurisdiction to try a civil case designated in the motion because, it contends, a notice of appeal filed by Allison-Smith Company acts as a supersedeas under OCGA § 5-6-46 (incorrectly designated several places in the motion as OCGA § 5-4-46). We disagree, and deny the motion.

In the present case, Atlanta Gift Mart sued Beers Construction Company. Beers Construction Company denied liability and filed a third-party action against Allison-Smith Company, seeking, among other things, indemnity or contribution. Allison-Smith Company, in turn, filed a third-party and fourth-party action against Mayer Electric Company and Square D Company, seeking indemnity or contribution. Both Mayer Electric Company and Square D Company filed motions for summary judgment, which the trial court granted. Allison-Smith Company filed its notice of appeal from the grant of these motions. However, contrary to Allison-Smith Company and Beers Construction Company's argument, the trial court has informed all parties that the case will be tried beginning March 11, 2002, notwithstanding the pending appeal. Beers Construction Company and Allison-Smith Company filed this emergency motion, requesting that we issue an order directing the trial court that it has no jurisdiction to move forward with the trial of the case at this time.

This court's authority to issue orders in emergency situations is not unlimited, and our review of the record indicates that the relief sought by Beers Construction Company and Allison-Smith Company does not meet the stringent requirements of Rule 40 (b). Rule 40 (b) provides:

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This

power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court.

Here, we have not been presented with evidence that such an emergency situation exists in which we have the authority to grant relief. It is not necessary to grant the relief requested in order to preserve jurisdiction of the pending appeal. Nor is it necessary to grant the motion so as to prevent a contested issue from becoming moot.

Moreover, even if this court did have the authority to grant relief in this case, Beers Construction Company and Allison-Smith Company do not present a valid claim for relief. The general rule is that the trial court loses jurisdiction of a case in which an appeal has been taken as to all matters related to the appeal. See *Argonaut Ins. Co. v. Atlantic Wood Indus.*, 187 Ga. App. 477, 478 (370 SE2d 770) (1988). However,

[m]atters independent of and distinct from the questions involved in the appeal are not taken from the jurisdiction of the trial court. Such matters as the appeal does not cover are purely collateral or supplemental, lying outside the issues framed in the case, or arising subsequent to the delivery of the judgment from which the appeal is prosecuted. (Punctuation and citation omitted.) *Id.*

In the present case, Allison-Smith Company filed the third-party and fourth-party actions against Mayer Electric Company and Square D Company as permissive third-party actions pursuant to OCGA § 9-11-14 (a). These types of claims are subject to a severance or a separate trial if such a motion is granted by the trial court. See OCGA § 9-11-14 (a). They are truly collateral or supplemental actions. Thus, while the trial court is divested of jurisdiction with regard to the actions between Allison-Smith Company, Mayer Electric Company and Square D Company, the trial court retains jurisdiction with regard to the main action between the plaintiff and Beers Construction Company, and the action between Beers Construction Company and Allison-Smith Company.

Accordingly, the motion is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

....., Clerk.