

Jurisdiction of the Supreme Court of Georgia

A Historical Perspective and Analysis

Submitted by

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The constitutional scheme of judicial appellate review in this State has evolved from one court of review, the Supreme Court of 1845, to the present two-tiered system consisting of the Supreme Court and the Court of Appeals. While the Court of Appeals was originally created in 1906 to relieve the Supreme Court's workload, the present constitutional plan resulted not from case-management concerns, but from policy considerations regarding the purpose and functions of the two appellate courts. The two appellate courts serve similar functions with respect to the cases which fall within their separate jurisdictions, but the present day Supreme Court, as the State's highest court whose decisions are binding on all other courts of the state, also acts in a broader capacity. First, the Court serves as the ultimate policy-setting and administrative body of the judiciary. Second, this Court determines the meaning and constitutionality of legislative acts and constitutional provisions.

The Court's policy-making role permeates all its functions. The most obvious is the role of the Supreme Court in approving uniform rules for the trial courts and for the State Bar of Georgia. That role is also readily apparent in the Court's function as a court of certiorari,

whereby it reviews cases from the Court of Appeals which it determines to be of great concern, gravity and importance to the public. This role of the court was discussed extensively in 1977 by members of the Committee on Constitutional Revision. Most of the members of the Committee, including at least two who presently serve on the Court of Appeals, agreed that the Supreme Court's function should be that of a certiorari or discretionary court with direct appellate jurisdiction over only the most important areas.

This Court also has the responsibility to answer questions certified to it by both our state Court of Appeals and the Eleventh Circuit of the U.S. Court of Appeals when those courts request guidance on a question of state law. In those cases and all appeals in the Supreme Court, the Court, where the law is unclear, performs its policy-making role and applies the appropriate policy in determining the law.

This Court also has exclusive appellate jurisdiction over certain types of cases. The court's exclusive appellate jurisdiction encompasses cases requiring the construction of a provision of the state or federal constitution, those cases involving an attack upon the constitutionality of a legislative enactment, and cases of election contest. This function clearly illustrates the Supreme Court's role as the judicial arm in our state's tripartite "checks and balances" form of government.

In addition to certiorari jurisdiction and exclusive appellate jurisdiction, this Court has direct appellate jurisdiction over specific classes of appeals. Appeals which do not fall within those specific classes, nor within the Court's exclusive jurisdiction, are in the jurisdiction of the Court of Appeals. Generally speaking, the classes of cases over which this Court has general appellate jurisdiction involve matters of great societal importance, discretionary matters, and

extraordinary (i.e., nonmonetary) remedies, while those assigned to the Court of Appeals involve more mundane matters such as criminal cases not involving the death penalty and civil cases involving legal questions and monetary damages. The classes of appeals which fall within this Court's general appellate jurisdiction are: title to land; equity cases; cases involving wills; habeas corpus cases; ~~cases involving extraordinary remedies; divorce and alimony cases; cases certified~~ to it by the Court of Appeals; and cases in which a sentence of death was imposed or could be imposed.

The constitutional assignment of exclusive and general appellate jurisdiction to the Supreme Court is on its face straightforward, and evinces an intent that this Court review in a constitutional context provisions of state and local law, and that it decide questions involving extraordinary, non-monetary relief. This Court, in adhering to the language and spirit of this jurisdictional assignment, has jurisdiction only in appeals presenting issues which fall within its exclusive or general jurisdiction. The reason for this is clear. Our state constitution establishes classes of appeals within this Court's jurisdiction, and assigns all others to the Court of Appeals. It is inappropriate and contrary to the constitutional scheme for this Court to review appeals which may contain elements of or arise from the classes of cases within its jurisdiction, but which do not, in fact, present for appellate consideration an issue within this Court's jurisdiction.

The following is essentially a historical and analytical review of the exclusive appellate and general appellate jurisdiction of the Supreme Court and how the Supreme Court adheres to the constitutional scheme of jurisdiction assigned to it.

A. Exclusive Appellate Jurisdiction of the Supreme Court

1) Constitutional Issues

Pursuant to *Ga. Const 1983, Art. VI, Sec. VI, Par. II*, the Supreme Court has jurisdiction over “cases involving the construction of a treaty or the Constitution or the State of Georgia or of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn in question ...” This provision has been construed to give this court exclusive jurisdiction over only those cases in which issues of constitutional construction and of the constitutionality of legislative enactments are properly presented. “Jurisdiction is not vested in the Supreme Court merely because it is contended that an action or judgment is or would be contrary to some provision of the Constitution.’ [Cits.]” Aiken v. Richardson, 207 Ga. 735 (1) (64 SE2d 54) (1951). “To hold that the Court of Appeals must lose jurisdiction over all cases where any right or privilege asserted or denied depended for its allowance or refusal upon the construction of plain and unambiguous language in the constitution, though no question as to the construction of such constitutional revision was raised, would be practically to enable any litigant (not relying upon a construction of the constitution to support his contentions) to select the appellate forum in which he might prefer his case to be determined.” Cox v. State, 19 Ga. App. 283 (91 SE 422) (1917).

In an effort to dispel some of the confusion which seems to have arisen from this court’s application of that principle, this court explained recently that the transfer to the Court of Appeals of a case filed here because of a constitutional question means only that the case “was not a case involving a constitutional issue over which we had exclusive jurisdiction.” Atlanta Ind. School System v. Lane, 266 Ga. 657 (469 SE2d 22) (1996). That opinion went on to recount some circumstances in which this court would not have jurisdiction over issues denominated by the parties as coming within this court’s jurisdiction:

There are a number of reasons why a case can fail to come within this court's exclusive jurisdiction The constitutional issue that is raised on appeal may not be one which is within our exclusive jurisdiction. Unless the issue raised on appeal relates either to the constitutional construction or to the constitutionality of a law, ordinance or constitutional provision, jurisdiction is in the Court of Appeals. [Cit.] Although the constitutional issue raised on appeal may be one which otherwise would be within our exclusive jurisdiction, that constitutional issue may already have been resolved by this court. [Cit.] Also, this court does not have exclusive appellate jurisdiction over a case where the constitutional issue asserted on appeal has not been raised in and ruled upon by the trial court. [Cit.]

Id.

2) Election Contests

The Supreme Court retains jurisdiction of cases involving election contests. *Ga. Const.*

1983, Art. VI, Sec. VI, Para. II

B. General Appellate Jurisdiction of the Supreme Court

1) Title to Land

Unless otherwise provided by law, the Supreme Court has original jurisdiction over all cases involving title to land. *Ga. Const. 1983, Art. VI, Sec. VI, Par. III.* Because property rights have always been of such great importance in law, the legislature which created the Court of Appeals and divided appellate subject matter jurisdiction between the two appellate courts gave the highest court in the state jurisdiction over those issues. Cases involving title to land refer to actions at law, such as ejectment and statutory substitutes, in which the plaintiff asserts a presently enforceable legal title against the possession of another for the purpose of recovering the land. Graham v. Tallent, 235 Ga. 47 (218 SE2d 799) (1975); Barton v. Gammell, 238 Ga. 643 (235 SE2d 18) (1977); McMahon v. Folds, 216 Ga. 709 (119 SE2d 353) (1961); Bond v. Ray, 207 Ga. 559 (63 SE2d 399) (1951). Appellate jurisdiction of a partition proceeding is

vested in the Supreme Court. Wallace v. Wallace, 260 Ga. 400 (396 SE2d 208) (1990).

The following types of cases have been held not to be “cases respecting title to land” so as to confer jurisdiction on the Supreme Court: suit to foreclose a materialman’s lien on real estate; suit to confirm sale of land under power of sale; application by widow to ordinary for approval of sale by her of property set aside as year’s support; ~~suit to condemn land; suit to~~ determine location of disputed boundary line; suit by grantee for declaratory judgment that grantor in a warranty deed was sane at the time of executing the deed; and suit for damages for breach of warranty of title contained in deed to land. Graham v. Tallent, 235 Ga. 47 (1975)

When the only issue to be determined is the boundary line between the lands of respective owners, title to land is not involved and the case is properly transferred to the Court of Appeals. Beauchamp v. Knight, 261 Ga. 608 (1991). Patterson v. Bailey, 222 Ga. 422 (150 SE2d 645) (1966); Mote v. Seitz, 219 Ga. 208 (132 SE2d 79) (1963); Whaley v. Ellis, 209 Ga. 147 (71 SE2d 209) (1952). The enforceability of a lease is not an issue “respecting title to land.” Lake Lanier Islands Development Authority v. Village Harbor, Inc., 152 Ga. App. 705 (264 SE2d 23) (1979).

In keeping with the principle that appellate jurisdiction is determined by the issues presented on appeal, the Supreme Court has no jurisdiction when title to land is not directly, but only incidentally, involved. Miller v. Ray, 208 Ga. 27 (64 SE2d 449) (1951). There are a few recent examples of cases in which the parties sought to invoke the Supreme Court’s jurisdiction over “title to land cases,” when the issue involving title to land was ancillary to the main issues on appeal. Lawrence et al. v. Sewell et al., Case No. S96A168[?] (September 5, 1996) (the trial court granted a motion to dismiss an action to set aside a deed based on res judicata); Cheema &

Nanda, Inc. v. Perimeter Oil Company et al, Case No. S96A1746 (September 6, 1996) (entitlement to return of escrow funds); Archibe v. Lincoln Property Company, Case No. S96A1559 (July 12, 1996) (order granting a writ of possession in a dispossessory action).

2) Equity

When Georgia's court system was first established, there were separate courts for equitable relief and for legal relief. In establishing the two-tiered system of appellate courts, the legislature considered equitable claims to be of such importance that it endowed the Supreme Court with jurisdiction over these cases. Today, even though we no longer have separate courts for equitable and legal claims, cases involving equity issues remain within the general appellate jurisdiction of the Supreme Court. *Ga. Const. 1983, Art. VI, Sec. VI, Para. III*. Because it is the Supreme Court's duty and responsibility to inquire into its own jurisdiction (Collins v. AT&T, 265 Ga. 37 (456 SE2d 50) (1995)), we must ensure that the court's consideration of these cases remains within the legislature's original intent. Accordingly, this court does not have jurisdiction over cases in which a substantive issue on appeal does not involve equity; those cases are properly before the Court of Appeals. In Beauchamp v. Knight, 261 Ga. 608 (409 SE2d 208) (1991), and in Pittman v. Harbin Clinic, 263 Ga. 66 (428 SE2d 328) (1993), this court clarified the definition of an equity case, noting that cases in which equitable relief is "merely ancillary to underlying issues of law, or would have been a matter of routine once the underlying issues of law were resolved, are not 'equity cases.'" Beauchamp, 261 Ga. at 609.

3) Wills

As previously noted, property rights have great importance in the law. Because one's will disposes of property, both real and personal, and the Supreme Court has jurisdiction over

cases involving title to real property, the legislature gave jurisdiction of cases involving wills to the Supreme Court. *Ga. Const., Art. VI, Sec. VI, Para. III.* Cases involving wills are those in which the validity or meaning of a will is in question on appeal. In re Lott, 251 Ga. 461 (306 SE2d 920) (1983). Where the construction of a will is involved only incidentally to some other proceeding the Supreme Court does not have jurisdiction. For example, in In re Lott, it was held that the Supreme Court did not have jurisdiction because the only issue was the jurisdiction of the probate court to set aside a probate based on the discovery of new evidence. Likewise, the Supreme Court has found the following types of cases do not fall within its jurisdiction: a proceeding to establish a copy of a lost will (Bond v. Reid, 152 Ga. 481 (110 SE 281) (1922)); a dispute over the identity of the beneficiary (Scheridan v. Scheridan, 231 Ga. 729 (204 SE2d 293) (1974)); where will is incidentally relied upon to show title to stock (Pignatel v. Mobley, 173 Ga. 410 (___ SE2d ___) (1931)); in a proceeding to select the replacement of an executor (Darnell v. Tate, 208 Ga. 23 (64 SE2d 582) (1951)); in a proceeding to determine the qualification of nominated executors of a probated will (Thomasson v. Barber, 191 Ga. 262 (11 SE2d 887) (1940).

There have not been many cases in the last two years which were transferred from the Supreme Court on the basis that the validity and construction of a will was not involved. Most recently, in Gary Smith et al. v. Donald L. Turner, Exr., et al., Case No. S96A0867 (April 1, 1996), jurisdiction was invoked as a case involving wills, but the issue to be determined was whether there was an express contract to make a will. *See Also*, Rodelia K. Collins et al. v. Virginia J. Kiah, Case No. S95A0731 (March 30, 1995); William Harlow Tidwell v. Patsy Tidwell White et al., Case No. S95A1703 (August 10, 1995).

4) Habeas Corpus

The Supreme Court rarely transfers cases which are, even arguably, habeas corpus cases. This court has retained all cases filed as habeas corpus petitions, but has determined that custody controversies involving delinquents are not habeas corpus cases. Moss v. Moss, 233 Ga. 688 (212 SE2d 853) (1975).

5) Extraordinary remedies

Very little case law exists on the issue of the Supreme Court's jurisdiction over cases involving extraordinary remedies. In Spence v. Miller, 176 Ga. 96, 167 SE 188 (1932), this court recognized the limited nature of that grant of jurisdiction, holding that the phrase "extraordinary remedies" refers only to such extraordinary legal remedies as mandamus, prohibition, quo warranto, and the like. See also Fellton v. Chandler, 201 Ga. 347 (39 SE2d 654) (1946), holding that a proceeding brought under the declaratory-judgment statute is not per se a proceeding involving an extraordinary remedy within the meaning of our Constitutional grant of jurisdiction. The scope of that jurisdiction, like that of equity cases, is limited to those cases in which an issue of the propriety of an extraordinary remedy is presented on appeal. See, e.g., Dyches v. McCorkle, 212 Ga. App. 209 (441 SE2d 518) (1994), where the appeal was transferred to the Court of Appeals because the mandamus issue on which this court's jurisdiction was predicated had become moot.

6) Divorce and Alimony

Because of the importance assigned to the family unit, and the resulting strong public policy against divorce, that remedy was once available only by petition to the legislature, which granted few of them. Once divorce became a judicial matter, it was within the Supreme Court's

jurisdiction. When the Court of Appeals was established, the legislature considered the issue of divorce to be so important as to warrant entrusting it to the Supreme Court. In today's society, divorce is, unfortunately, a much more commonplace event. The Supreme Court now reviews divorce cases by discretionary application, seeking to fulfill its constitutional obligation by granting the applications of those cases presenting important legal issues.

In keeping with the reason for establishing the court's jurisdiction over divorce and alimony, this court transfers to the Court of Appeals cases that do not present an issue on appeal regarding divorce or alimony, although they may have arisen from or contained an element of the subject. For example, in Eickhoff v. Eickhoff, 263 Ga. 498, 499 (435 SE2d 914) (1993), this court held that an action to enforce a property settlement that is not incorporated in the divorce decree is a contract action. Subsequently, this court, adhering to the jurisdictional allocations set by the constitution, began transferring cases which did not involve divorce but involved a contract dispute over property that had been previously disposed of in the divorce decree. See Crotty v. Crotty, Case No. S95A1177 (September 11, 1995). This court also transfers cases which involve actions to either enforce or modify a child custody provision of a previously entered divorce decree since these issues, although arising from divorce, do not present an issue on appeal involving divorce or alimony. See Ashburn v. Baker, 256 Ga. 507 (350 SE2d 437) (1986); see also Munday v. Munday, 243 Ga. 863 (257 SE2d 282) (1979).

7) Cases Certified to the Supreme Court by the Court of Appeals

The Supreme Court has never transferred a case certified to it by the Court of Appeals.

8) Cases in Which a Death Sentence Was or Could Be Imposed

Death penalty cases or cases in which the death penalty could be imposed are not

transferred by the Supreme Court; however, it has been determined that the Court of Appeals has jurisdiction of a murder case involving a change of venue motion. Wilburn v. State, 140 Ga. 138 (1913).

Conclusion

In summary, this Court, as the state's highest appellate Court, serves a number of functions. With respect to jurisdiction, our state constitution establishes both exclusive and general jurisdiction of certain types of appeals in this Court, and all other appeals in the Court of Appeals. This Court is bound to follow its constitutional mandate in determining those questions which fall within its jurisdiction. In so doing, it acts in partnership with the Court of Appeals, which is bound to determine all other appeals. The constitutional scheme establishes a two-tiered system reflecting different jurisdictions in the two courts as a matter of policy. That policy, and this Court's determination of its jurisdiction in accord with the constitutional scheme, have guided this court's decisions regarding the transfer of cases between the appellate courts.