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Trial Practice and Procedure

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Trial Practice and Procedure

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I. INTRODUCTION

This Article addresses several significant opinions and legislation of interest to the Georgia civil trial practitioner issued during the survey period of this publication.¹

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II. LEGISLATION

There were several significant bills that were passed or considered by the Georgia General Assembly this year. Trial practitioners should pay close attention to the following legislation in particular.

House Bill 239² created a statewide business court in Georgia.³ The business court will be a court of limited jurisdiction that is primarily limited to complex business litigation matters and that excludes claims such as those for personal injury sounding in tort.⁴ As passed, the law requires the consent of all parties to remove or transfer a case out of state or superior court into business court.⁵

There are two other bills that, while they were not passed by the General Assembly during this legislative session, had the potential to impact trial practice and procedure in Georgia. Therefore, they are included in this article in the event that the bills resurface during a future legislative session.

The first is House Bill 171,⁶ which would have made the plaintiff's failure to wear a seatbelt admissible into evidence at the trial of a car-wreck case.⁷ The bill also would have permitted the jury to apportion fault to the plaintiff and reduce the plaintiff's damages awarded due to the plaintiff's failure to wear a seatbelt.⁸ House Bill 171 did not pass a vote in the General Assembly.

The second is Senate Bill 155,⁹ which would have limited a plaintiff's recovery of damages for medical expenses to the amount paid by an insurer or other third-party benefits provider, rather than the amount billed by the medical provider.¹⁰ The bill would have made the amount billed inadmissible as evidence at trial.¹¹ The bill also would have allowed a post-verdict motion by the defendant to challenge whether the plaintiff's medical providers' charges exceeded usual and customary amounts, thereby reducing the damages owed under the verdict,

1. For an analysis of Georgia trial practice and procedure during the prior survey period, see Brandon L. Peak et al., *Trial Practice and Procedure, Annual Survey of Georgia Law*, 70 MERCER L. REV. 253 (2018).

2. Ga. H.R. Bill 239, Reg. Sess. (2019) (codified at O.C.G.A. § 15-5A-1-14 (2019)).

3. *Id.*

4. *Id.*

5. *Id.*

6. Ga. H.R. Bill 171, Reg. Sess. (2019) (unenacted).

7. *Id.*

8. *Id.*

9. Ga. S. Bill 155, Reg. Sess. (2019) (unenacted).

10. *Id.*

11. *Id.*

including future damages.¹² Senate Bill 155 did not pass out of committee.

III. CASE LAW

A. Appeals

In *Duke v. State*,¹³ the Georgia Supreme Court unanimously overruled its earlier decision in *Waldrip v. Head*¹⁴ and held that Georgia's appellate courts cannot circumvent the requirements of O.C.G.A. § 5-6-34¹⁵ by permitting interlocutory appeals where the trial court has not granted a certificate of immediate review.¹⁶

In *Duke*, the defendant was accused of malice murder, among other charges, in connection with Tara Grinstead's death. The case was set for trial, and the defendant moved for public funding of experts and investigators to aid in his defense.¹⁷ Pursuant to O.C.G.A. § 5-6-34(b),¹⁸ the motions were denied, and the trial court refused to grant Duke a certificate of immediate review. Despite the failure to obtain a certificate of immediate review from the trial court, Duke appealed to the Georgia Supreme Court, arguing the court had appellate jurisdiction pursuant to *Waldrip v. Head*.¹⁹

In *Waldrip*, the Georgia Supreme Court created an exception to the statutory limitations on interlocutory appellate review for cases that involve "an issue of great concern, gravity, and importance to the public and no timely opportunity for appellate review."²⁰ This rule allowed parties to file appeals even where the trial court had denied a certificate of immediate review.²¹ In *Duke*, the court reversed its holding in *Waldrip*, holding that the judicially created exception to the interlocutory appellate process in *Waldrip* "extended beyond the Court's constitutional and statutory authority and [was] based on unsound and inapposite precedents."²²

12. *Id.*

13. 306 Ga. 171, 829 S.E.2d 348 (2019).

14. 272 Ga. 572, 532 S.E.2d 380 (2000).

15. O.C.G.A. § 5-6-34 (2019).

16. *Duke*, 306 Ga. at 171, 829 S.E.2d at 351.

17. *Id.*

18. O.C.G.A. § 5-6-34(b) (2019).

19. *Duke*, 306 Ga. at 171, 829 S.E.2d at 351.

20. *Waldrip*, 272 Ga. at 575, 532 S.E.2d at 384–85.

21. *Id.* at 577, 532 S.E.2d at 386.

22. *Duke*, 306 Ga. at 183, 829 S.E.2d at 358.

The court's rationale for overruling its prior decision in *Waldrip* was threefold. First, the court held that the *Waldrip* rule impermissibly shifted the authority to decide whether interlocutory appellate review was warranted from the trial court to the appellate courts.²³ Second, the court held that *Waldrip*'s holding was based upon non-binding, unpersuasive, and inapposite case authority.²⁴ Third, the court held that the *Waldrip* decision wrongly construed the constitutional and statutory grants of authority to Georgia's appellate courts to allow the court to extend its own appellate jurisdiction.²⁵

For these reasons, the court held that *Waldrip* should be overruled and that *stare decisis* did not warrant maintaining *Waldrip*'s judicially created exception to the interlocutory appeal process.²⁶ Although the court noted that the appellate courts have rarely permitted appellate review under *Waldrip*,²⁷ the court determined that it should nonetheless be overruled because its "reasoning was unsound and unmoored from [the] Court's consistent and longstanding application of statutory appeal requirements enacted by the General Assembly."²⁸ Parties will no longer be able to rely upon the judicially-created *Waldrip* rule to seek interlocutory appeal.²⁹ Rather, parties must follow the appellate procedures outlined in O.C.G.A. § 5-6-34 and seek a certificate of immediate review (or, alternatively, rely upon other statutory or judicial grounds for interlocutory appeal, such as the collateral order doctrine, where applicable).³⁰

B. Apportionment

In *Federal Deposit Insurance Corporation v. Loudermilk*,³¹ the primary holding of the Georgia Supreme Court, in response to three certified questions from the United States Court of Appeals for the

23. *Id.* at 178–79, 829 S.E.2d at 355–56. "*Waldrip* injected this Court into a role that the General Assembly entrusted exclusively to the trial court; namely, deciding whether, in the first instance, an issue merits interlocutory consideration." *Id.* at 178, 829 S.E.2d at 355.

24. *Id.* at 179–81, 183, 829 S.E.2d at 356–58 (*impliedly overruling In re Bd. of Twiggs County Comm'rs*, 249 Ga. 642, 292 S.E.2d 673 (1982), on which the *Waldrip* court relied, "to the extent it suggests that jurisdictional issues need not be resolved by an appellate court before it considers the merits of an appeal.").

25. *Id.* at 182, 829 S.E.2d at 358.

26. *Id.* at 184, 829 S.E.2d at 359.

27. *Id.*

28. *Id.*

29. *Id.* at 186, 829 S.E.2d at 360.

30. *Id.*

31. 305 Ga. 558, 826 S.E.2d 116 (2019).

Eleventh Circuit, was that Georgia's apportionment statute does not abrogate the common law rule imposing joint and several liability on persons who act in concert in the commission of a tort.³²

In its capacity as the receiver for the Buckhead Community Bank, the FDIC sued nine of the bank's former directors and officers under theories of negligence and gross negligence associated with their approval of ten commercial real estate loans in Georgia. Before trial, the defendants requested that the district court instruct the jury to apportion damages among them if the jury found they were liable. The district court denied the request, and the defendants renewed the request during trial, which the district court again denied.³³

The jury found the directors and officers were negligent in approving four of the ten loans and awarded damages of \$4,986,993. The district court entered a final judgment for that amount and the defendants appealed.³⁴

On appeal, the FDIC argued that even if the apportionment statute generally abrogated joint and several liability for most torts, joint and several liability survived where tortfeasors "act in concert."³⁵ The Eleventh Circuit then certified the question to the Georgia Supreme Court, which emphasized that the touchstone of the damages analysis under Georgia's apportionment statute is "whether *fault* is divisible."³⁶ In comparing the statute's directive to apportion fault "according to the percentage of fault of each person" to civil conspiracies, the court observed that:

true concerted action is predicated on the idea that wrongdoers "in pursuance of a common plan or design to commit a tortious act . . . are equally liable," and that through "joint enterprise" and "mutual agency . . . the act of one is the act of all." Under that legal theory, where the act (and thus the fault) of one person is imputed to all

32. *Id.* at 569, 826 S.E.2d at 124–25. The court also held that Georgia's apportionment statute applies to tort claims for purely pecuniary losses against bank directors and officers because, the court reasoned, the language of the phrase in subsection (b) "for injury to person or property," includes intangible property: "We . . . adopt the usual and customary meaning of the term 'property,' as used in a legal context, and conclude that 'injury to person or property' in O.C.G.A. § 51-12-33(b) includes both tortious injuries to tangible and intangible property." *Id.* at 566, 826 S.E.2d at 122–23. The court declined to answer the Eleventh Circuit's third certified question of whether the decision of a bank's board of directors constituted "concerted action." *Id.* at 576, 826 S.E.2d at 129.

33. *Id.* at 558–59, 826 S.E.2d at 117–18.

34. *Id.* at 559, 826 S.E.2d at 118.

35. *Id.* at 560, 826 S.E.2d at 118.

36. *Id.* at 572, 826 S.E.2d at 126.

other members of the same joint enterprise, “liability for all that is done is visited upon each.” And where the fault of one person is legally imputed to another person who is part of the same joint enterprise, we cannot say that there is a legal means of dividing fault “among the persons who are liable.”³⁷

Because the entirety of the “fault” of tortfeasors who “act in concert” was imputed to each bad actor, the court concluded there was no way to divide that fault among them.³⁸ Thus:

Georgia’s apportionment statute, OCGA § 51-12-33,³⁹ did not abrogate Georgia’s common-law rule imposing joint and several liability on persons who act in concert. We emphasize, however, that this holding encompasses only traditional concerted action, as it was understood at common law, for the basic reason that fault in such scenarios is not divisible.⁴⁰

In *Trabue v. Atlanta Women’s Specialists, LLC*,⁴¹ the Georgia Court of Appeals held that apportionment was not proper between an employer and a nonparty physician where the basis of the employer’s liability for the actions of the physician–employee who was a party to the suit is solely vicarious, and the defendant–employer failed to give the 120-day notice required by Georgia’s apportionment statute to apportion fault to the nonparty physician.⁴²

The plaintiffs sued Atlanta Women’s Specialists (AWS) and one of its physician–employees in Fulton County State Court, alleging AWS was liable for the catastrophic brain injury the primary plaintiff’s spouse suffered after being admitted to the hospital for induction of labor.⁴³ The plaintiffs asserted no direct liability claim against AWS, instead alleging that AWS was vicariously liable for the alleged malpractice of both the physician–employee named as a defendant as well as the nonparty physician–employee not named as a defendant, a fact to which AWS stipulated.⁴⁴ The jury awarded the plaintiffs \$46 million and the

37. *Id.* at 572–73, 826 S.E.2d at 127 (internal citations omitted) (quoting W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS §§ 46, 52 (5th ed. 1984)).

38. *Id.* at 576, 826 S.E.2d at 129.

39. O.C.G.A. § 51-12-33 (2019).

40. *Loudermilk*, 305 Ga. at 576, 826 S.E.2d at 129.

41. 349 Ga. App. 223, 825 S.E.2d 586 (2019).

42. *Id.* at 232, 825 S.E.2d at 594. O.C.G.A. § 51-12-33(d) provides: “Negligence or fault of a nonparty shall be considered if . . . a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault.” O.C.G.A. § 51-12-33(d)(1) (2019).

43. *Trabue*, 349 Ga. App. at 223, 825 S.E.2d at 588.

44. *Id.* at 231, 825 S.E.2d at 593–94.

defendants moved for a new trial, alleging, among other things, that the trial court erred because it did not require the jury to apportion fault between the named physician–employee and AWS based on the alleged relative fault of the nonparty physician–employee.⁴⁵ The trial court granted the defendants’ motion and ordered a new trial on the issue of apportionment only.⁴⁶

The defendants sought and received a certificate of immediate review from the trial court.⁴⁷ The court of appeals granted their petition for an interlocutory appeal and reversed the order granting a new trial on the issue of apportionment because “fault,” as used in Georgia’s apportionment statute, only extends to those who “have breached a legal duty in the nature of a tort that is owed for the protection of the plaintiff, the breach of which is a proximate cause of his injury.”⁴⁸ Because AWS’s liability for the torts of its employees was purely vicarious in nature, and because the plaintiffs had not alleged any independent breach by AWS, there was no basis to conclude that AWS had “breached a legal duty in the nature of a tort,” thus making apportionment inappropriate.⁴⁹ Further, AWS’s failure to provide the statutorily required notice of its intent to apportion fault to its nonparty employee meant the nonparty could not appear on the verdict form.⁵⁰ The defendants were not allowed to apportion fault to any nonparty.⁵¹

C. Attorney’s Fees

In *Showan v. Pressdee*,⁵² the United States Court of Appeals for the Eleventh Circuit held that, under O.C.G.A. § 9-11-68(e),⁵³ which governs awards of attorney’s fees when a party has asserted a frivolous claim or defense, “[a] district court has no discretion to decline [a] prevailing party’s request [for a hearing in front of the jury] if the party makes” such a request.⁵⁴

45. *Id.* at 223, 825 S.E.2d at 588.

46. *Id.* at 227, 825 S.E.2d at 590.

47. *Id.* at 227, 825 S.E.2d at 591.

48. *Id.* at 231, 825 S.E.2d at 594 (quoting *Johnson St. Props., LLC v. Clure*, 302 Ga. 51, 58, 805 S.E.2d 60, 68 (2017)).

49. *Id.* at 231–32, 825 S.E.2d at 594.

50. *Id.* at 232, 825 S.E.2d at 594.

51. *Id.*

52. 922 F.3d 1211 (11th Cir. 2019). Despite being a case from the United States Court of Appeals for the Eleventh Circuit, the Authors have included this opinion because it interprets an important Georgia statutory provision regarding attorney’s fees awardable for bad faith and represents important persuasive authority on that statute.

53. O.C.G.A. § 9-11-68(e) (2019).

54. *Showan*, 922 F.3d at 1227. O.C.G.A. § 9-11-68(e) provides, in relevant part:

In *Showan*, the plaintiff was rear-ended by a Krispy Kreme delivery truck while stopped at a red light and was seriously injured.⁵⁵ Eight days after the wreck, Krispy Kreme issued a “corrective action report” to its driver stating that the driver was “at fault” for the wreck.⁵⁶ Less than two weeks after the wreck, a Krispy Kreme insurance claim summary was prepared that stated the plaintiff “was ‘0%’ negligent.”⁵⁷

Despite these facts, the defendants (Krispy Kreme and its driver) asserted in their answers that the defendants had “breached no duty to” the plaintiff.⁵⁸ The defendants also refused to admit in discovery responses “that [the driver’s] actions caused or contributed to the collision or that [the plaintiff] suffered injuries.”⁵⁹ However, “shortly before trial” the defendants obtained permission to amend their answers in order to “admit significant liability of which [the defendants had] arguably been aware since the collision at issue.”⁶⁰

Following a jury verdict in the plaintiff’s favor, the plaintiff requested a hearing under O.C.G.A. § 9-11-68(e) so that the jury could determine whether the defendants had asserted frivolous defenses and, if so, to what extent the plaintiff was entitled to attorney’s fees.⁶¹ The district court denied the plaintiff’s request, reasoning that “as a matter of law’ . . . the [defendants’] pleadings were not frivolous.”⁶²

The United States Court of Appeals for the Eleventh Circuit reversed.⁶³ The Eleventh Circuit held that the district court’s refusal to give the plaintiff a hearing in front of the jury that served as factfinder with respect to the merits of the plaintiff’s liability case constituted reversible error.⁶⁴ As the Eleventh Circuit explained, O.C.G.A. § 9-11-68(e) required the district court to give the plaintiff a hearing in

Upon motion by the prevailing party at the time that the verdict or judgment is rendered, the moving party may request that the finder of fact determine whether the opposing party presented a frivolous claim or defense. In such event, the court shall hold a separate bifurcated hearing at which the finder of fact shall make a determination of whether such frivolous claims or defenses were asserted and to award damages, if any, against the party presenting such frivolous claims or defenses.

Id.

55. *Showan*, 922 F.3d at 1213–14.

56. *Id.* at 1214.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 1227–28.

62. *Id.* at 1228.

63. *Id.*

64. *Id.*

front of the jury after she requested one because the statute “uses the mandatory ‘shall’ in describing the court’s obligation to hold the bifurcated hearing upon the party’s motion” and “[t]he word ‘shall’ is ordinarily [t]he language of command.”⁶⁵ Further, the Eleventh Circuit held that the district court had no authority to determine that the defendants’ pleadings were not frivolous as a matter of law.⁶⁶ As the Eleventh Circuit held, “Georgia has made clear that such a determination is for the finder of fact. It has also made clear that the prevailing party has a right to a hearing if it requests one.”⁶⁷

D. Damages

In *Bibbs v. Toyota Motor Corp.*,⁶⁸ the United States District Court for the Northern District of Georgia posed two certified questions to the Georgia Supreme Court:

Under Georgia law, are the damages that may be recovered in a wrongful death action brought by survivors of a decedent limited by a settlement entered into by the decedent’s guardian in a previous personal injury suit settling all claims that were or could have been asserted in that suit?

If the answer is yes, what components of wrongful death damages are barred?⁶⁹

The Georgia Supreme Court answered each of those questions by holding (1) “damages in a wrongful death action are limited by the decedent’s full settlement of her earlier personal injury action”⁷⁰ and (2) “damages recovered or recoverable in an earlier personal injury lawsuit [are barred and] cannot be recovered again in a wrongful death suit.”⁷¹

65. *Id.* at 1227.

66. *Id.* at 1228.

67. *Id.*

68. 304 Ga. 68, 815 S.E.2d 850 (2018).

69. *Id.* at 68, 815 S.E.2d at 852.

70. *Id.* at 80, 815 S.E.2d at 859 (emphasis omitted).

71. *Id.* at 68, 815 S.E.2d at 852. The case’s relevant facts stem back more than two decades. Delia Bibbs suffered a serious head injury in a car wreck in 1992. While Mrs. Bibbs was in a coma as a result of the wreck, her husband brought a personal injury lawsuit on her behalf against Toyota, the manufacturer of the car, alleging that a defect in the car caused Mrs. Bibbs’ injuries. *Id.* at 69, 815 S.E.2d at 852. Mr. Bibbs ultimately entered into a settlement agreement “releas[ing] Toyota from all ‘claims’ and ‘damages’ arising from the accident,” while “[e]xpressly exclud[ing] from the release ‘any claim for Delia Bibbs’ wrongful death” *Id.* Mrs. Bibbs never awoke from her coma and subsequently died more than twenty years later. After her death, the subject lawsuit was

In reaching its conclusion, the court analyzed the history and development of Georgia's wrongful death law.⁷² The court noted that "wrongful death damages and personal injury damages are often distinguishable, but sometimes overlap, and where they do [overlap], double recovery is impermissible."⁷³ Based on the facts presented in *Bibbs*, the court concluded that there was "substantial overlap between the damages for future losses recoverable in personal injury and the damages recoverable in wrongful death."⁷⁴ The court concluded on these facts that the full value of Mrs. Bibbs's economic damages were recoverable at the time of her personal injury settlement and could therefore not be recovered again in the wrongful death suit.⁷⁵

E. Discovery, Evidence, and Sanctions

In *Anglin v. Smith*,⁷⁶ the Georgia Court of Appeals affirmed a trial court's decision to exclude an affidavit from evidence at trial on the grounds that the plaintiff had failed to produce or identify the affidavit during discovery.⁷⁷ *Anglin* was a medical malpractice case. The plaintiff received two separate injections from the defendant to treat lower back pain.⁷⁸ After the second round of injections, the plaintiff allegedly suffered "weakness and pain in her lower extremities, such that she was unable to stand, as well as urinary incontinence."⁷⁹

A key issue at trial was when the defendant allegedly learned of these complications and what actions the defendant took in response to learning about them. The plaintiff called her employer as a witness at trial to testify about a phone conversation the employer had with the plaintiff following the second round of injections. The employer could not remember the precise details of the phone call, so the plaintiff's counsel attempted to refresh the employer's recollection with an affidavit plaintiff's counsel had obtained from the employer.⁸⁰

filed by Mr. Bibbs and the surviving children of Mrs. Bibbs seeking to recover from Toyota the full value of the life of Mrs. Bibbs as a result of her wrongful death. *Id.*

72. *Id.* at 70–75, 815 S.E.2d at 853–56.

73. *Id.* at 79–80, 815 S.E.2d at 859.

74. *Id.* at 79, 815 S.E.2d at 858–59.

75. *Id.* at 80, 815 S.E.2d at 859.

76. 346 Ga. App. 456, 816 S.E.2d 426 (2018).

77. *Id.* at 457, 462, 463–64, 816 S.E.2d at 428, 431–32.

78. *Id.* at 456–57, 816 S.E.2d at 428.

79. *Id.* at 458, 816 S.E.2d at 429.

80. *Id.* at 458–60, 816 S.E.2d at 429–30.

The defendant objected to use of the affidavit because it had not been identified or produced by the plaintiff during discovery.⁸¹ The trial court sustained the objection and disallowed the plaintiff from using the affidavit as a sanction.⁸² The court of appeals affirmed this ruling, holding “no abuse of discretion in the trial court’s determination that the existence of [the employer’s] affidavit should have been disclosed to the defense even though the affidavit was given after the plaintiffs’ initial responses to the defendant’s interrogatories.”⁸³ The court held that because “the plaintiffs’ counsel clearly intended to use [the employer’s] affidavit at trial to support the allegation that [defendant] was aware of the pain and other difficulties [plaintiff] was experiencing two days following the second injection,” the plaintiff had a clear duty under O.C.G.A. § 9-11-26(e)(2)(B)⁸⁴ to, at a minimum, identify the affidavit in a supplemental response to defendant’s discovery responses.⁸⁵ Trial practitioners should be cautioned by this opinion that even where a party may have a valid work-product objection to producing a witness affidavit, the failure to identify such affidavits in response to discovery requests (on a privilege log, for example) may result in exclusion of such evidence at trial as a sanction.

F. Dismissal and Renewal

In *Wentz v. Emory Healthcare, Inc.*,⁸⁶ the Georgia Court of Appeals held that a trial court did not have the power to later convert a plaintiff’s voluntary dismissal into a dismissal with prejudice.⁸⁷

George Wentz sued Emory Healthcare for medical malpractice and, pursuant to O.C.G.A. § 9-11-9.1,⁸⁸ attached an expert affidavit to his original complaint.⁸⁹ Emory Healthcare filed a motion to dismiss,

81. *Id.* at 460, 816 S.E.2d at 430. Both the court of appeals and trial court determined the affidavit was responsive to defendant’s discovery requests. *See id.* at 461, 816 S.E.2d at 431.

82. *Id.* at 460, 816 S.E.2d at 430.

83. *Id.* at 461, 816 S.E.2d at 431.

84. O.C.G.A. § 9-11-26(e)(2)(B) (2019).

85. *Anglin*, 346 Ga. App. at 461–62, 816 S.E.2d at 431. The court of appeals did not address the substance of the plaintiff’s work-product objection, holding that regardless of whether the plaintiff’s work-product objection had merit or not, the plaintiff was still under an obligation to identify the affidavit in discovery, at which point the trial court could have addressed the work-product objection if challenged by the defendant. *See id.* at 462 n.5, 816 S.E.2d at 431 n.5.

86. 347 Ga. App. 302, 819 S.E.2d 296 (2018).

87. *Id.* at 305, 819 S.E.2d at 299.

88. O.C.G.A. § 9-11-9.1 (2019).

89. *Wentz*, 347 Ga. App. at 302, 819 S.E.2d at 297.

arguing that Wentz's expert affidavit was insufficient because, as required by O.C.G.A. § 24-7-702(c),⁹⁰ it failed to set forth the expert's experience. While that motion was pending, Wentz voluntarily dismissed his case.⁹¹ Emory Healthcare filed a motion to strike Wentz's dismissal and argued that, because Wentz failed to amend his expert affidavit within thirty days of the complaint, pursuant to O.C.G.A. § 9-11-9.1(e),⁹² the complaint must be dismissed with prejudice.⁹³ Wentz refiled and renewed his case with an updated expert affidavit. Emory Healthcare argued that the renewal action was barred by res judicata because Wentz's original suit could only have been dismissed with prejudice under O.C.G.A. § 9-11-9.1(e).⁹⁴

Five months after Wentz's voluntary dismissal, the trial court entered an order that converted Wentz's original dismissal to a dismissal with prejudice and dismissed the renewal action.⁹⁵ The trial court found that Wentz "had no absolute right to voluntarily dismiss [the] prior suit without prejudice under O.C.G.A. § 9-11-41(a),⁹⁶ and that 'by operation of law, the earlier dismissal was with prejudice, and the renewal action is barred by the doctrine of res judicata.'"⁹⁷

The court of appeals reversed and held O.C.G.A. § 9-11-9.1(e) gave the trial court the discretion to dismiss the complaint with prejudice but that discretion was not absolute: "it requires the trial court to take action while the case is still pending."⁹⁸ The trial court had not taken action on Emory Healthcare's motion before Wentz dismissed his case.⁹⁹ The court of appeals held that the voluntary dismissal concluded the first action and emphasized that a failure to timely amend an expert

90. O.C.G.A. § 24-7-702(c) (2019).

91. *Wentz*, 347 Ga. App. at 302, 819 S.E.2d at 297.

92. O.C.G.A. § 9-11-9.1(e) (2019). The statute provides:

If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed on or before the close of discovery, that said affidavit is defective, the plaintiff's complaint shall be subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment pursuant to Code Section 9-11-15 within 30 days of service of the motion alleging that the affidavit is defective. The trial court may, in the exercise of its discretion, extend the time for filing said amendment or response to the motion, or both, as it shall determine justice requires.

Id.

93. *Wentz*, 347 Ga. App. at 302–03, 819 S.E.2d at 297.

94. *Id.*

95. *Id.* at 303, 819 S.E.2d at 297–98.

96. O.C.G.A. § 9-11-41(a) (2019).

97. *Wentz*, 347 Ga. App. at 303, 819 S.E.2d at 297–98.

98. *Id.* at 304–05, 819 S.E.2d at 298–99.

99. *Id.* at 304, 819 S.E.2d at 298.

affidavit under O.C.G.A. § 9-11-9.1(e) is not an incurable defect that prevents a plaintiff from voluntarily dismissing his case without prejudice.¹⁰⁰ The court of appeals distinguished *Chatham Orthopaedic Surgery Center, LLC v. Georgia Alliance of Community Hospitals, Inc.*,¹⁰¹ because dismissal under O.C.G.A. § 9-11-11.1(b)¹⁰² is mandatory (the claim “shall be stricken”) and dismissal under O.C.G.A. § 9-11-9.1(e) is discretionary (the “complaint shall be subject to dismissal”).¹⁰³ Finally, the court of appeals held that, because Wentz’s voluntary dismissal was effective and final, his renewal action was not barred by *res judicata*.¹⁰⁴

G. Jurisdiction and Venue

In *Carpenter v. McMann*,¹⁰⁵ the Georgia Supreme Court unanimously held that, where a Georgia resident and an unknown driver are alleged to be joint tortfeasors who caused injuries during a traffic collision, venue is proper in the county in which the traffic collision occurred.¹⁰⁶

The court’s opinion was based on a plain reading of the venue provision of the uninsured motorist statute, O.C.G.A. § 33-7-11(d)(1),¹⁰⁷ and the state constitutional venue provision¹⁰⁸ for suits involving joint tortfeasors.¹⁰⁹ Under the uninsured motorist statute, a person injured in a traffic collision may sue the unknown defendant as “John Doe” and choose whether “John Doe” resides in either the “county in which the accident causing injury or damages occurred” or the county in which the plaintiff resides.¹¹⁰ Under the Georgia Constitution, venue is proper against joint tortfeasors who “resid[e] in different counties . . . in either county.”¹¹¹ Reading these rules together, the court in *Carpenter* held that the Georgia defendant was not entitled to a change of venue to his home county.¹¹²

100. *Id.* at 305, 819 S.E.2d at 299.

101. 262 Ga. App. 353, 585 S.E.2d 700 (2003), *overruled on other grounds by* Berryhill v. Georgia Cmty. Support and Sols., Inc., 281 Ga. 439, 638 S.E.2d 278 (2006).

102. O.C.G.A. § 9-11-11.1(b) (2019).

103. *Wentz*, 347 Ga. App. at 304–05, 819 S.E.2d at 298–99.

104. *Id.* at 306, 819 S.E.2d at 299.

105. 304 Ga. 209, 817 S.E.2d 686 (2018).

106. *Id.* at 210, 817 S.E.2d at 688.

107. O.C.G.A. § 33-7-11(d)(1) (2019).

108. GA. CONST. art. VI, § 2, para. 4.

109. *See Carpenter*, 304 Ga. at 210, 817 S.E.2d at 688.

110. *Id.*

111. GA. CONST. art. VI, § 2, para. 4.

112. *Carpenter*, 304 Ga. at 212–13, 817 S.E.2d at 689–90.

In *Pascarelli v. Koehler*,¹¹³ the Georgia Court of Appeals considered the propriety of personal jurisdiction based on internet contacts with the state.¹¹⁴ In April 2012, Frank Pascarelli, who lived in Marietta, Georgia, traveled to Casper, Wyoming for business. Pascarelli worked for the Centers for Disease Control (CDC).¹¹⁵ In choosing a hotel in Casper, Pascarelli based his decision on the hotel's status as a "preferred hotel" with the CDC and amenities apparent on the website.¹¹⁶ The hotel Pascarelli chose was a franchise of Marriot International, Inc., owned, operated, and managed by James Koehler, a South Dakota resident.¹¹⁷

After his first night at the hotel, Pascarelli awoke with "an enormous amount" of bed bug bites.¹¹⁸ He went to an urgent care facility in Wyoming twice to get treatment. When he returned to Georgia, he ended up in the hospital for two weeks because his wounds became infected with MRSA.¹¹⁹

In March 2014, Pascarelli and his wife sued Marriott International, Inc., Koehler,¹²⁰ and other business entities associated with Koehler's hotel. The defendants collectively moved to dismiss for lack of personal jurisdiction, and the trial court granted that motion with respect to each defendant except franchisor Marriott International.¹²¹

On appeal, the key question was whether Koehler, a South Dakota resident, had established sufficient minimum contacts with Georgia for purposes of establishing personal jurisdiction.¹²² The court began its analysis by acknowledging that the Georgia long-arm statute does not require physical presence in this state and that "long-arm jurisdiction over nonresident defendants [can be] based on business conducted through postal, telephonic, and Internet contacts."¹²³ Turning to Koehler's conduct, the court noted that he did not operate an independent website for his hotel and that he focused his independent

113. 346 Ga. App. 591, 816 S.E.2d 723 (2018).

114. *Id.* at 592–93, 816 S.E.2d at 725.

115. *Id.* at 592, 816 S.E.2d at 724–25.

116. *Id.*

117. *Id.* at 594, 816 S.E.2d at 726.

118. *Id.* at 592, 816 S.E.2d at 725.

119. *Id.*

120. *Id.* Koehler was doing business as Courtyard Casper's. *Id.* at 591, 816 S.E.2d at 724.

121. *Id.* at 592, 816 S.E.2d at 725.

122. *See id.* at 591, 816 S.E.2d at 724.

123. *Id.* at 594, 816 S.E.2d at 726 (quoting *Paxton v. Citizens Bank & Tr. of W. Ga.*, 307 Ga. App. 112, 116, 704 S.E.2d 215, 219 (2010)).

advertising in Wyoming and Colorado.¹²⁴ Koehler did, however, put information about his hotel on a website run by Marriott International for its franchises. He also paid to Marriott International, under his franchise agreement, a percentage of room revenue into a marketing fund. Marriott International used that fund to pay for television commercials and digital advertising of several Marriott International brands but not any specific franchise hotel. Evidence in the record showed that from 2010 to 2013, Koehler's hotel generated about \$40,000 in revenue from Georgia residents, less than one percent of each year's total revenue. The Marriott International website used a centralized booking and reservation system.¹²⁵

The court of appeals noted that whether personal jurisdiction exists based on online activity is based on a "sliding-scale" analysis of the underlying internet activity.¹²⁶ On one end of the scale are people or entities who are plainly doing business over the internet. At the other end of the scale are people or entities who have simply posted material on the internet that is accessible.¹²⁷ In the middle are "interactive" websites, which allow users to exchange information with the source computer.¹²⁸

The Marriott International website, the court concluded, was "neither entirely passive nor entirely interactive."¹²⁹ So, to determine whether personal jurisdiction was proper, the court had to analyze "the level of interactivity and commercial nature of the exchange of information that occurs on the Web site."¹³⁰ The court distinguished hotel reservation websites from websites where goods are ordered and then delivered to Georgia.¹³¹ According to the court, goods-selling websites fulfill their purpose when the goods are delivered in Georgia, whereas hotel-reservation websites fulfill their purpose when a room is rented outside the state.¹³² The court noted that several courts in other jurisdictions had concluded that operation of a hotel reservation website did not create sufficient minimum contacts to permit specific personal jurisdiction over the hotel.¹³³ Finding those decisions persuasive, the

124. *Id.*

125. *Id.* at 594, 816 S.E.2d at 726.

126. *Id.* at 595, 816 S.E.2d at 726–27.

127. *Id.*

128. *Id.* at 595, 816 S.E.2d at 727.

129. *Id.*

130. *Id.* (quoting *Aero Toy Store, LLC v. Grieves*, 279 Ga. App. 515, 522, 631 S.E.2d 734, 740 (2006)).

131. *Id.* at 596–97, 816 S.E.2d at 727.

132. *Id.* at 597, 816 S.E.2d at 727.

133. *Id.* at 597, 816 S.E.2d at 728.

court held that Koehler's internet contacts with Georgia (which were solely via Marriott International) were insufficient to support personal jurisdiction where the underlying tortious conduct occurred outside of Georgia.¹³⁴

H. Jury Instructions

In *Southwestern Emergency Physicians, P.C. v. Quinney*,¹³⁵ the Georgia Court of Appeals held that, in a medical malpractice action, it is proper for a trial court to instruct the jury that, in order for a defendant to apportion fault to a nonparty emergency medical provider, the defendant has the burden of proving by clear and convincing evidence that the nonparty emergency medical provider was grossly negligent in his or her care of the plaintiff.¹³⁶

The plaintiff in *Quinney* went to the emergency room, presenting with severe back pain, five days after undergoing surgery to have a spinal-cord stimulator placed in his back to relieve pain related to diabetic neuropathy. The plaintiff was treated by several healthcare providers at the emergency room, but none of those healthcare providers determined the cause of the plaintiff's severe back pain. After the plaintiff was transferred to a different hospital, the plaintiff was diagnosed with a spinal canal hematoma that had been compressing the plaintiff's spine. Although a surgeon immediately removed the hematoma, the damage to the plaintiff's spine was already done: the plaintiff was irreversibly paralyzed from the waist down.¹³⁷

The plaintiff filed a medical malpractice lawsuit against the physician who treated him in the emergency room.¹³⁸ During the charge conference, the defendant physician "advocated for the trial court to instruct the jury to apply an ordinary-negligence standard of care in apportioning fault to non-part[y]" healthcare providers such as the nonparty radiologist and the nurses who also treated the plaintiff in the emergency room.¹³⁹ The trial court rejected this request, ruling that "it would instruct the jury to apply the gross-negligence standard for apportioning fault to any non-party [that] provid[ed] [the plaintiff] with emergency care."¹⁴⁰ The trial court based this ruling on O.C.G.A.

134. *Id.*

135. 347 Ga. App. 410, 819 S.E.2d 696 (2018).

136. *Id.* at 418–19, 819 S.E.2d at 704.

137. *Id.* at 411–12, 819 S.E.2d at 698–99.

138. *Id.* at 412, 819 S.E.2d at 699.

139. *Id.* at 421, 819 S.E.2d at 705.

140. *Id.*

§ 51-1-29.5,¹⁴¹ which provides, in pertinent part, that “no physician or health care provider [who has provided emergency medical care in a hospital emergency department] shall be held liable unless it is proven by clear and convincing evidence that the physician or health care provider’s actions showed gross negligence.”¹⁴²

The court of appeals affirmed the trial court’s ruling.¹⁴³ The court of appeals reasoned that in order for the defendant physician to apportion fault to non-party healthcare providers who treated the plaintiff in the emergency room, the plain language of O.C.G.A. § 51-1-29.5 required any party attempting to establish the liability of an emergency room healthcare provider to prove by “clear and convincing evidence” that the emergency room healthcare provider’s actions (with respect to the plaintiff) constituted gross negligence.¹⁴⁴ This burden applies equally to a defendant attempting to apportion fault to a non-party emergency room healthcare provider as it does to a plaintiff attempting to establish liability against an emergency room healthcare provider who is a defendant in the case.¹⁴⁵

In *Berryhill v. Daly*,¹⁴⁶ the Georgia Court of Appeals reversed a jury verdict in favor of the defendant in a medical malpractice case after concluding that the trial court improperly instructed the jury with respect to assumption of the risk.¹⁴⁷

The plaintiff in *Berryhill* was prescribed blood pressure medication and underwent a related surgical procedure performed by the plaintiff’s cardiologist. Five days after the surgical procedure, the plaintiff fainted after climbing to the top of a deer stand and was seriously injured when he fell. The plaintiff filed a medical malpractice action against the cardiologist contending that the cardiologist had prescribed too much blood pressure medication. The trial court instructed the jury with respect to assumption of the risk. The jury returned a verdict in favor of the defendant–cardiologist.¹⁴⁸

On appeal, the plaintiff argued that the trial court erred in instructing the jury with respect to assumption of the risk.¹⁴⁹ The court of appeals agreed, explaining that “a defendant asserting an

141. O.C.G.A. § 51-1-29.5 (2019).

142. *Quinney*, 347 Ga. App. at 421, 819 S.E.2d at 705 (quoting O.C.G.A. § 51-1-29.5).

143. *Id.* at 410, 819 S.E.2d at 698.

144. *Id.* at 421, 819 S.E.2d at 705.

145. *Id.* at 425–26, 819 S.E.2d at 708.

146. 348 Ga. App. 221, 822 S.E.2d 30 (2018).

147. *Id.* at 223, 822 S.E.2d at 32.

148. *Id.* at 222, 822 S.E.2d at 32.

149. *Id.* at 223, 822 S.E.2d at 32–33.

assumption of the risk defense must establish that the plaintiff (1) had actual knowledge of the danger; (2) understood and appreciated the risks associated with such danger; and (3) voluntarily exposed himself to those risks.”¹⁵⁰ The court of appeals held that the defendant failed to introduce “evidence establishing the first element necessary for an instruction on assumption of the risk.”¹⁵¹ Although “the record suggest[ed] that [the cardiologist] advised [the plaintiff] not to engage in any strenuous activity[, the record did] not establish that [the plaintiff] knew he risked losing consciousness if he chose to disregard [the cardiologist’s] instructions.”¹⁵² Further, the record was devoid of “any evidence . . . that [the plaintiff] knew that dizziness or loss of consciousness was a possible side effect of [the plaintiff’s] blood pressure medication.”¹⁵³ Because the plaintiff did not have “actual knowledge of the danger” that he faced with respect to taking the blood pressure medication, the jury instruction regarding assumption of the risk “should not have been given.”¹⁵⁴ The trial court’s decision to give the assumption of the risk instruction constituted reversible error because the instruction “could have confused the jury into believing that any risk [as opposed to the risk associated with taking the blood pressure medication] assumed by [the plaintiff] could have formed the basis for a finding of no liability.”¹⁵⁵

I. Offers of Judgment

In *Hillman v. Bord*,¹⁵⁶ the Georgia Court of Appeals held that a settlement offer under O.C.G.A. § 9-11-68(a)¹⁵⁷ was valid even though the offer was conditioned on the release of a party’s equitable claims for injunctive relief.¹⁵⁸ The court of appeals also affirmed the trial court’s ruling that the settlement offers were made in good faith and held that the award of fees was not an abuse of discretion.¹⁵⁹

Daniel and Amy Hillman sued their next-door neighbors, alleging their property had been damaged by a newly constructed retaining wall

150. *Id.* at 223, 822 S.E.2d at 33 (quoting *Vaughn v. Protective Ins. Co.*, 243 Ga. App. 79, 81, 532 S.E.2d 159, 162 (2000)).

151. *Id.* at 224, 822 S.E.2d at 33.

152. *Id.* at 223–24, 822 S.E.2d at 33.

153. *Id.* at 224, 822 S.E.2d at 33.

154. *Id.* at 223–24, 822 S.E. 2d at 33.

155. *Id.* at 224, 822 S.E.2d at 33.

156. 347 Ga. App. 651, 820 S.E.2d 482 (2018) (physical precedent only).

157. O.C.G.A. § 9-11-68(a) (2019).

158. *Hillman*, 347 Ga. App. at 657–58, 820 S.E.2d at 489.

159. *Id.* at 655, 820 S.E.2d at 487.

that caused increased water runoff onto the Hillmans' property.¹⁶⁰ The defendants made two separate offers to settle the case, first for \$4,000 and then \$41,000. Both offers were conditioned on the release of all the plaintiffs' claims in tort and in equity.¹⁶¹ After a five-day jury trial, the jury found on behalf of the defendants as to the plaintiffs' claims.¹⁶²

The plaintiffs appealed, arguing the settlement offers were invalid¹⁶³ because O.C.G.A. § 9-11-68(a) provides only for the settlement of tort claims and does not allow for the inclusion of equitable claims in a valid offer.¹⁶⁴

The majority disagreed and took an expansive view of the requirement in O.C.G.A. § 9-11-68(a)(4)¹⁶⁵ that a settlement offer must "[s]tate with particularity any relevant conditions."¹⁶⁶ Agreeing with the trial court, the court of appeals held that the plaintiffs' claims for equitable injunctive relief were a "relevant condition" of the settlement offer under the statute because the plaintiffs' claims were intertwined with and "premised entirely on the allegations . . . in [their] tort claims."¹⁶⁷ The majority cited to *Canton Plaza, Inc. v. Regions Bank*

160. *Id.* at 651, 820 S.E.2d at 485.

161. *Id.* at 656–57, 820 S.E.2d at 487–88.

162. *Id.* at 652, 820 S.E.2d at 485.

163. *Id.* at 651, 820 S.E.2d at 485.

164. *Id.* at 654, 820 S.E.2d at 487. O.C.G.A. § 9-11-68(a) states:

(a) At any time more than 30 days after the service of a summons and complaint on a party but not less than 30 days (or 20 days if it is a counteroffer) before trial, either party may serve upon the other party, but shall not file with the court, a written offer, denominated as an offer under this Code section, to settle a tort claim for the money specified in the offer and to enter into an agreement dismissing the claim or to allow judgment to be entered accordingly. Any offer under this Code section must:

- (1) Be in writing and state that it is being made pursuant to this Code section;
- (2) Identify the party or parties making the proposal and the party or parties to whom the proposal is being made;
- (3) Identify generally the claim or claims the proposal is attempting to resolve;
- (4) State with particularity any relevant conditions;
- (5) State the total amount of the proposal;
- (6) State with particularity the amount proposed to settle a claim for punitive damages, if any;
- (7) State whether the proposal includes attorney's fees or other expenses and whether attorney's fees or other expenses are part of the legal claim; and
- (8) Include a certificate of service and be served by certified mail or statutory overnight delivery in the form required by Code Section 9-11-5.

Id.

165. O.C.G.A. § 9-11-68(a)(4) (2019).

166. *Hillman*, 347 Ga. App. at 653, 820 S.E.2d at 486 (quoting O.C.G.A. § 9-11-68(a)(4)).

167. *Id.* at 655, 820 S.E.2d at 487.

*Inc.*¹⁶⁸ for the proposition that in a fee-award determination under O.C.G.A. § 9-11-68¹⁶⁹ with tort and non-tort claims, the court could properly subsume non-tort claims with the tort claims where the non-tort claim is “premised entirely” on the tort claim.¹⁷⁰

Presiding Judge Anne Elizabeth Barnes dissented and would have held the settlement offer—including equitable claims—invalid by the terms of the statute because O.C.G.A. § 9-11-68 “applies only to offers seeking to settle tort damages claims.”¹⁷¹ Presiding Judge Barnes also would not have construed the term “any relevant conditions” to include a claim for non-monetary relief because such an expansion is inconsistent with the rule of strict construction and should properly come from the legislature.¹⁷²

Plaintiffs also argued the settlement offers were made in bad faith because the first offer was too low and the second offer was unclear as to whether it included the equitable claims.¹⁷³ The majority disagreed, determining on the first claim that defendants had a reasonable belief that they had strong defenses to liability and limited exposure.¹⁷⁴ On the second claim, the majority quoted the language of the settlement offer and determined that the requirement of dismissal of “all claims” was sufficiently clear to identify both the tort and equitable claim in the case.¹⁷⁵

J. Statutes of Limitations

In *Tenet Healthsystem GB, Inc. v. Thomas*,¹⁷⁶ the Georgia Supreme Court held that a new legal theory asserted in an amended complaint after the statute of limitations had expired, as it related back to the date of the original complaint pursuant to O.C.G.A. § 9-11-15(c),¹⁷⁷ was not time-barred.¹⁷⁸ The plaintiff’s original complaint alleged

168. 325 Ga. App. 361, 749 S.E.2d 825 (2013).

169. O.C.G.A. § 9-11-68 (2019).

170. *Hillman*, 347 Ga. App. at 654–55, 820 S.E.2d at 487. *Canton Plaza*, a decision joined by Presiding Judge Barnes, involved a contract claim and a tort claim. 325 Ga. App. at 362, 749 S.E.2d at 826.

171. *Hillman*, 347 Ga. App. at 660, 820 S.E.2d at 490 (Barnes, J., dissenting).

172. *Id.*

173. *Id.* at 656–57, 820 S.E.2d at 488–89 (majority opinion).

174. *Id.* at 657, 820 S.E.2d at 488.

175. *Id.* at 657–58, 820 S.E.2d at 489.

176. 304 Ga. 86, 816 S.E.2d 627 (2018).

177. O.C.G.A. § 9-11-15(c) (2019).

178. *Tenet Healthsystem GB, Inc.*, 304 Ga. at 93, 816 S.E.2d at 632. O.C.G.A. § 9-11-15(c) provides:

professional negligence against two doctors and also asserted a vicarious liability claim against the hospital for the negligent acts and omissions of those two doctors.¹⁷⁹ After the statute of limitations expired, the plaintiff filed a second amended complaint adding a vicarious liability claim against the hospital based on the negligence of a nursing employee, which was not alleged in the original complaint.¹⁸⁰

In evaluating whether the newly asserted claim was time-barred, the court noted that “[t]he very purpose of [O.C.G.A. § 9-11-15(c)] is to qualify a statute of limitations.”¹⁸¹ The court then examined whether the factual allegations in the original complaint and the new imputed liability claim alleged in the second amended complaint “are close in time, place, and subject matter, and involve events leading up to the same injury.”¹⁸² The court concluded there were “close factual connections between the relevant allegations” such that “they amounted to a single ‘episode-in-suit,’ sharing a ‘common core of operative facts.’”¹⁸³ Accordingly, the court held “[t]he fact that [plaintiff]’s second amended complaint invoked a legal theory . . . that was not in the original complaint does not prevent [the plaintiff]’s new claim from relating back” to the date of the original complaint.¹⁸⁴

Whenever the claim or defense asserted in the amended pleading arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back to the date of the original pleadings if the foregoing provisions are satisfied, and if within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Id.

179. *Tenet Healthsystem GB, Inc.*, 304 Ga. at 87, 816 S.E.2d at 628–29.

180. *Id.* at 87–88, 816 S.E.2d at 629. The trial court dismissed the plaintiff’s new imputed liability claim as time-barred based on its “finding that the original complaint was ‘devoid of allegations of liability on the part of the hospital nursing staff’” and, therefore, did not relate back to the date of the original complaint. *Id.* at 88, 816 S.E.2d at 629. The court of appeals reversed the trial court’s ruling. *Id.* The supreme court affirmed the decision by the court of appeals. *Id.* at 93, 816 S.E.2d at 632–33.

181. *Id.* at 90, 816 S.E.2d at 630 (citation omitted).

182. *Id.* at 91, 816 S.E.2d at 631 (citations omitted).

183. *Id.* at 92, 816 S.E.2d at 632.

184. *Id.*

IV. CONCLUSION

The above cases and legislation have, in the Authors' estimation, most significantly affected trial practice and procedure in Georgia during the survey period. This Article, however, is not intended to be exhaustive of all legal developments for this topic.