OFFICIAL CODE OF GEORGIA ANNOTATED

2025 Supplement

Including Acts of the 2025 Regular
Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 39

2017 Edition

Title 51. Torts

Including Notes to the Georgia Reports
and the Georgia Appeals Reports

Place in Pocket of Corresponding Volume of Main Set

LexisNexis®
Miamisburg, Ohio

ISBN 978-0-327-11074-3 (set)
ISBN 978-1-5221-2568-6

509827

(Pub. 41805)

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2025 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through May 12, 2025. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through May 12, 2025.

Other Annotations:

References to:

- Emory Bankruptcy Developments Journal.
- Emory International Law Review.
- Emory Law Journal.
- Georgia Journal of International and Comparative Law.
- Georgia Law Review.
- Georgia State University Law Review.
- John Marshall Law Review.
- Mercer Law Review.
- Georgia State Bar Journal.
- Georgia Journal of Intellectual Property Law.
- American Jurisprudence, Second Edition.
- American Jurisprudence, Pleading and Practice Forms Annotated.
- American Jurisprudence, Proof of Facts.
- American Jurisprudence, Trials.
- Corpus Juris Secundum.
- Uniform Laws Annotated.
- American Law Reports, First through Seventh Series.
- American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2025 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2025 supplement pamphlets and in the bound volumes of the Code.

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TITLE 51

TORTS

Law reviews.

For article, "Medical Malpractice as Worker's Comp: Overcoming State Constitutional Barriers to Tort Reform," see 67 Emory L.J. 975 (2018).

For article, "The Impropriety of Punitive Damages in Mass Torts," see 52 Ga. L. Rev. 723 (2018).

For article, "The Costs of Changing Our Minds," see 69 Emory L.J. 75 (2019).

For article, "SB 33: Civil Cause of Action Against Human Traffickers," see 38 Ga. St. U.L. Rev. 241 (2021).

RESEARCH REFERENCES

ALR.

Personal Injury Claims by Concert or Music Festival Attendees Against Concert or Music Festival Promoters, 56 A.L.R.7th 4.

CHAPTER 1

GENERAL PROVISIONS

Sec.
51-1-57. Damages for false solicitation in media and false advertising of media services.

Law reviews.
For note, "Publicly Funded Private Security: A Critical Examination of Georgia Law Pertaining to the Private Employment of Off-Duty Police Officers," see 51 Ga. L. Rev. 879 (2017).

For article, "SB 33: Civil Cause of Action Against Human Traffickers," see 38 Ga. St. U.L. Rev. 241 (2021).

RESEARCH REFERENCES

ALR.
Tort Liability for Injuries Sustained During Use of Inflatable Structures Such as Bounce Houses or Inflatable Slides, 54 A.L.R.7th 1.

51-1-1. Tort defined.

Law reviews.
For article, "The Unidentified Wrongdoer," see 56 Ga. L. Rev. 893 (2022).

51-1-2. Ordinary diligence and ordinary negligence defined.

RESEARCH REFERENCES

ALR.
Liability of Cruise Ship Operator for Medical Negligence, 77 A.L.R.7th 5.

Liability for Negligence for Body Piercings and Tattoos, 92 A.L.R.7th 7.

51-1-4. Slight diligence and gross negligence defined.

JUDICIAL DECISIONS

Analysis

General Consideration

No evidence from which jury could conclude landowner was grossly negligent in controlled burn. — After the plaintiff was injured when the truck the plaintiff was riding in struck a fallen power cable in the roadway, summary judgment was granted in favor of the defendant as the Prescribed Burning Act, O.C.G.A. § 12-6-145 et seq., shielded the defendant from liability because the defendant's employees did not fail to ensure that the fire was adequately confined before leaving the area; and, even if the controlled burn was the source of the fire that burned the power pole, that did not establish that the defendant's employees were grossly negligent as the employees exercised at least slight diligence in handling the controlled burn because the employees cut firebreaks; patrolled the area; doused hot spots; and returned later that evening and extinguished a nearby fire. Patton v. Cumberland Corp., 347 Ga. App. 501, 819

S.E.2d 898, 2018 Ga. App. LEXIS 549 (2018), cert. denied, No. S19C0341, 2019 Ga. LEXIS 428 (Ga. June 3, 2019).

Gross Negligence as Jury Question

When jury question is presented.
Trial court erred by granting defendant summary judgment on plaintiff's claim for gross negligence because reasonable persons might find that relying on only an informal plan for some unspecified worker to perform a visual check of the teams course to ensure participants were safely off the course, during a rainstorm so intense that both vision and communication may have been impeded, amounted to a failure to exercise even the slightest diligence or degree of care, thus rising to the level of gross negligence. Bailey v. Make a Difference Ministries, Inc., 372 Ga. App. 442, 904 S.E.2d 94, 2024 Ga. App. LEXIS 286 (2024).

RESEARCH REFERENCES

ALR.
Liability of homeowner for injury to guest caused by dangerous condition of residential porch, deck, balcony, or patio, 73 A.L.R.7th 7.

51-1-6. Recovery of damages upon breach of legal duty.

Law reviews.
For note, "Spoliating the Adverse Inference Instruction: The Impact of the 2015 Amendment to Federal Rule of Civil Procedure 37(E)," see 51 Ga. L. Rev. 917 (2017).

For article, "2018 Georgia Corporation and Business Organization Case Law Developments," see 24 Ga. St. B.J. 36 (June 2019).

JUDICIAL DECISIONS

Analysis

General Consideration
Applicability to Specific Cases
1. Duty of Care Imposed
2. Breach of Legal Duty

General Consideration

No civil remedy provided for theft by conversion. — Although O.C.G.A. § 51-10-6 expressly provided for a civil recovery for thefts, under Georgia case law, the statute could not be used to establish a civil remedy for the specific crime of theft by conversion. Nor had O.C.G.A. § 51-1-6 been used to create a civil remedy for violations of the theft by conversion statute. Thomas Concrete of Ga., Inc. v. Osbourne (In re Osbourne), No. 10-82440-WLH, No. 10-06621, 2017 Bankr. LEXIS 2414 (Bankr. N.D. Ga. Aug. 24, 2017).

Calculation of amount of damage suffered. — Creditor would not necessarily be entitled to a claim in the full amount of the creditor's materialman's liens under O.C.G.A. § 44-14-361 but, rather, would only be entitled to recover the damages the creditor suffered pursuant to O.C.G.A. § 51-1-6 due to the debtor's crime of false

General Consideration (Cont'd)

swearing, which would be the value of liens lost, which in turn depended on the value of the properties to which the liens attached and the existence of any superior liens on those properties. In the absence of an established underlying claim, summary judgment in the creditor's favor on the creditor's nondischargeability claims was not warranted. Thomas Concrete of Ga., Inc. v. Osbourne (In re Osbourne), No. 10-82440-WLH, No. 10-06621, 2017 Bankr. LEXIS 2414 (Bankr. N.D. Ga. Aug. 24, 2017).

Counties without legislative authority to collect 911 tax. — Charge imposed under the Georgia Emergency Telephone 911 Service Act, O.C.G.A. § 46-5-120 et seq., was a tax as a matter of law, and counties did not have the required legislative authority under Ga. Const. 1983, Art. VII, Sec. I, Par. III(a), to sue telephone companies to recover charges not collected from subscribers; neither the Act nor the tort statutes, O.C.G.A. §§ 51-1-6 and 51-1-8, provided such authority. Bellsouth Telecoms., LLC v. Cobb County, 305 Ga. 144, 824 S.E.2d 233, 2019 Ga. LEXIS 106 (2019).

Applicability to Specific Cases

1. Duty of Care Imposed

Duty of hospital to follow bylaws. — In a doctor's suit against a hospital asserting violations of the hospital's rules and regulations regarding patient assignment, the court held that case law precedent of St. Mary's Hosp. v. Radiology Professional Corp., 205 Ga. App. 121 (1992) only recognizes a tort claim for a physician when their staff privileges are terminated or effectively terminated in violation of hospital bylaws, not for a hospital's failure to follow internal rules and regulations regarding patient assignment. Othman v. Navicent Health, 373 Ga. App. 240, 908 S.E.2d 223, 2024 Ga. App. LEXIS 421 (2024).

Private cause of action recognized for false swearing. — Although no statute contained an express provision for a civil remedy for the crime of false swearing, case law held that O.C.G.A. § 51-1-6 provided a civil remedy. However, summary judgment was not warranted in favor of either the creditor or the debtor on the creditor's nondischargeability claims because there was an issue of fact as to whether the debtor knowingly and willfully signed a false affidavit. Thomas Concrete of Ga., Inc. v. Osbourne (In re Osbourne), No. 10-82440-WLH, No. 10-06621, 2017 Bankr. LEXIS 2414 (Bankr. N.D. Ga. Aug. 24, 2017).

No private right of action to enforce portions of EMC Act. — Suits by classes of former and current members of distribution electric membership corporations (EMCs) seeking to recover millions of dollars in patronage capital from two wholesale EMCs were dismissed because the members lacked privity with the wholesale EMCs, and there was no legal duty under O.C.G.A. § 46-3-340(c) or the EMCs' bylaws requiring distribution of the patronage capital to the members. Walker v. Oglethorpe Power Corp., 341 Ga. App. 647, 802 S.E.2d 643, 2017 Ga. App. LEXIS 261 (2017), overruled in part, Hanham v. Access Mgmt. Group L.P., 305 Ga. 414, 825 S.E.2d 217, 2019 Ga. LEXIS 137 (2019).

2. Breach of Legal Duty

Action could not be brought against individual doctors. — Because the Federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, imposed no legal duty on individual doctors, the administratrix could not maintain a cause of action against the individual doctors under O.C.G.A. § 51-1-6, and the trial court properly granted the doctors' motions to dismiss the violation of a legal duty claim. Pham v. Black, 347 Ga. App. 585, 820 S.E.2d 209, 2018 Ga. App. LEXIS 567 (2018).

51-1-8. Right of action arising from breach of private duty.

JUDICIAL DECISIONS

Analysis

General Consideration

No legislative authority to collect 911 tax. — Charge imposed under the Georgia Emergency Telephone 911 Service Act, O.C.G.A. § 46-5-120 et seq., was a tax as a matter of law, and counties did not have the required legislative authority under Ga. Const. 1983, Art. VII, Sec. I, Par. III(a), to sue telephone companies to recover charges not collected from subscribers; neither the Act nor the tort statutes, O.C.G.A. §§ 51-1-6, 51-1-8, provided such authority. Bellsouth Telecoms., LLC v. Cobb County, 305 Ga. 144, 824 S.E.2d 233, 2019 Ga. LEXIS 106 (2019).

51-1-11. When privity required to support action; product liability action and time limitation therefore; industry-wide liability theories rejected.

Law reviews.
For annual survey on product liability, see 69 Mercer L. Rev. 231 (2017).
For article, "Do's and Don'ts When Handling a Product Liability Matter in Georgia," see 25 Ga. St. B.J. 17 (Aug. 2019).
For note, "Amazon's Invincibility: The Effect of Defective Third-Party Vendors' Products on Amazon," see 53 Ga. L. Rev. 1215 (2019).
For article with annual survey on trial practice and procedure, see 73 Mercer L. Rev. 265 (2021).

JUDICIAL DECISIONS

Analysis

General Consideration

Application for appointment of special counsel denied. — In a bankruptcy matter arising out of a trustee's application to employ special counsel to assist in pursuing the debtor's product liability claim under Georgia law, the application was denied because the court could not conclude that the debtor's cause of action was property of the estate. In re Cardenas, No. 11-62253-BEM, 2022 Bankr. LEXIS 1108 (Bankr. N.D. Ga. Apr. 22, 2022).

Privity as Element of Action

2. Applicability to Specific Cases

Members of distribution EMCs lacked privity to sue wholesale EMCs. — Suits by classes of former and current members of distribution electric membership corporations (EMCs) seeking to recover millions of dollars in patronage

Privity as Element of Action (Cont'd)
2. Applicability to Specific Cases (Cont'd)

capital from two wholesale EMCs were dismissed because the members lacked privity with the wholesale EMCs, and there was no legal duty under O.C.G.A. § 46-3-340(c) or the EMCs' bylaws requiring distribution of the patronage capital to the members. Walker v. Oglethorpe Power Corp., 341 Ga. App. 647, 802 S.E.2d 643, 2017 Ga. App. LEXIS 261 (2017), overruled in part, Hanham v. Access Mgmt. Group L.P., 305 Ga. 414, 825 S.E.2d 217, 2019 Ga. LEXIS 137 (2019).

Products Liability

1. In General

Exception to 10 year liability limit. Consumer's negligence claim survived under the exception to the statute of repose for claims arising out of the negligence of such manufacturer in manufacturing products which cause a disease or birth defect. L'Oreal USA, Inc. v. Burroughs, 372 Ga. App. 30, 903 S.E.2d 740, 2024 Ga. App. LEXIS 250 (2024).

5. Design Defect Cases

Manufacturer has duty to use reasonable care selecting alternative designs to reduce reasonably foreseeable risks. — Georgia Supreme Court held manufacturer has a duty under decisional law to use reasonable care selecting from alternative designs to reduce reasonably foreseeable risks of harm posed by products and when particular risk of harm from product is not reasonably foreseeable, manufacturer owes no design duty to reduce that risk. Maynard v. Snapchat, Inc., 313 Ga. 533, 870 S.E.2d 739, 2022 Ga. LEXIS 68 (2022).

Social media company could reasonably foresee particular risk of harm. — Plaintiffs adequately alleged that social media company could reasonably foresee particular risk of harm from the app filter at issue, thus, lower appellate court's judgment was reversed. Maynard v. Snapchat, Inc., 313 Ga. 533, 870 S.E.2d 739, 2022 Ga. LEXIS 68 (2022).

No defect in design of truck cap shown. — In a product liability action, the manufacturer of a truck cap installed over the bed of a pickup truck was properly granted summary judgment because the product was not defective for purposes of the design defect or failure to warn claims because the sole cause of the harm suffered was the unforeseeable misuse of the product that occurred when the fire department installed a truck bed extender product and damaged a gas strut that supported the truck cap door that subsequently hit the injured party. Woods v. A.R.E. Accessories, 345 Ga. App. 887, 815 S.E.2d 205, 2018 Ga. App. LEXIS 297 (2018).

Failure to warn based on need to change brake fluid. — In a product liability action, the defendants' motion for directed verdict was properly denied on the negligent failure to warn claim as there was evidence to support a finding that the defendants should have known of a defective design in the brake cylinder that might interfere with the functioning of the front brake, and that corrosion might not have been prevented by diligently changing the brake fluid according to the maintenance schedule. Suzuki Motor of America, Inc. v. Johns, 351 Ga. App. 186, 830 S.E.2d 549, 2019 Ga. App. LEXIS 413 (2019), cert. denied, No. S19C1530, 2020 Ga. LEXIS 27 (Ga. Jan. 13, 2020), aff'd, 310 Ga. 159, 850 S.E.2d 59, 2020 Ga. LEXIS 760 (2020).

No intervening cause in product liability action. — In a product liability action, the defendants' motion for directed verdict was properly denied on the design defect claim as the jury could reject the defendants' position that there was an intervening cause because the defendants knew that the defect in the brake cylinder produced corrosion debris; and the defendants were unable to conclusively determine that the corrosion would not occur even if customer maintenance was properly preformed. Suzuki Motor of America, Inc. v. Johns, 351 Ga. App. 186, 830 S.E.2d 549, 2019 Ga. App. LEXIS 413 (2019), cert. denied, No. S19C1530, 2020 Ga. LEXIS 27 (Ga. Jan. 13, 2020), aff'd, 310 Ga. 159, 850 S.E.2d 59, 2020 Ga. LEXIS 760 (2020).

No defect in design of heating pad shown. — In a product liability action, the grant of summary judgment to the manufacturer was affirmed because the record evidence allowed for only an inference that the heating pad caused the fire, which inference did not extend to the cause being the result of a design defect. Sheffield v. Conair Corporation, 348 Ga. App. 6, 821 S.E.2d 93, 2018 Ga. App. LEXIS 624 (2018), cert. denied, No. S19C0437, 2019 Ga. LEXIS 467 (Ga. July 1, 2019).

6. Strict Liability

Strict liability claims brought against talc manufacturer. — General tort statute of repose barred strict liability claims brought under the Asbestos Claims and Silica Claims Act, O.C.G.A. § 15-14-1 et seq., and therefore the trial court erred by denying the talc manufacturer's motion to dismiss the consumer's strict liability claims, because the language "notwithstanding any other provision of law" in O.C.G.A. § 51-14-5 referred to the statute of limitation, and did not bar the application of the statute of repose to asbestos claims. PTI Royston, LLC v. Eubanks, 360 Ga. App. 263, 861 S.E.2d 115, 2021 Ga. App. LEXIS 342 (2021).

7. Pleading and Practice

Repose period begins with first sale.

Trial court erred in concluding that the statute of repose did not bar the consumer's products liability claim because it improperly concluded that each application of the hair relaxer constituted exposure to a new product, which was contrary to the language of O.C.G.A. § 51-1-11(b)(2), which indicated that the repose period begins with the "first sale". L'Oreal USA, Inc. v. Burroughs, 372 Ga. App. 30, 903 S.E.2d 740, 2024 Ga. App. LEXIS 250 (2024).

Manifest reckless disregard impacts statute of limitations. — Actor's conduct manifests a reckless disregard for life or property if the actor intentionally does an act or fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable person to realize that the actor's conduct not only creates an unreasonable risk of harm to another's life or property but also involves a high degree of probability that substantial harm will result to the other's life or property. Ford Motor Co. v. Cosper, 317 Ga. 356, 893 S.E.2d 106, 2023 Ga. LEXIS 201 (2023).

RESEARCH REFERENCES

ALR.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Users of Asbestos and Tobacco Products, 50 A.L.R.7th 3.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Construction Products and Equipment, 53 A.L.R.7th 8.

Products Liability: Duty of Manufacturer or Seller of Component Part Incorporated in Another Product to Warn of Dangers, 58 A.L.R.7th Art. 4.

Products Liability: Talcum Powder Cases, 78 A.L.R.7th 3.

Products Liability and Warranties: Bows and Crossbows, 79 A.L.R.7th 7.

Products Liability: Dishwashers, 79 A.L.R.7th 1.

Products Liability: Computers and Software, 80 A.L.R.7th 4.

Products liability: windows, doors, and screens in residential and non-residential buildings, 73 A.L.R.7th 3.

Products liability: necessity and admissibility of expert or opinion evidence as to design and manufacture of sporting equipment, 76 A.L.R.7th 4.

Products liability: breast implants or prostheses, 76 A.L.R.7th 1.

Products liability: necessity and admissibility of expert or opinion evidence as to design and manufacture of asbestos and tobacco products, 78 A.L.R.7th 2.

Products liability: nasal sprays, 78 A.L.R.7th 1.

Products liability: talcum powder cases, 78 A.L.R.7th 3.

Products liability and warranties: bows and crossbows, 79 A.L.R.7th 7.

Products liability: dishwashers, 79 A.L.R.7th 1.

Products liability: computers and software, 80 A.L.R.7th 4.

51-1-11.1. Liability of product seller as a manufacturer.

Law reviews.

For annual survey on product liability, see 69 Mercer L. Rev. 231 (2017).

RESEARCH REFERENCES

ALR.

Regulation of Sugar-Sweetened Beverages, 38 A.L.R.7th Art. 3.

Products Liability: necessity and admissibility of expert or opinion evidence as to causation of injury to user of prescription drugs generally, 38 A.L.R.7th Art. 7.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Prescription Drug User Concerning Particular Witnesses, 39 A.L.R.7th Art. 1.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Prescription Drug User Concerning Particular Drugs, 39 A.L.R.7th Art. 2.

Opioid Marketing, Promoting, and Distributing Claims Against Manufacturers and Distributors, 39 A.L.R.7th Art. 4.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Medical Devices Generally, 39 A.L.R.7th Art. 5.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Medical Device User Concerning Particular Witnesses, 39 A.L.R.7th Art. 8.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Medical Device User Concerning Particular Devices, 40 A.L.R.7th Art. 4.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Automobiles and Other Motor Vehicles Generally, 42 A.L.R.7th Art. 4.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Automobile and Other Motor Vehicle User Concerning Particular Witnesses, 43 A.L.R.7th Art. 2.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Automobile and Other Motor Vehicle User Concerning Particular Vehicles, 43 A.L.R.7th Art. 7.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Household Items, 44 A.L.R.7th Art. 5.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Electronic Devices, 45 A.L.R.7th Art. 4.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Industrial Equipment and Chemicals, 46 A.L.R.7th Art. 8.

Sufficiency of Evidence of Crime of Disarming Police Officer or Attempt Thereof, 47 A.L.R.7th Art. 2.

Products Liability: Inferior Vena Cava (IVC) filters, 47 A.L.R.7th Art. 5.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Agricultural Equipment, Chemicals, and Feed, 48 A.L.R.7th Art. 4.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to User of Sporting Equipment, 49 A.L.R.7th Art. 1.

Liability for Injuries Arising from Use of Hot Tubs, 62 A.L.R.7th 5.

Products Liability of Manufacturer of Intrauterine Device (IUD), 63 A.L.R. 7th 4.

Products Liability and Negligence Claims Arising from Defects in Mobile Personal Electronics, 64 A.L.R. 7th 5.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Prescription Drugs, 65 A.L.R. 7th 5.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Medical Devices, 67 A.L.R. 7th 1.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Automobiles and Other Motor Vehicles, 69 A.L.R. 7th 2.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Electronic Devices, 72 A.L.R.7th 3.

Products Liability: Windows, Doors, and Screens in Residential and Non-Residential Buildings, 73 A.L.R.7th 3.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Industrial Equipment and Chemicals, 74 A.L.R.7th 1.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Agricultural Equipment, Chemicals, and Feed, 75 A.L.R.7th 3.

Products Liability: Breast Implants or Prostheses, 76 A.L.R.7th 1.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Sporting Equipment, 76 A.L.R.7th 4.

Products Liability: Nasal Sprays, 78 A.L.R.7th 1.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Asbestos and Tobacco Products, 78 A.L.R.7th 2.

Products Liability: Talcum Powder Cases, 78 A.L.R.7th 3.

Products Liability and Warranties: Bows and Crossbows, 79 A.L.R.7th 7.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Construction Products and Equipment, 82 A.L.R.7th 2.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Food Products and Equipment, 80 A.L.R.7th 1.

51-1-13. Cause of action for physical injury; intention considered in assessing damages.

RESEARCH REFERENCES

ALR.

Liability of homeowner for injury to guest caused by dangerous condition of residential porch, deck, balcony, or patio, 73 A.L.R.7th 7.

51-1-20. Liability of persons serving charitable organizations and public entities while acting in good faith.

JUDICIAL DECISIONS

Scope of immunity.

In action asserting defendants misused positions to impose stop work orders and take other actions that harmed plaintiffs, trial court erred holding that immunity shielded defendants from claims for prospective injunctive relief as there was an understanding in American law generally that personal immunities of public officers typically did not extend to prospective relief. Mommies Properties, LLC v. Semanson, 366 Ga. App. 153, 880 S.E.2d 376, 2022 Ga. App. LEXIS 513 (2022).

No bad faith found and immunity remains. — Immunity provided under O.C.G.A. § 51-1-20 applies regardless of whether the nature of the person's actions at issue were ministerial or discretionary. Thus, in a landfill's suit against a county and the county's commission asserting an open meetings violation, neither the landfill's complaint nor the landfill's brief on appeal alleged with any particularity that the county commission made any fraudulent statements or representations or that the commission committed any fraudulent actions or acted in bad faith. Sweet City Landfill, LLC v. Lyon, 352 Ga. App. 824, 835 S.E.2d 764, 2019 Ga. App. LEXIS 648 (2019), cert. denied, No. S20C0514, 2020 Ga. LEXIS 502 (Ga. June 29, 2020).

Immunity upheld. — In a landfill's suit against a county and the county's commission asserting an open meetings violation, the county commission was entitled to statutory immunity because the county commission's actions as alleged in the complaint were within the scope of the commission's official duties and the landfill had not pled sufficient facts to show bad faith. Sweet City Landfill, LLC v. Lyon, 352 Ga. App. 824, 835 S.E.2d 764, 2019 Ga. App. LEXIS 648 (2019), cert. denied, No. S20C0514, 2020 Ga. LEXIS 502 (Ga. June 29, 2020).

51-1-20.1. Liability of volunteers, employees, or officers of nonprofit association conducting or sponsoring sports or safety program; liability of association.

RESEARCH REFERENCES

ALR.

Waiver of Liability for Personal Injury or Death in Cases Involving Interscholastic, Intramural Sports or Curricular Activities of Public and Private Schools and Institutions of Higher Learning, 89 A.L.R.7th 6.

51-1-22.1. Liability of an operator of a vessel under certain conditions.

(a) As used in this Code section, the term:

(1) "Boat livery" means a business which holds any vessel for renting, leasing, or chartering.

(2) "Vessel" means a self-propelled, motorized boat or vessel having a length of more than 16 feet with a depth of more than 16 inches, used or capable of being used as a means of transportation on water. Such term includes but is not limited to personal watercraft as defined in Code Section 52-7-8.2. Such term excludes an inflatable or whitewater raft, unless such vessel is self propelled or motorized. Such term excludes a seaplane.

(b) Provided that a boat livery obtains and carries insurance coverage as provided for in subsection (c) of this Code section:

(1) The operator of a vessel rented, leased, or chartered from a boat livery shall be liable for any injury or damage occasioned by the negligent operation of such vessel, whether the negligence consists of a violation of the statutes of this state or of neglecting to observe such ordinary care in such operation as the rules of common law require; and

(2) Such boat livery shall not be liable as an owner as provided for in Code Sections 51-1-21 and 51-1-22 and shall only be liable for any tort caused by the operation of a vessel that the boat livery rented, leased, or chartered:

(A) To an individual who the boat livery knew or should have known at the time of or before providing the vessel was not a reasonably safe operator of the vessel;

(B) To an individual who the boat livery knew or should have known did not meet the applicable requirements provided for in Code Section 52-7-8.3 or 52-7-22;

(C) To an individual who the boat livery knows is operating the vessel in a manner that is reckless or under the influence of any substance such that the judgment of the operator is substantially impaired, and the boat livery does not take reasonable steps to ensure such vessel is not operated in such a manner;

(D) When a reasonable inspection revealed or should have revealed that such vessel was not in reasonably safe operating condition; or

(E) When such vessel was not in reasonably safe operating condition based on acts or omissions of the boat livery.

(c)(1) In order to avail itself of the protections provided in subsection (b) of this Code section, a boat livery shall not rent, lease, or charter or offer to rent, lease, or charter a vessel without first obtaining and maintaining in full force and effect a policy from a licensed insurance carrier in this state or a nonadmitted insurer through a licensed surplus lines broker that provides coverage for such boat livery against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of a boat livery vessel. Such policy shall provide coverage of not less than $500,000.00 per person per occurrence and not less than $1 million in the aggregate per occurrence.

(2) A boat livery shall have proof of such insurance coverage available for inspection at the location where the boat livery rents, leases, or charters vessels.

History.

Code 1981, § 51-1-22.1, enacted by Ga. L. 2024, p. 762, § 1/HB 994, effective May 6, 2024; Ga. L. 2025, p. 1029, § 51(1)/SB 153, effective July 1, 2025.

Effective date.

This Code section became effective May 6, 2024.

Amendments.

The 2025 amendment, effective July 1, 2025, part of an Act to revise, modernize, and correct the Code, substituted “$1 million” for “$1,000,000.00” in the second sentence of paragraph (c)(1).

51-1-23. Sale of unwholesome provisions.

JUDICIAL DECISIONS

Analysis

General Consideration

Res ipsa loquitur principle misapplied. — In a consumer food product liability case, the trial court misapplied the doctrine of res ipsa loquitur because having found that the doctrine applied, the trial court was obligated to allow the jury to determine whether the defendant's negligence, if any, was the proximate cause of the plaintiff's injuries under a jury charge that included the principle of res ipsa loquitur instead of granting summary judgment to the defendant. Matthews v. Yoplait USA, Inc., 352 Ga. App. 591, 835 S.E.2d 393, 2019 Ga. App. LEXIS 601 (2019).

RESEARCH REFERENCES

ALR.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Users of Asbestos and Tobacco Products, 50 A.L.R.7th 3.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Food Products and Equipment, 80 A.L.R.7th 1.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Design and Manufacture of Construction Products and Equipment, 82 A.L.R.7th 2.

51-1-25. Furnishing of wrong article or medicine by vender of drugs and medicines.

Law reviews.

For article, "Liability for Vaccine Injury: The United States, the European Union, and the Developing World," see 67 Emory L.J. 415 (2018).

51-1-27. Recovery for medical malpractice authorized.

Law reviews.

For comment, "Georgia's Telemedicine Laws and Regulations: Protecting Against Health Care Access," see 68 Mercer L. Rev. 489 (2017).

For article, "Non-Physician vs. Physician: Cross-Disciplinary Expert Testimony in Medical Negligence Litigation - Who Knows the Standard of Care?," see 35 Ga. St. U.L. Rev. 679 (2019).

JUDICIAL DECISIONS

Analysis

General Consideration

Elements of liability. — Paramedic did not breach his duty of care to an inmate, as nothing in the record suggested the paramedic failed to communicate his findings; an intake screening form clearly showed the paramedic marked that the inmate was actively or suspected to be detoxing and had current suicidal thoughts, and the paramedic's testimony indicated that he took the intake sheet, went to the provider, and told him that the inmate had methadone use disorder, was possibly detoxing and had thoughts of suicide. Myrick v. Fulton Cnty., 69 F.4th 1277, 2023 U.S. App. LEXIS 14184 (11th Cir. 2023).

No application to massage therapist. — Trial court did not err by dismissing the spa patron's personal injury action against the spa and its massage therapist because his action was barred by an exculpatory clause in an agreement the patron signed waiving liability for the therapist's alleged negligence. The statutory standard of care and private cause of action set forth in O.C.G.A. § 51-1-27 did not govern the massage services offered by the spa because the massage therapist was not a physician and the parties' contract stated that the therapist was not. Curmode v. Alsbrooks, 365 Ga. App. 824, 880 S.E.2d 320, 2022 Ga. App. LEXIS 505 (2022).

Jury instruction on gross negligence correct. — In a medical malpractice action against an emergency room doctor, in which a patient's spinal canal hematoma was not diagnosed or treated, resulting in paraplegia, the gross-negligence standard of O.C.G.A. § 51-1-29.5 applied; the jury was not misled by opening statements into believing the jury could find liability under an ordinary-negligence standard. Southwestern Emergency Physicians, P.C. v. Quinney, 347 Ga. App. 410, 819 S.E.2d 696, 2018 Ga. App. LEXIS 538 (2018).

Applicability to Special Cases

2. Hospitals

Negligent acts of employees. Trial court properly denied the emergency department physician's motions for directed verdict and judgment notwithstanding the verdict because the physician grossly departed from the standard of care by failing to inform the on-call neurologist that plaintiff had been to a chiropractor earlier that day and that a CT angiogram was ordered looking for and possibly showing dissection, among other actions, which authorized the jury to find the physician acted with gross negligence. Buckelew v. Womack, 374 Ga. App. 711, 913 S.E.2d 789, 2025 Ga. App. LEXIS 106 (2025).

4. Surgeons

Failure to order CT scan prior to surgery. — In a wrongful death case, plaintiff presented sufficient evidence to prove causation by a preponderance of the evidence because plaintiff's expert's testimony provided ample evidence to establish that there was more than a mere possibility that defendants' failure to order a pre-surgery CT scan resulted in the severance of the decedent's superior mesentery artery, which caused decedent's death. The Medical Center of Central Georgia, Inc. v. Turner, 372 Ga. App. 644, 905 S.E.2d 858, 2024 Ga. App. LEXIS 343 (2024), vacated, No. S25G0132, 2025 Ga. LEXIS 136 (Ga. June 24, 2025).

Pleading and Practice

Burden of proof. — When an employee forged mammogram reports, denial of summary judgment to the hospital was reversed because the plaintiffs failed to show that the plaintiffs suffered physical, emotional, or pecuniary injury as the plaintiff's consented to undergoing a second mammogram, the plaintiffs did not have breast cancer, and therefore failure of the radiologist to examine their mammography films did not exacerbate the plaintiffs' existing condition. Houston Hospitals, Inc. v. Felder, 351 Ga. App. 394, 829 S.E.2d 182, 2019 Ga. App. LEXIS 319 (2019), cert. denied, No. S19C1628, 2020 Ga. LEXIS 210 (Ga. Mar. 13, 2020).

RESEARCH REFERENCES

ALR.

Liability for Malpractice in Diagnosis or Misdiagnosis of, or Treatment for, Migraine, 41 A.L.R.7th Art. 6.

Medical Malpractice in Failing to Diagnose or Properly Treat Multiple Sclerosis, or Misdiagnosing Another Condition as Multiple Sclerosis, 41 A.L.R.7th Art. 13.

Medical Malpractice: Brain, 52 A.L.R.7th 1.

Expert testimony and evidence in medical malpractice cases involving diagnosis or treatment of pneumonia — state cases, 90 A.L.R.7th 3.

51-1-29.5. Definitions; limitation on health care liability claim to gross negligence in emergency medical care; factors for jury consideration.

Law reviews.

For annual survey on trial practice and procedure, see 71 Mercer L. Rev. 305 (2019).

JUDICIAL DECISIONS

Application to non-parties providing emergency care. — In a medical malpractice action against an emergency room doctor, O.C.G.A. § 51-1-29.5(c)'s gross negligence standard applied not only to the physician but also applied with regard to apportioning fault to non-parties (radiologist and nurses) under O.C.G.A. § 51-12-33(c) when those non-parties also provided emergency care. Southwestern Emergency Physicians, P.C. v. Quinney, 347 Ga. App. 410, 819 S.E.2d 696, 2018 Ga. App. LEXIS 538 (2018).

In a claim for wrongful death and other damages in which jurors allocated only 20 percent of the fault to the skilled nursing facility, the trial court did not err in allowing the jury to consider whether to apportion fault to non-parties at the trial and the plaintiffs were not entitled to a directed verdict on the fault allocation issue because the jury would have been authorized to find by clear and convincing evidence that three non-party medical providers acted with gross negligence as the facility's expert asserted that the breaches of care committed by the three non-parties were egregious, resulting in the provision of astonishingly poor care to the patient in the emergency room. Lowndes County Health Services, LLC v. Copeland, 352 Ga. App. 233, 834 S.E.2d 322, 2019 Ga. App. LEXIS 554 (2019), cert. denied, 141 S. Ct. 2803, 210 L. Ed. 2d 933, 2021 U.S. LEXIS 3246 (2021).

Gross negligence standard proper for emergency room practices. — Trial court did not err in applying the gross negligence standard to the intensive care unit's physician assistant's treatment of the plaintiff in the emergency department and finding that O.C.G.A. § 51–1–29.5 applied to the plaintiff's treatment as the plaintiff was objectively in need of immediate medical attention related to the original medical emergency by being in a serious condition with the neurologic condition still active and undergoing a catastrophic neurologic insult. Buckelew v. Womack, 374 Ga. App. 711, 913 S.E.2d 789, 2025 Ga. App. LEXIS 106 (2025).

Question of fact remained whether patient was provided emergency medical care.

Whether the patient at some point was stable and capable of receiving medical treatment as a nonemergency patient within the meaning of the emergency medical care statute was a question for the trier of fact and, thus, the trial court erred by granting summary judgment to the hospital and emergency room physicians on the issue of whether the emergency medical care statute applied to the claims against them. Kidney v. Eastside Medical Center, LLC, 343 Ga. App. 401, 806 S.E.2d 849, 2017 Ga. App. LEXIS 504

(2017), cert. denied, No. S18C0468, 2018 Ga. LEXIS 344 (Ga. May 7, 2018).

In a medical malpractice action, the trial court erred in granting summary judgment in the doctor's favor on the issue of the standard of care because whether the patient at some point had stabilized and was capable of receiving medical treatment as a nonemergency patient was a question for the trier of fact. Connie v. Garnett, 360 Ga. App. 24, 860 S.E.2d 592, 2021 Ga. App. LEXIS 304 (2021).

The trial court erred in granting summary judgment in favor of the doctor because although the appellate court agreed that the doctor provided care "in an emergency department," the court found there was a factual question concerning whether the patient received emergency medical care. Wilson v. Inthachak, 372 Ga. App. 341, 904 S.E.2d 414, 2024 Ga. App. LEXIS 304 (2024).

Jury instructions on gross negligence were correct. — In a medical malpractice action against an emergency room doctor, in which a patient's spinal canal hematoma was not diagnosed or treated, resulting in paraplegia, the gross-negligence standard of O.C.G.A. § 51-1-29.5 applied; the jury was not misled by opening statements into believing the jury could find liability under an ordinary negligence standard. Southwestern Emergency Physicians, P.C. v. Quinney, 347 Ga. App. 410, 819 S.E.2d 696, 2018 Ga. App. LEXIS 538 (2018).

51-1-29.7. Liability for mental health care providers.

(a) As used in this Code section, the term:

(1) "Claimant" means a person, including a decedent's estate, who seeks or has sought recovery of damages under this Code section. All persons claiming to have sustained damages as the result of the bodily injury or death of a single person are considered a single claimant.

(2) "Inpatient" means:

(A) A person who is not an outpatient that has been admitted to a mental health care facility for a short-term or long-term stay:

(i) Due to being a substantial risk of harm to himself or herself or others, as manifested by either recent or past overt acts, or recent or past expressed threats, of violence which present a probability of physical injury to himself or herself or other persons;

(ii) For the treatment or rehabilitation of substance abuse requiring medically monitored detoxification; or

(iii) Due to being unable to care for his or her own physical health and safety so as to create a life-endangering crisis; or

(B) A person in foster care receiving mental health care rendered by a contracted provider of the Department of Human Services, including a child placement agency, and who is at risk of being admitted to or has previously been admitted to a mental health care facility for a short-term or long-term stay:

(i) Due to being a substantial risk of harm to himself or herself or others, as manifested by either recent or past overt acts, or recent or past expressed threats, of violence which present a probability of physical injury to himself or herself or other persons;

(ii) For the treatment or rehabilitation of substance abuse requiring medically monitored detoxification; or

(iii) Due to being unable to care for his or her own physical health and safety so as to create a life-endangering crisis.

(3) "Mental health care" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for an individual's mental or emotional illness, developmental disability, or addictive disease.

(4) "Mental health care facility" means any psychiatric or substance abuse program, any contracted beds program that primarily serves at least 50 percent Georgia Medicaid and uninsured inpatient patients, any entity that contracts with the Department of Human Services to provide mental health care for foster children who are in the custody of the Department of Human Services and have been determined by the Department of Human Services to be in need of mental health care, or any entity primarily engaged in providing mental health care to inpatient patients; provided, however, that any such program or entity:

(A) Is open 365 days per year, seven days per week, and 24 hours per day; and

(B) Has or is covered by a hospital affiliation agreement with an acute care hospital within a reasonable distance from the facility or the medical staff at the facility have admitting privileges or other acceptable documented arrangements with such hospital to ensure the necessary backup for the facility for medical complications.

(5) "Mental health care liability claim" means a cause of action against a mental health care provider for treatment, lack of treatment, or other claimed departure from accepted standards of mental health care to a claimant that is an inpatient and such departure from standards proximately results in injury to or death of a claimant while in a mental health care facility; provided, however, this term shall not be construed to include a cause of action for injuries arising from criminal acts resulting from negligent hiring or retention by a mental health care facility.

(6) "Mental health care professional" means any person administering mental health care who is licensed, certified, or otherwise authorized or permitted by law in this state to administer mental health care in the ordinary course of business or the practice of a profession, including, but not limited to:

(A) A clinical nurse specialist in psychiatric/mental health authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health;

(B) A clinical social worker authorized to practice under the laws of this state;

(C) A registered nurse, licensed practical nurse, nurse practitioner, physician assistant, mental health care aid or technician;

(D) A professional counselor authorized to practice under the laws of this state;

(E) A psychologist authorized to practice under the laws of this state;

(F) A psychiatrist authorized to practice under the laws of this state; and

(G) A foster care parent trained by a contracted child placement agency to coordinate mental health care services.

(7) "Mental health care provider" means:

(A) A mental health care professional, or any person acting for any such professional directly related to providing mental health care;

(B) A mental health care facility; and

(C) Any person providing management or administrative services for:

(i) A mental health care professional; or

(ii) A mental health care facility.

(b) In an action involving a mental health care liability claim, no mental health care provider shall be held liable unless it is proven that the mental health care provider's actions showed gross negligence.

(c) In an action involving a mental health care liability claim, the court shall instruct the jury to consider, together with all other relevant matters:

(1) Whether the person providing mental health care did or did not have the patient's medical history or was able or unable to obtain a full medical history, including the knowledge of preexisting mental health conditions or illnesses;

(2) The presence or lack of a preexisting mental health care provider-patient relationship;

(3) The circumstances constituting the provision of mental health care services; and

(4) The circumstances surrounding the delivery of the mental health care services.

(d) In an action involving a mental health care liability claim, no mental health care provider shall be held liable for punitive damages unless the claimant proves that the actions of such provider showed willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

(e) This Code section shall apply to causes of action arising on and after July 1, 2024.

History.
Code 1981, § 51-1-29.7, enacted by Ga. L. 2024, p. 650, § 2/HB 1409, effective July 1, 2024.

Effective date.
This Code section became effective July 1, 2024.

Editor's notes.
Ga. L. 2024, p. 650, § 1/HB 1409, not codified by the General Assembly, provides: "The General Assembly finds that there presently exists a crisis affecting the provision and quality of mental health care services in this state. Hospitals and other health care providers in this state are having increasing difficulty in employing providers, in part due to liability exposure. The result of this crisis is the potential for a diminution of the availability of access to mental health care services and a resulting adverse impact on the health and well-being of the citizens of this state."

51-1-30.3. Immunity from liability for persons providing certain services upon public or private school property and for public or private schools requesting such services.

RESEARCH REFERENCES

ALR.
Personal Liability of Public School Teacher in Negligence Action for Personal Injury or Death of Student, 92 A.L.R.7th 4.

51-1-32. Separate causes of action for personal injury and property damage caused by motor vehicle.

RESEARCH REFERENCES

ALR.
Products Liability: Crashworthiness Doctrine, 86 A.L.R.7th 1.

Proximate Cause in Accidents Involving Pedestrians, 90 A.L.R.7th 4.

51-1-40. Liability for acts of intoxicated persons.

Law reviews.
For comment, "Proprietors Beware: Recent Changes in Negligent Security Cases Involving Third-Party Criminal Acts and The State of the Law Moving Forward After the Supreme Court of Georgia's

Most Recent Decision in Georgia CVS v. Carmichael," see 75 Mercer L. Rev. 1588 (2024).

JUDICIAL DECISIONS

Analysis

General Consideration
Commercial Environments

General Consideration

Duty imposed on alcohol providers to protect third parties by not serving intoxicated patrons, etc.

In an action arising from a patient's driving under the influence and killing another, the trial court did not err in granting summary judgment to the psychiatrist as to the ordinary-negligence claim because the decedent's spouse cited no authority to support the implicit contention that the psychiatrist was required to initiate involuntary treatment on a patient any time the psychiatrist believed a patient was under the influence of alcohol. Stanley v. Garrett, 356 Ga. App. 706, 848 S.E.2d 890, 2020 Ga. App. LEXIS 512 (2020), cert. denied, No. S21C0259, 2021 Ga. LEXIS 331 (Ga. May 3, 2021).

Commercial Environments

When constructive knowledge sufficient to create jury question. — Under Georgia's Dram Shop Act, O.C.G.A. § 51-1-40(b), constructive knowledge that a minor patron will soon be driving was held sufficient to create a jury question as to the alcohol provider's liability, and evidence that the minor patron entered a restaurant with car keys visible can create a factual dispute as to the provider's constructive knowledge. Monterrey Mex, Inc. v. Collins, 372 Ga. App. 70, 903 S.E.2d 759, 2024 Ga. App. LEXIS 256 (2024).

Knowledge of driving required.

Trial court erred by denying the bar's motion for summary judgment because, in light of the undisputed evidence that the bar patron consistently used a designated driver to and from the bar, and in light of the absence of evidence that the bar knew or should have known that the patron would decide to drive to the patron's girlfriend's home sometime later after the patron had been cut off and safely driven home, the essential knowledge requirement of the Dram Shop Act, O.C.G.A. § 51-1-40, was not met to impose liability on the bar. Sepid, LLC v. Dock, 374 Ga. App. 825, 913 S.E.2d 86, 2025 Ga. App. LEXIS 72 (2025).

51-1-43. "Roller Skating Safety Act of 1993."

JUDICIAL DECISIONS

Application of Act proper. — Trial court did not err in applying the Roller Skating Safety Act of 1993, O.C.G.A. § 51-1-43, to bar the plaintiff's claim because there was no dispute that, at the time of the incident, the plaintiff rented and was wearing roller skates in a rolling skating center and was headed toward the rink and, thus, the plaintiff accepted the risks that were inherent in that activity insofar as the risks were obvious and necessary. Berrian v. Max Grin, LLC, 369 Ga. App. 761, 894 S.E.2d 500, 2023 Ga. App. LEXIS 525 (2023), overruled in part, Pollard v. Great Dane, LLC, 371 Ga. App. 872, 903 S.E.2d 338, 2024 Ga. App. LEXIS 236 (2024).

No requirement patrons are shown posted signs with required notice. — Trial court did not err in finding as a matter of law that the facility had properly posted all necessary notices. Although the plaintiff argued that there was no evidence that anyone pointed out the signs to the plaintiff, the Roller Skating Safety Act of 1993, O.C.G.A. § 51-1-43, contained no such requirement. Berrian v. Max Grin, LLC, 369 Ga. App. 761, 894 S.E.2d 500, 2023 Ga. App. LEXIS 525 (2023), overruled in part, Pollard v. Great Dane, LLC, 371 Ga. App. 872, 903 S.E.2d 338, 2024 Ga. App. LEXIS 236 (2024).

51-1-54. Program and Treatment Completion Certificate.

Law reviews.

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

For article on the 2017 amendment of this Code section, see 34 Ga. St. U. L. Rev. 115 (2017).

51-1-56. Civil recovery available to victims of human trafficking; statute of limitations; relief sought by Attorney General.

(a) As used in this Code section, the term:

(1) "Criminal action" means the investigation or prosecution of an offense that is pending final adjudication in a trial court.

(2) "Perpetrator" means a person or entity that knowingly benefits, financially or by receiving anything of value, from participation in a venture or scheme which such person or entity knew or should have known involved a violation of Code Section 16-5-46.

(b) An individual who is a victim of a violation of Code Section 16-5-46 shall have a cause of action against any perpetrator of said violation and may recover damages and reasonable attorney's fees.

(c) Any action filed under subsection (b) of this Code section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the individual is the victim.

(d) Notwithstanding any other law to the contrary, an action may be brought under subsection (b) of this Code section within ten years after the:

(1) Cause of action arose; or

(2) Victim reaches 18 years of age, if the victim was a minor at the time of the alleged violation.

(e) Whenever the Attorney General has reasonable cause to believe that an interest of the citizens of this state has been or is threatened or adversely affected by a perpetrator, the Attorney General shall have a cause of action against such perpetrator on behalf of the state to obtain appropriate relief.

History.
Code 1981, § 51-1-56, enacted by Ga. L. 2021, p. 99, § 1/SB 33.
Effective date.
This Code section became effective July 1, 2021.

Law reviews.
For article, "SB 33: Civil Cause of Action Against Human Traffickers," see 38 Ga. St. U.L. Rev. 241 (2021).

RESEARCH REFERENCES

U.L.A.
Uniform Act on Prevention of and Remedies for Human Trafficking, § 10 et seq.

51-1-57. Damages for false solicitation in media and false advertising of media services.

Any person who solicits in any media in violation of Code Section 10-1-424.1 or 10-1-427 shall, in addition to any other remedies provided by law, be liable for damages caused by each media that is in violation of such Code sections. A claim of a violation of such Code sections may be brought in a representative capacity and may be the subject of a class action under Code Section 9-11-23. Damages for such violation shall be the actual damages or $500.00 per each media that is in violation, whichever is greater.

History.
Code 1981, § 51-1-57, enacted by Ga. L. 2023, p. 248, § 2-6/SB 74, effective May 1, 2023.
Effective date.
This Code section became effective May 1, 2023. See Editor's notes for applicability.
Cross references.
Advertising by attorneys, Ga. R. & Regs. St. Bar 7.2.
Editor's notes.
Ga. L. 2023, p. 248, § 2-1/SB 74, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) The First Amendment protects commercial speech unless it involves illegal conduct or is misleading or fraudulent;

"(2) Commercial speech that does no more than propose a commercial transaction through advertising or solicitation is entitled to First Amendment free speech protection, but only if it concerns lawful activity and is not misleading;

"(3) The state should take necessary actions to ensure that all Georgians have their constitutional rights protected and appropriately vindicated when violated;

"(4) The government has a substantial interest in protecting Georgians from false or misleading commercial practices relating to the handling of legal matters before the courts of this state and the courts of the United States;

"(5) These practices have been particularly damaging to Georgia's older residents who may have become confused or misled by such treatment; and

"(6) A ban on commercial speech falsely claiming to handle legal matters before the courts of this state and the courts of the United States is necessary to directly advance the government's interest in protecting Georgians from false or misleading business advertising and solicitations that offer to protect or vindicate constitutional rights of Georgians."

Ga. L. 2023, p. 248, § 4-1(1)/SB 74, not codified by the General Assembly, provides, in part, that this Code Section applies to contracts entered into on and after May 1, 2023, and does not apply to contracts entered into before May 1, 2023; provided, however, that any contract in violation of the provisions of Part II of this Act entered into before May 1, 2023, shall be void after the initial period set forth in such contract and shall not be renewed or otherwise extended on terms in violation of Part II of this Act.

CHAPTER 2

IMPUTABLE NEGLIGENCE

RESEARCH REFERENCES

ALR.

Whether Common Carrier Is Vicariously Liable Under State Law for Employee's Sexual Misconduct, 66 A.L.R. 7th 2.

Whether Sexual Misconduct Falls Within Scope of Clergy Member's Employment to Support Theory of Vicarious Liability or Respondeat Superior Under State Law, 68 A.L.R. 7th 2.

51-2-1. Basis for imputation of negligence; fault of parents or custodians not imputable to child.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Sexual abuse by priest not imputable to church. — In a case in which the plaintiff allegedly suffered childhood sexual abuse while serving as an altar boy, the trial court did not err in dismissing the plaintiff's respondeat-superior claim because the suppression of information about whether the defendants knew the abusive priest was dangerous in the 1970s could not have hindered an attempt to hold the defendants vicariously liable for the priest's conduct once the plaintiff reached the age of majority in the 1980s. Doe v. St. Joseph's Catholic Church, 313 Ga. 558, 870 S.E.2d 365, 2022 Ga. LEXIS 59 (2022).

51-2-2. Liability for torts of spouse, child, or servant in certain instances.

Law reviews.

For note, "Publicly Funded Private Security: A Critical Examination of Georgia Law Pertaining to the Private Employment of Off-Duty Police Officers," see 51 Ga. L. Rev. 879 (2017).

For annual survey on labor and employment law, see 71 Mercer L. Rev. 137 (2019).

JUDICIAL DECISIONS

Analysis

Vicarious Liability
Family Purpose Doctrine
1. General Principles

Vicarious Liability

No liability when travel not related to volunteering. — Appellant was entitled to summary judgment on appellee's negligence claim because the driver's travel from home to a cub scout day camp planning meeting was akin to a worker commuting to her usual place of work, so the driver, a volunteer, was presumed to be acting only for the driver's own purposes at the time of the collision and not within the scope of any employment. Atlanta Area Council, Inc. v. Patel, 374 Ga. App. 357, 912 S.E.2d 720, 2025 Ga. App. LEXIS 52 (2025).

Family Purpose Doctrine

1. General Principles

Supervision and control. — Defendant's parents were not vicariously liable for alleged negligence in an auto accident case because the family purpose doctrine did not apply as uncontroverted evidence showed that the defendant's parents did not have requisite authority and control over the use of the car as, despite the mother being the co-signor and the insurance policy was in the parents' names, the defendant gave money to the father to make the loan payments and reimbursed insurance premiums, and paid all gasoline and maintenance expenses for the vehicle. Yim v. Carr, 349 Ga. App. 892, 827 S.E.2d 685, 2019 Ga. App. LEXIS 227 (2019), cert. denied, No. S19C1220, 2019 Ga. LEXIS 853 (Ga. Dec. 23, 2019).

Torts of Servant

1. Definitions and General Scope

Word "voluntary" in this section, etc.

In a medical malpractice action, the trial court erred by granting a new trial as to apportionment because by failing to give the mandatory notice required by O.C.G.A. § 51-12-33(b), the defendants waived the defendants' right to apportion damages on vicarious liability and as to a non-party. Trabue v. Atlanta Women's Specialists, LLC, 349 Ga. App. 223, 825 S.E.2d 586, 2019 Ga. App. LEXIS 140 (2019), aff'd, 310 Ga. 331, 850 S.E.2d 748, 2020 Ga. LEXIS 764 (2020).

2. Basis of Master's Liability

Master liable for torts of servant committed within scope of business. — Trial court committed no error in concluding that the amended complaint sufficiently pled allegations of vicarious liability because the defendants failed to demonstrate that the plaintiffs could not possibly introduce evidence within the framework of the amended complaint sufficient to hold the defendants vicariously liable for the allegedly tortious actions of their employees associated with the inspection of the company's books and records. TMX Finance, LLC v. Goldsmith, 352 Ga. App. 190, 833 S.E.2d 317, 2019 Ga. App. LEXIS 555 (2019), cert. denied, No. S20C0415, 2020 Ga. LEXIS 414 (Ga. May 4, 2020), cert. denied, No. S20C0427, 2020 Ga. LEXIS 405 (Ga. May 4, 2020).

3. Scope of Employment

Corporation could be liable for acts of employees who acted at behest of owner. — In a fraud claim by controlling shareholders of an LLC against an investor who wrestled control from the shareholders, the shareholders sufficiently pled that the investor's companies could be held vicariously liable for the actions of their personnel who were sent from Texas to Georgia to inspect the LLC's books and operations and who allegedly made false conclusions regarding them. TMX Finance, LLC v. Goldsmith, 352 Ga. App. 190, 833 S.E.2d 317, 2019 Ga. App. LEXIS 555 (2019), cert. denied, No. S20C0415, 2020 Ga. LEXIS 414 (Ga. May 4, 2020),

Torts of Servant (Cont'd)
3. Scope of Employment (Cont'd)

cert. denied, No. S20C0427, 2020 Ga. LEXIS 405 (Ga. May 4, 2020).

Special circumstances exception to respondeat superior. — Georgia Supreme Court rejected the Georgia Court of Appeals' special circumstances exception to respondeat superior and multi-factor test developed; further, the Court disapproved the imprecise language used in Clo White Company v. Lattimore, 263 Ga. App. 839 (590 SE2d 381) (200 3), and Hunter v. Modern Continental Construction Company, 287 Ga. App. 689 (652 SE2d 583) (2007), the two cases on which the Court of Appeals relied in applying the special circumstances exception. Prodigies Child Care Mgmt., LLC v. Cotton, 317 Ga. 371, 893 S.E.2d 640, 2023 Ga. LEXIS 211 (2023).

Georgia Supreme Court clarified that the so-called special circumstances exception was merely an application of the doctrine of respondeat superior, not a separate doctrine or an exception to respondeat superior. Prodigies Child Care Mgmt., LLC v. Cotton, 317 Ga. 371, 893 S.E.2d 640, 2023 Ga. LEXIS 211 (2023).

Whether respondeat-superior liability attached turns on whether an employee was acting in furtherance of their employer's business and within the scope of their employment at the time the employee committed a tortious act and the same framework of analysis applies whether or not the employee was commuting to or from work or on a lunch break at the time. Prodigies Child Care Mgmt., LLC v. Cotton, 317 Ga. 371, 893 S.E.2d 640, 2023 Ga. LEXIS 211 (2023).

Negligence of medical students. — Trial court did not err by finding that the surgeons were not vicariously liable for the medical student's negligence as a matter of law under agency principles because there was no agency or employment relationship between the parties as the agreement between the medical school and the host agency specified that the medical student was not considered an employee or agency of the practice nor was the agreement intended to create any agency, employer/employee, or fiduciary relationship between the parties. Statham v. Quang, 371 Ga. App. 55, 899 S.E.2d 275, 2024 Ga. App. LEXIS 82 (2024), rev'd, 321 Ga. 533, 2025 Ga. LEXIS 105 (2025).

7. Borrowed Servants

Determining status as borrowed servant.

Plaintiff did not show that the medical student was a borrowed servant so as to make the surgeons vicariously liable because the surgeons did not retain the exclusive right to terminate the student from the program as both parties retained that right and the student's participation in the surgery did not require a level of professional skill or judgment, but rather only involved the student placing and holding the sponge stick as the surgeons directed. Statham v. Quang, 371 Ga. App. 55, 899 S.E.2d 275, 2024 Ga. App. LEXIS 82 (2024), rev'd, 321 Ga. 533, 2025 Ga. LEXIS 105 (2025).

Torts of Servant — Specific Cases

1. Automobiles

No employer liability. — When the driver was killed and the passenger was injured after a tire from the employee's vehicle struck the driver's vehicle, the employer's motion for summary judgment was improperly denied because there was no negligent act by the employee at the time of the injury for which vicarious liability could attach to the employer as both the employee and the employee's passenger testified that they did not notice anything wrong with the truck on the day of the collision; and the engineering expert's vague and equivocal testimony was insufficient to show that the employee had knowledge of the vehicle's unsafe condition. In/Ex Systems, Inc. v. Masud, 352 Ga. App. 722, 835 S.E.2d 799, 2019 Ga. App. LEXIS 645 (2019), cert. denied, No. S20C0619, 2020 Ga. LEXIS 572 (Ga. July 15, 2020).

After the plaintiff was injured in an accident while riding the plaintiff's motorcycle, and sued the driver of the car that struck the plaintiff and the driver's employer, asserting vicarious liability claims against the employer, the trial court erred in denying the employer's motion for summary judgment because the driver was not acting within the scope of the driver's employment at the time of the accident as there was no evidentiary support for the plaintiff's theory that the driver was on the driver's way to run an errand for the employer; and the positive and uncontradicted evidence was that the driver was on the driver's lunch break at the time of the accident. Mannion & Mannion, Inc. v. Mendez, 355 Ga. App. 28, 842 S.E.2d 334, 2020 Ga. App. LEXIS 250 (2020).

51-2-4. Liability for torts of independent employee.

Law reviews.

For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

For article with annual survey on labor and employment law, see 73 Mercer L. Rev. 137 (2021).

JUDICIAL DECISIONS

Analysis

Applicability to Specific Cases

Auto accidents. — In a negligence action, summary judgment to defendant was reversed because a genuine issue of material fact existed as to whether defendant had sufficient control over the transportation provider to establish an employer-employee relationship by requiring its drivers to undergo training on how to secure passengers in wheelchairs, making defendant potentially vicariously liable for the transportation provider's negligence. Ga. Insurers Insolvency Pool v. Logisticare Solutions, 374 Ga. App. 208, 912 S.E.2d 91, 2025 Ga. App. LEXIS 25 (2025).

Construction contractors and subcontractors. — Trial court did not err by denying the contractor's motion for a directed verdict and for JNOV on the issue of whether it could be held vicariously liable for the subcontractor's actions and omissions based on an employer/employee relationship because there was evidence that the contractor, through its owner, exercised the right to control the time, manner, and method in which the subcontractor performed the pool renovation. Employees of the subcontractor testified that the owner was on-site everyday, provided tools, and instructed the subcontractor as to what should be done every day at the work site. Cajun Contrs. v. Peachtree Prop., 360 Ga. App. 390, 861 S.E.2d 222, 2021 Ga. App. LEXIS 366 (2021).

Installation of satellite television company's cable equipment. — After the plaintiffs' home was struck by lightning on or near the exterior satellite cable equipment, causing the lightning to travel through a metal doorknob that the plaintiff was touching, resulting in the plaintiff's injury, the satellite television company's motion for summary judgment was properly granted as the company was not responsible for torts committed by independent contractors; and the seller and the installer were independent contractors because the fact that the installer displayed a company logo on the installer's attire and vehicle, alone, was not sufficient to transform its status as an independent contractor; and the company lacked the right to direct or control the time and manner of the installation of the system. Ward v. DirecTV LLC, 342 Ga. App. 69, 801 S.E.2d 110, 2017 Ga. App. LEXIS 232 (2017).

51-2-5. Liability for negligence of contractor.

Law reviews.

For annual survey on construction law, see 69 Mercer L. Rev. 63 (2017).

JUDICIAL DECISIONS

Analysis

Applicability to Other Specific Cases

Auto accidents. — In a negligence action, summary judgment to defendant was reversed because a genuine issue of material fact existed as to whether defendant had sufficient control over the transportation provider to establish an employer-employee relationship by requiring its drivers to undergo training on how to secure passengers in wheelchairs, making defendant potentially vicariously liable for the transportation provider's negligence. Ga. Insurers Insolvency Pool v. Logisticare Solutions, 374 Ga. App. 208, 912 S.E.2d 91, 2025 Ga. App. LEXIS 25 (2025).

Apportionment of damages not ascertainable. — In a wrongful death action, the trial court erred in imposing liability on a condominium association for the security company's share of fault as the general verdict did not distinguish the award and the jury may have imposed fault on the condominium association based strictly on a theory of nuisance, and the imposition of fault on the security company under common law, which negligence could be completely independent of, and not imputable to the condominium association. Camelot Club Condo. Assoc. v. Afari-Opoku, 340 Ga. App. 618, 798 S.E.2d 241, 2017 Ga. App. LEXIS 111 (2017).

No ratification of unauthorized wrong. — Defendants were not liable for the alleged negligence of the certified registered nurse anesthetist because the plaintiff did not identify any record evidence from which a reasonable jury could find that the defendants ratified the unauthorized wrong of the nurse anesthetist's allegedly negligent provision of medical care to the patient in August 2019 as all of the acts alleged to have been ratified occurred before then. Miller v. Polk, 363 Ga. App. 771, 872 S.E.2d 754, 2022 Ga. App. LEXIS 218 (2022).

No liability based on duty imposed by express contract. — Defendants were not liable for the certified registered nurse anesthetist's alleged negligence on the ground that such negligence violated a duty imposed by express contract because the contractual duties under which the defendants would be liable for the acts of the certified registered nurse anesthetist, an independent contractor, could not be enforced by one not a party to the contract, including the plaintiff and the patient. Miller v. Polk, 363 Ga. App. 771, 872 S.E.2d 754, 2022 Ga. App. LEXIS 218 (2022).

Applicability to Construction

Repairs to pool. — Trial court did not err by denying the contractor's motion for a directed verdict and for JNOV on the issue of whether the contractor could be held vicariously liable for the subcontractor's actions and omissions based on an employer/employee relationship because there was evidence that the contractor, through the contractor's owner, exercised the right to control the time, manner, and method in which the subcontractor performed the pool renovation. Employees of the subcontractor testified that the owner was on-site everyday, provided tools, and instructed the subcontractor as to what should be done every day at the work site. Cajun Contrs. v. Peachtree Prop., 360 Ga. App. 390, 861 S.E.2d 222, 2021 Ga. App. LEXIS 366 (2021).

RESEARCH REFERENCES

ALR.

Products liability: windows, doors, and screens in residential and non-residential buildings, 73 A.L.R.7th 3.

51-2-5.1. Relationship between hospital and health care provider prerequisite to liability; notice regarding independent contractor status; factors for consideration in determining status.

Law reviews.

For annual survey on torts law, see 69 Mercer L. Rev. 299 (2017).

For annual survey on labor and employment law, see 74 Mercer L. Rev. 153 (2022).

51-2-7. Liability of owner or keeper of vicious or dangerous animal for injuries caused by animal.

Law reviews.

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

JUDICIAL DECISIONS

Analysis

General Consideration

Due process not violated. — Second sentence of O.C.G.A. § 51-2-7 regarding liability of an owner for a vicious or dangerous animal did not violate procedural due process because the owner could still produce evidence that the owner did not have knowledge of the animal's vicious nature or that the owner did not know that the animal was unrestrained at the time of the injury, and the plaintiff still had to prove the other elements of a claim under that statute, which satisfied the due process right of an opportunity to be heard; and the defendants had constructive notice of the presumption regarding an animal's viciousness as the second sentence of that Code section was enacted in 1985. S&S Towing & Recovery, Ltd. v. Charnota, 309 Ga. 117, 844 S.E.2d 730, 2020 Ga. LEXIS 454 (2020).

To the extent that the second sentence of O.C.G.A. § 51-2-7 regarding liability of an owner for a vicious or dangerous animal could be considered a rebuttable presumption, procedural due process was not violated as a rational basis existed to allow local jurisdictions to determine based on the local conditions whether certain animals needed to be restrained and for the General Assembly to modify the common law and define a vicious animal as one that was not restrained according to the will of the local governmental body. S&S Towing & Recovery, Ltd. v. Charnota, 309 Ga. 117, 844 S.E.2d 730, 2020 Ga. LEXIS 454 (2020).

No application to out-of-possession landlord. — In an action by a woman seriously injured in a pit bull attack, the landlord of the dogs' owners was entitled to summary judgment despite the landowner's failure to fix a broken gate latch, O.C.G.A. § 44-7-14, because there was no evidence that the landlord was aware of the dogs' vicious propensities. The Court of Appeals erred in applying O.C.G.A. § 51-2-7 to the landlord and to presume such awareness because the statute applied only to owners and keepers of dangerous animals. Tyner v. Matta-Troncoso, 305 Ga. 480, 826 S.E.2d 100, 2019 Ga. LEXIS 158 (2019).

Assumption of risk properly determined on summary judgment. — In a suit involving two dogs fighting, the trial court erred in denying the plaintiffs' mo-

General Consideration (Cont'd)

tion for summary judgment on the defendant's counterclaims because the defendant assumed the risk of harm as a matter of law by intervening in the dog fight with the defendant's bare hands. Saulsbury v. Wilson, 348 Ga. App. 557, 823 S.E.2d 867, 2019 Ga. App. LEXIS 45 (2019).

Although issues of negligence, lack of care in avoiding negligence of others, lack of care for one's own safety, and assumption of the risk are ordinarily not susceptible to summary adjudication, either for or against the complainant, when the evidence shows clearly and palpably that the jury could reasonably draw but one conclusion the issue of assumption of risk may be determined on summary judgment. Saulsbury v. Wilson, 348 Ga. App. 557, 823 S.E.2d 867, 2019 Ga. App. LEXIS 45 (2019).

Knowledge

Owner's knowledge of dog's vicious propensity not immaterial when dog running at large. — Supreme Court disapproved any court of appeals cases to the extent they held that the owner's knowledge of the animal's vicious propensity was immaterial when the animal was running at large in violation of a local ordinance, including Cowan v. Carillo, 331 Ga. App. 387 (2015); Stennette v. Miller, 316 Ga. App. 425 (2012); Huff v. Dyer, 297 Ga. App. 761 (2009); Johnston v. Warendh, 252 Ga. App. 674 (2001); and Oertel v. Chi Psi Fraternity, 239 Ga. App. 147 (1999). S&S Towing & Recovery, Ltd. v. Charnota, 309 Ga. 117, 844 S.E.2d 730, 2020 Ga. LEXIS 454 (2020).

Lack of knowledge of vicious and dangerous character. — Trial court erred by denying defendants' motion for JNOV or a new trial after plaintiff was awarded $66,000 for injuries caused by defendants' dog because no evidence showed that defendants were on notice regarding the dog's vicious or dangerous propensities, as no evidence was presented that defendants knew of prior incidents where the dog had attacked, knocked down, or bitten anyone. Defendants testified that no one had ever told them the dog was vicious and although a neighbor had called the police about the dog the neighbor testified that the neighbor never spoke to defendants about the dog's behavior. Harris v. Martin, 373 Ga. App. 158, 908 S.E.2d 17, 2024 Ga. App. LEXIS 401 (2024).

Proof of scienter required. — When a plaintiff showed that a local ordinance required an animal to be restrained and the animal was not restrained at the time of the incident, a plaintiff seeking to recover had to prove scienter and could do so in two ways: by showing that the owner had knowledge of the animal's vicious propensity as defined by the common law or by showing that the owner knew that the animal was unrestrained at the time of the injury; and a plaintiff had to also show that the owner carelessly managed or allowed the animal to go at liberty; the animal caused the injury; and the injured party did not provoke the injury by plaintiff's own act. S&S Towing & Recovery, Ltd. v. Charnota, 309 Ga. 117, 844 S.E.2d 730, 2020 Ga. LEXIS 454 (2020).

Knowledge of dog's vicious propensity. — Trial court erred in granting summary judgment in favor of the defendant on the plaintiff's negligence claim because the defendant had knowledge of the dog's vicious propensity as, on February 16, in the defendant's presence, the defendant's dog jumped on, scratched, and bit the plaintiff; and, on February 17, the dog charged at the plaintiff, barking and running to within ten feet of the plaintiff before stopping when the plaintiff fell. The fact that the dog did not succeed in the attempt did not matter as there was evidence that the plaintiff was injured while trying to escape the attack. Cornejo v. Allen, 367 Ga. App. 618, 887 S.E.2d 679, 2023 Ga. App. LEXIS 194 (2023).

Adequacy of owner's management and control. — After the plaintiff was bitten by a dog, summary judgment was improperly granted in favor of the plaintiff as an issue of fact existed as to whether the dog was carelessly managed by the dog's owner at the time of the incident because the evidence that the dog was on a two-foot leash showed that the owner was in full compliance with the county ordinance's leash requirement; and, given that the owner was six feet tall and weighed 165 pounds, that the owner testified that the owner was physically capable of restraining the dog, and that there was no evidence that the dog had a history or propensity for vicious behavior, it was for a jury to decide whether the owner carelessly managed the dog at the time the dog bit the plaintiff. Myers v. Ogden, 343 Ga. App. 771, 807 S.E.2d 926, 2017 Ga. App. LEXIS 559 (2017), cert. denied, No. S18C0515, 2018 Ga. LEXIS 381 (Ga. May 21, 2018).

Violation of Ordinances

Dog not confined as required by ordinance. — Plaintiff was not required to show that the owners had knowledge of the dog's vicious propensity as that term was defined by the common law. Rather, plaintiff could prove scienter by showing that the owners were aware of the manner in which the dog was restrained and by showing that such manner of restraint violated an applicable government leash ordinance. Plaintiff did that by pointing to direct testimony from both defendants that they knew that they left the dog alone for a long weekend, they knew he was tethered to a single-point line, and they knew that their back yard was not fully fenced-in. Espinoza v. Morel, 367 Ga. App. 184, 885 S.E.2d 188, 2023 Ga. App. LEXIS 124 (2023).

RESEARCH REFERENCES

ALR.

Personal Injuries Inflicted or Caused by Animal as Within Homeowner's or Personal Liability Policy, 51 A.L.R.7th Art. 3.

CHAPTER 3

LIABILITY OF OWNERS AND OCCUPIERS OF LAND

Law reviews.

For annual survey on commercial transportation: a two-year survey, see 71 Mercer L. Rev. 39 (2019).

ARTICLE 1

GENERAL PROVISIONS

51-3-1. Duty of owner or occupier of land to invitee.

Law reviews.

For article, "Premises Liability and Apportionment Following Martin v. Six Flags Over Georgia II, L.P.," see 69 Mercer L. Rev. 1 (2017).

For annual survey on construction law, see 69 Mercer L. Rev. 63 (2017).

For annual survey on torts law, see 69 Mercer L. Rev. 299 (2017).

For note, "Don't Let the Bed Bugs Bill: Landlord Liability for Bed Bug Infestations," see 34 Ga. St. U.L. Rev. 479 (2018).

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

For comment, "Proprietors Beware: Recent Changes in Negligent Security Cases Involving Third-Party Criminal Acts and The State of the Law Moving Forward After the Supreme Court of Georgia's Most Recent Decision in Georgia CVS v. Carmichael," see 75 Mercer L. Rev. 1587 (2024)

JUDICIAL DECISIONS

Analysis

General Consideration

3. Duty Owed to Invitee by Owner/Occupier or Proprietor

Hotel proprietors. — In a slip and fall in a bathtub at a hotel, summary judgment was properly granted to the hotel defendants because the hotel defendants did not violate their statutory duty to the hotel's invitees as the plaintiff offered no expert testimony that the bathtub itself was somehow unreasonably hazardous, nor did the plaintiff show that the bathtub was in violation of any applicable safety code; and the only evidence of a transient substance that created the slippery or slick condition of the bathtub floor was the combination of water and soap, which the plaintiff admittedly was using to lather the plaintiff's body. Leavins v. Nayan Corp., 344 Ga. App. 417, 810 S.E.2d 324, 2018 Ga. App. LEXIS 43 (2018).

Duty of owner or occupier of premises, etc.

Evidence was sufficient to create a genuine question of material fact as to whether the shop owner remained responsible for exercising ordinary care in keeping the premises safe for invitees because, regardless of the owner's presence at the precise time of the accident, some evidence showed that the owner both retained control of the premises and authorized or encouraged invitees to visit or remain on the shop floor. Sherwood v. Williams, 347 Ga. App. 400, 820 S.E.2d 141, 2018 Ga. App. LEXIS 534 (2018), cert. denied, No. S19C0303, 2019 Ga. LEXIS 366 (Ga. May 20, 2019).

No liability when shooting was not foreseeable. — Trial court did not err in granting summary judgment in favor of the landowner after a customer was shot on the landowner's property, by a bullet originating across the street from the property, because the customer failed to show that the customer's injuries were the result of foreseeable conduct. While police reports indicated that there had been three prior instances involving guns in the area, the landowner was not aware of those reports or required to seek them out. Hill v. MM Gas & Food Mart, Inc., 351 Ga. App. 708, 832 S.E.2d 862, 2019 Ga. App. LEXIS 479 (2019).

No liability when invitee fails to show owner's actual or constructive knowledge. — In a negligence action against the hospital based on the plaintiff's fall in the hospital's visitor parking deck, the hospital's motion for summary judgment was improperly denied because the knowledge of the generally prevailing hazardous snow and ice conditions was not sufficient to establish actual or constructive knowledge by the hospital or the plaintiff of the specific invisible ice hazard on the upper deck which caused the slip and fall; there was no evidence that the hospital had actual knowledge of the invisible ice hazard on the upper deck; and constructive knowledge of the hazard could not be inferred based on the lack of a reasonable inspection procedure as the hospital had round the clock patrols to look for snow and ice. St. Joseph's Hosp. of Atlanta, Inc. v. Hall, 344 Ga. App. 1, 806 S.E.2d 669, 2017 Ga. App. LEXIS 569 (2017), cert. denied, No. S18C0577, 2018 Ga. LEXIS 426 (Ga. June 4, 2018).

In a slip-and-fall case, the company's motion for summary judgment was improperly denied because there was no evidence that the company had actual knowledge of the gas spill; and the plaintiff did not show that the company had constructive knowledge of the spill as the owner's view of the spill was blocked by various vehicles; the substance was on the ground for 20 seconds at most, and only 5 or 10 seconds by the plaintiff's own estimation, when the plaintiff fell; the plaintiff conceded that there was nothing the owner could have done to prevent the plaintiff's fall; there was no evidence that the gas pump or nozzle was defective; and the plaintiff had actual knowledge of the spill. Keisha, LLC v. Dundon, 344 Ga. App. 278, 809 S.E.2d 835, 2018 Ga. App. LEXIS 18 (2018).

Approach to premises. — Trial court erred in granting summary judgment to the property owner on the premises liability claim, as factual issues remained as to whether the area where the lessee was injured by the falling tree branch constituted an approach to the rental property as the owner designated it for guest parking and it was adjacent to the property. Drucker v. Morgan, 371 Ga. App. 334, 900 S.E.2d 204, 2024 Ga. App. LEXIS 150 (2024).

No liability for obvious hazard of sidewalk. — In a personal injury action, the trial court properly granted summary judgment to the occupier of the property because the alleged hazard the walkway presented was obvious and, thus, avoidable by the customer in the exercise of reasonable care. The customer's deposition testimony showed that the customer observed the transition between the parking lot and the walkway and it appeared to the customer to be flat and nothing obstructed the customer's view of the area. D'Elia v. Phillips Edison & Co., 354 Ga. App. 696, 839 S.E.2d 721, 2020 Ga. App. LEXIS 97 (2020).

Wet floor sign visible prior to slip and fall. — In a slip and fall case, the evidence was plain, palpable, and undisputed that the plaintiff had knowledge of the hazard, and thus the defendant was entitled to summary judgment because the plaintiff testified that the plaintiff saw the employee cleaning another section of the floor and saw a "wet floor" sign as the plaintiff exited the escalator; contemporaneous photos of the area showed a wet floor sign in the vicinity of the plaintiff's fall; and the plaintiff testified that the plaintiff was looking straight ahead as the plaintiff walked down the hall, the lighting was fine, and nothing obscured the plaintiff's vision. Allen v. ABM Aviation, Inc., 356 Ga. App. 331, 847 S.E.2d 13, 2020 Ga. App. LEXIS 440 (2020).

Evidence of criminal activity.

Trial court did not err by denying the restaurant's motion for summary because factual questions remained as to both the

General Consideration (Cont'd)
3. Duty Owed to Invitee by Owner/Occupier or Proprietor (Cont'd)

foreseeability of the crime and causation, as the evidence showed that the restaurant knew a substantial number of car break-ins and property crimes had occurred on its property, only two security officers were on duty the night of the crime, video surveillance showed that the officers were distracted, the restaurant was aware of an increase in crime in the area in the weeks before the murder, and the security company had recommended additional security. Pappas Rest. v. Welch, 371 Ga. App. 614, 901 S.E.2d 751, 2024 Ga. App. LEXIS 192 (2024).

Duty of owner of chicken farm to subcontractors on farm. — In a wrongful death case arising out of a forklift accident on a chicken farm, the farm owner was not entitled to summary judgment because, although the forklift was owned and operated by another, the owner was aware of the dangers of operating forklifts and there was no designated forklift path on the farm. Further, it was not clear that the owner had surrendered possession of the premises to the chicken company's subcontractors who had come to catch and transport the chickens. Mullinax v. Pilgrim's Pride Corp., 354 Ga. App. 186, 840 S.E.2d 666, 2020 Ga. App. LEXIS 143 (2020), cert. denied, No. S20C1216, 2020 Ga. LEXIS 905 (Ga. Nov. 2, 2020), cert. denied, No. S20C1181, 2020 Ga. LEXIS 892 (Ga. Nov. 2, 2020).

Assault on employer's property by foreseeable assailant. — In an action wherein plaintiff was falsely imprisoned and raped by a fellow resident of a homeless shelter, the trial court erred by granting summary judgment to defendant because plaintiff pointed to some evidence creating a question of fact on the issues of foreseeability and proximate causation. Fields v. Rainbow Community Center, Inc., 369 Ga. App. 620, 894 S.E.2d 191, 2023 Ga. App. LEXIS 502 (2023).

4. Ordinary Care Standard

Ordinary care does not require inspection when no apparent need exists. In slip and fall case, because hospital failed to present evidence of reasonable inspection procedures, inference of constructive knowledge could be established and trial court correctly denied summary judgment to hospital. Fairview Park, Limited Partnership v. Roddenberry, 364 Ga. App. 247, 874 S.E.2d 408, 2022 Ga. App. LEXIS 287 (2022).

Plaintiff assumed the risk of zip lining. — Trial court properly granted summary judgment to the defendant in a premises liability case wherein the plaintiff's foot was injured when the plaintiff fell from a zipline on property owned by the defendant because the defendant did not violate the applicable standard of care to the plaintiff and the plaintiff assumed the risk of injury. Stanton v. Griffin, 361 Ga. App. 205, 863 S.E.2d 548, 2021 Ga. App. LEXIS 456 (2021).

Failure to exercise ordinary standard of care. — Evidence was plain and palpable that plaintiff failed to exercise ordinary care for plaintiff's own safety given that the door to the restroom opened inward into the restroom itself, there was nothing stopping plaintiff from seeing the paper towels on the floor before entering, and plaintiff did not notice any water or moisture. P&D Ole Times v. McCray, 369 Ga. App. 270, 893 S.E.2d 171, 2023 Ga. App. LEXIS 442 (2023).

Commercial Sales Establishments

Storekeeper is not insurer of safety of its customers, etc.

In a premises liability action, the grant of summary judgment to the store was upheld because the shopper failed to point to admissible evidence creating a jury question on the issue of whether the store had superior knowledge of the instrumentality that allegedly caused the shopper's injury as the undisputed evidence showed that the package had been placed on a shelf in a cooler and was readily accessible to other customers. Westmoreland v. Walgreen Co., 362 Ga. App. 119, 866 S.E.2d 832, 2021 Ga. App. LEXIS 569 (2021).

Proprietor's duty to exercise ordinary care. — Reasonable foreseeability of third-party criminal conduct is properly considered as part of a proprietor's duty to exercise ordinary care in keeping the premises and approaches safe under O.C.G.A. § 51-3-1 although considerations of foreseeability also inform other elements of a premises liability claim. Ga. CVS Pharm., LLC v. Carmichael, 316 Ga. 718, 890 S.E.2d 209, 2023 Ga. LEXIS 141 (2023).

Prior traversal rule did not apply. — In a wrongful death action, denial of the defendant's summary judgment motion was upheld as the prior traversal rule did not apply since there was no evidence that the decedent traversed the bump in the driveway lot previously. N. Fulton Cmty. Charities v. Goodstein, 367 Ga. App. 576, 887 S.E.2d 646, 2023 Ga. App. LEXIS 190 (2023).

Foreseeability issue. — In a case in which the plaintiff was injured when a driver in a mall parking lot backed into the plaintiff and pinned the plaintiff's leg under a tire, the trial court erred in denying the summary judgment motion of the owner of the mall as the incident was not reasonably foreseeable because, given the lack of evidence of any specific, immediate threat, and no prior act of violence by the driver known to the owner, the plaintiffs failed to establish that it was reasonably foreseeable to the retired officer that the driver would strike the plaintiff with the driver's vehicle directly in front of law enforcement. Retail Property Trust v. McPhaul, 359 Ga. App. 345, 857 S.E.2d 521, 2021 Ga. App. LEXIS 194 (2021).

As a matter of law, the legal duty to keep the premises safe is imposed by statute and has been construed to encompass a duty to protect against foreseeable third-party criminal acts. But whether the third-party criminal acts were foreseeable under the facts of a particular case — thus triggering the duty to protect against them — is a question for the factfinder (unless no rational juror could find the criminal act reasonably foreseeable). Ga. CVS Pharm., LLC v. Carmichael, 316 Ga. 718, 890 S.E.2d 209, 2023 Ga. LEXIS 141 (2023).

Presence of water on the floor. — Store patron who was badly injured when the patron slipped in pooled water in the garden section of a hardware store failed to establish that a store employee who told the patron to follow the employee had necessarily diverted the patron's attention under the distraction doctrine so that the patron was excused from discovering the open and obvious water and caution signs on the floor of the garden shop. Weickert v. Home Depot U. S. A., Inc., 347 Ga. App. 889, 821 S.E.2d 110, 2018 Ga. App. LEXIS 625 (2018), cert. denied, No. S19C0438, 2019 Ga. LEXIS 551 (Ga. Aug. 5, 2019).

Common area parking lot. — Store was entitled to summary judgment on a claim by a store patron who slipped and fell on a slippery substance in the store's shopping center's common area parking lot because the parking lot was not an approach to the store premises within the meaning of O.C.G.A. § 51-3-1 and was maintained by the shopping center owner. Boyd v. Big Lots Stores, Inc., 347 Ga. App. 140, 817 S.E.2d 698, 2018 Ga. App. LEXIS 472 (2018).

Sidewalks.

Where the decedent fell while walking on a sidewalk at a resort, there were disputed factual issues as to whether the height differential in the sidewalk was open and obvious as none of the photographs purporting to show the condition of the sidewalk conclusively established that, at the time of the decedent's fall, the defect was not objectively open and obvious. Callaway Gardens Resort, Inc. v. Grant, 365 Ga. App. 222, 878 S.E.2d 65, 2022 Ga. App. LEXIS 420 (2022).

Prior traversal rule barred claim against mall for injury in revolving door. — Mall patron's claim against the mall for injuries the patron suffered when the patron ran into the stationary pane of a revolving glass door was barred by Georgia's prior traversal doctrine because the patron had successfully negotiated the same revolving door twice earlier that same day and had equal knowledge of the door and the door's stationary parts. Gervin v. The Retail Property Trust, 354 Ga. App. 11, 840 S.E.2d 101, 2020 Ga. App. LEXIS 108 (2020).

Home, Apartment, and Landowners

Jury charge on assumption of risk in error. — Trial court committed reversible error in a premises liability suit by providing an inapt, incorrect, and not rea-

Home, Apartment, and Landowners (Cont'd)

sonably raised or authorized by the evidence jury charge on assumption of risk because the charge, in essence, supported the defendants argument that anyone who chose to remain on the property consented to assume the risk of being shot and killed, which was flawed reasoning. Cham v. ECI Mgmt. Corp., 353 Ga. App. 162, 836 S.E.2d 555, 2019 Ga. App. LEXIS 611 (2019), cert. denied, No. S20C0600, 2020 Ga. LEXIS 562 (Ga. July 15, 2020), aff'd, 311 Ga. 170, 856 S.E.2d 267, 2021 Ga. LEXIS 85 (2021).

Apartment owner's liability for crimes of others.

In a case in which the appellee was sexually assaulted when an intruder broke into the appellee's apartment, and the appellee sued the appellants, the owners and managers of the apartments, the causal connection between the appellants' alleged conduct and the appellee's injury was too remote to create a question of fact on the issue because the appellee failed to present any evidence showing that the window in question was malfunctioning at the time of the appellee's attack; and the appellee admitted that the appellee did not check the window to make certain it was locked, and the appellee admitted the intruder could have entered through the appellee's front door, which the appellee might have left unlocked earlier that evening. Tara Bridge Apartments, LP v. Benson, 365 Ga. App. 647, 879 S.E.2d 531, 2022 Ga. App. LEXIS 469 (2022).

Liability of property management company. — In a slip and fall action, there was an issue as to whether the management company was in control of the handicap ramp on the apartment property to the degree necessary to impose on the company the duty to keep the premises safe, including the duty to warn, as an occupier of the premises and, thus, the trial court erred in granting summary judgment in favor of the management company. Stelly v. WSE Prop. Mgmt., LLC, 350 Ga. App. 627, 829 S.E.2d 871, 2019 Ga. App. LEXIS 354 (2019).

Factual issues as to landlord's superior knowledge of fire ant colonies. — When a baby was injured in an apartment after being bitten by fire ants, grant of summary judgment to the landlord was reversed because issues of material fact existed since there was evidence that there were two fire ant mounds located outside the apartment, the landlord had superior knowledge of the hazard, and preventative treatment may have deterred ants from colonizing. Owens v. Larry Franklin Properties, Inc., 363 Ga. App. 362, 870 S.E.2d 218, 2022 Ga. App. LEXIS 102 (2022).

Store inspection procedures or cleaning practices inadequate to guard against known or foreseeable dangers. — In a premises liability action for injuries the plaintiff received after stepping on an anti-theft sensor pin while shopping, summary judgment was improperly granted to the defendant as there was not plain, palpable, and undisputable proof that the defendant's inspection procedures or cleaning practices were adequate to guard against known or foreseeable dangers because the defendant was aware of the specific risk associated with stray pins on the floor; the defendant suffered from daily shoplifting activity; the defendant knew that the shoplifters tended to randomly discard the sensor pins without regard to where the pins landed; and there was no evidence of any policy or procedure requiring that the storeroom floor be inspected for hazards during working hours. Donastorg v. Rainbow USA, Inc., 342 Ga. App. 215, 802 S.E.2d 425, 2017 Ga. App. LEXIS 334 (2017).

HOA acted promptly with repair of gate. — In a premises liability claim, in which the plaintiff was attacked by two armed men, the trial court erred in denying summary judgment to the homeowners association (HOA) as the undisputed facts showed no conduct by the HOA that failed to meet what was required by ordinary care because, when the HOA was notified of the broken gate, it initiated remedial action the same day and approved an estimate for the repair work two days later; the gate, which needed refabrication, was fully repaired a mere 11 days later; the plaintiff's injury occurred four days after the gate was broken and only two days after the estimate was approved; and there was no evidence that the HOA could have gotten the repair done before the plaintiff was attacked. Villages of Cascade Homeowners Ass'n v. Edwards, 363 Ga. App. 307, 870 S.E.2d 899, 2022 Ga. App. LEXIS 160 (2022).

Independent Contractors

Contractor with knowledge of potential hazard. — In a mesothelioma case, the grant of summary judgment to defendant hospital was upheld because plaintiff's employing contractor had at least equal knowledge of the specific hazard posed by exposure to asbestos at defendant hospital and full knowledge by the independent contractor of the dangers was sufficient to discharge the landowner's duty to its invitees. Sinyard v. Ga. Power Co., 363 Ga. App. 195, 871 S.E.2d 45, 2022 Ga. App. LEXIS 138 (2022).

Landlord Liability

Out-of-possession landlord's duty to guests provided in O.C.G.A. § 44-7-14. — In a premises liability action wherein a minor was fatally shot inside an apartment by a gun found in the tenant-mother's closet, because the injury occurred inside an apartment leased to a tenant, the landlord's liability derived from O.C.G.A. § 44-7-14, not O.C.G.A. § 51-3-1, and since the landlord had fully parted with possession, it was not liable for injuries caused by the tenant's negligence inside the apartment. Jordan v. H. J. Russell & Co., 371 Ga. App. 8, 899 S.E.2d 514, 2024 Ga. App. LEXIS 107 (2024).

Out-of-possession landlord not liable for personal injuries to invitee. — In a suit arising from the plaintiff being injured at a nightclub, the trial court properly granted the property management company summary judgment because it was an out-of-possession landlord not subject to premises liability under O.C.G.A. § 51-3-1, and its liability was limited under O.C.G.A. § 44-7-14, which did not encompass the plaintiff's personal injury claims. Williams v. Kasulka Props., LP, 370 Ga. App. 653, 898 S.E.2d 843, 2024 Ga. App. LEXIS 69 (2024).

Student union landlord not liable for shooting death of student. — In a tragic case involving the shooting death of a university student by an unknown assailant, although the student union landlord was obligated to service and maintain the property and retained a right to enter the property for such purposes, those obligations and rights did not evince the requisite dominion and control of the premises to impose liability under O.C.G.A. § 51-3-1. Starks v. USG Real Estate Found. III, 361 Ga. App. 406, 864 S.E.2d 621, 2021 Ga. App. LEXIS 494 (2021).

Constructive knowledge is a question of fact.

In the invitee's premises liability action against the landlord, a factual issue existed as to the landlord's knowledge of the backyard hazard because the invitee offered proof that the landlord did not act responsibly in taking care of the outside of the house; the landlord admittedly did not inspect the yard for hazards or perform work in the back yard; the tenant testified that the landlord was very poor at maintaining the back yard; and the invitee's testimony regarding the size of the hole and the overgrowth covering the hole would permit a reasonable jury to infer both that the hole had been in existence for a substantial period of time and that the hole was large enough to have been observable during routine mowing and maintenance. Watson v. Dana, 356 Ga. App. 645, 848 S.E.2d 654, 2020 Ga. App. LEXIS 499 (2020).

Trial court erred in granting summary judgment to the landlord because there were genuine issues of material fact about whether the landlord had superior, constructive knowledge of the hazard, rendering him liable under the general principles of premises liability, as the evidence showed that there were indications that the fasteners on the staircase were failing, its railing had become loose, and the wood was cracking around the fasteners on other steps. Pollard v. Deloach, 372 Ga. App. 303, 903 S.E.2d 329, 2024 Ga. App. LEXIS 234 (2024).

Dog bite. — In an action by a woman seriously injured in a pit bull attack, the

Landlord Liability (Cont'd)

landlord of the dogs' owners was entitled to summary judgment despite the landlord's failure to fix a broken gate latch, O.C.G.A. § 44-7-14, because there was no evidence that the landlord was aware of the dogs' vicious propensities. The Court of Appeals erred in applying O.C.G.A. § 51-2-7 to the landlord and to presume such awareness because the statute applied only to owners and keepers of dangerous animals. Tyner v. Matta-Troncoso, 305 Ga. 480, 826 S.E.2d 100, 2019 Ga. LEXIS 158 (2019).

Whether landlord retained control over yard. — In the invitee's premises liability action against the landlord, the tenant's testimony raised a question of fact as to whether the landlord retained control over the backyard and thus owed a duty of ordinary care to keep the yard reasonably safe for the invitee. Watson v. Dana, 356 Ga. App. 645, 848 S.E.2d 654, 2020 Ga. App. LEXIS 499 (2020).

Motion to compel discovery improperly denied in premises liability case. — In a premises liability action involving a rape of a minor at an apartment building, the trial court abused the court's discretion in denying the plaintiff's motion to compel discovery without either reaching the merits or determining whether the desired discovery procedures had been promptly commenced, diligently pursued, and completed without unnecessary delay and the court's reasoning that trial was only a few weeks away with no time to address the matter fairly and thoughtfully was not compelling. Pres. Mgmt., Inc. v. Herrera, 352 Ga. App. 710, 835 S.E.2d 777, 2019 Ga. App. LEXIS 633 (2019).

Public Accommodation Facilities

Hotel liability for slip and fall in hotel tub. — In a slip and fall case dealing with a hotel tub, the guest and the guest's wife presented a fact question as to whether the tub had any nonslip surface because the guest stated that the tub had no traction, only dark striping where possibly traction strips used to be, but the other witnesses stated that the dark stripes were traction strips built into the tub which did not wear out and could not be removed; and the guest's wife stated that the hotel's general manager told the wife that the hotel's bathrooms were being renovated, that there were no traction strips in that shower, and that the room should not have been occupied, but the manager stated that the manager did not remember discussing traction strips or tub surfaces with the wife. Hall v. Noble-Interstate Management Group, LLC, 349 Ga. App. 661, 824 S.E.2d 705, 2019 Ga. App. LEXIS 122 (2019).

For purposes of a negligence per se claim based on a slip and fall in a hotel bathtub, the guest and the guest's wife raised a jury question as to whether the defendants violated hotel/motel safety codes requiring anti-slip tubs, slip strips, appliques, or slip-proof mats because a jury could find that the guest's fall resulted from an unreasonable risk of harm because the hotel's tub did not have proper or regulation-compliant traction. Hall v. Noble-Interstate Management Group, LLC, 349 Ga. App. 661, 824 S.E.2d 705, 2019 Ga. App. LEXIS 122 (2019).

Duty of amusement park. — Six Flags, an amusement park, cannot evade liability for the foreseeable consequence of the park's failure to exercise ordinary care in keeping the park's premises safe, simply because the park's patron had moved off those premises in an attempt to distance oneself from the patron's attackers. Martin v. Six Flags Over Georgia II, L.P., 301 Ga. 323, 801 S.E.2d 24, 2017 Ga. LEXIS 454 (2017).

While the off-duty police officers hired by Six Flags may have sometimes assisted Cobb County with security issues outside the park's gates, the evidence does not show the level of dominion and control required to render the company responsible for the safety of its patrons at and around the bus stop in the same way it is responsible within the confines of the park's premises and approaches. Martin v. Six Flags Over Georgia II, L.P., 301 Ga. 323, 801 S.E.2d 24, 2017 Ga. LEXIS 454 (2017).

Hospital's failure to present evidence of reasonable inspection procedures. — In slip and fall case, because the hospital failed to present evidence of reasonable inspection procedures, inference of constructive knowledge could be established and the trial court correctly denied summary judgment to the hospital. Fairview Park, Limited Partnership v. Roddenberry, 364 Ga. App. 247, 874 S.E.2d 408, 2022 Ga. App. LEXIS 287 (2022).

Spectator Events and Facilities

Injured party had equal knowledge of hazard. — Trial court erred by denying the defendant's motion for summary judgment on plaintiff's premises liability claim because the lack of a handrail next to the stairs was an open and obvious static condition, the weather was clear and nothing obstructed plaintiff's view of the hazard and, therefore. the plaintiff had equal knowledge of the hazard that led to the plaintiff's fall. American Multi-Cinema, Inc. v. Gillis, 372 Ga. App. 230, 904 S.E.2d 49, 2024 Ga. App. LEXIS 282 (2024).

Miscellaneous

Agent and broker were not liable for injury on listed property. — Trial court erred by concluding that real-estate agents and brokers were exempt from O.C.G.A. § 51-3-1 as a matter of law because the real estate brokers or agents could not be held responsible for injuries sustained by a visitor on property listed and shown for sale since, under the terms of the listing contract, neither the agent or broker were given control over the premises such that they could be considered occupiers who owed a duty under § 51-3-1. Kidd v. Metro Brokers, Inc., 372 Ga. App. 563, 905 S.E.2d 316, 2024 Ga. App. LEXIS 329 (2024).

Apportionment of damages not ascertainable. — In a wrongful death action, the trial court erred in imposing liability on a condominium association for the security company's share of fault as the general verdict did not distinguish the award and the jury may have imposed fault on the condominium association based strictly on a theory of nuisance, and the imposition of fault on the security company under common law, which negligence could be completely independent of, and not imputable to the condominium association. Camelot Club Condo. Assoc. v. Afari-Opoku, 340 Ga. App. 618, 798 S.E.2d 241, 2017 Ga. App. LEXIS 111 (2017).

Rape by hospital nurse. — Trial court erred by deciding that appellant's alleged rape while she was on a ventilator in appellee's intensive care unit (ICU) was not foreseeable because, given the number and similarity of other incidents and the known vulnerability of ICU patients, a jury could conclude that appellee had reason to anticipate that a sexual assault of an incapacitated patient might occur. There was evidence of five other complaints made to appellee of sexual misconduct that occurred inside the hospital within a few years of appellant's alleged rape. D. L. v. St. Francis Health, LLC, 369 Ga. App. 314, 893 S.E.2d 444, 2023 Ga. App. LEXIS 450 (2023).

Water park.— Trial court did not err by granting defendant summary judgment in plaintiff's negligence/premises liability action seeking damages for injuries she sustained at a water park because plaintiff identified no record evidence establishing her total weight and her boyfriend's weight or the depth of the water in the exit pool either on the day in question generally or at the specific time she was injured and, therefore, the plaintiff could not establish the defendant acted negligently by failing to enforce or otherwise warn her about the weight restriction or that any such failure was a cause of her injuries. Sheffield v. Jekyll Island State Park Authority, 369 Ga. App. 265, 893 S.E.2d 158, 2023 Ga. App. LEXIS 438 (2023).

Grocery store. — Trial court erred in denying the grocery store's motion for summary judgment in a customer's slip and fall action as the customer could not establish that the store had superior knowledge of the oily hazard on which the customer fell given that the store's customer service manager had made an inspection of the area where the fall occurred about five minutes before the fall and found that the area was free of hazards. Ingles Markets, Inc. v. Rhodes, 340 Ga. App. 769, 798 S.E.2d 340, 2017 Ga. App. LEXIS 138 (2017).

After the plaintiff slipped on ice tea that had spilled in one of the aisles of the

Miscellaneous (Cont'd)

grocery store, the store's motion for directed verdict was improperly denied because the manager placed a caution cone in front of the spill to warn customers of the condition; the plaintiff did not notice the cones or the spill even after the plaintiff successfully walked past the first cone; according to surveillance camera footage from inside the store, the time between the manager receiving notice of the spill and learning that the plaintiff had fallen was about 75 seconds; and the store did not have a reasonable amount of time after notice of the hazardous condition to exercise care in correcting the condition prior to the plaintiff's fall. Bi-Lo, LLC v. Green, 346 Ga. App. 770, 816 S.E.2d 298, 2018 Ga. App. LEXIS 252 (2018), cert. denied, No. S18C1581, 2019 Ga. LEXIS 173 (Ga. Mar. 4, 2019).

Security company had no duty to inspect. — After the plaintiff fell and broke the plaintiff's hip, O.C.G.A. § 51-3-1 did not impose a statutory duty upon the security company or the company's employee to inspect the premises to keep the premises safe for invitees, such as the plaintiff, because there was no evidence that either the company or the company's employee owned or occupied the store where the plaintiff fell, or that the plaintiff was an invitee of either the company or the employee, as the plaintiff and the plaintiff's husband were the invitees of the corporation that managed the store. Simmons v. Universal Prot. Servs., LLC, 349 Ga. App. 374, 825 S.E.2d 858, 2019 Ga. App. LEXIS 174 (2019), cert. denied, No. S19C0997, 2019 Ga. LEXIS 753 (Ga. Nov. 4, 2019).

Parking lots.

Appellants' motions for summary judgment in a premises liability action filed by the appellee were improperly denied because, to the extent that the lack of a crosswalk or traffic warnings in the parking lot constituted a defect on the property, that defect was open and obvious and the appellee had equal knowledge of any such defect as the appellee had been to the shopping center numerous times; and the appellee actually saw the car that ultimately hit the appellee heading in the appellee's direction before the appellee stepped into the parking lot and, thus, the appellee had superior knowledge of the immediate risk posed by that car, which could have been avoided by waiting for the car to either stop or to pass before proceeding. Cherokee Main St., LLC v. Ragan, 345 Ga. App. 405, 813 S.E.2d 397, 2018 Ga. App. LEXIS 74 (2018), cert. denied, No. S18C1105, 2018 Ga. LEXIS 716 (Ga. Oct. 22, 2018).

Trial court did not err by granting the property owner summary judgment in the injured patron's premises liability action because the trial court correctly determined that the mutual combatant doctrine governed. The patron had ample time to leave the scene and avoid the possibility of injury from the altercation in the parking lot, the patron punched the security guard in the face, which precipitated the guard's shooting the patron, and because the patron voluntarily engaged in the combat that led to the patron's injuries the patron's knowledge was deemed superior to the property owner's knowledge as a matter of law. Jones v. Scarlett & Associates, Inc., 373 Ga. App. 349, 908 S.E.2d 353, 2024 Ga. App. LEXIS 436 (2024).

Power company liability as non-owner. — Trial court erred in denying the power company's motion for summary judgment in an action for injuries under Georgia's premises-liability statute, O.C.G.A. § 51-3–1, because that statute imposed a duty to keep the premises safe only on an owner or occupier of land and the power company did not own the subject premises. Ga. Power Co. v. Triola, 364 Ga. App. 60, 873 S.E.2d 737, 2022 Ga. App. LEXIS 260 (2022).

No liability for non-owner. — Trial court erred in denying the power company's motion for summary judgment in an action for injuries under Georgia's premises-liability statute because that statute imposed a duty to keep the premises safe only on an owner or occupier of land and the power company did not own the subject premises. Ga. Power Co. v. Triola, 364 Ga. App. 60, 873 S.E.2d 737, 2022 Ga. App. LEXIS 260 (2022).

RESEARCH REFERENCES

ALR.

Liability of Homeowner for Injury to Guest Caused by Dangerous Condition of Residential Porch, Deck, Balcony, or Patio, 73 A.L.R.7th 7.

Premises Liability: Museums and Art Galleries, 79 A.L.R.7th 5.

Civil Liability Arising from Mass Shootings, 83 A.L.R.7th 3.

51-3-2. Duty of owner of premises to licensee.

Law reviews.

For comment, "Proprietors Beware: Recent Changes in Negligent Security Cases Involving Third-Party Criminal Acts and The State of the Law Moving Forward After the Supreme Court of Georgia's Most Recent Decision in Georgia CVS v. Carmichael," see 75 Mercer L. Rev. 1587 (2024)

JUDICIAL DECISIONS

Analysis

General Consideration

Jury instruction concerning licenses. — In a wrongful death action where the decedent was killed during an armed robbery in a parking lot at an apartment complex, the trial court did not err in instructing the jury on the law concerning licensees because the jury was authorized to conclude that the rental agreement and management policy indicated that the defendants had no interest in having people (such as the decedent) live in the apartment complex and continually use the common areas without signing the lease or being listed on the rental application; and evidence was presented that the decedent's extended stay in the tenant's apartment and the decedent's concomitant use of the common areas occurred with the defendants' permission but merely for the decedent's own interests. Cham v. ECI Mgmt. Corp., 311 Ga. 170, 856 S.E.2d 267, 2021 Ga. LEXIS 85 (2021).

Jury charge on assumption of risk in error. — Trial court committed reversible error in a premises liability suit by providing an inapt, incorrect, and not reasonably raised or authorized by the evidence jury charge on assumption of risk because the charge, in essence, supported the defendants argument that anyone who chose to remain on the property consented to assume the risk of being shot and killed, which was flawed reasoning. Cham v. ECI Mgmt. Corp., 353 Ga. App. 162, 836 S.E.2d 555, 2019 Ga. App. LEXIS 611 (2019), cert. denied, No. S20C0600, 2020 Ga. LEXIS 562 (Ga. July 15, 2020), aff'd, 311 Ga. 170, 856 S.E.2d 267, 2021 Ga. LEXIS 85 (2021).

Applicability to Specific Cases

Defective condition of residential premises. — Grant of summary judgment to the homeowner in a premises liability suit was upheld because the officer, who was injured while responding to a call for assistance, was precluded from recovering since the officer was a licensee responding in a professional capacity and there was no wanton nor willful conduct on the part of the homeowner, who had warned another officer of the hole in the porch floor. Shedeke v. Garrett, 373 Ga. App. 881, 910 S.E.2d 637, 2024 Ga. App. LEXIS 495 (2024).

Homeowner not liable for criminal acts of third person. — Trial court clearly erred in denying the appellant's motion for summary judgment because the appellant, the property owner of the

Applicability to Specific Cases (Cont'd)

home the appellant allowed the appellant's daughter's estranged husband to enter and who thereafter killed the daughter, could not have foreseen the violent criminal actions of the estranged husband, a third party, in the negligence suit brought by the deceased daughter's estate. Van v. Kong, 344 Ga. App. 754, 811 S.E.2d 474, 2018 Ga. App. LEXIS 131 (2018).

Liability for known criminal activity and gunfire at gas station. — Evidence supported the jury's verdict and there was no error in denying the property owner's motion for new trial because the trial court correctly determined that a jury should decide whether the property owner was wanton or wilful in failing to take ordinary care to warn invitees and their guests, such as the plaintiff, of the hazardous conditions on the owner's premises, including frequent criminal activity and gunfire, of which the owner arguably had knowledge. Khalia, Inc. v. Rosebud, 353 Ga. App. 350, 836 S.E.2d 840, 2019 Ga. App. LEXIS 699 (2019), cert. denied, No. S20C0736, 2020 Ga. LEXIS 703 (Ga. Aug. 24, 2020).

Plaintiff assumed the risk of zip lining. — Trial court properly granted summary judgment to the defendant in a premises liability case wherein the plaintiff's foot was injured when the plaintiff fell from a zipline on property owned by the defendant because the defendant did not violate the applicable standard of care to the plaintiff and the plaintiff assumed the risk of injury. Stanton v. Griffin, 361 Ga. App. 205, 863 S.E.2d 548, 2021 Ga. App. LEXIS 456 (2021).

Fireworks injury. — Trial court erred by granting the homeowners summary judgment in the premises liability action filed by the injured child's mother because questions of fact remained as to whether the homeowners breached a duty to the child by allowing intoxicated individuals to shoot off fireworks on their property in the presence of a large group of adults and children. Harbin v. Ritch, 364 Ga. App. 885, 876 S.E.2d 737, 2022 Ga. App. LEXIS 364 (2022).

Legally blind pedestrian failed to exercise ordinary care. — Trial court did not err by granting defendants, property owner and store operators, summary judgment in the pedestrian's negligence action because the absence of a railing and the protruding cleanout plug were open and obvious, and the pedestrian would have seen the hazards had the pedestrian exercised ordinary care. Even though the pedestrian was legally blind, the pedestrian testified that the pedestrian generally was able to see obstructions in the pedestrian's path as the pedestrian walked and the pedestrian chose to walk alone and unassisted. Gilchrist v. Meldi Sub, LLC, 363 Ga. App. 53, 870 S.E.2d 541, 2022 Ga. App. LEXIS 118 (2022).

51-3-3. Lawful possessor of land owes no duty of care to trespasser.

Law reviews.

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

ARTICLE 2

OWNERS OF PROPERTY USED FOR RECREATIONAL PURPOSES

RESEARCH REFERENCES

ALR.

What constitutes recreational purpose within meaning of recreational use statutes, 78 A.L.R.7th 5.

Premises liability: museums and art galleries, 79 A.L.R.7th 5.

51-3-20. Purpose of article.

Law reviews.

For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

For comment, "Remarks and Recreation: Recent Changes in the Recreational Property Act and the State of the Law Going Forward," see 71 Mercer L. Rev. 443 (2019).

JUDICIAL DECISIONS

Fall at leased gymnasium during cheerleader exhibition. — A mother who was injured in a fall while attending her daughter's cheerleading exhibition could not recover for negligence against the gym (a lessee) because she had signed a medical-release form; further, her claims were barred by the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., because the gym did not charge a fee for the exhibition. Shields v. RDM, LLC, 355 Ga. App. 409, 844 S.E.2d 297, 2020 Ga. App. LEXIS 324 (2020).

Owner not liable to persons admitted free, although others were charged. — Under O.C.G.A. § 51-3-23 of the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., a city operating a stadium was shielded from liability for injuries sustained by a six-year-old child who fell from the bleachers because children under six were not charged a fee to enter the stadium, although adults and older children were charged. Mayor & Aldermen of Garden City v. Harris, 302 Ga. 853, 809 S.E.2d 806, 2018 Ga. LEXIS 46 (2018).

51-3-21. Definitions.

JUDICIAL DECISIONS

Owner or occupant. — Chatham Area Transit Authority (CAT) was not entitled to immunity from claims by passengers who were injured when a ferry dock ramp collapsed under the Recreational Properties Act, O.C.G.A. § 51-3-20 et seq., because it was not an "owner" or "occupant" of the dock as defined in O.C.G.A. § 51-3-21(3). Chatham Area Transit Auth. v. Brantley, 353 Ga. App. 197, 834 S.E.2d 593, 2019 Ga. App. LEXIS 675 (2019).

Lessee of a gym offering tumbling and gymnastics instruction was an "owner." Shields v. RDM, LLC, 355 Ga. App. 409, 844 S.E.2d 297, 2020 Ga. App. LEXIS 324 (2020).

Transit authority was not owner of dock. — Because the transit authority was not an owner of the dock, the authority was not entitled to immunity under the Recreational Property Act, O.C.G.A. § 51-3-20 et seq. Chatham Area Transit Auth. v. Brantley, 353 Ga. App. 197, 834 S.E.2d 593, 2019 Ga. App. LEXIS 675 (2019).

RESEARCH REFERENCES

ALR.

Waiver of Liability for Personal Injury or Death in Cases Involving Facilities of Recreational or Sports Activities, 88 A.L.R.7th 3.

What constitutes recreational purpose within meaning of recreational use statutes, 78 A.L.R.7th 5.

51-3-22. Duty of owner of land to those using same for recreation generally.

JUDICIAL DECISIONS

Financial benefits from use of recreational facilities. — Language of Atlanta Committee for the Olympic Games, Inc. v. Hawthorne, 278 Ga. 116 (2004) was held inconsistent with the weight of case law and the Georgia Supreme Court disapproved the language in Hawthorne or any other case that could be read to require consideration of evidence that the landowner was motivated by the possibility of obtaining indirect financial benefits from allowing the public to use the public's land in determining whether that invitation was for recreational purposes. Mercer Univ. v. Stofer, 306 Ga. 191, 830 S.E.2d 169, 2019 Ga. LEXIS 436 (2019).

Determining whether immunity is available under Recreational Property Act. — Georgia Supreme Court held that whether immunity is available under the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., requires determination of the true scope and nature of the landowner's invitation to use property, and that determination properly is informed by two related considerations: (1) the nature of the activity that constitutes use of the property in which the people have been invited to engage; and (2) the nature of the property that the people have been invited to use. Mercer Univ. v. Stofer, 306 Ga. 191, 830 S.E.2d 169, 2019 Ga. LEXIS 436 (2019).

University entitled to immunity. — In a wrongful death action against the university after the decedent was fatally injured in a fall while attending a free concert in a park that was promoted and produced by a grant-funded division of the university, the university's motion for summary judgment was improperly denied as the university was immune from suit under the Recreational Property Act (RPA), O.C.G.A. § 51-3-20 et seq., because the nature of the activity and of the property was recreational as to the extent that the concert series might have increased the university's name recognition and good will in the community, potential student interest, or the likelihood that the university would receive future grant funding, such speculative considerations and subjective motivations were not relevant under the RPA. Mercer University v. Stofer, 354 Ga. App. 458, 841 S.E.2d 224, 2020 Ga. App. LEXIS 191 (2020).

51-3-23. Effect of invitation or permission to use land for recreation.

Law reviews.

For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

JUDICIAL DECISIONS

Phrase "who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes". — Georgia Supreme Court held that whether immunity is available under the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., requires determination of the true scope and nature of the landowner's invitation to use property, and that determination properly is informed by two related considerations: (1) the nature of the activity that constitutes use of the property in which the people have been invited to engage; and (2) the nature of the property that the people have been invited to use. Mercer Univ. v. Stofer, 306 Ga. 191, 830 S.E.2d 169, 2019 Ga. LEXIS 436 (2019).

Owner not liable to persons admitted free, although others were charged. — Under O.C.G.A. § 51-3-23 of the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., a city operating a stadium was shielded from liability for injuries sustained by a six-year-old child who fell from the bleachers because children under six were not charged a fee to enter the stadium, although adults and older children were charged. Mayor & Aldermen of Garden City v. Harris, 302 Ga. 853, 809 S.E.2d 806, 2018 Ga. LEXIS 46 (2018).

Financial benefits from use of recreational facilities. — Language of Atlanta Committee for the Olympic Games, Inc. v. Hawthorne, 278 Ga. 116 (2004) was held inconsistent with the weight of case law and the Georgia Supreme Court disapproved the language in Hawthorne or any other case that could be read to require consideration of evidence that the landowner was motivated by the possibility of obtaining indirect financial benefits from allowing the public to use the public's land in determining whether that invitation was for recreational purposes. Mercer Univ. v. Stofer, 306 Ga. 191, 830 S.E.2d 169, 2019 Ga. LEXIS 436 (2019).

Fall at a gymnasium during cheerleader exhibition. — A mother who was injured in a fall while attending her daughter's cheerleading exhibition could not recover for negligence against the gym (a lessee) because she had signed a medical-release form; further, her claims were barred by the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., because the gym did not charge a fee for the exhibition. Shields v. RDM, LLC, 355 Ga. App. 409, 844 S.E.2d 297, 2020 Ga. App. LEXIS 324 (2020).

Fatal injury at free concert. — When the plaintiff's decedent incurred a fatal injury while attending a free, outdoor concert in a public park hosted by the defendant, the Georgia Supreme Court held that since it clarified the standard under the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., a lower appellate court had to determine whether the defendant was entitled to summary judgment on the basis of immunity since the evidence was cited that the court improperly considered the indirect benefit that the defendant might have received as a result of the concert. Mercer Univ. v. Stofer, 306 Ga. 191, 830 S.E.2d 169, 2019 Ga. LEXIS 436 (2019).

51-3-25. Certain liability not limited.

Nothing in this article limits in any way any liability which otherwise exists:

(1) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or

(2) On a date when the owner of land charges any individual who lawfully enters such land for recreational use and any individual is injured in connection with the recreational use for which the charge was made, provided that, in the case of land leased to the state or a

subdivision thereof, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this Code section.

History.

Ga. L. 1965, p. 476, § 6; Ga. L. 2018, p. 1083, § 1/HB 904.

Amendments.

The 2018 amendment, effective July 1, 2018, substituted "On a date when the owner of land charges any individual who lawfully enters such land for recreational use and any individual is injured in connection with the recreational use for which the charge was made, provided that," for "For injury suffered in any case when the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that," at the beginning of paragraph (2).

Law reviews.

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

JUDICIAL DECISIONS

Determining whether immunity is available under Recreational Property Act. — Georgia Supreme Court held that whether immunity is available under the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., requires determination of the true scope and nature of the landowner's invitation to use property, and that determination properly is informed by two related considerations: (1) the nature of the activity that constitutes use of the property in which the people have been invited to engage; and (2) the nature of the property that the people have been invited to use. Mercer Univ. v. Stofer, 306 Ga. 191, 830 S.E.2d 169, 2019 Ga. LEXIS 436 (2019).

Owner not liable to persons admitted free, although others were charged. — Under O.C.G.A. § 51-3-23 of the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., a city operating a stadium was shielded from liability for injuries sustained by a six-year-old child who fell from the bleachers because children under six were not charged a fee to enter the stadium, although adults and older children were charged. Mayor & Aldermen of Garden City v. Harris, 302 Ga. 853, 809 S.E.2d 806, 2018 Ga. LEXIS 46 (2018).

Financial benefits from use of recreational facilities. — Language of Atlanta Committee for the Olympic Games, Inc. v. Hawthorne, 278 Ga. 116 (2004) was held inconsistent with the weight of case law and the Georgia Supreme Court disapproved the language in Hawthorne or any other case that could be read to require consideration of evidence that the landowner was motivated by the possibility of obtaining indirect financial benefits from allowing the public to use the public's land in determining whether that invitation was for recreational purposes. Mercer Univ. v. Stofer, 306 Ga. 191, 830 S.E.2d 169, 2019 Ga. LEXIS 436 (2019).

Whether park officials knew of dangerous condition and whether failure to warn occurred. — In an action brought after a cyclist was seriously injured in a biking accident in a national park, the district court erred in finding that the United States was immune from liability under Georgia's Recreational Property Act, O.C.G.A. § 51-3-20 et seq., because park officials knew the park was being used for recreational purposes, a reasonable jury could conclude that park officials knew the condition existed involving unreasonable risk of death or serious bodily harm, genuine issues of material fact remained as to whether park officials knew that dangerous condition created by root heave in pavement was not apparent to visitors, and genuine issues of material fact remained as to whether willful failure to warn occurred. Shaw v. United States, 725 Fed. Appx. 817, 2018 U.S. App. LEXIS 4285 (11th Cir. 2018).

Failure to warn coach not proven. — Coach, who was injured in a fight following a youth football game, failed to demonstrate facts required to invoke the failure to warn of or guard against a dangerous condition exception to the Recreational Property Act, O.C.G.A. § 51-3-20 et seq., as there was no evidence that unruly behavior by spectators was not open and obvious, there was no evidence creating a genuine issue of material fact about whether the league had the necessary actual knowledge that the lack of police presence was not apparent to persons using the field. Trotter v. Tucker Football League, 364 Ga. App. 811, 875 S.E.2d 474, 2022 Ga. App. LEXIS 328 (2022).

Jury instruction on payment for access to land. — Trial court erred in denying the county's motion for summary judgment on the plaintiff's premises liability lawsuit against the county because the Recreational Property Act (RPA), O.C.G.A. § 51-3-20 et seq., including the charge exception, did not waive the county's sovereign immunity because the charge lacked specific language providing for a waiver of sovereign immunity and the extent of such waiver as the RPA simply acted as a limitation of liability for land owners who allowed others to use their land for recreational purposes, and the charge exception simply provided that the limitation of liability did not apply when the land owner charged a fee. Macon-Bibb County v. Kalaski, 355 Ga. App. 24, 842 S.E.2d 331, 2020 Ga. App. LEXIS 249 (2020).

51-3-26. Construction of article.

RESEARCH REFERENCES

ALR.

Waiver of Liability for Personal Injury or Death in Cases Involving Facilities of Recreational or Sports Activities, 88 A.L.R.7th 3.

ARTICLE 4

LIABILITY OF SPACE FLIGHT ENTITIES

Law reviews.

For article on the 2017 enactment of this article, see 34 Ga. St. U.L. Rev. 251 (2017).

For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

ARTICLE 5

NEGLIGENT SECURITY

Effective date.

This article became effective April 21, 2025. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2025, p. 19, § 9(b)/SB 68, not codified by the General Assembly, provides: "Sections 6 and 7 of this Act shall apply only with respect to causes of action arising on or after the effective date of this Act, and any prior causes of action shall be governed by prior law. It is the intention of the General Assembly that all other provisions of this Act shall apply to causes of action pending on the effective date of this Act, unless such application would be unconstitutional." This Act became effective April 21, 2025.

51-3-50. Definitions.

As used in this article, the term:

(1) “Negligent security” means any claim against an owner or occupier, or against a security contractor, that:

(A) Sounds in tort or nuisance, including, but not limited to, any claim under Article 1 of this chapter;

(B) Seeks to recover damages for bodily injury or wrongful death; and

(C) Arises from an alleged failure to keep the premises and approaches safe from the wrongful conduct of third persons.

(2) “Owner or occupier” means any person that owns, leases, occupies, operates, maintains, or manages real property of any kind or any director, officer, employee, or agent of such person.

(3) “Particularized warning of imminent wrongful conduct by a third person” means information actually known to an owner or occupier and deemed credible by the owner or occupier, which causes the owner or occupier to consciously understand that a third person is likely to imminently engage in wrongful conduct on the premises that poses a clear danger to the safety of persons upon the premises, such information being specific as to the identity of the third person, the nature and character of the wrongful conduct, the degree of dangerousness of the wrongful conduct, and the location, time, and circumstances of the wrongful conduct.

(4) “Premises” means the real property that is owned, leased, occupied, operated, maintained, or managed by an owner or occupier.

(5) “Prior occurrences of substantially similar wrongful conduct” means prior occurrences of wrongful conduct which are sufficiently similar in nature and character, degree of dangerousness, proximity, location, time, and circumstances to the wrongful conduct from which a claim of negligent security arises to lead a reasonable person in the position of the owner or occupier to apprehend that such wrongful conduct is reasonably likely to occur upon the premises, to understand the risk of injury to persons upon the premises presented by such wrongful conduct, and to understand that a specific and known physical condition of the premises has created a risk of such wrongful conduct on the premises that is substantially greater than the general risk of such wrongful conduct in the vicinity of the premises.

(6) “Security contractor” means any person that contracts with an owner or occupier to provide protective or security services upon any premises or any director, officer, employee, or agent of such person.

(7) “Third person” means any person other than an owner or occupier or a security contractor or a person under the direction, control, or supervision of an owner or occupier or security contractor.

(8) "Wrongful conduct" means:

(A) Any violation of a law of this state or an ordinance of any political subdivision thereof that is punishable as a felony or misdemeanor, regardless of whether such violation results in an arrest, citation, accusation, indictment, or conviction; or

(B) Any other conduct that amounts to an intentional, or willful and wanton, tort.

History.
Code 1981, § 51-3-50, enacted by Ga. L. 2025, p. 19, § 6/SB 68, effective April 21, 2025.

51-3-51. Liability of owner or occupier as to invitees; required proof.

Except as provided in Code Section 51-3-54, an owner or occupier shall be liable for negligent security arising from any injury sustained by any person upon the premises of the owner or occupier as an invitee if the plaintiff proves that:

(1) The wrongful conduct by a third person that caused the injury sustained by the invitee was reasonably foreseeable because the owner or occupier:

(A) Had particularized warning of imminent wrongful conduct by a third person; or

(B) Reasonably should have known that a third person was reasonably likely to engage in such wrongful conduct upon the premises, based on:

(i) Prior occurrences of substantially similar wrongful conduct upon the premises of which the owner or occupier had actual knowledge;

(ii) Prior occurrences of substantially similar wrongful conduct upon the property adjoining the premises, or otherwise occurring within 500 yards of the premises, of which the owner or occupier had actual knowledge; or

(iii) Prior occurrences of substantially similar wrongful conduct by the third person whose wrongful conduct caused the injury, if the owner or occupier knew or should have known, by clear and convincing evidence, that such third person was or would be upon the premises and if the owner or occupier had actual knowledge of such prior occurrences of substantially similar wrongful conduct;

(2) The injury sustained by the invitee was a reasonably foreseeable consequence of such wrongful conduct by a third person;

(3) Such wrongful conduct by a third person was a reasonably foreseeable consequence of such third person exploiting a specific physical condition of the premises known to the owner or occupier, which created a reasonably foreseeable risk of wrongful conduct on the premises that was substantially greater than the general risk of wrongful conduct in the vicinity of the premises;

(4) The owner or occupier failed to exercise ordinary care to remedy or mitigate such specific and known physical condition of the premises and to otherwise keep the premises safe from such wrongful conduct by a third person; and

(5) Such failure of the owner or occupier to exercise ordinary care was a proximate cause of the injury sustained by the invitee.

History.
Code 1981, § 51-3-51, enacted by Ga. L. 2025, p. 19, § 6/SB 68, effective April 21, 2025.

51-3-52. Liability of owner or occupier as to licensees; required proof.

Except as provided in Code Section 51-3-54, an owner or occupier shall be liable for negligent security arising from any injury sustained by any person upon the premises of the owner or occupier as a licensee if the plaintiff proves that:

(1) The wrongful conduct by a third person that caused the injury sustained by the licensee was reasonably foreseeable because the owner or occupier had particularized warning of imminent wrongful conduct by a third person;

(2) The injury sustained by the licensee was a reasonably foreseeable consequence of such wrongful conduct by a third person;

(3) Such wrongful conduct by a third person was a reasonably foreseeable consequence of such third person exploiting a specific physical condition of the premises known to the owner or occupier, which created a reasonably foreseeable risk of wrongful conduct on the premises that was substantially greater than the general risk of wrongful conduct in the vicinity of the premises;

(4) The owner or occupier willfully and wantonly failed to exercise any care to remedy or mitigate the specific and known physical condition of the premises and to otherwise keep the premises safe from such wrongful conduct by a third person; and

(5) Such failure of the owner or occupier to exercise any care was a proximate cause of the injury sustained by the licensee.

History.
Code 1981, § 51-3-52, enacted by Ga. L. 2025, p. 19, § 6/SB 68, effective April 21, 2025.

51-3-53. Limitations on liability.

(a) Except as otherwise provided in subsections (b) and (c) of this Code section, the provisions of this article shall be the sole and exclusive remedy for negligent security against owners or occupiers, and no owner or occupier shall be liable for negligent security except as provided in this article.

(b) Nothing in this article shall be construed to limit or otherwise affect any cause of action brought pursuant to Code Section 51-1-56 or any other applicable law or theory of recovery otherwise recognized by law, including, but not limited to, negligence and nuisance, in connection with an alleged violation of Code Section 16-5-46.

(c) Nothing in this article shall be construed to limit or otherwise affect any claim or remedy for breach of contract or any other claim, remedy, or cause of action not arising under Article 1 of this chapter.

History.
Code 1981, § 51-3-53, enacted by Ga. L. 2025, p. 19, § 6/SB 68, effective April 21, 2025.

51-3-54. Liability of owner or occupier dependent upon plaintiff's status.

Notwithstanding Code Sections 51-3-51 and 51-3-52, no owner or occupier shall be liable for negligent security:

(1) Arising from an injury sustained by a person upon the premises of the owner or occupier as a trespasser;

(2) Arising from an injury sustained by a person not upon the premises of the owner or occupier;

(3) Arising from the wrongful conduct of a third person, if such wrongful conduct did not occur upon the premises and in a place from which the owner or occupier had the legal right and authority to exclude such third person;

(4) Arising from the wrongful conduct of a third person, if such third person was upon the premises as a tenant or as a guest of a tenant, if the owner or occupier had commenced eviction proceedings against such tenant at the time of the wrongful conduct;

(5) Arising from an injury sustained by a third person upon the premises of the owner or occupier as an invitee or a licensee, if such person:

(A) Came upon the premises for the purpose of committing any violation of a law of this state that is punishable as a felony or any violation of Chapter 8 of Title 16 that is punishable as a misdemeanor; or

(B) Was engaged at the time of the injury in the commission of any violation of a law of this state that is punishable as a felony or any violation of Chapter 8 of Title 16 that is punishable as a misdemeanor, provided that this subparagraph shall not apply to a victim of a violation of Code Section 16-5-46;

(6) Arising from an injury sustained upon premises that is used as a single-family residence; or

(7) Based on a particularized warning of imminent wrongful conduct by a third person, if the owner or occupier made any reasonable effort to provide such information to law enforcement personnel, provided that calling 9-1-1 or otherwise making a report about such information to law enforcement personnel shall be deemed a reasonable effort.

History.
Code 1981, § 51-3-54, enacted by Ga. L. 2025, p. 19, § 6/SB 68, effective April 21, 2025.

51-3-55. Level of care required.

(a) No owner or occupier shall be required to exercise extraordinary care to keep persons on or around any premises safe from wrongful conduct by a third person, and no owner or occupier shall be required to assume the responsibilities and obligations of government for law enforcement and public safety.

(b) In any action for negligent security, in assessing whether an owner or occupier has breached a duty to exercise ordinary care to keep persons on or around any premises safe from wrongful conduct by a third person, the trier of fact shall consider the security measures employed by the owner or occupier at the time of the injury from which the claim of negligent security arises, the need for additional or other security measures, the practicality of additional or other security measures, whether additional or other security measures would have prevented the injury, the respective responsibilities of owners or occupiers with respect to the premises and government with respect to law enforcement and public safety, and any other relevant circumstances.

History.
Code 1981, § 51-3-55, enacted by Ga. L. 2025, p. 19, § 6/SB 68, effective April 21, 2025.

51-3-56. Apportionment of fault.

In any action for negligent security:

(1) If the trier of fact finds that any defendant is liable to the plaintiff, the trier of fact shall make an apportionment of fault under Code Section 51-12-33, and in making such an apportionment, the trier of fact shall reasonably apportion fault to:

(A) The owner or occupier;

(B) Any third person whose wrongful conduct was a cause of the injury from which the claim of negligent security arises; and

(C) Any other persons to whom fault otherwise should be apportioned under Code Section 51-12-33;

(2) In connection with an apportionment of fault under Code Section 51-12-33, no party shall offer evidence, or make an argument or other comment in the hearing of any juror or prospective juror, concerning:

(A) Any sentence of imprisonment or probation, fine, or other punishment that has been, or could be, imposed in a criminal prosecution of any third person for the wrongful conduct from which the claim of negligent security arises;

(B) The financial resources of any party or nonparty; or

(C) The effect of an apportionment of fault upon any award of damages to the plaintiff; and

(3) If a jury fails as the trier of fact to apportion a reasonable degree of fault to the third person whose wrongful conduct was a cause of the injury from which the claim of negligent security arises, the trial court shall set aside the verdict of the jury and order a retrial of liability and damages. There shall be a rebuttable presumption that an apportionment of fault is unreasonable if the total percentage of fault apportioned to all third persons for their wrongful conduct is less than the total percentage of fault apportioned to all owners or occupiers, security contractors, and other persons and entities that did not engage in wrongful conduct.

History.
Code 1981, § 51-3-56, enacted by Ga. L. 2025, p. 19, § 6/SB 68, effective April 21, 2025.

51-3-57. Liability of security contractors.

(a) If a security contractor assumes and undertakes a duty to invitees and licensees to keep all or part of a premises of an owner or occupier safe from the wrongful conduct of a third person, the security contractor may be liable for negligent security only in the same manner, to the same extent, and subject to the same limitations and provisions applicable to an owner or occupier contained in this article. In no event shall a security contractor be subject to liability for negligent security to an extent greater than the liability for negligent security of an owner or occupier.

(b) No security contractor shall be liable for negligent security except as provided in this Code section.

(c) Nothing in this Code section shall limit or otherwise affect any claim or remedy of an owner or occupier for breach of contract.

History.
Code 1981, § 51-3-57, enacted by Ga. L. 2025, p. 19, § 6/SB 68, effective April 21, 2025.

Cross references.
Georgia Private Detective and Security Agencies Act, § 43-38-1 et seq.

CHAPTER 4

WRONGFUL DEATH

RESEARCH REFERENCES

ALR.
When does wrongful death claim accrue in maritime case under 46 U.S.C.A. § 30106, 83 A.L.R. Fed. 3d 7.

51-4-1. Definitions.

JUDICIAL DECISIONS

Analysis

Damages

Damages not recoverable for both coma state and subsequent death. — Damages that a husband (on behalf of his wife who was in a coma) recovered or that were recoverable in an earlier personal injury lawsuit could not be recovered again in a wrongful death suit when the wife died twenty years later, having never awoken; the value of the wife's life in a coma to her was all that the survivors could recover. Bibbs v. Toyota Motor Corp., 304 Ga. 68, 815 S.E.2d 850, 2018 Ga. LEXIS 443 (2018).

51-4-2. Wrongful death of spouse or parent.

(a) The surviving spouse or, if there is no surviving spouse, a child or children, either minor or sui juris, may recover for the homicide of the spouse or parent the full value of the life of the decedent, as shown by the evidence.

(b)(1) If an action for wrongful death is brought by a surviving spouse under subsection (a) of this Code section and the surviving spouse dies pending the action, the action shall survive to the child or children of the decedent.

(2) If an action for wrongful death is brought by a child or children under subsection (a) of this Code section and one of the children dies pending the action, the action shall survive to the surviving child or children.

(3) If there is no surviving spouse and an action for wrongful death is brought by a minor child or minor children under subsection (a) of this Code section, the natural guardian, guardian, or next friend of any such minor child shall:

(A) Qualify as a conservator if necessary to receive payment of the settlement and shall thereafter hold and use the settlement for the benefit of the minor and shall be accountable for the same as provided in Code Section 29-3-1; and

(B) Obtain court approval of such settlement of such minor child or minor children as provided in Code Section 29-3-3.

(c) The surviving spouse may release the alleged wrongdoer without the concurrence of the child or children or any conservator, guardian, next friend, or other authorized representative thereof, and without any order of court, provided that such spouse shall hold the consideration for such release subject to subsection (d) of this Code section and shall be accountable for same.

(d)(1) Any amount recovered under subsection (a) of this Code section shall be equally divided, share and share alike, among the surviving spouse and the children per capita, and the descendants of children shall take per stirpes.

(2) Notwithstanding paragraph (1) of this subsection, the surviving spouse shall receive no less than one-third of such recovery as such spouse's share. If there is no surviving spouse, the amount recovered under subsection (a) of this Code section shall be equally divided, share and share alike, among the children per capita, and the descendants of children shall take per stirpes.

(e) No recovery had under subsection (a) of this Code section shall be subject to any debt or liability of the decedent or of the decedent's estate.

(f) In actions for recovery under this Code section, the fact that a child has been born out of wedlock shall be no bar to recovery, provided that such child born out of wedlock had rights of inheritance from or through the child's deceased parent under Code Section 53-2-3.

History.
Laws 1850, Cobb's 1851 Digest, p. 476.; Ga. L. 1855-56, p. 154, § 4; Code 1863, § 2913; Code 1868, § 2920; Code 1873, § 2971; Ga. L. 1878-79, p. 59, §§ 1, 2; Code 1882, § 2971; Ga. L. 1887, p. 43, § 1; Civil Code 1895, §§ 3828, 3829; Civil Code 1910, §§ 4424, 4425; Ga. L. 1924, p. 60, §§ 1, 2; Code 1933, §§ 105-1302, 105-1303, 105-1304, 105-1305; Ga. L. 1973, p.

488, § 1; Ga. L. 1985, p. 1253, § 1; Ga. L. 1986, p. 10, § 51; Ga. L. 1988, p. 1720, § 17; Ga. L. 1993, p. 1055, § 1; Ga. L. 1998, p. 605, § 1; Ga. L. 2022, p. 207, § 7/HB 620; Ga. L. 2024, p. 1052, § 6(37)/SB 448, effective July 1, 2024; Ga. L. 2025, p. 806, § 32/HB 327, effective July 1, 2025.

Amendments.

The 2022 amendment, effective May 2, 2022, added paragraph (b)(3); in subsection (c), inserted "conservator, guardian, next friend, or other authorized" near the beginning and "and shall be accountable for same" at the end; in paragraph (d)(1), deleted ", provided that any such recovery to which a minor child is entitled and which equals less than $15,000.00 shall be held by the natural guardian of the child, who shall hold and use such money for the benefit of the child and shall be accountable for same; and any such recovery to which a minor child is entitled and which equals $15,000.00 or more shall be held by a guardian of the property of such child" at the end; in paragraph (d)(2), added the second sentence; and, in subsection (e), added "or of the decedent's estate" at the end.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (b)(3)(A) and in subsection (c).

The 2025 amendment, effective July 1, 2025, added ", provided that such child born out of wedlock had rights of inheritance from or through the child's deceased parent under Code Section 53-2-3" at the end of subsection (f).

Law reviews.

For annual survey on wills, trusts, guardianships, and fiduciary administration, see 74 Mercer L. Rev. 277 (2022).

For annual survey on trial practice and procedure, see 74 Mercer L. Rev. 263 (2022).

JUDICIAL DECISIONS

Analysis

Procedure

Standing of adult child. — In an action under the Wrongful Death Act, O.C.G.A. § 51-4-1 et seq., the Court of Appeals erred in reversing the trial court's denial of the appellees' motion for judgment on the pleadings because the allegations of the appellant's complaint did not disclose with certainty that the appellant, an adult child of the decedent, would not be entitled to pursue the wrongful death claim under any state of provable facts. Hamon v. Connell, 315 Ga. 760, 883 S.E.2d 785, 2023 Ga. LEXIS 24 (2023).

Fiduciary duty in allocating settlement proceeds. — When the parties entered into a High-Low settlement agreement that was silent as to how the funds should be allocated between the wrongful death claim and the claims of the decedent's estate, the decedent's wife, who was also the administrator of the decedent's estate, acted in contravention of the wife's fiduciary duties to the children by arguing that none of the settlement funds should be allocated to the wrongful death claim, and the trial court erred by failing to allocate any of the settlement funds to the wrongful death claim because the trial court was not allowed to consider the decedent's wishes in apportioning the claims as the children had an absolute right to share in any recovery on that claim. Leanhart v. Knox, 351 Ga. App. 268, 830 S.E.2d 545, 2019 Ga. App. LEXIS 421 (2019).

Wrongful Death of Spouse

Surviving spouse must bring claim if alive. — Plaintiffs' motion to add the decedent's widow as a plaintiff in the wrongful death action was improperly denied as the plaintiff's motion met the relation-back requirements because the proposed amendment would not have altered the substance of the wrongful death claim or changed the underlying circumstances set forth in the original complaint; the widow's claim clearly arose out of the same occurrence as that alleged in the original complaint; there was no evidence of prejudice to the defendants or dilatory tactics by the plaintiffs as the original complaint was filed within the applicable statute of limitation; and, although the widow initially did not want to participate in the lawsuit, later the widow's mind was changed. Seay v. Valdosta Kidney Clinic, LLC, 353 Ga. App. 378, 837 S.E.2d 529, 2020 Ga. App. LEXIS 3 (2020).

Effect of settling prior personal injury action for spouse in perpetual coma. — Damages that a husband (on behalf of his wife who was in a coma) recovered or that were recoverable in an earlier personal injury lawsuit could not be recovered again in a wrongful death suit when the wife died twenty years later, having never awoken; the value of the wife's life in a coma to her was all that the survivors could recover. Bibbs v. Toyota Motor Corp., 304 Ga. 68, 815 S.E.2d 850, 2018 Ga. LEXIS 443 (2018).

Decedent's spouse had authority to settle claims. — Decedent's wife, as the surviving spouse, was the proper party to seek damages for the decedent's wrongful death and, as the administrator of the decedent's estate, damages for the decedent's shock, fright and terror prior to the collision, all components of the mental pain and suffering endured by the decedent upon impact up until the decedent's death, and funeral and burial expenses, and the wife had the authority to settle or compromise the claims without any input from the decedent's children. Leanhart v. Knox, 351 Ga. App. 268, 830 S.E.2d 545, 2019 Ga. App. LEXIS 421 (2019).

51-4-4. Wrongful death of child.

The right to recover for the homicide of a child shall be as provided in Code Section 19-7-1 and Code Section 53-1-5.

History.

Code 1933, § 105-1307, enacted by Ga. L. 1980, p. 1154, § 2; Ga. L. 2022, p. 669, § 1/SB 543.

Amendments.

The 2022 amendment, effective July 1, 2022, added "and Code Section 53-1-5" at the end of this Code section.

51-4-5. Recovery by personal representative for wrongful death and for certain expenses.

JUDICIAL DECISIONS

Administratrix of estate proper party to bring suit. — As decedent's father lost parental power due to failure to provide and abandonment, the decedent's mother was deceased, and the decedent had no spouse or children, under O.C.G.A. § 51-4-5(a), the decedent's sister, as administratrix of the estate, was the proper party to bring the suit, and the trial court did not err in denying the defendants' motion to dismiss or for partial summary judgment and to vacate and transfer the case to superior court. Abraham v. Black, 346 Ga. App. 229, 816 S.E.2d 351, 2018 Ga. App. LEXIS 358 (2018).

Statutory right to bring an action for wrongful death. — Trial court properly dismissed appellants' complaint alleging wrongful death and ordinary negligence arising from the release of an individual in 2019 from appellees' mental health facility, and the individual being missing since release, because appellants lacked standing as appellants were not appointed as the administrator of a deceased person's estate. Garner v. Acadia Healthcare Company, Inc., 370 Ga. App. 146, 894 S.E.2d 204, 2023 Ga. App. LEXIS 547 (2023).

No standing to sue for wrongful death for missing person. — Trial court did not err by dismissing appellants' wrongful death action for lack of standing because the probate court had not yet determined whether the missing man was deceased, and the complaint only showed that appellants were appointed the conservator and estate for a missing person. Garner v. Acadia Healthcare Company, Inc., 370 Ga. App. 146, 894 S.E.2d 204, 2023 Ga. App. LEXIS 547 (2023).

Administrator of estate proper party to bring suit. — Since the husband had previously been found guilty by a jury of felony murder of the decedent, the husband's wife, the husband's motion to dismiss a wrongful death action filed against the husband by the administrator of the estate of the decedent was properly denied as the state court did not err by concluding that the administrator had standing to bring the claim because, although the law contemplated that there should be a right of recovery, it did not authorize the husband to sue the husband's self for wrongful death as the surviving spouse of the decedent, whom the husband feloniously killed; and, pursuant to the Wrongful Death Act, O.C.G.A. § 51-4-1 et seq., the administrator was authorized to bring the wrongful death action. McIver v. Oliver, 353 Ga. App. 106, 836 S.E.2d 535, 2019 Ga. App. LEXIS 584 (2019).

No evidence of negligence, actual malice, or actual intent to cause injury. — In an action by the administrator for decedent's estate, alleging that a deputy's use of deadly force violated the decedent's Fourth and Fourteenth Amendment rights, the court affirmed the district court's judgment on the administrator's state law wrongful death claim because, at the time of summary judgment, there was no evidence that the deputy's use of deadly force was negligent or performed with actual malice or actual intent to cause injury. Wells v. Talton, 695 Fed. Appx. 439, 2017 U.S. App. LEXIS 9459 (11th Cir. 2017).

CHAPTER 5

LIBEL AND SLANDER

Law reviews.

For note, "A (Thigh) Gap in the Law: Addressing Egregious Digital Manipulation of Celebrity Images," see 34 Ga. St. U.L. Rev. 795 (2018).

For note, "Injunction Junction, What's Your Function? Crafting Permanent Injunctions to be Appropriate Remedies in Defamation Cases," see 54 Ga. L. Rev. 663 (2020).

RESEARCH REFERENCES

ALR.

Claims Concerning Use of "Cookies" To Acquire Internet Users' Web Browsing Data Under Federal Law, 36 A.L.R. Fed. 3d Art. 5.

51-5-1. Libel defined; publication prerequisite to recovery.

Law reviews.

For note, "The Great Escape: How One Plaintiff's Sidestep of a Mandatory Arbitration Clause Was Applied to a Class in Bickerstaff v. SunTrust Bank," see 68 Mercer L. Rev. 539 (2017).

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Truth as defense. — To the extent that the plaintiffs alleged that the defendants' accusations regarding the plaintiffs overcharging customers were defamatory, those claims failed because the county concluded that the plaintiffs had, in fact, overcharged the truck owners; and the plaintiffs failed to establish that the accusations regarding overcharging were not true. Swanson Towing & Recovery, LLC v. Wrecker 1, Inc., 342 Ga. App. 6, 802 S.E.2d 300, 2017 Ga. App. LEXIS 305 (2017).

Statements which tend to injure one in one's trade, occupation, or business are libelous per se, etc.

Defendant was not entitled to summary judgment because the defendant's statement constituted defamation per se as it did not require innuendo to be understood as injurious because the normal and obvious meaning of the phrase — since the plaintiff last had the ability to practice medicine — indicated that the plaintiff had lost the plaintiff's license or no longer had the physical or mental capacity to practice medicine, and either meaning was injurious to the plaintiff's reputation; and, although the defendant argued that the challenged statement referred to the plaintiff's ability to practice with the company the plaintiff had formerly worked for, nothing in the words themselves would reasonably lead a reader to that interpretation. Smith v. DiFrancesco, 341 Ga. App. 786, 802 S.E.2d 69, 2017 Ga. App. LEXIS 279 (2017), cert. denied, No. S17C1908, 2017 Ga. LEXIS 1005 (Ga. Dec. 11, 2017).

Publication

Publication to employer sufficient. — In a defamation claim alleging that the individual appellee falsely accused the appellant of sexual harassment, resulting in the termination of the appellant's employment, the appellant's defamation claim against the individual appellee did not fail to state a claim because any communication that the individual appellee made to the appellant's employer could constitute a publication that did not fall within the intracorporate privilege as the facts could show that the appellant and the individual appellee worked for two separate and distinct entities that were not engaged in a joint venture or undertaking. Boyd v. Disabled American Veterans, 349 Ga. App. 351, 826 S.E.2d 181, 2019 Ga. App. LEXIS 159 (2019).

In a defamation claim alleging that the individual appellee falsely accused the appellant of sexual harassment, resulting in the termination of the appellant's employment, the appellant's defamation claim against the individual appellee did not fail to state a claim because any communications the individual appellee made to coworkers were publications unless the communications fell within the intracorporate privilege, and the coworkers had reason to receive the information because of the coworkers' duty or authority. Boyd v. Disabled American Veterans, 349 Ga. App. 351, 826 S.E.2d 181, 2019 Ga. App. LEXIS 159 (2019).

Pleading and Practice

Pleading of malice. — After a consumer appealed a district court's Fed. R. Civ. P. 12(b)(6) of a defamation claim against a bank, the consumer's complaint did not make any allegation of malice. Boyd v. Experian Info. Sol., Inc., 692 Fed. Appx. 980, 2017 U.S. App. LEXIS 10163 (11th Cir. 2017).

Allegation that exonerated prisoner remained under indictment. — Former prisoner's complaint against a district attorney alleged facts that would

Pleading and Practice (Cont'd)

constitute libel per se: the complaint alleged that the DA falsely stated in writing that the prisoner remained under indictment for kidnapping and rape. However, in the prisoner's suit under 42 U.S.C. § 1983, the DA had qualified immunity because the prisoner's right to be free from retaliation by defamation for the exercise of the DA's right to petition was not clearly established. Echols v. Lawton, 913 F.3d 1313, 2019 U.S. App. LEXIS 2560 (11th Cir.), cert. denied, 587 U.S. 1040, 139 S. Ct. 2678, 204 L. Ed. 2d 1070, 2019 U.S. LEXIS 3830 (2019).

Applicability to Specific Cases

Publication implying criminal record. — Defendant's statements were protected speech under Georgia's anti-SLAPP statute as plaintiff failed to show a likelihood of prevailing on the libel claim because the statements were substantially true in that defendant provided evidence of plaintiff's membership in organizations advocating race wars and a history of violent criminal behavior, and defendant did not act with actual malice. Weaver v. Millsaps, 370 Ga. App. 513, 898 S.E.2d 239, 2024 Ga. App. LEXIS 45 (2024).

Email statements to county officials did not allege specific crime. — In an email to a county official, the defendants' statements characterizing the plaintiffs as without morals and as mean, vulgar, demeaning crooks were not actionable as the statements did not allege a specific crime, and the statements constituted expressions of opinion. Swanson Towing & Recovery, LLC v. Wrecker 1, Inc., 342 Ga. App. 6, 802 S.E.2d 300, 2017 Ga. App. LEXIS 305 (2017).

Published statements that trailer purchased was stolen. — Judgment in favor of the plaintiffs in a libel action was upheld because the defendants published newspaper advertisements that offered a reward for the return of the trailer purchased by the plaintiffs, stating that the trailer was taken without proper ownership, documentation, and payment and was last seen with the plaintiffs and the plain import of those words imputed the criminal offense of theft to the plaintiffs, a crime for which the plaintiffs had not been charged or found guilty. Cate v. Patterson, 354 Ga. App. 108, 840 S.E.2d 489, 2020 Ga. App. LEXIS 135 (2020).

Social media posts. — Genuine issue of material fact existed as to elements of the plaintiffs' libel claim because some of the defendant's social media posts contained specific explanatory statements, and the plaintiffs pointed to evidence that those explanations were not truthful; the defendant did not show that the defendant was entitled to a claim of privilege as a matter of law; and whether the plaintiffs could show the fault necessary for their libel claim was a jury question. N. Atlanta Golf Operations, LLC v. Ward, 363 Ga. App. 259, 870 S.E.2d 814, 2022 Ga. App. LEXIS 148 (2022).

Many of the defendant's social media posts were not actionable as some were only opinions or subjective assessments as to which reasonable minds could differ, rather than statements of fact that could be proven false; and O.C.G.A. § 9-3-33 barred any claim for libel based on posts published more than one year before the plaintiffs filed their action. N. Atlanta Golf Operations, LLC v. Ward, 363 Ga. App. 259, 870 S.E.2d 814, 2022 Ga. App. LEXIS 148 (2022).

RESEARCH REFERENCES

ALR.

Statement Regarding Victim or Accuser of Rape or Other Sexual Misconduct as Defamation, 49 A.L.R.7th Art. 8.

Libel and Slander: Defamation by Implication, 89 A.L.R.7th 1.

What matters not contained in pleadings may be considered in ruling on motion to dismiss under Rule 12(b)(6) of Federal Rules of Civil Procedure or motion for judgment on pleadings under Rule 12(c) without conversion to motion for summary judgment — Sixth Circuit, 77 A.L.R. Fed. 3d 2.

51-5-4. Slander defined; when special damage required; when damage inferred.

Law reviews.

For note, "The Great Escape: How One Plaintiff's Sidestep of a Mandatory Arbitration Clause Was Applied to a Class in Bickerstaff v. SunTrust Bank," see 68 Mercer L. Rev. 539 (2017).

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Scope of section.

Genuine issue of material fact existed as to elements of the plaintiffs' libel claim because some of the defendant's social media posts contained specific explanatory statements, and the plaintiffs pointed to evidence that those explanations were not truthful; the defendant did not show that the defendant was entitled to a claim of privilege as a matter of law; and whether the plaintiffs could show the fault necessary for their libel claim was a jury question. N. Atlanta Golf Operations, LLC v. Ward, 363 Ga. App. 259, 870 S.E.2d 814, 2022 Ga. App. LEXIS 148 (2022).

Complaint failed to state claim for defamation. — Proposed amended complaint did not sufficiently allege a claim for libel because, in and of itself, claiming that debtor signed a deed to secure debt that he did not sign was not disparaging and did not expose him to public hatred, contempt, or ridicule. Shibley v. Nat'l Bank of Commerce (In re Shibley), No. 19-05229-LRC, 2022 Bankr. LEXIS 276 (Bankr. N.D. Ga. Feb. 3, 2022).

RESEARCH REFERENCES

ALR.

Statement Regarding Victim or Accuser of Rape or Other Sexual Misconduct as Defamation, 49 A.L.R.7th Art. 8.

Libel and Slander: Defamation by Implication, 89 A.L.R.7th 1.

Comment Note: Elements of Tort of Disparaging Business, Trade, Service, or Product, 92 A.L.R.7th 6.

What matters not contained in pleadings may be considered in ruling on motion to dismiss under Rule 12(b)(6) of Federal Rules of Civil Procedure or motion for judgment on pleadings under Rule 12(c) without conversion to motion for summary judgment — Sixth Circuit, 77 A.L.R. Fed. 3d 2.

51-5-5. Inference of malice; rebuttal thereof; effect of rebuttal.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Published statements that trailer purchased was stolen. — Judgment in favor of the plaintiffs in a libel action was upheld because the defendants published newspaper advertisements that offered a reward for the return of the trailer purchased by the plaintiffs, stating that the trailer was taken without proper ownership, documentation, and payment and was last seen with the plaintiffs and the plain import of those words imputed the

General Consideration (Cont'd)

criminal offense of theft to the plaintiffs, a crime for which the plaintiffs had not been charged or found guilty. Cate v. Patterson, 354 Ga. App. 108, 840 S.E.2d 489, 2020 Ga. App. LEXIS 135 (2020).

51-5-6. Truth as justification.

Law reviews.
For note, "The Great Escape: How One Plaintiff's Sidestep of a Mandatory Arbitration Clause Was Applied to a Class in Bickerstaff v. SunTrust Bank," see 68 Mercer L. Rev. 539 (2017).

JUDICIAL DECISIONS

Social media statements not truthful. — Genuine issue of material fact existed as to elements of the plaintiffs' libel claim because some of the defendant's social media posts contained specific explanatory statements, and the plaintiffs pointed to evidence that those explanations were not truthful; the defendant did not show that the defendant was entitled to a claim of privilege as a matter of law; and whether the plaintiffs could show the fault necessary for their libel claim was a jury question. N. Atlanta Golf Operations, LLC v. Ward, 363 Ga. App. 259, 870 S.E.2d 814, 2022 Ga. App. LEXIS 148 (2022).

51-5-7. Privileged communications.

JUDICIAL DECISIONS

Analysis

General Consideration

Social media posts. — Genuine issue of material fact existed as to elements of the plaintiffs' libel claim because some of the defendant's social media posts contained specific explanatory statements, and the plaintiffs pointed to evidence that those explanations were not truthful; the defendant did not show that the defendant was entitled to a claim of privilege as a matter of law; and whether the plaintiffs could show the fault necessary for their libel claim was a jury question. N. Atlanta Golf Operations, LLC v. Ward, 363 Ga. App. 259, 870 S.E.2d 814, 2022 Ga. App. LEXIS 148 (2022).

Jury to determine good faith.
Trial court erred in finding that the defendant's statement, which constituted defamation per se to the plaintiff's reputation in the plaintiff's profession, was privileged as a matter of law because the record did not conclusively show that the defendant acted in good faith as it was undisputed that the plaintiff was at all times licensed to practice medicine and the defendant had no basis to believe otherwise; and there was a factual question as to whether the statement was properly limited in scope or audience as the documents in the record did not conclusively establish who received the letter from the defendant or that the publication was properly limited to only the defendant's patients who received communication from the plaintiff. Smith v. DiFrancesco, 341 Ga. App. 786, 802 S.E.2d 69, 2017 Ga. App. LEXIS 279 (2017), cert. denied, No. S17C1908, 2017 Ga. LEXIS 1005 (Ga. Dec. 11, 2017).

Comments of Counsel

Attorney's defamatory remark. — In

a driver's defamation case against an attorney for parties injured in a collision with the driver, the trial court erred in denying the attorney's motion to dismiss the case under the anti-SLAPP statute, O.C.G.A. § 9-11-11.1, because the attorney's statements regarding the driver's excessive speed and use of Snapchat's Speed Filter on the defendant's phone at the time of the collision were conditionally privileged under O.C.G.A. § 51-5-7. Neff v. McGee, 346 Ga. App. 522, 816 S.E.2d 486, 2018 Ga. App. LEXIS 406 (2018), cert. denied, No. S18C1508, 2019 Ga. LEXIS 203 (Ga. Apr. 1, 2019), overruled on other grounds, Oskouei v. Matthews, 321 Ga. 1, 912 S.E.2d 651, 2025 Ga. LEXIS 23 (2025).

Acts of Public Officials

Inquiry into malice required regarding congresswoman's speech. — In a defamation suit against a congresswoman, the dismissal of the action was reversed because the trial court erred in concluding that the entirety of the congresswoman's speech was non-actionable opinion as a matter of law and abused the court's discretion in failing to grant limited discovery to the company on the issue of malice. Equity Prime Mortgage, LLC v. Greene for Congress, Inc., 373 Ga. App. 441, 908 S.E.2d 717, 2024 Ga. App. LEXIS 458 (2024).

Applicability to Specific Cases

Statements made to doctor who was chair of department where plaintiff worked. — Summary judgment was properly granted to the CEO of a physicians services group and a hospital on the plaintiff's defamation claim arising from the statements to the doctor, who was the chair of the department that the plaintiff had worked in, as the statements to the doctor were privileged because the doctor had reason to know about the termination of another doctor in the doctor's specialty, and the plaintiff's termination would have impacted the doctor's work; the CEO proffered evidence to show that the CEO did not act with reckless disregard of the truth of the statements; and the plaintiff did not raise an issue of fact on malice; thus, the CEO made the defamatory statements in the CEO's performance of a private moral duty. Murray v. Cmty. Health Sys. Prof'l Corp., 345 Ga. App. 279, 811 S.E.2d 531, 2018 Ga. App. LEXIS 158 (2018), cert. denied, No. S18C1066, 2018 Ga. LEXIS 697 (Ga. Oct. 9, 2018), overruled in part, Oskouei v. Matthews, 321 Ga. 1, 912 S.E.2d 651, 2025 Ga. LEXIS 23 (2025).

Statements not privileged when no evidence of close personal friendship of medical professionals. — Summary judgment was improperly granted to the CEO of a physicians services group and a hospital on the plaintiff's defamation claim arising from the statements to a doctor that occasionally referred patients to the plaintiff and was friendly with the plaintiff socially because the CEO did not show that the statements were privileged as the appellate court could not conclude that the plaintiff and the doctor retained the type of relationship that permitted disclosure of the information about the plaintiff's alleged disparate treatment of Medicaid patients as nothing in the doctor's job responsibilities would have been directly affected by the plaintiff's termination, and there was no evidence that they shared a close personal friendship. Murray v. Cmty. Health Sys. Prof'l Corp., 345 Ga. App. 279, 811 S.E.2d 531, 2018 Ga. App. LEXIS 158 (2018), cert. denied, No. S18C1066, 2018 Ga. LEXIS 697 (Ga. Oct. 9, 2018), overruled on other grounds, Oskouei v. Matthews, 321 Ga. 1, 912 S.E.2d 651, 2025 Ga. LEXIS 23 (2025).

51-5-8. Absolute privilege of allegations in pleadings.

JUDICIAL DECISIONS

Applicable to defamation claim. — Trial court did not err by finding that appellee's declaration in the underlying matter was absolutely privileged and, therefore, the appellees were properly granted summary judgment on appellant's defamation claim because the statements in the declaration were pertinent and material as the statemenhts were relevant to appellant's credibility as a witness. McCauley v. Powell, 373 Ga. App. 169, 908 S.E.2d 27, 2024 Ga. App. LEXIS 400 (2024).

Evidence was insufficient to prove appellee's claim defamation of title because appellant's notice of lis pendens was privileged, as the trial court correctly found it was valid when filed based on appellant's unjust enrichment claim seeking a constructive trust on appellee's property. Since the lis pendens was privileged, the evidence was insufficient to support defamation, and the trial court erred by reconsidering the validity based on evidence at trial. Spinola v. Akaranta, 375 Ga. App. 194, 915 S.E.2d 24, 2025 Ga. App. LEXIS 176 (2025).

51-5-9. Right of action for malicious use of privilege.

JUDICIAL DECISIONS

Application of conditional privilege defense in certain defamation cases. — Actual malice standard does not apply to overcome a conditional privilege defense in defamation cases when the plaintiff is a private figure and the statements do not involve matters of public concern. The actual malice standard articulated in New York Times v. Sullivan, 376 U.S. 254 (1964) does not apply when a plaintiff is a private figure and does not seek presumed or punitive damages related to a defamatory statement that does not involve a matter of public concern. Oskouei v. Matthews, 321 Ga. 1, 912 S.E.2d 651, 2025 Ga. LEXIS 23 (2025).

In a defamation suit brought by a doctor against a defense attorney who made statements suggesting the doctor performed illegal surgeries, the Court of Appeals incorrectly imported the actual malice from New York Times v. Sullivan, 376 U.S. 254 (1964), standard into O.C.G.A. § 51-5-9 in the case, but the actual malice standard did not pertain to defamation cases brought by private-figure plaintiffs relating to statements that did not involve matters of public concern. Oskouei v. Matthews, 321 Ga. 1, 912 S.E.2d 651, 2025 Ga. LEXIS 23 (2025).

CHAPTER 6

FRAUD AND DECEIT

51-6-2. When misrepresentation of material fact actionable as deceit; effect of mere concealment; knowledge of falsehood essential to deceit; when knowledge implied.

JUDICIAL DECISIONS

Analysis

Application to Specific Cases

Fraud in connection with placement of utilities. — In a case of, inter alia, fraudulent concealment of negligent construction and negligent construction of the utility lines, the defendants' motion for summary judgment on the plaintiffs' claims of fraud and false representation of a material fact because the former owner's reckless, if not knowingly false, representations regarding the placement of the utilities were sufficient to sustain a claim of fraud; the owner's act of signing the final plat without checking that the subdivision complied with the county regulations, including the proper placement of utility lines, was a reckless representation without knowledge; and the act of filing a plat with the county could be interpreted as an act intended to induce parties to purchase the lots. Lafontaine v. Alexander, 343 Ga. App. 672, 808 S.E.2d 50, 2017 Ga. App. LEXIS 552 (2017), overruled in part, Driskell v. Dougherty County, 363 Ga. App. 481, 871 S.E.2d 283, 2022 Ga. App. LEXIS 164 (2022).

No duty to disclose. — Grant of summary judgment to defendants was upheld on fraud claims as there was no fiduciary relationship between parties nor any fraud by concealment since no duty to disclose trade premium existed. Overlook Gardens Props. v. Orix, 366 Ga. App. 820, 884 S.E.2d 433, 2023 Ga. App. LEXIS 86 (2023).

Sexual abuse by priest. — In a sexual abuse by a priest case, the plaintiff's negligent supervision, training, and retention, negligent failure to warn and provide adequate security, breach of fiduciary duty, and fraudulent misrepresentation and concealment claims were improperly dismissed as the plaintiff adequately pled actual fraud for purposes of tolling as the plaintiff could possibly establish the existence of confidential relationship between the plaintiff and the defendants, and that the defendants' alleged fraudulent concealment about the abusive priest debarred or deterred the plaintiff from discovering the plaintiff's causes of action; and the plaintiff could show that the plaintiff exercised reasonable diligence to discover the defendants' fraud. Doe v. St. Joseph's Catholic Church, 313 Ga. 558, 870 S.E.2d 365, 2022 Ga. LEXIS 59 (2022).

CHAPTER 7

FALSE ARREST, FALSE IMPRISONMENT, MALICIOUS PROSECUTION, AND ABUSIVE LITIGATION

Article 4

Detention or Arrest on Suspicion of ShopliftingTheft or Film Piracy

ARTICLE 1

FALSE ARREST

51-7-1. Right of action for false arrest.

JUDICIAL DECISIONS

Dismissal of criminal charge pursuant to compromise agreement did not terminate in plaintiff's favor. — Plaintiff's state law malicious arrest claim against the deputy was properly dismissed because the state dismissed the criminal charge based on a compromise agreement, and thus, it did not terminate in the plaintiff's favor. Henley v. Payne, 945 F.3d 1320, 2019 U.S. App. LEXIS 38625 (11th Cir. 2019).

No false imprisonment when detained pursuant to valid warrant. — District court properly dismissed the plaintiff's claims against the sheriff because as to a § 1983 false arrest claim, the plaintiff did not allege the sheriff played a role in the probable cause determination; as to the Eighth Amendment excessive bail claim, the complaint did not allege the sheriff was involved in setting bail or that the sheriff could alter bail; as to the state malicious arrest claim, the sheriff was not involved in the decision to arrest the plaintiff, nor was the arrest carried out as result of a policy made by the sheriff; as to a state law false imprisonment claim, by the time the sheriff knew of imprisonment, the plaintiff was detained pursuant to a valid warrant; and as to an intentional infliction of emotional distress claim, the allegations did not meet the required standard. Henley v. Payne, 945 F.3d 1320, 2019 U.S. App. LEXIS 38625 (11th Cir. 2019).

False arrest and malicious prosecution distinquished. — Trial court did not err in granting summary judgment to the defendants as to the plaintiff's claim for false arrest as a genuine issue of material fact did not exist since the plaintiff did not dispute that the plaintiff's arrest proceeded to prosecution when the plaintiff was brought before a judge who set bond and that the plaintiff remained in jail for 72 days; thus, to the extent the plaintiff may seek redress, the action was one for malicious prosecution and not false arrest. Sheffield v. Futch, 354 Ga. App. 661, 839 S.E.2d 294, 2020 Ga. App. LEXIS 80 (2020), cert. denied, No. S20C1090, 2020 Ga. LEXIS 807 (Ga. Oct. 5, 2020).

Employer not liable when employees not liable. — Because the individual defendants and the detective were not liable for false arrest, summary judgment was proper as to the employer since there was no evidence of malice or corruption. McClendon v. Harper, 349 Ga. App. 581, 826 S.E.2d 412, 2019 Ga. App. LEXIS 202 (2019).

ARTICLE 2

FALSE IMPRISONMENT

51-7-20. False imprisonment defined.

JUDICIAL DECISIONS

Analysis

General Consideration

No false imprisonment when detained pursuant to valid warrant. — District court properly dismissed the plaintiff's claims against the sheriff because as to a § 1983 false arrest claim, the plaintiff did not allege the sheriff played a role in the probable cause determination; as to the Eighth Amendment excessive bail claim, the complaint did not allege the sheriff was involved in setting bail or that the sheriff could alter bail; as to the state malicious arrest claim, the sheriff was not involved in the decision to arrest the plaintiff, nor was the arrest carried out as result of a policy made by the sheriff; as to a state law false imprisonment claim, by the time the sheriff knew of imprisonment, the plaintiff was detained pursuant to a valid warrant; and as to an intentional infliction of emotional distress claim, the allegations did not meet the required standard. Henley v. Payne, 945 F.3d 1320, 2019 U.S. App. LEXIS 38625 (11th Cir. 2019).

Claim stated when there is unlawful detention without warrant. — Plaintiff's false imprisonment claim against a deputy should not have been dismissed because the plaintiff alleged the plaintiff was unlawfully detained for the time between the plaintiff's arrest and when the plaintiff's arrest warrant was procured. Henley v. Payne, 945 F.3d 1320, 2019 U.S. App. LEXIS 38625 (11th Cir. 2019).

Applicability to Specific Cases

False imprisonment claim against co-workers failed. — Plaintiff's claim for false imprisonment against the individual defendants, who were plaintiff's co-workers, failed because there was no evidence the co-workers wrongfully procured the plaintiff's arrest by a detective, but only that the co-workers conveyed factual information to the detective, who, with a supervisor, made the decision to arrest the plaintiff. McClendon v. Harper, 349 Ga. App. 581, 826 S.E.2d 412, 2019 Ga. App. LEXIS 202 (2019).

Eviction of hotel patron. — Trial court erred by granting defendant summary judgment on plaintiff's false imprisonment claim because a genuine issue of material fact existed as to whether plaintiff had a right to occupy the room when the plaintiff was evicted. Information on defendant's website showed that, under the terms of the loyalty program, plaintiff's specific membership level entitled the plaintiff to a late check-out time of at least 2:00 P.M. Jordan v. Kimpton Hotel and Restaurant Group, LLC, 368 Ga. App. 750, 890 S.E.2d 417, 2023 Ga. App. LEXIS 366 (2023).

Bad faith shown in procuring arrest warrants. — Trial court properly denied the defendants' motion for summary judgment on the false imprisonment claim because the plaintiff produced evidence showing that the defendants did not act in good faith in procuring the warrants to collect on the 55 returned checks since the magistrate judge was not informed that the trailers had been delivered pursuant to a 30-day payment term and the checks were not given for present consideration and some of the trailers had already been repossessed. Sheffield v. Futch, 354 Ga. App. 661, 839 S.E.2d 294, 2020 Ga. App. LEXIS 80 (2020), cert. denied, No. S20C1090, 2020 Ga. LEXIS 807 (Ga. Oct. 5, 2020).

51-7-21. Effect of good faith on liability for imprisonment under warrant.

JUDICIAL DECISIONS

Bad faith shown in procuring arrest warrant for collection of bad checks. — Trial court properly denied the defendants' motion for summary judgment on the false imprisonment claim because the plaintiff produced evidence showing that the defendants did not act in good faith in procuring the warrants to collect on the 55 returned checks since the magistrate judge was not informed that the trailers had been delivered pursuant to a 30-day payment term and the checks were not given for present consideration and some of the trailers had already been repossessed. Sheffield v. Futch, 354 Ga. App. 661, 839 S.E.2d 294, 2020 Ga. App. LEXIS 80 (2020), cert. denied, No. S20C1090, 2020 Ga. LEXIS 807 (Ga. Oct. 5, 2020).

ARTICLE 3

MALICIOUS PROSECUTION

51-7-40. Right of action for malicious prosecution.

Law reviews.

For article, "Symposium Protect and Serve: Perspectives on 21st Century Policing January 20, 2017: Urban Policing and Public Policy - The Prosecutor's Role," see 51 Ga. L. Rev. 1179 (2017).

JUDICIAL DECISIONS

Analysis

Application to Specific Cases

Evidence established malice and lack of probable cause. — Judgment notwithstanding the jury's verdict for the former employee was properly denied on the employee's claim for malicious prosecution because the company's owner provided the police with false information about the employee, and there was evidence that at least one of the crimes alleged by the owner did not occur; there was a lack of probable cause as the trial evidence supported a finding that the owner pursued a prosecution of the employee knowing that the employee had not committed the alleged crimes; and there was sufficient evidence of malice as the owner disliked the employee, and a jury could find that the owner's actions against the employee were motivated by personal spite. Carly Ray Indus., Inc. v. Mays, 354 Ga. App. 638, 841 S.E.2d 100, 2020 Ga. App. LEXIS 192 (2020), cert. denied, No. S20C1077, 2020 Ga. LEXIS 842 (Ga. Sept. 28, 2020).

51-7-42. Inquiry before committing court or magistrate as prosecution.

JUDICIAL DECISIONS

False arrest and malicious prosecution distinquished. — Trial court did not err in granting summary judgment to the defendants as to the plaintiff's claim for false arrest as a genuine issue of material fact did not exist since the plaintiff did not dispute that the plaintiff's arrest proceeded to prosecution when the plaintiff was brought before a judge who set bond and that the plaintiff remained in jail for 72 days; thus, to the extent the plaintiff may seek redress, the action was one for malicious prosecution and not false arrest. Sheffield v. Futch, 354 Ga. App. 661, 839 S.E.2d 294, 2020 Ga. App. LEXIS 80 (2020), cert. denied, No. S20C1090, 2020 Ga. LEXIS 807 (Ga. Oct. 5, 2020).

51-7-43. Lack of probable cause defined; question for jury.

JUDICIAL DECISIONS

Analysis

Applicability to Specific Cases

Evidence of lack of probable cause. — Judgment notwithstanding the jury's verdict for the former employee was properly denied on the employee's claim for malicious prosecution because the company's owner provided the police with false information about the employee, and there was evidence that at least one of the crimes alleged by the owner did not occur; there was a lack of probable cause as the trial evidence supported a finding that the owner pursued a prosecution of the employee knowing that the employee had not committed the alleged crimes; and there was sufficient evidence of malice as the owner disliked the employee, and a jury could find that the owner's actions against the employee were motivated by personal spite. Carly Ray Indus., Inc. v. Mays, 354 Ga. App. 638, 841 S.E.2d 100, 2020 Ga. App. LEXIS 192 (2020), cert. denied, No. S20C1077, 2020 Ga. LEXIS 842 (Ga. Sept. 28, 2020).

51-7-44. Inference of malice from lack of probable cause; rebuttal of inference.

JUDICIAL DECISIONS

Malice shown for collection of bad checks. — Trial court did not err in denying summary judgment on the plaintiff's claim for malicious prosecution because there was evidence from which a jury could determine that the defendant withheld information on the parties' course of dealings from the magistrate judge at the time the warrants were procured, which the defendant signed despite knowing that the checks had not been delivered for present consideration and that at least 16 of the checks were less than 30 days old. Sheffield v. Futch, 354 Ga. App. 661, 839 S.E.2d 294, 2020 Ga. App. LEXIS 80 (2020), cert. denied, No. S20C1090, 2020 Ga. LEXIS 807 (Ga. Oct. 5, 2020).

ARTICLE 4

DETENTION OR ARREST ON SUSPICION OF SHOPLIFTING, THEFT, OR FILM PIRACY

Law reviews.
For article, "HB 479: Repeal of Georgia's Citizen's Arrest Law," see 38 Ga. St. U.L. Rev. 25 (2021).

51-7-60. Preclusion of recovery for detention of person suspected of theft under certain circumstances.

Whenever the owner or operator of a retail establishment as defined in Code Section 16-7-2 or a food service establishment as defined in Code Section 26-2-370 or any agent or employee thereof detains or causes to be detained any person pursuant to Code Section 17-4-80 and any person who detains or causes to be detained a person while acting pursuant to Article 2 of Chapter 3 of Title 16 wherein the person so detained brings an action for false arrest or false imprisonment against such owner, operator, agent, employee, or person, no recovery shall be had by the plaintiff in such action when it is established by competent evidence:

(1) That the plaintiff had so conducted himself or herself or behaved in such manner as to cause a person of reasonable prudence to believe that the plaintiff, at or immediately prior to the time of the detention, was committing an:

(A) Offense authorized for detention pursuant to Code Section 17-4-80; or

(B) Act which caused a detention which was justified as provided in Article 2 of Chapter 3 of Title 16; and

(2) That the manner of the detention and the length of time during which such plaintiff was detained was under all the circumstances reasonable.

History.

Ga. L. 1958, p. 693, § 1; Ga. L. 2014, p. 404, § 2-4/SB 382; Ga. L. 2021, p. 625, § 7/HB 479.

Amendments.

The 2021 amendment, effective May 10, 2021, substituted the present provisions of the introductory paragraph for the former provisions, which read: "Whenever the owner or operator of a mercantile establishment or any agent or employee of the owner or operator detains, arrests, or causes to be detained or arrested any person reasonably thought to be engaged in shoplifting or refund fraud and, as a result of the detention or arrest, the person so detained or arrested brings an action for false arrest or false imprisonment against the owner, operator, agent, or employee, no recovery shall be had by the plaintiff in such action where it is established by competent evidence:", substituted the present provisions of paragraph (1) for the former provisions, which read: "That the plaintiff had so conducted himself or herself or behaved in such manner as to cause a person of reasonable prudence to believe that the plaintiff, at or immediately prior to the time of the detention or arrest, was committing the offense of shoplifting, as defined by Code Section 16-8-14, or refund fraud as defined in Code Section 16-8-14; or", and deleted "or arrest" following "detention" in paragraph (2). See Editor's note for applicability.

Editor's notes.

Ga. L. 2021, p. 625, § 8/HB479, not codified by the General Assembly, provides, in part, that: "This Act shall not apply to rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Act." This Act became effective May 10, 2021.

Law reviews.

For note, "Publicly Funded Private Security: A Critical Examination of Georgia Law Pertaining to the Private Employment of Off-Duty Police Officers," see 51 Ga. L. Rev. 879 (2017).

For article, "HB 479: Repeal of Georgia's Citizen's Arrest Law," see 38 Ga. St. U.L. Rev. 25 (2021).

JUDICIAL DECISIONS

Question whether detention and manner of detention by retailer were reasonable. — Retailer was not entitled to summary judgment with regard to a customer's false imprisonment claim because there were questions of fact as to whether the belief that the customer had shoplifted was reasonable and whether the manner of detention was reasonable. Carnegay v. WalMart Stores, Inc., 353 Ga. App. 656, 839 S.E.2d 176, 2020 Ga. App. LEXIS 63 (2020).

ARTICLE 5

ABUSIVE LITIGATION

51-7-80. Definitions.

Law reviews.

For article, "A Constitutional Counterpunch to Georgia's Anti-SLAPP Statute," see 69 Mercer L. Rev. 407 (2019).

JUDICIAL DECISIONS

Abusive litigation statute only applies to civil proceedings. — Abusive litigation statute, O.C.G.A. § 51-7-85, did not preclude the arbitration proceedings, as it only applied to civil proceedings and the filing of an attorney's lien was not a civil proceeding. Smith v. Blackhall Real Estate, 373 Ga. App. 177, 908 S.E.2d 1, 2024 Ga. App. LEXIS 403 (2024).

Application to divorce. — In an invasion of privacy action arising from divorce litigation, the ex-wife's claims premised on the ex-husband's surveillance did not fall within the ambit of the abusive litigation statute, O.C.G.A. § 51-7-80, but any claims stemming from the subsequent disclosure of the sexual relationship in filings made with the divorce court were preempted by the abusive litigation statute. Valade v. Meriwether & Tharp, LLC, 364 Ga. App. 782, 875 S.E.2d 490, 2022 Ga. App. LEXIS 332 (2022).

Notice required prior to suit.

Trial court erred by failing to dismiss an invasion of privacy claim through public disclosure of private facts because the plaintiff failed to comply with the procedural requirements of O.C.G.A. § 51-7-80 et seq., by not providing statutory notice of the claim as required by O.C.G.A. § 51-7-84(a). Rogers v. Dupree, 349 Ga. App. 777, 824 S.E.2d 823, 2019 Ga. App. LEXIS 204 (2019), cert. denied, No. S19C1170, 2019 Ga. LEXIS 880 (Ga. Dec. 23, 2019), cert. denied, No. S19C1132, 2019 Ga. LEXIS 889 (Ga. Dec. 23, 2019).

51-7-81. Liability for abusive litigation.

JUDICIAL DECISIONS

Notice required prior to suit.

Trial court erred by failing to dismiss an invasion of privacy claim through public disclosure of private facts because the plaintiff failed to comply with the procedural requirements of O.C.G.A. § 51-7-80 et seq., by not providing statutory notice of a claim as required by O.C.G.A. § 51-7-84(a). Rogers v. Dupree, 349 Ga. App. 777, 824 S.E.2d 823, 2019 Ga. App. LEXIS 204 (2019), cert. denied, No. S19C1170, 2019 Ga. LEXIS 880 (Ga. Dec. 23, 2019), cert. denied, No. S19C1132, 2019 Ga. LEXIS 889 (Ga. Dec. 23, 2019).

Judgment in favor of a plaintiff was upheld because plaintiff's notice met the statutory requirements for an abusive litigation claim under O.C.G.A. § 51-7-84 and there was evidence defendant acted with malice and without justification in suing to enjoin plaintiff's alcoholic beverage license to deter competition. PJ Bev. Corp. v. The Bottle Shop, LLC, 372 Ga. App. 461, 904 S.E.2d 125, 2024 Ga. App. LEXIS 316 (July 1, 2024).

Plaintiffs not authorized to bring claim. — Because the complaint for abusive litigation did not allege that the defendants initiated, continued, or procured civil proceedings against the plaintiffs, the plaintiffs were not within the class of persons authorized to bring a claim and therefore failed to state a claim for abusive litigation. Oldham v. Landrum, 363 Ga. App. 284, 870 S.E.2d 82, 2022 Ga. App. LEXIS 162 (2022).

Claim not "without substantial justification."

There was evidence to support appellee's abusive litigation claim because there was evidence that appellant was motivated by a desire to deter competition and acted with malice and without substantial justification as appellant filed the initial lawsuit against the city seeking a restraining order to prevent appellee from obtaining a license and during a newspaper interview appellant stated that he did not want a competitor. P&J Bev. Corp. v. Bottle Shop, LLC, 372 Ga. App. 461, 904 S.E.2d 125, 2024 Ga. App. LEXIS 316 (2024).

51-7-83. Measure of damages.

JUDICIAL DECISIONS

Punitive damages generally may be recovered in an abusive litigation lawsuit (as long as the lawsuit is not solely to recover damages for injury to peace, happiness, or feelings) because the text of O.C.G.A. § 51-7-83 indicates that punitive damages are included, the statute did not change the common law generally allowing punitive damages in abusive litigation cases, and punitive damages in abusive litigation cases do not always constitute an impermissible double recovery. Coen v. Aptean, Inc., 307 Ga. 826, 838 S.E.2d 860, 2020 Ga. LEXIS 103 (2020).

Attorney fees supported by the evidence. — Trial court did not err by denying appellant's motions for directed verdict and judgment notwithstanding the verdict because evidence was provided to support appellee's claim for attorney fees, as appellee's lawyers testified as to their fees for the original lawsuit, including their hourly rates and their fees amounts, and the lawyers were cross-examined regarding the fees. P&J Bev. Corp. v. Bottle Shop, LLC, 372 Ga. App. 461, 904 S.E.2d 125, 2024 Ga. App. LEXIS 316 (2024).

Appellate review of attorney fees.

Judgment in favor of a plaintiff was upheld in an abusive litigation claim and because plaintiff sought attorney fees under O.C.G.A. § 51-7-83(a), not O.C.G.A. § 9-15-14, plaintiff was properly awarded attorney fees incurred in connection with the appellate proceedings as the statutory language of O.C.G.A. § 51-7-83(a) did not exclude appellate proceedings from the recovery for reasonable attorney fees. P&J Bev. Corp. v. Bottle Shop, LLC, 372 Ga. App. 461, 904 S.E.2d 125, 2024 Ga. App. LEXIS 316 (2024).

51-7-84. Notice of claim asserted; when action must be brought.

JUDICIAL DECISIONS

Failure to give notice. — Claims against the attorney failed because, while styled as claims for civil conspiracy, in substance the claims were claims for abusive litigation and the notice requirements were not met. Stapler v. Boling, 347 Ga. App. 79, 815 S.E.2d 602, 2018 Ga. App. LEXIS 412 (2018).

Trial court erred by failing to dismiss an invasion of privacy claim through public disclosure of private facts because the plaintiff failed to comply with the procedural requirements of O.C.G.A. § 51-7-80 et seq., by not providing statutory notice of a claim as required by O.C.G.A. § 51-7-84(a). Rogers v. Dupree, 349 Ga. App. 777, 824 S.E.2d 823, 2019 Ga. App. LEXIS 204 (2019), cert. denied, No. S19C1170, 2019 Ga. LEXIS 880 (Ga. Dec. 23, 2019), cert. denied, No. S19C1132, 2019 Ga. LEXIS 889 (Ga. Dec. 23, 2019).

Notice sufficient. — Trial court did not err by denying the appellant's motions regarding the appellee's abusive litigation claim because there was evidence to support the jury's finding that the notice was sufficient as the appellee gave the appellant the opportunity to consent to a stay of the injunction and informed appellant that if it failed to do so appellee would seek damages. P&J Bev. Corp. v. Bottle Shop, LLC, 372 Ga. App. 461, 904 S.E.2d 125, 2024 Ga. App. LEXIS 316 (2024).

Notice insufficient as to lessee's managing partner in individual capacity. — Although a landlord's abusive litigation notice letter under O.C.G.A. § 51-7-84(a) was insufficient to give notice to the lessee's managing partner individually, the trial court erred in awarding attorney's fees to the partner under O.C.G.A. § 9-15-14 because under the circumstances of the case there was a justiciable issue as to whether the notice letters were served properly. Dunwoody Plaza Partners, LLC v. Markowitz, 346 Ga. App. 516, 816 S.E.2d 450, 2018 Ga. App. LEXIS 400 (2018).

Renewal action was timely. — Former employee's renewal action for abusive litigation was not time-barred because the causes of action in the employee's original action and the employee's renewal action were substantially the same and, thus, the current suit was a good renewal of the original suit so as to suspend the one-year statute of limitation applicable in abusive litigation suits. Coen v. Aptean, Inc., 356 Ga. App. 468, 847 S.E.2d 835, 2020 Ga. App. LEXIS 468 (2020).

51-7-85. Exclusive remedy.

JUDICIAL DECISIONS

Abusive litigation statute only applies to civil proceedings. — Abusive litigation statute, O.C.G.A. § 51-7-85, did not preclude the arbitration proceedings as the statute only applied to civil proceedings and the filing of an attorney's lien was not a civil proceeding. Smith v. Blackhall Real Estate, 373 Ga. App. 177, 908 S.E.2d 1, 2024 Ga. App. LEXIS 403 (2024).

Notice required prior to suit. — Trial court erred by failing to dismiss an invasion of privacy claim through public disclosure of private facts because the plaintiff failed to comply with the procedural requirements of O.C.G.A. § 51-7-80 et seq., by not providing statutory notice of a claim as required by O.C.G.A. § 51-7-84(a). Rogers v. Dupree, 349 Ga. App. 777, 824 S.E.2d 823, 2019 Ga. App. LEXIS 204 (2019), cert. denied, No. S19C1170, 2019 Ga. LEXIS 880 (Ga. Dec. 23, 2019), cert. denied, No. S19C1132, 2019 Ga. LEXIS 889 (Ga. Dec. 23, 2019).

CHAPTER 9

INJURIES TO REAL ESTATE

Sec.
51-9-12. Civil cause of action for the recording of fraudulent or forged deeds or other instruments.

51-9-1. Cause of action for interference with enjoyment of property.

JUDICIAL DECISIONS

ANALYSIS

Applicability to Specific Cases

Homeowners' claim against paper mill for noxious odor was claim for nuisance, not trespass. — Georgia's right to farm statute, O.C.G.A. § 41-1-7, barred the homeowners' nuisance claims against a recycled paper mill because the recycled paper was a "forest product" and the mill a "forest products processing plant" protected from liability by the statute; the noxious odor emitted as a byproduct of the plant was not a trespass. Ga.-Pac. Consumer Prods., LP v. Ratner, 345 Ga. App. 434, 812 S.E.2d 120, 2018 Ga. App. LEXIS 175 (2018), cert. denied, No. S18C1131, 2018 Ga. LEXIS 736 (Ga. Nov. 5, 2018), cert. denied, No. S18C1130, 2018 Ga. LEXIS 725 (Ga. Nov. 5, 2018).

Deed granted utility easement. — Trial court erred in ordering the neighbors to remove the utility lines or obtain an easement to keep the lines in place because the landowner's deed from the predecessor stated that the landowner took the land subject to all easements for roads and utilities in use or of record and the easement for utilities was filed on August 16, 2006, years before the landowner's purchase of the property in 2017. Floyd v. Chapman, 353 Ga. App. 434, 838 S.E.2d 99, 2020 Ga. App. LEXIS 16 (2020).

Continued use of driveway constituted trespass. — Trial court properly determined that the neighbors did not possess a prescriptive easement across the property since the property was wild and, consequently, the landowner had the right to exclude the neighbors from the property as the neighbors' continued use of the driveway constituted a trespass. Floyd v. Chapman, 353 Ga. App. 434, 838 S.E.2d 99, 2020 Ga. App. LEXIS 16 (2020).

HOA's removal of homeowners' sign presented jury question. — In a dispute involving a homeowners' association's (HOA) claim of a pedestrian easement access across a subdivision lot to a lake, the term "10' PEDESTRIAN ESMT" on the plat was void for uncertainty of description. The lot owners' counterclaims for trespass, theft by taking (for removal of a sign), interfering with the right of quiet enjoyment, attorney's fees, and punitive damages presented jury questions; however, their claim for intentional infliction of emotional distress was subject to summary judgment. The Plantation at Bay Creek Homeowners Association, Inc. v. Glasier, 349 Ga. App. 203, 825 S.E.2d 542, 2019 Ga. App. LEXIS 132 (2019).

51-9-11. Slander or libel concerning title to land.

JUDICIAL DECISIONS

Insufficient evidence. — Evidence was insufficient to prove appellee's claim of defamation of title because the appellant's notice of lis pendens was privileged as the trial court correctly found it was valid when filed based on appellant's unjust enrichment claim seeking a constructive trust on appellee's property. Since the lis pendens was privileged, the evidence was insufficient to support defamation and the trial court erred by reconsidering the validity based on evidence at trial. Spinola v. Akaranta, 375 Ga. App. 194, 915 S.E.2d 24, 2025 Ga. App. LEXIS 176 (2025).

51-9-12. Civil cause of action for the recording of fraudulent or forged deeds or other instruments.

(a) In addition to any other remedy that may be available at law or in equity, the owner of any real property may bring an action against an individual who has knowingly filed, entered, or recorded, or caused to be filed, entered, or recorded, in any public record a false or forged deed or other instrument purporting to convey the owner's interest to such real property to such individual or a third party or purporting to encumber the owner's interest in such real property to:

(1) Recover the owner's actual damages caused by the filing, entering, or recording of such false or forged deed or other instrument or $5,000.00, whichever is greater; and

(2) Recover the owner's costs incurred in bringing such action, including reasonable attorney's fees.

(b) Nothing in this Code section shall be construed as creating a cause of action against any public official or employee, including, without limitation, a clerk of the superior court or any employee or agent of a clerk of the superior court, for actions taken in the performance of his or her duties.

History.

Code 1981, § 51-9-12, enacted by Ga. L. 2024, p. 553, § 2-3/HB 1292, effective May 2, 2024.

Effective date.

This Code section became effective May 2, 2024.

CHAPTER 10

INJURIES TO PERSONALTY

51-10-1. Right of action for deprivation of possession of personalty.

JUDICIAL DECISIONS

O.C.G.A. § 51-10-1 covers the unauthorized seizure of personal property by police officers, etc.

District court erred in denying a motion for leave to amend a complaint by buyers of a car at an auction to include a state law claim for conversion under O.C.G.A. § 51-10-1 based on a local detective seizing the car from the buyers, claiming that the car was stolen; the buyers were not required to physically resist turning the vehicle over to the detective. Pierce v. Clayton Cty., 717 Fed. Appx. 866, 2017 U.S. App. LEXIS 23484 (11th Cir. 2017).

Judgment on pleadings proper. — In a case dealing with a sale and repossession of a business, summary judgment and judgment on the pleadings were properly granted in favor of the buyer on the buyer's breach of contract, trespass to personal property, and conversion claims as the sellers' claim of a breach of an alleged oral agreement that the buyer obtain a liquor license, business permits, and insurance in the buyer's name was meritless because there was no evidence that the oral agreement changed the requirement that the sellers obtain the buyer's written consent to remove equipment from the business premises, or that it added new provisions allowing the sellers to evict the buyer and repossess the business and all of the business's assets upon a breach of the oral agreement. Caldwell v. Church, 341 Ga. App. 852, 802 S.E.2d 835, 2017 Ga. App. LEXIS 293 (2017).

Summary judgment on conversion claim not warranted.

In suit alleging computer theft and other claims, trial court erred holding that plaintiff's claim for injunctive relief was moot because plaintiff sought order enjoining defendants from retaining copies of information taken from plaintiff's computer, and there was no record evidence to suggest that defendants no longer retained that information. Patel v. Duke Hospitality, LLC, 364 Ga. App. 538, 875 S.E.2d 520, 2022 Ga. App. LEXIS 335 (2022).

In a business dispute involving renewable energy certificates (RECs), the denial of summary judgment to defendant on plaintiff's conversion claim was upheld given the circumstances under which Georgia courts have found intangible property to be subject to a conversion claim, the RECs at issue could be considered a species of specific intangible property for purposes of a conversion claim, contrary to defendant's assertion otherwise. NoFree, LLC v. State of Georgia, 373 Ga. App. 753, 909 S.E.2d 852, 2024 Ga. App. LEXIS 478 (Nov. 18, 2024).

No conversion shown. — There was no allegation by the buyer that the United States had actual possession of the vehicles, and the count was correctly dismissed. Smith v. United States, 873 F.3d 1348, 2017 U.S. App. LEXIS 20735 (11th Cir. 2017).

Trial court erred in granting summary judgment against the appellant husband because there was no evidence that the husband converted any funds belonging to the appellee, the appellant wife's employer, as there was no evidence that the husband possessed any of the funds or that they went into the appellants' joint bank account. Mims v. Exclusive Association Management, Inc., 372 Ga. App. 777, 906 S.E.2d 799, 2024 Ga. App. LEXIS 359 (2024).

RESEARCH REFERENCES

ALR.

Application of Kingsley to acts or conditions constituting punishment for pretrial detainees, 78 A.L.R Fed 3d 3.

51-10-2. Who may bring an action for interference with possession of chattel.

JUDICIAL DECISIONS

Judgment on pleadings proper. — In a case dealing with a sale and repossession of a business, summary judgment and judgment on the pleadings were properly granted in favor of the buyer on the buyer's breach of contract, trespass to personal property, and conversion claims as the sellers' claim of a breach of an alleged oral agreement that the buyer obtain a liquor license, business permits, and insurance in the buyer's name was meritless because there was no evidence that the oral agreement changed the requirement that the sellers obtain the buyer's written consent to remove equipment from the business premises, or that it added new provisions allowing the sellers to evict the buyer and repossess the business and all of the business's assets upon a breach of the oral agreement. Caldwell v. Church, 341 Ga. App. 852, 802 S.E.2d 835, 2017 Ga. App. LEXIS 293 (2017).

51-10-3. Abuse of or damage to personalty as trespass.

JUDICIAL DECISIONS

Judgment on pleadings proper. — In a case dealing with a sale and repossession of a business, summary judgment and judgment on the pleadings were properly granted in favor of the buyer on the buyer's breach of contract, trespass to personal property, and conversion claims as the sellers' claim of a breach of an alleged oral agreement that the buyer obtain a liquor license, business permits, and insurance in the buyer's name was meritless because there was no evidence that the oral agreement changed the requirement that the sellers obtain the buyer's written consent to remove equipment from the business premises, or that it added new provisions allowing the sellers to evict the buyer and repossess the business and all of the business's assets upon a breach of the oral agreement. Caldwell v. Church, 341 Ga. App. 852, 802 S.E.2d 835, 2017 Ga. App. LEXIS 293 (2017).

HOA's removal of homeowners' sign presented jury question. — In a dispute involving a homeowners' association's (HOA) claim of a pedestrian easement access across a subdivision lot to a lake, the term "10' PEDESTRIAN ESMT" on the plat was void for uncertainty of description. The lot owners' counterclaims for trespass, theft by taking (for removal of a sign), interfering with the right of quiet enjoyment, attorney's fees, and punitive damages presented jury questions; however, their claim for intentional infliction of emotional distress was subject to summary judgment. The Plantation at Bay Creek Homeowners Association, Inc. v. Glasier, 349 Ga. App. 203, 825 S.E.2d 542, 2019 Ga. App. LEXIS 132 (2019).

51-10-6. Owner's right of action for damage to or theft involving personal property.

JUDICIAL DECISIONS

Civil theft. — Supreme Court of Georgia held that given plaintiff's express disavowal of the element of consumer confusion in the complaint, it could not state a claim for civil theft arising from the use of its trade name and associated goodwill; thus, the trial court did not err in granting defendant's motion to dismiss plaintiff's claim for civil theft. Edible IP, LLC v. Google, LLC, 313 Ga. 305, 869 S.E.2d 481, 2022 Ga. LEXIS 29 (2022).

No private right of action. — Although O.C.G.A. § 51-10-6 expressly provided for a civil recovery for thefts, under Georgia case law, that statute could not be used to establish a civil remedy for the specific crime of theft by conversion. Nor had O.C.G.A. § 51-1-6 been used to create a civil remedy for violations of the theft by conversion statute. Thomas Concrete of Ga., Inc. v. Osbourne (In re Osbourne), No. 10-82440-WLH, No. 10-06621, 2017 Bankr. LEXIS 2414 (Bankr. N.D. Ga. Aug. 24, 2017).

Removal of homeowners' sign presented jury question. — In a dispute involving a homeowners' association's (HOA) claim of a pedestrian easement access across a subdivision lot to a lake, the term "10' PEDESTRIAN ESMT" on the plat was void for uncertainty of description. The lot owners' counterclaims for trespass, theft by taking (for removal of a sign), interfering with the right of quiet enjoyment, attorney's fees, and punitive damages presented jury questions; however, their claim for intentional infliction of emotional distress was subject to summary judgment. The Plantation at Bay Creek Homeowners Association, Inc. v. Glasier, 349 Ga. App. 203, 825 S.E.2d 542, 2019 Ga. App. LEXIS 132 (2019).

CHAPTER 11

DEFENSES TO TORT ACTIONS

Article 1

General Provisions

ARTICLE 1

GENERAL PROVISIONS

51-11-2. Effect of consent.

RESEARCH REFERENCES

ALR.

Waiver of Liability for Personal Injury or Death in Cases Involving Organized Sports Like Leagues, Club Sports, and the Like, 92 A.L.R.7th 5.

51-11-7. Effect of plaintiff's failure to avoid consequences of defendant's negligence.

JUDICIAL DECISIONS

Analysis

Applicability to Specific Cases

5. Miscellaneous

Parking lots. — Trial court erred by granting the grocery store and the store's security company summary judgment in a personal injury action filed by the decedent's spouse, where the decedent was killed by a man who had entered the decedent's truck while the truck was parked in the store's parking lot, because there was a genuine issue of material fact regarding the decedent's exercise of ordinary care as a reasonable jury could conclude that because the decedent did not see that the man was armed, did not knowingly insert the decedent into an existing altercation, had no previous contact with the man or knowledge that the man intended harm, and did not inject the decedent into imminent danger, the decedent did not fail to exercise ordinary care in approaching the truck. Richey v. The Kroger Co., 355 Ga. App. 551, 845 S.E.2d 351, 2020 Ga. App. LEXIS 354 (2020).

RESEARCH REFERENCES

ALR.

Waiver of Liability for Personal Injury or Death in Cases Involving Facilities of Recreational or Sports Activities, 88 A.L.R.7th 3.

Waiver of Liability for Personal Injury or Death in Cases Involving Organized Sports Like Leagues, Club Sports, and the Like, 92 A.L.R.7th 5.

51-11-9. No duty to retreat and immunity in certain instances of threat or use of force.

A person who is justified in threatening or using force against another under the provisions of Code Section 16-3-20, relating to justification as a defense, Code Section 16-3-21, relating to the use of force in defense of self or others, Code Section 16-3-23, relating to the use of force in defense of a habitation, Code Section 16-3-24, relating to the use of force in defense of property other than a habitation, or Code Section 17-4-20, relating to arrests and use of force by law enforcement officers, has no duty to retreat from the use of such force and shall not be held liable to the person against whom the use of force was justified or to any person acting as an accomplice or assistant to such person in any civil action brought as a result of the threat or use of such force.

History.

Code 1981, § 51-11-9, enacted by Ga. L. 1986, p. 515, § 1; Ga. L. 2006, p. 477, § 3/SB 396; Ga. L. 2024, p. 543, § 2/SB 517, effective May 2, 2024.

Amendments.

The 2024 amendment, effective May 2, 2024, inserted "Code Section 16-3-20, relating to justification as a defense,", deleted "or" preceding "Code Section 16-3-24", and inserted "or Code Section 17-4-20, relating to arrests and use of force by law enforcement officers,". See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 543, § 3/SB 517, not codified by the General Assembly, makes this Code section applicable to all offenses committed and causes of action accruing on or after May 2, 2024.

CHAPTER 12

DAMAGES

RESEARCH REFERENCES

ALR.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Users of Asbestos and Tobacco Products, 50 A.L.R.7th 3.

Products liability: nasal sprays, 78 A.L.R.7th 1.

Products liability: necessity and admissibility of expert or opinion evidence as to design and manufacture of asbestos and tobacco products, 78 A.L.R.7th 2.

Products liability: talcum powder cases, 78 A.L.R.7th 3.

Products liability: necessity and admissibility of expert or opinion evidence as to design and manufacture of food products and equipment, 80 A.L.R.7th 1.

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

ALR.

Excessiveness or Adequacy of Damages for Personal Injuries Resulting in Death of Minor, 70 A.LR.7th 6.

51-12-1. Types of damages; evidence admissible in actions involving special damages.

RESEARCH REFERENCES

ALR.

Products Liability: dishwashers, 79 A.L.R.7th 1.

51-12-1.1. Special damages for medical and healthcare medical and healthcare payment evidence; abrogation of common law collateral source rule.

(a) In any civil action to recover damages resulting from injury or death to a person, special damages for medical and healthcare expenses shall be recoverable only as provided in this Code section.

(b) Special damages for medical and healthcare expenses shall be limited to the reasonable value of medically necessary care, treatment, or services, and the amount of such special damages shall be determined by the trier of fact.

(c) If the plaintiff in any such civil action has any form of public or private health insurance, including benefits under a governmental workers' compensation program, evidence relevant to the determination of the reasonable value of medically necessary care, treatment, or services pursuant to subsection (b) of this Code section shall include both the amounts charged for past, present, or future medical and healthcare expenses and the amounts actually necessary to satisfy such charges pursuant to the insurance contract or the applicable governmental workers' compensation program, regardless of whether the health insurance has been used, is used, or will be used to satisfy such charges.

(d) In any claim for medical and healthcare expenses rendered under a letter of protection or any other arrangement by which a healthcare provider renders treatment in exchange for a promise of payment for the plaintiff's medical and healthcare expenses from any judgment or settlement of a civil action to recover damages resulting from injury or death to a person, regardless of how such arrangement is referred to, the following shall be relevant and discoverable:

(1) A copy of the letter of protection;

(2) All charges for the plaintiff's medical and healthcare expenses, which shall be itemized and, to the extent applicable, coded according to generally accepted medical billing practices;

(3) If the healthcare provider sells the accounts receivable for the plaintiff's medical and healthcare expenses to a third party at less than the invoice price:

(A) The name of the third party; and

(B) The dollar amount for which the third party purchased such accounts receivable; and

(4) Whether the claimant was referred for treatment under a letter of protection or other similar arrangement and, if so, the identity of the person who made the referral.

(e) It is the intent of the General Assembly that this Code section abrogates the common law collateral source rule to the extent necessary to introduce the evidence described in this Code section; provided, however, that nothing in this Code section shall be construed or applied to prevent the court from issuing appropriate jury instructions to clarify the role of collateral source payments and to prevent potential jury confusion regarding the effect of collateral source payments on the plaintiff's recovery.

(f) Nothing in this Code section shall be construed or applied to limit the right of a plaintiff or defendant to present evidence or testimony, or both, challenging the reasonableness of medical and healthcare expenses, whether incurred or projected future expenses, or the medical necessity of any treatment.

History.

Code 1981, § 51-12-1.1, enacted by Ga. L. 2025, p. 19, § 7/SB 68, effective April 21, 2025.

Effective date.

This Code section became effective April 21, 2025. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2025, p. 19, § 9(b)/SB 68, not codified by the General Assembly, provides: "Sections 6 and 7 of this Act shall apply only with respect to causes of action arising on or after the effective date of this Act, and any prior causes of action shall be governed by prior law. It is the intention of the General Assembly that all other provisions of this Act shall apply to causes of action pending on the effective date of this Act, unless such application would be unconstitutional." This Act became effective April 21, 2025.

51-12-2. General and special damages distinguished; when recovered.

Law reviews.

For note, "Whose Sperm Is It Anyways in the Wild, Wild West of the Fertility Industry?," see 34 Ga. St. U.L. Rev. 847 (2018).

JUDICIAL DECISIONS

Vehicle repairs as special damages. — Trial court erred by granting the defendant summary judgment in the plaintiff's action seeking recovery for damage to the plaintiff's vehicle because the plaintiff presented sufficient evidence of special damages to raise a material issue of fact, as the plaintiff's chief executive officer testified that the executive officer determined the value of the vehicle immediately prior to the accident to be $14,425 and the plaintiff submitted repair orders and the bills for the rental vehicle. T & T Transportation v. Duckworth, 361 Ga. App. 882, 864 S.E.2d 181, 2021 Ga. App. LEXIS 503 (2021).

51-12-4. Damages given as compensation for injury; measure of damages generally; nominal damages.

Law reviews.

For note, "A Single Symbolic Dollar: How Nominal Damages Can Keep Lawsuits Alive," see 52 Ga. L. Rev. 935 (2018).

For article, "The Color of Pain: Racial Bias in Pain and Suffering Damages," see 56 Ga. L. Rev. 651 (2022).

JUDICIAL DECISIONS

Analysis

General Consideration

Nominal damages permitted when no particular loss demonstrated. — In a borrower's wrongful foreclosure case against a lender in which the lender failed to answer the complaint, thereby admitting causation and the borrower's allegation of damages, even if the borrower had no equity in the home and could not demonstrate actual damages, the borrower still could recover nominal damages, and nominal damages would support an award of punitive damages. Zhong v. PNC Bank, N.A., 345 Ga. App. 135, 812 S.E.2d 514, 2018 Ga. App. LEXIS 184 (2018), cert. denied, No. S18C1034, 2018 Ga. LEXIS 696 (Ga. Oct. 9, 2018), cert. denied, No. S18C1032, 2018 Ga. LEXIS 700 (Ga. Oct. 9, 2018).

Measure of Damages Applicable to Specific Cases

Damages for invasion of privacy by accessing medical records. — When defendants were alleged to have accessed the plaintiff's medical records without authorization, the court held that nominal damages or peace, happiness, and feelings damages, were available for invasion of privacy claims despite no proof of monetary loss, thus, the trial court erred granting defendants' summary judgment on that claim. Nayani v. Bhatia, 371 Ga. App. 44, 899 S.E.2d 485, 2024 Ga. App. LEXIS 113 (2024).

RESEARCH REFERENCES

ALR.

Sufficiency of Evidence to Prove Future Medical Expenses as Result of Injury to Head or Brain, 65 A.L.R. 7th 3.

51-12-5.1. Punitive damages.

Law reviews.

For article, "Do's and Don'ts When Handling a Product Liability Matter in Georgia," see 25 Ga. St. B.J. 17 (Aug. 2019).

For article with annual survey on trial practice and procedure, see 73 Mercer L. Rev. 265 (2021).

JUDICIAL DECISIONS

Analysis

General Consideration

Constitutionality. — The very nature and operation of O.C.G.A. § 51-12-5.1(g) was different from the nature of the judicial remittitur power and did not infringe on the judicial power as appellant contended and, thus, appellant's claim that § 51-12-5.1 (g) was a violation of the separation of powers required by the Georgia Constitution failed. Taylor v. Devereux Foundation, 316 Ga. 44, 885 S.E.2d 671, 2023 Ga. LEXIS 63 (2023).

Singular references in subsection (f). — The fact that O.C.G.A. § 51-12-5.1(f), the punitive damages statute, refers to "the defendant" and "an active tort-feasor" in the singular does not mean that only one defendant may be liable for punitive damages under subsection (f). Under O.C.G.A. § 1-3-1(d)(6), the singular or plural number each includes the other, unless the other is expressly excluded. Reid v. Morris, 309 Ga. 230, 845 S.E.2d 590, 2020 Ga. LEXIS 472 (2020).

Punitive damages in abusive litigation claim. — Trial court did not err by denying appellant's motion for directed verdict and motion for judgment notwithstanding the verdict on appellee's claim for punitive damages because there was evidence that appellant instituted the injunctive action in order to prevent competition from appellee as the appellant admitted as much in an interview with local media, and it filed the action against the city to prevent appellee from obtaining a license. There was evidence to support the jury's conclusion that appellant's actions were motivated to harass a competitor and accordingly showed willful misconduct. P&J Bev. Corp. v. Bottle Shop, LLC, 372 Ga. App. 461, 904 S.E.2d 125, 2024 Ga. App. LEXIS 316 (2024).

Punitive damages awarded in foreclosure case. — Jury's finding of specific intent was supported by evidence showing the lender knew its escrow analysis was in error yet proceeded to demand payment repeatedly without explanation and then foreclosed on the homeowner's property; the finding of specific intent was supported by evidence that the lender knew the lender's conduct was almost certain to cause the homeowner emotional harm, and the lender's conduct went well beyond ordinary threats to foreclose. McGinnis v. Am. Home Mortg. Servicing, Inc., 901 F.3d 1282, 2018 U.S. App. LEXIS 23596 (11th Cir. 2018).

Probate conservator liability for punitive damages. — Conservator's bond pursuant to O.C.G.A. § 29-5-40 et seq. does not cover punitive damages. In re Estate of Gladstone, 303 Ga. 547, 814 S.E.2d 1, 2018 Ga. LEXIS 292 (2018).

Judgment that a conservator's bond covered punitive damages even though such damages were not expressly provided for under O.C.G.A. § 29-5-40 et seq. or under the provisions of the bond itself was reversed because a conservator's bond pursuant to § 29-5-40 et seq. does not cover punitive damages. In re Estate of Gladstone, 303 Ga. 547, 814 S.E.2d 1, 2018 Ga. LEXIS 292 (2018).

Punitive damages may not be recovered when there is no entitlement to compensatory damages, etc.

Because the tenant was not awarded actual or compensatory damages for the alleged missing items after the eviction, the tenant was not entitled to punitive damages. Hart v. Walker, 347 Ga. App. 582, 820 S.E.2d 206, 2018 Ga. App. LEXIS 566 (2018).

Cutting of timber without authorization. — Holder of a security deed on property from which timber was cut without authorization was not entitled to damages for the diminished value of the property, but only for the value of the trees; however, evidence of diminished value was relevant for purposes of attorney's fees and punitive damages. Redcedar, LLC v. CML-GA Social Circle, LLC, 341 Ga. App. 110, 798 S.E.2d 334, 2017 Ga. App. LEXIS 136 (2017).

Evidentiary Standard

Negligence inadequate to support punitive damage award. — Trial court properly granted summary judgment to the pharmacy on the customers' claim for punitive damages because the customers failed to point to any evidence upon which a jury could properly base such an award given that the evidence, at most, presented a claim for negligence. Roberts v. Quick Rx Drugs, Inc., 343 Ga. App. 556, 807 S.E.2d 476, 2017 Ga. App. LEXIS 532 (2017).

Culpable conduct required.

Trustee's conversion claim against an attorney who settled a personal injury case on behalf of a debtor in bankruptcy and disbursed funds to the debtor without the bankruptcy court's authorization plausibly could support a claim for punitive damages, which requires culpable tortious conduct, because the complaint alleged sufficient facts to state a claim for relief as to the intentional tort of conversion. Gordon v. Hines (In re Tanner), No. 19-05064, 2023 Bankr. LEXIS 256 (Bankr. D.P.R. Jan. 31, 2023).

Evidence to support punitive damages arising from sexual assault in employment. — Punitive damages were supported by evidence that despite the facility's hiring policies, there were still incidents of its staff members sexually assaulting residents, the jury also could have credited evidence that the facility knew that its training and supervision policies failed to prevent two incidents of patients sexually assaulting other patients, and an employee testified that the incidents happened because of poor supervision and acknowledged that the staff needed further training. Taylor v. Devereux Foundation, 316 Ga. 44, 885 S.E.2d 671, 2023 Ga. LEXIS 63 (2023).

Uncapped punitive damages in DUI case. — Trial court erred in finding that a car owner who gave a driver the owner's car keys, even though both had been drinking and the owner knew that the driver was drunk and did not have a license, could not be liable to a collision victim for punitive damages under O.C.G.A. § 51-12-5.1(f); the term "active tort-feasor" was not limited to drunk drivers. The issue was whether the owner was intoxicated to the degree that the owner's judgment was substantially impaired and whether the owner was an "active tort-feasor." Reid v. Morris, 309 Ga. 230, 845 S.E.2d 590, 2020 Ga. LEXIS 472 (2020).

HOA's trespass and removal of homeowners' sign presented jury question. — In a dispute involving a homeowners' association's (HOA) claim of a pedestrian easement access across a subdivision lot to a lake, the term "10' PEDESTRIAN ESMT" on the plat was void for uncertainty of description. The lot owners' counterclaims for trespass, theft by taking (for removal of a sign), interfering with the right of quiet enjoyment, attorney's fees, and punitive damages presented jury questions; however, their claim for intentional infliction of emotional distress was subject to summary judgment. The Plantation at Bay Creek Homeowners Association, Inc. v. Glasier, 349 Ga. App. 203, 825 S.E.2d 542, 2019 Ga. App. LEXIS 132 (2019).

Excessive punitive damages sought not permitted in sexual assault by employee against patient. — In an action arising from a sexual assault by a behavioral healthcare facility employee on a patient, appellant's claim for punitive damages greater than those permitted under O.C.G.A. § 51-12-5.1(g), failed because the appellant could not show that a Georgia jury in 1798 would have been authorized to award the kind of punitive damages sought on a defendant acting with an entire want of care. Taylor v. Devereux Foundation, 316 Ga. 44, 885 S.E.2d 671, 2023 Ga. LEXIS 63 (2023).

Other Cases

Summary judgment properly denied on conversion claim. — Denial of summary judgment to the defendants on the plaintiff's claim for punitive damages was proper because the plaintiff asserted an independent tort claim for conversion, which could support an award of punitive damages and an award of attorney fees. McCalla Raymer, LLC v. Foxfire Acres, Inc., 356 Ga. App. 117, 846 S.E.2d 404, 2020 Ga. App. LEXIS 418 (2020).

Specific intent requirement. — Trial court did not err in awarding punitive damages against the defendant for the specific intent the defendant had to cause harm to the creditors through fraudulent transfers because the defendant, as a managing member of an insolvent corporation or LLC owed fiduciary duties to the company's creditors to conserve and manage the remaining assets in trust for creditors. Reeser v. Glover, 374 Ga. App. 490, 913 S.E.2d 131, 2025 Ga. App. LEXIS 76 (2025).

Other Cases (Cont'd)

Insufficient evidence for subsection (f) award.

Trial court did not err by concluding that the store customer was not entitled to punitive damages for false imprisonment because the evidence gave rise to nothing more than injury to the customer's peace, happiness, and feelings. The evidence showed that the police officer placed his hand on the customer's shoulder and prevented him from leaving the store with his baton extended in his hand and there was conflicting evidence as to whether the officer or a store employee verbally directed the customer to the loss prevention office. Carnegay v. Wal-Mart Stores, Inc., 370 Ga. App. 688, 898 S.E.2d 871, 2024 Ga. App. LEXIS 73 (2024).

Punitive damages in medical malpractice claim. — While judgment creditors were entitled to default judgment on claims under 11 U.S.C. § 523(a)(2)(A) against the debtor husband because state court adjudication of the debtor husband's liability for fraud necessarily adjudicated the same issues that rendered liability nondischargeable under § 523(a)(2)(A), and collateral estoppel applied, because it was not clear how a punitive damages award was allocated under state law, judgment could not be awarded regarding such damages. Palloto v. Neri (In re Neri), No. 17-53022-BEM, No. 17-5125-BEM, 2018 Bankr. LEXIS 40 (Bankr. N.D. Ga. Jan. 8, 2018).

Conscious indifference in failing to provide equipment allowed punitive damages. — Trial court did not err by denying defendants summary judgment on punitive damages because the record included evidence that defendants, knowing that it was required to provide its residents with an emergency call device, not only failed to do so but also gave its residents the unauthorized and illusory option of waiving their right to that device in writing. These circumstances raised a presumption of defendants' conscious indifference to the consequences of not providing an emergency device such that a jury could find by clear and convincing evidence that plaintiff was entitled to punitive damages. Mercy Housing Georgia III, L.P. v. Kaapa, 368 Ga. App. 270, 888 S.E.2d 346, 2023 Ga. App. LEXIS 226 (2023).

Punitive damages following auto accident.

Trial court did not err by granting defendant's motion for summary judgment as to plaintiff's request for punitive damages because following too closely in stop-and-go traffic on a highway while using a cell phone was not clear and convincing evidence of aggravating circumstances or an entire want of care or indifference to consequences. McKnight v. Love, 369 Ga. App. 812, 894 S.E.2d 110, 2023 Ga. App. LEXIS 488 (2023), rev'd, 321 Ga. 196, 913 S.E.2d 614, 2025 Ga. LEXIS 48 (2025), vacated, 375 Ga. App. 167, 915 S.E.2d 30, 2025 Ga. App. LEXIS 199 (2025).

Denial in bankruptcy non-dischargeability matter. — Creditor who loaned 503,170 Euros to a debtor before the debtor moved to the United States and declared Chapter 7 bankruptcy proved that the debtor was ineligible under 11 U.S.C. § 727 to have the debt discharged because the debtor made a false oath in conjunction with the bankruptcy case by testifying falsely that the debtor did not sign an Acknowledgement of Debt the creditor offered as evidence of the debt; however, the creditor was not entitled to punitive damages under O.C.G.A. § 51-12-5.1 or an award of attorney's fees and costs under O.C.G.A. § 13-6-11 because those statutes did not apply in an adversary proceeding filed pursuant to 11 U.S.C. § 727. Locci v. Siewe (In re Siewe), No. 14-60345-WLH, No. 14-5321, 2017 Bankr. LEXIS 1617 (Bankr. N.D. Ga. June 13, 2017), aff'd, No. 1:17-CV-2386-CAP, 2017 U.S. Dist. LEXIS 215521 (N.D. Ga. Oct. 10, 2017).

Punitive damages not allowed in wrongful foreclosure action. — Trial court properly denied the borrower punitive damages in a wrongful foreclosure action because construing the evidence of record most favorably for the borrower, the acts committed, at most, were negligent breaches of the duties owed as grantee and loan servicer under the deeds to secure debt; but negligence, even gross negligence, was inadequate to support a punitive damage award. Poverty

Destroyed Forever v. Visio Fin. Servs., 360 Ga. App. 691, 859 S.E.2d 612, 2021 Ga. App. LEXIS 294 (2021).

Punitive damage award upheld for breach of non-compete agreement although only nominal damages awarded. — Although only nominal damages were awarded to a secured seller of an adult novelty business when the buyer defaulted and proceeded to open the buyer's own competing business in violation of the parties' non-compete agreement, an award of $50,000 punitive damages was not excessive given the intentional nature of the buyer's conduct, the buyer's conversion of the business's social media accounts, and the buyer's failure to turn over cash collateral in violation of a bankruptcy court order. Bearoff v. Craton, 350 Ga. App. 826, 830 S.E.2d 362, 2019 Ga. App. LEXIS 384 (2019).

Talking on cell phone while driving. — Given uncontroverted evidence that a teen driver was not using the driver's cell phone at the time of the accident, the driver's earlier conduct of texting and talking on the driver's phone was not the proximate cause of the driver accidentally striking a pedestrian and the pedestrian's dog, and punitive damages were not available. Head v. de Souse, 353 Ga. App. 309, 836 S.E.2d 227, 2019 Ga. App. LEXIS 685 (2019).

Summary judgment on punitive damages claim in trespass action. — In an action concerning defendants trespass to property, the trial court erred in granting the defendants summary judgment on the punitive damages claim because a jury could find, based on the evidence, that the defendants were innocent trespassers and punitive damages would not be warranted or it could find that the defendants were on notice that the property owner likely did not want fiber internet and defendants willfully trespassed on the property and the owner was entitled to punitive damages. Woodstone Townhouses, LLC v. Southern Fiber Worx, LLC, 358 Ga. App. 516, 855 S.E.2d 719, 2021 Ga. App. LEXIS 90 (2021).

Restaurant's indifference to known food allergy. — Restaurant was not entitled to a directed verdict on the issue of punitive damages in a negligence action involving a severe allergic reaction because the restaurant's staff reassured the customer, on multiple occasions, that the food ordered would not contain mushrooms and that evidence was sufficient for the jury to find that the restaurant acted wantonly or with a conscious indifference to consequences. Atlantic Star Foods, LLC v. Burwell, 368 Ga. App. 79, 889 S.E.2d 202, 2023 Ga. App. LEXIS 265 (2023).

Procedure

Seeking damages for injured feelings and, alternatively, punitive damages. — Former employee was authorized in a renewal complaint to request, as part of the statutory abusive litigation claim, damages for injured feelings and, alternatively, punitive damages, even if the employee ultimately could not recover both types of damages. Coen v. Aptean, Inc., 356 Ga. App. 468, 847 S.E.2d 835, 2020 Ga. App. LEXIS 468 (2020).

Absence of bad faith prevents punitive and attorney fees awards. — Because the trial court's ruling that neither the insurance agent or company had a contract of insurance with the tree service company owner in effect on the date of the accident, no bad faith claim could be asserted against either defendant for failure to pay a claim arising from the accident; thus, the claims for punitive damages and attorney fees also failed since those claims were derivative of the underlying claims. Popham v. Landmark Am. Ins. Co., 340 Ga. App. 603, 798 S.E.2d 257, 2017 Ga. App. LEXIS 106 (2017).

Claim for punitive damages. — Claim for punitive damages constituted a claim under O.C.G.A. § 24-4-408(a) and, therefore, evidence of statements made during settlement negotiations were inadmissible to prove liability for punitive damages. Whitaker Farms, LLC v. Fitzgerald Fruit Farms, LLC, 320 Ga. 208, 908 S.E.2d 531, 2024 Ga. LEXIS 258 (2024).

Erroneous admission of settlement negotiation statements. — After a lessee was locked out of the leased premises, the statements made during a settlement negotiation by the owner to the lessee were improperly admitted at trial because

Procedure (Cont'd)

the evidence of the owner's statements was offered to prove the owner's state of mind and intent, which were elements of the punitive damages claim, which evidence was necessarily offered to prove the owner's liability for that claim and, thus, offered for a purpose forbidden by O.C.G.A. § 24-4-408(a). Whitaker Farms, LLC v. Fitzgerald Fruit Farms, LLC, 320 Ga. 208, 908 S.E.2d 531, 2024 Ga. LEXIS 258 (2024).

No harmful error in jury instructions. — Pretermitting whether the trial court erred in charging the jury on specific intent to cause harm during the first rather than second phase of the bifurcated trial, it did not rise to the level of harmful error, as the trial court, in its final recharge and in the revised special verdict form, made clear that the jury was required to make a specific finding, as a threshold matter for awarding punitive damages, as to whether there was proof by clear and convincing evidence of willful misconduct by the defendant to support an award of punitive damages. Fassnacht v. Moler, 358 Ga. App. 616, 856 S.E.2d 15, 2021 Ga. App. LEXIS 84 (2021).

Punitive damage was jury issue. — Trial court erred in withdrawing the issue of punitive damages from the jury as the defendant's actions were sufficient evidence of conscious indifference to authorize such an award. Whitaker Farms, LLC v. Fitzgerald Fruit Farms, LLC, 347 Ga. App. 381, 819 S.E.2d 666, 2018 Ga. App. LEXIS 527 (2018), cert. denied, No. S19C0294, 2019 Ga. LEXIS 429 (Ga. June 3, 2019), cert. denied, No. S19C0293, 2019 Ga. LEXIS 411 (Ga. June 3, 2019).

Summary judgment. — In a negligence case in which the plaintiff was injured by dogs owned by the defendants when those dogs allegedly attacked the dog that the plaintiff was walking, partial summary judgment was improperly granted to the defendants as there was sufficient evidence for the issue of punitive damages to go to a jury because there was evidence from the defendants' neighbors that there had been a prior instance in which the defendants lost control of the dogs, which allowed the dogs to act aggressively and attack another dog, and a neighbor testified that the neighbor believed that it was only the neighbor's intervention that prevented an injury on that occasion; and it was for the jury to determine whether punitive damages were appropriate. Weinstein v. Holmes, 344 Ga. App. 391, 810 S.E.2d 320, 2018 Ga. App. LEXIS 41 (2018).

Issue was one for jury to resolve. — In a case in which summary judgment and judgment on the pleadings was properly granted in favor of the buyer on the buyer's breach of contract, trespass to personal property, and conversion claims, the trial court erroneously granted judgment on the pleadings on the buyer's claim for punitive damages because the issue of punitive damages had to be decided by a jury or a court sitting as the trier of fact; and the trial court was not sitting as a trier of fact when the court ruled on the motion for judgment on the pleadings. Caldwell v. Church, 341 Ga. App. 852, 802 S.E.2d 835, 2017 Ga. App. LEXIS 293 (2017).

Default operates to admit well-pled allegations of the complaint. — After defendants failed to repay a loan to plaintiff, the trial court erred in allowing one defendant to dispute liability for fraud, civil RICO, and punitive damages, and introduce evidence that the defendant was not criminally prosecuted, despite defendant's default, because the striking of defendant's answers as a sanction for discovery violations operated as an admission of the complaint's factual allegations. Hansford v. Veal, 369 Ga. App. 641, 894 S.E.2d 215, 2023 Ga. App. LEXIS 505 (2023).

Differences between South Carolina and Georgia punitive damages law. — Trial court did not err determining that South Carolina law applied to plaintiffs' punitive damages claims because South Carolina's punitive damages law for wrongful death, although it provided a different remedy than Georgia law, did not constitute form of redress radically dissimilar to anything existing in Georgia's system of jurisprudence. UPS of Am. v. Whitlock, 366 Ga. App. 542, 883 S.E.2d 556, 2023 Ga. App. LEXIS 39 (2023).

Facts not warranting punitive dam-

ages. — After the plaintiff was arrested outside the police department where the plaintiff's spouse worked, the district court dismissed all of the plaintiff's state law claims for malicious arrest, malicious prosecution, and false imprisonment; therefore, the plaintiff's Georgia law claims for punitive damages and attorney's fees failed as a matter of law. Perkins v. Thrasher, 701 Fed. Appx. 887, 2017 U.S. App. LEXIS 12945 (11th Cir. 2017).

Punitive damages claim required to be submitted to the jury. — In a boundary line dispute, the trial court improperly granted the defendant's motion for summary judgment as to the plaintiff's punitive damages claim as there were genuine issues of material facts as to the plaintiff's claims of trespass and nuisance because a jury question remained as to the boundary line and pointed to evidence showing that there was water runoff onto the plaintiff's property and that construction materials and debris had repeatedly been discharged onto the plaintiff's property causing damages; and just as there were material questions of fact regarding the allegations of repeated trespass and continuing nuisance, the evidence of such acts by the defendant allowed the jury to consider a claim for punitive damages. McDonald v. Silver Hill Homes, LLC, 343 Ga. App. 194, 806 S.E.2d 651, 2017 Ga. App. LEXIS 470 (2017).

RESEARCH REFERENCES

ALR.

Products liability: dishwashers, 79 A.L.R.7th 1.

51-12-6. Damages for injury to peace, happiness, or feelings.

JUDICIAL DECISIONS

Analysis

General Consideration

Physical impact rule inapplicable to mishandling of human remains. — Courts reject the creation of an exception to the physical impact rule for cases involving the negligent mishandling of human remains; thus, a parent who buried the wrong still born baby could not recover. Coon v. Med. Ctr., Inc., 300 Ga. 722, 797 S.E.2d 828, 2017 Ga. LEXIS 170 (2017).

Seeking damages for injuried feelings and, alternatively, punitive damages. — Former employee was authorized in a renewal complaint to request, as part of the statutory abusive litigation claim, damages for injured feelings and, alternatively, punitive damages, even if the employee ultimately could not recover both types of damages. Coen v. Aptean, Inc., 356 Ga. App. 468, 847 S.E.2d 835, 2020 Ga. App. LEXIS 468 (2020).

Applicability to Specific Cases

Invasion of privacy for disclosure of medical records. — When defendants were alleged to have accessed plaintiff's medical records without authorization, the court held that nominal damages or peace, happiness, and feelings damages, were available for invasion of privacy claims despite no proof of monetary loss, thus, the trial court erred granting defendants' summary judgment on that claim. Nayani v. Bhatia, 371 Ga. App. 44, 899 S.E.2d 485, 2024 Ga. App. LEXIS 113 (2024).

In an action arising from the unauthorized release of the plaintiff's psychiatric records, etc.

Trial court erred awarding summary

Applicability to Specific Cases (Cont'd)

judgment to defendants on plaintiff's claim for violation of Georgia Computer Systems Protection Act, O.C.G.A. § 16-9-90 et seq., due to plaintiff's purported lack of damages with regard to the disclosure of plaintiff's medical records because there was no limitation on the category of compensatory damages available for a violation as either nominal damages or O.C.G.A. § 51-12-6 damages were available for the claim if proven. Nayani v. Bhatia, 371 Ga. App. 44, 899 S.E.2d 485, 2024 Ga. App. LEXIS 113 (2024).

51-12-8. When damage too remote for recovery generally.

JUDICIAL DECISIONS

Analysis

Applicability to Specific Cases
3. Miscellaneous

Applicability to Specific Cases

3. Miscellaneous

Burden of proof. — When an employee forged mammogram reports, denial of summary judgment to the hospital was reversed because the plaintiffs failed to show that the plaintiffs suffered physical, emotional, or pecuniary injury as they consented to undergoing a second mammogram, the plaintiffs did not have breast cancer, and therefore failure of the radiologist to examine their mammography films did not exacerbate the plaintiffs' existing condition. Houston Hospitals, Inc. v. Felder, 351 Ga. App. 394, 829 S.E.2d 182, 2019 Ga. App. LEXIS 319 (2019), cert. denied, No. S19C1628, 2020 Ga. LEXIS 210 (Ga. Mar. 13, 2020).

51-12-11. Mitigation of damages required; exception.

Law reviews.

For article, "The Color of Pain: Racial Bias in Pain and Suffering Damages," see 56 Ga. L. Rev. 651 (2022).

JUDICIAL DECISIONS

Failure to seek medical treatment. — Trial court did not err granting summary judgment to plaintiff on defendant's mitigation damages because under particular facts and circumstances of case, appellate court was unwilling to hold that plaintiff who has been injured, but fails to recognize the enormity and severity of that injury, has affirmative duty to mitigate damages by seeking treatment for that injury. N. Fulton Cmty. Charities v. Goodstein, 367 Ga. App. 576, 887 S.E.2d 646, 2023 Ga. App. LEXIS 190 (2023).

51-12-12. Court interference with jury verdict as to damages.

JUDICIAL DECISIONS

Analysis

General Consideration
Second Trials and Appeals
Applicability to Specific Cases

General Consideration

Presumptions are in favor of validity of verdict of jury, etc.

In an action by the buyer of a restaurant against the sellers, alleging trespass, conversion, and breach of contract when the sellers re-entered the premises three months after the sale, changed the locks, and began operating the restaurant as the sellers' own, there was some evidence supporting the jury's award of $360,675 damages to the buyer. The trial court's approval of the verdict creates a presumption of correctness which is not to be disturbed absent compelling evidence. Caldwell v. Church, 353 Ga. App. 141, 836 S.E.2d 594, 2019 Ga. App. LEXIS 647 (2019).

Second Trials and Appeals

Judicial review of verdict. — Supreme Court disapproves of Robinson v. Star Gas of Hawkinsville, Inc., 498 SE2d 524 (1998), which held, inter alia, that purportedly inadequate damage awards are subject to judicial review in comparative fault cases, to the extent that it can be read to suggest that appellate courts may review a jury's verdict to determine whether it was consistent with a preponderance of the evidence adduced at trial. That task is reserved for the trial court. Rockdale Hospital, LLC v. Evans, 306 Ga. 847, 834 S.E.2d 77, 2019 Ga. LEXIS 642 (2019).

It was error for the court of appeals to conclude that the zero damages award for past pain and suffering was clearly inadequate under a preponderance of the evidence because the court of appeals could not substitute the court's judgment for that of the trial court on the fact-based question of whether the damages awarded were within the range authorized by a preponderance of the evidence; the court of appeals should have limited the appellate's court review to whether the trial court, who saw the witnesses and heard the testimony, abused the court's discretion in denying the motion for a new trial. Rockdale Hospital, LLC v. Evans, 306 Ga. 847, 834 S.E.2d 77, 2019 Ga. LEXIS 642 (2019).

Applicability to Specific Cases

Damages for physical injuries not excessive or inadequate.

In a personal injury action arising from the plaintiff being injured from the defendant's tree-cutting operations in the median of an interstate, the trial court did not abuse the court's discretion in denying the defendant's motion for new trial on the ground that the compensatory damages award was excessive, as the award was supported by evidence of the plaintiff's pain and suffering, including certain permanent injuries. S. Clearing & Grinding v. Garcia, 375 Ga. App. 62, 913 S.E.2d 732, 2025 Ga. App. LEXIS 98 (2025).

Medical malpractice.

Trial court did not abuse the court's discretion by denying the plaintiffs' challenge to the adequacy of the damages award because the plaintiffs, a patient and the patient's spouse, did not point to any errors of material fact made by the trial court and the court could not say that the jury verdict was so inadequate as to be irrational and thus the apparent result of jury bias, prejudice, or corruption, even though the court awarded the patient zero damages for future medical expenses, past and future lost wages, and past and future pain and suffering. Evans v. Rockdale Hosp., LLC, 355 Ga. App. 33, 841 S.E.2d 449, 2020 Ga. App. LEXIS 221 (2020).

Trial court did not abuse its discretion by failing to set aside the $10.1 million verdict as excessive under O.C.G.A. § 51-12-12(a) because the evidence showed that defendant physician violated the standard of care by transecting plaintiff's bile duct, and as a result plaintiff was in considerable pain, incurred medical bills exceeding $900,000, suffered complications from the injury, was hospitalized numerous times to deal with those complications and repair the duct, and was required to wear a biliary bag and tubes for over a year as a result of the injury. White v. McGouirk, 370 Ga. App. 318, 897 S.E.2d 100, 2024 Ga. App. LEXIS 13 (2024).

Damage award upheld.

Ample evidence in the record established that the plaintiff suffered severe pain for at least two years after the fall, still experienced pain, and will likely ex-

Applicability to Specific Cases (Cont'd)

perience some pain after a third knee surgery and the defendant pointed to no evidence let alone compelling evidence that the verdict was so excessive as to shock the conscience and require reversal. Vineyard Indus. v. Bailey, 343 Ga. App. 517, 806 S.E.2d 898, 2017 Ga. App. LEXIS 525 (2017), cert. denied, No. S18C0480, 2018 Ga. LEXIS 314 (Ga. May 7, 2018).

Jury award of $15 million was not excessive given that the racer's right leg was almost severed; the racer would never normally walk, run, or play sports; the racer had six surgeries to repair the damages to the racer's leg; the racer testified to the excruciating pain the racer experienced; the racer testified to continuing to experience muscle spasms, trouble sleeping, nightmares, and anxiety; the racer had limitations on the racer's performance at the racer's job, and the racer would need additional medical care. Ga. Trails & Rentals, Inc. v. Rogers, 359 Ga. App. 207, 855 S.E.2d 103, 2021 Ga. App. LEXIS 139 (2021).

In a suit for legal fees under a quantum meruit theory, the client failed to show that the trial court abused its discretion in approving the verdict and entering final judgment on the jury's award of $1.15 million to the law firm as the award equated to a fee rate of approximately $630 per hour for the services provided, which was within the range of evidence presented at trial, including expert testimony on rates, and the trial court saw the witnesses and heard the testimony. Cordial Endeavor Concessions of Atlanta, LLC v. Gebo Law LLC, 370 Ga. App. 528, 898 S.E.2d 259, 2024 Ga. App. LEXIS 46 (2024).

51-12-15. Written demand for procedure determining damages; rejection of election.

(a) In any action to recover damages for bodily injury or wrongful death, any party may elect, by written demand prior to the entry of the pretrial order, to have fault and any award of damages determined at trial in the following manner:

(1) In the first phase of the trial, the trier of fact shall determine the fault of each defendant, and if the trier of fact finds that any defendant is at fault for the plaintiff's injuries or wrongful death, the trier of fact shall further determine through an appropriate form of the verdict the percentages of fault of all persons or entities that contributed to such injuries or wrongful death as provided in Code Section 51-12-33, prior to any determination of the total amount of damages to be awarded, if any such findings are required. The evidence and arguments of counsel in the first phase of the trial shall be limited to the issues provided for in this paragraph;

(2) If the trier of fact finds in the first phase of the trial that any defendant is at fault for the plaintiff's injuries or wrongful death, the trial shall be recommenced immediately with the same judge and the same jury. In the second phase of the trial, the trier of fact shall determine all compensatory damages to be awarded to the plaintiff, if any, and the evidence and arguments of counsel shall be limited to this issue; and

(3) If the trier of fact finds in the second phase of the trial that any compensatory damages are to be awarded to the plaintiff, the trial

may be recommenced immediately with the same judge and the same jury for such further proceedings as may be required, including, but not limited to, proceedings provided for in subsection (d) of Code Section 51-12-5.1 concerning punitive damages and proceedings to determine liability for, and the amount of, any attorney's fees, court costs, or expenses of litigation that may be awarded by the trier of fact as provided by law.

(b) The court may reject an election by any party made pursuant to subsection (a) of this Code section and order the concurrent trial of fault and damages only upon motion by any party in opposition to such election and upon the court's determination that:

(1) The plaintiff, or if the plaintiff is the legal guardian of a minor, the minor, was injured by an alleged sexual offense and would be likely to suffer serious psychological or emotional distress as a result of testifying more than once in a bifurcated proceeding; or

(2) The amount in controversy is less than $150,000.00.

History.

Code 1981, § 51-12-15, enacted by Ga. L. 2025, p. 19, § 8/SB 68, effective April 21, 2025.

Effective date.

This Code section became effective April 21, 2025.

ARTICLE 2

JOINT TORT-FEASORS

51-12-30. Procurer of wrong as joint wrongdoer; how action brought against joint wrongdoer.

JUDICIAL DECISIONS

Analysis

General Consideration

Apportionment statute does not apply to tortfeasors acting in concert. — O.C.G.A. § 51-12-33, Georgia's apportionment statute, applied to tort claims for damage to tangible and intangible property and, therefore, applied to purely pecuniary losses. However, § 51-12-33 did not abrogate Georgia's common-law rule imposing joint and several liability on tortfeasors who acted in concert; in such cases, fault was not divisible and could not be apportioned. FDIC v. Loudermilk, 305 Ga. 558, 826 S.E.2d 116, 2019 Ga. LEXIS 186 (2019).

Pleadings and Practice

Aiding and abetting fraud not recognized, but one who assists may be liable for fraud. — While the court refused to recognize a tort of aiding and abetting fraud, a complaint by investors against a fraudster's attorney adequately set forth the elements of a fraud claim in alleging that the attorney drafted many of the transaction documents that evidenced the many phony deals that the fraudster

Pleadings and Practice (Cont'd)

pretended to undertake, which conveyed the false impression to the investors that their purported investments were legitimate, causing damage to the investors. Siavage v. Gandy, 350 Ga. App. 562, 829 S.E.2d 787, 2019 Ga. App. LEXIS 338 (2019).

51-12-31. Recovery against joint trespassers.

Law reviews.

For article, "Premises Liability and Apportionment Following Martin v. Six Flags Over Georgia II, L.P.," see 69 Mercer L. Rev. 1 (2017).

51-12-32. Right of contribution among joint trespassers; effect of settlement.

JUDICIAL DECISIONS

Analysis

General Consideration

Apportionment statute does not apply to tortfeasors acting in concert. — O.C.G.A. § 51-12-33, Georgia's apportionment statute, applied to tort claims for damage to tangible and intangible property and, therefore, applied to purely pecuniary losses. However, § 51-12-33 did not abrogate Georgia's common-law rule imposing joint and several liability on tortfeasors who acted in concert; in such cases, fault was not divisible and could not be apportioned. FDIC v. Loudermilk, 305 Ga. 558, 826 S.E.2d 116, 2019 Ga. LEXIS 186 (2019).

Investors could not show joint tortfeasor liability against title company. — In a suit arising out of the failure of a mixed-use real estate development project, because the investors had not shown that the title insurance company breached a duty directly to the investors, they could not show that the title company was a joint tortfeasor as to the investors. ALR Oglethorpe v. Fid. Nat'l Title Ins. Co., 361 Ga. App. 776, 863 S.E.2d 568, 2021 Ga. App. LEXIS 464 (2021).

Apportionment required between seller of contaminated property and buyer who disturbed contaminants. — In a soil contamination contribution action in which a buyer, in developing the property, disturbed and moved cinders containing arsenic and lead left by the seller and the seller's predecessors, the trial court erred in interpreting the parties' assumption agreement to require the seller to indemnify the buyer; apportionment of fault was required. Viad Corp v. United States Steel Corp., 343 Ga. App. 609, 808 S.E.2d 58, 2017 Ga. App. LEXIS 541 (2017).

51-12-33. Reduction and apportionment of award or bar of recovery according to percentage of fault of parties and nonparties.

(a) Where an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall determine the percentage of fault of the plaintiff and the judge shall reduce the amount of damages otherwise awarded to the plaintiff in proportion to his or her percentage of fault.

(b) Where an action is brought against one or more persons for injury to person or property, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion its award of damages among the person or persons who are liable according to the percentage of fault of each person. Damages apportioned by the trier of fact as provided in this Code section shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.

(c) In assessing percentages of fault, the trier of fact shall consider the fault of all persons or entities who contributed to the alleged injury or damages, regardless of whether the person or entity was, or could have been, named as a party to the suit.

(d)(1) Negligence or fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or 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.

(2) The notice shall be given by filing a pleading in the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing the nonparty to be at fault.

(e) Nothing in this Code section shall eliminate or diminish any defenses or immunities which currently exist, except as expressly stated in this Code section.

(f)(1) Assessments of percentages of fault of nonparties shall be used only in the determination of the percentage of fault of named parties.

(2) Where fault is assessed against nonparties pursuant to this Code section, findings of fault shall not subject any nonparty to liability in any action or be introduced as evidence of liability in any action.

(g) Notwithstanding the provisions of this Code section or any other provisions of law which might be construed to the contrary, the plaintiff shall not be entitled to receive any damages if the plaintiff is 50 percent or more responsible for the injury or damages claimed.

History.

Code 1981, § 51-12-33, enacted by Ga. L. 1987, p. 915, § 8; Ga. L. 2005, p. 1, § 12/SB 3; Ga. L. 2022, p. 802, § 1/HB 961.

Amendments.

The 2022 amendment, effective May 13, 2022, in the first sentence in subsection (b), substituted "one or more persons" for "more than one person" near the beginning, and inserted "person or" near the end. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2022, p. 802, § 2/HB 961, not codified by the General Assembly, provides that this Act shall apply to all cases filed after May 13, 2022.

Law reviews.

For article, "Premises Liability and Apportionment Following Martin v. Six Flags Over Georgia II, L.P.," see 69 Mercer L. Rev. 1 (2017).

For annual survey on construction law, see 69 Mercer L. Rev. 63 (2017).

For annual survey on product liability, see 69 Mercer L. Rev. 231 (2017).

For note, "Publicly Funded Private Security: A Critical Examination of Georgia Law Pertaining to the Private Employment of Off-Duty Police Officers," see 51 Ga. L. Rev. 879 (2017).

For annual survey on trial practice and procedure, see 70 Mercer L. Rev. 253 (2018).

For annual survey on business associations, see 71 Mercer L. Rev. 15 (2019).

For annual survey on construction law, see 71 Mercer L. Rev. 57 (2019).

For annual survey on trial practice and procedure, see 71 Mercer L. Rev. 305 (2019).

For article, "2019 Georgia Corporation and Business Organization Case Law Developments," see 25 Ga. St. B.J. 30 (June 2020).

For article with annual survey on labor and employment law, see 73 Mercer L. Rev. 137 (2021).

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

For article with annual survey on trial practice and procedure, see 73 Mercer L. Rev. 265 (2021).

For annual survey on trial practice and procedure, see 74 Mercer L. Rev. 263 (2022).

JUDICIAL DECISIONS

Constitutionality. — Tenant lacked standing to challenge the constitutionality of the apportionment statute as the statute applied to non-parties. Johnson St. Props., LLC v. Clure, 302 Ga. 51, 805 S.E.2d 60, 2017 Ga. LEXIS 784 (2017).

Applicability.

Trial court erred by failing to reduce the compensatory damages award to appellee by 20% where the jury assigned 5% fault to appellee and 15% fault to the driver of the vehicle appellee was riding in under the former version of this section because there were numerous named defendants in the case at all times. The record was devoid of any evidence that permission from the trial court was sought to drop any of the numerous defendants from the case and therefore, despite a pre-trial settlement and a pre-trial grant of summary judgment. Southern Oil Refinery, LLC v. Price, 372 Ga. App. 427, 903 S.E.2d 693, 2024 Ga. App. LEXIS 308, overruled in part, AU Medical Center, Inc. v. Dale, 373 Ga. App. 521, 908 S.E.2d 790, 2024 Ga. App. LEXIS 467 (2024).

Meaning of "brought". — Whether the term "brought", as used in the former version of O.C.G.A. § 51-12-33(b), refers to the number of named defendants when a case is initiated or to the number of named defendants remaining in the case at the time of trial was answered by determining that the latter must control. The plain language of the statute confirms that the statute applies only to actions that involve more than one named defendant at trial. AU Medical Center, Inc. v. Dale, 373 Ga. App. 521, 908 S.E.2d 790, 2024 Ga. App. LEXIS 467 (2024)

No reduction in damages. — When apportionment is not available under O.C.G.A. § 51-12-33(b) in a single-defendant action, then no reduction of damages is permitted. AU Medical Center, Inc. v. Dale, 373 Ga. App. 521, 908 S.E.2d 790, 2024 Ga. App. LEXIS 467 (2024)

Apportionment applied to claims for purely pecuniary losses. — O.C.G.A. § 51-12-33, Georgia's apportionment statute, applied to tort claims for damage to tangible and intangible property and therefore applied to purely pecuniary losses. However, § 51-12-33 did not abrogate Georgia's common-law rule imposing joint and several liability on tortfeasors who acted in concert; in such cases, fault was not divisible and could not be apportioned. FDIC v. Loudermilk, 305 Ga. 558, 826 S.E.2d 116, 2019 Ga. LEXIS 186 (2019).

Apportionment between defaulting defendants. — Appellant waived apportionment by not participating in the damages trial or otherwise seeking apportionment after being found in default and while a defaulting defendant does not necessarily forfeit the right to apportionment, appellant failed to cite any case holding that the trial court must apportion damages between defaulting defendants who did not appear at their damages trials or present evidence on apportionment. KOS Limited v. Dockery, 371 Ga. App. 216, 899 S.E.2d 796, 2024 Ga. App. LEXIS 137 (2024).

Verdict not inconsistent when shooting involved. — Verdict finding defendant 95% at fault and plaintiff 5% at fault, while also finding that the shooter bore no fault for plaintiff's injuries, could be construed in a way that was consistent because the jury could have reasonably believed that the unidentified shooter acted deliberately, as opposed to negligently, with an intent to do harm. Ga. CVS Pharm., LLC v. Carmichael, 316 Ga. 718, 890 S.E.2d 209, 2023 Ga. LEXIS 141 (2023).

Insurers who paid judgment could seek reimbursement from other insurers despite lack of apportionment. — Insurers' claim that other insurers who had paid a judgment against both insureds for breach of the peace during a repossession under O.C.G.A. § 11-9-609 had no right of reimbursement because fault had not been apportioned under O.C.G.A. § 51-12-33 was rejected; the insurers had a right to recover contribution as subrogees. Renaissance Recovery Solutions, LLC v. Monroe Guar. Ins. Co., No. CV 114-102, 2016 U.S. Dist. LEXIS 91036 (S.D. Ga. July 13, 2016).

Apportionment in single-defendant cases. — Because the General Assembly chose to exclude single-defendant cases from apportionment among non-parties, and the defendant did not argue that such a choice was beyond the legislative power vested in the General Assembly, apportionment under O.C.G.A. § 51-12-33(b) did not apply to tort actions brought against a single defendant, and did not permit a reduction in damages against a single defendant in accordance with the jury's allocation of fault to a non-party. Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC, 312 Ga. 350, 862 S.E.2d 295, 2021 Ga. LEXIS 568 (2021), superseded by statute as stated in Deaton Holdings, Inc. v. Reid, 367 Ga. App. 746, 888 S.E.2d 333, 2023 Ga. App. LEXIS 223 (2023).

Who makes determination of apportionment. — The text of O.C.G.A. § 51-12-33 does not require a single trier of fact to make the determination of liability, damages sustained, and apportionment. Martin v. Six Flags Over Georgia II, L.P., 301 Ga. 323, 801 S.E.2d 24, 2017 Ga. LEXIS 454 (2017).

Defendant that had entered a consent judgment still a party. — Trial court did not err by reducing the jury's award for apportionment because, although some defendants were dismissed, the case still contained multiple defendants because the defendant that had entered a consent judgment was technically still a party at the time of trial. Shaw v. Smith, 374 Ga. App. 623, 913 S.E.2d 750, 2025 Ga. App. LEXIS 102 (2025).

Insufficient proof to support apportionment based on non-party fault defense. — In a toxic-tort action, the trial court did not err in granting summary judgment to the decedent's wife as to the appellants' non-party fault defense that the decedent's treating physicians committed malpractice, which contributed to the decedent's injuries or damages because medical testimony from the appellants' expert was too vague to express the kind of reasonable degree of medical certainty or probability necessary to establish causation for a medical-malpractice claim. Pneumo Abex, LLC v. Long, 357 Ga. App. 17, 849 S.E.2d 746, 2020 Ga. App. LEXIS 552 (2020), cert. denied, No. S21C0350, 2021 Ga. LEXIS 318 (Ga. May 3, 2021).

Apportionment of damages not ascertainable. — In a wrongful death action, the trial court erred in imposing liability on a condominium association for the security company's share of fault as the general verdict did not distinguish the award and the jury may have imposed fault on the condominium association based strictly on a theory of nuisance, and the imposition of fault on the security company under common law, which negligence could be completely independent of, and not imputable to the condominium association. Camelot Club Condo. Assoc. v. Afari-Opoku, 340 Ga. App. 618, 798 S.E.2d 241, 2017 Ga. App. LEXIS 111 (2017).

Apportionment to nonparty.

In a medical malpractice action, the trial court erred by granting a new trial as to apportionment because by failing to give the mandatory notice required by O.C.G.A. § 51-12-33(b), the defendants waived the defendants' right to apportion damages on vicarious liability as to a non-party. Trabue v. Atlanta Women's Specialists, LLC, 349 Ga. App. 223, 825 S.E.2d 586, 2019 Ga. App. LEXIS 140 (2019), aff'd, 310 Ga. 331, 850 S.E.2d 748, 2020 Ga. LEXIS 764 (2020).

In a claim for wrongful death and other damages in which jurors allocated only 20 percent of the fault to the skilled nursing facility, the trial court did not err in allowing the jury to consider whether to apportion fault to non-parties at the trial and the plaintiffs were not entitled to a directed verdict on the fault allocation issue because the jury would have been authorized to find by clear and convincing evidence that three non-party medical providers acted with gross negligence as the facility's expert asserted that the breaches of care committed by the three non-parties were egregious, resulting in the provision of astonishingly poor care to the patient in the emergency room. Lowndes County Health Services, LLC v. Copeland, 352 Ga. App. 233, 834 S.E.2d 322, 2019 Ga. App. LEXIS 554 (2019), cert. denied, 141 S. Ct. 2803, 210 L. Ed. 2d 933, 2021 U.S. LEXIS 3246 (2021).

In a medical malpractice case, a physician was not entitled to apportionment of damages based on the percentage of fault of a non-party doctor, the physician's co-employee, because the physician did not comply with O.C.G.A. § 51-12-33(d), which required that the physician give notice of fault of a non-party at least 120 days before trial. Atlanta Women's Specialists, LLC v. Trabue, 310 Ga. 331, 850 S.E.2d 748, 2020 Ga. LEXIS 764 (2020).

While the jury's decision to apportion no fault to the shooting might have been unusual, it was not reversible error because, under O.C.G.A. § 51-12-33, the jury was not entitled to apportion fault to non-parties. Georgia CVS Pharmacy, LLC v. Carmichael, 362 Ga. App. 59, 865 S.E.2d 559, 2021 Ga. App. LEXIS 541 (2021), aff'd, 316 Ga. 718, 890 S.E.2d 209, 2023 Ga. LEXIS 141 (2023).

Because O.C.G.A. § 51-12-33(b) was inapplicable in the case, percentages of fault could not be allocated to the nonparty dentists under O.C.G.A. § 51-12-33(c) as requested by the defendants since O.C.G.A. § 51-12-33(c) was applicable only when O.C.G.A. § 51-12-33(b) was applicable, thus, the trial court committed no error in striking the defendants' notice of their intention to allocate fault to nonparties. Eliezer v. Mosley, 369 Ga. App. 102, 891 S.E.2d 555, 2023 Ga. App. LEXIS 393 (2023).

Full retrial not required, only retrial for apportionment. — Trial court's error in apportionment did not require a full retrial, but rather required retrial only for the apportionment damages, as the assessment of fault among tortfeasors, in most if not all cases, would have no impact on the jury's finding of liability or on the total amount of damages to which the plaintiff was entitled. Martin v. Six Flags Over Georgia II, L.P., 301 Ga. 323, 801 S.E.2d 24, 2017 Ga. LEXIS 454 (2017).

Jury instructions on apportionment in error. — In a premises liability case, while the trial court instructed the jury that it must apportion fault among all the parties, and that if the jury found the plaintiff's conduct was the sole proximate cause of the plaintiff's injuries the plaintiff would recover nothing, the court erred in failing to inform the jury that the plaintiff would recover nothing if the jury found the plaintiff at fault 50 percent or more. Durham v. Dollar Tree Stores, 360 Ga. App. 548, 859 S.E.2d 620, 2021 Ga. App. LEXIS 305 (2021).

Correction of errors in apportionment. — When correction of an apportionment error involves only the identification of tortfeasors and assessment of relative shares of fault among the tortfeasors, there is no sound reason to disturb the jury's findings on liability or its calculation of damages sustained by the plaintiff. Though there may be instances in which the particular circumstances of the case or the nature of the apportionment error militate otherwise, in the ordinary case, the issue of apportionment among tortfeasors will be sufficiently distinct from the issue of liability and calculation of damages that the correction of an error in apportionment will not require a full retrial. In fact, when the issue of apportionment is distinct from the issues of liability and damages sustained, our "law of the case" doctrine will in most instances preclude the re-litigation of these issues once the jury's verdict on them has been affirmed. Martin v. Six Flags Over Georgia II, L.P., 301 Ga. 323, 801 S.E.2d 24, 2017 Ga. LEXIS 454 (2017).

In a contract case involving the sale of allegedly defectively installed windows, the trial court's method used to calculate loss of use damages was improper because it assumed all parts of the buyer's property were equally valuable per square foot, and the maximum recovery rule capped loss of use damages at the total value of the deck space. Latium USA Trading, LLC v. Smith, 371 Ga. App. 347, 899 S.E.2d 324, 2024 Ga. App. LEXIS 88 (2024).

Reduction of damages award. — Because the malpractice action involved only one defendant, the law firm, and the jury found that the holding company was 8% responsible for the injuries it suffered, the trial court should have reduced the award of compensatory damages by 8% rather than 68%. Alston & Bird LLP v. Hatcher Management Holdings, LLC, 355 Ga. App. 525, 843 S.E.2d 613, 2020 Ga. App. LEXIS 286 (2020), cert. denied, No. S20C1418, 2021 Ga. LEXIS 33 (Ga. Feb. 1, 2021), cert. denied, No. S20C1436, 2021 Ga. LEXIS 62 (Ga. Feb. 1, 2021), aff'd in part, rev'd, 312 Ga. 350, 862 S.E.2d 295, 2021 Ga. LEXIS 568 (2021).

Trial court properly denied plaintiff's motion for new trial in negligence action because by entering judgment in defendant's favor, trial court essentially struck portion of verdict purporting to award plaintiff damages and accepted portion finding plaintiff 65 percent at fault. Cruz v. Patel, 367 Ga. App. 429, 886 S.E.2d 386, 2023 Ga. App. LEXIS 161 (2023).

Cause of action for apportionment not created. — Trial court did not err refusing to charge the jury to apportion negligence/fault to the decedent because defendants offered no evidence the decedent was not exercising ordinary care riding the dirt bike or that the decedent otherwise breached any legal duty which proximately caused the injury causing death. McCommons v. White, 371 Ga. App. 93, 899 S.E.2d 731, 2024 Ga. App. LEXIS 117 (2024).

Apportionment to pool contractor proper. — Trial court did not err by denying the contractor's motion for new trial based on the jury's apportionment of 100% of fault for the accident to the contractor under O.C.G.A. § 51-12-33 because there was evidence presented at trial that the hotel owner surrendered possession of the pool construction area to the contractor, thus relieving the hotel owner of its duties with respect to that portion of the hotel premises. The contractor's owner acknowledged that the contractor kept the doors locked to the pool area so that no one could come in. Cajun Contrs. v. Peachtree Prop., 360 Ga. App. 390, 861 S.E.2d 222, 2021 Ga. App. LEXIS 366 (2021).

Apportionment when investors seeking damages against title company. — In a suit arising out of the failure of a mixed-use real estate development project, because the investors had not shown that the title insurance company breached a duty directly to the investors, they could not show that the title company was a joint tortfeasor as to the investors. ALR Oglethorpe v. Fid. Nat'l Title Ins. Co., 361 Ga. App. 776, 863 S.E.2d 568, 2021 Ga. App. LEXIS 464 (2021).

Apportionment in product liability action. — In a product liability action, because O.C.G.A. § 51-12-33 was intended to displace the common law of apportionment, the trial court did not err in apportioning the plaintiff's damage award on the plaintiff's claim for strict product liability, and in reducing the award of the wife's loss of consortium claim as it was derivative of and arose out of the tort committed against the plaintiff. Suzuki Motor of America, Inc. v. Johns, 351 Ga. App. 186, 830 S.E.2d 549, 2019 Ga. App. LEXIS 413 (2019), cert. denied, No. S19C1530, 2020 Ga. LEXIS 27 (Ga. Jan. 13, 2020), aff'd, 310 Ga. 159, 850 S.E.2d 59, 2020 Ga. LEXIS 760 (2020).

Gross negligence standard applied to non-party emergency care providers. — In a medical malpractice action against an emergency room doctor, O.C.G.A. § 51-1-29.5(c)'s gross negligence standard applied not only to the physician but also applied with regard to apportioning fault to non-parties (radiologist and nurses) under O.C.G.A. § 51-12-33(c) when those non-parties also provided emergency care. Southwestern Emergency Physicians, P.C. v. Quinney, 347 Ga. App. 410, 819 S.E.2d 696, 2018 Ga. App. LEXIS 538 (2018).

Jury instructions. — In an FDIC suit alleging that former directors of a failed bank were negligent and grossly negligent in approving 10 risky loans, a district court properly refused to instruct the jury on apportionment because the evidence did not support an apportionment instruction as it was impossible to divide fault among the directors because the decision to approve a loan was a group decision that required the consent from all members of the directors' loan committee and this quorum-approval policy essentially allowed the committee members to act as agents for each other. FDIC v. Loudermilk, 930 F.3d 1280, 2019 U.S. App. LEXIS 21728 (11th Cir. 2019).

Expenses of litigation. — Award for expenses of litigation was subject to apportionment because the award constituted damages, and the apportionment statute required an apportionment of the total damages. Because O.C.G.A. § 51-12-33(a) of the apportionment statute applied, but not O.C.G.A. § 51-12-33(b), damages were to be reduced according to the jury's allocation of fault to the plaintiff, but not according to the allocation of fault to the non-party. Alston & Bird, LLP v. Hatcher Mgmt. Holdings, LLC, 312 Ga. 350, 862 S.E.2d 295, 2021 Ga. LEXIS 568 (2021), superseded by statute as stated in Deaton Holdings, Inc. v. Reid, 367 Ga. App. 746, 888 S.E.2d 333, 2023 Ga. App. LEXIS 223 (2023).

RESEARCH REFERENCES

ALR.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Users of Asbestos and Tobacco Products, 50 A.L.R.7th 3.

ARTICLE 3

DAMAGES FOR CONVERSION OF TIMBER

51-12-50. Measure of damages for converted timber; presumption.

(a) When a plaintiff, other than a plaintiff under Code Section 51-12-51, recovers for timber cut or cut and carried away, the measure of damages shall be:

(1) Treble the fair market value of the trees cut as they stood;

(2) Treble the diminished fair market value of any trees incidentally harmed;

(3) Costs of reasonable reforestation activities related to the plaintiff's injury; and

(4) Attorney fees and expenses of litigation.

(b) When the defendant is a willful trespasser, the plaintiff may also recover punitive damages.

(c) When the boundary lines of the property have been clearly and accurately marked, it shall be presumed that the defendant was a willful trespasser.

History.

Civil Code 1895, § 3918; Civil Code 1910, § 4515; Code 1933, § 105-2013; Ga. L. 2014, p. 695, § 7/HB 790; Ga. L. 2021, p. 584, § 1/HB 90.

Amendments.

The 2021 amendment, effective July 1, 2021, substituted "When a plaintiff, other than a plaintiff under Code Section 51-12-51," for "Except as provided in Code Section 51-12-51, when" at the beginning of subsection (a).

51-12-51. Recovery by person holding security interest in land for conversion of timber; use of converted timber by owner.

(a) Every person, firm, or corporation who, without the written consent of the person holding legal title to land or to an interest in land as security for debt, as shown by the public records of the county where such land is located, buys, sells, cuts, removes, holds, disposes of, changes the form of, or otherwise converts to the use of such person, firm, corporation, or another any trees growing or grown on such land shall be liable to the holder of the legal title for such trees, in any form, bought, sold, cut, removed, held, disposed of, changed in form, or otherwise converted by such person, firm, or corporation, or for the value of such trees, provided that recovery may not be for more than the unpaid portion of the secured indebtedness, interest thereon, and a reasonable attorney's fee. Recovery may be had by action at law from one who purchases, without the consent of the holder of the legal title, such interest in the trees, mineral or other rights, or interest in the encumbered real estate, either jointly or severally, with the holder of the equitable title. Notwithstanding any other provision of law, any such person, firm, or corporation who is a buyer in the ordinary course of business pursuant to Title 11, the "Uniform Commercial Code," including, but not limited to, Code Section 11-9-320, shall have no liability under this Code section.

(b) The equitable owner of the land shall be allowed to use the timber for such equitable owner's own use, such as for firewood or other necessary uses of timber in and around such equitable owner's farm.

History.

Ga. L. 1939, p. 340, § 1; Ga. L. 2021, p. 584, § 2/HB 90.

Amendments.

The 2021 amendment, effective July 1, 2021, in subsection (a) in the first sentence, substituted "such person, firm, corporation, or another" for "himself, itself, or another" and substituted "such person, firm, or corporation" for "him or it", and added the last sentence; and substituted "such equitable owner's" for "his" twice in subsection (b).

Law reviews.

For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).

JUDICIAL DECISIONS

Cutter of timber was strictly liable despite being hired contractor. — Timber cutter was strictly liable for damages under the Georgia Timber Collateral Conversion Statute, O.C.G.A. § 51-12-51, despite the cutter's claim that the cutter was simply acting as a contractor under the direction of another; however, the holder of a security deed was not entitled to damages for the diminished value of the property, but only for the value of the trees. Redcedar, LLC v. CML-GA Social Circle, LLC, 341 Ga. App. 110, 798 S.E.2d 334, 2017 Ga. App. LEXIS 136 (2017).

Damages for diminished value not allowed. — Holder of a security deed on property from which timber was cut without authorization was not entitled to damages for the diminished value of the property, but only for the value of the trees; however, evidence of diminished value was relevant for purposes of attorney's fees and punitive damages. Redcedar, LLC v. CML-GA Social Circle, LLC, 341 Ga. App. 110, 798 S.E.2d 334, 2017 Ga. App. LEXIS 136 (2017).

ARTICLE 4

GEORGIA STRUCTURED SETTLEMENT PROTECTION

Effective date.

This article became effective July 1, 2021.

Editor's notes.

Ga. L. 2021, p. 663, § 1/HB 443 repealed the Code sections formerly codified as this article and enacted the current article. The former article consisted of Code Sections 51-12-70 through 51-12-77, relating to damages in tort actions, and was based on Ga. L. 1999, p. 853, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 4, § 51; Ga. L. 2003, p. 140, § 51; Ga. L. 2003, p. 820, §§ 7, 8; Ga. L. 2015, p. 1088, § 46/SB 148.

51-12-71. Short title.

This article shall be known and may be cited as the "Georgia Structured Settlement Protection Act."

History.

Code 1981, § 51-12-71, enacted by Ga. L. 2021, p. 663, § 1/HB 443.

51-12-72. Definitions.

As used in this article, the term:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Assignee" means a person or entity acquiring or proposing to acquire structured settlement payments from a structured settlement purchase company or transferee after, or concurrently with, the transfer by the payee to the structured settlement purchase company or transferee.

(3) "Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(4) "Discounted present value"' means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(5) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights, before any reductions for transfer expenses or other deductions to be made from such consideration.

(6) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(7) "Interested party" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any party to the structured settlement that has continuing obligations to make payments under the structured settlement.

(8) "Net advance amount" means the gross advance amount, less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under paragraph (5) of subsection (a) of Code Section 51-12-76.

(9) "Payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

(10) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

(11) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended.

(12) "Renewal date" means the date on which a registered structured settlement purchase company is required to have renewed

their registration under this statute, which date shall be one year after the initial registration or any subsequent renewal.

(13) “Structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

(14) “Structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) “Structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or qualified assignment agreement.

(16) “Structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where the payee is domiciled in this state or the structured settlement agreement was approved by a court in this state.

(17) “Structured settlement purchase company” means a person that acts as a transferee in this state and who is registered with the Secretary of State pursuant to Code Section 51-12-73.

(18) “Structured settlement transfer proceeding” means a court proceeding filed by a structured settlement purchase company seeking court approval of a transfer in accordance with this article.

(19) “Terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court.

(20) “Transfer” means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. Such term shall not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

(21) “Transfer agreement” means the agreement providing for a transfer of structured settlement payment rights.

(22) “Transfer expense” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or

deducted from the gross advance amount, including, without limitation, court filing fees, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. Such term shall not include preexisting obligations of the payee payable for the payee's account from the proceeds of the transfer.

(23) "Transfer order" means an order approving a transfer in accordance with Code Section 51-12-77.

(24) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

History.
Code 1981, § 51-12-72, enacted by Ga. L. 2021, p. 663, § 1/HB 443.

51-12-73. Structured settlement purchase companies; requirements for doing business.

(a) A person or entity shall not act as a transferee, attempt to acquire structured settlement payment rights through a transfer from a payee who resides in this state, or file a structured settlement transfer proceeding in this state unless the person or entity has registered with the Secretary of State to do business in this state.

(b)(1) An applicant's initial registration application shall be submitted on a form prescribed by the Secretary of State, and shall include a sworn certification by an owner, officer, director, or manager of the applicant, if the applicant is an entity, or by the individual applicant if the applicant is an individual, certifying that the applicant has secured a surety bond, or has been issued a letter of credit, or has posted a cash bond in the amount of $50,000.00, relative to its business as a structured settlement purchase company in this state. The surety bond or letter of credit is intended to protect payees who do business with a structured settlement purchase company.

(2) The bond shall be payable to the State of Georgia.

(3) The bond, letter of credit, or cash bond shall be effective concurrently with the applicant's registration with the Secretary of State and shall remain in effect for not less than three years after expiration or termination of that registration. The bond, letter of credit, or cash bond shall be renewed each year when the registration of the applicant is renewed.

(4) The applicant shall submit to the Secretary of State a copy of the bond, letter of credit, or cash bond with its registration or renewal application.

(5) The bond, letter of credit, or cash bond is intended to ensure

that the structured settlement purchase company will comply with the provisions of this article relative to the payee and perform its obligations to the payee under this article, and to provide a source for recovery for the payee should a payee recover a judgment against a structured settlement purchase company for a violation of this article.

(6) The Secretary of State shall be authorized to set and charge a fee to offset the costs of processing and maintaining the registration required by this Code section.

(c) Within ten days after a judgment is secured against a structured settlement purchase company by a payee, the structured settlement purchase company shall file a notice with the Secretary of State and the surety providing a copy of the judgment and the name and address of the judgment creditor, and include the status of the matter, including whether the judgment will be appealed, or has been paid or satisfied.

(d) The liability of the surety under the bond shall not be affected by any breach of contract, breach of warranty, failure to pay a premium or other act or omission of the bonded structured settlement purchase company, or by any insolvency or bankruptcy of the structured settlement purchase company.

(e) Neither the bonded structured settlement purchase company nor the surety shall cancel or modify the bond during the term for which it is issued, except with written notice to the Secretary of State at least 20 days prior to the effective date of such cancellation or modification.

(f) In the event of a cancellation of the bond, the registration of the structured settlement purchase company shall automatically expire unless a new surety bond, letter of credit, or cash bond, which complies with this Code section, is filed with the Secretary of State. The cancellation or modification of a bond shall not affect any liability of the bonded surety company incurred before the cancellation or modification of the bond.

(g) The applicant shall comply with all of the provisions of this article when acting as a structured settlement purchase company and filing structured settlement transfer proceedings in this state.

(h) An assignee shall not be required to register as a structured settlement purchase company in order to acquire structured settlement payment rights or to take a security interest in structured settlement payment rights that were transferred by the payee to a structured settlement purchase company.

(i) An employee of a structured settlement purchase company, if acting on behalf of the employer structured settlement purchase company in connection with a transfer, is not required to be registered.

(j) A registered structured settlement purchase company shall renew its registration annually, on or before the renewal date, and provide the certifications set forth in this Code section.

History.

Code 1981, § 51-12-73, enacted by Ga. L. 2021, p. 663, § 1/HB 443; Ga. L. 2022, p. 352, § 51/HB 1428.

Amendments.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "obligations to the payee" for "obligations to payee" in paragraph (b)(5).

51-12-74. Prohibited activities; penalty for violation.

(a) A transferee or structured settlement purchase company, and an employee or representative of a transferee or structured settlement purchase company, shall not engage in any of the following actions:

(1) Pursue or complete a transfer with a payee without complying with this article;

(2) Refuse or fail to fund a transfer, following court approval of the transfer;

(3) Acquire structured settlement payment rights from the payee without complying with this article and securing court approval of the transfer in accordance with this article;

(4) Intentionally file a structured settlement transfer proceeding in any court other than the court specified in subsection (a) of Code Section 51-12-79, unless the transferee is required to file in some other court by other applicable law;

(5) Pay a commission or finder's fee to a person or entity for facilitating or arranging a structured settlement transfer with a payee, unless such person or entity is registered as a structured settlement purchase company or is an employee of a registered structured settlement purchase company. A structured settlement purchase company may pay to third parties routine transfer expenses, such as court filing fees, escrow fees, lien recordation fees, judgment and lien search fees, attorney fees, and other similar types of fees relating to a transfer. A structured settlement purchase company may pay a reasonable referral fee to an attorney, certified public accountant, actuary, licensed insurance agent, or other licensed professional advisor in connection with a transfer;

(6) Intentionally advertise materially false or misleading information regarding its products or services;

(7) Attempt to coerce, bribe, or intimidate any payee seeking to transfer structured settlement payment rights;

(8) Attempt to defraud a payee or any party to a structured settlement transfer or any interested party in a structured settlement transfer proceeding by means of forgery or false identification;

(9) Intervene in a pending structured settlement transfer proceeding, if the transferee or structured settlement purchase company is not a party to such proceeding or an interested party relative to the proposed transfer which is the subject of the pending structured settlement transfer proceeding. However, this shall not preclude a structured settlement purchase company from intervening in a pending structured settlement transfer proceeding where the payee has signed a transfer agreement with the structured settlement purchase company within 60 days prior to the filing of the pending structured settlement proceeding, and the structured settlement purchase company who filed the pending structured settlement transfer proceeding violated any of the provisions of this article in connection with the proposed transfer that is the subject of the pending structured settlement transfer proceeding;

(10) Knowingly contact a payee who has signed a transfer agreement and is pursuing a proposed transfer with another structured settlement purchase company for the purpose of inducing the payee into canceling the proposed transfer or transfer agreement with the other structured settlement purchase company, if a structured settlement transfer proceeding has been filed by the other structured settlement purchase company and is pending. However, if no hearing has been held in the pending structured settlement transfer proceeding within 90 days of the filing of same, this paragraph shall not apply; or

(11) Fail to dismiss a pending structured settlement transfer proceeding at the request of the payee. A dismissal of a structured settlement proceeding under this Code section shall not exempt a person who violates this Code section from any liability under this article.

(b) A payee may pursue a private action as a result of a violation of this Code section, and may recover all damages and pursue all rights and remedies to which the payee may be entitled under this article, the Fair Business Practices Act, or other applicable law.

(c) A structured settlement purchase company may pursue a private action to enforce paragraphs (4), (7), (9), (10), or (11) of subsection (a) of this Code section as a result of a violation of such paragraphs, and may recover all damages and pursue all remedies to which the structured settlement purchase company may be entitled under this article or other applicable law.

(d) If a court determines that a structured settlement purchase company or transferee is in violation of this Code section, the court may revoke the registration of the structured settlement purchase company, suspend the registration of the structured settlement purchase company for a period of time to be determined at the discretion of the court, or enjoin the structured settlement purchase company or transferee from filing new structured settlement transfer proceedings or pursuing transfers in this state.

History.
Code 1981, § 51-12-74, enacted by Ga. L. 2021, p. 663, § 1/HB 443.

51-12-75. Transfer orders as qualified orders under federal statutes.

A transfer order signed by a Georgia court of competent jurisdiction in accordance with this article shall constitute a qualified order under 26 U.S.C. Section 5891. A transfer order signed by a Georgia court of competent jurisdiction after July 1, 2021, where the transferee is not a registered structured settlement purchase company at the time the transfer order is signed shall not constitute a qualified order under 26 U.S.C. Section 5891.

History.
Code 1981, § 51-12-75, enacted by Ga. L. 2021, p. 663, § 1/HB 443.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2021, "July 1, 2021" was substituted for "the effective date of this article".

51-12-76. Separate disclosure statement provided to payee; requirements.

Not less than ten days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 point font, setting forth the following:

(1) The amounts and due dates of the structured settlement payments to be transferred;

(2) The aggregate amount of such payments;

(3) The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating such discounted present value;

(4) The gross advance amount;

(5) An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements, payable in connection

with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

(6) The effective annual interest rate, which must be disclosed in a statement in the following form: "On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will, in effect, be paying interest to us at a rate of ________ percent per year.";

(7) The net advance amount;

(8) The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee;

(9) That the payee has the right to cancel the transfer agreement, without penalty or further obligation, until the transfer is approved by the court;

(10) That the payee has the right to seek and receive independent professional advice regarding the proposed transfer and should consider doing so before agreeing to transfer any structured settlement payment rights; and

(11) That the payee has the right to seek out and consider additional offers for transferring the structured settlement payments and should do so.

History.

Code 1981, § 51-12-76, enacted by Ga. L. 2021, p. 663, § 1/HB 443; Ga. L. 2022, p. 352, § 51/HB 1428.

Amendments.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (6).

51-12-77. Approval of transfer by court order; requirements.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee or assignee of structured settlement payment rights, unless the transfer has been approved in advance in a final court order based on express findings by such court that all of the following apply:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

(2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer, and has

either received such advice or knowingly waived in writing the opportunity to seek and receive such advice; and

(3) The transfer does not contravene any applicable statute or the order of any court or other government authority.

History.
Code 1981, § 51-12-77, enacted by Ga. L. 2021, p. 663, § 1/HB 443.

51-12-78. Redirecting payments; liability of transferee; dividing payment; compliance.

(a) Following a transfer of structured settlement payment rights, the structured settlement obligor and the annuity issuer may rely on the court order approving the transfer in redirecting periodic payments to an assignee or transferee in accordance with the order approving the transfer and shall, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from any and all liability for the redirected payments. Such discharge and release shall not be affected by the failure of any party to the transfer to comply with this article or with the court order approving the transfer.

(b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(1) If the transfer contravenes the terms of the structured settlement, for any taxes incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

(2) For any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the structured settlement obligor or annuity issuer with the court order approving the transfer, or from the failure of any party to the transfer to comply with this article.

(c) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.

(d) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this article.

History.
Code 1981, § 51-12-78, enacted by Ga. L. 2021, p. 663, § 1/HB 443.

51-12-79. Application for transfer of structured settlement payment right required documentation; hearing.

(a) An application under this article for approval of a transfer of structured settlement payment rights shall be made by the transferee. The application shall be brought in superior court in the county in which the payee is domiciled, except that if the payee is not domiciled in this state, the application may be brought in the court in this state that approved the structured settlement agreement.

(b) At the time any application is made under this article for approval of a transfer of structured settlement payment rights, the transferee's application shall include evidence that the transferee is registered to do business in this state as a structured settlement purchase company.

(c) A timely hearing shall be held on an application for approval of a transfer of structured settlement payment rights. The payee shall appear in person at the hearing, unless the court determines that good cause exists to excuse the payee from appearing in person.

(d) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Code Section 51-12-77, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for authorization. Such notice and application shall include all of the following:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under Code Section 51-12-76;

(4) The payee's name, age, county of domicile, and the number and ages of each of the payee's dependents;

(5) A summary of:

(A) Any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the four years preceding the date of the transfer agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate, applications for approval of which were denied within the two years preceding the date of the transfer agreement; and

(B) Any prior transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of the transferee or an affiliate within the three years preceding the date of the transfer agreement, and any prior proposed transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval of which were denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or otherwise are actually known to the transferee;

(6) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing;

(7) Notification of the time and place of the hearing and notification of the manner in which and the date by which written responses to the application must be filed, which date shall be not less than five days prior to the hearing, in order to be considered by the court; and

(8) Evidence of the transferee's registration to do business in this state as a structured settlement purchase company.

History.
Code 1981, § 51-12-79, enacted by Ga. L. 2021, p. 663, § 1/HB 443.

51-12-80. Waiver prohibited; governing law; death of payee; compliance by transferee.

(a) The provisions of this article shall not be waived by any payee.

(b) Any transfer agreement entered into on or after July 1, 2021, by a payee who is domiciled in this state shall provide that disputes under such transfer agreement, including any claims that the payee has breached the agreement, shall be determined in and under the laws of the State of Georgia. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(d) If the payee cancels a transfer agreement, or if the transfer agreement otherwise terminates, after an application for approval of a transfer of structured settlement payment rights has been filed and before it has been granted or denied, the transferee shall promptly request dismissal of the application.

(e) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this article.

(f) Nothing contained in this article shall:

(1) Be construed to authorize any transfer of structured settlement payment rights in contravention of any applicable law or to imply that any transfer under a transfer agreement entered into prior to July 1, 2021, is valid or invalid; or

(2) Affect the validity of any transfer of structured settlement payment rights, whether under a transfer agreement entered into prior to or subsequent to July 1, 2021, in which the structured settlement obligor and annuity issuer have waived, or have not asserted their rights under, terms of the structured settlement prohibiting or restricting sale, assignment, or encumbrance of the structured settlement payment rights.

(g) The compliance with the requirements set forth in Code Section 51-12-76 and fulfillment of the conditions set forth in Code Section 51-12-77 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with such requirements or failure to fulfill such conditions.

(h) This article shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after July 1, 2021.

History.

Code 1981, § 51-12-80, enacted by Ga. L. 2021, p. 663, § 1/HB 443.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2021, "July 1, 2021," was substituted for "the effective date of this article" in subsection (b) and in paragraphs (f)(1) and (f)(2).

CHAPTER 13

RECOVERY IN MEDICAL MALPRACTICE ACTIONS

51-13-1. Definitions; maximum liability; allowance for periodic payments.

Law reviews.
For article, "Biased But Reasonable: Bias Under the Cover of Standard of Care," see 57 Ga. L. Rev. 489 (2023).

RESEARCH REFERENCES

ALR.
Liability of cruise ship operator for medical negligence, 77 A.L.R.7th 5.

Medical Malpractice: Gastric Bypass, 87 A.L.R.7th 5.

CHAPTER 14

ASBESTOS AND SILICA CLAIMS

Law reviews.
For note, "Dust in the Wind: Revisiting Georgia's Refusal to Extend Liability to Employers in Take-Home Asbestos Litigation," see 53 Ga. L. Rev. 1169 (2019).

51-14-1. Legislative findings and purpose.

RESEARCH REFERENCES

ALR.
Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Users of Asbestos and Tobacco Products, 50 A.L.R.7th 3.

51-14-3. Definitions.

JUDICIAL DECISIONS

Certification on cause of injury in talc powder case.— Trial courts should have dismissed the complaints alleging talc powder asbestos claims without prejudice because plaintiff's expert witness did not certify that other potential causes (such as smoking) were not the sole or most likely cause of the injury at issue and the plain language of O.C.G.A. § 51-14-3(17)(B)(ii) required that certification. Johnson & Johnson v. Shiver, 361 Ga. App. 677, 865 S.E.2d 283, 2021 Ga. App. LEXIS 534 (2021).

51-14-5. When limitations period begins to run.

JUDICIAL DECISIONS

Strict liability claims brought under the Asbestos Claims and Silica Claims Act barred. — General tort statute of repose barred strict liability claims brought under the Asbestos Claims and Silica Claims Act, O.C.G.A. § 51-14-1 et seq., and therefore the trial court erred by denying the talc manufacturer's motion to dismiss the consumer's strict liability claims, because the language "notwithstanding any other provision of law" in O.C.G.A. § 51-14–5 referred to the statute of limitation, and did not bar the application of the statute of repose to asbestos claims. PTI Royston, LLC v. Eubanks, 360 Ga. App. 263, 861 S.E.2d 115, 2021 Ga. App. LEXIS 342 (2021).

51-14-6. Dismissal for failure to establish prima-facie evidence of physical impairment with respect to an asbestos claim or silica claim; procedure; evidentiary requirements.

JUDICIAL DECISIONS

Certification on other potential causes. — Trial courts should have dismissed the complaints alleging talc powder asbestos claims without prejudice because plaintiff's expert witness did not certify that other potential causes (such as smoking) were not the sole or most likely cause of the injury at issue and the plain language of O.C.G.A. § 51-14-3(17)(B)(ii) required that certification. Johnson & Johnson v. Shiver, 361 Ga. App. 677, 865 S.E.2d 283, 2021 Ga. App. LEXIS 534 (2021).

CHAPTER 15

ASBESTOS CLAIMS

RESEARCH REFERENCES

ALR.

Products liability: necessity and admissibility of expert or opinion evidence as to design and manufacture of asbestos and tobacco products, 78 A.L.R.7th 2.

51-15-1. Legislative findings; limitations on liabilities.

RESEARCH REFERENCES

ALR.

Products Liability: Necessity and Admissibility of Expert or Opinion Evidence as to Causation of Injury to Users of Asbestos and Tobacco Products, 50 A.L.R.7th 3.

CHAPTER 16

COVID-19 PANDEMIC BUSINESS SAFETY

Effective date.

This chapter became effective August 5, 2020.

Editor's notes.

Ga. L. 2020, p. 798, § 1/SB 359, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Healthcare institutions, facilities, and workers require additional flexibility to provide the critical assistance and care needed by this state during the unprecedented COVID-19 pandemic; and

"(2) Certain protections provided to healthcare institutions, facilities, and workers in the Governor's Executive Orders dated April 14, 2020, and May 12, 2020, should continue beyond the Public Health State of Emergency as provided for in this Act."

Ga. L. 2020, p. 798, § 2/SB 359, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia COVID-19 Pandemic Business Safety Act.'"

Ga. L. 2020, p. 798, § 4/SB 359, as amended by Ga. L. 2021, p. 341, § 1/HB 112, not codified by the General Assembly, provides that: "This Act shall apply to causes of action accruing until July 14, 2022, and shall not apply to any causes of action accruing thereafter."

Law reviews.

For article on the 2020 enactment of this chapter, see 37 Ga. St. U.L. Rev. 135 (2020).

For annual survey on healthcare law, see 73 Mercer L. Rev. 1273 (2022).

RESEARCH REFERENCES

ALR.

COVID-19-related litigation: moratorium on evictions, 75 A.L.R.7th 6.

51-16-1. Definitions.

As used in this chapter, the term:

(1) "Claimant" means an individual or an individual's survivor, including a decedent's estate, who seeks or has sought recovery of damages in a COVID-19 liability claim; provided, however, that all individuals claiming to have sustained damages of a single individual, are considered a single claimant.

(2) "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), and any mutation or viral fragments thereof,

or any disease or condition caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which were the subject of the public health state of emergency declared by the Governor on March 14, 2020.

(3) "COVID-19 liability claim" means a cause of action for:

(A) Transmission, infection, exposure, or potential exposure of COVID-19 to a claimant:

(i) At any healthcare facility or on the premises of any entity, individual, or healthcare provider, resulting in injury to or death of a claimant; or

(ii) Caused by actions of any healthcare provider or individual resulting in injury to or death of a claimant;

(B) Acts or omissions by a healthcare facility or healthcare provider in arranging for or providing healthcare services or medical care to the claimant resulting in injury or death of the claimant for COVID-19 or where the response to COVID-19 reasonably interfered with the arranging for or the providing of healthcare services or medical care at issue to the claimant; or

(C) Manufacturing, labeling, donating, or distributing personal protective equipment or sanitizer that is directly related to providing such personal protective equipment or sanitizer to claimant by any entity during a public health state of emergency for COVID-19, which departs from the normal manufacturing, labeling, donating, or distributing personal protective equipment of such entity that proximately results in injury to or death of a claimant.

(4) "Entity" means any association, institution, corporation, company, trust, limited liability company, partnership, religious or educational organization, political subdivision, county, municipality, other governmental office or governmental body, department, division, bureau, volunteer organization; including trustees, partners, limited partners, managers, officers, directors, employees, contractors, independent contractors, vendors, officials, and agents thereof, as well as any other organization other than a healthcare facility.

(5) "Healthcare facility" shall have the same meaning as "healthcare facility" as provided for in paragraph (17) of Code Section 31-6-2 and all related parties; as "institution" as provided for in subparagraphs (A) and (C) through (G) of paragraph (4) and paragraph (5) of Code Section 31-7-1 and all related parties; as "end stage renal disease" as provided for in paragraph (6) of Code Section 31-44-1 and all related parties; and shall mean the recipient of a contract as authorized in paragraph (5) of Code Section 37-1-20 and any clinical laboratory certified under the Clinical Laboratory

Improvement Amendments in Section 353 of the Public Health Service Act, 42 U.S.C. Section 263a. Such term shall not be construed to include premises.

(6) "Healthcare provider" means any physician or other person licensed or otherwise authorized in this state to furnish healthcare services, including, but not limited to, any dentist, podiatrist, optometrist, pharmacist, psychologist, clinical social worker, advanced practice registered nurse, registered optician, licensed professional counselor, physical therapist, massage therapist, marriage and family therapist, chiropractor, athletic trainer qualified pursuant to Code Section 43-5-7, occupational therapist, speech-language pathologist, audiologist, dietitian, physician assistant, cardiac technician, emergency medical technician, paramedic, or related parties.

(7) "Medical care" means any act defined as the practice of medicine under Code Section 43-34-21.

(8) "Personal protective equipment" means equipment worn to minimize exposure to hazards that cause injuries and illnesses, including, but not limited to, items such as gloves, masks, face shields, safety glasses, shoes, earplugs, muffs, respirators, coveralls, vests, and full body suits.

(9) "Premises" means, other than a healthcare facility, any property owned, occupied, leased, operated, maintained, or managed by an individual or entity, whether residential, agricultural, commercial, industrial, or other real property located within the State of Georgia.

(10) "Public health state of emergency" means a state of emergency as a result of a public health emergency as defined in Code Section 38-3-3 and as declared by the Governor and approved by the General Assembly pursuant to Code Section 38-3-51.

(11) "Related parties" includes persons, business corporations, general partnerships, limited partnerships, limited liability companies, limited liability partnerships, joint ventures, nonprofit corporations, or any other for profit or not for profit organization that owns or controls, is owned or controlled by, or operates under common ownership or control, of a healthcare provider or healthcare facility, or has legal responsibility for the acts or omissions of such healthcare facility or healthcare provider.

(12) "Sanitizer" means a liquid, gel, or foam generally used to decrease infectious agents such as viruses on the body, objects, or other spaces which receive human contact.

(13) "State of emergency" shall have the same meaning as set forth in Code Section 38-3-3.

History.

Code 1981, § 51-16-1, enacted by Ga. L. 2020, p. 798, § 3/SB 359; Ga. L. 2021, p. 922, § 51/HB 497.

Amendments.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "including, but not limited to," for "including but not limited to" in paragraph (8).

Law reviews.

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

For comment, "No Shirt, No Shoes, No Mask, No Entry, and (hopefully) No Lawsuits under the Georgia COVID-19 Business Safety Act!," see 72 Mercer L. Rev. 915 (2021).

51-16-2. Liability standard; immunity.

(a) No healthcare facility, healthcare provider, entity, or individual shall be held liable for damages in an action involving a COVID-19 liability claim against such healthcare facility, healthcare provider, entity, or individual, unless the claimant proves that the actions of the healthcare facility, healthcare provider, entity, or individual showed gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

(b) The immunity set forth in subsection (a) of this Code section shall be provided in addition to, and shall in no way limit, any other immunity protections that may apply in state or federal law.

History.

Code 1981, § 51-16-2, enacted by Ga. L. 2020, p. 798, § 3/SB 359.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2020, in subsection (a), a comma was deleted following the first and third occurrences of "individual" and a colon was deleted following "showed".

Law reviews.

For comment, "No Shirt, No Shoes, No Mask, No Entry, and (hopefully) No Lawsuits under the Georgia COVID-19 Business Safety Act!," see 72 Mercer L. Rev. 915 (2021).

JUDICIAL DECISIONS

Gross negligence not shown. — Patient's allegations of hospital staff oversight did not rise to the level of "gross negligence" required by the Georgia COVID-19 Pandemic Business Safety Act, O.C.G.A. § 51-16-1 et seq., to overcome immunity because the alleged failure was inattentiveness or negligence but did not show a complete absence of care. Kennestone Hospital v. Turner, 374 Ga. App. 887, 914 S.E.2d 439, 2025 Ga. App. LEXIS 139 (2025).

Action barred. — Wrongful death action was barred by the Georgia COVID-19 Pandemic Business Safety Act, and therefore the trial court erred by denying the manager of the senior-citizen residential facility's motion to dismiss, because the amended complaint did not allege gross negligence, as the facts alleged showed either an under-response or a temporary continuation of normal activity at a time of uncertainty during the first days of the pandemic. The allegedly wrongful conduct was based on decisions made regarding visitation, staffing, recreation, and socialization related to the COVID-19 pandemic. Arbor Management Services, LLC v. Hendrix, 364 Ga. App. 758, 875 S.E.2d 392, 2022 Ga. App. LEXIS 319 (2022).

51-16-3. Rebuttable presumption of assumption of risk relating to premises of individuals or entities.

(a) Except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, in an action involving a COVID-19 liability claim against an individual or entity for transmission, infection, exposure, or potential exposure of COVID-19 to a claimant on the premises of such individual or entity, there shall be a rebuttable presumption of assumption of the risk by the claimant.

(b) The provisions in this Code section shall not be construed so as to limit or restrict the immunities from liability provided in Code Section 51-16-2.

History.

Code 1981, § 51-16-3, enacted by Ga. L. 2020, p. 798, § 3/SB 359; Ga. L. 2021, p. 922, § 51/HB 497; Ga. L. 2024, p. 198, § 1/SB 430, effective July 1, 2024.

Amendments.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "including, but not limited to," for "including but not limited to" in paragraph (a)(1).

The 2024 amendment, effective July 1, 2024, in subsection (a), substituted a period for "when:" at the end, and deleted former paragraphs (a)(1) and (a)(2), which read: "(1) Any receipt or proof of purchase for entry, including, but not limited to, an electronic or paper ticket or wristband, issued to a claimant by the individual or entity for entry or attendance, includes a statement in at least ten-point Arial font placed apart from any other text, stating the following warning:

"'Any person entering the premises waives all civil liability against this premises owner and operator for any injuries caused by the inherent risk associated with contracting COVID-19 at public gatherings, except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, by the individual or entity of the premises.'; or

"(2) An individual or entity of the premises has posted at a point of entry, if present, to the premises, a sign in at least one-inch Arial font placed apart from any other text, a written warning stating the following:

"'Warning

"Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.'"; and deleted "; further failure to participate as provided in subsection (a) of this Code section shall in no way limit or restrict the immunities from liability provided in Code Section 51-16-2 nor shall such failure to participate be admissible" from the end of subsection (b).

Law reviews.

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

For comment, "No Shirt, No Shoes, No Mask, No Entry, and (hopefully) No Lawsuits under the Georgia COVID-19 Business Safety Act!," see 72 Mercer L. Rev. 915 (2021).

51-16-4. Rebuttable presumption of assumption of risk relating to healthcare facilities or premises of healthcare providers.

(a) Except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, in an action involving a COVID-19 liability claim for transmission, infection, exposure, or potential exposure of COVID-19 to a claimant at any healthcare facility or on the premises of any healthcare provider, resulting in injury to or death of a claimant there shall be a rebuttable presumption of assumption of the risk by the claimant.

(b) The provisions in this Code section shall not be construed so as to limit or restrict the immunities from liability provided in Code Section 51-16-2.

History.

Code 1981, § 51-16-4, enacted by Ga. L. 2020, p. 798, § 3/SB 359; Ga. L. 2024, p. 198, § 2/SB 430, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted "when a healthcare facility or a healthcare provider has posted at a point of entry, if present, to the premises, a sign in at least one-inch Arial font placed apart from any other text, a written warning stating the following:

"'Warning

"Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.'" from the end of subsection (a); and deleted "; further failure to participate as provided in subsection (a) of this Code section shall in no way limit or restrict the immunities from liability provided in Code Section 51-16-2 nor shall such failure to participate be admissible" from the end of subsection (b).

Law reviews.

For article with annual survey on torts, see 73 Mercer L. Rev. 243 (2021).

51-16-5. Construction with other law.

This chapter shall not modify or supersede the terms or application of:

(1) Title 16, relating to crimes and offenses;

(2) Title 31, relating to health or any state regulations related thereto;

(3) Chapter 9 of Title 34, relating to workers' compensation; and

(4) Chapter 3 of Title 38, relating to emergency management.

History.

Code 1981, § 51-16-5, enacted by Ga. L. 2020, p. 798, § 3/SB 359.

Law reviews.

For comment, "No Shirt, No Shoes, No Mask, No Entry, and (hopefully) No Lawsuits under the Georgia COVID-19 Business Safety Act!," see 72 Mercer L. Rev. 915 (2021).