

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 7A 2015 Edition

Title 9. Civil Practice (Chapters 12—17)

Including Annotations 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 978-1-63283-827-8

509276

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.

Contacting LexisNexis®:

Visit our internet home page at www.lexisnexis.com for an online bookstore, technical support, and other company information.

If you have questions or suggestions concerning the Official Code of Georgia Annotated, you may contact Customer Support at our self-service portal available 24/7 at supportcenter.lexisnexis.com/app/ print or call us at 800-833-9844. Direct written inquiries to:

LexisNexis®

Attn: Official Code of Georgia Annotated

9443 Springboro Pike

Miamisburg, OH 45342

TITLE 9
CIVIL PRACTICE
VOLUME 6

Chap.

4. Declaratory Judgments, 9-4-1 through 9-4-11.
10. Civil Practice and Procedure Generally, 9-10-1 through 9-10-204.

VOLUME 7

11. Civil Practice Act, 9-11-1 through 9-11-133.

VOLUME 7A

12. Verdict and Judgment, 9-12-1 through 9-12-138.
13. Executions and Judicial Sales, 9-13-1 through 9-13-178.
14. Habeas Corpus, 9-14-1 through 9-14-53.
15. Court and Litigation Costs, 9-15-1 through 9-15-16.
16. Uniform Civil Forfeiture Procedure Act, 9-16-1 through 9-16-22.
17. Georgia Uniform Mediation Act, 9-17-1 through 9-17-14.

Law reviews.

For annual survey on trial practice and procedure, see 69 Mercer L. Rev. 1249 (2018).

For article, “Surges and Delays in Mass

Adjudication,” see 53 Ga. L. Rev. 1335 (2019).

For article, “An Empirical Evaluation of Proposed Civil Rules for Multidistrict Litigation,” see 55 Ga. L. Rev. 221 (2020).

CHAPTER 12

VERDICT AND JUDGMENT

Article 5

**Uniform Foreign-Country Money
Judgments Recognition Act**

ment of foreign-country
judgments.

Sec.

9-12-113. Recognition and enforce-

Article 6		Sec.	
Enforcement of Foreign Judgments			Code Section 9-11-4 inapplicable to article.
		9-12-134.	Appeal or stay of foreign judgment; security for satisfaction.
Sec.			
9-12-133.	Filing of foreign judgment; notice to judgment debtor;	9-12-135.	Clerk's fees.

ARTICLE 1

GENERAL PROVISIONS

9-12-4. Construction of verdicts.

JUDICIAL DECISIONS

ANALYSIS

CONSTRUCTION OF VERDICT

Construction of Verdict

Trial court's construction of verdict authorized. — In a dispute over a doctor's employment contract and sale of a medical practice, the court held the jury's verdicts on the doctor's breach of contract and fraud claims were not legally inconsistent because "Good Reason" for resignation under the agreements depended on whether the health system exercised its right to cure, which did not happen until after the doctor resigned. *Health Servs. of Cent. Ga. v. Wanna*, 373 Ga. App. 642, 908 S.E.2d 41, 2024 Ga. App. LEXIS 405 (2024).

Verdict not avoided in real estate deal. — In a failed commercial real estate deal, the trial court did not err in denying the appellant's motion to amend the verdict form as the verdicts should not be avoided unless from necessity; the jury verdict and award of damages was not in any way inconsistent, much less void; there were facts by which the jury could

properly allocate the liability for the appellees' counterclaims among the three defendants; and the appellate court would not substitute the court's judgment based upon a cold record for that of enlightened jurors who heard the evidence and saw the witnesses. *Bristol Consulting Group, Inc. v. D2 Prop. Group, LLC*, 366 Ga. App. 843, 884 S.E.2d 546, 2023 Ga. App. LEXIS 93 (2023).

Plausible that jury concluded account owner ratified by adding beneficiary's name. — Trial court properly denied the challenger's motion for judgment notwithstanding the verdict because there was evidence to support the jury's special verdict that the named beneficiary owned the IRA account at issue since it was plausible that the jury concluded that the owner ratified the act of placing the beneficiary's name on the account. *Lucas v. Charles Schwab & Co.*, 354 Ga. App. 522, 841 S.E.2d 150, 2020 Ga. App. LEXIS 201 (2020).

9-12-8. Amendment of verdict — When part illegal.

JUDICIAL DECISIONS

Partial responsibility of plaintiff. — Trial court properly denied the plaintiff's motion for new trial in a negligence action because by entering judgment in

the defendant's favor, the trial court essentially struck the portion of the verdict purporting to award plaintiff damages and accepted the portion finding the plain-

tiff 65 percent at fault. *Cruz v. Patel*, 367 Ga. App. 429, 886 S.E.2d 386, 2023 Ga. App. LEXIS 161 (2023).

9-12-9. Judgment to conform to verdict.

JUDICIAL DECISIONS

Failure to conform judgment to verdict. — Because the jury clearly intended for the easement to encompass the new road built by the grantee, the trial court erred by amending the judgment on remand in a manner that failed to conform to the reasonable intendment of the ver-

dict and the evidence presented at trial regarding the location of the new road. *R. C. Acres, Inc. v. Mommies Properties, LLC*, 338 Ga. App. 569, 790 S.E.2d 824, 2016 Ga. App. LEXIS 501 (2016), cert. denied, No. S17C0317, 2017 Ga. LEXIS 271 (Ga. Apr. 17, 2017).

9-12-16. Validity of judgment when court does not have jurisdiction.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

SPECIFIC APPLICATION

2. DOMESTIC ISSUES

General Consideration

Section not applicable. — In the absence of evidence that the trial court lacked jurisdiction over the subject matter or the parties, the Georgia judgment was not void, rather it was merely voidable and O.C.G.A. § 9-12-16, did not apply. *Williams v. Willis*, 340 Ga. App. 740, 798 S.E.2d 323, 2017 Ga. App. LEXIS 134 (2017).

Specific Application

2. Domestic Issues

Failure to comply with interlocu-

tory appeal procedures. — Trial court’s denial of a wife’s motion to vacate was affirmed because the husband’s filing of a notice of appeal without first complying with the requirements for obtaining interlocutory review had no legal effect and, therefore, did not deprive the trial court of jurisdiction to consider the husband’s motion for reconsideration or from entering a modification order. *Islamkhan v. Khan*, 299 Ga. 548, 787 S.E.2d 731, 2016 Ga. LEXIS 423 (2016).

9-12-17. When creditors or purchasers may attack judgment.

JUDICIAL DECISIONS

Court erred in dismissing complaint for failure to state claim. — While the trial court properly analyzed the motion under O.C.G.A. § 9-11-60, the court erred in dismissing the plaintiffs’ challenge to the consent judgment under

O.C.G.A. § 9-12-17, which permits creditors or bona fide purchasers to attack a judgment for fraud or collusion, whenever and wherever it interferes with their rights, either at law or in equity, as sufficient allegations were set forth in the

complaint to state a claim and discovery was necessary. *Lyle v. Fulcrum Loan Holdings*, 354 Ga. App. 742, 841 S.E.2d 182, 2020 Ga. App. LEXIS 190 (2020), cert. denied, No. S20C1327, 2020 Ga. LEXIS 789 (Ga. Oct. 19, 2020), cert. denied, No. S20C1103, 2020 Ga. LEXIS 787 (Ga. Oct. 19, 2020).

9-12-18. Right to confess judgment and appeal; where and when entered.

JUDICIAL DECISIONS

Defective confession of judgment. — Confession of judgment, in which the appellant expressly declined to admit to the material factual and legal assertions in the appellee’s mandamus petition, was not, in effect, a valid confession of judgment because there was no authority permitting the tailoring of a confession of judgment in such a manner. Thus, the confession of judgement was defective and could not provide a basis for an appeal or the subsequent exercise of the appellate court’s jurisdiction. *Gonzalez v. Miller*, 372 Ga. App. 264, 903 S.E.2d 920, 2024 Ga. App. LEXIS 289 (2024).

9-12-21. Judgments transferable; status of transferee.

JUDICIAL DECISIONS

Assignee of judgment could not bring non-assignable fraudulent transfer action. — In a suit by an assignee of a judgment seeking to set aside a fraudulent transfer by the judgment debtor to a corporation, the assignee’s fraudulent transfer claim did not survive the assignment of the California judgment based on Georgia’s assignment statute, O.C.G.A. § 44-12-24, and was not revived by O.C.G.A. § 9-11-25(c). *EMM Credit, LLC v. Remington*, 343 Ga. App. 710, 808 S.E.2d 96, 2017 Ga. App. LEXIS 557 (2017).

ARTICLE 2
EFFECT OF JUDGMENTS

9-12-40. Judgment conclusive between which persons and on what issues.

Law reviews. For note, “Reluctance or Apathy? Examining Georgia’s Continued Adherence to a Strict Mutuality Issue Preclusion Doctrine,” see 37 Ga. St. U.L. Rev. 541 (2021).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
SAME PARTIES AND PRIVIES
RES JUDICATA
ESTOPPEL BY JUDGMENT

General Consideration

Bankruptcy contempt proceeding did not bar later conversion action. — Res judicata did not bar a secured seller's claim for conversion against the buyer of an adult novelty business because the question in a prior contempt proceeding in bankruptcy was not whether the buyer had converted any property belonging to the business, but whether the buyer had failed to comply with the Bankruptcy Court's turnover order to provide the seller with certain, specified items, including cash collateral. The Bankruptcy Court did not adjudicate any claim of civil conversion. *Bearoff v. Craton*, 350 Ga. App. 826, 830 S.E.2d 362, 2019 Ga. App. LEXIS 384 (2019).

Same Parties and Privies

County planning officials as individuals were not in privity with county board of commissioners. — Developer's prior action against the county board of commissioners, which the developer had dismissed, was not res judicata as to the developer's later claim seeking mandamus against two county planning officials in the officials individual capacities because the officials were not parties to the prior action nor in privity with the board of commissioners under O.C.G.A. § 9-12-40. *Carson v. Brown*, 348 Ga. App. 689, 824 S.E.2d 605, 2019 Ga. App. LEXIS 74 (2019).

Defendants in privity with defendants in prior suit. — In a suit for professional negligence in preparing a title examination and abstract, the trial court properly granted the defendants summary judgment because the action was barred by the doctrine of collateral estoppel as a previous suit adjudicated the plaintiff's professional negligence claims, defendants were in privity with the abstract preparer sued in the previous action, and the prior suit was adjudicated on the merits ending in a dismissal. *ALR Oglethorpe, LLC v. Henderson*, 336 Ga. App. 739, 783 S.E.2d 187, 2016 Ga. App. LEXIS 184 (2016), cert. denied, No. S16C1457, 2016 Ga. LEXIS 723 (Ga. Oct. 31, 2016).

Two voluntary dismissals barred third action despite additional plain-

tiffs. — Trial court correctly dismissed a shipyard owner's third civil action arising from the same set of facts under the two-dismissal rule of O.C.G.A. § 9-11-41(a)(1) and (a)(3) and the res judicata rule of O.C.G.A. § 9-12-40 because, although there were additional plaintiffs in the third action, each of the three actions was based on the apparently complex initial financing for, and subsequent failure of, the shipyard. *Global Ship Sys., LLC v. RiverHawk Group, LLC*, 334 Ga. App. 860, 780 S.E.2d 697, 2015 Ga. App. LEXIS 735 (2015), cert. denied, No. S16C0508, 2016 Ga. LEXIS 231 (Ga. Mar. 7, 2016).

Res Judicata

Identity of cause of action. — Trial court erred in granting summary judgment on the basis of res judicata as to the plaintiff's claim of constructive discharge under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, because the doctrine of res judicata did not apply as there was not an identity of causes of action in both the federal and Georgia cases. *Rintoul v. Tolbert*, 341 Ga. App. 688, 802 S.E.2d 56, 2017 Ga. App. LEXIS 263 (2017).

Because there was identity of causes of action and identity of parties, the trial court did not err in applying the doctrine of res judicata to the plaintiff's 2019 complaint and in granting the defendant's motion for summary judgment as both complaints were based on the same set of facts, both alleged libel against the defendant for the same purportedly false statements, and both asserted the defendant put a false lien on the plaintiff's property. *Dashtpeyma v. Walker*, 359 Ga. App. 644, 859 S.E.2d 799, 2021 Ga. App. LEXIS 253 (2021).

Adjudication on the merits. — Summary judgment was properly granted to the defendants on the plaintiff's breach of fiduciary duties in a partnership venture claim because the plaintiff never argued during the summary judgment phase that a confidential relationship existed between the parties as partners. *Laymac v. Kushner*, 349 Ga. App. 727, 824 S.E.2d 768, 2019 Ga. App. LEXIS 165 (2019), cert. denied, No. S19C1091, 2019 Ga. LEXIS 871 (Ga. Dec. 23, 2019).

Res Judicata (Cont'd)

In a landfill's suit against a county and the county's commission asserting an open meetings violation, the trial court did not err in dismissing the landfill's as applied claims on res judicata grounds because the record showed that the merits of the landfill's allegations against the county commission were previously adjudicated as evidenced by the Georgia Supreme Court's holding from the prior litigation. *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).

In a second suit challenging a county's ordinance regulating adult establishments, although the constitutional waiver of sovereign immunity contained in Ga. Const. 1983, Art. I, Sec. II, Para. V applied to the store's lawsuit, its suit was barred by res judicata because the constitutional issues it raised could have been raised in defending against the county's earlier counterclaim, which was adjudicated on the merits. *Starship Enterprises of Atlanta, Inc. v. Gwinnett County*, 319 Ga. 293, 903 S.E.2d 55, 2024 Ga. LEXIS 142 (2024).

Opportunity to litigate issues in prior suit. — In a dispute between members of a car wash LLC, a member's action was not barred by res judicata because the instant case's issues against the managing member were arguable breaches of the managerial duties as established in a settlement agreement arising from a lender's earlier action; because the first member could not have put these matters at issue in their cross-claims in the lender's action, they were not barred from raising the matters in this action. *McCabe v. Rainey*, 343 Ga. App. 480, 806 S.E.2d 867, 2017 Ga. App. LEXIS 515 (2017).

Requirement that court have competent jurisdiction. — Trial court erred dismissing plaintiff's suit arising from lease agreement based on res judicata grounds because prior action in magistrate court was not court of competent jurisdiction to resolve plaintiff's claims, thus, plaintiff was not barred from re-asserting claims in superior court. *Tate v.*

Habif, 367 Ga. App. 435, 886 S.E.2d 389, 2023 Ga. App. LEXIS 163 (2023).

Res judicata barred subsequent suit against bank. — Trial court properly granted the bank's motion to dismiss the plaintiffs' breach of contract and wrongful foreclosure claims under O.C.G.A. § 9-11-12(b)(6) because the plaintiffs' previous litigation against the bank could have included the plaintiffs' new claims and, thus, were barred by the doctrine of res judicata. *Harris v. Deutsche Bank Nat'l Trust Co.*, 338 Ga. App. 838, 792 S.E.2d 111, 2016 Ga. App. LEXIS 550 (2016).

Divorce decree determined paternity. — In a child custody dispute that occurred six years after the parties' divorce, the mother was estopped from challenging the father's paternity of the child, and the trial court erred by granting the mother's motion for genetic testing for the purpose of challenging the father's paternity. *Brooks v. Lopez*, 350 Ga. App. 390, 829 S.E.2d 470, 2019 Ga. App. LEXIS 305 (2019).

Action for continuing nuisance not barred by prior nuisance action. — Homeowner's nuisance action against a county based on the county's failure to maintain a deteriorating retaining wall was not barred by res judicata based on the owner's prior nuisance action for diminution in value arising out of a failure to maintain a storm water drainage system because the present suit was for a continuing nuisance. *DeKalb County v. Heath*, 331 Ga. App. 179, 770 S.E.2d 269, 2015 Ga. App. LEXIS 123 (2015), cert. denied, No. S15C1110, 2015 Ga. LEXIS 424 (Ga. June 1, 2015).

Res judicata applied. — Dismissal of the plaintiffs' suit brought under the Georgia False Medicaid Claims Act, O.C.G.A. § 49-4-168 et seq., was affirmed because the suit was barred by res judicata based on an earlier-filed federal suit against the same pharmaceutical companies for similar claims. *Jordan v. State of Ga.*, 336 Ga. App. 345, 785 S.E.2d 27, 2016 Ga. App. LEXIS 176 (2016), cert. denied, No. S16C1269, 2016 Ga. LEXIS 503 (Ga. Sept. 6, 2016).

Because the judgment of the state court was a valid, final judgment under Georgia

law, *res judicata* barred the re-litigation of the claim the judgment addressed, namely, whether the bankruptcy automatic stay barred the bank's discovery requests. *Bank of N. Ga. v. Vanbrocklin* (In re Vanbrocklin), No. 15-11761-WHD, 2016 Bankr. LEXIS 2176 (Bankr. N.D. Ga. May 16, 2016).

Trial court should have granted the adoption petitioner's motion to dismiss the claims for abusive litigation because the claims were barred by the doctrine of *res judicata* as there was sufficient identity of parties and issues and an adjudication on the merits. *Stapler v. Boling*, 347 Ga. App. 79, 815 S.E.2d 602, 2018 Ga. App. LEXIS 412 (2018).

Different wrongs, different facts prohibited application of *res judicata*. — In a homeowners' association's suit against an owner for damages and injunctive relief, the trial court did not err in denying the owner's motion for summary judgment because there was no identity of the causes of action in the two lawsuits as the two suits were based on different wrongs and different sets of operative facts. *Amason v. Highland Park Homeowners' Ass'n*, 362 Ga. App. 163, 866 S.E.2d 836, 2021 Ga. App. LEXIS 568 (2021).

Issue barred by *res judicata*. —

Franchisor's claim for the present value of the future fees, including unpaid royalty and advertising fees, from its franchi-

see was barred by the doctrine of *res judicata* because the franchisor elected to treat the franchisee's repudiation as a breach of the entire franchise agreement and was able to immediately sue to recover damages for such breach, including the present value of the future fees; thus, even if the franchisor's breach-of-contract counterclaim in the first suit did not explicitly seek damages for the future fees, the franchisor could have sought such fees based upon the franchisee's repudiation of the entire contract, and the franchisor could have, and should have, obtained a judgment on those claims in the first suit. *Legacy Academy, Inc. v. Doles-Smith Enters.*, 344 Ga. App. 805, 812 S.E.2d 72, 2018 Ga. App. LEXIS 141 (2018).

Estoppel by Judgment

Custody issue could not be relitigated. — When a mother filed a motion for change of custody in the father's home county (Fulton), and the Fulton court ruled there was a material change in circumstances, and the father then filed a motion for change of custody in the mother's county (DeKalb), the Fulton ruling had a preclusive effect on the material change of circumstances issue under the doctrine of collateral estoppel. However, the mother could present evidence of facts arising after that judgment. *Allen v. McGuire*, 339 Ga. App. 219, 793 S.E.2d 151, 2016 Ga. App. LEXIS 604 (2016).

RESEARCH REFERENCES

Am. Jur. 2d.

20 Am. Jur. 2d, Courts, § 125 et seq.

ALR.

Construction and application of two-dismissal rule under federal law, 10 A.L.R. Fed.3d 4.

Supreme Court jurisprudence on gov-

ernmental use of excessive force as violation of constitutional or civil rights, 80 A.L.R. Fed. 3d 3.

Arbitration against entity in privity with plaintiff as barring action in court under doctrine of claim preclusion, 73 A.L.R.7th 4.

9-12-42. Judgment no bar absent decision on merits.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

3. BANKRUPTCY

Application

3. Bankruptcy

Bankruptcy contempt proceeding did not bar later conversion action. — Res judicata did not bar a secured seller’s claim for conversion against the buyer of an adult novelty business because the question in a prior contempt proceeding in bankruptcy was not whether the buyer

had converted any property belonging to the business, but whether the buyer had failed to comply with the Bankruptcy Court’s turnover order to provide the seller with certain, specified items, including cash collateral. The Bankruptcy Court did not adjudicate any claim of civil conversion. *Bearoff v. Craton*, 350 Ga. App. 826, 830 S.E.2d 362, 2019 Ga. App. LEXIS 384 (2019).

RESEARCH REFERENCES

ALR.
Arbitration against entity in privity with plaintiff as barring action in court

under doctrine of claim preclusion, 73 A.L.R.7th 4.

ARTICLE 3

DORMANCY AND REVIVAL OF JUDGMENTS

9-12-60. When judgment becomes dormant; how dormancy prevented; docketing; applicability.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
ENFORCEMENT OF EXECUTION

General Consideration

Action time-barred. — There was no evidence to support the appellant’s argument that the Illinois judgment it obtained and sought to enforce in Georgia was originally obtained in 2008, rather than 2000 and, thus, was not dormant as the notice of enforcement stated that the date of the Illinois judgment was 2000 and the proposed order domesticating the judgment likewise identified the date of the original judgment as 2000. *Gateway Fin. Servs., LLC v. Norrils*, 345 Ga. App. 775, 815 S.E.2d 126, 2018 Ga. App. LEXIS 281 (2018).

Action not time-barred. — Since the settlement agreement was incorporated into the final divorce decree, the ex-wife’s claims were founded on the judgment itself, not the underlying agreement and the ten-year statute of limitation for enforcing judgments applied, not the six-year limitation for contract claims.

Bucher v. Martin, 373 Ga. App. 788, 909 S.E.2d 663, 2024 Ga. App. LEXIS 482 (2024).

Action to revive dormant tax execution. — Trial court erred in denying the appellant’s petition to domesticate and enforce a judgment that was entered by a Michigan court in its favor against the appellee because, under the Uniform Enforcement of Foreign Judgments Law, O.C.G.A. § 9-12-130 et seq., the trial court was required to treat the August 3, 2007, Michigan judgment as if it had been entered in Georgia, and, although the judgment became dormant seven years after it was entered, the trial court overlooked the fact that the appellant had an additional three years after the judgment became dormant to revive it; thus, the Michigan judgment was enforceable in Georgia because the appellant sought domestication and enforcement of the Michigan judgment in

November 2016, less than 10 years after its entry. *Auto. Credit Corp. v. White*, 344 Ga. App. 321, 810 S.E.2d 166, 2018 Ga. App. LEXIS 26 (2018).

Reviving dormant judgment. — Trial court did not err in domesticating and reviving a North Carolina judgment entered in favor of a successor bank because the successor bank timely filed an action to domesticate and revive a dormant foreign judgment on October 5, 2021, which was 12 days before the 10-year period in which to do so expired. *Robinson v. Citi Bank, N.A.*, 365 Ga. App. 27, 877 S.E.2d 281, 2022 Ga. App. LEXIS 371 (2022).

Installment payment of settlement agreement in final divorce decree. — When, pursuant to a settlement agreement incorporated into the final divorce decree, the husband would pay the wife 50% percent of the husband's Armed Services retirement pay per month after the husband was no longer obligated to pay child support, the trial court's ruling that any and all installment payments due to the wife could not be enforced was reversed because the dormancy period did not begin to run until each installment was due as each installment payment was treated as a new and separate judgment; thus, the installments that became due within seven years preceding the issuance and recording of the execution were collectible and enforceable; and the installments that were dormant remained subject to revival. *Holmes-Bracy v. Bracy*, 302 Ga. 714, 808 S.E.2d 669, 2017 Ga. LEXIS 979 (2017).

Dormant statute does not apply to uncollected child support. — Judgment forgiving a father's child support arrearage based on the mother's delay in making the claim was reversed because laches does not apply to claims for uncollected child support and the dormancy statute, O.C.G.A. § 9-12-60(a), did not apply to child support orders entered after July 1, 1997, such as the one involved in the case. *Wynn v. Craven*, 301 Ga. 30, 799 S.E.2d 172, 2017 Ga. LEXIS 240 (2017).

Dormant judgment as to debt.

In an action to recover on a promissory note, the trial court erred in denying ap-

pellant's motion to vacate a judgment and writ of *fi. fa.*, because the judgment became dormant after seven years and the reissuance of the *fi. fa.* did not reset the seven year deadline. *Szymanski v. Truist Bank*, 372 Ga. App. 43, 903 S.E.2d 752, 2024 Ga. App. LEXIS 247 (2024).

Dormancy of judgment on materialman's lien. — Trial court erred in granting summary judgment to the lumber company in the company's suit against the property owner to foreclose on a materialman's lien to recover the price of materials sold to the contractor and used to construct the owner's home because the dormancy statute barred foreclosure on the lien more than seven years after the lien was perfected because, when the lumber company failed to take action on the default judgment against the contractor, and the judgment became unenforceable at the end of seven years, the lien was no longer valid and there was nothing to foreclose upon. *Lang v. Brand-Vaughan Lumber Co., Inc.*, 339 Ga. App. 710, 792 S.E.2d 461, 2016 Ga. App. LEXIS 591 (2016), cert. denied, No. S17C0792, 2017 Ga. LEXIS 498 (Ga. June 5, 2017).

Enforcement of Execution

Service of a scire facias by county sheriff required. — Georgia Court of Appeals held O.C.G.A. § 9-12-63 expressly requires service of a scire facias by the county sheriff, and that specific statutory requirement prevails over the general methods of service permitted under the Civil Practice Act, O.C.G.A. § 9-11-81. *Mancuso v. Cadles of W. Va.*, 370 Ga. App. 347, 897 S.E.2d 486, 2024 Ga. App. LEXIS 18 (2024).

In a case involving the revival of a dormant judgment against defendant, because O.C.G.A. § 9-12-63 mandated that defendant be served by the sheriff of the county in which defendant resided and defendant was not served in that manner, service was never properly perfected. *Mancuso v. Cadles of W. Va.*, 370 Ga. App. 347, 897 S.E.2d 486, 2024 Ga. App. LEXIS 18 (2024).

9-12-61. Dormant judgments renewed by action or scire facias; time of renewal.**JUDICIAL DECISIONS**

Timeliness. — Trial court did not err domesticating and reviving North Carolina judgment entered in favor of successor bank because successor bank timely filed action to domesticate and revive dormant foreign judgment on October 5, 2021, which was 12 days before 10-year period in which to do so expired. *Robinson v. Citi Bank, N.A.*, 365 Ga. App. 27, 877 S.E.2d 281, 2022 Ga. App. LEXIS 371 (2022).

Since the settlement agreement was incorporated into the final divorce decree, the ex-wife's claims were founded on the judgment itself, not the underlying agreement and the ten-year statute of limitation for enforcing judgments applied, not the six-year limitation for contract claims. *Bucher v. Martin*, 373 Ga. App. 788, 909 S.E.2d 663, 2024 Ga. App. LEXIS 482 (2024).

Foreign judgments. — Trial court erred in denying the appellant's petition to domesticate and enforce a judgment that was entered by a Michigan court in its favor against the appellee because, under the Uniform Enforcement of Foreign Judgments Law, O.C.G.A. § 9-12-130 et seq., the trial court was required to treat the August 3, 2007, Michigan judgment as if it had been entered in Georgia, and, although the judgment became dormant seven years after it was entered, the trial court overlooked the fact that the appellant had an additional three years after the judgment became dormant to revive it; thus, the Michigan judgment was enforceable in Georgia because the appellant sought domestication and enforcement of the Michigan judgment in November 2016, less than 10 years after the judgment's entry. *Auto. Credit Corp. v. White*, 344 Ga. App. 321, 810 S.E.2d 166, 2018 Ga. App. LEXIS 26 (2018).

Service of a scire facias by county sheriff required. — Georgia Court of Appeals held O.C.G.A. § 9-12-63 expressly requires service of a scire facias by the county sheriff, and that specific statutory

requirement prevails over the general methods of service permitted under the Civil Practice Act, O.C.G.A. § 9-11-81. *Mancuso v. Cadles of W. Va.*, 370 Ga. App. 347, 897 S.E.2d 486, 2024 Ga. App. LEXIS 18 (2024).

In a case involving the revival of a dormant judgment against defendant, because O.C.G.A. § 9-12-63 mandated that defendant be served by the sheriff of the county in which defendant resided and defendant was not served in that manner, service was never properly perfected. *Mancuso v. Cadles of W. Va.*, 370 Ga. App. 347, 897 S.E.2d 486, 2024 Ga. App. LEXIS 18 (2024).

Revival of dormant installment payments of settlement agreement in final divorce decree. — When, pursuant to a settlement agreement incorporated into the final divorce decree, the husband would pay the wife 50% percent of the husband's Armed Services retirement pay per month after the husband was no longer obligated to pay child support, the trial court's ruling that any and all installment payments due to the wife could not be enforced was reversed because the dormancy period did not begin to run until each installment was due as each installment payment was treated as a new and separate judgment; thus, the installments that became due within seven years preceding the issuance and recording of the execution were collectible and enforceable; and the installments that were dormant remained subject to revival. *Holmes-Bracy v. Bracy*, 302 Ga. 714, 808 S.E.2d 669, 2017 Ga. LEXIS 979 (2017).

Child support. — In a former wife's suit seeking unpaid child support pursuant to a judgment that had become dormant, the entire child support award could not be revived under O.C.G.A. § 9-12-61; because each payment was treated as a new judgment, only installments that became due within the ten years preceding the filing of the renewal petition were revived.

Additionally, the trial court erred in applying the former version of O.C.G.A. § 7-4-12.1 and awarding 12 percent interest; only 7 percent was available.

Johnson v. Collins, 354 Ga. App. 589, 841 S.E.2d 189, 2020 Ga. App. LEXIS 204 (2020).

9-12-63. Issuance of scire facias; copies; service; return.

JUDICIAL DECISIONS

Service of a scire facias by county sheriff required. — Georgia Court of Appeals held O.C.G.A. § 9-12-63 expressly requires service of a scire facias by the county sheriff, and that specific statutory requirement prevails over the general methods of service permitted under the Civil Practice Act, O.C.G.A. § 9-11-81. Mancuso v. Cadles of W. Va., 370 Ga. App. 347, 897 S.E.2d 486, 2024 Ga. App. LEXIS 18 (2024).

In a case involving the revival of a dormant judgment against defendant, because O.C.G.A. § 9-12-63 mandated that defendant be served by the sheriff of the county in which defendant resided and defendant was not served in that manner, service was never properly perfected. Mancuso v. Cadles of W. Va., 370 Ga. App. 347, 897 S.E.2d 486, 2024 Ga. App. LEXIS 18 (2024).

ARTICLE 4

JUDGMENT LIENS

9-12-80. Equal dignity and binding effect of judgments.

JUDICIAL DECISIONS

Judgment during look-back period. — Creditor's acquisition of a judgment lien on the debtors' real property occurred within the 90-day look-back period, even though the judgment entry occurred outside the look-back period, because, pursuant to O.C.G.A. § 9-12-86(b), the judicial lien was not created until the judgment was recorded within the look-back period. Kelley v. First Cmty. Bank (In re Brownlee), 593 B.R. 916, 2018 Bankr. LEXIS 3800 (Bankr. M.D. Ga. 2018), *aff'd*, 624 B.R. 512, 2020 U.S. Dist. LEXIS 198213 (M.D. Ga. 2020).

Date of lien is date of recording. — Georgia Supreme Court held that under Georgia law, as between the judgment creditor and judgment debtor, a lien on the title to real property is not created until the judgment is recorded, that the date of that lien is the date of recording, and the date of the lien does not relate back to the date the judgment was entered. Synovus Bank v. Kelley, 309 Ga.

654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

Recording requirement for personal property. — Creditor had a judicial lien against a debtor's personal property that was obtained through a consent judgment for a deficiency on a car loan, even without recording the lien or obtaining a writ of fieri facias, as O.C.G.A. §§ 9-12-80 and 9-12-86 did not require a recording for personal property, and the failure to record only affected the creditor's interests against third parties. Action Motors, Inc. v. Milliner (In re Milliner), No. JTL, 554 B.R. 525, 2016 Bankr. LEXIS 2677 (Bankr. M.D. Ga. 2016).

Government not required to record restitution lien as against ex-wife with actual notice of lien. — Under a restitution lien against the defendant's property under 18 U.S.C. § 3613, the U.S. could garnish \$433,039 in settlement funds awarded to the defendant, despite

the defendant's ex-wife's contention that she was entitled to the funds under a divorce decree. Because the ex-wife had actual notice of the restitution judgment, she was not a third party without notice under O.C.G.A. § 9-12-81, and the U.S. was not required by Georgia law to record the lien for the lien to be enforceable against her. *United States v. Smith*, 768 Fed. Appx. 926, 2019 U.S. App. LEXIS 10416 (11th Cir. 2019).

Judgment does not create lien on

chose in action. — Creditor was not entitled to turnover of abandoned property because, although the creditor had a judicial lien which gave the creditor interest in all of the debtor's property on the date the judgment was entered, such an interest did not constitute a possessory interest in the property, but only a right to levy on the property and sell the property. *In re Patel*, 607 B.R. 765, 2019 Bankr. LEXIS 2806 (Bankr. N.D. Ga. 2019).

9-12-81. General execution docket; when money judgment in county of defendant's residence creates lien against third parties without notice.

JUDICIAL DECISIONS

Date of lien is date of recording. — Georgia Supreme Court held that under Georgia law, as between the judgment creditor and judgment debtor, a lien on the title to real property is not created until the judgment is recorded, that the date of that lien is the date of recording, and the date of the lien does not relate back to the date the judgment was entered. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

No limitation on application of section. — Georgia Supreme Court held that based on the plain language of the text, nothing in O.C.G.A. § 9-12-81, O.C.G.A. § 9-12-82, or O.C.G.A. § 9-12-85 limited the application of O.C.G.A. § 9-12-86 to disputes between bona fide purchasers for value and the judgment creditor. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

9-12-82. When money judgment outside county of defendant's residence creates lien against third parties without notice.

JUDICIAL DECISIONS

Date of lien is date of recording. — Georgia Supreme Court held that under Georgia law, as between the judgment creditor and judgment debtor, a lien on the title to real property is not created until the judgment is recorded, that the date of that lien is the date of recording, and the date of the lien does not relate back to the date the judgment was entered. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

No limitation on application of section. — Georgia Supreme Court held that based on the plain language of the text, nothing in O.C.G.A. § 9-12-81, O.C.G.A. § 9-12-82, or O.C.G.A. § 9-12-85 limited the application of O.C.G.A. § 9-12-86 to disputes between bona fide purchasers for value and the judgment creditor. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

9-12-85. Deeds, mortgages, judgments, or liens between parties not affected by money judgments.

JUDICIAL DECISIONS

No limitation on application of section. — Georgia Supreme Court held that based on the plain language of the text, nothing in O.C.G.A. § 9-12-81, O.C.G.A. § 9-12-82, or O.C.G.A. § 9-12-85 limited the application of O.C.G.A. § 9-12-86 to disputes between bona fide purchasers for value and the judgment creditor. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

Date of lien is date of recording. —

Georgia Supreme Court held that under Georgia law, as between the judgment creditor and judgment debtor, a lien on the title to real property is not created until the judgment is recorded, that the date of that lien is the date of recording, and the date of the lien does not relate back to the date the judgment was entered. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

9-12-86. Recordation in county where property located prerequisite to lien on land.

JUDICIAL DECISIONS

No limitation on application of section. — Georgia Supreme Court held that based on the plain language of the text, nothing in O.C.G.A. § 9-12-81, O.C.G.A. § 9-12-82, or O.C.G.A. § 9-12-85 limited the application of O.C.G.A. § 9-12-86 to disputes between bona fide purchasers for value and the judgment creditor. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

Date of lien is date of recording. — Georgia Supreme Court held that under Georgia law, as between the judgment creditor and judgment debtor, a lien on the title to real property is not created until the judgment is recorded, that the date of that lien is the date of recording, and the date of the lien does not relate back to the date the judgment was entered. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

Judgment within look-back period. — Creditor's acquisition of a judgment lien on the debtors' real property occurred within the 90-day look-back period, even though the judgment entry occurred outside the look-back period, because the judicial lien was not created until the judgment was recorded within the look-back period. *Kelley v. First Cmty. Bank* (In re Brownlee), 593 B.R. 916, 2018 Bankr.

LEXIS 3800 (Bankr. M.D. Ga. 2018), *aff'd*, 624 B.R. 512, 2020 U.S. Dist. LEXIS 198213 (M.D. Ga. 2020).

Recordation prerequisite applicable only to liens on real property. — A creditor had a judicial lien against a debtor's personal property that was obtained through a consent judgment for a deficiency on a car loan, even without recording the lien or obtaining a writ of *fieri facias*, as O.C.G.A. §§ 9-12-80 and 9-12-86 did not require a recording for personal property, and the failure to record only affected the creditor's interests against third parties. *Action Motors, Inc. v. Milliner* (In re Milliner), No. JTL, 554 B.R. 525, 2016 Bankr. LEXIS 2677 (Bankr. M.D. Ga. 2016).

Under a restitution lien against the defendant's property under 18 U.S.C. § 3613, the U.S. could garnish \$433,039 in settlement funds awarded to the defendant, despite the defendant's ex-wife's contention that she was entitled to the funds under a divorce decree. A state requirement that a federal judgment be recorded with the clerk in the county in which the real property is located did not apply to the U.S.'s restitution lien on the settlement funds, which constituted personal property. *United States v. Smith*, 768 Fed. Appx. 926, 2019 U.S. App. LEXIS 10416 (11th Cir. 2019).

9-12-87. Judgments from same term considered of equal date.

JUDICIAL DECISIONS

Date of lien is date of recording. — Georgia Supreme Court held that under Georgia law, as between the judgment creditor and judgment debtor, a lien on the title to real property is not created until the judgment is recorded, that the date of that lien is the date of recording, and the date of the lien does not relate back to the date the judgment was entered. *Synovus Bank v. Kelley*, 309 Ga. 654, 847 S.E.2d 592, 2020 Ga. LEXIS 587 (2020).

9-12-93. When purchased property discharged from lien.

JUDICIAL DECISIONS

This section does not apply to a claim based on a gift. — Bank’s fraudulent transfer claim was not barred because the conveyances of the properties to the debtor’s wife were gifts, and, thus, the wife was not a purchaser under O.C.G.A. § 9-12-93. Furthermore, because the properties were subject to mortgages, the four-year period in § 9-12-93 did not begin to run while the properties were encumbered. *Tuggle v. Ameris Bank*, 363 Ga. App. 600, 872 S.E.2d 1, 2022 Ga. App. LEXIS 183 (2022).

ARTICLE 5

UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS
RECOGNITION ACT

9-12-113. Recognition and enforcement of foreign-country judgments.

(a) Except as otherwise provided in subsection (b) of this Code section, a court of this state shall recognize a foreign-country judgment meeting the requirements of Code Section 9-12-112.

(b) A court of this state shall not recognize a foreign-country judgment if:

- (1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have personal jurisdiction over the defendant;
- (3) The foreign court did not have jurisdiction over the subject matter;
- (4) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;

(5) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(6) The judgment or cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;

(7) The judgment conflicts with another final and conclusive judgment;

(8) The proceedings in the foreign court were contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in such foreign court;

(9) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(10) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to such judgment; or

(11) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(c) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this Code section exists.

History.

Ga. L. 1975, p. 479, §§ 3, 4; Ga. L. 2015, p. 996, § 2-1/SB 65; Ga. L. 2016, p. 864, § 9/HB 737.

ize, and correct the Code, deleted “or” at the end of paragraph (b)(2) and revised punctuation in paragraph (b)(3).

Amendments.

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modern-

ARTICLE 6

ENFORCEMENT OF FOREIGN JUDGMENTS

9-12-130. Short title.

Law reviews.

For annual survey on domestic relations, see 70 Mercer L. Rev. 81 (2018).

JUDICIAL DECISIONS

Domesticating a judgment. — Debtor failed to demonstrate how entry of a confessed judgment constituted a transfer subject to avoidance as a preferential transfer because no evidence was provided that the creditor domesticated the confessed judgment as to the debtor pursuant to Georgia’s Uniform Enforcement of Foreign Judgments Law, O.C.G.A. § 9-12-130 et seq., prior to the filing of the debtor’s bankruptcy case. *GMI Grp., Inc. v. Unique Funding Sols., LLC* (In re GMI Grp., Inc.), 606 B.R. 467, 2019 Bankr. LEXIS 2495 (Bankr. N.D. Ga. 2019).

Power of court to set aside judgment in same term does not extend to a domesticated foreign judgment. — Inherent power of a Georgia court to set aside a judgment within the same term of court in which the judgment was entered does not extend to a foreign judgment domesticated under O.C.G.A. § 9-12-130 et seq. *Lemcon USA Corp. v. Icon Tech. Consulting, Inc.*, 301 Ga. 888, 804 S.E.2d 347, 2017 Ga. LEXIS 707 (2017).

9-12-131. “Foreign judgment” defined.

JUDICIAL DECISIONS

Timeliness. — Trial court did not err domesticating and reviving North Carolina judgment entered in favor of successor bank because successor bank timely filed action to domesticate and revive dormant foreign judgment on October 5,

2021, which was 12 days before 10-year period in which to do so expired. *Robinson v. Citi Bank, N.A.*, 365 Ga. App. 27, 877 S.E.2d 281, 2022 Ga. App. LEXIS 371 (2022).

9-12-132. Filing of judgment; force and effect following filing.

JUDICIAL DECISIONS

Timeliness. — Trial court did not err in domesticating and reviving a North Carolina judgment entered in favor of the successor bank because the successor bank timely filed an action to domesticate and revive a dormant foreign judgment on October 5, 2021, which was 12 days before the 10-year period in which to do so expired. *Robinson v. Citi Bank, N.A.*, 365 Ga. App. 27, 877 S.E.2d 281, 2022 Ga. App. LEXIS 371 (2022).

Power of court to set aside judgment in same term does not extend to domesticated foreign judgment. — Inherent power of a Georgia court to set aside a judgment within the same term of court in which it was entered does not extend to a foreign judgment domesticated under O.C.G.A. § 9-12-130 et seq. *Lemcon USA Corp. v. Icon Tech. Consulting, Inc.*, 301 Ga. 888, 804 S.E.2d 347, 2017 Ga. LEXIS 707 (2017).

9-12-133. Filing of foreign judgment; notice to judgment debtor; Code Section 9-11-4 inapplicable to article.

- (a) At the time a foreign judgment is filed, the judgment creditor or the judgment creditor’s attorney shall make and file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor.
- (b) The clerk shall promptly mail notice of the filing of the foreign

judgment to the judgment debtor at the address given and shall note the mailing in the docket. The notice must include the name and post office address of the judgment creditor and, if the judgment creditor has an attorney in this state, the attorney's name and address. The judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk does not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(c) The provisions of Code Section 9-11-4 shall not apply to this article.

(d) The provisions of subsections (a) and (b) of this Code section shall not apply to the registration of a guardianship order or conservatorship order from another state under Article 4 of Chapter 11 of Title 29.

History.

Code 1981, § 9-12-133, enacted by Ga. L. 1986, p. 380, § 1; Ga. L. 2015, p. 996, § 5-1/SB 65; Ga. L. 2019, p. 693, § 35/HB 70.

Amendments.

The 2019 amendment, effective January 1, 2020, added subsection (d).

9-12-134. Appeal or stay of foreign judgment; security for satisfaction.

(a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted and proves that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) If the judgment debtor shows the court any ground on which enforcement of a judgment of the court of this state would be stayed, including the ground that an appeal from the foreign judgment is pending or will be taken or that the time for taking such an appeal has not yet expired, the court shall stay enforcement of the foreign judgment for an appropriate period until all available appeals are concluded or the time for taking all appeals has expired and require the same security for satisfaction of the judgment that is required in this state, subject to the provisions of subsections (b) and (f) of Code Section 5-6-46.

(c) With respect to a guardianship order or conservatorship order from another state registered and recorded under Article 4 of Chapter 11 of Title 29, nothing in subsection (a) or (b) of this Code section shall prevent an appropriate court from taking any action permitted by subsection (d) of Code Section 29-4-70, subsection (d) of Code Section 29-5-110, or Articles 1 and 2 of Chapter 11 of Title 29.

History.

Code 1981, § 9-12-134, enacted by Ga. L. 1986, p. 380, § 1; Ga. L. 2000, p. 228, § 3; Ga. L. 2004, p. 980, § 2; Ga. L. 2019, p. 693, § 36/HB 70.

Amendments.

The 2019 amendment, effective January 1, 2020, added subsection (c).

9-12-135. Clerk’s fees.

(a) A person filing a foreign judgment shall pay to the clerk of court the same sums as in civil cases in superior court as provided in Code Section 15-6-77; provided, however, that a person registering a guardianship order or conservatorship order from another state under Article 4 of Chapter 11 of Title 29 shall pay to the probate court in which such order is registered the same sums as in adult guardianship matters in probate court as provided in paragraph (1) of subsection (g) of Code Section 15-9-60.

(b) Fees for other enforcement proceedings shall be as otherwise provided by law.

History.

Code 1981, § 9-12-135, enacted by Ga. L. 1986, p. 380, § 1; Ga. L. 1988, p. 320, § 1; Ga. L. 1991, p. 1324, § 3; Ga. L. 2019, p. 693, § 37/HB 70.

Amendments.

The 2019 amendment, effective January 1, 2020, substituted the present pro-

visions of this Code section for the former provisions, which read: “A person filing a foreign judgment shall pay to the clerk of court the same sums as in civil cases in superior court as provided in Code Section 15-6-77. Fees for other enforcement proceedings shall be as otherwise provided by law.”

CHAPTER 13

EXECUTIONS AND JUDICIAL SALES

Article 7	Sec.	
Judicial Sales		official organ changed; notice to Secretary of State.
PART 1	9-13-143.	Rates for legal advertisements.
ADVERTISEMENT		PART 2
Sec. 9-13-142.		CONDUCT AND EFFECT
Requirements for official organ of publication; designation where no journal or newspaper qualifies; how of-	9-13-172.1.	“Eligible sale” defined; rescission of sale; damages.

ARTICLE 1
GENERAL PROVISIONS

9-13-13. Written notice of levy on land.

JUDICIAL DECISIONS

Statute did not apply to judicial foreclosure in equity. — In cases of levying on land, written notice of the levy must be given personally or delivered by certified mail or statutory overnight delivery to the tenant in possession and to the defendant if not in possession. O.C.G.A. § 9-13-13 does not apply to a judicial foreclosure in equity; however, due process requires that interested parties receive actual notice. *Ga. Home Appraisers, Inc. v. Trintec Portfolio Servs., LLC*, 349 Ga. App. 356, 825 S.E.2d 833, 2019 Ga. App. LEXIS 173 (2019).

Tax commissioners immune to action for damages for failure to give

notice. — Property owner’s claim for damages based on a county tax commissioner’s failure to properly send notices required by O.C.G.A. §§ 9-13-13, 48-3-3, 48-3-9(a), and 48-4-1 was barred by sovereign immunity; O.C.G.A. §§ 15-13-2 and 48-5-137 did not render the tax commissioner liable as an ex-officio sheriff because the notices did not constitute a “false return” or legal neglect to make a “proper return”. *Raw Properties, Inc. v. Lawson*, 335 Ga. App. 802, 783 S.E.2d 161, 2016 Ga. App. LEXIS 87 (2016), cert. denied, No. S16C1076, 2016 Ga. LEXIS 556 (Ga. Sept. 6, 2016).

ARTICLE 3
PROPERTY AGAINST WHICH EXECUTION LEVIED

9-13-57. Choses in action.

JUDICIAL DECISIONS

Bankruptcy debtor’s pre-petition claim. — Judgment creditor’s claim against proceeds of a sale of a bankruptcy debtor’s interest in a marital residence awarded in divorce proceedings was wholly unsecured since the debtor’s interest was a chose in action to which the

creditor’s judgment lien did not automatically attach and the creditor did not initiate a collateral proceeding to attach the lien to the chose in action. *Souther v. First Bank (In re Sapp)*, No. 11-20841, 2015 Bankr. LEXIS 1065 (Bankr. S.D. Ga. Apr. 2, 2015).

ARTICLE 7
JUDICIAL SALES

PART 1
ADVERTISEMENT

9-13-140. How judicial sales advertised; description of property; advertisement and sale of livestock.

JUDICIAL DECISIONS

Foreclosure advertisement sufficient. — Trial court erred in denying the appellants’ summary judgment motion on the appellee’s claim for wrongful foreclosure because, in the advertisement of the nonjudicial foreclosure sale, the typographical error in the property description of the advertisement that mistakenly described the district in which the property resided did not render the foreclosure sale void as the advertisement accurately re-

flected the property’s district for two of the four weeks it ran; each published advertisement contained an otherwise accurate description of the property; and the error did not have any chilling effect on the bidding process or cause an inadequate selling price. Wells Fargo Bank, N.A. v. Molina-Salas, 332 Ga. App. 641, 774 S.E.2d 712, 2015 Ga. App. LEXIS 375 (2015).

9-13-141. Timing of advertisements.

Law reviews. Due Process, and Nonjudicial Foreclosure,” see 65 Emory L.J. 107 (2015).
For comment, “Are Fannie Mae and Freddie Mac State Actors? State Action,

9-13-142. Requirements for official organ of publication; designation where no journal or newspaper qualifies; how official organ changed; notice to Secretary of State.

(a) No journal or newspaper published in this state shall be declared, made, or maintained as the official organ of any county for the publication of sheriff’s sales, citations of probate court judges, or any other advertising commonly known in terms of “official or legal advertising” and required by law to be published in such county official newspaper unless the newspaper shall meet and maintain the following qualifications:

- (1) “Newspaper” as used in this Code section means a printed product of multiple pages containing not greater than 75 percent advertising content in no more than one-half of its issues during the previous 12 months, excluding separate advertising supplements inserted into but separately identifiable from any regular issue or issues of the newspaper;
- (2) The newspaper shall be published within the county and

continuously at least weekly for a period of two years or is the direct successor of such a newspaper. Failure to publish for not more than two weeks in any calendar year shall not disqualify a newspaper otherwise qualified;

(3) For a period of two years prior to designation and thereafter, the newspaper shall have and maintain at least 75 percent paid circulation as established by an independent audit. Paid circulation shall not include newspapers that are distributed free or in connection with a service or promotion at no additional charge to the ultimate recipient. For circulation to be considered paid, the recipient of the newspaper or such recipient's employer or household must pay reasonable and adequate consideration for the newspaper. No rules of circulation of audit companies, the United States Postal Service, or accounting principles may be considered in determining paid circulation if they are inconsistent with the provisions of this subsection;

(4) Based on the published results of the 1990 United States decennial census or any future such census, the newspaper shall have and maintain at least the following paid circulation within the county for which it is designated as the legal organ newspaper:

(A) Five hundred copies per issue in counties having a population of less than 20,000;

(B) Seven hundred fifty copies per issue in counties having a population of at least 20,000 but less than 100,000; or

(C) One thousand five hundred copies per issue in counties having a population of 100,000 or greater; and

(5) For purposes of this Code section, paid circulation shall include home or mail delivery subscription sales, counter, vendor and newsrack sales, and sales to independent newspaper contract carriers for resale. Paid circulation shall not include multiple copies purchased by one entity unless the multiple copies are purchased for and distributed to the purchaser's officers, employees, or agents, or within the purchaser's household.

(b)(1) In counties where no journal or newspaper meets the qualifications set forth in subsection (a) of this Code section, the official organ may be designated by the judge of the probate court, the sheriff, and the clerk of the superior court, or by a majority of these officers governing from among newspapers otherwise qualified to be a legal organ that meet the minimum paid circulation in subsection (a) of this Code section for the county, or if there is no such newspaper, then the newspaper having the greatest general paid circulation in the county of at least 100 copies per issue.

(2) In the event that no otherwise qualified journal or newspaper has a paid circulation of at least 100 copies per issue in the county,

the judge of the probate court, the sheriff, the clerk of the superior court, or a majority of these officers may designate a newspaper that does not meet the qualifications of subsection (a) of this Code section, but does have a weekly circulation in the county of at least 100 copies per issue, as the legal interim organ for the county. Such interim designation shall terminate in the event that another newspaper meets the qualifications of subsection (a) of this Code section and is designated as the county's legal organ pursuant to this Code section.

(c) Any selection or change in the official organ of any county shall be made upon the concurrent action of the judge of the probate court, the sheriff, and the clerk of the superior court of the county or a majority of the officers. No change in the official legal organ shall be effective without the publication for four weeks of notice of the decision to make a change in the newspaper in which legal advertisements have previously been published. All changes in the official legal organ shall be made effective on January 1 unless a change has to be made where there is no other qualified newspaper.

(d) Notwithstanding the other provisions of this Code section, an official organ of any county meeting the qualifications under the statute in force at the time of its appointment and which was appointed prior to July 1, 1999, may remain the official organ of that county until a majority of the judge of the probate court, the sheriff, and the clerk of the superior court determine to appoint a new official organ for the county.

(e) During the month of December in each year, the judge of the probate court of each county shall notify the Secretary of State, on a form supplied by the Secretary of State, of the name and mailing address of the journal or newspaper currently serving as the official organ of the county. The judge of the probate court shall also likewise notify the Secretary of State of any change in the official organ of the county at the time that such change is made. The Secretary of State shall maintain at all times a current listing of the names and addresses of all county organs and shall make such list available to any person upon request.

History.

Laws 1850, Cobb's 1851 Digest, p. 580.; Code 1863, § 3577; Code 1868, § 3600; Code 1873, § 3650; Code 1882, § 3650; Civil Code 1895, § 5460; Ga. L. 1910, p. 87, § 1; Code 1910, § 6065; Code 1933, §§ 39-1103, 39-1107; Ga. L. 1953, Nov.-Dec. Sess., p. 271, § 1; Ga. L. 1989, p. 1248, § 1; Ga. L. 1992, p. 1035, § 1; Ga. L. 1997, p. 528, § 1; Ga. L. 1999, p. 6, § 2; Ga. L. 2023, p. 535, § 1/HB 254, effective

July 1, 2023; Ga. L. 2024, p. 1052, § 6(2)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, designated the existing provisions of subsection (b) as paragraph (b)(1); in paragraph (b)(1), inserted "or by", "paid", and added "of at least 100 copies per issue" at the end; and added paragraph (b)(2).

The 2024 amendment, effective July

1, 2024, part of an Act to revise, modernize, and correct the Code, in paragraph (b)(1), substituted “In counties” for “However, in counties” in the beginning and substituted “circulation in subsection (a) of this Code section” for “circulation in the

preceding subsection”; and, in paragraph (b)(2), deleted “of paragraph (1)” following “qualifications” in the first sentence.

Cross references.

Electronic posting of notice, § 36-80-29.

JUDICIAL DECISIONS

Newspaper headquartered in another state not published within the county. — County officials’ decision under O.C.G.A. § 9-13-142 to change the county’s legal organ to a newspaper that was headquartered across the state line in Tennessee was properly enjoined by the

trial court because the paper was edited, formatted, and issued in Tennessee; it was not “published within the county” as required by § 9-13-142(a). *Catoosa County v. Rome News Media, LLC*, 349 Ga. App. 123, 825 S.E.2d 507, 2019 Ga. App. LEXIS 119 (2019).

9-13-143. Rates for legal advertisements.

(a) The rates to be allowed to publishers for publishing legal advertisements shall be as follows:

(1) For each 100 words, not more than the sum of \$15.00 for each insertion for the first four insertions; and

(2) For each subsequent insertion, not more than the sum of \$14.00 per 100 words.

In all cases fractional parts of 100 words shall be charged for at the same rate as for 100 words.

(b) For the purpose of the computation in subsection (a) of this Code section, a block of numbers or a block of letters and numbers shall be counted as one word. If the block of numbers or letters or any combination thereof contains a hyphen, a semicolon, a colon, or other similar character or punctuation mark, the block shall still be counted as one word, provided there are no intervening spaces. When an intervening space does occur, this space shall mark the start of a new word.

(c) No judge of the probate court, sheriff, coroner, clerk, marshal, or other officer shall receive or collect from the parties, plaintiff or defendant, other or greater rates than set forth in this Code section.

History.

Ga. L. 1878-79, p. 81, § 1; Code 1882, § 3704a; Civil Code 1895, § 5461; Civil Code 1910, § 6066; Ga. L. 1920, p. 86, § 1; Code 1933, § 39-1105; Ga. L. 1949, p. 566, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 271, § 2; Ga. L. 1964, p. 77, § 1; Ga. L. 1965, p. 174, § 1; Ga. L. 1968, p. 126, § 1; Ga. L. 1975, p. 52, § 1; Ga. L. 1981, p. 1808, § 1;

Ga. L. 1985, p. 1042, § 1; Ga. L. 1989, p. 325, § 1; Ga. L. 1993, p. 91, § 9; Ga. L. 1995, p. 992, § 1; Ga. L. 1996, p. 6, § 9; Ga. L. 2023, p. 535, § 2/HB 254, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (a), substituted “\$15.00” for “\$10.00” in paragraph (a)(1),

substituted “\$14.00” for “\$9.00” in paragraph (a)(2), and in the undesignated paragraph following paragraph (a)(2), inserted “of 100 words” and substituted “same rate as for 100 words” for “same rates”.

PART 2

CONDUCT AND EFFECT

9-13-172. When execution sale set aside.

JUDICIAL DECISIONS

Rescission of sale due to lack of actual notice to interested parties. — In a judicial foreclosure sale held after a tax sale and redemption, the super lien holder’s failure to give actual notice of the sale to the record owner and two lienholders justified the trial court’s setting aside the sale under O.C.G.A. § 9-13-172; the disappointed buyer from that sale had no interest in the property and lacked standing to ask the court to confirm or set aside a second sale. *Ga. Home Appraisers, Inc. v. Trintec Portfolio Servs., LLC*, 349 Ga. App. 356, 825 S.E.2d 833, 2019 Ga. App. LEXIS 173 (2019).

9-13-172.1. “Eligible sale” defined; rescision of sale; damages.

(a) As used in this Code section, “eligible sale” means a judicial or nonjudicial sale that was conducted in the usual manner of a sheriff’s sale and that was rescinded by the seller within 30 days after the sale but before the deed or deed under power has been delivered to the purchaser.

(b) Upon rescission of an eligible sale, the seller shall return to the purchaser, within five days of the rescission, all bid funds paid by the purchaser.

(c) Where the eligible sale was rescinded due to an automatic stay pursuant to the filing of bankruptcy by a person with an interest in the property, the damages that may be awarded to the purchaser in any civil action shall be limited to the amount of the bid funds tendered at the sale.

(d) Where the eligible sale was rescinded due to:

- (1) The statutory requirements for the sale not being fulfilled;
- (2) The default leading to the sale being cured prior to the sale; or
- (3) The plaintiff in execution and the defendant in execution having agreed prior to the sale to cancel the sale based upon an enforceable promise by the defendant to cure the default,

the damages that may be awarded to the purchaser in any civil action shall be limited solely to the amount of the bid funds tendered at the sale plus interest on the funds at the rate of 18 percent annually,

calculated daily. Notwithstanding any other provision of law, specific performance shall not be a remedy available under this Code section.

History.

Code 1981, § 9-13-172.1, enacted by Ga. L. 2003, p. 413, § 1; Ga. L. 2021, p. 922, § 9/HB 497.

Amendments.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modern-

ize, and correct the Code, substituted “rescission” for “recision” twice in subsection (b).

JUDICIAL DECISIONS

Rescission of sale due to lack of actual notice to interested parties. — In a judicial foreclosure sale held after a tax sale and redemption, the super lien holder’s failure to give actual notice of the sale to the record owner and two lienholders justified the trial court’s setting aside the sale under O.C.G.A. § 9-13-172; the disappointed buyer from that sale had no interest in the property and lacked standing to ask the court to confirm or set aside a second sale. *Ga. Home Appraisers, Inc. v. Trintec Portfolio Servs., LLC*, 349 Ga. App. 356, 825 S.E.2d 833, 2019 Ga. App. LEXIS 173 (2019).

No documentary proof of rescission required. — In an action for specific performance, the grant of the seller’s motion to dismiss was upheld because O.C.G.A. § 9-13-172.1 did not require the seller of the two properties purchased at a foreclosure sale to provide the buyer with reasonable documentary proof evidencing that a qualifying event under subsection (d) of the statute occurred to rescind the buyer’s purchase. *Najarian Capital, LLC v. Fannie Mae Two Cases*, 354 Ga. App. 159, 840 S.E.2d 500, 2020 Ga. App. LEXIS 133 (2020), cert. denied, No. S20C1479, 2021 Ga. LEXIS 99 (Ga. Mar. 1, 2021).

CHAPTER 14

HABEAS CORPUS

Article 2		Sec.	
Procedure for Persons under Sentence of State Court of Record			Recordings or transcriptions of proceedings.
		9-14-53.	Reimbursement to counties for habeas corpus costs.
Sec.			
9-14-50.	(Effective January 1, 2026.)		

Law reviews.

For note, “Protecting Access to the Great Writ: Equitable Tolling, Attorney Negligence, and AEDPA,” see 51 Ga. L. Rev. 647 (2017).

For note, “(I Can’t Get No) Habeas Relief, Cause I Try, and I Try, and I Try, and I Try,” see 70 Mercer L. Rev. 1135 (2019).

ARTICLE 1
GENERAL PROVISIONS

9-14-1. Who may seek writ.

JUDICIAL DECISIONS

Habeas corpus not proper when another adequate remedy exists. — In a case in which the petitioner received a speeding ticket and pleaded not guilty, the habeas court did not err in dismissing the petitioner’s pretrial petition for habeas corpus challenging the pretrial restrictions on the petitioner’s driving privileges because pretrial habeas relief was not available as the proceedings under which the petitioner’s liberty was restrained were still pending and the petitioner could have sought relief under ordinary established procedures, including asking the state court to remove any conditions on the petitioner’s bond other than the petitioner’s appearance in court, and, if the

state court declined to do so, the petitioner could have sought an interlocutory appeal. *Gay v. Jackson*, 315 Ga. 464, 883 S.E.2d 349, 2023 Ga. LEXIS 10 (2023).
Claim not moot because defendant demonstrated adverse consequence. — Habeas court erred in dismissing the appellant’s case alleging ineffective assistance of counsel at trial and on appeal as moot because the appellant demonstrated an adverse consequence, a restrain on the appellant’s liberty, when the appellant argued that the appellant suffered the potential to receive an enhanced recidivist sentence under Georgia’s DUI laws. *Hostetler v. State*, 319 Ga. 179, 903 S.E.2d 117, 2024 Ga. LEXIS 141 (2024).

9-14-2. Habeas corpus on account of detention of spouse or child.

JUDICIAL DECISIONS

ANALYSIS

SPECIFIC APPLICATION

Specific Application

Prior habeas court order did not bar legitimization adjudication. — Trial court’s orders granting legitimization to the father and awarding the father primary custody were upheld because the prior habeas court order returning custody to the mother did not bar the trial court from determining custody in the legitimization proceeding, and the trial court was not required to apply the material change in circumstances test to modify custody since

there was no previous best interest custody adjudication. *Davis v. Taylor*, 2024 Ga. App. LEXIS 56.
In a legitimization case, the habeas court decided only the narrow issue of whether the mother had lost prima facie right to custody, not the broader issue of the child’s best interest, and that order did not bar the trial court from adjudicating custody in the legitimization proceeding. *Davis v. Taylor*, 370 Ga. App. 837, 898 S.E.2d 574, 2024 Ga. App. LEXIS 94 (2024).

ARTICLE 2

PROCEDURE FOR PERSONS UNDER SENTENCE OF STATE
COURT OF RECORD**9-14-40. Legislative intent.**

JUDICIAL DECISIONS

Constitutional claims required to be brought by habeas corpus. — Defendant's post-appeal challenge to a criminal conviction brought 15 years after the defendant's conviction based on alleged improper communications with the jury that occurred during the trial but that were not brought to the defendant's attention until years later could not be pursued through an extraordinary motion for new trial because such claims involved a deprivation of the defendant's constitutional rights and were required to be pursued exclusively through a petition for a writ of habeas corpus. *Mitchum v. State*, 306 Ga.

878, 834 S.E.2d 65, 2019 Ga. LEXIS 641 (2019).

Out-of-time appeal procedure. — Georgia Supreme Court held that there was no legal authority for motions for out-of-time appeal in trial courts and that the out-of-time appeal procedure allowed in various case law precedents, and followed in other cases, was not a legally cognizable vehicle for a convicted defendant to seek relief from alleged constitutional violations. *Cook v. State*, 313 Ga. 471, 870 S.E.2d 758, 2022 Ga. LEXIS 65 (2022).

9-14-41. Article as exclusive procedure.

JUDICIAL DECISIONS

Out-of-time appeal procedure. — Georgia Supreme Court held that there was no legal authority for motions for out-of-time appeal in trial courts and that the out-of-time appeal procedure allowed in various case law precedents, and followed in other cases, was not a legally cognizable vehicle for a convicted defendant to seek relief from alleged constitutional violations. *Cook v. State*, 313 Ga. 471, 870 S.E.2d 758, 2022 Ga. LEXIS 65 (2022).

Constitutional claims required to be brought by habeas corpus rather than extraordinary motion for new

trial. — Defendant's post-appeal challenge to a criminal conviction brought 15 years after the defendant's conviction based on alleged improper communications with the jury that occurred during the trial but that were not brought to the defendant's attention until years later could not be pursued through an extraordinary motion for new trial because such claims involved a deprivation of the defendant's constitutional rights and were required to be pursued exclusively through a petition for a writ of habeas corpus. *Mitchum v. State*, 306 Ga. 878, 834 S.E.2d 65, 2019 Ga. LEXIS 641 (2019).

9-14-42. Grounds for writ; waiver of objection to jury composition.

JUDICIAL DECISIONS

ANALYSIS

IN GENERAL

In General

Violation of court rules not cognizable. — Habeas court erred in reversing the petitioner's guilty pleas on the grounds of judicial interference or coercion; claims of violation of Ga. Unif. Super. Ct. R. 33.5 were not cognizable. The trial court's exchange with the petitioner stating that the court "didn't want to play games" did not threaten the petitioner with a particular sentence and did not reveal the judge's preference about whether the petitioner pled guilty. *Kennedy v. Hines*, 305 Ga. 7, 823 S.E.2d 306, 2019 Ga. LEXIS 5 (2019).

Habeas corpus and appeal distinct. — Habeas court erred in finding that the applicant waived the applicant's right to petition for a writ of habeas corpus in a colloquy that took place during an agreement to reduce the applicant's sentence from 25 to 15 years; although the applicant waived the applicant's right to appeal, the trial court had conflated the concepts of appeal and habeas corpus, and they were distinct rights. *Rawles v. Holt*, 304 Ga. 774, 822 S.E.2d 259, 2018 Ga. LEXIS 789 (2018).

Time for filing. — Habeas court correctly dismissed a petition based on the new rule of law announced in *Garza v. State*, 284 Ga. 696 (2008) (regarding asportation in kidnapping cases) for failure to file within the time allowed by O.C.G.A. § 9-14-42(c)(3); the time ran from the *Garza* decision, not the date *Garza* was made retroactively applicable to cases on collateral review. *Abrams v. Laughlin*, 304 Ga. 34, 816 S.E.2d 26, 2018 Ga. LEXIS 464 (2018).

Habeas petitioner's convictions became final when the petitioner's time for seeking a petition for certiorari in the Supreme Court of Georgia expired without the petitioner's filing one, not when the

petitioner failed to file a notice of intent to apply for certiorari; however, the petitioner's petition was still untimely under O.C.G.A. § 9-14-42(c)(1). There was no remedy for the trial court's failure to comply with the notice required by § 9-14-42(d), and the court declined to adopt the doctrine of equitable tolling. *Stubbs v. Hall*, 308 Ga. 354, 840 S.E.2d 407, 2020 Ga. LEXIS 181 (2020).

Constitutional claims required to be brought by habeas corpus rather than extraordinary motion for new trial. — Defendant's post-appeal challenge to a criminal conviction brought 15 years after his conviction based on alleged improper communications with the jury that occurred during the trial but that were not brought to the defendant's attention until years later could not be pursued through an extraordinary motion for new trial because such claims involved a deprivation of defendant's constitutional rights and were required to be pursued exclusively through a petition for a writ of habeas corpus. *Mitchum v. State*, 306 Ga. 878, 834 S.E.2d 65, 2019 Ga. LEXIS 641 (2019).

Habeas corpus is available to review constitutional deprivations only. — Habeas applicant's claim that the sentencing court in the applicant's statutory rape trial improperly failed to consider the Youthful Offender Act, O.C.G.A. § 42-7-1 et seq., when the court sentenced the applicant was not of constitutional dimensions and so was not cognizable in a habeas action. O.C.G.A. § 9-14-42(a) required that there be a substantial denial of the applicant's constitutional rights, and O.C.G.A. § 42-7-9(a) provided that nothing in the Act affected the power of any court to proceed under other laws. *Conley v. Pate*, 305 Ga. 333, 825 S.E.2d 135, 2019 Ga. LEXIS 140 (2019).

Out-of-time appeal procedure. — Georgia Supreme Court held that there

was no legal authority for motions for out-of-time appeal in trial courts and that the out-of-time appeal procedure allowed in various case law precedents, and followed in other cases, was not a legally cognizable vehicle for a convicted defendant to seek relief from alleged constitutional violations. *Cook v. State*, 313 Ga. 471, 870 S.E.2d 758, 2022 Ga. LEXIS 65 (2022).

Conviction of crime not charged in the indictment. — Although a habeas applicant was convicted of uncharged statutory rape based on an instruction that statutory rape was a lesser included offense of forcible rape, and it was later decided that statutory rape was never an offense included in forcible rape, the applicant failed to show a violation of due process because the elements of statutory rape were stated in the indictment as a whole, which also charged the applicant with child molestation and aggravated child molestation. *Hill v. Williams*, 296 Ga. 753, 770 S.E.2d 800, 2015 Ga. LEXIS 189 (2015).

Prosecutorial misconduct. — Ha-

beas court erred in granting relief to a rape defendant based on the court's erroneous finding that the prosecutor allowed the victim to testify despite knowing that the victim was lying because the prosecutor later testified that the prosecutor did not know that the victim testified falsely, but only held that opinion; also, this finding was barred by collateral estoppel based on evidence offered at a hearing on the defendant's motion for new trial. The violation of ethical rules did not constitute a due process deprivation. *Washington v. Hopson*, 299 Ga. 358, 788 S.E.2d 362, 2016 Ga. LEXIS 466 (2016).

Juror's crime scene visit. — Habeas petitioner alleged facts showing grounds for relief which could not reasonably have been raised in the petitioner's original habeas petition and which could not have been discovered by diligence including a juror's misconduct in visiting the scene and the state's failure to disclose ballistic evidence, satisfying O.C.G.A. §§ 9-14-42(c)(4) and 9-14-51. *Watkins v. Ballinger*, 308 Ga. 387, 840 S.E.2d 378, 2020 Ga. LEXIS 177 (2020).

9-14-43. Jurisdiction and venue.

JUDICIAL DECISIONS

Extraordinary motions for new trial rest largely within court's discretion. — Sentencing order on a criminal attempt count was vacated because the trial court was without authority to enter a February 2018 sentence since the Georgia Supreme Court had already determined that the appellant was not con-

victed of felony murder or criminal attempt, which was the law of the case, and prevented the trial court from revisiting the issue and the court inappropriately granted a new trial. *Hollmon v. State*, 305 Ga. 90, 823 S.E.2d 771, 2019 Ga. LEXIS 56 (2019).

9-14-44. Petition — Contents and verification.

JUDICIAL DECISIONS

Failure to assert ineffective assistance. — Because the record showed that the defendant did not, either in the habeas petition or at the habeas hearing, assert a claim of ineffective assistance of counsel based on inconsistent representation, and the warden was given no notice of and had no meaningful opportunity to investigate or respond to the ground on

which the habeas court's grant of relief was based, the habeas court erred by granting relief to the defendant on an unasserted ground, despite the general authority of a habeas court to consider matters sua sponte. *Shepard v. Williams*, 299 Ga. 437, 788 S.E.2d 428, 2016 Ga. LEXIS 463 (2016).

9-14-48. Hearing; evidence; depositions; affidavits; determination of compliance with procedural rules; disposition.

JUDICIAL DECISIONS

Habeas relief properly granted. — Habeas court properly granted relief to petitioner because there was record evidence supporting the habeas court’s determination that at the time petitioner entered the guilty pleas, petitioner’s mental condition prevented petitioner’s understanding of the consequences of the pleas. *Smith v. Magnuson*, 297 Ga. 210, 773 S.E.2d 205, 2015 Ga. LEXIS 353 (2015).

Time for filing petition not affected by subsection (e). — O.C.G.A. § 9-14-48(e) does not purport to permit the filing of a petition for habeas corpus filed outside the limitations period and instead provides that a petition may be dismissed upon a respondent’s particularized showing of prejudicial delay, meaning petitioners who would otherwise be eligible to file a petition

under O.C.G.A. § 9-14-42(c)(1) could have their petitions dismissed. *Stubbs v. Hall*, 308 Ga. 354, 840 S.E.2d 407, 2020 Ga. LEXIS 181 (2020).

Procedural bars not found. — In a habeas applicant’s direct appeal from the applicant’s murder conviction, a due process challenge to the jury instruction on venue under O.C.G.A. § 17-2-2(c) was neither raised nor ruled upon; because only the sufficiency of the evidence with respect to venue was addressed, the due process challenge to the jury instructions was not procedurally defaulted under O.C.G.A. § 9-14-48(d). However, relief was properly denied. *Shelton v. Lee*, 299 Ga. 350, 788 S.E.2d 369, 2016 Ga. LEXIS 452 (2016), cert. denied, 580 U.S. 1121, 137 S. Ct. 1066, 197 L. Ed. 2d 187, 2017 U.S. LEXIS 1286 (2017).

9-14-49. Findings of fact and conclusions of law.

JUDICIAL DECISIONS

Improper analysis of ineffective assistance of counsel claim. — Habeas court failed to properly analyze the prejudice prong of the defendant’s claim of ineffective assistance of counsel with regard to the guilty plea entered; thus, the order lacked a factually supported legal

conclusion essential to the court’s ruling on ineffective assistance of counsel claim and essential to the appellate court’s appellate review of that ruling. *Dozier v. Watson*, 305 Ga. 629, 827 S.E.2d 276, 2019 Ga. LEXIS 231 (2019).

9-14-50. (Effective January 1, 2026.) Recordings or transcriptions of proceedings.

All trials held under this article shall be recorded via a digital recording system, as defined in Code Section 15-14-22, and as provided for by uniform court rules adopted and published by order of the Supreme Court with the advice and consent of the council of the affected class or classes of trial courts and transcribed by a court reporter, or taken down and transcribed by a court reporter, as designated by the superior court hearing the case.

History.

Code 1933, § 50-127, enacted by Ga. L.

1967, p. 835, § 3; Ga. L. 2025, p. 151, § 1-2/HB 179, effective January 1, 2026.

Amendments.

The 2025 amendment, effective January 1, 2026, rewrote this Code section.

9-14-51. Effect of failure to raise grounds for relief in original or amended petition.

JUDICIAL DECISIONS

Petitioner could not have raised issues in original habeas petition. — Habeas petitioner alleged facts showing grounds for relief which could not reasonably have been raised in the petitioner's original habeas petition and which could not have been discovered by diligence, including a juror's misconduct in visiting the scene and the state's failure to disclose ballistic evidence, satisfying O.C.G.A. §§ 9-14-42(c)(4) and 9-14-51. *Watkins v. Ballinger*, 308 Ga. 387, 840 S.E.2d 378, 2020 Ga. LEXIS 177 (2020).

Relief improperly granted on unasserted ground of ineffective assistance. — Because the record showed that

the defendant did not, either in the habeas petition or at the habeas hearing, assert a claim of ineffective assistance of counsel based on inconsistent representation, and the warden was given no notice of and had no meaningful opportunity to investigate or respond to the ground on which the habeas court's grant of relief was based, the habeas court erred by granting relief to the defendant on an unasserted ground, despite the general authority of a habeas court to consider matters sua sponte. *Shepard v. Williams*, 299 Ga. 437, 788 S.E.2d 428, 2016 Ga. LEXIS 463 (2016).

9-14-52. Appeal procedure; application to Supreme Court by petitioner for certificate of probable cause; effect of appeal by respondent.

JUDICIAL DECISIONS

Time limits. — When the Georgia Supreme Court denies a state habeas petitioner's application for a certificate of probable cause, the petitioner's proceedings remain "pending" for purposes of 28 U.S.C. § 2244 until the state court issues a remittitur for the denial. *Dolphy v. Warden, Cent. State Prison*, 823 F.3d 1342, 2016 U.S. App. LEXIS 9464 (11th Cir. 2016).

Habeas petitioner may cross appeal without a certificate of probable cause. — When a habeas petitioner is denied relief and wishes to appeal, he or she generally must first seek authorization to appeal by filing an application for a certificate of probable cause to appeal. However, the Supreme Court of Georgia previously has permitted habeas petitioners to pursue cross-appeals under O.C.G.A. § 5-6-38(b) regarding the partial denial of their habeas petitions without

first obtaining such a certificate of probable cause since the warden is already appealing in the case. *Ford v. Tate*, 307 Ga. 383, 835 S.E.2d 198, 2019 Ga. LEXIS 725 (2019), cert. denied, 141 S. Ct. 139, 207 L. Ed. 2d 1082, 2020 U.S. LEXIS 3336 (2020).

Motion to set aside judgment evaluated in context of all circumstances. — Petitioner's case was remanded to the habeas court for it to consider the motion to set aside in a manner that takes into account the affidavit of habeas counsel in the context of all the circumstances of the case because the habeas court did not make a finding as to whether habeas counsel received notice of the final habeas hearing based on a consideration of the affidavit of habeas counsel; thus, the habeas court's analysis was incomplete. *Case v. State*, 300 Ga. 208, 794 S.E.2d 93, 2016 Ga. LEXIS 766 (2016).

RESEARCH REFERENCES

ALR. of State Prison Litigation Reform Acts, 85
Validity, construction, and application A.L.R.6th 229.

9-14-53. Reimbursement to counties for habeas corpus costs.

Each county of this state shall be reimbursed from state funds for court costs both at the trial level and in any appellate court for each writ of habeas corpus sought in the superior court of the county by indigent petitioners when the granting of the writ is denied or when the court costs are cast upon the respondent, but such reimbursement shall not exceed \$30,000.00 per annum total for each county. By not later than September 1 of each calendar year, the clerk of the superior court of each county shall send a certified list to The Council of Superior Court Judges of Georgia of each writ of habeas corpus sought in the superior court of the county during the 12 month period immediately preceding July 1 of that calendar year by indigent petitioners for which the granting of the writ was denied or for which the court costs were cast upon the respondent; and such list shall include the court costs both at the trial level and in any appellate court for each such writ of habeas corpus. By not later than December 15 of each calendar year, the council shall pay to the county from funds appropriated or otherwise made available for the operation of the superior courts the reimbursement as set forth in the certified list, subject to the maximum reimbursement provided for in this Code section. The list sent to the council as provided in this Code section shall be certified as correct by the governing authority of the county and by the judge of the superior court of the county. The council is authorized to devise and make available to the counties such forms as may be reasonably necessary to carry out this Code section and to establish such procedures as may be reasonably necessary for such purposes. This Code section shall not be construed to amend or repeal the provisions of Code Section 15-6-28 or any other provision of law for funds for any judicial circuit.

History.

Code 1933, § 50-128, enacted by Ga. L. 1978, p. 2051, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 9; Ga. L. 1999, p. 660, § 1; Ga. L. 2011, p. 477, § 1/SB 193; Ga. L. 2017, p. 553, § 1/HB 319.

Amendments.

The 2017 amendment, effective July 1, 2017, substituted “\$30,000.00” for “\$10,000.00” near the end of the first sentence.

CHAPTER 15

COURT AND LITIGATION COSTS

Sec.		attorney fees, court costs, or expenses of litigation; utilization of contingent fee agreements.
9-15-4.	Deposit prior to filing by clerk; exception if affidavit of indigence filed; repayment of excess; exemptions.	
9-15-16.	Limitations on recovery of	

Law reviews.

For article, “Legal Analytics, Social Science and Legal Fees: Remaining ‘Legal

Spend’ Decisions in an Evolving Industry,” see 35 Ga. St. U.L. Rev. 1269 (2019).

RESEARCH REFERENCES

ALR.

Recovery of fees and costs for jury con-

sultation, focus group, or mock trial, 78 A.L.R.7th 4.

9-15-1. Which party liable for costs.

JUDICIAL DECISIONS

Judge to determine upon whom costs fall in equity. — Record indicated that the majority of attorney fees were related to claims connected with the mother’s estate and the superior court, therefore, did not abuse the court’s discre-

tion in finding that the mother’s estate was entitled to reimbursement from the siblings’ estate in the amount of \$3,000 for their individual claims. *Braswell v. Benton*, 351 Ga. App. 372, 830 S.E.2d 758, 2019 Ga. App. LEXIS 366 (2019).

9-15-2. Affidavit of indigence; procedure when filing party not represented by counsel.

JUDICIAL DECISIONS

Previously dismissed federal lawsuits not counted under three strikes provision. — Trial court erred in ruling that an inmate’s previously dismissed federal lawsuits counted as strikes under the three strikes provision of Georgia’s Georgia Prison Litigation Reform Act, O.C.G.A. § 42-12-7.2, because lawsuits in federal district court did not qualify as strikes under the statute since the statute unambiguously included only courts created by the constitution and laws of Georgia. *Wright v. Brown*, 336 Ga. App. 1, 783 S.E.2d 405, 2016 Ga. App. LEXIS 112 (2016).

No further affidavit of indigence when affidavit filed in prior action. — Trial court erred by denying the defendant’s indigent status because, although the trial court may have attempted to inquire into the validity of the affidavit, the court failed to hold the hearing required by O.C.G.A. § 9-15-2, and without a traverse or a hearing, the defendant’s affidavit stood un rebutted in the record and the defendant should have been relieved from paying costs without any adverse impact on the defendant’s right to pursue a legal remedy. *Williams v. DeKalb*

County, 355 Ga. App. 106, 842 S.E.2d 570, 2020 Ga. App. LEXIS 263 (2020).

Review of denial of pro se pleading.

— In an appeal from the trial court's denial of permission to a pro se litigant to file the litigant's pleading pursuant to O.C.G.A. § 9-15-2(d) and denial of the litigant's right to proceed as a pauper under § 9-15-2(a)(1), a copy of the complaint, motion to proceed as a pauper, and affidavit of indigence were not part of the record, requiring remand for supplementation. *Moore v. City of Statesboro*, 340 Ga. App. 45, 796 S.E.2d 10, 2017 Ga. App. LEXIS 2 (2017).

Consideration of inmate's pro se pleadings. — Trial court erred in denying the filing of the pro se appellant's civil action under O.C.G.A. § 9-15-2(d) because the complaint stated justiciable claims against the appellee based on their alleged failure to provide the appellant with adequate, nutritional, and safely prepared food, as required by state law and the Department of Corrections policies, and was adequate to assert a claim for violations of the appellant's civil rights under 42 U.S.C. § 1983. *Robbins v. Anderson*, 346 Ga. App. 125, 816 S.E.2d 60, 2018 Ga. App. LEXIS 335 (2018).

Failure to conduct a hearing on prisoner's pauper's affidavit. — Trial court erred by failing to conduct a hearing on a prisoner's claim of indigence as the plain language of O.C.G.A. § 9-15-2(b) required a hearing before the court could order costs to be paid and there was nothing in the statute that allowed the court, on the court's own, to inquire into the truth of a pauper's affidavit to order the payment of court costs without a hearing. *Lee v. Batchelor*, 345 Ga. App. 559, 814 S.E.2d 416, 2018 Ga. App. LEXIS 233 (2018).

Dismissal of application to proceed in forma pauperis as untimely was not authorized. — In a dispossessory proceeding, the trial court erred in denying the tenant's application to proceed in forma pauperis as untimely as the trial court erred in considering the tenant's

application under O.C.G.A. § 9-15-2 because, assuming arguendo that the statute applied to notices of appeal filed in the superior court, the language of the statute did not authorize a dismissal for failure to file a timely application to proceed in forma pauperis; and the trial court made no determination that it could not be reasonably believed that the trial court could not grant any relief against any party named in the pleading. *Freeman v. The Park at Hairston Apartments*, 341 Ga. App. 321, 800 S.E.2d 21, 2017 Ga. App. LEXIS 191 (2017).

Denial of indigency appropriate. — Under O.C.G.A. § 9-15-2(b), a trial court has the authority to inquire into the truth of the affidavit of indigency even in the absence of a challenge from the opposing party. *Anderson v. All Am. Quality Foods*, 333 Ga. App. 533, 773 S.E.2d 389, 2015 Ga. App. LEXIS 497 (2015).

Trial court did not err by denying the plaintiff indigent status and refusing to relieve the plaintiff of paying the costs of a first appeal because under O.C.G.A. § 9-15-2(b), the trial court had the authority to inquire into the truth of the affidavit of indigency even in the absence of a challenge from the opposing party and the plaintiff did not attend the hearing and did not challenge the trial court's finding that the plaintiff's absence was without legal reason or excuse. *Anderson v. All Am. Quality Foods*, 333 Ga. App. 533, 773 S.E.2d 389, 2015 Ga. App. LEXIS 497 (2015).

Nine month delay in ruling on motion for mandamus. — Trial court's order denying the filing of a mandamus petition was error because a justiciable issue was patent from the face of the petition, namely, whether the judge failed to comply with the duty to timely rule on the pending motion since the record established that the petitioner had been waiting to rule on the motion for nine months, which was considerably outside the maximum period during which the judge was required to decide the pending motion. *Bellamy v. Rumer*, 305 Ga. 638, 827 S.E.2d 269, 2019 Ga. LEXIS 232 (2019).

9-15-4. Deposit prior to filing by clerk; exception if affidavit of indigence filed; repayment of excess; exemptions.

(a) A clerk of the superior court shall not be required to file any civil case or proceeding until the fee required by Code Section 15-6-77, relating to fees of clerks of the superior courts, has been paid to the clerk. The fee shall not be required if the party desiring to file the case or proceeding is unable because of indigence to pay the fee and the party files with the clerk an affidavit to such effect.

(b) The deposit required to be filed by this Code section shall not affect any other law which requires a deposit in excess of or in addition to the deposit of cost required by this Code section.

(c) Nothing contained in this Code section shall be deemed to require a deposit of cost by the state, its agencies, or its political subdivisions; and, without limiting the generality of the foregoing, no clerk of any court shall be authorized to require any deposit of costs in any action or proceeding for the collection of criminal penalties as authorized under Code Section 42-8-34.2.

History.

Ga. L. 1890-91, p. 100, § 1; Civil Code 1895, § 5398; Civil Code 1910, § 5986; Code 1933, § 24-3406; Ga. L. 1945, p. 207, § 1; Ga. L. 1957, p. 405, § 2; Ga. L. 1958, p. 398, § 1; Ga. L. 1970, p. 497, § 4; Ga. L. 1971, p. 214, § 2; Ga. L. 1972, p. 664, § 5; Ga. L. 1981, p. 1396, § 2; Ga. L. 1986, p. 1002, § 4; Ga. L. 1991, p. 1051, § 2; Ga. L. 2019, p. 683, § 1/HB 288.

Amendments.

The 2019 amendment, effective January 1, 2020, in subsection (a), deleted “and

Code Section 15-6-77.2” following “15-6-77” in the first sentence and deleted “his” following “because of” in the middle of the second sentence.

Law reviews.

For article, “2019 Legislative Review,” see 24 Ga. St. B.J. 28 (June 2019).

For annual survey on real property, see 71 Mercer L. Rev. 241 (2019).

9-15-11. Inclusion of costs in judgment; itemization and endorsement on execution.

JUDICIAL DECISIONS

Jurisdiction to assess costs. —

O.C.G.A. § 9-15-11 clearly provides a trial court with jurisdiction to assess the costs of a case against a plaintiff upon her

voluntary dismissal of the case. *Bromaghim v. Ligon*, 372 Ga. App. 543, 905 S.E.2d 196, 2024 Ga. App. LEXIS 324 (2024).

9-15-14. Litigation costs and attorney’s fees assessed for frivolous actions and defenses.

Law reviews.

For annual survey on trial practice and

procedure, see 67 Mercer L. Rev. 257 (2015).

For annual survey on domestic relations, see 69 Mercer L. Rev. 83 (2017).
For annual survey on legal ethics, see 69 Mercer L. Rev. 157 (2017).
For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).
For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).
For article, “A Constitutional Counterpunch to Georgia’s Anti-SLAPP Statute,” see 69 Mercer L. Rev. 407 (2019).

For annual survey on domestic relations, see 71 Mercer L. Rev. 83 (2019).
For article with annual survey on domestic relations, see 73 Mercer L. Rev. 89 (2021).
For article, “The City Suit,” see 72 Emory L.J. 1351 (2023).
For article, “Doubling Down: Supreme Court of Georgia Allows for Seemingly Double Recovery of Attorney’s Fees,” see 74 Mercer L. Rev. 1615 (2023).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
PROCEDURE
APPLICATION
APPEALS

General Consideration

Implicit in the language of O.C.G.A. § 9-15-14 is that a court of record of Georgia may impose reasonable and necessary attorney fees and expenses of litigation for proceedings before that court, which were brought for purposes of harassment or delay or lacked substantial justification. *McNair v. McNair*, 343 Ga. App. 41, 805 S.E.2d 655, 2017 Ga. App. LEXIS 438 (2017).

Party’s conduct can justify award. — Party’s conduct in litigation is a valid basis for awarding attorney fees and O.C.G.A. § 9-15-14 can provide authority for awarding attorney fees in a contempt action when warranted by a party’s conduct. *Shooter Alley, Inc. v. City of Doraville*, 341 Ga. App. 626, 800 S.E.2d 588, 2017 Ga. App. LEXIS 192 (2017).

Determination of whether fees are frivolous litigation sanction or support award. — Attorneys’ fees award to the creditor (the debtor’s former spouse) that was related to the debtor’s unsuccessful efforts to obtain modifications to the divorce decree was not a domestic support obligation (DSO) as defined in the Bankruptcy Code and, thus, was not a priority claim because there was no express determination by the Georgia state court that the fees were awarded as support based upon the relative financial circumstances of the parties rather than as a sanction for

frivolous litigation. *Mosely v. Mosely* (In re Mosely), 577 B.R. 419, 2017 Bankr. LEXIS 3763 (Bankr. N.D. Ga. 2017).
Amount of award. — In cases involving O.C.G.A. § 9-15-14(a) or (b), the trial court must limit the fees award to those fees incurred because of the sanctionable conduct; lump sum or unapportioned attorney fees awards are not permitted in Georgia. *Shooter Alley, Inc. v. City of Doraville*, 341 Ga. App. 626, 800 S.E.2d 588, 2017 Ga. App. LEXIS 192 (2017).
Award of attorney’s fees improper. — Award of attorney fees under O.C.G.A. § 9-15-14(b) to the ex-husband was vacated because the ex-wife announced the intention to move prior to the instigation of the ex-husband’s petition, therefore, the trial court abused the court’s discretion by granting the ex-husband’s motion for fees under § 9-15-14(b) for that conduct. *Regan v. Edwards*, 334 Ga. App. 65, 778 S.E.2d 233, 2015 Ga. App. LEXIS 573 (2015).

Procedure

Timing of request for attorney fees. — Ex-wife’s motion for attorney fees was timely filed because the ex-husband continued to file motions after the September 12 order was entered; on January 16, 2015, the trial court entered an order granting, in part, the husband’s motion to set aside, which resolved all pending is-

sues and thus was the final disposition; and the wife's motion filed in November 2014, prior to the trial court's final order on January 16, 2015, was timely as O.C.G.A. § 9-15-14 permitted attorney fees when the motion was filed at any time during the course of the action but not later than 45 days after the final disposition. *Kim v. Han*, 339 Ga. App. 886, 795 S.E.2d 191, 2016 Ga. App. LEXIS 690 (2016).

Necessary evidence demonstrating fee. — Awarding to the ex-wife a lump sum attorney fee of \$30,000 under O.C.G.A. § 9-15-14 was vacated as the trial court's unapportioned award was improper since the court failed to detail the amounts allegedly excluded and the billing records submitted by the ex-wife's counsel after remand did not delineate or apportion the fees to exclude the amounts related to the litigation of the claims that were reversed in a prior appeal. *Sponsler v. Sponsler*, 353 Ga. App. 627, 838 S.E.2d 921, 2020 Ga. App. LEXIS 56 (2020), cert. denied, No. S20C0952, 2020 Ga. LEXIS 722 (Ga. Sept. 8, 2020).

In a garnishment proceeding, the award of attorney fees to plaintiff was vacated and the case remanded for further proceedings because the trial court's order awarding fees failed to make express findings of fact and conclusions of law in support of the award. *SMS Financial Recovery Services, LLC v. Silverstone*, 374 Ga. App. 502, 913 S.E.2d 376, 2025 Ga. App. LEXIS 80 (2025).

Findings by court must support award. — Trial court order awarding attorney fees to a firefighter terminated from employment was vacated because the trial court's order failed to show the complex decision making process necessarily involved in reaching a particular dollar figure and failed to articulate why the amount awarded was \$111,590 as opposed to any other amount. *City of Albany v. Pait*, 335 Ga. App. 215, 780 S.E.2d 103, 2015 Ga. App. LEXIS 691 (2015), cert. denied, No. S16C0634, 2016 Ga. LEXIS 320 (Ga. Apr. 26, 2016).

In a post-divorce proceeding, the trial court erred to the extent that the court awarded attorney fees to the ex-wife under O.C.G.A. § 9-4-9 and to the extent

that the court's award was procedurally improper under O.C.G.A. § 9-15-14(a) in that the court did not make express findings specifying the abusive conduct for which the award was made. *Belcher v. Belcher*, 298 Ga. 333, 782 S.E.2d 2, 2016 Ga. LEXIS 71 (2016).

Trial court erred in awarding attorney fees under O.C.G.A. § 9-15-14(b) without including any factual findings to underlay the court's conclusion that the ex-husband caused unreasonable delay. *Moore v. Hullander*, 345 Ga. App. 568, 814 S.E.2d 423, 2018 Ga. App. LEXIS 234 (2018).

In a contempt case arising out of violations of a non-competition order, the trial court's award of attorney fees against the former employee failed to specify the conduct upon which the award was made under O.C.G.A. § 9-15-14(a) or (b), requiring remand; additionally, the trial court awarded the full amount of attorney fees requested, although the employee had prevailed on only two of the claims of contempt. *Bailey v. Maner Builders Supply Co., LLC*, 348 Ga. App. 882, 825 S.E.2d 377, 2019 Ga. App. LEXIS 98 (2019).

Although the trial court correctly noted that the court was awarding attorney fees under O.C.G.A. § 9-15-14(a), the award was vacated because the court failed to articulate any findings of fact or conclusions of law in support of such an award. *Garrett v. Dep't of Human Servs.*, 355 Ga. App. 714, 845 S.E.2d 742, 2020 Ga. App. LEXIS 376 (2020), cert. denied, No. S20C1470, 2021 Ga. LEXIS 101 (Ga. Feb. 15, 2021).

Trial court erred in awarding attorney fees under O.C.G.A. § 9-15-14 without specifying any sanctionable conduct or determining the reasonableness of such fees as a mere five-line ruling failed to make express findings of fact or conclusions of law as to the basis for such award. *Lynch v. Lynch*, 351 Ga. App. 160, 828 S.E.2d 460, 2019 Ga. App. LEXIS 317 (2019), cert. denied, No. S20C0034, 2020 Ga. LEXIS 191 (Ga. Mar. 13, 2020).

Trial court erred by awarding attorney fees under this section because the order failed to specify the subsection under which it was made and it did not contain the findings necessary to support such an

Procedure (Cont'd)

award. *J. Walker & Assocs. v. Saleem*, 374 Ga. App. 617, 913 S.E.2d 744, 2025 Ga. App. LEXIS 101 (2025).

Trial court erred by awarding attorney's fees without identifying the factual or statutory basis for the award, failing to identify a statutory basis for the lump-sum fee award nor the facts underlying the award. *Castillo v. Lopez*, 374 Ga. App. 794, 914 S.E.2d 344, 2025 Ga. App. LEXIS 124 (2025).

Failure to make required findings.

— In a contempt action arising out of a custody dispute, the trial court erred in failing to make findings sufficient to support the award of attorney fees to the ex-wife under O.C.G.A. § 9-15-14(b) or O.C.G.A. § 19-6-2 and, thus, remand for an explanation of the statutory basis for the award and any findings necessary to support the award was required. *Cole v. Cole*, 333 Ga. App. 753, 777 S.E.2d 39, 2015 Ga. App. LEXIS 521 (2015).

In a child custody proceeding, the trial court erred by awarding fees pursuant to O.C.G.A. § 9-15-14 without holding a hearing to make the necessary findings. *Dingle v. Carter*, 350 Ga. App. 255, 829 S.E.2d 604 (2019).

Failure to specify basis for award.

— Trial court erred in awarding attorney fees without specifying a statutory or factual basis for the award as there were two plausible statutory bases for the award, O.C.G.A. § 9-15-14 or O.C.G.A. § 19-6-15, and the record contained no statement regarding the amount attributable to the pursuit or defense of claims for which attorney fees were recoverable or how the trial court calculated the court's award, which was less than requested. *Hall v. Hall*, 335 Ga. App. 208, 780 S.E.2d 787, 2015 Ga. App. LEXIS 715 (2015), dismissed, No. S16C0751, 2016 Ga. LEXIS 375 (Ga. May 9, 2016).

In a contempt action between the parents of a minor child, the award of attorney fees to the father did not satisfy statutory requirements because the trial court did not make express findings of fact or conclusions of law about the statutory basis of the award. The trial court made no findings of fact or conclusions of law as

to how the mother asserted a claim or defense that lacked substantial justification, was intended to harass or delay the father in the litigation, or unnecessarily expanded the proceedings. *Viente v. Maiden*, 362 Ga. App. 264, 867 S.E.2d 856, 2022 Ga. App. LEXIS 15 (2022).

Findings in order awarding attorney fees not clear.

— Award of attorney fees to a mother in a child custody and support proceeding was vacated because although in the modification order the trial court made references to factors that indicate that the award was being made under O.C.G.A. § 9-15-14(b) due to sanctionable conduct, the trial court also referred to the relative financial position of the parties, which would indicate the award was being made under O.C.G.A. § 19-6-2; thus, further proceedings on the issue of attorney fees was required. *Wilson v. Guerrero*, 353 Ga. App. 501, 838 S.E.2d 588, 2020 Ga. App. LEXIS 27 (2020).

Failure to indicate who was required to pay.

— Order awarding the father attorney fees had to be vacated because the order failed to indicate whether the mother, or the mother's then-attorney, or both were required to pay the award. *Long v. Truex*, 349 Ga. App. 875, 827 S.E.2d 66, 2019 Ga. App. LEXIS 221 (2019).

Notice required. — Mother was not provided sufficient notice pursuant to O.C.G.A. § 9-15-14(b) that the trial court could assess attorney fees against her because she was not given notice of the possibility that the final hearing could result in an award against her and, therefore, the award was vacated. *Turney v. Turney*, 372 Ga. App. 855, 907 S.E.2d 210, 2024 Ga. App. LEXIS 378 (2024).

Party received sufficient notice.

— Birth mother received sufficient notice that the court was considering imposing attorney fees and litigation expenses against the birth mother as the adoptive mother specifically sought such fees in a motion to enforce the parties' mediated custody agreement and the court, in the court's final order on child support, stated that the court was reserving for later the issue of fees which may be awarded. *Butler v. Lee*, 336 Ga. App. 102, 783

S.E.2d 704, 2016 Ga. App. LEXIS 132 (2016).

Failure to give notice attorney fees were being considered. — Trial court erred when the court considered the issue of liability for attorney fees without providing notice that the court was considering an award under O.C.G.A. § 9-15-14 or a hearing on that issue. *Barbour v. Sangha*, 346 Ga. App. 13, 815 S.E.2d 228, 2018 Ga. App. LEXIS 308 (2018).

Hearing required. — Trial court erred by failing to consider a father's motion for attorney's fees and costs because the father requested the same in writing and the trial court had held that a number of the mother's post-trial motions were frivolous and vexatious, but did not mention or rule on the father's longstanding request for fees and costs incurred up to and including trial. *Bankston v. Warbington*, 332 Ga. App. 29, 771 S.E.2d 726, 2015 Ga. App. LEXIS 268 (2015).

In a child custody and support contempt proceeding, the trial court did not err in finding the mother in contempt but erred in awarding the father attorney's fees under O.C.G.A. § 9-15-14 without holding a hearing regarding reasonable and necessary fees, and erred in awarding fees under O.C.G.A. § 19-6-2, because that section applied only to cases of divorce and alimony. *Dingle v. Carter*, 350 Ga. App. 255, 829 S.E.2d 604, 2019 Ga. App. LEXIS 284 (2019).

Trial court erred by failing to hold a hearing on attorney fees prior to entry of the award. *Milliron v. Anton*, 369 Ga. App. 121, 891 S.E.2d 448, 2023 Ga. App. LEXIS 381 (2023), rev'd in part, 319 Ga. 616, 905 S.E.2d 657, 2024 Ga. LEXIS 169 (2024), vacated, 375 Ga. App. 150, 2025 Ga. App. LEXIS 149 (2025).

Award of attorney's fees for improper conduct, not as offsets to child support and fees. — Fees under O.C.G.A. § 9-15-14(b) may be awarded in any civil action; consequently, the fees awarded pursuant to O.C.G.A. § 9-15-14(b) are not subject to offset for amounts paid as temporary support and attorney fees. *Vakharwala v. Vakharwala*, 301 Ga. 251, 799 S.E.2d 797, 2017 Ga. LEXIS 331 (2017).

Application

Standards for subsection distinctions blurred in making award.

Trial court improperly blurred the distinct standards in subsections (a) and (b) by relying on grounds like delay and vexatiousness for the subsection (a) award, when those belong under subsection (b) when the awards must be reconsidered separately. *Blackmon v. Dudley*, 375 Ga. App. 271, 2025 Ga. App. LEXIS 180 (2025).

Attorney's fees denied. — Appellate court correctly concluded that the appellants were not entitled to recover expenses and fees under O.C.G.A. § 9-15-14(a) or (b) because the appellants were not parties to the action. *Workman v. RL BB ACQ I-GA CVL, LLC*, 303 Ga. 693, 814 S.E.2d 696, 2018 Ga. LEXIS 358 (2018).

In an action for modification of child custody, the trial court did not err in denying the father's motion for attorney fees under O.C.G.A. § 9-15-14(a) because, absent the transcript of the final hearing on the mother's claim, the appellate court assumed that the trial court's finding that it could have accepted the mother's position was correct. *Bennett v. McClam*, 358 Ga. App. 550, 855 S.E.2d 744, 2021 Ga. App. LEXIS 92 (2021).

Although attorneys fees were improper under O.C.G.A. § 9-15-14 in the child custody case as the trial court did not state which subsection the award was made under and it failed to specify the conduct upon which the award was based, the trial court did not err in awarding attorney fees to the mother pursuant to O.C.G.A. § 19-6-2 because it properly considered the relative financial circumstances of both parties; it was not required to make any findings as to the reasonableness of fees; and, in the absence of a transcript of the hearing, the appellate court had to presume that the evidence supported the trial court's findings. *Roth v. Crafton*, 363 Ga. App. 254, 870 S.E.2d 804, 2022 Ga. App. LEXIS 149 (2022).

Trial court did not abuse its discretion in denying the property owners' motion for

Application (Cont'd)

attorneys fees in a condemnation action as the record contained evidence that the city attempted to engage in good faith negotiations with the property owners, but they refused; thus, the city's petition to condemn, and subsequent litigation, did not lack substantial justification. *Joe & James Props. v. City of Atlanta*, 368 Ga. App. 302, 890 S.E.2d 21, 2023 Ga. App. LEXIS 301 (2023).

In an action for modification of child custody and child support, the trial court's order was insufficient to support an award of attorney fees under O.C.G.A. § 9-15-14(a), because its summary conclusions that the mother's pursuit of custody and her defense of the father's custody claim were devoid of merit were not supported by any specific factual findings. *Calvert v. Calvert*, 373 Ga. App. 689, 908 S.E.2d 332, 2024 Ga. App. LEXIS 435 (2024).

In a business dispute involving renewable energy certificates (RECs), the denial of plaintiff's request for sanctions against defendant for pursuing a breach of contract claim was upheld because the business court did rely on the Exhibit C agreements, with one being partially executed by one entity associated with plaintiff, so there was some evidence to support the business court's ruling. , 2025 Ga. App. LEXIS 119 (March 11, 2025).

Attorney's fees improperly denied. — Given the petitioner's admissions and the other evidence showing that the petitioner had no basis for seeking a temporary protective order for stalking, the trial court erred in denying the respondent's motion for attorney fees under O.C.G.A. § 9-15-14(a). *Durrance v. Schad*, 345 Ga. App. 826, 815 S.E.2d 164, 2018 Ga. App. LEXIS 289 (2018).

In a case in which the caveat contesting probate of the decedent's will was dismissed, appellant's motion for attorney fees was improperly denied because the caveators failed to present any evidence demonstrating the factual merit of their claims that the decedent lacked testamentary capacity, appellant exerted undue influence on the decedent, and appellant caused the rush to death of the decedent

as the probate court stated in its order that not only did appellant's witness testify that the decedent was of sound mind and was not influenced by appellant, but the caveators' own witness also testified that the witness did not believe that appellant exerted any influence over the decedent or coerced the decedent in any way. *In re Estate of Ferrell*, 363 Ga. App. 8, 870 S.E.2d 508, 2022 Ga. App. LEXIS 115 (2022).

Award of expenses improper when spouse expanded litigation in domestic litigation. — Although the trial court found that the ex-wife's behavior in alienating the children, the wife's refusal to allow the ex-husband to visit with the children, and the wife's unfounded allegations of child abuse had greatly expanded the litigation, were substantially lacking in justification, and were interposed for delay and harassment, and those findings were supported by the record, the trial court did not go on to make a finding as to how the award for expenses was limited to the prohibited conduct; thus, the award had to be vacated to the extent expenses other than attorney fees were awarded. *Rowles v. Rowles*, 351 Ga. App. 246, 830 S.E.2d 589, 2019 Ga. App. LEXIS 422 (2019), cert. denied, No. S19C1535, 2020 Ga. LEXIS 156 (Ga. Feb. 28, 2020).

Award of fees was improper. — Trial court did not err in dismissing the condominium association's counterclaim seeking to collect on an assessment of litigation fees and costs against two former association members who had unsuccessfully sued the association as the former members' lawsuit did not result solely from the former members' conduct without reference also to the conduct of the association because the former members' claims were based on the conduct of the association with respect to the association's response to and management of various mold and moisture issues. *City Heights Condo. Ass'n v. Bombara*, 337 Ga. App. 679, 788 S.E.2d 563, 2016 Ga. App. LEXIS 392 (2016).

Trial court did not err in dismissing the condominium association's counterclaim seeking to collect on an assessment of litigation fees and costs against two former association members who had unsuc-

cessfully sued the association because the association had already obtained a judgment for the money to which it was entitled to as a result of having to defend against a claim the trial court determined lacked substantial justification; and the former members' remaining claims, while not ultimately successful, were sufficiently justified that the trial court did not penalize the former members for bringing them. *City Heights Condo. Ass'n v. Bombara*, 337 Ga. App. 679, 788 S.E.2d 563, 2016 Ga. App. LEXIS 392 (2016).

Putative wife's claim for divorce was not frivolous entitling the putative husband to an award of attorney fees as the wife's claim that the parties' Greek ceremony constituted a marriage ceremony, during which the parties exchanged vows and rings and after which they held themselves out as husband and wife, even though it was not performed by an officiant did not entirely lack a legal or factual basis. *Russell v. Sparmer*, 339 Ga. App. 207, 793 S.E.2d 501, 2016 Ga. App. LEXIS 597 (2016).

Although the ex-wife's motion for attorney fees was timely, the trial court's bare findings that the ex-husband's actions lacked substantial justification were insufficient to support the award of fees; thus, the fee award had to be vacated. *Kim v. Han*, 339 Ga. App. 886, 795 S.E.2d 191, 2016 Ga. App. LEXIS 690 (2016).

When the plaintiffs alleged that the pension board wrongfully disbursed their deceased father's pension benefits, the trial court erred in awarding attorney fees to the board as the plaintiffs' claims were not frivolous, the plaintiffs did not lack substantial justification for bringing the plaintiffs' claims, and the plaintiffs' claims did not suffer from a complete absence of any justiciable issue of law or fact because, although the board prevailed, it was not unreasonable for the plaintiffs to argue that the change-in-beneficiary form was effective when the form was received by the board; and the plaintiffs cited authority that arguably supported the plaintiffs' claim. *Shoenthal v. DeKalb County Employees Retirement System Pension Board*, 343 Ga. App. 27, 805 S.E.2d 650, 2017 Ga. App. LEXIS 435 (2017).

Trial court abused the court's discretion in awarding the buyer attorney fees based

on a finding that the part-owner's equitable claims lacked justification as the part-owner presented evidence that created a legitimate factual dispute as to whether the buyer was a bona fide purchaser for value, including the buyer's interrogatory responses showing the buyer failed to confirm ownership of the business and evidence that the buyer asked the selling-partner about the other person's signature on the lease, showing constructive notice that someone else had an interest in the business. Furthermore, since the buyer did not actually prevail on the part-owner's unjust enrichment claim, the trial court abused the court's discretion in awarding the buyer attorney fees for defending against that claim. *Lee v. Park*, 341 Ga. App. 350, 800 S.E.2d 29, 2017 Ga. App. LEXIS 197 (2017).

Award of attorney fees to the former guardians could not stand because the father's initial filing was not done in the absence of any justiciable issue of law or fact. *In the Interest of M. F.*, 345 Ga. App. 550, 813 S.E.2d 786, 2018 Ga. App. LEXIS 231 (2018).

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).

Trial court erred by denying the defendant's motions for a directed verdict or JNOV on the issue of attorney fees under O.C.G.A. § 13-6-11 because the jury found no bad faith in the underlying quiet title action between the parties and the mere fact that the defendant's action had caused an issue which later required litigation to correct did not in and of itself provide a basis for an award; plus, any conduct during litigation could not support an award under § 13-6-11. *Bowen v. Laird*, 348 Ga. App. 1, 821 S.E.2d 105, 2018 Ga. App. LEXIS 622 (2018).

Former husband could not seek modification of his \$2,000 monthly alimony ob-

Application (Cont'd)

ligation to his former wife, although he was 88 years old and had only \$2,953 income per month, because the parties had waived their right to seek modification in the divorce agreement; however, an award of attorney fees to the wife under O.C.G.A. § 9-15-14(b) was an abuse of discretion because the husband had conceded that his argument was barred by the waiver but sought a change in the law. *Naar v. Naar*, 350 Ga. App. 21, 827 S.E.2d 711, 2019 Ga. App. LEXIS 233 (2019), cert. denied, No. S19C1229, 2019 Ga. LEXIS 856 (Ga. Dec. 23, 2019).

Trial court did not err to the extent that the court awarded the respondent attorney fees under O.C.G.A. § 9-15-14(a) as to the petitioner's claims for custody and parenting time/visitation because the petitioner premised the arguments as to parenting time/visitation and custody on new theories of law based on some recognized persuasive authority and Georgia courts often considered law and decisions from other jurisdictions as persuasive authority. *Hill v. Burnett*, 349 Ga. App. 260, 825 S.E.2d 617, 2019 Ga. App. LEXIS 138 (2019), overruled in part as stated in *Southern Piedmont Law, PC v. Pierre*, 362 Ga. App. 474, 869 S.E.2d 90, 2022 Ga. App. LEXIS 50 (2022).

Trial court erred in awarding the ex-wife attorney fees because the ex-husband's motion to recuse was not without substantial justification since the record showed that the trial court overlooked well-established law to incarcerate the ex-husband in violation of his due process rights when it entered an impermissible self-executing contempt order, which provided for his imprisonment without affording him a hearing to determine whether his failure to purge contempt was willful. *McLaws v. Drew*, 355 Ga. App. 162, 843 S.E.2d 440, 2020 Ga. App. LEXIS 280 (2020).

In an action to domesticate a foreign judgment appointing a guardian for an adult ward, the trial court had no authority to impose the attorney fee and expenses against the ward's daughter because the daughter was not properly made a party to the petition to domesticate the

guardianship order. *Carruthers v. Chan*, 354 Ga. App. 826, 841 S.E.2d 475, 2020 Ga. App. LEXIS 226 (2020).

Trial court abused the court's discretion in awarding attorney fees because the mother's declaratory judgment action was not substantially vexatious, did not lack substantial justification, and the father's summer vacation selections indicated he did not agree with the mother's interpretation of the parenting plan. *Brown v. Brown*, 359 Ga. App. 511, 857 S.E.2d 505, 2021 Ga. App. LEXIS 195 (2021).

In a post divorce proceeding, the award of \$10,050.47 in attorney fees to the ex-wife was not adequately supported by statutory authority and factual findings because the order made no factual findings to support the award, nor did it specify a statutory basis. *Rose v. Clark*, 360 Ga. App. 440, 859 S.E.2d 137, 2021 Ga. App. LEXIS 286 (2021).

Award of attorneys fees to the wife was erroneous because it was not limited to those related to the husband's prohibited, sanctionable conduct and included fees for a private investigator that did not testify at trial and the reasonableness of whose fees was not established. *Williams v. Williams Two Cases*, 362 Ga. App. 839, 870 S.E.2d 462, 2022 Ga. App. LEXIS 108 (2022).

Trial court abused the court's discretion by awarding the wife attorney fees because the court erred by concluding that the husband's 2020 petition to domesticate a foreign judgment and to modify parenting time lacked substantial justification as the trial court erred by concluding that the husband had filed a substantially similar claim in 2014 that was resolved in the wife's favor and because the Uniform Child Custody Jurisdiction and Enforcement Act, O.C.G.A. § 19-9-40 et seq., arguably supported his position. *Sprenkle v. Sprenkle*, 363 Ga. App. 703, 872 S.E.2d 472, 2022 Ga. App. LEXIS 205 (2022).

Although the plaintiff's action for failure to notify the the purchaser of neighboring property of an unrecorded written agreement giving the plaintiff a sewer easement was not successful, the trial court erred in awarding the defendant attorney fees because some authority sup-

ported each of the arguments made by the plaintiff in support of its claims. *Alpha Rho Corporation of Delta Delta Delta v. Mathis Apartments, Inc.*, 364 Ga. App. 28, 873 S.E.2d 717, 2022 Ga. App. LEXIS 252 (2022).

Because appellant was not a party to the action, the trial court did not have authority to impose attorney fees against appellant. *Ellis v. Seaver*, 367 Ga. App. 322, 885 S.E.2d 817, 2023 Ga. App. LEXIS 150 (2023).

Award of fees was proper. — Trial court did not abuse the court's discretion in awarding attorney fees to the husband after finding that the wife's written motion lacked substantial justification. *McLendon v. McLendon*, 297 Ga. 779, 778 S.E.2d 213, 2015 Ga. LEXIS 679 (2015).

Trial court's award of attorney fees was proper based on the Department of Transportation's use of a fundamentally flawed appraisal in support of the declaration of taking and the DOT taking of a baseless position in the litigation. *Shiv Aban, Inc. v. Ga. DOT*, 336 Ga. App. 804, 784 S.E.2d 134, 2016 Ga. App. LEXIS 210 (2016), cert. denied, No. S16C1456, 2016 Ga. LEXIS 720 (Ga. Oct. 31, 2016), cert. denied, No. S16C1455, 2016 Ga. LEXIS 717 (Ga. Oct. 31, 2016).

Wife failed to raise a meritorious challenge to the decree awarding the husband attorney fees as the award contained a discussion of the wife's unauthorized attempts to amend the pleadings and consolidated pretrial order, thereby unnecessarily expanding the proceedings. *Horton v. Horton*, 299 Ga. 46, 785 S.E.2d 891, 2016 Ga. LEXIS 357 (2016).

Trial court did not err in awarding the mother attorney fees after the father turned a simple litigation complex. *Dallow v. Dallow*, 299 Ga. 762, 791 S.E.2d 20, 2016 Ga. LEXIS 581 (2016).

Fee award to the county for the county's own attorney fees was upheld because the former coroner failed to provide any proof showing that the county agreed to pay the county's own attorney fees and the record supported the trial court's findings that the coroner violated O.C.G.A. § 9-15-14(a) and (b), and the fees and expenses incurred by the county were reasonable and necessary. *O'Neal v.*

Crawford County, 339 Ga. App. 687, 792 S.E.2d 498, 2016 Ga. App. LEXIS 644 (2016), cert. denied, No. S17C0779, 2017 Ga. LEXIS 519 (Ga. June 5, 2017), cert. denied, 583 U.S. 963, 138 S. Ct. 425, 199 L. Ed. 2d 312, 2017 U.S. LEXIS 6681 (2017).

Contempt order requiring the plaintiff to pay \$ 17,296.53 in attorney fees and litigation costs under O.C.G.A. § 9-15-14 was affirmed on appeal because the trial court expressly stated that the amount was intended to prevent future violations of, and to coerce compliance with, the injunction issued against the plaintiff and no case law prohibited such a civil contempt sanction. *Shooter Alley, Inc. v. City of Doraville*, 341 Ga. App. 626, 800 S.E.2d 588, 2017 Ga. App. LEXIS 192 (2017).

Trial court did not err in assessing attorney fees against a borrower and the borrower's counsel in favor of the lender because the borrower and counsel knew or should have known that the lawsuit against the lender for wrongful foreclosure and related claims was substantially groundless and sanctions against the borrower and the borrower's counsel were warranted to punish, deter and to recompense the litigants. *Ettrick v. SunTrust Mortg., Inc.*, 349 Ga. App. 703, 824 S.E.2d 727, 2019 Ga. App. LEXIS 128 (2019), cert. denied, No. S19C1067, 2019 Ga. LEXIS 808 (Ga. Nov. 18, 2019).

Because the special master found that the creditor's action to quiet title was brought in bad faith, was stubbornly litigious, and unnecessarily expanded the scope of the proceedings, and the trial court found that the creditor's refusal to cancel the security deed even after direction to do so from the special master lacked substantial justification, those findings were sufficient to justify the award of attorney fees against the creditor, the creditor's law firm, and its attorney. *CB Lending, LLC v. Strategic Property Consulting Group, LLC*, 353 Ga. App. 114, 834 S.E.2d 618, 2019 Ga. App. LEXIS 576 (2019), cert. denied, No. S20C0586, 2020 Ga. LEXIS 567 (Ga. July 15, 2020).

Trial court was not precluded from awarding attorney fees to the ex-wife pur-

Application (Cont'd)

suant to O.C.G.A. § 19-6-2 because she remarried and her entitlement to and ability to seek alimony discontinued as the trial court considered both parties regarding their financial circumstances at the hearing, made specific findings concerning the ex-husband's assertions regarding his inability to pay his court-ordered obligations and overall financial circumstances, and his contempt. *McCarthy v. Ashment*, 353 Ga. App. 270, 835 S.E.2d 745, 2019 Ga. App. LEXIS 643 (2019), cert. denied, No. S20C0707, 2020 Ga. LEXIS 628 (Ga. Aug. 10, 2020).

There was no error in the trial court's determination that the father was entitled to an award of attorney fees because while the mother ultimately prevailed in requiring the father to enroll the children at the private school, the mother's attempt to force a change in primary physical custody by withholding the children's school tuition generated in the first instance the dispute over school enrollment and the litigation required to resolve that dispute. *Ernest v. Moffa*, 359 Ga. App. 678, 859 S.E.2d 834, 2021 Ga. App. LEXIS 265 (2021).

Trial court did not err in awarding attorney fees to the defendant in a defamation case because there was a complete absence of any justiciable issue of law as to the three grounds of defamation alleged in the complaint where two grounds of defamation involved protected speech and the third was not supported by any evidence. *Barnwell v. Trivedi*, 370 Ga. App. 522, 898 S.E.2d 250, 2024 Ga. App. LEXIS 47 (2024).

Attorney's fees award in frivolous action. — Trial court did not err in awarding attorney fees against the ex-husband because the record supported the trial court's finding that the petition for declaratory judgment filed by the ex-husband, seeking verification of the ex-wife's health status before paying alimony, was frivolous at best and malicious at worse. *Belcher v. Belcher*, 346 Ga. App. 141, 816 S.E.2d 82, 2018 Ga. App. LEXIS 339 (2018).

Lump sum award not permissible. — Trial court erred in awarding the ex-

wife a lump sum of attorney fees when an award was only permitted for fees related to sanctionable conduct. *Belcher v. Belcher*, 346 Ga. App. 141, 816 S.E.2d 82, 2018 Ga. App. LEXIS 339 (2018).

Trial court had jurisdiction to rule on the motion for attorney fees even after plaintiff dismissed the complaint because such motions survived dismissal and while the trial court made detailed findings showing plaintiff engaged in sanctionable conduct, the trial court failed to properly apportion the fees to the specific sanctionable conduct, and instead awarded a lump sum. *Modi v. India-American Cultural Association*, 370 Ga. App. 458, 897 S.E.2d 86, 2024 Ga. App. LEXIS 9 (2024).

While there was some evidence to demonstrate that the fees requested by the father were reasonable, including the statements of the father's attorney as to the attorney's experience, the reasonableness of the rate, and the length of the litigation, the award was erroneous because it constituted a lump-sum award. *Calvert v. Calvert*, 373 Ga. App. 689, 908 S.E.2d 332, 2024 Ga. App. LEXIS 435 (2024).

Fee awarded when surety claim brought in bad faith. — Trial court properly awarded the surety company a bad faith attorney fee award and struck the counterclaim because the purchaser's bad faith counterclaim against the surety company as a corporate surety was not only brought under an inapplicable statute, namely O.C.G.A. § 13-6-11, but failed to meet the basic pleading requirements under § 13-6-11. *Hicks v. Gabor*, 354 Ga. App. 714, 841 S.E.2d 42, 2020 Ga. App. LEXIS 183 (2020).

Contempt order inappropriate for failure to pay money damages. — Following the defendant's attempt to pay a judgment against him with two buckets of coins, which the plaintiff refused, the trial court erred in holding the defendant in contempt and assessing attorney fees because contempt cannot be used as punishment for failure to obey a court order to pay money damages. *Daniel v. Daniel*, 362 Ga. App. 893, 870 S.E.2d 481, 2022 Ga. App. LEXIS 111 (2022).

Failure to determine what fees re-

lated to sanctionable conduct. — Judgment of liability for attorney fees against an ex-husband under O.C.G.A. § 9-15-14 was affirmed but the judgment was vacated and the case remanded because the trial court erred in awarding fees under that Code section without determining what fees were related specifically to sanctionable conduct. *Reid v. Reid*, 348 Ga. App. 550, 823 S.E.2d 860, 2019 Ga. App. LEXIS 46 (2019), cert. denied, No. S19C0832, 2019 Ga. LEXIS 689 (Ga. Oct. 7, 2019).

Sanctionable conduct occurring during litigation. — Award of attorney fees was reversed because the record was clear that the property owner sought attorney fees pursuant to O.C.G.A. § 13-6-11, and the civil court made the court's award explicitly under that Code section, but the allegedly sanctionable conduct cited occurred as part of the litigation, namely, in the 30 days leading up to trial; therefore, a fee award under § 13-6-11 was not authorized because that Code section addressed conduct arising from the underlying transaction. *Cheatham Fletcher Scott Architects, P.C. v. Hull 2000, LLLP*, 352 Ga. App. 691, 835 S.E.2d 644, 2019 Ga. App. LEXIS 614 (2019).

Award of attorney's fees for improper conduct. — Although the trial court did not abuse the court's discretion in determining that the appellants' actions in introducing irrelevant character evidence about which counsel had been admonished were sanctionable, the award of attorneys' fees was vacated because the trial court did not receive evidence as to the actual costs and reasonableness of the fees, and the appellee failed to present evidence — and the trial court failed to find — that the attorneys' fees were the result of the appellants' sanctionable trial conduct. *Connolly v. Smock*, 338 Ga. App. 754, 791 S.E.2d 853, 2016 Ga. App. LEXIS 541 (2016).

Trial court's award of \$ 98,385 in attorney fees and expenses pursuant to O.C.G.A. § 9-15-14(b) was affirmed based on the husband's egregious and improper behavior and abuse of the discovery process, but the additional award of \$ 60,000 for misconduct pursuant to

O.C.G.A. § 19-6-2 was reversed since such an award had to be a part of alimony and the parties' prenuptial agreement barred the wife from receiving alimony. *Vakharwala v. Vakharwala*, 301 Ga. 251, 799 S.E.2d 797, 2017 Ga. LEXIS 331 (2017).

In a divorce action, the trial court erred to the extent the court awarded attorney fees and costs to the wife incurred before the husband engaged in sanctionable conduct as the sanctionable conduct underlying the award was the husband's assertion of defenses to a contempt action that lacked substantial justification. *Cook v. Campbell-Cook*, 349 Ga. App. 325, 826 S.E.2d 155, 2019 Ga. App. LEXIS 151 (2019).

Reasonable and necessary fees permitted only. — Attorney fee award to the wife was vacated, in part, because the fee award was based in part on billing records not made available for review; thus, remand was necessary for the trial court to determine the amount of reasonable and necessary attorney fees and to indicate the basis for the award and to hold a hearing if supplemental evidence was needed to make the required determination. *Cook v. Campbell-Cook*, 349 Ga. App. 325, 826 S.E.2d 155, 2019 Ga. App. LEXIS 151 (2019).

Award of attorney's fees was proper if suit was not justified. — Trial court erred to the extent that the court awarded the respondent attorney fees under O.C.G.A. § 9-15-14(a) as to the petitioner's legitimation claim involving a same sex relationship because the petitioner cited no law from any jurisdiction for the proposition that a person of either gender may petition to legitimate a child absent a biological relationship, and Georgia law made no provision for such situation. *Hill v. Burnett*, 349 Ga. App. 260, 825 S.E.2d 617, 2019 Ga. App. LEXIS 138 (2019), overruled in part as stated in *Southern Piedmont Law, PC v. Pierre*, 362 Ga. App. 474, 869 S.E.2d 90, 2022 Ga. App. LEXIS 50 (2022).

Award proper under "any evidence" standard. — In a dispute between a county and a county state court judge over a supplement to the judge's

Application (Cont'd)

salary, the judge was entitled to attorney's fees for defending against frivolous counterclaims; the evidence introduced at a hearing at which counsel testified and was subject to cross-examination supported the trial court's findings allocating fees between the frivolous counterclaims and a non-frivolous counterclaim for reimbursement. *Heiskell v. Roberts*, 342 Ga. App. 109, 802 S.E.2d 385, 2017 Ga. App. LEXIS 320 (2017), cert. denied, No. S17C1940, 2018 Ga. LEXIS 35 (Ga. Jan. 16, 2018).

Award of fees in child custody cases. — In a custody case, the superior court did not abuse the court's discretion by awarding attorney fees to the child's biological father under O.C.G.A. § 9-15-14(b) because the mother insisted on a paternity test even though she had stipulated that he was the father; evaded service; hid the child from the father for 18 months; and made dubious allegations of sexual molestation. However, the trial court's award of \$68,500 failed to show the process involved in reaching that figure, necessitating remand. *Smith v. Pearce*, 334 Ga. App. 84, 778 S.E.2d 248, 2015 Ga. App. LEXIS 578 (2015), cert. denied, No. S16C0247, 2016 Ga. LEXIS 33 (Ga. Jan. 11, 2016).

In a custody modification case, the trial court's award of attorney's fees to the mother was reversed because, given the appellate court's decision, she did not prevail, and the trial court failed to address the reasonableness of the fees, failed to specify the potentially sanctionable conduct under O.C.G.A. § 19-9-3(g), failed to identify the subsection of O.C.G.A. § 9-15-14 relied on, and failed to hold an evidentiary hearing. *Wilson v. Perkins*, 344 Ga. App. 869, 811 S.E.2d 518, 2018 Ga. App. LEXIS 152 (2018).

Trial court correctly dismissed a grandmother's claim for grandparent visitation for lack of jurisdiction under O.C.G.A. § 19-7-3(c)(2) and awarded attorneys' fees against her under O.C.G.A. § 9-15-14(b) because her action was filed during the same year as the parents' divorce action in which custody was determined, which was prohibited by statute. *Gnam v. Livingston*, 353 Ga. App. 701, 839 S.E.2d 200, 2020 Ga. App. LEXIS 68 (2020).

Contempt in divorce action. — In a contempt case brought by a former wife to enforce a divorce decree's requirement that the husband refinance two properties in his name alone, the trial court's award of attorney fees and expenses was vacated and the case remanded for the trial court to identify the statutory basis for the award and to include the requisite findings of fact supporting the award. *Borotkanics v. Humphrey*, 344 Ga. App. 875, 811 S.E.2d 523, 2018 Ga. App. LEXIS 150 (2018).

Award not sustainable under O.C.G.A. § 9-15-14(b) but proper under O.C.G.A. § 19-6-2. — Trial court did not abuse the court's discretion by awarding the husband's attorney fees under O.C.G.A. § 19-6-2, despite the award not being sustainable under O.C.G.A. § 9-15-14(b), because the record showed that the court carefully considered the parties' relative financial positions, their obligations under the final decree, and the substantial costs incurred by both parties, and awarded the husband substantially less than the total amount of fees claimed to have been incurred in the litigation. *Hoard v. Beveridge*, 298 Ga. 728, 783 S.E.2d 629, 2016 Ga. LEXIS 197 (2016).

Payment plan improperly ordered. — In an action for malpractice, negligence per se, trespass, and libel, the trial court erred in allowing the plaintiff to satisfy the judgment awarding attorney fees and costs to the defendant through installments paid over a two-year period because by so doing the court restricted the defendant's ability to recover the award. *S. Piedmont Law, PC v. Pierre*, 362 Ga. App. 474, 869 S.E.2d 90, 2022 Ga. App. LEXIS 50 (2022).

Appeals

Appellate jurisdiction. — Because appellants were required to follow the discretionary appeal procedures to obtain review of the trial court's order awarding appellees attorney fees and the appellants failed to do so, the court lacked jurisdiction over the appeal. *Low v. Swift*, 367 Ga. App. 874, 889 S.E.2d 122, 2023 Ga. App. LEXIS 249 (2023).

Failure to file an application for discretionary review or a notice of appeal in a

dispossessory action within seven days of the trial court's March 14th order deprives the Court of Appeals of jurisdiction over the appeal requiring the appeal's dismissal. *Stubbs v. Local Homes, LLC*, 915 S.E.2d 91, 2025 Ga. App. LEXIS 171 (Ga. Ct. App. 2025).

Abuse of discretion in awarding fees. — Trial court abused the court's discretion by awarding attorney's fees to the husband as the wife's conduct in opposing the husband's equitable caregiver claim and filing a motion to declare the equitable caregiver statute, O.C.G.A. § 19-7-3.1, unconstitutional did not lack substantial justification, was not done for harassment or delay, and did not unnecessarily expand the litigation. *Doyle v. Haas*, 374 Ga. App. 558, 913 S.E.2d 437, 2025 Ga. App. LEXIS 92 (2025).

Improper consideration of prior court's proceedings. — Trial court abused the court's discretion in awarding bad faith attorney fees to appellees for defending a testator's will against a filed caveat because the findings of the trial court included events that occurred prior to the appellees' appeal to the superior court, namely, occurrences in the probate court, and the remainder of the findings were not supported by the record. *McNair v. McNair*, 343 Ga. App. 41, 805 S.E.2d 655, 2017 Ga. App. LEXIS 438 (2017).

Award upheld. — Trial court did not abuse the court's discretion in awarding attorney fees and costs (O.C.G.A. § 9-15-14) payable by the plaintiff's attorney because the order spanned 22 pages and included more than 40 findings to support the defendant's request based on defending a duplicative lawsuit filed by the plaintiff's attorney in another county when a suit was already pending. *Cohen v. Rogers*, 341 Ga. App. 146, 798 S.E.2d 701, 2017 Ga. App. LEXIS 147 (2017), cert. denied, No. S17C1483, 2018 Ga. LEXIS 161 (Ga. Mar. 5, 2018).

Trial court's confirmation of the final arbitration award against an in-house attorney and the denial of sanctions was upheld because the attorney failed to establish any statutory ground for vacating the award since the attorney invited any error by naming the alleged bogus entities in the demand letter, agreeing they were

proper parties, and seeking damages against some of them; therefore, their alleged lack of standing was not a statutory ground for vacating the award. *Smith v. Blackhall Real Estate*, 373 Ga. App. 177, 908 S.E.2d 1, 2024 Ga. App. LEXIS 403 (2024).

Appellate review of awards. — Trial court had authority under O.C.G.A. § 9-15-14(a) to order the petitioner, rather than the petitioner's lawyer, to pay the respondent's attorney fees and expenses in a child custody case involving same sex partners because the assessment was just since the trial court found that it could not be said the petitioner reasonably relied on existing Georgia legal precedent in bringing the action. *Hill v. Burnett*, 349 Ga. App. 260, 825 S.E.2d 617, 2019 Ga. App. LEXIS 138 (2019), overruled in part as stated in *Southern Piedmont Law, PC v. Pierre*, 362 Ga. App. 474, 869 S.E.2d 90, 2022 Ga. App. LEXIS 50 (2022).

Order enforcing an executed settlement agreement and denying the motion to dismiss the appeal was upheld because it was undisputed that the only attorney fees in question were those sought by the brother in a post-judgment motion under O.C.G.A. § 9-15-14 and the trial court's reservation of the issue did not render the judgment non-final but, rather, that judgment enforcing the settlement agreement was final and directly appealable. *Miller v. Miller*, 356 Ga. App. 142, 846 S.E.2d 429, 2020 Ga. App. LEXIS 424 (2020), cert. denied, No. S20C1529, 2021 Ga. LEXIS 159 (Ga. Mar. 15, 2021).

Appellant required to follow both discretionary and interlocutory procedures. — Because a driver seeking review of an order of attorney's fees against the driver, entered under O.C.G.A. § 9-15-14, after the driver opposed a motion to transfer venue, properly followed O.C.G.A. § 5-6-35(a)(10) in seeking discretionary review, but did not comply with O.C.G.A. § 5-6-34(b) governing interlocutory appeals, the appeal was dismissed. *Eidson v. Crutch*, 337 Ga. App. 542, 788 S.E.2d 129, 2016 Ga. App. LEXIS 367 (2016).

Inapplicable to post-judgment proceedings. — In a post-judgment discovery dispute, an award of attorney's fees

Appeals (Cont'd)

under O.C.G.A. § 9-15-14(b) was error because that statute did not apply to post-judgment discovery; however, the case was remanded to consider whether fees were appropriate under O.C.G.A. § 9-11-37(a)(4)(A), in connection with the grant of a protective order to the judgment debtor. *CEI Servs. v. Sosebee*, 344 Ga. App. 508, 811 S.E.2d 20, 2018 Ga. App. LEXIS 57, overruled in part, *Workman v. RL BB ACQ I-GA CVL, LLC*, 303 Ga. 693, 814 S.E.2d 696, 2018 Ga. LEXIS 358 (2018).

Pending motion when final judgment entered does not extend time for appeal. — Hospital's motion to dismiss an appeal was granted because the order granting summary judgment was a final judgment since the order concluded the case and the fact that the ancillary issue of the cost award under O.C.G.A. § 9-11-4(d) remained pending did not prevent the judgment from being final for purposes of O.C.G.A. §§ 5-6-34(a)(1) and 5-6-38(a); thus, the appeal was untimely

since the appeal was brought outside of the 30-day time frame from the trial court's entry of judgment. *Edokpolor v. Grady Mem. Hosp. Corp.*, 338 Ga. App. 704, 791 S.E.2d 589, 2016 Ga. App. LEXIS 530 (2016), rev'd, 302 Ga. 733, 808 S.E.2d 653, 2017 Ga. LEXIS 978 (2017).

Remand for determination of attorney fees required. — Remand on the issue of attorney fees was necessary because it was unclear whether any part of the award flowed from the husband's litigation of remedies for contempt that was reversed. *Sponsler v. Sponsler*, 301 Ga. 600, 800 S.E.2d 564, 2017 Ga. LEXIS 442 (2017).

Failure to ensure award included only fees based on sanctioned conduct. — Trial court erred by awarding the adoptive mother an unapportioned or lump sum award of fees without indicating how that award was apportioned to include only fees and expenses generated based on the birth mother's sanctionable conduct. *Butler v. Lee*, 336 Ga. App. 102, 783 S.E.2d 704, 2016 Ga. App. LEXIS 132 (2016).

RESEARCH REFERENCES**ALR.**

Application of Anti-SLAPP ("Strategic Lawsuit Against Public Participation") statutes to real estate development, land use, and zoning disputes, 64 A.L.R.6th 365.

Application of anti-SLAPP ("Strategic Lawsuit Against Public Participation") statutes to invasion of privacy claim, 85 A.L.R.6th 475.

Attorney's fees under stalking statutes, 77 A.L.R.7th 8.

9-15-16. Limitations on recovery of attorney fees, court costs, or expenses of litigation; utilization of contingent fee agreements.

(a) In any civil action, no party shall recover the same attorney's fees, court costs, or expenses of litigation more than once pursuant to one or more statutes authorizing awards of attorney's fees, court costs, or expenses of litigation, whether such statute or statutes authorize such awards for compensatory or punitive purposes, unless the statute or statutes specifically authorize the recovery of duplicate attorney's fees, court costs, or expenses of litigation.

(b) In any civil action, if a party seeks to recover attorney's fees pursuant to any statute authorizing an award of reasonable attorney's fees, a contingent fee agreement between such party and such party's

attorney shall not be admissible as proof of the reasonableness of the fees.

(c) Nothing in this Code section shall limit or diminish any contractual right to recover attorney’s fees, court costs, or expenses of litigation.

History.
Code 1981, § 9-15-16, enacted by Ga. L. 2025, p. 19, § 4/SB 68, effective April 21, 2025.
Effective date.
This Code section became effective April 21, 2025.

Cross references.
Fees, Ga. R. & Regs. St. Bar 1.5.

CHAPTER 16

UNIFORM CIVIL FORFEITURE PROCEDURE ACT

Sec.		property	valued	at
9-16-5.	Notice to owner of seizure of vehicle.	\$25,000.00	or less;	notice;
9-16-11.	Quasi-judicial forfeiture for			procedure.

Editor’s notes.
In light of the enactment of this chapter, effective July 1, 2015, the reader is advised to consult the annotations following Code Sections 16-6-13.3, 16-12-30, 16-12-32, 16-13-32, 16-13-49, 16-14-7, 16-14-14, 16-16-2, 17-5-51, 17-5-54, and

40-6-391.2, as they existed on June 30, 2015, which may also be applicable to this chapter.
Law reviews.
For article on the 2015 enactment of this chapter, see 32 Ga. St. U.L. Rev. 1 (2015).

9-16-5. Notice to owner of seizure of vehicle.

If a seized vehicle is registered to a person or entity that was not present at the scene of the seizure and whose conduct did not give rise to the seizure, the seizing officer or his or her designee shall make a reasonable effort to determine the name of the registered owner of the seized vehicle and, upon learning such registered owner’s telephone number or address, inform such registered owner that the vehicle has been seized.

History.
Code 1981, § 9-16-5, enacted by Ga. L. 2015, p. 693, § 1-1/HB 233.

Editor’s notes.
This Code section is set out above to reflect a change in the catchline.

9-16-6. Seizure of property.**RESEARCH REFERENCES**

ALR. state “red flag” or extreme risk protection
Seizure and retention of firearm under law, 75 A.L.R.7th 7.

9-16-11. Quasi-judicial forfeiture for property valued at \$25,000.00 or less; notice; procedure.

(a) If the estimated value of personal property seized is \$25,000.00 or less, the state attorney shall post a notice of the seizure of such property in a prominent location in the courthouse of the county in which the property was seized. Such notice shall include:

- (1) A description of the property;
- (2) The date and place of seizure;
- (3) The conduct giving rise to forfeiture;
- (4) The alleged violation of law; and

(5) A statement that the owner or interest holder of such property has 30 days within which a claim must be served on the state attorney by certified mail or statutory overnight delivery, return receipt requested, and that such claim shall be signed by the owner or interest holder and shall provide:

- (A) The name of the claimant;
- (B) The address at which the claimant resides;
- (C) A description of the claimant’s interest in the property;
- (D) A description of the circumstances of the claimant’s obtaining an interest in the property and, to the best of the claimant’s knowledge, the date the claimant obtained the interest and the name of the person or entity that transferred the interest to the claimant;

(E) The nature of the relationship between the claimant and the person who possessed the property at the time of the seizure;

(F) A copy of any documentation in the claimant’s possession supporting his or her claim; and

(G) Any additional facts supporting his or her claim.

(b) The state attorney shall serve a copy of the notice specified in subsection (a) of this Code section upon an owner, interest holder, and person in possession of the property at the time of seizure as follows:

- (1) If the name and current address of the person in possession of the property at the time of the seizure, owner, or interest holder are

known, provide notice by either personal service or mailing a copy of the notice by certified mail or statutory overnight delivery, return receipt requested, to that address;

(2) If the name and address of the person in possession of the property at the time of seizure, owner, or interest holder are required by law to be on public record with a governmental agency to perfect an interest in the property but the owner's or interest holder's current address is not known, mail a copy of the notice by certified mail or statutory overnight delivery, return receipt requested, to any address on the record; or

(3) If the current address of the person in possession of the property at the time of the seizure, owner, or interest holder is not known and is not on record as provided in paragraph (2) of this subsection or the name of the person in possession of the property at the time of the seizure, owner, or interest holder is not known, publish a copy of the notice of seizure once a week for two consecutive weeks in the legal organ for the county in which the seizure occurs.

(c)(1) The owner or interest holder may serve a claim to the seized property within 30 days after being served or within 30 days after the second publication of the notice of seizure, whichever occurs last, by sending the claim to the state attorney by certified mail or statutory overnight delivery, return receipt requested.

(2) The claim shall be signed by the owner or interest holder and shall provide:

(A) The name of the claimant;

(B) The address at which the claimant resides;

(C) A description of the claimant's interest in the property;

(D) A description of the circumstances of the claimant's obtaining an interest in the property and, to the best of the claimant's knowledge, the date the claimant obtained the interest and the name of the person or entity that transferred the interest to the claimant;

(E) The nature of the relationship between the claimant and the person who possessed the property at the time of the seizure;

(F) A copy of any documentation in the claimant's possession supporting his or her claim; and

(G) Any additional facts supporting his or her claim.

(3) If any claim is served, even when the state attorney determines that the information provided by the claimant pursuant to paragraph (2) of this subsection is insufficient, the state attorney shall file a

complaint for forfeiture as provided in Code Section 9-16-12 or 9-16-13 within 30 days of the actual receipt of the claim. Such complaint shall be filed specifically as to the property claimed and the state attorney shall join as a party any person who serves the state attorney with a claim.

(4) As to any property to which no claim is received within 30 days after service of the notice of seizure or the second publication of the notice of seizure, whichever occurs last, all right, title, and interest in the property shall be forfeited to the state by operation of law and the state attorney shall dispose of the property as provided in Code Section 9-16-19. The state attorney shall serve a copy of the order forfeiting the property by first-class mail upon any person who was served with a notice of seizure.

History.

Code 1981, § 9-16-11, enacted by Ga. L. 2015, p. 693, § 1-1/HB 233.

Editor's notes.

This Code section is set out above to reflect a change in the catchline.

9-16-12. In rem forfeiture.

JUDICIAL DECISIONS

Service by publication. — Court of Appeals properly interpreted O.C.G.A. § 9-16-12(b)(3) as permitting service by publication in an in rem forfeiture proceeding if the owner of the subject property resided outside of Georgia, and properly rejected the property owner's claims that personal service was required and that the state's complaint should have been dismissed based on the state's failure to personally serve the property owner; however, when the court of appeals reversed the trial court and concluded that service by publication was permitted under § 9-16-12, it should have remanded the case to the trial court for it to consider the claimant's due process claim. *Crowder v. State of Ga.*, 309 Ga. 66, 844 S.E.2d 806, 2020 Ga. LEXIS 451 (2020).

Service ineffective. — In an in rem forfeiture action, the trial court erred in awarding the appellants' forfeited assets to the state as the trial court did not acquire personal jurisdiction over the appellants because the purported service of process of the appellants through their counsel was ineffective; the trial court granted the appellants' motion to set aside the court's order allowing the state to serve the owners and interest holders by

publication; and the record did not show that a proper acknowledgment or waiver of service was filed. *Crispin v. State of Ga.*, 360 Ga. App. 485, 861 S.E.2d 444, 2021 Ga. App. LEXIS 372 (2021).

Pleading requirements met. — Trial court did not err in holding that the state satisfied the applicable pleading requirements as the second amended complaint alleged the essential elements of at least one criminal violation which was claimed to exist and sufficiently connected the property to be forfeited to the alleged illegal conduct, meeting the requirements of O.C.G.A. § 9-16-12(a). *Smith v. State*, 366 Ga. App. 815, 884 S.E.2d 403, 2023 Ga. App. LEXIS 87 (2023), rev'd in part, vacated, 319 Ga. 352, 903 S.E.2d 878, 2024 Ga. LEXIS 151 (2024), vacated, 374 Ga. App. 548, 913 S.E.2d 417, 2025 Ga. App. LEXIS 90 (2025).

Pleading requirements not met. — Appellate court erred by concluding that the state adequately alleged theft by taking in the in rem civil forfeiture complaint because the second amended complaint failed to recite theft by taking's intent-to-deprive element as the theft-by-taking allegations addressed only what happened to the property after the property was

allegedly stolen. *Smith v. State*, 319 Ga. 352, 903 S.E.2d 878, 2024 Ga. LEXIS 151 (2024).

Although the state's second amended complaint alleged violations of a number of statutes, the complaint failed to adequately allege the essential elements of any criminal violation for an in rem civil-asset-forfeiture proceeding. *NoFree, LLC v. State of Georgia*, 373 Ga. App. 753, 909 S.E.2d 852, 2024 Ga. App. LEXIS 478 (Nov. 18, 2024).

Ruling on motion for more definite statement required before striking answer. — In an in rem forfeiture proceeding, the trial court had to rule on a pending motion for more definite statement before striking a claimant's answer as insufficient. *Crowder v. State of Ga.*, 309 Ga. 66, 844 S.E.2d 806, 2020 Ga. LEXIS 451 (2020).

Geographic restriction. — Trial court did not err in denying the defendants' motion to dismiss the plaintiff's complaint for breach of contract, tortious

interference and related claims because, although the non-solicitation policy lacked a geographic description required by Georgia's Restrictive Covenants Act, O.C.G.A. § 13-8-50 et seq., the appellate court could not say that the plaintiff could not possibly introduce evidence within the framework of the complaint establishing that one or more of the individual defendants engaged in prohibited conduct while still employed by the plaintiff. *Zammit v. Hobson & Hobson, P.C.*, 372 Ga. App. 174, 904 S.E.2d 23, 2024 Ga. App. LEXIS 269 (2024).

Opening of default error. — Because a truck owner failed to establish excusable neglect as a matter of law, and the trial court abused the court's discretion in opening the default in the absence of any facts establishing excusable neglect, the trial court's order opening the default had to be reversed, as did the court's order denying forfeiture to the state. *State v. Hatcher*, 360 Ga. App. 385, 861 S.E.2d 268, 2021 Ga. App. LEXIS 367 (2021).

9-16-13. In personam forfeiture.

JUDICIAL DECISIONS

Untimely action should have been dismissed. — After the defendant in a criminal forfeiture action agreed to a trial date that was within the second 60-day period, and through no fault of the defendant's, the state set the trial date well outside of that period without the defen-

dant's consent, the court's order denying the defendant's motion to dismiss and granting the state's motion for a continuance had to be reversed. *Rounsaville v. State*, 345 Ga. App. 899, 815 S.E.2d 212, 2018 Ga. App. LEXIS 298 (2018).

9-16-15. Stay of civil forfeiture proceedings during pendency of criminal proceedings; effect of criminal conviction.

Law reviews.

For article, "Parallel Proceedings," see 25 Ga. St. B.J. 20 (Feb. 2020).

9-16-19. Disposition of forfeited property; order of distribution; annual report.

OPINIONS OF THE ATTORNEY GENERAL

National Guard as law enforcement agency. — National Guard satisfies the criteria of O.C.G.A. § 9-16-19 (a)(2) and is

a law enforcement agency under this definition. 2018 Op. Att'y Gen. No. 18-2.

9-16-21. Effect of federal law forfeitures; annual report.

OPINIONS OF THE ATTORNEY GENERAL

Use of forfeiture funds for overtime pay of law enforcement. — If federal law and regulations or guidelines promulgated permit the use of the proceeds of

federal forfeitures for overtime pay of law enforcement officers, such use would be permitted under Georgia law. 2016 Op. Att’y Gen. No. 16-3.

CHAPTER 17

GEORGIA UNIFORM MEDIATION ACT

Sec.		Sec.	
9-17-1.	Definitions.		
9-17-2.	Application.		closures by mediator; exclusion; special qualifications not required.
9-17-3.	Mediation communication as privileged; use of mediation evidence.	9-17-9.	Participation with attorney or designated representative.
9-17-4.	Waiver of privilege; criminal activity.	9-17-10.	Application of federal Model Law.
9-17-5.	When communication privilege is inapplicable; use of mediation evidence.	9-17-11.	Application of federal Electronic Signatures in Global and National Commerce Act.
9-17-6.	Limited disclosures by mediators.	9-17-12.	Uniformity across jurisdictions.
9-17-7.	Limited disclosures of mediation and mediation communications.	9-17-13.	Severability.
9-17-8.	Review of mediator’s conflict of interest; required dis-	9-17-14.	Applicability.

Effective date.

This chapter became effective July 1, 2021.

Cross references.

Agreement to mediate in juvenile proceedings, § 15-11-22.

Mediation board, § 25-5-8 et seq.

Stay of juvenile proceedings pending mediation, § 15-11-23.

Editor’s notes.

Ga. L. 2021, p. 646, § 1/SB 234, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Uniform Mediation Act.’”

RESEARCH REFERENCES

ALR.

Trust and estate dispute resolution act, 74 A.L.R.7th 3.

9-17-1. Definitions.

As used in this chapter, the term:

(1) “Mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) “Mediation communication” means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, terminating, or reconvening a mediation or retaining a mediator.

(3) “Mediation party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) “Mediator” means an individual who conducts a mediation, or if conducting a mediation pursuant to the Supreme Court of Georgia Alternative Dispute Resolution Rules governing the use of alternative dispute resolution mechanisms by the courts of this state, an individual qualified to mediate under such rules.

(5) “Nonparty participant” means a person, other than a mediation party or mediator, that participates in a mediation, including a representative of a party.

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) “Proceeding” means:

(A) A judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(B) A legislative hearing or similar process.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) “Sign” means:

(A) To execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

History.

Code 1981, § 9-17-1, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

Law reviews.

For article with annual survey on trial

practice and procedure, see 73 Mercer L. Rev. 265 (2021).

For article with annual survey on domestic relations, see 73 Mercer L. Rev. 89 (2021).

9-17-2. Application.

(a) Except as otherwise provided in subsection (b) or (c) of this Code section, this chapter applies to a mediation in which:

(1) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(2) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(3) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or as a provider of mediation services.

(b) This chapter shall not apply to a mediation:

(1) Relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(2) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that this chapter shall apply to a mediation arising out of such a dispute that has been filed with an administrative agency or court;

(3) Conducted by a judge where that judge acts as a mediator and may still make a ruling on the dispute; or

(4) Conducted under the auspices of:

(A) A primary or secondary school if all the mediation parties are students; or

(B) A correctional institution for persons who are under the age of 18 years if all the mediation parties are residents of that institution.

(c) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under Code Sections 9-17-3 through 9-17-5 do not apply to the mediation or part agreed upon. However, Code Sections 9-17-3 through 9-17-5 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

History.

Code 1981, § 9-17-2, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

practice and procedure, see 73 Mercer L. Rev. 265 (2021).

Law reviews.

For article with annual survey on trial

9-17-3. Mediation communication as privileged; use of mediation evidence.

(a) Except as otherwise provided in Code Section 9-17-6, a mediation communication is privileged as provided in subsection (b) of this Code section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by Code Section 9-17-4.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose and may prevent any other person from disclosing a mediation communication;

(2) A mediator may refuse to disclose a mediation communication and may prevent any other person from disclosing a mediation communication of the mediator; and

(3) A nonparty participant may refuse to disclose and may prevent any other person from disclosing a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

History.

Code 1981, § 9-17-3, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

practice and procedure, see 73 Mercer L. Rev. 265 (2021).

Law reviews.

For article with annual survey on trial

9-17-4. Waiver of privilege; criminal activity.

(a) A privilege under Code Section 9-17-3 may be waived in a record if it is expressly waived by all mediation parties and:

(1) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under Code Section

9-17-3, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under Code Section 9-17-3.

History.

Code 1981, § 9-17-4, enacted by Ga. L. Rev. 265 (2021).
2021, p. 646, § 2/SB 234.

Law reviews.

For article with annual survey on trial

practice and procedure, see 73 Mercer L. Rev. 265 (2021).

9-17-5. When communication privilege is inapplicable; use of mediation evidence.

(a) There shall be no privilege under Code Section 9-17-3 for a mediation communication that is:

(1) In an agreement evidenced by a record signed by all parties to the agreement;

(2) Available to the public under Article 4 of Chapter 18 of Title 50, relating to open records, or made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) A threat or statement of a plan to inflict bodily injury or commit a criminal act of violence;

(4) Intentionally used to plan a criminal act, to commit or attempt to commit a criminal act, or to conceal an ongoing criminal act or criminal activity;

(5) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(6) Except as otherwise provided in subsection (c) of this Code section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the Division of Family and Children Services mediation.

(b) There shall be no privilege under Code Section 9-17-3 if a court, administrative agency, or arbitrator finds, after a hearing in camera,

that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(1) A court proceeding involving a felony; or

(2) Except as otherwise provided in subsection (c) of this Code section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator shall not be compelled to provide evidence of a mediation communication referred to in paragraph (6) of subsection (a) or paragraph (2) of subsection (b) of this Code section.

(d) If a mediation communication is not privileged under subsection (a) or (b) of this Code section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this Code section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

History.

Code 1981, § 9-17-5, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

practice and procedure, see 73 Mercer L. Rev. 265 (2021).

Law reviews.

For article with annual survey on trial

9-17-6. Limited disclosures by mediators.

(a) Except as provided in subsection (b) of this Code section, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

(1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) A mediation communication as permitted under Code Section 9-17-5; or

(3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) of this Code section may not be considered by a court, administrative agency, or arbitrator.

History.

Code 1981, § 9-17-6, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

9-17-7. Limited disclosures of mediation and mediation communications.

Notwithstanding any provision of this chapter to the contrary, mediation and mediation communications, and such related conduct, shall not be admissible or subject to disclosure, except to the extent agreed to by the parties in writing or as provided in Code Section 24-4-408 or other law or court required rule of this state, unless such communications are subject to Article 4 of Chapter 18 of Title 50, relating to open records.

History.

Code 1981, § 9-17-7, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

9-17-8. Review of mediator's conflict of interest; required disclosures by mediator; exclusion; special qualifications not required.

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(2) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in paragraph (1) of subsection (a) of this Code section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a) or (b) of this Code section is precluded by the violation from asserting a privilege under Code Section 9-17-3.

(e) Subsection (a), (b), or (c) of this Code section shall not apply to an individual acting as a judge.

(f) This chapter shall not require that a mediator have a special qualification by background or profession.

History.

Code 1981, § 9-17-8, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

9-17-9. Participation with attorney or designated representative.

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

History.

Code 1981, § 9-17-9, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

9-17-10. Application of federal Model Law.

(a) As used in this Code section, the term “Model Law” means the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, as approved at the 51st Session of the United Nations Commission on International Trade Law on June 26, 2018.

(b) Except as otherwise provided in subsections (c) and (d) of this Code section, if a mediation is an international commercial mediation as defined by the Model Law, the mediation is governed by the Model Law.

(c) Unless the parties agree in accordance with subsection (c) of Code Section 9-17-2, that all or part of an international commercial mediation is not privileged, Code Sections 9-17-3, 9-17-4, and 9-17-5 and any applicable definitions in Code Section 9-17-1 also apply to the mediation and nothing in Article 11 of the Model Law derogates from Code Sections 9-17-3, 9-17-4, and 9-17-5.

(d) If the parties to an international commercial mediation agree that the Model Law shall not apply, this chapter shall apply.

History.

Code 1981, § 9-17-10, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

9-17-11. Application of federal Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but shall not modify, limit, or supersede Section 101(c) of

such act or authorize electronic delivery of any of the notices described in Section 103(b) of such act.

History.

Code 1981, § 9-17-11, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

9-17-12. Uniformity across jurisdictions.

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.

Code 1981, § 9-17-12, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

9-17-13. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History.

Code 1981, § 9-17-13, enacted by Ga. L. 2021, p. 646, § 2/SB 234.

9-17-14. Applicability.

This chapter shall apply to all mediation agreements and mediation proceedings entered into on or after July 1, 2021.

History.

Code 1981, § 9-17-14, enacted by Ga. L. 2021, p. 646, § 2/SB 234.