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ORDER OF THE SUPREME COURT OF GEORGIA DENYING PETITION FOR WRIT OF CERTIORARI (SAME DAY AS *RICHARDS v. OLENS* HEARING) (NOVEMBER 7, 2016)

SUPREME COURT OF GEORGIA

ANTHONY S. TRICOLI,

v.

ROB WATTS ET AL.,

Case No. S16C1469

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

OPINION OF THE COURT OF APPEALS OF GEORGIA CONVERTING TO AND GRANTING SUMMARY JUDGMENT WITH NO NOTICE OR OPPORTUNITY TO RESPOND (MARCH 30, 2016)

IN THE COURT OF APPEALS OF GEORGIA

TRICOLI,

v.

WATTS ET AL.,

A15A2256

Before: ANDREWS, P.J., BARNES, P. J., ELLINGTON, P. J., DILLARD, MCFADDEN, and BRANCH, JJ., MILLER, P. J.

ANDREWS, Presiding Judge.

Anthony Tricoli served as President of Georgia Perimeter College (GPC) for six years until he was blamed for a $16 million budget shortfall and resigned. He subsequently sued numerous individuals affiliated with GPC, the Board of Regents of the University System of Georgia, Board of Regents members, and the Georgia Attorney General for fraud, breach of contract, and violations of the Georgia Racketeer Influenced and Corrupt Organizations Act (RICO). The trial court granted the defendants' motion to dismiss, and this appeal followed.

On appeal, Tricoli contends the trial court erred by: (1) finding there was no enforceable written employment contract between Tricoli and the Board of Regents; (2) concluding that the Georgia Tort Claims Act (GTCA), OCGA § 50-21-20 et seq., barred his RICO claims; (3) rejecting his claims for fraud, extortion, and intentional infliction of emotional distress; (4) failing to consider his claims under the Open Records Act; (5) ignoring his abusive litigation claim; and (6) ignoring his motion for preliminary injunction. We find the trial court thoroughly addressed all the issues in this case and correctly concluded that Tricoli's claims failed under the Georgia Tort Claims Act (GTCA) and the doctrine of sovereign immunity.

1. Initially, we note that the standard of review applicable in this appeal is the one for review of a decision on a motion for summary judgment. Although the appeal is from the grant of a motion to dismiss, Tricoli's submission of documentary evidence in response to the motion to dismiss constituted, in effect, a request to convert the motion into one for summary judgment and waived the notice requirement for such a conversion. *See Gaddis v. Chatsworth Health Care Center*, 282 Ga.App. 615, 617 (639 S.E.2d 399) (2006); *Bd. of Regents of the Univ. System of Ga. v. Barnes*, 322 Ga.App. 47, 49 (1) (743 S.E.2d 609) (2013). (Exhibits attached to the pleadings would not operate to convert a motion to dismiss into a motion for summary judgment, *Gaddis*, *supra*, but because a motion to dismiss is not a pleading under OCGA § 9-11-7(a), any documents submitted in conjunction with such a motion are outside the pleadings.)

Where a defendant, who would not bear the burden of proof at trial, moves for summary judgment and

shows an absence of evidence to support any essential element of the plaintiff's case, "the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue." *Cowart v. Widener*, 287 Ga. 622, 623 (1) (697 S.E.2d 779) (2010). But when we review a grant or denial of summary judgment, we must construe the evidence in the light most favorable to the nonmovant. *Home Builders Assn. of Savannah v. Chatham County*, 276 Ga. 243, 245 (1) (577 S.E.2d 564) (2003).

2. "[T]he defense of sovereign immunity is waived as to any action ex contractu for the breach of any written contract entered into by the state or its departments and agencies." (Punctuation and footnote omitted.) *Bd. of Regents of the Univ. System of Ga. v. Barnes*, 322 Ga.App. 47, 49 (2) (743 S.E.2d 609) (2013). Tricoli contends the trial court erred in concluding there was no valid written employment contract that effectuated a waiver of sovereign immunity.

However, in moving to dismiss the action, the defendants originally showed the absence of a written contract of employment, which was critical to Tricoli's ability to show a waiver of sovereign immunity. The trial court held a hearing on the motion on September 22, 2014. Subsequently, on October 10, 2014, Tricoli submitted an August 7, 2006 letter from the Chancellor of the Board of Regents offering him the GPC presidency, which he claimed constituted a written employment contract. That letter stated:

> It is my pleasure to offer you an appointment to the presidency of Georgia Perimeter College, subject to the policy and terms of the Board of Regents and the approval of the Board of Regents of the University System

> of Georgia at its regular meeting on August 9, 2006. The appointment would be effective on October 1, 2006. The total annualized compensation for the position is $190,000 . . . To accept the position, please return this letter with your signature.

The defendants objected to the consideration of that letter on the grounds Tricoli had not properly notified them of the submission, and also on the grounds the letter did not constitute a valid contract of employment. On November 21, 2014, "[a]fter consideration of the evidence, counsel's argument, and applicable statutory and case law," the trial court granted the motion to dismiss.

Assuming arguendo the letter created a contract of employment under this Court's ruling in *Bd. of Regents of the Univ. System of Ga. v. Doe*, 278 Ga.App. 878, 881 (1) (630 S.E.2d 85) (2006), it still didn't save Tricoli's breach of contract claim. The letter, which only specifies a salary and a starting date subject to the approval and policies of the Board of Regents, hardly supports a breach of contract claim. "An employment contract containing no definite term of employment is terminable at the will of either party, and will not support a cause of action against the employer for wrongful termination." *Burton v. John Thurmond Constr. Co.*, 201 Ga.App.10 (410 S.E.2d 137) (1991).

Tricoli contends his alleged written contract was subject to the Board of Regent's written policies and that the relevant policy, as provided by the Board in its answer to a request for admission, supplied sufficient terms to supplement the letter and form an enforceable employment contract. The text of that policy statement relied upon by Tricoli stated as follows:

> If the Board declines to re-appoint a president, it shall notify the president, through the Chancellor, of such decision immediately following the Board's regularly scheduled April [later amended to May] meeting. A decision by the Board not to re-appoint a president is not subject to appeal.

The quoted policy does not provide a definite term for the contract, a promise of employment, a specific deadline for providing the notice, or a provision that Tricoli's employment would be automatically extended for a year or some other period in the event the Board failed to provide notice of re-appointment within a certain time. As such, the policy in no way converts the August 2006 letter into an employment contract that is not terminable at will.

Further, Tricoli himself terminated any employment contract he may have had when he resigned his position as president of GPC. There was no demonstrable breach of contract by any of the defendants, and Tricoli's contention that the defendants forced him to resign asserted a tort, not a contract breach. Lastly, the Board of Regents' failure to renew Tricoli's contract or offer him a contract for a different position provided no basis for avoiding the application of sovereign immunity. *See, e.g.*, *Liberty County School Dist. v. Halliburton*, 328 Ga.App. 422 (762 S.E.2d 138) (2014).

As Tricoli failed to show an enforceable employment contract, there was no waiver of sovereign immunity on the basis of a written contract.

3. All of Tricoli's tort claims were barred by the Georgia Tort Claims Act. OCGA § 50-21-25 (a) provides that the GTCA "constitutes the exclusive remedy for

any tort committed by a state officer or employee . . . while acting within the scope of his or her official duties or employment . . . .” OCGA § 50-21-23 waives sovereign immunity for torts of state officers and employees, but that waiver is subject to the exceptions set forth in OCGA § 50-21-24. Virtually all of the tortious conduct Tricoli complains of falls within those listed exceptions, and so his claims based on that conduct are barred.

4. Tricoli also asserted a claim under the Georgia RICO Act, OCGA § 16-14-1 *et seq.*, based on the same conduct that predicated his tort claims. It is an imaginative theory of recovery to assert against the State itself, but that is about all it is–imagination. The Georgia RICO Act does not express any waiver of sovereign immunity. As noted above, OCGA § 50-21-25 (a) clearly states that the GTCA is the exclusive remedy for any torts committed by state officers and employees. Because the GTCA is the exclusive remedy, the Georgia RICO Act cannot be invoked as an alternate remedy or waiver of sovereign immunity for tortious conduct of state officers and employees.

Colon v. Fulton County, 294 Ga. 93, 95 (1) (751 S.E.2d 307) (2013), relied upon by Tricoli, does not support finding otherwise. *Colon* only involved the Georgia whistleblower statute, OCGA § 45-1-4, which more clearly contained a waiver of sovereign immunity, and did not involve any other statute that was designated as the exclusive remedy where sovereign immunity is at issue.

In conclusion, because Tricoli failed to establish a written enforceable employment contract that would avoid sovereign immunity, and because Tricoli’s tort claims were exclusively governed and barred by the

GTCA, the trial court properly granted the defendants' motion.

Judgment affirmed. Barnes, P. J., Ellington, P. J., Dillard, McFadden, and Branch, JJ., concur. Miller, P. J., dissents.

DISSENTING OPINION OF JUDGE MILLER (MARCH 30, 2016)

I respectfully dissent from the majority's conclusion that the trial court properly granted the defendants' motion to dismiss because the trial court did not convert the motion to dismiss into a motion for summary judgment, and the Georgia Tort Claims Act is not the exclusive remedy where the RICO statute created a separate waiver of sovereign immunity.

1. The majority concludes that the trial court converted the motion to dismiss into a motion for summary judgment. The trial court, however, could not do so without providing Tricoli with notice. *Bonner v. Fox*, 204 Ga.App. 666, 667 (420 S.E.2d. 1992). Instead, the trial court granted the defendant's motion to dismiss, and this Court should review the trial court's order consistent with that standard of review.[1]

2. The issue of whether the Georgia RICO statute provides a waiver of immunity is a question of statutory interpretation and a matter of first impression.

> [a] statute draws it[s] meaning, of course, from its text. When we read the statutory text, we must presume that the General Assembly meant what it said and said what it meant, and so, we must read the statutory text in its most natural and reasonable way,

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[1] We review de novo a trial court's decision to grant a motion to dismiss. *Liberty County School Dist. v. Halliburton*, 328 Ga.App. 422, 423 (762 S.E.2d 138) (2014). In doing so, we construe the pleadings in the light most favorable to the appellant, and we resolve any doubts in the appellant's favor. *Ewing v. City of Atlanta*, 281 Ga. 652, 653 (2) (642 S.E.2d 100) (2007).

> as an ordinary speaker of the English language would. The common and customary usages of the words are important, but so is their context. For context, we may look to the other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.

(Citations and punctuation omitted.) *Tibbles v. Teachers Retirement System of Ga.*, 297 Ga. 557, 558 (1) (775 S.E.2d 527) (2015).

The RICO Act makes it unlawful for "any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity." OCGA § 16-14-4(b). The definition of "enterprise" includes governmental entities. OCGA § 16-14-3(3). Moreover, the statute specifically provides that "[a]ny aggrieved person" may initiate a civil action for treble damages and/or injunctive relief. OCGA § 16-14-6(b), (c).

Importantly, nothing requires the Legislature to "use specific 'magic words' such as 'sovereign immunity is hereby waived' in order to create a specific statutory waiver of sovereign immunity." *Colon v. Fulton County*, 294 Ga. 93, 95 (1) (751 S.E.2d 307) (2013). In drafting the RICO Act, the legislature made its intent clear:

> It is the intent of the General Assembly that [the RICO statute] apply to an interrelated pattern of criminal activity motivated by or the effect of which is pecuniary gain or econ-

> omic or physical threat or injury. This chapter shall be liberally construed to effectuate the remedial purposes embodied in its operative provisions.

OCGA § 16-14-2(b).

The RICO statute includes government entities in its definition of enterprise, and it specifically provides a private individual with a civil remedy for RICO Act violations. These provisions, when viewed together, create a waiver of sovereign immunity.[2] To read the RICO Act as the trial court and the majority do would result in a violation of statutory interpretation and led to a nonsensical result. *See Colon*, *supra*, 294 Ga. at 96 (1).

The majority argues that the Georgia Tort Claims Act is the exclusive remedy for Tricoli's claims and decides the case on this basis. *See* OCGA § 51-21-25(a). I beg to differ, however, with the trial court's and majority's conclusion that Tricoli cannot overcome the bar of sovereign immunity because the language of the RICO statute itself indicates otherwise. Imaginative[3] or not, it is irrelevant whether Tricoli will prevail

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[2] Moreover, in other contexts, the Georgia Supreme Court has found language similar to that found in the RICO Act sufficient to waive immunity. *See Colon*, *supra*, 294 Ga.App. at 95-96 (1). Specifically, in *Colon*, the Supreme Court concluded that the whistleblower statute, OCGA § 45-1-4, waived sovereign immunity with language that "[a] public employee . . . may institute a civil action[.]" As the Supreme Court explained, "in order for the statute to have any meaning at all here, it can only be interpreted as creating a waiver of sovereign immunity." (Citation omitted.) *Id.*

[3] *See* majority op. at 7 (4).

ultimately on the merits of his RICO allegations. The only issue before this Court now is whether he has pled claims that can overcome sovereign immunity at this stage of the litigation. Tricoli has certainly done so.

If Tricoli had alleged only isolated instances of tortious conduct, the Georgia Tort Claims Act would have barred his claims because the General Assembly, in drafting the RICO Act, did not intend to cover "isolated incidents of misdemeanor conduct." OCGA § 16-14-2(b) (emphasis supplied). Unlike the Georgia Tort Claims Act, however, the RICO Act is designed to prohibit (1) a pattern of activity, (2) intended to threaten or cause economic harm, even where that pattern involves tortious actions. *See id.* This is exactly what Tricoli has alleged in his RICO claim—a pattern of tortious and criminal acts designed to threaten him with and inflict economic harm upon him. This Court cannot overlook a remedy the legislature, in its wisdom, saw fit to create. Therefore, I conclude that the Georgia Tort Claims Act is not the exclusive remedy where, as in this case, the legislature intended for the RICO Act to provide a separate waiver of sovereign immunity. Accordingly, I dissent from the majority's opinion.

SUPERIOR COURT ORDER DISMISSING RICO AND BREACH OF CONTRACT COMPLAINT ON GROUNDS OF SOVEREIGN IMMUNITY (NOVEMBER 14, 2014)

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ANTHONY S. TRICOLI,

Plaintiff,

vs.

ROB WATTS; RON CARRUTH; JIM RASMUS; MARK GERSPACHER; SHELETHA CHAMPION: HENRY HUCKABY; JOHN FUCHKO; STEVE WRIGLEY; BEN TARBUTTON; THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; SAM OLENS, the Attorney General of Georgia; and ROBIN JENKINS,

Defendants.

Case No. 14CV4911-7

Before: Daniel M. COURSEY, JR., Judge,
DeKalb Superior Court

This case came regularly before the Court on September 22, 2014 on Defendants' Motion to Dismiss based on sovereign immunity. Counsel for all parties presented argument. After consideration of the evi-

dence, counsel's argument, and applicable statutory and case law, the Court GRANTS Defendants' Motion to Dismiss.

Under the Georgia Constitution, "sovereign immunity extends to the state and all of its departments and agencies" and "can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver." 1983 Ga. Const. Art. I, Sec. III, Para. IX (e). "The party seeking to benefit from the waiver of sovereign immunity has the burden of proof to establish waiver." *Hagan v. Ga. Dept. of Transp.*, 321 Ga.App. 472, 474-475(1) (2013) (citations and punctuation omitted). Failure to establish waiver merits dismissal pursuant to OCGA § 9-11-12(b)(1) for lack of subject matter jurisdiction. "[A] trial court is entitled to make factual findings necessary to resolve the jurisdictional issue." *Board of Regents of University System of Georgia v. Brooks*, 324 Ga.App. 15, 16 (FN2) (2013).

Plaintiff Anthony Tricoli was President of Georgia Perimeter College (GPC) from 2006 to 2012, during which he won numerous leadership awards and accolades. His presidency came to an abrupt end in the spring of 2012 when a $16 million budget deficit came to light. Tricoli resigned—he alleges involuntarily. He claims that he was given a choice: either resign and accept a position at the University System of Georgia's central office or be fired. Tricoli resigned but due to additional reports of misconduct, he was not reassigned to the central office and instead placed on administrative leave until his existing contract expired on June 30. Media reports blamed Tricoli for the deficit.

Tricoli denies responsibility for the budget crisis. He alleges that he is the victim of a conspiracy to destroy his career: GPC's finance team "intentionally, systematically, and duplicitously fed [him] inaccurate numbers;" the Board of Regents "coerced" and "cajoled" him into resigning and denied his due process and appeal rights for improper termination; and the Board of Regents and the Attorney General's Office allowed evidence proving Tricoli's innocence to be "altered, misrepresented or concealed."[1] He filed a Complaint alleging violation of the Georgia RICO Act, OCGA § 16-14-1 *et seq.*; fraud; fraudulent inducement; violation of the Open Records Act, OCGA § 50-18-70 *et seq.*; breach of contract; promissory estoppel; reliance; retaliation; respondeat superior; intentional infliction of emotional distress; attorney's fees; punitive damages; and injunctive relief. Every named defendant is either a state agency or a state employee.

The breach of contract, promissory estoppel, and reliance claims fail. First, none of the individual defendants were parties to a contract with Tricoli. Secondly, there is no written contract to enforce against the Board of Regents. The Georgia Constitution waives sovereign immunity for "any action ex contractu" but only for breach of a written contract. Ga. Const. of 1983, Art. I, Sec. II, Para. IX (c). "An implied contract will not support a waiver of immunity under the provisions of the Georgia Constitution." *Bd. of Regents of Univ. System of Ga. v. Ruff*, 315 Ga.App. 452, 454 (2012) (no waiver of sovereign immunity when plaintiff could not show that he entered into a written contract with a university board of regents). Tricoli's

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[1] Complaint, ¶¶ 147, 148, 161, 176, and 184.

employment contract as President of GPC ended with his resignation, and no other written contract exists. The promissory estoppel, and reliance claims allege that Tricoli was falsely promised a position at the University System of Georgia's central office in return for his resignation. As explained in *Liberty County School Dist. v. Halliburton*, ___Ga.App.___, 762 S.E.2d 138 (2014), the waiver for actions ex contractu does not apply when a plaintiff seeks a new contract that a state agency refuses to issue. The breach of contract, promissory estoppel, and reliance claims are dismissed as to all defendants.

The tort claims against the individual defendants are barred by the Georgia Tort Claims Act, OCGA § 50-21-20 *et seq.* The GTCA expressly exempts state officers and employees from personal liability so long as the allegedly tortious actions fall within the scope of their official duties or employment. OCGA § 50-21-51(b). The breadth of the exemption is discussed in *Davis v. Standifer*, 275 Ga.App. 769, 771-772(1)(a) (2005):

> The GTCA exempts state officers and employees from liability for any torts committed while acting within the scope of their official duties or employment. The scope of the exemption has been construed broadly: Where the state employee acts in the prosecution and within the scope of his official duties, intentional wrongful conduct comes within and remains within the scope of employment. Even where the plaintiff alleges a state constitutional violation, if the underlying conduct complained of is tortious and occurred within the scope of the state employee's official

> duties, the employee is protected by official immunity under the GTCA.

Id. (citations and punctuation omitted). Consistent with the exemption, the GTCA requires that tort claims be filed against government entities, not individuals: "A person bringing an action against the state under the provisions of this article must name as a party defendant only the state government entity for which the state officer or employee was acting and shall not name the state officer or employee individually." OCGA § 5021-25(b). The GTCA "constitutes the exclusive remedy for any tort committed by a state officer or employee . . . while acting within the scope of his or her official duties or employment." OCGA § 50-21-25(a). Here, the tort claims against the individual defendants concern matters that arose "from the performance or nonperformance of their official duties or functions." OCGA § 50-21-21(b). Therefore, the tort claims against the individual defendants are dismissed.

The tort and RICO claims against the Board of Regents and the Attorney General's Office are barred by sovereign immunity. Although the GTCA waives the state's sovereign immunity for torts committed by state officers and employees, the waiver is subject to the exceptions and limitations set forth in Section 24. OCGA §§ 50-21-23 & 24. Whether an exception applies depends not on the causes of action asserted in the complaint but on the conduct that actually produced the claimed losses. *Board of Public Safety v. Jordan*, 252 Ga.App. 577, 583 (2001).

In *Jordan*, the superintendent of the Georgia Police Academy sued the Georgia Board of Public Safety and other defendants for intentional infliction of emotional

distress resulting from his wrongful termination. Jordan alleged that the Board fabricated cause and manipulated the media to discredit him and justify his termination. Even though intentional infliction of emotional distress is not an exception listed in Section 24, the court in *Jordan* found that the exceptions included the Board's conduct that caused the emotional distress. Specifically, the court held that the Board's actions in terminating Jordan were discretionary and protected by Subsection 24(2), and the Board's purported statements to the media and any notations in his employment record constituted libel and slander and were protected by Subsection 24(7).

Here, as in *Jordan*, the Board of Regents' conduct falls within the exclusions set forth in Section 24. Defendants' alleged misreporting of the college's budget is covered by Subsection 24(11), which retains immunity for financial oversight activities. Defendants' alleged defamatory statements are covered by Subsection 24(7), which retains immunity for libel and slander. Defendants' purported retaliation against Tricoli for his attempts at good governance and their trickery in procuring his resignation are also covered by Subsection 24(7), which retains immunity for interference with contractual rights. And the Board of Regents' remaining actions concerning Tricoli's departure as college president "were within the ambit of the Board's discretion inherent to the exercise of its administrative functions," and thus covered by Subsection 24(2), which retains immunity for discretionary acts, "whether or not the discretion involved is abused." *Jordan*, 252 Ga.App. at 584. Because Section 24 preserves the state's sovereign immunity for the Board's conduct, the tort claims are barred. The RICO

claim is barred because it is premised on the same conduct, and the GTCA "constitutes the exclusive remedy for any tort committed by a state officer or employee." OCGA § 50-21-25(a). The tort and RICO claims against the Board of Regents and the Attorney General's Office are dismissed.

Even if the GTCA was not the exclusive remedy, the RICO claim would still fail because Tricoli has not shown the explicit and unequivocal legislative waiver of sovereign immunity required by the state constitution. Tricoli relies on OCGA § 16-14-3(g), which defines a RICO "enterprise" to include "governmental as well as other entities," to establish the requisite waiver. However, defining enterprise to include governmental entities is not a legislative act that expressly waives sovereign immunity and delineates the extent of such waiver. Tricoli failed to carry his burden of establishing waiver, thus requiring dismissal of the RICO claim.

Nor can Tricoli rely on the doctrine of respondeat superior to impose liability on the Board of Regents. He alleges that the Board of Regents is liable for the malfeasance and malice of its employees, specifically naming professor Rob Jenkins who he alleges is guilty of libel and slander. The respondeat superior statute, OCGA § 51-2-5, "does not authorize suit against the state either explicitly or implicitly." *Department of Human Resources v. Johnson*, 264 Ga.App. 730, 734 (2003). The respondeat superior claim is dismissed.

The claim for violation of the Open Records Act, OCGA § 50-18-70 *et seq.*, fails because Tricoli has no standing and the issue is res judicata. David Schick made requests under the Open Record Act, not Tricoli. Furthermore, Schick litigated this issue in Fulton

County Superior Court, *Schick vs. the Board of Regents*. The claim for violation of the Open Records Act is dismissed as to all defendants.

The claims for attorney's fees, punitive damages, and injunctive relief are dependent on Tricoli's underlying substantive tort and contract claims. Because the substantive claims fail, the dependent claims also fail. Further, OCGA § 50-21-30 bars recovery of punitive damages.

SO ORDERED, this 19th day of November 2014.

/s/ Daniel M. Coursey, Jr.
Judge, DeKalb Superior Court

cc: Stephen F. Humphreys, Esq.
C. McLaurin Sitton, Asst Attorney General

ORDER OF THE SUPREME COURT OF GEORGIA DENYING MOTION FOR RECONSIDERATION (AUGUST 10, 2020)

SUPREME COURT OF GEORGIA

ANTHONY TRICOLI,

v.

ROB WATTS ET AL.

Case No. S20C0577

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

Melton, C.J., Nahmias, P.J., Blackwell, and Boggs, JJ., and Judge Karen Beyers concur. Peterson, Warren, Bethel, Ellington, and McMillian, JJ., disqualified.

Thèrèse S. Barnes
Clerk

ORDER OF THE SUPREME COURT OF GEORGIA DENYING PETITION FOR CERTIORARI (JUNE 16, 2020)

SUPREME COURT OF GEORGIA

ANTHONY TRICOLI,

v.

ROB WATTS ET AL.

Case No. S20C0577

Court of Appeals Case No. A19A1071

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

The Supreme Court today denied the petition for certiorari in this case.

Melton, C.J., Nahmias, P.J., Blackwell and Boggs, JJ., and Judge Karen E. Beyers, concur. Peterson, Warren, Bethel, Ellington and McMillian, JJ., disqualified.

Thèrèse S. Barnes
Clerk

ORDER OF THE SUPREME COURT OF GEORGIA DENYING MOTION TO RECUSE REPLACEMENT JUDGE (JULY 16, 2020)

SUPREME COURT OF GEORGIA

ANTHONY TRICOLI,

v.

ROB WATTS ET AL.

Case No. S20C0577

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

Judge Beyers, having carefully considered the motion to recuse her, denies the motion.

Thèrèse S. Barnes
Clerk

ORDER OF THE SUPREME COURT OF GEORGIA APPOINTING SINGLE REPLACEMENT JUDGE FOR FIVE DISQUALIFIED JUSTICES (JUNE 4, 2020)

SUPREME COURT OF GEORGIA

ANTHONY TRICOLI,

v.

ROB WATTS ET AL.

Case No. S20C0577

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

It appearing that Justice Nels S. D. Peterson is disqualified in this case, it is ordered that the Honorable Karen E. Beyers, Judge of the Superior Court of the Gwinnett Judicial Circuit, be hereby designated to act in this case in the place of Justice Nels S. D. Peterson.

Thèrèse S. Barnes
Clerk

UNTIMELY RECUSAL ORDER OF FIVE DISQUALIFIED JUSTICES OF THE SUPREME COURT OF GEORGIA (MAY 4, 2020)

SUPREME COURT OF GEORGIA

TRICOLI,

v.

WATTS ET AL.

Case No. S20C0577

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

Justices Peterson, Warren, Bethel, Ellington, and McMillian have each decided to disqualify from participation in this case. Petitioner's Motion to Disqualify Justices is therefore moot as to those five Justices. Chief Justice Melton, Presiding Justice Nahmias, and Justices Blackwell and Boggs, having each carefully considered the motion to recuse him, deny the motion.

Thèrèse S. Barnes
Clerk

ORDER OF THE SUPREME COURT OF GEORGIA DENYING MOTION TO FILE SUPPLEMENTAL BRIEF ON ATTORNEY GENERAL'S ETHICAL VIOLATIONS (JANUARY 22, 2020)

SUPREME COURT OF GEORGIA

ANTHONY TRICOLI,

v.

ROB WATTS ET AL.

Case No. S20C0577

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

Upon consideration of the Motion to File Supplemental Brief filed in this case, it is ordered that it be hereby denied.

Thèrèse S. Barnes
Clerk

ORDER OF THE COURT OF APPEALS DENYING MOTION FOR RECONSIDERATION (NOVEMBER 8, 2019)

COURT OF APPEALS
OF THE STATE OF GEORGIA

ANTHONY S. TRICOLI,

v.

ROB WATTS ET AL.

Case No. A19A1071

The Court of Appeals hereby passes the following order:

Appellant Anthony Tricoli moves for reconsideration of our order denying his several motions to set aside our decision in *Tricoli v. Watts*, 336 Ga. App. 837 (783 S.E.2d 475) (2016). Having considered the motion, we hereby DENY it.

Stephen E Castlen
Clerk

ORDER OF THE COURT OF APPEALS DENYING APRIL 1, 2019 MOTION TO SET ASIDE SUMMARY JUDGMENT ENTERED BY APPEALS COURT (OCTOBER 24, 2019)

COURT OF APPEALS
OF THE STATE OF GEORGIA

ANTHONY S. TRICOLI,

v.

ROB WATTS ET AL.

Case No. A19A1071

The Court of Appeals hereby passes the following order:

In this direct appeal, the appellant has filed a series of motions asking us to set aside our decision in *Tricoli v. Watts*, 336 Ga. App. 837 (783 S.E.2d 475) (2016), an earlier direct appeal from another ruling in this case. That earlier decision, from which the appellant unsuccessfully sought certiorari in both the Supreme Court of Georgia and the Supreme Court of the United States, is binding upon us as the law of the case in this proceeding. *See* OCGA § 9-11-60 (h) ("any ruling by the Supreme Court or the Court of Appeals in a case shall be binding in all subsequent proceedings in that case in the lower court and in the Supreme Court or the Court of Appeals, as the case may be").

Accordingly, we hereby DENY the appellant's April 1, 2019 motion to set aside, his June 6, 2019 supplemental motion to set aside, his June 24, 2019 second supplemental motion to set aside, and his July 9, 2019 amended second supplemental motion to set aside the decision in *Tricoli v. Watts, supra*, 336 Ga. App. 837.

Stephen E Castlen
Clerk

APPEALS COURT ORDER AFFIRMING TRIAL COURT WITHOUT OPINION (OCTOBER 24, 2019)

COURT OF APPEALS
OF THE STATE OF GEORGIA

ANTHONY S. TRICOLI,

v.

ROB WATTS ET AL.

Case No. A19A1071

Before: McFadden, C. J., McMillian, P. J., and PHIPPS, Senior Appellate Judge.

McFadden, Chief Judge.

In this case, the following circumstances exist and are dispositive of the appeal:

(1) The evidence supports the judgment;

(2) No reversible error of law appears, and an opinion would have no precedential value; and

(3) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. McMillian, P.J., and Senior Appellate Judge Herbert E. Phipps concur.

ORDER OF THE COURT OF APPEALS FOR THE STATE OF GEORGIA DENYING MOTION TO SUPPLEMENT APPELLATE RECORD (MAY 6, 2019)

COURT OF APPEALS OF
THE STATE OF GEORGIA

ANTHONY S. TRICOLI,

v.

ROB WATTS ET AL.

Case No. A19A1071

The Court of Appeals hereby passes the following order:

The Appellant has filed a motion to supplement the appellate record with numerous categories of new and supplemental evidence, as well as with certain materials filed in the Supreme Court of Georgia. As to the former, this court is "a court of review," Ga. Const. of 1983, Art. VI, Sec. V, Par. III, and will not consider evidence in the first instance. As to the latter, this court can consult the publicly available records of the Supreme Court when it is appropriate to do so. The motion is DENIED.

Stephen E Castlen
Clerk

ORDER OF THE SUPERIOR COURT OF DEKALB COUNTY ATTEMPTING TO DISMISS TRICOLI NOTICE OF APPEAL (BLOCKED BY CLERK OF SUPERIOR COURT) (SEPTEMBER 13, 2018)

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

_____

ANTHONY S. TRICOLI,

Plaintiff,

v.

ROB WATTS; RON CARRUTH; JIM RASMUS; MARK GERSPACHER; SHEL ETHA CHAMPION; HENRY HUCKABY; JOHN FUCHKO; STEVE WRIGLEY; BEN TARBUTTON; THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; SAM OLENS, THE ATTORNEY GENERAL OF GEORGIA; AND ROBIN JENKINS,

Defendants.

_____

Case No. 14CV4911-7

Before: Daniel M. COURSEY, JR.,
Judge, DeKalb Superior Court.

Counsel for Plaintiff Anthony S. Tricoli filed a Notice of Appeal on April 2, 2018, appealing the Court's

January 30, 2018 Order Denying Plaintiff's Motion to Set Aside Judgment. This was a discretionary appeal, and on April 24, 2018, the Court of Appeals dismissed the application. A18D0406. Two copies of the dismissal order were docketed with the superior court clerk on May 3, 2018, one with the Court's stamp and signature adopting the appellate court's ruling as its own. Therefore, the Notice of Appeal filed on April 2, 2018 is hereby dismissed.

SO ORDERED, this 13th day of September 2018.

/s/ Daniel M. Coursey, Jr
Judge DeKalb Superior Court

Copies to parties via eservice

ORDER OF THE COURT OF APPEALS FOR THE STATE OF GEORGIA DENYING DISCRETIONARY REVIEW OF SANCTIONS (JUNE 15, 2018)

COURT OF APPEALS OF
THE STATE OF GEORGIA

ANTHONY S. TRICOLI,

v.

ROB WATTS ET AL.

Case No. A18D0468

LC Numbers: 14CV4911

The Court of Appeals hereby passes the following order:

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

Stephen E Castlen
Clerk

ORDER OF THE SUPERIOR COURT OF DEKALB COUNTY DENYING MOTION FOR PROTECTION FROM FIRST AMENDMENT RETALIATION WITHOUT STATUTORY HEARING (MAY 17, 2018)

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ANTHONY S. TRICOLI,

Plaintiff,

v.

ROB WATTS; RON CARRUTH; JIM RASMUS; MARK GERSPACHER; SHEL ETHA CHAMPION; HENRY HUCKABY; JOHN FUCHKO; STEVE WRIGLEY; BEN TARBUTTON; THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; SAM OLENS, THE ATTORNEY GENERAL OF GEORGIA; AND ROBIN JENKINS,

Defendants.

Case No. 14CV4911-7

Before: Daniel M. COURSEY, JR.,
Judge, DeKalb Superior Court.

Plaintiff's Motion to Extend Time to File Notice of Appeal on Anti-SLAPP Motion, Motion to Strike

(anti-SLAPP), Emergency Motion to Vacate the Order Denying Tricoli's Rule 60 Motion, Cross Motion for Sanctions, and Motion for Reconsideration are hereby DENIED.

SO ORDERED, this 17th day of May 2018.

/s/ Daniel M. Coursey, Jr
Judge DeKalb Superior Court

Copies to parties via eservice

ORDER OF THE COURT OF APPEALS FOR THE STATE OF GEORGIA DENYING APPLICATION FOR DISCRETIONARY REVIEW OF RULE 60(D) DENIAL (APRIL 24, 2018)

COURT OF APPEALS OF
THE STATE OF GEORGIA

ANTHONY S. TRICOLI,

v.

ROB WATTS ET AL.

Case No. A18D0406

The Court of Appeals hereby passes the following order:

This is the second time this case has appeared before us. Anthony Tricoli served as President of Georgia Perimeter College (GPC) for six years until he was blamed for a $16 million budget shortfall and resigned. He subsequently sued numerous individuals affiliated with GPC, the Board of Regents of the University System of Georgia, Board of Regents members, and the Georgia Attorney General for fraud, breach of contract, and violations of the Georgia Racketeer Influenced and Corrupt Organizations Act (RICO). The trial court granted the defendants' motion to dismiss, and Tricoli appealed to this Court. We affirmed the trial court's decision, *see Tricoli v. Watts*, 336 Ga. App. 837 (783 S.E.2d 475) (2016), and the Supreme

Court denied Tricoli's petition for certiorari. *Tricoli v. Watts*, Case No. S16C1469 (Nov. 7, 2016).

Tricoli subsequently filed a motion to set aside the trial court's dismissal order. The trial court denied this motion on January 30, 2018, and Tricoli filed this application for discretionary appeal from that order on April 3, 2018. We lack jurisdiction.

To be timely, a discretionary application must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. *Boyle v. State*, 190 Ga. App. 734, 734 (380 S.E.2d 57) (1989). Here, Tricoli filed his application 63 days after entry of the order he seeks to appeal. In his application, Tricoli asserts that "[o]n March 1, 2018, the trial court entered an order extending the time to file a notice and application for appeal 30 days, extending the deadline to Monday, April 2, 2018." However, trial courts have no authority to grant extensions of time to file applications for discretionary appeal. *Gable v. State*, 290 Ga. 81, 85 (2)(a) (720 S.E.2d 170) (2011) ("Because a discretionary application must be filed only in an appellate court, see OCGA § 5-6-35 (d), a trial court may not grant an extension of the time to file the application pursuant to OCGA § 5-6-39."). Although this Court may grant an extension of time to file an application for discretionary appeal, such relief must be requested on or before the application due date. OCGA § 5-6-39 (d); Court of Appeals Rule 31(i). No such motion was filed in this Court, and the failure to meet the statutory deadline for filing a discretionary appeal is a jurisdictional defect. *Gable*, 290 Ga. at 85(2)(a). Tricoli's

failure to comply with the jurisdictional requirement of filing his discretionary application within the statutorily allotted time bars our consideration of this application. Accordingly, Tricoli's application is hereby DISMISSED.

Stephen E Castlen
Clerk

TRIAL COURT ORDER GRANTING SANCTIONS AGAINST TRICOLI WITHOUT ANTI-SLAPP HEARING (APRIL 18, 2018)

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ANTHONY S. TRICOLI,

Plaintiff,

v.

ROB WATTS; RON CARRUTH; JIM RASMUS; MARK GERSPACHER; SHEL ETHA CHAMPION; HENRY HUCKABY; JOHN FUCHKO; STEVE WRIGLEY; BEN TARBUTTON; THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; SAM OLENS, THE ATTORNEY GENERAL OF GEORGIA; AND ROBIN JENKINS,

Defendants.

Case No. 14CV4911-7

Before: Daniel M. COURSEY, JR.,
Judge, DeKalb Superior Court.

This case came before the Court on March 7, 2018 on Defendants' Motion for Sanctions, seeking attorney's fees under OCGA § 9-15-14. Counsel for all parties

appeared and presented evidence and argument. Upon review of the evidence and consideration of counsel's arguments, as well as applicable statutory and case law, the Court GRANTS the Motion.

Subsection (a) of OCGA § 9-15-14 mandates an award of attorney's fees when a party asserts "a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position."

Subsection (b) gives the court discretion to award attorney's fees when a party brings or defends an action, or any part thereof, that "lacked substantial justification." "[L]acked substantial justification means substantially frivolous, substantially groundless, or substantially vexatious." *Id.*

The damages authorized by OCGA § 9-15-14 "are intended not merely to punish or deter litigation abuses but also to recompense litigants who are forced to expend their resources in contending with [abusive litigation]." *O'Keefe v. O'Keefe*, 285 Ga. 805, 806 (2009).

Defendants contend that they are entitled to attorney's fees under both Subsection (a) and (b) for having to respond to Plaintiff Anthony Tricoli's Motion to Set Aside Judgment. The Court agrees.

On January 30, 2018, the Court entered an order denying Tricoli's Motion to Set Aside Judgment on grounds that it lacked any factual or legal basis. The Motion sought to set aside an order that was entered in November 2014 and affirmed in a full bench decision by the Court of Appeals in March 2016.

Citing OCGA § 9-11-60(a) and (d), the Motion alleges fraud, due process violations, the absence of jurisdiction, failure to consider "the Georgia RICO Act," and failure to consider the "constitutional waiver of sovereign immunity for a written contract." The Motion objects to the Court of Appeals' decision, alleging that the appellate "judgment converting the trial court's order dismissing the action into a grant of summary judgment, is also void for due process violations, lack of jurisdiction, and fraud on the part of the Defendants." The Affidavit of Stephen F. Humphreys, Tricoli's counsel, avers that the "dismissal order was supplanted by a sua sponte grant of summary judgment by the Court of Appeals." The Motion also objects to the Georgia Supreme Court's denial of certiorari, asserting that the Supreme Court refused to recognize Tricoli's "mandatory right to appeal a grant of summary judgment." Humphreys' Affidavit avers that "the Georgia Supreme Court denied certiorari, ignoring the mandatory right to appeal of [sic] a grant of summary judgment under OCGA § 9-11-56."

It goes without saying that this Court has no authority to rule on decisions issued by the Court of Appeals or the Supreme Court. However, for clarity, the Court of Appeals did not convert the motion to dismiss into one for summary judgment; rather, it held that "Tricoli's submission of documentary evidence in response to the motion to dismiss constituted, in effect, a request to convert the motion into one for summary judgment and waived the notice requirement for such a conversion." *Tricoli v. Watts*, 336 Ga.App. 837, 838 (2016). And the Supreme Court is not required to accept a direct appeal from the Court of

Appeals simply because the appeals court applied the standard of review for summary judgment.

Confining consideration of Tricoli's Motion to Set Aside to solely the criticisms about this Court's order of November 2014, the Court finds that the Motion is riddled with expansive and baseless assertions that display stubborn ignorance and purposeful disregard for the facts and the law. The Court allegedly failed to consider the sovereign immunity waiver provisions of the Georgia RICO Act. However, the Court did in fact consider the RICO claim and ruled that it was barred because there is no legislative waiver of immunity. The Court of Appeals affirmed, describing Tricoli's RICO claim as "an imaginative theory of recovery to assert against the State itself, but that is about all it is—imagination." *Tricoli*, 336 Ga. App. at 840. The Court was also accused of fabricating legal rules, denying "due process by bypassing statutes," denying "due process via bait and switch," and manipulating statutory authority. All accusations are attempts to re-argue the dismissal motion, which was decided and affirmed. The Motion never specifies any factual or legal basis for setting aside the judgment under OCGA § 9-11-60.

At the hearing on March 7, 2018, Humphreys presented extensive argument but still failed to provide any cognizable grounds for filing the Motion to Set Aside. For instance, he asserted that the Court of Appeals directed him to file the Motion to Set Aside, and argued that an award under OCGA § 9-15-14 would punish him for following the Court of Appeals' directive.

The Court finds that an award attorney's fees against Tricoli and Humphreys is mandated under

Subsection (a) of OCGA § 9-15-14 because Tricoli and Humphreys filed the Motion to Set Aside despite the "complete absence of any justiciable issue of law or fact, and he could not have "reasonably believed that a court would accept" the arguments asserted in the Motion. The Court also and alternatively finds that a discretionary award is authorized under Subsection (b) of OCGA § 9-15-14. Tricoli and Humphreys filed a motion that "lacked substantial justification," *i.e.*, it was "substantially frivolous, substantially groundless, [and] substantially vexatious." *Id.* And the Motion to Set Aside has unnecessarily expanded a case that was decided in November 2014 and affirmed on appeal in March 2016.

Defendants seek $6,675.90 in attorney's fees, not including the time for the sanctions hearing. Senior Assistant Attorney General C. McLaurin Sitton described his education and experience, the legal services rendered, the number of hours worked, the hourly billing rate, the total amount of the fees, and the reasonableness of the fees. He submitted a time sheet as Exhibit 1, and it is attached hereto. Humphreys was given the opportunity to challenge the value and need for legal services, and he chose to ask only if Sitton's fees were paid by the Georgia tax payers.

Tricoli and Humphreys are jointly and severally ordered to pay $6,675.90 to the Attorney General's office by July 18, 2018.

SO ORDERED, this 18th day of April 2018.

/s/ Daniel M. Coursey, Jr
Judge DeKalb Superior Court

EX PARTE TRIAL COURT ORDER GRANTING ATTORNEY GENERAL'S MOTION TO QUASH SUBPOENAS (MARCH 6, 2018)

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ANTHONY S. TRICOLI,

Plaintiff,

v.

ROB WATTS; RON CARRUTH; JIM RASMUS; MARK GERSPACHER; SHEL ETHA CHAMPION; HENRY HUCKABY; JOHN FUCHKO; STEVE WRIGLEY; BEN TARBUTTON; THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; SAM OLENS, THE ATTORNEY GENERAL OF GEORGIA; AND ROBIN JENKINS,

Defendants.

Case No. 14CV4911-7

Before: Daniel M. COURSEY, JR.,
Judge, DeKalb Superior Court.

Before the Court for consideration is a Motion to Quash Subpoenas filed by Deputy Attorney General Annette M. Cowart, Senior Assistant Attorney General

Russell D. Willard, Chancellor of the Board of Regents Steve Wrigley, and Samuel S. Olens. The Court does not believe that the testimony of any of the movants is needed, and they are released from appearing at the hearing scheduled for Wednesday, March 7, 2018. If during the hearing it appears that their testimony is required, they can be called at a later date.

SO ORDERED, this 6th day of March 2018

/s/ Daniel M. Coursey, Jr
Judge DeKalb Superior Court

cc: Stephen F. Humphreys, Esq.
C. McLaurin Sitton, Asst Attorney General

ORDER DENYING PLAINTIFF'S RULE 60 MOTION TO SET ASIDE JUDGMENT (JANUARY 29, 2018)

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ANTHONY S. TRICOLI,

Plaintiff,

v.

ROB WATTS; RON CARRUTH; JIM RASMUS; MARK GERSPACHER; SHEL ETHA CHAMPION; HENRY HUCKABY; JOHN FUCHKO; STEVE WRIGLEY; BEN TARBUTTON; THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA; SAM OLENS, THE ATTORNEY GENERAL OF GEORGIA; AND ROBIN JENKINS,

Defendants.

Case No. 14CV4911-7

Before: Daniel M. COURSEY, JR.,
Judge, DeKalb Superior Court.

Before the Court for consideration are Plaintiff's Motion to Set Aside Judgment and Defendants' Motion for Sanctions. Neither party has filed a written request for oral argument. USCR 6.3. Upon review of the motions, the record, and applicable statutory and

case law, the Court DENIES Plaintiff's Motion to Set Aside Judgment.

Plaintiffs Motion to Set Aside Judgment is based on OCGA § 9-l l-60(a) and (d). The judgment that Plaintiff seeks to set aside is the Order Granting the Motion to Dismiss entered on November 21, 2014, which was affirmed on appeal in March 2016. *Tricoli v. Watts*, 336 Ga. App. 837 (2016). Reconsideration of the appeal was denied, and certiorari to the Georgia Supreme Court was denied. The Motion to Set Aside fails to show evidence supporting either OCGA § 9-11-60(a) or (d). First, the Order is not void on its face. Second, there is no factual or legal basis supporting Plaintiff's profuse assertions of fraud and due process violations.

Defendants' Motion for Sanctions requests attorney's fees and expenses under OCGA §§ 9-15-14 and 50-21-32. The Court will hear the Motion for Sanctions on Wednesday, March 7, 2018 at 9:30 a.m. in Courtroom 7B of the DeKalb County Courthouse.

SO ORDERED, this 29th day of January 2018.

/s/ Daniel M. Coursey, Jr
Judge DeKalb Superior Court

CORRESPONDENCE WITH TRIAL COURT RE: PURPORTED DISMISSAL OF DIRECT APPEAL (SEPTEMBER 13, 2018)

STEPHEN F. HUMPHREYS PC
ATTORNEY AT LAW

PO Box 192
Athens, Georgia 30603
athenslaw@gmail.com
706 207 6982

Honorable Daniel Coursey
Judge, DeKalb Superior Court
Decatur, Georgia
ADaldry@dekalbcountyga.gov

Dear Judge Coursey,

I am writing to call your attention to an order that was mistakenly entered by the Court today, confusing direct for discretionary appeals.

We have recently been working with the Clerk to prepare the record for two issues that are directly appealable under OCGA 5-6-34. In fact, we filed yesterday the transcript of the March 7 hearing for inclusion in the record, after verifying the original garbled version was corrected.

The two issues covered by the September 12, 2018 amended notice which your order purports to dismiss, the denial of the motion to set aside pursuant to OCGA 9-11-60(a), and the denial of the anti-SLAPP motion under OCGA 9-11-11.1, are final orders directly appealable by statute. OCGA 5-6-34 and 9-11-11.1(e).

These issues were separately and properly noticed for appeal. All yesterday's September 12 amended notice did was to consolidate these two directly appealable matters into a single appeal. Thus, the Court has no discretion to dismiss them as discretionary appeals denied by the Court of Appeals.

These appeals under 9-11-60(a) & 9-11-11.1 are separate from the applications for discretionary appeal that were denied by the Court of Appeals. Those denials involved the sanctions order under OCGA 9-15-14 and the denial of the Rule 60(d) motion, which require applications for appeal under OCGA 5-6-35(a)(8&10). That is the subject of the denial of the discretionary application in the Court of Appeals' April 24 order. This Court's May 3 order adopting the Court of Appeals order denying application for discretionary appeal does not affect the matters that are directly appealable under OCGA 5-6-34, and for which timely notices of appeal were filed and have not been contested.[1]

Neither this Court nor the Court of Appeals has any authority or jurisdiction to bar the direct appeals under OCGA 5-6-34 that were duly noticed and for which the record has been prepared. Moreover, the Attorney General also has an interest in seeing that the statutes of Georgia are faithfully followed on such a matter

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[1] That May 3, 2018 order appears in the docket, but was never served on Tricoli. We presume its content based on the Court's representation in the September 13 order purporting to dismiss the direct appeals as applications for discretionary appeal that were denied by the Court of Appeals.

Therefore, we respectfully request that this mistaken order entered without notice to the parties be rescinded so that the transmission of the record on the directly appealable issues may proceed without interruption.

Thank you for your attention to this matter.

Sincerely

/s/ Stephen F. Humphreys

cc: Attorney General
CID
Diana Edwards
Amy Daldry

EMAIL STRING FROM ATTORNEY GENERAL ASKING COURT TO EXCUSE SUBPOENAED WITNESSES

SITTON EMAIL STRING

Friday, March 2–Wednesday March 7, 2018

Re: Urgent: Notice of Appeal Deadline Today, Tricoli, 14cv4911

Friday, March 2

From: Mac Sitton [mailto:msitton@law.ga.gov]
Sent: Friday, March 02, 2018 4:06 PM
To: Daldry, Amy Lynn
Cc: Stephen Humphreys
Subject: Re: Urgent: Notice of Appeal Deadline Today

Good afternoon Ms. Daldry,

The hearing that is scheduled on Wednesday is on the Defendants' Motion for Sanctions.

Following the Court's denial of Plaintiff's Rule 60 Motion to Set Aside the Judgment, which also set that hearing date, Mr. Humphreys filed a motion for reconsideration of the Court's denial and a "cross-motion for sanctions." No supporting material was filed in support of the motion for reconsideration pursuant to Rule 6.1.

We have become aware that Mr. Humphreys has served a number of subpoenas for Wednesday's hearing. These have been served on both current and former employees of the Board of Regents of the University System of Georgia as well as current and former

employees of the Georgia Department of Law. This includes attorneys of this office who are involved in the litigation of other cases in other courts being handled by Mr. Humphreys.

We do not know how many people Mr. Humphreys has served or is planning to serve as there has been no notice provided by him. We are also unaware as to what some of these people are being called for. Certainly, none have any connection with the motion for sanctions and some have no connection with this case.

The presentation of evidence on motions is controlled by the Court, and we are requesting that the Court hold a phone conference with the parties as soon as practical to address whether, and on what issues, testimony is going to be heard on Wednesday.

Out of an abundance of caution, we also request that the phone conference be recorded or transcribed.

My direct number is below. I am currently scheduled to be in Augusta for depositions on Monday afternoon but will be in the office Monday morning. If necessary, I can also be reached at my cell phone number, which I will provide directly to the Court at its request.

Respectfully,

Mac Sitton
Senior Assistant Attorney General
Office of Attorney General Chris Carr
General Litigation

Tel: 404-656-3370
msitton@law.ga.gov

Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334

From: Daldry, Amy Lynn
[mailto:ADaldry@dekalbcountyga.gov]
Sent: Friday, March 02, 2018 4:44 PM
To: Mac Sitton
Cc: Stephen Humphreys
Subject: Re: Urgent: Notice of Appeal Deadline Today

I will bring your request for a phone conference to Judge Coursey's attention on Monday.

Have a good weekend,

Amy Daldry
Law Clerk to Hon. Daniel M. Coursey, Jr.
Superior Court, Stone Mountain Circuit
556 N. McDonough St., Ste 7220
Decatur, GA 30030
(404) 371-4711
Fax: (404) 371-2993
adaldry@dekalbcountyga.gov

From: Stephen Humphreys <athenslaw@gmail.com>
To: Mac Sitton <msitton@law.ga.gov>
cc: "Daldry, Amy Lynn"
<ADaldry@dekalbcountyga.gov>
Date: Fri, Mar 2, 2018 at 6:35 PM

Subject: Re: Urgent: Notice of Appeal Deadline Today mailed-gmail.com
By: Important according to Google magic.

Dear Ms. Daldry:

The representations of Mr. Sitton are incorrect and misleading. The Attorney General has filed a motion for sanctions against us-purportedly on the basis that there is no newly available evidence of fraud affecting the judgment supporting Tricoli's Rule 60 motion, for which the Attorney General is asking that we be subjected to punitive sanctions.

Despite the derogatory characterization and imputed motives for the subpoenas that have been served, the witnesses are called to show that there is, in fact, a large amount of supporting evidence, evidence that the Attorney General has denied in bad faith.

In addition, we requested a hearing to present evidence of the fraud affecting the judgment we are asserting-however, it was obviated by the Court's order, denying our motion, that was entered an hour after our pleading requesting the hearing. We have filed a motion for reconsideration asking the Court to revisit that denial. We also filed a cross motion for sanctions and invited the Court to consider this related motion at the same hearing. Since it was the Attorney General who raised the issue of sanctions, he should be prepared to address it at that time.

The Attorney General is also dilatory in responding to the subpoenas served mainly on defendants in this case, which started being served over a week ago. Subpoenas have also been served on persons with direct knowledge concerning evidence of fraud affecting

the judgment-evidence that has already been filed into the court record.

Thus the evidence sought is directly relevant to the Attorney General's motion. Additional evidence is being compiled to be filed as exhibits prior to the hearing.

Please let us know if you have any questions. However, we can not discern any legal basis for Mr. Sitton's objections, unless he intends to call a hearing seeking sanctions against us-and then attempt to bar us from presenting evidence directly relevant to the threat of sanctions raised by the Attorney General. That, of course, would prevent us from defending ourselves against the Attorney General's motion, which we contend fails on its face to meet the standards of OCGA 9-15-14. We simply intend to prove that failure conclusively.

If Mr. Sitton has any actual legal objection, other than the Attorney General would like to avoid the presentation of evidence refuting the grounds for his own motion, then the Attorney General should file a motion stating the legal grounds for barring evidence directly related to the motion he filed. Unless he now wishes to withdraw the motion, we cannot *see* how he can now object to the relevant evidence.

Certainly any discussion and decision regarding this important question of due process should be on the record in writing, clearly stating the legal grounds, not in a phone conference where punitive measures are at stake.

Respectfully,

Stephen Humphreys
Stephen F. Humphreys, P.C.
(706) 207-6982

Monday, March 5

From: Mac Sitton [mailto:msitton@law.ga.gov]
Sent: Monday, March 05, 2018 3:18 PM
To: Daldry, Amy Lynn
Cc: Stephen Humphreys
Subject: Re: Urgent: Notice of Appeal Deadline Today

Ms. Daldry,

I do not mean to be a pest, but I am receiving calls from a number of people, several of whom were served with subpoenas by Plaintiff as recently as late Friday and at least one of whom has an out-of-state commitment regarding a family matter this Wednesday. I would very much appreciate if you might let us know whether and when Judge Coursey might be able to address this issue before then.

I am in the office now and all day tomorrow and can go to the courthouse if Judge Coursey would prefer to deal with this in person.

Thank you for your help,

Mac Sitton
Senior Assistant Attorney General
Office of Attorney General Chris Carr
General Litigation

Tel: 404-656-3370
msitton@law.ga.gov

Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334

From: Daldry, Amy Lynn
<ADaldry@dekalbcountyga.gov>
To: Mac Sitton <msitton@law.ga.gov>
cc: Stephen Humphreys <athenslaw@gmail.com>
Date: Mon, Mar 5, 2018 at 4:30 PM
Subject: Re: Urgent: Notice of Appeal Deadline Today, Tricoli, 14cv4911
Mailed by: -dekalbcountyga.gov by:
Signed by: -dekalb.onmicrosoft.com
Security by: Standard encryption (TLS) Learn more
Important according to Google magic.

Hello,

The sole issue that the Court will hear on Wednesday, March 7 is Defendants' 9-15-14 Motion for Sanctions. Judge Coursey does not believe that a phone conference is needed prior to the hearing.

Regards,

Amy Daldry
Law Clerk to Hon. Daniel M. Coursey, Jr.
Superior Court, Stone Mountain Circuit
556 N. McDonough St., Ste 7220
Decatur, GA 30030

(404) 371-4711
Fax: (404) 371-2993
adaldry@dekalbcountyga.gov

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from: Stephen Humphreys <athenslaw@gmail.com>
to: "Daldry, Amy Lynn"
<ADaldry@dekalbcountyga.gov>
cc: Mac Sitton <msitton@law.ga.gov>
date: Mon, Mar 5, 2018 at 4:35 PM
subject: Re: Urgent: Notice of Appeal Deadline Today, Tricoli, 14cv4911
mailed by: gmail.com
Important according to Google magic.

We can assure the Court that every witness subpoenaed is directly related to the sanctions issue. We have no intention of getting into other matters.

Stephen F. Humphreys, P.C.
(706) 207-6982

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from: Mac Sitton <msitton@law.ga.gov>
to: "Daldry, Amy Lynn"
<ADaldry@dekalbcountyga.gov>
cc: Stephen Humphreys <athenslaw@gmail.com>
date: Mon, Mar 5, 2018 at 4:35 PM
subject: Re: Urgent: Notice of Appeal Deadline Today, Tricoli, 14cv4911
mailed by: law.ga.gov
security by: Standard encryption (TLS) Learn more
Important according to Google magic.

Thank you Ms. Daldry.

So that I can clarify for those who have been validly served with subpoenas-are those individuals excused from attending Wednesday's hearing?

Mac Sitton
Senior Assistant Attorney General
Office of Attorney General Chris Carr
General Litigation
Tel: 404-656-3370
msitton@law.ga.gov

Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334

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from: Stephen Humphreys <athenslaw@gmail.com>
to: Mac Sitton <msitton@law.ga.gov>
cc: "Daldry, Amy Lynn"
<ADaldry@dekalbcountyga.gov>
date: Mon, Mar 5, 2018 at 4:39 PM
subject: Re: Urgent: Notice of Appeal Deadline Today, Tricoli, 14cv4911
mailed by: gmail.com
: Important according to Google magic.

We would certainly object to Mr. Sitton's requested "clarification." These are validly served subpoenas that cannot be eliminated in an email.

If Mr. Sitton thinks there are grounds for quashing the subpoenas, he should file a motion stating the legal basis and ask for a written order based on legal authority.

Stephen F. Humphreys, P.C.
(706) 207-6982

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from: Daldry, Amy Lynn
<ADaldry@dekalbcountyga.gov>
to: Stephen Humphreys <athenslaw@gmail.com>,
Mac Sitton <msitton@law.ga.gov>
date: Mon, Mar 5, 2018 at 5:03 PM
subject: Re: Urgent: Notice of Appeal Deadline Today, Tricoli, 14cv4911
mailed by: dekalbcountyga.gov
signed by: dekalb.onmicrosoft.com
security: Standard encryption (TLS) Learn more
: Important according to Google magic.

Mr. Sitton,

The clarification you seek is beyond the scope of emails, which is limited to procedural matters.

Regards,

Amy Daldry
Law Clerk to Hon. Daniel M. Coursey, Jr.
Superior Court, Stone Mountain Circuit
556 N. McDonough St., Ste 7220
Decatur, GA 30030
(404) 371-4711
Fax: (404) 371-2993
adaldry@dekalbcountyga.gov

Tuesday, March 6

Proposed Order
From: Rebecca Mick
Sent: Tuesday, March 06, 2018 11:29 AM
To: 'ADaldry@dekalbcountyga.gov'
'athenslaw@gmail.com'
Subject: Proposed Order

I have efiled a Motion to Quash subpoenas for the sanctions hearing scheduled tomorrow morning. I have also attached a proposed order for the Court's consideration. Thank you and have a great day.

Rebecca Mick
Senior Assistant Attorney General
Office of Attorney General Chris Carr
Government Services & Employment
Tel: 404-656-3352
rmick@law.ga.gov

Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334

Re: Proposed Order, Tricoli, 14CV4911

from: Daldry, Amy Lynn
<ADaldry@dekalbcountyga.gov>
to: Rebecca Mick <rmick@law.ga.gov>,
"athenslaw@gmail.com"
<athenslaw@gmail.com>
date: Tue, Mar 6, 2018 at 3:22 PM
subject: Re: Proposed Order, Tricoli, 14CV4911

mailed by: dekalbcountyga.gov
signed by: dekalb.onmicrosoft.com
security: Standard encryption (TLS) Learn more
: Important according to Google magic.

The attached order is being efiled with the clerk today.

Regards,

Amy Daldry
Law Clerk to Hon. Daniel M. Coursey, Jr.
Superior Court, Stone Mountain Circuit
556 N. McDonough St., Ste 7220
Decatur, GA 30030
(404) 371-4711
Fax: (404) 371-2993
adaldry@dekalbcountyga.gov

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from: Stephen Humphreys <athenslaw@gmail.com>
to: "Daldry, Amy Lynn"
<ADaldry@dekalbcountyga.gov>
cc: Rebecca Mick <rmick@law.ga.gov>,
Mac Sitton <msitton@law.ga.gov>
date: Tue, Mar 6, 2018 at 3:35 PM
subject: Re: Proposed Order, Tricoli, 14CV4911
mailed by: gmail.com

of course, we strenuously object to any order being filed, based on such a tardy motion, without so much as giving Tricoli an opportunity to respond. This is a complete denial of due process.

Accordingly, it is our position that any order granting the Attorney General's request, which cites no legal authority, should be withdrawn immediately.

Stephen F. Humphreys, P.C.
(706) 207-6982

STEPHEN F. HUMPHREYS CORRESPONDENCE WITH CLERK OF GEORGIA COURT OF APPEALS (DECEMBER 19, 2017)

STEPHEN F. HUMPHREYS PC
ATTORNEY AT LAW

PO Box 192
Athens, Georgia 30603
athenslaw@gmail.com
706 207 6982

Mr. Steve Caslten
Clerk, Georgia Court of Appeals
47 Trinity Avenue, SW
Atlanta, Georgia 30334
castlens@gaappeal.us

Dear Mr. Castlen:

As we discussed by phone, we filed a Motion to Set Aside Judgment pursuant to OCGA 9-11-60 (Rule 60) in Case No. A15A2256 on November 21, 2017. The pleading was rejected the same day by the filing clerk as a matter over which the Court did not deem to have jurisdiction. However, the statute requires the motion to be filed in the "court of rendition," and since the Court of Appeals did enter its own original judgment, *sua sponte*, instead of affirming the trial court, we believe the statute confers jurisdiction on the appellate court to consider this matter. In fact, the statute requires the motion to be filed in the appellate court.

According to OCGA 9-11-60(b), "a judgment can be attacked. . . . by a motion to set aside. Judgments may be attacked only in the court of rendition." The trail court, where a Rule 60 motion would normally be filed, has no power, in this case, to set aside the summary judgment granted in the first instance by the Court of Appeals. Summary judgment was not raised or considered by the trial court.

While we agree that it is an unusual matter, since facts are not usually determined and original judgments are not usually entered at the appeals court level, that is what occurred in this instance. Instead of affirming the final order of the trail court granting dismissal under OCGA 9-11-12(b)(1), the Georgia Court of Appeals entered a grant of summary judgment, on its own motion, without notice or opportunity to respond, on March 30, 2016.

We are filing the Rule 60 motion, in part, because the appeals court violated due process by considered matters not considered in the trial court below or raised by any party on appeal (OCGA 9-11-60(d)(1)), and, in part, because of newly discovered evidence of fraud by the defendants which render the Court of Appeals' findings of fact on summary judgment untenable. OCGA 9-11-60-(d)(2).

Part of the reason for the confusion is that the Court of Appeals acted contrary to the statute when it granted its own summary judgment motion, since summary judgment conversion only applies to motions to dismiss filed under OCGA 9-11-12(b)(6). The motion in the instant case was filed under OCGA 9-11-12(b)(1). Therefore, the procedural irregularity is due to the Court's own action taken outside the statute.

For all these reasons, we believe that the Court has jurisdiction and that the filing of the Rule 60 Motion directly to the Court of Appeals is the proper procedure. We considered other procedural mechanisms, such as mandamus, but they do not seem to make any sense given the specific direction of OCGA 9-11-60(b). I would certainly appreciate any thoughts you have about another mechanism that could address this unusual procedural posture, but we believe the correct course is for the Court of Appeals to accept the filing and consider the motion on its merits.

Thank you for your time and attention to these concerns. Please let me know if you have any questions, or if I may be of any additional assistance.

Sincerely

/s/ Stephen F. Humphreys