APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Opinion, U.S. Court of Appeals for the Eleventh Circuit (January 12, 2024) 1a

Judgment, U.S. District Court for the Southern District of Georgia (March 3, 2022) 22a

Order, U.S. District Court for the Southern District of Georgia (February 22, 2022) 24a

Order, U.S. Bankruptcy Court for the Southern District of Georgia (April 1, 2021) 48a

REHEARING ORDER

Order Denying Petition for Rehearing, U.S. Court of Appeals for the Eleventh Circuit (May 8, 2024)..... 55a

STATUTORY PROVISIONS INVOLVED

Relevant Statutory Provision 57a
GA Code § 9-12-60..... 57a
GA Code § 9-12-61. ..... 59a
GA Code § 9-12-62. ..... 59a
GA Code § 9-12-63. ..... 59a
GA Code § 9-12-64 ..... 60a
GA Code § 9-12-65..... 60a
GA Code § 9-12-66. ..... 60a
GA Code § 9-12-67. ..... 61a
GA Code § 9-12-68. ..... 61a

APPENDIX TABLE OF CONTENTS (Cont.)

OTHER DOCUMENTS

Opinion in *Atwood v. Hirsch Bros*,
Supreme Court of Georgia
(August 3, 1905) 62a

Opinion in *Popham v. Jordan*,
Court of Appeals of Georgia
(March 15, 2006)..... 66a

Opinion in *Mancuso v. Cadles of West Virginia, LLC*, Court of Appeals of Georgia
(January 18, 2024)..... 70a

OPINION, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (JANUARY 12, 2024)

PUBLISH

90 F.4th 1158

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

IN RE: DONALD H. BAILEY

Debtor.

KAI HANSJURGENS,

Plaintiff-Appellant,

v.

DONALD H. BAILEY,

Defendant-Appellee.

No. 22-10819

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:21-cv-00105-RSB-CLR,
Bkcy No. 4:07-bk-41381-EJC

Before: WILLIAM PRYOR, Chief Judge, and ROSENBAUM and ABUDU, Circuit Judges.

ROSENBAUM, Circuit Judge:

Baseball Hall of Famer Frank Robinson famously said that "[c]lose only counts in horseshoes and hand grenades."[1] To that list we add one more thing: close—as long as it's close enough to qualify as "substantial compliance"—also counts when it comes to following a state's rules for reviving a judgment in federal court under Federal Rule of Civil Procedure 69(a).

More than a decade ago, Appellee Donald Bailey obtained a bankruptcy judgment against Appellant Kai Hansjurgens for tortious interference with contract. That judgment included punitive damages based on Hansjurgens's "malice and intent to injure" and "cavalier attitude toward [his] duties as [a] litigant[]." *Bailey v. Hako-Med USA, Inc.*, No. 09-4002, at 8-9 (Bankr. S.D. Ga. Apr. 7, 2011). Hansjurgens has not paid Bailey a cent.

Georgia state law gave Bailey ten years to collect. But before Bailey's judgment expired irretrievably, Bailey filed—and the bankruptcy court granted—a motion to revive that judgment. Hansjurgens does not dispute that the underlying judgment is valid, but he still seeks to keep his streak of dodging payment intact. This time, Hansjurgens claims that Bailey didn't strictly comply with Georgia state-law procedures to revive his judgment. But the district court found—and Bailey argues on appeal—that Bailey did enough to satisfy the Georgia judgment-revival procedure under Federal Rule of Civil Procedure 69(a). We agree. So

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[1] Nick Acocella, *More Info on Frank Robinson*, ESPN CLASSIC (last visited Jan. 12, 2024), https://www.espn.com/classic/000728frankrobinsonadd.html [https://perma.cc/5ATF-87HL].

after careful consideration, and with the benefit of oral argument, we affirm.

I. Background

A. Original Bankruptcy Proceedings and Related Appeals

Bailey and Hansjurgens's dispute originated with a business arrangement. Bailey leased medical equipment to physicians. To obtain some of his leasing inventory, Bailey entered into a distributorship agreement with Hansjurgens and his medical device company Hako-Med USA, Inc. *Bailey v. Hako-Med USA, Inc. (In re Bailey)*, 2010 Bankr. LEXIS 6300, at *2 (Bankr. S.D. Ga. 2010). Under this agreement, Bailey bought several Hako-Med PRO Elec DT 2000 and VasoPulse 2000 devices. Healthcare professionals use these machines to non-invasively treat lower back pain. *Id.* Unfortunately for Bailey, though, he had trouble selling the devices. In Bailey's view, his sales problem arose because Hansjurgens and Hako-Med recommended billing codes that resulted in lower reimbursement rates than they had touted. *Id.* at *3-4.

After the distributorship agreement expired, a medical-equipment rental company, New River, offered to pay Bailey $1,000 each month per device to lease the devices to physicians' offices. *Id.* at *5. But Hansjurgens and Hako-Med threatened (unfounded) legal action against physicians who were negotiating with Bailey and New River. *Id.* at *6. So Bailey stopped marketing the devices, and New River shut down its operations. *Id.* at *9.

Bailey filed for Chapter 11 bankruptcy. In bankruptcy court, Bailey brought an adversary proceeding

against Hansjurgens and Hako-Med for tortious interference with contract.

The bankruptcy court held a trial and entered an interlocutory order in favor of Bailey. *Id.* at *27. It concluded that Hansjurgens had indeed tortiously interfered "to bully the Potential Purchasers out of negotiations" and "to advance his own pecuniary interest." *Id.* at *18-19.

After finding that Hansjurgens and Hako-Med "acted with malice and intent to injure," the bankruptcy court ordered post-judgment discovery on punitive damages and attorney's fees. *Id.* at *21, *27. Bailey's post-judgment discovery requests went "largely unanswered," so Bailey moved to compel. *Bailey*, No. 09-4002, at 2. The bankruptcy court ordered Hansjurgens and Hako-Med to submit discovery responses for the court's inspection, but they did not do so. *Id.* at 2-3.

In the meantime, the bankruptcy court proceeded with its trial on punitive damages and attorney's fees. In April 2011, the bankruptcy court entered judgment for Bailey and awarded $893,973.64 total: $277,336.13 in compensatory damages, $554,672.26 in punitive damages, and $61,965.25 in attorney's fees. *Id.* at 12. In support of its ruling, the court characterized Hansjurgens's trial testimony as "evasive and uncooperative" and noted his "cavalier attitude toward [his] duties as [a] litigant[]" throughout the discovery process. *Id.* at 3, 9. And it found that Hansjurgens's failure to produce post-judgment discovery was "intentional" and "possibly motivated by a desire to perpetrate a fraud on the Court." *Id.* at 10.

Hansjurgens repeatedly and unsuccessfully appealed.

First, before the bankruptcy court entered final judgment, Hansjurgens sought to appeal the partial-liability determination to the district court. But the district court dismissed the appeal for lack of jurisdiction because Hansjurgens never obtained leave to appeal the interlocutory order. *Hansjurgens v. Bailey (In re Bailey)*, 489 F. App'x 425, 425 (11th Cir. 2012). We affirmed. *Id.*

Hansjurgens then moved to reopen his appeal. The district court denied the motion. Because the bankruptcy court later issued a final judgment, we dismissed as moot Hansjurgens's appeal of that denial. *Hansjurgens v. Bailey*, No. 12-12465, at 4 (11th Cir. 2013).

In his third effort on appeal, Hansjurgens appealed the final judgment to the district court. But the district court found that Hansjurgens's notice of appeal was untimely filed, and he failed to show excusable neglect as Federal Rule of Bankruptcy Procedure 8002(c)(2) requires. *Hansjurgens v. Bailey*, No. CV411-202, 2012 WL 3289001, at *3 (S.D. Ga. Aug. 10, 2012). We affirmed the dismissal for lack of jurisdiction. *In re Bailey*, 521 F. App'x 920, 922 (11th Cir. 2013).

Around the same time, Bailey moved the bankruptcy court to hold Hansjurgens in contempt based on his and Hako-Med's continued failure to produce post-judgment discovery. Hansjurgens did not appear at the contempt hearing. So the bankruptcy court submitted a proposed contempt order to the district court. *Bailey v. Hako-Med USA, Inc. (In re Bailey)*, 2011 Bankr. LEXIS 5424 (Bankr. S.D. Ga. 2011). The proposed order directed that Hansjurgens "be placed under arrest and imprisoned for his continuing noncompliance"

and that Hansjurgens reimburse Bailey's reasonable expenses incurred. *Id.* at *19.

The district court eventually adopted the bankruptcy court's proposed order in its entirety, specifying that an arrest warrant would issue after 30 days if Hansjurgens did not comply with the discovery order. *Bailey v. Hako-Med USA, Inc.*, 2014 U.S. Dist. LEXIS 119697, at *3 (S.D. Ga. 2014). The court also ordered Hansjurgens to pay Bailey's reasonable expenses arising from the contemptible conduct, including attorney's fees, but it left calculation of those expenses to the bankruptcy court. *Id.* at *3-4. Once again, Hansjurgens did not comply. But the district court never issued an arrest warrant.

Hansjurgens again appealed to this Court, and we dismissed the appeal for lack of jurisdiction. *In re Bailey*, No. 14-14905 (11th Cir. 2015), *cert. denied*, 580 U.S. 820 (2016). In our opinion, we noted that both we and the U.S. Marshals "tried and failed to contact" Hansjurgens about his own appeal. *Id.* at 5.

B. Revival Proceedings

Under Georgia state law, the judgment against Hansjurgens became dormant on April 7, 2018, and was due to become unenforceable on April 7, 2021. *See* GA. Code Ann. § 9-12-61 (2020).[2] Before that could happen, though, in November 2020, Bailey requested a status conference with the bankruptcy court. The bankruptcy court set the conference for March 18, 2021. To inform Hansjurgens of the status conference,

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[2] Throughout this opinion, we cite the 2020 statute, the version in effect when the judgment against Hansjurgens became dormant and Bailey filed the motion to revive.

the Bankruptcy Noticing Center sent notice of the telephonic status conference to Hansjurgens's Hawaii address and to Hako-Med's registered agent

On March 12, 2021, Bailey filed an "Emergency Motion to Revive Dormant Judgment" in the same adversarial proceeding as the original judgment. In his motion, Bailey alleged that the judgment "remains unsatisfied," as Hansjurgens and Hako-Med "have refused to pay any of the award."

The bankruptcy court conducted its status conference, set a telephonic hearing on the motion for March 30, and determined that process would be served by mail. Bailey and the Bankruptcy Noticing Center mailed notice of the hearing to Hansjurgens, Hako-Med, and Hako-Med's registered agent at their Nevada and Hawaii addresses. At the court's direction, Bailey filed an amended certificate of service attesting that he had mailed the motion and notice of hearing to Hansjurgens, Hako-Med, registered agents (EastBiz. com, Inc. and Alive, Inc.), and Hansjurgens's attorney, Craig Marc Rappel, at additional addresses in Nevada, Hawaii, and Florida. Bailey's counsel also called Rappel the day before the hearing. But Hansjurgens failed to appear at the hearing or otherwise contact the court.

On April 1, 2021, the bankruptcy court granted Bailey's motion. It found that the judgment remained unpaid and that Bailey timely moved to revive within the limitations period. As a result, the bankruptcy court concluded, Bailey had satisfied Georgia's procedural requirements and was entitled to revival of the judgment against Hansjurgens.

Hansjurgens, proceeding *pro se*, appealed to the district court. He raised four objections: (1) the bankruptcy court lacked personal jurisdiction over him; (2) Bailey failed to comply with Georgia procedures for revival of judgments;[3] (3) Bailey did not state good cause to warrant issuance of an "emergency" order; and (4) Bailey failed to properly notify him of the proceedings and serve him with a summons, violating his due-process rights.

The district court affirmed the bankruptcy court's order. Hansjurgens now appeals to this Court.

II. Jurisdiction

The district court exercised bankruptcy appellate jurisdiction under 28 U.S.C. § 158(a). We have appellate jurisdiction under 28 U.S.C. §§ 158(d)(1) and 1291 because the revival judgment is a final order.

To be final, an order "must end the litigation on the merits, leaving nothing to be done but execute the judgment." *Barben v. Donovan (In re Donovan)*, 532 F.3d 1134, 1136 (11th Cir. 2008). We take a functional approach to the finality inquiry, "looking not to the form of the" order "but to its actual effect." *Thomas v. Blue Cross & Blue Shield Ass'n*, 594 F.3d 823, 829 (11th Cir. 2010) (citation and quotation

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[3] Hansjurgens contends that Bailey did not strictly comply with Georgia's scire facias procedures. We discuss Georgia's scire facias procedures in more detail later in this opinion, but for now, we note simply that scire facias "resembles a summons and directs the" judgment debtor "to appear in the issuing court on a certain date and to show cause why the identified judgment should not be revived and an execution be issued." *Popham v. Jordan*, 628 S.E.2d 660, 662 (Ga. Ct. App. 2006); *see also* GA. Code Ann. § 9-12-63.

marks omitted). And we treat finality more flexibly in the bankruptcy context. *Donovan*, 532 F.3d at 1136. To that end, a final order generally must resolve the adversary proceeding or controversy in question but need not resolve the bankruptcy proceedings in their entirety. *Id.*

For postjudgment proceedings, we determine finality through a two-step inquiry. First, we "'treat the postjudgment proceeding as a free-standing litigation, in effect treating the final judgment as the first rather than the last order in the case.'" *Mayer v. Wall St. Equity Grp., Inc.*, 672 F.3d 1222, 1224 (11th Cir. 2012) (quoting *Thomas*, 594 F.3d at 829). Second, we ask whether the order "disposes of all the issues raised in the motion that initially sparked the postjudgment proceedings" and whether the order is "apparently the last order to be entered in the action." *Id.* (citations and quotation marks omitted).

Under this framework, the revival judgment is a final order over which we have appellate jurisdiction. Bailey's emergency motion to revive the judgment "initially sparked the postjudgment proceedings," and the bankruptcy court's order granting that motion "dispose[d] of all the issues raised" therein. *See id.* At the same time, the district court's order "dispose[d] of all the issues" in the revival proceedings and was "the last order to be entered in the action." *See id.* And there is no further merits determination to be made, since scire facias proceedings do not permit review on the merits. *See Heslen v. Heslen*, 404 S.E.2d 592, 592 (Ga. Ct. App. 1991) ("A grant of a writ of scire facias does not authorize the examination of the original judgment's validity." (citation omitted)). In short, the

revival judgment qualifies as a final order over which we have appellate jurisdiction.

III. Standard of Review

In bankruptcy cases, we sit as a "'second court of review.'" *Ga. Dep't of Revenue v. Mouzon Enters., Inc. (In re Mouzon Enters., Inc.)*, 610 F.3d 1329, 1332 (11th Cir. 2010) (quoting *Finova Cap. Corp. v. Larson Pharm. Inc. (In re Optical Techs., Inc.)*, 425 F.3d 1294, 1299 (11th Cir. 2005)). In this capacity, we "'examine[] independently the factual and legal determinations of the bankruptcy court and employ[] the same standards of review as the district court.'" *Id.* We review the bankruptcy court's legal conclusions de novo and factual findings for clear error. *Carrier Corp. v. Buckley (In re Globe Mfg. Corp.)*, 567 F.3d 1291, 1296 (11th Cir. 2009).

IV. Discussion

A. The district court retained personal jurisdiction over Hansjurgens for the revival proceedings

First, Hansjurgens claims that the bankruptcy court lacked personal jurisdiction over him for the revival proceedings.[4] The threshold question we must address in considering this issue is whether the bankruptcy court needed to re-establish personal jurisdiction. We conclude that it did not.

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[4] Bailey moved to dismiss based on the fugitive-disentitlement doctrine. We carried that motion with the case. But because the merits require affirmance in any case, we DENY AS MOOT Bailey's motion to dismiss.

Bailey did not file a new action against Hansjurgens. Rather, he filed, with the same bankruptcy court and under the same case caption as the adversary proceeding, an emergency motion for revival that the bankruptcy court and district court construed as a motion seeking revival in the form of scire facias. "Scire facias to revive a judgment is not an original action but is the continuation of the action in which the judgment was obtained." GA. Code Ann. § 9-12-62; *see also Mitchell v. Chastain Fin. Co.*, 233 S.E.2d 829, 832 (Ga. Ct. App. 1977) (scire facias to revive a judgment "is merely a supplementary step in the original action"). So if the bankruptcy court had personal jurisdiction over Hansjurgens for the adversary proceeding—and neither party contests that it did—the bankruptcy court did not need to re-establish that jurisdiction for the continuation of that proceeding. In other words, the bankruptcy court retained personal jurisdiction over Hansjurgens from the original bankruptcy adversary proceeding for the purposes of the revival judgment.

B. The district court properly revived the judgment against Hansjurgens

Hansjurgens raises two objections to how Bailey revived the judgment against him: (1) the procedure failed to strictly comply with Georgia law governing scire facias proceedings; and (2) it violated due process. We find neither availing.

1. Rule 69 Does Not Require Strict Compliance With Georgia Scire Facias Procedures

We begin by identifying the relevant rules of procedure in a judgment-revival proceeding in federal bankruptcy court. Rule 81(a)(2), Fed. R. Civ. P., makes the Federal Rules of Civil Procedure applicable to bankruptcy proceedings "to the extent provided by the Federal Rules of Bankruptcy Procedure." And Federal Rule of Bankruptcy Procedure 7069, in turn, provides that Federal Rule of Civil Procedure 69 "applies in adversary proceedings." Fed. R. Bankr. P. 7069.

So we turn to Federal Rule of Civil Procedure 69. Rule 69 provides that the execution of judgments in adversary proceedings "and in proceedings supplementary to and in aid of judgment or execution . . . must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Fed. R. Civ. P. 69(a)(1) (incorporated into bankruptcy adversary proceedings by Fed. R. Bankr. P. 7069).[5] That requires us to reconsider the

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[5] The bankruptcy and district courts concluded that Federal Rule of Civil Procedure 81(b) abolishes scire facias in federal court, and under that rule, Bailey could obtain relief previously available through scire facias by "appropriate action or motion." So the courts determined that Bailey needed to substantially comply with Georgia's scire facias procedures, and filing the motion to revive sufficed. On appeal, for the first time, Hansjurgens objects to the application of Rule 81(b), relying on our decision in *Rosenberg v. DVI Receivables XIV, LLC*, 818 F.3d 1283 (11th Cir. 2016). *Rosenberg* held that the Federal Rules of Civil Procedure "only apply" in bankruptcy cases "to the extent they have been explicitly incorporated by the Federal Bankruptcy Rules," *id.* at 1288, and Hansjurgens asserts that Rule 81 has not been explicitly incorporated. We need not decide this issue regardless of whether Hansjurgens preserved it. Hansjurgens argues that

Federal Rules of Bankruptcy Procedure. But no Federal Rule of Bankruptcy Procedure "governs" revival of judgments. So under Rule 69, the creation, dormancy, and execution of the judgment against Hansjurgens must "accord with" Georgia state procedures.

We begin, as always, with the Rule's text. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Rule 69's key phrase is "accord with."

In its original form, Rule 69 provided,

> The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.

Fed. R. Civ. P. 69(a) (1938) (emphasis added). In 2007, Rule 69(a) was amended as part of a broader effort to simplify the language of the Federal Rules of Civil Procedure without changing their substance. Fed. R. Civ. P. 69 advisory committee's note to 2007 Amendment; *see also Mills v. Foremost Ins.*, 511 F.3d 1300, 1308 n.11 (11th Cir. 2008). The phrase "accord with" replaced the phrase "in accordance with." Because these phrases are substantially the same, we look to dictionary definitions from the time of initial adoption

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the bankruptcy court should have issued an adversarial summons after Bailey initiated the revival proceeding by motion. Although bankruptcy courts may issue adversarial summonses, *see* Fed. R. Bankr. P. 7004, we reject the argument that the failure of the bankruptcy court to issue one here violated Rule 69(a).

of the "accordance" language, 1938. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1738-39 (2020); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 40, at 257 (2012) (explaining that "new language" in a "legislative restyling exercise[]" like the revised Rule 69(a) "does not amend prior enactments unless it does so clearly").

At that time, "accord" meant "to agree or concur," *Accord*, Black's Law Dictionary (3d ed. 1933), or "to agree, be in harmony, be consistent," *Accord*, Oxford English Dictionary (2d ed. 1933). *See also Accord*, Webster's New International Dictionary (2d ed. 1938) ("To bring into agreement; to reconcile; to . . . harmonize"). Those definitions do not require revival proceedings in federal court to strictly follow state-law procedures, however impractical or arcane. Rather, they suggest that revival proceedings in federal court must only "agree" or "be in harmony"—in other words, substantially comply—with state-law procedures. And "when the meaning of the [Rule's] terms is plain, our job is at an end." *Bostock*, 140 S. Ct. at 1749.[6]

Still, though, as we explain after we describe Georgia's scire facias procedures, practicalities reinforce the natural meaning of "accord." Under Georgia law, a "judgment shall become dormant and shall not be enforced . . . [w]hen seven years shall elapse after the rendition of the judgment before execution is issued

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[6] Even if we look to dictionary definitions from 2007, when the current version of the Rule was adopted, our interpretation does not change. *See, e.g.*, *Accord*, Black's Law Dictionary (8th ed. 2004) ("To agree"); *Accord*, Merriam-Webster's Collegiate Dictionary (11th ed. 2007) ("to be consistent or in harmony: AGREE"); *Accord*, American Heritage Dictionary (4th ed. 2006) ("To be in agreement, unity, or harmony").

thereon[.]" GA. Code Ann. § 9-12-60. The judgment creditor may "renew[] or revive[]" the dormant judgment "by an action or by scire facias, at the option of the holder of the judgment, within three years from the time it becomes dormant." *Id.* § 9-12-61. These two statutory provisions "operate in tandem as a ten-year statute of limitation for the enforcement of Georgia judgments." *Corzo Trucking Corp. v. West*, 636 S.E.2d 39, 40 (Ga. Ct. App. 2006). The 2011 judgment against Hansjurgens became dormant on April 7, 2018, and would have expired on April 7, 2021.

Scire facias "resembles a summons and directs the" judgment debtor "to appear in the issuing court on a certain date and to show cause why the identified judgment should not be revived and an execution be issued." *Popham*, 628 S.E.2d at 662. "Scire facias to revive a judgment is not an original action but is the continuation of the action in which the judgment was obtained." GA. Code Ann. § 9-12-62. To that end, "[i]n no case and under no circumstances can the merits of the original judgment be inquired into" in scire facias proceedings. *Mitchell*, 233 S.E.2d at 833.

If the judgment debtor resides outside the state, the "judgment may be revived . . . by such process as is issued in cases in which the defendant resides in this state, provided that" he "shall be served with scire facias by publication in the newspaper in which the official advertisements of the county are published[.]" GA. Code Ann. § 9-12-67. Neither "record[ing] the judgment on the general execution docket" nor "mak[ing] any efforts to collect the judgment" is a "prerequisite to reviving a dormant judgment." *Bowers v. Jim Rainwater Builder & Props., Inc.*, 416 S.E.2d 832, 832 (Ga. Ct. App. 1992).

Hansjurgens asserts that Bailey and the bankruptcy court did not strictly comply with these state-law procedures. He is right about that. It is undisputed that Bailey did not file a new judgment to seek revival. It is also undisputed that Bailey did not strictly follow traditional scire facias procedures. These traditional procedures include issuance from "the court of the county in which the judgment was obtained" and service "by the sheriff of the county in which [the judgment debtor] resides" twenty days prior to the hearing, or service by publication for two months before the hearing. GA. Code Ann. §§ 9-12-63, 9-12-67.

But, again, we do not interpret Rule 69(a) to require strict compliance—only that federal revival proceedings "accord," or substantially comply, with state procedures. *See Chambers v. Blickle Ford Sales, Inc.*, 313 F.2d 252, 256 (2d Cir. 1963) (holding that an enforcement hearing in lieu of a state scire facias action "accords with the spirit of the Rules and seems to be a sufficiently close adherence to state procedures"); *Thomas, Head & Greisen Emps. Tr. v. Buster*, 95 F.3d 1449, 1452 (9th Cir. 1996); 12 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure Civil* § 3012 (3d ed. 2023); 13 *Moore's Federal Practice Civil* § 69.03[3]. As the Seventh Circuit has opined, "[w]e do not think the draftsmen of Rule 69 meant to put the judge into a procedural straitjacket, whether of state or federal origin." *Resol. Tr. Corp. v. Ruggiero*, 994 F.2d 1221, 1226 (7th Cir. 1993) (citation omitted). And as we've explained, the Rule's plain text does not compel a "procedural straitjacket" in the form of a strict-compliance requirement. We will not impose one here.

What's more, Georgia scire facias procedures do not squarely fit within the federal court system. Under Georgia state law, the clerk of the state court in which the judgment was obtained must issue scire facias, and that county's sheriff must serve it. GA. Code Ann. § 9-12-63. But Georgia federal courts do not control county sheriffs. Requiring strict compliance with scire facias procedures in a federal forum that cannot order the state-mandated relief makes little sense. And insisting on county-specific procedures in federal court, especially in a state with 159 counties, is impractical. Rather, the Federal Rules of Civil Procedure, which apply uniformly in federal court, require one procedure for obtaining relief: filing a motion. *See* Fed. R. Civ. P. 7(b)(1) (incorporated into bankruptcy adversary proceedings by Fed. R. Bankr. P. 7007). That is exactly what Bailey did here.

We conclude that Bailey substantially complied with Georgia's scire facias statute, so revival was proper. Scire facias provides notice of court proceedings and the opportunity "to show cause why the identified judgment should not be revived and an execution be issued." *Popham*, 628 S.E.2d at 662. Service here accomplished the same goal. Hansjurgens received at least twelve notices of the revival hearing, and his participation in these proceedings has provided him an opportunity to object to the revival judgment. In other words, the purposes of scire facias have been served. *Cf. Sanderford v. Prudential Ins. Co. of Am.*, 902 F.2d 897, 900 (11th Cir. 1990) (upholding a default judgment when the summons omitted a return date but substantially complied with Fed. R. Civ. P. 4(b) and the defendant was not prejudiced by the defect); *Chambers*, 313 F.2d at 256.

Indeed, as a purely practical matter, there is nothing more that can be accomplished by remanding for strict compliance. Remanding would not change the ultimate result of the revival proceedings. To be sure, the district court could require personal service on Hansjurgens. But a revival motion may be timely even if service is not perfected during the dormancy period, so long as the motion is filed before the judgment expires. *Stahle v. Jones*, 3 S.E.2d 861, 862 (Ga. Ct. App. 1939). And here, Bailey timely filed his revival motion. So even if the district court ordered Bailey to personally serve it on Hansjurgens, the revival proceedings would still go forward.

Personal service could not accomplish more than what this record demonstrates has already occurred: Hansjurgens's actual notice of the proceedings. Plus, under Georgia law, parties may not challenge "the merits of the original judgment" in scire facias proceedings to revive it. *Bowers*, 416 S.E.2d at 832-33. So since Bailey's revival motion was timely, and since we dispose of Hansjurgens's procedural objections in this appeal, Hansjurgens has no other basis for a challenge to the revival proceedings.

Put simply, the only outcome on remand would be to reach the same result: the entry of a valid revival judgment, though after even more time and expense. Because service here was in "accord" with Georgia's scire facias procedures, and because remanding for personal service would not change the outcome of the revival proceedings, we hold that the bankruptcy court properly revived the dormant judgment.

2. The Revival Proceedings Did Not Violate Due Process

Finally, Hansjurgens argues that the bankruptcy court violated his due-process rights when it did not require personal service through an adversarial summons, contrary to Georgia state law. Hansjurgens does not claim that Bailey mailed the revival motion and notice of hearing to the wrong addresses—addresses that Hansjurgens had provided to the court. Instead, Hansjurgens complains that, despite delivery to the addresses he provided and a call to his former (and later) attorney advising him of the proceeding, Hansjurgens was unaware of the proceeding until after the judgment was revived.

Our precedent does not require service in one particular form to satisfy due process—rather, "[d]ue process is a flexible concept that varies with the particular circumstances of each case, and myriad forms of notice may satisfy" its requirements. *Arrington v. Helms*, 438 F.3d 1336, 1350 (11th Cir. 2006). Under this "flexible" framework, "notice must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* at 1349-50 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

Both the Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure authorize service by mail. First, Federal Rule of Civil Procedure 5 applies in bankruptcy adversary proceedings. Fed. R. Bankr. P. 7005. Under that rule, "mailing" the motion and notice of hearing "to the person's last known address in which event service is complete upon mailing" —accomplishes service. Fed. R. Civ. P. 5(b)(2)(C).

Separately, the Federal Rules of Bankruptcy Procedure authorize service by mail "to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession" or to "an agent of such defendant authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(1), (8).

Bailey certified that he mailed the motion to revive and notice of hearing to Hansjurgens at three Hawaii and Nevada addresses, including the address that Hansjurgens has since used in his appellate filings. Bailey also mailed the motion and hearing notice to two registered agents of Hako-Med (EastBiz.com, Inc. and Alive, Inc.) and Hansjurgens's attorney, Craig Marc Rappel.[7] The Bankruptcy Noticing Center certified that it too mailed notice to of the hearing to three Nevada addresses. Not only that, but Bailey's counsel called Rappel in yet another attempt to inform Hansjurgens of the revival proceedings. And as Hansjurgens's participation in the appellate process reflects, Hansjurgens had actual notice of the revival proceedings and an opportunity to be heard.

To be sure, Bailey could have attempted service personally or by publication, but due process did not require him to do so. *See Arrington*, 438 F.3d at 1350 (due process does not require notice that is "ideal under all the circumstances, but rather" notice that "is reasonable under all the circumstances"). We conclude that service by mail to the six addresses here

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[7] At the time, Hansjurgens was proceeding *pro se*, but Rappel had represented him in prior proceedings. Rappel resumed representing Hansjurgens for his appeal in this Court until Rappel passed away in January 2023 and current counsel took over.

was "reasonably calculated . . . to apprise" Hansjurgens of the revival proceedings and to allow him to present objections. *See Mullane*, 339 U.S. at 314.

V. Conclusion

For the reasons we have explained, we affirm the district court's revival order.

AFFIRMED.

JUDGMENT, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA (MARCH 3, 2022)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

KAI HANSJURGENS,

Appellant,

v.

DONALD H. BAILEY,

Appellee.

Case Number: 4:21-cv-105

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that, pursuant to the Order dated February 22, 2022, the Court affirms the Bankruptcy Court's Order granting Appellee Donald Bailey's Emergency Motion to Revive Dormant Judgment. This action stands closed.

Approved by: /s/ R. Stan Baker

Date: March 3, 2022

John E. Triplett
Clerk of Court

/s/ Jamie Sabalza
Deputy Clerk

ORDER, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA (FEBRUARY 22, 2022)

639 B.R. 262

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

KAI HANSJURGENS,

Appellant,

v.

DONALD H. BAILEY,

Appellee.

Civil Action No.: 4:21-cv-105

Before: R. Stan BAKER,
United States District Judge.

ORDER

R. Stan Baker, United States District Judge

Appellant Kai Hansjurgens, proceeding *pro se*, appeals the United States Bankruptcy Court for the Southern District of Georgia's decision to grant Appellee Donald Bailey's Emergency Motion to Revive Dormant Judgment. (Doc. 1-2.) The main issue before the Court is whether the Bankruptcy Court erred by reviving a

dormant monetary judgment Appellee obtained against Appellant on April 7, 2011.

Appellant filed a Brief enumerating the alleged errors committed by the Bankruptcy Court. (Doc. 4.) Appellee then filed a Response, (doc. 6), and Appellant filed a Reply, (doc. 7). For the reasons set forth below, the Court AFFIRMS the Bankruptcy Court's decision. (Doc. 1-2.)

BACKGROUND

In 2007, Appellee filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Georgia. (Doc. 1-2, p. 1.) In 2009, Appellee filed an adversarial proceeding against Appellant and Hako-Med USA, Inc. ("Hako-Med USA") in the Bankruptcy Court. (*Id*. at pp. 1-2); *see* (doc. 2-1, pp. 1-21.) In that adversarial proceeding, Appellee, a medical doctor who leased medical equipment to practicing physicians, alleged that Appellant and Hako-Med USA tortiously interfered with contractual relations concerning the leasing of his medical equipment. (Doc. 2-1, pp. 26-32.) On April 7, 2011, the Bankruptcy Court entered a final judgment against Appellant and Hako-Med USA for $893,973.64 (the "Judgment"). (*Id*. at pp. 46-57.) Appellant and Hako-Med USA failed to pay the Judgment, and therefore, Georgia law rendered the Judgment dormant on April 7, 2018, pursuant to O.C.G.A. § 9-12-60(a)(1).[1] (*See* doc. 1-2, pp. 4-6) (citing O.C.G.A. § 9-12-60(a)(1) ("A

[1] The parties agree that the Judgment became dormant on April 7, 2018. (*See* doc. 4, p. 4 ("The [J]udgment . . . became dormant on April 7, 2018."); doc. 6, p. 6 ("The [J]udgment became dormant on April 7, 2018, pursuant to O.C.G.A. § 9-12-60.").)

judgment shall become dormant and shall not be enforced . . . [w]hen seven years shall elapse after the rendition of the judgment before execution is issued thereon and is entered on the general execution docket of the county in which the judgment was rendered.").)

In November 2020, Appellee requested a status conference with the Bankruptcy Court, which the Bankruptcy Court set for March 18, 2021. (Doc. 2-1, pp. 19-20; *see also* doc. 6, p. 7.) Appellee sent Notice of the status conference to Appellant on March 4, 2021.[2] (Doc. 2-1, p. 19; *see also* doc. 6, p. 7.) This status conference was to be conducted via telephone. (Doc. 2-1, p. 19.) On March 12, 2021, Appellee filed the at-issue Emergency Motion to Revive Dormant Judgment (hereinafter, the "Motion") in the Bankruptcy Court, asking the Bankruptcy Court to revive the Judgment so that it would not become permanently time-barred on April 7, 2021, pursuant to O.C.G.A. § 9-12-61.[3] (*Id*. at pp. 58-64.) Notably, Appellee filed the Motion to Revive within the same adversarial proceeding in which the Bankruptcy Court had entered the Judgment against Appellant. (*Id*. at pp. 13, 19.) Appellee also

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[2] The adversarial proceeding docket appears to indicate that, on March 6, 2021, the Bankruptcy Noticing Center sent three Notices of the status conference. (Doc. 2-1, p. 19.) The Court points out, however, that on March 16, 2021, the postal service returned at least one of these Notices as undeliverable. (*Id*. at pp. 103-04.) Thus, it is unclear from the record whether Appellant ever received this Notice.

[3] O.C.G.A. § 9-12-61 provides that "[w]hen any judgment obtained in any court becomes dormant, the same may be renewed or revived by an action or by scire facias, at the option of the holder of the judgment, within three years from the time it becomes dormant."

filed a Certificate of Service, certifying that he served four individuals or groups of individuals "by depositing a copy of [the Emergency Motion to Revive Dormant Judgment] in the United States mail with proper postage affixed or by electronic service." (*Id*. at p. 93.) Specifically, the Certificate of Service listed as recipients: (1) Appellant and Hako-Med USA, Inc. at a Nevada address; (2) Appellant at a second Nevada address; (3) a "registered agent of Hako-Med" at a third Nevada address; and (4) Craig Marc Rappel, a Florida attorney who had previously represented Appellant, at a Florida address.[4] (*Id*. at pp. 93-94; *see also* doc. 6, p. 17 (referring to Mr. Rappel as Appellant's "former attorney"); doc. 4, p. 6 (same); doc. 7, p. 4 (same).)

Also on March 12, 2021, the Bankruptcy Court scheduled a second telephonic hearing regarding the Emergency Motion to Revive Dormant Judgment for March 30, 2021. (Doc. 1-2, p. 3; *see also* doc. 2-1, pp. 23, 95-96.) The Bankruptcy Noticing Center sent Notice of the hearing via first class mail to Appellant, Hako-Med USA, and a registered agent of Hako-Med USA at the Nevada Addresses. (Doc. 2-1, p. 97.) On March 18, 2021, the Bankruptcy Court conducted the first scheduled status conference and determined that service by mail should be made on Appellant, Hako-Med USA, EastBiz.com, Inc., Alive, Inc., and Attorney

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[4] Appellee mailed a copy of the Emergency Motion to Revive Dormant Judgment to three different Las Vegas, Nevada, addresses: 4262 Blue Diamond Rd., Unit 122-355, Las Vegas, Nevada 89139-7789; 7811 S. Decatur Blvd., Las Vegas, Nevada 89739-0105; and 5348 Vegas Dr., Las Vegas, Nevada 89108 (hereinafter, the "Nevada Addresses"). (Doc. 2-1, p. 93.)

Rappel.[5] (Doc. 6, p. 7.) Appellee then filed an Amended Certificate of Service, certifying that his counsel mailed copies of the Emergency Motion to Revive Dormant Judgment and Notice of Hearing to Appellant, Hako-Med USA, EastBiz.com, Inc., Alive, Inc., and Mr. Rappel at additional addresses.[6] (Doc. 2-1, pp. 101-02.) Appellee's counsel also contacted Mr. Rappel by phone the day before the telephonic hearing on the Motion in an effort to inform Appellant of the hearing. (Doc. 6, p. 7; *see also* doc. 4, p. 6 n.1.)

Despite receiving no response to the Motion from Appellant, the Bankruptcy Court conducted the telephonic hearing on March 30, 2021. (Doc. 1-2, p. 3.) Appellant failed to appear. (*Id.*) After taking the matter under advisement, the Bankruptcy Court, finding that Appellee satisfied the relevant requirements under federal and Georgia law to revive the Judgment, granted Appellee's Emergency Motion to Revive Dormant Judgment. (*Id.* at pp. 3, 7.) According to Appellant, he had "no advanced notice" of the

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[5] The Amended Certificate of Service indicates that EastBiz.com, Inc., and Alive, Inc., are registered agents for "Hako-Med." (Doc. 2-1, p. 101.) However, Appellant asserts that Eastbiz.com, Inc., is "solely the registered agent for Hako-Med *Holdings,* Inc. and not for any party to these proceedings." (Doc. 7, p. 4 (emphasis added).)

[6] The Amended Certificate of Service indicates that Appellee served (1) Eastbiz.com, Inc., at 5348 Vegas Dr., Las Vegas, Nevada 89108; (2) Appellant at 4678 Kahala Ave., Honolulu, Hawaii 96816; (3) Alive, Inc., and Appellant at 537 Cummins St., Honolulu, Hawaii 96814; (4) Appellant and Hako-Med USA at 4262 Blue Diamond Rd., Unit 122-355, Las Vegas, Nevada 89139-7789; (5) Appellant at 7811 S. Decatur Blvd., Las Vegas, Nevada 89739-0105; and (6) Mr. Rappel at 601 21st Street, Suite 300, Vero Beach, Florida 32960. (Doc. 2-1, pp. 101-02.)

hearing and was informed by Mr. Rappel of the proceeding only after the Bankruptcy Court revived the Judgment. (Doc. 4, p. 6.) Appellant then appealed to this Court, asking that it reverse the Bankruptcy Court's decision to revive the dormant Judgment. (Doc. 1.)

STANDARD OF REVIEW

The Court functions as an appellate court in reviewing the Bankruptcy Court's determinations. 28 U.S.C. § 158(a); *In re Williams*, 216 F.3d 1295, 1296 (11th Cir. 2000). As such, the Court reviews the Bankruptcy Court's findings of fact under a "clearly erroneous" standard of review and its legal conclusions *de novo*. *In re Globe Mfg. Corp*., 567 F.3d 1291, 1296 (11th Cir. 2009). Mixed questions of law and fact are reviewed *de novo*. *In re Cox*, 493 F.3d 1336, 1340 n.9 (11th Cir. 2007). Furthermore, a district court is not "authorized to make independent factual findings; that is the function of the bankruptcy court." *In re Sublett*, 895 F.2d 1381, 1384 (11th Cir. 1990). Also, "[i]n general, [courts] show a leniency to *pro se* litigants not enjoyed by those with the benefit of a legal education." *Christiansen v. McRay*, 380 F. App'x 862, 863 (11th Cir. 2010) (internal quotations omitted).

DISCUSSION

Appellant claims that the Bankruptcy Court erred in granting the Emergency Motion to Revive Dormant Judgment because: (1) the Bankruptcy Court lacked personal jurisdiction over him, (doc. 4, pp. 25-27); (2) Appellee failed to comply with the requirements to revive a judgment under Georgia law, (id. at pp. 6-24); (3) Appellee failed to state a sufficient reason or

good cause to warrant the Court's issuance of an "emergency" order, (*id*. at pp. 24-25); and (4) Appellee failed to properly notify Appellant of the proceedings and serve him with summons, violating his due process rights, (*id*. at pp. 27-28).

I. The Bankruptcy Court Possessed Personal Jurisdiction Over Appellant

Appellant argues that the Bankruptcy Court erred in reviving the Judgment because the Bankruptcy Court lacked personal jurisdiction over him and failed to "re-establish" personal jurisdiction over him prior to issuing its Order reviving the Judgment. (*Id*. at pp. 25-27.) Notably, Appellant does not argue that the Bankruptcy Court lacked personal jurisdiction at the time the Judgment was entered against him in 2011. (*See id*.) Instead, Appellant appears to argue that the Bankruptcy Court lost personal jurisdiction over him when Appellee's bankruptcy plan was confirmed, and it failed to "re-establish" personal jurisdiction for Appellee's revival action because Appellee failed to properly serve him with the Emergency Motion to Revive Dormant Judgment under Georgia law. (Doc. 7, pp. 14-15.) Appellee responds that the Bankruptcy Court had personal jurisdiction over Appellant when it revived the Judgment because the Bankruptcy Court entered the Judgment in the first place. (Doc. 6, pp. 17- 18.)

Generally, to determine if a defendant is subject to personal jurisdiction, a court must determine (1) "whether the applicable statute potentially confers jurisdiction over the defendant" and (2) "whether the exercise of jurisdiction comports with due process." *Republic of Panama v. BCCI Holdings (Luxembourg)*

S.A., 119 F.3d 935, 942 (11th Cir. 1997). Regarding the first question, Rule 7004 of the Federal Rules of Bankruptcy Procedure governs "when a bankruptcy court has personal jurisdiction over a defendant." *In re Charming Castle, LLC*, Bankr. No. 06-71420-CMS-7, Adv. No. 08-70007 CMS, 2008 WL 5391988, at *4 (Bankr. N.D. Ala. Dec. 12, 2008). "Bankruptcy Rule 7004 [(d)] allows for nationwide service of process in adversary proceedings by providing: 'The summons and complaint and all other process except a subpoena may be served anywhere in the United States.'" *Id.* (quoting Fed. R. Bankr. P. 7004(d)). Furthermore, "[w]hen a federal statute provides for nationwide service of process, it becomes the statutory basis for personal jurisdiction." *BCCI Holdings (Luxembourg) S.A.*, 119 F.3d at 942.

Regarding the second question, "[i]t is well established that when . . . a federal statute provides the basis for jurisdiction, the constitutional limits of due process derive from the Fifth, rather than the Fourteenth, Amendment." *Id.*; *see also Reynolds v. Behrman Cap. IV L.P.*, 988 F.3d 1314, 1325 (11th Cir. 2021) ("When the district court applies Bankruptcy Rule 7004(d) on remand, it will need to ensure that the exercise of jurisdiction over the defendant is not unconstitutionally burdensome under the Fifth Amendment.") (internal quotations omitted). Courts consider the same factors in the Fifth Amendment analysis as the Fourteenth Amendment analysis. *See Cont'l Cas. Co. v. Cura Grp. Inc.*, No. 03-61846-CIV-ALTONAGA/Turnoff, 2005 WL 8155321, at *32 (S.D. Fla. Apr. 6, 2005) ("In determining whether the defendant has met burden of establishing constitutionally significant inconvenience [under the due process

clause of the Fifth Amendment], courts consider the factors used in determining fairness under the Fourteenth Amendment.") (citing *BCCI Holdings (Luxembourg) S.A.*, 119 F.3d at 946). However, the Eleventh Circuit Court of Appeals has instructed courts to not "apply these factors mechanically in cases involving federal statutes." *BCCI Holdings (Luxembourg) S.A.*, 119 F.3d at 946. Indeed, when conducting a Fifth Amendment analysis, courts "must examine a defendant's aggregate contacts with the nation as a whole rather than [its] contacts with [just] the forum state." Reynolds, 988 F.3d at 1325 (emphasis added) (internal quotations omitted); *see also In re McCallan*, 599 B.R. 361, 368 (Bankr. M.D. Ala. 2019) ("Bankruptcy Courts routinely exercise *in personam* jurisdiction over out-of-state parties so long as they have minimum contacts with the United States. . . ."). While a defendant's contacts with the United States do not "automatically satisfy" the Fifth Amendment's due process requirements, the defendant bears the burden to "demonstrate that the assertion of jurisdiction in the forum will make litigation so gravely difficult and inconvenient that [he] unfairly is at a severe disadvantage [compared] to his opponent." *BCCI Holdings (Luxembourg) S.A.*, 119 F.3d at 947-48 (internal quotations omitted). If the defendant carries that burden, jurisdiction may still "comport with due process . . . if the federal interest in litigating the dispute in the chosen forum outweighs the burden imposed on the defendant." *Reynolds*, 988 F.3d at 1325.

Based on the parties' briefings and the Court's own independent research, there is little binding case law regarding the issue presently before the

Court: whether a bankruptcy court retains personal jurisdiction over a party to revive a judgment that the bankruptcy court entered against the party in an adversarial proceeding. While not a bankruptcy case, the Court finds the Eleventh Circuit's decision in *Huff v. Pharr*, 748 F.2d 1553 (11th Cir. 1984), instructive. In *Huff*, the plaintiff, a California resident, obtained a final judgment against the defendant, a Florida resident, in a California state court. 748 F.2d at 1554. Seven years later, the plaintiff sought to renew the judgment in the California state court, an action in which the defendant did not appear or contest. *Id.* After obtaining a new final judgment against the defendant, the plaintiff sought to domesticate the judgment in the United States District Court for the Middle District of Florida, an action the defendant did contest. *Id.* The district court entered summary judgment against the defendant, and the defendant appealed, arguing that the California court lacked personal jurisdiction over him during the renewal action. *Id.* For purposes of the appeal, the Eleventh Circuit "assume[d] . . . that, in a suit to renew a prior judgment, the due process requirement of minimum contacts between the defendant, the forum state, and the cause of action must be met." *Id.* at 1554-55. Thus, the Eleventh Circuit addressed the question of whether the defendant's participation in the original California state litigation and his connection to California prior to that litigation satisfied the minimum contacts requirement. *Id.* at 1555. The Eleventh Circuit ultimately held that the defendant had the requisite minimum contacts with the state of California for the state court to properly exercise jurisdiction in the renewal action. *Id.* The Eleventh Circuit stated:

> Such contacts were present when the original suit was filed in 1972. Over the next five years, the defendant made full use of the procedures available to him under California law by litigating a counterclaim and appealing an adverse judgment to a higher state court. The [renewal action] involved a claim uniquely connected with the defendant's previous forum-related activities. Under these circumstances, we do not consider it unfair to require the defendant, when properly served, to submit again to the jurisdiction of the California courts in a suit based upon a judgment previously entered in an action involving the same claim.

Id.; *see also Kaylor v. Turner*, 210 Ga.App. 2, 435 S.E.2d 233, 235 (1993) ("[W]hen a defendant had the requisite minimum contacts with the forum state for that state to exercise personal jurisdiction over the defendant during the original litigation, those same contacts are sufficient to provide personal jurisdiction to the trial court for any revival action concerning the judgment entered in the course of the original litigation."), *disapproved on other grounds by Okekpe v. Com. Funding Corp.*, 218 Ga.App. 705, 463 S.E.2d 23, 25 (1995).

Assuming, as the Eleventh Circuit did in Huff, that the due process requirement of minimum contacts applies in an action to renew a dormant monetary judgment, the Court finds that the Bankruptcy Court had personal jurisdiction over Appellant when it revived the Judgment. First, Appellant does not dispute that the Bankruptcy Court had personal jurisdiction over him in the adversarial proceeding when

it entered the Judgment. (*See* docs. 4, 7.) Furthermore, as stated above, the Fifth Amendment due process analysis—which the Court applies here—requires the Court to look to Appellant's contacts with the United States and not just the forum state of Georgia. *See Reynolds*, 988 F.3d at 1325. Here, the Judgment stems from a failed business relationship between Appellant and Appellee, who was a Georgia physician practicing in Savannah. (Doc. 2-1, p. 26.) After the business relationship soured, Appellee filed an adversarial proceeding against Appellant in the United States Bankruptcy Court for the Southern District of Georgia. (*See id.* at pp. 1-21.) Moreover, Appellant fully litigated and defended himself in that case and "made full use of the procedures available to him," including attempting to appeal the Judgment to this Court and subsequently the Eleventh Circuit.[7] (*See id.* at pp. 17-18; *see also id.* at p. 6 (filing a motion for summary judgment and a motion to extend time for discovery).) In addition, the Judgment is "uniquely connected" with Appellant's contacts in the United States as the Judgment stems from Appellant's tortious interference with Appellee's contractual relations as a Georgia physician. (*See id.* at pp. 25-45.) Finally, Appellant made no effort to "demonstrate that the assertion of jurisdiction in the [Bankruptcy Court] . . . [made the renewal action] so gravely difficult and inconvenient that [he] unfairly is at a severe

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[7] The Court dismissed Appellant's appeal of the Judgment in the adversarial proceeding on "jurisdictional grounds," finding that Appellant's failure to file a timely appeal of the Judgment was not due to excusable neglect. *Hansjurgens v. Bailey*, No. 4:11-cv-202, 2012 WL 3289001, at *3 (S.D. Ga. Aug. 10, 2012), *aff'd by In re Bailey*, 521 F. App'x 920 (11th Cir. 2013).

disadvantage" compared to Appellee. *BCCI Holdings (Luxembourg) S.A.*, 119 F.3d at 947-48 (internal quotations omitted). Thus, the Court finds that it was not unfair to require Appellant to submit again to the jurisdiction of the Bankruptcy Court "based upon a judgment previously entered [by that Court] in an action involving the same claim." *Huff*, 748 F.2d at 1555.

The Court's conclusion is further bolstered by the fact that Georgia's writ of scire facias, in the context of reviving a dormant judgment, is a continuation of the original action.[8] *See* O.C.G.A. § 9-12-62. Thus, the Bankruptcy Court's basis for personal jurisdiction in the adversarial proceeding, the existence of which Appellant does not contest, is equally sufficient for the Bankruptcy Court to exercise personal jurisdiction over Appellant in an action to revive the Judgment. *See In re RR Valve, Inc.*, Nos. 09-33345, 09-33377, 2020 WL 2858679, at *2 (Bankr. S.D. Tex. June 2, 2020) ("The Court retains personal jurisdiction over parties during the scire facias action.") (citing *Berly v. Sias*, 152 Tex. 176, 255 S.W.2d 505, 508 (1953)); *F.D.I.C v.*

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[8] As discussed in Discussion Section II.A, *infra*, Federal Rule of Civil Procedure 81 abolished the writ of scire facias in federal court and replaced it with an "appropriate action or motion under" the Federal Rules of Civil Procedure. Because a motion to revive or renew a dormant judgment is filed within the same proceeding in which the dormant judgment was originally obtained, the Court finds that the motion to revive is a continuation of the original action just like the writ of scire facias in Georgia. *See J&J Sports Prods. Inc. v. Salas*, No. 1:11-cv-03781-SDG, 2021 WL 2581430, at *1 (N.D. Ga. May 14, 2021) ("[T]o revive a judgment in federal court in Georgia, a party must either file a new action or obtain relief in the action in which the judgment was obtained.") (emphasis added).

Bauman, No. 3-90-CV-0614-H, 2004 WL 1732933, at *1 (N.D. Tex. July 30, 2004) ("The Court . . . agrees with Plaintiff that the Court retains personal jurisdiction over Defendant during this scire facias action.") (citing *Berly*, 255 S.W.2d at 508); *In re Fiorenza*, Bankr. No. 08-11670-t7, Adv. No. 09-1012-t, 2019 WL 262196, at *6 (Bankr. D.N.M. Jan. 17, 2019) ("Defendants argue that the Court lacks jurisdiction to revive the Judgment, and/or that the Court should abstain from reviving it. The argument must be overruled. The Court clearly has jurisdiction to revive the Judgment; indeed, it is the only proper court to do so.").

Accordingly, the Bankruptcy Court possessed personal jurisdiction over Appellant when it revived the Judgment.

II. The Bankruptcy Court Correctly Determined that Appellee Properly Followed the Procedural Requirements for Reviving a Judgment

Appellant argues that the Bankruptcy Court erred in granting the Motion to Revive Dormant Judgment because Appellee failed to comply with all the requirements under Georgia law. (Doc. 4, pp. 6-24.)

A. Applicable Legal Authority

"Authority to revive a federal court judgment is provided by" Federal Rules of Civil Procedure 69(a) and 81(b). *Young v. Cinnamon*, No. 00-MC-209-KHV, 2006 WL 3026739, at *1 (D. Kan. Oct. 24, 2006). Federal Rule of Civil Procedure 69, which governs the execution of money judgments, provides that federal courts should apply the procedure "of the state where the court is located, but a federal statute governs to

the extent it applies."[9] Fed. R. Civ. P. 69(a); *see also Tibbs v. Vaughn*, No. 2:08-cv-787-TC, 2019 WL 528232, at *1 (D. Utah Feb. 11, 2019) ("A judgment may be renewed or revived in federal court by complying with the state law governing such relief."); *In re Fiorenza*, 2019 WL 262196, at *4 ("[I]n actions to revive judgments entered by this Court, New Mexico's judgment revival rules apply."). Thus, the Court looks to Georgia's procedure for reviving dormant judgments but applies federal law to the extent it applies.

Georgia law provides a judgment holder with two options to renew or revive a dormant judgment: institute an "action" or seek a writ of scire facias.[10] *See* O.C.G.A. § 9-12-61. Concerning a judgment holder's second option, a writ of scire facias "is not an original action but is the continuation of the action in which the judgment was obtained." O.C.G.A. § 9-12-62; *see also Popham v. Jordan*, 278 Ga.App. 254, 628 S.E.2d 660, 661 (2006). Georgia law imposes somewhat complex and exact requirements for seeking a writ of scire facias. *See* O.C.G.A. § 9-12-60 *et seq*. Pertinent to this case, O.C.G.A. § 9-12-63 provides the specific

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[9] While revival of judgments is not mentioned in Rule 69, the Eleventh Circuit has cited Rule 69 as the basis for applying state law in a judgment revival case. *See United States v. Fiorella*, 869 F.2d 1425, 1426 n.5 (11th Cir. 1989). Furthermore, other federal courts—also relying on Rule 69-have applied state law in judgment revival cases. *See*, *e.g.*, *McCarthy v. Johnson*, 35 F. Supp. 2d 846, 847 (D. Utah 1997); *J&J Sports Prods., Inc. v. Salas*, 2021 WL 2581430, at *1-2; Tibbs, 2019 WL 528232, at *1.

[10] A writ of scire facias is a "writ requiring the person against whom it is issued to appear and show cause . . . why a dormant judgment against that person should not be revived." *Bauman*, 2004 WL 1732933, at *1 n.2 (citing Black's Law Dictionary (8th ed. 2004)).

requirements for the issuance, return, direction, and service of scire facias. *See* O.C.G.A. § 9-12-63. That provision requires, among other things, that a writ of scire facias be "issue[d] from and be returnable to the court of the county in which the judgment was obtained" and "be served by the sheriff of the county in which the party to be notified resides." *Id.*; *see also* Popham, 628 S.E.2d at 661-62. Furthermore, O.C.G.A. § 9-12-67 sets out additional requirements for the revival of judgments against non-Georgia residents. *See* O.C.G.A. § 9-12-67. That provision provides that a dormant judgment may be revived against a non-resident if the non-resident is "served with scire facias by publication in the newspaper in which the official advertisements of the county are published." *Id.*

In federal court, however, the writ of scire facias has been abolished. *See* Fed. R. Civ. P. 81(a). Instead, Rule 81(b) provides that "[r]elief previously available through [a writ of scire facias] may be obtained by appropriate action or motion under these rules." Fed. R. Civ. P. 81(b). Such relief includes the "revival of judgments." *Sec. Prot. Corp. v. Institutional Secs. of Colo., Inc.*, 37 F. App'x 423, 425 (10th Cir. 2002) (citing Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, 12 Federal Practice & Procedure § 3134 (2d ed. 1997)). In other words, "in federal court[,] the motion to revive judgment entirely replaces the writ of scire facias." *Old St. Paul Missionary Baptist Church v. First Nation Ins. Grp.*, No. 3:07 cv-00043-LPR, 2020 WL 5579555, at *2 (E.D. Ark. Sept. 17, 2020); *see also J&J Sports Prods., Inc. v. Salas*, 2021 WL 2581430, at *1 ("[T]he interplay between Federal Rules of Civil Procedure 69 and 81(b) and O.C.G.A. §§ 9-12-61 and 9-12-62, permits relief in federal court

in the nature of scire facias."). Accordingly, "to revive a judgment in federal court in Georgia, a party must either file a new action or obtain relief in the action in which the judgment was obtained." *Id.*

B. Appellee Properly Sought Relief in the Nature of Scire Facias

The Bankruptcy Court revived the Judgment, holding that Appellee satisfied O.C.G.A. § 9-12-61. (Doc. 1-2, pp. 6-7.) Specifically, the Bankruptcy Court determined that "the motion to revive judgment entirely replaces the writ of scire facias" in federal court and, because Appellee filed the Emergency Motion to Revive Dormant Judgment prior to the expiration of Georgia's ten-year limitation period, Appellee satisfied Georgia law. (*Id.*) Notably, however, the Bankruptcy Court did not address O.C.G.A. §§ 9-12-63 and 9-12-67. (*See id.* at pp. 1-7.) Appellant generally argues that the Bankruptcy Court erred in granting the Emergency Motion to Revive Dormant Judgment because Appellee failed to comply with the exact requirements set out in O.C.G.A. §§ 9-12-63 and 9-12-67. (Doc. 4, pp. 6-24.)

The Court finds that the Bankruptcy Court did not err on this ground as Appellee properly sought relief in the nature of a writ of scire facias. Contrary to Appellant's argument that Appellee needed to have complied with every specific requirement of O.C.G.A. §§ 9-12-63 and 9-12-67, other courts in the Eleventh Circuit have found that "strict compliance with . . . Georgia's scire facias statute [is] unnecessary" to properly revive a dormant judgment. *J&J Sports Prods., Inc. v. Salas*, 2021 WL 2581430, at *1 (quoting *Blue Lake Recovery Co. v. Pugliese*, No. 1:10-cv-469-AT,

ECF No. 49, at p. 4 (N.D. Ga. Oct. 13, 2020)). Indeed, "[a]t least two courts in [the Northern District of Georgia] have found that a party can revive a judgment in federal court by filing a motion in the nature of scire facias and serving that motion on the defaulting party." *Id.* (citing *Blue Lake Recovery Co.*, No. 1:10-cv-469-AT, ECF No. 49, at p. 4; J*&J Sports Prods., Inc. v. Los Ranchos Latinos, Inc.*, No. 1:10-cv-2809-SCJ, ECF No. 38, at p. 3 (N.D. Ga. Nov. 6, 2020)). As explained by the Tenth Circuit Court of Appeals, "because supplementary proceedings [are] meant to be swift, cheap, [and] informal, [s]ubstantial compliance with the procedural provisions of [any controlling state] statutes [or case law] is sufficient." *McCarthy v. Johnson*, 172 F.3d 63, 1999 WL 46703, at *1 (10th Cir. 1999) (internal quotations and citations omitted). Thus, the Court examines whether Appellant was offered "the same opportunity to be heard on whether the Judgment is eligible for revival" as he "would have receive[d] in state court." *J&J Sports Prods., Inc. v. Salas*, 2021 WL 2581430, at *2 ; *see also Resol. Trust Corp. v. Ruggiero*, 994 F.2d 1221, 1226-27 (7th Cir. 1993) (holding that a court in supplementary proceedings to execute a federal court's judgment "could proceed in any way that satisfied the requirements of due process").

The Court is satisfied that Appellant received such an opportunity in this case. Appellee served Appellant and Hako-Med USA with a copy of the Emergency Motion to Revive Dormant Judgment by mail at the Nevada Addresses. (Doc. 2-1, p. 93.) The Bankruptcy Noticing Center then sent notice of the March 30, 2021, hearing to Appellant and Hako-Med USA via first class mail to the Nevada Addresses. (*Id.* at pp. 97-100.) Appellee then served Appellant and

Hako-Med USA a second time by mailing, via first class mail, copies of the Motion and Notice of Hearing to Appellant, Hako-Med USA, and at least one registered agent of Hako-Med USA at the Nevada Addresses and two Hawaii addresses. (*Id.* at pp. 101-02.) The Court finds that such efforts afforded Appellant a sufficient opportunity to be heard at the telephonic hearing and to voice any objections to revival of the Judgment.[11] Thus, the Bankruptcy Court did not err

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[11] The Court recognizes that some district courts are "not convinced that serving [a] motion by mail is sufficient to substantially comply" with state revival statutes and have thus required personal service of motions to revive judgments. *J&J Sports Prods, Inc. v. Salas*, 2021 WL 2581430, at *2 ; *see also Fed. Deposit Ins. Corp. v. Davis*, No. H-92-3759, 2006 WL 8445383, at *2 (S.D. Tex. July 28, 2006) (construing Texas scire facias statute to require that motions to revive judgment be personally served and accompanied by a summons). However, the Court finds these cases unpersuasive as Rule 81 abolished the writ of scire facias entirely and replaced it with an "appropriate action or motion under [the Federal Rules of Civil Procedure]." Fed. R. Civ. P. 81(b) (emphasis added). Federal Rule of Civil Procedure 5 provides that "a written motion" and "a pleading filed after the original complaint" may be served by mail. Fed. R. Civ. P. 5(a)(1)(B), (a)(1)(D), (b)(2)(C). The Bankruptcy Court determined that Appellant and Hako-Med USA were properly served, and the record amply supports that conclusion. (Doc. 1-2, p. 3.) Thus, the Court finds that service by mail in this case sufficiently provided Appellant an opportunity to object to revival of the Judgment. *See Resol. Trust Corp.*, 994 F.2d at 1226 ("We do not think that the draftsmen of Rule 69 meant to put the judge into a procedural straightjacket, whether of state or federal origin."); *Blue Lake Recovery Co.*, No. 1:10-cv-469-AT, ECF No. 49, at p. 4 n.3 (noting that serving motion for revival of dormant judgment by mail is sufficient under Georgia's scire facias statute). Furthermore, as discussed in Discussion Section IV, *infra*, Appellant's due process rights were not violated by service by mail in this case.

as Appellee properly sought relief in the nature of a writ of scire facias by timely filing the Emergency Motion to Revive Dormant Judgment and serving Appellant and Hako-Med USA by mail on two separate occasions.

III. The Bankruptcy Court Did Not Err by Granting an "Emergency" Motion

Appellant next argues that the Bankruptcy Court erred in granting the Emergency Motion to Revive Dormant Judgment because no emergency existed and Appellee failed to provide good cause in violation of Southern District of Georgia Local Rule 7.7. (Doc. 4, pp. 24-25.) The Court finds these arguments unpersuasive. Local Rule 7.7 provides, "Upon written motion and for good cause shown, the Court may waive the time requirements" for filing and responding to civil motions and grant "an immediate hearing on any matter requiring expedited procedure." L.R. 7.7. Even assuming the Bankruptcy Court waived applicable time requirements, good cause existed to waive those requirements.[12] The Emergency Motion, which was filed on March 12, 2021, states, "The judgment at

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[12] The Court doubts that the Bankruptcy Court "waived" any time requirements under Local Rule 7 in the first place. For example, one of the time requirements the Court may waive under Local Rule 7.7 is the 14-day period in which parties must respond to civil motions. *See* L.R. 7.5, 7.7. Appellee first served Appellant with the Emergency Motion on March 12, 2021. (Doc. 1-2, p. 2; doc. 2-1, p. 23.) The Bankruptcy Court scheduled a telephonic conference for March 30, 2021, and, following that conference, published its Order on April 1, 2021. (Doc. 2-1, pp. 23, 93-94; doc. 1-2, p. 7.) Thus, Appellant had more than fourteen days to respond to the Emergency Motion prior to the hearing and the Bankruptcy Court's ruling on the Emergency Motion.

issue in this case will extinguish and become forever time-barred on April 7, 2021, if . . . this motion is not granted by that deadline." (Doc. 2-1, p. 60 (citing O.C.G.A. § 9-12-61).) The Bankruptcy Court then noted the urgency of the matter in its Order, stating that Appellee filed the Emergency Motion on March 12, 2021, and that the Judgment would become "forever time-barred on April 7, 2021." (Doc. 1-2, pp. 2-3.) Thus, the urgency of the revival issue is clearly stated in the Emergency Motion and noted in the Bankruptcy Court's Order. To the extent Appellant argues no emergency existed or that Appellee created the emergency by waiting until "the eleventh hour" to seek revival of the Judgment, the Court notes that Appellant timely sought revival of the Judgment within the three-year period permitted by Georgia law. *See* O.C.G.A. § 9-12-61. Moreover, Appellant has failed to cite to any authority suggesting that when a motion is filed within the time period permitted by Georgia law, good cause does not exist if the motion could have been filed earlier. (*See* docs. 4, 7.) Accordingly, the Court finds that the Bankruptcy Court did not err on this ground in issuing the Emergency Order to Revive Dormant Judgment.

IV. Appellant's Due Process Rights Were Not Violated by the Efforts to Serve Appellant with the Emergency Motion to Revive Dormant Judgment and the Notice of Hearing

Appellant next argues that the Bankruptcy Court violated his due process rights by granting the Emergency Motion to Revive Dormant Judgment without requiring personal service of a "summons or equivalent." (Doc. 4, pp. 27-28.) To provide sufficient

due process, "notice must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Arrington v. Helms*, 438 F.3d 1336, 1349-50 (11th Cir. 2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). "Due process is a flexible concept that varies with the particular circumstances of each case, and myriad forms of notice may satisfy the *Mullane* standard." *Arrington*, 438 F.3d at 1350; *see also*, *e.g.*, *Save Our Dunes v. Ala. Dep't of Env't Mgmt.*, 834 F.2d 984, 989 (11th Cir. 1987) ("What due process requires varies and depends upon all the circumstances.").

Contrary to Appellant's assertion and as discussed above, personal service of a summons is not required for motions to revive judgments. *See* Discussion Section II.B n.8, *supra.* Federal Rule of Civil Procedure 5 expressly provides for service by mail of written motions and pleadings filed after the original complaint, in which case service is "complete upon mailing." Fed. R. Civ. P. 5; *see also In re Le Centre on Fourth, LLC*, No. 19-cv-62199-SINGHAL, 2020 WL 12604348, at *3 (S.D. Fla. June 30, 2020) ("[S]ervice by mail is complete upon mailing. . . . "). Furthermore, Appellee's repeated attempts to notify Appellant of the hearing and serve him with a copy of the Emergency Motion were reasonably calculated to notify him of the proceedings to revive the Judgment. Appellee served Appellant and Hako-Med USA with a copy of the Emergency Motion at the Nevada Addresses by mail. (Doc. 2-1, pp. 93-94.) The Bankruptcy Noticing Center then sent notice of the March 30, 2021, hearing to Appellant and Hako-Med USA via first class mail to

the same addresses. (Id. at pp. 95-98.) Appellee then served Appellant and Hako-Med USA a second time by mailing, via first class mail, a copy of the Emergency Motion and notice of the hearing to Appellant, Hako-Med USA, and at least one registered agent of Hako-Med USA at the Nevada Addresses and two Hawaii addresses. (*Id*. at pp. 101-02.) These efforts are enough to satisfy due process. *See Guarino v. Productos Roche S.A.*, 839 F. App'x 334, 340 (11th Cir. 2020) ("Roche and the ACCC sent mail notifications to the business address listed on the purchase agreement and the emails were sent to the email addresses Roche had on file. These repeated attempts to notify Guarino of the arbitration do not violate due process because they were reasonably calculated to notify Guarino of the arbitration proceedings."); *In re Bagwell*, 741 F. App'x 755, 757-59 (11th Cir. 2018) (rejecting debtor's argument that the bankruptcy court violated due process by failing to give sufficient notice where creditor filed a certificate of service indicating that a motion for relief from automatic stay and a notice of hearing were mailed to debtor's address).

Finally, to the extent Appellant asserts his due process rights were violated because he did not receive notice of the Emergency Motion to Revive Dormant Judgment until after the Bankruptcy Court had revived the Judgment, (doc. 4, pp. 6, 27-28), the Court notes that "[t]he Constitution . . . judges the adequacy of notice from the perspective of the sender [and] not the recipient." *Lampe v. Kash*, 735 F.3d 942, 944 (6th Cir. 2013). Indeed, "proof of actual receipt of a mailed notice is not required to satisfy due process requirements." *In re TLFO, LLC*, 572 B.R. 391, 432 (Bankr. S.D. Fla. 2016) (citing *Dusenbery v. United States*, 534 U.S.

161, 170, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002); *Sanders v. Henry County*, 484 F. App'x 395, 397 (11th Cir. 2012)); *see also Guarino*, 839 F. App'x at 340 ("Actual notice is not required; the adverse party need only prove an attempt to provide actual notice."). Thus, "a court may find that notice and due process requirements were met even when the notice mailed was not actually received by the aggrieved party." *In re TLFO, LLC*, 572 B.R. at 432. Here, the Court finds that Appellee's and the Bankruptcy Court's numerous attempts to notify Appellant of the Emergency Motion to Revive and Notice of Hearing satisfied due process requirements.[13]

CONCLUSION

Based on the foregoing, the Court **AFFIRMS** the Bankruptcy Court's Order granting Appellee Donald Bailey's Emergency Motion to Revive Dormant Judgment. (Doc. 1-2.)

SO ORDERED, this 22nd day of February, 2022.

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[13] Notably, Appellant does not argue that Appellee or the Bankruptcy Court mailed copies of the Emergency Motion and Notice of Hearing to the wrong addresses. Rather, Appellant simply argues that he heard of the proceeding from his former attorney after the Bankruptcy Court revived the Judgment and that the Bankruptcy Court should have required personal service of a summons. (*See* docs. 4, 7.)

ORDER, U.S. BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF GEORGIA (APRIL 1, 2021)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE: DONALD H. BAILEY,

Debtor.

Chapter 11
Number 07-41381-EJC

DONALD H. BAILEY,

Plaintiff,

v.

HAKO-MED USA, INC., and KAI HANSJURGENS,

Defendants.

Adversary Proceeding
Number 09-04002-EJC

Before: Edward J. COLEMAN, III,
United States Bankruptcy Judge.

ORDER GRANTING EMERGENCY MOTION TO REVIVE DORMANT JUDGMENT

Before the Court is the Emergency Motion to Revive Dormant Judgment (adv. dckt. 229) filed by Donald H. Bailey, the Plaintiff-Debtor in this adversary proceeding. On September 4, 2007, the Plaintiff-Debtor filed a Chapter 11 petition. (Dckt. 1). On January 28, 2009, the Plaintiff-Debtor filed this adversary proceeding against Hako-Med USA, Inc., and Kai Hansjurgens (the "Defendants"). (Adv. Dckt. 1, amended at Adv. Dckt. 36). The Plaintiff-Debtor, a medical doctor in the business of leasing medical equipment to practicing physicians, alleged that the Defendants made certain misrepresentations and tortiously interfered with his contractual relations in connection with the sale of medical equipment.

A trial was held on September 17, 2010. (Adv. Dckt. 141, 207). On November 18, 2010, the Court entered an interlocutory Memorandum and Order finding in favor of the Plaintiff-Debtor on his tortious interference claim, awarding $293,650.02 in actual damage, and stating that a separate trial would be scheduled to determine the amount of punitive damage and attorneys' fees to be awarded. (Adv. Dckt. 95, p. 21). That trial took place on March 8, 2011. (Adv. Dckt. 201, 208, 213). On April 7, 2011, the Court entered its Order Awarding Punitive Damage and Attorneys' Fees (the "April 7, 2011 Judgment"), which stated that "final judgment is entered in favor of the Plaintiff and against the Defendants in the following amounts: (1) Compensatory Damage in the amount of $277,336.13; (2) Punitive Damage in the amount of $554,672.26; and (3) Attorneys' Fees in the amount of

$61,965.25, for a total of $893,973.64." (Adv. Dckt. 145, p. 12).1

On March 12, 2021, the Plaintiff-Debtor filed the instant Emergency Motion to Revive Dormant Judgment asserting that "[t]he judgment in this case remains unsatisfied and the Defendants herein have refused to pay any of the award set forth in the judgment against them at any time." (Adv. Dckt. 229, p. 3). According to the Plaintiff-Debtor, under Georgia law, the April 7, 2011 Judgment became dormant on April 7, 2018, and, absent further action, will become forever time-barred on April 7, 2021. The Plaintiff-Debtor requests that the Court revive the Judgment prior to that date.

A hearing on the Emergency Motion to Revive Dormant Judgment was scheduled for March 30, 2021. (Adv. Dckt. 231). The certificate of service filed by the Plaintiff-Debtor indicates that the Defendants were properly served with the motion and with notice of the hearing. (Adv. Dckt. 230, amended at Adv. Dckt. 233). The Defendants, however, failed to respond to the motion. At the hearing on March 30, 2021, the Defendants failed to appear. The Court heard argument from Plaintiff-Debtor's counsel, recited into the record preliminary findings of fact and conclusions of law,2 and took the matter under advisement.

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1 The Court recited the lengthy history of this adversary proceeding, of which only the pertinent parts are mentioned here, at the hearing on March 30, 2021.

2 Those findings of fact and conclusions of law are hereby adopted, as supplemented herein.

Rule 69 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this adversary proceeding by Rule 7069 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), provides as follows:

Money Judgment; Applicable Procedure. A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

F.R.C.P. 69(a)(1). In other words, "the practice and procedure to be applied with respect to executing a judgment must be in accordance with the procedure of the state where the court is located, except that any statute of the United States governs to the extent that it is applicable." *In re RR Valve, Inc.,* No. 09-33345, 2020 WL 2858679, at *1 (Bankr. S.D. Tex. June 2, 2020). "Rule 69 is broad enough to encompass the state court rules on reviving judgments." *Sandia Area Fed. Credit Union v. Fiorenza (In re Fiorenza),* Adv. Pro. No. 09-1012-t, 2019 WL 262196, at *3 (Bankr. D.N.M. Jan. 17, 2019). *See also Tibbs v. Vaughn,* No. 2:08-cv-787-TC, 2019 WL 528232, at *1 (D. Utah Feb. 11, 2019) ("A judgment may be renewed or revived in federal court by complying with the state law governing such relief."). Thus, the laws of the State of Georgia apply to a motion to revive a judgment entered by this Court.

Under Georgia law, "[a] judgment shall become dormant and shall not be enforced . . . [w]hen seven years shall elapse after the rendition of the judgment before execution is issued thereon and is entered on the general execution docket of the county in which

the judgment was rendered[.]" O.C.G.A. § 9-12-60(a)(1). However, "[w]hen any judgment obtained in any court becomes dormant, the same may be renewed or revived by an action or by scire facias, at the option of the holder of the judgment, within three years from the time it becomes dormant."3 O.C.G.A. § 9-12-61. These statutes "operate in tandem as a ten-year statute of limitation for the enforcement of Georgia judgments." *Corzo Trucking Corp. v. West,* 281 Ga. App. 361, 362-63 (2006). "Although a judgment . . . becomes dormant seven years from the date of the last entry upon the execution docket, it does not expire until ten years after that date." *See also Automotive Credit Corp. v. White,* 344 Ga. App. 321, 323 (2018).

Pursuant to the Uniform Enforcement of Foreign Judgments Law, O.C.G.A. 9-12-130 *et seq.,* "the Georgia provision for revival of a dormant judgment, O.C.G.A. § 9-12-61, is applicable to revive a dormant federal judgment." *Smith v. State,* 218 Ga. App. 429 (1995).4 *See also O*.C.G.A. § 9-12-131 ("As used in this article, the term 'foreign judgment' means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state."); O.C.G.A. § 9-12-132 ("A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or

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3 "Scire facias to revive a judgment is not an original action but is the continuation of the action in which the judgment was obtained." O.C.G.A. § 9-12-62.

4 *But see Tunnelite, Inc. v. Estate of Sims,* 266 Ga. App. 476, 478-49 (2004) (judgment of a Georgia federal district court was not a "foreign judgment" requiring domestication).

satisfying as a judgment of the court in which it is filed and may be enforced or satisfied in like manner."). Accordingly, the revival of the April 7, 2011 Judgment in this adversary proceeding is governed by O.C.G.A. § 9-12-60 *et seq*.

The Plaintiff-Debtor has elected to seek revival of the dormant April 7, 2011 Judgment in this Court rather than in state court.5 Under Federal Rule 81(b), the writ of scire facias is abolished in federal court, but the same relief "may be obtained by appropriate action or motion under these rules." F.R.C.P. 81(b). In other words, "in federal court the motion to revive judgment *entirely* replaces the writ of scire facias." *Old St. Paul Missionary Baptist Church v. First Nation Ins. Grp.,* No. 3:07-cv-00043-LPR, 2020 WL 5579555, at *2 (E.D. Ark. Sept. 17, 2020) (emphasis in original). "What this means in practice is that, in federal court, so long as the motion to revive judgment is filed within the 10-year window, that particular timing prerequisite for the revival of a judgment is fulfilled." *Id.* "It is not clear what valid objections there might be to a motion to revive a judgment, so long as the judgment is unpaid and the statute of lim-

5 As an alternative to requesting relief in this Court, the Plaintiff-Debtor may seek to revive the dormant April 7, 2011 Judgment in state court. In *Smith v. State,* 218 Ga. App. at 429, the State of Georgia filed an action in the Superior Court of Jackson County, Georgia, to revive a dormant judgment entered in the United States District Court for the Northern District of Georgia. The superior court granted the motion for summary judgment filed by the State of Georgia, and the Court of Appeals affirmed. Thus, "the Georgia provision for revival of a dormant judgment gives Georgia courts the authority to revive . . . a dormant federal judgment." Amy G. Gore, *5 Ga. Proc. Verdict and Judgments §* 9:215 (March 2021).

itations has not run." *Fiorenza,* 2019 WL 262196, at *4. Here, the Court finds that the April 7, 2011 Judgment remains unpaid, that it became dormant on April 7, 2018, and that the Plaintiff-Debtor timely filed the instant motion prior to the expiration of the ten-year limitation period on April 7, 2021. Accordingly, the Plaintiff-Debtor has satisfied the requirements of O.C.G.A. § 9-12-61, made applicable by Federal Rules 69 and 81, and is entitled to a revival of the April 7, 2011 Judgment.

For the foregoing reasons, the Court hereby GRANTS the Plaintiff-Debtor's Emergency Motion to Revive Dormant Judgment. (Adv. Dckt. 229). The April 7, 2011 Judgment awarding compensatory damage in the amount of $277,336.13, punitive damage in the amount of $554,672.26, and attorneys' fees in the amount of $61,965,25, for a total of $893,973.64, is hereby REVIVED.

Dated at Savannah, Georgia, this 1st day of April, 2021.

/s/ Edward J. Coleman, III
Chief Judge
United States Bankruptcy Court
Southern District of Georgia

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (MAY 8, 2024)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

IN RE: DONALD H. BAILEY

Debtor.

KAI HANSJURGENS,

Plaintiff-Appellant,

v.

DONALD H. BAILEY,

Defendant-Appellee.

No. 22-10819

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:21-cv-00105-RSB-CLR

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

Before: WILLIAM PRYOR, Chief Judge, and
ROSENBAUM and ABUDU, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

RELEVANT STATUTORY PROVISION

GEORGIA CODE TITLE 9, CHAPTER 12 (2022)

2022 Georgia Code
Title 9 - Civil Practice
Chapter 12 - Verdict and Judgment
Article 3 - Dormancy and Revival of Judgments

GA Code § 9-12-60. When Judgment Becomes Dormant; How Dormancy Prevented; Docketing; Applicability

a. A judgment shall become dormant and shall not be enforced:

1. When seven years shall elapse after the rendition of the judgment before execution is issued thereon and is entered on the general execution docket of the county in which the judgment was rendered;

2. Unless entry is made on the execution by an officer authorized to levy and return the same and the entry and the date thereof are entered by the clerk on the general execution docket within seven years after issuance of the execution and its record; or

3. Unless a bona fide public effort on the part of the plaintiff in execution to enforce the execution in the courts is made and due written notice of such effort specifying the time of the institution of the action or proceedings, the nature thereof, the names of the parties thereto, and the name of the court in which it is pending is filed by the

plaintiff in execution or his attorney at law with the clerk and is entered by the clerk on the general execution docket, all at such times and periods that seven years will not elapse between such entries of such notices or between such an entry and a proper entry made as prescribed in paragraph (2) of this subsection.

b. The record of the execution made as prescribed in paragraph (1) of subsection (a) of this Code section or of every entry as prescribed in paragraph (2) or (3) of subsection (a) of this Code section shall institute a new seven-year period within which the judgment shall not become dormant, provided that when an entry on the execution or a written notice of public effort is filed for record, the execution shall be recorded or rerecorded on the general execution docket with all entries thereon. It shall not be necessary in order to prevent dormancy that such execution be entered or such entry be recorded on any other docket.

c. When an entry on an execution or a written notice of public effort is filed for record and the original execution is recorded in a general execution docket other than the current general execution docket, the original execution shall be rerecorded in the current general execution docket with all entries thereon. When an original execution is so rerecorded, a notation shall be made upon the original execution which states that it has been rerecorded and gives the book and page number where the execution has been rerecorded. When an original execution is so rerecorded in the current general execution docket,

it shall be indexed in the current general execution docket in the same manner as if it were an original execution. Nothing in this subsection shall affect the priority of any judgment or lien; and no judgment or lien shall lose any priority because an execution is rerecorded.

d. The provisions of subsection (a) of this Code section shall not apply to judgments or orders for child support or spousal support.

GA Code § 9-12-61. Dormant Judgments Renewed by Action or *Scire Facias*; Time of Renewal

When any judgment obtained in any court becomes dormant, the same may be renewed or revived by an action or by scire facias, at the option of the holder of the judgment, within three years from the time it becomes dormant.

GA Code § 9-12-62. Nature of *Scire Facias*

Scire facias to revive a judgment is not an original action but is the continuation of the action in which the judgment was obtained.

GA Code § 9-12-63. Issuance of Scire Facias; Copies; Service; Return

A scire facias to revive a dormant judgment in the courts must issue from and be returnable to the court of the county in which the judgment was obtained. It shall be directed to all and singular the sheriffs of this state and shall be signed by the clerk of such court who shall make out copies thereof. An original and a copy shall issue for each county in which any party to be notified resides. A copy shall be served by the sheriff of

the county in which the party to be notified resides 20 days before the sitting of the court to which the scire facias is made returnable and the original shall be returned to the clerk of the court from which it issued.

GA Code § 9-12-64. Revival on Motion After Service of Scire Facias; When Defendant Entitled to Jury Trial

In all cases of scire facias to revive a judgment, when service has been perfected, the judgment may be revived on motion at the first term without the intervention of a jury unless the person against whom judgment was entered files an issuable defense under oath, in which case the defendant in judgment shall be entitled to a trial by jury as in other cases.

GA Code § 9-12-65. Scire Facias When Judgment Transferred

When a judgment has been transferred, the scire facias shall issue in the name of the original holder of the judgment for the use of the transferee.

GA Code § 9-12-66. Venue of Action to Renew Judgment

An action to renew a dormant judgment shall be brought in the county where the defendant in judgment resides at the commencement of the action.

GA Code § 9-12-67. Revival of Judgment Against Nonresident; Service by Publication

> If the defendant in judgment or other party to be notified resides outside this state, a dormant judgment may be revived against such defendant or his representative by such process as is issued in cases in which the defendant resides in this state, provided that the defendant in judgment or other party to be notified shall be served with scire facias by publication in the newspaper in which the official advertisements of the county are published, twice a month for two months previous to the term of the court at which it is intended to revive the judgment, which service shall be as effectual in all cases as if the defendant or person to be notified had been personally served.

GA Code § 9-12-68. Revival of Dormant Decrees for Payment of Money

> Decrees for the payment of money shall become dormant like other judgments when not enforced and may be revived as provided by law for other judgments.

OPINION, IN
***ATWOOD v. HIRSCH BROS.*,**
SUPREME COURT OF GEORGIA
(AUGUST 3, 1905)

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51 S.E. 742 123 Ga. 734

SUPREME COURT OF GEORGIA

ATWOOD

v.

HIRSCH BROS.

Before: L. S. ROAN, Superior Court,
De Kalb County, FISH, P.J., SIMMONS, C.J.

FISH, P.J.

Hirsch Bros. sued out a scire facias to revive a dormant judgment. It was served upon the defendant by "leaving a copy at his most notorious place of abode." After return of service had been made, and at the first term of the court, the defendant appeared and moved the court to dismiss the scire facias, upon the ground that it had not been served upon him personally. The judge overruled the motion, and the defendant excepted.

Civ. Code 1895, § 5381, provides that a scire facias to revive a dormant judgment "shall be served by the sheriff of the county in which the party to be notified may reside, twenty days before the sitting of the court," etc. No particular method of service is

prescribed. "The general rule in regard to service of process or legal notice is that it must be served personally on the party or the individual in question, unless some other mode is especially provided for that purpose by statute, or has been otherwise established by long and recognized practice to the contrary." 19 Enc. Pl. & Pr. 614, 620. This rule was cited approvingly in *Baldwin v. Baldwin*, 116 Ga. 472, 42 S.E. 727, where Chief Justice Simmons said: "The Code provides for notice to the defendant [in a proceeding for alimony], and the defendant himself must be served with notice, before the court can acquire jurisdiction to proceed with the case. If the Legislature desires to make some other method of service sufficient, substituted service may be provided for by statute, as has been done in ordinary suits. In the absence of such a statutory provision, service by leaving a copy of the petition at the defendant's most notorious place of abode is not sufficient. Indeed, it amounts to no service at all." Section 2743 of the Civil Code of 1895, which provides the method of foreclosure of mortgages on realty, declares that "the court shall grant a rule directing the principal, interest, and costs to be paid into court on or before the first day of the next term, *** which rule shall be published once a month for four months, or served on the mortgagor, or his special attorney, at least three months previous to the time at which the money is directed to be paid into court." In the case of Hobby v. Bunch, 83 Ga. 1, 10 S.E. 113, 20 Am.St.Rep. 301, the court construes the meaning of the word "served," as employed in the section of the Code last quoted, to be personal service, and not service by leaving a copy at the residence of the defendant. In that case Chief Justice Bleckley said: "But the only service which the sheriff could legally

make, and the only service effected less than four months before the term of the court at which the judgment of foreclosure was rendered which could be valid would be personal service. Service by leaving a copy at the defendant's residence is unauthorized and insufficient. * * * Were the sheriff to leave it at his own residence, and return that he had done so, and thereby served the defendant, the service would be quite as good as that which was returned in this instance"—citing *Dykes v. McClung*, 74 Ga. 382, and *Meeks v. Johnson*, 75 Ga. 630.

Section 5382 of the Civil Code of 1895, which provides the method of service by publication upon nonresidents against whom dormant [51 S.E. 743.] judgments are sought to be revived, concludes with this language: "Which service shall be as effectual in all cases as if the defendant or person to be notified has been personally served." This would seem to indicate that the legislative interpretation of the act providing for service within the state was that such service should be personal. But it is contended by the defendant in error that a writ of scire facias is in the nature of an action at law, that it "assumes all the forms and attributes" of such, and therefore comes under the provisions of Civ. Code 1895, § 4985, which describes the mode of service in this state in actions commenced by petition; it being permissible, under that section, to perfect service by leaving "a copy at the defendant's residence." In answer to this contention we cite Civ. Code 1895, § 5380: "Scire facias to revive a judgment is not an original action, but the continuation of the suit in which the judgment was obtained." And to combat the argument that, since scire facias is but the continuation of the suit in which the judgment

was obtained, and, personal service not being required in the original action, it should not be required there, we say that neither is 20 days' notice necessary in order to bring the defendant into court in the original action, yet by the plain letter of the law it is in scire facias indispensable. The refusal to dismiss the scire facias was error.

Judgment reversed. All the Justices concurring, except SIMMONS, C.J., absent.

OPINION IN
***POPHAM v. JORDAN*,**
COURT OF APPEALS OF GEORGIA
(MARCH 15, 2006)

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278 Ga. App. 254

628 S.E.2d 660

COURT OF APPEALS OF GEORGIA

POPHAM

v.

JORDAN

No. A06A0467

Before: ELLINGTON, Judge.

In 1996, Peter N. Popham sued Hill Jordan, purportedly for fraud, in the State Court of Gwinnett County and obtained a judgment in the amount of 39,545 on May 23, 1997. After Popham allowed the judgment to become dormant, he filed this petition for writ of scire facias pursuant to OCGA § 9-12-60 et seq. The trial court found that Popham's petition failed to meet the procedural requirements of OCGA § 9-12-63 and denied the petition. Popham appeals, challenging virtually every aspect of the trial court's handling of his petition. For the following reasons, we affirm.

1. Popham concedes that he allowed his judgment against Hill to become dormant. *See* OCGA § 9-12-60(a).[1] Within three years from the time it became dormant, Popham attempted to revive the judgment by scire facias, as permitted by OCGA § 9-12-61,[2] by filing a petition on December 27, 2004. *See also* OCGA § 9-12-62 ("Scire facias to revive a judgment is not an original action but is the continuation of the action in which the judgment was obtained."). Popham contends that the trial court erred in concluding that his petition failed to satisfy the procedural requirements of OCGA § 9-12-63.

OCGA § 9-12-63 provides:

> A scire facias to revive a dormant judgment in the courts must issue from and be returnable to the court of the county in which the judgment was obtained. It shall be directed to all and singular the sheriffs of this state and shall be signed by the clerk of such court who shall make out copies thereof. An original and a copy shall issue for each county in which any party to be notified resides. A copy shall be served by the sheriff of the county in which the party to be notified resides

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[1] OCGA § 9-12-60(a) provides in pertinent part: "A judgment shall become dormant and shall not be enforced . . . [u]nless entry is made on the execution by an officer authorized to levy and return the same and the entry and the date thereof are entered by the clerk on the general execution docket within seven years after issuance of the execution and its record."

[2] When any judgment obtained in any court becomes dormant, the same may be renewed or revived by an action or by scire facias, at the option of the holder of the judgment, within three years from the time it becomes dormant." OCGA § 9-12-61.

> 20 days before the sitting of the court to which the scire facias is made returnable and the original shall be returned to the clerk of the court from which it issued.

A scire facias resembles a summons and directs the defendant to appear in the issuing court on a certain date and to show cause why the identified judgment should not be revived and an execution be issued. *See Brown*, Georgia Pleading, Practice and Legal Forms Annotated (2d ed.), §§ 9-12-62 Form 1; 9-12-63 Form 1. Although OCGA § 9-12-63 required Popham to prepare a scire facias, directed to the sheriffs of this state, and to have the scire facias signed by the clerk of the court of the county in which the original judgment was obtained and issued from that court, that is, the State Court of Gwinnett County, the record contains no such scire facias. Similarly, the record does not demonstrate that an original and a copy were issued for DeKalb County, where Hill resides. Although, according to a certificate of service attached to the petition, Popham personally mailed a copy to Hill, and Hill appeared and filed a response to Popham's petition, Hill's answer included an affirmative defense alleging that Popham had failed to comply with OCGA § 9-12-63. The record does not demonstrate that the DeKalb County sheriff served Hill a copy of any scire facias, as required by the statute, nor does the record demonstrate that any original was returned to the clerk of the State Court of Gwinnett County.

Accordingly, the trial court correctly concluded that Popham's petition failed to satisfy the procedural requirements of OCGA § 9-12-63. The trial court's order denying Popham's petition is affirmed. *Atwood*

v. Hirsch Bros., 123 Ga. 734, 51 S.E. 742 (1905); *Scott v. Napier*, 85 Ga.App. 268, 274, 69 S.E.2d 111 (1952).

2. Popham's remaining claims of error are moot or were not presented to the trial court for a decision. "This court's function is to review errors of the lower courts, not to review assertions made by [Popham] and brought directly to this court. For that reason, we will not address the issues which were not raised below." (Punctuation and footnote omitted.) *Daniels v. State,* 244 Ga. App. 522, 523, 536 S.E.2d 206 (2000).

Judgment affirmed.

JOHNSON, P.J., and MILLER, J., concur.

OPINION IN
***MANCUSO v. CADLES OF WEST VIRGINIA, LLC*,**
COURT OF APPEALS OF GEORGIA
(JANUARY 18, 2024)

COURT OF APPEALS OF GEORGIA

MANCUSO

v.

CADLES OF WEST VIRGINIA, LLC

A23A1379

Before: BARNES, Presiding Judge,
LAND and WATKINS, JJ.

Following the trial court's entry of an order reviving a dormant judgment entered against him, Peter B. Mancuso appeals, contending that the order should be reversed because he was never properly served with a copy of the scire facias to revive the judgment. According to Mancuso, service upon him of the scire facias was defective and did not satisfy the procedural requirements of OCGA § 9-12-63 because he was served by a private process server rather than by the sheriff in the county where he resided. For the reasons discussed below, we agree with Mancuso that service of the scire facias by a private process server was insufficient. Accordingly, we reverse the trial court's order reviving the judgment and remand

the case to the trial court for further proceedings consistent with this opinion.[1]

The pertinent facts are undisputed. On February 20, 2013, Multibank 2009-1 RES ADC Venture, LLC obtained in the Superior Court of Henry County a judgment against Mancuso in the amount of $65,492.63. Execution thereafter was entered on the judgment on July 15, 2014. Several years later, after the judgment became dormant,[2] Cadles of West Virginia, LLC, as alleged assignee of Multibank, filed a proposed scire facias to revive the judgment in the same superior court. On October 31, 2022, the superior court clerk issued a scire facias to revive the dormant judgment,[3] which was served on Mancuso by a private process server. Mancuso filed a verified response to the scire facias, contending, among other things, that service of the scire facias was insufficient under OCGA § 9-12-63 because he was not served by the sheriff in the county where he resided.[4] Following a hearing, the trial court entered its order reviving the dormant

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[1] In light of our decision in this case, we do not reach several additional claims of error raised by Mancuso.

[2] *See* OCGA § 9-12-60 (a) (addressing when a judgment becomes dormant).

[3] The superior court clerk previously issued a scire facias to revive the judgment on July 21, 2022, but a copy of the scire facias was not personally served on Mancuso at least 20 days before the hearing scheduled for November 14, 2022, as required by OCGA § 9-12-63, leading the clerk to issue a second scire facias on October 31, 2022. Only the second scire facias is at issue in this appeal.

[4] Mancuso incorporated his verified response to the scire facias issued on July 21, 2022 into his verified response to the second scire facias issued on October 31, 2022. *See supra* footnote 3.

judgment on February 6, 2023. In its order, the court concluded that the scire facias had been "duly served" on Mancuso.

On appeal, Mancuso contends that the trial court erred in reviving the dormant judgment because OCGA § 9-12-63 required that he be personally served with a copy of the scire facias by the county sheriff rather than by a private process server.

When interpreting the meaning of a statute,

> we must presume that the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would and if the statutory text is clear and unambiguous, we attribute to the statute its plain meaning, and our search for statutory meaning is at an end.

(Citation and punctuation omitted.) *Mayor & Aldermen of the City of Garden City v. Harris*, 302 Ga. 853, 854-855, 809 S.E.2d 806 (2018). "When we construe statutory authority on appeal, our review is de novo." (Citation and punctuation omitted.) *In re Estate of Jones*, 346 Ga. App. 877, 879 (2), 815 S.E.2d 599 (2018).

Mindful of these principles, we turn to the statutory framework pertinent to this case. Title 9, Chapter 12, Article 3 of the Official Code of Georgia Annotated addresses the dormancy and revival of judgments ("Revived Judgment Code"). OCGA § 9-12-60 (a) and (b) specify when a judgment becomes

dormant, and construing those subsections, we have explained that "a judgment becomes dormant seven years from the date of the last entry upon the execution docket." (Citation and punctuation omitted.) *First Merit Credit Svcs. v. Fairway Aviation*, 359 Ga. App. 829, 833 (2), 860 S.E.2d 126 (2021). Once a judgment becomes dormant, it "may be renewed or revived . . . by scire facias, at the option of the holder of the judgment, within three years from the time it becomes dormant." OCGA § 9-12-61.5 "A scire facias resembles a summons and directs the defendant to appear in the issuing court on a certain date and to show cause why the identified judgment should not be revived and an execution be issued." *Popham v. Jordan*, 278 Ga. App. 254, 254-255 (1), 628 S.E.2d 660 (2006). OCGA § 9-12-63 sets out the procedural requirements for issuance and service of a scire facias, and that statute provides:

> A scire facias to revive a dormant judgment in the courts must issue from and be returnable to the court of the county in which the judgment was obtained. It shall be directed to all and singular the sheriffs of this state and shall be signed by the clerk of such court who shall make out copies thereof. An original and a copy shall issue for each county in which any party to be notified resides, A copy

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5 OCGA §§ 9-12-60 and 9-12-61 . . . operate in tandem as a ten-year statute of limitation for the enforcement of Georgia judgments, such that although a judgment becomes dormant seven years from the date of the last entry upon the execution docket, it does not expire until ten years after that date." (Citations and punctuation omitted.) *First Merit Credit Svcs.*, 359 Ga. App. At 833 (2), 860 S.E.2d 126.

> shall be served by the sheriff of the county in which the party to be notified resides 20 days before the sitting of the court to which the scire facias is made returnable and the original shall be returned to the clerk of the court from which it issued.

(Emphasis supplied.) The service requirements imposed by OCGA § 9-12-63 must be satisfied before a dormant judgment may be revived. *See* OCGA § 9-12-64 ("In all cases of scire facias to revive a judgment, when service has been perfected, the judgment may be revived on motion at the first term without the intervention of a jury unless the person against whom judgment was entered files an issuable defense under oath, in which case the defendant in judgment shall be entitled to a trial by jury as in other cases.") (emphasis supplied). *See Popham*, 278 Ga. App. at 255 (1), 628 S.E.2d 660 (affirming trial court's denial of petition seeking to revive dormant judgment, where scire facias was not issued and served in compliance with the procedural requirements of OCGA § 9-12-63).

In the present case, it is undisputed that Mancuso was served with a copy of the scire facias by a private process server. But OCGA § 9-12-63 expressly provides that the copy of the scire facias "shall be served by the sheriff of the county in which the party to be notified resides." "The general rule is that 'shall' is recognized as a command, and is mandatory," and "[w]e cannot by construction add to, take from, or vary the meaning of unambiguous words in a statute." (Citations and punctuation omitted.) *City of Albany v. GA HY Imports*, 348 Ga. App. 885, 891, 825 S.E.2d 385 (2019). Accordingly, by its plain and unambiguous language,

OCGA § 9-12-63 required that Mancuso be served by the sheriff of the county in which he resided.

Although Mancuso was not served by the county sheriff, Cadles contends that service nevertheless was proper because OCGA § 9-11-4 (c) of the Civil Practice Act ("CPA"), OCGA § 9-11-1 et seq., authorizes service of a summons by a private process server appointed by the trial court,[6] and the process server who served Mancuso with the scire facias was so appointed. In relying upon OCGA § 9-11-4 (c) as a method for effecting service, Cadles emphasizes that OCGA § 9-12-62 of the Revived Judgment Code provides that "[s]cire facias to revive a judgment is not an original action but is the continuation of the action in which the judgment was obtained." Cadles argues that because the scire facias "is a continuation of the action in which the judgment was obtained, then likewise it would stand to reason that a [s]cire [f]acias could be served in the same manner that the underlying complaint and summons could be served" under the CPA.

We are unpersuaded by Cadles's argument. The fact that a scire facias is treated as the continuation of the suit in which the underlying judgment was obtained does not override the specific procedural requirements set out in OCGA § 9-12-63 for service of the scire facias. *See Atwood v. Hirsch Bros.*, 123 Ga. 734, 736, 51 S.E. 742 (1905) (rejecting "argument that,

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[6] *See* OCGA § 9-11-4 (c) (3) (authorizing service by "[a]ny citizen of the United States specially appointed by the court for that purpose"); (c) (4) (authorizing service by "[a] person who is not a party, not younger than 18 years of age, and has been appointed by the court to serve process or as a permanent process server").

since scire facias is but the continuation of the suit in which the judgment was obtained," the same rules for personal service applicable to civil actions should apply to service of the scire facias);[7] *Popham*, 278 Ga. App. at 255 (1), 628 S.E.2d 660 (reflecting that a judgment cannot be revived if the specific service requirements of OCGA § 9-12-63 are not satisfied). Any other interpretation of the statutory scheme would render the specific service requirements of OCGA § 9-12-63 mere surplusage and meaningless, a result we must avoid. *See Kelley v. Cincinnati Ins. Co.*, 364 Ga. App. 612, 615 (1) (a), 876 S.E.2d 51 (2022) (noting that "we must construe statutes to give sensible and intelligent effect to all of their provisions and to refrain from any interpretation which renders any part of the statutes meaningless") (citation and punctuation omitted).

Moreover, Cadles's argument fails to take account of OCGA § 9-11-81, which provides that the CPA "shall apply to all special statutory proceedings except to the extent that specific rules of practice and procedure in conflict herewith are expressly prescribed by law." The process for reviving dormant judgments set out in the Revived Judgment Code is a "special statutory proceeding" within the meaning of OCGA § 9-11-81, given that the process for reviving dormant judgments is created by statute and differs from a. standard civil action. *See* OCGA § 9-12-60 et seq. (setting out statutory scheme for revival of judgments); OCGA § 9-12-62 (quoted *supra*). *See also Hardin*

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[7] Although *Atwood* was decided under a former version of the Revived Judgment Code (*see* Civil Code of 1895, §§ 5380, 5381), the pertinent statutory language is materially the same. *See Atwood*, 123 Ga. at 735-736, 51 S.E. 742.

Constr. Group v. Fuller Enterprises, 265 Ga. 770, 771, 462 S.E.2d 130 (1995) (concluding that the arbitration confirmation process set out in the Georgia Arbitration Code is a "special statutory proceeding" under OCGA § 9-11-81 after explaining that an arbitration confirmation proceeding is "not a civil action" because the confirmation process is commenced and heard in the same manner as a motion and "an application for confirmation is not a complaint which initiates a civil action in the superior court") (citation and punctuation omitted); *Sherman v. Dev. Auth. of Fulton County*, 321 Ga. App. 550, 554 (1), 739 S.E.2d 457 (2013) (noting that a bond validation proceeding, "as a proceeding that is created by statute, constitutes a 'special statutory proceeding' within the meaning of OCGA § 9-11-81"). Thus, under OCGA § 9-11-81, the CPA is applicable to proceedings for reviving judgments, "except to the extent that specific rules of practice and procedure in conflict [t]herewith are expressly prescribed by [the Revived Judgment Code]."

Such a conflict exists in this case. The specific rule of practice and procedure set out in OCGA § 9-12-63 of the Revived Judgment Code for service of a copy of the scire facias (namely, service by the sheriff of the county where the party to be notified resides) is narrower and conflicts with the broader rule of practice and procedure for service of a summons set out in OCGA § 9-11-4 (c) of the CPA. Consequently, pursuant to OCGA § 9-11-81, the specific rule for service set out in OCGA § 9-12-63 controls over OCGA § 9-11-4 (c), such that service of a copy of the scire facias must be effectuated by the county sheriff rather than a private process server appointed by the trial court. *See Woodruff v. Morgan County*, 284 Ga.

651, 652 (1), 670 S.E.2d 415 (2008) (concluding that the Quiet Title Act was a "special statutory proceeding" under OCGA § 9-11-81 and that its special rules of practice and procedure for an in rem quiet title action prevailed over "the procedures that might otherwise be sufficient to effect proper service and require that a responsive pleading be filed under the Civil Practice Act"); *In re Estate of Jones*, 346 Ga. App. at 881 (2), 815 S.E.2d 599 (concluding that proceedings for the probate of a will were "special statutory proceedings" under OCGA § 9-11-81 and that the special procedures for attacking an order admitting a will to probate found in OCGA §§ 53-5-50 and 53-5-51 prevailed over the CPA's more restrictive procedure for setting aside a judgment found in OCGA § 9-11-60).

Because OCGA § 9-12-63 mandated that Mancuso be served by the sheriff of the county in which he resided and he was not served in that manner, service was never properly perfected. *See Lewis v. Waller*, 282 Ga. App. 8, 13 (2), 637 S.E.2d 505 (2006) (explaining that "if service upon a defendant was made by an unauthorized person, the purported service was a nullity and was never properly perfected") (citation and punctuation omitted). Accordingly, given that service of a copy of the scire facias was not properly perfected on Mancuso under OCGA § 9-12-63, the trial court erred in reviving the dormant judgment. *See* OCGA § 9-12-64 (judgment subject to revival "when service has been perfected"); *Popham*, 278 Ga. App. At 255 (1), 628 S.E.2d 660 (concluding that petition to revive judgment was properly denied for failure to comply with OCGA § 9-12-63, where, among other things, the "record [did] not demonstrate that the

DeKalb County sheriff served [the respondent] a copy of any scire facias, as required by the statute").

Judgment reversed and case remanded with direction.

Land and Watkins, JJ., concur.