

# APPENDIX

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SUPREME COURT OF GEORGIA

Case No. S24C0807

August 13, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ANDREW W. BELL v. FULTON COUNTY et al.

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

*All the Justice concur.*

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

A handwritten signature in cursive script, reading "Thirsa A. Barnes".

., Clerk





SUPREME COURT OF GEORGIA

Case No. S24C0807

July 02, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ANDREW W. BELL v. FULTON COUNTY et al.

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

*All the Justices concur.*

Court of Appeals Case No. A24A0890

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Theresa A. Barnes*

, Clerk

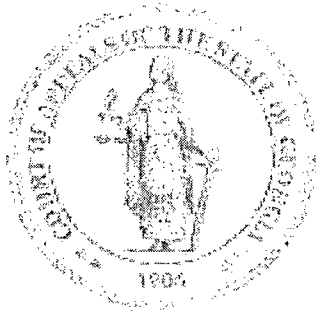
# Court of Appeals of the State of Georgia

ATLANTA, March 11, 2024

*The Court of Appeals hereby passes the following order*

**A24A0890. ANDREW W. BELL v. FULTON COUNTY et al.**

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, March 11, 2024:*

*I certify that the above is a true extract from the minutes  
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto  
affixed the day and year last above written.*

*Stephen E. Castle* . Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 14, 2024

*The Court of Appeals hereby passes the following order:*

**A24A0890. ANDREW W. BELL v. FULTON COUNTY et al.**

Andrew W. Bell filed a complaint against numerous defendants related to property he purchased at a tax sale. On November 8, 2023, the superior court dismissed the case with prejudice.<sup>1</sup> Bell filed a motion for reconsideration, which the court denied on December 13, 2023. Bell filed this appeal on December 19, 2023. We lack jurisdiction.

A notice of appeal must be filed within 30 days of entry of an appealable order or judgment. OCGA § 5-6-38 (a). “The proper and timely filing of a notice of appeal is an absolute requirement to confer jurisdiction upon an appellate court.” *Perlman v. Perlman*, 318 Ga. App. 731, 739 (4) (734 SE2d 560) (2012) (citation and punctuation omitted). Here, Bell filed his notice of appeal 41 days after entry of the superior court’s final order. Although he filed a motion for reconsideration, motions for reconsideration do not extend the time for filing an appeal from the underlying decision, and an order resolving the motion for reconsideration is not itself a directly appealable judgment. See *Ferguson v. Freeman*, 282 Ga. 180, 181 (1) (646 SE2d 65) (2007); *Bell v. Cohran*, 244 Ga. App. 510, 510 (536 SE2d 187) (2000). Thus, we lack

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<sup>1</sup> The court determined that the case was barred by res judicata based on Bell’s filing of a previous lawsuit, arising from the same underlying facts, which had been dismissed with prejudice, and the dismissal affirmed on appeal. See *Bell v. Lopez*, 368 Ga. App. 101 (888 SE2d 284) (2023).

jurisdiction to entertain this appeal, which is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 02/14/2024*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Stephen E. Carlton*

*, Clerk.*

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

ANDREW BELL.

Plaintiff,

v.

FULTON COUNTY, GEORGIA, et. al.,

Defendant.

:  
:  
: Civil Action No.  
: 2022CV373877  
:  
:  
:

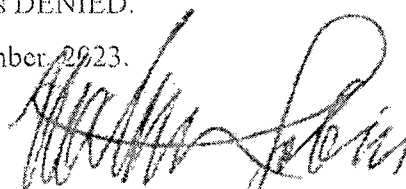
**ORDER**

The Court dismissed this case with prejudice on 11/8/23. Thirty days have passed since that ruling and no appeal has been filed.

Plaintiff did file a motion for reconsideration on 11/20/23, although such a motion does not toll the time in which to file an appeal. *Harned v. Piedmont Healthcare Foundation*, 356 Ga. App. 870 (2020) ("It is well settled that motions for reconsideration do not toll the time period for filing a notice of appeal.").

The motion for reconsideration presents nothing that would warrant the relief sought and sets forth none of the grounds listed in O.C.G.A. §9-11-60(d). See: *Bell v. Cohran*, 244 Ga. App. 510 (2000). The motion for reconsideration is DENIED.

SO ORDERED this 13<sup>th</sup> day of December, 2023.



\_\_\_\_\_  
SENIOR JUDGE MATHEW ROBINS  
SUPERIOR COURT OF FULTON COUNTY  
Sitting by Designation

Copy: all parties by eserve

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

ANDREW BELL.	:	
Plaintiff,	:	Civil Action No.
	:	2022CV373877
v.	:	
	:	
FULTON COUNTY, GEORGIA, et. al.,	:	
Defendant.	:	

**ORDER**

Plaintiff, in Fulton County Case # 2021CV352322, filed a complaint relating to property he purchased at a tax sale. The petition was dismissed with prejudice on 10/25/22. The dismissal was affirmed on appeal in *Bell v. Lopez*, 368 Ga. App. 101 (2023). A Cert Petition was filed but denied on 11/7/23.

This complaint was filed on 12/14/22 – after the dismissal with prejudice of the prior case. It alleges the same facts as the prior case but seeks relief from numerous persons and governmental figures, including the judge who dismissed the prior case, under the theory that they are responsible for unspecified damages due to their having had any part to play in the prior failed lawsuit.

The Fulton County Defendants all filed motions to dismiss premised on the affirmative defense of sovereign immunity. Plaintiff's response to those motions simply refers the Court to Article 1, Section II, Paragraph IX(d) of the Georgia Constitution and O.C.G.A. §51-6-1.

"Sovereign immunity can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver." (Citation and punctuation omitted.) *Conway v. Jones*, 353 Ga. App. 110 (2019). Counties, as a general rule, enjoy sovereign immunity. *Lyer v. Barrow County*, 297 Ga. 871 (2015). County officers sued in their official capacities enjoy the same sovereign immunity because "a suit against a county officer in [his] official capacity is a suit against the county itself[.]" (Emphasis omitted). *Lyer*, 297 Ga. at 871. Whether a county has waived sovereign immunity is a "threshold issue" and not a "mere defense to liability." *Bd. of Commrs. of Glynn County v. Johnson*, 311 Ga. App. 867 (2011).

A waiver of sovereign immunity "must be established by the party seeking to benefit

from that waiver,” *Bd. of Regents of the Univ. System. of Ga. v. Daniels*, 264 Ga. 328 (1994), and when a litigant fails to bear this burden, the trial court must dismiss the complaint pursuant to OCGA § 9-11-12 (b) (1) for lack of subject-matter jurisdiction. *Southerland v. Ga. Dept. of Corrections*, 293 Ga. App. 56, 57, 666 S.E.2d 383 (2008).

Plaintiff has failed to make that showing, and the complaint is DISMISSED as to the Fulton Defendants pursuant to O.C.G.A. §9-11-12(b)(1) due to sovereign immunity.

The complaint is DISMISSED as to Judge Adams due to judicial immunity.

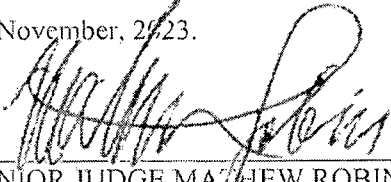
The complaint is also subject to dismissal due to lack of service. Plaintiff claims that the Fulton Defendants have acknowledged service. It appears that Plaintiff printed off several file-stamped copies of the summons, hand-wrote along the tops of them “For Fulton County,” “For Fulton County Tax Assessor,” etc., and then dropped them off. Some are stamped “REC’D BY ATTY’S OFFICE DEC 15 ’22 AM10:24”. Others are stamped “Received Dec 16 2022 Administrative Division Fulton County Board of Assessors.” Plaintiff contends that these stamps function as acknowledgments of service.

This is not a valid acknowledgment of service as contemplated by O.C.G.A. §9-11-4, Plaintiff is not a certified process server, the Fulton Defendants have never been served, and the complaint is dismissed as to the Fulton Defendants due to lack of service.

Plaintiff has also failed to comply with the anti-litem notice requirement found in O.C.G.A. §36-11-1.

But as to all the Defendants, this case is clearly barred by res judicata. The claims against all of the Defendants depend on Plaintiff’s root claim regarding the subdivided property. That claim has been dismissed with prejudice and the dismissal has been affirmed on appeal. The same set of facts gave rise to both complaints, and adding new defendants or causes of actions does not entitle Plaintiff to simply try again. *See: Dashtpeyma v. Walker*, 359 Ga. App. 644 (2021). This case is DISMISSED WITH PREJUDICE.

SO ORDERED this 8 day of November, 2023.

  
\_\_\_\_\_  
SENIOR JUDGE MATTHEW ROBINS  
SUPERIOR COURT OF FULTON COUNTY  
Sitting by Designation

Copy: all parties by eserve



SUPREME COURT OF GEORGIA  
Case No. S23O1019

August 21, 2023

The Honorable Supreme Court met pursuant to adjournment.  
The following order was passed:

ANDREW W. BELL v. FULTON COUNTY et al.

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

*All the Justices concur.*

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

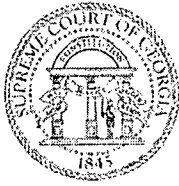
I certify that the above is a true extract from the minutes  
of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto  
affixed the day and year last above written.

A handwritten signature in black ink, reading "Thina A. Barnes". The signature is written in a cursive, flowing style.

, Clerk





SUPREME COURT OF GEORGIA  
Case No. S23O1091

July 5, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ANDREW BELL v. FULTON COUNTY et al.

Petitioner filed the instant “Petition for Temporary Restraining Order and/or Interlocutory Injunction Relief” in which he seeks “expedited review and determination of his claims” related to a dispute over the ownership of certain real property that the Court of Appeals recently ruled on. See *Bell v. Lopez*, Case No. A23A0723 (May. 24, 2023). He also asks this Court to issue an injunction against the sale of the property until he has fully adjudicated his claims.

This Court has the constitutional authority to grant original relief in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction. See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV. However, the Court “has chosen to maintain its general status as an appellate court” and to exercise its original jurisdiction only in extremely rare situations where need has been shown, see *Graham v. Cavender*, 252 Ga. 123, 124 (311 SE2d 832) (1984), and, here, Petitioner has not shown that this is one of those extremely rare cases that would invoke the Court’s original jurisdiction. Moreover, this Court has made it clear that a petitioner cannot invoke the Court’s original jurisdiction simply as a way to circumvent the proper channels for obtaining the relief sought, see *Gay v. Owens*, 292 Ga. 480, 482-483 (738 SE2d 614) (2013), and

Petitioner has failed to demonstrate that he is being improperly prevented from utilizing the available avenues for judicial review of his claims. Indeed, he admits that there is still an opportunity for him to seek review of the Court of Appeals' opinion in this Court, and states that it is "possible" that he will do so depending on whether the Court of Appeals fails to issue a favorable ruling on his motion for reconsideration. See generally Supreme Court Rules 38-45; Court of Appeals Rule 38. Accordingly, this petition is dismissed.

*All the Justices concur.*

SUPREME COURT OF THE STATE OF GEORGIA  
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY  
 STATE OF GEORGIA

ANDREW W. BELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
FULTON COUNTY, BAFFOUR	)	CIVIL ACTION FILE
ADUMATTAH, ANDREWS B. ASARE a/k/a	)	NO.: 2022CV373877
ANDREW B. ASARE, MARINA LOPEZ, JOSE	)	
LUX, WEBSTER RICHARDS, MARK	)	
RICHARDS, JUANITA HICKS, FULTON	)	
COUNTY SUPERIOR CLERK CATHELENE	)	
ROBINSON, FULTON COUNTY SHERIFF	)	
PATRICK LABAT, FULTON COUNTY	)	
BOARD OF TAX ASSESSORS, EDWARD	)	
LONDON, SALMA AHMED, LISA AMAN,	)	
MICHAEL FITZGERALD, PAMELA SMITH,	)	
FULTON COUNTY TAX COMMISSIONER	)	
ARTHUR E. FERDINAND, and THE	)	
HONORABLE KIMBERLY M. ESMOND	)	
ADAMS,	)	
	)	
Defendants.	)	

ORDER RECUSING ALL JUDGES OF THE  
FIFTH JUDICIAL ADMINISTRATIVE DISTRICT

Upon a review of the above-captioned matter, the undersigned Administrative Judge of the Fifth Judicial Administrative District hereby determines that all active Judges of the Fulton County Superior Court Bench should be recused.

Pursuant to the procedures outlined in Uniform Superior Court Rules 25.4 and 25.7, the matter is hereby assigned to the Honorable Chief Judge LaTisha Dear Jackson, Stone Mountain Judicial Circuit, 4<sup>th</sup> Judicial Administrative District, to preside over this matter or to assign another judge in her jurisdiction to so preside. The assigned judge may contact David Summerlin, the

Fulton County Superior Court Administrator, at (404) 612-4518 to arrange courtroom space, if needed, at the Fulton County Superior Court.

The Clerk of Fulton County Court is directed to submit a certified copy of the entire record as it currently exists and a certified copy of all documents filed in the same case after the date of this order to the Honorable Chief Judge LaTisha Dear Jackson, Stone Mountain Judicial Circuit, 4<sup>th</sup> Judicial Administrative District, located at the DeKalb County Superior Court, 556 N. McDonough Street, Suite 7220, Decatur, Georgia 30030. The parties are further directed to provide courtesy copies of any filings after the date of this Order to the Chief Judge of the Stone Mountain Judicial Circuit or the judge assigned to preside over this matter.

SO ORDERED this 1<sup>st</sup> day of February 2023



IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

ANDREW W. BELL,

Plaintiff,

v.

FULTON COUNTY; BAFFOUR ADUMATTAH;  
ANDREWS B. ASARE a/k/a ANDREW B.  
ASARE; MARINA LOPEZ; JOSE LUX;  
WEBSTER RICHARDS; MARK RICHARDS;  
JUANITA HICKS; FULTON COUNTY  
SUPERIOR CLERK CATHELENE ROBINSON;  
FULTON COUNTY SHERIFF PATRICK  
LABAT; FULTON COUNTY BOARD OF TAX  
ASSESSORS EDWARD LONDON, SALMA  
AHMED, LISA AMAN, MICHAEL  
FITZGERALD, PAMELA SMITH; FULTON  
COUNTY TAX COMMISSIONER ARTHUR E.  
FERDINAND; and THE HONORABLE  
KIMBERLY M. ESDMOND ADAMS,

Defendants.

Fulton County Case File No.  
2022CV373877

**ORDER ACCEPTING CASE AND APPOINTING JUDGE OF  
THE FOURTH JUDICIAL ADMINISTRATIVE DISTRICT**

The Court having received the request of the Administrative Judge of the Fifth Judicial Administrative District to select a Superior Court judge from the Fourth Judicial Administrative District to hear the above-referenced case pursuant to the procedures outlined in Uniform Superior Court Rule 25 and OCGA § 15-1-9.1, the undersigned Chief Administrative Judge of the Fourth Judicial Administrative District accepts such request and has selected the Honorable Mathew Robins, Senior Judge, to hear said case.

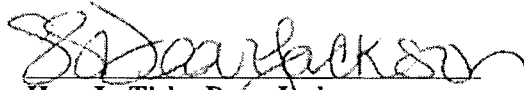
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*Bell v. Fulton Co. et al., Fulton County Case No. 2022CV373877*

Order Accepting Case and Appointing Judge of  
the Fourth Judicial Administrative District

1 of 2

SO ORDERED, this 2<sup>nd</sup> day of February 2023.



**Hon. LaTisha Dear Jackson**  
**Chief and Administrative Judge of the**  
**Fourth Judicial Administrative District**  
Superior Court of DeKalb County  
Stone Mountain Judicial Circuit

Copies to:

Hon. Ural Glanville, Chief and Administrative Judge, Fifth JAD

Hon. Mathew Robins, Senior Judge, DeKalb County

David Summerlin, Court Administrator, Fifth JAD

LeNora Hawkins Ponzo, Court Administrator, Fourth JAD

*Bell v. Fulton Co. et al.*, Fulton County Case No. 2022CV373877

Order Accepting Case and Appointing Judge of  
the Fourth Judicial Administrative District

2 of 2



SUPREME COURT OF GEORGIA

Case No. S23C1052

December 19, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ANDREW W. BELL v. MARINA LOPEZ et al.

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

*All the Justices concur.*

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Theresa A. Barnes*, Clerk



SUPREME COURT OF GEORGIA

Case No. S23C1052

November 07, 2023

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ANDREW W. BELL v. MARINA LOPEZ et al.

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

*All the Justices concur.*

Court of Appeals Case No. A23A0723

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

*Theresa A. Barnes*  
Clerk



# Court of Appeals of the State of Georgia

ATLANTA, June 12, 2023

*The Court of Appeals hereby passes the following order:*

**A23A0723. ANDREW W. BELL v. MARINA LOPEZ et al.**

Before this Court is Appellant's Motion for Reconsideration of this Court's opinion in the above-styled appeal that was issued on May 24, 2023 and Appellant's Motion for Interlocutory Injunction Relief.

In his Motion for Reconsideration, Appellant has failed to show that this Court overlooked a material fact or a decision that is controlling authority that would require a different result, or that this Court erroneously construed or misapplied a provision of law or controlling authority. See Court of Appeals Rule 37 (e). Accordingly, Appellant's Motion for Reconsideration is hereby DENIED.

In his Motion for Interlocutory Injunction Relief, Appellant requests that this Court prohibit the property that was at issue in this case from being transferred or sold until all legal proceedings have been completed. Under certain circumstances, this Court has authority to grant a supersedeas, stay, or injunction *pending appeal*. See Court of Appeals Rule 40 (b); *Green Bull Ga. Partners v. Register*, 301 Ga. 472, 473 (801 SE2d 843) (2017); *Cobb County v. Mable Oak Dev.*, 366 Ga. App. 561, 566 (2) (b) (883 SE2d 571) (2023). However, the opinion in this case affirming the trial court's decision on these matters has been issued, and Appellant's Motion for Reconsideration is denied, as discussed *supra*. Consequently, Appellant's Motion for Interlocutory Injunction Relief is hereby DENIED AS MOOT. See generally *Settendown Public Utility v. Waterscape Utility*, 324 Ga. App. 652, 658 (751 SE2d

463) (2013); *Long v. Long*, 303 Ga. App. 215, 221 (5), n. 22 (692 SE2d 811) (2010);  
*In the Interest of T. N.*, 254 Ga. App. 330, 332 (562 SE2d 374) (2002).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, 06/12/2023*

*I certify that the above is a true extract from  
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court  
hereto affixed the day and year last above written.*

*Stephen E. Castle*, Clerk.

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

ANDREW BELL,	)	
	)	
PETITIONER,	)	
	)	
v.	)	CIVIL ACTION FILE NO.
	)	2023CV374730
MARINA LOPEZ & JOSE LUX;	)	
Webster Richards & Mark Richards;	)	
Andrews B. Asare,	)	
	)	
RESPONDENTS.	)	

**FINAL ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION**

This matter came before the court on Petitioner's Motion for Reconsideration of the final order entered in civil action file number 2021CV352322. On October 25, 2022, this Court entered a final order granting Defendants' motion to dismiss and denying Petitioner's motion for default judgment and finding petitioner's motion to issue a writ of possession with the original boundaries as moot.


*Colclough v. GA Dept of Human Services* provides, "although a trial judge has inherent power during the same term of court in which the judgment was rendered to revise, correct, revoke, modify or vacate such judgment, this authority does not extend beyond the same term of court, unless a motion to modify or vacate, et cetera, was filed within the same term of court." "Thus, while "a motion for reconsideration filed within the term of court that a judgment is entered extends the authority of a trial judge to modify its judgment after the term expires, a trial court has no authority to do so if the motion to reconsider is filed after that term has ended." *Colclough v. Georgia Dep't of Hum. Servs.*, No. A23A0721, 2023 WL 3191427 (Ga. Ct. App. May 2, 2023)

Superior Court Rules of Court 15 – 6 – 3 (3) offers the rules for Terms of Court for Fulton County, which are the first Monday in January, March, May, July, September, and November. The final order was filed on October 25, 2022, and Petitioner filed its motion for reconsideration on January 11, 2023.

This court lacks authority to grant a motion for reconsideration because it was filed after the expiration of the term of court in which the October 25, 2022 order was filed.

Accordingly, Petitioner's Motion for Reconsideration is hereby **DENIED**.

**SO ORDERED** this 31<sup>st</sup> day of May, 2023.

  
HONORABLE KIMBERLY M. ESMOND ADAMS  
SUPERIOR COURT OF FULTON COUNTY  
ATLANTA JUDICIAL CIRCUIT

**Distribution List:**

*Filed and Served Electronically via eFileGA*

**FIRST DIVISION  
RICKMAN, C. J.,  
BARNES, P. J., and LAND, J.**

NOTICE: Motions for reconsideration must be  
*physically received* in our clerk's office within ten  
days of the date of decision to be deemed timely filed.  
<https://www.gaappeals.us/rules>

**May 24, 2023**

**In the Court of Appeals of Georgia**

A23A0723. BELL v. LOPEZ et al.

BARNES, Presiding Judge.

In this case involving a dispute over land ownership, Andrew W. Bell, proceeding pro se, appeals from the trial court's final order dismissing his petition to quiet title and for ejectment for failure to state a claim upon which relief could be granted and denying his motions for default judgment and for a writ of possession as moot. Bell also appeals the trial court's order denying his emergency motion for injunctive relief. Upon our review, we affirm.

At the outset, we note that Bell's brief does not fully comply with the rules of this Court. Court of Appeals Rule 25 (a) (5) requires that an appellant's brief include "[a] statement of the case that sets out the material facts relevant to the appeal, describes the relevant proceedings below, and identifies how each enumerated error

was preserved for review, with appropriate citations to the record,” and Rule 25 (d) (1) (i) requires that “[e]ach enumerated error shall be supported in the brief by specific reference to the record or transcript.” However, Bell’s brief does not include a statement of the method by which each enumeration of error was preserved for appellate review. And, most significantly, Bell’s brief does not include any citations to the record. While his brief includes footnotes that contain citations to various exhibits, Bell cites only to the exhibit numbers rather than to the location in the record where those exhibits can be found, which is insufficient under our rules. See Court of Appeals Rule 25 (d) (2) (setting out the proper format for citations to the record); *Rolleston v. Estate of Sims*, 253 Ga. App. 182, 185 (2) (558 SE2d 411) (2001) (concluding that brief that listed numerous exhibits without including any citations to the record failed to comply with this Court’s rules).

Bell’s “pro se status does not excuse [him] from compliance with the substantive and procedural requirements of the law, including the rules of this Court. These rules are designed to facilitate the consideration of enumerated errors and compliance with such rules is not optional.” (Citations and punctuation omitted.) *Stewart v. Johnson*, 358 Ga. App. 813, 814 (856 SE2d 401) (2021). In the absence of specific citations to the record, we are entitled to treat Bell’s claims of error as

abandoned. See *id.*; Court of Appeals Rule 25 (d) (1) (“Any enumeration of error that is not supported in the brief by citation of authority or argument may be deemed abandoned.”). Nevertheless, because the record in this case is not large and the appellees have provided sufficient citations to the record in their brief, we will endeavor to address the merits of Bell’s appeal. See *Fortson v. Brown*, 302 Ga. App. 89, 90 (1) (690 SE2d 239) (2010). But “if we miss something in the record or misconstrue an argument due to the nonconforming brief, the responsibility rests with [Bell].” *Stewart*, 358 Ga. App. at 814.

We turn now to the factual and procedural background of this case, which centers on a dispute over parcels of land located on Stone Road in the City of East Point in Fulton County that originally consisted of an undivided 5.838 acres (the “Stone Road Property”). Bell’s petition and the subdivision plats and deeds attached thereto as exhibits reflect the following facts. In December 1995, Robert O. Taylor conveyed the Stone Road Property to Andrew B. Asare by general warranty deed. In 2006, Asare decided to develop the Stone Road Property into a subdivision. To that end, Asare filed and recorded two subdivision plats dividing the Stone Road Property into 19 lots with separate street numbers. The plats included plans for a new street

that would run through the subdivision, but the street was never built, and the lots became overgrown and “reforested.”

After the subdivision plats were recorded, Asare conveyed some of the lots to different buyers over the ensuing years but retained ownership of a large portion of the Stone Road Property. More specifically, Asare conveyed Lot 1 to Baffour Adumattah by quitclaim deed. Separately, Asare conveyed Lots 3 and 4 to Eyeylondra Austin, who then conveyed those two lots to The Office Geeks ATL, LLC by limited warranty deed. In addition, Lots 5 and 6 were conveyed to Webster Richards and Mark Richards.

In May 2021, Lot 1, which consisted of 0.64 acres, was conveyed by tax deed from Adumattah to Bell. Shortly thereafter, in July 2021, Bell filed his pro se “Original Petition for Ejectment and Restoration of the [Stone Road Property] to Its Original Boundaries” against Asare, Austin, The Office Geeks ATL, and Webster and Mark Richards (the “Richards Defendants”) in the Superior Court of Fulton County. In his petition, Bell alleged that the plats for the subdivision were defective, failed to meet various statutory requirements, and should not have been recorded. Bell claimed that as a result of the defects in the plats, “neither the subdivision or any smaller tracts should exist,” and the Stone Road Property should be returned to its original



boundaries before it was subdivided, the county clerk should issue a “new title” for the entire undivided parcel to him, and the defendants should be “ejected from those boundaries.” Bell also alleged that the case constituted a summary action to eject intruders brought pursuant to OCGA § 44-11-30 et seq., and he subsequently filed a motion for the trial court to issue “a writ of possession for the original boundaries” of the Stone Road Property on the ground that he had filed affidavits supporting summary ejection but the defendants had not filed counteraffidavits.

Bell thereafter filed a motion to amend his petition to add Marina Lopez and Joze Lux (the “Lopez Defendants”) as party defendants on the ground that he had learned through further research that The Office Geeks ATL had conveyed Lots 3 and 4 to them by limited warranty deed. Bell also sought emergency injunctive relief against the Lopez Defendants to “prevent[ ] them from entering or disturbing any portion of [his] [p]roperty” based on his contention that they had constructed a road on and removed trees from the Stone Road Property. After conducting a hearing, the trial court granted Bell’s motion to amend his petition to add the Lopez Defendants as party defendants, but denied his emergency motion for an injunction.

The Lopez Defendants then answered Bell’s petition and filed a motion to dismiss for failure to state a claim upon which relief could be granted. In their motion

to dismiss, the Lopez Defendants asserted that Bell's petition was an action to quiet title and for ejectment, given that he sought to have the Stone Road Property restored to its original boundaries and the title in that entire property issued to him, and thus sought to cancel their chain of title in Lots 3 and 4 and eject them from those lots. The Lopez Defendants further contended that Bell failed to state a claim to quiet title and for ejectment because his chain of title showed that he only held current title to Lot 1.

After the Lopez Defendants filed their motion to dismiss, Bell filed a motion for default judgment on the ground that all of the defendants had failed to file the counteraffidavits required in a summary action to eject intruders. The Lopez Defendants filed a brief opposing the motion.

The trial court subsequently entered its final order granting the Lopez Defendants' motion to dismiss, concluding that Bell failed to state a claim to quiet title and for ejectment because his ownership interest in the Stone Road Property was limited to Lot 1 and thus did not encompass the lots over which the Lopez Defendants claimed ownership (Lots 3 and 4). The trial court further ruled that even if Bell could show that the subdivision plats were recorded improperly, "said defect would not legally grant [him] an interest in property he did not purchase or receive by other

legal means.” Additionally, the trial court concluded that Bell failed to state a claim for summary ejection of intruders because the criteria for that type of summary proceeding had not been satisfied. And upon determining that the “same analysis applie[d] to all [of the defendants] in this case,” the trial court sua sponte dismissed Bell’s claims against the remaining defendants as well. The trial court denied Bell’s motions for default judgment and for a writ of possession on the ground that they were moot. This appeal followed.<sup>1</sup>

1. In several related enumerations of error, Bell challenges the trial court’s dismissal of his petition for failure to state a claim upon which relief could be granted.

“This Court reviews de novo a trial court’s ruling on a motion to dismiss for failure to state a claim, construing the pleadings in the light most favorable to the plaintiff and with any doubts resolved in the plaintiff’s favor, and viewing all well-pled allegations in the complaint as true.” (Citations and punctuation omitted.) *PV Holding Co. v. Poe*, 360 Ga. App. 381, 382 (861 SE2d 265) (2021).

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<sup>1</sup> The Lopez Defendants filed an appellees’ brief. The remaining defendants did not join the Lopez Defendants’ brief or file their own briefs in this Court.

A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof, and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.

(Citation and punctuation omitted.) *Blau v. Ga. Dept. of Corrections*, 364 Ga. App. 1, 2 (873 SE2d 464) (2022). In determining whether a claim should be dismissed, courts may consider exhibits attached to and incorporated into the complaint. See OCGA § 9-11-10 (c) (“A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.”); *Love v. Fulton County Bd. of Tax Assessors*, 311 Ga. 682, 683 (859 SE2d 33) (2021).

(a) Guided by these principles, we conclude that the trial court did not err in dismissing Bell’s claims to quiet title and for ejectment. To maintain a suit to quiet title, the plaintiff must assert that he holds the current record title or current prescriptive title to the property in dispute. *Smith v. Ga. Kaolin Co.*, 269 Ga. 475, 477 (2) (498 SE2d 266) (1998); *In re Rivermist Homeowners Assn.*, 244 Ga. 515, 518 (260 SE2d 897) (1979). “Otherwise, he possesses no title at all, but only an expectancy[.]” *In re Rivermist Homeowners Assn.*, 244 Ga. at 518. “A plaintiff in an

ejectment action, in order to recover, must establish that at the time of filing his action, he possesses legal title or its equivalent, as well as the right of entry.” *Brown v. Christian*, 276 Ga. 203, 204 (1) (576 SE2d 894) (2003). See *Evans v. Elder*, 219 Ga. 566, 567 (134 SE2d 803) (1964).

The dispute in the present case was over the ownership of the land encompassed by Lots 2-19 of the Stone Road Property, with Bell seeking in his amended petition to have a “new title” issued in his name that would encompass all of that land and to have the defendants ejected from it. However, the subdivision plats and the deeds attached to his petition reflect that Bell held current title only to Lot 1, and “[t]o the extent there are inconsistencies between the allegations in the [petition] and exhibits attached to [it], the exhibits control.” *Love*, 311 Ga. at 683-684. “Thus, Bell cannot claim the [entire Stone Road Property] as [his] own because [his] own title establishes undeniably that the [lots other than Lot 1 were] not included in [his] deed[.]” *McRae v. SSI Dev.*, 283 Ga. 92, 93 (2) (656 SE2d 138) (2008). Because Bell’s petition with exhibits thereto, even if construed liberally, reflects that he had no record or prescriptive title to any of the lots in dispute in this case, the trial court properly dismissed his claims to quiet title and for ejectment. See *Brown*, 276 Ga. at

204 (1); *Smith*, 269 Ga. at 477 (2); *In re Rivermist Homeowners Assn.*, 244 Ga. at 518; *Evans*, 219 Ga. at 567.

Bell nevertheless argues that dismissal was inappropriate because the trial court erred in determining that lots had been conveyed “to various persons and entities” after the plat was subdivided by Asare and, specifically, that Lots 5 and 6 had been conveyed to the Richards Defendants. But “[t]he law in this State is clear that a person must establish ownership of property on the strength of her own title and cannot prevail in a quiet title action by relying on the weaknesses in another’s title.” *McRae*, 283 Ga. at 93 (2). See *Smith*, 269 Ga. at 477 (2) (“In suits regarding title to land the plaintiff’s right to recovery or relief depends upon the strength of his own title to the realty involved, not the weakness of his opponents’ evidence.”) (citation and punctuation omitted). The same rule applies to a plaintiff seeking ejectment. See OCGA § 44-11-1 (“A plaintiff in ejectment must recover on the strength of his own title and not on the weakness of the defendant’s title.”); *Brown*, 276 Ga. at 204 (1) (“A plaintiff seeking ejectment must recover on the strength of his own title; he may not rely on the weakness of the defendant’s title.”). Bell therefore cannot rely on alleged weaknesses in the instruments conveying the lots to various defendants to resuscitate his quiet title and ejectment claims.

Bell also contends that dismissal was improper because the subdivision plats were not properly recorded under the plat recording statute, OCGA § 15-6-67. Bell's contention is misplaced because, as noted by the trial court, even if the subdivision plats were not recorded properly, the defects in recording would not entitle Bell to any interest in property that otherwise had not been legally conveyed to him, and thus would not entitle him to an interest in the lots disputed here, Lots 2-19. Moreover, "the Georgia Code is specific that failure of a plat to meet the requirements of OCGA § 15-6-67 'shall not, in and of itself, affect or invalidate any legal description or *legal instrument* based on such plat.'" (Emphasis in original.) *Edgewater Hall Enterprises v. City of Canton*, 366 Ga. App. 142, 149 (2) (880 SE2d 582) (2022), quoting OCGA § 15-6-69 (a). See *Purcell v. C. Goldstein & Sons*, 264 Ga. 443, 444 (1) (448 SE2d 174) (1994) ("That the legislature intended the requirements for recordation to be limited to that purpose is evident from the provision in OCGA § 15-6-69 (a) that failure of a plat to meet the requirements of § 15-6-67 shall not affect or invalidate any legal description or legal instrument based on the plat.").

Accordingly, for the aforementioned reasons, the trial court committed no error in dismissing Bell's quiet title and ejectment claims.

(b) Bell also argues that his petition stated a claim for the summary ejection of intruders under OCGA § 44-11-30 et seq. and that the trial court erred in dismissing that claim. We disagree.

Under the summary procedure of OCGA § 44-11-30, a plaintiff may bring an action to eject an intruder onto land by making an affidavit attesting to her good-faith right of possession. If the defendant submits a counter-affidavit asserting his own good-faith right, “the sheriff shall not turn [the defendant] out of possession[,] but shall leave both parties in their respective positions . . . [and] shall return both affidavits to the office of the clerk of the superior court of the county in which the land is located for a trial of the issue before a jury.” OCGA § 44-11-32.

These summary ejection proceedings are intended to apply only to intruders, squatters, or disseizors, who enter in bad faith and without any claim or shadow of right. The sole question in such cases is the good faith of the defendant in entering upon the land and in claiming the right of possession; title is involved only insofar as it sheds light on this question.

(Citations and punctuation omitted.) *Sims v. Merritt*, 270 Ga. App. 877, 877-878 (608 SE2d 547) (2004). See OCGA §§ 44-11-30;<sup>2</sup> 44-11-32;<sup>3</sup> *Brixmor/IA Northeast Plaza*,

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<sup>2</sup> OCGA § 44-11-30 provides:

When any person, either by himself, his agent, or his attorney in fact, shall take and subscribe an affidavit in writing before any officer authorized to administer an oath setting forth that he claims, in good



*LLC v. Sublet Atlanta Realty, LLC*, 347 Ga. App. 223, 225 (1) (818 SE2d 681) (2018) (explaining summary ejection actions provided for by OCGA § 44-11-30).

Here, however, Bell's petition and the exhibits attached thereto reflect that Bell did not own the lots from which he sought to eject the defendants. Furthermore, this is not a case where the defendants can be characterized as mere intruders or squatters, even when Bell's allegations are construed most favorably to him. Rather, Bell's own allegations and the plats and deeds he included as exhibits reflect that Asare was conveyed the Stone Road Property by general warranty deed; that Asare sought to

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faith, the right of possession to the described land or tenement and that such land or tenement is in the hands of another named person who does not in good faith claim a right to such possession and yet refuses to abandon the same, it shall be the duty of the sheriff of the county where the land or tenement is located, upon receiving such affidavit, to exhibit such affidavit to the person described as being in possession of such land or tenement at the earliest possible day and to turn such person out of possession unless the person in possession tenders to the sheriff a counteraffidavit stating that he claims, in good faith, a legal right to the possession of the land or tenement.

<sup>3</sup> OCGA § 44-11-32 provides:

If the party in possession submits a counteraffidavit as provided in Code Section 44-11-30, the sheriff shall not turn him out of possession but shall leave both parties in their respective positions. In such an event, the sheriff shall return both affidavits to the office of the clerk of the superior court of the county in which the land is located for a trial of the issue before a jury in accordance with the laws of this state.

create a subdivision out of that property; and that consistent with that plan, two subdivision plats were filed and recorded and lots were conveyed to various defendants who then conveyed the lots to other defendants. And, in his petition, Bell was seeking to invalidate those conveyance instruments based on alleged deficiencies in the recorded subdivision plats and to have title to those lots issued in his name. Hence, Bell's allegations and exhibits demonstrate on their face that the defendants were not simply intruders acting "in bad faith without any claim or shadow of right," as required for a summary ejection action brought under OCGA § 44-11-30 et seq. (Citation and punctuation omitted.) *Sims*, 270 Ga. App. at 878.

Additionally, Bell sought broad relief in this case—to have the Stone Road Property restored to its original boundaries, a new title issued in his name for the property encompassed by the restored boundaries, a writ of possession issued to him based on the restored boundaries, and ejectment of the defendants from the restored boundaries. But the summary proceeding contemplated by OCGA § 44-11-30 et seq. cannot be utilized to resolve title disputes and determine property boundaries, and thus the summary ejection procedures available for the ejectment of intruders were not the proper vehicle for the expansive relief sought by Bell. See Daniel F. Hinkel, 2 Pindar's Ga. Real Estate Law & Procedure § 13:47 (7th ed., April 2023 update)

(“The summary action to oust intruders is entirely inadequate to determine boundaries.”) (footnote omitted); *Lane v. Williams*, 114 Ga. 124, 126 (39 SE 919) (1901) (explaining that Georgia “law has laid down certain well-defined methods for trying issues involving the title to land,” but the summary action for ejecting intruders “is not one of those methods”).<sup>4</sup> Consequently, the trial court did not err in concluding that Bell failed to state a claim under OCGA § 44-11-30 et seq. for the summary ejection of intruders.

(c) Bell also maintains that the trial court failed to consider his fraud claim in ruling on the motion to dismiss. Yet, Bell did not allege that the defendants committed fraud in his petition, and we will not consider the propriety of a claim that was neither raised nor ruled upon in the trial court. See *Larose v. Bank of America, N. A.*, 321 Ga. App. 465, 467, n. 1 (740 SE2d 882) (2013).

(d) Bell asserts that apart from whether the trial court properly granted the motion to dismiss filed by the Lopez Defendants, the court erred in sua sponte dismissing his claims against the remaining defendants who did not themselves file

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<sup>4</sup> Although *Lane* was decided under a former version of the summary ejection statute, Civ. Code 1895, § 4808 et seq., we discern no reason why the same rule would not apply under the current statute. See *Sims*, 270 Ga. App. at 878 (quoting *Lane* in case addressing OCGA § 44-11-30).

motions to dismiss or join the Lopez Defendants' motion. We disagree because "[a] trial court has the authority to dismiss claims sua sponte if it can determine from the pleadings that the claims cannot succeed as a matter of law." (Citation and punctuation omitted.) *Love*, 311 Ga. at 690-691 (2). And for the reasons discussed supra in Division 1, the trial court could determine that Bell could not succeed on his claims for quiet title, ejectment, or the summary ejection of intruders as a matter of law. The trial court therefore did not err in sua sponte dismissing Bell's claims against the remaining defendants. See *id.*

2. In addition to challenging the grant of the motion to dismiss, Bell contends that the trial court erred "when it did not consider" his emergency motion for injunctive relief. The record reflects, however, that the trial court did consider Bell's motion and denied it in a thorough written order. And Bell does not address the reasons given by the trial court for its ruling or cite to any legal authority for why the trial court should have granted the requested relief. Bell therefore has abandoned any claim that the trial court erred in denying his emergency motion for injunctive relief. See Court of Appeals Rule 25 (d) (1) (warning that enumerations of error not supported by citation to authority or any argument "may be deemed abandoned"); *Farmer v. Dept. of Corrections*, 346 Ga. App. 387, 394 (2) (816 SE2d 376) (2018)

("[A]s we have repeatedly emphasized, under the rules of this Court, an appellant must support enumerations of error with argument and citation of authority, and mere conclusory statements are not the type of meaningful argument contemplated by our rules.") (citation and punctuation omitted); *Woods v. Hall*, 315 Ga. App. 93, 96 (726 SE2d 596) (2012) ("[L]egal argument . . . requires, at a minimum, a discussion of the appropriate law as applied to the relevant facts.") (citation and punctuation omitted).

3. Bell further argues that the trial court erred by not granting his motion for default judgment. We do not agree. Bell moved for entry of default judgment in his favor on the ground that the defendants did not file counteraffidavits as required in a summary action to eject intruders under OCGA § 44-11-30 et seq.<sup>5</sup> But, as explained *supra* in Division 1 (b), Bell failed to state a claim for the summary ejectment of intruders, given that his allegations and exhibits showed on their face that the defendants did not enter the Stone Road Property as intruders "in bad faith without any claim or shadow of right," *Sims*, 270 Ga. App. at 878 (citation and punctuation omitted), and given that a summary ejectment action was not the proper procedural vehicle for pursuing the broad relief sought by Bell. Consequently, the trial court committed no error in denying Bell's motion for default judgment. Accord

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<sup>5</sup> See *supra* note 2.

*Majeed v. Randall*, 279 Ga. App. 679, 681 (2) (632 SE2d 413) (2006) (concluding that “the grant of defendants’ motions to dismiss terminated the action and obviated the need for a timely answer”).

*Judgment affirmed. Rickman, C. J., and Land, J., concur.*

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

ANDREW W. BELL,	)	
	)	
PETITIONER,	)	
	)	CIVIL ACTION FILE NO. 2021CV352322
v.	)	
	)	
EYEYLONGRA AUSTIN, et. al.,	)	HON. KIMBERLY M. ESMOND ADAMS
	)	
RESPONDENTS.	)	
	)	

**FINAL ORDER GRANTING MOTION TO DISMISS AND DENYING PETITIONER'S  
MOTION FOR DEFAULT JUDGMENT AND PETITIONER'S MOTION TO ISSUE A  
WRIT OF POSSESSION WITH THE ORIGINAL BOUNDARIES AS MOOT**

The above-styled matter is before the Court on Respondents Marina Lopez and Jose Lux's Motion to Dismiss, Petitioner's Motion for Default and Motion for Hearing on Additional Damages Owed to Petitioner, and Petitioner's Motion to Issue a Writ of Possession with the Original Boundaries. Although the Motion to Dismiss was filed on behalf of Respondents Marina Lopez and Jose Lux, the Court finds that the same analysis applies to all Respondents in this case and construes the Motion accordingly.

As a preliminary matter, the Court finds that Georgia Law requires consideration of the Motion to Dismiss prior to considering the Motion for Default Judgment. *Smith v. Loc. Union No. 1863*, 260 Ga. App. 683, 684–85(2003). Upon consideration of the Motion to Dismiss, the record and applicable authority, the Court hereby **GRANTS** Respondent's Motion to Dismiss for the reasons that follow. Accordingly, Petitioner's Motion for Default Judgment and Petitioner's Motion to Issue a Writ of Possession with the Original Boundaries are hereby **DENIED** as **MOOT**.

## FACTUAL ALLEGATIONS

Petitioner and Respondents own adjoining parcels of property in the 14<sup>th</sup> District of Fulton County, Georgia. Petitioner brought this action disputing Respondents' ownership of their land claiming that the land should be restored to its original boundaries and that Petitioner is entitled to ownership of the entire tract as it existed before it was subdivided. The transfer history of the subject land is as follows:

1. On December 1, 1995, Robert O. Taylor conveyed 2478 Stone Road to Respondent Andrew B. Asare ("Respondent Asare"). (*Pl. Pet., Exhibit 1*)
2. In 2006, Respondent Asare subdivided 2478 Stone Road into 19 Lots (*Pl. Compl., Exhibits 2-3*).
3. Upon subdivision of the plat, Respondent Asare began conveying the individual lots to various persons and entities. (*Pl. Pet.,*)
4. On June 18, 2008, Respondent Asare conveyed Lot 1 to Baffour Adumattah via a Quitclaim Deed and on May 4, 2021 Baffour Adumattah conveyed Lot 1 ("2478 Stone Road") to Petitioner via a tax deed. (*Pl. Pet., Exhibit 4 -5*)
5. On June 18, 2021, Respondent Asare conveyed lots 3 and 4 to Respondent Eyelondra Austin who conveyed lots 3 and 4 to Respondent The Offer Geeks ATL. On November 3, 2021, The Offer Geeks ATL, LLC conveyed Lots 3 and 4 to Respondents Marina Lopez and Joze Lux via a Limited Warranty Deed. (*Pl. Pet., Exhibit A; Pl. Mtn to Amend, Exhibit 12*)
6. On June 18, 2021 Respondent Asare conveyed lots 5 and 6 to Respondents Webster Richards and Mark Richards. (*Pl. Pet.,*)



The original boundaries of 2478 Stone Road included 4.06 acres of land which was subdivided into 19 lots by Respondent Asare (“Subdivision”). When Respondent Asare subdivided the plat, the boundaries of 2478 Stone Road were modified and became Lot 1. Petitioner claims there were several violations to O.C.G.A. §§ 15-6-67 which governs the requirements for plat recording and contends that the plat for the subdivision should not have been recorded. On July 27, 2021, Petitioner commenced this action for Ejectment and Restoration against Respondents Eyelondra Austin, The Offer Geeks ATL LLC., Webster Richards and Mark Richards, and Andrew B. Asare to restore the original boundaries of 2478 Stone Road and eject Respondents from the subdivided land.

On November 29, 2021, Petitioner moved to amend the original petition to add Respondents Marina Lopez and Jose Lux who are in possession of Lots 3 and 4 of the Subdivision. Petitioner sought an emergency injunction and restraining order against Respondents Lopez and Lux for allegedly cutting a road through Petitioner’s property without his knowledge or permission. On March 1, 2022, Respondent Lopez and Lux filed a Motion to Dismiss the Original Petition for Ejectment and Restoration of 2478 Stone Road for failure to state a claim upon which relief can be granted. As the Court “has inherent authority to dismiss *sua sponte* a complaint in an appropriate case,” this Court also considers whether dismissal of Petitioner’s claim is warranted as to all the Respondents in this case. *Ga. Receivables, Inc. v. Williams*, 218 Ga. App. 313, 314 (1995) (citing O.C.G.A. § 15-6-9(8)).

### **LEGAL STANDARD**

A motion to dismiss for failure to state a claim upon which relief can be granted should not be sustained unless the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and the movant

establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. *Stendahl v. Cobb County*, 284 Ga. 525, 525-26 (2008) (quoting *Scouten v. Amerisave Mortg. Corp.*, 283 Ga. 72, 73 (2008)). In ruling on a motion to dismiss, the trial court must accept as true all well-pleaded material allegations in the complaint and must resolve any doubts in favor of the Petitioner. *Riverdale Land Grp., LLC v. Clayton Cty.*, 354 Ga. App. 1, 2 (2020).

### LEGAL ANALYSIS

Respondents Lux and Lopez assert that Petitioner fails to state a claim upon which relief can be granted as to both the quiet title and ejectment actions. Specifically, Respondents contend that Petitioner cannot bring forth such claims as to Lots 3 and 4 (respectively 2482 Stone Road and 2484 Stone Road) as Petitioner cannot show he holds current title to the disputed property. The Court agrees that Petitioner has failed to demonstrate that he holds legal title to Lots 3 and 4, and is, therefore, foreclosed from maintaining an action for quiet title and ejectment as to these parcels.

Although Petitioner's Complaint may allege a "possibility of an interest," this is not sufficient to maintain an action to quiet title nor ejectment. *In re Rivermist Homeowners Assoc.*, 244 Ga. 515, 518 (1979) (quoting *Myers v. Grant*, 212 Ga. 677, 681 (1956)). Rather, in a quiet title action, Petitioner "must assert that he *holds* some current record title or current prescriptive title." *Id.* Similarly, in an ejectment action, Petitioner "must establish that . . . he possesses legal title or its equivalent, as well as the right of entry." *Brown v. Christian*, 276 Ga. 203, 204 (2003).

Here, Petitioner has not established title over Lots 3 and 4. As documented by Exhibits 4 and 5 of the original Petition, Petitioner only purchased Lot 1 (2478 Stone Road) from Baffour Adumattah in the tax sale on May 4, 2021, as Baffour Adumattah only held ownership of Lot 1

following the conveyance from Respondent Asare on June 18, 2008. At the time of the conveyance, 2478 Stone Road did not include the entire plat and only included the legal description for Lot 1. *See* Petition, Exhibit 4 and 5. Moreover, the Tax Deed, the Quitclaim Deed, and the Corrective Quitclaim Deed all only describe Lot 1, and, thus, do not provide evidence that Petitioner has some form of legal title over Lot 3 and Lot 4. Likewise, Petitioner's Deed does not establish title to Lots 5 and 6 which are owned by Webster Richards and Mark Richards.

Furthermore, O.C.G.A. §44-11-30 which governs the process for ejectment, only applies to intruders who enter in bad faith. The record demonstrates that Respondents Lopez, Lux, Webster Richards, and Mark Richards purchased the subject properties and entered in good faith. A plaintiff is entitled to a directed verdict pursuant to O.C.G.A. § 44-11-30 only if the Respondent fails to show a good-faith claim of possession in their counter-affidavit coupled with the results of cross-examination. *Sims v. Merritt*, 270 Ga. App. 877, 608 S.E.2d 547 (2004). Respondents Lopez and Lux showed a good-faith claim of possession in their Answer when they asserted legal title, therefore the Petitioner is not entitled to a directed verdict as to Lopez and Lux. As to Respondents Webster Richards and Mark Richards, Petitioner's Complaint and exhibits establish that Respondents have a good faith claim to the subject property. The Offer Geeks ATL received good title from Eyelondra Austin and Webster Richards and Mark Richards received good title from The Offer Geeks ATL.


Accordingly, an action to quiet title cannot properly lie against Respondents Lux, Lopez, Webster Richards or Mark Richards. As to the remaining Respondents, The Offer Geeks ATL and Eyelondra Austin, Petitioner has failed to state a claim against them as they are no longer in possession of the subject property. Furthermore, the record demonstrates that The Offer Geeks ATL and Eyelondra Austin were bona fide purchasers and were, therefore, able to convey a

legitimate interest to Webster Richards and Mark Richards. Lastly, Petitioner has failed to state a claim against Respondent Andrew Asare. Even if there is a set of provable facts demonstrating that Mr. Asare incorrectly filed the relevant plats, it is unclear what relief Petitioner seeks in this regard. Petitioner cannot present any evidence within the framework of his Complaint to attack Respondents' good title. Instead, Petitioner attacks Respondent Asare's compliance with the plat recording statute. Even if Petitioner could present evidence demonstrating that the plat was recorded improperly, said defect would not legally grant Petitioner an interest in property he did not purchase or receive by other legal means.

In addition to Petitioner's failure to state a claim under the law, the Court finds that it would violate all notions of fairness and justice to eject rightful landowners based on Petitioner's misguided assumption that the land must be restored to its original boundaries. Accordingly, Respondents' Motion to Dismiss is **GRANTED** and the claims against all Respondents are **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that Petitioner's Motion for Default Judgment and Hearing and Petitioner's Motion to Issue a Writ of Possession with Original Boundaries are hereby **DENIED** as **MOOT** in light of the grant of the Motion to Dismiss.

**SO ORDERED**, this 25<sup>th</sup> day of October, 2022.

  
HONORABLE KIMBERLY M. ESMOND ADAMS  
SUPERIOR COURT OF FULTON COUNTY  
ATLANTA JUDICIAL CIRCUIT

**Distribution List:**

*Filed and Served Electronically via Odyssey e-FileGA*

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

ANDREW BELL,

Petitioner,

v.

EYEYLONGRA AUSTIN; *et. al.*,

Respondents.

CIVIL ACTION FILE NO.  
2021CV352322

**ORDER GRANTING REQUEST TO ADD MARINA LOPEZ AND JOSE LUX AS  
PARTY DEFENDANTS AND DENYING PETITIONER'S REQUEST FOR  
EMERGENCY INJUNCTIVE RELIEF**

This matter is before the Court on Plaintiff's Motion to Add Party Defendants and to Request Emergency Injunctive Relief. After considering this Motion, the Court finds that Marina Lopez and Jose Lux have an interest in the subject property and Plaintiff has therefore demonstrated good cause for seeking to add Marina Lopez and Jose Lux as party defendants. Plaintiff's request to add Marina Lopez and Jose Lux as party defendants is hereby GRANTED.


The Court finds that Plaintiff's request for injunctive relief is not supported by Georgia law and is hereby DENIED. The Court must exercise its discretion prudently and cautiously, and pursuant to O.C.G.A. § 9-5-8 may only grant the extraordinary remedy of injunctions in clear and urgent cases. After considering Plaintiff's Motion, this Court finds that Plaintiff has not demonstrated that this is a clear and urgent case requiring injunctive relief. In order to grant an interlocutory injunction, the Court must consider whether "(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury

to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of [the] claims at trial, and (4) granting the interlocutory injunction will not disserve the public interest.” *Lue v. Eady*, 297 Ga. 321, 327, 773 S.E.2d 679, 685 (2015). The first factor, the showing of a substantial threat of irreparable harm, is the most important one, since an interlocutory injunction “is a device to keep the parties in order and prevent one from hurting the other whilst their respective rights are under adjudication ...” *Chambers v. Peach County, Ga.*, 268 Ga. 672, 673, 492 S.E.2d 191, 192 (1997).

In the present case, the Court finds Plaintiff has failed to show a substantial threat of irreparable harm. Plaintiff’s allegations that a large number of trees have been removed and that a road was created on the portion of the property that is in dispute is insufficient to show irreparable harm. Specifically, the Court finds Plaintiff has an adequate remedy at law for his claims: a judgment for money damages. *See, e.g., Allen v. Hub Cap Heaven, Inc.*, 225 Ga. App. 533, 540, 484 S.E.2d 259 (1997) (explaining that “[I]t is error to grant an injunction when the party seeking it has an adequate remedy at law.”). In the event Plaintiff proves ownership of the property, Plaintiff can be compensated for the removal of the trees and the construction of the road and any harm that has occurred may be remedied through financial compensation. Furthermore, the standard requires that Plaintiff demonstrates that there is a “threat” or irreparable harm and cannot receive injunctive relief for acts that have already been completed. *Moorhead v. Luther*, 219 Ga. 242, 244, 132 S.E.2d 669, 671; *Shurley v. Black*, 156 Ga. 683 (2a), 119 S.E. 618; *Hapeville-Block Inc. v. Walker*, 204 Ga. 462, 50 S.E.2d 9. If in fact trees were removed and a road was created, this does not demonstrate a continuing threat of harm and only demonstrates a past harm.

Secondly, as the individuals which Plaintiff is seeking an interlocutory injunction against will be added as parties through this Order, the new parties have not yet had an opportunity to present their facts before the Court and the Court is therefore without sufficient information to determine whether any threatened injury to the moving party outweighs the threatened injury to Marina Lopez and Jose Lux. Third, Plaintiff's Motion simply restates the allegations from his original petition which may raise some concerns regarding ownership of the subject property but does not show a probability of success on the merits of his claim. Plaintiff's contention that the legal descriptions of the subject land are defective do not prove that Marina Lopez or Jose Lux are in possession of property owned by Plaintiff. Finally, the Court does not find that its ruling on the requested relief, whether granted or denied, would disserve the public interest. This dispute involves the property rights of several private individuals and maintenance of the status quo will neither positively nor negatively impact the public at large. Although Plaintiff does not need to meet all four factors to receive an interlocutory injunction, *Lue v. Eady*, 297 Ga. 321, 327, 773 S.E.2d 679, 685 (2015), the Court finds that Plaintiff has not satisfied any of the interlocutory injunction factors and his request for emergency injunctive relief is hereby DENIED.

**SO ORDERED** this 18th day of February, 2022.

  
HONORABLE KIMBERLY M. ESMOND ADAMS  
SUPERIOR COURT OF FULTON COUNTY  
ATLANTA JUDICIAL CIRCUIT

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

ANDREW BELL,	)	
	)	
Purchaser,	)	CIVIL ACTION FILE NO.
	)	2022CV372868
v.	)	
	)	
BAFFOUR ADUMATTAH,	)	
Fulton County Sheriff Patrick Labat,	)	
Any all-unknown parties of interest,	)	
	)	
Respondents.	)	

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**FINAL ORDER ON ALL PENDING MOTIONS**

This above-captioned matter is before the Court on the following motions (1) Petitioner's Motion to Add Party; (2) Respondent Fulton County Sheriff Patrick Labat's Special Appearance Motions to Dismiss the Petitioner's Petition (five in total, for each version of the Petition); (3) Petitioner's Motion to Appoint Process Server; (4) Petitioner's Motion to Remove Party; and (5) Petitioner's Motion for Summary Judgment Against Baffour Adumattah and His Heirs.

Turning to the Sheriff's motions to dismiss Petitioner's multiple versions of his Petition, the Court **GRANTS** the Motions on the grounds that there has not been adequate proof of service on *any* of the Respondents named in this case. Although the Sheriff contends that Petitioner is seeking to quiet title against all the world, the Court finds that the allegations of the Petition, while far from clear, appear to seek conventional quiet title against the named Respondents. As such, the Court is not required to appoint a Special Master. However, even though Petitioner may proceed with service pursuant to the Georgia Civil Practice Act, there has been no proof of service on a single one of the named respondents, including the Sheriff. The attempted service on Mr. Adumattah indicates that the process server was told Mr. Adumattah is deceased; if true, Mr.

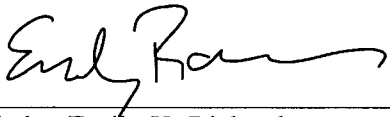


Adumattah is not a proper party to this case. Regardless of whether Mr. Adumattah is alive, the record does not show any proper service upon him or any attempt to substitute the proper party.

Because Petitioner has not perfected service on any of the named respondents, the Court does not have jurisdiction over this case. “[U]ntil service is perfected or waived, there is no ‘pending suit,’ and the trial court has no jurisdiction or authority to enter any ruling in the case except for a ruling dismissing the case for lack of jurisdiction.” *Williams v. Resurgens & Affiliated Orthopaedists*, 267 Ga. App. 578, 580 (2004). While Petitioner has asked the Court to appoint a special process server, Petitioner has not shown any diligence in attempting to serve the respondents by utilizing any of the many process servers already authorized to serve summons on behalf of this Court. Accordingly, due to this lack of diligence, the Court **DENIES** Petitioner’s Motion to Appoint Process Server.

Likewise, due to this Court’s lack of jurisdiction over this matter because of the failure of service, Petitioner’s Motion to Add Party and Motion for Summary Judgment are **DENIED**. Furthermore, Petitioner’s Motion to Remove Party (the Sheriff) is rendered **MOOT** by the dismissal of this action for want of jurisdiction. This case is **DISMISSED**.

**SO ORDERED**, this 14<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
Judge Emily K. Richardson  
Superior Court of Fulton County

**Filed and served via eFileGA.**

# Court of Appeals of the State of Georgia

ATLANTA, October 07, 2024

*The Court of Appeals hereby passes the following order*

**A25A0118. ANDREW BELL v. BAFFOUR ADUMATTAH et al .**

The appellant's motion FOR PERMISSION TO FILE A REPLY/SUPPLEMENTAL BRIEF IN EXCESS OF FOUR THOUSAND TWO HUNDRED (4200) WORDS in the above-styled case is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta, October 07, 2024.*

*I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto affixed the day and year last above written.*

*Christina Coley Smith*, Clerk.

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

ANDREW BELL,

Petitioner,

v.

BAFFOUR ADUMATTAH, FULTON  
COUNTY SHERIFF PATRICK LABAT, and  
ANY AND ALL UNKNOWN PARTIES OF  
INTEREST,

Respondents.

CIVIL ACTION FILE  
NO. 2022CV372868

ORDER TRANSFERRING CASE

It appears that the above-styled case is substantially related to Civil Action Number 2021CV352322, which was assigned to the Honorable Kimberly M. Esmond Adams.

Georgia Uniform Superior Court Rule 3.2 provides that “[w]hen practical, all actions involving substantially the same parties, or substantially the same subject matter, or substantially the same factual issues, whether pending simultaneously or not, shall be assigned to the same judge... Generally, such actions will be assigned to the judge to whom the action with the lower action number is assigned.”

Accordingly, the Court HEREBY TRANSFERS this matter to Judge Adams and INSTRUCTS the Clerk of the Court to mark the case accordingly.

SO ORDERED this 10th day of January, 2024.

*Emily Richardson*

JUDGE EMILY K. RICHARDSON  
Fulton County Superior Court

Filed and served via eFileGA.

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

ANDREW BELL,

Petitioner,

v.

BAFFOUR ADUMATTAH, FULTON  
COUNTY SHERIFF PATRICK LABAT, and  
ANY AND ALL UNKNOWN PARTIES OF  
INTEREST,

Respondents.

CIVIL ACTION FILE  
NO. 2022CV372868

ORDER VACATING TRANSFER OF CASE

On January 11, 2024, this Court transferred the above-captioned case to the Honorable Kimberly M. Esmond Adams. It is HEREBY ORDERED that such order is VACATED. The Clerk of Court shall return this case to the undersigned and shall update the docket accordingly

SO ORDERED this 2nd day of February, 2024.

  
JUDGE EMILY K. RICHARDSON  
Fulton County Superior Court

Filed and served via eFileGA.

DE Book 43626 Page 350

CLERK, SUPERIOR COURT

95 DEC -7 AM 8:37

File No.: 52283/ASARE

After Recording, Return to:  
R. William Hamner, c/o  
LEVINE & D'ALESSIO  
Attorneys at Law  
1590 Phoenix Boulevard  
Suite 100  
College Park, Georgia 30349

Fulton County, Georgia  
Mortgage Transfer Tax  
Paid \$ 10.00  
Date 12-7-95  
J. L. HICKS  
Clerk, Superior Court  
Per [Signature]  
(Clerk's Office)

CLERK, SUPERIOR COURT

### WARRANTY DEED

STATE OF GEORGIA

COUNTY OF CLAYTON

This Indenture made this 1st day of December, in the year One Thousand Nine Hundred Ninety-Five, between ROBERT O. TAYLOR, of the County of Fulton, State of Georgia, as party or parties of the first part, hereinafter called Grantor, and ANDREWS B. ASARE as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits):

WITNESSETH that: Grantor, for and in consideration of the sum of TEN AND 00/100 (\$10.00) Dollars and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee:

ALL THAT TRACT or parcel of land lying and being in Land Lot 194 of the 14th District of Fulton County, Georgia, and being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereto in the same being, belonging, or in anywise appertaining to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor well warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whosoever.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal this day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]  
Notary Public

[Signature]  
ROBERT O. TAYLOR (Seal)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

20377-215

Exhibit 1 pg. 1 of 2

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 194 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED ON THE SOUTHERLY RIGHT OF WAY OF STONE ROAD, 50 FOOT RIGHT OF WAY, 724.6 FEET WESTERLY OF THE INTERSECTION FORMED BY THE SOUTHERLY RIGHT OF WAY OF STONE ROAD AND THE EAST LINE OF LAND LOT 194; THENCE RUNNING SOUTH 87 DEGREES 46 MINUTES 55 SECONDS WEST 243.0 FEET TO A 1/2 INCH REBAR FOUND; THENCE RUNNING SOUTH 01 DEGREES 42 MINUTES 29 SECONDS EAST 775.04 FEET TO A ONE INCH PIPE FOUND; THENCE RUNNING NORTH 88 DEGREES 16 MINUTES 40 SECONDS EAST 163.13 FEET TO A ONE INCH PIPE FOUND; THENCE RUNNING NORTH 27 DEGREES 46 MINUTES 59 SECONDS EAST 121.29 FEET TO A ONE INCH SOLID STEEL PIN FOUND; THENCE RUNNING NORTH 00 DEGREES 04 MINUTES 45 SECONDS EAST 671.92 FEET TO A POINT AND THE POINT OF BEGINNING; AND BEING FURTHER SHOWN ON THE PLAT OF SURVEY PREPARED BY ROBERT M. KIRKLEY, REGISTERED LAND SURVEYOR FOR ANDREW D. ASARE, DATED NOVEMBER 27, 1995.

#20377 - 219

Exhibit 1 pg 2 of 2

**Additional material  
from this filing is  
available in the  
Clerk's Office.**