

Appellate Case Law Update

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The following case law update was provided by the GDLA's Appellate Substantive Law Committee.

Damani v. State
So8G0601, So8G0602,
So8G0603, So8G0608,
So8G0611, So8G0613
September 22, 2008

In this case, the District Attorney of Cobb County filed 12 complaints for condemnation of several machines which the State contended were illegal gambling devices. The trial court concluded that four of the 11 devices were subject to condemnation, but the seven remaining were not. The State appealed. After requesting that the entire record be transmitted to the court of appeals, it became clear that that entire record was not transmitted. The State then filed a motion in the court of appeals requesting that the trial court be ordered to transmit the complete record. The court of appeals then issued an opinion resolving the case and denying the State's motion as moot. The supreme court then granted certiorari and vacated the judgment, determining that the entire trial record should have been sent to the court of appeals. Relying on O.C.G.A. §5-6-48(d), the supreme court held that there are two considerations when determining whether an appellate court should exercise discretion to supplement the record. First, the court should consider that cases should be decided according to their true and complete facts as they occurred in the trial court. Second, the court should also consider that cases on appeal should not be delayed by proceedings in the trial court. The first consideration prevails over the second. Based on this, the supreme court determined that the court of appeals should have ordered the trial court to convey the complete record.

Popham v. Yancey
So8A1394
September 22, 2008

In this case, Kyle Yancey petitioned the Superior Court of Cobb County and asked that a receiver be appointed to sell certain property owned by Peter Popham in order to satisfy a judgment Yancey had obtained against Popham. The trial court granted the request and Popham appealed. In his notice of appeal, Popham requested that the record be prepared and forwarded to the Court without a transcript. Relying on the rule that court proceedings are presumed to be lawful in the absence of a transcript, the Supreme Court affirmed.

Mackey v. Federal National Mortgage Association
A08A1056
September 24, 2008

In this case, the court of appeals affirmed the grant of a writ of possession to Fannie Mae in a dispossessory proceeding. The Mackeys contended on appeal the dispossessory warrant was fatally flawed. However, no transcript was submitted to the court of appeals. Relying on the presumption the evidence supported the grant of the writ of possession absent a transcript, the court of appeals affirmed.

Morris v. Morris
So8A1372
November 3, 2008

In this case, the supreme court affirmed a judgment finding Clyde Morris in contempt for failing to comply with the provisions of his divorce decree. Interestingly, in the original appeal, Morris stated that a transcript would not be prepared. However, in his brief, he challenged factual findings underlying the order and relied on documents not contained in the record. The

supreme court issued an order striking the brief and ordered Morris to insure that the record was sent to the supreme court. Morris then approached the trial court ex-parte and the trial court entered an order supplementing the record on appeal with documents neither admitted nor properly proffered at the hearing. The opposing party objected, and the trial court entered an amended order supplementing the record with only some of the documents Morris had asked the trial court to add. A substituted brief was filed. Morris continued in the substituted brief to rely on documents not properly in the record and others that were not admitted or proffered in the trial court. Again, relying on the rule that a proceeding is presumed to have been conducted in accordance with law absent a transcript, the supreme court affirmed.

Byrd v. Rachaman
A08A2132
November 7, 2008

In this case, the trial court granted summary judgment to Rachaman in his suit for breach of a promissory note. Byrd contended there was error because the trial court denied his motion to withdraw admissions. Those admissions essentially proved Rachaman's case. However, Byrd did not prepare and include a transcript in the appellate record. The court of appeals, presuming the hearing on the motion to withdraw admissions was not done in error, affirmed.

City of Greenville v. Bray
So8A0692
November 17, 2008

In this case, James Curtis Bray applied to run for mayor for the City of Greenville in 2007. After a chal-

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lence to his qualifications, the superintendent of elections disqualified him. The Superior Court of Meriweather County then reversed. Bray won the race for mayor. After that, the City filed an appeal from the superior court's prior order. The supreme court determined that the appeal was moot. Reasoning that the case involved a pre-election challenge to a candidate's qualifications, the supreme court determined that any challenge should have been brought in the form of a petition for stay of an election prior to the election date.

Olarsch v. Newell
A08A1278
November 20, 2008

Olarsch filed a motion for extension of time to file a new trial and motion for judgment notwithstanding the verdict two days before the judgment was entered in the trial court. However, O.C.G.A. §5-6-39(b) expressly states that no extensions in time shall be granted for filing motions for new trial or for judgment notwithstanding the verdict. Therefore, the court of appeals determined that Olarsch was required to file a motion for new trial and JNOV within 30 days after the entry of judgment, which he did not do. For that reason, the court of appeals determined that the trial court did not err in dismissing Olarsch's notice of appeal.

Ruskin v. AAF McQuay, Inc.
A08A1230
November 25, 2008

In this case, the court of appeals affirmed a judgment finding Ruskin in contempt of an order adopting a settlement agreement entered into between the parties. The court of appeals determined that Ruskin should be sanctioned for frivolous appeals penalties in the amount of \$2,000 against him and \$2,000 against his counsel. The court of appeals specifically determined that Ruskin had stubbornly delayed enforcement of a settlement agreement to which he had voluntarily agreed.

Yates v. CACV of Colorado
LLC, A08A2288
December 3, 2008

In this case, CACV of Colorado, LLC obtained an arbitration award against Yates for failure to pay credit card debt. When CACV petitioned to confirm the award, Yates answered and asserted a counterclaim. After a hearing, the trial court entered an order confirming the award but made no ruling on the counterclaim. Yates then appealed, but the court of appeals held that the appeal was premature and had to be dismissed. The court of appeals relied on the rule that unless summary judgment is granted on a claim or the matter is certified pursuant to O.C.G.A. §9-11-54(b), a direct appeal is premature and must be dismissed where a counterclaim remains pending.

