

JUN 27, 2025 09:47 AM

*Tahnica Phillips*  
Tahnica Phillips, Clerk of State Court  
Cobb County, Georgia

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

TINA J. KROSKE and  
JOHN A. KROSKE,

Plaintiffs,

v.

ROBERT MICHAEL BECKLEAN and  
NORTH COBB CHRISTIAN SCHOOL, INC.

Defendants

CIVIL ACTION NO.:  
22-A-2138

**ORDER DENYING PLAINTIFFS' SUPPLEMENTAL MOTION IN LIMINE**

**THIS MATTER**, comes before the Court on Plaintiff Tina J. Kroske's and Plaintiff John A. Kroske's ("Plaintiffs") Supplemental Motion *in Limine* seeking a pretrial ruling on the constitutionality and applicability of the new law codified as O.C.G.A. § 9-15-16. After consideration of the submissions of the parties the Court finds as follows.

**I. Background.**

Plaintiffs' motion *in limine* seeks to avoid the retroactive application of O.C.G.A. § 9-15-16 to their case arguing that the statute is unconstitutional and therefore unapplicable. Plaintiffs' constitutional arguments focus on the bar of double recovery of attorney's fees and expenses and that the matter it is not a "pending cause of action" but instead a "civil action."

**II. Legal Standard.**

"A motion *in limine* is a pretrial method of determining the admissibility of evidence, as a party may secure a pretrial ruling on the admissibility of evidence or a ruling prohibiting any reference to certain evidence until its admissibility can be assessed in the context of the trial as it unfolds." *Andrews v. Wilbanks*, 265 Ga. 555, 556 (1995) (citation omitted). The Court recognizes that Plaintiffs' motion regarding the constitutionality of O.C.G.A. § 9-15-

16(a) does not deal with the admissibility of evidence or what arguments are appropriate to be had in the presence of the jury. However, a motion *in limine* may—in addition to seeking a pre-trial ruling on admissibility of evidence—be used to obtain a ruling on the propriety of opening statements, closing arguments, and the like.<sup>1</sup> The Court finds that the retroactive application of O.C.G.A. § 9-15-16 could affect the propriety of opening statements and closing arguments. As such, Plaintiffs’ submission is appropriate as a motion *in limine*.

### **III. Analysis.**

#### **A. Plaintiffs’ arguments regarding double recovery of attorney fees and expenses is premature.**

Plaintiffs argue that the retroactive application of the new law’s bar on double recovery of attorney fees and expenses is unconstitutional. Defendants Robert Michael Becklean and North Cobb Christian School, Inc., (herein after “Defendants”) contend that Plaintiffs have yet to show that they are entitled to attorney’s fees under either O.C.G.A. § 9-11-68(a) or (e) and the application of O.C.G.A. § 9-15-16(a) does not impact Plaintiffs’ rights. Defendants further assert that the constitutional challenge of this subsection is not ripe. The Court agrees with Defendants that it cannot “assume” future events will happen and to rule this subsection is unconstitutional is premature at this point in time.

#### **B. Plaintiffs challenge the retroactive application of O.C.G.A. § 9-15-16.**

In order to determine if a statute may be applied retroactively, the Georgia Supreme Court held in that trial court must “engage in a two-part analysis.” *S. States Chem., Inc. v. Tampa Tank & Welding, Inc.* 316 Ga. 701, 708 (2023). The Court’s analysis begins by determining whether the legislature has clearly indicated that the

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<sup>1</sup> The Georgia Supreme Court has held that “a motion *in limine* may seek to limit a specific argument at trial.” *Tollette v. State*, 280 Ga. 100, 103 (2005).

new law is to be applied retroactively. The Court finds that it does, thereby meeting the first step of the analysis.<sup>2</sup>

The second step of the analysis requires the Court to “consider whether retroactive application is unconstitutional, and in this context, an unconstitutional retroactive application of legislation would be one that would ‘injuriously affect the vested rights of citizens.’” *S. States Chem., Inc.*, 316 Ga. at 708. In determining whether the retroactive application of a statute is constitutional, the Court “distinguish[es] between substantive and procedural law.” *Id.*

“Substantive law is that law which creates rights, duties, and obligations. Procedural law is that law which prescribes the methods of enforcement of rights, duties, and obligations.” *Killearn, Inc. v. Southern Structural, Inc.*, 308 Ga. App. 494, 496 (2011) (citing, *EHCA Cartersville, LLC v. Turner*, 280 Ga. 333, 337 (2006)). In other words, “where a statute governs only procedure of the courts ... it is to be given retroactive effect absent an expressed contrary intention.” *Creech v. Brinker Georgia, Inc.*, 2022 WL 20626431 \*4 (N.D. Ga. 2022) (citing, *Polito v. Holland*, 258 Ga. 54, 55 (1988)). The constitutionality of each provision of O.C.G.A. § 9-15-16 depends on whether it is a procedural rule or substantive law.

**1. O.C.G.A. § 9-15-16(a) only affects Plaintiffs’ remedy and therefore is a procedural rule.**

The new law regarding attorney fees and expenses is procedural in nature, and its retroactive application is not unconstitutional.<sup>3</sup> “[W]here a

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<sup>2</sup>The new law, as enacted, includes the following language:

Sections 6 and 7 of this Act shall apply only with respect to causes of action arising on or after the effective date of this Act, and any prior cause of action shall be governed by prior law. It is the intention of the General Assembly that all other provisions of this Act shall apply to causes of action pending on the effective date of this Act, unless such application would be unconstitutional. (Exhibit 1 pages 18-19.)

<sup>3</sup> A law that is procedural affects only the remedy, rather than the right to which the remedy attaches. The epitome of this is a statute of limitation. It is firmly established that “a statute of limitation is procedural and creates no vested right.” *S. States Chem., Inc. v. Tampa Tank & Welding, Inc.*, 316 Ga. 701, 710 (2023).

statute governs only procedure of the courts, including the rules of evidence, it is to be given retroactive effect absent an expressed contrary intention.

Retroactive effect is also given to statutes affecting the remedy only rather than the right to which the remedy attaches.” *Davis v. Lugenbeel*, 283 Ga. App. 642, 643 (2007) (quoting *Reid v. Reid*, 232 Ga. App. 304, 305 (1998)).

O.C.G.A. § 9-15-16(a) limits Plaintiffs’ remedy to the extent Plaintiffs are prohibited from obtaining fees and expenses that are duplicative of each other. Thus, the Court finds that because the new law affects the remedy rather than the right to which the remedy attaches—the subsection operates similarly to a statute of limitations thereby procedural in nature—its retroactive application is not unconstitutional.

**2. O.C.G.A. § 9-15-16(b) sets forth an evidentiary rule, which is a procedural rule.**

Although it is not specifically codified into the evidence code, the Court finds that the new law deals with the admissibility of evidence and is procedural in nature. “[W]here a statute governs only procedure of the courts, including the rules of evidence, it is to be given retroactive effect absent an expressed contrary intention.” *Mason v. Home Depot U.S.A., Inc.*, 283 Ga. 271, 278 (2008). Accordingly, because both O.C.G.A. § 9-15-16(a) and (b) set forth procedural rules, the statute’s retroactive application is constitutional.

**C. Plaintiffs’ argument that the current action is not a “cause of action” fails.**

The Court of Appeals has held that similar language “shall apply to causes of action pending on its effective date” expressly meant the relevant provisions “applied to cases pending at the time the law was passed.” *Airasian v. Shaak*, 289 Ga. App. 540, 541 (2008). Since Plaintiffs’ cause of action was pending at the time the new law was enacted, that law indisputably applies to this case.

**D. Adopting Plaintiffs’ argument that a contingency fee agreement is admissible to prove fees incurred would render O.C.G.A. § 9-15-16(b) meaningless.**

Plaintiffs argue that the language of O.C.G.A. § 9-15-16(b) should be interpreted to mean that a contingency fee agreement is inadmissible only to prove the reasonableness of fees but is still admissible to prove that fees and expenses were incurred. Defendants contend that Plaintiffs’ assertion that § 9-15-16(b) “simply codified into evidentiary law” the rule from *Georgia Department of Corrections v. Couch*, 295 Ga. 469 (2014), must be dismissed out of hand.<sup>4</sup> Defendants assert that O.C.G.A. § 9-15-16(b) clearly abrogates this rule—and does not codify it—by holding that a contingency fee agreement is not admissible “as proof of the reasonableness of the fees.” The Court agrees. The Court rejects Plaintiffs’ argument and focuses solely on the interpretation of the statute.<sup>5</sup>

The Georgia Supreme Court has stated that a statute’s text must be afforded its plain and ordinary meaning, “When we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant.” *Walton Electric Membership Corporation et. al. v. Georgia Power Company, Nestle Purina Petcare Company, et al, v. Georgia Power Company*, 320 Ga. 720, 747 (2025) (citations omitted). And because the Georgia Supreme Court has also instructed that “courts are to refrain from any interpretation which renders any part of the statute

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<sup>4</sup> *Couch* specifically stated that a contingency fee agreement was “evidence of usual and customary fees” which could be used to “determin[e] . . . reasonableness.” *Id.* at 483.

<sup>5</sup> The text of O.C.G.A. § 9-15-16(b) states: “In any civil action, if a party seeks to recover attorney fees pursuant to any statute authorizing an award of reasonable attorney’s fees, a contingent fee agreement between such party and such party’s attorney shall not be admissible as proof of the reasonableness of the fees.”

meaningless,” this Court rejects Plaintiffs’ interpretation of O.C.G.A. § 9-15-16(b). *Carrier, et al. v. Ravi Zacharias International Ministries, Inc.*, 2022 WL 1540206, 14 (N.D. Ga. 2022) (quoting *Scott v. State*, 295 Ga. 39, 40 (2014)).<sup>6</sup>

The statute presupposes that fees and expenses were incurred by discussing the “reasonableness” of a party’s fees and specifically excludes submission of a contingency agreement to prove reasonableness.<sup>7</sup> If a contingency fee agreement were admissible for any other purpose as Plaintiffs assert, then the prohibition on the agreement’s admissibility for purposes of reasonableness is meaningless. Interpreting O.C.G.A. § 9-15-16(b) to allow for the admissibility of the contingency fee agreement *for any other purpose* is not tenable. As the Court stated above, it will not add an interpretation of the new law that may render the General Assembly’s intent meaningless and will not allow admission of Plaintiffs’ contingency agreement in evidence.

#### **IV. Conclusion.**

Plaintiffs’ constitutional arguments regarding the bar on the double recovery of attorney fees and expenses are not yet ripe. Plaintiffs’ challenge to the constitutionality of the retroactive application of O.C.G.A. § 9-15-16 fails as the statute is merely procedural. Plaintiffs’ argument that O.C.G.A. § 9-15-16 does not apply to this action because it is not a “pending cause of action” also fails because Plaintiffs’ civil action *is* a cause of action. Finally,

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<sup>6</sup> Though the statutory text of O.C.G.A. § 9-15-16(b) states only that a contingency fee agreement is not admissible for purposes of reasonableness, the General Assembly did not clarify that an agreement may be admissible for some other purpose. And since the General Assembly is capable of inserting language allowing inadmissible evidence for a specific purpose to be admissible for other purposes, this Court will not add an interpretation that may render the General Assembly’s intent meaningless.

<sup>7</sup> “Generally, an award of attorney fees is not available in Georgia unless authorized by statute or contract.” *Moon v. Moon*, 277 Ga. 375, 379 (2003). “[A] trial court may award attorney fees under OCGA §19-6-2 based on the knowledge of the financial circumstances of the parties that it has acquired during the [] proceedings and based on its ability to place a value on legal services rendered by an attorney in a divorce action.” *Bulat v. Bulat*, 280 Ga. 310, 310-311 (2006). “An attorney may testify as to the reasonableness of his own fee.” *Campbell v. Beak*, 256 Ga.App. 493, 498 (2002).

Plaintiffs' interpretation of O.C.G.A. § 9-15-16(b) is rejected and the Court will not allow admission of Plaintiffs' contingency agreement in evidence because this Court will not add an interpretation to a statute that may render its intent meaningless.

In light of the foregoing, **IT IS HEREBY ORDERED** that Plaintiffs' motion is **DENIED**.

**SO ORDERED** this 27<sup>th</sup> day of June 2025.

  
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Judge Jane P. Manning  
State Court of Cobb County