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Appellate Practice and Procedure

by **Roland F. L. Hall***

I. INTRODUCTION

This Article surveys decisions addressing appellate law and procedure handed down by the Georgia appellate courts between June 1, 2007 and May 31, 2008. The cases discussed fall into the following categories: (1) appellate jurisdiction, (2) preserving the record, and (3) miscellaneous cases of interest.

II. APPELLATE JURISDICTION

A. *Discretionary Appeals v. Direct Appeals*

Several cases during the survey period dealt with the sometimes difficult determination of whether discretionary or direct appeal procedures should be used. In *Cooney v. Burnham*,¹ the plaintiff, an attorney, brought an action against the defendant, his client, seeking legal fees, prejudgment interest, litigation expenses, and attorney fees expended in bringing the suit. At trial, the jury returned a verdict for the plaintiff. When the trial court entered judgment based on the verdict, the court denied the plaintiff's request for prejudgment interest and attorney fees. The plaintiff's direct appeal from the judgment was dismissed by the Georgia Court of Appeals on the basis that because the judgment was less than \$10,000, the plaintiff should have followed the discretionary appeal procedure set forth in the Official Code of Georgia Annotated (O.C.G.A.) § 5-6-35(a)(6).²

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1. 283 Ga. 134, 657 S.E.2d 239 (2008).

2. *Id.* at 134-36, 657 S.E.2d at 239-41; O.C.G.A. § 5-6-35(a)(6) (1995 & Supp. 2008).

The Georgia Supreme Court granted certiorari,³ and the plaintiff argued that because his appeal involved issues of liability rather than damages, the direct appeal procedure was applicable.⁴ Under O.C.G.A. § 5-6-35(a)(6), an application to appeal is required when the judgment is between one cent and \$10,000.⁵ The plaintiff contended that because he received a “zero recovery” on his claims for prejudgment interest and attorney fees, this was an adverse finding by the trial court on liability, and the statute did not apply.⁶ The supreme court held that because the claims for prejudgment interest and attorney fees were dependent on the primary claim for legal fees, the failure to recover any amount on these ancillary claims could not transform the judgment of \$6,000 into a finding of adverse liability.⁷ Accordingly, because the judgment appealed from was one for damages within the scope of O.C.G.A. § 5-6-35(a)(6), the direct appeal procedures could not be used.⁸ The supreme court affirmed the court of appeals dismissal of the plaintiff’s direct appeal.⁹

In *Zitrin v. Georgia Composite State Board of Medical Examiners*,¹⁰ a group of physicians filed an action seeking a declaratory judgment that Georgia law prohibits physicians from participating in executions, an entry of an order requiring the Georgia Composite State Board of Medical Examiners (State Board) to investigate physicians who participated in executions by lethal injection, and a reversal of the State Board’s decision not to conduct an investigation. (Before filing suit, the physicians filed a request for investigation with the State Board, which had denied the request.) The trial court dismissed the physicians’ complaint, and the physicians filed a direct appeal.¹¹

The State Board moved for dismissal of the appeal on the ground that the physicians failed to follow the discretionary appeal procedures of O.C.G.A. § 5-6-35(a)(1),¹² which states that appeals from decisions of the superior courts reviewing decisions of state and local agencies must comply with the discretionary appeal procedures.¹³ The State Board

3. *Cooney*, 283 Ga. at 134, 657 S.E.2d at 239.

4. *Id.* at 136, 657 S.E.2d at 241.

5. *Id.* (citing *Bales v. Shelton*, 260 Ga. 335, 336, 391 S.E.2d 394, 395 (1990)); O.C.G.A. § 5-6-35(a)(6).

6. *Cooney*, 283 Ga. at 136, 657 S.E.2d at 241.

7. *Id.* at 136-37, 657 S.E.2d at 241.

8. *Id.* at 137, 657 S.E.2d at 241.

9. *Id.*

10. 288 Ga. App. 295, 653 S.E.2d 758 (2007).

11. *Id.* at 296, 653 S.E.2d at 760-61.

12. O.C.G.A. § 5-6-35(a)(1) (1995 & Supp. 2008).

13. *Id.*

argued that section 5-6-35(a)(1) applied because the subject matter of the claim involved the decision of a state administrative agency. The State Board relied on prior decisions which held that parties cannot use the Declaratory Judgment Act¹⁴ to obtain direct appeal of agency decisions, but instead they must use the discretionary appeal procedures under the Georgia Administrative Procedure Act (APA).¹⁵ The State Board was thus arguing that the physicians' declaratory judgment action was essentially an appeal of the State Board's administrative decision.¹⁶

The court of appeals held that because the physicians' claim for declaratory relief could have been brought regardless of whether the physicians sought review of the State Board's denial of the request for an investigation, the claim for declaratory relief was independent of the claim asserted under the APA, and the cases cited by the State Board were not controlling.¹⁷ Thus, the physicians could appeal the denial of their request for a declaratory judgment claim using the direct appeal procedures and include their claim under the APA in the appeal.¹⁸ The court of appeals held that the physicians were not required to use the discretionary appeal process and denied the motion to dismiss the appeal.¹⁹

B. Selecting the Correct Appeal Procedure

In *Stubbs v. Pickle*,²⁰ the plaintiff brought an action against his former attorney for malpractice. Subsequently, the plaintiff added the defendant's law firm as a codefendant. The trial court entered a default judgment against the law firm, and the law firm requested an interlocutory appeal from the default judgment. The plaintiff had also filed a motion for summary judgment, and the trial court had entered an order striking the defendant-attorney's brief in response to the summary judgment motion as untimely. The defendant-attorney joined in the law firm's appeal from the default judgment to challenge the striking of his brief.²¹

14. O.C.G.A. §§ 9-4-1 to -10 (2007 & Supp. 2008).

15. O.C.G.A. §§ 50-13-1 to -44 (2006 & Supp. 2008); see *Cox v. Acad. of Lithonia*, 280 Ga. App. 626, 634 S.E.2d 778 (2006); *Best Tobacco, Inc. v. Dep't of Revenue*, 269 Ga. App. 484, 604 S.E.2d 578 (2004). For an analysis of *Cox*, see Roland F. L. Hall, *Appellate Practice and Procedure*, 59 MERCER L. REV. 21, 22-23 (2007).

16. *Zitrin*, 288 Ga. App. at 296-97, 653 S.E.2d at 761.

17. *Id.* at 297, 653 S.E.2d at 761.

18. *Id.* at 298, 653 S.E.2d at 762.

19. *Id.* at 298, 300, 653 S.E.2d at 762-63.

20. 287 Ga. App. 246, 651 S.E.2d 171 (2007).

21. *Id.* at 246-47, 651 S.E.2d at 171.

The court of appeals granted the law firm's request for an interlocutory appeal, noting that the default judgment was, in fact, directly appealable.²² On appeal, the plaintiff argued that the court of appeals lacked jurisdiction to consider the defendant-attorney's challenge to the order that struck his response to the motion for summary judgment.²³

The plaintiff maintained that even though the law firm's application for appeal had been granted on the ground that final judgment was entered against the law firm, no final judgment had been entered against the defendant-attorney, who had failed to follow the interlocutory appeal procedures for appealing the ruling on the motion to strike.²⁴ The defendant-attorney relied on O.C.G.A. § 5-6-34(d),²⁵ pursuant to which the court of appeals, when considering issues correctly raised in a direct appeal, can also consider any other nonfinal rulings entered in the case.²⁶

The court of appeals held that the defendant-attorney could not use O.C.G.A. § 5-6-34(d) to challenge the trial court's interlocutory ruling striking his response.²⁷ The directly appealable order involved only the law firm, and the defendant-attorney could not use the law firm's direct appeal to challenge the interlocutory ruling relating only to the defendant-attorney.²⁸ Because the defendant-attorney did not follow the interlocutory appeal procedures, the court of appeals lacked jurisdiction to review the order striking his response.²⁹

C. Standing

*In the Interest of J.R.P.*³⁰ arose from a finding by a juvenile court that J.R.P. was deprived because of the lack of a guardian or custodian. After a subsequent hearing, the juvenile court had awarded permanent custody to J.R.P.'s cousin. J.R.P.'s grandmother, who had cared for J.R.P. for several years after his mother's death,³¹ appealed from the deprivation ruling but failed to timely seek review of the custody order.³² The court of appeals held that the grandmother lacked standing to appeal the deprivation ruling because the grandmother was

22. *Id.* at 247, 651 S.E.2d at 171.

23. *Id.*, 651 S.E.2d at 172.

24. *Id.*

25. O.C.G.A. § 5-6-34(d) (1995).

26. *See id.*; *Stubbs*, 287 Ga. App. at 247, 651 S.E.2d at 172.

27. *Stubbs*, 287 Ga. App. at 247-48, 651 S.E.2d at 172.

28. *Id.*

29. *Id.* at 248, 651 S.E.2d at 172.

30. 287 Ga. App. 621, 652 S.E.2d 206 (2007).

31. *Id.* at 622, 652 S.E.2d at 607.

32. *Id.* at 623 n.6, 652 S.E.2d at 207 n.6.

not the child's legal guardian or custodian.³³ Thus, the grandmother could not show that the deprivation ruling affected her rights.³⁴ The court of appeals further held that even if the grandmother did have standing, the issues raised by her appeal were moot.³⁵ Because the grandmother's appeal challenged only the deprivation order, any ruling concerning the order would have no effect on the cousin's permanent legal custody of J.R.P.³⁶ The court of appeals affirmed the juvenile court's order.³⁷

D. Miscellaneous Jurisdictional Issues

In *First Christ Holiness Church, Inc. v. Owens Temple First Christ Holiness Church, Inc.*,³⁸ the supreme court addressed the issue of whether a direct appeal could be filed from an order dismissing a complaint for failure to prosecute the action in the name of the real party in interest.³⁹ The case arose from a dispute between the parties over the ownership of church property, and the plaintiffs brought suit to quiet title to the property. The defendant brought a counterclaim to quiet title in its own name. The defendant claimed that because the plaintiffs did not have the approval from a majority of their congregation, they lacked authority to file the complaint. The defendant filed a motion to dismiss or, in the alternative, for summary judgment. The trial court granted the motion for summary judgment, finding that it lacked subject matter jurisdiction over the plaintiffs' claims because the plaintiffs lacked the capacity to file the complaint. However, the trial court did not dismiss the defendant's counterclaim, and the counterclaim remained pending.⁴⁰

Upon the plaintiffs' appeal to the supreme court, the court examined whether it had jurisdiction to consider the appeal.⁴¹ The supreme court noted that because the order dismissing the complaint did not qualify as a final judgment (because the counterclaim was still pending) and the plaintiffs had not sought a certificate of immediate review, the appeal was subject to dismissal unless another exception to the final judgment rule applied.⁴²

33. *Id.* at 622, 652 S.E.2d at 207.

34. *Id.*

35. *Id.* at 623, 652 S.E.2d at 207-08.

36. *Id.*

37. *Id.* at 624, 652 S.E.2d at 208.

38. 282 Ga. 883, 665 S.E.2d 605 (2008).

39. *Id.* at 884, 665 S.E.2d at 607.

40. *Id.* at 883-84, 665 S.E.2d at 606-07.

41. *Id.* at 884, 665 S.E.2d at 607.

42. *Id.*

Because the trial court had titled its order as an “Order on Motion for Summary Judgment,” it appeared that the plaintiffs could bring a direct appeal pursuant to O.C.G.A. § 9-11-56(h)⁴³ from an order granting summary judgment.⁴⁴ However, after examining the substance of the order, the supreme court held that a “dismissal for lack of subject matter jurisdiction is not a summary judgment, regardless of how it is styled” because a trial court has no power to enter a judgment on the merits if it lacks subject matter jurisdiction.⁴⁵ The supreme court determined that the trial court’s order was best viewed as an order dismissing the plaintiffs’ complaint for failure to prosecute the action in the name of the real party in interest as required by O.C.G.A. § 9-11-17.⁴⁶ The supreme court held that because the trial court’s order could not be considered a grant of summary judgment and the plaintiffs had failed to follow the procedures for obtaining a certificate of immediate review, the appeal would be dismissed.⁴⁷

In *Coastal Marshlands Protection Committee v. Center for a Sustainable Coast*,⁴⁸ a developer had filed an application pursuant to the Coastal Marshlands Protection Act⁴⁹ to obtain a permit to construct marina and dock facilities on state-owned coastal marshlands. After a permit was granted, various organizations filed a petition to challenge the issuance of the permit in a hearing before an Administrative Law Judge (ALJ). The ALJ affirmed certain portions of the permit and remanded other portions for further consideration by the issuing authority. The parties filed petitions seeking superior court review of the ALJ’s decision, but because the superior court did not act on the petitions within the statutory time limit, the ALJ’s decision was affirmed by operation of law.⁵⁰ The court of appeals granted the applications for discretionary appeal of both the developer and the issuing authority.⁵¹

In considering whether it had jurisdiction to hear the appeals, the court noted that under O.C.G.A. § 50-13-20⁵² the court can only review a final judgment of the superior court rendered pursuant to the APA and that a superior court remanding for additional findings is not a final

43. O.C.G.A. § 9-11-56(h) (2006).

44. *First Christ Holiness Church*, 282 Ga. at 884-85, 665 S.E.2d at 607.

45. *Id.* at 885, 665 S.E.2d at 608.

46. *Id.*; O.C.G.A. § 9-11-17 (2006).

47. *First Christ Holiness Church*, 282 Ga. at 887, 665 S.E.2d at 609.

48. 286 Ga. App. 518, 649 S.E.2d 619 (2007).

49. O.C.G.A. §§ 12-5-280 to -297 (2006 & Supp. 2008).

50. *Coastal Marshlands Prot. Comm.*, 286 Ga. App. at 519-20, 649 S.E.2d at 622-23.

51. *Id.* at 520, 649 S.E.2d at 623.

52. O.C.G.A. § 50-13-20 (2006).

judgment subject to appellate review.⁵³ However, the court of appeals held that the ALJ's remand, which became the superior court's remand by operation of law, did not prevent the court of appeals from exercising jurisdiction because the remand did more than return the case for consideration of additional issues and evidence.⁵⁴ Instead, the remand was ordered on the basis that the reviewing authority erred as a matter of law in construing the applicable statute and was thus required to regulate certain features of the developer's construction of the marina and dock facilities.⁵⁵ The court of appeals concluded that the ALJ's order was functionally an appealable final judgment.⁵⁶ Therefore, the court of appeals had jurisdiction to consider the appeals.⁵⁷

III. PRESERVING THE RECORD

During every survey period, there are cases demonstrating the critical importance of making a complete record in the trial court. In *Waters v. Ellzey*,⁵⁸ the plaintiffs sought an injunction granting them access rights to a boating dock. The matter was referred to a special master, who conducted a two-day trial and ultimately rejected some of the plaintiffs' claims but found that the plaintiffs had certain rights of use related to the boating dock.⁵⁹ "The trial court adopted the findings and conclusions of the special master and entered judgment accordingly."⁶⁰

The plaintiffs and the defendant appealed from the judgment. Because the first day of the trial was not reported and the parties did not attempt to recreate the missing testimony, only the transcript from the second day of trial was included in the record on appeal. Few of the defendant's enumerations of error could be reviewed without reference to a full transcript.⁶¹ Thus, the Georgia Court of Appeals was unable to review most of the defendant's claims on appeal.⁶² Also, one of the plaintiffs' enumerations of error could not be reviewed because of the

53. *Coastal Marshlands Prot. Comm.*, 286 Ga. App. at 520, 649 S.E.2d at 623 (citing O.C.G.A. § 50-13-20).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. 290 Ga. App. 693, 660 S.E.2d 392 (2008).

59. *Id.* at 694, 660 S.E.2d at 394.

60. *Id.*

61. *Id.* at 694-95, 660 S.E.2d at 394-95.

62. *Id.* at 695-96, 660 S.E.2d at 395.

lack of a complete transcript.⁶³ The court of appeals ultimately affirmed on both issues.⁶⁴

In *Nathans v. Diamond*,⁶⁵ a medical malpractice case, the plaintiffs argued that a statute governing expert witness qualifications in professional malpractice cases was unconstitutional. At trial, the plaintiffs contended that the statute violated equal protection and due process laws, denied them access to the courts, violated the separation of powers, and could not constitutionally be applied retroactively to their case. At a hearing addressing the plaintiffs' constitutional challenges, the trial court discussed only the issue of retroactivity, and the subsequent written order focused on the retroactivity issue as well.⁶⁶ On appeal, the plaintiffs presented all of their constitutional challenges to the statute to the Georgia Supreme Court.⁶⁷ Because the record showed that only the challenge relating to retroactivity was considered by the trial court at the hearing and in its written order, the supreme court held that none of the other constitutional issues were distinctly ruled upon by the trial court.⁶⁸ Thus, the other issues were not preserved for appeal.⁶⁹

In *Hipster, Inc. v. Augusta Mall Partnership*,⁷⁰ the plaintiff, a shopping mall, brought an action against the defendant, one of its tenants, seeking an injunction requiring the defendant to relocate to another space in the mall pursuant to the parties' lease agreement. The trial court entered an order granting the plaintiff's motion for an interlocutory injunction and ordered the defendant to relocate.⁷¹ The defendant's primary contention on appeal was that the trial court erred in granting the interlocutory injunction, and the court of appeals agreed, reversing the trial court.⁷² However, the defendant also contended that the trial court erred in concluding that the defendant was not entitled to a jury trial.⁷³ The court of appeals noted that while the trial court had instructed the plaintiff to prepare an order granting the interlocutory injunction and stating that the defendant was not entitled to a jury trial pursuant to a waiver contained in the lease, the actual order

63. *Id.* at 697, 660 S.E.2d at 397.

64. *Id.* at 698, 660 S.E.2d at 397.

65. 282 Ga. 804, 654 S.E.2d 121 (2007).

66. *Id.* at 804-05, 654 S.E.2d at 122-23.

67. *Id.* at 804, 654 S.E.2d at 122.

68. *Id.* at 808, 654 S.E.2d at 125.

69. *Id.*

70. 291 Ga. App. 273, 661 S.E.2d 652 (2008).

71. *Id.* at 273-74, 661 S.E.2d at 653-54.

72. *Id.* at 274, 661 S.E.2d at 654.

73. *Id.* at 276, 661 S.E.2d at 655.

entered by the trial court did not specifically preclude a jury trial.⁷⁴ Because the trial court's oral declaration did not constitute a judgment, the court of appeals concluded there was no legal ruling to review.⁷⁵

IV. MISCELLANEOUS

In the interesting case of *Radioshack Corp. v. Cascade Crossing II, LLC*,⁷⁶ decided by the Georgia Supreme Court, the majority and the dissent crossed swords over fundamental issues of statutory interpretation and stare decisis. The appeal concerned whether O.C.G.A. § 13-1-11(a),⁷⁷ which limits certain obligations to pay attorney fees, applied to the parties' dispute concerning a commercial lease.⁷⁸ The majority relied on a line of decisions from the Georgia Court of Appeals that applied the statute to commercial leases and noted that the Georgia General Assembly had made no attempt to alter the court of appeals construction of the statute.⁷⁹ The majority held that a "reinterpretation" of the statute, "accomplished through the failure to adhere to the long line of cases applying [the statute] to leases, would constitute an unauthorized change in an 'integral' part of the statute."⁸⁰ The majority concluded that the statute applied to the commercial lease in question.⁸¹

The dissent took the position that "this Court *is* writing on a 'clean slate' where, as here, it must decide an issue of first impression regarding statutory interpretation, and prior interpretations by the Court of Appeals should be considered for their persuasive value only."⁸² As the dissent noted, the Georgia constitution states that decisions of the court of appeals are not binding on the supreme court.⁸³ The dissent placed little value on the silence of the state legislature, stating that "[i]t is primarily the responsibility of this Court, not the General Assembly, to correct errors of statutory interpretation by the Court of Appeals, and we should not place this burden on the General Assembly's shoulders."⁸⁴

74. *Id.* at 276-77, 661 S.E.2d at 656.

75. *Id.* at 277, 661 S.E.2d at 656.

76. 282 Ga. 841, 653 S.E.2d 680 (2007).

77. O.C.G.A. § 13-1-11(a) (1982 & Supp. 2008).

78. *Radioshack Corp.*, 282 Ga. at 841, 653 S.E.2d at 682 (citing O.C.G.A. § 13-1-11(a)).

79. *Id.* at 842-43, 653 S.E.2d at 682-83.

80. *Id.* at 843, 653 S.E.2d at 683.

81. *Id.* at 846, 653 S.E.2d at 685.

82. *Id.* at 847, 653 S.E.2d at 685 (Sears, C.J., dissenting).

83. *Id.* (citing GA. CONST. art. VI, § 5, para. 3).

84. *Id.* at 848, 653 S.E.2d at 686.

Although in most cases establishing the applicable standard of review is straightforward, in some instances determining which standard applies may be less than obvious. *In re Estate of Huff*⁸⁵ involved an insurance company seeking to enforce a settlement agreement with the estate of its deceased insured. The trial court conducted a hearing in which evidence was presented concerning the status of the settlement agreement. Ultimately, the trial court ruled that no settlement agreement had been reached. On appeal, the plaintiff insurer argued that the de novo standard of review was applicable because its motion to enforce the settlement agreement was most analogous to a motion for summary judgment.⁸⁶ The court of appeals disagreed, holding that because the issue on appeal required the examination of a factual issue resolved by the trial court after considering evidence presented on the status of the settlement agreement, the clearly erroneous standard of review applied.⁸⁷

In *Thompson v. Central of Georgia Railroad*,⁸⁸ another case in which the standard of review was at issue, the plaintiff, a railroad, brought an action to quiet title to land located adjacent to the railway. The trial court appointed a special master, who held an evidentiary hearing and entered a report recommending a ruling in the plaintiff's favor. The trial court adopted the special master's recommendations, and the defendant appealed.⁸⁹

In determining the applicable standard of review, the supreme court stated that neither the special master nor the trial court had set forth findings of fact that supported the conclusion that title to the land was vested in the plaintiff.⁹⁰ Moreover, neither party had requested that findings of fact be made.⁹¹ In light of the absence of findings of fact, the court determined that the special master's recommendation was most closely analogous to a jury verdict returned on a general verdict form upon which judgment is entered by the trial court.⁹² Accordingly, the court applied the any evidence standard and concluded that there was evidence to support the determination of the special master.⁹³ The court affirmed the trial court's judgment.⁹⁴

85. 287 Ga. App. 614, 652 S.E.2d 203 (2007).

86. *Id.* at 614-15, 652 S.E.2d at 204.

87. *Id.*

88. 282 Ga. 264, 646 S.E.2d 669 (2007).

89. *Id.* at 264, 646 S.E.2d at 670-71.

90. *Id.* at 266, 646 S.E.2d at 672.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

The court of appeals also issued several decisions indicating its continuing displeasure with violations of its court rules.⁹⁵ In *Comcast Corp. v. Warren*,⁹⁶ the plaintiff, a motorist, brought suit against the defendant for injuries sustained in an automobile accident. The plaintiff claimed that the accident was caused by the failure of the defendant's employees to warn the plaintiff of an obstruction created in the roadway by the employees. The jury returned a verdict awarding compensatory and punitive damages.⁹⁷ On appeal, the defendant contended "that the trial court erred by 'refusing to allow evidence of the nature and circumstances of [the defendant's] alleged conduct during [the] punitive damages phase'" of the trial.⁹⁸ The court of appeals noted that the defendant's brief did not contain a statement showing how it preserved the issue for review, as required by Court of Appeals Rule 25(a)(1).⁹⁹ In the absence of such a statement, the court of appeals held that there was nothing to review.¹⁰⁰

In *Bulgin v. Georgia Department of Transportation*,¹⁰¹ a condemnation case, the plaintiff sought additional compensation for land condemned by the defendant, the Georgia Department of Transportation. The trial court entered a judgment upon a jury verdict awarding compensation.¹⁰² On appeal, the plaintiff contended "that the trial court erred in denying [the plaintiff's] pretrial motion seeking to have the petition to condemn amended to include additional land being taken."¹⁰³ The plaintiff stated in his brief that the pretrial motion was denied at a hearing in the trial court, but the plaintiff did not include any citation to the record regarding the hearing or a transcript.¹⁰⁴ The court of appeals declined to consider the alleged error because of the plaintiff's "failure to ensure the necessary transcript was included in the record and/or his failure to properly cite the record."¹⁰⁵

95. See *Bulgin v. Ga. Dep't of Transp.*, 292 Ga. App. 1, 663 S.E.2d 730 (2008); *Lincoln Elec. Co. v. Gaither*, 286 Ga. App. 558, 649 S.E.2d 823 (2007); *Comcast Corp. v. Warren*, 286 Ga. App. 835, 650 S.E.2d 307 (2007).

96. 286 Ga. App. 835, 650 S.E.2d 307 (2007).

97. *Id.* at 836, 650 S.E.2d at 309.

98. *Id.* at 842, 650 S.E.2d at 313 (second alteration in original).

99. *Id.*; GA. CT. APP. R. 25(a)(1).

100. *Comcast Corp.*, 286 Ga. App. at 842-43, 650 S.E.2d at 313.

101. 292 Ga. App. 1, 663 S.E.2d 730 (2008).

102. *Id.* at 1, 663 S.E.2d at 732.

103. *Id.*

104. *Id.*

105. *Id.* at 2, 663 S.E.2d at 732.

The case of *Lincoln Electric Co. v. Gaither*¹⁰⁶ illustrates on a larger scale the potential hazards involved in failing to follow court rules. The appeal arose from cases involving over 350 plaintiffs bringing claims against more than 40 companies for injuries allegedly sustained from exposure to welding fumes. The defendant-employers filed a consolidated motion to sever and argued that the plaintiffs improperly joined their claims.¹⁰⁷ When the trial court denied the motion, the defendants filed a petition for interlocutory appeal, which was granted by the court of appeals.¹⁰⁸

On appeal, the court of appeals noted that although its rules required the parties to make references to the record by volume and page number,¹⁰⁹ the parties had provided only page number references even though the record consisted of over twenty thousand pages in forty volumes.¹¹⁰ The court of appeals also stated that the defendant-employers failed to provide any citations to the record in their statement of facts and indicated that such a violation of its rules would support dismissal of the appeal in its entirety.¹¹¹ Ultimately, the court of appeals exercised its discretion not to dismiss the appeal only because “the lower court clerk has provided a detailed index, which has allowed [the court]—with no small difficulty—to ascertain what transpired below,” but cautioned counsel that “future violations of this magnitude will result in a finding of contempt.”¹¹²

In *Vaughn v. Faulkner*,¹¹³ a case concerning a property dispute, the defendants filed a notice of appeal from an order of the trial court, but they failed to file the transcript within the thirty-day period as required by O.C.G.A. § 5-6-42.¹¹⁴ Instead, the defendants did not order the transcript until almost three months after filing the notice of appeal and did not file the transcript until eighty-one days after it was due. The plaintiffs moved to dismiss the appeal, and the trial court dismissed it pursuant to O.C.G.A. § 5-6-48(c)¹¹⁵ on the basis of an inexcusable delay in filing the transcript. In the hearing before the trial court, the defendants’ counsel explained that the delay in filing the transcript resulted from changes in his office staff. The trial court found the delay

106. 286 Ga. App. 558, 649 S.E.2d 823 (2007).

107. *Id.* at 558, 649 S.E.2d at 824.

108. *Id.*

109. *Id.* (citing GA. CT. APP. R. 25(a)(1), (c)(3)(iii)).

110. *Id.*

111. *Id.*

112. *Id.* at 559, 649 S.E.2d at 824.

113. 288 Ga. App. 798, 655 S.E.2d 686 (2007).

114. *Id.* at 789, 655 S.E.2d at 686-87; O.C.G.A. § 5-6-42 (1995).

115. O.C.G.A. § 5-6-48(c) (1995 & Supp. 2008).

to be unreasonable in part because it delayed the term of the court of appeals to which the case was assigned. Further, the trial court found the delay to be inexcusable based on an attorney's duty to properly administer his or her law office.¹¹⁶ The court of appeals agreed and affirmed the trial court's dismissal.¹¹⁷

In *Pacheco v. Charles Crews Custom Homes, Inc.*,¹¹⁸ the plaintiff-homeowner brought suit against the defendant-homebuilder, claiming fraud and negligent construction. Before filing suit, the plaintiff had terminated her relationship with the defendant and entered into a general release that released all claims against the defendant. The trial court granted summary judgment to the defendant on the basis of the release and awarded attorney fees to the defendant.¹¹⁹ The court of appeals held that the release clearly barred the plaintiff's claims and affirmed the judgment of the trial court.¹²⁰ The court of appeals also granted the defendant's request that the court of appeals impose sanctions against the plaintiff for filing a frivolous appeal.¹²¹ The court of appeals concluded that the appeal was brought only for purposes of delay and assessed a penalty for frivolous appeal in the amount of \$1,000.¹²²

116. *Vaughn*, 288 Ga. App. at 798-99, 655 S.E.2d at 687.

117. *Id.* at 799, 655 S.E.2d at 687.

118. 289 Ga. App. 773, 658 S.E.2d 396 (2008).

119. *Id.* at 773-74, 658 S.E.2d at 397-98.

120. *Id.* at 774, 658 S.E.2d at 398.

121. *Id.* at 777, 658 S.E.2d at 399.

122. *Id.*