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, 2008 and May 31, 2009.[1] 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. *Selecting the Correct Appeal Procedure*

Several cases during the survey period dealt with the sometimes difficult determination of which appeal procedure should be used. For example, in *Davis v. Deutsche Bank National Trust Co.*,[2] the plaintiff creditor—the assignee of a mortgage company—brought an action against the defendant debtors, seeking foreclosure on property owned by the defendants' mother that was used as collateral for a loan. The plaintiff also sought damages for bad faith, claiming that when the defendants executed the security deed, the defendants stated they were the owners of the property. The defendants' mother sought to intervene in the suit, and the plaintiff moved for partial summary judgment against the defendants. In a single order, the trial court denied the

---

* Partner in the law firm of Autry, Horton & Cole, LLP, Atlanta, Georgia. Mercer University (B.A., magna cum laude, 1991); Mercer University, Walter F. George School of Law (J.D., magna cum laude, 1994). Member, Mercer Law Review (1992-1994); Senior Managing Editor (1993-1994). Member, State Bars of Georgia and Florida.

1. For analysis of Georgia appellate practice and procedure law during the prior survey period, see Roland F. L. Hall, *Appellate Practice and Procedure, Annual Survey of Georgia Law*, 60 MERCER L. REV. 21 (2008).

2. 285 Ga. 22, 673 S.E.2d 221 (2009).

motion to intervene and granted partial summary judgment to the plaintiff.[3]

The defendants' mother filed a direct appeal from the order denying her motion to intervene. The plaintiffs contended that the appeal should be dismissed for failure to follow the interlocutory appeal procedures.[4] The Georgia Supreme Court noted that although the grant of a partial summary judgment ordinarily may be directly appealed pursuant to section 9-11-56(h) of the Official Code of Georgia Annotated (O.C.G.A.),[5] in a multi-party case the appeal may only be filed by one with standing to pursue it—the losing party.[6] The court held that the mere fact that the trial court joined its ruling on the motion to intervene with the ruling granting the partial summary judgment to the plaintiff did not make the defendants' mother a party to the suit or confer standing on her to appeal the grant of partial summary judgment to the plaintiff.[7] Because there was no order from which the defendants' mother could file a direct appeal, the appeal was dismissed.[8] However, the court noted that under the procedures of O.C.G.A. § 5-6-34(a),[9] the defendants' mother could have sought an interlocutory appeal.[10]

In *American Medical Security Group, Inc. v. Parker*,[11] the plaintiffs brought a motion for contempt against the defendants for abuse of the discovery process. As a discovery sanction, the trial court struck the defendants' answer and entered a default judgment against the defendants for liability. When the defendants filed a notice of appeal, the plaintiffs argued that the order was a discovery order that was not subject to direct appeal, and the trial court dismissed the notice of appeal. The defendants appealed from the dismissal of the notice of appeal. The Georgia Court of Appeals also dismissed the appeal, ruling that a trial court's order dismissing an unauthorized interlocutory appeal is itself an interlocutory order and that the defendants failed to comply with the interlocutory appeal procedures when appealing the order.[12]

---

3. *Id.* at 23, 673 S.E.2d at 222.
4. *Id.*
5. O.C.G.A. § 9-11-56(h) (2006).
6. *Davis*, 285 Ga. at 23–24, 673 S.E.2d at 222.
7. *Id.* at 24, 673 S.E.2d at 222–23.
8. *Id.*, 673 S.E.2d at 223.
9. O.C.G.A. § 5-6-34(a) (1995 & Supp. 2009).
10. *Davis*, 285 Ga. at 24, 673 S.E.2d at 223.
11. 284 Ga. 102, 663 S.E.2d 697 (2008).
12. *Id.* at 102–03, 663 S.E.2d at 698.

The Georgia Supreme Court granted the defendants' petition for certiorari.[13] The supreme court initially determined that whether the court of appeals erred in dismissing the defendants' appeal turned on whether the trial court's order providing discovery sanctions was directly appealable because a trial court's order dismissing a properly filed direct appeal is itself subject to a direct appeal.[14]

The defendants argued that the order providing sanctions was directly appealable because the trial court in essence had found that the defendants committed an act of contempt by violating the discovery order. Accordingly, pursuant to O.C.G.A. § 5-6-34(a), the order should have been considered directly appealable. Further, the defendants argued that the order was not an order imposing discovery sanctions because under the circumstances such an order would not be directly appealable.[15]

The supreme court held that the sanction of dismissing the defendants' answer and entering a default judgment could not be considered a punishment for either criminal or civil contempt.[16] Because the order was unconditional and was not intended to coerce compliance with the prior discovery order, the court reasoned that the order did not constitute punishment for civil contempt.[17] The supreme court determined that although the trial court had labeled the defendants' violation of the discovery order as an act of contempt, the defendants' appeal was not a contempt case and was thus not directly appealable because the trial court did not impose punishment for criminal contempt or attempt to coerce compliance with the prior discovery order.[18] The supreme court stated that to hold otherwise would "permit direct appeals of all interlocutory discovery orders that require a finding of wilfulness," and might cause a trial court to forgo issuing sanctions to avoid the significant delay in the trial caused by a direct appeal.[19] Therefore, the supreme court held that the court of appeals properly dismissed the defendants' appeal.[20]

Also of interest in this case is the concurring opinion of Justice Benham, in which he discussed the expansion by the appellate courts of

---

13. *Id.* at 103, 663 S.E.2d at 698.
14. *Id.*, 663 S.E.2d at 698–99; *see also* Azar v. Baird, 232 Ga. 81, 82–83, 205 S.E.2d 273, 273–74 (1974).
15. *Parker*, 284 Ga. at 103–04, 663 S.E.2d at 699.
16. *Id.* at 105, 663 S.E.2d at 700.
17. *Id.*
18. *Id.*
19. *Id.* at 107, 663 S.E.2d at 701–02.
20. *Id.*, 663 S.E.2d at 702.

the trial courts' authority to dismiss a notice of appeal.[21] As Justice Benham noted, the trial courts only have statutory authority, pursuant to O.C.G.A. § 5-6-48(c),[22] to dismiss appeals in circumstances when "there has been an unreasonable delay in filing the transcript or in transmitting the record to the appellate court."[23] However, a series of decisions by the court of appeals and the supreme court allowed the trial courts to dismiss appeals on other grounds, including the grounds that (1) the judgment was not yet appealable,[24] (2) the question presented had become moot,[25] and (3) the notice of appeal was untimely.[26] In contrast, Justice Benham noted that the appellate courts had restricted the trial courts' authority to dismiss appeals in other cases.[27] Further, Justice Benham noted that the expansion of the trial courts' ability to dismiss appeals had resulted in additional work for the appellate courts, such as in the instant case when the trial court's dismissal of the appeal on the ground that the decision was not then appealable required review by both the court of appeals and the supreme court.[28] Remarking that "[i]t is not supposed to be that difficult," Justice Benham called for a return to abiding by the statutory grant of authority to the trial courts to dismiss appeals.[29]

In *Rhymes v. East Atlanta Church of God, Inc.*,[30] the plaintiff church brought an action for damages against the defendants along with a petition to quiet title. A special master conducted an evidentiary hearing on the quiet title claim and filed a report with the trial court finding in favor of the plaintiff church. The defendants filed exceptions to the special master's report and also filed pleadings seeking a jury trial. The trial court adopted the special master's report and decided that the plaintiff church held title to the property. In a separate order, the trial court granted the plaintiff's motion to strike the pleadings requesting a jury trial because the request was not made prior to the

---

21. *Id.* at 108, 663 S.E.2d at 702 (Benham, J., concurring).
22. O.C.G.A. § 5-6-48(c) (1995 & Supp. 2009).
23. *Parker*, 284 Ga. at 108, 663 S.E.2d at 702 (Benham, J., concurring).
24. *Id.* (citing Jones v. Singleton, 253 Ga. 41, 316 S.E.2d 154 (1984)).
25. *Id.* at 109, 663 S.E.2d at 702 (citing Attwell v. Lane Co., 182 Ga. App. 813, 357 S.E.2d 142 (1987)).
26. *Id.*, 663 S.E.2d at 702–03 (citing Crumbley v. Wyant, 183 Ga. App. 802, 360 S.E.2d 276 (1987)).
27. *Id.* at 109–10, 663 S.E.2d at 703 (citing numerous supreme court and court of appeals cases).
28. *Id.* at 110, 663 S.E.2d at 703.
29. *Id.*
30. 284 Ga. 145, 663 S.E.2d 670 (2008).

special master's hearing. The defendants subsequently filed a notice of direct appeal.[31]

The defendants contended that a direct appeal could be filed pursuant to O.C.G.A. § 5-6-34(a)(1), which allows a direct appeal to be taken from all final judgments.[32] The supreme court held that because the case involved multiple claims and "[t]he trial court neither expressly determined that there [was] no just reason for delay nor expressly directed the entry of final judgment," there was no final judgment from which the defendants could take a direct appeal.[33] Although the trial court's order adopting the special master's report was designated "Final Judgment and Order," the supreme court held that such designation was not controlling and that the order did not adjudicate the plaintiff's other claims.[34] The court also overruled the decision of the court of appeals in *Re-Max Executives, Inc. v. Wallace*[35] to the extent the court of appeals held that the designation of a judgment as "final" is controlling.[36] Because the defendants were not entitled to file a direct appeal and failed to follow the interlocutory appeal procedures, the supreme court dismissed the appeal.[37]

In *Board of Regents of the University System of Georgia v. Canas*,[38] another case examining the final judgment rule, the plaintiff, a patient with HIV/AIDS, brought tort claims against the board of regents. The board contended that it was immune from suit on the basis of sovereign immunity. The trial court denied the board's motion to dismiss the plaintiff's administrative failure to warn claim and held that the board was not immune from suit on sovereign immunity grounds.[39] Based on the defendant's failure to comply with the interlocutory appeal procedures of O.C.G.A. § 5-6-34(b),[40] the plaintiff moved to dismiss the appeal.[41]

The court of appeals held that the order appealed from, the trial court's order denying the defendant's motion to dismiss, was not a final

31. *Id.* at 145, 663 S.E.2d at 671–72.
32. *Id.* at 145–46, 663 S.E.2d at 672.
33. *Id.* at 146, 663 S.E.2d at 672.
34. *Id.*
35. 205 Ga. App. 170, 421 S.E.2d 540 (1992).
36. *Rhymes*, 284 Ga. at 147, 663 S.E.2d at 672; *see Wallace*, 205 Ga. App. at 171, 421 S.E.2d at 541.
37. *Rhymes*, 284 Ga. at 148, 663 S.E.2d at 673.
38. 295 Ga. App. 505, 672 S.E.2d 471 (2009).
39. *Id.* at 505, 672 S.E.2d at 472–73.
40. O.C.G.A. § 5-6-34(b) (1995 & Supp. 2009).
41. *Canas*, 295 Ga. App. at 505–06, 672 S.E.2d at 473.

judgment and was not an order made directly appealable by statute.[42] Generally, the court of appeals lacks jurisdiction over a direct appeal filed from an interlocutory ruling.[43] But a narrow exception applies, pursuant to the collateral order doctrine, when an order "'resolve[s] an important issue completely separate from the merits of the action'" and is "'effectively unreviewable on appeal from a final judgment.'"[44] The court of appeals held that because sovereign immunity is more than a "mere defense to liability, and is effectively lost if a case is erroneously permitted to go to trial," an order denying a motion to dismiss based upon a conclusive determination of no sovereign immunity falls within the collateral order doctrine.[45] The court of appeals thus had jurisdiction over the defendant's direct appeal.[46]

B. Jurisdiction of Supreme Court and Court of Appeals

Although the supreme court has exclusive appellate jurisdiction over constitutional issues, in certain limited circumstances the court of appeals can review constitutional questions.[47] In *City of Decatur v. DeKalb County*,[48] which involved a claimed breach of an intergovernmental agreement, the supreme court indicated that the exception under which the court of appeals can review constitutional questions is to be narrowly construed.[49] In that case, several cities in DeKalb County, Georgia, brought suit against the county on the basis of an intergovernmental agreement for the expenditure of certain tax revenues. The county sought summary judgment on the basis that the agreement violated a state constitutional provision regarding intergovernmental agreements. The trial court denied summary judgment, finding that issues of fact remained regarding the type of agreement at issue.[50]

---

42. *Id.*

43. *Id.* at 506, 672 S.E.2d at 473.

44. *Id.* at 507, 672 S.E.2d at 473 (quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468–69 (1978)); *see also* Britt v. State, 282 Ga. 746, 748, 653 S.E.2d 713, 716 (2007).

45. *Canas*, 295 Ga. App. at 507, 672 S.E.2d at 473–74. Because the trial court had conclusively determined that the defendant was not immune from suit on the basis of sovereign immunity, the court of appeals distinguished *State v. Gober*, 229 Ga. App. 700, 494 S.E.2d 724 (1997). *Canas*, 295 Ga. App. at 507 n.8, 672 S.E.2d at 474 n.8. In *Gober* the court of appeals held that an order denying the State of Georgia's motion for dismissal was not directly appealable under the collateral order doctrine because the trial court had not made a final conclusion regarding sovereign immunity. 229 Ga. App. at 700–01, 494 S.E.2d at 725.

46. *Canas*, 295 Ga. App. at 507, 672 S.E.2d at 474.

47. *See* Watson v. State, 283 Ga. App. 635, 637, 642 S.E.2d 328, 330 (2007).

48. 284 Ga. 434, 668 S.E.2d 247 (2008).

49. *See id.* at 436–37, 668 S.E.2d at 250–51.

50. *Id.* at 434–35, 668 S.E.2d at 249.

On appeal, the court of appeals held that it had jurisdiction because the case required only the application of an unambiguous constitutional provision and was thus not within the exclusive jurisdiction of the supreme court. The court of appeals then construed the constitutional provision as not authorizing the agreement between the parties and reversed.[51]

The supreme court disagreed with the court of appeals' conclusion that it had merely applied an unambiguous constitutional provision to the facts of the case.[52] The supreme court concluded that because the court of appeals had interpreted the term *services* as used in the constitutional provision and none of the supreme court decisions construing the provision had interpreted the term *services*, the court of appeals had in fact applied its own construction of the provision to the facts before it—an act that was outside its jurisdiction.[53] The supreme court thus vacated the judgment of the court of appeals.[54] The supreme court also noted that the trial court had not specifically ruled upon the constitutional issue and, thus, remanded the case to the court of appeals to examine whether the trial court erred in denying the county's motion for summary judgment.[55]

C. Miscellaneous Jurisdictional Issues

In *GMC Group, Inc. v. Harsco Corp.*,[56] the court of appeals considered the issue of what constitutes a final judgment for purposes of triggering the time limit for filing a notice of appeal.[57] A default judgment was filed with the clerk in October 2007, but a civil disposition form was not filed until May 2008. The appellant did not file the notice of appeal until May 2008.[58] The appellant relied upon O.C.G.A. § 9-11-58(b),[59] which provides that the filing with the clerk of a signed judgment together with the fully completed civil case disposition form constitutes the entry of judgment,[60] and argued that its notice of appeal was timely filed.[61]

---

51. *Id.* at 437, 668 S.E.2d at 250.
52. *Id.*
53. *Id.*, 668 S.E.2d at 251.
54. *Id.* at 438, 668 S.E.2d at 251.
55. *Id.*
56. 293 Ga. App. 707, 667 S.E.2d 916 (2008).
57. *Id.* at 707, 667 S.E.2d at 917.
58. *Id.* at 707–08, 667 S.E.2d at 917–18.
59. O.C.G.A. § 9-11-58(b) (2006).
60. *Id.*
61. *GMC Group, Inc.*, 293 Ga. App. at 708, 667 S.E.2d at 918.

The court of appeals disagreed,[62] citing a provision of the Appellate Practice Act,[63] which states that filing a signed judgment with the clerk constitutes the entry of a judgment for purposes of the Act.[64] The court of appeals held that the specific section of the Appellate Practice Act addressing what triggers the running of the thirty-day period for filing a notice of appeal[65] prevailed over the more general provisions of the Civil Practice Act.[66] Accordingly, the court concluded that it lacked jurisdiction to consider the appeal because the notice of appeal was untimely filed.[67]

III. Preserving the Record

In *Byrd v. Rachaman*,[68] an action for breach of a promissory note, the defendant failed to serve timely responses to the plaintiff's requests for admissions and subsequently moved to withdraw the admissions. The trial court held a hearing on the motion, which it denied, and subsequently granted the plaintiff's motion for summary judgment on the basis of the matters deemed admitted by operation of law. On appeal, the defendant contended that the trial court erred in denying his motion to withdraw the admissions and that without the admissions, summary judgment could not have been granted.[69] Because no transcript of the hearing on the defendant's motion to withdraw his admissions was included in the record on appeal, the court of appeals held it was required to assume the trial court was authorized to conclude that the defendant failed to set forth the proper legal basis for his motion to withdraw his admissions.[70] Accordingly, the court of appeals held that the defendant could not show any basis for reversing the summary judgment order.[71]

IV. Miscellaneous Cases of Interest

Although trial courts generally may not award litigation expenses for appellate proceedings, the court of appeals in *In re Estate of Zeigler*[72]

---

62. *Id.*
63. O.C.G.A. §§ 5-6-30 to -51 (1995 & Supp. 2009).
64. O.C.G.A. § 5-6-31 (1995).
65. O.C.G.A. § 5-6-38 (1995).
66. O.C.G.A. §§ 9-11-1 to -133 (2006 & Supp. 2009).
67. *GMC Group, Inc.*, 293 Ga. App. at 710, 667 S.E.2d at 919.
68. 294 Ga. App. 869, 670 S.E.2d 458 (2008).
69. *Id.* at 869, 670 S.E.2d at 458–59.
70. *Id.* at 870, 670 S.E.2d at 459.
71. *Id.*
72. 295 Ga. App. 156, 671 S.E.2d 218 (2008).

explored a limited exception to this general rule.[73] In that case, the removal of an executrix from an estate had been affirmed in a prior appeal. Subsequently, the probate court was asked to decide whether the former executrix and her attorney should pay litigation expenses to one of the estate's beneficiaries. The beneficiary contended in part that the former executrix and her attorney had unnecessarily prolonged the proceedings by filing multiple continuances and appeals. The probate court entered an order awarding the beneficiary damages and litigation expenses, including attorney fees.[74] The probate court used O.C.G.A. § 9-15-14(b),[75] O.C.G.A. § 13-6-11,[76] and O.C.G.A. § 53-12-193(a)(4)[77] to justify its award of litigation expenses.[78]

On appeal, the court of appeals noted that neither O.C.G.A. § 9-15-14(b) nor O.C.G.A. § 13-6-11 authorized the probate court to award expenses of litigation for appellate proceedings because both statutes address conduct occurring at the trial court level.[79] However, the court of appeals held that O.C.G.A. § 53-12-193(a)(4) did support such an award.[80] The court of appeals held that the statute allowed recovery of litigation expenses incurred when a beneficiary brings an action for breach of a trustee's duties to the beneficiary and that such expenses could include those incurred before an appellate court and a trial court.[81] Accordingly, the court of appeals held that because the beneficiary's petition for the executrix's removal was based on the executrix's breach of duty to the estate, the probate court could award expenses incurred by the beneficiary in defending the executrix's appeals of such removal.[82]

In *Hunt v. Thomas*,[83] the plaintiff father-in-law brought suit against the defendant son-in-law for the return of an investment in real property. The trial court granted plaintiff's motion for summary judgment on all issues except attorney fees. Although the defendant requested an oral hearing, the trial court issued its order without holding a hearing.[84]

---

73. *See id.* at 156, 158, 671 S.E.2d at 222–23.
74. *Id.* at 157, 671 S.E.2d at 222.
75. O.C.G.A. § 9-15-14(b) (2006).
76. O.C.G.A. § 13-6-11 (1982 & Supp. 2009).
77. O.C.G.A. § 53-12-193(a)(4) (1997 & Supp. 2009).
78. *In re Estate of Zeigler*, 295 Ga. App. at 160–61, 671 S.E.2d at 225.
79. *Id.* at 161, 671 S.E.2d at 225.
80. *Id.*
81. *Id.*
82. *Id.*
83. 296 Ga. App. 505, 675 S.E.2d 256 (2009).
84. *Id.* at 505–06, 675 S.E.2d at 257.

On appeal, the defendant contended that the order granting partial summary judgment should be reversed because of the trial court's failure to hold a hearing.[85] As noted by the court of appeals, a party timely requesting oral argument on a motion for summary judgment is absolutely entitled to a hearing, and the failure to grant a hearing is never harmless error.[86] However, the court of appeals held that it did not have to rely on these principles and that the real issue was whether a party could ever waive the failure to hold the hearing by his conduct.[87] Relying on the well-established principle that at the appellate level a party "'cannot complain of a judgment, order, or ruling that his own procedure or conduct procured or aided in causing,'"[88] the court of appeals held that the defendant's failure to object or notify the trial court of the failure to hold a hearing resulted in a waiver of his right to raise the issue on appeal.[89]

In *Blackmon v. Tenet Healthsystem Spalding, Inc.*,[90] the plaintiff brought a medical malpractice action against the defendants in her capacity as legal guardian of her grandchild. The defendants moved for partial summary judgment on the ground that the plaintiff was not the proper party to bring the action.[91] The state court denied the motion, purportedly in the exercise of its equitable power to allow an exception to O.C.G.A. § 51-4-2(a),[92] which provides that only the surviving spouse can bring a wrongful death claim.[93] The court of appeals reversed, holding that the state court did not possess the equitable power held by a superior court to make an exception to the statute.[94] Although the plaintiff sought to have the court of appeals require transfer of the case to the superior court, the court of appeals held that (1) the plaintiff had not requested transfer in the state court and (2) Georgia Uniform Superior Court Rule 19.1(A),[95] which provides for transfer,[96] was not applicable because the rule only applies when subject matter jurisdiction

---

85. *Id.* at 506, 675 S.E.2d at 257.
86. *Id.*, 675 S.E.2d at 258 (citing Bennett v. McDonald, 238 Ga. App. 414, 415, 518 S.E.2d 912, 914 (1999); Dixon v. McClain, 204 Ga. App. 531, 531, 420 S.E.2d 66, 66–67 (1992)).
87. *Id.*
88. *Id.* (quoting Mitchell v. Wyatt, 192 Ga. App. 127, 129, 384 S.E.2d 227, 229 (1989)).
89. *Id.* at 507, 675 S.E.2d at 258.
90. 284 Ga. 369, 667 S.E.2d 348 (2008).
91. *Id.* at 369–70, 667 S.E.2d at 348–49.
92. O.C.G.A. § 51-4-2(a) (2000).
93. *Id.*; *Blackmon*, 284 Ga. at 370–71, 667 S.E.2d at 349.
94. *Blackmon*, 284 Ga. at 370, 667 S.E.2d at 349.
95. GA. UNIF. SUPER. CT. R. 19.1(A).
96. *Id.*

is lacking, and the issue before the state court concerned standing, not subject matter jurisdiction.[97]

The supreme court granted certiorari and held that the court of appeals should have vacated the state court's ruling and remanded with direction to transfer the case to superior court.[98] The supreme court held that the court of appeals was required to do so by article VI, section 1, paragraph 8 of the Georgia Constitution,[99] which provides that "[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere."[100] Although the court of appeals held that the request for partial summary judgment was based on the plaintiff's lack of standing to sue rather than lack of subject matter jurisdiction, the supreme court held that (1) the constitutional provision referred to "jurisdiction" generally, and the concept of "standing" fell under "jurisdiction" in the general sense; and (2) the purpose of the constitutional provision was to "prevent parties from being penalized when their attorneys . . . make a mistake regarding the complex . . . rules that govern jurisdiction and venue and . . . file a case in the wrong court."[101]

During the survey period, the court of appeals issued several decisions addressing violations of its rules. For example, in *de Castro v. Durrell*,[102] the plaintiffs, owners of subdivision lots, brought suit against the defendants, owners of an adjoining lot, based on an alleged easement in a soccer field.[103] The plaintiffs moved to strike portions of the defendants' answers on the basis that the defendants set forth spurious defenses solely for the purpose of delay. The trial court, however, denied the motion to strike.[104] On appeal, the appellants, citing "Rule 11,"[105] argued that the trial court erred in denying the motion to strike.[106] However, citing Georgia Court of Appeals Rule 25(c)(2),[107] the court of appeals deemed the claim of error abandoned,

---

97. *Blackmon*, 284 Ga. at 370, 667 S.E.2d at 349.
98. *Id.* at 371–72, 667 S.E.2d at 350.
99. GA. CONST. art. VI, § 1, para. 8; *Blackmon*, 284 Ga. at 371, 667 S.E.2d at 350.
100. GA. CONST. art. VI, § 1, para. 8.

holding that it was the appellants' obligation to cite specific authority in support of their enumeration of error.[108]

Although failure to properly set forth enumerations of error holds the risk of the court of appeals declining to consider issues on appeal, in *Biederbeck v. Marbut*,[109] the court of appeals demonstrated its willingness to overlook technical violations when the intent of the appellant is obvious.[110] In that case, the appellants stated in their first enumeration of error that the trial court erred by not striking the appellee's quantum meruit claim and by requiring the appellee to proceed on the written contract between the parties. The appellee moved to dismiss the enumeration of error because the appellants had not filed a motion in the trial court to strike the quantum meruit claim.[111] The court of appeals determined that the appellees had moved for a directed verdict on the quantum meruit claim and had sought a motion for new trial on the same ground, and the trial court had denied these motions.[112] Based on its authority to consider the record in discerning what errors the appellant was attempting to make, the court of appeals concluded that it would address the trial court's ruling regarding the quantum meruit claim.[113]

In *Ruskin v. AAF-McQuay, Inc.*,[114] the parties entered into a settlement agreement but were unable to finalize some of the agreement's terms. The trial court referred the dispute to a special master, who resolved all issues, and the trial court adopted the special master's decisions, entering a judgment enforcing the settlement agreement. In a prior appeal, the court of appeals had concluded that the settlement agreement was enforceable, and the trial court subsequently found one of the parties in contempt for failing to follow the order adopting the settlement agreement.[115] Another appeal was filed, and the court of appeals determined that the appellant raised essentially the same arguments as in the first appeal.[116] Noting that the appellant's actions had delayed enforcement of the settlement for nearly four years, the court of appeals held that the appeal was "clearly an appeal for purposes of delay,"[117] and on the basis of Georgia Court of Appeals Rule

^@^@^@^@^A^PFNNUM^@^V^@^@^@

15(b),[118] imposed penalties of $2000 against the appellants and $2000 against their appellate counsel.[119]

FNNUM^@^V^@^@^@