

Court of Appeals of the State of Georgia

ATLANTA, August 28, 2024

The Court of Appeals hereby passes the following order:

A24D0404. LEMARCUS ALLISON et al. v. CALCON MUTUAL MORTGAGE LLC.

On July 16, 2024, this Court dismissed Lemarcus Allison’s discretionary application as untimely because it was filed 63 days after the superior court’s order dismissing his petition for review in this dispossessory case. In our order, we explained that Allison’s “Motion for New Trial or Judgment Notwithstanding the Verdict” — which was filed after the superior court dismissed his petition for review — did not extend the time for filing an application because no trial was had, and such a motion has no validity where it is not a proper vehicle for review of a trial court’s action. See *Luster v. Bank of America, N.A.*, 331 Ga. App. 510, 511 (769 SE2d 394) (2015) (motion for new trial was improper vehicle for review of trial court’s dismissal of action where there had been no trial); *Avion Systems v. Bellomo*, 338 Ga. App. 141, 144-145 (2) (789 SE2d 374) (2016) (motion for judgment notwithstanding the verdict is improper in the absence of a verdict). Allison, through attorney Clifford Hardwick, IV, filed a motion for reconsideration of our dismissal order.

CalCon Mutual Mortgage, LLC moved for sanctions, arguing that the application was frivolous. In a separate order, the Court directed Allison and attorney Hardwick to show cause why we should not find the application frivolous and issue sanctions. Although Allison and Hardwick filed affidavits in response to the show cause order, neither addressed the propriety of the application in their sworn statements. Rather, in an unverified “Response to Show Cause Order” and the motion for reconsideration of our dismissal, they argued that a motion for new trial

was proper because “[i]n the case at bar[,] the trial court dismissed [Allison’s] Petition for Review after a bench trial.” CalCon filed a supplemental motion for sanctions, arguing that the motion for reconsideration contained false information.

Allison and Hardwick’s assertion that the petition for review was dismissed after a bench trial is a blatant misrepresentation of what occurred below. The portions of the record provided to the Court, *by Allison and Hardwick*, clearly show that the petition for review was dismissed without a trial. Indeed, the lack of a trial was the superior court’s entire basis for denying the motion for new trial. Nevertheless, in their motion for reconsideration, Allison and Hardwick allege for the first time that the court dismissed the petition for review after a bench trial.¹

Because Allison has not established that the Court erred by dismissing his application, his motion for reconsideration is hereby DENIED. In addition, we find the application and the motion for reconsideration of our dismissal to be frivolous. Accordingly, CalCon’s motions for sanctions are GRANTED.

The trial court’s order informed Allison and Hardwick that a motion for new trial cannot be directed at a judgment of dismissal and that an improper motion for new trial does not extend the time for seeking appellate review. Further, we have warned them before that filing future frivolous matters in this Court would result in the imposition of sanctions. See Case No. A22A1233 (decided Apr. 26, 2024). Additionally, we have explicitly advised attorney Hardwick at least once before that the filing of a motion for new trial or judgment notwithstanding the verdict does not make an application timely where it is not the proper vehicle for review of a trial court’s action. See *Taylor v. Blackstone Residential Operating Partnership*, Case No. A22D0424 (decided June 24, 2022). In defiance of these warnings, Allison and Hardwick proceeded with this untimely application and subsequently relied on blatantly false assertions to support their request for reconsideration after the application was dismissed.

¹ In his application, Allison’s only attack on the motion for new trial order is that it was denied without a hearing.

Under these circumstances, there is no reasonable basis on which Allison and Hardwick could have anticipated reversal of the trial court's judgment, and we can only conclude that this application and the motion for reconsideration were filed for the sole purpose of delaying enforcement of the writ of possession. See *Trevino v. Flanders*, 231 Ga. App. 782, 783 (2) (501 SE2d 13) (1998) (a frivolous appeal penalty is authorized where the appellant could have no reasonable basis for anticipating reversal of the trial court's judgment); see also *Vaughn v. Roberts*, 282 Ga. App. 840, 841 (640 SE2d 293) (2006) ("Delay can be assumed where an appeal lacks merit. If an appellant knew or should have known that an appeal was ill-founded, sanctions should issue.") (citation and punctuation omitted).

Accordingly, we impose frivolous filing penalties under Court of Appeals Rule 7 (e) (2) in the maximum amount of \$2,500 against LeMarcus Allison and a \$2,500 against attorney Clifford Hardwick, IV, for the filing of this frivolous application and motion for reconsideration. The trial court is directed to enter a \$5,000 judgment in favor of CalCon Mutual Mortgage, LLC in the form of a \$2,500 penalty against LeMarcus Allison and \$2,500 penalty against Clifford Hardwick, IV. See *Mitchell v. Wyatt*, 192 Ga. App. 127, 129 (2) (384 SE2d 227) (1989); see also *Pitts Properties, Inc. v. Auburn Bank*, 274 Ga. App. 538, 538 (618 SE2d 171) (2005) (imposing maximum sanctions against appellants and their appellate counsel where appellants brought appeal despite trial court's warning that the action was frivolous). The imposition of this penalty constitutes a money judgment that may be collected in the trial court as are other money judgments. See Court of Appeals Rule 7 (e) (3).



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 08/28/2024

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 Bailey Smith

, Clerk.

**FOURTH DIVISION
DILLARD, P. J.,
BROWN and PADGETT, JJ.**

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>

August 28, 2024

In the Court of Appeals of Georgia

A24D0404. LEMARCUS ALLISON et al. v. CALCON MUTUAL
MORTGAGE LLC.

PER CURIAM.

On July 19, 2024, we directed attorney Clifford E. Hardwick, IV to show cause why he should not be held in contempt for making multiple misrepresentations of fact in his filings in this Court. For reasons that follow, we find Hardwick in contempt, revoke his permission to practice law before the Court of Appeals, and refer this matter to the Disciplinary Board of the State Bar of Georgia.

1. Background

Pursuant to Court of Appeals Rule 6, parties must serve filings made in this Court upon opposing counsel contemporaneously with or before filing, and may do so by one of three methods: United States Postal Service, personal service, or

electronic service. See Court of Appeals Rules 6 (b) & (d). A party that chooses to serve a filing via email must certify that “based upon a prior agreement with the recipient party, service of a PDF copy of the document via email will be deemed sufficient service.” Court of Appeals Rule 6 (b) (2).

On July 5, 2024, LeMarcus Allison filed an application for discretionary review against CalCon Mutual Mortgage, LLC, which is represented by attorneys Igor Y. Stephens and Brett Chaness. The application contains a certificate of service bearing the signature of Allison’s counsel, Clifford E. Hardwick, IV. The certificate states:

I hereby certify that I have on this day served a copy of the within and foregoing *Application for Appellate Review* upon counsels of record to this matter via Statutory Electronic Mail. I certify that there is a prior agreement with Igor Y. Stephens, Esq., Bret Chaness, Esq. to allow documents in a .pdf format sent via email to suffice for service[.]

CalCon moved for sanctions on the grounds that the attorneys had no prior agreement for electronic service and that Hardwick did not accomplish service as required by our Court rules. In support of the motion, CalCon submitted the affidavits of attorneys Stephens and Chaness, who both averred that they had not made any agreement with Hardwick to accept filings via electronic mail or other electronic means and that they never received a service copy of the application by email, U. S.

mail, or any other means. The day after CalCon filed its motion to dismiss, an amended certificate of service for the application was filed. The amended certificate of service bore Hardwick's signature and certified that he served the application on CalCon's attorneys via the United States Postal Service on July 9, 2024 — four days after the application was filed.

This is not the first time Hardwick has been accused of violating Rule 6. In three prior cases in this Court, CalCon's counsel alleged that Hardwick misrepresented that the parties had an agreement for electronic service and that Hardwick had not served them by email or any other means. See Case Nos. A22D0155, A22A0212, and A22A0545. Hardwick never responded to any of these allegations.

In Case No. A22D0155, we warned Hardwick that “[t]his Court takes seriously misrepresentations like that alleged by Calcon, and both counsel and client may be subjected to sanctions in this or other appeals for such misconduct if proven.” Case No. A22D0155 (decided Dec. 27, 2021). Further, due to the uncontradicted evidence of insufficient service in Case Nos. A22A0212 and A22A0545, we struck Hardwick's

briefs and dismissed those appeals. See Case Nos. A22A0212 and A22A0545 (decided Feb. 1, 2022). In each dismissal order, we noted that

this is not an isolated incident, as attorney Hardwick has . . . misrepresented the existence of a prior agreement in [Case Nos. A22D0155, A22A0212, and A22A0545]. Hardwick is cautioned that “[r]epeated violations of this Court’s rules or orders may result in the revocation of the violator’s admission to practice before the Court of Appeals.” Court of Appeals Rule 7 (d).

In light of the foregoing circumstances, the Court ordered Hardwick, in connection with the instant application, to show cause why he should not be held in contempt for his repeated misrepresentations before this Court. In response, Hardwick provided an affidavit from his senior paralegal and office manager, whom he made responsible for finalizing and filing documents in all cases. The paralegal stated that she was on vacation when the application came due, and that in her “zest to . . . file the document and get back to enjoying [her] family, [she] inadvertently utilized an older template for the Certificate of Service, which contained the incorrect statement.” She stated that she realized this “inadvertent mistake” while she was still on vacation, but CalCon filed a motion regarding this issue before she could remedy the situation. She asserted that “[u]pon [her] return to the office, [she] took the

necessary steps to correct the issue and filed an Amended Certificate of Service, as acknowledged by the Court.”

Hardwick also filed an affidavit¹ in which he stated:

I personally am not involved in the preparation and the filing of Certificates of Service to Counsel and the Courts. I have never engaged in that activity. The responsibility for these tasks are exclusively handled by my law firm staff.

He also explained that he had “discussed this issue with [his] staff, following the prior admonition regarding the issue,” but the “current mistake occurred in the midst of a holiday rush to timely file and serve the [application]” and by the time he became aware of it, his “staff . . . had already commenced corrective action, as evidenced by the Amended Certificate of Service.” Notwithstanding his and his paralegal’s characterization of the service issue as a “mistake,” Hardwick also asserted that he was not in violation of Court of Appeals Rule 6 because he had served opposing counsel electronically in the lower courts on multiple occasions without objection.

2. Findings of Fact and Conclusions of Law

¹ The show cause order gave Hardwick the option of appearing at an oral hearing, which he waived by choosing to file an affidavit.

Upon consideration of the parties' affidavits, all submissions related to the motion for sanctions, and the records in the previously-referenced actions, we find that attorney Hardwick falsely certified that he had an agreement with CalCon's attorneys for electronic service concerning filings in this Court, in willful disregard of this Court's rules and our prior admonitions.

As an initial matter, we reject Hardwick's patently disingenuous and frivolous assertion that he complied with our rules because electronic service on CalCon's attorneys in the lower court amounts to an agreement for electronic service in this Court. It should go without saying that service in the lower courts — which is governed by the rules of those courts — has no bearing on whether the parties have an agreement to serve a document via email in this Court under our rules. See Court of Appeals Rule 6 (b) (2) (providing that a party may serve a document in the Court of Appeals by email if the filer certifies the existence of a prior agreement for email service of *that document* — not an agreement for service of a document filed in a different court). More importantly, however, Hardwick cannot credibly argue that he reasonably believed that an implied agreement existed — especially in the instant case — given that CalCon's attorneys have previously accused Hardwick of

misrepresenting the existence of such an agreement in three separate cases in this Court.

On the contrary, based upon Hardwick's admission that the certification regarding an agreement for service was a "mistake" for which his staff took "corrective action," the corroborating testimony of his paralegal, who deemed the certification an "incorrect statement," and Hardwick's failure to review the certificates of service before his paralegal filed them, we find that Hardwick knew that the parties did not have an agreement for electronic service concerning filings in this Court and that he willfully defied this Court's rules and our prior admonitions by failing to ensure that the certificates of service bearing his signature contained truthful information.

It is no defense that Hardwick was not personally involved in preparing the certificates of service. As a lawyer, Hardwick is prohibited from engaging in professional conduct involving dishonesty or misrepresentation and is required to be truthful when dealing with others — including a tribunal — on a client's behalf. See, e.g., Georgia Rules of Professional Conduct 3.3, 4.1, and 8.4 (a) (4). And Hardwick

was required to make reasonable efforts to ensure that his paralegal's conduct was compatible with his professional obligations. See *id.* at Rules 5.3 (a) and (b).

Although Hardwick asserts that he spoke to his staff about the misrepresentations in the certificates of service after our prior admonitions, he inexplicably allowed his paralegal to continue signing his name to certifications and filing them in this Court without verifying their accuracy. Indeed, Hardwick completely abdicated his duty to supervise his staff in this regard, which is evident from his admission that he was unaware of the false certification in the instant case until after his paralegal had already filed an amended certificate of service. Under these circumstances, Hardwick's efforts are far from reasonable. His intentional ignorance of his paralegal's actions in the face of three prior warnings from this Court on this exact issue between the same parties rises to willful disregard of the Court's rules and the seriousness of our warnings in the three prior orders.

When alleged attorney misconduct is brought to the Court's attention, we may dispose of the matter "through the use of [our] inherent, statutory, or other powers, or refer the matter to an appropriate state agency for investigation or disposition." Court of Appeals Rule 7 (b). See also Court of Appeals Rule 7 (a) (nothing contained

in the Court’s rules shall be construed to deny or limit the Court’s inherent power to maintain control over proceedings conducted before it). Further, under OCGA § 15-1-4 (a) (2), the Court has the power to punish for contempt in cases involving the “[m]isbehavior of any officers of the courts in their official transactions[.]” This statute is intended to impose upon lawyers engaged in their official transactions a higher duty to the court than is demanded of others. See *In re Dillon*, 344 Ga. App. 200, 203 (808 SE2d 436) (2017) (“[C]ourts have broader contempt powers in cases of misbehavior of any of the officers of the courts.”) (citation and punctuation omitted). If the misconduct amounts to repeated violations of this Court’s rules or orders, we may revoke the violator’s admission to practice in the Court of Appeals. See Court of Appeals Rule 7 (d).

Based on the foregoing findings, the Court hereby holds Clifford E. Hardwick, **IV IN WILLFUL CONTEMPT** for repeatedly making false representations in this Court. We are alarmed that Hardwick continued to make the same misrepresentations with no regard for the Court’s numerous warnings, and we are troubled by his apparent failure or refusal to recognize how this pattern of behavior constitutes misconduct, or to acknowledge the gravity of his actions. We are particularly

concerned that Hardwick seems to believe that shifting blame to his paralegal somehow mitigates the seriousness of the misconduct. On the contrary, it exacerbates the situation, as it highlights an inexcusable lack of oversight and accountability. Given these circumstances, the Court believes there is a significant risk that Hardwick will be undeterred from making future misrepresentations in this Court, despite any finding of contempt in this matter. Thus, we hereby exercise our authority under Rule 7 (d) and **REVOKE** Clifford E. Hardwick, IV's permission to practice law before the Court of Appeals upon completion of his representation in his pending cases.

Hardwick is currently representing litigants in four direct appeals (Case Nos. A24A1372, A24A1399, A24A1514, A24A1860), and two discretionary applications (Case Nos. A25D0006, A25D0020) pending in this Court. Hardwick will be permitted to continue his representation in those cases only. For purposes of this Order, we consider Hardwick's representation in these pending cases to be over once one of the following conditions is met: (1) upon the expiration of the motion for reconsideration period following disposition of the case, if no motion for reconsideration is filed within that time; (2) upon expiration of the time to file a notice of the intention to petition for a writ of certiorari, if no such notice is filed within that

time; (3) upon filing of a notice of filing a petition for writ of certiorari to the Supreme Court of Georgia.²

Hardwick is **DIRECTED** to forward a copy of this order to LeMarcus Allison and the parties he represents in the above-listed cases within five days of the entry of this Order. Service may be accomplished by United States Postal Service, personal service, or electronic service. Hardwick is **FURTHER DIRECTED** to file an affidavit in this Court certifying that he has served this Order in compliance with our directive. The affidavit shall include each recipient's name; the method of service utilized for each recipient; and each recipient's physical mailing address, regardless of how the order is served. Failure to file the service affidavit by September 4, 2024 at 4:30 p.m. will result in a finding of contempt and sanctions.

Upon completion of Hardwick's representation in the pending cases, as outlined above, the Clerk of Court is **DIRECTED** to remove Clifford E. Hardwick, IV's name from the roll of attorneys permitted to practice in this Court.

The Clerk is **FURTHER DIRECTED** not to accept any future filings from Clifford E. Hardwick, IV, except the service affidavit we require in this case and in the

² These conditions should not be read in any way to limit the litigants' appellate rights.

pending cases identified above. This prohibition applies to the instant case, as well as direct appeals, applications, motions, and all other filings. No motion for reconsideration is permitted from this order, and the filing of any such motion — by Hardwick or any other person on his behalf — will result in a finding of contempt and sanctions.

The Clerk of Court is **DIRECTED** to forward a copy of this Order to the Disciplinary Board of the State Bar of Georgia.

Clifford E. Hardwick, IV held in contempt and permission to practice law in the Court of Appeals revoked. Division Per Curiam. All Judges concur.