
**IN THE COURT OF APPEALS OF GEORGIA
STATE OF GEORGIA**

HEIDI CHAPMAN

Appellant,

v.

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

Appellee

APPELLANT’S BRIEF

A26A2158

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III. INTRODUCTION

This case was originally filed on May 13, 2024, within the two year deadline. *Id.* (V2-109-119). On May 15, 2024, the complaint and summons were returned. The filing was returned by the Clerk because the attorney's name and bar number are missing from the document. It was also returned because there had no been no payment. (V2-111).

The case was thereafter filed on May 24, 2024, (V2-122), and the defendant served on May 30, 2024. It was thereafter dismissed for want of prosecution on July 31, 2024. (V2-123).

Plaintiff refiled the case on October 28, 2024 (V2-15), and served defendant within the 6 month period on November 25, 2024. (V2-92).

Defendant filed a motion to dismiss. As the Court notes on (V2-124), May 13, 2024, was the last possible filing date that the case could have been filed within the statutes of limitations. Plaintiff responded to defendant's motion.

Without notice to plaintiff or counsel, the trial court took judicial notice of the earlier case (but not the documents attached to plaintiff's response). (V2-124).

The Court held that plaintiff had failed to comply with Uniform Superior Court Rule 36.16(a), as interpreted in that Court's Administrative Order 2018-EX-001350. (V2-124-125)

However, the Court misstated the Uniform Rule, changing the sentence under Subsection (F) from “will enter appropriate relief” to “may enter” (V2-125). In addition, the Court faulted plaintiff for not complying with Administrative Order 2018-EX-001350, when such rule had no validity under Uniform Superior Court Rules 1.1 and 1.2. (V2-125).

The Court further found that original service on May 24, 2024, was untimely, (V2-125), and even if the Court had allowed such service to stand it would have infected the subsequent suit without citing Hobbs v. Arthur, 264 Ga. 359 (1994).

The Court dismissed the case. (V2-126). Plaintiff timely appealed. (V2-9).

IV. JURISDICTIONAL STATEMENT

This Court has jurisdiction of this appeal under O.C.G.A. §5-6-34(a)(13).

This Court has jurisdiction of this appeal because the appeal is not within the exclusive jurisdiction of the Supreme Court, Ga. Const. Art. VI, Sec. VI, Para. II or III as revised by O.C.G.A. §15-3-31.

A notice of appeal was filed in the case on January 16, 2026. (V2-9)

V. ENUMERATION OF ERRORS

1. This Court erred in taking judicial notice in the case without proper notice. (V2-122).

2. This Court erroneously applied the Uniform Rules of Supreme Court (and Local Rule), in determining whether plaintiff had timely filed her original case. (V2-123-124)
3. Assuming the original service was within the statute of limitations, the Court erred in finding service in the renewed case to be untimely. (V2-125-126)

VI. STATEMENT OF THE CASE

This case was a renewal case originally brought on March 13, 2024. (V2-124). Such a filing was timely. However, on March 15, 2024, the Clerk rejected the filing because the case initiation form lacked “the attorney’s name and bar number”, and the complaint lacked the payment of necessary fee. (V2-134, 110-117).

The case was dismissed without prejudice on July 31, 2024, (V2-123), and refiled on October 28, 2024 (V2-122).

The defendant moved to dismiss the renewed petition on the grounds that the original complaint not been timely filed. (V2-92 *et. seq.*) Plaintiff responded to that motion. (V2-102 *et. seq.*).

The Court, thereafter, dismissed the renewed action as untimely. (V2-122). In doing so, the Court took judicial notice of documents without giving notice of

its intent to do so. (V2-123), and failed to take judicial notice of documents (V2-109-119), because they were unauthenticated. (V2-124).

In addition, the Court misread Uniform Superior Court Rule 36.16(F), substituting the word “may” for the word “will”, and relying on a local rule despite Uniform Superior Court Rules 1.1 and 1.2. (V2-124-125).

The Court dismissed the action (V2-122). Plaintiff timely appealed. (V2-9).

VII. SUMMARY OF ARGUMENT

The Court below failed to give effect to Uniform Superior Court Rule 36.16(F) as mandatory rather than permissive. Rule 36.16(F) provides that “a court will enter appropriate relief.” (V2-125). The Court read that language as “may enter appropriate relief.” (V2-125). In doing so, the Court relied on a local rule without recognizing that the rule no longer had validity in light of Uniform Superior Court Rule 1.1 and 1.2 (V2-124-125).

Thereafter the Court took judicial notice of documents filed in the earlier case (the instant case was a renewal case) without notice to counsel. Moreover, the Court refused to take notice of documents attached from the earlier case because they were not authenticated. Had the Court given notice, plaintiff would certainly have argued that the Court should take judicial notice of such documents.

The Court abused its discretion in not following Uniform Superior Court Rule 36.16(F), as written and instead relying on a local rule. The Court abused its discretion in failing to inform counsel of its intent to take judicial notice.

VIII. ARGUMENT

I. THE COURT ERRED IN TAKING JUDICIAL NOTICE IN THIS CASE WITHOUT PROPER NOTICE TO PLAINTIFF

O.C.G.A. §24-2-201(e) provides:

(e) A party shall be entitled, upon timely request, to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, such request may be made after judicial notice has been taken.

The Court did not give notice that it intended to take judicial notice of the prior lawsuit.¹

Given the fact that judicial notice was taken at the end of the case, the taking of judicial notice in the case raises serious due process issues.

It is true that Hunter v. Will 352 Ga. App. 479 (2019) says “. . . a plain reading of the current version of OCGA § 24-2-201 dictates that the trial court can

¹ The standard of review as to whether the Court erred in taking judicial notice without notice to plaintiff is *de novo*. [Shannon v. Hatch](#), 359 Ga.App. 787 (2021). As to whether the Court otherwise erred in taking judicial notice, the standard of review is abuse of discretion, that is, where the trial court misstates or misapplies the relevant law. Eagle Jets, LLC v. Atlanta Jet, Inc., 347 Ga.App. 567 (2018).

take judicial notice . . .” But issues merely lurking in the record [not] expressly ruled upon, have not been so decided so as to constitute precedent. Wallace v. Chandler, 360 Ga. App. 541 (2021).

Respectfully, appellant submits that the Hunter observation is erroneous.

As the United States Supreme Court noted in Garner v. State of La., 368 U.S. 157 (1961) “[u]nless an accused is informed at the trial of the facts of which the court is taking judicial notice, not only does he not know upon what evidence he is being convicted, but, in addition, he is deprived of any opportunity to challenge the deductions drawn from such notice or to dispute the notoriety or truth of the facts allegedly relied upon.” Accord Ohio Bell Tel. Co. v. Public Utilities Commission of Ohio, 301 U.S. 292 (1937); see also Cooperativa de Ahorro y Credito Aguada v. Kidder, Peabody & Co., 993 F.2d 269 (1ST Cir. 1993), and cases cited; Pain Referral Services, LLC v. Otto, 774 F.3d 1045 (8th Cir. 2014); Lussier v. Runyon, 50 F.3d 1103, 1114 (1ST Cir. 1995); Cf Garner v. State of La., 368 U.S. 157 (1961).

Neither O.C.G.A. §24-2-201(e) nor FRE 201(e) specifies “the procedure that must be followed to claim that right. As Wright, Miller, and Marcus, Federal Practice & Procedure note at §5109:

Rule 201(e) places the burden on the parties to exercise their right to be heard on the propriety of taking judicial notice but it does not specify the procedure that must be followed to claim that right. The Rule requires a request

for a hearing but does not specify the form it should take. Some writers say that the proponent's request for judicial notice under 201(d) should suffice as a request to be heard under Rule 201(e). If this is correct, it suggests that an opponent's request to be heard should take analogous form; that is, it should state whether the impropriety arises under Rule 201 or some law extrinsic to the Evidence Rules, specify the authority that makes notice improper, and—if the claim is that notice is proper but the tenor is wrong, some source showing the true tenor of the fact. Though we think the request for a hearing should be in writing, some commentators suggest that an oral request will suffice if made on the record.

(footnotes omitted).

Wright, Miller and Marcus, Federal Practice & Procedure §5109 suggests two alternatives for an Appellate Court.

The first is for this Court to apply “the sanction of nullity” and simply ignore the noticed facts in deciding the case, citing In re Estate of Russell, 95 Cal. Rptr. 88 (1971), or as an alternative “the court could remand the case for the purpose of affording the party the hearing [she] should have been given the first time” citing Oneida Indian Nation of New York v. State of N.Y., 691 F.2d 1070, 1086 (2d Cir. 1982). See also Perry v. Emory Healthcare Services Management, LLC, 374 Ga. App. 41 (2025).

The Court should follow either of these alternatives, vacate the final judgment, and remand for an O.C.G.A. §24-2-201(e) hearing.

II. THE COURT ERRONEOUSLY APPLIED THE UNIFORM RULES (AND LOCAL RULES) IN DETERMINING WHETHER IT HAD TIMELY FILED HER ORIGINAL CASE²

Exhibit 1 is a case initiation form. (V2-109-119). It shows a filing in the earlier case, see *Id.* at (V2-109-119), on March 13, 2024 which includes a MARTA summons (V2-112). The lead document is for HEIDE CHAPMAN, the appellant below (V2-115).

As the Court notes, these documents were not authenticated. But the Court erred in not judicially noticing these documents³ (just as the Court had the right to notice such documents under Perry v. Emory Healthcare Services Management, LLC, 374 Ga. App. 41 (2025)). See Hunter v. Will 352 Ga. App. 479 (2019) (“In taking judicial notice of a fact the trial court dispenses with the need for any evidence regarding it.”) It cannot be reasonably argued that the documents attached at V2-109-119, are not what they appear to be. The trial court should have taken judicial notice of such records. O'Toole v. Northrop Grumman Corp.,

² The standard is abusive of discretion. See Eagle Jets, LLC v. Atlanta Jet, Inc., 347 Ga.App. 567 (2018). The Court does cite to Administrative Order 2018-EV-001350 at 5, see V2-124-125, but Uniform Superior Court Rule 1.1 and 1.2 rob the order of any validity. There is other explanation as to why the Court took judicial notice of some of the documents in the prior case, but not the notice sent by the Clerk to plaintiff's counsel.

³ Particularity when plaintiff requested the Court to do so. (V2-103)

499 F.3d 1218 (10TH Cir. 2007), Perry v. Emory Healthcare Services Management, LLC, 374 Ga. App. 41 (2025).

Uniform Superior Court Rule 36.16(a)⁴ provides:

An electronic document is presumed filed upon its receipt by the electronic filing service provider . .

Subsection (F) provided:

System or sued filing errors

If electronic filing or service is prevented or delayed because of a failure of electronic filing system, a court will enter appropriate relief such as the allowance of filing nunc pro tunc

After taking judicial notice, the trial court misapplied the Uniform Rules that were in effect at the time. Nor did the Court refer to the plaintiff's request except to say the documentation was authenticated.

In addition, the Court below misapplied the controlling Superior Court and Local Court Rules. See Uniform Superior Court Rule 1.1 and 1.2.

This Court has routinely found that electronic filing can be timely despite the clerk's actions.

⁴ At V2-125 of the Court's order, the Court cites to the same Uniform Rule 36.16(a)(F), but changes it. The rule says the Court "will enter appropriate relief". The Court cites the Order as the Court "may enter an order . . .". Moreover, the Court cites a pre Uniform Superior Court Rule from 2018. Barbour v. Sangha, 346 Ga. App. 13 (2018).

In Lavan v. Philips, 184 Ga. App. 573 (1987), a pre electronic filing case, this Court reversed the trial court and held that a complaint was timely filed even though it was file-stamped after the statute of limitations had run, since it had been delivered to the clerk's office official receptacle on Saturday, December 22. But the clerk did not pick up the filing until December 26, even though the post-office box was open and accessible on December 24. The problem was that the Clerk's office had been closed since December 21 at 5 p.m., a Friday. As the Court explained:

“The actual date of filing is the date upon which the paper is handed to the clerk to be filed. [Cits.]” Brinson v. Ga. R. Bank & Trust Co., 45 Ga.App. 459, 461, 165 S.E. 321 (1932). See also Forsyth v. Hale, 166 Ga.App. 340, 341, 304 S.E.2d 81 (1983). The clerk's endorsement as to the date of filing is the best evidence of the filing of such paper, and is presumed correct as long as it is not challenged. *Id.* However, the clerk's endorsement is not a necessary prerequisite to filing, but only evidence of delivery of the paper intended to be filed to the clerk. *Id.* “So, where a [pleading] has been delivered for filing to the clerk, it will be deemed filed even though that officer fails to make the proper entry of filing thereon. [Cit.]” Brinson, supra, 45 Ga.App. at 461, 165 S.E. 321.

In Barbour v. Sangha, 346 Ga. App. 13 (2018), the defendant electronically filed an answer and other defensive pleadings. He had been served on June 2, 2016, a Thursday; the answer was filed July 5, 2016. That same day, defendant received an acknowledgement of the filing from the Peach Court e-filing system. But the next day (July 6), the clerk's office sent an e-mail to defense counsel's

registered e-filer, Victoria Lockard, that the filings had been rejected because “the signature of the documents do not match the credentials of the filer.” Lockard did not see this e-mail.

In S. T. C., Inc. v. Ralph + Rita Venture, LLC, 376 Ga. App. 130 (2025), the appellants attempted to file an appeal in Fulton Superior Court because “there was a technical problem in the court’s e-filing system that delayed its filing for the petition for review.” The appeal was rejected because [t]his case was submitted in person.

As the Court noted in Piksel America, Inc. v. Piksel, Inc., 378 Ga. App. 613 (2026):

[S]tate court clerks have the legal duty to file pleadings, not to ascertain their legal effect. These duties of the clerk relating to the filing of pleadings are ministerial in nature and do not involve the exercise of discretion.

Accord Alexander v. Gibson, 300 Ga. 394, 395 (2016).

Here, the rejected pleadings are in the record, and this Court, like any other appellant court, can take judicial notice of such filing.

Plaintiff, in fact asked the Court to look at such documents (V2-103).

This Court can take judicial notice of the same documents. See e.g. United States v. Herrera-Ochoa, 245 F.3d 495 (5th Cir. 2001), Government of Canal Zone v. Burjan, 596 F.2d 690 (5th Cir. 1979).

The Court should either take judicial notice of the documents found at V2 – 109-119, or remand this case to the State Court.

**III. ASSUMING THE ORIGINAL SERVICE WITHIN
THE STATUTE OF LIMITATIONS WAS THE COURT ERRED
IN FINDING SERVICE IN THE RENEWED CASE TO BE UNTIMELY**

In reliance on its earlier holding that the original action was untimely, the Court then determined the renewal case was also untimely (V2-125-126). As appellant has pointed out, the Court erred in not holding that the original filing was untimely, see pages 12-19, *supra*⁵

But the Court also holds that even if the initial was filed on May 13, 2024, that the renewal case was itself untimely (V2-125-126).

Suffice it to say that Hobbs v. Arthur, 264 Ga. 359 (1994) holds the opposite.

Accordingly, inasmuch as diligence in perfecting service of process in an action properly refiled under OCGA § 9–2–61(a) must be measured from the time of filing the renewed suit, any delay in service in a valid first action is not available as an affirmative defense in the renewal action.

Id. at 360-361.

Insofar as the trial relied on lack of diligence in serving the first complaint to dismiss this case, the Court erred.

⁵ The standard of review for this alternative holding is *de novo*, as the Court below misapplied the law.

RULE 24 CERTIFICATION

I hereby certify that this submission does not exceed the word count limit imposed by Rule 24.

CERTIFICATE OF SERVICE

This is to certify that on June 22, 2026, I served a copy of the Appellant's Brief upon all counsel of record by using electronic filing via eFast System and by mailing the brief by U.S. mail to:

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