

APPEAL NO. A26A2158

IN THE COURT OF APPEALS
STATE OF GEORGIA

HEIDI CHAPMAN,
Plaintiff/Appellant,

v.

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY
Defendant/Appellee.

BRIEF OF APPELLEE

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

On Appeal from the Superior Court of Fulton County

Civil Action No. 24CV013677

(The Honorable Scott McAfee)

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TABLE OF CONTENTS

PRELIMINARY STATEMENT	3
I. STATEMENT OF FACTS	4
A. APPELLEE’S PROCEDURAL HISTORY AND MATERIAL STATEMENT OF FACTS	4
B. APPELLEE’S OBJECTIONS TO APPELLANT’S STATEMENT OF FACTS	5
II. ARGUMENT AND CITATION OF AUTHORITY	6
A. STANDARD OF REVIEW.....	6
B. THE TRIAL COURT PROPERLY TOOK JUDICIAL NOTICE, AND APPELLANT WAIVED ANY OBJECTION BY FAILING TO REQUEST A HEARING.	8
C. THE TRIAL COURT CORRECTLY APPLIED ANY RELEVANT UNIFORM SUPERIOR COURT RULES IN DETERMINING WHETHER APPELLANT’S ORIGINAL ACTION WAS TIMELY FILED.....	14
III. CONCLUSION	17
CERTIFICATE OF COMPLIANCE	18
CERTIFICATE OF SERVICE	19

PRELIMINARY STATEMENT

This Court should affirm the trial court's dismissal of Appellant's renewal action, in all respects. On appeal, Appellant provides no basis for reversing that decision. The appeal arises from Appellant's attempt to circumvent the statute of limitations by improperly renewing a void lawsuit. Appellant challenges the trial court's use of judicial notice, but the record demonstrates that Appellant received all process due under Georgia law and forfeited any objection by failing to request a hearing on the propriety of judicial notice after it was taken. Appellant's action was untimely filed, barred by the applicable statute of limitations, and Appellant cannot manufacture the timely commencement of an action where none exists. The trial court correctly applied Uniform Superior Court Rule 36.16, as there was no failure of the electronic filing system. Plaintiff attempted to file the initial complaint on the day the statute of limitations expired, but failed to commence the original action until approximately two weeks after the expiration of the limitations period. Due to this, the original action was void. Plaintiff refiled the suit under Georgia's renewal statute, O.C.G.A. §9-2-61. Accordingly, Plaintiff's renewal action was properly dismissed. Since each of Appellant's arguments fail as a matter of law and fact, this Court should affirm the trial court's ruling granting Appellee MARTA's Motion to Dismiss for Want of Jurisdiction.

I. STATEMENT OF FACTS

A. Appellee's Procedural History and Material Statement of Facts

On May 24, 2024, Appellant filed an action for damages in Fulton County Superior Court. The civil action filing number is 24CV013677. [V2:15-17]. The Complaint alleged that on May 12, 2022, a MARTA bus operator, Joseph Lloyd, recklessly closed the bus doors on her person. [V2:15-17]. On June 6, 2024, Appellant filed an affidavit of service showing that Appellee MARTA had been served with process on May 31, 2024. [V2:123]. On June 21, 2024, the trial court entered its standing order which required a plaintiff to serve a defendant, or defendants, within sixty (60) days of filing the action. [V2:123]. The standing order also required a plaintiff to file a motion for default judgment within fifteen (15) days of the order if a defendant was in default. [V2:123]. The order provided that if the requirements were not met, the action would be dismissed without prejudice for want of prosecution. [V2:123]. On July 31, 2024, the trial court dismissed Appellant's action for want of prosecution. [V2:123].

On October 28, 2024, approximately three months after dismissal, Appellant filed a renewal action pursuant to O.C.G.A. §9-2-61. [V2:15]. The renewal action named only Appellee as a defendant since Appellant failed to serve Joseph Lloyd prior to this dismissal of the original action. [V2:15; V2:123]. Appellee was served with process in the renewal action on November 25, 2024. [V2:40]. The affidavit of

service was not filed until March 10, 2025. [V2:40]. On December 30, 2024, Appellee filed its Answer by special appearance specifically asserting defenses of lack of jurisdiction, failure to state a claim upon which relief can be granted, and expiration of the applicable statute of limitations, among others. [V2:21]. After the closing of a reopened discovery period, and following a notice for trial, Appellee filed a Motion to Dismiss for Want of Jurisdiction on October 30, 2025. [V2:92]. A stipulation to extend the time for Appellant's response was filed on November 21, 2025. [See V2:99-100]. Appellant filed her response on December 15, 2025. [V2:102-121]. On December 17, 2025, the trial court granted Appellee's motion, finding that Appellant's original action was time barred and incapable of renewal. [V2:122-126]. On January 16, 2026, Appellant filed a notice of appeal, followed by six amended notices of appeal which were filed between January 20, 2026 and May 12, 2026 without an application for or granting of an extension. [V2: 1-12; V2:142-147]. The record was not transmitted to the Court of Appeals until June 2, 2026.

B. Appellee's Objections to Appellant's Statement of Facts

Georgia Court of Appeals Rule 25(a) requires that an appellant's brief include, "a statement of the case that sets out the material facts relevant to the appeal, describes the relevant proceedings below, and identifies how each enumerated error was preserved for review, with appropriate citations to the record." (Ga. Ct. App. R. 25(a)(5)). Appellee objects to Appellant's entire statement of the case. First,

Appellant's statement of the case cites incorrect dates. Appellant cites March 13, 2024, as the date the renewal action was filed and incorrectly asserts that on March 15, 2024, said filing was rejected by the clerk. (See *Brief of Appellant*, p.8). The record clearly shows that the renewal action was filed on October 28, 2024, and does not suggest or reveal that the renewal action was rejected by the clerk. Whether the original action or renewal action was filed on March 13, 2024 is unfounded; there is only documentation that a filing attempt by Appellant occurred on May 13, 2024.

Second, Appellant's statement fails to identify how each enumerated error was preserved for review. With regard to Appellant's enumeration of error that the trial court failed to provide advanced notice of its intention to judicially notice Appellant's affidavit of service, the record is silent as to any objection, motion, or request for hearing in any form. Although, Appellant did argue that the trial court misapplied, or misread, the Uniform Superior Court Rules, she did not identify this error in the statement of the case.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review

An appellate court reviews de novo a trial court's ruling on a motion to dismiss. Doe v. Saint Joseph's Catholic Church, 313 Ga. 558, 870 S.E.2d 365 (2022). The same de novo standard applies to dismissals for failure to state a claim, for lack of subject-matter jurisdiction, lack of personal jurisdiction, and based on the

expiration of the statute of limitations, with the pleadings construed in the light most favorable to the plaintiff, all doubts resolved in the plaintiff's favor, and all well-pled allegations accepted as true. Gwinnett Cty. v. Netflix, Inc., 367 Ga. App. 138, 885 S.E.2d 177 (2023). Dismissal for failure to state a claim is proper only when the complaint shows with certainty that the plaintiff would not be entitled to relief under any state of provable facts asserted in support of the claim and the movant establishes that the plaintiff could not possibly introduce evidence within the framework of the complaint sufficient to warrant the relief sought. Doe v. Saint Joseph's Catholic Church, 313 Ga. 558, 870 S.E.2d 365 (2022); Northway v. Allen, 291 Ga. 227, 728 S.E.2d 624 (2012). When the jurisdictional challenge is factual rather than facial, the trial court may consider evidence beyond the complaint; factual determinations made after a hearing are tested under the any-evidence rule, but the grant of the motion remains subject to de novo review. Simmons v. Solo Cup Operating Corp., 373 Ga. App. 69, 907 S.E.2d 377 (2024). Where dismissal rests on the expiration of the statute of limitations, review is de novo because the issue is resolved under the same motion-to-dismiss principles. Doe v. Saint Joseph's Catholic Church, 313 Ga. 558, 870 S.E.2d 365 (2022); Love v. Fulton Cty. Bd. of Tax Assessors, 348 Ga. App. 309, 821 S.E.2d 575 (2018).

A trial court's decision to take judicial notice of adjudicative facts is reviewed for abuse of discretion. Hunter v. Will, 352 Ga. App. 479, 833 S.E.2d 128 (2019).

"While a court has wide discretion to take judicial notice of facts, ... the taking of judicial notice of facts is, as a matter of evidence law, a highly limited process." Najarian Capital, LLC v. Clark, 357 Ga. App. 685, 849 S.E.2d 262 (2020)(citation and punctuation omitted).

B. The trial court properly took judicial notice, and Appellant waived any objection by failing to request a hearing.

1. Georgia Law Permits Judicial Notice Without Advance Notice to the Parties.

The timing of the trial court's judicial notice was within the court's discretion, fully authorized by statute, and complied with O.C.G.A. § 24-2-201. O.C.G.A. § 24-2-201 governs judicial notice of adjudicative facts and expressly permits a trial court to take judicial notice at any stage of the proceeding, without advanced notice, and whether requested by a party or not. O.C.G.A. § 24-2-201; Hunter v. Will, 352 Ga. App. 479, 833 S.E.2d 128 (2019) (emphasis added); Najarian Capital, LLC v. Clark, 357 Ga. App. 685, 849 S.E.2d 262 (2020). The trial court judicially noticed the affidavit of service filed in Appellant's original action (Fulton County Superior Court Rule 24CV006720), which is not uncommon. [See V2: 122- 126]. The affidavit attested that Defendant MARTA was served on May 31, 2024, which was approximately two weeks after the expiration of the statute of limitations. [See V2: 122- 126]. The date of service in the original action was "not subject to reasonable dispute" and was "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." O.C.G.A. § 24-2-201.

There can hardly be error where a trial court acts well within its authority and in the interest of judicial economy. A trial court may take judicial notice of the physical record of an original action on file in its own court when ruling on whether a subsequent action meets the statutory requirements for a valid renewal action under O.C.G.A. § 9-2-61. See Petkas v. Grizzard, 252 Ga. 104 (1984); Whitesell v. Ga. Power Co., 341 Ga. App. 279 (2017). In Petkas, the Supreme Court examined whether a trial court may take judicial notice of the record in a prior suit within the same court when determining if a new action falls under the renewal statute, O.C.G.A. § 9-2-61. The Court granted certiorari specifically on this issue, ultimately reversing the Court of Appeals' decision that affirmed the dismissal of the defendant's motion to dismiss. The Court of Appeals' error lay in its conclusion that the trial court should have dismissed the case based on the statute of limitations, since the complaint did not explicitly allege it was a renewal action, and neither the pleadings nor the record from the dismissed action were formally introduced as evidence. This reversal included overruling prior cases that conflicted with the Civil Practice Act's underlying policy of substantial justice and judicial economy. See O.C.G.A. §9-11-1; Petkas v. Grizzard, 252 Ga. 104 (1984).

Following Petkas, The Court of Appeals has consistently upheld the principle that when a renewal action is filed in the same court as the original action, the trial court is empowered to take judicial notice of the physical record in the original action

to determine the validity of the renewed action under O.C.G.A. § 9-2-61. See also, Mumford v. Davis, 206 Ga. App. 148 (1992)(affirming that a trial court may take judicial notice of the physical record of an action filed in its own court to decide if a subsequent action complies with the renewal provisions of O.C.G.A. § 9-2-61.) See also, Whitesell v. Ga. Power Co., 341 Ga. App. 279 (2017)(reiterating the trial court’s authority to take judicial notice of the physical record of the original action when a renewal action is filed in the same court, for purposes of determining validity under the renewal statute.); See also, Cummings v. First Transit, Inc., 376 Ga. App. 440 (2025)(holding the trial court properly took judicial notice of the prior action’s record and dismissal dates when granting the defendant’s motion to dismiss, despite the plaintiff not attaching the original complaint or explicitly requesting judicial notice.).

Provided that O.C.G.A. § 24-2-201 explicitly states that a court is not required to provide advanced notice before taking judicial notice, and provided that Georgia case law is quite settled on whether a trial court may take judicial notice of the physical record of a case filed in its court when ruling on a renewal action, Appellant has failed to show how the court erred.

2. Appellant Failed to Request a Hearing on the Propriety of Judicial Notice and Therefore Waived Any Objection

O.C.G.A. § 24-2-201(e) places the burden on the party to avail himself of the remedy afforded where no advanced notice has been provided. Hunter v. Will, 352

Ga. App. 479, 833 S.E.2d 128 (2019). "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" and further specifies that "[i]n the absence of prior notification, such request may be made after judicial notice has been taken." O.C.G.A. § 24-2-201(e) (emphasis added); Hunter v. Will, 352 Ga. App. 479, 833 S.E.2d 128 (2019).

Noticeably absent from the record is a request for oral hearing on Appellee's motion to dismiss. Without a request from either party, no hearing was required. See O.C.G.A. §9-11-12(d). Additionally, Uniform Superior Court Rule 6.3, provides that all motions in civil actions shall be decided by the court without oral hearing, unless otherwise ordered by the court. USCR 6.3. Therefore, the "announcement" by the trial court that it had taken judicial notice of the affidavit of service in Appellant's original action was memorialized in its order. Thus, Appellant's sole remedy was to request a hearing under O.C.G.A. §24-2-201(e). Such a request by appellant is absent from the record. Instead, Appellant filed a notice of appeal, which was followed by several amended notices. [See V2:1-12; 142-147]. A party who completely fails to request a hearing after judicial notice has been taken and does not contest the accuracy of the fact(s) judicially noticed has no support for a claim that a trial court committed an error in taking such notice. Hunter v. Will, 352 Ga.

App. 479, 833 S.E.2d 128 (2019). Appellant's stance that Hunter is inapplicable is erroneous and unsupported.

Having failed to request a hearing after judicial notice was taken, Appellant cannot now raise this issue on appeal.

3. No violation of Due Process occurred.

Appellant incorrectly relies on United States Supreme Court case, Garner v. State of Louisiana, 368 U.S. 157, 158, (1961) to support her due process argument. This case has no application to the instant appeal. In Garner v. State of Louisiana, the U.S. Supreme Court unanimously reversed the convictions of protesters who participated in a peaceful sit-in at an East Baton Rouge, Louisiana lunch counter in 1960. The Court found no evidence their actions disturbed the peace, and held that the State of Louisiana violated the Fourteenth Amendment in convicting them and upholding those convictions under an expansive reading of the controlling criminal statute. Judicial notice of racial tensions was mentioned, but not central to the outcome of the case.

It appears, but is not readily clear, that Appellant attempts to test the constitutionality of O.C.G.A. §24-2-201 in making the argument that her due process rights were violated when the trial court did not provide advanced notice of its intention to take judicial notice of the affidavit of service. This argument is groundless and unsubstantiated. As part of an act of the General Assembly, O.C.G.A.

§24-2-201 is presumed to be constitutional, especially since it is exceedingly clear and not susceptible to more than one meaning. See Development Auth. of DeKalb County v. Beverly Enterprises, 247 Ga. 64, 66 (274 S.E.2d 324) (1981)(holding that properly enacted statutes carry a presumption of constitutionality.); See also, City of Columbus v. Rudd, 229 Ga. 568 (3) (193 S.E.2d 11) (1972)(holding that where an Act has doubtful meaning, and may be susceptible of more than one meaning, it shall be interpreted consistently with the Constitution.). Under Georgia law, the constitutionally guaranteed right to due process of law requires notice and an opportunity to be heard. Cobb County Sch. Dist. v. Barker, 271 Ga. 35 (1999), Ga. Const. Art. I, § I, Para. I. However, neither the federal nor the Georgia Constitution guarantees a specific form or method of procedure.

Since Appellant received reasonable notice and an opportunity to respond to Appellee's motion to dismiss, due process was satisfied. Not only was Appellant notified of Appellee's motion to dismiss, but she was also allowed an extension of time to respond. [See V2: 99-121]. The fact that a hearing was not held on the motion (especially when it was not requested), does not invalidate the trial court's ruling or signify a due process violation. Being that Appellant took no affirmative steps to request a hearing, any possible due process right was waived and the trial court had no duty to initiate a hearing. See Schatte v. McGee, 368 Ga. App. 868 (2023); See also, In re Woodall, 241 Ga. App. 196, 526 S.E.2d 69 (1999)(where the Court of

Appeals rejected a due process claim when the party failed to request a hearing and failed to object during the proceeding.).

Appellant's submission to the trial court's order and election to file a Notice of Appeal without first challenging the court's decision to take judicial notice, prevents her from now complaining of inadequate notice or procedural deficiencies on appeal. Allowing Appellant to challenge judicial notice for the first time on appeal—without having requested a hearing in the trial court—would undermine the efficient administration of justice. This Court should reject Appellant's due process argument and affirm the trial court.

C. The trial court correctly applied any relevant Uniform Superior Court Rules in determining whether Appellant's original action was timely filed.

1. Appellant Cannot Manufacture a Timely Filing by Challenging the Trial Court's Procedural Rulings

Appellant's attempted filing of the original action on May 13, 2024 should not be construed as a timely filing because it was rejected due to attorney (or filer) error rather than a technical error of the Odyssey e-filing system. [See V2: 99-126]. Under USCR 36.16(D), there is no presumption of filing unless the electronic system provider automatically confirms the fact, date, and time of receipt to the filer. USCR 36.16(D). Appellant provided no evidence of confirmation. Appellant had two years to file the action against Appellee but did not do so until May 24, 2024. Appellant's filing was simply late.

As a replacement for confirmation, Appellant relies on Uniform Superior Court Rule 36.16(F) to manufacture a procedural irregularity to excuse the untimely May 24, 2024 filing of the original action. Uniform Superior Court Rule 36.16(F) addresses the procedure when an electronic filing system experiences a *technical* failure:

(F) System or user filing errors. If electronic filing or service is prevented or delayed because of a failure of the electronic filing system, a court will enter appropriate relief such as the allowance of filings nunc pro tunc or the provision of extensions to respond. USCR 36.16(F).

Because USCR 36.16(F) exists to protect litigants from technical failures beyond their control, expanding the rule to excuse late filings caused by attorney error or other non-technical causes would undermine the orderly administration of justice and the enforceability of filing deadlines. The burden is on Appellant to demonstrate that a system failure did in fact prevent the timely filing of the original action. In her Response to Appellee's Motion to Dismiss, Appellant supplied no evidence that the e-filing system was inoperable on the date in question, nor was there any allegation of system downtime or error message. USCR 36.16(F) does not provide an excuse for late filings. It applies only when the electronic filing system itself fails. Attorney error, misunderstanding of deadlines, or other non-technical causes do not trigger the rule's protections. Appellant has offered no evidence of such a failure.

Instead, Appellant supplied Odyssey E-filing system emails which showed that Appellant's Complaint, Summonses, and case initiation form submitted on May 13, 2024 were rejected. [See V2: 99-121]. The emails indicated that the submission was rejected due to an incomplete case initiation form, non-payment of fees, and mismatched parties on the filed documents and summons. [See V2: 99-121]. There is no other documented submission or filing of a complaint, summons, and case initiation form until May 24, 2024, when the complaint was successfully filed. Based on the foregoing, the trial court correctly found that USCR 36.16(F) did not apply and that Appellant's original action was not commenced within the statute of limitations.

Lastly, Uniform Superior Court Rules 1.1 and 1.2 have no application to the instant appeal. Nothing in the record indicates that the Fulton County Superior Court Standing Order Regarding Electronic Filing in Civil Actions runs afoul of any statute, case, or local court rule.

D. The trial court correctly held that the original action was void and incapable of renewal.

Appellant's original action was void because the applicable two-year statute of limitations period expired before service was perfected. O.C.G.A. § 9-3-33. If a plaintiff fails to exercise due diligence in the service of his or her complaint, and the statute of limitations runs in the interim, then dismissal is a proper mechanism. See, Freeman v. Nodvin, 181 Ga. App. 663, (1987); Daughtry v. Cohen, 187 Ga. App.

253 (1988). Appellant's cause of action arises from an alleged injury sustained on May 12, 2022, and could have been filed at any time through May 13, 2024 (May 12, 2024 was a Sunday). [See V2:15-18;121-126]. Nothing in the record demonstrates Appellant's original action commenced prior to May 31, 2024, when Appellee was served with process. See Milton v. Goins, 309 Ga. App. 865, 866 (2011) (overruled in part on other grounds) (an action does not commence until the defendant has been properly served with process.).

At no point did Appellant supply the trial court with any reason (other than the alleged technical e-filing system failure) for the delay in ensuring timely filing of the original action or reasons for the delay in perfecting service on Appellee, despite Appellee raising the issue in its special appearance Answer in the renewal action. See Hobbs v. Arthur, 264 Ga. 359, 360 (1994); Giles v. State Farm Mut. Ins. Co., 330 Ga. App. 314, 317 (2014); Van Omen v. Lopresti, 357 Ga. App. 9, 14 (2020); McWilliams v. Parker, 362 Ga. App. 147, 148 (2021). Therefore, the original suit was void and the trial court properly dismissed Appellant's renewal action with prejudice. The trial court's dismissal of Appellant's renewal action should be affirmed.

III. CONCLUSION

This appeal is centered on procedural deficiencies that warranted the dismissal of the Appellant's personal injury claim. To promote judicial efficiency and due

diligence requirement of all litigants, parties must be held to the confines of Georgia's law especially when filing pursuant to the prescribed statute of limitations. Parties must know the law and act on their responsibilities diligently. The trial court held Plaintiff to this standard and correctly ruled that Plaintiff's renewal action warranted dismissal because the underlying complaint was void. This Court should do the same.

CERTIFICATE OF COMPLIANCE

This submission does not exceed the word count limit imposed by Rule 24. It contains 3,898 words.

Respectfully submitted this 13th day of **July, 2026**.

/s/ **Desni A. Scaife**

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **BRIEF OF APPELLEE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY**, with the Clerk of the Court of Appeals of Georgia using the Georgia appellate e-filing system and served counsel for Appellant via U.S. Mail with a copy of the same in a manner prescribed in Ga. Ct. App. R. 6 at the address listed below:

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Respectfully submitted this 13th day of **July, 2026**.

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