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

HEIDI CHAPMAN

Appellant,

v.

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

Appellee

APPELLANT’S REPLY BRIEF

CASE NUMBER

A26A2158

/s/ Keith Foster

Keith Foster
Georgia State Bar 271001
Attorney for Plaintiff
The Foster Firm, LLC
One Crown Center
1895 Phoenix Blvd. Suite 110
Atlanta, GA. 30349
Tel: (404) 559-8325
Kfoster@tfflaw.net

/s/ Ralph Goldberg

Ralph Goldberg
Georgia Bar No. 299475
Attorney for Plaintiff
Goldberg & Cuvillier, P.C.
2295 Parklake Dr., N.E., Suite 432
Atlanta, GA. 30345
Tel: (770) 670-7343
attorneygoldberg@hotmail.com

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**III. THE COURT IMPROPERLY
FAILED TO INFORM APPELLANT OF ITS INTENTION
TO TAKE JUDICIAL NOTICE. BECAUSE FINAL JUDGMENT HAD
BEEN ENTERED NO STAGE OF THE PROCEEDING
REMAINED AND APPELLANT HAD NO OPPORTUNITY TO
CHALLENGE THE COURT’S DECISION**

Appellants’ brief gives little or no weight to due process requirements guaranteed to every litigant.¹

In Graves v. State, 269 Ga. 772 (1998), the Court explained:

First, we conclude that henceforth, if a trial court intends to take judicial notice of any fact, it must first announce its intention to do so on the record, and afford the parties an opportunity to be heard regarding whether judicial notice should be taken. The reasons for requiring such a rule have been well stated by the United States Supreme Court in Garner v. Louisiana:

[U]nless an accused is informed at 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. Moreover, there is no way by which an appellate court may review the facts and law of a case and intelligently decide whether the findings of the lower court are supported by evidence where that evidence is unknown. Such an assumption would be a denial of due process.

The Federal Rules require that a trial judge notify parties that she is taking judicial notice of an adjudicative fact, and provide them an opportunity to be heard, and we see no reason to require anything less in the courts of this State. In addition to the reasons discussed in Garner, supra, so long as a trial court need not announce an intention to take judicial notice, it might appear that

¹ There is no decision of this Court or this Supreme Court treating due process so miserly. While Hunter v. Will, 352 Ga. App. 479 (2019), and Zayac v. State, 372 Ga. App. 239 (2024), may be read that way, the Court has often time stated that “Issues merely lurking in the record, neither brought to the court's attention nor expressly ruled upon, have not been decided so as to constitute precedent.” Wallace v. Chandler, 360 Ga. App. 541 (2021). The Supreme Court has agreed. See Durham v. Durham, 291 Ga. 231 (2012). In neither Hunter or Zayac, does this Court discuss due process.

reviewing courts could resort to judicial notice to legitimize an otherwise flawed decision, despite the absence of evidence that judicial notice actually was taken.

For all of these reasons, we conclude that in future cases, trial courts are required to announce on the record an intention to take judicial notice, and to give the parties an opportunity to be heard on whether judicial notice should be taken.

(footnotes omitted).

See Mann v. State, 285 Ga. App. 39 (2007), recognizing that this holding still remains controlling precedent. Compare Gaddis v. State, 310 Ga. App. 189 (2011).

As Wright & Miller, Federal Practice and Procedures, § 5109 notes, there are no cases that interpret FRE 201(e), as providing a “chance” to be heard, instead of a “right” to a hearing, citing 1-800-411-Pain Referral Service, LLC v. Otto, 744 F.3d 1045 (8th. Cir. 2014); In re Graves, 217 S.W.3d 744 (Tex. App. 2007). See Lussier v. Runyon, 50 F.3d 1103 (1st Cir. 1995).

As the Treatise concluded at §5109

One instance where the opponent of judicial notice may occupy a different procedural posture than the proponent is when the court takes judicial notice sua sponte. In such cases, the proponent does not need to be heard. But the opponent may not learn that notice has been taken until the judge instructs the jury or makes findings of fact—which may be too late to convince the judge to change her mind. Hence, the sine qua non of the due process right to a hearing is notice to a party that action is being contemplated that affects her interests.

The Model Code of Evidence required the court to tell the parties it was thinking of taking judicial notice of a fact so that they could exercise their constitutional right to be heard on the question. The original Uniform Rules of Evidence implied some advance notice in requiring the court to afford each party an opportunity to be heard on the propriety of taking notice.

(footnotes omitted).

As Justice Peterson has stated “Notice and an opportunity to be heard is the sine qua non of due process.” Georgia Department Of Human Services v. Steiner, 303 Ga. 890, 908 (2018). Appellant did not receive due process.

O.C.G.A. §24-2-201(f) says:

Judicial notice may be taken at any stage of the proceeding.

According to Black’s Law Dictionary (6th ed. 1990), defining:

a “proceeding”:

This word may be used synonymously with “action” or “suit” to describe the entire course of an “action” or “suit” from . . the filing of the complaint until the entry of a final judgment.

In this case, it was only after final judgment that appellant learned of the taking of judicial notice. (V2-124-123) This Court has adopted a similar standard. “It is clear that proceedings in the trial court are “terminated” by the entry of a final judgment, after which time “the cause is no longer pending in the court below.” Scott v. Liberty Mut. Ins. Co., 168 Ga. App. 815 (1983), Nairon v. Land, 242 Ga. App. 259 (2000).

In other words, the rule set out in O.C.G.A. § 24-2-201(e), quite simply did not apply because the proceeding was over, even though in any other situation where the case is still pending, such taking of judicial notice may still be made under O.C.G.A. § 24-2-201(e).

As Wright & Miller, Federal Practice and Procedures, § 5109 notes:

Though no court has held Rule 201(e) unconstitutional, it seems dubious due process to allow a party to be heard only after the judge has already made up her mind.

It seems even more dubious not to provide for a retrospective hearing after the decision made even if there were some mechanism. Compare 1 Weinstein & Berger, Weinstein’s Evidence, 2d ed. 1996. P. 201-64.

The whole idea of due process depends upon pre-deprivation process – notice before the taking.

When appellees discuss due process at pages 12-14, their idea of due process is thin gruel indeed. Essentially, Plaintiff was supposed to object to the taking of judicial notice when she has no notice when judicial notice was to be taken. This is Alice in Wonderland. There is no discussion of Graves v. State, 269 Ga. 772 (1998). The best appellee can do is to wash away Garner v. State of La., 368 U.S. 157 (1961), with the following sentence “judicial notice of racial tensions were mentioned, but not central to the outcome of the case.” A reading of Garner makes it clear that the State’s argument about judicial notice was the linchpin of its case. See Wright & Miller, Federal Practice and Procedures, § 5107.

Appellant has been denied due process.

CONCLUSION

The Court’s decision below should be reversed. Alternatively, the Court’s decision should be vacated so that the Court can apply both §24-2-201 and the local rules of Fulton County correctly.²

² In appellant’s original brief, there arise a number of typos. At fn. 2, the first sentence should read “The standard is abuse of discretion.” At page 14, the sentence in the third paragraph should read “Nor did the Court refer to the Plaintiff’s request except to say the documentation was not authenticated.” At page 17, the citation at the end of the first paragraph under III, the last sentence should read “. . . the Court erred in holding that the original filing was untimely, see pages 13-16.” Counsel acknowledges these sentence and regrets the same.

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 August 3, 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:

Kareemah Lewis
Metropolitan Atlanta Rapid Transit Authority:
Legal Services Department
2424 Piedmont Road N.E., 6th Floor
Atlanta, Georgia 30324-3330
klewis1@itsmarta.com

/s/ Ralph Goldberg
Ralph Goldberg
Ga. Bar No. 299475
Attorney for Appellant

Goldberg & Cuvillier, P.C.
2295 Parklake Dr., N.E.,
Atlanta, GA. 30345
Tel: 770-670-7343
Fax: 770-670-7344
attorneygoldberg@hotmail.com

/s/ Keith R. Foster
Keith R. Foster
Ga. Bar No. 271001
Attorney for Appellant

The Foster Firm, LLC
One Crown Center
1895 Phoenix Blvd., Suite 110
Tel: 404-559-8325
Fax: 404-559-8335
kfoster@tfflaw.net