

# Court of Appeals of the State of Georgia

ATLANTA, APR 18 1996

*The Honorable Court of Appeals met pursuant to adjournment.*

*The following order was passed:*

A96A1490. Tony L. Ware v. Jeffrey D. Vaughn

Upon consideration of appellant's motion for an extension of time to file appellant's enumeration of errors and brief in support thereof, this Court makes the following findings from the record.

Appellant's original notice of appeal filed with the clerk of the trial court on September 19, 1995, stated "All transcript of evidence and proceedings will be filed for inclusion in the record on appeal." Thereafter, appellant's amended notice of appeal filed March 21, 1996, stated "...The clerk shall submit the record without the transcript of the proceedings held on August 22, 1995..." but that appellant did not waive any rights to amend his notice of appeal before final review by the Georgia Court of Appeals.

The amended notice of appeal also stated that the appellant stipulated that he may or will amend and/or supplement his notice of appeal to have the transcript for inclusion on the record on appeal at any time before review by the Court of Appeals.

The above case was docketed by the Court of Appeals on March 28, 1996. Appellant seeks an extension of time to file appellant's enumeration of errors and brief based on the grounds that the court reporter has failed to file a copy of the transcript below, but at the same time, appellant amended his notice of appeal to direct the clerk of the trial court to send the record without the transcript, while keeping open the option of supplementing the record with a transcript.

Due to the requirements of the Ga. Const. 1983, Art. VI, Sec. IX, Para. II, this Court cannot grant open ended extensions, and it appears that the above styled case was transmitted to this Court prematurely.

It is hereby ordered that the case be remanded to the trial court and the Clerk of this Court is directed to return the record to the trial court and remove this case from the docket of this Court. It is further ordered, that upon the filing of the transcript of the proceedings in the Superior Court of Gwinnett County, appellant shall have thirty days from that date to refile appellant's notice of appeal, and upon the filing of such notice of appeal the case with the complete record and transcript may be transmitted to the Court of Appeals for redocketing.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 18 1996

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.

*Will. L. Martin, Jr.*

Clerk.