

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

September 15, 2015

To: Mr. Benjamin Holmes, 408 North Granford Street, Waycross, Georgia 31501

Docket Number: A16A0025 **Style:** Benjamin Holmes v. Georgia Department of Administrative Services, et al.

Your document(s) is (are) being returned for the following reason(s).

1. Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal *Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**
2. A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4. No Certificate of Service or an improper Certificate of Service accompanied your document(s). Rule 6
5. Your Certificate of Service did not include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
6. There were an insufficient number of copies of your document. Rule 6.
7. Your document exceeds page limits. Rules 24 (f) and 27 (a)
8. Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9. Letter briefs and letter cites are not permitted. Rule 27 (b)
10. Your request for court action must be submitted in motion form. Rule 41 (a) I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.
11. Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12. Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13. The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14. Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15. Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16. Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17. **Other: The Appellant's Brief must consist of three parts: a Statement of Proceedings, the Enumeration of Errors made by the trial court and lastly, the Argument why the trial court was not correct with supporting documentation. We have received only the Enumeration of Errors and enclosing it with this Return Notice.**

COURT OF APPEALS OF GEORGIA

APPELLANT

Benjamin Holmes

vs.

DEFENDANT

Georgia Department of Administrative Services
Attn: Risk Management Services Division, Tort Claims
State Agency: TCSG-Okefenokee Technical College,
Sharon P. Horne, Assistant Attorney General, Georgia
Department of Law

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CASE NUMBER:
13V-0840

APPEAL CASE NUMBER
A16A002

2015 SEP 14 PM 1:02
CLERK OF SUPERIOR COURT
JAMES M. HARRIS, JR.

ENUMERATION OF ERRORS

Appellant Benjamin Holmes brings forth the following causes of action and alleges the following:

1. Superior Court Judge issued an order dismissing my claim on June 17, 2015 for failure to served TCSG, a government entity, in a timely manner. See attached Exhibit A.
2. The Court stated that the dismissal was based on the alleged fact that TCSG had not been served for over seventeen months since Plaintiff filed the complaint.
3. TCSG-Okefenokee Technical College and Dr. Glenn Deibert, agent representing TCSG, was served on November 8, 2013. See Exhibit B.
4. Further, Plaintiff was informed by Sharon P. Horne, Assistant Attorney General for the Georgia Department of Law that "Please be aware that Office represents these parties and should be served with all pleading and correspondence directed to the undersigned." See Exhibit C.
5. The Court erred in the determination that the TCSG was not notified in a timely manner.

RELIEF

Plaintiff is requesting that the Court's Order be reversed and that Plaintiff be allowed to pursue his claims of Negligence against TCSG-Okefenokee Technical College.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served counsel for all concerned parties with a copy of the within and foregoing **ENUMERATION OF ERRORS** by depositing a copy of same in the United States Mail in a properly addressed envelope with sufficient postage affixed thereto to ensure delivery and addressed to:

Georgia Department of Administrative Services
ATTN: Risk Management Services Division, Tort Division
200 Piedmont Ave., N.E., West Tower
Atlanta, GA 30334-9010

Dr. Glenn Deibert, President
Coastal Pine Technical College (formerly known as Okefenokee Technical College)
1701 Carswell Avenue
Waycross, GA 31503

Sharon P. Horne
Assistant Attorney General
Georgia Department of Law
40 Capital Square SW
Atlanta, GA 30334-1300

This is the 14 day of July 2015

Signature: Benjamin Holmes
Benjamin Holmes, Pro Se

Exhibit A

his injuries nor that DOAS is in any manner vicariously liable for the negligence of TCSG. Therefore, Plaintiff fails to state a claim upon which relief can be granted against DOAS.

The Georgia Court of Appeals has stated that:

If the filing of the petition is followed by timely service perfected as required by law, although the statute of limitation runs between the date of the filing of the petition and the date of service, the service will relate back to the time of filing so as to avoid the limitation. Where service is belatedly perfected, the trial court may dismiss the action when the delay was caused by laches on the plaintiff's part. Service must proceed with diligence if the statute of limitation is to be tolled by the filing of the action.

Webb v. Murphy, 142 Ga. App. 649, 650 (1977) (internal citations omitted). Here, Plaintiff filed his complaint within two years of the injury allegedly caused by TCSG's negligence. Over seventeen months have passed since the complaint's filing, and Plaintiff still has not served TCSG. Given the lengthy extent of time that has passed since the complaint's filing and the ease with which Plaintiff could have served TCSG, a government entity, Plaintiff has failed to proceed with the diligence necessary for the filing of the action to toll the statute of limitations.

Accordingly, the Court hereby **GRANTS** the Motion to Dismiss.

SO ORDERED, this 17 day of June, 2015.


Dwayne H. Gillis, Judge
Superior Court, Ware County, Georgia

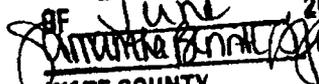
FILED IN OFFICE THIS 17 DAY
OF June 2015

CLERK
WARE COUNTY

Exhibit B

IN THE SUPERIOR COURT OF WARE COUNTY

STATE OF GEORGIA

BENJAMIN HOLMES
408 N. CRAWFORD ST
WAYCROSS, GA. 31501
PLAINTIFF

CIVIL ACTION,
NUMBER

13V-0840

VS.
Georgia Department of Administrative Services
ATTN: RISK MANAGEMENT SERVICES Division, TORT Division
200 Piedmont Ave., N.E., West Tower
Atlanta, GA. 30334-9010
DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusively of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 8 day of November, 20 13

Melba H. Fiveash
Clerk of Superior Court

By Samantha Bennett

Deputy Clerk

Instructions: Attach addendum for additional parties if needed, make notation on this sheet if addendum sheet is used.

IN THE SUPERIOR COURT OF WARE COUNTY
STATE OF GEORGIA

Benjamin Holmes

Plaintiff,

vs.

Georgia Department of Administrative Services
Attn: Risk Management Services Division, Tort Claims
State Agency: TCSG-Okefenokee Technical College

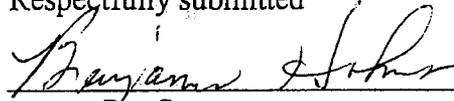
Defendant

Civil Action: 13V-0840

**Plaintiff's Complaint of Negligence against Georgia Department of
Administrative Services and State Agency: TCSG-Okefenokee Technical
College**

This day of November 8, 2013

Respectfully submitted



Pro Se

IN THE SUPERIOR COURT OF WARE COUNTY
STATE OF GEORGIA

Benjamin Holmes

Plaintiff,

vs.

Georgia Department of Administrative Services
Attn: Risk Management Services Division, Tort Claims
State Agency: TCSG-Okefenokee Technical College
Defendant

Civil Action: 13v.0840

COMPLAINT OF NEGLIGENCE

Plaintiff Benjamin Holmes brings forth the following causes of action and alleges the following:

1. Plaintiff is an individual and resident of Waycross, Georgia, USA.
2. Defendant is a corporation and at the time of this complaint, a resident of Waycross Georgia, USA.
3. On or about November 10, 2011, Plaintiff was asked by Mr. Thomas Wesley to wait outside his office at Okefenokee Technical College (OTC).
4. On or about November 10, 2011, Plaintiff found a seat in a nearby chair in or adjacent to the electronics laboratory.
5. On or about November 10, 2011, when Plaintiff sat down, the chair scooted back and tipped over causing Plaintiff to fall out of the chair and strike his head on the floor and a wall. Additionally, the back rest mechanism collapsed causing Plaintiff to be ejected from the chair.
6. On or about November 10, 2011, Plaintiff was taken to Satilla Regional Medical Center.
7. Based on examination by Dr. William Brown, Plaintiff was diagnosed with bad pain, cervical strain (whiplash) and low back pain/contusion.
8. At the time of the chair collapse, Plaintiff was 58 years of age.

Plaintiff brings forth the following counts and allegations supporting his cause of action:

COUNT 1 – NEGLIGENCE

Defendant failed to perform the duties in the written contract in a safe and effective manner leading to the injuries sustained by the Plaintiff.

1. Plaintiff believes that the chair was defective and therefore, there was a failure to warn of a potentially dangerous situation and /or instrumentality.

DAMAGES

1. As a result of the collapse, Plaintiff has been unable to perform his daily duties.

2. As a result of incident, Plaintiff sustained pecuniary and economic damages in the amount of \$2,000,000.

WHEREFORE, Plaintiff seeks compensatory damages in the amount of \$2,000,000 together with court costs.

Dated this 8TH day of November 7, 2013

Benjamin Behr
Pro Se

FILED IN OFFICE THIS 8 DAY
OF November 2013
Samantha Bennett CLERK
WARE COUNTY

STATE OF GEORGIA

COUNTY OF Ware

VERIFICATION

PERSONALLY appeared before the undersigned attesting officer authorized by law to administer oaths, Benjamin Adams, who, being first duly sworn, on oath depose and says that the facts alleged in the above and foregoing Complaint for Negligence are true and correct.

Sworn to and subscribed before me this November 8, 2013

Justin E. Chasler
Notary Public

Notary Public, Ware County, Georgia
My Commission Expires Nov. 3, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served counsel for all concerned parties with a copy of the within and foregoing COMPLAINT OF NEGLIGENCE by depositing a copy of same in the United States Mail in a properly addressed envelope with sufficient postage affixed thereto to ensure delivery and addressed to:

Georgia Department of Administrative Services
ATTN: Risk Management Services Division, Tort Division
200 Piedmont Ave., N.E., West Tower
Atlanta, GA 30334-9010

Dr. Glenn Deibert, President
1701 Carswell Avenue
Waycross, GA 31503

This is the 8th day of November 7, 2013.

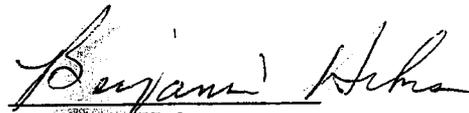

Benjamin Holmes

Exhibit C



GEORGIA DEPARTMENT OF LAW

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

SAMUEL S. OLENS
ATTORNEY GENERAL

www.law.ga.gov
(404) 656-3300

Writer's Direct Dial
404.656-3370
Fax 404.651.6920

January 17, 2014

Benjamin Holmes
408 N. Crawford Street
Waycross, Georgia 31501

RE: Holmes v. Georgia Department of Administrative Services, et al.
Superior Court of Ware County; 13V-0840

Dear Mr. Holmes:

I have recently been forwarded correspondence that you sent to Georgia Department of Administrative Services and Dr. Deibert of Okefenokee Technical College. Please be aware that our Office represents these parties and should be served with all pleadings and correspondence directed to the undersigned. I am also enclosing my card with my full contact information for your convenience.

Sincerely,

SHARON P. HORNE
Assistant Attorney General

STATE OF GEORGIA

COUNTY OF WARE

VERIFICATION

PERSONALLY appeared before the undersigned attesting officer authorized by law to administer oaths, *Benjamin A. Miller*, who, being first duly sworn, on oath depose and says that the facts alleged in the above and foregoing Complaint for Negligence are true and correct.

Sworn to and subscribed before me this 14 day of July,
2015

E. John Miller
Notary Public

