

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

September 16, 2015

To: Mr. Dale M. Irving, 1911 Grayson Highway • Suite 8-109, Grayson, Georgia 30017

Docket Number: A15A2364 **Style:** Dale M. Irving v. Neil R. Butler

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. The Motion to Supplement has not been granted.
18. Other: **The appellee's Motion to Supplement was returned to him. You are responding to a motion that was docketed in error.**

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

To: Dale M. Irving
Docket Number: A15A 2365

Style: Dale Irving v. Neil R. Butler

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 counsel and pro se 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)
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. The Motion to Supplement has not been granted.
18. Other: The appellee's motion was returned. Your responding to a motion that was ~~not~~ docketed in error.

For Additional information, please go to the Court's website at: www.gaappeals.us

In The Court of Appeals of Georgia

Appellant's Opposition to Appellees Motion to
Supplement
A15A2364

Dale M. Irving

Appellant

vs.

Officer Neil R. Butler (Individually
and as a sworn officer for Dekalb
County Georgia) Dekalb County,
Georgia
Appellees

Dale M. Irving
1911 Grayson Highway
Suite 8-109
Grayson, GA 30017
(404) 219-5080
Consolid354@yahoo.com

FILED IN OFFICE

SEP 15 2015

CLERK, COURT OF
APPEALS OF GEORGIA

RECEIVED IN OFFICE
2015 SEP 15 AM 10:02
CLERK / DEPUTY ADMINISTRATOR
COURT OF APPEALS OF GA

Appellant's Opposition to Appellees Motion to Supplement the Record on Appeal

COMES NOW Appellant Dale M. Irving (Appellant) and opposes Appellees Motion to Supplement the Record on the grounds that such supplementation of the record is immaterial to the trial Court's decision, any such supplementation will increase the costs for Appellant, and at least in part the supplementation will allow Appellees to misstate the record.

Supplementation is Immaterial to the Court's Decision to Strike

The trial Court laid out the Orders upon which it was basing its discovery sanction for violation of three prior discovery orders. (Record 467). The Court specifically point to the February 2014 Order (Record 13), the May 19, 2014 Order (Record 115) and the July 30, 2014 Order (Record 231). It is clear that the basis upon which the trial Court decided the Appellant had violated three (emphasis in the original), is already a part of the record. Any further supplementation at this point would be immaterial to the trial Court's decision. Appellees claim for this Court to determine whether or not the trial Court was in error it needs every Order issued, hearing notices, and pleadings which it is clear from the trial Court's Order (Record 467) played no role in its decision to strike Appellant's Complaint.

Supplementation Will Increase the Cost for Appellant

The trial Court controls the determination of the final record on appeal *Smith v. Top Dollar Stores, Inc.*, 129 Ga. App. 60 (198 SE2d 690) (1973) and may even supplement the record designated by the parties on its own motion *G E C Corp. v. Southern Fabricators, Inc.*, 122 Ga.

App. 452 (177 SE2d 497) (1970). It follows then that if the trial court finds that the additional portions designated by the appellee are necessary to complete the record on appeal, the costs must be paid by the appellant; only if considered unnecessary on appeal, should the costs be taxed against the appellee. *Jones v. Spindel*, 239 Ga. 68, (235 S.E.2d 486)(1977). Supplementing the record with this avalanche of unnecessary documents would only serve to drive up the costs on Appellant.

Supplementation will allow for a Misstatement of the Record

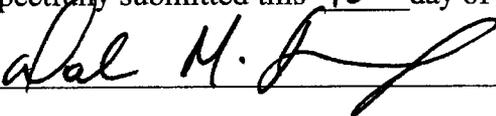
In their Brief in Support of their Motion to Supplement Appellees argue that at the June 20, 2014 Peremptory Calendar Hearing their was a “[discussion of] Appellant’s continual failure to answer basic discovery questions at two depositions and to comply with the judge’s orders to cooperate with discovery”. There was no such discussion. Appellants notes made shortly after the Peremptory Calendar hearing reflect that the Trial Court called the case to inquire if both sides were ready for trial. Appellees through counsel informed the trial Court they had Motion to Compel and/or Dismiss pending. Appellant then informed the trial Court he had responded to that motion and was in no way in violation of the Court’s Order. The Court interrupted Appellant, said she would not be hearing any arguments on the motion as she had not reviewed the briefs, and would issue a ruling after reviewing the record. At that point the trial Court excused Appellant. Neither side had the hearing taken down by a Court Reporter, thus to allow Appellees to supplement the record and to use the Peremptory Calendar hearing to misstate the

record would be unfair to Appellant.

Conclusion

Allowing Appellees to supplement the record is unnecessary, will increase the costs for Appellant and will allow Appellees to misstate the record. For these reasons the Court should not allow Appellees to supplement the record.

Respectfully submitted this 15th day of September, 2015

By 

Dale M. Irving

1911 Grayson Highway

Suite 8-109

Grayson, Georgia 30017

(404) 219-5080

Consolid354@yahoo.com

