

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

September 16, 2015

To: Mr. Oscar Miller, 519 East Ontario Avenue, S.W., Atlanta, Georgia 30310

Docket Number: A16A0024 **Style:** Oscar W. Miller, Jr. v. David Wilburn

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: _____

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IN THE COURT OF APPEALS
STATE OF GEORGIA

15 SEP 15 PM 3:21
COURT OF APPEALS OF GEORGIA
CLERK OF COURT

FILED IN OFFICE
SEP 14 2015
COURT CLERK
CLERK COURT OF APPEALS OF GA

OSCAR WAYNE MILLER JR.
Appellant

V

DAVID WILBERN
Appellee

CASE NO: A16A0024

PART ONE

PROCEDURAL HISTORY AND SETTLEMENT OF FACTS

In the court below appellee served Oscar Miller (senior) on October 11, 2006 with a complaint and summons in connection with custodianship affecting the possession and control of inherit property. A default judgement was entered on February 8, 2007, on June 21, 2007 the trial court set aside that judgment but did not set aside the default. Oscar Wayne Miller III (Oscar Miller Jr.) was added as a party to the action and an amended complaint was filed with the court on July 24, 2007. Oscar Miller died and the court appointed a special master. The parties were ordered

to obtain an order appointing an administrator for his estate to proceed before the special master by November 18, 2011. The deadline passed and the case was dismissed. The errors complained of here in appear in the re-opening. The method by which the errors were preserved for consideration was by the entry of the court's order permitting withdrawal.

PART TWO
ENUMERATION OF ERRORS

Error 1- The Court erred below in referring to respondent as petitioner in a case where respondent had discharged his lawyer with cause before the original case had been dismissed.

Error 2- The court erred below in denying movant's August 21, 2014 motion to vacate and set aside judgment in a second case sought by the adverse party when movant new counsel had not entered an appearance.

Error 3- The Court erred below in accepting for filing Oscar Miller Jr. death certificate without notifying opposing party.

PART THREE

ARGUMENT

Standard of Review for the grant of withdrawal from representation is cause and effective date of that withdrawal in the instant case, however, the court below granted withdrawal from representation and then the withdrawing attorney fail to notify his client of the effective date.

“Generally,” [4] A client has a right to discharge a lawyer at any time, with or without cause subject to liability for payment for the lawyer’s service. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Therefore, the standard for review here where the effective date representation was withdrawn due to pay being denied to the attorney the evidence for so doing must be clear and convincing.

STATEMENT OF FACTS

This case is the culmination of a man’s persistent attempts as custodian of his grandparent property to protect and maintain possession and control. Appellant Oscar Wayne Miller Jr. (here in after appellant) entered this case by a motion to set

aside the judgement obtained against his father in order to clear up the matter of ownership and so the appellee could address his concerns to him. The first knowledge of Oscar Miller III was set forth in this pleading. The appellee opposed the assertion that they had served the wrong Oscar Miller so they continued to set forth facts in support of that claim.

The appellee also claimed he is the successor in interest to Willie Miller and that pursuant to the terms of the Last Will and Testament of Coven Miller, Willie Miller was entitled to one half of Coven Miller's interest in the property which was to be sold pursuant to the terms of the will.

Appellant father was the executor of the estate of Oscar Coven Miller whose legal name was Oscar Coven Creamer. Him and his wife Willie Mae, whose legal name was Willie Mae Creamer were the original owners of the property which is in dispute. The before mentioned Willie Miller legal name is Alonzo Creamer. These Facts were unknown to the appellee. The February 4, 1998 deed entered into this case to establish appellee interest is the same deed DeKalb County declared unworkable, he did not have the legal right to file an executive deed for this property. During the course of these proceeding appellant's father died July 22, 2010. The appellee accused appellant of refusing to probate his father's will by refusing to cooperate in obtaining the appointment of an administrator. The probate judge fail

to assist the appellee in committing a fraud before the court all the evidence of the record acknowledges the fact that Oscar Miller was deceased, not Oscar Miller Jr.

The parties had until the last day of the courts' October 18, 2011 trial calendar to take appropriate action. Appellant urged his counsel in an October 17, 2011 certified letter to use the documents of his grandparents and uncle legal names to file a motion to dismiss base on Alonzo Creamer could not legally sign his name as Willie Miller. The appropriate action referred to was to obtain an order appointing and administrator. Appellant urged his counsel again to file a motion to dismiss based off appellant's father name change from Oscar Creamer to Oscar Miller. This is the effective date legal counsel could not get paid because he would not do what his client wanted him to do. November 18, 2011 came and the case was dismissed anyway.

The case summary show that after the dismissal appellee meet with another judge 10 months later, filed a suggestion of death and a status conference was held 18 months after the case was dismissed. During this lapse of time appellant attorney had not ask about any payment that he might believe was due and his ex- client did not bother him about his withdrawal from his dismissed case. Counsel withdrawn was not needed until the new trial court judge would not allow appellant to represent himself pro se eventually, after most of the pleading had been ruled on appellant ex-counsel was granted permission to withdrawn. The case is before the court of appeal

because the withdrawn is an improper withdrawn due to counsel failure to establish an effective date.

Statement of Law and Authorities

Error One: In order for a judge to grant an attorney permission to withdraw from representing a client he should be clear on who the client is and that good cause for withdrawal exists. The attorney's grounds for withdrawal was not true. The client did have the funds to retain counsel further but chose not to insist upon his council to continue to pursue his objective. His attorney considered filling a motion to dismiss based on legal documents that would clarify who is Oscar Miller Jr. and establish the fact that Willie Miller name is an alias for Alonzo Creamer was repugnant and imprudent.

Thus we will consider the subject of the appellant's October 17, 2011 letter to Mark J. Issa. Here is the birth certificates discussed:

VERIFY PRESENCE OF WATERMARK HOLD TO LIGHT TO VIEW

255922

1 FULL NAME OF CHILD Oscar Wayne Miller		STATE FILE NO 2608	
2 DATE OF BIRTH February 15 1956	3 BOY OR GIRL Boy	4 IS RESIDENCE ON A FARM? YES <input type="checkbox"/> NO <input type="checkbox"/>	
5 NAME OF COUNTY Fulton		9 NAME OF COUNTY Fulton	
6 NAME OF CITY OR TOWN Atlanta		10 NAME OF CITY OR TOWN Atlanta	
7 NAME OF HOSPITAL H. S. P. Grady		11 STREET ADDRESS OR RFD AND BOX NO 324 1/2 Old Wheat Street	
8 HOW LONG WAS MOTHER IN THIS COUNTY BEFORE THIS DELIVERY 27 years		12 STATE Georgia	
13 FULL NAME Oscar Miller		18 MAIDEN NAME Ruby Lue Johnson	
14 RACE Negro	15 AGE AT TIME OF THIS BIRTH 33	19 RACE Negro	20 AGE AT TIME OF THIS BIRTH 27
16 BIRTHPLACE OF FATHER Atlanta, Georgia		21 BIRTHPLACE OF MOTHER Fulton County, Georgia	
17 USUAL OCCUPATION Truck Driver		22 USUAL OCCUPATION Elevator Operator	
23 NUMBER OF OTHER CHILDREN NOW LIVING 4		24 NUMBER OF OTHER CHILDREN BORN ALIVE - NOW DEAD 0	
25 NUMBER OF FETAL DEATHS OF ANY GESTATION AGE 0			
26 PARENT OF INFANT SIGN HERE BY <i>Oscar Miller</i>		RELATIONSHIP TO INFANT Father	
LOCAL REGISTRAR'S SIGNATURE <i>Kate Pierce</i>		DATE FILED Feb. 23, 1956	MILITIA DISTRICT

REVISED SEPTEMBER 1, 1956

ATTENDANT'S NAME

ADI 98

GEORGIA DEPARTMENT OF PUBLIC HEALTH DIVISION OF VITAL RECORDS

CERTIFICATE OF LIVE BIRTH

ADM-3 1

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE U. S. PUBLIC HEALTH SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE REPRODUCTION OF THE ORIGINAL RECORD ON FILE WITH THE STATE OFFICE OF VITAL RECORDS, GEORGIA DEPARTMENT OF PUBLIC HEALTH. THIS CERTIFIED COPY IS ISSUED UNDER THE AUTHORITY OF CHAPTER 31-10, CODE OF GEORGIA AND 280-1-3, DPH RULES AND REGULATIONS. Any reproduction of this document is prohibited by statute. Do not accept unless on security paper with seal of Vital Records clearly embossed. Chapter 31-10, Code of Georgia as amended.

NOV 02 2011

BY

Samuel C. Adershold

Registrar

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300566



Form 3972 (Rev. 7/11)

1 PLACE OF BIRTH
 COUNTY OF Fulton
 MIL. DIST. OF _____
 TOWN OR CITY OF Atlanta Ga
 REG. DIS. No. 1061 REGISTER No. 5528
 No. Buller St. Trust H. STREET. 25751

GEORGIA STATE BOARD OF HEALTH
 BUREAU OF VITAL STATISTICS
 STANDARD CERTIFICATE OF BIRTH

FILE No. For State Registrar Only. [Redacted]
 B.O.V.S. FORM 5

2 FULL NAME OF CHILD UN-NAMED
Baby Willie May Creamer (IF CHILD IS NOT YET NAMED, MAKE SUPPLEMENTAL REPORT, AS DIRECTED.)

3 SEX OF CHILD Male
 4 TWIN, TRIPLET OR OTHER NO
 5 NUMBER IN ORDER OF BIRTH _____
 6 LEGITIMATE (YES OR NO) Yes
 7 DATE OF BIRTH Dec 26 1922
 (MONTH) (DAY) (YEAR)

8 FULL NAME FATHER Cover Creamer
 14 FULL MAIDEN NAME MOTHER Willie May Creamer

9 RESIDENCE 61 Fitzgerald St. Atlanta Ga
 15 RESIDENCE 61 Fitzgerald - Atlanta Ga

10 COLOR negro
 11 AGE AT LAST BIRTHDAY 25 (YEARS)
 16 COLOR negro
 17 AGE AT LAST BIRTHDAY 31 (YEARS)

12 BIRTHPLACE Dodgeville Ga
 18 BIRTHPLACE Clayton Co. Ga

13 OCCUPATION laborer
 19 OCCUPATION domestic

20 NUMBER OF CHILDREN BORN TO THIS MOTHER INCLUDING THE PRESENT BIRTH three (3)
 21 NUMBER OF CHILDREN OF THIS MOTHER NOW LIVING three 3

CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE

22 I hereby certify that I attended the birth of this child, who was born alive at 5:48 P.M. on the date above stated, and that I did give the treatment for preventing ophthalmia neonatorum.

(When there was no attending physician or midwife, then the father, householder, etc., should make this return. A stillborn child is one that neither breathes nor shows other evidence of life after birth.)

(Signature) J. C. Rutland
 (Physician or Midwife)
 Address Grady Hospital
 Given name added from a supplemental report _____ 1922

23 Filed _____ 1922 L. Horvath Local Registrar. Registrar.

VOID IF ALTERED OR REPRODUCED

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BY NOV 02 2011

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Registrar Arthur C. Gierbold



VOID IF ALTERED OR COPIED

Form 3972 (Rev. 7/11)

1a. Child's Name First: OSCAR Middle: MILLER Last: MILLER			1b. Date of Birth Mo. Day Yr. Dec. 26 1922		1c. Sex Male <input checked="" type="checkbox"/> Female <input type="checkbox"/>	
1d. County of Birth Fulton		1e. City, Town, or Location of Birth Atlanta, Georgia			1f. Hospital - Name (if not hospital give street and number) Grady Hospital	
2a. MAIDEN NAME OF MOTHER First: Willie Middle: May Last: Ammond				2b. Age (At time of this birth) 21		
2c. Mother's Birthplace Georgia			2d. County Clayton		2e. Race <input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Other	
3a. Father Name First: Oscar Middle: Creamer Last: Creamer			3b. Age (At time of this birth) 25		3c. Father's Birthplace Ogelthorpe, Georgia	
3d. Race <input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Other						

Item Number	Facts stated incorrectly on birth certificate	Facts as they should have been stated
1a	Un-named Baby Willie Mae* Creamer	Oscar Miller

ABSTRACT OF SUPPORTING EVIDENCE	
Name of Document With Identifying Information	Date Original Document was made
Child's name changed from Un-named Baby Willie Mae Creamer to Oscar Miller by order of Superior Court, State of Georgia, County of Fulton, Order signed by Sam P. McKenzie, Judge, Superior Court	
Order signed	Feb. 13, 1981

I HEREBY CERTIFY THAT I, AS AN EMPLOYEE OF VITAL RECORDS UNIT, GEORGIA DEPARTMENT OF HUMAN RESOURCES, HAVE EXAMINED THE ORIGINAL DOCUMENTS OR CERTIFICATIONS THEREOF LISTED ABOVE AND THE INFORMATION ON EACH SHOWS THE SAME INFORMATION AS LISTED IN ITEM

Original File Date Dec. 31, 1922	Abstractor's Signature <i>[Signature]</i>
Date of Amendment Feb. 13, 1981	State Custodian of Vital Records <i>[Signature]</i>

This is to certify that this is a true and correct copy of the certificate filed with the Vital Records Service, Georgia Department of Human Resources. This certified copy is issued under the authority of Chapter 88-17, Vital Records, Code of Georgia, annotated, as amended.

Michael R. Jarvis
**State Vital Records
 Registrar and Custodian
 Director, Vital Records
 Service**

Issued by *[Signature]*
 Date Issued 2-13-81
 (Void without original signature and impressed seal.)

FILE NO.
 For State Registrar Only.
 B.O.Y.S.
 P O U M
 5

GEORGIA STATE BOARD OF HEALTH
 BUREAU OF VITAL STATISTICS
 STANDARD CERTIFICATE OF BIRTH

1 Place of Birth
 County of Fulton
 Mil. Dist. of _____

Reg. Dis. No. 1061 Register No. 1743

Town or City of Atlanta Ga (No. Grady St. Hospital Ward) III 26923

2 FULL NAME OF CHILD Baby Creamer (If child is not yet named, make supplemental report, as directed)

3 Sex of Child Male 4 Twin, triplet or other _____ 5 Number in order of birth _____ 6 Legitimate Yes 7 Date of Birth May 17 1921 (Month) (Day) (Year)

FATHER
 8 FULL NAME COBEN Creamer
 9 RESIDENCE 41 Chamberlain St
 10 COLOR colored 11 AGE AT LAST BIRTHDAY 23 (Years)
 12 BIRTHPLACE Waltham, Ga
 13 OCCUPATION Common Laborer
 20 Number of children born to this mother, including present birth 11

MOTHER
 14 FULL MAIDEN NAME Willie Mae Amos
 15 RESIDENCE 47 Chamberlain St
 16 COLOR colored 17 AGE AT LAST BIRTHDAY 17 (Years)
 18 BIRTHPLACE Jonesboro, Ga
 19 OCCUPATION maid
 21 Number of children of this mother now living 2

CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE*

22 I hereby certify that I attended the birth of this child, who was born alive at 6:05 A.M. on the date above stated, and that I did use the treatment for preventing ophthalmia neonatorum.

*When there was no attending physician or midwife, then the father, householder, etc., should make this return. A stillborn child is one that neither breathes nor shows other evidence of life after birth.

(Signature) D. R. A. Bartholomew (Physician or Midwife)
 Address Grady Hospital

23 Filed MAY 17 1921 192 L. Shanton Local Registrar.
 Given name added from supplemental report _____ 19 _____ Registrar.

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Arthur C. Gierhold Registrar



Importantly in appellant's discussion of how his case was handled he belittled the attorney's prudence and discretion to the point where his counsel begin to treat his case as an aversion. Heedful of circumstances and potential consequences. His reason or appellant reason both showed good cause for withdrawal existed but at the time the issue was just not that important. Both parties knew the November 18, 2011 deadline to obtain and order to appoint an administrator of Oscar Miller Jr. estate would not happen and the case would be dismissed.

Error two: the ruling that stated appellant has been represented at all times by his attorney was totally unsupported by the evidence. Georgia's Uniform Superior Court rules do not discuss withdrawal from representing a client when the presiding Judge has dismissed the case. Rule 4.3 withdrawal do state "shall submit a written request to an appropriate judge of the court for an order of the court permitting such withdrawal." The appropriate judge at that time would have been the Honorable John J. Goger and that would have seem futile due to the dismissed case. When he dismissed the case he also discharged the cause for appellant having an attorney. Judge Tom Campbell re-opened the case some 18 months later and then granted an order for appellant's lawyer to withdraw 21 months after that.

It appears the appellee expects the missing effective date of withdrawal to fall under improper withdrawal due to lack of communication by the appellant's attorney. The court below addressed this issue when appellant's August 21, 2014

Motion to Vacate and Set Aside Judgement was denied. Then the court ruled appellant has been represented at all times by his attorney even though movant filed his motion pro se. State Bar Rules and Regulations, Rule 4-102, RPC Rule 1.16 (A)3 states” A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.

In no instance has this court or the Supreme Court of Georgia ever concluded that a trial court must rely on a discharged lawyer to submit a written request for an order of the court to permit withdrawal from a dismissed case. Furthermore, this trial court has not been required to support any of its erogenous conclusion. Appellant’s motions which followed would not receive a response from the court.

Error 3: In determining an effective date of appellant declining or terminating representation we have to consider potential significant damage from pleading after the case dismissal. The court below allowed an October 12, 2012 appearance of a death certificate for Oscar Miller Jr. and it should not have went unchallenged by the opposing party. Objections to this were filed in probate court and that court never had any hearings on the matter. Oscar Miller named his son Oscar Miller Jr. in his will. When appellant submitted one of those objections he had to produce positive identification. The court below determined that the appellee and the court notified appellant of the events after May 29, 2013 in its September 9, 2014 denial of

appellant's August 21, 2014 Motion to Vacate and Set Aside Judgement. Two entries appear on the case summary prior to this date. Thus we must consider this death certificate file on October 12, 2012. The appellant's August 21, 2014 motion was based on O.C.G.A. & 9-11-60(d). The second ground under this code is fraud.

In considering the findings listed in the enumeration of error 1- the birth certificates the court below should not be permitted to terminate the living due to a fraudulent filing. After making this unsupported filing the appellee fail to notify appellant nor appellant's discharged lawyer. Due to this fraudulent filing the evidence now show that a non- amenable defect "appears upon the face of the record or pleading as a ground for the setting aside" the court's order of August 20, 2014 and that appellant did meet his burden to have the court below order set aside or vacated.

Furthermore, the evidence did not show, or even hint to the fact that appellant had representation since November 18, 2011. Without evidence of representation the ruling that stated appellant had been represented at all times by his attorney is totally unsupported, the court's granted orders are totally unsupported by the evidence the law required to make such decisions and therefore appellant submit all the court' orders after November 18, 2011 should be overturned and the case once again be dismissed.

IN THE COURT OF APPEALS

STATE OF GEORGIA

OSCAR WAYNE MILLER JR.
Appellant

V

DAVID WILBERN
Appellee

CASE NO: A16A0024

Certificate of Service

This is to certify that I have served the following counsel, party, or individual in the foregoing matter with a copy of the attached document by depositing a copy of same in the United State mail in a properly addressed envelope with adequate postage on to ensure delivery, addressed as follows:

Maurice J. Bernard, III
Attorney for Appellee/ Ga. Bar No.054850
3717 Chamblee Dunwoody Road
Atlanta, Georgia 30341

This 14th day of September 2015,

Oscar Wayne Miller Jr

Oscar Wayne Miller Jr.
Appellant
519 East Ontario Ave S.W.
Atlanta, Georgia 30310
(404) 756-0104