

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

February 17, 2015

To: Ms. Tonia Simmonsia, 2288 Cypress Point Way, Lithonia, Georgia 30058

Docket Number: A14A2276 **Style:** Tonia Simmonsia v. CitiMortgage, 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)
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**BRIEF FOR MOTION TO RECONSIDERATION
PART ONE1**

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IN THE COURT OF APPEALS OF GEORGIA

TONIA SIMMONSIA,)	
)	
Appellant,)	
)	
vs.)	APPEAL CASE NUMBER: A14A2276
)	
CITIMORTGAGE et al.)	
)	
Appellee.)	

APPELLANT’S MOTION TO RECONSIDER AND REQUEST TO SUPPLEMENT THE RECORD

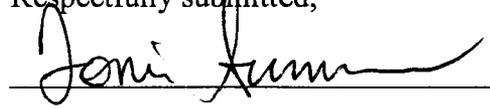
COMES NOW Tonia Simmonsia, Appellant above-named, and files her herein, pursuant to court appeals rule for Motion to Reconsider within ten (10) days of this Court’s Order dated February 3, 2015 dismissing Appellant s appeal respectfully moves this Court to alter or amend by supplementing the record with all the facts before making its decision to her appeal.

In support of this Motion, Plaintiff relies upon the following:

1. Her Brief in Support thereof;
2. Request to include the related original case# 11-CV-8118-3 from DeKalb County Public Records; to include Motion and Brief and amended Brief to set aside, All Affidavits and Amended Affidavits in support her motion to set aside and, Courts denial of motion to set aside,
3. All papers, documents, and tangible things of record before the Court at the time of the hearing of this matter.

WHEREFORE, Appellant prays that this Motion be inquired into and granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tonia Simmons", is written over a horizontal line.

Tonia Simmonsia, Plaintiff Pro Se

2288 Cypress Point Way
Lithonia, Georgia 30058
(770) 369-1877
tsimmonsia@gmail.com

IN THE COURT OF APPEALS OF GEORGIA

TONIA SIMMONSIA,)	
)	
Appellant,)	
)	
vs.)	APPEAL CASE NUMBER: A14A2276
)	
CITIMORTGAGE et al.)	
)	
Appellee.)	

**APPELLANT’S BRIEF IN SUPPORT FOR HER MOTION TO RECONSIDER AND
REQUEST TO SUPPLEMENT THE RECORD**

INTRODUCTION

COMES NOW Tonia Simmonsia, Appellant above-named, submits this Brief In Support of Her Motion to Reconsider and request to supplement the record, as follows:

Part I

ARUGMENT AND CITATION OF AUTHORITY

A. In accordance with Rule 36 the judgment was affirmed in the Court Appeals decision dated February 3, 2015. Although I understand the court can only rule based on the record at hand. Therefore, I am requesting the court to supplement the record to have all the facts before making its decision on this motion.

In a normal situation for example, when a judgment was rendered against someone properly according to the law, and that judgment was denied with prejudice, and served timely according to the law, and if the losing party *choose* not to appeal is not the same as the Appellant case. Furthermore, in this same example if the losing party decides to refile the same suit to the same defendants this scenario would justify to be affirmed in accordance with Court Appeals Rule 36.

On the other hand, Appellant should not be judged in this scenario and rule 36 based on lack of factual information available to the court at the time of its decision. Which is why Appellant is requesting the record be supplemented to allow all the facts be available prior to making a decision on this motion.

- B. Appellant assumed in her appeal the entire record including the first case would be in her file since they were related, and being a pro se person she based her brief on the entire record. Therefore, she is asking the court for leniency with this matter and grants her request to supplement the record to include her first case # 11-CV-8118-3 to include the Motion to set aside and Brief to support and amended Brief to set aside, All Affidavits and Amended Affidavits in support her motion to set aside and, Courts denial of motion to set aside.
- C. Appellee's argument is Appellant has sued twice for the same claim arising out of a foreclosure. Appellee's want the court to ignore the fact Appellant didn't receive a copy of the August 2011 order until three months after the order was filed, and the order was never in the public county court system either. This error prevented Appellant her right to a direct appeal as a matter of right. Now the Appellees want to use this defective August 2011 order and claim res judicata. In addition, Appellees claim the trial court has already addressed the "lost/misplaced order" by simply re-enter the order on November 15, 2012 for the August 2011 which is not true.
- D. The supplemental record will show grounds on why this case should be remanded back to the trial court for the following reasons:

The supplemental record will prove Appellant was unaware of the order having been entered, on August 2011 until three months later well pass appeal or reconsider opportunity. (See Brief)

On page 2 of the brief it will show Appellant made an error stating the August 2011 order was re-established on November 14, 2011 and the court notified her of the re-establish order. This error was corrected to reflect Appellant spoke with the court on November 14, 2011 and the court confirmed the August 2011 order was accurate but lost. (See amended brief and affidavits) In the order the trial court he has confirmed he did not send Appellant a copy of the August 2011 order as well as confirming he did not send Appellant a copy of the re-establish lost order. The re-establish order was filed for the clerk purpose eyes only to replace the lost original order. (See order denying motion to set aside.

Appellant argument is this court should supplement the record because it's a related case that the Appellee's are basing their reason for justifying their argument for res judicata.

Appellant argument to the court is the lack of being provided with notice effectively deprived her of the opportunity to seek reconsideration or an appeal of the order of dismissal. "Motions to set aside brought on the grounds that the court failed to notify the losing party of its decision are cognizable as motions to correct a clerical error pursuant to OCGA § 9-11-60 (g) and are properly the subject of a direct appeal." Downs v. C.D.C. Fed. Credit Union, 224 Ga. App. 869 (1) (481 SE2d 903) (1997), citing Leuenthal v. Moseley, 264 Ga. 891, 892 (453 SE2d 455) (1995). Appellate courts of this state have repeatedly held that the issue is not whether the losing party had knowledge that the judgment was entered, but whether the court had carried out the duty imposed upon it by OCGA § 15-6-21(c). Intertrust Corp. v. Fischer Imaging Corp., 198 Ga.App. 812, 403 S.E.2d 94 (1991); Kendall v. Peach State Machinery, 215 Ga.App. 633, 634(2), 451 S.E.2d 810 (1994) (physical precedent only). See Cambron,

Appellant is also seeking justice and fairness and asking the court for leniency as a pro se because harm has been done to her based on the trial court decision on not notifying her of its

decision regarding her property. However there will be no harm done by supplementing the record towards the Appellee's.

CONCLUSION

In conclusion, the Appellant understands the burden of proof is on her shoulder is why supplementing the record is necessary and according to The Supreme Court discussed how courts should allocate the burden of proof (i.e., the burden of persuasion) in *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005). The Supreme Court explained that if a statute is silent about the burden of persuasion, the court will “begin with the ordinary default rule that plaintiffs bear the risk of failing to prove their claims.” In support of this proposition, the Court cited 2 J. Strong, McCormick on Evidence § 337, 412 (5th ed. 1999), which states:

The burdens of pleading and proof with regard to most facts have been and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion. The proof will show in the supplemental record that Appellant was never served the order in her first case therefore; the first case is incomplete and never properly resolved is why it should be remanded back to the trial court.

Therefore, the Appellant persuasion lies on supplementing the record as proof and asking the court for understanding some procedural errors have occurred and it solely lies on the fact the litigant is pro se and is praying for leniency fairness and justice.

Based on the foregoing reasons, argument and citation of authority, Appellant respectfully request that this Court reverse its decision and remand it back to the trial court for further proceedings.

Respectfully submitted on February 13, 2015,

A handwritten signature in cursive script, appearing to read "Tonia Simmons", is written over a horizontal line.

Tonia Simmonsia, Plaintiff Pro Se

2288 Cypress Point Way
Lithonia, Georgia 30058
(770) 369-1877
tsimmonsia@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing
**APPELANT'S BRIEF IN SUPPORT OF HER MOTION TO RECONSIDER AND
REQUEST TO SUPPLEMENT THE RECORD** upon all parties of record in this action by
placing a copy of same in the United States Mail, Postage pre-paid, as follows:

Ashley Kent, Esq.
Burr Forman, LLP
171 Seventeenth Street, N.W., Suite 1100
Atlanta, Georgia 30363

This 13 day of February, 2015.

Respectfully submitted,



Tonia Simmons, Plaintiff Pro Se

2288 Cypress Point Way
Lithonia, Georgia 30058
(770) 369-1877