

2026 WL 2605700

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Court of Appeals of Georgia.

CASTLEBERRY et al.

v.

STEIB et al.

A26A1041

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September 3, 2026

Synopsis

Background: Leading driver and her husband brought action against trailing driver and trailing driver's employer, seeking damages for injuries sustained by leading driver in rear-end collision and for husband's loss of consortium. Following jury trial resulting in defense verdict, the State Court, DeKalb County, [Ana Maria Martinez, J.](#), denied leading driver's and husband's motion for new trial. Leading driver and husband appealed.

[Holding:] The Court of Appeals, [McFadden, P.J.](#), held that any error by trial court in failing to give jury instruction requested by leading driver and husband was not substantial error that was harmful as matter of law.

Affirmed.

Procedural Posture(s): On Appeal; Motion for New Trial; Request for Instructions.

West Headnotes (7)

[1] New Trial 🔑 Power and duty of court in general

Whether to grant new trial on general grounds is decision left to sole discretion of trial court.

[2] Appeal and Error 🔑 Objection to refusal of requested charge

Were plaintiffs required to show substantial harmful error to obtain reversal based on refused jury charge they failed to object to? **Yes**

Leading driver and her husband were required to show substantial error that was harmful as matter of law in order to obtain reversal of jury's defense verdict for trailing driver and trailing driver's employer on basis of trial court's refusal to give requested jury charge in leading driver's and husband's action against trailing driver and employer seeking damages for injuries sustained by leading driver in rear-end collision and for husband's loss of consortium, where leading driver and husband did not object after trial court instructed jury. [Ga. Code Ann. § 5-5-24\(c\)](#).

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[3] Appeal and Error 🔑 Repetition of objections

An objection voiced at the jury charge conference does not preserve for ordinary appellate review a party's objection to the charge as subsequently given. [Ga. Code Ann. § 5-5-24\(a\)](#).

[4] Appeal and Error 🔑 Necessity of timely objection

Appeal and Error 🔑 Repetition of objections

To preserve an objection to a jury charge for ordinary appellate review, the defendant must restate his objection after the court gives its instructions and before the jury retires to deliberate. [Ga. Code Ann. § 5-5-24\(a\)](#).

[5] Appeal and Error 🔑 Necessity of objection in general

Instances falling within the exception contemplated in the subsection in the rule regarding requested jury charges providing for appellate review of erroneous charges where there has been a substantial error in the charge which was harmful as a matter of law, regardless of whether a proper objection was made, are very rare, and the subsection must be strictly construed so as to avoid emasculation of the provisions of the rule's other subsections

generally requiring a proper objection. [Ga. Code Ann. §§ 5-5-24\(a\), 5-5-24\(b\), 5-5-24\(c\)](#).

[6] Appeal and Error 🔑 **Objection to refusal of requested charge**

Any error by trial court in failing to give jury instruction requested by leading driver and her husband indicating that negligent actor was liable not only for injury caused by his own acts but also for any additional harm resulting from manner in which reasonably required medical services were rendered was not substantial error that was harmful as matter of law, and thus did not warrant reversal, in absence of proper objection, of jury's defense verdict for trailing driver and trailing driver's employer in leading driver's and husband's action seeking damages for injuries sustained by leading driver in rear-end collision and for husband's loss of consortium, where trial court gave jury thorough instruction on proximate cause. [Ga. Code Ann. § 5-5-24\(c\)](#).

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[7] Appeal and Error 🔑 **Necessity of objection in general**

To warrant relief on appeal with respect to an allegedly erroneous jury charge to which proper objection was not made, alleged error must be substantial one which is blatantly apparent and prejudicial; alleged error must raise question as to whether appellant has been deprived of fair trial. [Ga. Code Ann. § 5-5-24\(c\)](#).

Attorneys and Law Firms

[Charles R. Adams III](#), [William G. Cromwell](#), for Appellant.

[P. Michael Freed](#), [Grant Butler Smith](#), [Nicholas David Michael Bedford](#), for Appellee.

Opinion

[McFadden](#), Presiding Judge.

*1 Brennon Steib was driving a dump truck owned by his company, BJN Trucking, LLC, when he drove into the back of a car driven by Alecia Castleberry. Castleberry and her husband filed this lawsuit against Steib and BJN, seeking damages for her injuries and her husband's loss of consortium. The case went to trial, and the jury returned a defense verdict. After the trial court denied the Castleberrys' motion for new trial, they filed this appeal.

The Castleberrys argue that the defense verdict was contrary to the evidence and that the trial court erred by failing to give their requested jury instruction on the issue of causation. We hold that the Castleberrys have not shown reversible error. So we affirm.

1. Trial evidence

Viewed in the light most favorable to the jury's verdict, see [Fassnacht v. Moler](#), 358 Ga. App. 463, 463, 855 S.E.2d 692 (2021), the evidence presented at trial showed that Steib admitted that he struck Castleberry's car while he was driving a fully loaded dump truck at a very low speed. The issue at trial was damages.

After the collision, Castleberry made multiple trips to the emergency room and visits to health care providers, seeking treatment for pain in her lower back, legs, right side, and neck. Eventually, she sought treatment from an orthopedic surgeon, who gave her injections for pain. The injections gave temporary relief, but they did not correct the problem, so Castleberry opted for surgery to relieve the pain in her neck. She underwent a second surgery four months later to relieve numbness, tingling, and pain in her back. Although the surgeries helped, Castleberry is still in pain.

The defense presented expert testimony that Castleberry's neck pain was unrelated to the collision and that her back surgery was unnecessary.

2. General grounds

The Castleberrys argue that the trial court erred in denying their motion for new trial on the general grounds, and specifically on the ground that the verdict was strongly against the weight of the evidence. They argue that “[t]he trial court's disregard of ... crucial and dispositive matters of evidence clearly takes this case out of the realm of discretion, and demands a new trial in accordance with the principles of justice and equity.”

[1] On the contrary, “[w]hether to grant a new trial on the general grounds ... is a decision left to the sole discretion of the trial court. [The Castleberrys] do[] not argue that the trial court failed to exercise its discretion under the general grounds, and we lack the authority to substitute our discretion for that of the trial court.” *Rease v. State*, — Ga. —, — n.13, 931 S.E.2d 906, 920 n.13 (2026) (citation modified). The record does not show that the trial court failed to exercise her discretion. So the Castleberrys have not shown reversible error.

3. Failure to give jury charge

[2] The Castleberrys argue that the trial court erred by refusing to give one of their requested jury charges. They have not shown “substantial error [that] was harmful as a matter of law,” OCGA § 5-5-24(c), as they were required to do since they did not object after the trial court instructed the jury.

*2 At the charge conference, the trial court judge stated that she intended to give her own proximate cause charge, which is set forth below. The Castleberrys’ theory of the case was that the relatively minor injury the defendants admitted causing foreseeably resulted in medical malpractice, the unnecessary surgeries. So they requested that, instead, the trial court give the following charge:

A negligent actor is liable not only for the injury caused by his own acts, but is also liable for any additional harm resulting from the manner in which reasonably required medical services are rendered. ... The [d]efendants may be liable not only for damages resulting from his negligent act, but also for all damages resulting from the improper or unskillful treatment of the injuries by the physician.

The defendants also objected to the court's proposed charge on the ground that it was incomplete. The trial court said that she would look at both parties’ proposed charges but as of that point, she intended to give the court's proximate cause charge.

The Castleberrys raised the issue again later in the charge conference, arguing that the defendants were liable “not only for damages relative directly but also for all damages relative

for the improper unskillful treatment of the injuries; which means you can say it's unnecessary or negligent surgeries.” The trial court noted their objection, but again declined to give their requested charge.

After the defense presented their case, the Castleberrys renewed their request for the charge. But the trial court did not alter her decision, and ultimately instructed the jury on proximate causation as follows:

An injury or damage is proximately caused by an act or a failure to act whenever it appears from the evidence that the act or failure to act played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or reasonable probable consequence of the act or omission. In order to be a proximate cause, the act or omission must be such that a person using ordinary care would have foreseen that the event or some similar event might reasonably result, therefrom. There may be more than one proximate cause of an event.

The transcript does not show that the Castleberrys objected after the trial court finished instructing the jury.

[3] [4] “An objection voiced at the charge conference does not preserve for ordinary appellate review a party's objection to the charge as subsequently given.” *Jivens v. State*, 317 Ga. 859, 861(1), 896 S.E.2d 516 (2023). Accord *McDowell v. Hartzog*, 292 Ga. 300, 301, 736 S.E.2d 395 (2013); *Tucker Nursing Ctr. v. Mosby*, 303 Ga. App. 80, 87(5), 692 S.E.2d 727 (2010). Instead, under OCGA § 5-5-24(a), “in all civil cases, no party may complain of the giving or the failure to give an instruction to the jury unless he objects thereto before the jury returns its verdict, stating distinctly the matter to which he objects and the grounds of his objection.” Thus, “to preserve an objection to a jury charge for ordinary appellate review, the defendant must restate his objection after the court gives its instructions and before the jury retires to deliberate.” *Jivens*, 317 Ga. at 861(1), 896 S.E.2d 516.

[5] “Nevertheless, we ‘consider and review erroneous charges where there has been a substantial error in the charge which was harmful as a matter of law, regardless of whether objection was made hereunder or not.’ [OCGA § 5-5-24\(c\)](#).” [ATG Sports Indus. v. ITS Sprinturf Holdings](#), 379 Ga. App. 63, 70(4), 928 S.E.2d 172 (2026). “Instances falling within the exception contemplated in subsection (c) are very rare, and the subsection must be strictly construed so as to avoid emasculat[i]on of the provisions of subsections (a) and (b).” [Nelson v. Miller](#), 169 Ga. App. 403, 405, 312 S.E.2d 867 (1984) (citation modified).

*3 [6] [7] To warrant relief under [OCGA § 5-5-24\(c\)](#), the alleged error “must be a substantial one which is blatantly apparent and prejudicial. ... The [alleged error] must raise a question as to whether the appellant has been deprived of a

fair trial[.]” [Nelson](#), 169 Ga. App. at 405, 312 S.E.2d 867. In this case, given the trial court's thorough instruction on proximate cause, “[w]e cannot agree that [the failure to give the requested instruction] constituted an error — if error it was — of such magnitude as to require reversal of the judgment below.” *Id.*

Judgment affirmed.

[Watkins](#) and [Padgett](#), JJ., concur.

All Citations

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