

2026 WL 2919895

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Court of Appeals of Georgia.

FIDLER

v.

AIKG, LLC et al.

AIKG, LLC et al

v.

Fidler.

A26A1558, A26A1559

|

September 29, 2026

Opinion

Dillard, Presiding Judge.

*1 These consolidated appeals concern the trial court's rulings arising from Slade Fidler¹ being allegedly injured in a go-karting accident at a facility owned by AIKG, LLC.² In Case Number A26A1558, Fidler appeals from the denial of his spoliation motion and grant of AIKG's motion for summary judgment. More precisely, Fidler argues that (1) the court abused its discretion by finding his spoliation letter imposed no duty on AIKG to preserve the requested evidence, and (2) summary judgment was improperly granted when AIKG spoliated pertinent evidence. In Case Number A26A1559, AIKG appeals from the dismissal of its breach-of-contract counterclaim against Fidler. In doing so, AIKG contends the court erred in dismissing its counterclaim because Georgia law requires the enforcement of a valid contract according to its plain terms. For the following reasons, as to Case Number A26A1558, we vacate the court's judgment and remand for further proceedings; and as to Case Number A26A1559, we affirm in part, vacate in part, and also remand for further proceedings.³

On September 21, 2023, Fidler filed a complaint for damages against AIKG, LLC; AIKG Buford, LLC; John Doe; and John Doe, LLC.⁴ In doing so, Fidler alleged that on December 30, 2022, while driving a go-kart at an AIKG facility in Buford, a track attendant turned off his vehicle, which caused it to stop and be struck by another go-kart. As a result, Fidler claimed he was injured by this collision. AIKG answered and asserted a counterclaim against Fidler. More precisely, AIKG argued that (1) Fidler was in breach of contract by filing suit

rather than pursuing mediation as required by the agreement he signed before participating in the go-kart race, and (2) the agreement signed by Fidler also contained a covenant not to sue and an indemnification clause.

AIKG moved for summary judgment on Fidler's claims. Fidler responded and filed his own motion to find spoliation and impose sanctions. In doing so, Fidler alleged that AIKG “destroyed evidence going to the heart of [the] case only after being asked to preserve that exact [security] footage.”

On February 9, 2023, an attorney sent a letter to management at the Buford AIKG facility, notifying the recipient that “an incident” occurred on December 30, 2022, which “caus[ed] injuries” to Fidler. And in addition to other types of documentation, the letter requested “[a]ny and all audio, surveillance, and/or security tapes inside and outside your establishment for thirty (30) days prior to the date of the incident up through and including the time of the incident and the five (5) days immediately following the incident.”

*2 The general manager for AIKG's Buford facility received the letter and investigated whether any employees were aware of Fidler's injury and what activities, if any, he participated in on the day in question. The investigation proceeded in this way because the spoliation letter did not explain how Fidler was injured or provide a time frame in which the injury occurred.⁵ And despite the letter's lack of specificity, the manager discovered that Fidler participated in a go-kart race and then reviewed security video from the race and his other movements around the facility. Ultimately, the manager saved *some* footage and sent Fidler video recordings that included the final two laps of the seven-lap race in which he participated (with shots from two angles). During one of those laps, on a downhill portion of the track, Fidler's go-kart made contact with another participant's vehicle.⁶ The remaining footage was destroyed.

In response to the spoliation motion, AIKG claimed it “maintained approximately twenty to thirty cameras at the premises,” and so Fidler's preservation letter requested that it “save approximately 17,000 to 25,000 hours-worth of video footage without providing any details of the alleged incident.” So, in AIKG's view, Fidler's February 9 letter was “unreasonable and failed to place [it] on notice of any recognizable incident,” and thus his spoliation motion should fail “because the video footage produced ... shows the exact location and time of the alleged go-kart incident.”⁷

After a hearing, on September 18, 2025, the trial court denied Fidler's motion to find spoliation and impose sanctions on AIKG. In doing so, the court took issue with the lack of specificity in Fidler's February 9 preservation letter, concluding that it was "overbroad, vague, and insufficient in its sweeping request for [AIKG] to preserve video evidence encompassing approximately 'at least' thirty-six (36) days and thousands of hours of footage from multiple cameras." The court also highlighted the letter's failure to "provide any facts and/or details concerning the incident at issue," which it said was "necessary to impose any duty on [AIKG] to preserve documents or information."

Then, on January 21, 2026, the trial court granted AIKG's motion for summary judgment but dismissed its breach-of-contract counterclaim against Fidler. As to the question of summary judgment, the court said only that there was "no genuine issue of material fact." And as to the counterclaim, it concluded that AIKG waived its right to alternative dispute resolution by engaging in "conduct inconsistent with such, *i.e.*, asserting a multicount counterclaim, engaging in discovery, and failing to invoke their right to arbitration." Fidler filed a timely notice of appeal from the grant of summary judgment; and in Case Number A16A1558, he challenges both that order and the denial of his request for a finding of spoliation. AIKG filed a cross appeal in Case Number A16A1559, challenging the court's dismissal of its counterclaim. We will address each case in turn.

1. Case Number A26A1558. Fidler's Appeal.

***3** a. *Spoliation*. Fidler first contends the trial court erred by denying his motion to find spoliation and impose sanctions. And because the court applied an erroneous legal theory to its consideration of this motion, we vacate its judgment in this regard and remand for further proceedings.

A trial court has wide discretion in "adjudicating spoliation issues, and such discretion will not be disturbed absent abuse."⁸ Indeed, when a court makes findings of fact in ruling on a spoliation claim, we will "uphold those findings if there is any evidence to support them, *i.e.*, unless they are clearly erroneous."⁹

Spoliation refers to "the destruction or failure to preserve evidence that is relevant to contemplated or pending litigation."¹⁰ And when this occurs, it may create the "rebuttable presumption that the evidence would have been harmful to the spoliator."¹¹ But for a plaintiff to pursue

a remedy for spoliation, the party that destroyed pertinent evidence must have first had a duty to preserve it.¹² Significantly, for a defendant, this duty arises when the alleged spoliator has actual or constructive notice that the plaintiff is contemplating litigation.¹³

Here, the trial court found that AIKG had *actual notice or knowledge* of contemplated litigation from Fidler's February 9 preservation letter. The evidence supports this finding. But the court did not stop there. It then analyzed the substance of the preservation letter and ultimately concluded that it did *not* impose a duty on AIKG to preserve evidence because it was "overbroad, vague, and insufficient in its sweeping request" for more than 30 days' worth of footage from multiple cameras. So, the court found that no spoliation occurred despite AIKG receiving the letter, beginning an investigation, reviewing surveillance footage from the identified day, preserving *some* of that footage, and then unilaterally deciding to destroy footage the reviewing manager *subjectively* deemed to be unimportant.

In reaching this conclusion, the trial court solely relied on the Supreme Court of Georgia's decision in *Cooper Tire & Rubber Co. v. Koch*,¹⁴ in which it explained that "a plaintiff also must act reasonably in anticipating whether litigation arising from her injury will occur."¹⁵ But significantly, the *Koch* Court was *not* referring to a plaintiff's duty as to the specific contents of a preservation letter but to the duty to *preserve evidence* when he or she should reasonably or actually consider litigation.¹⁶ The court below, then, mistakenly applied a standard to the substance of Fidler's preservation letter that simply does not exist.

***4** In response to Fidler's arguments, AIKG does not rely on *Cooper Tire*. Instead, AIKG seeks to distinguish this case from those relied on by Fidler—*Baxley v. Hakiel Indus., Inc.*¹⁷ and *Kroger Co. v. Walters*.¹⁸ And while the facts of *Baxley* and *Kroger* are distinguishable in that the defendants in those cases were both aware of injuries on the dates they occurred and thus began almost immediate investigations (without first receiving preservation letters),¹⁹ these cases do *not* support a reasonableness standard being applied to the contents of a preservation letter. Indeed, we are unaware of any legal basis for employing such a standard, and AIKG has not pointed us to any binding statutory provision or precedent supporting one. In the absence of such a standard, we decline to craft one out of whole cloth.²⁰ Georgia has a

clear and established spoliation standard from our Supreme Court: “[T]he duty to preserve relevant evidence *arises when litigation is reasonably foreseeable* to the party in control of that evidence”²¹ So, the trial court’s wide discretion notwithstanding, we cannot affirm a court’s reasoning when it is “based upon an erroneous legal theory.”²²

Here, the trial court made a finding of fact supported by the evidence—that the February 9 preservation letter gave AIKG *actual notice or knowledge* that litigation was contemplated. But the court then applied an erroneous legal theory to conclude that—its finding notwithstanding—no preservation duty arose. Put another way, the court applied a nonexistent standard to the contents of a preservation letter it had already determined provided actual notice. This was an abuse of discretion. And because the court employed an erroneous legal theory, we vacate its denial of Fidler’s motion to find spoliation and impose sanctions, and remand this case for application of the correct standard.²³

b. *Summary Judgment.* Fidler next argues the trial court erred by granting summary judgment in AIKG’s favor. We agree. Because the court’s decision to grant summary judgment was influenced by its ruling on spoliation (and because the question of spoliation must be revisited under the appropriate standard), we likewise vacate its grant of summary judgment for AIKG and remand for reconsideration.²⁴

2. Case Number A26A1559. AIKG’s Cross Appeal.

*5 In its sole claim of error on cross appeal, AIKG argues the trial court erred in dismissing its counterclaim against Fidler based on breach of the contract he signed before engaging in activities at its facility—which included a covenant not to sue and an indemnity provision.²⁵ Reviewing this claim of error *de novo*, we agree in part.²⁶

The trial court dismissed AIKG’s counterclaim when it granted summary judgment as to Fidler’s claims—an order

we vacated above. And in doing so *sua sponte*, the court found that AIKG “waived its right to arbitrate or mediate the claims ... through conduct inconsistent with such[,] *i.e.*, asserting a multicount counterclaim, engaging in discovery, and failing to invoke their right to arbitration.”²⁷ We agree with the court in this respect and thus affirm that portion of the order.²⁸ But that was not the basis of AIKG’s motion for summary judgment on the breach-of-contract counterclaim.

AIKG’s motion for summary judgment did not rely on the contract’s arbitration clause,²⁹ but was instead based on the covenant not to sue and indemnification clause. But the court’s order makes *no mention* of this alternative ground for AIKG’s counterclaim. So, because we vacate and remand on the bases provided in Case No. A26A1558, we likewise vacate in part and remand Case No. A26A1559 for the court to consider this alternative ground of AIKG’s breach-of-contract counterclaim when it reconsiders the motion for summary judgment.³⁰

For these reasons, as to Case No. A26A1558, we vacate the trial court’s order denying a finding of spoliation and granting summary judgment for AIKG, and remand for further proceedings consistent with this opinion. And as for Case No. A26A1559, we affirm in part and vacate in part, and also remand for further proceedings consistent with this opinion.

**6 Judgment vacated and case remanded for further proceedings as to Case Number A26A1558. Judgment affirmed in part, vacated in part, and case remanded for further proceedings as to Case Number A26A1559.*

Gobeil and Pipkin, JJ., concur.

All Citations

--- S.E.2d ----, 2026 WL 2919895

Footnotes

¹ Fidler’s full legal name is Nicklos Slade Fidler, but the case is docketed as Slade Fidler.

² AIKG is an acronym for Andretti Indoor Karting and Games.

- 3 Oral argument was held on June 9, 2026, and is archived on the Court of Appeals of the State of Georgia's website. See Court of Appeals of the State of Georgia, Oral Argument, Case No. A26A1558 (June 9, 2026), available at <https://vimeo.com/1200808785>.
- 4 For the sake of clarity, we refer to AIKG, LLC; AIKG Buford, LLC; John Doe; and John Doe, LLC. collectively as "AIKG."
- 5 At oral argument, Fidler's counsel acknowledged the preservation letter was less than exemplary in this regard.
- 6 Significantly, according to Fidler, the collision that caused his injury occurred on a downhill portion of the track during the final lap.
- 7 In its order on the spoliation motion, the trial court appears to have disagreed with this representation because it found that no collision was shown in the footage from the final two laps; that *Fidler's* go-kart made contact with other carts on a different lap; and none of the preserved footage showed what Fidler described as having caused his injury—*i.e.*, his go-kart abruptly stopping before another go-kart struck him from behind on a downhill slope during the last lap. We must accept the court's finding in this regard because no videos were transmitted with the appellate record. See, e.g., [*Kennedy v. Kennedy*, 309 Ga. App. 590, 592\(1\)\(a\), 711 S.E.2d 103 \(2011\)](#) (explaining that when an item necessary for our review is omitted from the appellate record, "we must assume that the evidence supported the contested determination"). And while the record does contain deposition exhibits that include links to the relevant videos, those links no longer work. In any event, our rules require that "[c]opies of any video or audio recordings of evidence ... be submitted to this Court on DVD or on video or audio compact disc, and ... include any proprietary software necessary to play the recordings." Ga. Ct. App. R. 18(c). No DVDs or CDs were included in the record, nor were they requested for transmission in the notice of appeal or any motion to supplement the record.
- 8 [*Creek House Seafood & Grill, LLC v. Provatas*, 358 Ga. App. 727, 729, \(856 S.E.2d 335\) \(2021\)](#) (quotation marks omitted). Accord [*Phillips v. Harmon*, 297 Ga. 386, 397\(II\), 774 S.E.2d 596 \(2015\)](#); [*Reid v. Waste Indus. USA*, 345 Ga. App. 236, 245\(6\), 812 S.E.2d 582 \(2018\)](#).
- 9 [*Provatas*, 358 Ga. App. at 729, 856 S.E.2d 335](#) (quotation marks omitted). Accord [*Reid*, 345 Ga. App. at 245\(6\), 812 S.E.2d 582](#).
- 10 [*Reid*, 345 Ga. App. at 245\(6\), 812 S.E.2d 582](#) (quotation marks omitted). Accord [*Phillips*, 297 Ga. at 393\(II\), 774 S.E.2d 596](#).
- 11 [*Reid*, 345 Ga. App. at 245\(6\), 812 S.E.2d 582](#) (quotation marks omitted). Accord [*Baxley v. Hakiel Indus., Inc.*, 282 Ga. 312, 313, 647 S.E.2d 29 \(2007\)](#).
- 12 See [*Phillips*, 297 Ga. at 394\(II\), 774 S.E.2d 596](#) (explaining that "in order for the injured party to pursue a remedy for spoliation, the spoliating party must have been under a duty to preserve the evidence at issue").
- 13 See [*Phillips*, 297 Ga. at 396\(II\), 774 S.E.2d 596](#) (explaining that "the duty arises when [the defendant] knows or reasonably should know that the injured party, the plaintiff, is in fact contemplating litigation, which the cases often refer to in terms of 'notice' to the defendant"); [*Hailu v. John Milledge Acad., Inc.*, 376 Ga. App. 673, 676\(2\), 920 S.E.2d 702 \(2025\)](#) (same).
- 14 303 Ga. 336, (812 S.E.2d 256) (2018).
- 15 *Id.* at 341(2)(c), 812 S.E.2d 256.

- 16 See *id.* (“In this case, the alleged spoliator is an individual plaintiff, and the duty to preserve evidence must be considered from her perspective. As with defendants, the duty of plaintiffs to preserve relevant evidence in their control arises when litigation is actually or reasonably should be anticipated.”).
- 17 282 Ga. 312, 647 S.E.2d 29 (2007).
- 18 319 Ga. App. 52, 735 S.E.2d 99 (2012).
- 19 See *Baxley*, 282 Ga. at 313, 647 S.E.2d 29 (“There was proof of spoliation here, as [the pub’s] manager was aware of her customer’s involvement in the accident at issue and took steps to investigate the day after it occurred, yet failed to preserve the recording of the pertinent events and allowed any potential videotaped evidence to be destroyed.”); *Kroger*, 319 Ga. App. at 53(1), 735 S.E.2d 99 (“Following Kroger’s stated procedure to investigate every such incident, [the store co-manager] began to investigate [the plaintiff’s] fall that same day.”).
- 20 See *Collier v. State*, 307 Ga. 363, 379, 834 S.E.2d 769 (2019) (Peterson, J., concurring specially) (chastising the Supreme Court of Georgia for “creat[ing] out of whole cloth” what became “a tangled mess of ... jurisprudence” and warning that “[w]e never should have started making things up, and we ought to stop now”).
- 21 *Phillips*, 297 Ga. at 397(II), 774 S.E.2d 596.
- 22 *Id.*
- 23 See *Venticinque v. Lair*, 323 Ga. 169, 169, 924 S.E.2d 312 (2025) (vacating trial court’s grant of equitable caregiver status to appellee and remanding the case for the trial court to reconsider the issue applying the correct legal standard); *State v. Harris*, 316 Ga. 272, 279(3), 888 S.E.2d 50 (2023) (vacating a court’s ruling on a motion and remanding the case to the trial court to reconsider the motion under the correct legal standard); *Loehle v. Ga. Dep’t of Pub. Safety*, 334 Ga. App. 836, 843(2), 780 S.E.2d 469 (2015) (vacating the denial of appellant’s spoliation motion and remanding the case for the trial court to reconsider that motion in light of the correct legal analysis).
- 24 *Baxley*, 282 Ga. at 313, 647 S.E.2d 29 (explaining that “[p]roof of spoliation raises a rebuttable presumption against the spoliator that the evidence favored the spoliator’s opponent, a fact rendering summary judgment inappropriate” (brackets omitted)).
- 25 To the extent that any other arguments may lurk in the record, we neither seek out nor address them. See *Smyrna Dev. Co. v. Whitener Ltd. P’ship*, 280 Ga. App. 788, 790(2) n.3, 635 S.E.2d 173 (2006) (declining “to address any ... issues that might be lurking in the record but are not specifically supported in the brief by argument and citation to authority” (punctuation omitted)); *Collins v. Newman*, 237 Ga. App. 861, 861–62(1), 517 S.E.2d 100 (1999) (noting it is “inappropriate for this Court to speculate as to possible bases for reversal that might be lurking in the record but are not clearly articulated in the brief and supported by argument and citation to authority”).
- 26 See, e.g., *YP, LLC v. Ristich*, 341 Ga. App. 381, 381, 801 S.E.2d 80 (2017) (“We review a trial court’s sua sponte order of dismissal de novo.” (quotation marks omitted)).
- 27 AIKG’s answer and counterclaim included an allegation that Fidler breached the agreement by filing suit “without first attempting to pursue mediation” as required by the contract “[i]n the event [Fidler] believe[d] a valid claim exist[ed] against [AIKG].”

- 28 See *Griffis v. Branch Banking & Tr. Co.*, 268 Ga. App. 588, 591(2), 602 S.E.2d 307 (2004) (holding that defendants waived the right to arbitration by asserting a multicount counterclaim, engaging in extensive discovery, and waiting nine months before asserting the right to arbitration).
- 29 AIKG does not contest the trial court's finding as to a waiver of alternative dispute resolution head on, instead focusing again on the clauses for indemnification and a covenant not to sue.
- 30 *Rafac v. Jiangsu Linhai Power Mach. Grp. Corp.*, 357 Ga. App. 551, 556, 851 S.E.2d 185 (2020) (vacating grant of motion to dismiss and remanding for reconsideration).

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