2026 WL 1825358
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Court of Appeals of Georgia.

PARRIS

v.

GOOCH et al.

Onsite Communication Services, LLC

v.

Gooch et al.

AMCO Insurance Company

v.

Gooch et al.

A26A0423, A26A0424, A26A0425
|
June 24, 2026

Synopsis

Background: Motorists, who were injured in head-on collision with truck driver, brought action against truck driver, driver's employer, and employer's insurer, asserting claims for negligence and negligence per se against truck driver, claims for vicarious liability and direct negligence against employer, including negligent supervision, training, and retention, and claims against insurer. The Superior Court, White County, Raymond E. George, C.J., denied driver's, employer's, and insurer's motions for summary judgment and issued certificate of immediate review. Driver and employer filed applications for interlocutory review, which were granted, and insurer cross-appealed.

Holdings: The Court of Appeals, McFadden, P.J., held that:

[1] issue of material fact as to whether truck driver was under influence of methamphetamine at time of head-on collision precluded grant of summary judgment to truck driver on motorists' negligence claim;

[2] Federal Motor Carrier Safety Regulations (FMCSR) applied to truck driver, as an intrastate driver, for purposes of negligence per se claim brought against truck driver by motorists;

[3] issue of material fact as to whether truck driver's employer had actual or constructive knowledge of truck driver's drug use and his multiple speeding tickets, and yet took no action, precluded grant of summary judgment to employer on motorists' negligent supervision, training, and retention claims;

[4] issue of material fact as to whether truck driver's employer actually knew that truck driver was using illegal drugs and that he had multiple speeding tickets, but did not reprimand him, precluded grant of summary judgment to employer on motorists' punitive damages claim; and

[5] issue of material fact as to whether truck driver's employer acted in bad faith toward motorists precluded grant of summary judgment to employer on motorists' claim for attorney fees; and

[6] truck driver's employer was "motor carrier" under statute providing that any person having cause of action, whether arising in tort or contract, may join in same cause of action the motor carrier and its insurance carrier.

Affirmed.

Procedural Posture(s): Interlocutory Appeal; Motion for Summary Judgment; Motion for Attorney's Fees.

West Headnotes (23)

[1] Summary Judgment

Genuine issue of material fact as to whether truck driver was under the influence of methamphetamine at time of head-on collision with motorists precluded grant of summary judgment to truck driver on motorists' negligence claim.

[2] Summary Judgment

Defendant may prevail on a motion for summary judgment by either presenting evidence negating an essential element of the plaintiff's claims or establishing from the record an absence of evidence to support such claims, and when defendant discharges this burden, plaintiff, as the nonmoving party, cannot rest on its pleadings,

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but, rather, must point to specific evidence giving rise to a triable issue. Ga. Code Ann. § 9-11-56(c).

[3] **Automobiles**

Jury had to make factual determination whether to accept opinion testimony concerning truck driver's impairment due to drugs at time of collision, in whole or in part, and what weight and credibility to give it in motorists' negligence action against truck driver stemming from head-on collision.

[4] **Summary Judgment**

Appellate courts use a de novo standard of review on appeal from a grant or denial of summary judgment and view the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the non-movant. Ga. Code Ann. § 9-11-56(c).

[5] **Automobiles**

Question of whether a motorist's consumption of alcohol or drugs impaired his driving capabilities and entered into the proximate cause of vehicular collision is best left for the jury's resolution in negligence action stemming from vehicular accident.

[6] **Automobiles**

Federal Motor Carrier Safety Regulations (FMCSR) applied to truck driver, as an intrastate driver, for purposes of negligence per se claim brought against truck driver by motorists, who were injured in head-on collision with truck driver; at time of collision, Georgia had adopted the FMCSR as its own safety regulations applicable to intrastate commerce, expressly providing that all references to interstate commerce in the FMCSR shall be interpreted to mean "intrastate" commerce in Georgia, and there was no indication in record that such adopted rules did not apply to truck driver. Ga. Comp. R. & Regs. 515-16-4-.01.

[7] **Summary Judgment**

Genuine issue of material fact as to whether truck driver's employer had actual or constructive knowledge of truck driver's drug use and his multiple speeding tickets while driving employer's trucks, and yet took no action and continued to allow him to drive its trucks, precluded grant of summary judgment to truck driver's employer on negligent supervision, training, and retention claims brought against driver's employer by motorists, who were injured in head-on collision with truck driver.

[8] **Labor and Employment**

Direct negligence claims brought by motorists, who were injured in head-on collision with truck driver, against truck driver's employer for negligent training, supervision, and retention each required a showing that employer had actual or constructive knowledge of the danger that resulted in the alleged injury, namely truck driver's drug use.

[9] **Labor and Employment**

Employer has a duty to exercise ordinary care not to hire or retain an employee the employer knows or should know poses a risk of harm to others when it is reasonably foreseeable that the employee's tendencies could cause the type of harm sustained by the plaintiff; however, it is not necessary that the employer should have contemplated or even been able to anticipate the particular consequences which ensued or the precise injuries sustained by the plaintiff.

[10] **Summary Judgment**

In order to defeat employer's motion for summary judgment on plaintiff's claim for negligent training and supervision of employee, plaintiff must produce some evidence of incidents similar to the behavior of employee that is the cause of the injury at issue.

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[11] **Pleading**

Motorists, who were injured in head-on collision with truck driver, could rely on Georgia's adoption of the Federal Motor Carrier Safety Regulations (FMCSR), for purposes of their negligence per se claims against truck driver's employer, even though they did not cite Georgia's adoption on FMCSR in their complaint and, instead, cited only the FMCSR; there was no authority for the proposition that such citations were required, Civil Practice Act required only a short and plain statement of the plaintiff's claim, and function and substance of motorists' complaint against employer put employer on notice of the negligence per se claims against it. Ga. Code Ann. § 9-11-1 et seq.; Ga. Comp. R. & Regs. 515-16-4-.01.

[12] **Pleading**

Civil Practice Act requires only a short and plain statement of the plaintiff's claim. Ga. Code Ann. § 9-11-1 et seq.

[13] **Pleading**

There is no magic in nomenclature, and courts judge pleadings by their function and substance.

[14] **Summary Judgment**

Genuine issues of material fact as to whether truck driver's employer actually knew that truck driver was using illegal drugs and that he had multiple speeding tickets while driving employer's vehicles, but did not reprimand or train him, and instead continued to let him drive, precluded grant of summary judgment to employer on punitive damages claim brought against employer by motorists, who were injured in head-on collision with truck driver and who alleged negligent hiring and retention claims against truck driver's employer. Ga. Code Ann. § 51-12-5.1(b).

[15] **Damages**

Mere negligence, although gross, will not alone authorize the recovery of punitive damages; there must be circumstances of aggravation or outrage. Ga. Code Ann. § 51-12-5.1(b).

[16] **Damages**

Plaintiff alleging negligent hiring and/or retention claim can proceed with a punitive damages claim against employer only by showing that employer had actual knowledge of numerous and serious violations on its employee's record or, at the very least, that employer flouted a legal duty to check employee's record showing such violations. Ga. Code Ann. § 51-12-5.1(b).

[17] **Damages**

In automobile collision cases, punitive damages are not recoverable when the driver at fault simply violates a rule of the road.

[18] **Summary Judgment**

Genuine issue of material fact as to whether truck driver's employer acted in bad faith toward motorists, who were injured in head-on collision with truck driver, because he knew that truck driver was using illegal drugs and that he had multiple speeding tickets, but yet did not reprimand or train him, precluded grant of summary judgment to employer on motorists' claim for attorney fees. Ga. Code Ann. § 13-6-11.

[19] **Costs, Fees, and Sanctions**

Element of bad faith that will support statutory claim for expenses of litigation must relate to the acts in the transaction itself prior to the litigation, not to the motive with which a party proceeds in the litigation. Ga. Code Ann. § 13-6-11.

[20] **Insurance**

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Truck driver's employer was "motor carrier" under statute providing that any person having a cause of action, whether arising in tort or contract, may join in the same cause of action the motor carrier and its insurance carrier, such that motorists, who were injured in head-on collision with truck driver, could bring direct action against employer's insurer; although truck driver's employer was not a "for-hire" motor carrier, statute did not limit its application to "for-hire" motor carriers. Ga. Code Ann. § 40-2-140(d) (4).

[21] Insurance

Party may not bring a direct action against the liability insurer of the party who allegedly caused the damage unless there is an unsatisfied judgment against the insured or it is specifically permitted either by statute or a provision in the policy.

[22] Insurance

Statute providing that any person having a cause of action, whether arising in tort or contract, may join in the same cause of action the motor carrier and its insurance carrier does not limit its application to "for-hire" motor carriers; plain language of statute provides for a direct action against a "motor carrier" and its insurer, with no reference to for-hire motor carriers. Ga. Code Ann. § 40-2-140(d) (4).

[23] Statutes

When courts consider the meaning of a statute, courts must presume that the General Assembly meant what it said and said what it meant.

Attorneys and Law Firms

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Opinion

McFadden, Presiding Judge.

***1** This case arises out of a motor vehicle collision. The defendant driver, Jimmy Parris, his employer, Onsite Communication Services, LLC, and Onsite's insurer, AMCO Insurance Company, each moved for summary judgment. The trial court denied those motions.

We conclude that there is enough evidence to create a genuine issue of material fact as to whether Parris was impaired at the time of the collision. There is also sufficient evidence to create a genuine issue of material fact as to whether Onsite had actual or constructive knowledge of Parris's drug use and his multiple speeding tickets while driving Onsite trucks and yet took no action and continued to allow him to drive its vehicles. That evidence is sufficient to sustain an award of compensatory and punitive damages and of attorney fees under OCGA § 13-6-11.

At the time of the collision, Georgia had adopted the Federal Motor Carrier Safety Regulations ("FMCSR") as its own safety regulations applicable to intrastate commerce. We hold that the complaint encompasses Georgia's adoption of those federal regulations.

OCGA § 40-2-140 (d) (4) (2021) authorizes a direct action against a motor carrier's insurer. We hold that Onsite is a motor carrier under that statute.

So we affirm.

1. *Facts and procedural posture*

Tammy Gooch and Jeffery Gooch were involved in a head-on motor vehicle collision with Parris, who was driving a truck owned by his employer Onsite. It is undisputed that Parris was in the course and scope of his employment at the time of the collision and that the day after the collision, per Onsite's company policy, Parris submitted to a drug test which was positive for methamphetamine.

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The Gooches filed a complaint against Parris, Onsite, and AMCO.[1] The complaint alleged that the Onsite truck driven by Parris crossed out of its lane of travel and into the oncoming lane of traffic; that the truck struck a vehicle traveling directly in front of the Gooches; and that the Onsite vehicle then collided with the Gooches' vehicle at a high rate of speed, thereby causing disabling damage to both vehicles and personal injuries to the Gooches. The complaint asserted claims for negligence and negligence per se against Parris, with the negligence per se claims premised in part on alleged violations of the FMCSR. The complaint set forth claims for vicarious liability and direct negligence against Onsite, including negligent supervision, training, and retention. The complaint further claimed that AMCO was liable as Onsite's insurer. The Gooches sought compensatory damages as well as punitive damages and attorney fees under OCGA § 13-6-11.

The defendants filed separate motions for summary judgment. Parris moved for partial summary judgment on the Gooches' claims of negligence per se for FMCSR violations, punitive damages, and attorney fees. Parris conceded in his motion that it appeared he was negligent in causing the collision, but he argued that there was no evidence to support allegations that he was under the influence of drugs, including methamphetamine, at the time of the collision. He also adopted Onsite's argument in its summary judgment motion that the FMCSR did not apply to him because he drove solely within the state of Georgia and was not an interstate driver.

***2** Onsite moved for partial summary judgment on the claims of negligence per se for FMCSR violations, direct negligence, punitive damages, and attorney fees. Onsite conceded in its motion that it is vicariously liable for Parris' breach of the applicable duty of care and damages proximately caused by the collision, but it argued that there was no evidence that Parris was under the influence of methamphetamine at the time of the accident and that the FMCSR did not apply.

AMCO moved for summary judgment on all claims, arguing that Georgia's direct action statutes, pursuant to which AMCO was added as a party defendant, do not apply because its insured, Onsite, is not a "motor carrier" as defined by those statutes.

In a single order, the trial court summarily denied all three defense motions for summary judgment, but issued a certificate of immediate review. Parris and Onsite filed applications for interlocutory review, which this court granted, and these appeals followed. In Case No. A26A0423, Parris appeals; in Case No. A26A0424, Onsite appeals; and in Case No. A26A0425, AMCO cross-appeals.

Case No. A26A0423

2. *Impairment at time of collision*

[1] Parris contends that the trial court erred in denying his motion for summary judgment because there was no genuine issue of material fact as to whether he was impaired at the time of the collision. We disagree.

[2] "Summary judgment is proper only when no issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Rebel Auction Co. v. Citizens Bank*, 343 Ga. App. 81, 86 (2), 805 S.E.2d 913 (2017) (citation and punctuation omitted). See OCGA § 9-11-56 (c). "A defendant may [prevail on a motion for summary judgment] by either presenting evidence negating an essential element of the plaintiff's claims or establishing from the record an absence of evidence to support such claims." *Cowart v. Widener*, 287 Ga. 622, 623 (1) (a), 697 S.E.2d 779 (2010) (citations and punctuation omitted). "Where a defendant moving for summary judgment discharges this burden, the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue." Id.

In support of his motion for summary judgment, Parris cites the following evidence as showing that he was not impaired at the time of the collision. A co-worker who was in the Onsite vehicle with Parris at the time of the collision testified that he did not notice abnormal behavior from Parris, who was driving normally and safely. A state trooper who spoke to Parris at the scene of the collision testified that Parris did not show signs of impairment, did not exhibit symptoms associated with methamphetamine intoxication, and was not cited for driving under the influence of drugs. And an expert opined in a report that the methamphetamine present in Parris' body had been metabolized so that he was not impaired at the time of the collision.

In response, the Gooches have not rested on their pleadings and instead have pointed to the following evidence as giving rise to a triable issue. Parris has admitted that he is a long-time, habitual methamphetamine user, with a prior arrest for possession of methamphetamine while employed at Onsite.

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He deposed that he smokes methamphetamine up to three times per week. He admitted using methamphetamine before the collision, but claimed that he last smoked the drug two days before the collision. Parris has conceded that he caused the collision when his vehicle crossed the centerline of the roadway and veered into oncoming traffic, and he has offered no explanation for such erratic driving. The day after the collision, he tested positive for methamphetamine, showing that the drug was present in his body at the time of the collision. He deposed that he knew he would fail the drug test and that he told the CEO of Onsite before taking it that he would fail.

***3** **[3]** The Gooches also note that the opinion of Parris' expert alone would not authorize a grant of summary judgment. See *Gryder v. Conley*, 352 Ga. App. 891, 895 (2), 836 S.E.2d 120 (2019) ("when the evidence on a dispositive issue consists of opinion evidence, such evidence alone can never sustain an award of summary judgment, although it can be sufficient to preclude an award of summary judgment") (citation and punctuation omitted). Indeed, the other evidence cited by Parris also rests on opinion testimony concerning his impairment, and for such evidence a "jury must make the factual determination whether to accept the opinion evidence ... in whole or in part and what weight and credibility to give it." *Young v. Faulkner*, 251 Ga. App. 847, 555 S.E.2d 221 (2001) (trial court erred in granting summary judgment because weight and credibility of opinion evidence were matters for the jury).

[4] **[5]** "We use a de novo standard of review on appeal from a grant or denial of summary judgment, and view the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the non-movant." *State of Ga. v. Fed. Defender Program*, —— Ga. —— (3), —— S.E.2d ——, 2026 WL 1541134 (Case No. S26A0364, decided June 2, 2026). So viewed, the evidence cited by the Gooches — Parris' admitted habitual use of methamphetamine before the collision, his unexplained traffic violation of crossing the road's centerline and veering into oncoming traffic, and his positive drug test showing that methamphetamine was present in his body at the time of the collision — was sufficient to create a genuine issue of material fact as to whether Parris was impaired at the time of the collision. See *Wright v. State*, 304 Ga. App. 651, 652-653 (1), 697 S.E.2d 296 (2010) (evidence that defendant admitted to taking drugs, that lab tests confirmed the presence of drugs in his system, and that his vehicle crossed the centerline and caused a collision was sufficient to establish appellant's impairment); *Yglesia v. State*, 288 Ga. App. 217, 218, 653 S.E.2d 823 (2007) ("the commission of a traffic violation can constitute evidence that a driver is impaired"). Indeed, "the question of whether a motorist's consumption of alcohol [or drugs] impaired his driving capabilities and entered into the proximate cause of the collision is best left for the jury's resolution." *Barrett v. Burnette*, 348 Ga. App. 838, 840, 824 S.E.2d 701 (2019) (citation and punctuation omitted) (physical precedent). See also *Gwinnett County v. Sargent*, 321 Ga. App. 191, 193 (1), 738 S.E.2d 716 (2013) (same); *Schwartz v. Brancheau*, 306 Ga. App. 463, 467 (2), 702 S.E.2d 737 (2010) ("trial court has discretion to admit even minimal evidence of alcohol [or drug] consumption"). Because the evidence creates a genuine issue of material fact as to whether Parris was impaired at the time of the collision, the trial court did not err in denying his motion for summary judgment on this ground.

3. *Negligence per se*

[6] Parris contends that the trial court erred in denying summary judgment on the Gooches' negligence per se claims premised on alleged violations of the FMCSR because those regulations applied only to interstate commerce and he worked entirely intrastate. But at the time of the collision, Georgia had adopted the FMCSR as its own safety regulations applicable to intrastate commerce, expressly providing that "[a]ll references to 'interstate' commerce in the Federal Motor Carrier Safety Regulations adopted hereby shall be interpreted ... to mean 'intrastate' commerce in Georgia." Ga. Comp. R. & Regs. 515-16-4-.01 (2021). Parris has not addressed this application of the adopted rules to intrastate commerce in Georgia, has pointed to no evidence showing that such adopted rules did not apply to him, and thus has failed to carry his burden as a defendant seeking summary judgment to show that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law on this basis.

Case No. A26A0424

4. *Negligence claims*

***4** **[7]** Onsite contends that the trial court erred in denying summary judgment on the direct negligence claims, including negligent supervision, training and retention, because there is no evidence that Parris' drug use proximately caused the collision. But as discussed above, there was sufficient evidence creating a genuine issue of material fact as to

whether Parris was under the influence of methamphetamine at the time of the collision.

Onsite also claims that there is no evidence that it had knowledge of Parris' drug use. But the Gooches have pointed to evidence showing that approximately three years before the collision in this case, Kristin House, who had been in a relationship with Parris and had two children with him, knew that Parris was using methamphetamine and she informed his supervisors at Onsite that he was using drugs. The supervisors discussed the information, but did not have Parris submit to drug testing or take any other action. Approximately a year before the crash, House filed a court motion averring that Parris had drug paraphernalia in his home and was using drugs again. Parris' attorney then filed affidavits in that case in support of Parris, including affidavits of his Onsite supervisors and another Onsite employee.

The Gooches also point to the evidence showing that Parris smoked methamphetamine up to three times per week while working at Onsite; that he deposed that he was drug-tested at Onsite three to five times per year; that the expert witness reported that a positive test could result up to a week following chronic use; and yet Onsite claimed Parris had passed all drug tests, but failed to produce any such test results. The Gooches further cite evidence that Parris had four or five speeding tickets while driving Onsite trucks, that he reported those tickets to Onsite, and that he was not reprimanded or further trained as a result of those tickets.

[8] **[9]** **[10]** The Gooches' direct negligence claims against Onsite "for negligent training, supervision, and retention each require a showing that [Onsite] had actual or constructive knowledge of the danger that resulted in [the alleged] injury, namely, [Parris' drug use]." *Doe v. St. Joseph's Catholic Church*, 313 Ga. 558, 566 (2), 870 S.E.2d 365 (2022).

> An employer has a duty to exercise ordinary care not to hire or retain an employee the employer knew or should have known posed a risk of harm to others where it is reasonably foreseeable that the employee's tendencies could cause the type of harm sustained by the plaintiff. However, it is not necessary that the employer should have contemplated or even [been] able to anticipate the particular consequences which ensued, or the precise injuries sustained by the plaintiff. In order to defeat summary judgment on a claim for negligent training and supervision, a plaintiff must produce some evidence of incidents similar to the behavior that was the cause of the injury at issue.

Doe I v. YWCA of Greater Atlanta, 321 Ga. App. 403, 408 (2), 740 S.E.2d 453 (2013) (citation and punctuation omitted).

In this case, the evidence cited by the Gooches was sufficient to create a genuine issue of material fact as to whether Onsite had actual or constructive knowledge of Parris' drug use and his multiple speeding tickets while driving Onsite trucks and yet took no action and continued to allow him to drive its vehicles. Under the circumstances, we find that the trial court did not err in denying summary judgment on this basis.

5. *Negligence per se claims*

***5** **[11]** **[12]** **[13]** Onsite argues, like Parris, that the trial court erred in denying summary judgment on the negligence per se claims based on violations of the FMCSR because those rules did not apply to Parris as an intrastate driver. But as discussed above, Georgia adopted the FMCSR as its own safety rules applicable to intrastate commerce. See Ga. Comp. R. & Regs. 515-16-4-.01 (2021). Onsite points to no evidence showing, and does not argue, that Parris was not subject to such intrastate regulation under the rules as adopted. Rather, Onsite claims that the Gooches' reliance on Georgia's adoption of the FMCSR pursuant to Ga. Comp. R. & Regs. 515-16-4-.01 (2021) fails because they did not cite it in their complaint and instead cited only the FMCSR.

> [But] we are aware of no authority for the proposition that such citations are required and the appellant has cited no such authority. On the contrary, the Civil Practice Act requires only a short and plain statement of the plaintiff's claim. There is no magic in nomenclature, and we judge pleadings ... by their function and substance[.]

Daily Underwriters of America v. Williams, 354 Ga. App. 551, 556-557 (2) (b) (i), 841 S.E.2d 135 (2020) (citations and punctuation omitted) (physical precedent). Here, the function and substance of the complaint "clearly put [Onsite] on notice of the [negligence per se] actions against it[.]" Id. at 557 (2) (b) (i), 841 S.E.2d 135. We find no reversible error in the denial of summary judgment.

6. *Punitive damages*

[14] **[15]** **[16]** "Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences." OCGA § 51-12-5.1 (b).

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> Mere negligence, although gross, will not alone authorize the recovery of punitive damages. There must be circumstances of aggravation or outrage. In accordance with these principles, this [c]ourt has allowed a plaintiff alleging negligent hiring and/or retention to proceed with a punitive damages claim against the employer only when some facts support a conclusion that the employer acted with such an entire want of care as to raise a presumption of conscious indifference to the consequences. A plaintiff can shoulder this burden of proof only by showing that an employer had actual knowledge of numerous and serious violations on its driver's record, or, at the very least, when the employer has flouted a legal duty to check a record showing such violations.

Western Indus. v. Poole, 280 Ga. App. 378, 380 (1), 634 S.E.2d 118 (2006) (citations and punctuation omitted). Here, the Gooches have pointed to evidence creating genuine issues of material fact as to whether Onsite actually knew that Parris was using illegal drugs and that he had multiple speeding tickets while driving Onsite vehicles, but Onsite did not reprimand or train him and instead continued to let him drive Onsite vehicles.

[17] It is true that "in automobile-collision cases, punitive damages are not recoverable where the driver at fault simply violated a rule of the road[.]" *McKnight v. Love*, 369 Ga. App. 812, 819 (1) (a), 894 S.E.2d 110 (2023) (citation and punctuation omitted), reversed in part on other grounds by *Love v. McKnight*, 321 Ga. 196, 913 S.E.2d 614 (2025). But this case does not necessarily involve simply a violation of a rule of the road, such as crossing the centerline, but also includes a triable issue as to whether Parris was driving while under the influence of methamphetamine at the time of the collision. Moreover,

> we have never held that showing a pattern or policy of dangerous driving[, such as speeding or driving while intoxicated,] is the only path to an award of punitive damages in automobile-collision cases. Indeed, even in cases that have not involved a pattern or policy of dangerous driving, we have concluded there was evidence by which a jury could consider the question of punitive damages.

***6** *McKnight v. Love*, supra at 818, (1) (a) (citations and emphasis omitted). Given the genuine issues of material facts in the instant case, we conclude that there is evidence from which a jury could consider the issue of punitive damages. So the trial court properly denied summary judgment on that claim.

7. *Attorney fees*

[18] **[19]** "The expenses of litigation generally shall not be allowed as a part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them." OCGA § 13-6-11. "[T]he element of bad faith that will support a claim for expenses of litigation under OCGA § 13-6-11 must relate to the acts in the transaction itself prior to the litigation, not to the motive with which a party proceeds in the litigation." *David G. Brown, P. E. v. Kent*, 274 Ga. 849, 850, 561 S.E.2d 89 (2002).

In this case, the same evidence discussed above which supported the trial court's denial of summary judgment on the claim for punitive damages also supports the denial of summary judgment on the claim for attorney fees under OCGA § 13-6-11. "Just as this evidence [created genuine issues of material fact as to whether the Gooches may be] entitled to punitive damages under OCGA § 51-12-5.1 (b), it constitutes [some] evidence [creating a triable issue as to whether Onsite] acted in bad faith toward [the Gooches.]" *Taylor v. Devereux Foundation*, 316 Ga. 44, 90 (VII), 885 S.E.2d 671 (2023). "Thus, we conclude that the evidence ... was sufficient to [create a genuine issue of material fact as to whether they were] entitled to attorney fees under OCGA § 13-6-11." Id.

Case No. A26A0425

8. *OCGA § 40-2-140 (d) (4)*

[20] AMCO argues that the trial court erred in denying its motion for summary judgment because the direct action brought against it was not authorized by OCGA § 40-2-140 (d) (4). AMCO's argument is without merit.

[21] The general rule in Georgia is that "a party may not bring a direct action against the liability insurer of the party who allegedly caused the damage unless there is an unsatisfied judgment against the insured or it is specifically permitted either by statute or a provision in the policy." *Hartford Ins. Co. v. Henderson & Son*, 258 Ga. 493, 494, 371 S.E.2d 401 (1988). OCGA § 40-2-140 (d) (4) (2021) provides such an exception to this general rule by allowing for a direct action against a motor carrier's insurer. The applicable version of OCGA § 40-2-140 (d) (4) (2021) provides, "Any

person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action the *motor carrier* and its insurance carrier."[2] (Emphasis supplied).

[22] AMCO argues that this code section does not authorize the direct action against it because its insured, Onsite, is not a "for-hire" motor carrier as required by that code section. But the plain language of the code section, as emphasized above, clearly does not limit its application to "for-hire" motor carriers. Rather, the plain language provides for a direct action against a "motor carrier" and its insurer, with no reference to for-hire motor carriers.

***7** In arguing otherwise, AMCO mistakenly relies on subsection (2) of OCGA § 40-2-140 (d), which concerns a specific insurance filing requirement applicable to a "for-hire intrastate motor carrier." AMCO ignores the word "intrastate" in that term and posits that its "for-hire" language should be glommed onto the plain language of the direct action provision of OCGA § 40-2-140 (d) (4) to modify the term "motor carrier," thus making that provision applicable only to actions against "for-hire motor carriers." But there is nothing in the statutory language which would allow for such a modification. On the contrary, the terms "for-hire intrastate motor carrier" and "motor carrier" have distinct and different meanings within that statutory scheme. See OCGA §§ 40-2-1 (4) and (6) (respectively defining the terms "for-hire intrastate motor carrier" and "motor carrier").

[23] "In interpreting statutes, we presume that the General Assembly meant what it said and said what it meant." "When we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant." *Deal v. Coleman*, 294 Ga. 170, 172, 751 S.E.2d 337 (2013) (citation and punctuation omitted). Accord *Langley v. State*, 313 Ga. 141, 143 (2), 868 S.E.2d 759 (2022). So contrary to AMCO's argument, we presume that the General Assembly, in using the defined term "motor carrier" in OCGA § 40-2-140 (d) (4), meant "motor carrier" and did not mean "for-hire motor carrier." AMCO has thus failed to show that the trial court's denial of summary judgment should be reversed on this ground.

Judgments affirmed.

Watkins and Padgett, JJ., concur.

All Citations

--- S.E.2d ----, 2026 WL 1825358

Footnotes

1 The complaint also named Centerline Communications, LLC of Delaware as another defendant. But pursuant to a consent motion of the Gooches and Centerline, the trial court dismissed Centerline from the case without prejudice.

2 The parties agree that this version of the statute applies to the instant case. The current version of OCGA § 40-2-140 became effective July 1, 2024. Ga. L. 2024, p. 966, § 2.

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