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CIVIL PRACTICE Nonjury Trials: Require Parties to Move for Written Findings of Fact and Conclusions of Law

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CIVIL PRACTICE

Nonjury Trials: Require Parties to Move for Written Findings of Fact and Conclusions of Law

CODE SECTION:	O.C.G.A. § 9-11-52 (amended)
BILL NUMBER:	HB 657
ACT NUMBER:	718
SUMMARY:	The Act amends the Georgia Civil Practice Act to require parties in nonjury trials to request or move for written findings of fact and conclusions of law by the court. The parties' failure to do so results in a waiver for purposes of appellate review.
EFFECTIVE DATE:	July 1, 1987

History

Prior law required courts in nonjury trials to set forth written findings of fact and conclusions of law[1] in the absence of a waiver by the parties.[2] The court had to make its written findings within ten days after entry of judgment.[3] The requirements of O.C.G.A. § 9-11-52 specifically excluded uncontested divorce, alimony and child custody cases, and motions.[4]

Section 9-11-52 was added to the Georgia Civil Practice Act by the Georgia legislature in 1969.[5] An amendment was added in 1970 to exclude application of the section to uncontested divorce, alimony and child custody cases, and to further provide that the provision may be waived in writing by the parties.[6]

Written findings of fact and conclusions of law were mandated both at

1. Doyal Dev. Co. v. Blair, 234 Ga. 261, 261, 215 S.E.2d 471, 471 (1975) ("[F]indings of fact and conclusions of law . . . are mandatory.").
2. O.C.G.A. § 9-11-52(a) (1982); *See also* Rude v. Rude, 241 Ga. 454, 246 S.E.2d 311 (1978); Stephens v. Stephens, 232 Ga. 69, 205 S.E.2d 295 (1974).
3. O.C.G.A. § 9-11-52(b); *See also* Jacobs Pharmacy Co. v. Richard & Assocs., 229 Ga. 156, 157, 189 S.E.2d 853, 854 (1972) ("Clearly, it was the legislative intent that these findings be made prior to the rendition of the judgment, and not after the expiration of the time for appeal.").
4. O.C.G.A. § 9-11-52(a) (1982); *See also* Githens v. Githens, 234 Ga. 715, 217 S.E.2d 291 (1975) (findings of fact and conclusions of law are required for contested child custody cases, but not for uncontested actions).
5. 1969 Ga. Laws 645.
6. HB 1029, 1970 Ga. Gen. Assem., 1970 Ga. Laws 170.

the superior and state court levels.[7] The written findings must have been sufficiently set forth to enable appellate review of the lower court's decision.[8] Furthermore, the lower court's findings were required to be set forth in writing to satisfy the requirements of O.C.G.A. § 9-11-52.[9]

Appellate courts have reversed the lower court's decision despite a failure to set forth written findings if the record below displays patently erroneous reasoning.[10] However, failure to record findings of fact and conclusions of law usually resulted in the judgment being vacated and remanded back to the lower court.[11] The lower court then was required to set forth the written findings of fact and conclusions of law, and the losing party once again could file an appeal.[12] Failure to make written findings did not constitute grounds for reversal,[13] and the lower court could not reopen the case for other purposes.[14]

The purpose of O.C.G.A. § 9-11-52 was threefold: "as an aid in the trial judge's process of adjudication; for purposes of res judicata and estoppel by judgment; and as an aid to the appellate court on review."[15] However, the purpose of the section was not well served in practical application. Rather than serving as an aid to trial and appellate courts, the section caused unnecessary delays and expenses.[16]

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In an effort to reduce court costs and end unnecessary delays, O.C.G.A. § 9-11-52 is amended to place the burden of obtaining written findings of fact and conclusions of law on the parties.[17] The court shall make written findings and conclusions "upon request of any party made prior to [its]

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7. Risk v. Turner Coal & Brick Co., 139 Ga. App. 232, 232, 228 S.E.2d 210, 210 (1976) ("This requirement that the judge make written findings of fact and conclusions of law, unless waived, applies to the various state courts as well as the superior courts of Georgia.").

8. Paxton v. Trust Co. Bank of Gwinnett County, 245 Ga. 834, 268 S.E.2d 154 (1980).

9. Aycock v. Morris Indus., 171 Ga. App. 50, 318 S.E.2d 780 (1984).

10. Wood v. Dan P. Holl & Co., 169 Ga. App. 839, 315 S.E.2d 51 (1984).

11. Medical Personnel Pool v. Middlebrooks, 133 Ga. App. 148, 210 S.E.2d 372 (1974); Spivey v. Mayson, 124 Ga. App. 775, 186 S.E.2d 154 (1971).

12. Spivey v. Mayson, 124 Ga. App. 775, 186 S.E.2d 154 (1971).

13. Jacobs Pharmacy Co. v. Richard & Assocs., 229 Ga. 156, 157, 189 S.E.2d 853, 854 (1972) ("The absence of findings would not require a reversal of the judgment, but only a remand of the case for such findings. . . .").

14. Marsh v. Way, 255 Ga. 284, 336 S.E.2d 795 (1985).

15. Spivey v. Mayson, 124 Ga. App. 775, 776, 186 S.E.2d 154, 155 (1971) (quoting 5A J. MOORE, MOORE'S FEDERAL PRACTICE § 52.06 (1986)).

16. Memorandum from Georgia Court of Appeals Judge Dorothy Beasley to Judicial Procedure and Administration Committee, State Bar of Georgia (Oct. 11, 1984) (at that time Judge Beasley was Judge of the State Court of Fulton County) [hereinafter Judicial Procedure Letter].

17. O.C.G.A. § 9-11-52 (Supp. 1987).

ruling."[18] Additionally, the losing party in a nonjury trial may move that the court set forth written findings and conclusions no later than twenty days after entry of judgment. If either course is not followed, the provisions are waived automatically.[19] The former provision which required the court to make written findings and conclusions without request, absent a written waiver by the parties, has been eliminated.

The amended Code section corrects the waiver problem that often led to cases being brought on appeal without any written findings or conclusions. This problem arises when parties at the beginning of nonjury trials are uncertain as to whether a waiver of findings and conclusions is tactically advisable.[20] As a result, many nonjury trial cases were decided without a waiver of the O.C.G.A. § 9-11-52 requirements and reached the appellate level without written findings.[21] Increased court costs and unnecessary delays in resolving cases resulted. Instances arose where the trial court's failure to make written findings and conclusions, which resulted in the remand of the case, caused delays of more than one year before finally resolving the case.[22] Shifting the burden to the parties to seek a memorialization when desired or needed, and away from the court which otherwise will be engaging in an unnecessary and time-consuming exercise, should eliminate remands for this purpose.[23]

Additionally, the former language specifying the application of the section to superior courts has been expanded to include all nonjury trials[24] and now comports with case law interpretation. The 1987 amendment also reorganized O.C.G.A. § 9-11-52 for reasons of clarity. The retained exceptions to O.C.G.A. § 9-11-52 for uncontested divorce, alimony and

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18. O.C.G.A. § 9-11-52(a) (Supp. 1987) (failure to make a pre-ruling request does not foreclose a later request following the entry of judgment).

19. O.C.G.A. § 9-11-52(c) (Supp. 1987).

20. Judicial Procedure Letter, *supra* note 16.

21. Memorandum from Judge Dorothy Beasley to Advisory Committee on Legislation (Oct. 24, 1986) ("Parties may now waive the right to have the court make findings of fact and conclusions of law, but often decline to do so, leaving considerable uncertainty as to whether it is necessary for the trial court to invest its time and resources to make written findings and conclusions.").

22. Bourdon v. Plank, 170 Ga. App. 711, 318 S.E.2d 312 (1984), *appeal dismissed*, 173 Ga. App. 391, 326 S.E.2d 571 (1985). Bench trial judgment was entered without findings of fact and conclusions of law on May 9, 1983. Notice of appeal was filed on June 9, 1983. Notice of cross-appeal was filed on July 13, 1983. Appeals were filed in Court of Appeals on Sept. 29, 1983. Cases were remanded for findings of fact and conclusions of law on April 4, 1984. New judgment was entered by trial court on June 19, 1984. New notice of appeal was filed on July 2, 1984. New appeals were filed in Court of Appeals on August 17, 1984. Nineteen months after the initial bench trial judgment was entered, the Court of Appeals on Jan. 1, 1985 affirmed judgments in both the appeal and cross-appeal.

23. *See* Avery Mechanical Contractors, Inc. v. Quality Mechanical Contractors, Inc., 182 Ga. App. 168, 355 S.E.2d 102 (1987).

24. O.C.G.A. § 9-11-52(a) (Supp. 1987).

child custody cases, and motions, are set forth separately in paragraph (b).

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