

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

**CAROLINE JEFFORDS AND ROBBIN SOTIR,
Appellants,**

v.

**FULTON COUNTY, ET AL.,
Appellees.**

CASE NO. A22A1097

**BRIEF OF APPELLEE
FULTON COUNTY CLERK OF SUPERIOR
AND MAGISTRATE COURTS**

Kaye Woodard Burwell
Georgia Bar No.775060
Dominique Martinez
Georgia Bar No. 430323
*Attorneys for Appellee Fulton County Clerk
of Superior and Magistrate Courts*

OFFICE OF THE COUNTY ATTORNEY
141 Pryor Street, S.W.
Suite 4038
Atlanta, Georgia 30303
Telephone: (404) 612-0246
Facsimile: (404) 730-6324
Kaye.burwell@fultoncountyga.gov
Dominique.martinez@fultoncountyga.gov

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PART ONE

I. INTRODUCTION

Appellee Fulton County Clerk of Superior Court, Georgia (“the Clerk”) hereby files this **BRIEF OF APPELLEE** in support of the trial court’s June 24, 2021 decision which granted the Clerk’s Motion to Dismiss as to Caroline Jeffords and Robbin Sotir’s (collectively “Jeffords-Sotir”) claims against the Clerk. For the reasons discussed below, Appellee respectfully requests that the Court affirm the trial court’s decision in its entirety.

II. STATEMENT OF FACTS AND PROCEEDINGS BELOW

On December 23, 2020, Garland Favorito, Michael Scupin, Trevor Terris, Sean Draime, Caroline Jeffords, Stacey Doran, Christopher Peck, Robin Sotir, and Brandi Taylor’s (collectively, “Petitioners”) filed a Petition for Declaratory and Injunctive Relief against Mary Carole Cooney, Vernetta Keith Nuriddin, Kathleen Ruth, Aaron Johnson, Mark Wingate, and Richard Barron (collectively, “Original Respondents”), in their individual capacities, seeking injunctive and declaratory relief (“Original Petition”). (V1-6-37) On January 13, 2021, Petitioners filed their First Amended Petition for Declaratory and Injunctive Relief (“Amended Petition”) (collectively, with the Original Petition, the “Petition”). (V2-228-242) The Petition alleged the following causes of action:

Count I: Declaratory Judgment for Violation of State Equal Protection Claim
(Same County);

Count II: Declaratory Judgment for Violation of State Due Process Claim
(Same County);

Count III: Declaratory Judgment for Violation of State Equal Protection
Claim (Within State);

Count IV: Declaratory Judgment for Violation of State Due Process Claim
(Within State);

Count V: Declaratory Judgment for Violation of State Equal Protection
Claim (Third Party);

Count VI: Declaratory Judgment for Violation of State Due Process Claim
(Third Party);

Count VII: Temporary Injunction;

Count VIII: Enforcement of Open Records Request for Interim Results by
Garland Favorito;

Count IX: Enforcement of Open Records Request for Inspection of Ballots
by Garland Favorito; and

Count X: Enforcement of Open Records Request for Inspection of Ballots by Caroline Jeffords.

Following the filing of the Petition, Petitioners sought to substitute Original Respondents with Fulton County, the Fulton County Board of Registration and Elections, and the Clerk of the Superior Court of Fulton County (collectively, “Substituted Respondents”). (V2-302-308) The Court granted this request and entered an Order substituting the Original Respondents with the Substituted Respondents. (V3-641-642) The Clerk was added as a Substituted Respondent in her official capacity. (See id.)

Petitioners’ constitutional claims appear to be based on purported actions connected to the carrying out of the 2020 General Election. The Petition is devoid of any allegations that the Clerk committed a wrongful act in connection to the carrying out of the 2020 General Election. The remaining claims in the Petition, all of which are premised on supposed violations of the Open Records Act, are also devoid of any factual allegations of unlawful conduct by the Clerk. Indeed, the requests under the Open Records Act to which Petitioners sought court intervention were directed to other parties. (V1-6-37, 228-242) For instance, Count 8 of the Petition is for enforcement of an Open Records Act request dated November 5, 2020 to the Board of Registration and Elections. (V1-25-26, 49, 52-53, 228-242) Count 9 of the Petition is for enforcement of an Open Records Request dated December 3,

2020 to the Board of Registration and Elections. (V1-26-27, 235, 228-242) Count 10 of the Petition is for enforcement of two Open Records Act requests dated December 28, 2020 and December 29, 2020 from Robert Cheeley to the Board of Registration and Elections. (V1-228-242) Notably, none of the Open Records Act requests were directed to the Clerk or Appellee Fulton County.

It is therefore unclear why Jeffords-Sotir named Fulton County in their Open Records Act claims and why they named the Clerk at all in any part of this lawsuit. According to Petitioners, the Clerk was added, not because she allegedly violated a law, but because she had discoverable materials. (V2-305)

Prior to the Clerk becoming a party, the Court had already disposed of several counts pled in the Petition. On January 7, 2021, the Court entered an Order Granting Petitioners' Request for a Temporary Injunction. (V1-225-227) And, on April 20, 2021, the Court disposed of Counts VIII-X, which were not asserted against the Clerk, by issuing an Order granting and/or denying those counts. (V3-631-640)

After the Clerk became a party and in response to her Motion to Dismiss, the Court entered an order on June 24, 2021, dismissing the Clerk on sovereign immunity grounds. (V4-1119-1155) Thereafter, the new Respondents moved to dismiss for, inter alia, lack of standing. (V6-1566-1590) The Court also granted that motion to dismiss. (V7-2012-2025)

PART TWO

I. ARGUMENT AND CITATION OF AUTHORITY

Each appealing party is required to set forth enumeration of errors as to the order being appealed. O.C.G.A. § 5-6-40. “Matters not enumerated as error will not be considered on appeal.” Odum v. State, 255 Ga. App. 70, 71 (2002), citing Rider v. State, 226 Ga. 14, 15 (1970). In addition, failure to argue or cite authority showing error in a lower court’s holding renders an appeal of that order abandoned. Hewitt v. Community & Southern Bank, 324 Ga. App. 713, 716 (2014); Reed v. City of Atlanta, 136 Ga. App. 193, 194 (1975). Jeffords-Sotir have not enumerated any error as to the dismissal of the Clerk. Accordingly, the lower Court’s June 24, 2021 order should be affirmed.

To the extent Jeffords-Sotir claim that the Clerk has discoverable material in her possession, non-party discovery still exists in Georgia. See O.C.G.A. § 9-11-34(c). Thus, her presence in this case is not necessary, and even if it was, Jeffords-Sotir have not explained how sovereign immunity could be waived for such a reason not recognized by the State.

Furthermore, O.C.G.A. § 21-2-500—specifically the provision that “ballots and other documents shall be preserved in the office of the clerk, county records manager, or officer designated by the clerk...unless otherwise provided by order of the superior court”—does not create a private right of action for Jeffords-Sotir to sue

any person or entity to obtain, as a remedy, access to the “ballots and other documents” via the court order referenced in O.C.G.A. § 21-2-500. “It is well settled that violating statutes and regulations does not automatically give rise to a civil cause of action by an individual claiming to have been injured from a violation thereof.” Best Jewelry Mfg. Co. v. Reed Elsevier Inc., 334 Ga. App. 826, 833 (2015). But cf., Blalock v. Cartwright, 300 Ga. 884, 887-88 (2017). There being no Open Records Act request to the Clerk for which enforcement was sought, no Open Records Act claim directed at the Clerk and the Clerk’s sovereign immunity not being challenged, there is no basis to reverse the lower court’s order as to the Clerk.

CONCLUSION

For the reasons set forth herein, the Clerk requests the Court affirm the lower court’s dismissal of the claims against the Clerk.

Respectfully submitted this 15th day of April, 2022.

This submission does not exceed the word count limit imposed by Rule 24.

OFFICE OF THE COUNTY ATTORNEY
/s/ Dominique Martinez
Kaye Woodard Burwell
Georgia Bar No.775060
Dominique Martinez
Georgia Bar No. 430323

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing **BRIEF OF APPELLEE FULTON COUNTY CLERK OF SUPERIOR AND MAGISTRATE COURTS** using the Court's electronic filing system, which will send email notification of such filing to all attorneys of record in this matter who have registered to use the Court's electronic filing system. I further certify that I have served a copy of the above-referenced brief by placing a copy of it in the United States mail, first class, postage prepaid and properly addressed to:

Robert D. Cheeley, Esq.
bob@cheeleylawgroup.com
Gabrielle M. Holland, Esq.
gabrielle@cheeleylawgroup.com
Cheeley Law Group, LLC
2500 Old Milton Parkway, Suite 200
Alpharetta, Georgia 30004

Wm. Charles Bundren, Esq.
Pro Hac Vice
Bundren Law Group, PLLC
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034
Counsel for Appellants
Caroline Jeffords and Robbin Sotir

C. David Joyner, Esq.
djoyner@cdavidjoynerpc.com
C. David Joyner, P.C.
1305 Mall of Georgia, Suite 130
Buford, Georgia 30519
Counsel for Appellees
Kathleen Ruth and Mark Wingate

Todd A. Harding, Esq.
kamikazehitman@comcast.net
Maddox & Harding, LLC
113 E. Solomon Street
Griffin, Georgia 30223

Paul C. Kunst, Esq.
341quicklube@bellsouth.net
Paul C Kunst PC
941 Thomaston Street
Barnesville, Georgia 30204
Counsel for Appellants Garland
Favorito, Michael Scupin, Trevor
Terris, Sean Draime, Stacy Doran,
Christopher Peck, and Brandi Taylor

Donald F. Samuel, Esq.
dfs@gsllaw.com
Amanda Clark Palmer, Esq.
aclark@gsllaw.com
Garland, Samuel Loeb, P.C.
31151 Maple Drive, N.E.
Atlanta, Georgia 30305
Counsel for Appellees Aaron Johnson,
Alex Wan, and Vernetta Nuriddin

Cheryl Ringer, Esq.
Cheryl.Ringer@fultoncountyga.gov
David R. Lowman, Esq.
David.Lowman@fultoncountyga.us
Steve Rosenberg, Esq.
Steven.Rosenberg@fultoncountyga.gov
141 Pryor Street, Suite 4038
Atlanta, Georgia 30303
Counsel for Appellee Fulton County

Charlene S. McGowan, Esq.
Assistant Attorney General
40 Capitol Square
Atlanta, Georgia 30334
Counsel for Secretary of State Brad
Raffensperger

This 15th day of April, 2022.

/s/ Dominique Martinez

Dominique Martinez

Georgia Bar No. 4303223

Dominique.martinez@fultoncountyga.gov

Attorney for Appellee Fulton County Clerk
of Superior and Magistrate Courts