FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.

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September 1, 2026

In the Court of Appeals of Georgia

A26A0921. TATELMAN v. SMITH.

HODGES, Judge.

This case involves "a silver, blonde, black & brown, female, Yorkshire Terrier … known as Gypsy[.]" Sara Smith filed an action against Brenda Tatelman claiming that Gypsy was her dog and that Tatelman refused to return Gypsy to her. The trial court granted summary judgment to Smith and issued an order of replevin for Tatleman to return the dog. When Tatelman did not, the court entered an order holding her in contempt and commanding her incarceration for failing to produce Gypsy as ordered by the court. Tatelman appeals from the trial court's rulings. For the reasons that follow, we affirm the trial court's grant of summary judgment to Smith and the order of replevin, but we reverse the court's contempt order because the contempt proceeding violated Tatelman's due process rights and the court's award of OCGA § 13-6-11 attorney fees because the trial court was not authorized to award such fees at the hearing where it granted Smith's motion for summary judgment.

The record shows that Sara Smith was arrested for charges involving her operation of a cat rescue, and on December 18th, 2023, she was placed under a magistrate court bond pending trial. Under "[o]ther conditions," the bond stated: "Do not possess any domesticated animals, livestock, or fowl. May transfer ~~ownership~~ possession of dog to friend or family." On December 19, 2023, Smith gave a friend permission to reclaim Gypsy from the Cherokee County Animal shelter, which seized Gypsy and other animals in her possession at the time of her arrest. Shortly thereafter, Smith's friend, with Smith's knowledge and cooperation, permitted Tatelman to take possession of Gypsy. According to Smith, despite numerous texts and letters where she demanded the return of her dog and Tatelman acknowledged the dog belonged to Smith, Tatelman began restricting Smith's access to Gypsy, limited communication between the parties, and refused to allow visitation or give Gypsy to Smith. On June 18, 2024, Smith received a cease and desist letter from Tatelman that, among other things, restricted all future contact with Tatelman. Smith contacted an attorney and attempted to resolve the issue, but Tatelman purportedly disregarded any communication.

In February 2025, Smith filed an action against Tatelman in the Superior Court of Cherokee County to recover Gypsy, who Smith claimed she had owned since 2015 or 2016 and who is her emotional support animal.[1] The complaint sought a declaratory judgment to determine Gypsy's owner, an interlocutory injunction enjoining Tatelman from harming, selling or transferring, or making medical decisions for Gypsy without Smith's input, and alleged claims for replevin and trover to recover Gypsy after a wrongful taking, negligent or intentional infliction of emotional distress, fraud, conversion, attorney fees, and punitive damages. Smith also moved separately for a temporary restraining order and a preliminary injunction to enjoin Tatelman from the actions listed in her complaint for an interlocutory injunction. Following a hearing, the trial court granted Smith's motion for temporary injunctive relief.

Tatelman subsequently filed a pro se motion to dismiss under OCGA § 9-11-12(b)(6), asserting that Smith was attempting to regain custody of a dog she no longer

[1] While Smith's criminal matter has not yet resolved, she desired to appoint a different friend or family member to care for Gypsy.

legally owned. Smith responded and filed a counter-motion for partial summary judgment, contending that there was no genuine issue of material fact and she was entitled to ownership of Gypsy as a matter of law.[2] Tatelman did not respond to Smith's motion for summary judgment, but she did file a supplemental motion to dismiss, which the trial court converted into a motion for summary judgment since Tatelman relied on evidence outside the pleadings.

On September 8, 2025, the trial court held a hearing on the competing motions for summary judgment. The hearing included the "testimony of witnesses, documentary evidence, and … oral arguments." During the hearing, Tatelman "testified under oath that she had possession of [Smith's] property; Gypsy, a Yorkie," and the court immediately issued an order of replevin, commanding Tatelman to give possession of Gypsy to Smith's counsel "INSTANTER." Later that afternoon, after Tatelman asserted that Gypsy had gotten loose and was unaccounted for, the court

[2] Smith also filed a motion to compel Tatelman to respond to discovery requests. Following a hearing on Smith's motion to compel, the trial court found that Tatelman "willfully failed to produce discoverable materials responsive to [Smith's] [r]equests for [p]roduction and failed to provide legally responsive answers to [Smith's] [r]equest for [a]dmission and [i]nterrogatories." The court order indicated that "if [Tatelman's] non-compliance persists, more severe sanctions may follow for failing to adhere to discovery rules."

issued an order of contempt and incarceration based on Tatelman's failure to comply with the court's order of replevin. The order authorized and directed the Sheriff of Cherokee County to incarcerate Tatelman "until further order of this [c]ourt on its finding of her [c]ontempt of [c]ourt" and to not release Tatelman "until she has complied with this court's [o]rder of [r]eplevin."

Thereafter, on September 11, 2025, the trial court issued a final order granting Smith's motion for summary judgment and denying Tatelman's motion for summary judgment. Among other things, the trial court found that (i) Tatelman was the foster for Smith's dog, Gypsy, and had accepted temporary responsibility of Gypsy; (ii) Tatelman continued to hold and refused to return Gypsy despite Smith personally and through counsel demanding the return of her dog; and (iii) Tatelman had no recorded verbal or written evidence, nor any evidence of sale, adoption, or transfer and assignment, of Smith's consent to a permanent transfer of Gypsy to Tatelman. Based on these findings, the trial court concluded that Smith had demonstrated without adequate rebuttal that she owned Gypsy and was entitled to judgment as a matter of law. The court's order awarded Smith immediate possession of Gypsy and

$20,400.00 in OCGA § 13-6-11 attorney fees as a result of Tatelman acting in bad faith, being stubbornly litigious, or causing unnecessary trouble and expense.

Tatelman filed a motion to set aside the contempt order, as well as a motion for supersedeas bond on her criminal contempt. The trial court granted her motion for supersedeas bond, and Tatelman filed a notice of appeal of the September 8, 2025 order of contempt and incarceration before any ruling on her motion to set aside was rendered.

1. Tatelman first contends that the trial court's order of contempt was in error because (a) it was unclear whether the order was a civil or criminal order of contempt, and (b) the order was inconsistent with the applicable legal standard for contempt. We find that the trial court's contempt order was civil and that the court erred in finding contempt without providing Tatelman a hearing.

We review sentences of contempt for abuse of discretion by the trial court. *Wright v. Wright*, 367 Ga. App. 15, 21(1) (884 SE2d 610) (2023). See also *Killingsworth v. Killingsworth*, 286 Ga. 234, 237(3) (686 SE2d 640) (2009) (noting that trial courts have broad discretion in ruling on contempt motions, and their decisions will be affirmed on appeal if there is any evidence to support them). However, "we remain mindful that such discretion is not unfettered," and "we must evaluate on appeal whether the legal requirements were satisfied" because "contempt is a drastic remedy which ought not to deprive one of his liberty unless it rests upon a firm and proper basis." *Wright*, 367 Ga. App. at 21(1) (citations and punctuation omitted).

(a) Tatelman first argues that the trial court's contempt order does not indicate whether it is one for civil or criminal contempt. "Since the trial court does not specify whether it found [Tatelman] in civil or criminal contempt, we must examine the purpose of the contempt order." *Phillips v. Tittle*, 261 Ga. 820 (411 SE2d 871) (1992). See also *Martin v. Waters*, 151 Ga. App. 149(1) (259 SE2d 153) (1979) ("The classification of contempt proceedings as civil or criminal is one depending on the facts of each case"). In doing so, we conclude that the contempt order at issue in this case is one for civil contempt.

It is well settled that "[w]here the primary purpose [of a contempt order] is to preserve the court's authority and to punish for disobedience of its orders, the contempt is criminal. Where the primary purpose is to provide a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil." *Ensley v. Ensley*, 239 Ga. 860, 861 (238 SE2d 920) (1977) (punctuation omitted).

> The conditional or unconditional imposition of a fine or imprisonment indicates the purpose of an order. If the contemnor is imprisoned for a specified unconditional period ..., the purpose is punishment and thus the contempt is criminal. If the contemnor is imprisoned only until he performs a specified act, the purpose is remedial and hence the contempt is civil.

Id. at 861-62. In other words, "criminal contempt imposes unconditional punishment for prior acts of contumacy, whereas civil contempt imposes conditional punishment as a means of coercing future compliance with a prior court order." *Alexander v. DeKalb County*, 264 Ga. 362, 364(1) (444 SE2d 743) (1994). Accord *Phillips*, 261 Ga. at 820. An order demanding immediate production of property could support either type of contempt sanction depending on how it is structured. If the order simply punishes a person for the failure to produce the item, it would be criminal; if it conditions sanctions on continued non-production with an opportunity to purge by producing the property, it would be civil.

In this case, the court ordered Tatelman incarcerated "until further order of this [c]ourt" and noted that "the intention of this order [is] that ... Tatelman[ ] not be released until she has complied with this [c]ourt's [o]rder of [r]eplevin." We conclude that because the purpose of the contempt order was to obtain Tatelman's compliance with the replevin order to return the dog and because the contempt order contained conditional punishment designed to coerce future compliance with the court's replevin order, the contempt was civil in nature. See *Wright*, 367 Ga. App. at 18(1) ("When the trial court orders incarceration for an indefinite period until the performance of a specified act, the contempt is civil.") (punctuation omitted). See also *Hughes v. Ga. Dep't of Human Res.*, 269 Ga. 587(1) (502 SE2d 233) (1998) (finding that appellant was held in civil contempt when trial court ordered indefinite incarceration until he paid a specified amount of child support arrears).

(b) Turning next to Tatelman's contention that the trial court erroneously issued the contempt order in this case, we agree. Regardless of whether the contempt is characterized as civil or criminal, the critical issue remains the same: Was Tatelman entitled to a hearing before the trial court issued its contempt order? To answer this question, we must determine whether the order constitutes direct or indirect contempt because "[t]he procedures that a trial court must follow to hold a person in contempt depend upon whether the acts alleged to constitute the contempt are committed in the court's presence (direct contempt) or are committed out of the court's presence (indirect contempt)." *In re Spix*, 358 Ga. App. 119(2) (853 SE2d 893)

(2021). See also *Ramirez v. State*, 279 Ga. 13, 14(2) (608 SE2d 645) (2005) (noting that direct contempt occurs when the acts alleged to constitute the contempt are committed in the court's presence, while indirect contempt occurs when contemptuous conduct occurs outside the presence of the court).

"If the contempt is direct, a trial court has the power, after affording the contemnor an opportunity to speak in his or her own behalf, to announce punishment summarily and without further notice or hearing." *Ramirez*, 279 Ga. at 14(2) (punctuation omitted). This summary power is authorized "in light of the court's substantial interest in rapidly coercing compliance and restoring order, and because the contempt's occurrence before the court reduces the need for extensive factfinding and the likelihood of an erroneous deprivation[.]" Id. (punctuation omitted). See also *Newton v. Golden Grove Pecan Farm*, 309 Ga. App. 764, 769(1) (711 SE2d 351) (2011) ("[W]here misconduct occurs in open court, the affront to the court's dignity is more widely observed, justifying summary vindication.") (punctuation omitted); *Martin*, 151 Ga. App. at 150(1) (noting that a direct criminal contempt does not deprive an individual of due process because the judge is aware by use of his own senses of what has transpired). That said,

> although the trial judge has the authority to summarily punish for contemptuous conduct committed in his or her presence, due process requires that such punishment cannot be meted out until the contemnor is given reasonable notice of the charge and an opportunity to be heard … because of the heightened potential for abuse posed by the contempt power.

In re Williams, 347 Ga. App. 189, 191-92 (818 SE2d 260) (2018) (reversing a direct criminal contempt order where it did not include any finding that the contemnor was given an opportunity to speak on her own behalf or attempt to explain her actions before she was found in contempt) (citations and punctuation omitted).

Indirect contempt, where the alleged contumacious acts are committed outside the court's presence, requires even more due process safeguards because the judge does not have first-hand knowledge of the acts and considerations justifying expedited procedures do not pertain. See *In re Spix*, 358 Ga. App. at 120(2). Indeed, in both indirect criminal and civil contempt, notice and an opportunity to be heard are paramount. See *Ramirez*, 279 Ga. at 15(2) (holding that for indirect criminal contempt an individual "must be advised of charges, have a reasonable opportunity to respond to them, and be permitted the assistance of counsel and the right to call witnesses"); *Washington v. Washington*, A26A0506, slip op. at 5(2) (Ga. App. June 4, 2026) (2026

Ga. App. LEXIS 272) (holding that for indirect civil contempt an individual "must have notice of the charges and the opportunity for a hearing at a specific time and place") (punctuation omitted). It is well settled that "summary adjudication of indirect contempts is prohibited." *Ramirez*, 279 Ga. at 15(2) (punctuation omitted). See also *In re Spix*, 358 Ga. App. at 120(2); *Norred v. Moore*, 263 Ga. App. 516, 518(2)(b) (588 SE2d 301) (2003) (finding in the context of failure to pay a monetary obligation that due process required the trial court to give the respondent a reasonable opportunity to comply with the previous order before contempt proceedings, notice of the alleged willful failure to comply, and an opportunity at a hearing to show that the failure was not willful).

In the present case, it is undisputed that Tatelman's allegedly contemptuous conduct — failing to produce Gypsy because the dog allegedly had escaped — "did not occur in open court and did not threaten the court's immediate ability to conduct its proceedings[,]" and, thus, her conduct "cannot be said to have occurred in the court's presence." *Ramirez*, 279 Ga. at 16(3) (punctuation omitted). Tatelman, therefore, was entitled to full due process considerations before the trial court issued an indirect contempt order. Under due process, a trial court may not order a contemnor incarcerated without providing her with an opportunity at a hearing to show that her failure to comply with a court production order was deliberate. See *McLaws v. Drew*, 355 Ga. App. 162, 168(1)(a) (843 SE2d 440) (2020) ("It is well established that the requirements of due process apply in a civil contempt proceeding. And due process includes the opportunity to be heard.") (citations omitted).

Indeed, "[t]he essence of civil contempt is willful disobedience of a prior court order." *Wright*, 367 Ga. App. at 18(1) (reversing contempt order because the record contained no evidence authorizing a finding of willful disobedience) (punctuation omitted). See *Higdon v. Higdon*, 321 Ga. App. 260, 263(1)(c) (739 SE2d 498) (2013) ("To hold in contempt, the court must find that there was a wil[l]ful disobedience of the court's decree or judgment.") (punctuation omitted). Tatelman's conduct in this case, committed outside the judge's presence, required extensive findings of fact to determine exactly what occurred and when it occurred to answer the question of whether Tatelman's failure to produce "was a wil[l]ful and contumacious flaunting of the [court's replevin order], whether it was accidental, or whether it was due to some unavoidable cause." *Martin*, 151 Ga. App. at 150(2).

Smith argues that it is reasonable to infer that the trial court's summary punishment was direct rather than indirect contempt based on Tatelman's courtroom and courthouse conduct. She cites OCGA § 15-1-4(a)(1), which permits a court to impose "summary punishment" for alleged contemptuous conduct committed "in the presence of such courts or so near thereto as to obstruct the administration of justice[,]" urges us to extend the concept of "presence" of the court, and repeatedly points out that Tatelman's comment about Gypsy's escape occurred while she was still in the courthouse, shortly after the court issued its order of replevin. She also "supports extending the concept of 'presence of the court' to include ... behavior which was [c]ourt supervised through court sheriff['s] deputies executing that [c]ourt's instanter order." However, Smith's proposed expansions do not comport with the established requirement that the conduct occur in open court or that the judge be aware "by use of his own senses" of the contumacious conduct. *In re Harris*, 289 Ga. App. 334, 336(1) (657 SE2d 259) (2008). See *In re Spix*, 358 Ga. App. at 120(2). We decline to extend the interpretation of direct contempt to encompass acts not committed in open court or before the trial judge.

Our Supreme Court has concluded that the OCGA § 15-1-4(a)(1) statement permitting summary contempt adjudication for alleged contemptuous conduct committed in the presence of such courts or so near thereto as to obstruct the administration of justice "must yield to the fundamental constitutional right to due process of law" and, therefore, "typically, an alleged contumacious act may only be said to have occurred in the presence of the court, warranting summary contempt proceedings, if the act was committed in open court." *Ramirez*, 279 Ga. at 15(2) (punctuation omitted). Indeed, in *Pounders v. Watson*, 521 US 982, 988 (117 SCt 2359, 138 LE2d 976) (1997), the Supreme Court of the United States noted that

> the summary contempt exception to the normal due process requirements, such as a hearing, counsel, and the opportunity to call witnesses, includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent demoralization of the court's authority before the public. (Punctuation omitted.)

None of Smith's arguments demonstrate that the contempt order at issue is a direct contempt subject to summary adjudication without affording Tatelman due process.

See *In re Spix*, 358 Ga. App. at 120-21(2) (vacating and remanding contempt order because summary adjudication of contempt for an attorney's alleged acts that did not occur in open court was prohibited, and due process required the court to follow more normal adversarial procedures); *In re Harris*, 289 Ga. App. at 336(1) (reversing a trial court order of direct criminal contempt where the contemptuous conduct occurred outside the court's presence and the court first learned of the conduct during an in camera discussion). Compare *In re Jones*, 198 Ga. App. 228, 230(1) (401 SE2d 278) (1990) (affirming summary adjudication of contempt where individual committed the allegedly contemptuous conduct — speaking to reporters in the presence of jurors (and then lying about it in court) — "in an area immediately surrounding the courtroom and within which the judge had a right to restrict access in order to assure the parties a fair trial").

Smith further argues that Tatelman was given notice of the contempt hearing but failed to appear. According to Smith, and the order of contempt that Smith's attorney prepared, her attorney "advised [Tatelman] he would return before the [c]ourt after lunch at 1:30 p.m." to address Tatelman's purported inability to produce Gypsy, but, "[r]ather than return, [Tatelman] failed to appear and address her prior testimony and/or non-compliance with the INSTANTER commands of the [o]rder of [r]eplevin." Smith does not cite any case authority for the proposition that an attorney's advisement that he will return to court is actual notice to a party of a contempt hearing. In fact, she admits that "due process typically requires formal notice and an opportunity to be heard."[3] Indeed, it is well settled that

> where the alleged contumacious conduct is disobedience to a mandate of the court, not an act in the presence of the court or so near thereto as to obstruct the administration of justice, the law requires that a rule nisi issue and be served upon the accused, giving him notice of the charges against him, and that he be given an opportunity to be heard.

Barnes v. Tant, 217 Ga. 67, 72(4) (121 SE2d 125) (1961). Accord *Anthony v. Anthony*, 240 Ga. 155, 157(1) (240 SE2d 45) (1977).

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[3] Smith cites OCGA § 15-1-4(a)(3), permitting a trial court to summarily find contempt of court for "[d]isobedience or resistance by any officer of the courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the courts[,]" but she admits that the statute does not apply unless an order is reduced to writing, and she fails to provide any context for the section's implication under the circumstances presented in this case. See *In re Beckstrom*, 295 Ga. App. 179, 182(2) (671 SE2d 215) (2008) (finding that OCGA § 15-1-4(a)(3) did not apply in a contempt proceeding alleging an attorney, as an "officer of the court," failed to appear because the letters and telephone call he received from the trial court directing him to appear were not enforceable orders).

> The notice given by the rule nisi is to afford the accused a reasonable time in which to prepare his defense to the charge that he had violated the court's order. It was error, in the case we now review, for the judge … to summarily hear evidence and find [Tatelman] guilty of contempt for failure to abide by the court's previous order, when no rule nisi had issued, and [Tatelman] was not given notice, prior to the hearing, that [s]he would be called upon to show that [s]he had not disobeyed the previous order of the court, or to show legal excuse for [her] conduct.

Barnes, 217 Ga. at 72(4).

In summary, because Tatelman received no rule nisi or other reasonable notice from the court that a contempt hearing would occur and had no opportunity to defend herself or explain the circumstances surrounding Gypsy's alleged disappearance, Tatelman was denied her due process rights, and the trial court's contempt order must be reversed.

2. Tatelman next asserts that the trial court erred in granting summary judgment to Smith. Specifically, she claims that there are material factual disputes as to Gypsy's rightful owner. Tatelman "cannot prevail on this argument, however, because [she has] failed to include a transcript of the summary judgment hearing in the

record on appeal."[4] *Mashburn Constr. v. CharterBank*, 340 Ga. App. 580, 582(1) (798 SE2d 251) (2017).

It is well settled that "[t]he burden is on an appellant to show error by the record, and when a portion of the record which is necessary for our determination of one or more appellate issues is not before the court, the trial court's express or implicit ruling as to those issues must be affirmed." *Gill v. B & R Int'l*, 234 Ga. App. 528, 531(1)(c) (507 SE2d 477) (1998) (affirming grant of summary judgment because the court's order expressly referred to "submissions and arguments of counsel" at the motion hearing, but a transcript of the hearing was not included in the record on appeal). Indeed,

> [i]n order for the appellate court to determine whether the trial court erred in granting summary judgment, the appellant must include in the record those items which will enable the appellate court to ascertain whether a genuine issue of material fact remains or, if the record

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[4] Although Tatelman's notice of appeal indicates that "[a]ny transcript of evidence and proceedings is to be transmitted as part of the record" to this Court, no transcript is included in the appellate record, and the lower court confirmed with our Clerk's office that no transcripts have been filed because take down was not requested.

> establishes there is no such issue of fact, whether the moving party is entitled to judgment as a matter of law.

Tanks v. Greens Owners Ass'n, 281 Ga. App. 277 (635 SE2d 872) (2006) (punctuation omitted).

If a trial court does not hear testimony or accept documentary evidence at a summary judgment motion hearing, the lack of a transcript of that hearing might not be fatal to an appellant's appeal. See *Johnson v. Wood*, 376 Ga. App. 876, 879(1) (921 SE2d 417) (2025) (holding that a transcript of a motion for summary judgment hearing was not necessary to this Court's de novo review because "no new evidence was presented in the subject motion hearing [and] ... the trial court's order [did] not reference any alleged evidence being received at the hearing on the motion") (punctuation omitted). See also *Baker v. Brannen/Goddard Co.*, 274 Ga. 745, 747(1) (559 SE2d 450) (2002) (reaching merits despite missing transcript of summary judgment hearing when "the trial court limited itself to the evidence which had been filed in the case and did not consider any additional evidence").

Here, however, the trial court's order on the summary judgment motions indicates that the parties "presented testimony of witnesses, documentary evidence, and made oral arguments." Indeed, the record shows that Tatelman issued witness subpoenas for the September 8, 2025 hearing. In addition, the court's order states that it was entered after the court "read and considered the parties' competing [m]otions and briefs, the record of the case, testimony of witness, evidence admitted by both parties, the applicable law, and the parties' arguments[.]"[5]

Because the parties presented testimony and evidence at the hearing on their competing motions for summary judgment, a transcript is necessary for our review of the court's order, and its omission requires this Court to assume the judgment below was correct and affirm. *Fleming v. Advanced Stores Co.*, 301 Ga. App. 734, 736 (688 SE2d 414) (2009) (affirming summary judgment ruling because, among other things, the appellant failed to include the transcript of the summary judgment hearing — in which testimony was taken — in the appellate record). As this Court repeatedly has stated in reviewing summary judgment orders where evidence was presented at the

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[5] Based on the trial court's order, we reject Tatelman's assertion that the trial court entered a default summary judgment against her. Although the trial court indicated in its order that Tatelman "did not file any [r]esponse to [Smith's] [m]otion ... as required by law[,]" the notion that the court entered a default judgment is belied by the remainder of the order, wherein the court specifically states that it "read and considered the parties' competing [m]otions and briefs, the record of the case, testimony of witness, evidence admitted by both parties, the applicable law, and the parties' arguments[.]"

summary judgment proceeding: "Without a transcript, we must assume the trial court had an adequate basis for its findings, as we cannot assume from a nonexistent transcript that the trial court failed to consider any relevant evidence or arguments." *Mashburn Constr.*, 340 Ga. App. at 582(1) (punctuation omitted).

Here, "[b]ecause [Tatelman] failed to have the hearing transcribed, the record before us does not show some portion of the evidence upon which the trial court relied in granting [Smith's] motion for summary judgment[.]" *Tanks*, 281 Ga. App. at 277. "Moreover, no statutorily authorized substitute for the hearing transcript was submitted." *Fleming*, 301 Ga. App. at 736. We therefore must affirm the trial court's decision.

3. In her third enumeration of error, Tatelman argues that the trial court erred when it assessed OCGA § 13-6-11 attorney fees against her. We agree.

It is well settled that an award of attorney fees under OCGA § 13-6-11 is a matter for the jury or a court sitting as a trier of fact. See *Sherman v. Dickey*, 322 Ga. App. 228, 233-34(2) (744 SE2d 408) (2013). Accord *Ga. Lottery Corp. v. Vasaya*, 353 Ga. App. 52, 57-58(3) (836 SE2d 107) (2019). OCGA § 13-6-11 provides that

> [t]he 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.

Here, Smith specifically pleaded to recover reasonable attorney fees and expenses of litigation under OCGA § 13-6-11 because (i) her "inability to recover Gypsy from [d]efendant Tatelman has forced [p]laintiff to retain an attorney and suffer unnecessary trouble, and expense, including attorney[] fees," and (ii) Tatelman "acted in bad faith, ha[s] been stubbornly litigious, and, by [her] conduct, ha[s] caused [p]laintiff unnecessary trouble and expense by requiring [p]laintiff to recover the property and/or amounts rightfully due and owing through litigation." The trial court's order cited OCGA § 13-6-11 and concluded that "[b]ased on the record, the [c]ourt finds that [Tatelman's] conduct meets this standard." The court awarded $20,400.00 in attorney fees pursuant to OCGA § 13-6-11.

Tatelman, however, correctly points out that OCGA § 13-6-11 expenses generally cannot be awarded at summary judgment:

> Our Supreme Court has held that attorney fees cannot be awarded by a trial court pursuant to OCGA § 13-6-11 at the summary-judgment stage of proceedings because the very language of the statute prevents a trial court from ever determining that a claimant is entitled to attorney fees

> as a matter of law. Indeed, it is well established that because both the liability for and amount of attorney fees pursuant to OCGA § 13-6-11 are solely for the jury's determination, a trial court is not authorized to grant summary judgment in favor of a claimant therefor. And although a trial court is permitted to grant such fees when it sits as a trier of fact, it is not a trier of fact on a motion for summary judgment.

Sherman, 322 Ga. App. at 233-34(2) (citations and punctuation omitted). Accord *Ga. Lottery Corp.*, 353 Ga. App. at 57-58(3). In short, although a trial court may grant summary judgment *agains*t a claim for attorney fees under OCGA § 13-6-11 in "the rare case where there [is] absolutely no evidence to support the award" of attorney fees, in no case can summary judgment be granted "*in favor of a claimant* under OCGA § 13-6-11." *Covington Square Assocs. v. Ingles Markets*, 287 Ga. 445, 447 (696 SE2d 649) (2010) (punctuation omitted).

In an attempt to circumvent this well settled law, Smith repeatedly refers to the September 8, 2025 hearing as a bench trial — rather than a summary judgment hearing — and argues that the trial court was authorized to award OCGA § 13-6-11 expenses because it sat as a trier of fact at a bench trial. Indeed, a trial court may award OCGA § 13-6-11 expenses during a bench trial, provided that the requirements of

OCGA § 13-6-11 are met and the parties properly waived their right to a jury trial.[6] See *Ovrevik v. Ovrevik*, 254 Ga. App. 756, 758-59(1) (564 SE2d 8) (2002) (finding that a trial court hearing constituted a bench trial where the court specifically told the parties that (i) it was not treating a hearing as one concerning summary judgment and had stated that in its notice to the parties, (ii) declined to consider a late-filed motion for summary judgment, and (iii) labeled its order the "FINAL ORDER OF JUDGMENT," and where the party's counsel explicitly waived her demand for a jury trial). However, a trial court cannot transform a hearing on a motion for summary judgment into a bench trial to award OCGA § 13-6-11 expenses. See *Rasmussen v. Nodvin*, 174 Ga. App. 203, 205(4) (329 SE2d 541) (1985) (reversing trial court's award of OCGA § 13-6-11 expenses because the court "transformed the summary

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[6] Regardless of the constitutional and statutory mandates of Ga. Const. of 1983, Art. I, Sec. I, Par. XI(a), and OCGA § 9-11-38, a party may implicitly waive his right to a jury trial in civil suits by his conduct. "Specifically, the appellate courts have recognized that a party may waive a right to jury trial by his or her actions, either by appearing at the hearing and allowing the bench trial to proceed without objection or, in rare circumstances, by conduct indicative of the fact that the right is not asserted, i.e., by failing to appear in court after proper notification and ignoring motions filed by the opposing party, such as a motion for bench trial." *Cole v. ACR/Atlanta Car Remarketing,* 295 Ga. App. 510, 512 (672 SE2d 420) (2008) (punctuation omitted).

adjudication into a bench trial”). The main issue before us, then, is whether the trial court’s September 8, 2025 hearing was a summary judgment hearing or a bench trial.

The record in this case shows that during the course of the litigation, Smith filed a motion to compel Tatelman to respond to discovery requests. While that motion was pending, Tatelman filed a motion to dismiss, which she subsequently supplemented. Smith responded to the motion to dismiss and filed a counter-motion for partial summary judgment. On July 11, 2025, the trial court issued a rule nisi for an August 4, 2025 “to show cause why the relief sought should not be granted” on Smith’s motion to compel discovery. Tatelman moved to stay the rule nisi based on her motion to dismiss, which had not yet been ruled upon. Thereafter, the trial court issued another rule nisi for a September 8, 2025 “hearing” on Tatelman’s motion and supplemental motion to dismiss.

The trial court held a hearing on August 4, 2025 to address the pending discovery motion, as well as other discovery matters, and found that Tatelman had willfully failed to provide legally responsive answers and discoverable materials responsive to Smith’s discovery requests. The order noted that the court had deferred ruling on Tatelman’s motion to dismiss and Smith’s counter-motion for partial summary judgment until "a further hearing" on September 8, 2025. The court further deferred any ruling on Smith's request for sanctions and/or award of attorney fees. On August 5, 2025, Tatelman issued witness subpoenas for the September 8, 2025 hearing. Tatelman issued additional witness subpoenas for the September 8, 2025 hearing on August 11, 2025, and these were served on the witnesses in late August.

As mentioned previously, the parties presented the testimony of witnesses and documentary evidence at the September 8, 2025 hearing. The trial court captioned its subsequent order "FINAL ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT," noted that it had converted Tatelman's motion to dismiss to a motion for summary judgment to allow her submission of evidence outside the pleadings, and detailed the standards for a motion for summary judgment. The court's order specifically denied Tatelman's motion for summary judgment and granted Smith's motion for summary judgment, but it also indicated: "[A]ll remaining claims asserted in the [c]omplaint are rendered moot as the [c]ourt advised the parties before proceeding that [the hearing] would be treated as a **Final Hearing** on this case."

Given the conflicting nature of the trial court's order in this case — which both grants and denies summary judgment to the parties after detailing the law regarding summary judgments, but indicates that the court advised the parties that the proceeding would be a final hearing — as well as the lack of any evidence that Tatelman waived her right to a jury trial, we conclude that the trial court proceeding was a summary judgment hearing and *not* a bench trial. The court, therefore, did not have authority to award OCGA § 13-6-11 expenses and attorney fees at the hearing. Consequently, we reverse the trial court's award of fees under OCGA § 13-6-11.[7]

4. Finally, Tatelman asserts that the trial court erred when it entered its order of replevin in conflict with Smith's bond conditions that she not possess any domesticated animals.[8] This claim fails for two reasons.

First, Tatelman's three-sentence conclusory argument only provides one case citation, and it is to a superior court order, to support its general proposition that "a trial court does not have the authority to act in conflict with the clear terms of a bond

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[7] Given our holding, we need not determine whether the trial court's order detailed sufficient evidence to support the award of fees.

[8] Tatelman does not assert on appeal that the trial court erred in its final order, so we need not address that issue.

agreement." Under Court of Appeals Rule 25(d)(1), "[a]ny enumeration of error that is not supported in the brief by citation of authority or argument may be deemed abandoned." Here, Tatelman does not provide any meaningful legal authority or argument related to the specific facts of the case. In such cases, we have deemed arguments abandoned. See *In the Interest of K. R.*, 367 Ga. App. 668, 677-78(2)(b) (888 SE2d 204) (2023). Accord *Gresham v. Harris*, 349 Ga. App. 134, 138(1) n. 9 (825 SE2d 516) (2019) (holding that legal analysis "is, at a minimum, a discussion of the appropriate law *as applied to the relevant facts*") (punctuation omitted); *PraultShell, Inc. v. River City Bank*, 366 Ga. App. 70, 80(2) (880 SE2d 616) (2022) ("[M]ere conclusory statements are not the type of meaningful argument contemplated by our rules.") (punctuation omitted).

Second, the trial court's order of replevin in this case specifically directed Tatelman to "transfer and give possession of [Smith's] dog, Gypsy, to [Smith's] counsel[.]" This order, therefore, was not "in conflict with the clear terms of [Smith's] bond agreement." In fact, the bond specifically permitted Smith to "transfer ~~ownership~~ possession of [her] dog to [a] friend or family" member. As the owner of Gypsy, Smith has the authority to decide who should retain possession of her dog while her trial is pending and her bond conditions are in force. The order of replevin in this case is not in conflict with Smith's bond conditions.

5. Smith has filed a motion for frivolous appeal penalties, asserting that Tatelman's appeal lacks any arguable merit and was merely taken for delay and to continue a wrongful retention. Tatelman, in turn, filed a counter-motion for sanctions, arguing that Smith's motion for frivolous appeal penalties lacks merit or supporting precedent. This court declines to award either party sanctions for frivolous filings.

In summary, we affirm the trial court's grant of summary judgment to Smith and the trial court's order of replevin, but we reverse the trial court's contempt order and its award of attorney fees under OCGA § 13-6-11.

Judgment affirmed in part and reversed in part. Barnes, P. J., and Markle, J., concur.