

**FIFTH DIVISION
MCFADDEN, P. J.,
HODGES and PIPKIN, JJ.**

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
<https://www.gaappeals.us/rules>

November 3, 2025

In the Court of Appeals of Georgia

A25A0880. GADDY v. SHERARD.

PIPKIN, Judge.

In this granted discretionary appeal, Michael Gaddy challenges the Superior Court of Fulton County's order dismissing his petition for review of a final judgment entered by the Magistrate Court of Fulton County in favor of his next-door neighbor, Phyllis Sherard. Gaddy filed his petition for review pursuant to the recently enacted Superior and State Court Appellate Practice Act, Ga. L. 2022, p. 767 (codified as amended at OCGA §§ 5-3-1 to 5-3-21) (the "Act"). See Ga. L. 2022, p. 767, § 3-1 ("This Act shall become effective on July 1, 2023, and shall apply to petitions for review filed in superior or state court on or after such date."). Gaddy contends that the superior court erred in: (1) granting Sherard's motion to dismiss based on a

narrow, overly technical interpretation of the provision of the Act that required him to serve a copy of the petition for review on Sherard “within five days after filing the petition for review in the reviewing court,” OCGA § 5-3-7 (g); (2) ruling on Sherard’s motion to dismiss ten days after she filed it, which, he argues, violated Uniform Superior Court Rule 6.2, which gives “each party opposing a motion . . . 30 days after service of the motion” to “file a response”; and (3) considering Sherard’s motion to dismiss, which, he argues, violated the superior court’s case management order, which said that “motions to dismiss . . . shall be due on August 16, 2024 or they will be waived.” (Emphasis omitted.) We need not address Gaddy’s claims of error, however, because we conclude that, regardless of whether the superior court should have dismissed Gaddy’s petition for review for failure to timely serve Sherard, the petition was properly dismissed for a different reason. Accordingly, we affirm the superior court’s order dismissing Gaddy’s petition for review under the right-for-any-reason doctrine.

1. On June 17, 2024, Gaddy filed his petition for review in the superior court. However, he failed to attach a certificate of service certifying that he had served the petition for review on Sherard. See OCGA § 5-3-10 (a) (3) (“Proof of service shall be

shown by: (A) Acknowledgment of the attorney or party served; or (B) A certificate of service from the attorney, party, or other person perfecting service.”), (4) (A) (“The certificate of service provided for in this subsection shall . . . [b]e attached to the original of the document to be served.”). See also OCGA § 5-3-10 (a) (2), (b) (requiring “service of process” under the Act to be made “in person, by mail, or electronically if consent to electronic service is given . . . as provided for in subsection (f) of Code Section 9-11-5”).

OCGA § 5-3-9 (c) (1) states, “After a petition for review is filed in the reviewing court, the reviewing court *shall [e]stablish filing deadlines* for any necessary documents” (Emphasis added.) Thus, on July 1, two weeks after Gaddy filed his petition for review, the superior court entered an Order to File Proof of Service directing Gaddy to “file proof of service in the record **by July 11, 2024.**” (Emphasis in original.) The court expressly warned Gaddy that “[f]ailure to do so *shall result in dismissal* of the instant case.” (Emphasis added.) See OCGA § 5-3-12 (a) (6) (prohibiting reviewing courts from dismissing petitions for review unless the reviewing court finds, among other things, that the “petitioner [failed] to comply with . . . any court . . . order”). Gaddy never filed a request for an extension of the court-

ordered filing deadline. See OCGA § 5-3-11 (a) (authorizing requests for filing deadline extensions), (b) (authorizing reviewing courts to “grant such filing deadline extensions for other documents as may be necessary to permit a just and expeditious review of a petition for review”).

Gaddy then failed to meet the deadline to file proof of service in the record that the superior court set out in the Order to File Proof of Service. Instead, as the superior court recognized in its Order of Dismissal, Gaddy waited until Friday, July 12, to file his proof of service. As a result, Gaddy’s petition for review was due to be dismissed for failure to comply with the superior court’s order to “file proof of service in the record **by July 11, 2024.**” (Emphasis in original.) See OCGA § 5-3-12 (a) (6) (listing “[t]he failure of a petitioner to comply with . . . any court . . . order” as a statutory ground for dismissing a petition for review). Accordingly, we affirm the superior court’s order dismissing Gaddy’s petition for review on the ground that Gaddy failed to comply with the court’s order requiring him to file proof of service in the record no later than July 11, 2024. See *City of Gainesville v. Dodd*, 275 Ga. 834, 836 (573 SE2d 369) (2002) (“‘A judgment right for any reason will be affirmed by the appellate courts.’”) (citation omitted); *Health Help Servs. of Gainesville, Inc. v. State Health*

Planning Agency, 174 Ga. App. 640, 640–41 (1) (329 SE2d 628) (1985) (affirming superior court’s judgment under right-for-any-reason doctrine in granted discretionary appeal).

In reaching this conclusion, we are not unmindful of the General Assembly’s stated intent in adopting the Act to “[i]ncrease access to justice through the greater resolution of appeals on the basis of substantive issues rather than on complex procedural grounds.” OCGA § 5-3-2 (b) (2). See also OCGA § 5-3-2 (a) (finding that “many appeals from a lower judicatory to a superior or state court result in dismissal on complex procedural grounds and not a decision on the merits”). However, in our view, a dismissal for failure to comply with an explicit court-ordered filing deadline cannot fairly be described as a dismissal based on “complex procedural grounds” of the sort that troubled the General Assembly under the prior statutory scheme. To the contrary, in the Act, the General Assembly expressly provided six grounds for dismissal of a petition for review, the last of which is “[t]he failure of a petitioner to comply with the provisions of this chapter or *any court rule or order*.” (Emphasis added.)

2. The dissent raises two objections to our approach to this case, but we find neither argument persuasive. First, the dissent argues that we cannot (or perhaps merely should not) affirm the superior court’s order dismissing Gaddy’s petition for review under the right-for-any-reason doctrine because Sherard did not raise Gaddy’s failure to comply with the superior court’s order to “file proof of service in the record **by July 11, 2024**” (emphasis in original) as a ground for dismissal in her motion to dismiss. See Dis. Op. at 1-3. In support of this argument, the dissent cites our decisions in *City of Albany v. South Georgia Rails to Trails, Inc.*, 375 Ga. App. 494 (915 SE2d 720) (2025) (“*Rails-to-Trails*”), and *Oskouei v. Orthopaedic & Spine Surgery of Atlanta, LLC*, 340 Ga. App. 67 (796 SE2d 299) (2017), as well as our Supreme Court’s decision in *Georgia-Pacific, LLC v. Fields*, 293 Ga. 499 (748 SE2d 407) (2013).

In *Rails-to-Trails*, this Court reviewed the *denial* of a motion to dismiss and not, as in this case, the *grant* of a motion to dismiss. See 375 Ga. App. at 494, 497, 501 (1). Thus, the quote from *Rails-to-Trails* recited by the dissent, which addresses when “[t]his [C]ourt may affirm a trial court’s *grant* of a motion to dismiss” under the right-for-any-reason doctrine, is mere dicta that provides no support for the dissent’s argument. Dis. Op. at 2 (emphasis added). Unlike *City of Albany*, *Oskouei* did involve

review of a trial court’s grant of a motion to dismiss. See 340 Ga. App. at 68. And in *Oskouei*, we exercised our discretion under the right-for-any-reason doctrine not to consider two complicated alternative grounds for affirmance that the appellees did not raise in the trial court. See *id.* at 70 (“Appellees raised neither of these points below, nor did the trial court rule upon them, and we will not do so in the first instance.”). See also *Dodd*, 275 Ga. at 837 (explaining in the context of the right-for-any-reason doctrine that “the appellate courts often must exercise discretion in determining what is the best course to pursue in any given case”). However, nothing in *Oskouei* prevents us from exercising our discretion differently in this case, where the alternative ground for affirmance is straightforward and clearly established by the relatively short record on appeal. See *Brock v. Atlanta Airlines Terminal Corp.*, 359 Ga. App. 226, 229–31 (1), (3) (857 SE2d 74) (2021) (affirming grant of partial summary judgment to appellee on ground not raised or ruled on in the trial court under the right-for-any-reason doctrine). Cf. *id.* at 234–35 (McFadden, C.J., dissenting) (arguing that the Court should not affirm under the right-for-any-reason doctrine and reciting as support the same quote from *Oskouei* that the dissent recites here).

The dissent’s reliance on our Supreme Court’s decision in *Georgia-Pacific, LLC* also is misplaced. In that case, the Supreme Court reversed our alternative right-for-any-reason holding based on a well-established legal rule applicable to motions for summary judgment. See 293 Ga. at 503–04 (2) (“‘The law is well established that [the] [d]efendants as the non-movants [on the motion for partial summary judgment] were not required to produce any counter evidence or materials in affirmative support of their side of the issue [of causation] until the [plaintiffs] carried the burden placed upon them as the movant[s] for summary judgment’” to pierce the defendants’ nonparty fault defense “by showing that there was no evidence of Mrs. Fields’s exposure to products manufactured by the nonparty defendants . . . causing Mrs. Fields’s condition” (citation omitted)). No similar legal rule applies to motions to dismiss, which is what is involved here.

Moreover, to the extent that the dissent is arguing that there is an across-the-board bar on applying the right-for-any-reason doctrine to affirm a lower court’s judgment on a ground that the appellee failed to raise below, the dissent is incorrect. See *Mondy v. Magnolia Advanced Materials, Inc.*, 303 Ga. 764, 770 n.2 (3) (815 SE2d 70) (2018) (listing the fact that “neither party has ever mentioned the issue” — that

is, the requirement that a motion to recuse not only be “filed” but also be “presented” to the trial judge — in the trial court, this Court, or the Supreme Court as just one reason among many that that issue was “*not a good candidate* for affirming the Court of Appeals’ opinion under the ‘right for any reason’ doctrine”) (emphasis added); *Dodd*, 275 Ga. at 837 (explaining that “the appellate courts often must exercise discretion in determining what is the best course to pursue in any given case” when deciding whether to affirm a lower court’s judgment on an alternative ground under the right-for-any-reason doctrine). See also, e.g., *Merrill v. Lee*, 301 Ga. 34, 36–37 (2) (799 SE2d 169) (2017) (considering on the merits “an argument that [the appellee] did not raise in the trial court” but did raise in his brief on appeal as a potential basis for affirming the trial court’s judgment under the right-for-any-reason doctrine but ultimately rejecting the alternative ground for affirmance); *Jones v. State*, 282 Ga. 784, 784 (1), 789 (1) (c) (653 SE2d 456) (2007) (holding — based on an argument “not raised by the parties or the trial court” that was “relevant to whether the trial court’s order [denying the probationer-defendant’s motion to suppress] was right for any reason” — that a search of the defendant’s apartment “was . . . permissible insofar as it involved the observation of items of obvious evidentiary value

in plain view during the time and activities required to attempt [the defendant's] arrest" for probation violations); *Guffin v. Kelly*, 191 Ga. 880, 890 (4) (14 SE2d 50) (1941) (affirming the trial court's judgment on an implied trust theory not urged in either the trial court or the Supreme Court because "if a judgment is right for any reason, it should be affirmed"), disapproved on other grounds by *Morgan v. Wright*, 219 Ga. 385, 387 (2) (133 SE2d 341) (1963). This has long been the law in Georgia. See *L.J. Glenn & Son v. Shearer*, 44 Ga. 16, 16 (2) (1871) ("There will be no reversal of a judgment, if it was right, upon any ground apparent from the record.").

Second, the dissent argues that OCGA § 5-3-12 (a) (6) does not authorize dismissal under the facts of this case. In truth, though, the dissent barely mentions OCGA § 5-3-12 (a) (6). Instead, the dissent applies a Supreme Court decision from 1980 interpreting a different provision (OCGA § 9-11-41 (b)) of a different act (the Civil Practice Act of 1966, Ga. L. 1966, p. 609 (codified as amended at OCGA §§ 9-11-1 to 9-11-133) ("CPA")), on the theory that OCGA § 5-3-12 (a) (6) is a mere "adaptation" of OCGA § 9-11-41 (b). Dis. Op. at 4. However, the General Assembly knew how to direct us to look to provisions of the CPA when interpreting the Act. Indeed, the General Assembly did just that in a section of the Act two doors down

from OCGA § 5-3-12. See OCGA § 5-3-10 (a) (2), (b) (requiring “service of process” under the Act to be made “in person, by mail, or electronically if consent to electronic service is given . . . *as provided for in subsection (f) of Code Section 9-11-5*” (emphasis added)). Moreover, unlike the Act, the CPA contains no provision requiring trial courts to enter orders establishing filing deadlines for necessary documents once a complaint has been filed. Cf. OCGA § 5-3-9 (c) (1) (“After a petition for review is filed in the reviewing court, the reviewing court *shall[e]stablish filing deadlines* for any necessary documents” (emphasis added)).

The dissent also accuses us of overlooking the “purpose” of the Act, quoting an article from the Georgia Bar Journal. Dis. Op. at 5. However, the General Assembly did not include the language quoted by the dissent in the text of the Act itself. The Act instead contains the following explanation of the General Assembly’s purpose in adopting the Act:

It is the intent of the General Assembly in enacting this chapter to: (1) Provide a single, modern, and uniform procedure called a “petition for review” for appealing a decision made by a lower judicatory to a superior or state court, as authorized by the laws and the Constitution of this state; (2) Increase access to justice through the greater resolution of appeals on the basis of substantive issues rather than on complex procedural grounds; and (3) Retain the limited appellate jurisdiction of

state courts prescribed in the Constitution of Georgia and Code sections outside of this chapter.

OCGA § 5-3-2 (b). Our interpretation of OCGA § 5-3-12 (a) (6) is fully consistent with this statement of legislative purpose, which renders moot the dissent's temptation to speculate on legislative intent.

For the reasons stated above, we affirm the superior court's order dismissing Gaddy's petition for review under the right-for-any-reason doctrine.

Judgment affirmed. Hodges, J., concurs. McFadden, P. J. dissents.

A25A0880. GADDY v. SHERARD.

McFADDEN, Presiding Judge, dissenting.

Citing OCGA § 5-3-12 (a) (6) of the Superior and State Court Appellate Practice Act, the majority affirms, as right for any reason, the trial court's dismissal of appellant Michael Gaddy's petition for review. I disagree. We should not affirm on that ground under the right-for-any-reason rule, because that reason for dismissal was not argued to the trial court. Moreover, OCGA § 5-3-12 (a) (6) does not support the severe sanction of dismissal for a proof of service filed one day late. Finally, the record shows that the trial court erred when he dismissed Gaddy's petition for failure to timely perfect service upon appellee Phyllis Sherard, because the trial court appears

not to have considered whether Gaddy exercised due diligence in his attempt to do so. I would vacate the dismissal and remand for further proceedings on that issue, and so I respectfully dissent.

1. *We should not affirm under the right-for-any-reason rule*

The majority holds that it “has long been the law in Georgia” that this court may affirm a judgment as right for a reason not raised to the trial court. I am not persuaded. Certainly that it not the law in the summary judgment context. Our Supreme Court has reversed us for doing just that in affirming a summary judgment ruling, *Ga.-Pac., LLC v. Fields*, 293 Ga. 499, 504 (2) (748 SE2d 407) (2013), and there are many decisions in that context holding that the right-for-any-reason rule applies “so long as the movant raised the issue in the trial court and the nonmovant had a fair opportunity to respond.” *Id.* (citation and punctuation omitted; emphasis supplied). See, e. g., *Callaway v. Willard*, 351 Ga. App. 1, 18 (4) (830 SE2d 464) (2019) (summary judgment); *Abdullah v. Winslow at Eagle’s Landing Homeowners Ass’n*, 349 Ga. App. 615, 620 (823 SE2d 872) (2019) (summary judgment).

And this court has acknowledged the same principle in applying the right-for-any-reason rule to dismissal orders. See *City of Albany v. S. Ga. Rails to Trails*, 375 Ga. App. 494, 501 (1) (915 SE2d 720) (2025) (“this [c]ourt may affirm a trial court’s grant

of a motion to dismiss if it is right for any reason, *so long as the argument was fairly presented to the court below*”) (citation and punctuation omitted; emphasis supplied); *Oskouei v. Orthopaedic & Spine Surgery of Atlanta*, 340 Ga. App. 67, 70 (796 SE2d 299) (2017) (holding, in declining to affirm the dismissal of a counterclaim, that “[e]ven in the context of de novo review, this [c]ourt does not apply the right for any reason rule to uphold a decision of the trial court based on a ground not raised below”).

I believe it is correct to apply that limiting principle to the review of dismissal orders and would do so here. Consequently, I disagree with the majority’s decision to affirm the trial court’s judgment under the right-for-any-reason rule for a reason not raised to the trial court.

2. *OCGA § 5-3-12 (a) (6) does not authorize dismissal under the facts of this case*

Moreover, I do not agree with the majority that OCGA § 5-3-12 (a) (6) permits the trial court to dismiss Gaddy’s petition for review.

OCGA § 5-3-12 (a) (6) authorizes the dismissal of a petition for review for “[t]he failure of the petitioner to comply with the provisions of this chapter or any court rule or order.” It is an adaptation of a provision of the Civil Practice Act, OCGA § 9-11-41 (b), which authorizes dismissal “[f]or failure of the plaintiff to prosecute or to comply with this chapter or any order of court[.]”

Our Supreme Court has limited the application of that provision of the Civil Practice Act in situations such as this. It has held that the provision “does not authorize dismissal of a complaint for failure to comply with an order where the sanction for noncompliance is . . . clearly not dismissal but some less severe sanction.” *Hawn v. Chastain*, 246 Ga. 723, 727 (273 SE2d 135) (1980) (construing OCGA § 9-11-41 (b)’s predecessor, Code Ann. § 81A-141 (b)). See also *Mathews v. City of Atlanta*, 167 Ga. App. 168, 169 (306 SE2d 3) (1983) (“Generally, a dismissal with prejudice is warranted only where a clear record of delay or contumacious conduct by the plaintiff exists and a lesser sanction would not better serve the interest of justice.”).

The sanction imposed by the Civil Practice Act for tardy filing of a return of service is much less severe than dismissal. OCGA § 9-11-4 (h) provides that “[i]f the proof of service is not filed within five business days, the time for the party served to answer the process shall not begin to run until such proof of service is filed.” OCGA § 9-11-4 (h). So under the rule set forth in *Hawn*, *supra*, dismissal for such a tardy filing would not be authorized by OCGA § 9-11-41 (b). I see no reason to treat a proof of service that was filed one day late differently under the Superior and State Court Appellate Practice Act.

The majority takes strong exception (to say the least) to reliance on case law construing the Civil Practice Act. But the Superior and State Court Appellate Practice Act and the Civil Practice Act serve the same function, setting out the rules of procedure, in distinct but related contexts. OCGA §§ 5-3-12 and 9-11-41 are directly corresponding: they address dismissals and specify when dismissals are and are not authorized. More fundamentally the central innovation of the Civil Practice Act is its declaration that, “There shall be one form of action, to be known as ‘civil action.’” OCGA § 9-11-2. The central innovation of the Superior and State Court Appellate Practice Act follows that example; it is that “[a] petitioner invokes the appellate jurisdiction of a reviewing court under this chapter by filing a petition for review with the clerk of the reviewing court.” OCGA § 5-3-6. “Statutes are not to be construed in a vacuum, but in relation to other statutes of which they are a part, and all statutes relating to the same subject-matter are to be construed together, and harmonized wherever possible.” *Muscogee County Bd. of Tax Assessors v. Pace Indus.*, 307 Ga. App. 532, 535 (705 SE2d 678) (2011) (citation and punctuation omitted).

As the majority acknowledges, the first stated purpose of the Superior and State Court Appellate Practice Act is to “[p]rovide a single, modern, and uniform

procedure called a “petition for review” for appealing a decision made by a lower judicatory to a superior or state court[.]” OCGA § 5-3-2 (b). It is also true that,

The purpose of the new Superior and State Court Appellate Practice Act (the new Act) is to bring appellate practice before our superior courts into the mid-20th century. More specifically, that purpose is to make superior court appellate practice more like practice under the Civil Practice Act and the Appellate Practice Act—which were adopted in the 1960s.

Christopher J. McFadden, Gary E. Jackson, and Darron J. Enns, Introducing the Superior and State Court Appellate Practice Act, Georgia Bar Journal, Vol. 29, Issue 3, p. 17 (December 2023) (emphasis supplied).

To that end, that new Act borrows heavily from the Civil Practice Act and the Appellate Practice Act. So it appropriate and unremarkable to construe language in the new Act in light of case law construing identical language in the Civil Practice Act. Particularly so here, as the same policy considerations obtain.

3. The dismissal should be vacated and the case remanded for the trial court to consider whether Gaddy exercised due diligence in attempting to perfect service

Moreover, I agree with Gaddy that the trial court erred in dismissing his petition for review. The trial court dismissed on the ground that Gaddy’s service of process upon Sherard was “well outside the deadline circumscribed by Georgia

law[,]” which under the Superior and State Court Appellate Practice Act is five days. OCGA § 5-3-7 (g). The record shows that Gaddy filed his petition for review with the trial court on June 17, 2024, but the sheriff’s office did not serve the petition upon Sherard until July 1, 2024.

However, a “reviewing court shall not immediately dismiss a petition for review for failure to perfect service on any party if the party obligated to perfect service shows due diligence in attempting to timely perfect service.” OCGA § 5-3-12 (d). Gaddy argues that he provided the sheriff’s office with Sherard’s correct address when he filed his petition for review and that he was justified in relying on the sheriff’s office to timely serve the petition upon Sherard.

It is true, as Gaddy argues, that under the Civil Practice Act a plaintiff who has supplied the sheriff’s office with the correct service address for the defendant may “justif[iably] . . . rel[y] on the sheriff to perform his duty to serve process within five days of receiving the process papers.” *Lee v. Kim*, 275 Ga. App. 891, 893 (622 SE2d 99) (2005), overruled in part on other grounds by *Giles v. State Farm Mut. Ins. Co.*, 330 Ga. App. 314, 319-321 (2) & n. 2 (765 SE2d 413) (2014). But the appellate record in this case does not specifically state when the sheriff’s office received the process papers, although it shows that a summons was issued on June 17, 2024 and that the

sheriff's office had Sherard's correct address when a deputy served her on July 1, 2024.

Moreover, cases construing the Civil Practice Act, such as those cited by Gaddy, are not directly analogous. The Civil Practice Act requires a complaint to be served upon a defendant by the sheriff, sheriff's deputy, or other statutorily designated person. OCGA § 9-11-4 (c). The Superior and State Court Appellate Practice Act, by contrast, permits a petition for review to be served "in person, by mail, or electronically if consent to electronic service is given. . . ." OCGA § 5-3-10 (a) (2).

Gaddy chose to have his petition served in person by the sheriff's office, rather than by mail or electronically. It was for the trial court to determine whether he exercised due diligence in doing so. Instead, the trial court dismissed the petition for failure to perfect service without considering if the petitioner had exercised due diligence, despite the presence in the record of a return of service and of acknowledgment in Sherard's motion to dismiss that she had been served. Moreover that motion to dismiss was itself untimely, as Sherard filed it after a court-imposed deadline for such motions had passed. And Gaddy's period for responding to the motion had not expired when the trial court entered the dismissal order. See Ga. Unif.

Superior Ct. Rule 6.2 (“Unless otherwise ordered by the judge or as provided by law, each party opposing a motion shall serve and file a response . . . not later than 30 days after service of the motion.”). The trial court’s decision to dismiss the petition under these circumstances, instead of addressing the issue of due diligence, was error.

For this reason, I would vacate the dismissal order and remand the case for further proceedings.