

**SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.**

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October 19, 2026

In the Court of Appeals of Georgia

A26A1286. HEARD v. LOGAN

DOYLE, Presiding Judge.

In this civil action on a fraud perpetrated on the late Lynette Murphy, defendant James Heard appeals from a jury verdict in favor of plaintiff Rany Logan, Murphy's guardian and conservator. Heard contends that the trial court erred by denying his motion for a judgment notwithstanding the verdict ("JNOV") or a new trial because (1) the jury panel was not properly sworn in pursuant to OCGA § 15-12-138; and (2) the trial court improperly denied his motion for a mistrial based on juror misconduct. For the reasons that follow, we affirm.

The relevant record shows that in 2021, Logan¹ filed a verified complaint against Heard, Murphy's stepson. The complaint alleged that Murphy had been experiencing memory loss since 2013, and in 2020, Heard persuaded Murphy to transfer her interest in her Rome, Georgia, home to Heard, despite her lack of capacity to do so. The complaint further alleged that Heard refused Logan's demands to transfer the property back to Murphy. Consequently, Logan sued Heard, asserting claims for rescission of deed, exploitation of a disabled adult, exploitation of an elder person, fraud and deceit; seeking a constructive trust, interlocutory injunction, and punitive damages and attorney fees. A jury trial ensued, and the jury returned a verdict in favor of Logan, rescinding the deed and awarding \$27,600 in damages for fraud and \$30,000 in punitive damages.

Heard filed a motion for a JNOV or for a new trial, arguing, as amended, that the verdict was void because the trial court failed to administer the oath to the jury panel in accordance with OCGA § 15-12-138 and that the trial court erred by denying his motion for a mistrial when, prior to trial, a juror performed an internet search on Logan, telling the other jurors that Logan had "tried to take people's property

¹ It is undisputed that Logan previously had been appointed as Murphy's guardian and conservator.

before.” The trial court denied the motion based in part on its follow-up inquiry during voir dire, and Heard now appeals.

1. Heard contends that the jury’s verdict was void because the jury panel was not properly sworn pursuant to OCGA § 15-12-138. We disagree.

OCGA § 15-12-138 provides:

Each panel of the trial jury shall take the following oath:

“You shall well and truly try each case submitted to you during the present term and a true verdict give, according to the law as given you in charge and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either party, provided you are not discharged from the consideration of the case submitted. So help you God.”

“In a civil case, the oath that is prescribed by OCGA § 15-12-138 is to be given to each panel of the trial jury and, by its terms, that oath is to be given prior to the selection of jurors to serve in any individual case.” *Strozier v. Clark*, 206 Ga. App. 85, 86(2) (424 SE2d 368) (1992) (emphasis omitted).

Here, Heard argues that no such oath was given, and although voir dire was not transcribed, there is nothing in the transcript reflecting the oath. Normally, we

presume procedural regularity if a party fails to provide a full transcript, but we do not apply such a presumption here based on the partial transcript that we do have, which includes the proceedings from the time the selected jurors entered the courtroom, and the difficulty of proving a negative. See generally *Gilchrist v. Gilchrist*, 287 Ga. App. 133, 134(1) (650 SE2d 795) (2007) (holding that the record overcame the presumption of regularity despite the lack of a transcript) (citing *Barnett v. Freeman*, 157 Ga. App. 760, 761-62(2) (278 SE2d 694) (1981) (presumption of regularity overcome by portion of transcript making “an affirmative showing contrary to that presumption”)).

Even so, it is undisputed that neither party raised this issue before the trial court. In fact, the transcript reflects that after giving the entire jury panel the voir dire oath² and then conducting general voir dire of the panel, the trial court asked the parties if the panel “appear[s] to be statutorily qualified,” and each party affirmatively agreed. The parties’ voir dire of the individual jurors followed, and once the jury of 12 was selected, the trial court gave them general instructions about its duty, and the trial took place without objection to the lack of a jury oath.

² The trial court administered the panel an oath to “give true answers to all questions” asked by the court and attorneys in accordance with OCGA § 15-12-132.

Normally, a party's failure to object at the appropriate time results in a waiver of his ability to challenge the issue on appeal. This is because "[a] party cannot acquiesce in a procedure by a trial court and then complain of it. Failure to object to the procedure amounts to a waiver." *Dep't of Cmty. Health v. Houston Hosps., Inc.*, 372 Ga. App. 218, 224(4) (904 SE2d 70) (2024) (punctuation marks omitted) (quoting *Gnam v. Livingston*, 353 Ga. App. 701, 703(2) (839 SE2d 200) (2020)). See generally *Gober v. State*, 247 Ga. 652, 654–55 (2) (278 SE2d 386) (1981) (holding that even if a trial court completely fails to give the voir dire oath required by OCGA § 15-12-132, any error is waived in the absence of an objection, and a defendant must show actual prejudice from the error, as harm will not be presumed).

Nevertheless, Heard contends that the total failure to give the jury's oath under OCGA § 15-12-138 rendered the verdict void entirely. As support, he cites a line of cases in the criminal context holding that the failure to administer the criminal trial oath in OCGA § 15-12-139 is a non-waivable jurisdictional defect. See, e.g., *Bowman v. State*, 315 Ga. 707, 711(2) (884 SE2d 293) (2023) (addressing the oath for criminal trials under OCGA § 15-12-139 and explaining that "the administration of the jury oath is what turns the 12 citizens selected to hear a criminal case into a jury invested

with the authority to decide whether the accused is guilty of a crime. Without the oath, there is no jury; and without the jury, there is no trial.”) (quoting *Slaughter v. State*, 100 Ga. 323, 329-30 (28 SE 159) (1897) (concluding that the complete failure to administer the trial jury oath in a criminal trial results in a jury that is not a “lawfully constituted” jury, is an error that is “jurisdictional in its character,” and “is a matter which cannot, in any manner or under any circumstances, be waived; and as a consequence, a conviction by an unsworn jury is a mere nullity”)). See also *Collins v. State*, ___ Ga. ___ (9) (932 SE2d 603) (2026) (“[W]e have held that a trial court’s total failure to give the trial jury oath required [in criminal trials] by OCGA § 15-12-139 is a non-waivable jurisdictional defect that automatically renders any trial a nullity”).

While informative, cases addressing the oath in OCGA § 15-12-139 do not control our analysis of the jurisdictional function of the oath in OCGA § 15-12-138 in a civil case. Instead, we look to the civil precedent established in *Towns v. Rome Ry. & Light Co.*, 19 Ga. App. 457 (91 SE2d 790) (1917). That case, in which three jurors were not sworn, posed the question: “whether the losing party in a civil suit may, after the rendition of a verdict, urge for the first time the objection that one or more of the

jurors trying the case had not been sworn.” Id. Addressing this question, the Court acknowledged the rule established in criminal cases such as *Slaughter* but noted that those cases were “confined by [their] express terms to criminal trials,” and therefore were not binding authority in the civil context. Id. at 459. The *Towns* court then noted several cases in other states holding that the partial or total failure to administer the jury oath in civil cases is a waivable defect. See, e.g., id. at 460 (citing *Ross v. Grand Pants Co.*, 241 Mo. 296, 299 (145 SW 410) (1912) (“We conclude that any irregularity in administering the oath to the jury, or a total or partial failure to administer the oath at all, in a civil case, is purely a matter of exception. Being such, an exception should be made at the time the omission occurred.”)). Based on the persuasiveness of authority in the civil context, the *Towns* Court concluded that

the fact that three jurors were not sworn in this case was only an irregularity, which could be waived and was waived by the omission to urge objection upon this ground before the return of the verdict. ... [W]e hold that the failure to swear jurors in a civil case is a matter which may be waived.

Towns, 19 Ga. App. at 461. Accord *Dye v. Hirsch*, 92 Ga. App. 803, 807(2) (90 SE2d 332) (1955) (noting that the jury not being sworn was waivable). Although the case

presented in *Towns* involved three unsworn jurors and not the whole panel, the Court did not distinguish between a partially unsworn jury and an entirely unsworn jury, citing persuasive case law characterizing either condition as a waivable defect. See *Towns*, 19 Ga. App. at 459–61.

Despite Heard’s well articulated argument urging otherwise, we decline to depart from this precedent based on the record before us. Prior to voir dire, the jury was given the voir dire oath, which emphasized its duty of truthfulness, and prior to opening statements, the trial court instructed the jury about its duty to consider only the evidence presented, decide the case independently, not prejudge witnesses’ credibility before they testify, and follow the law as instructed by the trial court. Although not a verbatim recitation, these instructions track the basic concepts encompassed in the oath given in OCGA § 15-12-138. Heard was represented and present throughout the process, and he identifies no harm he suffered by the failure to administer the prescribed jury oath. It was of course error to omit the oath, but in the present case, it was not a defect that infected the fairness or integrity of the process such that the jury lacked capacity to act and render a lawful verdict. Accordingly, this enumeration does not require reversal.

2. Heard next contends that the trial court abused its discretion by denying his motion for a mistrial based on juror misconduct. We disagree.

When ruling on a motion for a mistrial, a trial court is vested with broad discretion, and this Court will not disturb the ruling absent a manifest abuse of discretion. Indeed, unless it is apparent that a mistrial is essential to preservation of the right of fair trial, the discretion of the trial judge will not be interfered with by Georgia's appellate courts.

Bristol Consulting Group, Inc. v. D2 Prop. Group, LLC, 366 Ga. App. 843, 846(1) (884 SE2d 546) (2023) (citations omitted). See also *Kellett v. Kumar*, 281 Ga. App. 120, 126(4) (635 SE2d 310) (2006) (“Motions for new trial because of improper conduct of jurors or parties are addressed to the sound discretion of the trial judge. Unless there is abuse of discretion, the appellate court will not upset the trial judge’s determination.”) (punctuation omitted).

During jury deliberations, while the parties were present, a juror brought to the court’s attention that, “a few moments ago,” another juror had told the jury that he “Googled Rany Logan,” and stated that he believed that Logan “had tried to take people’s property before.” The other jurors “told him to quit talking[, w]e didn’t

want to hear anything.” This was the extent of the conversation, according to the reporting juror.

The court and parties discussed the matter, and Heard’s counsel stated that he would move for a mistrial. Following a lunch break, the court convened the parties outside the presence of the jury, removed the offending juror, and replaced him with an alternate who was not privy to the improper comment. The court then polled each juror outside the presence of the other jurors, asking them what they had heard and whether they could set aside anything the offending juror had said and could decide the case impartially based solely on the trial evidence. Each juror indicated that they could fairly decide the case based only on the evidence before them.

Based on this process, the trial court did not abuse its discretion by denying Heard’s motion for a mistrial. The trial judge explicitly noted her personal observations of the jurors’ demeanor during questioning and concluded, “I just questioned them at length, all 11 of them. ... They knew it was wrong, and they have all said they can disregard it.”³ Heard presents no other evidence or statements by

³ We note that to the extent that the jurors did not disregard the comment, it was a negative comment about Logan, not Heard, so it is not clear how the comment harmed Heard.

jurors showing that they were unable to do so; thus, this argument presents no basis for reversal. See generally *Sellers v. Burrowes*, 283 Ga. App. 505 (624 SE2d 145) (2007) (“[T]rial courts have broad discretion to evaluate and rule upon a potential juror’s impartiality, based upon the ordinary general rules of human experience, and a trial court may only be reversed upon a finding of ‘manifest abuse’ of that discretion.”) (punctuation omitted).

Judgment affirmed. Davis and Whitaker, JJ., concur.