

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

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October 26, 2026

In the Court of Appeals of Georgia

A26A1596. FAVORITO et al v. WAN et al.

A26A1739. JEFFORDS v. FULTON COUNTY et al.

HODGES, Judge.

This is the second appearance of this case before this Court, where appellants Garland Favorito, Caroline Jeffords, Christopher Peck, and Trevor Terris have challenged the actions of various local officials regarding the November 2020 general election.¹ They appeal from a trial court order that dismissed many of their claims and

¹ The appellants first appealed a prior order dismissing their claims to the Georgia Supreme Court, which transferred the appeal to this Court, where we affirmed the trial court's determination that the appellants, and other prior petitioners, lacked standing to maintain the action. *Favorito v. Wan*, 364 Ga. App. 745 (875 SE2d 892) (2022). After the Supreme Court vacated this Court's opinion, we determined that the appellants had standing to pursue the action as community stakeholders. *Favorito v. Wan*, 367 Ga. App. 642, 642–44 (887 SE2d 810) (2023).

awarded attorney fees under OCGA § 9-15-14(a) and (b) to Fulton County and the Fulton County clerk of the superior court. In Case No. A26A1596, Favorito, Peck, and Terris (collectively “the Favorito petitioners”) challenge the dismissal of their declaratory judgment, due process and equal protection claims, as well as the imposition of attorney fees. In Case No. A26A1739, Jeffords challenges the imposition of attorney fees. We consider these appeals together since they arise from the same trial court order and both challenge the imposition of attorney fees, for which they are jointly and severally liable.

As set forth more fully below, we affirm the dismissal of the Favorito petitioners’ claims, as they have failed to make any meaningful argument that these claims should survive. Regarding attorney fees, we conclude that the trial court erred in awarding fees to the county, affirm the award of fees to the clerk, and remand the case for the trial court to determine if the county is entitled to fees on other grounds.

Briefly, this case began in December 2020, when the appellants and others brought a petition for declaratory and injunctive relief against various officials in their individual capacities concerning purported illegal conduct regarding the handling or counting of ballots in Fulton County during the November 2020 general election. In

January 2021, the appellants sought to substitute the original defendants with Fulton County and the Fulton County clerk of the superior court as the new defendants. The superior court held a hearing on the motion to substitute in March 2021, and substituted the parties in April 2021. Both the clerk and the county moved to dismiss the petition in May 2021.

In February 2026, the superior court issued an order dismissing all of the Favorito petitioners' remaining claims, and all of Jeffords' claims save for an equal protection claim that is not at issue in these appeals.² The superior court also concluded that the appellants were liable to the county and the clerk for attorney fees pursuant to OCGA § 9-15-14(a) and (b) related to the dismissed claims. In Case No. A26A1596, the Favorito petitioners challenge the dismissal of their claims and the imposition of attorney fees. In Case No. A26A1739, we granted Jeffords' application for interlocutory review to consider the propriety of the attorney fee award.

² The appellees have filed a motion to dismiss Case No. A26A1596, asserting that the appeal is interlocutory because Jeffords' equal protection claim is still pending. The Favorito petitioners, however, have been severed from Jeffords since April 2021, and the trial court's order is clear that all of the Favorito petitioners' "remaining claims are now all dismissed." As such, this appeal is not interlocutory, and the appellees' motion is DENIED.

1. In Case No. A26A1596, the Favorito petitioners challenge the dismissal of their declaratory judgment, due process, and equal protection claims. The Favorito petitioners, however, have failed to advance any meaningful argument to challenge the trial court's conclusion and these claims of error are abandoned as a result. See *In the Interest of K. R.*, 367 Ga. App. 668, 677(2)(b) (888 SE2d 204) (2023) (“[W]e have held that an argument is abandoned if it provides general citations to the ‘most basic legal authority’ without providing any legal authority or argument related to the specific facts of [the] case.”); *Brittain v. State*, 329 Ga. App. 689, 704(4)(a) (766 SE2d 106) (2014) (“[A]n appellant must support enumerations of error with argument and citation of authority, and mere conclusory statements are not the type of meaningful argument contemplated by our rules.”) (citation and punctuation omitted); *Dixon v. MARTA*, 242 Ga. App. 262, 266(4) (529 SE2d 398) (2000) (“Rhetoric is not a substitute for cogent legal analysis, which is, at a minimum, a discussion of the appropriate law as applied to the relevant facts.”); Court of App. R. 25(d)(1) (“Any enumeration of error that is not supported in the brief by citation of authority or argument may be deemed abandoned.”).

Here, the Favorito petitioners have only cited the most basic legal authority in a general fashion with absolutely no attempt to apply any of the myriad (including very recent) case law regarding where declaratory judgments will lie to the facts of this case. At most, they have cited three cases that state the purpose of the declaratory judgment act and note that this Court considers the substance over the nomenclature of pleadings. Worse, regarding their due process and equal protection claims, the Favorito petitioners have cited absolutely no authority to support their position. Because the Favorito petitioners have failed to cite any meaningful authority, this Court can only speculate as to what argument they intended to advance, and we will not engage in such an enterprise. “As an appellate court, we should not speculate or make arguments on [the] appellant[s’] behalf; to do so would improperly change this Court’s role from disinterested decision-maker to appellate advocate.” *Muniz v. State*, 375 Ga. App. 140, 141–42(1)(b) (914 SE2d 358) (2025) (punctuation omitted). Because we refuse to invent arguments for counsel, these enumerations are abandoned. *In the Interest of K. R.*, 367 Ga. App. at 677(2)(b).

2. The Favorito petitioners in Case No. A26A1596 and Jeffords in Case No. A26A1739 each challenge the trial court’s award of attorney fees pursuant to OCGA

§ 9-15-14(a) and (b) to both Fulton County and the Fulton County clerk of the superior court on various grounds. As these appeals are taken from the same order, awarding fees on the same grounds, and the appellants' arguments are substantially similar, we will resolve these many enumerations collectively.

(a) As an initial matter, in both cases the appellants contend that the county and the clerk have waived or are estopped from any argument that they are entitled to fees for abusive litigation because the county and the clerk "affirmatively stated [the motion to substitute the county as a party] was unopposed." The appellants heavily rely on the fact that counsel representing the individual members of the Fulton County Board of Elections, who now represents the county, indicated the motion to substitute the parties was "unopposed." Additionally, the appellants point out that neither the county nor the clerk took any action to oppose substitution until four months after the motion to substitute was filed and until two and a half months after substitution was ordered.

Pretermitted whether the county and the clerk waived their opposition to being procedurally substituted as parties,³ Georgia law is clear that the county and the clerk

³ See *Kent v. A.O. White, Jr., Consulting Eng'r, Inc.*, 279 Ga. App. 563, 566(5) 631 SE2d 782) (2006) (finding waiver where opposition to substitution was filed

could still substantively assert sovereign immunity, as they each did with their first act after joining the case. Issues of substitution and sovereign immunity are separate inquiries, and “[t]he fact that a governmental entity may have sovereign immunity ... does not prevent such entity from being ... an entity that may sue and be sued.” *Foskey v. Vidalia City School*, 258 Ga. App. 298, 301(b) (574 SE2d 367) (2002). We have also concluded in other contexts that the substitution of parties “is a procedural rule and does not alter the substantive rights of the parties[.]” *EMM Credit, LLC v. Remington*, 343 Ga. App. 710, 718(3) (808 SE2d 96) (2017). Because the county and the clerk could (and did) raise sovereign immunity as a substantive challenge after being substituted as parties, we conclude that their purported lack of opposition to being substituted is not a bar to attorney fees.

(b) Turning to the merits of the attorney fee award regarding Fulton County, “[g]enerally, an award of attorney fees is not available in Georgia unless authorized by statute or contract.” *O’Keefe v. O’Keefe*, 285 Ga. 805, 805-06 (684 SE2d 266) (2009). OCGA § 9-15-14(a) *mandates* that the trial court must award attorney fees when a party

“nearly ninety days after the motion to substitute was filed and two months after the superior court allowed the substitution”).

has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position.

And OCGA § 9-15-14(b) *permits* a trial court to award attorney fees if an attorney or a party brings an action

that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct[.] ... As used in this Code section, “lacked substantial justification” means substantially frivolous, substantially groundless, or substantially vexatious.

“[A]n order awarding attorney fees pursuant to [OCGA § 9-15-14] must specifically state whether the award is made under OCGA § 9-15-14(a) or (b)[,]” *Woods v. Hall*, 315 Ga. App. 93, 97(2) (726 SE2d 596) (2012), and it must include “findings of fact that specify the conduct upon which the award is made.” *Hicks v. Gabor*, 354 Ga. App. 714, 726(2)(b) (841 SE2d 42) (2020). See *Cohen v. Rogers*, 341 Ga. App. 146, 152(2)(b) (798 SE2d 701) (2017) (“To permit meaningful appellate review of an award of fees and expenses [under OCGA § 9-15-14], the trial court’s order cannot be too vague and

conclusory, such as where it fails to cite examples of conduct that authorize the award.”) (punctuation omitted).

When considering an appeal from an OCGA § 9-15-14(a) fee award, “we must determine whether the claim asserted below either had some factual merit or presented a justiciable issue of law.” *Omni Builders Risk, Inc. v. Bennett*, 325 Ga. App. 293, 297(3) (750 SE2d 499) (2013). We will affirm an award under OCGA § 9-15-14(a) “if there is any evidence to support it.” *Reynolds v. Clark*, 322 Ga. App. 788, 789(1) (746 SE2d 266) (2013). “We review a subsection (b) fee award for abuse of discretion.” *Shoenthal v. DeKalb County Emps. Retirement System Pension Bd.*, 343 Ga. App. 27, 30 (805 SE2d 650) (2017).

However, this Court must “keep in mind that OCGA § 9-15-14(a) is intended to discourage the bringing of frivolous claims, not the presentation of questions of first impression about which reasonable minds might disagree or the assertion of novel legal theories that find arguable, albeit limited, support in the existing case law and statutes.” *Shoenthal*, 343 Ga. App. at 32. See OCGA § 9-15-14(c) (“No attorney or party shall be assessed attorney[] fees as to any claim or defense which the court determines was asserted by said attorney or party in a good faith attempt to establish

a new theory of law in Georgia if such new theory of law is based on some recognized precedential or persuasive authority.”)

(i) In its order awarding fees under OCGA § 9-15-14(a), the trial court concluded that (1) the county “enters litigation sheathed in sovereign immunity[,]” (2) the only possible waiver of sovereign immunity “plainly did not apply,” and (3) the appellants’ dismissed claims “presented zero factual or legal questions ... because the [c]ounty was immune to such claims.” Said another way, the trial court found the claims “suffered from a ‘complete absence of any justiciable issue of law or fact.’” See OCGA § 9-15-14(a).

In their petition, the appellants pled that those responsible for the November 2020 general election had failed to follow state law regarding ballot processing, diluted their vote, and allowed the disenfranchisement of voters by permitting the counting of fraudulent or fabricated ballots. The appellants sought to substitute the county as a party after Georgia voters approved an amendment to the Georgia Constitution allowing a new waiver of sovereign immunity. See Ga. Const. of 1983, Art. I, Sec. II, Par. V(b)(1) (the “Immunity Amendment”). This waiver permits actions in superior court for declaratory judgment and related injunctive relief against the state and its

counties for acts that are “outside the scope of lawful authority or in violation of the laws or the constitution of this state or the Constitution of the United States.” Id. The Immunity Amendment provides, without any further direction, that this waiver “shall apply to past, current, and prospective acts which occur on or after January 1, 2021.” Id.

The appellants assert that fees under OCGA § 9-15-14(a) should not be available as they asserted waiver of sovereign immunity under the Immunity Amendment, without the benefit of any interpretive guidance from our Supreme Court. At the time the appellants sought to substitute the county as a party, there was no guidance from our Supreme Court as to what types of “past, current, and prospective acts” could be captured by the waiver of sovereign immunity. Regardless of whether the appellants’ claims regarding the November 2020 election could have supported a waiver of sovereign immunity, we conclude that the appellants’ position was not so unreasonable that they could not have believed a trial court would accept it at the time it was filed.

In so concluding, we note that there have been at least five post-2021 Georgia appellate cases interpreting what types of acts can waive sovereign immunity under

the Immunity Amendment. See *Republican Nat’l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 791(4) (917 SE2d 125) (2025); *Starship Enters. of Atlanta, Inc. v. Gwinnett County*, 319 Ga. 293, 302(2)(b) (903 SE2d 55) (2024); *Maat Concepts, Inc. v. Fulton County*, ___ Ga. App. ___ (932 SE2d 825, 829(1)) (2026); *Fraser v. Glynn County*, 377 Ga. App. 662, 666–67(1)(a) (922 SE2d 825) (2025); *City of Atlanta v. MLK Props.*, 372 Ga. App. 210, 215-16(2)(a) (904 SE2d 79) (2024). We find *Eternal Vigilance Action* especially informative, where the Supreme Court reviewed petitioners’ challenge to the rules of the State Election Board based on their concern that the application of such rules would infringe on the petitioners’ right to vote. 321 Ga. at 791(4). The Supreme Court recognized the Immunity Amendment was an appropriate waiver of sovereign immunity because the voters “faced a risk of taking future undirected action that would nullify their votes.” *Id.* at 791–92(4).

While the appellants in the instant cases were unsuccessful in demonstrating that they had pled prospective acts as contemplated by the Immunity Amendment, we cannot say their efforts were so frivolous that no court could have accepted them at that time. In *Fraser*, for example, this Court considered whether there was a waiver of sovereign immunity where, before 2021, a county had issued a (purportedly void)

quitclaim deed over certain property and petitioners were aggrieved by the county potentially enforcing trespass laws related to that property, where petitioners believed they had access. 377 Ga. App. at 666–67(1)(a). Because the county had not taken any action to threaten petitioners with a trespass prosecution, this Court found there was no justiciable controversy, and thus no waiver under the Immunity Amendment. *Id.* The appellants here were in a similar posture, seeking declaratory relief over past violations of law which could impact their rights going forward. We find it notable that nothing in the *Fraser* case suggested the petitioners were acting in a frivolous or vexatious manner, and that *Fraser* was ultimately a split decision, with a judge indicating he would have found a valid waiver of sovereign immunity. *Fraser*, 377 Ga. App. at 678(1) (922 SE2d 825) (2025) (McFadden, P. J., dissenting) (noting that the Immunity Amendment waives sovereign immunity for prospective acts of enforcing unlawful or unauthorized acts).

We conclude that appellants’ claim of a waiver of sovereign immunity under the Immunity Amendment is similar to cases in which other petitioners have sought waiver without having attorney fees imposed. See *Eternal Vigilance Action, Inc.*, 321 Ga. at 791(4); *Fraser*, 377 Ga. App at 667(1)(a). Accordingly, we conclude that their

position was at least arguable at the time the petition was made. As stated above, attorney fees under OCGA § 9-15-14(a) are unavailable where parties take an arguable position on novel areas of law. *Shoenthal*, 343 Ga. App. at 32. Consequently, the trial court erred by awarding fees under OCGA § 9-15-14(a), which we now reverse.

(ii) This conclusion, however, does not end our inquiry regarding the attorney fee award to the county. While we have determined that the petition did not sufficiently lack substantial justification as to support an award under OCGA § 9-15-14(a), there are other grounds which can support a fee award under OCGA § 9-15-14(b), including “unnecessarily expand[ing] the proceeding by other improper conduct.” *Kim v. Han*, 339 Ga. App. 886, 888(2) (795 SE2d 191) (2016) (punctuation omitted). The county asserts this is exactly what happened here, with the appellants’ “many attempts to modify parties” and following “a ping-pong litigation strategy” to delay the proceedings. (Punctuation omitted.) While the trial court concluded that “[t]here was nothing to litigate” regarding the substitution of parties, it is unclear if this factual finding related to the lack of substantial justification or an unnecessary expansion of the proceeding.

If the court awards attorney fees under OCGA § 9-15-14, it must make express findings specifying the abusive conduct for which the award is

made, and whether the award is made under subsection (a) or (b) or both. If the court fails to make these findings, the fees award must be vacated and the case remanded for reconsideration.

Kim, 339 Ga. App. at 889(2). Because it is unclear from the trial court's order which factual finding undergirded which legal conclusion, we remand for the trial court to consider whether the appellants "unnecessarily expanded the proceeding[s] by other improper conduct," OCGA § 9-15-14(b), and (if so) provide appropriate findings of fact.⁴

(c) As to the clerk, the analysis regarding OCGA § 9-15-14(a) fees is much simpler. As with the county, the trial court noted the only proffered waiver of sovereign immunity was the Immunity Amendment. As noted above, the Immunity Amendment only applies to actions which are "outside the scope of lawful authority or in violation of the laws or the constitution of this state or the Constitution of the United States." Ga. Const. of 1983, Art. I, Sec. II, Par. V(b)(1). We conclude fees are

⁴ We note that the Favorito petitioners have also asked this Court to reverse the attorney fee award in favor of the county based on a purportedly tardy motion for fees, and remand the award for further findings of fact. We decline to address this enumeration further, as this fee award has been reversed and the issue can be raised on remand.

appropriate because the appellants did not, and still have not, alleged any action by the clerk which was outside the scope of her authority or a violation of any law.

Instead of alleging wrongful acts, the appellants added the clerk solely because it “claims that it currently has possession of the ballots that [the appellants] seek to view.” During the hearing on the motion to substitute, the appellants did not claim the clerk had done anything unlawful, but merely stated that they wanted injunctive relief to bind her to a preservation order. No appellant has pointed to any place in the record where anyone has asserted there was any unlawful conduct by the clerk, nor has our review of the record shown any claim that the clerk has acted unlawfully or beyond the scope of her authority.

The Immunity Amendment’s waiver, by its very terms, “turns on whether the petitioners have sought declaratory relief from acts of the relevant governmental entity that are either outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the United States.” *State v. Dovetel Communication, LLC*, 322 Ga. 635, 638(2) (921 SE2d 374) (2025) (punctuation omitted). Without any such allegation of an unlawful act, it is patent that there was never a justiciable issue of law regarding the clerk’s waiver of sovereign immunity, and any claim of such a waiver

lacked substantial justification. To avoid the imposition of OCGA § 9-15-14(a) fees, the appellants must find some arguable support in the text of the Immunity Amendment or other persuasive precedent to support their position. See *Shoenthal*, 343 Ga. App. at 32. The appellants, however, make no attempt to do so, instead simply asserting (with no meaningful support by citation of authority) that somehow seeking the preservation or production of records the clerk possesses can be covered by the amendment.

Because the text of the Immunity Amendment, by its own terms, clearly requires there to be some unlawful act or action without lawful authority, there was no need for any interpretive guidance from our Supreme Court to know there was no justiciable issue regarding the clerk. Accordingly, the trial court was correct that the clerk is entitled to fees under OCGA § 9-15-14(a). See *Trabue v. Hanson*, 377 Ga. App. 450, 457–58(2)(a) (922 SE2d 684) (2025) (affirming such fees where there was evidence to support the lack of any justiciable issue). Because this attorney fee award is affirmed under OCGA § 9-15-14(a), we need not address the appellants' claims specific to OCGA § 9-15-14(b). *Cheng v. Gloria Walker Revocable Living Trust*, 379 Ga. App. 197, 200–01(3) (925 SE2d 229) (2026).

In sum, because reasonable minds could have differed regarding the interpretation of prospective acts as to the county, the trial court erred in awarding attorney fees to the county under OCGA § 9-15-14(a). There is, however, absolutely nothing in the record to support the appellants' position that the Immunity Amendment arguably waived the clerk's sovereign immunity, so the trial court correctly awarded attorney fees as to her. We remand this case to the trial court to determine whether the county's attorney fees are appropriate under OCGA § 9-15-14(b), and if so, to make appropriate findings of fact.

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