

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

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November 3, 2025

In the Court of Appeals of Georgia

A25A1237. AMERICAN HONDA MOTOR COMPANY et al. v.
CHRISTIANSON et al.

HODGES, Judge.

This appeal arises from a one-car accident in which Cynthia Christianson, who was driving in Sullivan County, Tennessee, on December 23, 2016, was negotiating a curve on I-81 when her 2014 Honda CRV entered the median and rolled over, ejecting her. She died from her injuries. Christianson's husband, John Christianson, individually and as administrator of her estate (collectively "the estate") filed an action asserting negligence, wrongful death, and product liability claims against American Honda Motor Co., Inc., the vehicle's manufacturer; Willett Imports/South, Inc. d/b/a Willett Honda South, the Georgia dealership where Cynthia purchased the vehicle; and other entities (collectively "Honda"). The estate alleged that the

vehicle's occupant restraint system was defective and proximately caused her death. Early in the trial, the trial court determined that Honda had intentionally violated orders and agreements on motions in limine and sanctioned Honda by striking its answer. The case was then tried before a jury only as to damages, yielding a \$17 million verdict and judgment in favor of the estate.

Honda now appeals, arguing that: (i) the trial court was not authorized under our law to strike its pleadings for the in limine violations; (ii) if the trial court was authorized to impose such sanctions, the sanctions were too severe; and (iii) the trial court erred in refusing to apply Tennessee substantive law,¹ but if the court's choice of Georgia law was correct, it nonetheless misapplied that law in the damages trial by refusing to apportion fault. Additionally, Honda argues that the trial court erred in denying two motions in limine related to Cynthia's blood alcohol level and lay-person evidence about her seatbelt use. We find no error.

¹ The parties do not dispute that Georgia's procedural and remedial laws would apply. See *Bunker Hill Int'l, Ltd. v. Nationsbuilder Ins. Servs.*, 309 Ga. App. 503, 506 (710 SE2d 662) (2011) ("Under the rule of *lex fori*, procedural or remedial questions are governed by the law of the forum, the state in which the action is brought.") (citation and punctuation omitted).

The primary issue in this appeal turns on three motions in limine that Christianson's estate filed as part of an omnibus motion seeking to prevent Honda from referencing, arguing, insinuating, or presenting certain identified topics or evidence. Based upon Honda's actions during voir dire and early in the trial, however, the lower court ultimately determined that Honda engaged in "material and willful violation of the [c]ourt's [m]otion in [l]imine rulings. The [c]ourt believes the defendants' conduct undermined the fairness of the trial and influenced the jury with evidence that was specifically excluded by the [c]ourt."

In the first motion in limine at issue, the estate moved to exclude argument or insinuation that it had engaged in "'forum shopping' by making statements regarding the 'venue of the case' or asking jurors to speculate why this case is in Clayton County, Georgia." Honda responded to this motion by stating, "[t]his court has jurisdiction and . . . venue is proper. Honda has no intention of offering evidence or argument to the contrary." During voir dire, however, in an exchange that was not taken down and does not appear in the transcript, Honda, despite its concession, apparently nonetheless addressed the estate's choice of venue. When the estate later

pointed this out on the record, the trial court stated, “I did stop it before it went to an area that I thought would be irreparably damaging to your case.”

In the second motion in limine at issue, the estate moved to exclude argument misstating the burden of proof on the element of causation or alluding to Honda’s being “innocent until proven guilty.” The estate attached a transcript for the trial court’s consideration showing that the same lawyer who was representing Honda at this trial had made similar arguments during a 2003 Georgia trial in which he had represented Ford Motor Co. in another case involving a vehicle-related death. Honda consented to the estate’s motion as long as it was a “two-way street, it’s a civil case. We’d *ask that this also cover other criminal words such as reasonable doubt, innocent, guilty*, that both sides be held to that. . . . This is a civil case not a criminal case. Ms. Christianson isn’t a criminal victim and *Honda is not the accused*[.]” (Emphasis added.) Despite Honda’s concession, during opening statements, Honda’s counsel used the terms “accusation” and “accusations” and referenced the legal system saying, “you don’t have to prove yourself innocent or not guilty.” After the jury was sent out, the trial court admonished Honda, saying, “if you cannot make an agreement with a lawyer about what is and what’s not acceptable during the process of a trial and they

go back on it, that's pretty egregious. Please don't do that again." The trial court also gave curative instructions.

In the final motion in limine at issue in this context, the estate moved to exclude evidence of Christianson's blood alcohol test results, arguing that these were irrelevant to the issue of whether the safety restraint system in the vehicle was defectively designed and that there was insufficient foundation to show the blood sample had been properly handled and not contaminated. Honda contested this motion, but the trial court granted it. Despite this, during Honda's opening statement, Honda's counsel published to the jury a slide showing the outline of a female form with markers indicating the parts of Christianson's body that had been injured. In the left lower corner, in a separate box, were the words "Blood alcohol concentration 0.183." The trial court remarked that it "remember[ed the slide] being up for half a minute[,] " though Honda's counsel disputed that time estimate.

1. Honda argues that the trial court erred by striking its answer as a sanction for what the court determined were Honda's intentional violations of pre-trial orders. We find no abuse of discretion.

“The trial court has the power to impose appropriate sanctions to make effective its pretrial orders and appellate courts review the action taken for abuse of discretion.” (Citation omitted.) *Robinson v. Williams*, 280 Ga. 877, 878(1) (635 SE2d 120) (2006). A trial court’s finding that a party “intentionally” engaged in sanctionable conduct “is entitled to substantial deference on appeal. Unlike . . . the Court of Appeals, the trial court directly supervised the ebb and flow of the . . . trial process in this case and had the opportunity to observe and assess the conduct, demeanor, and credibility of the parties and their counsel throughout the proceedings[.]” *Ford Motor Co. v. Conley*, 294 Ga. 530, 547(3)(a)(4) (757 SE2d 20) (2014). “[T]rial judges, through their direct involvement with the case, the parties, and the attorneys, . . . are in the best position to evaluate the parties’ conduct and to determine the appropriate level of sanctions.” (Citation omitted.) *Res. Life Ins. Co. v. Buckner*, 304 Ga. App. 719, 734(4) (698 SE2d 19) (2010).

Here, the trial court sanctioned Honda by striking its answer after finding that the three instances outlined above were “all a material and willful violation of the [c]ourt’s [m]otion in [l]imine rulings. The [c]ourt believe[d] [Honda’s] conduct

undermined the fairness of the trial and influenced the jury with evidence that was specifically excluded by the [c]ourt.”

(a) Honda relies on this Court’s recent decision in *Ford Motor Co. v. Hill*, 373 Ga. App. 480 (908 SE2d 748) (2024) for the proposition that a trial court is never authorized to engage in issue preclusion — and similarly, in the context of the instant appeal, is never authorized to strike a defendant’s pleading — as a sanction for violations of orders on motions in limine, even if the violations were intentional. This reading is too narrow. *Ford Motor Co.* is readily distinguishable because it in no way utterly forecloses a trial court’s inherent authority to strike defensive pleadings for violations of orders in limine; rather, *Ford Motor Co.* simply determined that, in the specific case before it, the defendant’s single transgression was insufficient to warrant such severe sanctions.

Like the instant case, *Ford Motor Co.* involved the trial court’s finding that the defendant-automaker had violated *multiple* orders in limine, and this Court’s subsequent reversal of the trial court’s sanctions which had precluded the consideration of certain matters on retrial. See 373 Ga. App. at 480-481.² The instant

² The *Ford Motor Co.* Court characterized the trial court’s order precluding consideration of certain issues as “effectively str[iking] the defendant’s pleadings. .

case indeed presents the same question as *Ford Motor Co.*: Whether a trial court may prohibit a defendant from litigating anything other than the question of damages as a sanction for the defendant's intentional violation of rulings on orders in limine. This case and *Ford Motor Co.*, however, differ in matters of degree. A close reading of *Ford Motor Co.* reveals that although the trial court found the company had violated at least three orders in limine, see 373 Ga. App. at 480 (listing three orders), 483(1)(b) (referencing "numerous violations of orders in limine"), this Court ultimately determined that only one of those orders actually had been violated. *Id.* at 480. It is clear that although the *Ford Motor Co.* Court questioned the trial court's authority "*in these circumstances* to sanction Ford by imposing issue preclusion sanctions," it ultimately "*reluctantly vacate[d] the jury's verdict and the resultant judgment[.]*" (Emphasis added.) *Id.* at 480-481. But the *Ford Motor Co.* Court explicitly limited its determination, twice, to the specific situation before it. The Court found, as noted above, that issue preclusion sanctions were not permitted in "these particular circumstances[,]" 373 Ga. App. at 491(3), and in remanding the case, provided that the trial court could revisit the issue of sanctions, albeit reiterating that "*under the facts*

..” 373 Ga. App. at 493(3).

of *this case*, issue preclusion is not among the available sanctions for the violation of the order in limine.” (Emphasis added.) Id. at 494(3).³ *Ford Motor Co.*, however, did not foreclose the possibility of striking a defendant’s answer (other otherwise engaging in issue preclusion) as a sanction in the context of a defendant’s violation of orders on motions in limine. Rather the Court focused more on the severity of the sanctions in the context of its determination that Ford had violated *only one* order in limine, rather than the multiple violations found by the trial court. The *Ford Motor Co.* Court contemplated that issue preclusion and similar sanctions in such contexts could be used by a trial court, noting that “if these sanctions were available to the trial court, lesser sanctions were likewise available.” (Emphasis added.) Id. at 493(3). Although the *Ford Motor Co.* Court was careful to recognize that trial courts have inherent authority to enforce their orders, 373 Ga. App. at 491(3), it also noted that it had not found “any case where the striking of a defensive pleading was upheld on appeal in

³ Although the dissent asserts that *Ford Motor Co.* “never ties [its] holding . . . to those unspecified facts and circumstances[,]” it then immediately quotes this language from *Ford Motor Co.*: “We further conclude that the trial court was not permitted to enter issue preclusion sanctions in these particular circumstances.” (Emphasis added.) 373 Ga. App. at 491(3).

Georgia for something other than the defendant’s failure to participate in the court’s proceedings.” Id. at 493(3).

While this is true, we find that the oft-articulated, very broad, inherent authority — recognized by our State Constitution, our Code, and our case law from this State’s highest court — leads to the conclusion that, despite the absence of precise predecessor case law, trial courts indeed possess the authority to enforce their orders by the striking of defensive pleadings.

“The inherent power of courts to enforce their orders is grounded in both the [C]onstitution and the Official Code of this [S]tate.” (Citation and punctuation omitted.) *Ford Motor Co.*, 373 Ga. App. at 491(3). The Georgia Constitution provides that “[e]ach court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments. . . .” Ga. Const. of 1983, Art. VI, Sec. I, Par. IV. OCGA § 15-1-3(3) provides that a court has the authority to “compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding therein[.]” As *Ford Motor Co.* recognized, “[t]he trial court’s powers under OCGA § 15-1-3 are broad.” 373 Ga. App. at 491(3). And as our Supreme Court has determined, “OCGA § 15-1-3 provides that every court has the power to compel

obedience to its orders and to control the conduct of everyone connected with a judicial proceeding before that court. OCGA § 15-1-3(3) and (4).” (Citation and punctuation omitted.) *Bayless v. Bayless*, 280 Ga. 153, 155(1) (625 SE2d 741) (2006).

Honda points to *Ford Motor Co.*’s statements that neither that Court nor the parties found case law precisely on point. See 373 Ga. App. at 493(3). Along these lines, Honda argues that the trial court abused its discretion because “no statute authorized” the sanction it imposed. This view is both too narrow and blind to the broad powers conferred by our Code. We agree that OCGA § 9-11-37(b), which applies to discovery abuses, does not pertain here. We agree that OCGA § 9-11-41(b), which addresses penalties applicable to plaintiffs, and OCGA § 9-11-41(c), which discusses dismissals of a “counterclaim, cross-claim, or third-party claim[,]” likewise do not apply. And we agree that OCGA § 9-10-185 specifies some remedies — among which the striking of pleadings is *not* specifically listed — applicable to counsel who “in the hearing of the jury make statements of prejudicial matters which are not in evidence[.]” But in so arguing, Honda essentially asks us to overlook the broad authority conferred by OCGA § 15-1-3(3) and (4) authorizing a trial court to compel obedience to its orders and to control the conduct of its officers.

As our Supreme Court determined,

the trial court may impose a harsh sanction, *including the striking of defensive pleadings and the barring of the introduction of supporting evidence*, because of the inherent power of the trial court who is charged with the efficient clearing of cases upon the court's docket. Further, OCGA § 15-1-3 provides that *every court has the power to compel obedience to its orders* and to control the conduct of everyone connected with a judicial proceeding before that court. OCGA § 15-1-3(3) and (4).

(Citation and punctuation omitted; emphasis added.) *Bayless*, 280 Ga. at 155(1).

Although, arguably, OCGA § 15-1-3 only generally enumerates the powers of trial courts, in *Bayless*, our Supreme Court upheld a trial court's decision to strike defensive pleadings where the defendant "had failed to personally appear throughout the litigation, and had disregarded multiple orders issued by the trial court." *Id.* at 156 (1); accord *Truitt v. Housing Auth. of City of Augusta*, 235 Ga. App. 92, 93-94 (507 SE2d 781) (1998) (upholding the striking of defensive pleadings where a defendant violated a court order directing her to appear for trial). The *Bayless* Court upheld the striking of defensive pleadings despite the fact that OCGA § 15-1-3 nowhere specifically addresses sanctions for failing to personally appear in the face of a trial court's directives, and similarly does not address sanctions for specific types of orders

that were violated. Although the dissent points out that in *Bayless*, the offending party still was allowed to challenge its opponent's evidence, the dissent ignores the bottom line in *Bayless*, in which our Supreme Court specifically found that, "under the circumstances of this case, *the trial court was within its authority to strike Mr. Bayless's answer and counterclaim and to bar the presentation of his evidence.*" (Emphasis added.) 280 Ga. at 155(1). This language in no way implies a bar on a trial court's authority to strike defensive pleadings. Indeed, OCGA § 15-1-3 is the *only* statutory authority *Bayless* cites in support of its finding that the trial court is permitted to strike defensive pleadings as a sanction for violations of its orders. 280 Ga. at 155(1). Taking the *Bayless* analysis as our example, we find that OCGA § 15-1-3(3) and (4) encompass the striking of a defendant's pleadings. As *Bayless* reiterated, one "who intentionally fails to comply fully with a court order may be subject to the harshest of sanctions." (Citation and punctuation omitted.) 280 Ga. at 156(1).

Further, as noted above, Christianson argued to the trial court that Honda's counsel had disobeyed court directives in prior cases and had engaged in the same type of behavior that the trial court forbade in the instant case. In light of this asserted history and Honda's repeated violations in the instant case, the trial court may have

believed that this sanction was the only way to “compel obedience to its orders” and to “control the conduct of everyone connected” with the proceeding. *Bayless*, 280 Ga. at 155(1), citing OCGA § 15-1-3(3) and (4).

Our Court “will not undertake to control the wide discretion vested in the trial court in the exercise of this fundamental power unless it is made to appear that wrong or oppression has resulted from an abuse of such discretion reposed in the court.” (Citation and punctuation omitted.) *Clark v. Chapman*, 301 Ga. App. 117, 119 (687 SE2d 146) (2009).

(b) In light of *Clark*, then, the next question before us is whether the severity of the sanctions this trial court imposed amounted to an abuse of its discretion.

We note at the outset that while the striking of the defendant’s answer in *Ford Motor Co.* may not have been the correct result given that the defendant in that case only violated one order in limine and lesser sanctions were available, 373 Ga. App. 480, 483(1)(b), we find the present case much more egregious. See *id.* at 493(3).

Our Supreme Court, citing 3 Moore’s Fed. Practice (2 Ed.) 1134, 1135, Par. 16.19, noted that “in an extreme case the . . . defendant [may be] precluded from introducing evidence relating to his defense, but these remedies are too drastic if less

harsh sanctions are appropriate.” *Ambler v. Archer*, 230 Ga. 281, 289(1) (196 SE2d 858) (1973). But the Court also recognized, “[i]t, undoubtedly, must lie within the power of the court to impose appropriate sanctions to make effective its pre-trial orders.” *Id.* “Generally dismissal, default, and striking a party’s pleadings are considered to be the harshest sanctions.” *Dentistry for Children of Ga. v. Foster*, 362 Ga. App. 217, 219(3) (867 SE2d 617) (2022). As the trial court did in the instant case, to impose such sanctions, the “court must find wi[l]lfulness as a predicate[.]” (Citation and punctuation omitted.) *Id.* It is well settled that credibility determinations on issues such as willfulness are for the trial court, not an appellate court, and such determinations will be upheld if any evidence supports the trial court’s finding. See *Resurgens v. Elliott*, 301 Ga. 589, 598(2)(b) (800 SE2d 580) (2017).

(i) First, Honda argues that it did not violate the trial court’s orders, and that if it did, it did so inadvertently.

Honda does not argue that its use of the blood alcohol slide was not a violation; rather, it argues that it inadvertently, rather than intentionally, used the blood alcohol slide. Credibility determinations, however, are for the finder of fact, not this Court. *Resurgens*, 301 Ga. at 598 (2)(b); see generally *Caribbean & Southeastern Dev. Corp. v.*

Utzman, 108 Ga. App. 376, 380(2) (133 SE2d 99) (1963) (finding that issues of intent and willfulness are for the finder of fact). The evidence supports the trial court's finding of willfulness as to this violation.

Honda does argue that it did not violate the forum shopping order. In this argument, however, Honda provides no citation to the record showing where its reference actually occurred before the jury. As noted above, apparently this statement was not transcribed. Absent a transcript, we presume the trial court's finding that Honda's statements violated its order was correct. See *State of Ga. v. Davis*, 292 Ga. App. 387, 389 (665 SE2d 350) (2008).

Finally, Honda argues that it did not violate the order in limine in which it agreed not to use terms suggesting this was a criminal case. As noted above, however, Honda's counsel explicitly agreed not to use such words, asking that the prohibition include words like "innocent" and "guilty" to make clear that "Honda is not the accused[.]" The record shows that Honda's counsel then used those exact words or a close variant in front of the jury during opening statements. The trial court did not err in finding that Honda violated its orders in limine. Further, because the trial court was authorized to judge credibility and disbelieve Honda's contentions that its actions

were inadvertent, evidence supports its finding that these violations were willful. *Resurgens*, 301 Ga. at 598(2)(b); *Caribbean & Southeastern Dev. Corp.*, 108 Ga. App. at 380(2).

As *Ford Motor Co.* recognized, “the willful and intentional violation of an order in limine [is] an even greater transgression than the failure to properly respond to discovery or participate in the preparation of a pretrial order. While all of these failures involve a violation of a court’s order, the intentional violation of an order in limine constitutes a more direct affront to the court’s authority.” 373 Ga. App. at 493(3). Here, the trial court found that Honda had directly affronted its authority by violating three orders in limine — including violating two limitations (to refrain from referencing forum shopping and using criminal terminology) to which Honda had voluntarily acceded. The trial court specifically found that in showing the jury the slide of Christianson’s blood alcohol content, Honda had committed an irremediable violation, writing “that the *bell cannot be unrung*.” (Emphasis in original.) The facts support the trial court’s finding of willfulness. The trial court further found that Honda had willfully and intentionally transgressed as to all three of the in limine restrictions. The Georgia Supreme Court has determined that “[a] party who

intentionally fails to comply fully with a court order may be subject to the harshest of sanctions.” (Citation and punctuation omitted.) *Pennington v. Pennington*, 291 Ga. 165, 166(1) (728 SE2d 230) (2012).

(ii) In addition to willfulness, as set forth above, Honda also engaged in a pattern of disobeying the trial court’s orders. The Georgia Supreme Court has confirmed the trial court’s inherent power to strike a defendant’s answer for, inter alia, a “pattern of ignoring the trial court’s directives[,]” *Bayless*, 280 Ga. at 154, finding that “every court has the power to compel obedience to its orders[.]” (Citation and punctuation omitted.) *Id.* at 155(1). It is true that, although

as a general rule, the trial court should attempt to compel compliance with its orders through the imposition of lesser sanctions . . . [, a] harsh and extreme sanction . . . is sometimes appropriate. *Mathews v. City of Atlanta*, 167 Ga. App. 168, 170 (306 SE2d 3) (1983). In *Mathews*, the court identified two reasons, *either one of which* would support [harsh sanctions]. The first was “the *willful nature* of [the party’s] conduct” and the second was that the “adequacy of lesser sanctions” was highly doubtful in view of [the party’s] failure to respond to the trial court’s warnings. *Id.*

(Punctuation omitted; emphasis added.) *Wood v. UHS of Peachford*, 315 Ga. App. 130, 131 (726 SE2d 422) (2012). Here, we have both factors contemplated in *Wood*:

Honda's willful behavior and its failure to follow the trial court's rulings and its own agreement to motions in limine. We also have Honda's pattern of ignoring the trial court's directives and its agreements with the estate. *Bayless*, 280 Ga. at 154, 156(1) (affirming the striking of defendant's pleadings where the trial court was frustrated with defendant's "course of conduct"). A trial court's findings of intentional misconduct are "entitled to substantial deference on appeal." *Conley*, 294 Ga. at 547(3)(a), (4). The trial court did not abuse its discretion.

2. Honda also argues that the trial court erred because it did not apply Tennessee substantive law; specifically, Tennessee law related to the issue of damages. The automaker asserts that, although Christianson purchased the car in Georgia, the accident and injury occurred in Tennessee; thus, Tennessee law should apply. To the extent that this argument still pertains, given our determination in Division 1, we will address it. We find no error.

(a) Honda bore the burden of pleading foreign law. *Abruzzino v. Farmers' & Merchants' Bank*, 168 Ga. App. 639, 640(1) (309 SE2d 911) (1983). Although Honda did raise affirmative defenses in its now-stricken answer under both Georgia and Tennessee law, in subsequent filings and interactions with the trial court, Honda

focused on Georgia law. For example, Honda cited the Georgia Suggested Pattern Jury Instructions, Georgia law, some federal law, but *no Tennessee law* in its request to charge, which was filed five days before trial. At that time, Honda also filed motions in limine and for summary judgment, again citing the law of Georgia and other jurisdictions — but *not* Tennessee law. On the very eve of trial, at 12:48 a.m., however, Honda filed a detailed brief on the application of Tennessee law. Trial began approximately nine hours later.

Pretermitted whether, under the circumstances, Honda waived its choice of law argument by failing to give adequate notice in the trial court given its inconsistencies in the law upon which it appeared to rely, and pretermitted whether the trial court erred in its choice of law, we find that Honda induced any error. “A party will not be heard to complain of error induced by their own conduct, nor to complain of errors expressly invited by him.” (Citation and punctuation omitted.) *Mary Allen Realty & Mgmt. v. Harris*, 354 Ga. App. 858, 862(1) (841 SE2d 748) (2020) (finding, where defendants argued the wrong law in the trial court and did not bring the correct law to the court’s attention at that time, they induced any error); see also *Gwinnett Cmty. Bank v. Arlington Cap.*, 326 Ga. App. 710, 719(2)(a)(1) (757 SE2d 239)

(2014) (finding self-induced error where party obtained a favorable ruling by arguing the applicability of a specific law, then appealed, arguing the trial court erred by not applying a different law).

(b) Honda next argues that if the trial court was correct in applying Georgia law, it nonetheless erred by “refus[ing] to permit the jury to apportion fault[,]” and Honda urges us to remand the case for a new trial on the issue of damages. Specifically, Honda argues that “the trial court’s failure to allow Honda to present evidence relevant to the apportionment of fault as contemplated by [OCGA §] 51-12-33(a) constitutes reversible error.” For example, Honda contends that the excluded evidence regarding Christianson’s seatbelt use “goes to the core question” of whether her injuries resulted from the failure of Honda’s restraint system or from her own actions.

Because the trial court excluded the blood alcohol content and seatbelt use evidence, it never substantively reached the issue of whether apportionment would apply in this case. Rather, it simply refused to charge the jury on apportionment,⁴ an

⁴ See *Swanson v. Hall*, 275 Ga. App. 452, 453(1) (620 SE2d 576) (2005) (recognizing that “some evidence” must support a jury charge).

issue that Honda preserved for appeal in the trial court, but does not specifically argue or enumerate as error in its appellate briefs.

In any event, the trial court's striking of Honda's answer is equivalent to a default. See *Hazzard v. Phillips*, 249 Ga. 24, 26(2) (287 SE2d 191) (1982). In this posture, the defendant "is in the position of having admitted each and every material allegation of the plaintiff's complaint except as to any damages alleged. Hence, he is concluded as to his liability, and is estopped to contest the merits of the case, including jurisdiction (other than subject-matter jurisdiction)." *Id.* Similarly, all of Honda's affirmative defenses — including apportionment of fault, which is an affirmative defense, see *Pneumo Abex v. Long*, 357 Ga. App. 17, 29(2) n. 50 (849 SE2d 746) (2020) — have been stricken. See generally *Cohran v. Carlin*, 254 Ga. 580, 585(3) (331 SE2d 523) (1985) (finding that a default "estops [the defendant] from offering any defenses which would defeat the right of recovery") (citation and punctuation omitted).

As Honda points out, however, there is a difference between liability and fault, and Honda is seeking to apportion fault to Christianson. This Court has recognized that "the fact that a defendant is in default does not preclude that defendant from

requesting or presenting evidence of apportionment at a hearing or trial on damages[.]” (Citation and punctuation omitted.) *KOS Ltd. v. Dockery*, 371 Ga. App. 216, 220(1) (899 SE2d 796) (2024) (finding that although the apportionment statute, OCGA § 51-12-33(b), provides that the “‘trier of fact . . . *shall* . . . apportion its award damages among the persons who are liable according to the percentages of fault,’ . . . and ‘*shall* consider the fault of all persons or entities who contributed to the alleged injury or damages,’ that does not mean that a liable defendant cannot waive the right to apportionment”) (emphasis in original).

But there is yet another exception to the “shall” language of OCGA § 51-12-33, and that is, of course, what Honda is deemed to have admitted by virtue of the striking of its answer. *Hazzard*, 249 Ga. at 26(2). For this, we turn to the estate’s complaint. The estate pled, inter alia, that “[t]he occupant protection system of the [s]ubject [v]ehicle was defective, negligently designed and not sufficiently crashworthy and, as a result, failed to adequately protect and restrain” Christianson. The estate also pled that Christianson “was properly wearing her seatbelt” and “properly negotiating a curve. . . . As a result of defects in the design and/or manufacture of the CRV, seatbelt, buckle, and components thereof, Mrs. Christianson was ejected from the

vehicle and killed.” Most pertinent to Honda’s apportionment argument, the estate pled that Christianson

did not commit any act or omission that led to the injuries or damages claimed herein, and *she does not bear any fault for the events leading to her injuries, death, and damages*. . . . Mrs. Christianson was driving the posted speed limit prior to the [s]ubject [w]reck, and Mrs. Christianson had not been drinking alcohol or using drugs or operating the [s]ubject [v]ehicle under any other known defects at the time of the [s]ubject [w]reck.

(Emphasis added.) Because, by virtue of the striking of its answer, Honda has admitted that Christianson bore no fault for her injuries and death, there can be no apportionment. See *Hazzard*, 249 Ga. at 26(2). The trial court did not err.

3. Honda also argues that the trial court erred in granting two of the estate’s motions in limine: a motion to exclude the results of the Tennessee Bureau of Investigation test measuring Christianson’s blood-alcohol content at the time of the accident, and a motion to exclude lay opinion testimony. Because of our determination that the trial court did not abuse its discretion in striking Honda’s answer, we need not reach this contention of error because “even if the [rulings] were erroneous . . . that does not excuse the failure to comply with them.” *Wood*, 315 Ga. App. at 132.

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

In the Court of Appeals of Georgia

A25A1237. AMERICAN HONDA MOTOR COMPANY, INC. et
al. v. CHRISTIANSON et al.

McFADDEN, Presiding Judge, dissenting.

This case is about the scope of trial courts' authority. In *Ford Motor Co. v. Hill*, 373 Ga. App. 480, 491-494 (3) (908 SE2d 748) (2024), we held that trial courts cannot sanction defendants for intentionally violating rulings on motions in limine by forbidding them from presenting evidence at trial on any issue other than damages.

Yet that is exactly what the trial court did here when he struck Honda's answer for what he perceived to be intentional violations of several motions in limine.

Ford Motor Co. controls the outcome of this case. Its holding recognizes parameters our legislature has placed upon trial courts' inherent authority. I would follow *Ford Motor Co.*, hold that the trial court lacked the authority to strike Honda's answer, and therefore vacate the sanctions order and subsequent judgment and remand the case for further proceedings.

The majority misreads *Ford Motor Co.* For the majority, that opinions's holding turns on a meaning ascribed by the majority to its references to unspecified "particular circumstances" and "facts of this case." Relying on *Ford Motor Co.*'s mention of unspecified circumstances and facts, the majority undertakes to distinguish it on the basis of an assessment of the relative severity of the violations in the two case. I respectfully dissent.

1. *The holding of Ford Motor Co.*

Ford Motor Co. is binding precedent. Its holding requires us to vacate the sanctions order and subsequent judgment before us and remand the case for further proceedings.

Ford Motor Co. arises out of a retrial. The first trial ended in a mistrial. *Ford Motor Co.*, 373 Ga. App. at 482 (1) (a). The trial court ordered that mistrial upon finding that the defendant had intentionally violated several orders in limine. *Id.* at 481-482 (1) (a). As a sanction, the trial court ordered that the only issues for jury determination on retrial would be those pertaining to damages. *Id.* at 485 (1) (b). After receiving a \$1,716,826,950 verdict and judgment on retrial, Ford appealed.

On appeal, we vacated that sanctions order and the subsequent judgment, and remanded the case for a retrial. *Ford Motor Co.*, 373 Ga. App. at 491-494 (3). We reasoned that the trial court was not authorized “to impose the sanction of ‘issue preclusion’ against a defendant who violates a court order.” *Ford Motor Co.*, 373 Ga. App. at 492 (3). In holding that, under our state constitution, statutes, and caselaw, trial courts’ authority is so limited, we rejected the same types of arguments that the estate and majority make here. *Id.* at 491-493 (3).

2. References to unspecified facts and circumstances

Ford Motor Co. sets out its holding repeatedly. Although it repeatedly mentions “facts” and “circumstances” it never ties its holding, which recognizes a limit on trial court authority, to those unspecified facts and circumstances.

Division 3 of that opinion is entitled “Whether the sanctions order exceeded the trial court’s authority.” *Ford Motor Co.*, 373 Ga. App. at 491 (3). That Division begins, “We further conclude that the trial court was not permitted to enter issue preclusion sanctions in these particular circumstances.” *Id.* From there the opinion launches into a discussion, not of those circumstances, not of the facts and prior proceedings of the case, but of the “inherent power of courts. . . .” *Id.* (citation and punctuation omitted).

The opinion then goes on to hold that OCGA § 9-11-41 (b) “does not authorize a trial court to impose the sanction of ‘issue preclusion’ against a defendant who violates a court order.” *Ford Motor Co.*, 373 Ga. App. at 492 (3). This time there is no mention of unspecified facts or circumstances.

When the opinion does compare the relative severity of violations — holding “the willful and intentional violation of an order in limine to be an even greater transgression than the failure to properly respond to discovery or participate in the preparation of a pretrial order,” *Ford Motor Co.*, 373 Ga. App. at 493 (3) — it *rejects* the majority’s severity-of-violation theory: “Nonetheless, the parties have not identified, nor have we found, any Georgia case in which the trial court effectively

struck the defendant's pleadings and imposed issue preclusion in a subsequent trial as a sanction for violating an order in limine." *Id.*

At the conclusion of Division 3 the opinion mentions unspecified facts a final time. "On remand, the trial court may elect to revisit the issue of sanctions against Ford in accordance with this opinion and impose whatever permissible sanctions it deems appropriate. However, we find that, under the facts of this case, issue preclusion is not among the available sanctions for the violation of the order in limine." *Ford Motor Co.*, 373 Ga. App. at 494 (3). Again the opinion focuses on the scope of trial courts' authority and does not undertake to tie unspecified facts to its holding.

In short, the facts and circumstances that controled the holding in *Ford Motor Co.* are that a defendant violated an order in limine.

3. Soundness of the holding of Ford Motor Co.

As to the scope of trial court's authority, the reasoning of *Ford Motor Co.* is sound, and it is correct. Our state constitution vests in courts "such powers as necessary in aid of [their] jurisdiction or to protect or effectuate [their] judgments[.]"

Ga. Const. of 1983, Art. VI, Sec. I, Par. IV. Similarly, our Code provides for such broad powers in OCGA § 15-1-3 (3) and (4).

But those broad powers have limits. Although a court may “impose *appropriate* sanctions,” sanctions must not be harsher than “necessary to vindicate the court’s authority[.]” *Carder v. Racine Enters.*, 261 Ga. 142, 143 (2) (401 SE2d 688) (1991) (citation and punctuation omitted; emphasis supplied). Our Supreme Court has reversed trial courts for imposing the “drastic” sanctions of dismissing a plaintiff’s action or precluding a defendant from introducing evidence related to his defense where a less harsh sanction is appropriate. See *id.*; *Ambler v. Archer*, 230 Ga. 281, 289 (1) (196 SE2d 858) (1973).

Our legislature has also set parameters for when such drastic sanctions might be appropriate. OCGA § 9-11-37 (b) (2) authorizes a trial court to strike pleadings for violations of certain types of orders, namely orders to provide or permit discovery. And OCGA § 9-11-41 (b) and (c) authorize a trial court to dismiss certain types of pleadings for violations of court orders: a plaintiff’s complaint, a counterclaim, a cross-claim, or a third-party claim.

These Code sections specify when a trial court may respond to the violation of an order with the drastic sanction of striking a pleading. They must be construed to prevail over OCGA § 15-1-3 because “[f]or purposes of statutory construction, a specific statute will prevail over a general statute, absent any indication of a contrary legislative intent.” *Southstar Energy Servs. v. Ellison*, 386 Ga. 709, 712 (1) (691 SE2d 203) (2010) (citation and punctuation omitted). They must be construed to place limits on the general grant of authority in OCGA § 15-1-3 because to construe them not to place such limits is construe them to do nothing at all.

Defendants’ answers to complaints are conspicuous by their absence from the lists in OCGA § 9-11-37 and OCGA § 9-11-41 of types of pleadings that trial courts are authorized to strike for violations of an order in limine. We must infer from that absence that our legislature did not intend to authorize striking an answer as a sanction for the violation of an order on a motion in limine. The canons of statutory construction call for that inference. See *In re Estate of Cheeley*, 376 Ga. App. 159, 167-168 (1) (b) (918 SE2d 388) (2025) (discussing the “negative implication” canon of statutory construction, “which includes the concept[] of . . . ‘expressum facit cessare

tacitum’ (if some things are expressly mentioned, the inference is stronger that those not mentioned were intended to be excluded)’’).

In *Ford Motor Co.*, we correctly reconciled the general rule setting forth a court’s inherent power, expressed in our state constitution and in OCGA § 15-1-3 on one hand, and the specific parameters that our Code sets forth to define when striking a pleading is an appropriate exercise of that power on the other.

And this reconciliation reflects a policy choice that we must respect. Preventing a party from mounting a defense in a lawsuit in which that party is an unwilling participant, because the party’s attorney has not complied with orders of the court relating to the presentation of evidence and argument at trial, does not serve the broad power of the trial court recognized by our state constitution and statutes. Striking a defendant’s answer does not force compliance with the court’s orders, see OCGA § 15-1-3 (3), or control the conduct of officers appearing before the court, see OCGA § 15-1-3 (4), or aid the court’s jurisdiction or protect or effectuate its judgments. See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV. Sanctions such as holding the attorneys in contempt or even disqualifying them could achieve those goals. Preventing a party from defending itself, while it may indirectly punish counsel, primarily punishes

counsel's client for the actions of counsel. In light of those considerations, we should affirm *Ford Motor Co.*'s holding that the provisions before us do not authorize issue-preclusion sanctions against a defendant for violations of orders in limine.

Indeed, the fact that the violations in this case were by counsel, rather than Honda, distinguishes this case from *Bayless v. Bayless*, 280 Ga. 153 (625 SE2d 741) (2006), which the majority cites and which *Ford Motor Co.* also distinguishes. *Ford Motor Co.*, 373 Ga. App. at 493 (3). In *Bayless*, our Supreme Court affirmed the striking of an answer after a *defendant* repeatedly failed to attend court proceedings despite being ordered to do so. Notably, despite striking the defendant's answer, the trial court in *Bayless* did not actually impose the drastic sanction of issue preclusion, because the court allowed the defendant to challenge the plaintiff's evidence through the defendant's attorney. *Id.* at 155 (1).

4. *The majority opinion renders Ford Motor Co. capricious*

A trial court's decision to impose sanctions is an exercise of discretion. See *Roberts v. Roberts*, 206 Ga. App. 423, 425 (2) (425 SE2d 414) (1992). A trial court can abuse that discretion by overstepping its authority or by acting on the basis of an erroneous conclusion of law. See *Ambler*, 230 Ga. at 289 (1) (discussing limits on trial

court's authority to impose sanctions); *Chua v. Johnson*, 336 Ga. App. 298, 299 (784 SE2d 449) (2016) (“an abuse of discretion . . . occurs where the trial court's ruling . . . misstates or misapplies the relevant law”) (citation and punctuation omitted). As explained above, that is what *Ford Motor Co.* expressly held here. It drew a bright line that disallows striking a defendant's answer for violation of an order in limine. That is a ruling trial courts can follow.

But for the majority, the difference between the ruling we reversed in *Ford Motor Co.* and the ruling the majority would affirm today is unspecified facts and circumstances. That is not a ruling trial courts can follow. It is a usurpation of the trial court's discretion. And the majority's post hoc evaluation of Honda's conduct does not make it any more workable.

5. Relative severity of violations

Assuming for the sake of argument that we should undertake an evaluation of the relative severity of the violations in these two cases, I again disagree with the majority. The majority understates the severity of the misconduct in *Ford Motor Co.* and overstates the severity of appellant's misconduct.

(a) Severity of the violations in Ford Motor Co.

For the majority, *Ford Motor Co.* involved a “single transgression.” That is too narrow a view. Sanctions in that case were imposed on retrial. “The first trial in [that] case ended in a mistrial after the trial court found that Ford deliberately violated several orders in limine. As sanctions, the trial court declared that several facts were established as a matter of law and required Ford and its attorneys to pay jury costs.” *Ford Motor Co.*, 373 Ga. App. at 480. Before imposing sanctions,

[t]he trial court noted that it spent “countless hours” addressing the parties’ exclusionary motions but that “*defense counsel continually and deliberately injected questions and comments, elicited testimony, and placed documents before the jury, concerning matters that this Court had ruled inadmissible.* By this conduct, defense counsel arrogated the Court’s gatekeeping function.” The court found that Ford and its counsel’s actions showed manifest bad faith, and *the court blamed Ford specifically, in addition to Ford’s counsel. The court also noted that Ford’s trial counsel, appellate counsel, and corporate representative were present during the trial.* The court then cited its inherent authority to impose sanctions against a party and its attorney to compel obedience to its orders and to control the conduct of its officers in furtherance of justice and expressly found “it appropriate to hold both counsel and Ford responsible for the necessary sanctions.”

Id. at 484 (1) (b) (emphasis supplied).

(b) *Severity of the violations in the present case*

In the present case, the trial court found three sanctionable violations.

(i) *Blood-alcohol content*

I agree that the trial court was within the bounds of his discretion and fact-finding authority in finding a willful violation of his order as to the PowerPoint slide displaying Cynthia Christianson's blood-alcohol content. But that information was in one of nine blocks of text in two columns on either side an outline of a human body — and it was on the bottom row. The contention that she was driving drunk was undoubtedly a key element of Honda's case, and it appears Honda removed other slides with similar references in response to the trial court's order.

The trial court initially “remember[ed] it being up for half a minute”; and when defense counsel suggested that it had up for only three seconds, responded that he “kn[ew] it was more than three seconds.” When I examined the slide — looking for blood-alcohol content — it took me close to half a minute to find it.

Of course the amount of harm done does not alter the trial court's finding that counsel acted willfully. But if we are going to engage an a freewheeling analysis of relative severity, harm done is a valid consideration.

Also relevant under the heading of harm done is that the trial court erred in excluding evidence of Christianson's blood-alcohol content. The estate argued below that the evidence of blood-alcohol content was neither relevant nor reliable. The trial court granted the estate's motion and excluded the evidence on reliability grounds, finding that the blood sample had not been properly collected for testing in accordance with instructions provided by the Tennessee Bureau of Investigations.

As an initial matter, the evidence presented to the trial court in connection with the motion in limine did not support the trial court's finding that the blood sample had been improperly collected. See generally *City of Gainesville v. Waters*, 258 Ga. App. 555, 560 (5) (574 SE2d 638) (2002) (we must accept a trial court's factual findings in reviewing a ruling on a motion in limine if there is any evidence to support them). There is no evidence in the record that the Tennessee Bureau of Investigation collection procedures were not followed, but only an absence of evidence one way or the other, because the law enforcement officer who was present when the blood was drawn could not recall details about its collection. That lack of evidence did not show that the sample was handled properly, but it also did not show that the sample was handled improperly.

Moreover, there was no affirmative evidence presented, nor finding made by the trial court, that the blood sample had been tampered with. “Absent affirmative evidence of tampering, mere speculative doubt as to the handling of the evidence is a matter for the jury to resolve.” *Lewis v. State*, 306 Ga. 455, 460 (1) (b) (831 SE2d 771) (2019) (citation and punctuation omitted). The trial court erred in granting the motion in limine on the ground that the evidence of blood-alcohol content was unreliable, because the trial court essentially ruled on the sufficiency of the evidence regarding the handling of the blood sample rather than permitting the jury to consider that issue. See *Dept. of Transp. v. Douglas Asphalt Co.*, 297 Ga. App. 470, 474 (1) (677 SE2d 699) (2009) (holding trial court erred in granting motion in limine in a way that essentially ruled on the sufficiency of the evidence).

Although the trial court did not expressly rule on the estate’s alternative argument that the evidence of blood-alcohol content should be excluded as irrelevant, I note that this argument also lacks merit. Under OCGA § 24-4-402, “[a]ll relevant evidence shall be admissible, except as limited by constitutional requirements or as otherwise provided by law or other rules[.]” Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of

consequence to the determination of the action more probable or less probable than it would be without the evidence.” OCGA § 24-4-401. While “[r]elevant evidence may be excluded if its probative value is substantially outweighed by [, among other things,] the danger of unfair prejudice,” OCGA § 24-4-403, exclusion of evidence under this rule “is an extraordinary remedy which should be used only sparingly.” *Chrysler Group v. Walden*, 303 Ga. 358, 362 (II) (A) (812 SE2d 244) (2018) (citation and punctuation omitted).

This court reviews rulings on motions in limine for abuse of discretion, *One Bluff Drive, LLC v. K. A. P., Inc.*, 330 Ga. App. 45, 51 (3) (766 SE2d 508) (2014), and in doing so keeps in mind that “the grant of a motion in limine excluding evidence is a judicial power which must be exercised with great care.” *Andrews v. Wilbanks*, 265 Ga. 555, 556 (458 SE2d 817) (1995). “A party’s motion in limine to exclude evidence as inadmissible should be granted only if there is no circumstance under which the evidence is likely to be admissible at trial.” *Lewis*, 306 Ga. at 461 (2) (a) (citation and punctuation omitted). Accord *Andrews*, supra. A trial court should not grant a motion in limine to exclude evidence that is arguably relevant, see *Miller v. Lynch*, 351 Ga. App. 361, 370 (3) (830 SE2d 749) (2019), or use the motion as a “vehicle to test the

sufficiency of that evidence.” *Dep’t of Transp.*, 297 Ga. App. at 473 (1) (citation and punctuation omitted). As detailed below, I would find that the trial court abused his discretion in excluding the blood-alcohol-content evidence.¹

(ii) *Criminal words*

I also reluctantly agree that the trial court was within the bounds of his discretion in finding that Honda violated the parties’ agreement not to use “criminal words such as reasonable doubt, innocent, [and] guilty[.]” In Honda’s opening statement, counsel stated that at the time a plaintiff files a lawsuit, “it is simply an accusation. Without more, without the plaintiffs actually proving their case to you, then all it is is simply an accusation.” And in discussing that burden, counsel stated, “you don’t have to prove yourself innocent or not guilty.” The parties and trial court then had a sidebar discussion, during which the estate’s counsel mentioned the motion in limine about “criminal-type language.” Shortly after continuing his opening statement, Honda’s counsel again used the word “accusations.”

¹ I also would find that the trial court erred in excluding what was undoubtedly another key element of Honda’s case: evidence that Cynthia Christianson’s seat belt was found to be buckled when her overturned vehicle was examined and argument that therefore she hadn’t been wearing it. Honda challenges that ruling on appeal, but that ruling is not connected with the issue of whether the trial court was authorized to strike Honda’s answer, so I do not address it further.

That single reference to proving oneself innocent or guilty clearly runs afoul of the parties' agreement. But the parties did not specifically identify the word "accusation" as an example of a prohibited "criminal word," and the trial court did not order Honda not to use that specific word. Moreover, the word "accusation" is not exclusively a "criminal word"; it has a broader meaning, including a meaning in a civil context that would not necessarily "impl[y] the existence of a 'criminal' legal proceeding," which was the focus of the motion in limine that gave rise to the parties' agreement on this issue. Defense counsel's assertion in his opening statement that "you don't have to prove yourself innocent or not guilty" could call to mind the beyond-a-reasonable-doubt standard, which seem to me the only obvious way such words could prejudice a plaintiff, but does not raise it explicitly.

(iii) *Forum shopping*

Finally, I do disagree with the holding that Honda violated the order prohibiting references to forum shopping. At oral argument, counsel for the estate was asked about the representation in the Honda's briefs that defense counsel's explanation of the basis for venue in Clayton County was in response to a question from a juror. Counsel for the estate replied that he did not recall. Honda's counsel represented that

it had indeed been in response to a juror's question. I would accept the representation of counsel.

Moreover, when the parties argued this issue before the trial court, their colloquy about that explanation included the following:

[DEFENSE COUNSEL]: Your Honor, I thought his motion was some allegation that they had done something untoward because he's forum shopping. And we said, hey it happened here, there, here, perfectly within their right. I didn't make any adverse inference about what they had done so I —

[PLAINTIFF'S COUNSEL]: — I don't necessarily disagree with that but that was a topic we had covered and he was testifying.

THE COURT: The Court (crosstalk) brought up counsel so to make sure that we didn't go too far. I thought that it was a little bit across the line but I don't believe it was detrimental to your case or helps the case of the Defense, but I did stop it before it went to an area that I thought would be irreparably damaging to your case.

So even if relative severity of misconduct were a cognizable rule of decision, it would not justify distinguishing the present case from *Ford Motor Co.*