FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and EPPS, JJ.

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August 19, 2026

In the Court of Appeals of Georgia

A26A1027. JACKSON v. CANTRELL et al.

WATKINS, Judge.

This personal injury action is before us a second time. Plaintiff Bryson Jackson was injured when 15-year-old Parker Cantrell accidentally shot him in the leg while the two were in a truck owned by Parker's father, Frederick Brad ("Brad") Cantrell. Jackson sued Parker, Brad, and Brad's company, Cantrell Tractor and Loader Service, LLC, to recover for his injuries. In the first appeal, we affirmed the trial court's grant of summary judgment in favor of the LLC ("*Jackson I*").[1] The trial court later granted summary judgment to Parker and Brad based on a limited release signed by Jackson. Jackson appeals from that order, arguing that the Cantrells are not entitled to

[1] *Jackson v. Cantrell Tractor & Loader Serv.*, A25A0017 (Ga. App. Mar. 18, 2025) (unpublished).

summary judgment because they failed to show that a condition of the release — that no other insurance policy covers Jackson's injuries — has been met. For reasons that follow, we reverse.

We set forth the relevant facts in *Jackson I*, as follows:

> On Sunday, June 28, 2020, Jeilen Jones, who sometimes did odd jobs for Brad Cantrell, asked Brad if he could borrow Brad's lawnmower to cut the grass at Jones's trailer. Brad agreed. Neither Brad nor the LLC had any ownership interest in Jones's house, and the blue truck used to transport the lawnmower was owned by Brad, not the LLC. No money was offered or taken by anyone concerning this errand.
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> Before getting into the truck driven by Jones and occupied by Jackson, Parker Cantrell took a 9-millimeter pistol from his father's dresser drawer, hid it in his waistband, and pulled his shirt over it. Brad had previously told his son not to use the gun except for "home defense" or if Brad gave him permission to practice shooting. Jackson provided no evidence that the LLC owned the pistol or that Brad commingled his personal funds with those of the LLC. While the young men were returning to Jones's trailer in the blue truck, Parker accidentally shot Jackson in the leg, eventually resulting in its amputation.[2]

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[2] *Jackson I*, slip op. at 2-3 (footnote omitted).

Jackson sued Parker, Brad, and the LLC, alleging that Brad was negligent for furnishing the gun to Parker and that the LLC was liable as "a mere instrumentality and alter ego for the transaction of Brad's affairs." Five months later, Jackson executed a limited release agreeing to relinquish all claims against Parker and Brad arising from the incident in exchange for an insurance payout, "except to the extent other insurance coverage is available which covers the claim or claims of [Jackson.]" Later, while discovery was still pending, Parker and Brad filed a motion to dismiss on the ground that Jackson had released his claims against them. Jackson opposed the motion, arguing that he had not yet received complete information about all insurance policies available to the defendants. The trial court denied the motion, but ruled that Parker and Brad could "re-file [it] as one for summary judgment following completion of discovery."

More dispositive motions followed. The LLC moved for summary judgment on the ground that there was no genuine issue of material fact as to its responsibility for the incident, and Jackson sought partial summary judgment "on the unqualified existence of an agency relationship between [Brad] and [the LLC]." The trial court granted the LLC's motion and denied Jackson's.[3]

Jackson appealed, arguing that the LLC was not entitled to summary judgment because Brad and the LLC were "one in the same." We affirmed the trial court's rulings, pointing to a lack of evidence that "Brad commingled his personal funds with those of the LLC," that the LLC owned "any of the instrumentalities or properties at issue," that the young men in the truck were employees of the LLC or acted in furtherance of its interests, or that any negligence by Brad or the occupants of the truck was imputable to the LLC.[4]

Following remittitur, Parker and Brad filed a renewed motion to dismiss and/or for summary judgment, again citing Jackson's release and contending that no other insurance coverage was available to cover his claims against them. The Cantrells acknowledged that the LLC had several other insurance policies, including a commercial auto policy from Home-Owners Insurance Company, but they maintained that those policies were inapplicable because the LLC, having been awarded summary

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[3] Brad also filed a motion for summary judgment, which the trial court likewise denied.

[4] *Jackson I*, slip op. at 3-5.

judgment, was no longer a party to the case. Jackson opposed the motion, arguing that the LLC's commercial auto policy provided coverage and that the LLC should be "restored as a party." The trial court granted the Cantrells' motion without explaining its reasoning and awarded attorney fees to defense counsel under OCGA § 9-11-68. Jackson appeals.

1. As an initial matter, the Cantrells argue that Jackson's "failure to include the entire record on appeal is a fatal defect" requiring us to affirm the trial court. We disagree. In his notice of appeal, Jackson asked the trial court clerk to transmit "only those parts of the record not already included in the record of [*Jackson I*] — namely, all *additional filings, orders, evidence,* and *transcripts* filed or entered since the preparation of the record for that earlier appeal." Because this Court may take into account the record from a prior appeal,[5] Jackson did not need to designate for inclusion in this appeal the parts of the record we already had.[6] Further, it does not appear that anything necessary for our review is missing from the record.

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[5] See *Trend Star Continental v. Branham*, 220 Ga. App. 781, 783(2) (469 SE2d 750) (1996).

[6] While the appellate record does contain multiple copies of the same 2024 hearing transcript, this defect is immaterial to our review.

2. As to the merits, Jackson argues that the trial court erred by granting summary judgment to the Cantrells under the limited release because the LLC's commercial auto policy may provide additional insurance coverage for his injuries. Jackson contends that our recent decision in *Harvey v. Hall*[7] controls this case and requires reversal of the trial court's order. We agree.

In *Harvey*, a passenger in a truck was injured when the driver fell asleep and crashed into a culvert. The passenger signed a limited release like the one in this case, insulating the driver, his employer, and his employer's insurance company from liability "except to the extent other insurance coverage is available which covers the claim."[8] The passenger then sent demand letters to two of the employer's other insurance companies, which both denied coverage. Later, the passenger sued the driver and the employer, who both sought summary judgment on the basis that "the limited release [the passenger] signed released them from liability while allowing him to pursue other available insurance coverage — and no such coverage existed."[9] The

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[7] 378 Ga. App. 98 (924 SE2d 25) (2025).

[8] Id. at 98 (punctuation omitted).

[9] Id. at 99.

trial court denied the defendants' motion, but we reversed because the passenger had failed to present evidence of additional insurance coverage.

We held that a defendant seeking summary judgment based on an affirmative defense, such as a release, must present evidence "which establishes the prima facie affirmative defense," after which the burden shifts to the plaintiff to produce evidence creating a jury issue on an element of the defense.[10] If the plaintiff fails to meet this burden, the defendant is entitled to summary judgment as a matter of law.[11] The *Harvey* defendants carried their burden of proof in support of their affirmative defense by presenting the release and the written denials of coverage from the employer's other insurers. The burden thus shifted to the passenger to present evidence that the incident was, in fact, covered by the other policies; however, the passenger failed to carry this burden.[12] Consequently, the defendants were entitled to summary judgment.

Applying *Harvey* to the facts of this case, the Cantrells presented evidence of Jackson's limited release insulating them and their insurance company from liability

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[10] *Harvey*, 378 Ga. App. at 99-100 (citations and punctuation omitted).

[11] Id. at 100.

[12] Id. at 101.

"except to the extent other insurance coverage is available which covers the claim or claims of [Jackson.]"[13] They also presented evidence of several other insurance policies held by the LLC, including the commercial auto policy issued by Home-Owners, which they say does not apply because the LLC is no longer a party to this lawsuit. Jackson contends that the Cantrells have not met their initial burden of proof as to the commercial auto policy because they have not presented evidence, such as coverage denial letters, "affidavits from the insurer," or "sworn testimony that coverage had been denied[.]"

To resolve this issue, we look to the terms of the commercial auto policy.[14] As the Cantrells point out, the policy names the LLC as the insured. It is undisputed that the policy lists two covered vehicles, neither of which was the truck in which Jackson

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[13] This document "release[d] the settling insurance carrier from any liability to the claimant, and release[d] the tortfeasor[s] from personal liability while preserving the claimant's right to pursue claims to judgment against the tortfeasor[s] for the purpose of collecting against other available insurance coverage[.]" *Carter v. Progressive Mountain Ins.*, 295 Ga. 487, 489 (761 SE2d 261) (2014) (citation and punctuation omitted). See also OCGA § 33-24-41.1.

[14] We do not read *Harvey* to require a defendant to present affirmative evidence of coverage denial for a policy that is plainly inapplicable on its face. Indeed, Jackson agrees on appeal that such evidence is not necessary if the terms of the policy clearly "establish[ ] non-coverage as a matter of law."

was shot, and three covered drivers, none of whom was the driver or the shooter. Accordingly, the Cantrells maintain that the policy plainly does not apply here.

But Jackson points to other policy provisions suggesting that coverage may be broader than the Cantrells claim. The policy states that Home-Owners will pay "all sums an insured legally must pay as damages because of bodily injury ... to which this insurance applies, caused by an accident and resulting from the ownership, maintenance or use of a covered auto as an auto."[15] In addition to the two listed vehicles, the policy also covers "non-owned autos," which are defined as "autos [the named insured] do[es] not own ... that are used in connection with [the named insured's] business. This includes autos owned by ... members (if [the named insured is] a limited liability company), but only while used in [the named insured's] business or ... *personal affairs*." (Emphasis supplied.) It is undisputed that Brad owned the truck at issue and that Brad is a member of the LLC. He loaned the truck to Jones to

[15] Although the Cantrells do not argue otherwise, we note that injuries resulting from the accidental discharge of a firearm inside a vehicle may, depending on the facts, fall within automobile liability coverage. See *Ga. Farm Bureau Mut. Ins. Co. v. Burnett*, 167 Ga. App. 480, 481(1) (306 SE2d 734) (1983) ("[W]here a connection appears between the use of the vehicle and the discharge of the firearm and resulting injury such as to render it more likely that the one grew out of the other, it comes within the coverage defined[.]" (citation and punctuation omitted)).

transport a lawnmower for Jones's use. Whether this mission occurred in a "non-owned auto" used for the LLC's "personal affairs" under the commercial auto policy may be a question of fact. And although Jones was not listed as a scheduled driver, the policy also generally defines "insured" as "[a]nyone else while using, with [the named insured's] permission, a covered auto[.]" Based on these broad coverage provisions, Jackson argues that there are questions of fact as to whether the commercial auto policy provides coverage for the incident in question. The Cantrells do not address these policy provisions or explain why they fail to provide coverage here, much less offer any affirmative evidence of coverage denial under the policy. Accordingly, we conclude that the Cantrells have not met their initial burden of showing that no other insurance coverage is available to cover Jackson's injuries.[16]

It is not our task, at this juncture, to determine whether coverage actually *is* available under the LLC's commercial auto policy; we hold only that the Cantrells have failed to carry their burden of showing that it is not. Therefore, the trial court erred by granting summary judgment in their favor on the basis of the limited release.

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[16] See *Harvey*, 378 Ga. App. at 99-100.

3. Jackson maintains that the trial court erred by ignoring an amended complaint that he filed shortly before the trial court granted summary judgment to the Cantrells. In the amended complaint, Jackson asserted a claim for declaratory judgment, purportedly against the LLC, seeking a ruling that the LLC's commercial auto policy "provides coverage applicable to [Jackson's] claim[.]" The trial court did not address the amended complaint in its summary judgment order. Because "this Court is for the correction of errors of law made by the trial courts,"[17] we will not consider the propriety of the amended complaint in the first instance. We note, however, that our ruling in *Jackson I* granting summary judgment to the LLC stands as the law of the case and is "binding in all subsequent proceedings."[18] Accordingly, the LLC is no longer a party in the case.[19]

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[17] *Burke Moore Law Group v. Drew Eckl & Farnham*, 374 Ga. App. 810, 820(2)(b) (914 SE2d 333) (2025) (citation and punctuation omitted).

[18] *Lundy v. Kemp*, 379 Ga. App. 374, 379(1)(a) (928 SE2d 206) (2026).

[19] In his opening appellate brief, Jackson argued that despite our affirmance of summary judgment in favor of the LLC in *Jackson I*, the LLC should "remain in the case[.]" In his reply brief, however, he stated that although he disagrees with *Jackson I*, he does not ask us to disturb it.

4. Finally, Jackson argues that the trial court's award of attorney fees to the Cantrells under OCGA § 9-11-68 must be reversed, as that award was dependent upon the grant of summary judgment in their favor. We agree. In light of our ruling in Division 2, we also reverse the attorney fee award.

Judgment reversed. McFadden, P. J., and Epps, J., concur.