

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

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**October 2, 2026**

## In the Court of Appeals of Georgia

A26A1382. SANDERS v. RAY.

HODGES, Judge.

This appeal turns on the recent amendments to the offer-to-settle statute, OCGA § 9-11-67.1 (2024). After Rico Ray was injured in an automobile collision on September 4, 2024, involving a vehicle owned by Sharon Spivey and driven by Kendra Sanders, their attorneys exchanged settlement communications and documents. Spivey and Sanders’ insurance carrier, Progressive Premier Insurance Company of Illinois (“Progressive”), accepted Ray’s offer of settlement on their behalf.<sup>1</sup> For reasons that will be discussed below, however, Ray later filed suit against Sanders. Sanders moved to enforce the settlement, and following a hearing, the trial court

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<sup>1</sup> Neither Spivey nor Progressive are parties to the instant appeal.

denied the motion, finding that no enforceable settlement had been reached. We granted Sanders' application for interlocutory review, and she filed the instant appeal. She contends that because she provided written acceptance of the material terms of the offer pursuant to OCGA § 9-11-67.1(b), a binding settlement existed, and the trial court erred in finding that no settlement existed. We agree, and reverse.

We apply a de novo standard of review to a trial court's order on a motion to enforce a settlement agreement. Because the issues raised are analogous to those in a motion for summary judgment, in order to succeed on a motion to enforce a settlement agreement, a party must show the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of the appellant's case. Thus, we view the evidence in a light most favorable to the nonmoving party.

*Torres v. Pineda*, 378 Ga. App. 321, 321-22 (925 SE2d 765) (2026). In our analysis, we are mindful that "settlement agreements must meet the same requirements of formation and enforceability as other contracts." *Torres v. Elkin*, 317 Ga. App. 135, 141(2) (730 SE2d 518) (2012). "A definite offer and complete acceptance, for consideration, create a binding contract." *Moreno v. Strickland*, 255 Ga. App. 850, 852(1) (567 SE2d 90) (2002). Further, when inquiring whether the parties entered

into a settlement agreement, this Court is “limited to those terms upon which the parties themselves have mutually agreed.” *Sherman v. Dickey*, 322 Ga. App. 228, 231(1) (744 SE2d 408) (2013) (punctuation omitted). Finally, “the law also favors compromise, and when parties have entered into a definite, certain, and unambiguous agreement to settle, it should be enforced.” *Greenwald v. Kersh*, 275 Ga. App. 724, 726 (621 SE2d 465) (2005).

Properly viewed, the record shows that following the collision, on December 19, 2024, Ray’s counsel sent Progressive an offer of settlement pursuant to OCGA § 9-11-67.1 proposing a limited release of Ray’s personal injury claims in exchange for payment of Progressive’s \$50,000 policy limits and execution of affidavits of no other insurance by stated deadlines.

It is undisputed that the offer included all the required material terms under OCGA § 9-11-67.1. It also contained provisions relating to the performance of the required terms. The offer provided that Ray’s counsel’s law firm must receive the \$50,000 payment no later than 5:00 p.m. on or before the 40th day after Progressive received the demand. The offer also provided that on or before the 40th day, Progressive was to provide Ray’s counsel with a statement under oath regarding

whether all liability and casualty insurance issued by Progressive that offered coverage for this claim, had been disclosed, and the offer required that this statement be on a form attached to the offer to settle. Further, the offer required Sanders and Spivey each to provide sworn, notarized statements that no other applicable insurance coverage was available to them. Specifically, the offer provided that the documents and payments must be received by specified dates in order to accept the offer. The offer characterized the performance of these acts as “material.”

We turn now to a timeline of the pertinent events. Under the offer, a written acceptance was due by January 25, 2025. Progressive received the offer on December 22, 2024, and it timely accepted the offer, in writing, via facsimile dated January 21, 2025. Its acceptance specifically provided that Progressive “accepts the material terms of your offer of settlement on behalf of Rico Ray as set forth in OCGA § 9-11-67.1(b) in their entirety.” By its plain language, Progressive’s facsimile did not accept extra-statutory terms. The acceptance further averred that, “[a]s a courtesy,” Progressive had attempted to obtain Sanders’ affidavit of no other insurance and her signature on a limited liability release but noted that she “has not complied with our requests to date.” Under the non-statutory terms outlined above, Progressive would

have needed to supply all the sworn statements and the \$50,000 check by the 40th day after the receipt of the offer, that is, by January 31, 2025. On January 28, 2025, Progressive sent the relevant documents and the check to Ray's counsel via Federal Express overnight delivery.

The offer specified a physical address for delivery of the written acceptance, as well as e-mail and facsimile contact information but did not specify an address for delivery of the payment, release, and affidavits. Instead of sending these items to the acceptance address, Progressive sent the performance letter to a different address listed on Ray's counsel's website. Tracking information shows the documents were delivered to that address on January 29, 2025. This address, however, was just a "virtual office" that Ray's counsel had never visited and no longer used, although he had not updated his website to reflect an address change. FedEx, apparently without any involvement by Progressive, then forwarded the documents and check to Ray's counsel's home address, where he found them on his front porch on February 3, 2026. Counsel did not accept the check and documents, and returned them to Progressive because, on January 31, 2025 — the day that the check and other documents should have been delivered to Ray's attorney under the settlement terms — Ray filed a motor

vehicle negligence complaint against Sanders. Sanders then filed a motion seeking to enforce the pre-suit settlement agreement. Ray opposed the motion, arguing that no settlement contract existed because Sanders had failed to perform the various “acts” required to accept the settlement offer in that the check and documents were not timely delivered. Ray also argued that there was never a settlement because Progressive accepted only the “material terms” of the offer “as set forth in OCGA § 9-11-67.1” rather than the additional terms Ray had designated as material. The trial court ruled in Ray’s favor, finding that no settlement agreement existed because the acceptance package was not delivered by the January 31, 2025 deadline and a Progressive affidavit was not in the form required by the offer.

1. To offer some preliminary context, OCGA § 9-11-67.1 became effective in July 2024,<sup>2</sup> shortly before the September 2024 collision from which this case arises. At the time the trial court issued its order, the newly amended OCGA § 9-11-67.1 had never been construed.<sup>3</sup> About two months after the trial court determined that no

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<sup>2</sup> Ga. L. 2024 at 178, § 1 (eff. July 1, 2024).

<sup>3</sup> This Code section has something of a tortured history, summarized as follows in *Gomez v. USAA Cas. Ins. Co.*, 378 Ga. App. 702 (926 SE2d 687) (2026):  
This is yet another case in the ongoing saga of settlement agreements in the motor-vehicle, personal-injury context here in Georgia. The story is

settlement had been reached, and shortly after the filing of the notice of appeal, this Court issued an opinion interpreting the 2024 amendments to OCGA § 9-11-67.1 for the first time. See *Torres*, 378 Ga. App. at 321.<sup>4</sup>

Apparently in this context, as will be discussed in more detail below, Ray has significantly changed his argument on appeal from his argument in the trial court. In the trial court, Ray contended that the parties never reached a binding settlement agreement. Ray's appellee's brief, however, accepts that a settlement was reached but asserts that Progressive breached material terms of the settlement by not meeting the

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a familiar one by now. There is a car accident. Someone is tragically injured. The party who caused the injury has minimal insurance policy limits. The attorney representing the injured party makes a settlement offer to the defendant's insurer. In making that offer, the plaintiff's attorney includes onerous, byzantine terms in the hope of causing a botched acceptance. And this then opens the door for the injured party to bring a bad-faith claim against the insurer, which allows for the possibility of a far larger verdict for the plaintiff. Enter the General Assembly. In 2013, it passed OCGA § 9-11-67.1—which was revised in 2021 and 2024—to address this very issue.

<sup>4</sup> In the months after the trial court issued its order, this Court also issued several other opinions which have some relevance here, as will be discussed below, although those opinions interpret the immediately prior, 2021 version, of OCGA § 9-11-67.1.

deadline for sending the check and the documents and by providing the signed affidavit in a different form than that referenced in the offer.

The trial court, relying on Ray's prior argument before it, determined that no settlement had been reached, and Sanders' appeal naturally arises from that determination.

2. Sanders argues that the trial court wrongly found that no settlement agreement had been reached. She contends that, despite the missed deadlines and different affidavit forms, her written acceptance of the statutory material terms of the agreement created a binding settlement agreement. We agree.

As outlined above, Progressive, on Sanders' behalf, timely sent notice of acceptance of Ray's offer, but because of the problematic address, the check and documents were not timely received. Pertinently, Ray's offer letter provided, as to the check delivery and affidavit forms and receipt deadlines discussed above, that these were material terms and that "some of the material terms are conditions of acceptance and not conditions of performance. Each of the following acts must be performed in order to ACCEPT this offer of compromise."

Before beginning our analysis on the merits, we turn to the relevant portions of OCGA § 9-11-67.1 (2024). Under the statute, “[a]ny offer to settle a tort claim for personal injury, bodily injury, or death arising from a motor vehicle collision shall be an offer to enter into a bilateral contract.” OCGA § 9-11-67.1(a). Further, offers to settle under OCGA § 9-11-67.1(b)

(1) Shall contain the following material terms, *which shall be the only material terms*: (A) A date by which such offer must be accepted, ...; (B) Amount of monetary payment; (C) The party or parties the claimant or claimants will release if such offer is accepted; (D) For any type of release, whether the release is full or limited and an itemization of what the claimant or claimants will provide to each releasee; (E) The claims to be released; (F) *A date by which payment shall be delivered*; provided, however, that such date shall not be less than 40 days from receipt of the offer; and (G) *A requirement that in order to settle the claim the recipient shall provide the offeror a statement, under oath, regarding whether all liability and casualty insurance issued by the recipient that provides coverage or that may provide coverage for the claim at issue has been disclosed to the offeror and a date by which such statement under oath shall be delivered*, and such date shall not be less than 40 days from receipt of the offer; provided, however, that the requirement provided in this subparagraph may be waived by the offeror[.]

OCGA § 9-11-67.1(b)(1) (emphasis added).

The statute further provides that:

*(c) Where any offer to settle a tort claim for personal injury, bodily injury, or death arising from a motor vehicle collision provides any term outside of the material terms provided in paragraph (1) of subsection (b) of this Code section, such term shall be construed as an immaterial term that may be mutually agreed to, in writing, by both the offeror and the recipient; provided, however, that a variance by the recipient from such immaterial term shall not subject the recipient to a civil action arising from an alleged failure by the recipient to accept an offer to settle such tort claim if such recipient otherwise complies with subsection (i) of this Code section.*<sup>5</sup>

OCGA § 9-11-67.1(c) (emphasis added). The statute also states that the offer to settle may be accepted by providing written acceptance of the material terms outlined in subsection (b)(1) of this Code section in their entirety. OCGA § 9-11-67.1(d).

Pertinent to this appeal and to changes between the current version of the statute and its two prior versions, OCGA § 9-11-67.1(a) (2024) provides that any offer to settle a tort claim as outlined in the statute “*shall* be an offer to enter into a bilateral contract.” (Emphasis added.) The prior versions of OCGA § 9-11-67.1 (2013) and

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<sup>5</sup> OCGA § 9-11-67.1(i), as will be discussed further below, provides that no civil action arises from a recipient’s alleged failure to settle one of the tort claims addressed in the statute so long as the recipient has timely provided the offeror with a writing accepting the material terms; a statement under oath regarding insurance coverage, if required; and payment.

OCGA § 9-11-67.1 (2021), by contrast, could be unilateral contracts. See *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 858(3) (797 SE2d 814) (2017) (finding that the 2013 version of OCGA § 9-11-67.1 allows unilateral contracts); Ga. Automobile Ins. Law, § 56C:1(c) (2025-2026 ed.) (“[A]ny offer to settle made under the 2021 version of the statute, unlike the 2024 amendment, does *not* constitute, by operation of law, ‘an offer to enter into a bilateral contract.’”) (quoting OCGA § 9-11-67.1(a) (2024)). In a unilateral contract, pre-suit offers “may demand acceptance in the form of performance (in addition to the statutorily mandated written acceptance) before there is a binding enforceable settlement contract ... [or] as a condition of acceptance.” *Woodard*, 300 Ga. at 858(3). Ray’s argument in the trial court, and the trial court’s order, essentially tracked this philosophy: That is, performance was required for acceptance.

OCGA § 9-11-67.1(a) (2024), however, provides unequivocally for a bilateral contract. As our Supreme Court has determined, “a bilateral contract [is] created through the exchange of mutual promises.” *Citizens & S. Nat’l Bank v. Benton*, 257 Ga. 751, 752-53(1) (363 SE2d 549) (1988) (providing that an agreement for the partial release of one property, if sales proceeds were timely paid on the secured debt, was a

binding contract, and while one party's failure to timely pay as agreed "may constitute a partial breach of contract for which a right of damages may exist[,] " the lender was not relieved of its duty to perform on its promise to sign over the mortgage because a bilateral contract had been created). See OCGA § 13-3-42.

We turn now to Sanders' argument. The record shows that Ray offered to settle his claim under OCGA § 9-11-67.1 and included the material terms set out in the statute. OCGA § 9-11-67.1(a), (b)(1). In response, Progressive accepted Ray's offer by specifically agreeing to all material terms as delineated in the statute and by providing a timely written acceptance of only those material terms "in their entirety." OCGA § 9-11-67.1(d). Contrary to Ray's contentions in the trial court, and to the trial court's order, under the plain language of the statute, the parties indeed reached a binding settlement agreement. See *Jackson Elec. Membership Corp. v. Ga. Power Co.*, 257 Ga. 772, 773(1) (364 SE2d 556) (1988) ("Clearly, the parties intended to enter an agreement: they expressed their mutual intentions to be bound, and a contract was formed."). Our analysis does not end here, however.

First, although the offer provided additional, non-statutory terms and designated them as "material" terms, the plain language of OCGA § 9-11-67.1(b)(1)

provides that the statutorily identified material terms “shall be the *only* material terms[.]” (Emphasis added.) “[W]hen we construe a statute, such as OCGA § 9-11-67.1, we must presume that the General Assembly meant what it said and said what it meant.” *Gabrell v. Hancock*, 378 Ga. App. 406, 410 (926 SE2d 110) (2026), citing *Deal v. Coleman*, 294 Ga. 170, 172-73(1)(a) (751 SE2d 337) (2013). The offer’s designation of various non-statutory terms as “material” does not make them material. OCGA § 9-11-67.1(c) provides that any term outside of the identified statutory material terms “shall be construed as an immaterial term[,]” and OCGA § 9-11-67.1(e) provides that “no party shall require another party, as a condition of settlement, to waive or *modify* the application of this Code section or any provision of this Code section.” (emphasis added).

Second, the plain language of the statute discusses what *terms* must be included in the offer to settle. The inclusion of those terms, coupled with the acceptance of those terms, is what creates a binding contract. See *Gabrell*, 378 Ga. App. at 410-411 (finding, under OCGA § 9-11-67.1 (2021), that when an offer included all statutory material terms, the insurer’s “letter accepting the terms of the offer [meant] a binding agreement was made”). The current statutory language and the fact that the statute

provides only for a bilateral contract does not allow the *performance* of those terms to be a factor in the formation of a binding settlement agreement. See *Progressive Mountain Ins. Co. v. Butler*, 364 Ga. App. 439, 443-44(2) (875 SE2d 422) (2022) (“Progressive’s failure to tender payment of the settlement amount bears on Progressive’s performance of the settlement agreement, not its existence or validity.”). Rather, performance or failure to perform pursuant to the terms is the determining factor as to whether the parties have complied with the binding settlement or breached it.

Whether the check and sworn affidavits were delivered on time goes to the issue of breach, not formation, of the settlement agreement, because OCGA § 9-11-67.1(b)(1)(F) provides only that offers to settle a tort claim “[s]hall contain the following material terms ... [a] *date* by which payment shall be delivered; provided, however, that such date shall not be less than 40 days from receipt of the offer[.]” (Emphasis added.) The delivery itself is not a “term” required for contract formation; rather, it is performance pursuant to a term in an existing settlement agreement. *Benton*, 257 Ga. at 752-53(1); *Butler*, 364 Ga. App. at 443-44(2). Similarly, whether any sworn affidavits were in the form sought by the offeror also goes to the issue of

compliance, not formation, of the settlement agreement because OCGA § 9-11-67.1(b)(1)(G)’s plain language neither addresses nor requires any particular form of affidavit. In *Torres*, the plaintiff argued that the trial court erred in finding the parties had reached a binding settlement agreement, contending that State Farm failed to accept a material term under OCGA § 9-11-67.1(b)(1)(G) because the insurer provided a *written* statement under oath, when Torres’ offer had demanded an *oral* statement under oath. 378 Ga. App. at 323. This Court affirmed, finding that although Torres’ offer “included a requirement that State Farm provide an oral statement under oath [ , this] *does not mean that a binding agreement was not reached when State Farm did not do so*. The Code section is clear that the *only material terms* are those set forth in the statute.” Id. at 324 (emphasis added and in original). “And, the plain language of the statute makes it clear that any additional terms” — here, the form of the affidavit — “are immaterial and variance from an immaterial term does not result in a rejection of the offer.” Id.<sup>6</sup> In other words, acceptance of the statutory terms creates a binding

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<sup>6</sup> OCGA § 9-11-67.1(d) (2024), and OCGA § 9-11-67.1(b)(2) (2021), contain nearly identical language in this regard, providing that “[t]he recipients of an offer to settle made under this Code section may accept the same by providing written acceptance of the material [statutory] terms ... in their entirety.” As a result, two cases decided under the 2021 version of the statute are instructive: *Gomez*, 378 Ga. App. 711-12(2) (determining that where a party agrees in writing only to the statutory terms,

settlement; performance of those terms goes to the issue of breach, not contract formation.

As discussed in Division 1, Ray now argues, for the first time on appeal, that although a settlement was reached, Progressive breached that agreement and, as a result, he has unilaterally rescinded the settlement contract. Ray urges us to affirm the trial court's judgment as right for any reason, see *City of Gainesville v. Dodd*, 275 Ga. 834, 838 (573 SE2d 369) (2002), and to find that because of his rescission, no settlement agreement now exists. Ray, however, never raised the issue of rescission in the trial court, nor did the trial court ever rule on the matter. “[I]ssues presented for the first time on appeal furnish nothing for us to review, for this is a court for correction of errors of law committed by the trial court[.]” *OVIP, Inc. v. Blockbuster Textiles*, 289 Ga. App. 276, 278(1) (656 SE2d 907) (2008).

Ray also contends, in the context of breach, that OCGA § 9-11-67.1(i)(1) provides that “[t]here shall be no civil action arising from an alleged failure by the

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the absence of mutual agreement to additional terms is “irrelevant to the formation of a binding contract[.]”); *Gabrell*, 378 Ga. App. at 409, 411 (finding a binding agreement existed even where insurer's statement of other insurance coverage did not “mirror” the form of the offeror's demand because the insurer's letter had accepted all material terms and the statute's plain language did not dictate the form of statements regarding available coverage).

recipient to settle a tort claim for personal injury, bodily injury, or death arising from a motor vehicle collision, where the recipient provides the offeror *on or before the dates specified in the offer*:

(A) A writing that purports to accept in their entirety the material terms of the offer, with the exception of the amount of payment;

(B) A statement by the recipient under oath regarding insurance coverage provided by the recipient, if required as a material term; and

(C) Payment[.] ...

(emphasis added).

It is undisputed that neither the \$50,000 check nor the affidavits were timely received under the terms of the settlement. As Ray recognizes, this goes to the issue of breach. See *Benton*, 257 Ga. at 752-53(1) (finding that where a bilateral contract exists, one party's failure to timely pay pursuant to the contract may constitute a partial breach). As noted above, the issue of breach was neither raised nor ruled upon in the trial court, so we do not address it further. *OVIP*, 289 Ga. App. at 278(1).

The only issue before us is whether a binding, enforceable settlement agreement

was reached. We find that it was, and the trial court erred in determining otherwise.

*Judgment reversed. Barnes, P. J., and Markle, J., concur.*