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

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October 27, 2026

In the Court of Appeals of Georgia

A26A0871. MAG MUTUAL INSURANCE COMPANY v. ESTATE OF TAPLEY et al.

DAVIS, Judge.

The Estate of James S. Tapley successfully obtained a $15 million judgment in a medical malpractice action arising from a botched surgery that caused Tapley's death. See *Geary v. Estate of Tapley*, 373 Ga. App. 561 (908 SE2d 324) (2024). The Estate subsequently brought this direct action against Mag Mutual Insurance Company ("MagMutual"), the insurer for the defendants in the malpractice case, alleging that MagMutual "slow paid" the policy limits and that MagMutual was liable to pay the post-judgment interest accrued during the time before MagMutual deposited the money with the court under OCGA § 9-11-67. The trial court denied MagMutual's motion to dismiss the Estate's complaint and granted partial summary

judgment to the Estate on the issue of whether MagMutual was liable to pay post-judgment interest, and MagMutual now challenges these rulings. For the following reasons, we reverse the trial court's denial of MagMutual's motion to dismiss to the extent the Estate sought damages due to MagMutual's delayed payment of the policy limits, but we otherwise affirm the trial court's order.

> Summary judgment is, of course, proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. And in considering a grant or denial of summary judgment, we apply a de novo standard of review, viewing the evidence, and all reasonable conclusions and inferences drawn from it, in the light most favorable to the nonmovants. Importantly, at the summary-judgment stage, we do not resolve disputed facts, reconcile the issues, weigh the evidence, or determine its credibility, as those matters must be submitted to a jury for resolution.

Jones v. Ga. Farm Bureau Mut. Ins. Co., 367 Ga. App. 35, 37 (885 SE2d 13) (2023) (citation modified). Additionally,

> [a] motion to dismiss for failure to state a claim upon which relief can be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a

> grant of the relief sought. On appeal, this Court reviews the denial of a motion to dismiss de novo. However, we construe the pleadings in the light most favorable to the plaintiff with any doubts resolved in the plaintiff's favor.

Cannon v. Safeco Ins. Co. of Illinois, 379 Ga. App. 150, 150 (928 SE2d 293) (2026) (quotation marks omitted).

> According to our prior opinion in these proceedings,
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> on the morning of November 16, 2016, James Tapley underwent prostate surgery, performed by [Brian] Geary. During the surgery, Tapley's bladder was perforated, causing fluid to leak and his abdomen to swell. Because of Tapley's comorbidities, Geary chose to try to drain the fluid instead of taking steps to repair the perforation. Tapley was moved to the intensive care unit, and he died about 30 hours later.
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> The [Estate] filed this lawsuit, alleging that Geary was negligent for failing to perform a cystogram, an imaging procedure that would have revealed the size and nature of Tapley's bladder perforation, and for failing to repair the perforation. The case was tried before a jury, which returned a verdict in favor of the [Estate] for $15 million.

Geary, 373 Ga. App. at 561(1). On appeal, we affirmed the jury's verdict against Geary and his practice, Urology Specialists of Georgia, P. C. See id. at 561.

Geary and Urology Specialists had a valid malpractice insurance policy with MagMutual. The policy provided a liability limit of $2 million for the doctor and $1 million for the practice, for a total of $3 million. The policy also contained a "Strong Defense" provision that listed many supplemental points of coverage. The provision started with the statement, "We will pay all expenses and costs we incur defending you in a covered claim. None of these payments will reduce your limits of liability." The "Strong Defense" included payment for "[p]ost judgment interest accruing by law on that part of the judgment that does not exceed your limits of liability and before we have deposited our portion of the judgment into the court." The policy separately defined "Each Loss Limit" as

> [t]his is the most we will pay for any one loss. By loss, we mean all covered claims resulting from an incident, regardless of the number of persons injured, claims made, claimants making claims, or subsequent related claims. Injuries to separate patients ... are considered separate losses, and separate each loss limits apply. Any derivative claims from family members or estates share in the each loss limit that applies to the injured patient. Punitive damages, if assessed as part of a judgment against you for a claim covered by this policy ... will share in the each loss limit. Prejudgment interest awarded against you on that part of the judgment that we pay on your behalf will also share in the each loss limit.

> Payments for derivative claims, punitive damages and prejudgment interest do not increase your limits of liability.

MagMutual paid $3,000,000 to the Estate on June 6, 2025, three months after the Georgia Supreme Court denied certiorari review in the appeal from the jury's verdict, but it did not pay any extra for post-judgment interest. The Estate then filed the instant complaint, raising a claim for a direct action against MagMutual for the post-judgment interest and damages due to the late payment as well as attorney fees under OCGA § 13-6-11.[1] MagMutual filed a motion to dismiss, arguing that (1) the Estate lacked standing to bring any claims directly against it, for post-judgment interest or other damages, because it had already paid the policy limits; (2) the insurance contract did not provide for the payment of post-judgment interest; and (3) attorney fees under OCGA § 13-6-11 are not allowed because there is a bona fide controversy between the parties. The Estate filed a motion for partial summary judgment on the issue of liability for post-judgment interest. The trial court denied the motion to dismiss and granted the motion for summary judgment. The trial court

[1] According to the complaint, Geary and Urology Specialists have separately filed a bad faith lawsuit against MagMutual based on its actions in this case.

concluded that the insurance policy clearly provided that MagMutual would pay post-judgment interest. This appeal followed.

1. MagMutual first argues that the trial court erred by granting summary judgment and concluding as a matter of law that it is liable to pay post-judgment interest in excess of the policy limits. The trial court correctly interpreted the insurance policy to conclude that MagMutual was liable to make such payments separately from the policy limits.

> An insurance policy is simply a contract, the provisions of which should be construed as any other type of contract. Construction of the contract, at the outset, is a question of law for the court. The court undertakes a three-step process in the construction of the contract, the first of which is to determine if the instrument's language is clear and unambiguous. If the language is unambiguous, the court simply enforces the contract according to the terms, and looks to the contract alone for the meaning.
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> If the contract is ambiguous in some respect, the court must apply the rules of contract construction to resolve the ambiguity. Finally, if the ambiguity remains after applying the rules of construction, the issue of what the ambiguous language means and what the parties intended must be resolved by a jury.

> 'Ambiguity' is defined as duplicity, indistinctness, an uncertainty of meaning or expression used in a written instrument, and it also signifies [that it is] open to various interpretations.

RLI Ins. v. Highlands on Ponce, LLC, 280 Ga. App. 798, 800-801(1) (635 SE2d 168) (2006) (punctuation omitted).

Here, we agree with the trial court that the insurance contract unambiguously provided that MagMutual would pay for post-judgment interest on the amount of the judgment within the normal policy limits and that such payment of post-judgment interest would be separate from the $3,000,000 policy limit. The insurance contract stated that MagMutual would pay post-judgment interest on the amount of the claim covered by the policy limits until it deposited the policy limit, and it listed this duty within the list of costs to defend its insured, which started with the statement, "We will pay all expenses and costs we incur defending you in a covered claim. None of these payments will reduce your limits of liability." This duty to make post-judgment payments was listed separately from the list of payments (such as the base claim, punitive damages, and prejudgment interest) that would contribute to the policy limit. Thus, we conclude that the insurance policy provided that any post-judgment

payments would not contribute to the policy limit but are separate and distinct payments to be made that are not subject to the policy limits.

MagMutual nevertheless argues that, because post-judgment interest is defined in the policy as a cost of defending the insured, it is not recoverable in a direct action by a judgment creditor, especially where, as here, it has already paid the policy limits.

> While as a general rule, an injured party has no standing to file a direct suit against the insurer of the party alleged to have caused the injury, an exception exists when the injured party holds an unsatisfied judgment against the insured. Where an injured party obtains an unsatisfied judgment against a party who has insurance covering the injuries—so that the judgment fixes the liability of the insured party to the injured party—the injured party may bring an action directly against the insurer to satisfy the judgment from the available insurance proceeds. Once a judgment has been obtained, the injured party is no longer a stranger to the insurance policy but instead stands in the shoes of the insured. Consequently, a judgment creditor derives his rights under the policy through the insured, and he is entitled to recover under the policy only if it appears that all conditions precedent have been complied with.

McCoy v. Ga. Dept. of Admin. Servs., 326 Ga. App. 853, 857-58(c) (755 SE2d 362) (2014).

MagMutual's argument centers on the definition of the word "proceeds" as we have used in our caselaw, arguing that "proceeds" refers only to the payments provided by the policy limits and does not cover the post-judgment interest payment, which is defined in the policy here as a cost of defending the insured. Under the circumstances of this case, however, we must disagree. The word "proceeds" is broadly defined as the "total amount brought in" or the "net amount received (as for a check or from an insurance settlement) after deduction of any discount or charges." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/proceeds (last visited October 20, 2026). Thus, the word "proceeds" as we have used in our case law refers to the total amount due to be paid under an insurance policy, which, depending on the situation, is not necessarily equivalent to the amount of the policy limits.

Additionally, while the insurance policy here refers to post-judgment interest as a cost of defending the insured, it is nevertheless a cost that is to be paid *to the judgment creditor*. Thus, putting aside the question of whether the Estate as a third-party judgment creditor generally has standing to argue about issues concerning coverage and MagMutual's duty to defend, the Estate has standing to seek payment

of the post-judgment interest from the proper party. Accordingly, we conclude that the trial court properly granted summary judgment on MagMutual's liability to pay the post-judgment interest on its $3,000,000 share of the judgment.

2. MagMutual also argues that the trial court should have dismissed the Estate's claim to the extent it separately sought special or compensatory damages due to MagMutual's delayed payment of the $3,000,000 because such damages are not cognizable in a direct action by a judgment creditor of the insured. We agree.

In its complaint, the Estate sought damages "equal to the time-value of money" caused by MagMutual's delay in paying the $3,000,000 it owed under the policy after the end of the appellate process. Although it did not cite the statute directly, by seeking such damages, the Estate is essentially presenting a bad faith claim under OCGA § 33-4-6, which allows recovery of penalties from an insurance company when it fails to pay a covered loss within sixty days after a demand for payment has been made and there has been a finding that the refusal to pay was in bad faith.[2] See *Ga. Intl. Life Ins. Co. v. Harden*, 158 Ga. App. 450, 454(2) (280 SE2d 863) (1981) (The

[2] "[P]leadings, motions, and orders are to be construed according to their substance and function and not merely as to their nomenclature, being always mindful to construe such documents in a manner compatible with the best interest of justice." *Planet Ins. Co. v. Ferrell*, 228 Ga. App. 264, 266 (491 SE2d 471) (1997).

purpose of the section is "to penalize (insurers) for resisting and delaying payment unless good cause was shown."). Indeed, we have been clear that no claim for an insurer's delay or refusal to pay arises under tort, and "the penalties contained in OCGA § 33-4-6 are the exclusive remedies for an insurer's bad faith refusal to pay insurance proceeds." *Great Sw. Express Co., Inc. v. Great Am. Ins. Co. of New York*, 292 Ga. App. 757, 760(2) & n.3 (665 SE2d 878) (2008). However, we have held that a claim under that statute may only be made by the insured, not a judgment creditor, and, indeed, such a claim cannot be assigned to a judgment creditor even after a judgment has been obtained against the insured. *Canal Indem. Co. v. Greene*, 265 Ga. App. 67, 72(3) (593 SE2d 41) (2003); *S. Gen. Ins. Co. v. Ross*, 227 Ga. App. 191, 196(7) (489 SE2d 53) (1997). Thus, we conclude that the compensatory or consequential damages that the Estate seeks for the delayed payment are not available in a direct action by a judgment creditor. *Great Sw. Express Co.*, 292 at 760(2) & n.3.

The Estate's reliance on *Merritt v. State Farm*, 247 Ga. App. 442, 448(3) (544 SE2d 180) (2000), does not provide for a different result. That case noted that a plaintiff could claim damages caused by the delay in receiving the proper amount due when such delay was caused by an insurer's fraud and misrepresentation in failing to

disclose the proper policy limit when negotiating a settlement agreement. Id. These are proper claims to be raised in a direct action against an insurer. See *S. Gen. Ins. Co. v. Ross*, 227 Ga. App. 191, 196(7) (489 SE2d 53) (1997) (judgment creditor could bring in a direct action a claim that the insurer settled in bad faith). It did not involve a direct action by a judgment creditor against the insurer merely seeking to claim the amount due under a judgment.

Accordingly, we must reverse the trial court's denial of MagMutual's motion to dismiss on this basis.[3]

3. MagMutual further argues that the trial court erred by denying its motion to dismiss the Estate's claim for attorney fees and expenses under OCGA § 13-6-11. We

[3] We note that a party's entitlement to post-judgment interest may usually be sufficient to protect against any losses based on the "time value of money" caused by an insurer's delay in rendering payment after a judgment has been reached. See *Davis v. Whitford Props., Inc.*, 282 Ga. App. 143, 148(3) (637 SE2d 849) (2006) ("The award of post-judgment interest is intended to deter post-judgment delay, motions, and appeals and to bring finality to judgments.") (quotation marks omitted). We note, as the trial court did, that had MagMutual promptly paid its portion of the judgment to the court, post-judgment interest would have abated under OCGA § 9-11-67.

conclude that MagMutual has not shown that the trial court erred by allowing the claim to proceed.[4]

"The expenses of litigation generally shall not be allowed as a part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them." OCGA § 13-6-11. "Attorney fees under OCGA § 13-6-11 are ancillary, and thus a party is not entitled to such fees unless [it] prevails on the underlying claims." *Atlanta Partners Realty, LLC v. Wohlgemuth*, 365 Ga. App. 386, 395(3) (878 SE2d 615) (2022). "The elements which will authorize an award under OCGA § 13–6–11 have consistently been found to relate to the conduct arising from the transaction

[4] It appears the trial court did not explicitly address MagMutual's argument that the Estate failed to state a claim that it engaged in bad faith, was stubbornly litigious, or had caused the Estate unnecessary trouble and expense. However, since this matter involves a simple question of law that we would review de novo, we exercise our discretion to address MagMutual's argument under our right-for-any-reason rule. See *Perry v. Emory Healthcare Servs. Mgmt., LLC*, 374 Ga. App. 41, 47 (911 SE2d 229) (2025) ("Under the right-for-any-reason rule, we will affirm a judgment if it is correct for any reason, even if that reason is different than the reason upon which the trial court relied. This rule applies to motions for summary judgment and motions to dismiss, so long as the movant raised the issue in the trial court and the nonmovant had a fair opportunity to respond.").

underlying the cause of action being litigated, not conduct during the course of the litigation itself." *David G. Brown, P.E., Inc. v. Kent*, 274 Ga. 849, 850 (561 SE2d 89) (2002). "Specifically, the element of bad faith that will support a claim for expenses of litigation under OCGA § 13–6–11, must relate to the acts in the transaction itself prior to the litigation, not to the motive with which a party proceeds in the litigation." Id. "[A] jury is entitled to award litigation expenses under OCGA § 13-6-11 if there is even slight evidence of bad faith." *Mag Mut. Ins. Co. v. Perera*, ___ Ga. App. ___(2)(a) (932 SE2d 158) (2026).

In its complaint, the Estate alleged that attorney fees under OCGA § 13-6-11 were recoverable because MagMutual "refus[ed] multiple opportunities to settle the Underlying Lawsuit within the Policy limits" and "refus[ed] to promptly pay its Policy Limits and post-judgment interest following the Judgment being final of all appeals[.]" The Estate alleged that MagMutual provided "no justification" for waiting to pay the policy limits.

MagMutual argues that the complaint merely alleged the failure to pay a debt, which is not enough to state a claim for attorney fees. "While a refusal to pay a debt, without more, will not support an award of attorney fees under OCGA § 13–6–11, it

may be sufficient when it is not prompted by an honest mistake as to one's rights or duties but by some interested or sinister motive. There may be bad faith in carrying out the provisions of the contract sufficient to support the award." *Roofers Edge, Inc. v. Std. Bldg. Co., Inc.*, 295 Ga. App. 294, 295-96(1) (671 SE2d 310) (2008) (quotation marks omitted). Because the Estate alleged that MagMutual did more than just fail to pay a debt, MagMutual has not shown that the trial court erred by allowing the attorney fees claim to proceed.

Accordingly, we reverse the trial court's order to the extent it failed to dismiss the Estate's claim for damages "equal to the time-value of money," but we otherwise affirm the trial court's order denying MagMutual's motion to dismiss and granting the Estate's motion for partial summary judgment.

Judgment affirmed in part and reversed in part. Doyle, P. J., and Whitaker, J., concur.