

**STANDARDS OF APPEAL FROM CIVIL ACTIONS
AND CLAIMS IN GEORGIA**

By Craig R. White

**SKEDSVOLD & WHITE, LLC.
1050 Crown Pointe Parkway
Suite 710
Atlanta, Georgia 30338
(770) 392-8610
FAX: (770) 392-8620
EMAIL: cwhite@skedsvoldandwhite.com**

May 17, 2009

**STANDARDS OF APPEAL FROM CIVIL ACTIONS
AND CLAIMS IN GEORGIA**

One of the many issues that attorneys consider while preparing for trial is how the presiding judge will rule on anticipated objections and motions made during that trial. One concern is what standard of review will be applicable should the case be appealed to the Georgia Supreme Court and/or Georgia Court of Appeals. This paper serves to provide an overview of the various standards of appeal used by Georgia appellate courts on a variety of subjects.

**GENERAL STANDARDS OF REVIEW OF JURY VERDICTS
AND RULINGS ON MOTIONS**

Probably the appeal most often considered by Georgia appellate courts is whether a judgment based on a jury verdict, should be overturned. As held by the Court of Appeals, a judgment, based a jury verdict, will not be disturbed on appeal if it is supported by the evidence and if there is no material legal error. See Horan v. Pirkle, 197 Ga. App. 151, 397 S.E.2d 734 (1990). Without the presence of legal error, appellate courts are without jurisdiction to interfere with the jury's verdict. This is true even if the preponderance of the evidence is against the verdict. Jeff Goolsby Homes Corp. v. Smith, 169 Ga. App. 218, 308 S.E.2d 564 (1983). The court has no choice but to construe the evidence most strongly in favor of the verdict. In reviewing the evidence, Georgia appellate courts must construe all applicable presumptions and inferences in favor of the verdict. See Citizen's Bank of Ball Ground v. Johnson, 191 Ga. App. 155, 381 S.E.2nd 130 (1988). In practical terms, an appellant must establish for the Appellate Court that the trial court's ruling was a significant and material error of law which would likely have affected the jury's verdict. Harmless error which would not have had an impact on the verdict is insufficient to overturn a jury's verdict.

Id.

Rulings on motions for summary judgment are probably the second most often appealed ruling by a trial court. As held by Court of Appeals in Moore v. Food Associates, appellate courts must determine whether the trial court erred in concluding that there was no genuine issue of material fact to be decided by a jury and that the moving party is entitled to judgment as a matter of law. Moore v. Food Associates 210 Ga. App. 780, 437 S.E.2d 723 (1993). See also Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991). If there remains any conflict in the evidence with respect to material facts, summary judgment was inappropriately entered. Id.

Often, defense counsel will move for a directed verdict both at the end of the Plaintiff's prima facie case and at the close of the defense's case in chief. A ruling on such a motion can take the case out of the hands of jury and allow the trial court to enter judgment "from the bench". Rulings on motions for directed verdict are subject to the "Any Evidence" of review. This is essentially the same standard of review the appellate courts use in deciding whether to overturn a jury verdict. Typically, if there is any evidence to support the Plaintiff's cause of action at issue, the appellate court will support the trial court's denial of a motion for directed verdict. The appellate court must construe the evidence in favor of the party opposing the motion. See Jordan v. Stephens, 221 Ga. App. 8, 470 S.E.2d 733 (1996). See also F.A.F. Motor Cars v. Childers, 181 Ga. App. 821, 354 S.E.2d 6 (1987). Only where there is no conflict in the evidence and where the evidence demands a particular verdict shall it be properly directed. Griffin v. Kangaroo, Inc., 208 Ga. App. 190, 430 S.E.2d 82 (1993).

Following trial and presuming that counsel has previously moved for directed verdict at the close of both the Plaintiff and Defendant's case in chief, he/she will often file a motion for judgment notwithstanding the verdict (JNOV). JNOV motions are also governed by the "Any Evidence"

standard of review. As held by the Georgia Court of Appeals, the appellate court must affirm the verdict (and subsequently entered judgment) unless a contrary judgment is demanded by the evidence. See Signsation, Inc. v. Harper, 218 Ga. App. 141, 460 S.E.2d 854 (1995). See also Griffin v. Kangaroo, Inc., 208 Ga. App. 190, 430 S.E.2d 82 (1993).

The “Any Evidence” standard of appeal is also applicable to review of motions for new trial. Again, the evidence must be construed in favor of the party opposing a motion for new trial. If there is any evidence to support the verdict, the motion must be denied. Jordan v. Stephens, 221 Ga. App. 8, 470 S.E.2d 733 (1996). The trial court’s ruling on motion for new trial is within the sound discretion of the court and will not be overturned if there is any evidence to support it. See Professional Consulting Services v. I.B.R., 206 Ga. App. 663, 426 S.E.2d 376 (1992) and Milam v. Attaway, 195 Ga. App. 496, 393 S.E.2d 753 (1990).

Rulings on motions for a mistrial are subject to the “Clearly Erroneous” standard of review. Under this fairly amorphous standard, the Court must determine whether the trial court’s denial of the motion was clearly erroneous in light of the law in effect at the time. See Underwood v. State, 218 Ga. App. 530, 462 S.E.2d 434 (1995).

STANDARDS OF REVIEW IN PARTICULAR TYPES OF CASES/CLAIMS

In addition to the standards of review that apply to most civil lawsuits, particular types of cases are subject to differing or additional standards of review.

Appeals of workers’ compensation claims are governed by the “Any Evidence” standard of review. The appellate court must accept the facts of the case as found by the State Board of Workers’ Compensation and can only overturn the Board’s decision if there is legal error. See A&P Transportation v. Warren, 213 Ga. App. 60, 443 S.E.2d 68 (1989). With respect to State Board of

Workers' Compensation rulings on change in physician requests, the standard is whether the Board acted arbitrarily or in excess of its powers. Franchise Enterprises, Inc. v. Sullivan, 190 Ga. App. 767, 380 S.E.2d 68 (1989).

Two different standards of review apply to awards of attorney fees under O.C.G.A. § 9-15-14. O.C.G.A. § 9-15-14(a) provides in relevant part:

In any civil action in any court of record of this state, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to any party against whom another party has asserted a claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position. Attorney's fees and expenses so awarded shall be assessed against the party asserting such claim, defense, or other position, or against that party's attorney, or against both in such manner as is just.

O.C.G.A. § 9-15-14(a). In cases involving an award of attorney fees pursuant to O.C.G.A. § 9-15-14(a), the "Any Evidence" standard of review is applicable. A different standard of review applies to an award of attorney fees under O.C.G.A. § 9-15-14(b). That code section provides:

The court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under Chapter 11 of this title, the "Georgia Civil Practice Act." As used in this Code section, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

O.C.G.A. § 9-15-14(b). The standard of review of an award of attorney fees under O.C.G.A. § 9-15-14(b) is whether the trial court abused its discretion. See Bankhead v. Moss, 210 Ga. App. 508, 436 S.E.2d 723 (1993).

The standard of review involving an award of attorney fees pursuant to O.C.G.A. § 13-6-11

is also subject to the “Any Evidence” standard of review. See Warner Robins v. Holt, 220 Ga. App. 794, 470 S.E.2d 238 (1996).

In review of cases involving whether a particular statute violates the equal protection clause of the U.S. and Georgia Constitutions, two possible standards of review are applicable. Unless a “suspect classification” is involved, the Georgia Supreme Court will decide whether there is a rational basis for enacting the statute in question. Typically, a statute is subject to “suspect classification” if it is based on race, religion, ethnicity, gender, sexual orientation or directly impacts a constitutional right. In “suspect classification” cases, the standard of review is that the classification cannot be arbitrary or unreasonable and that a fair and substantial relationship exists between the classification and the purpose of the law. Price v. Lithonia, 256 Ga. 49, 343 S.E.2d 688 (1986). “Suspect classification” cases are often held to a heightened level of appellate scrutiny than cases that do not involve “suspect classifications”.

Recently, more appeals have involved a determination of whether an insurer acted in bad faith. Since this issue is a factual one for the jury to decide, it is governed by the “Any Evidence” standard of review. See Binns v. MARTA, 169 Ga. App. 261, 308 S.E.2d 674 (1983). If there is any evidence to support a jury’s finding that an insurer acted in bad faith, that part of the verdict will not be overturned.

In cases of appeal from an arbitration, the standard of review is whether it is supported by the evidence. The award must be upheld unless it is completely irrational or constitutes a manifest disregard of the law. See Hundley v. Greene, 218 Ga. App. 1983, 461 S.E.2d 250 (1995).

CONCLUSION

Although this paper is not intended to be an all-inclusive manual of every standard of review

employed by the Georgia appellate courts, it is intended to act as a touchstone of the standards applied to many typical cases. In that the appellate courts can change these standards in a subsequently entered decision, they should be carefully considered.