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No Fee-Shifting in Garnishment? Georgia Supreme Court to Review *SMS Financial v. Silverstone*

Garnishments are one of the most common collection tools in Georgia, and banks see them nearly every day as garnishees. When a garnishment fight turns contentious, a basic question follows: can the winning party recover its attorney fees from the losing party?

This spring, the Georgia Court of Appeals answered no—at least under O.C.G.A. § 9-15-14. On October 27, 2026, the Supreme Court of Georgia agreed to review that decision. Until it rules, creditors, debtors, third-party claimants, and garnishees are left to operate under a holding whose future is uncertain.

The Fee-Shifting Statute

OCGA § 9-15-14 is Georgia's principal tool for sanctioning frivolous litigation conduct, and it reaches two kinds of misconduct.

- Subsection (a) requires the court to award fees when a party asserts a position with "such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept" it.
- Subsection (b) allows the court to award fees when a party's position "lacked substantial justification," was "interposed for delay or harassment," or "unnecessarily expanded the proceeding," including through discovery abuse.

Both subsections share a crucial limitation, however: by their terms they apply only "***in any civil action*** in any court of record of this state."

The Court of Appeals Decision

In *SMS Financial Recovery Services, LLC v. Silverstone*, 379 Ga. App. 495, 929 S.E.2d 824 (2026), a judgment creditor garnished a bank account belonging to the judgment debtor. A third party came forward, claiming the funds were hers. The trial court held a hearing the creditor did not attend, granted the third-party claim, and—after the creditor moved unsuccessfully to vacate for lack of notice—awarded the third-party claimant $14,525 in attorney fees under § 9-15-14(a) and (b). The court found that the creditor's motion to vacate and its post-judgment discovery had been frivolous and harassing.

The Court of Appeals reversed. Its reasoning was straightforward: OCGA § 9-15-14 authorizes fees only in a "***civil action***," and garnishment is a "special statutory proceeding," not a civil action.

The court drew on the Supreme Court's decision in *Hardin Construction Group, Inc. v. Fuller Enterprises, Inc*., 265 Ga. 770 (1995), which held that an arbitration-award confirmation proceeding is likewise a special statutory proceeding, and reaffirmed the settled rule that a proceeding may be one or the other—**but not both**[1]. Nor, the court added, did the "Civil Action File Number" printed on the statutory garnishment affidavit form, OCGA § 18-4-71, transform a garnishment into a civil action.

The court emphasized that fees are not entirely unavailable in garnishment. The Garnishment Act has its own fee provision, OCGA § 18-4-19(d)(2). It directs the court to award the *garnishee* its attorney fees incurred in connection with a traverse if the plaintiff's traverse "lacked reasonable justification." The court noted that this is a more forgiving standard than either prong of § 9-15-14.

The Supreme Court Grants Certiorari

On October 27, 2026, the Supreme Court granted the third-party claimant's petition (*Silverstone v. SMS Financial Recovery Services*, LLC, No. S26G1428). The Court framed a single question:

May a party in a garnishment proceeding, including a third-party claimant, be awarded attorney fees pursuant to OCGA § 9-15-14(a) and (b)?

The order is notable for the statutes the Court directed the parties to address:

- **OCGA § 9-11-2:** "There shall be one form of action, to be known as 'civil action.'"
- **OCGA § 9-11-81:** The Civil Practice Act "shall apply to all special statutory proceedings except to the extent that specific rules of practice and procedure in conflict herewith are expressly prescribed by law."
- **OCGA § 18-4-2(c):** "Except as otherwise provided in this chapter, Chapter 11 of Title 9 shall apply in garnishment proceedings in the state courts and superior courts of this state."

The Court of Appeals did not address these provisions. Together they frame a textual argument the Supreme Court will want addressed: if the Civil Practice Act recognizes only one form of action, and the General Assembly expressly made the Civil Practice Act applicable in garnishment, then the line between "civil action" and "special statutory proceeding" may not be as sharp as the Court of Appeals concluded.

The creditor's side of the argument is not without force. OCGA § 9-15-14 sits in Chapter 15 of Title 9, not Chapter 11. Section 18-4-2(c) imports Chapter 11 "except as otherwise provided" in the Garnishment Act, and the Act supplies its own fee provision in § 18-4-19(d)(2). And Hardin remains binding Supreme Court precedent.

What This Means for Parties in Garnishment

For banks and other garnishees. The garnishee's own fee remedy, § 18-4-19(d)(2), is untouched by SMS and does not depend on how the Supreme Court resolves § 9-15-14. When a plaintiff files a traverse that lacks reasonable justification, the garnishee should continue to seek fees under that provision.

Banks should watch the outcome for a second reason. If the Supreme Court holds that § 9-15-14 does reach garnishment, the ruling would cut both ways. Garnishees could pursue sanctions for frivolous conduct extending beyond a traverse—but they would also expose their own litigation positions to the same statute.

Should a garnishee reach for § 9-15-14 now, before the Court rules? Yes, if the circumstances are right. O.C.G.A. § 9-15-14 reaches sanctionable conduct across the entire proceeding—frivolous motions, abusive post-judgment discovery, and the like—and makes a wider range of fees recoverable. In that sense, § 9-15-14 would afford a materially broader remedy than the Garnishment Act; however, its standards are considerably more demanding than the traverse provision's forgiving "reasonable justification" test. Pursuing § 9-15-14 sanction where the only misconduct is an unjustified traverse, § 18-4-19(d)(2) remains both the easier and the sufficient path. Invoking § 9-15-14 now is worthwhile to preserve a claim—where the opposing party's conduct reaches beyond a traverse, and the statute's 45-day post-disposition filing deadline would otherwise lapse before the Supreme Court rules.

For judgment creditors. For now, SMS substantially limits fee exposure in garnishment litigation, including for motions to vacate and post-judgment discovery. Creditors should not treat that protection as settled. A reversal could restore § 9-15-14 exposure in pending cases. Creditors litigating aggressively in garnishment should continue to make sure every position has a defensible basis.

For judgment debtors and third-party claimants. Under SMS, a debtor or claimant who defeats a garnishment has no § 9-15-14 remedy, and § 18-4-19(d)(2) by its terms runs to the garnishee. Parties in this position who believe they have a fee claim should consider filing a timely § 9-15-14 motion anyway and expressly preserving the issue. Section 9-15-14 sets a deadline for fee motions measured from final disposition of the action. A party who waits for the Supreme Court's decision may find that window has closed.

For trial courts and pending motions. Where a § 9-15-14 motion is pending in a garnishment case, parties may consider asking the court to stay or reserve ruling until the Supreme Court decides Silverstone. Otherwise, the parties should build a record that supports both outcomes

Bottom Line

For now, SMS is the controlling decision in Georgia: § 9-15-14 does not reach garnishment proceedings, and the Garnishment Act's own provisions govern fee recovery. But the Supreme Court's grant of review—and its pointed citation of the "one form of action" rule and the Civil Practice Act's express application to garnishment—puts that holding squarely in play. Until the Court rules, the prudent course is to preserve fee positions in both directions.

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[1] *Should the Supreme Court soften the "civil action" line, the reasoning would likely not be confined to garnishment, and litigants in those other proceedings, such as arbitration confirmation proceedings, would have fresh reason to revisit whether § 9-15-14 is available to them.*

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