

FILED & RECORDED
CLERK SUPERIOR COURT
MONROE COUNTY, GA

2016 JUN 17 AM 8:44

IN THE SUPERIOR COURT OF MONROE COUNTY

STATE OF GEORGIA

LYNN W. HAM
CLERK

BY: INC., NETTIE PARKER, ESSIE :
HERNDON, LINDA HARRIS, WAYNE :
HARRIS, and VIVIAN YOUGHN, :

Plaintiffs, :

vs. :

JOHN HESTER and CHARLOTTE :
HESTER, Individually and as Former :
Officers of FORSYTH SECOND BAPTIST :
CHURCH, INC., ROCK SPRINGS :
CONGREGATIONAL METHODIST :
CHURCH, INC., ABC and XYZ :
CORPORATIONS and JOHN DOE, :

Defendants. :

CIVIL ACTION NO.: 2016-CV-57

REQUEST FOR EXCEPTION TO U.S.C.R. 6.3

COMES NOW, John Hester, Charlotte Hester, and Rock Springs Congregational Methodist Church, Inc., Defendants in the above-styled matter, and moves this Court, pursuant to U.S.C.R. 6.3, to dispose of Plaintiffs' Motion for a New Trial without a hearing, and hereby states as follows:

1.

In their Reply to the Defendant's Response to the Plaintiffs' Motion for a New Trial, the Plaintiffs contend that this Court is without authority to dispose of the Plaintiffs' Motion for New Trial without an oral hearing pursuant to Uniform Superior Court Rule 6.3. While the general rule in Georgia is that a Motion for a New Trial requires an oral hearing, both Rule 6.3 and the Supreme Court of Georgia explicitly state that a Trial Court possesses the authority to dispose of a Motion for New Trial without a hearing if the Court first enters an Order to that effect.

2.

U.S.C.R. 6.3 plainly states that “**[u]nless otherwise ordered by the court**, all motions in civil actions, including those for summary judgment, shall be decided by the court without oral hearing, except motions for new trial and motions for judgment notwithstanding the verdict.” U.S.C.R. 6.3 (emphasis added).

3.

The Supreme Court of Georgia has acknowledged that a Court may “otherwise order” that a hearing is not necessary on a Motion for New Trial in two recent rulings: “[a]s this Court has made clear, Uniform Superior Court Rule 6.3 requires a trial court to hold an oral hearing on all motions for new trial in civil cases, **unless otherwise specifically ordered by the court.**” *Brown v. Brown*, 294 Ga. 475, 476, 754 S.E.2d 362, 363 (2014) (citing *Triola v. Triola*, 292 Ga. 808, 741 S.E.2d 650 (2013).) (emphasis added).

4.

It is only an error to dispose of a Motion for New Trial without an oral hearing where the Court does not make the procedural step of first entering a separate Order indicating that a hearing is not necessary or explicitly reference Rule 6.3 in its Order ruling on the Motion for New Trial. *See Triola v. Triola*, 292 Ga. 808, 808, 741 S.E.2d 650, 651 (2013) (“The order denying the motion did not reference Rule 6.3 or Husband's right to an oral hearing, nor did the court issue a separate order excepting the motion from the oral hearing requirement.”); *Brown v. Brown*, 294 Ga. 475, 476, 754 S.E.2d 362, 363 (2014) (“reversal and remand required where the trial court denied a motion for new trial without holding the mandatory hearing and did not issue an order excepting the motion from the procedural requirement.”).

5.

For the reasons articulated in the Defendants' Response to the Plaintiffs' Motion for a New Trial, the Plaintiffs' Motion has no validity because it is not the proper vehicle to review the Court's ruling on the Defendants' Motion to Dismiss. *Pillow v. Seymour*, 255 Ga. 683, 683, 341 S.E.2d 447, 448 (1986). Because the motion has no validity, no oral hearing is required and the Court may dispose of the Plaintiff's Motion for a New Trial **without** an oral hearing – so long as it first enters an Order holding that no oral hearing is required.

6.

Accordingly, the Defendant hereby requests that the Court enter a separate Order, prior to the entry of its Order on the Plaintiff's Motion to Dismiss, holding that an oral hearing is not necessary pursuant to the Court's authority under Rule 6.3.

Respectfully submitted this 16th day of June, 2016.

SMITH, WELCH, WEBB & WHITE, LLC



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CERTIFICATE OF SERVICE

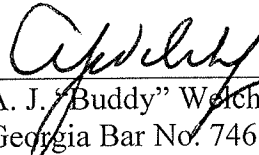
I hereby certify that I have this day served a copy of the within and foregoing **REQUEST FOR EXCEPTION TO U.S.C.R. 6.3** upon all parties to this matter by hand delivery and depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

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Respectfully submitted this 16th day of June, 2016.

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CONGREGATIONAL METHODIST :
CHURCH, INC., ABC and XYZ :
CORPORATIONS and JOHN DOE, :

Defendants. :

CIVIL ACTION NO.: 2016-CV-57

**[PROPOSED] ORDER ON DEFENDANTS' REQUEST FOR AN EXCEPTION
PURSUANT TO UNIFORM SUPERIOR COURT RULE 6.3**

This matter comes before the Court on Defendants' Request for an Exception Pursuant to Uniform Superior Court Rule 6.3. In that Request, the Defendants argue that the Court has the authority to rule on the Plaintiffs' Motion for New Trial without an oral hearing on the matter, pursuant to the plain language of Rule 6.3 and two recent Georgia Supreme Court cases. Plaintiffs argue that Rule 6.3 requires that the Court to first hold a hearing prior to issuing its ruling on the Motion for New Trial.

In relevant part, Rule 6.3 states: "Unless otherwise ordered by the court, all motions in civil actions, including those for summary judgment, shall be decided by the court without oral hearing, except motions for new trial and motions for judgment notwithstanding the verdict." U.S.C.R. 6.3.

It is certainly true that, in general, a movant is entitled to a hearing on a Motion for New Trial, even without making a request. To dispose of such a motion without a hearing may result in reversible error when the Court does not make an order excepting the Motion from the procedural requirements of Rule 6.3.

In this case, the trial court did not hold an oral hearing before ruling on Mother's motion for new trial. The order denying Mother's motion for new trial did not reference Rule 6.3 or Mother's right to an oral hearing, and the trial court did not issue a separate order excepting Mother's motion from the oral hearing requirement. Therefore, we must reverse the trial court's judgment on Mother's motion for new trial and remand the case with direction that the trial court comply with Rule 6.3. *See Triola*, 292 Ga. at 808–809, 741 S.E.2d 650 (reversal and remand required where the trial court denied a motion for new trial without holding the mandatory hearing and did not issue an order excepting the motion from the procedural requirement); *Kuriatnyk*, 286 Ga. at 592(2), 690 S.E.2d 397 (same).

Brown v. Brown, 294 Ga. 475, 476, 754 S.E.2d 362, 363 (2014).

However, it is equally clear that U.S.C.R. 6.3 allows a trial court to Order that no hearing is required, even on a Motion for New Trial. “As this Court has made clear, Uniform Superior Court Rule 6.31 requires a trial court to hold an oral hearing on all motions for new trial in civil cases, **unless otherwise specifically ordered by the court.**” *Brown v. Brown*, 294 Ga. 475, 476, 754 S.E.2d 362, 363 (2014) (citing *Triola v. Triola*, 292 Ga. 808, 741 S.E.2d 650 (2013)) (emphasis added).

Here, the Court agrees that an exception from the procedural requirements of Rule 6.3 is warranted such that no oral hearing shall be had on the Plaintiffs’ Motion for New Trial. The issue has been adequately briefed by both parties and oral argument will not further aid the Court in its determination of this matter. The Supreme Court has explicitly held that a Motion for New Trial is not the proper procedural vehicle to review a Court’s ruling on a Motion to Dismiss.

Pillow v. Seymour, 255 Ga. 683, 683, 341 S.E.2d 447, 447 (1986). “Where a motion for new trial is not a proper vehicle for review of a trial court's action, the motion has no validity...” *Id.* at 683, 448.

Because the Plaintiffs’ Motion is not the proper vehicle for review of the Court’s ruling on the Defendants’ Motion to dismiss, it is a nullity and no hearing is necessary. Accordingly, the Court believes that an exception to the general rule of Uniform Superior Court Rule 6.3 is warranted in this case.

ORDER

Having read and considered the Defendants’ Request for an Exception Pursuant to Uniform Superior Court Rule 6.3, all matters of record, and the arguments of counsel, it is hereby **ORDERED** that no hearing will be had on the Plaintiffs’ Motion for New Trial and the matter may be disposed of on the parties’ briefs.

This _____ day of _____, 2016.

Hon. Grant Brantley
Judge, Superior Court of Monroe County

Presented by:

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