

305 Ga. 107
Supreme Court of Georgia.

LA FONTAINE et al.
v.
SIGNATURE RESEARCH, INC.

S18G0078

Decided: February 4, 2019

Synopsis

Background: Zip-line user brought personal injury action against zip-line inspector, after user was injured when line collapsed. The State Court, Douglas County, [Barker](#), J., dismissed the action. User appealed. The Court of Appeals, [803 S.E.2d 609](#), affirmed. User sought certiorari.



[Holding:] The Supreme Court, [Benham](#), J., held that forum non conveniens statute did not permit dismissal in favor of filing action in foreign country, overruling [Hewett v. Raytheon Aircraft Co.](#), 273 Ga. App. 242, 614 S.E.2d 875.

Reversed.

[Peterson](#), J., filed specially concurring statement, in which [Warren](#), J., joined.

Procedural Posture(s): On Appeal; Motion to Dismiss for Forum Non Conveniens.

West Headnotes (5)

- [1] [Appeal and Error](#)  [Forum non conveniens](#)
[Appeal and Error](#)  [Negligence in general](#)

[30](#) Appeal and Error
[30XVI](#) Review
[30XVI\(D\)](#) Scope and Extent of Review
[30XVI\(D\)3](#) Procedural Matters in General
[30k3218](#) Forum non conveniens

[30](#) Appeal and Error
[30XVI](#) Review
[30XVI\(D\)](#) Scope and Extent of Review
[30XVI\(D\)22](#) Substantive Matters
[30k3726](#) Torts in General
[30k3728](#) Negligence in general

Determining whether the forum non conveniens statute was applicable in zip-line user's negligence action against zip-line inspector, in which inspector sought dismissal in favor of a forum in a foreign country, was a matter of statutory construction and, thus, was a question of law subject to de novo review. [Ga. Code Ann. § 9-10-31.1](#).

- [2] [Statutes](#)  [Construction based on multiple factors](#)

[361](#) Statutes
[361III](#) Construction
[361III\(A\)](#) In General
[361k1082](#) Construction based on multiple factors

The fundamental rules of statutory construction require courts to construe a statute according to its own terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage.

[2 Cases that cite this headnote](#)

- [3] [Statutes](#)  [Statute as a Whole; Relation of Parts to Whole and to One Another](#)

[361](#) Statutes
[361III](#) Construction
[361III\(E\)](#) Statute as a Whole; Relation of Parts to Whole and to One Another
[361k1151](#) In general

In construing language in any one part of a statute, a court should consider the statute as a whole.

[1 Cases that cite this headnote](#)

- [4] [Courts](#)  [Location of Forum; Forum Non Conveniens](#)

[106](#) Courts

[106I](#) Nature, Extent, and Exercise of Jurisdiction in General

[106I\(B\)](#) Location of Forum; Forum Non Conveniens

[106k40.1](#) In general

Forum non conveniens statute, having been adopted in derogation of the common law, must be limited strictly to the meaning of the language employed, and not extended beyond the plain and explicit terms of the statute. [Ga. Code Ann. § 9-10-31.1](#).

[5] [Courts](#)  [Alternate Forum](#)


[106](#) Courts

[106I](#) Nature, Extent, and Exercise of Jurisdiction in General

[106I\(B\)](#) Location of Forum; Forum Non Conveniens

[106k40.10](#) Alternate Forum

[106k40.10\(1\)](#) In general

Forum non conveniens statute did not apply as basis for dismissing a negligence action brought by a zip-line user against a zip-line inspector, in which inspector sought dismissal in favor of the action being filed in the foreign country in which user's accident at a zip-line course occurred; the statute required all defendants to waive the right to assert a statute of limitations defense "in all other states of the United States," thus showing that the statute's phrase "forum outside [the] state," as place where an "action would be more properly heard," referred only to forums in sister states; overruling  [Hewett v. Raytheon Aircraft Co., 273 Ga. App. 242, 614 S.E.2d 875. Ga. Code Ann. § 9-10-31.1](#).

****792** State Court, Douglas County, James E. "Eddie" Barker, Judge

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Opinion

[Benham](#), Justice.

***107** We granted certiorari in this case to resolve whether the trial court properly applied [OCGA § 9-10-31.1](#), Georgia's forum non conveniens statute, to dismiss a lawsuit filed in Georgia by residents of Michigan against a Georgia corporation in favor of it being filed in the foreign country where the underlying event occurred. For the reasons that follow, we conclude that [OCGA § 9-10-31.1](#) is inapplicable to the case at bar.

The facts relevant to this appeal are undisputed. While vacationing in the Dominican Republic in May 2014, Appellant Francis La Fontaine was injured in a fall from a collapsed zip-line at a course operated by Cumayasa Sky Adventures (CSA). She and her husband, Appellant Roberto Melendez, who are Michigan residents, filed a tort action in Douglas County State Court against Appellee Signature Research, Inc. Appellee is a Georgia corporation that inspected and certified the zip-line course operated by CSA. Appellee filed a motion to dismiss based on forum non conveniens saying it would submit to

***108** jurisdiction in the Dominican Republic and it would agree to extend the applicable statute of limitations period. Pursuant to [OCGA § 9-10-31.1](#), the trial court granted Appellee's motion because the

balance of private and public factors weighed in favor of adjudicating this matter in the Dominican Republic.

Appellants appealed the trial court's decision to the Georgia Court of Appeals on four grounds. See [La Fontaine v. Signature Research, Inc.](#), 342 Ga. App. 454, 803 S.E.2d 609 (2017).¹ Relevant here, the Court of Appeals relied on its earlier decision in [Hewett v. Raytheon Aircraft Co.](#), 273 Ga. App. 242, 248 (3), 614 S.E.2d 875 (2005),² to reject Appellants' ****793** argument that it was error to dismiss the case in favor of a foreign tribunal under the plain language of [OCGA § 9-10-31.1](#). [La Fontaine](#), 342 Ga. App. at 457 (2), 803 S.E.2d 609. Appellants' main argument in this Court is that [OCGA § 9-10-31.1](#) is inapplicable here because that statute only allows dismissals of actions to other states and not to other countries. We agree and consequently reverse the Court of Appeals' judgment.

[1] [2] [3] Determining whether [OCGA § 9-10-31.1](#) is applicable to this case is a matter of statutory construction which is a question of law subject to de novo review. See [Fulton County Bd. of Ed. v. Thomas](#), 299 Ga. 59, 61, 786 S.E.2d 628 (2016). “[T]he fundamental rules of statutory construction ... require us to construe the statute according to its own terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage.” [Lyman v. Cellchem Intl., Inc.](#), 300 Ga. 475, 477, 796 S.E.2d 255 (2017) (punctuation and citation omitted). In construing language in any one part of a statute, a court should consider the statute as a whole. See [id.](#)

[OCGA § 9-10-31.1](#) provides in relevant part:

(a) If a court of this state ... finds that in the interest of justice and for the convenience of the parties and witnesses a claim or action would be more properly heard in a forum ***109** outside this state ... the court shall decline to adjudicate the matter under the doctrine of forum non conveniens. *As to a claim or action that would be more properly heard in a forum outside this state*, the court shall dismiss the claim or action. ...


(b) A court may not dismiss a claim under this Code section until the defendant files with the court or with the clerk of the court a written stipulation that, with respect to a new action on the claim commenced by the plaintiff, *all the defendants waive the right to assert a statute of limitations defense in all other states of the United States* in which the claim was not barred by limitations at the time the claim was filed in this state as necessary to effect a tolling of the limitations periods in those states beginning on the date the claim was filed in this state and ending on the date the claim is dismissed.


(Emphasis added.)

[4] [OCGA § 9-10-31.1](#) was adopted in derogation of the common law³ and therefore “ ‘must be limited strictly to the meaning of the language employed, and not extended beyond the plain and explicit terms of the statute.’ ” [Wegman v. Wegman](#), 338 Ga. App. 648, 652 (1), 791 S.E.2d 431 (2016) (quoting [Couch v. Red Roof Inns](#), 291 Ga. 359, 364, 729 S.E.2d 378 (2012)).

[5] Considering the language of [OCGA § 9-10-31.1](#) as a whole and giving it its plain and ordinary meaning, dismissing a claim via statutory forum non conveniens when the alternative forum is a foreign country is not an action the trial court may take. [OCGA § 9-10-31.1 \(a\)](#) provides discretionary factors to help trial courts determine whether to grant a motion to dismiss an action or to transfer venue under the doctrine of forum non conveniens. Based on those factors, if a claim or action would be more properly heard in “a forum outside this state,” the trial court shall dismiss the claim or action. [OCGA § 9-10-31.1 \(a\)](#). Critically for this case, [OCGA § 9-10-31.1 \(b\)](#) provides ***110** that a court ****794** may not dismiss a claim via forum non conveniens until the defendant files a written stipulation that all defendants waive the right to assert a statute of limitations defense “in all other *states of the United States* in which the claim was not barred.” (Emphasis added.)

This requirement in [OCGA § 9-10-31.1 \(b\)](#) shows that a “forum outside this state” in subsection (a) can only be referring to forums in sister states. If the legislature had not included subsection (b), then the

“forum outside this state” language in subsection (a) might allow trial courts to dismiss cases in favor of forums in foreign countries. However, courts must ascertain the meaning of a statutory provision from the statute as a whole. See  [Lyman](#), 300 Ga. 475, 796 S.E.2d 255. The legislature included the requirement that defendants waive the right to assert a statute of limitations defense “in all other states of the United States” in subsection (b) in order for a claim or action to be dismissed. Reading the statute as Appellee urges, to include forums outside the United States, would make subsection (b)’s waiver requirement operate illogically.⁴ In cases like this one, a defendant would be unable to have a claim dismissed in favor of a forum in a foreign country unless it waived its right to raise a statute of limitations defense in 49 states where the defendant could not be sued in the first place, but the defendant would not have to waive this defense in the foreign country—the very place it argues should decide the case.




In sum, the courts cannot construe [OCGA § 9-10-31.1](#) to force an outcome that the legislature did not authorize. Strictly construed, [OCGA § 9-10-31.1](#) does not provide for dismissals of actions unless the claim should be moved to one of the other 49 states. Accordingly, the judgment of the Court of Appeals affirming the dismissal of Appellants’ action pursuant to [OCGA § 9-10-31.1](#) is reversed. We do not address whether the action may be transferred pursuant to [OCGA § 50-2-21](#),  [Sigala](#), 274 Ga. 137, 549 S.E.2d

[373](#), or on some other ground, as those theories have not been raised in and ruled on by the trial court.

Judgment reversed.

All the Justices concur, except [Peterson](#) and [Warren](#), JJ., who concur specially.

[Peterson](#), Justice, concurring specially.





*111 I am uncertain that the majority’s reading of the statute is the most reasonable construction, but it is certainly — at least — not unreasonable. And for me, that is enough, given that the constitutional concerns acknowledged — but not present — in  [Sigala](#) may well be present here. See  [AT&T Corp. v. Sigala](#), 274 Ga. 137, 140-141, 549 S.E.2d 373 (2001) (distinguishing cases where the parties “had an unqualified right under our constitution or federal statutes to litigate their claims in the courts of this state”); see also  [In the Interest of M. E.](#), 298 Ga. 138, 145-146, 780 S.E.2d 291 (2015) (applying canon of constitutional doubt to adopt statutory construction that “certainly [was] not unreasonable”).


I am authorized to state that Justice [Warren](#) joins in this concurrence.

All Citations

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Footnotes



- 1 The Court of Appeals declined to review Appellants’ first argument that [OCGA § 9-10-31.1](#) unconstitutionally invades a plaintiff’s right of access to the courts because the trial court did not rule on it.  [La Fontaine](#), 342 Ga. App. at 456 (1) (a), 803 S.E.2d 609 (citing [Pimper v. State](#), 274 Ga. 624, 627, 555 S.E.2d 459 (2001)). The court rejected Appellants’ second argument that  [AT&T Corp. v. Sigala](#), 274 Ga. 137, 549 S.E.2d 373 (2001), mandated that the trial court’s decision should be reversed because it concluded  [Sigala](#), which was decided four years prior to the enactment of [OCGA § 9-10-31.1](#), was superseded by the statute.  [La Fontaine](#), 342 Ga. App. at 457 (1) (b), 803 S.E.2d 609. Finally, the Court of Appeals rejected Appellants’ argument


that the trial court abused its discretion when granting the motion to dismiss under the factors provided in [OCGA § 9-10-31.1 \(a\)](#).  [La Fontaine](#), 342 Ga. App. at 458 (3), 803 S.E.2d 609.

2 Overruled on other grounds by [Wang v. Liu](#), 292 Ga. 568, 569 (1), 740 S.E.2d 136 (2013).



3 At common law, Georgia courts had no inherent authority to dismiss cases based on forum non conveniens when jurisdiction was otherwise granted by the Georgia Constitution or by statute. See [Wegman v. Wegman](#), 338 Ga. App. 648, 651 (1), 791 S.E.2d 431 (2016). Accordingly, the doctrine of forum non conveniens in Georgia is “generally controlled by statutory provisions.”

 [Holtsclaw v. Holtsclaw](#), 269 Ga. 163-164, 496 S.E.2d 262 (1998); see also  [AT&T Corp. v. Sigala](#), 274 Ga. at 141, 549 S.E.2d 373 (stating that statutes codifying the doctrine of forum

non conveniens will prevail over the common law). In  [Sigala](#), this Court relied on its “inherent judicial power” to “adopt the doctrine of forum non conveniens for use in lawsuits brought in state courts by nonresident aliens who suffer injuries outside this country.”  [Sigala](#), 274 Ga. at 139,

[549 S.E.2d 373](#). However, since  [Sigala](#) was decided in 2001, the legislature enacted [OCGA § 50-2-21](#) and [§ 9-10-31.1](#) in 2003 and 2005 respectively to create a statutory framework for the application of forum non conveniens in Georgia. See Ga. L. 2003, pp. 824-825, § 5; Ga. L. 2005, pp. 2-3, § 2.

4 In reaching this result, we need to overrule  [Hewett v. Raytheon Aircraft Co.](#), 273 Ga. App. 242,

[614 S.E.2d 875 \(2005\)](#). In  [Hewett](#), [OCGA § 9-10-31.1](#) was invoked to dismiss a case from a Georgia court even though the defendant was arguing that the case should be dismissed to Australia. Although the Court of Appeals stated in a footnote that Kansas could still serve as a possible forum for the suit, the Court of Appeals affirmed the trial court’s dismissal of the case in favor of Australia. Therefore,  [Hewett](#)’s holding that [OCGA § 9-10-31.1](#) can be used to dismiss a case in favor of a forum in another country is overruled.