Domestic Relations

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Legislative amendments to family and domestic law occupied center stage during the survey year. Amendments based on *Orr v. Orr*,[1] together with extensive revisions to the already complex adoption laws received the most attention. However, the amendment to the Appellate Practice Act substituting appeal by petition for the former appeal of right may have the most dramatic impact on practice.

Even with the active role taken by the legislature, the courts were far from silent. More than 150 cases were decided in the field of domestic and family law, most of which broke no new ground. Alimony, custody, and adoption cases received the most attention and the more significant of those, together with miscellaneous decisions on enforcement, property division, and annulment are reported here.

I. Annulment

In *McKinney v. McKinney*,[2] the "wife" was granted an annulment upon a showing that the "husband" had a pre-existing undissolved marriage unknown to the petitioner and that the voided union had produced no children. The supreme court also upheld the division of the parties' property. As an incident to general equitable powers courts can partition jointly owned property and can restore the *status quo ante* of property brought into the "marriage." In addition, attorney fees were allowed the petitioner under Georgia Code Ann. § 53-605 (1974) as a "responsibility occasioned by such marriage." Since the "husband" was the wrongdoer, he would not be heard to complain when the "wife" sought restoration of her former status.

II. Custody

A. *Parent v. Parent Controversies*

In *Westmoreland v. Westmoreland*,[3] the court held that the election of a fourteen year old gives the chosen custodian a prima facie right to cus-

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1. 99 S. Ct. 1102 (1979).
2. 242 Ga. 607, 250 S.E.2d 470 (1978).
3. 243 Ga. 77, 252 S.E.2d 496 (1979).

tody which can be defeated only by a showing of present unfitness. Moreover, awarding permanent custody of one such electing child to a parent is alone a sufficient change in condition to warrant the change of custody of a younger child as well.[4]

Sanders v. Sanders[5] featured an international custody dispute. The husband was a resident of Georgia and the wife was a British subject. She sued for divorce in England and obtained an interlocutory award of custody. To enforce her award, she filed habeas corpus proceedings against the husband in Georgia. The supreme court found no prima facie right to custody in the husband under Georgia Code Ann. § 74-107 (Supp. 1979). Habeas corpus is available to fix custody as well as to remedy illegal restraint. That remedy obtains even without divorce proceedings since "[i]n all writs of habeas corpus sued out on account of the detention of the child, the court on hearing all the facts, may exercise its discretion as to whom the custody of such child shall be given."[6] The court noted that the English order was not entitled to comity since the foreign trial court was without jurisdiction over the husband.

B. Parent v. Third Party Controversies

Paternal grandparents lacked standing under Georgia Code Ann. § 74-112 (Supp. 1979) to petition for visitation rights in an adoption proceeding where the father's parental rights were forfeited for non-compliance with a child support decree.[7] Moreover, maternal grandparents may not bring a habeas corpus petition against the natural father without some legal claim to custody.[8]

By way of contrast, the natural father's bid for habeas corpus relief against the maternal grandmother fell short in *Higbee v. Tuck*.[9] The previous year the grandmother had won custody in a habeas corpus proceeding. To prevail in the subsequent proceeding the father needed to prove changed conditions, and a mere showing that he had married the woman with whom he lived at the time of the former proceeding was held insufficient.

C. Procedure

In a per curiam opinion the supreme court reversed a trial court's denial of a motion to set aside a default judgment in a child custody habeas corpus case.[10] In such cases there can be no judgment by default; the

4. *Id.*
5. 242 Ga. 641, 250 S.E.2d 488 (1978).
6. *Id.* at 643, 250 S.E.2d at 489-90.
7. Mead v. Owens, 149 Ga. App. 303, 254 S.E.2d 431 (1979).
8. Spitz v. Holland, 243 Ga. 9, 252 S.E.2d 406 (1979).
9. 242 Ga. 376, 249 S.E.2d 62 (1978).
10. Wright v. Sanford, 243 Ga. 252, 253 S.E.2d 764 (1979) (habeas corpus).

allegations of the pleadings must be established by evidence.

Past cases have held that, in the absence of waiver, it is error to decide the issue of child custody on the basis of a Department of Family and Children Services report when the losing parent is denied access to that report.[11] In a questionable decision, the supreme court held that counsel for both parties could waive access to a welfare department report by signing a consent form which provided no more than "[s]aid report is to be confidential to the Courts."[12] Such reports are often replete with hearsay and opinion and offend the bases of the rules of evidence. Almost necessarily, however, they will significantly affect the court's decision. Reliance on such information appears inconsistent with adversarial process and waiver of access to the report by counsel is not good practice. Any such waiver should be intentional, voluntary, unambiguous, and of record. The decision in *Brown* upholds a waiver that is, at best, ambiguous and encourages such informal proceedings.

In *Parker v. Parker*,[13] the wife unsuccessfully sought contempt against the husband for nonpayment of child support. The trial court not only denied relief, but, on its own motion, temporarily placed custody of the children in the local welfare department. In reversing, the supreme court noted that *visitation* rights may be modified on contempt or at any time without a showing of changed conditions and on motion of either party or the trial court. However, *custody* cannot be changed "without a new proceeding based upon evidence showing a change in circumstances affecting the interest and welfare of the minor children."[14]

However, the supreme court reversed the trial court in *Shook v. Shook*[15] for refusing relief to a husband who had been denied all visitation for two years despite frequent requests. The husband argued that the divorce decree provision for "reasonable visitation" was unworkable and, in addition to contempt, sought specification of times and places for visits. Despite the wife's protest that the children were afraid of the husband and refused to visit, the court held:

> Appellant was not shown to be an unfit parent in either the original divorce proceeding or the present action. Therefore, we find that the trial judge abused his discretion in refusing to specify times, places and circumstances for visitation where the parties had been unable to agree between themselves. The desires of the children under 14 years of age in not wanting to visit their father is [*sic*] not sufficient to deny appellant his rights of visitation. (Citations omitted.) They may, however, be taken

11. *See*, McNabb v. Carver, 242 Ga. 526, 250 S.E.2d 447 (1978).
12. Brown v. Brown, 243 Ga. 423, 254 S.E.2d 371 (1979).
13. 242 Ga. 64, 247 S.E.2d 862 (1978).
14. *Id.* at 66, 247 S.E.2d at 863.
15. 242 Ga. 55, 247 S.E.2d 855 (1978).

into consideration by the trial judge in deciding appropriate circumstances under which appellant may visit the children.[16]

III. Alimony And Child Support

A. *The Obligation*

Bryan v. Bryan[17] judicially confirmed the backward step taken by the Georgia General Assembly in the 1977 amendment to Georgia Code Ann. § 30-201 (Supp. 1979).[18] At issue was the relevance of excluded evidence of the husband's adultery committed prior to the amendment. Noting that new section 30-201 makes evidence of the parties' misconduct relevant to the question of the *amount* of alimony, the court clarified the procedure to be followed:

> The factual cause of the parties' separation was made relevant to both the issues of entitlement and amount of alimony, regardless of the grounds on which the divorce is granted. Similarly, the husband's conduct toward the wife could be considered on the decision whether to grant alimony or not. As we read the statute, the considerations are in order as follows: 1- is wife barred entirely by adultery or desertion? 2- if not, the decision whether [footnote omitted] to grant her alimony should be made considering the factual cause of the separation and considering the husband's conduct toward her; and, finally 3- the amount of alimony should be set considering the factual cause of the separation, the wife's need and the husband's ability to pay.[19]

Application of this rule to pre-amendment conduct was not improper since the husband had no vested or substantive right to commit adultery and the rule changed was remedial in nature (evidentiary) and could validly operate retroactively.

However, the husband could *not* be asked by the wife's counsel whether he had committed adultery. Under Georgia Code Ann. § 38-1606 (Supp. 1979) a party is not competent to testify to his own or his spouse's adultery in a proceeding instituted in consequence of adultery. The court considered a lawsuit for alimony following a no-fault divorce to be a proceeding "instituted in consequence of adultery" when the wife seeks to prove the husband's adultery was the cause of their separation.[20] Therefore, Georgia Code Ann. § 38-1606 (Supp. 1979) applies and renders the husband incompetent to testify regarding his own adultery.

In light of such breathtakingly inconsistent rules of law, the need for a comprehensive revision of Georgia's divorce and alimony laws is dramatic.

16. *Id.* at 56-57, 247 S.E.2d at 856.
17. 242 Ga. 826, 251 S.E.2d 566 (1979).
18. Act of April 6, 1977, 1977 Ga. Laws 1253, 1256.
19. 242 Ga. at 827-28, 251 S.E.2d at 568.
20. *Id.* at 830, 251 S.E.2d at 569.

Proceedings such as those the Bryans endured fall little short of barbaric and are not dignified by complex procedural window dressing. Moreover, public airing of private conduct gets the trier of fact not one whit closer to a sensible resolution of pertinent alimony issues.

In another action a final decree of divorce granted on the pleadings was held not to constitute a pre-trial order which cuts off the right to amend under the Civil Practice Act.[21] Although a wife's remarriage eliminates her right to periodic alimony or alimony in gross, she may amend to seek a division of property on a resulting trust theory.[22]

In *Browne v. Browne*,[23] the wife appealed the grant of the husband's motion for summary judgment on her claim for permanent alimony. The husband argued that alimony was barred by a final order entered in a previous action for separate maintenance which was resolved by agreement of the parties. Rejecting that contention, the supreme court held that adjudication of alimony claims in the divorce proceeding superseded the separate maintenance award. The agreement did not provide that it was to be incorporated in a final decree of divorce, nor was there a clear waiver or other loss of the right to alimony.

Two cases involved the enforceability of certain obligations which had been imposed. In one case a divorce decree which made monthly alimony and child support obligations a charge against the husband's estate in the event of his death was held to be an unauthorized enlargement of his support obligation.[24] In the other an oral agreement *in judicio* to pay college expenses of a child was not enforceable since there was "[n]o *quid pro quo*" for such agreement.[25] Both decisions relied on *Clavin v. Clavin*.[26] Where the payor validly agrees to undertake such obligations, they remain enforceable under the rationale of *McClain v. McClain*.[27]

In *Worrell v. Worrell*,[28] although the husband was earning only $400 per month in a temporary job, he had just received his masters degree which he admitted gave him an annual earning capacity of $15,000. The court approved a child support award which was scaled to increases in the husband's earnings up to a maximum of one-third of his gross income in excess of a fixed sum.

The turmoil generated by *Orr* was short-lived when the General Assembly promptly enacted amendatory legislation deleting sexual based distinctions as a basis for entitlement to alimony.[29] However, during the in-

21. Price v. Price, 243 Ga. 4, 252 S.E.2d 402 (1979).
22. *Id.*
23. 242 Ga. 107, 249 S.E.2d 594 (1978).
24. Toney v. Toney, 242 Ga. 382, 249 S.E.2d 66 (1978).
25. Sherrard v. Sherrard, 242 Ga. 611, 250 S.E.2d 474 (1978).
26. 238 Ga. 421, 233 S.E.2d 151 (1977) (life insurance).
27. 235 Ga. 659, 221 S.E.2d 561 (1975).
28. 242 Ga. 44, 247 S.E.2d 847 (1978).
29. *See*, notes 79 to 86 *infra* and accompanying text for statutes affected by the decision.

terim between *Orr* and the legislative response, the supreme court upheld an award of temporary alimony to a wife in a divorce action, finding that the trial court's authority to grant such relief was derivative from and incidental to its power to grant divorces.[30] Nevertheless, in another interim case the "live-in-lover" statute[31] was found unconstitutional under *Orr*. Since the statute provided only for the modification of alimony awarded to the wife, this was considered a classification by gender.[32] Such constitutional challenges to the pre-amendment alimony laws are waived if not raised in the trial court.[33]

B. Modification of the Obligation

The case-by-case determination of whether the right to modify periodic alimony obligations had been waived received a welcome funeral in *Varn v. Varn*.[34] The supreme court adopted the rule that "parties to an alimony agreement may obtain modification unless the agreement expressly waives the right of modification by referring specifically to that right; the right to modification will be waived by agreement of the parties only in very clear waiver language which refers to the right of modification."[35] In a footnote the court further clarified its ruling: "The following waiver language will be deemed to comply with this requirement: 'The parties hereby waive their statutory right to future modifications, up or down, of the alimony payments provided for herein, based upon a change in the income or financial status of either party.' "[36] The decision applies to all alimony agreements entered into after November 23, 1978.[37]

The divorce decree in *Ivester v. Ivester*[38] provided for a monthly lump sum child support payment reducible by a fixed amount only on the majority of each child. The husband was not entitled to an automatic decrease where one child married while a minor and another, over fourteen, elected to live with him. The husband could petition for modification on the ground his living expenses had increased by reason of the electing child living with him, but, even then, a modification would not be mandated. Moreover, in *Gibson v. Giles*,[39] a decrease in the husband's net worth

30. Stitt v. Stitt, 243 Ga. 301, 253 S.E.2d 764 (1979).
31. Act of Apr. 6, 1977, 1977 Ga. Laws 1253-54.
32. Sims v. Sims, 243 Ga. 275, 253 S.E.2d 762 (1979).
33. Kosikowski v. Kosikowski, 243 Ga. 413, 254 S.E.2d 363 (1979).
34. 242 Ga. 309, 248 S.E.2d 667 (1978).
35. *Id.* at 311, 248 S.E.2d at 669.
36. *Id.*, n.1, 248 S.E.2d at 669 n.1.
37. Somewhat anticlimactically, two cases construed language in settlement agreements not to constitute waivers of modification rights. However, neither of the decisions was based on *Varn*. *See*, Cowan v. Cowan, 243 Ga. 25, 252 S.E.2d 454 (1979); Fech v. Fech, 241 Ga. 613, 247 S.E.2d 79 (1978).
38. 242 Ga. 386, 249 S.E.2d 69 (1978).
39. 242 Ga. 720, 251 S.E.2d 231 (1978).

brought about by the obligations imposed on him by the settlement agreement and increased living expenses occasioned by a new wife and child, was not such a change in financial status that would authorize a reduction in child support payments.

Where the wife requested the husband to make one-half of his child support payments to a lienholder, he was entitled to a credit for amounts so paid despite the decree's mandate of payment directly to the wife.[40] The court stated:

> This was not a modification or reduction in amount of support of the court decree. The husband paid the total amount decreed by the court every month. It was not a gratuitous payment. The wife agreed to the form of the payment used. The children received the benefit of the funds paid to the mortgage company as it provided them a home.[41]

In *Blue v. Blue*,[42] the supreme court held that a trial court has jurisdiction to modify alimony decrees of a sister state which have been domesticated in Georgia. The court stated that "[m]odification of a sister state decree does not offend the full faith and credit clause so long as the decree is modifiable by the rendering state."[43]

Finally, two cases addressed procedural issues. *McClain v. McClain*[44] held the 1977 amendments to Georgia Code Ann. § 30-220 (1969) do not apply retroactively and *Lamb v. Lamb*[45] held a Uniform Reciprocal Enforcement and Support Act (URESA) petition for modification would bar a petition filed under Georgia Code Ann. § 30-220 (Supp. 1979) if the former was filed within two years of the latter.

C. *Enforcement of the Obligation*

Trial courts now appear to have almost unlimited discretion to grant or refuse attorney fees to the petitioner in a contempt proceeding. In *Kight v. Kight*,[46] the court found the husband in non-wilful contempt, but awarded the wife attorney fees. Affirming the ruling, the supreme court held that the amendments to Georgia Code Ann. § 30-219 (1969) "which purport to control the trial judge's discretion in these matters have been repealed by implication by the recent amendment to Georgia Code Ann. § 30-202.1 (Supp. 1979)."[47] Conversely, the court in *Evans v. Evans*[48] held

40. Farmer v. Farmer, 147 Ga. App. 387, 249 S.E.2d 106 (1978).
41. *Id.* at 391, 249 S.E.2d at 109.
42. 243 Ga. 22, 252 S.E.2d 452 (1979).
43. *Id.* at 23, 252 S.E.2d at 453.
44. 241 Ga. 422, 246 S.E.2d 187 (1978).
45. 241 Ga. 545, 246 S.E.2d 665 (1978).
46. 242 Ga. 563, 250 S.E.2d 451 (1978).
47. *Id.* at 564, 250 S.E.2d at 452; Evans v. Evans, 242 Ga. 57, 247 S.E.2d 857 (1978); Swinson v. Swinson, 242 Ga. 305(2), 248 S.E.2d 675 (1978).
48. 242 Ga. 57, 247 S.E.2d 857 (1978).

that the trial court has discretion to refuse attorney fees for contempt of a temporary alimony order.

Three additional decisions relating to enforcement were handed down during the survey period. In *Duke v. Smith*,[49] the supreme court reaffirmed that the absence of a specific command to pay alimony is no longer a bar to enforcement by contempt.[50] In *Mitchell v. Koopu*,[51] the supreme court held that the trial court erred in denying the husband's motion to set aside a contempt order where it contained a provision that the husband would be jailed on the wife's affidavit that he failed to make support payments. The lack of a hearing was a denial of due process. Finally, the court in *Carter v. Carter*[52] held that a voluntary dismissal of a divorce complaint nullifies a prior temporary custody order since it lacks finality.

IV. Division Of Property

Property division squabbles continue to create triable issues in divorce cases. The 1979 amendment to Georgia Code Ann. § 53-502 (Supp. 1979), providing that both husbands and wives now have separate estates, promises to complicate the theory in this area. However, for the moment *Hargrett v. Hargrett*[53] succinctly sets forth the theories available to recapture property from a spouse in a form other than alimony.

At the time *Hargrett* was decided, husbands could not receive alimony from wives. A jury verdict declaring three conveyances of realty to the wife void was reversed since the husband had not shown entitlement to that relief on any of the legal bases:

> [T]here are at least three theories by which a husband in a divorce action may divest the wife of her interest in property without the necessity of showing an express written trust.
>
> *Resulting trust*: Where the husband purchases property with his funds but causes it to be placed in his wife's name, it is presumed to be a gift, but that presumption may be rebutted where a resulting trust is shown (citations omitted). . . .
>
> *Inceptive Fraud*: [also known as "constructive trust"] Where a promise of the wife was the consideration inducing execution of a deed, and such promise was fraudulently made with intent not to comply, such deed may be set aside for inceptive fraud (citations omitted). . . .
>
> *Partitioning of jointly held property*: Property, the title to which is owned jointly (e.g., realty which the parties hold as tenants-in-common),

49. 242 Ga. 207, 248 S.E.2d 617 (1978).

50. *See*, Stanley v. Stanley, 240 Ga. 856, 242 S.E.2d 626 (1978).

51. 242 Ga. 506, 249 S.E.2d 210 (1978).

52. 241 Ga. 335, 245 S.E.2d 292 (1978). The court relied on Foster v. Foster, 230 Ga. 658, 198 S.E.2d 881 (1973) and distinguished Burton v. Burton, 238 Ga. 394, 233 S.E.2d 367 (1977).

53. 242 Ga. 725, 251 S.E.2d 235 (1978).

> may be partitioned in a divorce action by the court as an equitable action.[54]

The husband's contention that adultery or a property settlement were separate grounds entitling him to relief was rejected.

Conveyances to a spouse may save taxes but their inherent risk is illuminated in *Griggs v. Griggs*.[55] There the husband transferred the family home to his wife for love and affection and for the admitted purpose of minimizing estate tax consequences. He testified that the parties agreed that the wife would reconvey the property to him should she predecease him or if the parties separated. Reversing the trial court's declaration that the husband was the equitable owner of the home, the supreme court stated:

> It is not improper for one spouse to deed property to the other spouse so as to minimize or eliminate estate tax liability, but it is improper for the parties to agree that notwithstanding such deed and claimed tax reduction the grantee holds the property in trust for the benefit of the grantor. A grantor in such a situation lacks clean hands.[56]

Finally, the grant of the husband's motion for summary judgment for title to personalty in the former wife's possession was error in *Lee v. Lee*.[57] The divorce complaint did not schedule personal property or pray for an award thereof. The final decree awarded child support but not alimony. Since the decree did not fully adjudicate the parties' rights to personalty, the separate title of each spouse was unaffected.

V. ADOPTION

In recent years, the statutory adoption rules concerning grounds for and proof of consent to adoption have received a wholesale face lift. The revisions, although doubtless intended to clarify consent (now called surrender) procedure and to facilitate adoptions in abandonment cases, have not yet had that effect. On the contrary, the adoption code is now technical and complicated and the courts are struggling to fix rules necessitated by the effective broadening of the abandonment ground.[58]

Essentially, the former law was structured to encourage the grant of petitions for adoption where the biological parents had affirmatively consented and to ensure protection of parental rights where consent did not exist.[59] The absence of consent was excused in obvious situations such as the death of a parent. Although abandonment of a child by a parent would

54. *Id.* at 727-28, 251 S.E.2d at 237-38.
55. 242 Ga. 96, 249 S.E.2d 566 (1978).
56. *Id.* at 98, 249 S.E.2d at 567.
57. 148 Ga. App. 321, 251 S.E.2d 171 (1978).
58. *See*, GA. CODE ANN. § 74-405 (Supp. 1979).
59. Act of March 27, 1941, 1941 Ga. Laws 300-01.

also excuse that person's consent, a finding of abandonment was almost never upheld.[60]

In 1950, the statute was amended to excuse consent for wilful noncompliance with a support decree for a period of twelve months or longer.[61] However, the courts strictly construed the amendment and cases sustaining grants of adoption when this ground was used to excuse consent were few.[62]

Twenty-seven years later the nonsupport ground was broadened to include "the case of a parent who has failed significantly without justifiable cause" either to comply with the support decree or "to communicate, or to make a bona fide attempt to communicate with the child."[63] In 1979 the "without justifiable cause" language was deleted and the court was required specifically to find that the adoption was "for the best interest of the child."[64]

The consent cases during the survey year appear to evidence a shifting of judicial preference away from protecting parental rights and toward the granting of adoptions. *Young v. Foster*[65] is the clearest example of this trend. The mother had custody of the three children by divorce decree but the two oldest elected to live with the father and were permitted to do so. The father never sought judicial modification of the divorce decree as to custody or support. Instead, acting on advice of counsel, he ceased making support payments to force visitation with the youngest child. Affirming the grant of the petition for adoption by the mother's new husband, the court of appeals had no patience with the father's reasons for nonpayment: "Notwithstanding the reasons for his actions, the appellant's nonpayments were intentional and constituted a voluntary abandonment. . . ."[66] Nor did the trial court err in refusing to hear the father's evidence to show the adoption was not in the best interest of the child. Since he had "abandoned" his child, his consent was unnecessary and he, therefore, lacked standing to object to the proceeding.

Although the conduct of the mother in *Young* in refusing visitation did not excuse the father's nonpayment, the mother in *Hix v. Patton*[67] was not so lucky. In that case, she told the father to cease making child support

60. *See,* Glendinning v. McComas, 188 Ga. 345, 3 S.E.2d 562 (1939); McComas v. Glendinning, 59 Ga. App. 234, 200 S.E. 304 (1938); Johnson v. Strickland, 88 Ga. App. 281, 76 S.E.2d 533 (1953).

61. GA. CODE ANN. § 74-403(2) (1964). Under the 1977 revision this section became GA. CODE ANN. § 74-405(a). Under the 1979 amendments it was renumbered § 74-405(b).

62. *See,* Hamrick v. Seward, 126 Ga. App. 5, 189 S.E.2d 882 (1972); Sale v. Leachman, 218 Ga. 834, 131 S.E.2d 185 (1963); Hamrick v. Riggins, 128 Ga. App. 479, 197 S.E.2d 145 (1973).

63. Adoption Act of 1977, 1977 Ga. Laws 201, 211.

64. GA. CODE ANN. § 74-405(b) (Supp. 1979).

65. 148 Ga. App. 737, 252 S.E.2d 680 (1979).

66. *Id.* at 739, 252 S.E.2d at 683.

67. 147 Ga. App. 14, 248 S.E.2d 28 (1978). *Compare,* Lanning v. Fiveash, 147 Ga. App. 290, 248 SE.2d 553 (1978) (consent excused for nonpayment).

payments. On those facts the trial court had discretion to hold that nonpayment was not wilful and wanton so as to constitute abandonment and excuse the father's consent to adoption.

In accordance with *Hix*, the nonpayment in *Ehrman v. Moser*[68] also did not excuse the requirement for the natural father's consent. In *Ehrman,* a written, post-divorce agreement between the former spouses was fully performed and relied upon by the father to end his support duty. This constituted "justifiable cause" within the meaning of Georgia Code Ann. § 74-405(a)(2) (Supp. 1977) and did not support excuse of the father's consent. The appellate court directed denial of the adoption petition.[69] Deletion of the "justifiable cause" language by the 1978 amendments[70] presumably would force the court to retreat to a *Hix* rationale to reach the same result.

Perhaps more important than the particular result reached or the reasoning used is judicial consistency. Georgia has long been a parental rights jurisdiction and adherence to those tenets requires strict construction of rules which encroach on the survival of the parent-child relationship. Yet recent years have produced numerous cases in the areas of adoption, termination of parental rights, and custody which are more compatible with a non-parental rights approach. Critics of Georgia's parent-child doctrine may find those decisions laudable. More to the point, they represent a profound conflict in Georgia's law of parent and child which, until it is resolved, will continue to make bedfellows of cases like *Young v. Foster* and *Hix v. Patton.*

Third parties continue to receive less cordial treatment in objecting to adoptions than do natural parents. In *Hester v. Mathis,*[71] the paternal grandfather lacked standing to object to the step-father's adoption petition despite his contention that grant of the petition would end the family bloodline. In this case, the only germane issues before the trial court were:

> (1) Does the surviving natural parent (mother) consent to the adoption of the child; (2) Is the adopting parent worthy and able to care for the child; and (3) Is the adoption for the best interest of the child? "The court is not required to declare the adoption unless all three of these factors unequivocally appear." (citations omitted)[72]

However, in *Joiner v. Smith,*[73] the trial court granted a motion to dismiss

68. 148 Ga. App. 857, 253 S.E.2d 216 (1979).

69. The court compared "justifiable cause" to the "justifiable reason" defense to contempt proceedings under GA. CODE ANN. § 30-219 (1969), comparing Meredith v. Meredith, 238 Ga. 595, 234 S.E.2d 510 (1977), where such reliance was a defense to contempt although ineffective to modify the divorce decree, with Daniel v. Daniel 239 Ga. 466, 238 S.E.2d 108 (1977).

70. GA. CODE ANN. § 74-405(b) (Supp. 1979).

71. 147 Ga. App. 257, 248 S.E.2d 538 (1978).

72. *Id.* at 258, 248 S.E.2d at 539.

73. 147 Ga. App. 165, 248 S.E.2d 296 (1978).

the father's objections to the adoption petition because they were filed later than ten days after the petition.[74] Even though the father was shown by evidence not to have manifested interest in the child until the petition was filed, due process guarantees of a hearing on parental fitness will not be frustrated solely on procedural grounds.

In *Sachs v. Walzer*,[75] the maternal grandparents unsuccessfully sought contempt against the natural father for refusing their court ordered visitation. The father defended on the ground that adoption by his new wife operated to terminate visitation rights. The court held that public policy favored adoptions and, moreover, that adoption was a change of conditions allowing modification of visitation rights under Georgia Code Ann. § 74-107(b) (Supp. 1979).

Finally, the denial by the trial court of an adult adoption petition without a hearing was reversed with directions to hear evidence.[76] The court cited Georgia Code Ann. § 74-420 (1973) and stated that while the language concerning hearings was "couched in discretionary terms [it] does not permit a trial judge to deny without a hearing an adult adoption."[77]

VI. LEGISLATION

As indicated at the outset of this article, legislative activity was preeminent during the survey year. Responding to the ruling of the United States Supreme Court that sexually based alimony laws were not constitutional, the Georgia General Assembly amended the entire family and domestic relations law to make alimony available to both husbands and wives,[78] to provide a separate estate for both spouses,[79] to repeal restrictions on the binding of a wife's separate estate,[80] to repeal protection of a wife's acquisitions while living separate from her husband,[81] and to eliminate the husband's liability for necessities supplied to his separated spouse.[82] Sexual based rules affecting custody of children were also modified to delete that constitutional flaw.[83] Under the recent amendments, rights of action for adultery, alienation of affections, and criminal conversation were abolished[84] and both parents may now sue for the wrongful death of a child.[85]

74. *See*, GA. CODE ANN. § 74-414 (1973), now GA. CODE ANN. § 74-411 (Supp. 1979). The ten day requirement has been deleted in the current code section.
75. 242 Ga. 742, 251 S.E.2d 302 (1978).
76. *In re* Chambers, 147 Ga. App. 536, 249 S.E.2d 343 (1978).
77. *Id.*
78. GA. CODE ANN. tit. 30 (Supp. 1979).
79. GA. CODE ANN. § 53-502 (Supp. 1979).
80. GA. CODE ANN. § 53-503 (Supp. 1979).
81. GA. CODE ANN. § 53-507 (Supp. 1979).
82. GA. CODE ANN. §§ 53-508, -509, -510, -512 (Supp. 1979).
83. GA. CODE ANN. §§ 74-105, -106, -108, -202 (Supp. 1979).
84. GA. CODE ANN. § 105-1203 (Supp. 1979).
85. GA. CODE ANN. § 105-1307 (Supp. 1979).

Amendments to the adoption laws[86] were also extensive. The petitioner must now be a Georgia resident for at least six months immediately preceding the filing of the petition for adoption.[87] The petitioner is affirmatively required "to cooperate fully" with the Department of Human Resources in its investigation.[88] Numerous changes were made regarding surrender of parental rights or the excuse thereof,[89] and notice to putative fathers.[90] Additional requirements for the content of the petition were enacted.[91]

URESA was amended to provide a procedure for registration of foreign support orders and to enable their subsequent enforcement and modification.[92] In addition, an office of child support receiver was created to collect payments directed by court order or by written agreement providing for such payment through the receiver.[93]

Last, but by no means least, appeal of right has been supplanted by a petition procedure similar to the present interlocutory appeal in caees of divorce, alimony, child custody, and contempt arising from alimony or child custody judgments.[94] The amendment applies to all orders and judgments entered after July 1, 1979, and should dramatically reduce the volume of domestic appellate decisions in the future.

86. GA. CODE ANN. ch. 74-4 (Supp. 1979).
87. GA. CODE ANN. § 74-402 (Supp. 1979).
88. GA. CODE ANN. §§ 74-404(c)(1),(2) (Supp. 1979).
89. GA. CODE ANN. §§ 74-404(c)(5),(6), -405 (Supp. 1979).
90. GA. CODE ANN. §§ 74-406 (a),(b) (Supp. 1979).
91. GA. CODE ANN. §§ 74-407(a) (Supp. 1979).
92. GA. CODE ANN. §§ 99-933(a) to -939(a) (Supp. 1979).
93. GA. CODE ANN. ch. 24-27A (Supp. 1979).
94. GA. CODE ANN. § 6-701 (Supp. 1979).