Domestic Relations

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Of the domestic relations cases decided by the Georgia Supreme Court and the Georgia Court of Appeals during the survey period,[1] twenty-seven are digested here. Possibly the most notable events of the survey period were pieces of legislation that were not enacted. A bill to restore direct appeals for certain domestic relations cases did not make it to the Governor's desk, and the Governor vetoed a bill that would have required trial judges hearing custody cases to consider the custodial elections of children between the ages of twelve and fourteen.[2] While the Georgia General Assembly otherwise focused on ways to aid in enforcing child support judgments, the appellate courts addressed a variety of issues.

I. Divorce Procedure

The supreme court reviewed two cases in which one spouse sought to set aside the divorce decree obtained by the other. In *Wright v. Wright*,[3] the supreme court held that the husband's motion to set aside the parties' divorce decree should have been granted.[4] When the husband's attorney withdrew his representation, the order stated that further notices should be sent to the husband. When the trial court scheduled

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1. This Article chronicles developments in Georgia domestic relations law from June 1, 1998 to May 31, 1999.
2. H.R. 534, Reg. Sess. (Ga. 1999); H.R. 407, Reg. Sess. (Ga. 1999).
3. 270 Ga. 229, 509 S.E.2d 902 (1998).
4. *Id.* at 229-30, 509 S.E.2d at 902-03.

the final trial, the court did not mail the husband notice because of a clerical error. Two days before trial, the wife's counsel issued the husband a subpoena for the production of documents. Believing the wife provided inadequate notice, the husband did not respond to the subpoena. The trial court struck the husband's answer and demand for jury trial and entered a decree of divorce. Subsequently, the trial court denied the husband's motion to set aside the judgment.[5] On discretionary appeal, the supreme court reversed, finding that the wife provided insufficient notice of the trial.[6] The subpoena may have put the husband on notice that something was scheduled in the case; however, the husband was entitled to notice of the specific nature of the scheduled hearing.[7]

In *Pierce v. Pierce*,[8] the supreme court again held that procedural errors warranted setting aside the parties' divorce decree.[9] The husband obtained permission to serve the wife by publication, stating the wife's last known address was "General Delivery, Kansas." After obtaining the divorce, the husband mailed the decree to the former marital home in Missouri, and the postal service forwarded the decree to the wife's new address in Missouri. The wife moved to set aside the decree, alleging that the husband's petition contained material misrepresentations and that the husband knew the wife's phone number as well as the addresses and phone numbers of her lawyer and parents in Kansas.[10] The supreme court held that a party must use due diligence to discover the opposing party's address and still be unable to locate that party before service by publication is warranted.[11] The issues raised by the wife's motion to set aside the divorce decree demonstrated the husband's lack of due diligence.[12]

In *Shah v. Shah*,[13] the supreme court held that a party may not add independent tort claims against a third-party defendant in a divorce case.[14] The wife added her father-in-law as a third-party defendant based on her allegations that the husband was fraudulently conveying marital assets to his father. Alleging fraud, the wife then added tort

5. *Id.*
6. *Id.* at 231, 509 S.E.2d at 904.
7. *Id.*
8. 270 Ga. 416, 511 S.E.2d 157 (1999).
9. *Id.* at 417-18, 511 S.E.2d at 157-58.
10. *Id.* at 416-17, 511 S.E.2d at 157.
11. *Id.* at 418, 511 S.E.2d at 158 (citing Abba Gana v. Abba Gana, 251 Ga. 340, 343, 304 S.E.2d 909, 912 (1983)).
12. *Id.*
13. 270 Ga. 649, 513 S.E.2d 730 (1999).
14. *Id.* at 651, 513 S.E.2d at 732.

claims against her father-in-law. The jury returned a verdict in favor of the wife.[15] While Georgia law expressly allows one spouse in a divorce case to join claims against the other spouse, the code is silent as to the joinder of claims against a third-party defendant, except when a fradulent conveyance claim is present.[16] Absent statutory authorization, the supreme court held that the jury in the divorce case was not entitled to consider the tort claims against the father-in-law.[17]

II. CHILD SUPPORT

In *Gruben v. Gittelman*,[18] the supreme court held that a trial court correctly refused to grant a motion to set aside a divorce decree based solely on an order of child support that was inconsistent with the Child Support Guidelines.[19] A jury verdict obligated the father to pay $1250 per month as support for the parties' one child.[20] Although the Guidelines suggest that child support should be in the range of seventeen to twenty-three percent of the father's gross income,[21] the jury verdict required that the father pay only eight percent of his gross income.[22] The verdict found no special circumstances to justify deviating from the Guidelines. Seventeen months later, the wife filed a motion to set aside the divorce decree.[23] The court found that the wife failed to exercise due diligence by failing to object to the verdict when it was rendered.[24] Absent due diligence or a showing that the interests of the child were adversely affected by the amount of child support awarded, she was not entitled to have her motion granted.[25]

In *Bradley v. Bradley*,[26] the supreme court held that a trial court lacked the authority to award the child dependency exemption to the noncustodial parent.[27] When the parties were unable to reach agreement on all the issues in their divorce case, they agreed to submit the

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15. *Id.* at 649-50, 513 S.E.2d at 731.
16. *Id.* at 650-51, 513 S.E.2d at 731 (citing O.C.G.A. § 9-11-18 (1993)).
17. *Id.* at 651, 513 S.E.2d at 731-32.
18. 269 Ga. 686, 502 S.E.2d 220 (1998).
19. *Id.* at 686, 502 S.E.2d at 221. The Child Support Guidelines are codified at O.C.G.A. § 19-6-15 (1999).
20. 269 Ga. at 687, 502 S.E.2d at 221.
21. O.C.G.A. § 19-6-15(b)(5) (1999).
22. 269 Ga. at 686, 502 S.E.2d at 220.
23. *Id.*, 502 S.E.2d at 220-21.
24. *Id.* at 687, 502 S.E.2d at 221-22.
25. *Id.* at 687-88, 502 S.E.2d at 221-22 (citing O.C.G.A. § 9-11-60(d); Marshall v. Marshall, 257 Ga. 494, 495, 360 S.E.2d 572, 573-74 (1987)).
26. 270 Ga. 488, 512 S.E.2d 248 (1999) (4-3 decision).
27. *Id.* at 489, 512 S.E.2d at 250.

remaining issues to the trial court. The trial court awarded the dependency exemption to the noncustodial parent and ordered a reduction in child support if the other parent successfully appealed the issue.[28] Relying on the rationale in *Blanchard v. Blanchard*,[29] the supreme court held that the trial court lacked the authority to award the dependency exemption to the noncustodial parent.[30] A contrary result would (1) provide the state with a taxation power reserved to the federal government, (2) prevent uniformity as contemplated by the federal statute, and (3) burden Georgia courts with case-by-case determinations.[31] The court further held that the automatic reduction of child support was invalid because the reduction set child support outside the Child Support Guidelines without enumerating any special circumstances warranting the departure.[32] The dissent found no merit in the majority's rationale and noted that most states have ruled in favor of allowing their courts to determine which parent receives the dependency exemption.[33]

In *Koch v. Martin*,[34] the supreme court reversed the trial court's ruling that the father was entitled to offset dependent social security disability payments against his child support obligation.[35] Prior to the divorce, the father began receiving social security disability payments, and the parties' child began receiving dependent social security disability payments.[36] While previous Georgia cases allowed offsets of disability payments against child support obligations, none of them involved disability payments that began prior to the divorce.[37] Because the basis of the parties' child support award was the father's receipt of disability benefits and not the child's dependency benefits, the trial court erred in allowing the offset.[38]

In *Mooney v. Mooney*,[39] the court of appeals held that a party could sustain an action for child support based on promissory estoppel.[40] The wife alleged that she agreed to become the guardian of her grandchild

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28. *Id.* at 488, 512 S.E.2d at 249.
29. 261 Ga. 11, 401 S.E.2d 714 (1991).
30. 270 Ga. at 488-89, 512 S.E.2d at 249.
31. *Id.* at 488, 512 S.E.2d at 249.
32. *Id.* at 489, 512 S.E.2d at 249-50.
33. *Id.* at 489-90, 512 S.E.2d at 250 (Fletcher, P.J., dissenting).
34. 270 Ga. 419, 510 S.E.2d 520 (1999).
35. *Id.* at 419, 510 S.E.2d at 520.
36. *Id.*
37. *Id.* at 419-20, 510 S.E.2d at 521 (citing Perteet v. Sumner, 246 Ga. 182, 182, 269 S.E.2d 453, 454 (1980); Horton v. Horton, 219 Ga. 177, 178, 132 S.E.2d 200, 201 (1963)).
38. *Id.* at 420, 510 S.E.2d at 521.
39. 235 Ga. App. 117, 508 S.E.2d 766 (1998).
40. *Id.* at 120, 508 S.E.2d at 769.

in exchange for her husband's promise to contribute to the support of the child. When the parties divorced, no provision was made for child support. The wife then filed an action seeking support based on the custody award. The trial court dismissed the action, holding that the husband could not be compelled, absent an agreement, to support his grandchild.[41] The appellate court reversed, finding that the mother presented sufficient evidence to allow her case to proceed on the theory of promissory estoppel.[42] According to the court, an obligation to pay child support can arise from "'parentage or contract.'"[43]

III. MODIFICATION OF CHILD SUPPORT

In *Wingard v. Paris*,[44] the supreme court was asked to interpret the modification statute.[45] The supreme court held that the custodial parent need only show that either the noncustodial parent's income or the child's needs have increased to obtain a modification of child support.[46] The trial court found that the father's income had substantially increased but then erroneously denied the request for modification because the mother had not proven an increase in the child's needs.[47] The supreme court found that because modifications are permitted upon a showing of a "'change in the income and financial status of either former spouse *or* in the needs of the child,'" the trial court misapplied the statute by requiring the mother to show both a change in the father's income *and* the needs of the child.[48]

The court of appeals also decided issues concerning the Full Faith & Credit for Child Support Orders Act ("FFCCSOA").[49] In *Connell v. Woodward*,[50] the court of appeals held that Georgia courts cannot modify Florida child support orders when one party continues to reside in Florida.[51] While the father was in Georgia visiting the parties' child, the mother had the father served with a petition to domesticate the Florida child support judgment, a petition to modify child support, and a motion for contempt. When the father did not appear for the hearing,

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41. *Id.* at 117-18, 508 S.E.2d at 767-68.
42. *Id.* at 120, 508 S.E.2d at 769.
43. *Id.* at 119, 508 S.E.2d at 768 (quoting Wright v. Newman, 266 Ga. 519, 519, 467 S.E.2d 533, 534 (1996)).
44. 270 Ga. 439, 511 S.E.2d 167 (1999).
45. O.C.G.A. § 19-6-19 (1999).
46. 270 Ga. at 439, 511 S.E.2d at 168.
47. *Id.*
48. *Id.* (quoting O.C.G.A. § 19-6-19(a) (1999)) (emphasis added by court).
49. 28 U.S.C. § 1738B (1994 & Supp. III 1997).
50. 235 Ga. App. 751, 509 S.E.2d 647 (1998).
51. *Id.* at 754, 509 S.E.2d at 649-50.

the mother received the relief she requested. The father then filed a motion to set aside, which the trial court denied.[52] The appellate court agreed with the father that Florida retained continuing, exclusive jurisdiction under the FFCCSOA.[53] A state retains continuing, exclusive jurisdiction if the state remains the residence of the child or either parent.[54] Even though the father was served in Georgia, his permanent residence in Florida prevented Georgia from exercising jurisdiction over the child support issues.[55] The fact that the parties' child support order was entered prior to the enactment of the FFCCSOA was of no consequence.[56] The FFCCSOA applies to all child support modification actions initiated after its effective date, regardless of the date of the underlying order.[57]

In *Department of Human Resources v. Fenner*,[58] the court of appeals held that the trial court improperly granted the father temporary relief from a child support judgment based on the father's allegation of fraud.[59] The mother obtained a child support order in Connecticut. When she tried to obtain enforcement in Georgia through the Department of Human Resources, the father questioned paternity and alleged fraud on the mother's part.[60] While the appellate court held that fraud is a valid defense to an action under FFCCSOA, the facts of the father's case prevented him from sustaining his burden of proof.[61] The issue of paternity was raised before entry of the Connecticut order.[62] The father's failure to investigate at the time of the divorce was the result of the father's negligence, not any misrepresentation by the mother.[63] A party seeking to set aside a judgment based on fraud cannot be contributorily negligent as the father was in this case.[64]

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52. *Id.* at 752, 509 S.E.2d at 648.
53. *Id.*
54. *Id.*
55. *Id.* at 754, 509 S.E.2d at 649-50.
56. *Id.*, 509 S.E.2d at 650.
57. *Id.*
58. 235 Ga. App. 233, 510 S.E.2d 534 (1998).
59. *Id.* at 233, 510 S.E.2d at 535.
60. *Id.*
61. *Id.*
62. *Id.* at 235, 510 S.E.2d at 536.
63. *Id.*, 510 S.E.2d at 536-37.
64. *Id.* at 234-35, 510 S.E.2d at 536 (citing O.C.G.A. § 9-11-60(d)(2) (1993)).

IV. MODIFICATION OF ALIMONY

The supreme court addressed two cases in which it found interlocutory modifications of alimony to be inappropriate. In *Cannon v. Cannon*,[65] the supreme court reversed the trial court's grant of a temporary modification of alimony.[66] Despite the fact that the parties' divorce settlement included a waiver of the right to modify alimony by both parties, the ex-husband filed an action to decrease alimony based on a change in his financial condition. The trial court granted interlocutory relief. While the appeal was pending, the ex-wife died.[67] Because there was still an issue of the amount of alimony due to her estate, her appeal was not rendered moot by her death.[68] When the right to modify spousal support has been waived in unambiguous terms, as in this case, the waiver is enforceable.[69]

In *Wilson v. Wilson*,[70] the supreme court again reversed a trial court's grant of a temporary modification of alimony.[71] When the ex-husband filed an action to modify alimony, the ex-wife filed a counter-complaint for contempt. The trial court granted the ex-husband temporary relief. After he was found to be in contempt, however, he voluntarily dismissed his modification action. Eight months later, he filed another action to modify alimony. The ex-wife argued that section 19-6-19 of the Official Code of Georgia Annotated ("O.C.G.A.") barred the ex-husband from filing a second modification action within two years of the first. The trial court held that the voluntary dismissal was not a "final order;" therefore, the two-year bar was not triggered.[72] The supreme court reversed the trial court.[73] Because the first action resulted in significant litigation, including a temporary modification of support, the court reasoned that O.C.G.A. section 19-6-19 applied and that the ex-husband's case should have been dismissed.[74]

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65. 270 Ga. 640, 514 S.E.2d 204 (1999).
66. *Id.* at 641, 514 S.E.2d at 205.
67. *Id.* at 640-41, 514 S.E.2d at 205.
68. *Id.* at 641, 514 S.E.2d at 205.
69. *Id.* (citing Varn v. Varn, 242 Ga. 309, 311, 248 S.E.2d 667, 669 (1978)).
70. 270 Ga. 479, 512 S.E.2d 255 (1999).
71. *Id.* at 479, 512 S.E.2d at 256.
72. *Id.*
73. *Id.* at 481, 512 S.E.2d at 258.
74. *Id.*, 512 S.E.2d at 257-58.

V. MODIFICATION OF CHILD CUSTODY

When the court of appeals reviewed custody modification cases relating to Georgia decrees during the survey period, the court was determining primarily whether the facts justified the trial courts' rulings. In *Daniel v. Daniel*,[75] the court of appeals affirmed the change of custody to the father.[76] The mother challenged the sufficiency of the evidence that justified modification. Since the parties' divorce in 1992, their child had been diagnosed with asthma. Despite the diagnosis, the mother and her live-in boyfriend continued to smoke in the child's presence. The child required several visits to a doctor for respiratory problems while in the mother's care.[77] Based on these facts, the trial court was authorized to change custody because of a change in circumstances since the divorce decree.[78]

In *Tenney v. Tenney*,[79] the court of appeals held that a trial court cannot modify a custody order without a showing of a change in circumstances affecting the welfare of the child.[80] The original custody award vested primary physical custody with the father. When the father contemplated a move to Florida, the mother petitioned for custody. The father's job offer in Florida was retracted and the father decided not to move. The trial court modified the custody order to provide that custody would be transferred to the mother if the father moved to Florida. The trial court then held that if the father wanted to move and retain custody, he could provide the mother with the names of five psychologists from which the mother could select one to evaluate the effects that a move would have on their child and to report to the trial court for a final custody determination.[81] Reversing the trial court, the court of appeals held that a move to Florida and the child's fears concerning the move were insufficient reasons to modify custody.[82] Furthermore, the trial court's provision for a psychological evaluation was improper.[83] The entry of a final order ends the case, and the trial court cannot retain jurisdiction to open the case without either party filing a new action.[84]

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75. 235 Ga. App. 184, 509 S.E.2d 117 (1998).
76. *Id.* at 184, 509 S.E.2d at 119.
77. *Id.* at 184-85, 509 S.E.2d at 119.
78. *Id.* at 184-86, 509 S.E.2d at 119-20.
79. 235 Ga. App. 128, 508 S.E.2d 487 (1998).
80. *Id.* at 129, 508 S.E.2d at 489.
81. *Id.* at 128-29, 508 S.E.2d at 488.
82. *Id.* at 130, 508 S.E.2d at 489.
83. *Id.*
84. *Id.*, 508 S.E.2d at 489-90.

In *Mock v. Smith*,[85] the court of appeals held that Georgia courts have jurisdiction to modify child custody orders even when the custodial parent is a nonresident.[86] The mother was in the process of moving from Arizona to California. During the transition, the mother came to Georgia to visit her mother. The father had the mother served in Georgia with a complaint to change custody. The father, a Georgia resident, was exercising extended visitation with the parties' children.[87] The trial court ruled that it lacked jurisdiction, but the court of appeals reversed.[88] Georgia courts may exercise jurisdiction over child custody issues when one party is a Georgia resident and substantial evidence exists in the state concerning the children's care.[89] Because the mother had no plans to return to Arizona, little relevant evidence would be found there.[90] Furthermore, because the children had not yet even visited California, the evidence in California would have been minimal.[91] However, the children spent each summer in Georgia and had relatives from each parent's family there.[92] Hence, jurisdiction in Georgia was proper.[93]

When the courts considered modification cases involving foreign custody awards, the rulings were more procedural in nature. The court of appeals vacated two modification orders because the plaintiffs attempted to modify foreign judgments without having the foreign decrees properly domesticated; thus, the trial courts lacked subject matter jurisdiction to modify custody.[94]

VI. CUSTODY: THIRD PARTIES

Georgia's appellate courts decided several cases involving the rights of third parties and children. In *In re A.P.H.*,[95] the court of appeals

85. 233 Ga. App. 36, 503 S.E.2d 319 (1998).
86. *Id.* at 36, 503 S.E.2d at 319.
87. *Id.*
88. *Id.*
89. *Id.* at 38, 503 S.E.2d at 321.
90. *Id.*, 503 S.E.2d at 320.
91. *Id.*, 503 S.E.2d at 320-21.
92. *Id.*, 503 S.E.2d at 321.
93. *Id.*
94. Wylie v. Blatchley, 237 Ga. App. 563, 564, 515 S.E.2d 855, 856 (1999); Kempton v. Richards, 233 Ga. App. 238, 238, 503 S.E.2d 876, 876-77 (1998). Each plaintiff filed a copy of the foreign decree as an exhibit to the modification action; however, neither plaintiff requested that the foreign decree be domesticated. 237 Ga. App. at 564, 515 S.E.2d at 856; 233 Ga. App. at 238, 503 S.E.2d at 876-77.
95. 236 Ga. App. 762, 514 S.E.2d 46 (1999).

reversed an award of custody to the child's former stepfather.[96] During the parties' marriage, the wife's son from a previous relationship developed a strong bond with his stepfather. After the divorce, the fifteen-year-old boy decided he preferred to reside with his former stepfather. The stepfather filed a deprivation action to seek custody. The only evidence of deprivation was the child's claim that his mother sometimes was out late on dates. After the trial court granted custody to the stepfather, the mother appealed.[97] The appellate court reversed the trial court, holding that the evidence was insufficient to support a clear and convincing case that the child was deprived.[98] The uncontroverted evidence showed that an adult supervised the child when his mother was on dates.[99] Because the child was not denied food, clothing, or shelter, the evidence did not support a finding of deprivation.[100] The trial court was not entitled to use the "best interests of the child" standard to award custody to a third party.[101] The decision of the fifteen-year-old child did not govern the case because a stepfather is not a parent within the meaning of O.C.G.A. section 19-9-3.[102]

A former stepfather fared much better in *In re J.S.G.*,[103] in which the court of appeals allowed him to become the adoptive father of his stepson.[104] The trial court previously denied the adoption petition for two reasons. First, the former stepfather's divorce from the child's mother meant he was no longer a stepfather within the meaning of the statute authorizing stepparent adoptions. Second, the adoption statute requires that a married person seeking to adopt a child must file jointly with the spouse. The stepfather had remarried since his divorce from the child's mother. The trial court found that the new wife was not entitled to adopt because the child had a natural mother.[105] The court of appeals held the trial court's construction of the statute was too narrow.[106] Georgia law has not defined the term "stepparent" to have any time restrictions.[107] Citing the unusual circumstances, the

96. *Id.* at 763-64, 514 S.E.2d at 47-48.
97. *Id.* at 762-63, 514 S.E.2d at 47.
98. *Id.* at 763, 514 S.E.2d at 47-48.
99. *Id.* at 762, 514 S.E.2d at 47.
100. *Id.* at 763, 514 S.E.2d at 48.
101. *Id.* (citing *In re* R.L.L. & J.M.L., 258 Ga. 628, 628, 373 S.E.2d 363, 364 (1998); Carvalho v. Lewis, 247 Ga. 94, 94, 274 S.E.2d 471, 472 (1981); *In re* J.C.P., 167 Ga. App. 572, 573, 307 S.E.2d 1, 2 (1983)).
102. *Id.*
103. 233 Ga. App. 690, 505 S.E.2d 70 (1998).
104. *Id.* at 690, 505 S.E.2d at 70.
105. *Id.* at 690-91, 505 S.E.2d at 70-71.
106. *Id.* at 691-92, 505 S.E.2d at 71.
107. *Id.* at 691, 505 S.E.2d at 71.

appellate court decided that the adoption was in the child's best interests and that substance should prevail over form.[108]

The constitutionality of Georgia's grandparent visitation statute is yet to be decided by the appellate courts. The original grandparent visitation statute was held unconstitutional in 1995.[109] The legislature revised the statute in 1996,[110] and although challenges to the new statute have been made at the trial court level, the appellate courts have not yet addressed the constitutionality on appeal. In *Rogers v. Barnett*,[111] the court of appeals affirmed the trial court's grant of visitation rights to the maternal grandmother over the mother's objections.[112] The mother's appeal contained only parts of the transcript; therefore, the court of appeals could not consider the sufficiency of the evidence.[113] The court of appeals refused to transfer the mother's constitutional challenges to the statute to the supreme court because she did not properly raise them at the trial court level.[114]

VII. CONTEMPT

In contempt cases, the appellate courts were frequently faced with determining whether the defendant's justification was satisfactory to show that the contempt was not willful. In *Turman v. Boleman*,[115] the court of appeals affirmed the trial court's refusal to hold the father in contempt; however, the appellate court held that part of the parties' settlement agreement was unenforceable.[116] During the parties' divorce case, they agreed that the wife would not exercise visitation in the presence of any African-American male. The agreement was made a judgment of the court. When the mother married an African-American, the father refused to allow the mother to exercise visitation outside his home, and the mother filed a contempt action. The trial court found that the visitation restriction was enforceable as an agreement between the parties and, therefore, that the father was not in violation of the parties' divorce decree.[117] The court of appeals held that, while the father's reliance on the language of the decree prevented

108. *Id.* at 692, 505 S.E.2d at 71.
109. *See* Brooks v. Parkerson, 265 Ga. 189, 193-94, 454 S.E.2d 769, 773-74 (1995).
110. *See* O.C.G.A. § 19-7-3 (1999).
111. 237 Ga. App. 301, 514 S.E.2d 443 (1999).
112. *Id.* at 301, 514 S.E.2d at 444.
113. *Id.*, 514 S.E.2d at 444-45.
114. *Id.* at 302-03, 514 S.E.2d at 445.
115. 235 Ga. App. 243, 510 S.E.2d 532 (1998).
116. *Id.* at 243, 510 S.E.2d at 533.
117. *Id.* at 244, 510 S.E.2d at 534.

him from being in willful contempt, the language was unenforceable as against public policy and could not be relied upon in the future.[118]

In *Brown v. Brown*,[119] the supreme court held that the 1997 amendment to the dormancy statute, which exempted spousal and child support judgments from the definition of dormant judgments, was not retroactive in its application.[120] Prior to the amendment's passage, the former wife filed a contempt action for nonpayment of alimony dating back as far as ten years and for any portion of the alimony that was dormant. The former husband argued that he was not in contempt because the payments in question were for a time period when the wife was involved in a meretricious relationship. The trial court agreed with the former husband, and the former wife appealed.[121] The supreme court held that the parties' divorce decree did not provide for an automatic termination of alimony upon the recipient's engaging in a meretricious relationship.[122] Absent such a provision, the former husband was not entitled to cease making the payments without an order from the trial court.[123] Any evidence of a "meretricious relationship would not be relevant to excuse retroactively [the husband's] failure to pay."[124] The supreme court then noted that the legislature provided no indication that the revised dormancy statute was to be applied retroactively.[125] Absent any signs that the legislature intended the statute to be applied retroactively, the supreme court held the statute to be inapplicable to judgments entered before July 1, 1997.[126] The former wife was entitled to seek only the arrearage that accrued within ten years of the filing of her contempt action.[127]

In *Kirkendall v. Decker*,[128] the supreme court upheld the trial court's finding that the ex-husband was in willful violation of the life insurance provisions of the parties' divorce decree.[129] The decree required the ex-husband to maintain life insurance, and the trial court held that the provision was not satisfied by an accidental death policy. Although the divorce decree stated that the ex-husband already had life insurance

118. *Id.* at 245, 510 S.E.2d at 534.
119. 269 Ga. 724, 506 S.E.2d 108 (1998).
120. *Id.* at 726-27, 506 S.E.2d at 110 (citing O.C.G.A. § 9-12-60(d) (Supp. 1999)).
121. *Id.* at 725, 506 S.E.2d at 109.
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.* at 726-27, 506 S.E.2d at 110.
126. *Id.* at 727, 506 S.E.2d at 110.
127. *Id.*
128. 271 Ga. 189, 516 S.E.2d 73 (1999).
129. *Id.* at 189, 516 S.E.2d at 74.

coverage and required him to maintain that coverage, the existing policy, in reality, was an accidental death policy, not a whole-life or term-life insurance policy.[130] The purpose of the life insurance provision was to secure the award of alimony.[131] This purpose might not have been served under an accidental death policy.[132] Finding that an accidental death policy is not the same as life insurance and that life insurance was expressly required by the decree, the trial court was authorized to find the ex-husband in contempt.[133]

In *Ford v. Ford*,[134] the supreme court reversed the contempt order entered against the father.[135] In a previous contempt action, the father was found to be in arrears regarding medical expenses for the parties' children. The trial court ordered the father to pay a certain sum immediately. In a letter to the judge, the mother requested a telephonic hearing and that the father be held in contempt. The trial judge sent counsel for both parties a letter stating that he received the letter from the mother's counsel and that he was setting a date for the telephonic hearing. The judge did not refer to the substance of the letter. Even though the father paid the arrearage prior to the hearing, the trial court found the father to be in criminal contempt.[136] The supreme court held that the trial court's letter failed to give the father adequate notice of the charge on which he was expected to defend himself.[137] Furthermore, the father's participation in the telephonic conference did not waive his right to object to a violation of his due process rights.[138]

VIII. CONTEMPT: PROCEDURE

The appellate courts were also faced with procedural issues arising out of contempt cases. In *Schmidt v. Schmidt*,[139] the supreme court ruled that appeals from orders under the Family Violence Act,[140] including contempt of family violence orders, "must come by discretionary application and that jurisdiciton lies in the Court of Appeals of Georgia."[141] Because the Family Violence Act is codified in Title 19

130. *Id.* at 190, 516 S.E.2d at 74.
131. *Id.* at 191, 516 S.E.2d at 75.
132. *Id.*
133. *Id.*
134. 270 Ga. 314, 509 S.E.2d 612 (1998).
135. *Id.* at 314, 509 S.E.2d at 613.
136. *Id.* at 315, 509 S.E.2d at 613.
137. *Id.*
138. *Id.* at 316, 509 S.E.2d at 614-15.
139. 270 Ga. 461, 510 S.E.2d 810 (1999).
140. O.C.G.A. §§ 19-13-1 to -34 (1999).
141. 270 Ga. at 461, 510 S.E.2d at 811.

and because Uniform Superior Court Rule 24.1[142] lists actions under the Family Violence Act as being within the scope of domestic relations, the supreme court held that a discretionary appeal is required.[143] As a matter of public policy, the supreme court noted that discretionary appeals provide the ability for expedited review, which is appropriate in cases under the Family Violence Act.[144] Because the supreme court only has appellate jurisdiction over cases involving divorce and alimony, neither of which are issues under the Family Violence Act, the court of appeals would always have jurisdiction over an appeal under the Act.[145]

In *Corbett v. Corbett*,[146] the court of appeals held that when a plaintiff files a petition for modification in a county other than the one issuing the divorce decree, venue rules do not prevent filing a motion for contempt with a complaint to change custody.[147] The parties divorced in Macon County. The father later filed an action to change custody in Terrell County, which was where the mother resided. He also sought to have the mother held in contempt for violations of the visitation provisions. The trial court declined to change custody but found the mother to be in contempt.[148] Although venue for a contempt action generally lies in the county where the decree was entered, there are exceptions.[149] The supreme court has permitted contempt actions to be filed as counter-complaints to modification actions.[150] Using this rationale—that flexibility is required by the unique nature of divorce cases—the court of appeals affirmed the trial court's judgment.[151]

In *Lewis v. Lewis*,[152] the supreme court reversed the trial court's order requiring child support payments to be withheld from the mother until she complied with the divorce decree.[153] The mother, a resident of Mississippi, objected to personal jurisdiction after being served in Mississippi with the father's contempt action. Although the trial court

142. GA. UNIF. SUPER. CT. R. 24.1.

143. 270 Ga. at 461-62, 510 S.E.2d at 811.

144. *Id.* at 462, 510 S.E.2d at 811.

145. *Id.*, 510 S.E.2d at 812 (citing GA. CONST. art. VI, § 5, para. 3; GA. CONST. art. VI, § 6, para. 3(b)).

146. 236 Ga. App. 299, 511 S.E.2d 633 (1999).

147. *Id.* at 301-02, 511 S.E.2d at 635.

148. *Id.* at 299-300, 511 S.E.2d at 633-34.

149. *Id.* at 300, 511 S.E.2d at 634 (citing Gignilliat v. Gentry, 217 Ga. App. 518, 519-20, 457 S.E.2d 833, 835 (1995)).

150. *Id.* (citing Buckholts v. Buckholts, 251 Ga. 58, 302 S.E.2d 676 (1983)).

151. *Id.* at 301-02, 511 S.E.2d at 634-35 (citing *Buckholts*, 251 Ga. at 59-60, 302 S.E.2d at 678).

152. 270 Ga. 409, 509 S.E.2d 926 (1999).

153. *Id.* at 409, 509 S.E.2d at 927.

granted the mother's motion to dismiss for lack of personal jurisdiction, the court ordered the father to begin making support payments to the Child Support Receiver, instead of to the mother, until she complied with the divorce decree.[154] The supreme court reversed, holding that once the trial court determined that it lacked personal jurisdiction, the trial court was without authority to make any substantive rulings in the case.[155] The supreme court further held that the trial court's order making the receipt of child support contingent on allowing visitation was error.[156]

IX. LEGISLATION

Recent legislation continued to center on the enforcement of child support orders. Contempt cases seeking to enforce alimony or child support orders are now filed as part of the underlying case and do not require a new filing fee.[157] Registrations for salespersons or investment advisor representatives can now be withheld for failure to comply with a child support order.[158] Finally, in compliance with federal mandates, the general assembly enacted legislation establishing and funding a child support registry to receive certain support payments, including those ordered to be paid through income deduction orders.[159]

154. *Id.* at 409-10, 509 S.E.2d at 927.
155. *Id.* at 410, 509 S.E.2d at 927-28.
156. *Id.*, 509 S.E.2d at 928.
157. O.C.G.A. § 19-6-28 (1999).
158. *Id.* § 10-5-4(e)-(f) (Supp. 1999).
159. *Id.* §§ 19-6-32 to -33.1 (1999).