Domestic Relations

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I. INTRODUCTION

This Article addresses significant case law that arose during the survey period.[1] There were no extensive statutory changes specific to domestic relations during this period, though legislation was passed by the Georgia General Assembly providing limitations on personal information allowed in court filings.

II. JURISDICTION, VENUE, AND PROCEDURAL ISSUES

Two cases during the survey period addressed questions of subject matter jurisdiction. In *Crutchfield v. Lawson*,[2] the parties divorced in Paulding County, and the former wife filed a subsequent contempt action in Cobb County. The former husband challenged Cobb County's jurisdiction, though at a hearing the parties had consented to the court's jurisdiction on the record. After the husband was held in contempt, he moved to set aside the contempt judgment based on a lack of subject

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1. This Survey focuses on developments in Georgia domestic relations law from June 1, 2013 to May 31, 2014. For an analysis of Georgia domestic relations law during the prior survey period, see Barry B. McGough & Elinor H. Hitt, *Domestic Relations, Annual Survey of Georgia Law*, 65 MERCER L. REV. 107 (2013).

2. 294 Ga. 407, 754 S.E.2d 50 (2014).

matter jurisdiction.[3] Subject matter jurisdiction is the power or authority to hear a class of cases, and "may not be waived by consent of the parties."[4] Superior courts have the authority to hear an action for contempt of a Georgia divorce decree; thus, subject matter jurisdiction in the superior court was proper.[5]

The real issue was which superior court could properly hear this particular case–a question of venue.[6] However, venue may be waived or conferred by consent, as happened here when the parties consented on the record to the case being heard in Cobb County.[7] The trial court's judgment was affirmed.[8]

In *Barfield v. Butterworth*,[9] the subject matter jurisdiction of a superior court versus that of a probate court was at issue.[10] On April 13, 2012, the maternal grandmother filed a petition in superior court seeking custody of her grandchild, H.H. On April 25, 2012, the paternal grandmother was issued letters of temporary guardianship over H.H. by the probate court. The paternal grandmother moved to dismiss the maternal grandmother's custody petition, arguing the superior court lacked subject matter jurisdiction to dissolve the letters of temporary guardianship she obtained. The trial court properly denied the motion.[11]

The temporary guardianship did not deprive the superior court of jurisdiction to determine whether permanent custody should be awarded to the maternal grandmother.[12] "Superior courts have 'original jurisdiction over contests for permanent child custody . . . between parents, *parents and third parties*, or between parties who are not parents.'"[13] Further, as a custody dispute between non-parents, the matter was required to be determined according to the best interests of the child.[14] The temporary guardianship did not preclude the custody

3. *Id.* at 407-08, 754 S.E.2d at 51.
4. *Id.* at 409, 754 S.E.2d at 52 (quoting Robinson v. Attapulgus Clay Co., 55 Ga. App. 141, 144, 189 S.E. 555, 558 (1937)).
5. *Id.*
6. *Id.*
7. *Id.* at 410, 754 S.E.2d at 52-53.
8. *Id.* at 410, 754 S.E.2d at 53.
9. 323 Ga. App. 156, 746 S.E.2d 819 (2013).
10. *Id.* at 156, 746 S.E.2d at 820.
11. *Id.* at 156-57, 746 S.E.2d at 820.
12. *Id.* at 160, 746 S.E.2d at 823.
13. *Id.* at 158, 746 S.E.2d at 821 (quoting Stone-Crosby v. Mickens-Cook, 318 Ga. App. 313, 314, 733 S.E.2d 842, 844 (2012)).
14. *Id.* at 159, 746 S.E.2d at 822.

proceeding, and any resulting custody award would supersede the temporary guardianship.[15]

Court filings are now to be redacted in a manner which precludes inclusion of certain sensitive information, including complete dates of birth, social security numbers, tax identification numbers, and financial account numbers.[16] The birth year may be included, but not the day or month, and only the last four digits of the other numbers may be used.[17]

III. DISCOVERY

In *Rutter v. Rutter*,[18] the Georgia Supreme Court reversed the Georgia Court of Appeals.[19] During the parties' divorce case, the husband moved to exclude evidence that the wife derived from video surveillance devices surreptitiously installed in the marital residence.[20]

The husband argued that the wife's use of the devices was a violation of section 16-11-62(2) of the Official Code of Georgia Annotated (O.C.G.A.),[21] which makes it unlawful for one to conduct video surveillance of another in a private place, out of public view, and without his consent.[22] Evidence obtained in violation of O.C.G.A. § 16-11-62[23] is not admissible in court.[24]

In denying the husband's motion to exclude, the trial court relied on O.C.G.A. § 16-11-62(2)(C), which provides an exception to the general prohibition and expressly permits one to conduct video surveillance of persons "within the curtilage of [her own] residence" for "security purposes, crime prevention, or crime detection."[25] The court of appeals affirmed the trial court, holding that subparagraph (2)(C) survived a 2000 amendment to the statute.[26] In reversing the lower court, the supreme court held that the 2000 amendment eliminated the "curtilage"

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15. *Id.* at 160, 746 S.E.2d at 823.

16. O.C.G.A. § 9-11-7.1 (2014). There are certain exemptions made to this general rule. *See* O.C.G.A. § 9-11-7.1(c).

17. O.C.G.A. § 9-11-7.1(a).

18. 294 Ga. 1, 749 S.E.2d 657 (2013).

19. *Id.* at 2, 749 S.E.2d at 658.

20. *Id.* at 1, 749 S.E.2d at 657.

21. O.C.G.A. § 16-11-62(2) (2011).

22. *Rutter*, 291 Ga. at 1 & n.1, 749 S.E.2d at 657 & n.1; *see also* O.C.G.A. § 16-11-62(2).

23. O.C.G.A. § 16-11-62 (2011).

24. O.C.G.A. § 16-11-67 (2011).

25. *Rutter*, 291 Ga. at 1 & n.2, 749 S.E.2d at 657-58 & n.2 (quoting O.C.G.A. § 16-11-62(2)(C)).

26. *Id.* at 2, 749 S.E.2d at 658.

exception of subparagraph (2)(C) by implication and the evidence should have been excluded.[27]

IV. FAMILY VIOLENCE

In *Mandt v. Lovell*,[28] the Georgia Supreme Court granted certiorari to determine under what circumstances, if any, a trial court, pursuant to O.C.G.A. § 19-13-4,[29] may subsequently modify a permanent protective order (PPO).[30] Based on changed circumstances, the trial court partially granted the father's motion to terminate a family violence PPO entered against him two years earlier.[31]

The supreme court agreed with the court of appeals in holding that the trial court had the authority to terminate portions of the PPO even though the court term in which the PPO was entered had expired.[32] Generally, a trial court lacks jurisdiction to make material changes to a final order after the expiration of the term of court in which it was entered.[33] Yet, "[j]udgments that govern continuing or recurring courses of conduct may be subject to modification even though the power of doing so is not expressly provided."[34] A PPO is a continuing judgment, and therefore is subject to modification at any time based upon changed circumstances.[35]

V. LEGITIMATION

Administrative legitimation was spotlighted in two cases reviewed by the Georgia Court of Appeals this survey period. In *Ray v. Hann*,[36] the minor child, A.C.R., was born out-of-wedlock in 2008.[37] Before leaving the hospital, Ray, the father, and Peterson, the mother, signed an acknowledgment of paternity and legitimation which provided that Ray's relationship with A.C.R. "shall be considered legitimate for all purposes under the law pursuant to O.C.G.A. § 19-7-22(g)(2)."[38]

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27. *Id.* at 2-3, 749 S.E.2d at 658-59.
28. 293 Ga. 807, 750 S.E.2d 134 (2013).
29. O.C.G.A. § 19-13-4 (2010).
30. *Mandt*, 293 Ga. at 808, 750 S.E.2d at 135.
31. *Id.* at 807-08, 750 S.E.2d at 135.
32. *Id.* at 808-10, 750 S.E.2d at 135-37.
33. *See id.* at 809, 750 S.E.2d at 136.
34. *Id.* (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 73 cmt. b (1982)).
35. *Id.* at 810, 750 S.E.2d at 136.
36. 323 Ga. App. 45, 746 S.E.2d 600 (2013).
37. *Id.* at 45, 746 S.E.2d at 602.
38. *Id.* at 45-46, 746 S.E.2d at 602; *see also* O.C.G.A. § 19-7-22(g)(2) (2010 & Supp. 2014); O.C.G.A. § 19-7-46.1 (2010).

In 2012, A.C.R.'s stepfather filed a petition to adopt the child, and Ray filed a petition to legitimate and opposed the stepparent adoption. The trial court was aware of the acknowledgment of paternity and legitimation; however, the court granted the stepfather's adoption petition, denied Ray's petition to legitimate, and terminated Ray's parental rights.[39] The court of appeals held that the trial court's denial of Ray's petition to legitimate was an abuse of discretion.[40] The acknowledgment of paternity and legitimation rendered Ray's relationship with A.C.R. legitimate, and Ray remained the child's legal father "unless and until his parental rights have been terminated."[41]

In *Allifi v. Raider*,[42] a different outcome occurred.[43] The day after the birth of T.R. in 2008, the mother and the father signed an acknowledgment of paternity and legitimation. In September 2010, the father filed a petition to legitimate T.R., which was denied. The trial court found that, based on the evidence of the father's drug use and irresponsible behavior, legitimation was not in T.R.'s best interest. The father moved to set aside the judgment denying his legitimation petition, and that motion was granted. The trial court found that the original order was based upon a mistake of fact and was pre-empted by the parties' acknowledgment of legitimation.[44] The appellate court determined this was error because a party is precluded from setting aside a judgment on a ground which he knew or could have discovered through reasonable diligence.[45] The father was aware of his voluntary acknowledgment of paternity at the time he filed his legitimation petition, and he should have brought it to the trial court's attention prior to judgment on his legitimation petition.[46] The father cannot now use the existence of this document as a basis to set aside the trial court's final judgment thereon.[47]

VI. CHILD CUSTODY

While the appellate courts reviewed numerous appeals regarding child custody during this survey period, four cases of note are highlighted

39. *Ray*, 323 Ga. App. at 46, 746 S.E.2d at 602.
40. *Id.* at 47, 746 S.E.2d at 603.
41. *Id.*
42. 323 Ga. App. 510, 746 S.E.2d 763 (2013).
43. *See id.* at 514, 746 S.E.2d at 766-67.
44. *Id.* at 510-11, 746 S.E.2d at 764-65.
45. *Id.* at 513, 746 S.E.2d at 766.
46. *Id.*
47. *Id.*

herein. In *Sahibzada v. Sahibzada*,[48] international travel restrictions were at issue.[49] The trial court entered a final decree of divorce, which provided that, until they reached the age of sixteen, the parties' two minor sons could not travel outside the United States without the wife's consent.[50] The supreme court affirmed the lower court because the evidence showed that the husband frequently travelled outside the country without communicating his whereabouts to his wife, the paternal relatives could travel to the United States to visit the children, and the wife may have difficulty asserting her custodial rights in Pakistan where she was a non-citizen and her husband was a citizen.[51]

In *Donohoe v. Donohoe*,[52] access to records of the Department of Family and Children's Services (DFACS) were at issue.[53] Two reports had been made to DFACS regarding the custodial father's treatment of the parties' minor child.[54] The mother "filed a motion for subpoena of the DFACS records . . ., asking the trial court to review the records to determine if the records were necessary to resolve any issues before the court and, if so, to release those records to the parties."[55] The court did not rule on the mother's motion. However, in rendering its final order, the trial court noted it had reviewed the DFACS records and used information from the records in reaching its verdict.[56] The court of appeals held that the trial court erred in relying on the DFACS records, as the records were never entered into evidence and no one from DFACS testified, and the court erred in declining to provide the mother access to the records.[57]

Driver v. Sene[58] reminds us that even when there is a material change in circumstances that would justify a modification of child custody, such a change still must be in the child's best interest. The father petitioned to modify custody, seeking primary custody of the parties' three children who were seventeen, fifteen, and twelve. The trial court granted the petition regarding the oldest child and it denied the request to change custody of the two youngest children. The father

48. 294 Ga. 783, 757 S.E.2d 51 (2014).
49. *Id.* at 783-84, 757 S.E.2d at 52.
50. *Id.* at 783, 757 S.E.2d at 52.
51. *Id.* at 785-86, 757 S.E.2d at 53-54.
52. 323 Ga. App. 473, 746 S.E.2d 185 (2013).
53. *Id.* at 474, 746 S.E.2d at 186.
54. *Id.*
55. *Id.*
56. *Id.* at 475, 477, 746 S.E.2d at 186-87, 188.
57. *Id.* at 477, 746 S.E.2d at 188.
58. 327 Ga. App. 275, 758 S.E.2d 613 (2014).

appealed, arguing that the court erred in failing to honor his fifteen-year-old son's affidavit of election to live with him.[59]

The court of appeals upheld the lower court's ruling, finding that the election of a child fourteen or older to live with one parent over the other is presumptive, but the election may be overridden based on the child's best interest.[60] The evidence showed that the fifteen-year-old has a developmental disorder, which required medication, specialized education, therapy, and counseling; the mother had historically been more involved in the child's care; and the child vacillated in his election of the custodial parent during the litigation.[61]

A custody dispute between a parent and third party was the subject of appeal in *Entrekin v. Friedman,*[62] a case involving the presumption that a surviving parent is entitled to custody.[63] This presumption can be overcome by clear and convincing evidence that the surviving parent is unfit.[64] After the custodial father's death, the paternal aunt refused to return the child to the mother. The mother filed a writ of habeas corpus, which was denied, and the aunt filed a petition for custody, which was granted.[65]

The supreme court upheld the lower court.[66] Evidence supported the trial court's finding that the mother was unfit: the mother had struggled with alcohol and drug addiction; she had a criminal history and other misconduct related to her addictions; and she was unaware of the child's special needs, notwithstanding her access to the child's educational and medical records.[67]

VII. CHILD SUPPORT

During this survey period, the appellate courts highlighted the necessity of adhering to statutorily correct procedures in preparing child support orders. In *Demmons v. Wilson-Demmons,*[68] the supreme court vacated and remanded the trial court's final order in the parties' divorce action because the final order failed to include "a written finding of the

59. *Id.* at 275, 758 S.E.2d at 615.
60. *Id.* at 277, 758 S.E.2d at 616.
61. *Id.* at 277-78, 758 S.E.2d at 616.
62. 294 Ga. 429, 754 S.E.2d 14 (2014).
63. *See id.* at 430, 754 S.E.2d at 16.
64. *Id.*
65. *Id.* at 429, 754 S.E.2d at 15-16.
66. *Id.* at 429, 754 S.E.2d at 16.
67. *Id.* at 430-31, 754 S.E.2d at 16-17.
68. 293 Ga. 349, 745 S.E.2d 645 (2013).

parent[s'] gross income[s] as determined by the court."[69] The court explained that the order would not have been remanded if the court had simply incorporated the gross monthly income from a child support worksheet into the final order through attachment therein.[70]

In *Williamson v. Williamson*,[71] the father filed a petition to modify child support and custody, and following a trial, the court ruled that the parties would continue to have joint custody but allocated 60% of parenting time to the father and 40% to the mother.[72] The court also ordered the father to pay child support to the mother, but the amount was reduced by a parenting-time deviation for the father's increased parenting time.[73]

The father appealed, arguing that the final order made him the "custodial parent," and therefore, the court erred in requiring him to pay child support to the mother.[74] The supreme court disagreed, stating that the final order did not explicitly find either party to be the custodial parent and that it was not necessary for the order to include such information.[75] However, because the order awarded the father more than 50% of the parenting time, the father was the custodial parent, and the mother was the non-custodial parent for purposes of applying the child support guidelines.[76] The court referred to *James v. James*,[77] which held that a court may require a custodial parent to pay child support to the non-custodial parent where it is in the best interests of the child to do so[78] for support.[79]

Consequently, the court reversed and remanded the trial court's order because the trial court improperly decreased the father's child support by applying a parenting-time deviation when a parenting-time deviation may only be applied to a non-custodial parent's child support amount.[80]

In *Crook v. Crook*,[81] the supreme court reversed and remanded the trial court's order on the mother's petition for modification of child

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69. *Id.* at 349, 745 S.E.2d at 646 (alteration in original) (quoting O.C.G.A. § 19-6-15(c)(2)(C) (2010)).
70. *Id.* at 349-50, 745 S.E.2d at 464.
71. 293 Ga. 721, 748 S.E.2d 679 (2013).
72. *Id.* at 721-22, 748 S.E.2d at 679.
73. *Id.* at 722, 748 S.E.2d at 679-80.
74. *Id.* at 722, 748 S.E.2d at 680.
75. *Id.* at 722-23, 748 S.E.2d at 680.
76. *Id.* at 723, 748 S.E.2d at 680; *see also* O.C.G.A. §§ 19-6-15(a)(9), (a)(14) (2010).
77. 246 Ga. 233, 271 S.E.2d 151 (1980).
78. *Id.* at 233, 271 S.E.2d at 152.
79. *Williamson*, 293 Ga. at 724, 748 S.E.2d at 681.
80. *Id.* at 726, 748 S.E.2d at 682-83; *see* O.C.G.A. § 19-6-15(a)(17) (2010).
81. 293 Ga. 867, 750 S.E.2d 334 (2013).

custody and support because the order failed to comply with the statutory guideline requiring the inclusion of findings of fact.[82] The trial court's order did not incorporate a child support worksheet and made no findings regarding the presumptive amount of child support or deviations but merely stated that the father's child support obligation was $1,000 per month because of shared custody and the history of the parties.[83] It is clear from the appellate court's holdings, above, that trial courts must strictly adhere to the child support guidelines in drafting final orders.

The supreme court's holding in *Strunk v. Strunk*[84] involved a variety of child support related issues.[85] The mother appealed the trial court's downward modification of child support sought by the father.[86] The supreme court upheld the trial court's finding that the father's "new employment [as a mortgage loan processor] and the economic realities of the mortgage industry constituted a material change of circumstances" warranting a downward modification of child support where "the industry has been unstable, downsizing, and affected by the recession."[87]

In keeping with the appellate courts' trend regarding strict adherence to child support guidelines, the court reversed the portion of the trial court's order related to the father's $200-per-month travel deviation because the order failed to state the reasoning behind departing from the presumptive amount to grant the deviation.[88] The court held that the trial court did not abuse its discretion in granting a downward adjustment to the father's gross income due to his newborn child living in his home because the father testified about the relationship at the hearing but failed to present documentary evidence of his parent-child relationship, and the mother failed to argue this issue at the hearing.[89]

Finally, the court reversed the portion of the trial court's order that set forth a payment schedule for the father's child support arrearage.[90] The trial court ordered the father to pay $96,000 owed in child support arrearage by paying "$250 per month until the child support obligation ended and then $1,000 per month until the arrearage was paid in

82. *Id.* at 867, 869, 750 S.E.2d at 335, 336.
83. *Id.* at 867-68, 750 S.E.2d at 335-36.
84. 294 Ga. 280, 754 S.E.2d 1 (2013).
85. *Id.* at 280, 754 S.E.2d at 2.
86. *Id.*
87. *Id.* at 280-82, 754 S.E.2d at 2-3.
88. *Id.* at 282, 754 S.E.2d at 3.
89. *Id.* at 282-83, 754 S.E.2d at 4.
90. *Id.* at 284, 754 S.E.2d at 5.

full."[91] The supreme court, citing *Department of Human Resources v. Chambers*,[92] stated that a court may not order the postponement of child support payments until the child reaches the age of eighteen.[93] Further, the trial court exceeded its authority in addressing the arrearages because the parties were before the court on a modification action, and "the trial court calculates in a contempt action the past-due child support and 'does not determine in a modification petition whether and how much the petitioner is in arrears on his child support payments.'"[94]

The case of *Riddell v. Riddell*[95] supplies an important practice tip. In *Riddell*, the mother filed a contempt action against the father for failure to pay child support, and the father filed a petition for downward modification of child support. At a hearing on both matters, the court held the father in contempt and denied his petition for modification based upon the father's failure to present evidence of his income and financial status at the time of his last modification action in 2009.[96]

However, the record from the hearing showed that the father requested the trial court to examine the full record of this case, which included the 2009 order setting forth both parties' incomes. The trial court refused to do so, and the father filed a motion for new trial.[97] In denying the father's motion, the trial court ordered the father to pay the mother's attorney fees pursuant to O.C.G.A. § 9-15-14(b),[98] and the father appealed.[99] In reversing the order, the supreme court stated that a party's request for the court to consider findings made in a prior modification action "is not without substantial justification, as [it has] previously held that 'a trial court may take judicial cognizance . . . of records on file in its own court.'"[100]

The case of *Friday v. Friday*[101] sets forth a helpful procedural tip, as well. In *Friday*, the father filed a motion to modify child support, and the mother filed a motion for contempt against the father for non-

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91. *Id.* at 281, 754 S.E.2d at 3.
92. 211 Ga. App. 763, 441 S.E.2d 77 (1994).
93. *Strunk*, 294 Ga. at 283, 754 S.E.2d at 4.
94. *Id.* at 284, 754 S.E.2d at 4-5 (quoting Morgan v. Bunzendahl, 316 Ga. App. 338, 340, 729 S.E.2d 476, 478 (2012)).
95. 293 Ga. 249, 744 S.E.2d 793 (2013).
96. *Id.* at 249-50, 744 S.E.2d at 794.
97. *Id.* at 250, 744 S.E.2d at 794.
98. O.C.G.A. § 9-15-14(b) (2014).
99. *Riddell*, 293 Ga. at 250, 744 S.E.2d at 794.
100. *Id.* at 251, 744 S.E.2d at 795 (second alteration in original) (quoting Petkas v. Grizzard, 252 Ga. 104, 108, 312 S.E.2d 107, 110 (1984)).
101. 294 Ga. 687, 755 S.E.2d 707 (2014).

payment of child support. Upon adjudicating both claims, the trial court entered an order finding that the father had a substantial change in income and financial circumstance warranting a downward modification of child support, but also found the father in contempt for failure to pay child support.[102]

The father appealed the order, arguing that the trial court erred by finding him in contempt since, from the time he lost his job to the present, the father had been paying a decreased amount of child support based upon the child support guidelines and his monthly unemployment benefits.[103] Although the supreme court disagreed with the father's reasoning, the court explained that, pursuant to O.C.G.A § 19-6-15(j),[104] "the modification of child support is prospective only, but if a question is presented on a petition for contempt, any amount of arrearages due that would be due under the prior order, but were attributable to lost income, do not accrue from the date of service of the petition."[105]

VIII. EQUITABLE DIVISION

While the appellate courts handed down numerous decisions during this survey period that involved the equitable division of marital property, three Georgia Supreme Court decisions, as set forth below, were of particular interest.

First, the case of *White v. Howard*[106] involved the husband's obligation under the divorce decree "to obtain a term life insurance policy in the amount of $100,000, naming [the wife] as the beneficiary," and to maintain the policy for twelve years.[107] Following the wife's remarriage, the husband filed a motion for relief, seeking to terminate the provision since his obligation to maintain the policy was classified as periodic alimony, and thus, pursuant to O.C.G.A. § 19-6-5(b),[108] terminable upon the wife's remarriage. In granting the wife's motion to dismiss, the trial court held that the husband's insurance obligation fell into the "equitable division" category of property since it was set for a definite period of time, and therefore not terminable by operation of law and not subject to modification.[109]

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102. *Id.* at 688, 755 S.E.2d at 709-10.
103. *Id.* at 690, 755 S.E.2d at 711.
104. O.C.G.A. § 19-6-15(j) (Supp. 2014).
105. *Friday*, 294 Ga. at 691, 755 S.E.2d at 711.
106. 295 Ga. 210, 758 S.E.2d 824 (2014).
107. *Id.* at 210, 758 S.E.2d at 826.
108. O.C.G.A. § 19-6-5(b) (2010).
109. *White*, 295 Ga. at 210-11, 213, 758 S.E.2d at 826, 828.

In reversing the trial court's holding, the supreme court restated its holding from *Rivera v. Rivera*[110] and held that the insurance provision could not be classified as an equitable division of property since the amount and duration were indefinite due to the fact that both depended on "the unknowable fact of how long [the husband] lives."[111] Further, the court held that the provision could not be classified as lump-sum alimony, since the amount of the death benefits was contingent on future events—the husband's death—that prevented the calculation of the exact number and amount of payments at the time of the divorce decree.[112] The court held that the life insurance requirement was periodic alimony, and therefore modifiable upon the wife's remarriage.[113] Interestingly, the parties' divorce decree stated that "[n]either Plaintiff nor Defendant shall pay or receive alimony and . . . the life insurance requirement was not alimony."[114] In reconciling its holding with the language of the decree, the court relied on *Moore v. Moore*,[115] stating, "Neither the parties' nor the trial court's characterization of an award is controlling."[116]

Second, in *Arthur v. Arthur*,[117] the court reversed in part the trial court's holding based upon two errors contained in the parties' divorce decree.[118] The decree awarded the wife the marital residence, but

> required [the wife] to use her best effort to refinance the indebtedness in order to remove [the husband] from the indebtedness and generate funds to pay [the husband] $20,000 for his interest in the marital home and, if not successful in refinancing the home, then "in the event the house is sold in the future" to pay said sum to [the husband] with interest from the date of the decree.[119]

The supreme court held that the decree failed to include sufficient findings of fact to support the award of the marital residence to the wife.[120] Because the husband filed his written request for findings of fact and conclusions of law, pursuant to O.C.G.A. § 9-11-52(a),[121] after

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110. 283 Ga. 547, 661 S.E.2d 541 (2008).
111. *White*, 295 Ga. at 212-13, 758 S.E.2d at 827-28.
112. *Id.* at 212, 213, 758 S.E.2d at 827, 828.
113. *Id.* at 213, 758 S.E.2d at 828.
114. *Id.* (first alteration in original) (internal quotation marks omitted)
115. 286 Ga. 505, 690 S.E.2d 166 (2010).
116. *White*, 295 Ga. at 213, 758 S.E.2d at 828.
117. 293 Ga. 63, 743 S.E.2d 420 (2013).
118. *Id.* at 64, 67, 743 S.E.2d at 422, 424.
119. *Id.* at 63, 743 S.E.2d at 422.
120. *Id.* at 66, 743 S.E.2d at 423-24.
121. O.C.G.A. § 9-11-52(a) (2014).

the hearing but prior to the judgment being entered, his request was timely.[122] The court explained that, upon a timely O.C.G.A. § 9-11-52(a) request, the court must, at a minimum, produce a judgment that contains sufficient findings of fact to "clarify the rationale used by the trial court to reach its result."[123] The court further explained, "The degree of detail . . . in findings of fact in a final judgment awarding equitable division of marital property should . . . depend upon the degree of complexity of the issues."[124]

Finally, in *Sullivan v. Sullivan*,[125] the husband had purchased stock in a closely-held corporation prior to the marriage, and the wife claimed that the appreciation on the premarital stock was subject to equitable division. In attempting to prove the amount of appreciation that occurred, the wife offered two valuations regarding the amount of appreciation. The trial court rejected both of the wife's valuations and found that there was no evidence of the amount of appreciation that occurred during the marriage.[126]

In affirming the trial court's decision, the court stated that the trial court has discretion to select the valuation method to be utilized, and likewise has discretion to reject any and all methods presented.[127]

IX. APPEALS

In *Miles v. Payne*,[128] the timeliness of the appeal was in question.[129] In this custody-modification action, an order denying the mother's petition for custody and a

> judgment [awarding the father] attorney fees were each marked with stamps reading "Filed with the Court," followed by a line, under which was printed "J. David Roper, Judge"; a handwritten signature appeared on the line and beside the signature, the handwritten date "11-26-12." The order and judgment also each contained stamps showing they were "Filed For Record" with the clerk of the superior court on November 27, 2012.[130]

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122. *Arthur*, 293 Ga. at 65, 743 S.E.2d at 423.

123. *Id.* at 66, 743 S.E.2d at 424 (quoting Crowder v. Crowder, 281 Ga. 656, 658, 642 S.E.2d 97, 99 (2007)).

124. *Id.*

125. 295 Ga. 24, 757 S.E.2d 129 (2014).

126. *Id.* at 24, 25, 26-27, 757 S.E.2d at 131, 132-33.

127. *Id.* at 26, 27, 757 S.E.2d at 132, 133.

128. 327 Ga. App. 191, 755 S.E.2d 551 (2014).

129. *Id.* at 191, 755 S.E.2d at 552.

130. *Id.*

The mother's notice of appeal was filed with the superior court clerk on December 27, 2012, but upon review, the court of appeals concluded it was untimely.[131] While the mother filed her appeal within thirty days from the date the order and judgment were filed in the clerk's office, O.C.G.A. § 9-11-5(e)[132] creates an exception to this general rule, allowing a judge to file orders and note his or her own filing date.[133] In such circumstance, the judge's filing date is the date that begins the time for filing an appeal.[134]

X. CONTEMPT

During this survey period, the appellate courts upheld several trial court orders on contempt, fashioning more liberal remedies as compared to similar orders in years prior. This trend is exemplified in the two following cases.

In *Smith v. Smith*,[135] per the parties' final decree, the husband was obligated to relinquish certain items of personal property to the wife. The items were thought to be located within the marital residence, which the husband occupied during the divorce proceedings. However, when the wife took possession of the home, the items had disappeared and the husband claimed no knowledge of the whereabouts of the items. The wife filed a contempt action against the husband, and the trial court found the husband in contempt after the wife presented evidence establishing the fair market value of the property, as well as evidence that the husband had removed at least one truckload of items from the home.[136]

The trial court ordered the husband to purge his contempt by paying the wife the fair market value of the items. The husband appealed, alleging that the court's order impermissibly modified the divorce decree.[137] The supreme court affirmed the trial court's order, stating, "[W]hile a trial court is not authorized to modify the original decree within a contempt proceeding, it may exercise its discretion 'to craft a remedy for contempt, including remedying harm caused to an innocent party by the contemptuous conduct.'"[138]

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131. *Id.* at 191-92, 755 S.E.2d at 552-53.
132. O.C.G.A. § 9-11-5(e) (2014).
133. *Miles*, 327 Ga. App. at 191, 755 S.E.2d at 552; *see also* O.C.G.A § 9-11-5(e).
134. O.C.G.A § 9-11-5(e).
135. 293 Ga. 563, 748 S.E.2d 456 (2013).
136. *Id.* at 563-64, 748 S.E.2d at 457.
137. *Id.* at 564-65, 748 S.E.2d at 457-58.
138. *Id.* at 564, 565, 748 S.E.2d at 457, 459 (quoting Wyatt Processing, LLC v. Bell Irrigation, Inc., 298 Ga. App. 35, 37, 679 S.E.2d 63, 64 (2009)).

The case of *Ziyad v. El-Amin*[139] is similar to *Smith*. In *Ziyad*, the trial court found the husband in contempt based upon his failure to refinance the debt on a residential property in his name within six months or, if he was unable to refinance, to sell the property, as required by the divorce decree. The trial court ordered the husband to purge the contempt by listing the property for sale immediately. Further, the court ordered the husband to make payments towards the principal of the mortgage on the property until the property was sold or the indebtedness was otherwise paid. The husband appealed, alleging that the court's order impermissibly modified the parties' decree.[140]

The supreme court upheld the trial court's order, stating that the trial court reasonably understood the terms of the decree to mean that the husband was obligated to place the property on the market for sale upon terms that made it salable, and in so much as the outstanding debt made it unsalable, the husband was required to make it salable.[141] The trial court reasonably found that the property was unsalable at the current time and could only be sold if the principal was paid down.[142]

While the holdings in *Smith* and *Ziyad* seem to broaden a trial court's ability to fashion remedies in contempt actions, the court's holding in *Friday v. Friday,* outlined above,[143] places limitations on remedial powers. In *Friday*, the supreme court reversed the portion of the trial court's order associated with the mother's contempt action that required the father to submit Qualified Domestic Relations Orders for his retirement accounts and pay child support arrearages out of the accounts.[144]

The case of *Weeks v. Weeks*[145] explains an important procedure in contempt actions. In *Weeks*, the father filed a contempt action against the mother based on her violation of the child custody order. Per an order entered on December 4, 2012, the court found the mother in contempt and also modified the parenting plan by deleting the father's supervised visitation requirement. The court scheduled a compliance hearing for January 31, 2013.[146]

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139. 293 Ga. 871, 750 S.E.2d 337 (2013).
140. *Id.* at 871, 750 S.E.2d at 338.
141. *Id.* at 872-73, 750 S.E.2d at 339.
142. *Id.* at 873, 750 S.E.2d at 339.
143. *See supra* Part VII.
144. *Friday*, 294 Ga. at 692-93, 755 S.E.2d at 712-13.
145. 324 Ga. App. 785, 751 S.E.2d 575 (2013).
146. *Id.* at 785, 786, 751 S.E.2d at 576, 577.

On December 4, 2012, the mother filed her request for supersedeas, pursuant to O.C.G.A. § 5-6-13(a),[147] and also filed her notice of appeal from the contempt order.[148] The trial court denied her request for supersedeas, stating, "[Removal] of the visitation provision [regarding supervision] was a child custody issue."[149] After the compliance hearing, the court entered an order changing physical custody to the father. The mother argued that it was error for the court to change custody following the compliance hearing.[150] The court of appeals disagreed, stating that the order was entered subsequent to the mother's notice of appeal filed on December 4, 2012, and therefore the order changing custody could not be adjudicated in this appeal.[151]

The mother also appealed the court's denial of her request for supersedeas.[152] The court of appeals upheld the denial.[153] The court held that, despite the language of the mother's request, she appealed only the trial court's remedy and not its finding of contempt; thus, the mother was not challenging the finding of contempt, and her challenge to the denial of supersedeas was moot.[154]

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147. O.C.G.A. § 5-6-13(a) (2013) ("A judge of any trial court or tribunal having the power to adjudge and punish for contempt shall grant to any person convicted of or adjudged to be in contempt of court a supersedeas upon application . . . where the person also submits . . . written notice that he intends to seek *review of the conviction or adjudication of contempt*." (emphasis added)).

148. *Weeks*, 324 Ga. App. at 786, 751 S.E.2d at 577.

149. *Id.* at 789, 751 S.E.2d at 578 (third alteration in original) (quoting the trial court).

150. *Id.* at 785-86, 751 S.E.2d at 576-77.

151. *Id.* at 786, 751 S.E.2d at 577.

152. *Id.* at 788, 751 S.E.2d at 578.

153. *Id.* at 789, 751 S.E.2d at 578.

154. *Id.*