The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Winter 2023

gettyimages.com/djedzura

Editor's Corner

By Kem A. Eyo

Welcome to the Winter 2023 Issue of the Family Law Review!

Thank you for allowing me the opportunity to serve as your editor for the upcoming year. This issue contains fewer articles than we are used to having the privilege of reading. This is likely a reflection of just how busy 2022 was for our profession – we were all too busy practicing to find time to write. Despite that, we are yet again blessed to gain knowledge and insight from reputable contributors. This issue includes Mark Sullivan's latest edition on his Magic Words series on military divorce and Trent Doty's helpful tips on how to retire as a single person. Bernard V. Pepukayi, Sr. also provides food for thought on the age-old question of whether mom or dad is more likely to get custody. Finally, I encourage you to review Vic Valmus' case law updates to learn the most recent developments in the law.

I am delighted to share the enclosed with you. I also invite you to contact me with ideas for future articles and to send me any articles you would like to have published in future editions of the Family Law Review.

Editor Emeritus

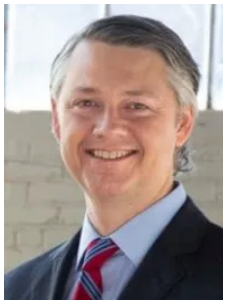
By Randall M. Kessler

2023! Time continues to fly. It seems all of us are busier than ever and the camaraderie and support of our section members is even more valuable than ever. I turned 60 this year and feel like I've been practicing family law forever. But I have felt that way for a long time, like many of us do. It is good, important work. I still enjoy it (maybe I'm nuts?). But what I enjoy, almost as much as helping someone through a difficult time, and sometimes more, is the friendships we forge. Let's continue to create and maintain these lifelong relationships we have created and the new ones we are creating every day. We are all (judges and lawyers) in this together. Like they used to say in the Navy commercial in the early 1980s, "It's not just a job, it's an adventure". Let's do our best to enjoy this great adventure we are all on together. I look forward to seeing everyone at this year's FLI.

Inside This Issue

From the Chair

By Ted Eittreim



I hope you all are doing well, and your 2023 is off to a good start.

In this month where society at large (and Hallmark in particular) turns to feelings of love and affection, it seems like a perfect time for all of us to think about how much joy we, as family lawyers, can add to the amorous atmosphere of the season!

In all seriousness, though, we all know that the practice of family law can be trying at times – some days more than others, to be sure – but this is the business we have chosen, and it behooves us to remember that, especially on those days that are particularly difficult. The truth is that while our days (and nights, and weekends, and vacations) are most often filled with addressing the problems of our clients, if we are cognizant of our roles in our client's lives and families, we can make a difference, to not only our clients, but to our colleagues as well.

What I mean by that is being mindful that a fundamental truth of our business is that it is one where our clients come to us for help at one of the most difficult times of their lives. Emotions are running high; their lives are being turned upside down and inside out. All that they have worked for is up for grabs, and everything dear to them seems to be falling apart. In those moments, and given those pressures, people are not always at their best, and sometimes their despair, fear and uncertainty can engender feelings of anger, and that anger is sometimes misdirected at us. Thankfully, most of the time those outbursts take the form of mere venting – about the situation, about their current or former partner, about us, or about life in general. However, on occasion, those feelings can turn to violence, and as we all saw with the tragedy last year with our friend and colleague Doug Lewis, sometimes that violence can be directed at us.

In the wake of that shocking tragedy, it behooves us all to remember to always be vigilant and to take reasonable and necessary precautions, but I hope it also reminds us to also take time for ourselves. Be with your families and loved ones; do things that make you happy; take care of yourselves, and if you are having a difficult day, week, or month, seek the counsel of others in whom you place trust. Too often it seems that we family lawyers are particularly good at helping our clients through emotional times, but we forget to give proper heed to our own needs and emotions. We must be reminded to do that from time to time, and it should not take a tragic event to jolt us into action.

But what I hope we are also reminded of is that this profession we have chosen is hard enough on a day-to-day basis without the lawyers adding fuel to the fire. We should strive every day to bring down the temperature of a family law case and to not be a metaphorical blowtorch to an already involved conflagration.

Is this wishful thinking? Perhaps, but a good portion of doing what we can to bring this notion to fruition can be reduced to the most fundamental aspect of what we call professionalism: treat others with respect, whether they be our clients, the opposing party, or our opposing counsel. We do not always have to agree (if we did, most of us would be out of a job, after all), but we should strive to disagree without being disagreeable. While sometimes our clients may think so, these cases are not zero-sum propositions. We are in the business of breaking up families, and we always need to be sensitive to that fact. Adding additional rancor to an already emotionally-fraught situation does not benefit that family, and, and the end of the day, neither does it benefit us.

It is with these thoughts in mind that I encourage all of you to be as involved in our Section as you can be this year. The best opportunity to do just that is to make plans, if you have not already done so, to attend the Family Law Institute, which this year will be taking place on June 2 – 4 at the Omni Amelia Island Plantation. Karine Burney and I are finalizing the agenda presently, and we hope that this year, as in the past, the FLI provides not only a convenient way to get a full year's CLE, but also provides an environment for all of us to come together as colleagues and reinforce some of the ideas I mentioned above.

Please consider not only attending the FLI but also becoming a sponsor. To that end, a huge thank you goes out to Jamie Perez and Megan Wyss (who is also our Young Lawyer's Division Representative) for spearheading the fundraising efforts. Putting on the FLI takes an incredible

amount of time, effort, and, of course, money. The fact is that the Section leans heavily on sponsorships to be able to provide the experience that you, our members, deserve, so any contributions you can make is most appreciated. If you are interested, please reach out to Jamie or Megan for additional information.

Of the other ways to stay connected and be involved, one of the best is to submit an article for the Family Law Review for publication. Our Editor, Kem Eno, has worked extremely hard getting this issue together, but we are looking for more articles to include in our May issue, so if you have an idea, please reach out to Kem. All ideas are welcome!

If you have an event that you want to announce to the entire Section, or if you have any pictures to post, get in touch with Kevin Rubin, who is handling the management of the Section's social media efforts this year.

We are planning additional CLEs, and first among those efforts will be (we hope) a return to in-person Nuts & Bolts sessions in both Savannah and Atlanta in the latter half of the year. Also, William Alexander is hard at work gathering ideas to resume our monthly "Lunch & Learn" sessions via Zoom, so if you have any ideas for these sessions, or would like to volunteer as a speaker, please get in touch with William.

A big thank you also goes out to Katie Connell and Kem for putting together our panel discussion on professionalism at the Bar's Midyear Meeting in January. The event was extremely well attended, especially considering the frightful weather that was blowing through our area at the exact time of our presentation. Thanks go out to Judge Jeff Bagley and Judge Connie Williford for taking the time out of their incredibly packed schedules to be there with us and impart their wisdom to the attendees.

Also at the Midyear Section Meeting, we elected our new slate of officers for the 2023 – 2024 Section year, and congratulations are in order for Karine Burney, who will be our Chair, Jonathan Dunn, who takes on the role of Vice-Chair, and Jeremy Abernathy, who will be our Secretary for the upcoming year. Jeremy is also our Legislative Liaison this year, and as the session gets into full swing, if you are interested in helping Jeremy with our outreach to the Legislature, please get in touch with him, as there is always work to be done on that front.

Our volunteer efforts continue, and Drew Wilkes is leading the efforts of the Section to support the Child Support Helpline, and Ros Holcomb is endeavoring to expand our outreach to support local groups working with families. Stay tuned for more information on those efforts and how you can support our communities through the Section.

With all of that said, then, I sincerely hope that you all have had, and continue to have, a good beginning to the year. I look forward to seeing all of you soon at one of our events, but in the meantime, if there is anything that I can do for any of you, please do not hesitate to reach out to me via email.

All the best.
Thanks,
Ted

The Family Law Review **is looking for authors of new content for publication.**

If you would like to contribute an article or have an idea for content, please contact Kem Eyo at Kem@rbafamilylaw.com

SAVE THE DATE

The Family Law Institute

When:

June 2nd - June 4th, 2023

Where:

Omni Amelia Island Resort

39 Beach Lagoon Road

Fernandina Beach (Amelia Island),

Come earn all of your CLE credit in a single weekend, while at the

2022-23 Editorial Board for *The Family Law Review*

- **Kem Eyo, Editor, Cumming**
- **Randy Kessler, Editor Emeritus, Atlanta**
- **Elinor Hitt, Atlanta**
- **Kelly Miles, Gainesville**
- **Kelley O'Neill-Boswell, Albany**
- **William Sams Jr., Augusta**

WHO IS MORE LIKELY TO WIN YOUR CHILD CUSTODY CASE - MOM OR DAD?

By Bernard V. Pepukayi, Sr.

I am often questioned by family, friends and potential clients about issues related to the law and the judicial process. Sometimes these questions originate from random conversations or thoughts, and sometimes people want to take advantage of the opportunity to speak with "a lawyer," believing everyone who graduated from law school and is admitted to a state bar is equally qualified to provide legal insight into everything from criminal justice to intellectual property. When this occurs, many of my colleagues may feel like we are subjected to a heightened degree of scrutiny, as if we are expected to recite random statutes and procedures like we are in the final round of Jeopardy. For those who know I practice family law, the questions are endless. They include everything from temporary protective orders to child support and property division. Perhaps the most frequent and emotionally charged questions that I receive are those concerning child custody; and when discussing child custody, it is frequently asked or implied whether a parent's success for obtaining custody is influenced by his or her gender. Therefore, I thought it would be most appropriate to discuss, "who is more likely to win your child custody case – Mom or Dad."

In the state of Georgia, the statutory guidance for how child custody is to be determined is located in Title 19 of the Official Code of Georgia Annotated (O.C.G.A.). O.C.G.A. §19-9- 3(a)(1), in part, states "[i]n all cases in which the custody of any child is at issue between the parents, there shall be no prima-facie right to the custody of the child in the favor of the father or mother." Furthermore, there is no presumption in favor of any form of custody – whether it be joint custody or sole custody. According to the statute, in all cases involving custody, it is the duty of the judge to determine custody solely by what is in the "best interests of the child, and what will best promote the child's welfare and happiness." Many litigants do not realize or appreciate this because of their experiences and the historical context of custody in the United States.

It is not hard to understand why some feel custody orders may favor one gender over the other. For many, this is what they have seen and this is what they have experienced. Let's consider the historical context and perception. According to the U.S. Department of Commerce, Bureau of the Census, Current Population Reports, issued June 1979 (Series P-23, No. 84), "[b]y 1978, [ ] 19 percent of all families with sons/daughters under 18 years of age in the home were maintained by only one parent – 17 percent by the mother and 2 percent by the father." This means the vast majority (approximately 89.5 percent) of all single parent households in 1978 were maintained by women. Over the years, this overwhelming percentage of single parent homes led by women has continued. "In 2014, about five of every six custodial parents were mothers (82.5 percent) and one of every six were fathers (17.5 percent)," according to the U.S. Census Bureau, Current Population Reports issued January 2016 (P60-255). A person can easily notice a majority of homes maintained by a single parent are led by women.

However, this result does not mean all of the matters leading to this disparity were custody orders from a court. The causes for this result are many. For example, in cases where the parents were married, I see more mothers than fathers who agree to stay home with the children or commit to reduced employment hours in order to spend more time raising the children. As a result of this mutual arrangement between the parents, and the reduced hours, fathers may have increased their working hours to make up for the "lost income." Such facts alone would create a greater likelihood that several best interests factors identified in O.C.G.A. §19-9-3 would weigh in the mother's favor. These factors include, but are not limited to factors "(A) . . . bonding and emotional ties existing between each parent and child; . . . (D) Each parent's knowledge and familiarity of the child and the child's needs; . . . (J) Each parent's involvement, or the lack thereof, in the child's educational, social and extracurricular activities; . . . [and] (K) Each parent's employment schedule and the related flexibility or limitations, if any, of a parent to care for

the child." This mutual arrangement between the parties would have already created a pattern for the child. If the parties were to separate, certain factors are naturally likely to weigh in that parent's favor and as a consequence increase the likelihood that a Court would find it is in the child's best interest to be primarily with that parent. Conversely, many mothers who may fall within this category question whether fathers have an advantage due to their economic ability and/ or the growing awareness of single father households.

Despite the historical background and the personal experiences many people have while interacting with our Courts, it is tremendously more beneficial to focus on the best interest factors rather than the parent's gender. Judges are people too. They have opinions and feelings. This means different judges may give a different amount of weight to a single best interest factor within the same contextual setting. Also, different judges may come to the same result in the same contextual setting even though they may afford a different amount of weight to various factors. An effective attorney will focus on creative ways of demonstrating to the judge why the factors favorable to his/her client should be provided greater weight as well as why factors not favorable to his/ her client should not be afforded much weight. However, judges are not focusing on whether mothers are better parents than fathers or whether fathers are better providers than mothers. Judges are focusing on what custodial arrangement will best promote the child's welfare and best interest. So, the next time I am asked "who is more likely to win your child custody case – Mom or Dad;" I am going to provide a simple answer – If you are properly advised, and you are willing to work for a just outcome . . . your children.

Bernard V. Pepukayi, Sr. is Senior Counsel at Hedgepeth Heredia LLC.

RETIRING SINGLE: 5 STRATEGIES TO CONSIDER

BEING SINGLE CAN BRING A DIFFERENT SET OF CHALLENGES TO PLANNING FOR RETIREMENT. THESE FIVE STRATEGIES CAN HELP.

By Trent Doty, CFP®, CDFA®

If you're planning on retiring single, you aren't alone. Nearly 22 million Americans age 65 and older were unmarried in 2019, according to the U.S. Census Bureau. This group made up 41.5% of all people in the U.S. in that age category.

Planning for retirement is challenging, from building an income stream for a longer lifespan to budgeting for increasing living expenses and health care costs. These and other retirement planning issues can be especially pressing for singles, who need to prepare financially without the decision-making and income support of a spouse or partner. Here are five tips to consider when it comes to setting a source for those solo retirement years.

1. Create a financial fallback plan.

Retirees may discover that there's a gap between what they thought they would need for retirement and what they actually need. As a single retiree, you may not have a second income stream to rely on if your finances are unexpectedly disrupted (for example, by dealing with a major health issue or illness).

To plan for the unexpected, it's important to periodically review your investment portfolio and build effective financial backup plans. Such contingency planning could involve a higher cash emergency savings total than couples might need and could require considering more robust disability and long-term care insurance protection than couples might select. You could also choose to take a part-time job for extra income.

2. Build a network of professional advisors.

You might appreciate the independence and freedom of your lifestyle. But with autonomy could come a reluctance to seek advice and ask questions regarding important financial matters. However, it's especially important for singles to consider forming a team of trusted professionals — including a financial advisor, an accountant, an attorney, and health care providers — to rely on for professional advice and guidance.

3. Count on family and friends — to a point.

It's important to have strong relationships with friends and family to help you out in good times and in times of need. However, it's equally important to make sure they don't take advantage of your independent status or create serious financial burdens for you. For example, you should take extreme care before turning over your financial matters and decisions to anyone else, whether a loved one or a professional. Make a point to stay actively involved in those decisions and work with a team of people you trust to help make decisions that are in your best interests. Evaluate the possibility of engaging a corporate trustee to manage finances should you become incapacitated.

4. Get estate and wealth-transfer plans in place.

Many people drag their feet when it comes to estate planning. Even if you've put some documents together, are you sure you have what you need to ensure your wishes are carried out?

Here are the key documents that form the foundation for most estate plans:

- Will
- Power of attorney (POA) for financial matters
- Durable power of attorney for health care
- Health Insurance Portability and Accountability Act (HIPAA) release authorization
- Living will
- Revocable living trust

Additionally, you could help prevent confusion and misdirected bequests by managing other critical planning documents: Carefully designate beneficiaries of assets in IRAs, employer-sponsored retirement plans, insurance policies, and annuities. Lay out clear directions for the distribution of remaining assets for your heirs. Also, don't forget about your digital assets and accounts. Will your executor or trustee have proper authority to access and manage those items? Talk to your attorney about keeping your digital planning secure and up-to-date.

5. Plan for change.
Although you may be single now, that could change during retirement — or even before. Entering into a committed relationship or getting married could mean making adjustments in your financial life now and down the road to and through retirement. Look at your insurance coverage, emergency fund and future income plan. Think about having a frank discussion with your new partner about how you want your assets to be divided in the event of divorce or death. If there are ex-spouses or children in the picture on either side, consider managing your finances and estate plans separately rather than jointly.

With the assistance of your financial advisor and estate planning attorney, you can get a basic estate plan put in place, and, as appropriate, discuss other strategies for preserving wealth.

One final tip: Set a time on your calendar for a regular review with your team of professionals to keep all of your documents up-to-date.

Trent Doty is a Financial Advisor at Wells Fargo Advisors in Savannah, GA. This article was written by/for Wells Fargo Advisors and provided courtesy of Trent Doty, Financial Advisor in Savannah, GA at trent.doty@wfa.com or 912-600-3232.

TIPS ON COURTROOM ETIQUETTE

Regardless of a lawyer's style or bent, there is some basic courtroom etiquette which a winning lawyer will always observe. Here are tips for new and experienced lawyers, derived and summarized from a judge's open court instructions.

First, always respect the Court.

Always preface any attempt to address the Court with "Your Honor...", "If it pleases the Court....", "If Your Honor pleases...".

There are many variations on how to address the Court. You must always do that.

Never argue with the Court once a ruling is made.

State your objection for the record if you wish to be heard. Say, "Your Honor, may I be heard?". Never argue. Every lawyer who has practiced in this Court knows that this Court always gives attorneys ample time to argue their motions and objections.

When the Court speaks, you listen.

Never carry on a conversation and never turn your back to the Court when the Court is speaking.

Be prompt.

Respect opposing counsel.

The Court never wants to hear any personal attacks in the courtroom.

Address your arguments to the Court, not opposing counsel.

Do not talk to opposing counsel in your arguments.

Never talk over one another.

You should know that the Court will give you ample opportunity to argue. The Court knows that the heat-of-the moment is there, emotions may be running high, and you want to get your point across. The Court can assure you that you will get your point across. We accomplish nothing by talking over one another. Not only does it accomplish nothing, it is rude, and the Court will not tolerate it. Rest assured that the Court will consider both sides when any objection or motion is made and the Court will make a ruling based on the Court's best understanding of what the law is as it applies to the evidence at that time. The Court understands that lawyers are tenacious, and they're being the best advocates that they can for their clients – that's what this is all about; that's what adversarial procedure is all about. We should expect each party to put its best foot forward in every case and make any argument that you have. Your argument may or may not win; if it's even an on-the-borderline argument, go ahead and make it. The Court understands that many times you are trying to make a record. The Court is not telling you to not be a zealous advocate for your client. You need to do that. The Court encourages you to do that. The Court welcomes objections to rule on and motions to decide. That's how we obtain the truth of the matter, through adversarial procedure. The Court welcomes that. That can be done by observing the courtroom etiquette rules outlined for you here.

Simply observe common etiquette, common courtesy, and manners that you should have been taught when you were a child.

If you do this, you should have no problem with the Court.

The above was provided to participants attending the Family Law Professionalism CLE, in person, during the Mid-Year meeting on January 12, 2023.

"MAGIC WORDS", VOLUME 2

*By Mark E. Sullivan**

The last article on "Magic Words," published in the Spring 2022 edition of The Family Law Review, pointed out the unique language required to effect a valid former-spouse election for the Survivor Benefit Plan. This exploration will cover life, not death.

When the military pension is divided by the court, the order which grants lifetime pension division can be a divorce decree, a settlement incorporated into the decree, or a consent order, sometimes called a military pension division order (MPDO). The order is required to have two special phrases, or what you might call "magic words," to comply with federal law.

The Frozen Benefit Rule

The law, of course, is the federal statute which allows the division of military retired pay by state courts; that's the Uniformed Services Former Spouses' Protection Act, or USFSPA, located at 10 U.S.C. §1408. An amendment in 2016 restricted the division of military retired pay to that which exists on the day of divorce. The "Frozen Benefit Rule" thus limits any further growth of the pension by taking a snapshot at the time of divorce. To provide information which the retired pay center needs to make this calculation, the law requires that every pension order state two data points: a) the High-3 pay of the servicemember on the date of the dissolution and b) the member's years of creditable service (or, in the case of Guard/Reserve members, the date-of-divorce number of retirement points). This rule applies, pursuant to 10 U.S.C. §1408 (a)(4)(B), to the military pension division cases where the divorce was granted after December 23, 2016 and the member was not receiving retired pay at divorce. There is no exception if you're within this window. Congress did not leave a loophole for the parties to "consent otherwise." Thus the husband and wife are not free to write their own agreement, since Congress has decided to tell them what they can do.

"High-3" Pay, Years of Service

The High-3 compensation of an individual is his or her highest three years of base pay, stated as a monthly amount (e.g., "John Doe's High-3 at divorce was $4,567.89 per month"). That will require a clear understanding of John Doe's current rank and years of service, as well as his date of initial entry into military service (or DIEMS) and his last promotion date, unless counsel somehow "gets lucky" and obtains the appropriate number of past pay statements from the servicemember. While not on a par with calculus, the computations are not easy for most attorneys. *The years of creditable service will depend on pay records* (and other documents when there was a break in service). Counsel must know the difference between DIEMS (see above) and the PEBD, or Pay Entry Base Date. The retirement points calculation means that counsel must have access to John Doe's annual Reserve/Guard points statement. None of this is simple, and it's often a wise idea to hire an attorney who's "been around the block" with these problems a couple of times. That's what we call a co-pilot or - in the words of Tom Cruise - a "wingman." It's also possible to attempt this alone by reading "Military Pension Division and the *Frozen Benefit Rule*: Nuts 'n' Bolts," a Silent Partner infoletter which may be found at https://www.americanbar.org/groups/family_law/ > Military Law Committee, or at www.nclamp.gov > Publications. All of this (and more) can be found at "The Frozen Benefit Rule" in Chapter 8 of THE MILITARY DIVORCE HANDBOOK (Am Bar Assn., 3rd Ed. 2019).

*Mr. Sullivan is a retired Army Reserve JAG colonel. He practices family law in Raleigh, North Carolina, and is the author of THE MILITARY DIVORCE HANDBOOK (Am. Bar Assn., 3rd Ed. 2019). He works with attorneys nationwide as a consultant in military divorce cases and in drafting military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com.

CASE LAW UPDATE

*By Vic Valmus**

ATTORNEY'S FEES/STATUTORY INTEREST
Claybrooks v. Claybrooks;
364 Ga.App. 157
(June 7, 2022)

The parties were divorced in 2016 and had one minor child. The father had primary custody of one child and the mother was to pay child support of $700.00 per month. In 2020, the father filed a Complaint for Contempt against the mother alleging she was behind $8,400.00. During opening statements, the mother's counsel explained that she had about $50,000.00 in her 401(k) account and was recently offered to use that to pay the child support arrearage. Therefore, the only issue was attorney's fees. The Trial Court found the mother in willful contempt, found she had $7,825.00 in child support arrearage, assessed $1,024.00 in interest pursuant to O.C.G.A.§7-4-12.1 and to pay $3,125.00 in attorney's fees pursuant to O.C.G.A.§19-6-28(a). The mother appeals and the Court of Appeals affirms in part and reverses and remands in part.

Pursuant to O.C.G.A.§19-6-28(a) gives the Courts the power to impose terms and conditions they deem proper to assure compliance with divorce, child support or alimony orders. However, it's not clear if ever attorney's fees awarded at the close of litigation would serve as a mechanism for assuring compliance with an Order. It is vacated to determine if some other statute authorizes the award of attorney's fees.

The mother also argues that the Court erred by applying interest pursuant to O.C.G.A.§7-4-12.1 and that the father did not specifically request interest in his complaint. However, O.C.G.A.§7-4-12.1(a) builds the interest question into each domestic relations action by default by stating that all awards and judgments in domestic relations actions shall accrue interest at the rate of 7 percent per annum and gives the Trial Courts discretion to decide whether and how to apply the interest in each case. However, the mother argues that the Court erred by not considering the statutory factors the Trial Court shall consider is determining whether and how to apply interest including whether 1) there was good cause for non-payment of child support; 2) hardship to the Petitioner; 3) hardship to the Defendant; and 4) the effect of applying interest on the ability to pay child support. Here, the Order makes no mention of the factors and contains no findings with regards to them. The Court stated, "I generally award interest" and therefore, interest award here was a matter of course rather than based on the application of statutory factors. Therefore, the willful contempt is affirmed. The attorney's fees and interest are vacated and remanded.

BLANKET VISITATION PROHIBITION
Beckman v. Beckman; **362 Ga.App. 748**
(February 23, 2022)

The parties were married and had one child in 2018. In 2019, the father began having an extra-marital affair with his sister-in-law; Bethune. She was married to the mother's brother. After the wife found out about the affair, they divorced. As part of the Settlement Agreement, the mother would have primary custody and the father would be entitled to certain visitation, but had a restrictive prohibition that Bethune shall never be in the presence of the minor child unless one of the parties is physically present or unless an adult designated by the parties such as a grandparent is physically present. Under no circumstances may Bethune be alone with the child. For a short period of time, the father and Bethune broke up. Later, Bethune and her husband divorced and she had shared custody of the three minor children. After the divorce, Bethune learned she was pregnant with the father's child and they both decided to get married. In July, 2020, the mother filed a Complaint to Modify Visitation to prohibit all contact between Bethune and the child. The father answered and counterclaimed seeking to modify visitation for unsupervised contact between Bethune and the child.

After the final hearing, the Court entered a Final Order expanding the visitation restricting any contact between Bethune and the child. The Court's reasoning found that the father engaged in a long-term adulterous relationship with the sister-in-law. He had chosen to marry Bethune despite the full knowledge of the complications it would impose with the visitation and that these choic-

es demonstrated a deep character flaw and a lack of insight and judgment by Bethune and the father and chose self-gratification over the needs of their children. Finally, the Trial Court found that even if there had been no showing that exposure to Bethune would harm the child, the mother was not required to show such harm because the Court was expanding upon the visitation restriction that had been consented to by the father to assure its content was fulfilled. The father appeals and the Court of Appeals reverses.

The Trial Court has discretion to prohibit the exercise of visitation rights by the parent in the presence of certain people only if the evidence demonstrates that the child has been exposed to inappropriate conduct involving specific persons or the exposure to the prohibited person would adversely affect the child. Absent this showing, the Trial Court abuses it's discretion by prohibiting a parent from exercising his or her custodial rights in that person's presence. In the present case, there was no evidence that Bethune and the father engaged in any inappropriate conduct in the presence of the child. Bethune and the father's relationship began as an extra-marital affair, but the primary consideration determining visitation issues is not the sexual mores or behavior of the parent, but whether the child will somehow be harmed by the conduct of the parent. The focus must be on the needs of the child and not the faults of the parents. In some instances, a parent's immoral conduct might warrant limitations on conduct between the parent and the child, but only if it's shown that the child is exposed to the parent's undesirable conduct in such a way that it has or would likely adversely affect the child. There is no evidence in the record that the mere exposure to Bethune would harm the child. In fact, the mother admitted at the final hearing that the child had contact with Bethune before the extra-marital affair and she had no concerns with such contact. In addition, Bethune has been granted shared custody of her own daughters without any restrictions. A Court cannot place restrictions on visitation based on mere speculation on what might occur in the future.

The Court also included in the alternative that the mother was not required to show the exposure to Bethune would harm the child because the father consented to the visitation restriction as part of the divorce settlement agreement and the Court was fulfilling the intent of the restriction by expanding it to a blanket prohibition. However, this is not the situation here. There is no evidence that the father would have ever agreed to such an expansion of the restriction. Therefore, the Trial Court erred in modifying the visitation revision to allow for a blanket prohibition and the Court did not rule on the father's counterclaim seeking modification of the visitation provision. Therefore, the case is remanded and the mother's claim is reversed and the Trial Court must rule on the father's counterclaim.

CHILD SUPPORT DEVIATION/ATTORNEY'S FEES/ALIMONY

Williams v. Williams; **362 Ga.App. 839**
(March 2, 2022)

The parties have been married for 17 years and have 4 minor children. The wife was a stay-at-home mom for the greater portion of the marriage. The husband was employed as a corporate director and had a yearly salary of $200,000.00 and an annual bonus in excess of $2,000.000.00. Following a bench trial, the Court entered a final parenting plan awarding the wife primary physical custody of the children, husband to pay $3825.00 in monthly child support, $4,000.00 in alimony and a lump sum alimony of 10 percent of his annual bonus for 10 years or until the youngest child emancipates which ever first occurs. The husband was also ordered to pay the children's private school tuition, outstanding charitable pledge to the school for 2020, annual contributions to the children's college savings accounts and 80 percent of their extracurricular activities. However, there were no child support worksheets attached to the Final Order. In addition, the Court awarded 50 percent of the husband's 2020 bonus and all of the credit card travel points. The Court also awarded the wife $129,520.00 in attorney's fees pursuant to O.C.G.A.§9-15-14(b). The husband appeals and the Court of Appeals vacates all items in part and remands.

The husband argues, among other things, the Trial Court abused its discretion by entering a child support award that deviated from the statutory guidelines without making the necessary findings of facts. In addition to the presumptive amount of child support, the Trial Court directed the husband to pay for the children's yearly school tuition, outstanding charitable pledge to the school, annual payments to the children's college savings plans and 80 percent of the children's extracurricular activities. The Court made no findings of facts in accordance with O.C.G.A.§19-6-15(i)(1)(b) or for the husband to pay 80 percent of uncovered medi-

cal expenses. Although the Court stated on the record that they consider these amounts to be appropriate as they reflect the disparity of income between the parties, are consistent with the intent expressed by both parties during their divorce trial and the husband can afford the same given his high income, however, this does not comply with the statute. Therefore, the child support awarded is reversed and remanded. The husband also contends the Trial Court erred by including his employer paid health insurance benefits in his calculation of monthly gross income. Here, the Court erred that employer paid insurance premiums are not included in the determination of the party's gross income.

The husband also argues that the Court should not consider fringe benefits for the purpose of alimony. However, the award of alimony is determined based on a number of factors including the financial resources of each party. Here, the Trial Court considered the party's marriage of 17 years and the wife had been a stay-at-home mom since the birth of their first child in 2005. The Court also found in addition to the husband's $200,000.00 per year salary, he received an annual bonus each year in excess of $2,000,000.00. In considering other factors, the Trial Court awarded the wife monthly alimony for $4,000.00 for 10 years or until the youngest child was no longer eligible for child support whichever first occurred. In addition, the wife received a lump sum award of 10 percent of the net amount of the husband's bonus for 10 years. Therefore, the Court considered the wife's needs and the husband's income and ability to pay. Also, the $4,000.00 award is precisely what the husband's attorney proposed to pay in his opening statement before the Trial Court. It is well established that one cannot complain of a judgment, order or ruling that his own procedure or conduct precured or aided in causing. The husband also argues the Trial Court abused it discretion in awarding the wife half of the net of his 2020 bonus. However, it is clear from the record that this award is an equitable division of marital property and was not alimony.

The husband argues the Trial Court erred by awarding attorney's fees pursuant to O.C.G.A.§19-15-14(b) without limiting the award to the allegedly sanctionable conduct. The wife sought recoupment of her attorney's fees in excess of $130,000.00 and after the hearing, the Trial Court awarded the wife the full amount of her claim based on the findings that the husband had lied about an extramarital affair at the outset of the case and was evasive about his cohabitation with another woman and that his conduct unnecessarily expanded the proceedings. Here, the Court made the ruling without showing the complex decision-making process necessarily involved in reaching the particular dollar figure nor describing how the award was appropriate to include only fees and expenses generated based upon the husband's sanctionable conduct. Here, the wife sought fees which incurred in her representation by 2 prior attorneys with no testimony. She merely attached the billing statements to her brief which amounted to over $45,000.00. In addition, the wife sought to recoup her cost for hiring a private investigator prior to the filing of the divorce action, a forensic accountant and a child therapist. Several of the billing statements were entries for work done prior to the filing of the complaint. In addition, there was nothing in the record to establish the reasonableness of the private investigator, the expert fees or the child therapist. Therefore, the award of attorney's fees is vacated and remanded.

EVIDENCE/PROFFER

Skelton v. Skelton; **A22A0718**
(July 20, 2022)

The parties were divorced in 2018, and had one child. They shared joint legal and physical custody with the mother being the primary custodial parent. The husband suffers from epilepsy and the parenting plan required his visits to be supervised, prohibiting him from consuming alcohol within 4 hours of any visit and required him to report all seizure activities to the mother within 24 hours. In September, 2020, the mother filed a Petition to Modify Custody and Visitation alleging that the father had placed the child in danger in several ways, including by engaging in unsupervised visits, consuming alcohol during the visits, failure to report seizures and driving with the child while at risk for seizures. The mother also subsequently filed a Motion for Contempt against the father. Shortly after, the father filed a Petition to Modify his visitation to non-supervised because of his improved health. Both cases were consolidated and heard in May, 2021. The Court granted the father's Petition and discontinued the supervision and held the mother in contempt for violating the father's visitation rights and awarded the father 2 additional weeks of summer visitation for the next 5 years. The Court found the father in contempt for failing to pay his share of uncovered medical expenses. The mother appeals and the Court of Appeals affirms.

The mother contends the Trial Court erred by imposing arbitrary time limits on the presentation of evidence during the final hearing and by prematurely terminating the cross-examination of the father. Before the final hearing, the Trial Court informed the parties that each side would have 75 minutes to present their case. At the beginning of the mother's cross-examination of the father, the Court stated 2 minutes and 29 seconds. Later, the Court informed the mother's counsel that she had used up her time. Counsel requested more time on the grounds that it's important for the parties to be able to have full opportunity to be heard. The Court responded, "is there anything else, counsel? I'm not going to argue with you." Counsel objected noting that she had another witness to call and she had not completed her cross-examination. The Trial Court implicitly overruled the objection by allowing the husband's counsel to conduct a redirect examination.

The right of cross-examination is a substantial right. As a general rule, it's better that cross-examination should be too free than too restricted. Nevertheless, the Trial Court retains broad discretion in determining whether to admit or exclude evidence. To establish reversable error, a party seeking review of a Trial Court's ruling excluding evidence must show how the testimony would have benefited her case. Thus, even if the Trial Court errs by imposing unwarranted limits on the trial of the case, there is no reversal error unless the appellant can show the harm resulting from the Court's action. To make this showing, a party must proffer the excluded testimony to the Trial Court. Absent such as proffer, the Court has basis in the record to disturb the Trial Courts ruling. Here, the mother did not seek a proffer of any evidence that was excluded because the Trial Courts time limitation and in her appellate brief, she likewise neither identifies the substance of any evidence she could not present nor explains how such evidence likely would have changed any of the Trial Courts ruling and she has the burden of showing reversal of error.

I-864 AFFIDAVIT

Backman v. Backman; **364 Ga.App. 549**
(June 28, 2022)

The parties met through an online dating site in 2011. The wife was a citizen and resided in Columbia. The parties married in February, 2013 and to expedite the wife's arrival in the U.S., the husband executed an I-864 Affidavit of Support pursuant to the Immigration and Nationality Act which he pledged to financially support the wife. After which, the wife moved to the U.S. and now is a legal permanent resident. Two months after the birth of the second child in 2018, the husband filed a Complaint for Divorce. After a bench trial, the Trial Court awarded primary custody of the parties 2 children to the husband. The Trial Court also found the husband has an obligation to support pursuant to the I-864 Affidavit of the support under section 213(a) and will use its discretion and award the wife the amount of $1,000.00 per month to be paid directly to the wife until such time that the I-864 Affidavit is no longer enforceable on January 1, 2023. The husband appeals and the Court of Appeals affirms in part and reverses in part.

This is a case of first impression under Georgia Law. The husband, by the signing of form I-864, agreed to provide support to maintain the sponsored wife at the annual income that is not less than 125 percent of the federal poverty line during the period in which the Affidavit is enforceable. The husband argues that the parties had a prenuptial agreement that the wife waived any right to seek spousal support. The right of support conferred by federal law exists apart from whatever rights a sponsored immigrant might or might not have under state divorce law. Under federal law, neither a divorce judgment nor a premarital agreement may terminate an obligation of support. Therefore, the premarital agreement under state law does not excuse an I-864 sponsors obligation under federal law.

With regards to the wife's award of $1,000.00 of support per month, the threshold amount is determined by the size of the sponsored's household. Here, the size of the wife's household following divorce was one notwithstanding that she resided with her mother. The I-864 Affidavit of support was to support the wife only. The husband's obligation was to support the wife at an annual income that is not less than 125% of the federal poverty line during the period in which the Affidavit is enforceable. The 2020 federal poverty guidelines introduced into evidence at the bench trial for one person household was $1,329.00 per month. However, the wife's income totaled $2,610.00 per month. Therefore, the sponsor is only to pay any deficiencies in order to meet the minimum level of floor and since there was no deficiency, the husband was not required to pay any additional support to the wife pursuant to the I-864 obligation.

INTERLOCUTORY APPEAL

Minnis v Minnis; **A230152**
(December 21, 2022)

In a pending divorce action, the wife motioned to strike the Answer and Counterclaim filed by the husband for failing to provide responses to the wife's discovery request. The Trial Court granted the request and reserved ruling on the award of attorney's fees under O.C.G.A.§9-11-37(4)(a). The husband proceeding pro se, filed a discretionary appeal of the Order striking his Answer and Counterclaim and the Court of Appeals dismisses.

The order that the husband seeks to appeal is not a final judgment and the case remains pending in the Superior Court. An Order striking the Answer and Counterclaim of the Defendant or Defendants and refusing to open the default is not an Order which can be directly appealed. Generally, an Order is final when it leaves no issues remaining to be resolved which constitutes the Courts final ruling on the merits of the action and leaves the party with no further recourse in the Trial Court. Here, the Court stuck the husband's Answer and Counterclaim which also allows the Court to impose sanctions of a judgment by default. However, the Trial Court did not enter a default judgment nor did it make an express determination of finality. In order to appeal such and Order, the husband was required to comply with interlocutory appeal procedures pursuant to O.C.G.A.§5-6-31(b) and obtain a certificate of immediate review. When a matter is both discretionary and interlocutory, the discretionary appeal statute does not excuse a party seeking appellate review of an interlocutory order from complying with the additional requirements of O.C.G.A.§5-6-34(b). Since the husband failed to follow the proper appellate procedures, the Court of Appeals has no jurisdiction and accordingly the appeal is dismissed.

LEGITIMATION

Jefferson v. O'Neil; **364 Ga.App. 23**
(May 24, 2022)

The parties, Jefferson and Kawana, (wife) were married in 1999 and were still married when K.J. was born in 2011. During the marriage, the wife had an affair with O'Neil, but believed K.J. was Jefferson's daughter. The wife kept the affair secret, but eventually O'Neil discovered that K.J. was his biological child. Sometime after the birth of K.J., Jefferson and the wife divorced and joint custody was granted to Jefferson and his wife. At some point afterwards, the wife and K.J. began living with O'Neil. In April, 2020, O'Neil filed a Petition for Legitimation. The Court found that K.J. was the biological child of O'Neil and had not abandoned his opportunity interest and was unaware that K.J. was his biological child before 2019 and granted the Petition for Legitimation. The Court also noted that it was in K.J.'s best interest not to cut off any reasonable ties with Jefferson and if the maternal grandparents allowed, Jefferson may be able to visit K.J. at their home if K.J. so desires. Jefferson appeals and the Court of Appeals reverses and remands.

If a child to be legitimated already has a legal father who is not the biological father, the legal father must be served with the Petition for Legitimation and given an opportunity to be heard. In addition, the Superior Court normally cannot grant a biological father's legitimation petition without first terminating the legal father's parental rights. There is a higher standard that applies in legitimation cases where the child has an existing legal father. Here, the Trial Court did not explicitly terminate Jefferson's parental rights before granting the legitimation and it's not clear from the Order whether the Court believed that it is in K.J.'s best interest to do so after the Court found that it was in K.J.'s best interest to maintain reasonable ties with Jefferson.

Jefferson argues that O'Neil was barred from asserting the claim of legitimation because K.J. already had a legal father and her conception was concealed from Jefferson. However, there were no findings of fraud or deceit by O'Neil and that O'Neil did not abandon his opportunity interest due to his recent discovery of the relationship to her. Jefferson also argues that K.J.'s legitimation was implicitly adjudicated in the divorce decree, but Jefferson's status as K.J.'s legal father was not granted in the divorce action, but was automatic as a result of her birth while he was married to the mother. These issues were not considered in the divorce action and therefore, collateral estoppel was not applied. The law permits the biological father to legitimate a child who already has a legal father so long as the Court applies the proper standards and find it's in the child's best interest. The case is reversed and remanded to decide if the termination of Jefferson's parental rights is in the child's best interest prior to granting the legitimation.

PLEADINGS

Daggy v. Daggy; **A22A1305**
(December 27, 2022)

The parties were married in 2015 and had one minor child. In 2021, the wife filed Petition for Divorce seeking joint legal custody, primary physical custody, child support, alimony and attorney's fees. The husband was served with the petition, but did not file an Answer. At the Final Hearing, the father did not appear and the Court issued Final Decree awarding the wife sole legal and physical custody of the children, giving the father visitation rights, ordered him to pay child support, alimony and attorney's fees. The husband appeals and the Court of Appeals reverses and remands in part.

The Husband first argues that the Court erred in granting relief in excess of that sought by the wife's petition without affording him an opportunity to assert a defense. Specifically, he challenges the Courts award of sole legal and physical custody to the wife where the wife only sought joint legal custody and primary physical custody. It is well established that a party who does not file a responsive pleading waives notice to the time and place of trial. However, a Trial Court may not award relief beyond that sought in a complaint when the Defendant does not file a defensive pleading and does not appear at trial. In addition, in such circumstances, a complaint may not be amended to conform to the evidence.

The wife contends that the husband was put on notice that custody was at issue in the case. However, this argument overlooks the fact that the Trial Court custody determination varied from what was sought in the pleadings. The Trial Courts order effectively barres the husband from making any decisions for the child. Because the petition provided no notice to the husband that he was facing such a claim, the Trial Court awarded relief beyond that requested in the petition and is therefore is reversed.

The father also argues Trial Court abuses discretion awarding attorney's fees without stating a statutory basis and the wife conceded this error and therefore this part of the order is vacated and remanded to explain the statutory basis for the award and make the requisite findings.

SIGNIFICANT CHANGE OF CONDITION

Stanley v. Edwards; **363 Ga.App. 331**
(March 15, 2022)

In 2018, the father filed a Complaint for Modification of Child Custody and Child Support for 2 children requesting primary custody. The mother filed and Answer and Counterclaim for Upward Modification of Child Support claiming the father frequently failed to exercise his visitation causing her to spend more money on resources and in 2019, the oldest child filed an election to live with the mother. After a bench trial, the Court found that there had been a significant and material change in circumstances and that the mother has taken steps to alienate the children from the father, failed to apprise the father of significant events, that the older child has significant problems in school which are simply not being addressed and the mother's morals have been shown to be questionable at best. Thereafter, the Court awards primary custody to the father. The mother appeals and the Court of Appeals reverses.

During the trial, the father identified 2 school events that were open to the family that the mother did not tell him about; one child's introduction into Beta Club and the other was a science event. The mother testified that she told the father about many events, but because he missed so many of them and so frequently, she ceased notifying him. The father did not dispute he missed the events blaming work or the mother and there was also no testimony regarding his actual attendance at events prior these two. The father also testified that he missed visitation based upon his work schedule. Although the father claimed to be able to take time off, he could not explain why he did not attend school events in the past even after receiving notifications. In addition, there is no evidence in the record that the mother spoke negatively about the father to the children or that they held a negative view of the father based on anything the mother said or did. The mother did not prohibit the father from calling the children on their cell phones. Even though the mother should have given the father notice of events if the information was not available otherwise, it is clear from the record that the animosity between the two parties has been ongoing throughout their relationship and began prior to the original order being entered. Nor was there any new or escalating manifestation of it on the part of the mother and therefore it would not present new circumstances or mate-

rial change of circumstances to support the Trial Court's order.

With regards to the child's significant school problems, it is clear from the record that the child has had a difficult time with reading and has always had such difficulty. The mother and grandmother have always worked with the child on reading and their school work. The bulk of difficulties has arisen from the transition to middle school and not an issue with parenting by the mother. There is also evidence that the father had never helped the child with his reading. Therefore, it appears the child has always had an issue with reading and it's known to the school and the parties and was not the result of any conduct on the part of the mother. There is no evidence that a change in custody would improve or remedy the situation. Therefore, the finding does not support the modification of custody.

With regards to the mothers' questionable morals, at trial there were several social media posts with quotes that showed the mother dressed up to go out with girlfriends and many of the quotes were clearly musical over the top or captioned below. None of the photographs showed the mother or her friends nude or engaged in sexually explicit conduct. The father also claimed the mother had several live-in boyfriends over 7 years since the entry of the initial custody order, but there was no evidence that the children were aware of or met anyone other than the person from the pictures she dated from 2012 to 2014 whom the mother claimed was a family friend. There was no evidence beyond the father's attorney speculation that any of her social media posts containing cuss words or the picture of her middle finger were seen by the children were indicative of the way the mother behaved when she was parenting the children or had any negative effect on the children. There is no evidence that any of the mother's behavior pointed to in the photographs constituted new circumstances because several of the pictures were from before the initial custody order was entered or soon after. In addition, there is no evidence that the children were aware of any of the mother's conduct to which the father objected to or negatively affected them.

Here, the testimony in evidence consisted largely of continuation of long patterns of behavior among the parties over years and testimony about the mother with no connection to her parenting with any adverse impact to the children. Judgment reversed.

SUBJECT MATTER JURISDICION

Emerman v. Hetherington; **872 S.E. 2d 477**
(April 21, 2022)

The parties were married in Australia in 2007 and separated in July, 2020. In October of 2020, the husband filed a Complaint for Divorce in the Superior Court of Coweta County where he alleged that he was a resident of that county and a resident of the State of Georgia for a continuous period of 6 months prior to filing of the complaint. The wife filed a special appearance and moved to dismiss the complaint alleging, among other things, that the Trial Court lacked subject matter jurisdiction because the husband could not prove that he met the 6-month requirement pursuant to O.C.G.A. §19-5-2. The wife noted that the parties had never lived in Georgia and they had last resided together in Scotland from December, 2019 until July, 2020. The Trial Court scheduled a hearing on the motion for the limited purpose of receiving arguments and did not consider any evidence and neither party submitted affidavits on the jurisdiction issue. The Trial Court granted the wife's Motion to Dismiss finding the husband had failed to meet the Georgia residency requirement. The husband appeals and the Court of Appeals reverses.

Pursuant to O.C.G.A.§19-5-2, no Court shall grant a divorce to any person who has not been a bona fide resident of the State of Georgia for 6 months prior to the filing of the Petition for Divorce. Here, the husband alleged he was a residence of Coweta County and had been for 6 months preceding the filing of the Complaint for Divorce. At the Trial Court's hearing, it limited the hearing to legal arguments only and did not consider any evidence nor any affidavits were submitted regarding the jurisdictional issue. Pursuant to O.C.G.A.§9-11-43(b) where a motion is based on facts not appearing on the record, the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct the matter be wholly or partly by oral testimony. The father contends that if he were given the opportunity to have an evidentiary hearing, he would have presented testimony in evidence including his Georgia driver's license, lease agreement and rent checks to satisfy his burden of establishing Georgia residency. Because the hearing was limited to legal arguments only, the husband was deprived of his opportunity to prove residency. Therefore, the Trial Court erred in dismissing the husband's Complaint for Divorce without an evidentiary hearing and the case is vacated and remanded.

SUPERSEDEAS

Dunn v. Dunn; **363 Ga.App. 132**
(March 9, 2022)

A Complaint of Divorce was filed in 2019. On December 15, 2020 a Final Order of Divorce was entered which granted the wife physical custody of the minor children, visitation with the husband, child support and awarded the marital residence to the wife and provided for sale other real property. Within 30 days of the entry of the Final Order, the husband filed a Motion for New Trial. In a separate action on January 7, 2021, the wife filed a TPO against the husband asserting claims of abuse. On January 21, 2021, a Motion for Contempt was filed against the husband that he was in arrears of his child support obligation and withholding the children from her Thanksgiving and Christmas time periods. The wife's Petition for Protective Order and her Motion for Contempt were heard at an evidentiary hearing on February 4, 2021. The next day, the Court entered 3 orders granting the wife a 12-Month Protective Order holding the husband in contempt for failure to pay child support and for retaining the party's children contrary to the terms of the Final Order. Two months later, while the husband's Motion for New Trial was still pending, the wife filed another Motion for Contempt to pay child support and had transferred real property. The hearing was held on April 8, 2021. The Trail Court entered an order holding the husband in contempt of failure to pay child support and sale or transfer of certain real estate. The husband Motion for New Trial was finally denied and the husband appeals and the Court of Appeals reverses.

Regarding the first contempt, the husband argues that pursuant to O.C.G.A.§9-11-62, his Motion for New Trial acted as an automatic supersedeas that precluded the Trial Court from holding him in contempt for violating the child support and custody agreement. The Motion for New Trial shall act as a supersedeas unless otherwise ordered by the Court, but the Court may condition the supersedeas upon giving a bond with good security in such amounts that the Court may order. Nothing in the Final Order exempted any of the provisions from the automatic supersedeas. The Final Order was stayed pending the resolution of the husband's Motion for New Trial.

With regards to the second contempt order, the same reasoning applies as to the first contempt order. The husband also challenges and contests the Family Violence Protective Order. The wife claims that the February 4th evidentiary hearing that the husband left bruises on the party's children which constitutes assault and battery. However, there was at best vague testimony which provided no factual basis for the wife's concern and thus did not authorize a finding that the husband committed either assault or battery. The wife also argues that the TPO should be affirmed because the husband committed felony interference with custody pursuant to O.C.G.A.§16-5-45 and that the husband has twice wrongfully withheld her from the 3 children during the entire week of Thanksgiving 2020 and for a 2-week period starting December 11th when the children were released from school early due to the Covid-19 pandemic. Pursuant to O.C.G.A.§16-5-45(d)(1)(c), a person commits the offense of interference of custody without lawful authority to do so intentionally and willfully retains possession within the state of the child upon expiration of lawful period of visitation with the child. But only the third or subsequent offense constitutes a felony. Pursuant to O.C.G.A.§16-5-45(c)(2) provides the offense of interstate interference with custody may be guilty of a felony when a person removes a minor from the state in a lawful exercise of visitation right and upon expiration of the period of lawful visitation intentionally retains possession of the minor child in another state for the purpose of keeping the child away from the individual having lawful custody of the minor. Regarding the relevant 2 intervals during November and December 2020, the wife cites nothing showing the whereabouts of the husband or where he retained the children. Her assertion that the husband committed a felony interference of custody is unavailing. Therefore, the TPO and 2 contempt orders are reversed for a lack of sufficient evidence.

UCCJEA

Makin v. Davis; **364 Ga.App. 16**
(May 24, 2022)

The parties resided in the UK for a period of time and had one child. Then the mother and the child returned to Georgia in March of 2017. The father remained in the UK and applied for a Child Arrangements and Prohibitions Steps Order in the Family Court in London. The UK Court issued an order in 2017 which required the mother to bring the child back to England on June 3, 2018. The parties agreed that the UK Court retains primary jurisdiction to consider custody matters and the mother agreed not to challenge the 2017 Order. The mother filed an ap-

plication with the UK Court to permanently remove the child to the United States and on April 18, 2019, the UK Court signed a Child Arrangement Order which stated the mother is permitted to take the child from the United States until June 22, 2021 and provided for visitation by the father. A review hearing was scheduled via video conference for March 1, 2021. On January 30, 2019, two months before the 2019 UK Order, the mother filed a Complaint for Divorce in the Superior Court of Monroe County. On September, 2019, the Monroe County Superior Court entered a Final Judgment and Decree of Divorce granting the mother primary physical custody and awarding parents joint legal custody of the child. In September 28, 2020, the father filed a Petition to Domesticate and register the 2019 Order in the Superior Court. A hearing was held in the Superior Court and entered an Order denying the father the Petition to Domesticate the foreign judgment. The father appeals and the Court of Appeals reverses.

UCCJEA was created to deal with the problems of competing jurisdiction entering conflicting interstate child custody orders, forum shopping and the draw out and complex child custody legal proceedings encountered when multiple states are involved. When a party seeks registration from an Order from another state or country, upon receiving the registered documents, the registering Court shall cause the determination to be filed as a foreign judgment and giving the other party notice and opportunity to contest the registration. Pursuant to O.C.G.A.§19-9-85(d) provides a person seeking the contest of the validity of a Registration Order must request a hearing within 20 days after the service of the notice.

The father contends that the Superior Court erred by denying his Petition to Domesticate pursuant to O.C.G.A.§19-9-85-(b)(d). Here, the mother has the burden of establishing that the UK Court did not have jurisdiction. However, the mother argues the UK Court lacked jurisdiction because it did not undertake the analysis of the minor child's home state as required under O.C.G.A.§19-9-61(a)(1) prior to the UK Order. However, the UCCJEA does not require that the Court include in it's Order express factual findings as to the children's home state. The mother has also failed to establish that the previous UK Order has been vacated, stayed or modified. The mother also argues that she was entitled to notice in accordance with O.C.G.A.§19-9-47 and was not given notice before the UK Family Court issued the judgment being domesticated in 2019. However, notice was not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the Court. Here, the mother clearly submitted herself to the jurisdiction of the UK Court through her application in the UK Family Court to permanently remove the child to the US and therefore, failed to establish that she did not receive the required notice of the UK proceedings. Judgment reversed.

*Vic Valmus graduated from the University of Georgia School of Law in 2001 and is a partner with Moore Ingram Johnson & Steele, LLP. His primary focus area is family law with his office located in Marietta. He can be reached at vpvalmus@mijs.com.

Past Section Chairs

Leigh Cummings.....2021-22

Kyla Lines.....2020-21

Ivory Brown 2019-20

Scott Kraeuter.....2018-19

Gary Patrick Graham.....2017-18

Marvin Solomiany.....2016-17

Regina M. Quick.....2015-16

Rebecca Crumrine Rieder.....2014-15

Jonathan J. Tuggle.....2013-14

Kelly Anne Miles.....2012-13

Randall Mark Kessler.....2011-12

Kenneth Paul Johnson.....2010-11

Tina Shadix Roddenbery.....2009-10

Edward Coleman.....2008-09

Kurt Kegel.....2007-08

Shiel Edlin.....2006-07

Stephen C. Steele.....2005-06

Richard M. Nolen.....2004-05

Thomas F. Allgood, Jr.....2003-04

Emily S. Bair 2002-03

Elizabeth Green Lindsey.....2001-02

Robert D. Boyd.....2000-01

H. William Sams.....1999-00

Child Support Worksheet Helpline

A Call for Volunteers

a service provided by the Family Law Section of the State Bar of Georgia and the Georgia Legal Services Program

Flex your child support worksheet prowess to assist income eligible, pro se Georgians with the completion and filing of child support worksheets!

*Convenient and easy way to serve the community
*One-time legal assistance - not an ongoing legal relationship with the pro se litigant
*Contact caller(s) from the comfort of your office or home on your schedule
*Flexible commitment
*You may volunteer for as many cases as you would like to take
*Simple registration: Email cswgahelp@gmail.com.

Child Support Worksheet Helpline Volunteers

Lori Anderson
Steven R. Ashby
Alice Benton
Audrey Bergeson
Dan Bloom
Ivory Brown
Teri L. Brown
Obreziah L. Bullard
Erik Chambers
Katie (Kathleen) Connell
Rebecca Crumrine Rieder
Leigh Cummings
Courtney Dixon
E. Lauren Ducharme
Regina Edwards
Ted Ettriem
Kem Eyo
Jessica Reece Fagan
Samantha Fassett
Max Fisher
Brooke French
Adam Gleklen
Gary Graham
Mitchell Graham
Karlise Grier
John E. Haldi
Hannibal Heredia
Elinor H. Hitt
Donna Hix
Michelle Jordan
Scot Kraeuter
Kelly Miles
Marcy Millard
Sabrina A. Parker
Jamie Perez
Laurie Rashidi-Yazd
Tera Reese-Beisbier
Steven C. Rosen
Jonathan Rotenberg
Elizabeth Schneider
Laura Holland Sclafani
Mali Shadmehry
Dawn Smith
Savannah Stede
Savannah Steele
Erin Stone
N. Jason Thompson

I am interested in being a Volunteer for the Child Support Helpline*

Name: _____

Bar Number: _____

Office Address: _____

Phone: _____

Email: _____

I would like to assist with no more than ____ callers per month.

l understand that by signing up for this volunteer position, I am certifying that I have a working knowledge of Child Support Worksheets in the State of Georgia and how to complete them based on information provided to me by a pro se litigant. I also certify that I am a member in good standing with the State Bar of Georgia.

_____

***Please email this form to cswgahelp@gmail.com.**

39th Annual Family Law Institute Sponsors

(as of 01/30/23)

Event

Brown Dutton & Crider Law Firm - Saturday Night Cocktail Reception
Hobson & Hobson, P.C. - Friday Night Cocktail Party
IAG Forensics & Valuation - Friday Night After - Party

Five Star ($7,500)

Burney & Reese LLC
Eittreim Martin Cutler, LLC
The Manley Firm, P.C.

Double Diamond ($5,000)

Connell Cummings

Diamond ($2,500)

Bloom Lines Alexander LLC
Boyd Collar Nolen Tuggle & Roddenbery, LLC
Davis, Matthews & Quigley, P.C.
Evolve Family Law
Hoelting & McCormack LLC
Levine Smith Snider & Wilson, LLC
Reese-Beisbier & Associates, P.C.
Rubin Family Law, LLC
Smith, Gilliam, Williams & Miles, P.A.
Soberlink
Stearns-Montgomery & Proctor
Stern Edlin Graham Family Law

Double Platinum ($1,500)

Ancillary Legal Corporation
Callaway & Company, LLC
Elizabeth Gallo Court Reporting
Gibbon Financial Consulting
Kessler & Solomiany
Legion Mediation
Matthew Lundy Law – QDRO Law
MDD Forensic Accountants
Thomson Reuters

Platinum ($1,000)

Caldwell, Carlson, Elliott & DeLoach, LLP
E.N. Banks-Ware Law Firm, LLC
Hedgepeth Heredia LLC

Gold ($500)

The Gleklen Law Firm
Homrich Berg
Lake Mediation
Moore Ingram Johnson & Steele, LLP
SignatureFD
Stephanie Wilson Family Law, L.L.C.

Family Law Section
State Bar of Georgia
Kem Eyo, Editor
104 Marietta St., NW, Suite 100
Atlanta, GA 30303

Presorted
Standard Mail
U.S. Postage Paid
Atlanta, GA
Permit No. 1447

2022-23 Family Law Section Executive Committee