2004 Georgia Case Law and Legislative Update

BY:

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SUMMARY: Relates to domestic relations, so as to change certain provisions relating to the calculation of child support; to provide guidelines for determining amount of child support to be paid; to provide for factors for apportioning child support obligations; to provide a schedule of basic child support obligation amounts; to change the form of the final judgment in divorce actions to conform such changes in the determination and computation of child support; to remove a certain limitation on petitions to modify alimony and child support; to provide an effective date; to repeal conflicting laws; and for other purposes.

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SUMMARY: Relates to divorce, so as to require certain divorcing parents to participate in education classes that focus on the effect of divorce and separation on children; provides for legislative findings; provides for the types of persons who can provide the education; provides for exceptions to the education classes;

changes the time limit for granting a divorce on the grounds that the marriage is irretrievably broken.

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SUMMARY: Relates to petition for legitimation of a child, notice to mother, court order, effect, and intervention by father; provides that legitimation of a child may take place contemporaneously with the establishment of paternity with the consent of the mother and the father; provides for related matters; repeals conflicting laws.

2005 GA S.B. 94 (SN) -

SUMMARY: Amends Article 2 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated the Georgia Child Custody Intrastate Jurisdiction Act of 1978; changes certain provisions relating to actions by physical or legal custodians not being permitted in certain circumstances; prohibits other persons or entities from maintaining certain actions under certain circumstances; repeals conflicting laws.

GEORGIA CASE LAW UPDATE

I. CHILD CUSTODY

A. *Initial Determination*

Anderson v. Anderson, 606 S.E.2d 251 (2004)

Facts: Teena Marie Anderson (Wife) and her husband Anthony Ray Anderson (Husband) were divorced in 2003 pursuant to an amended final judgment and decree. Husband and Wife have two children: a son born in 1993 who Wife brought into the marriage and Husband adopted, and a daughter born of the marriage in 1999. The trial court awarded the parties with joint legal custody of the children, with primary physical custody of the son to Wife and primary physical custody of the daughter to Husband. The trial court denied Wife's motion for new trial, and Wife filed an application for discretionary review.

The Georgia Supreme Court granted Wife's application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether the trial court abused its discretion in making a custody award which separated the siblings.

Holding: The trial court did not abuse its discretion by awarding primary physical custody of one child to a parent and primary physical custody of another child to the other parent.

Analysis: The trial court repeatedly stated in its amended final judgment and decree of divorce that custody of the children must be determined based on what is in the best interests of the children in accordance with O.C.G.A. § 19-9-3(a)(2). The trial court found that Husband cared for the children when Wife was out of town, fed, clothed and bathed them, took them to doctor's appointments and helped the son with his school work. The trial court found that although Wife loved the children, she "put her own desires and perceived needs ahead of and to the detriment of her children" and lacked "the moral fiber" to be a role model for the children. The trial court found further that Wife was not a credible witness and had "deliberately misrepresented matters to the court." There was no evidence that the trial court based its custody award on the children's biological relationship to Husband. Both parties participated in sexual indiscretions, but there was no evidence that the trial court made its custody determination by holding Wife to a higher standard regarding sexual indiscretion. The trial court's factual findings were supported by evidence; therefore, the trial court did not abuse its discretion in making a custody award which separated the siblings.

B. ***Modification***

Scott-Lasley v. Lasley, 278 Ga. 671, 604 S.E.2d 761 (2004)

Facts: Juana Scott-Lasley and Charles Lasley were divorced pursuant to a final decree which incorporated an agreement that the parties reached regarding custody of their three children. The custody portion of the decree provided that Scott-Lasley would have primary physical custody of the children. It also provided that "[i]n the event that one of

the parents move outside the Atlanta metropolitan area (7 counties), he or she shall forfeit the right to physical custody of the children to the parent who remains in the 7 counties area."

With respect to child support, the trial court determined that Charles Lasley had a gross monthly income of $9,716.66, and that the applicable percentage to be considered for the three children was twenty-five percent (25%) to thirty-two percent (32%). The trial court determined that the report of the guardian ad litem was a special circumstance. The court set Mr. Lasley's child support obligation as $2,430.00 per month, which amounts to 25% of his gross income.

The decree also provided that Mr. Lasley's child support obligation would be reduced by one-third each time a child reached the age of eighteen, married, died or otherwise became emancipated.

The Georgia Supreme Court granted Scott-Lasley's application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether the trial court erred by:

(1) incorporating the portion of the parties' agreement that provides for a self-executing modification of custody;

(2) reducing Mr. Lasley's obligation by one-third each time a child reaches the age of eighteen, marries, dies or otherwise becomes emancipated; thus, varying Mr. Lasley's child support obligation outside the child support guidelines; and

(3) declining to require Mr. Lasley's child support obligation to continue past the age of eighteen if any of the parties' children were still in high school.

Holding: *Affirmed in part, reversed in part.*

(1) The provision which provides for an automatic change of custody in the event a party moves outside of the 7 county, Atlanta metropolitan area violates the holding in Scott v. Scott, 276 Ga. 372, 578 S.E.2d 876 (2003). The Court's disapproval of self-executing provisions applies whether the provision was agreed upon by the parties or issued by the

trial court. Therefore, the trial court erred by incorporating the provision in to the divorce decree.

(2) When an award of child support is issued for more than one child, the trial court may provide for reduction in child support as the children reach the age of majority; however, the trial court may not reduce the child support on a per child or pro rata basis. The reduction must be made in accordance with the child support guidelines. In this case, when the oldest child reaches the age of eighteen, marries, dies or otherwise becomes emancipated, Mr. Lasley's child support obligation would be reduced from $2,430.00 per month to $1,620.00 per month, which amounts to 16.6% of Mr. Lasley's gross income. The applicable child support guideline range for two children is twenty-three percent (23%) to twenty-eight percent (28%). Even applying the low end of the percentage range of twenty-three percent (23%), Mr. Lasley's child support obligation would be $2,235.00, which is much greater than his obligation after the trial court's pro rata decrease. Furthermore, the one-third reduction when the parties' second child reaches the age of eighteen, marries, dies or otherwise becomes emancipated will result in a child support obligation below the guidelines. Therefore, the trial court erred in reducing the child support award by one-third as each child reaches the age of eighteen, marries, dies or otherwise becomes emancipated.

(3) O.C.G.A. § 19-5-15(e) permits the trial court to enter an award of child support which continues until age 20 if a child is still enrolled in high school. O.C.G.A. § 19-5-15(e) is discretionary, and the court is not required to include such a provision in all child support cases.

Cousens v. Pittman, 266 Ga.App. 387, 597 S.E.2d 486 (2004)

Facts: Kathleen Cousens and William Pittman divorced approximately 10 years ago and have one daughter, nearly 12 years old. The divorce decree provided the parties with joint legal custody of the child and Cousens with sole physical custody of the child. Both parties remarried, although Cousens recently divorced her second husband.

Since the divorce, the child had always lived with her mother. Cousens and the

child live in Gwinnett County, where the child attends school, and Pittman lives in Vinings. Since the divorce, the parties' relationship has been hostile. Following the divorce, Pittman filed a petition to increase his visitation, which the court granted.

Pittman subsequently filed his petition to modify custody. At the final hearing, many witnesses, including the child in chambers, the parties and the child's psychologist, testified to the parties' tense relationship. The child testified further that she loved her father but did not want to spend more time with him; that she missed her mother when she was away from her; and that she wanted the custody and visitation arrangement to stay as it was.

The psychologist testified that the child (1) felt excluded from her father's new family; (2) felt that she was not able to spend much time with her father when she was with him for visitation; (3) was afraid of her father when he was angry; and (4) had suicidal thoughts as a way to avoid the entire dispute. However, according to the psychologist, the child had not expressed suicidal thoughts since Pittman agreed to the psychologist's request that he reduce his visitation temporarily. The psychologist believed that a custody change would increase the child's anxiety and that a continued acrimonious relationship between the parties would continue to hurt the child. The psychologist could not predict what would occur if the child spent more time with her father, aside from an initial increase in the child's anxiety.

Although the Guardian *ad* Litem ("GAL") did a thorough investigation, the court neither read nor considered and sealed the GAL's report.

The court entered an order granting the parties joint physical custody in which the child would alternate weeks at each parent's house while remaining in school and in extra-curricular activities in Gwinnett County.

In support of its determination of a substantial change of circumstances, the trial court made specific findings that (1) the relationship between the child and her father was being irreparably harmed; (2) the child was suffering as a result of the parties' hostile relationship; and (3) the child's anxiety was a result of being caught in the middle of her

parents.

Cousens filed an application for discretionary appeal which was transferred to the Court of Appeals from the Supreme Court.

Issue: Whether the trial court applied proper criteria to effectuate the change of custody and whether a change of custody was warranted based on the evidence.

Holding: *Judgment vacated and remanded* because the trial court used improper criteria to effectuate the change of custody and the evidence did not show the existence of a material change in condition or that a change of custody was in the child's best interests.

Analysis: The Court of Appeals notes that it granted the appeal because the order suggested error on its face. At the time that the appeal was granted, the Supreme Court had not yet decided the Bodne decision, *see infra*, and thus, custodial parents were still entitled to a *prima facie* right to custody. The Court of Appeals did not decide whether the Bodne decision was applicable because the Court found that no material change in circumstances was shown and that there was no evidence in the record to support the trial court's conclusion that a change of custody was in the child's best interests.

Furthermore, even though the trial court made a specific finding that the child suffered from the parties' hostile relationship, the parent's behavior was not a new or material change in circumstances because their behavior had occurred since the divorce. The trial court's finding that the child's relationship with her father was not supported by evidence, and the record showed that the child's relationship with her father was improving. In addition, no evidence showed that the alternating schedule on a weekly basis would have a positive impact on the child or would be in her best interest.

Frank v. Lake, 266 Ga.App. 60, 596 S.E.2d 223 (2004)

Facts: Angela Lake and John Scott Frank divorced in 1997. The divorce decree, which incorporated the parties' settlement agreement, awarded custody of the parties' three children to Frank.

In 1998, Lake filed a petition to change custody. In 1999, the Dekalb County

court denied Lake's request to modify custody, and instead, the court modified visitation.

In February 2002, Lake filed another petition to change custody. As grounds for her request, Lake alleged that Frank used illegal drugs in the children's presence and failed to obtain suitable medical care for the children. The parties' daughter stated in a sworn affidavit, filed with the court, that Frank frequently smoked marijuana in the children's presence, and as a result, he became neglectful and abusive.

On April 17, 2002 at a temporary hearing, Frank's attorney informed the court that the parties had entered into a consent agreement to transfer custody to Lake, and the consent agreement was subsequently made a temporary order of the court. At the time of the hearing, the Court met with the daughter in chambers with the consent of the parties.

In August 2002, the court appointed a Guardian *ad* Litem ("GAL"). Following the GAL's investigation, the GAL submitted a report that noted that Lake provided medical documentation which showed that Frank failed to obtain proper medical care for the children, including (1) not securing adequate treatment for his daughter's wrist and arm fracture in April 2001; (2) taking the daughter to a clinic which misdiagnosed her skin ailment in May 2001; and (3) removing a cast from the daughter's fractured foot in November 2001 so she could attend a dance. Nonetheless, the GAL did not find evidence of medical neglect, and she found the allegations of Frank's drug use to be exaggerated.

The GAL concluded that the homes of both parents were equally suitable and that there had been no material change in circumstances adversely affecting the health and welfare of the children.

In February 2003, at the final hearing, Frank objected to the court's consideration of any statements that the daughter made to the court in chambers at the temporary hearing. The court overruled the objection because the discussion in chambers occurred with both parties' consent. Frank objected to the court's consideration of the temporary custody agreement. The court ruled that, for the purpose of determining whether a material change in circumstances has occurred since the prior custody order, the court

would consider matters which developed at the temporary custody hearings. Frank did not object to the court's consideration of the GAL report. In fact, Frank's attorney stated on the record that the GAL's report stood for itself and that he wanted the court to consider the report without having the GAL present for questioning.

Following the hearing, the court found a change in circumstances materially affecting the welfare of the children and granted Lake's petition for change of custody, finding that (1) Frank failed to obtain proper medical care for the children; (2) the children's reports of Franks' drug use or possession were credible; (3) the children had expressed a desire to live with their mother; and (4) the children were prospering in their mother's care.

Frank filed a motion for new trial which the court denied.

Issue: Whether the trial court erred in granting Lake's petition for change of custody based on two enumerations of error:

(1) that the court erred in considering the GAL report and the statements made by the daughter in chambers; and

(2) that the court erred in granting a change in custody because there was neither a change in circumstances nor probative evidence in the record to support a change of custody.

Holding: *Judgment affirmed.*

Analysis: (1) Both parties agreed to allow the trial court to consider the GAL's report and to interview the child in chambers. Even though the GAL's report may have contained nonprobative hearsay and the child's statements were not transcribes so could not be used to support the court's order, the trial court did not commit error. The Supreme Court has previously concluded that statements made by children, that are not on the record, could not be used to uphold a change of custody; however, "the trial court, within its broad discretion, and without objection by the parties, was authorized to relax the strict rules of evidence to ascertain the relevant and material circumstances to

determine what resolution of the controversy would be in the best interest and welfare of the children." *See* Kohler v. Kohler, 234 Ga. 117, 214 S.E.2d 551 (1975).

(2) Although there may have been insufficient admissible evidence in the record to support the change of custody on the basis of Frank's drug use, the record contained sufficient evidence to support a finding of medical neglect by him, which adversely affected at least one child and that the children improved while in Lake's care. In exercising its discretion, the trial court was authorized to find a material change in circumstances affecting the best interests of the children which justified a change of custody.

Fish v. Fish, 266 Ga.App. 224, 596 S.E.2d 654 (2004)

Facts: Jeffrey and Darby Fish were divorced in Gwinnett County, Georgia on December 6, 1994. The divorce decree provided the parties with joint legal custody of their two minor children. Darby Fish was given sole physical custody of the children, and Jeffrey Fish was granted visitation rights.

In 1996, Darby Fish and the children moved to Florida, and they remain Florida residents. Jeffrey Fish has remained in the marital residence since the time of the divorce.

In July 1997, the parties entered into a consent order in Georgia which modified Jeffrey Fish's visitation rights as necessitated by the children's move to Florida. Darby Fish agreed that she was subject to the jurisdiction of the Georgia Court for the 1997 modification action.

On July 14, 2003, Jeffrey Fish filed a petition for change of custody in Gwinnett County, Georgia based on his son having turned fourteen (*see* O.C.G.A. § 19-9-3(a)(4)) and the son's desire to live with his father. Darby Fish was served in Florida with the petition and an affidavit stating the son's desire to live with his father.

Acting *sua sponte*, and without motion by either party or a hearing on the matter, the trial court dismissed Jeffrey Fish's petition. The trial court determined that it did not

have exclusive, continuing jurisdiction, finding that neither the child nor Darby Fish had a significant connection to Georgia and that substantial evidence was no longer available in Georgia.

Issue: Whether the trial court erred in its application of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") in determining that it did not have exclusive, continuing jurisdiction over the child custody modification action.

Holding: *Reversed and remanded with direction* because Georgia has exclusive, continuing jurisdiction over the child custody modification case.

Analysis: Pursuant to the UCCJEA, the Gwinnett County court retains exclusive, continuing jurisdiction over the Fish's child custody matters until at least one of two situations occurs as set forth in O.C.G.A. § 19-9-62(a):

(1) A court of this state determines that neither the child nor the child's parents or any person acting as a parent has a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(2) A court of this state or a court of another state determines that neither the child nor the child's parent presently resides in this state.

Georgia has not lost jurisdiction under O.C.G.A. § 19-9-62(a)(1) because Jeffrey Fish still resides in Georgia and has never moved from Georgia since the time of the divorce.

Georgia has not lost jurisdiction under O.C.G.A. § 19-9-62(a)(2) because the facts do not show that neither the child nor the child's parents lack a significant connection to Georgia. Not only has Jeffrey Fish continued to reside in Georgia since the divorce, but Darby Fish also agreed that she was subject to jurisdiction in the 1997 modification action, and that modification action provided Jeffrey Fish with extended visitation with the children in Georgia.

Note: Even when a Georgia court retains exclusive, continuing jurisdiction, the court may determine that Georgia has become an inconvenient forum for further custody matters as set forth by O.C.G.A. § 19-9-67. However, the doctrine of inconvenient forum was not the basis for the trial court's determination in this case.

C. *Grandparents*

Reeves v. Hayes, 266 Ga.App. 297, 596 S.E.2d 668 (2004)

Facts: David and Gloria Reeves are the paternal grandparents of a minor child. The Reeves' son died before the child was born and was not married to the child's mother. The child's mother entered into a consent order in 2001 which established paternity and provided the Reeveses with visitation. In 2001, the Reeveses, as administrators of the estate of their deceased son, and the child's mother entered into a consent order on the Reeveses' petition to legitimate their son's child.

In February 2003, the Reeveses filed a petition seeking custody of their son's child. In March 2003, the mother relinquished her parental rights to the maternal grandmother. In April 2003, the maternal grandmother filed a motion to dismiss the Reeveses' petition for custody. The trial court dismissed the Reeveses' petition, finding that the legitimation was void on its face because only a father has a right to legitimate a child.

Issue: Whether the trial court erred in finding that paternal grandparents lacked standing to challenge custody of their deceased son's child.

Holding: *Reversed and remanded.* Paternal grandparents had standing to challenge custody of child because the child's mother had entered into a consent order establishing paternity and granting visitation to paternal grandparents. Even though the child's father died before the child was born so the child was not legitimated by father, the rights of the grandparents were not affected by the father's failure to legitimate the child. Once paternity had been established, the father became a parent to the child, and therefore, the father's parents became the grandparents to the child.

II. VISITATION

Dellinger v. Dellinger, S04F1376 (November 23, 2004)

Facts: Sonja Dellinger and Terry Dellinger were divorced after a final trial which was held in August 2003. The parties are the parents of two minor children. Prior to the parties' move to Georgia in late 2002, Sonja Dellinger had always resided in Alabama. During the hearing, Sonja Dellinger testified that she would return to Alabama with the children if she were awarded custody of the children.

The trial court awarded the parties joint legal custody of the children but awarded primary physical custody to Terry Dellinger. The trial court issued two visitation plans. "Plan A" provided that Sonja Dellinger would have the children for about half of the time and for four weeks during the summer. Under Plan A, the parties would alternate holiday visitation, and the parties would share equally in the transportation of the children for visitation. Plan A also provided that Sonja Dellinger would pay child support of ten percent (10%) of her gross income. "Plan B" automatically went into effect if Sonja Dellinger resided more than thirty-five (35) miles from Douglas County. Plan B provided that Sonja Dellinger would have the children for the first, third, and fifth weekends of each month and for four weeks during the summer. She was required to transport the children for visitation, and she would pay child support of twenty-three percent (23%) of her gross income.

The Georgia Supreme Court granted Sonja Dellinger's application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether the trial court erred by implementing a self-executing modification of visitation if appellant moved more than thirty-five (35) miles from Douglas County without considering the best interests of the children at the time of a move.

Holding: *Reversed with direction.* "We hold that self-executing material changes in visitation violate this State's public policy founded on the best interests of a child unless there is evidence before the court that one or both parties have committed to a given course of action that will be implemented at a given time; the court has heard evidence

how that course of action will impact upon the best interests of the child or children involved; and the provision is carefully crafted to address the effects on the offspring of that given course of action. Such provisions should be the exception, not the rule, and should be narrowly drafted to ensure that they will not impact adversely upon any child's best interests."

Analysis: The provision at issue provided that appellant's contact with her children would be automatically reduced from Sunday through Wednesday each week to two days every other weekend. The Court determined that this automatic decrease was substantial enough to constitute a material change in visitation.

The majority did not agree with the dissent's conclusion that the automatic change provision was based on evidence heard by the trial court that appellant intended to return to Alabama after the divorce, and therefore, was able to consider the impact of the move on the best interests of the children. Instead, the majority determined that trial transcript showed that appellee testified that she would return to Alabama if she were awarded primary physical custody of the children. The evidence did not show that appellant would move to Alabama if she were not awarded primary physical custody of the children. Furthermore, the automatic change provision did not limit the application of the automatic change to a time near the divorce. In fact, it was open-ended and did not contain any expiration date. In addition, the triggering event of appellant's move to a residence further than thirty-five (35) miles from Douglas County was an arbitrary and tangential connection to the children's best interests. "As drafted, the challenged provision fails to reflect an individualized consideration of the children's best interests in this case and neither recognizes nor promotes those best interests as they may be affected by the triggering event."

III. CHILD SUPPORT

Lewis v. Lewis, 604 S.E.2d 485 (2004)

Facts: A temporary order was entered during the parties' divorce proceedings which provided Gloria Lewis (Mother) with custody of the parties' minor children and which

required Terry Lewis (Father) to pay $950.00 per month as child support. Following a jury trial, Mother was awarded legal custody of the children and Father was required to pay child support.

Approximately one month after the final trial, Mother filed a contempt action against Father in which she alleged that Father owed $3,325.00 in child support under the temporary order. The trial court determined that Mother waived her claim to child support under the temporary order by failing to raise the issue at the final trial.

Issue: Whether Mother's claim for arrearage of child support was waived by her failure to assert the claim at final trial.

Holding: *Reversed and remanded.* Mother's claim for arrearage of child support under the temporary order was not waived by her failure to assert the claim at the final trial. Child support belongs to the child and cannot be waived by the custodial parent.

***see* IB; Scott-Lasley v. Lasley, 278 Ga. 671, 604 S.E.2d 761 (2004)**

IV. LEGITIMATION AND PATERNITY

Cohen v. Nudelman, 269 Ga.App. 517, 604 S.E.2d 580 (2004)

Court of Appeals of Georgia.

COHEN

v.

NUDELMAN.

No. A04A1444.

Sept. 9, 2004.

Certiorari Denied Jan. 10, 2005.

Background: Former husband moved to set aside paternity and child support determinations as to child, alleging that child was not his biological child. The Superior Court, DeKalb County, Becker, J., granted motion. Former wife applied for discretionary appeal.

Holdings: The Court of Appeals, Ruffin, P.J., held that:

(1) evidence established that former husband determined paternity after divorce proceedings;

(2) evidence established that former husband did not fail to exercise due diligence in investigating paternity issue;

(3) trial court improperly ordered former wife to reimburse $55,000 in child support payments; and

(4) vacation and remand of $25,000 to former husband for expenses of litigation was required.

Affirmed in part, reversed in part, vacated in part, and remanded.

West Headnotes

[1] Children Out-Of-Wedlock k62

76Hk62

To have a prior consent judgment regarding paternity and child support set aside through an extraordinary motion for new trial based on newly discovered evidence, the movant must show:(1) that the newly discovered evidence has come to his knowledge since the trial; (2) that want of due diligence was not the reason that the evidence was not acquired sooner; (3) that the evidence was so material that it would probably produce a different verdict; (4) that it is not cumulative only; (5) that the affidavit of the witness is attached to the motion or its absence accounted for; and (6) that the new evidence does not operate solely to impeach the credit of a witness.

[2] Children Out-Of-Wedlock k62

76Hk62

Evidence established that former husband determined he was not father of child after divorce proceedings and execution of custody modification agreement, and thus, prior consent judgment regarding paternity and child support could be set aside through extraordinary new trial motion; although former husband questioned paternity during divorce proceedings, he offered verified pleading stating that he believed he was child's father until receiving DNA test results, and after former wife stated in her verified interrogatory responses that former husband was child's father, former husband entered modified settlement based on assumption that he actually was father.

[3] Children Out-Of-Wedlock k62

76Hk62

Evidence established that former husband did not fail to exercise due diligence in investigating paternity issue, so as to set aside prior paternity determination through extraordinary motion for new trial; when former husband presented his suspicions of

paternity to former wife, she swore that he was child's father, without indicating that another man possibly fathered child, and former wife admitted that, during time when child was conceived, she had sexual intercourse on one occasion with someone other than former husband, and she admitted that she had never told anybody before.

[4] Children Out-Of-Wedlock k62

76Hk62

Due diligence requirement to have prior consent judgment regarding paternity and child support set aside through extraordinary motion for new trial based on newly discovered evidence related to diligence in discovering evidence of paternity, not due diligence in filing motion for new trial.

[5] Children Out-Of-Wedlock k62

76Hk62

Former husband in paternity dispute adequately satisfied affidavit requirement relating to newly discovered evidence of paternity by verifying his motion for new trial based on newly discovered evidence, in which he asserted that DNA test revealed he was not child's father and further asserting that, until he received those results, he believed that he was father.

[6] Children Out-Of-Wedlock k73

76Hk73

Statute establishing statutory procedure for setting aside a paternity determination based upon newly discovered evidence did not demand reversal of non-paternity determination on former husband's extraordinary motion for new trial, regardless of whether statute applied retroactively to former husband's motion, where trial court clearly applied new trial standard of *Roddenberry v. Roddenberry,* 255 Ga. 715, 342 S.E.2d 464, and nothing in statute prohibited trial court from employing standard other than that established by statute. West's Ga.Code Ann. § 19-7-54.

[7] Children Out-Of-Wedlock k62

76Hk62

Order setting aside a paternity determination following the discovery of new evidence does not violate Georgia public policy.

[8] Children Out-Of-Wedlock k67

76Hk67

Trial court improperly ordered former wife to reimburse former husband for over $55,000 in child support payments former husband made since divorce with regard to child, who was

determined subsequent to divorce to not be former husband's child; statutory procedure specifically limited monetary relief available to issues of prospective child support payments and past due child support payments, and legislature could have permitted putative father who successfully set aside paternity determination to recoup past support payments, but did not. West's Ga.Code Ann. § 19-7-54(d).

[9] Children Out-Of-Wedlock k73

76Hk73

Former wife's claim that public policy should prohibit ex-husband from suing ex-wife for fraud based on misrepresentations regarding paternity could not be considered on appeal from decision, on former's husband's extraordinary motion for new trial, setting aside paternity and child support determinations, where former wife raised argument for first time on appeal.

[10] Children Out-Of-Wedlock k62

76Hk62

[10] Constitutional Law k299.3

92k299.3

Reimbursement award to former husband of $55,000 in child support payments former husband made since divorce with regard to child, who was determined subsequent to divorce to not be former husband's child violated former wife's due process rights; such award was not proper remedy in motion for extraordinary new trial based on newly discovered evidence, although former husband may have alleged separate fraud claim sounding in tort, former wife received no notice that claim might be resolved and damages imposed following hearing, and thus, former wife had no reasonable opportunity to defend against claim or trial court's ultimate conclusion that she acquired funds by fraud. U.S.C.A. Const.Amend. 14.

[11] Constitutional Law k251.6

92k251.6

Due process demands that a litigant be given reasonable notice and opportunity to be heard, and to present its claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. U.S.C.A. Const.Amend. 14.

[12] Children Out-Of-Wedlock k73

76Hk73

Vacation and remand of $25,000 to former husband for expenses of litigation, based upon former wife's actions, including her actions

relating to discovery issues and disputes which arose in paternity and child support action, was required, where trial court's order did not specify legal basis for award. West's Ga.Code Ann. § 9-11-37(a)(4)(A).

***582** Joseph Szczecko, M. Simmons, Simmons, Warren, Szczecko & McFee, Decatur, Jean Kutner, Kutner & Bloom, Atlanta, for Appellant.

Randall Kessler, Atlanta, for Appellee.

RUFFIN, Presiding Judge.

Heidi Cohen and Richard Nudelman divorced in January 1992. According to the settlement agreement incorporated into the final divorce decree, the marriage produced two sons, J.N. and S.N., and Nudelman agreed to pay child support for both boys. In July 2001, however, Nudelman moved to set aside the paternity and child support determinations as to J.N. Alleging that J.N. is not his biological child, Nudelman sought relief from any future support obligations, as well as reimbursement for all previous support payments.

Following a hearing on August 15, 2003, the trial court granted Nudelman's motion. The court's order relieved Nudelman of all future support obligations relating to J.N., directed Cohen to reimburse Nudelman for $55,260 in past support payments, and awarded Nudelman $25,000 in litigation expenses. We granted Cohen's application for discretionary appeal, and for reasons that follow, we affirm in part, reverse in part, vacate in part, and remand for further proceedings.

1. Citing newly discovered evidence regarding J.N.'s paternity, Nudelman sought to set aside the prior paternity determination through an extraordinary motion for new trial. In resolving such motion, the trial court sits as the trier of fact, and its decision will be upheld absent a manifest abuse of discretion. [FN1] Furthermore, we must accept the trial court's factual findings if any evidence supports them. [FN2]

FN1. See *City of Gainesville v. Waters,* 258 Ga.App. 555, 562(6), 574 S.E.2d 638 (2002); *Harrell v. State,* 70 Ga.App. 521-522, 28 S.E.2d 821 (1944).

FN2. See *Waters,* supra at 560(5), 574 S.E.2d 638.

The record shows that, pursuant to the original divorce decree and settlement agreement, Cohen received primary physical

custody of six-year-old J.N. and seven-year-old S.N. Nudelman agreed to pay child support for both boys, who, according to the settlement agreement, were "born as a result of [the] marriage."

On October 2, 1996, however, Nudelman's counsel wrote Cohen's attorney regarding a dispute over child support and medical expense payments. In the letter, counsel stated that Nudelman "ha[d] learned that he is not the biological father of [J.N.]." The following month, Nudelman petitioned the court to award him custody of both boys. In connection with that litigation, Nudelman served interrogatories on Cohen and asked: "Is Richard Nudelman the biological father of [J.N.]?" Cohen responded, "[y]es."

In July 1997, Cohen and Nudelman reached a settlement and entered a new agreement modifying their rights and obligations "with respect to the minor children of the parties." Under the new agreement, the parties retained joint legal custody of both children. But whereas Cohen continued to have physical custody over J.N., J.N.'s brother was placed in Nudelman's custody. Nudelman ***583** and Cohen each were responsible for making child support payments to the other.

In July 1999, Nudelman obtained DNA testing showing that he is not the biological father of J.N. Two years later, Nudelman filed his petition for extraordinary relief, citing the DNA report as evidence of nonpaternity. Through his verified pleading, Nudelman asserted that, until he received the DNA test results, he believed that he was J.N.'s father.

[1] Under our Supreme Court's decision in *Roddenberry v. Roddenberry,* a prior consent judgment regarding paternity and child support can be set aside through an extraordinary motion for new trial based on newly discovered evidence. [FN3] To obtain such relief, the movant must show:

> FN3. 255 Ga. 715, 717, 342 S.E.2d 464 (1986). See also *Dept. of Human Resources v. Browning,* 210 Ga.App. 546, 547(1)(a), 436 S.E.2d 742 (1993) (noting that in *Roddenberry,* "the Supreme Court recognized an extraordinary motion for new trial (based on newly discovered evidence) as a proper procedural vehicle for challenging a consent judgment which resolved issues of paternity and child support").

(1) that the newly discovered evidence has come to his knowledge since the trial; (2) that want of due diligence was not the reason that the evidence was not acquired sooner; (3) that the evidence was so material that it would probably produce a different verdict; (4) that it is not cumulative only; (5) that the affidavit of the witness is attached to the motion or its absence accounted for; and (6) that the new evidence does not operate solely to impeach the credit of a witness. [FN4]

FN4. (Punctuation omitted.) *Roddenberry,* supra.

Applying these factors, the trial court concluded that Nudelman was entitled to extraordinary relief and set aside all prior judgments regarding child support. Although Cohen challenges the trial court's findings as to each factor, sufficient evidence supports its ruling.

[2] (a) Cohen first argues that Nudelman failed to present any *newly discovered* evidence. In particular, she argues that Nudelman knew of the paternity issue before their divorce was finalized and thus cannot show that the evidence came to his knowledge since the "trial"--or entry of the final divorce decree. To support this claim, she cites affidavits in the record from two individuals who testified that Nudelman questioned J.N.'s paternity during the divorce proceedings. Cohen further argues that, even if Nudelman had no suspicion about J.N.'s paternity before the divorce, he certainly questioned the paternity in October 1996, when his attorney asserted that he was not J.N.'s father.

Despite this evidence, the trial court determined as a matter of fact that Nudelman discovered in June or July 1999 that he is not J.N.'s biological father. We find no error. Nudelman offered evidence through a verified pleading that he believed he was J.N.'s father until he received the test results from the June 1999 DNA test. [FN5] He also presented an affidavit from his former attorney who wrote the October 2, 1996 letter to Cohen's counsel. That attorney testified that he did not write the letter based on Nudelman's knowledge of paternity. Instead, the attorney "decided to question the paternity based on a statement made to ... Nudelman by a former friend of ... Cohen." And after Cohen stated in her verified interrogatory responses that Nudelman was J.N.'s father, Nudelman entered the modified settlement based on the assumption that he actually was the father.

FN5. See *BEA Systems v. WebMethods, Inc.,* 265 Ga.App. 503, 504, 595 S.E.2d 87 (2004) (noting that a verified complaint serves as both pleading and evidence); *Weekes v. Nationwide General Ins. Co.,* 232 Ga.App. 144, 149(3)(b), 500 S.E.2d 620 (1998) (" 'Verified pleadings have been held to be equivalent to a supporting or opposing affidavit for purposes of raising an issue of fact on summary judgment.' ").

Although the record contains conflicting evidence, the trial court, as fact finder, resolved these conflicts in Nudelman's favor and determined that Nudelman discovered the information about J.N.'s paternity in 1999, *after* the divorce proceedings and execution of the 1997 modification agreement. Because this finding is supported by some ***584** evidence, we will not disturb it. [FN6]

FN6. See *Waters,* supra. We find no merit in Cohen's claim that the statement in the October 2, 1996 letter demands judgment in her favor. We similarly reject Cohen's claim that "[t]he theories of res judicata and collateral estoppel vitiate [Nudelman's] claim of newly discovered evidence after" execution of the modified settlement agreement in 1997. See *Browning,* supra ("[T]he doctrines of res judicata and estoppel by judgment are inapposite when ... a consent judgment is under attack via extraordinary motion for new trial [based on newly discovered evidence].").

[3] (b) Next, Cohen argues that Nudelman failed to exercise diligence in investigating the paternity issue. She again points to his alleged knowledge both before the divorce proceeding and in 1996. The trial court, however, found that he had no knowledge until 1999. And the record shows that when Nudelman presented his suspicions to Cohen in 1996, she swore that he was, in fact, J.N.'s father. Finally, at the hearing on Nudelman's extraordinary motion, Cohen admitted that, during the time when J.N. was conceived, she had sexual intercourse on one occasion with someone other than Nudelman. According to Cohen, she had "never admitted to this before and [had] never told anybody." She further agreed that this individual possibly fathered J.N.

We find no error in the trial court's determination that Nudelman exercised due diligence in discovering the evidence. Presented with a question about J.N.'s paternity in 1996, Nudelman asked Cohen whether he was the father, and she replied "yes," without indicating that another man possibly fathered the boy. Although he arguably could have obtained a DNA test at that point, the trial court did not abuse its discretion in refusing to view his failure to do so as a lack of diligence.

[4] Finally, we cannot agree with Cohen's vague assertion that Nudelman failed to exercise diligence by waiting two years after the DNA test to file his extraordinary motion, during which time he continued to pay child support pursuant to the modified settlement agreement. *Roddenberry's* due diligence criteria relates to diligence in discovering the evidence--not diligence in filing a motion for new trial. And we can hardly find a lack of diligence in Nudelman's decision to comply with the court-ordered support payments.

(c) According to Cohen, the trial court erred in concluding that the paternity evidence was material, would have produced a different outcome in the divorce proceedings, and was not cumulative. We disagree. Evidence establishing that J.N. is not Nudelman's son certainly would have altered the final divorce decree, which obligated Nudelman to pay significant sums in child support. And we find no merit in Cohen's assertion that the paternity evidence was "merely cumulative evidence supporting what [Nudelman] already knew."

[5] (d) Cohen claims that Nudelman failed to attach to his extraordinary motion an affidavit regarding the newly discovered evidence or to otherwise account for the affidavit's absence. As noted by the trial court, however, Nudelman verified his motion, in which he asserted that the June 1999 DNA test revealed he is not J.N.'s father. Nudelman further asserted that, until he received those results, he believed that he was the father. We find no error in the trial court's conclusion that Nudelman adequately satisfied the affidavit requirement. [FN7]

FN7. See *Weekes,* supra.

(e) Finally, Cohen claims that the newly discovered evidence serves no purpose other than to impeach her credibility. Again, we disagree. The new evidence shows that Nudelman is not J.N.'s father. [FN8] Although such evidence certainly impeaches

Cohen's claim that he is the father, that is not its sole purpose.

> FN8. The 1999 DNA test report obtained by Nudelman has potential chain-of-custody and resulting admissibility problems. Apparently concerned about this issue, the trial court ordered that new DNA tests be conducted and the results submitted to the court under seal for consideration in the court's final determination. We have been unable to find these test results in the record, and neither party has provided a helpful record cite. Cohen, however, does not dispute that the tests were conducted and submitted to the trial court, or that the results support Nudelman's claim of non-paternity.

***585** [6] 2. At several points in her brief, Cohen argues that Nudelman's motion failed to meet the requirements of OCGA § 19-7-54. That provision, which became effective after Nudelman filed his motion, but before the trial court ruled, establishes a statutory procedure for setting aside a paternity determination based upon newly discovered evidence. [FN9]

> FN9. See OCGA § 19-7-54.

At the hearing on Nudelman's motion, the parties discussed whether OCGA § 19-7-54 applies retroactively to this case and, if so, whether Nudelman had met the statutory requirements. The trial court's ruling, however, is clearly based upon the criteria set forth in *Roddenberry*. And nothing in OCGA § 19-7-54 prohibits the trial court from issuing a decision using the *Roddenberry* standard, rather than the statutory mechanism. [FN10] Accordingly, we find no merit in Cohen's claim that OCGA § 19-7-54 demands reversal.

> FN10. See OCGA § 19-7-54(c) (providing that if the movant cannot meet the statutory requirements for setting aside the paternity determination, "the court may grant the motion or enter an order as to paternity, duty to support, custody, and visitation privileges *as otherwise provided by law* " (emphasis supplied)).

[7] 3. Cohen also argues that allowing Nudelman to "delegitimize" J.N. violates public policy. The Supreme Court, however, has sanctioned a method for challenging paternity based on newly discovered evidence, and the trial court found that Nudelman met the necessary requirements for raising such

challenge. Furthermore, as noted above, the legislature recently established a statutory procedure for challenging a prior paternity determination. Although the trial court based its ruling on *Roddenberry,* the legislature's action further shows that an order setting aside a paternity determination following the discovery of new evidence does not violate Georgia public policy.

[8] 4. The trial court, therefore, did not err in setting aside the prior judgments relating to paternity and child support. Nevertheless, we agree with Cohen that the trial court improperly ordered her to reimburse Nudelman for over $55,000 in child support payments he has made since the divorce. Nothing in *Roddenberry* supports such an award, and the new statutory procedure specifically limits the monetary relief available to "the issues of prospective child support payments [and] past due child support payments." [FN11] The legislature could have permitted a putative father who successfully sets aside a paternity determination to recoup past support payments, but it did not do so. And we have found no case law that otherwise authorizes such recovery through an extraordinary motion for new trial based on newly discovered evidence.

FN11. See OCGA § 19-7-54(d).

[9][10] Assuming, for the sake of argument, that past child support payments can be recovered as damages in a fraud action, [FN12] the trial court erred to the extent it awarded such damages at this point. [FN13] Nudelman filed an extraordinary motion for new trial to set aside a child support determination. In his pleading, he also sought "relief" based on Cohen's alleged fraud and arguably stated a tort claim for fraud. Cohen, however, clearly believed that the trial court was only addressing the motion for new trial at the August 15, 2003 hearing. In fact, Cohen's counsel specifically stated that the hearing involved "a motion," rather than a trial. Neither the trial court nor Nudelman's counsel disputed this statement, and nothing in the record indicates that the trial court set August 15, 2003, as a trial date for resolving a ***586** tort claim. Nonetheless, the trial court essentially treated the hearing as a bench trial for the fraud allegations and awarded damages, finding that Cohen had "acquired [past child support payments] by fraud."

FN12. See *Butler v. Turner,* 274 Ga. 566, 569-570(2), 555 S.E.2d 427 (2001) (mother may bring fraud action against father of child who fraudulently misrepresented income to reduce child support obligations); *Ghrist v. Fricks,* 219 Ga.App. 415, 422(4), 465 S.E.2d 501 (1995) (evidence supported fraud verdict in action brought by former husband against his ex-wife on grounds that ex-wife fraudulently led him to believe that he was father of child born during marriage).

FN13. On appeal, Cohen argues that public policy should prohibit an ex-husband from suing an ex-wife for fraud based on misrepresentations regarding paternity. Cohen, however, has not shown that she raised this argument below, and we will not address such argument for the first time on appeal. See *Clark v. Chick-Fil-A,* 214 Ga.App. 758, 759(1), 449 S.E.2d 313 (1994).

[11] Due process demands that a litigant be given "reasonable notice and opportunity to be heard, and to present its claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it." [FN14] We cannot find that the trial court's award of previously paid child support satisfies due process. As noted above, such award is not a proper remedy in a motion for extraordinary new trial based on newly discovered evidence. Furthermore, although Nudelman may have alleged a separate fraud claim sounding in tort, Cohen received no notice that this claim might be resolved and damages imposed following the hearing. Thus, she had no reasonable opportunity to defend against the claim or the trial court's ultimate conclusion that she acquired funds by fraud. Accordingly, we must reverse the trial court's order to the extent it finds Cohen liable in tort for fraud, vacate the award of $55,260 in past child support payments, and remand the case for further proceedings on any properly raised fraud allegations. [FN15]

FN14. (Punctuation omitted.) *In the Interest of B.A.S.,* 254 Ga.App. 430, 442(9), 563 S.E.2d 141 (2002).

FN15. See *Maples v. Seeliger,* 165 Ga.App. 201, 202(1), 299 S.E.2d 906 (1983) (setting aside contempt finding because trial court failed to give alleged contemnor reasonable notice

and an opportunity to be heard); see also *Coweta County v. Simmons,* 269 Ga. 694, 507 S.E.2d 440 (1998) ("There having been no notice to [the defendant] that the [court] might consider the merits of the issue of his alleged negligence, a holding that he was liable, tantamount to an award of summary judgment against him, would deny him due process.").

[12] 5. Finally, Cohen argues that the trial court erred in awarding Nudelman $25,000 in "expenses of litigation, based upon [her] actions, including her actions relating to the discovery issues and disputes which arose in this case." Although the trial court's order does not specify a legal basis for the award, Nudelman claims on appeal that the trial court properly awarded him litigation expenses pursuant to OCGA § 9-11-37(a)(4)(A), which provides:

> If [a motion to compel] is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

This provision, however, only permits recovery of expenses incurred in obtaining an order compelling discovery. And, given the language used by the trial court, it does not appear that the $25,000 award relates solely to such expenses. Furthermore, Nudelman has not pointed us to any evidence in the record showing that he spent $25,000 to obtain an order compelling discovery.

Under these circumstances, we are uncertain whether the trial court's litigation expense award is based on OCGA § 9-11-37(a)(4)(A), some other provision, or a combination of provisions. We are unable, therefore, to properly review the award. Accordingly, we must vacate the $25,000 award and remand for further clarification by the trial court. [FN16]

FN16. See *Cotting v. Cotting,* 261 Ga.App. 370, 371-372(2), 582 S.E.2d 527 (2003); *Easler v. Fuller,* 169 Ga.App. 110, 111, 311 S.E.2d 534 (1983).

Judgment affirmed in part, reversed in part, vacated in part and case remanded.

ELDRIDGE and ADAMS, JJ., concur.

269 Ga.App. 517, 604 S.E.2d 580, 4 FCDR 3008

V. ENFORCEMENT AND INTERPRETATION OF SETTLEMENT AGREEMENTS, PREMARITAL AGREEMENTS & ANTENUPTIAL AGREEMENTS

Lerch v. Lerch, 2005 WL 123885 (Ga.)

Facts: Donald and Barbara Lerch were married in 1994. Prior to the marriage, parties entered into a prenuptial agreement. After the wedding, the parties lived in a residence which Husband owned prior to the marriage. In 1999, Husband executed and recorded a deed which transferred ownership of the residence to both parties as "tenants in common" with the right of survivorship.

The parties divorced in 2004. In the final decree of divorce, the trial court awarded $100,000.00 to Wife in accordance with the parties' prenuptial agreement. The trial court found that as a result of the transfer of ownership in 1999, one-half of the home qualified as marital property and one-half of the home remained the separate property of Husband. The court awarded the entire marital residence to Husband, with the marital portion being awarded as Husband's equitable division of marital property.

Issue: Whether the trial court erred in failing to treat the entire residence as marital property.

Holding: *Reversed and remanded.* The trial court erred in failing to treat the entire residence as marital property. Usually, a gift to one spouse becomes the separate property of the recipient. However, when a gift is made to a marital couple, the property will become marital property absent evidence a contrary intent by the donor. By deeding the residence to both Wife and himself as "tenants in common" with the right of survivorship, Husband's intent was to transform his separate property into marital

property. The entire residence should have been treated as marital property because both Husband and Wife owned an undivided one-half interest in the residence.

Adams v. Adams, 278 Ga. 521, 603 S.E.2d 273 (2004)

Facts: Husband and Wife were married in 1994. They executed an antenuptial agreement two days before their wedding. At the time the parties executed the antenuptial agreement, Husband's assets were valued at $4,526,708.00, and Wife's assets were valued at $30,000.00. The agreement provided, in part, that if the parties separated, Wife would receive $10,000.00 for every year of marriage with a cap of $100,000.00. Both parties waived claims to the separately titled property of other, whether acquired during or prior to the marriage. In addition, Wife waived all claims to Husband's pre-marital property and all other claims she may have growing out of the marriage and its dissolution. Wife also agreed to forfeit her rights if she engaged in "unforgiven adultery" and agreed not to make a "continued lifestyle claim."

Wife filed for divorce in January 2003 on the basis of adultery, cruel treatment and that the marriage was irretrievably broken. Wife sought an equitable division of property and alimony. Husband filed an answer and counterclaim for divorce and a motion to enforce the antenuptial agreement. The trial court granted Husband's motion to enforce, and then, Husband filed a motion for summary judgment to which Wife failed to respond. The trial court granted the divorce, ordering Husband to pay Wife a lump sum payment of $90,000.00, which represented the agreement provision of $10,000.00 per year for each year of marriage.

Issue: (1) Whether the antenuptial agreement is unconscionable as a matter of law; and

(2) Whether the trial court improperly limited the scope of the hearing on Husband's motion to enforce the antenuptial agreement by excluding evidence of Husband's alleged infidelity during the marriage.

Holding: The trial court did not abuse its discretion in enforcing the antenuptial agreement. The agreement was fair at the time the agreement was executed and at the time of its enforcement.

Analysis: (1) A trial court should consider three criteria in determining whether to enforce an antenuptial agreement: (1) whether the agreement was obtained through fraud, duress or mistake, or through misrepresentation or nondisclosure of material facts; (2) whether the agreement was unconscionable; and (3) whether the facts and circumstances have changed since the agreement was executed, so as to make its enforcement unfair and unreasonable. Scherer v. Scherer, 249 Ga. 635, 292 S.E.2d 662 (1982). Wife does not challenge the trial court's findings that Wife reviewed the agreement; that Wife was advised of her right to and was given sufficient opportunity to obtain counsel to review the agreement prior to executing the agreement; and that the agreement was entered into without fraud, duress, mistake, coercion or misrepresentation.

Wife alleges that the agreement is unconscionable when comparing Husband's financial status at the time of the execution of the agreement to the financial benefits that Wife is entitled to receive under the agreement. However, at the time of the execution of the agreement, both parties had already been married and divorced so it was reasonable for both parties to anticipate the possibility of divorce and to seek to protect their assets and define their property rights in the event of divorce. In a situation when there is a full disclosure of assets prior to the execution of the agreement, and Wife was offered the opportunity to consult with independent counsel, and she entered into the agreement voluntarily, an antenuptial agreement which may perpetuate an existing disparity in the parties' estates does not render the agreement unconscionable.

(2) Although there may be rare circumstances in which evidence a party's alleged infidelity could be relevant to demonstrate unconscionability or changed circumstances, Wife's allegations were irrelevant in this case.

VI. ATTORNEY'S FEES

Gomes v. Gomes, 278 Ga. 568, 604 S.E.2d 486 (2004)

Facts: Frances Gomes (Wife) sought an award of attorney's fees in her divorce action against her husband, Mario Gomes. The parties entered into a settlement agreement which was incorporated into a final divorce decree and which reserved the issue of

attorney's fees for the court. Wife filed a "Motion for Attorney's Fees" and included a request for oral hearing, her legal bill and an affidavit from her attorney. Because she failed to cite statutory authority in her request for fees, the trial court denied Wife's request for fees.

Issue: Whether the trial court erred in denying Wife's request for attorney's fees in a divorce action because Wife failed to cite any legal authority in support of her request

Holding: *Reversed and remanded to consider Wife's request on the merits.* The trial court abused its discretion by requiring Wife to cite law in support of her request for attorney's fees. In this case, it was clear that Wife sought an award of attorney's fees under O.C.G.A. § 19-6-2(a)(1), which authorizes an award of attorney's fees in a divorce action. Wife's Motion for Attorney's Fees clearly demonstrated that Wife sought fees based on the financial circumstances of the parties, not based on any wrongdoing.

Reese v. Grant, 277 Ga. 799, 596 S.E.2d 139 (2004)

Facts: Hal Grant filed a contempt action against his former wife, Tanya Grant Reese, alleging that she was in wilful contempt of the parties' divorce decree. The trial court did not hold Reese in contempt, but the court ordered her to pay attorney's fees to Grant. Reese appealed.

Issue: Whether it was proper for the trial court to order a defendant to pay attorney's fees in a contempt action even though the defendant was not held in contempt of court

Holding: *Judgment vacated and case remanded with direction.* The trial court's order was insufficient because it failed to specify the basis of its ruling. The order did not state whether the fees were awarded pursuant to O.C.G.A. § 9-15-14 for Grant having to defend against groundless and frivolous litigation or whether the fees were awarded pursuant to O.C.G.A. § 19-6-2(a) which allows fees in a domestic relations case for contempt of property division.

Note: Grant is not precluded from receiving an award of attorney's fees under O.C.G.A. § 9-15-14 even though Reese was not held in contempt.

VII. PROCEDURAL MATTERS

Withrow v. Withrow, 278 Ga. 525, 603 S.E.2d 276 (2004)

Facts: Husband filed action for divorce against Wife. The final hearing was scheduled for the morning of December 10, 2003. On November 19, 2003, counsel for Husband filed a notice of conflicts in accordance with Uniform Superior Court Rule 17.1. The notice of conflicts provided that the final hearing in this case should take precedence over the attorney's other legal matters. Neither the courts affected nor opposing counsel objected to the notice of conflicts.

Subsequently, Husband's attorney called the judge's office to request that the final hearing be removed from the court's calendar. On December 9, 2004, the judge's office informed Husband's attorney that the case was being rescheduled due to conflicts. On December 10, 2003, neither Husband nor his attorney appeared for the final hearing. The judge's office called Husband's attorney and instructed him to appear. The court conducted the hearing in the afternoon. Husband's attorney arrived in court after the final hearing had concluded and the court had entered a final divorce decree. Husband filed a motion for new trial asserting good cause as his reason for not appearing for the final hearing. The trial judge denied Husband's motion for new trial.

The Georgia Supreme Court granted Husband's application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether Husband was entitled to a new divorce trial.

Holding: *Judgment affirmed.* Husband was not entitled to a new divorce trial. Prioritization of cases and the filing of notices of conflicts are prescribed by U.C.S.R. 17.1. "Trial counsel has no discretion in determining the order in which cases are to be tried. The order of cases to be tried can be changed only by the agreement of judges on affected courts." Husband's attorney may have spoken to court personnel, but he did not speak to the trial judge. "Where counsel attempts to relay information to the trial judge through a third person, he does so at his own peril and at the peril of his client." In addition, Husband never requested a continuance. The absence of counsel "without

leave, to attend proceedings in other courts is no ground for continuance or postponement."

Husband's argues that he was not at fault because his attorney told him that the case was being reset. Because ineffective assistance of counsel does not apply to parties in a divorce case, the failure of Husband's counsel to inform Husband of the trial date does not, in and of itself, constitute a ground for new trial. However, Husband may have a claim against his counsel.

Wilson v. Wilson, 277 Ga. 801, 596 S.E.2d 392 (2004)

Facts: Husband E.D. Wilson filed for divorce from his wife, Brenda Copeland Wilson. The case involved disputed issues of property division and alimony. At the bench trial, Wife's attorney requested the opportunity to make a closing argument. Nonetheless, the trial court refused to allow closing arguments, stating "Y'all have worn me out. I don't think I want to hear any closing arguments." Wife appealed the final divorce decree pursuant to the Georgia Supreme Court's pilot project.

Issue: Whether there is a right to closing arguments in civil cases.

Holding: Wife was entitled to present a closing argument at a bench trial in a divorce action in which there were disputed issues of fact. The trial court committed reversible error by denying Wife the opportunity to closing argument.

Rationale: Georgia follows an intermediate approach in which the right to closing arguments exists in civil, non-jury trials. However, that right may be precluded when the parties waive the opportunity to present closing arguments or no factual issues exist.

VIII. DOMESTIC RELATIONS PILOT PROJECT PRESS RELEASE

Supreme Court Extends Domestic Relations Pilot Project

Atlanta, November 4, 2004–The Supreme Court has extended for another year the Domestic Relations Pilot Project that has been in effect since January 6, 2003. All the Justices concurred, except Chief Justice Fletcher, who dissented. The Pilot Project will continue until December 16, 2005.

Under the terms of the Pilot Project, all non-frivolous applications in divorce and/or alimony cases, i.e. those discretionary applications timely filed from the final judgment and decree of divorce, will be automatically granted unless the application is found to be frivolous by the Court. If the Court finds that an application is frivolous, it will be denied and the applicant as well as his or her attorney may be assessed a penalty of up to $2,500.

The Court has been compiling statistics on the Pilot Project since its inception. To date, 130 domestic discretionary applications have been ruled on since January of 2003; 48 of those applications fell within the parameters of the Pilot Project. Of those, 34 (71%) were granted automatically, 1 (2%) was dismissed, 1 (2%) was remanded to the trial court, and 12 (25%) were denied as frivolous. Monetary penalties were assessed in five instances when the application was denied as frivolous.

Additionally, the Court has issued opinions in 23 domestic relations appeals granted pursuant to the Pilot Project. The Court affirmed 13 (57%), reversed 6 (26%), affirmed in part and reversed in part 2 (9%), and affirmed without opinion 2 (9%).

Of the 82 non-Pilot Project applications, 56 (68%) were denied, 13 (16%) were granted, 10 (12%) were dismissed, 2 (2%) were remanded to the trial court, and 1 (1%) was transferred to the Court of Appeals.

Additional information regarding the Pilot Project and recent decisions in domestic relations cases is available at the Court's website: www.gasupreme.us

IX. LEGISLATIVE UPDATE

2005 Georgia House Bill No. 44, Georgia 148th General Assembly --

2005-06 Regular Session

VERSION: Introduced

January 10, 2005

Randall

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 5 of Title 19 of the Official Code of Georgia Annotated, relating to divorce, so as to specify distribution of marital property under certain circumstances; to provide for counseling under certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

TEXT:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 19 of the Official Code of Georgia Annotated, relating to divorce, is amended by striking in its entirety Code Section 19- 5-13, relating to disposition of property in accordance with verdict, and inserting in lieu thereof the following:

19-5-13.

The verdict of the jury disposing of the property in a divorce case shall be carried into effect by the court by entering such judgment or decree or taking such other steps as are usual in the exercise of the court's equitable powers to execute effectually and fully the jury's verdict; provided, however, that a party shall not be entitled to any of the marital property if it is established by a preponderance of the evidence that the separation between the parties was caused by that party's adultery .

SECTION 2.

Said chapter is further amended by adding a new Code section to the end of the chapter to read as follows:

19-5-18.

If it is established by a preponderance of the evidence that the separation between the parties was caused by one of the party's adultery, then the court shall order the party who committed the adultery to attend 12 hours of counseling involving marital issues. The

counseling shall be completed within six months of the final order granting the divorce. The counseling shall be performed by:

(1) A professional counselor, social worker, or marriage and family therapist who is licensed pursuant to Chapter 10A of Title 43;

(2) A physician who is licensed pursuant to Chapter 34 of Title 43;

(3) A psychologist who is licensed pursuant to Chapter 39 of Title 43;

(4) A member of a religious ministry responsible to its established ecclesiastical authority who possesses a master's degree or its equivalent in theological studies; or

(5) A person engaged in the practice of a specialty in accordance with Biblical doctrine in a public or nonprofit agency or entity or in private practice.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.

2005 Georgia House Bill No. 142, Georgia 148th General Assembly --

2005-06 Regular Session

VERSION: Introduced

January 25, 2005

Smith T

A BILL TO BE ENTITLED

AN ACT

To amend Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, so as to change certain provisions relating to voluntary separation, abandonment, or driving off of spouse; to create a duty to provide child support for a mentally or physically disabled child beyond the age of majority; to provide for postmajority child support in final verdict or divorce decree; to provide that a child's eligibility to receive public benefits shall not be impacted by an award of postmajority

child support; to change certain provisions relating to inclusion of life insurance in order of support; to change certain provisions relating to parents' obligations to child; to provide for related matters; to repeal conflicting laws; and for other purposes.

TEXT:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by striking Code Section 19-6-9, relating to voluntary separation, abandonment, or driving off of spouse as it relates to equity compelling support, in its entirety and inserting in its place the following:

19-6-9.

Absent the making of a voluntary contract or other agreement, as provided in Code Section 19-6-8, and on the application of a party, the court, exercising its equitable powers, may compel the spouse of the party to make provision for the support of the party and such minor children and mentally or physically disabled children who have attained the age of majority but lack the ability to otherwise support himself or herself independently as may be in the custody of the party.

SECTION 2.

Said title is further amended by striking Code Section 19-6-10, relating to voluntary separation, abandonment, or driving off of spouse as it relates to petition for support, notice, and hearing, in its entirety and inserting in its place the following:

19-6-10.

When spouses are living separately or in a bona fide state of separation and there is no action for divorce pending, either party, on the party's own behalf or on the behalf of the minor children and mentally or physically disabled children who have attained the age of majority but lack the ability to otherwise support himself or herself independently in the party's custody, if any, may institute a proceeding by petition, setting forth fully the

party's case. Upon three days' notice to the other party, the judge may hear the same and may grant such order as he might grant were it based on a pending petition for divorce, to be enforced in the same manner, together with any other remedy applicable in equity, such as appointing a receiver and the like. Should the petition proceed to a hearing before a jury, the jury may render a verdict which shall provide the factual basis for equitable relief as in Code Section 19-6-9. However, such proceeding shall be held in abeyance when a petition for divorce is filed bona fide by either party and the judge presiding has made his order on the motion for alimony. When so made, the order shall be a substitute for the aforesaid decree in equity as long as the petition is pending and is not finally disposed of on the merits.

SECTION 3.

Said title is further amended in Code Section 19-6-15, relating to child support in final verdict or decree, computation of award, guidelines for determining amount of award, continuation of duty to provide support, and duration of support, by striking subsection (a) in its entirety and inserting in its place the following:

(a) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent expressly authorized in subsection (e) or (g) of this Code section; and in a divorce case in which there are no minor children the requirements of this Code section for findings of fact and inclusion of findings in the verdict or decree shall not apply. In the final verdict or decree, the trier of fact shall specify in what amount and from which party the minor children are entitled to permanent support. The final verdict or decree shall further specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid. The final verdict or decree shall further include a written finding of the gross income of the father and the mother and the presence or absence of special circumstances in accordance with subsection (c) of this Code section. The trier of fact must also determine whether the accident and sickness insurance for the child or the children involved is reasonably available at reasonable costs through employment related or other

group health insurance policies to an obligor. For purposes of this Code section, accident and sickness coverage shall be deemed available if the obligor has access to any policy of insurance authorized under Title 33 through an employer or other group health insurance plan. If the accident and sickness insurance is deemed available at reasonable cost, the court shall order the obligor to obtain the coverage; provided, however, if the obligee has accident and sickness insurance for the child or children reasonably available at reasonable costs through employment related or other group health insurance policies, then the court may order that the child or children be covered under such insurance and the obligor contribute as part of the child support order such part of the cost of providing such insurance or such part of any medical expenses incurred on behalf of the child or children not covered by such insurance as the court may deem equitable or appropriate. If currently unavailable or unreasonable in cost, the court shall order the obligor to obtain coverage when it becomes available at a reasonable cost, unless such insurance is provided by the obligee as provided in this subsection. When support is awarded, the party who is required to pay the support shall not be liable to third persons for necessaries furnished to the children embraced in the verdict or decree. In any contested case, the parties shall submit to the court their proposed findings regarding the gross income of the father and the mother and the presence or absence of special circumstances. In any case in which child support is determined by a jury, the court shall charge the provisions of this Code section and the jury shall be required to return a special interrogatory similar to the form of the order contained in Code Section 19-5-12 regarding the gross income of the father and the mother and the presence or absence of special circumstances. Furthermore, nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement to the contrary which may be made the order of the court pursuant to the review by the court of child support amounts contained in this Code section; provided, however, any such agreement of the parties shall include a written statement regarding the gross income of the father and the mother and the presence or absence of special circumstances in accordance with subsection (c) of this Code section.

SECTION 4.

Said title is further amended by adding a new subsection (g) to Code Section 19-6-15, relating to child support in final verdict or decree, computation of award, guidelines for determining amount of award, continuation of duty to provide support, and duration of support, to read as follows:

(g) Notwithstanding the provisions of subsection (e) of this Code section, the trier of fact at its discretion may find that a duty exists to provide child support for a mentally or physically disabled child who has attained the age of majority but lacks the ability to otherwise support himself or herself independently, based upon the financial ability of the parties to provide support and based upon the financial resources and public benefits and assistance available to the child; provided, however, that the obligation for postmajority child support shall be modified for either party if the trier of fact determines, in the exercise of its sound discretion, that (1) there has been a substantial change in the income, financial condition, or income and financial condition of either parent, the child, or both or (2) there has been a substantial change in the child's ability to provide support for himself or herself. The child support provided pursuant to this subsection shall be in addition to and not in lieu of the benefits or assistance a child may receive from a source other than his or her parents. No duty created pursuant to this subsection nor any other provisions of this subsection shall impact the eligibility of a child awarded postmajority child support to receive the maximum benefits provided by any federal, state, local, and other governmental and public agencies. The provisions of this subsection shall be applicable only to a final decree of divorce entered on or after July 1, 2005.

SECTION 5.

Said title is further amended in Code Section 19-6-34, relating to inclusion of life insurance in order of support, by striking subsection (d) in its entirety and inserting in its place the following:

(d) (1) The trier of fact, in the exercise of sound discretion, may direct either or both parents to maintain life insurance for the benefit of a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that maintenance of such life insurance for the benefit of the child shall not be required after a child attains 20 years of age.

(2) The trier of fact, in the exercise of sound discretion, may direct either or both parents to maintain life insurance for the benefit of a mentally or physically disabled child who has attained the age of majority but lacks the ability to otherwise support himself or herself independently .

SECTION 6.

Said title is further amended by striking Code Section 19-7-2, relating to parents' obligation to child, and inserting in its place the following:

19-7-2.

It is the joint and several duty of each parent to provide for the maintenance, protection, and education of his or her child until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs, except as otherwise authorized and ordered pursuant to subsection (e) or (g) of Code Section 19-6-15 and except to the extent that the duty of the parents is otherwise or further defined by court order.

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.

2005 Georgia House Bill No. 221, Georgia 148th General Assembly -- 2005-06 Regular Session

VERSION: Introduced

February 1, 2005

Burmeister

A BILL TO BE ENTITLED

AN ACT

To amend Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, so as to change certain provisions relating to the calculation of child support; to provide guidelines for determining amount of child support to be paid; to provide for factors for apportioning child support obligations; to provide a schedule of basic child support obligation amounts; to change the form of the final judgment in divorce actions to conform such changes in the determination and computation of child support; to remove a certain limitation on petitions to modify alimony and child support; to provide an effective date; to repeal conflicting laws; and for other purposes.

TEXT:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by striking subsection (c) of Code Section 19-5-12, relating to form of judgment and decree in divorce actions, and inserting in lieu thereof a new subsection (c) to read as follows:

(c) In any case which involves the determination of child support and only in such cases, the form of the judgment shall also include provisions ~~substantially identical to the following:~~ indicating both parties' incomes, the number of children for which support is being provided, the presumptive award calculation, and, if the presumptive award is rebutted, the award amount and the basis for the rebuttal award. The order shall include a specific date that the obligation of support ceases based on the child or children's date of reaching majority, The order shall state provisions for extending support beyond the date of a child reaching majority when so ordered by the court in accordance with other

statutes or regulations, provided that a date certain for the cessation of the child support obligation is entered into the record and provided to both parties and any appropriate child support agency. The court is authorized to establish by court rule an administrative method of entering the date of cessation of obligation of support that extends beyond the age of majority, provided that an obligor is given notice and is provided a method of administratively challenging the appropriateness of the date of cessation of obligation of support with either party having the right to appeal the date of cessation of obligation of support to the superior court.

~~In determining child support, the court finds as follows:~~

~~The gross income of the father is _____ dollars monthly.~~

~~The gross income of the mother is _____ dollars monthly.~~

~~In this case child support is being determined for _____ children.~~

~~The applicable percentage of gross income to be considered is:~~

Number of Children	Percentage Range of Gross Income
~~1~~	~~17 percent to 23 percent~~
~~2~~	~~23 percent to 28 percent~~
~~3~~	~~25 percent to 32 percent~~
~~4~~	~~29 percent to 35 percent~~
~~5 or more~~	~~31 percent to 37 percent~~

~~Thus, ____ percent of _____ (gross income of obligor) equals _____ dollars per month.~~

~~The court has considered the existence of special circumstances and has found the following special circumstances marked with an 'X' to be present in this case:~~

~~_____ 1. Ages of the children.~~

_____ 2. A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available.

_____ 3. Educational costs.

_____ 4. Day-care costs.

_____ 5. Shared physical custody arrangements, including extended visitation.

_____ 6. A party's other support obligations to another household.

_____ 7. Income that should be imputed to a party because of suppression of income.

_____ 8. In-kind income for the self-employed, such as reimbursed meals or a company car.

_____ 9. Other support of party is providing or will be providing, such as payment of a mortgage.

_____ 10. A party's own extraordinary needs, such as medical expenses.

_____ 11. Extreme economic circumstances including but not limited to:

_____ (A) Unusually high debt structure; or

_____ (B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over $75,000.00 per annum.

_____ 12. Historical spending in the family for children which varies significantly from the percentage table.

_____ 13. Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact.

_____ 14. In-kind contribution of either parent.

_____ 15. The income of the custodial parent.

_____ 16. The cost of accident and sickness insurance coverage for dependent children included in the order.

~~_____ 17. Extraordinary travel expenses to exercise visitation or shared physical custody.~~

~~_____ 18. Any other factor which the trier of fact deems to be required by the ends of justice, as described below:~~

~~Having found that no special circumstances exist, or special circumstances numbered _____ exist (delete the phrase which does not apply), the final award of child support which _____ shall pay to _____ for support of the child or children is _____ dollars per week/month other period (delete those which do not apply and insert as necessary) per child, beginning on the _____ day of _____, ____, and payable thereafter on the _____ day of _____ until the child becomes 18 years of age, dies, marries, or otherwise becomes emancipated, except that if the child becomes 18 years of age while enrolled in and attending secondary school on a full-time basis, then such support shall continue until the child completes secondary school, provided that such support shall not be required after the child attains 20 years of age. _____ is ordered to provide accident and sickness insurance for the child or children for so long as he or she is obligated by this order to provide support (insert name of party or delete this sentence if the order does not include provision for insurance).~~

SECTION 2.

Said title is further amended by striking Code Section 19-6-15, relating to guidelines for calculating child support, and inserting in lieu thereof a new Code Section 19-6-15 to read as follows: Section 19-6-15.

(a) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent expressly authorized in subsection (e) of this Code section; and in a divorce case in which there are no minor children the requirements of this Code section for findings of fact and inclusion of findings in the verdict or decree shall not apply. In the final verdict or decree, the trier of fact shall specify in what amount and from which party the minor children are entitled to

permanent support. The final verdict or decree shall further specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid. The final verdict or decree shall further include a written finding of the gross income of the father and the mother ~~and the presence or absence of special circumstances in accordance with subsection (c) of this Code section. The trier of fact must also determine whether the accident and sickness insurance for the child or the children involved is reasonably available at reasonable costs through employment related or other group health insurance policies to an obligor. For purposes of this Code section, accident and sickness coverage shall be deemed available if the obligor has access to any policy of insurance authorized under Title 33 through an employer or other group health insurance plan. If the accident and sickness insurance is deemed available at reasonable cost, the court shall order the obligor to obtain the coverage; provided, however, if the obligee has accident and sickness insurance for the child or children reasonably available at reasonable costs through employment related or other group health insurance policies, then the court may order that the child or children be covered under such insurance and the obligor contribute as part of the child support order such part of the cost of providing such insurance or such part of any medical expenses incurred on behalf of the child or children not covered by such insurance as the court may deem equitable or appropriate. If currently unavailable or unreasonable in cost, the court shall order the obligor to obtain coverage when it becomes available at a reasonable cost, unless such insurance is provided by the obligee as provided in this subsection~~ . When support is awarded, the party ~~who is~~ required to pay the support shall not be liable to third persons for necessaries furnished to the children embraced in the verdict or decree. In any contested case, the parties shall submit to the court their proposed findings regarding the gross income of the father and the mother ~~and the presence or absence of special circumstances~~ . In any case in which child support is determined by a jury, the court shall charge the provisions of this Code section and the jury shall be required to return a special interrogatory ~~similar to the form of the order contained in Code Section 19-5-12 regarding the gross income of the father and the mother and the presence or absence of~~

~~special circumstances~~ . Furthermore, nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement to the contrary which may be made the order of the court pursuant to the review by the court of child support amounts contained in this Code section; provided, however, any such agreement of the parties shall include a written statement regarding the gross income of the father and the mother ~~and the presence or absence of special circumstances in accordance with subsection (c) of this Code section.~~

(b) ~~The child support award shall be computed as provided in this subsection:~~

~~(1) Computation of child support shall be based upon gross income;~~

~~(2) For the purpose of determining the obligor's child support obligation, gross income shall include 100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other income, except need-based public assistance;~~

~~(3) The earning capacity of an asset of a party available for child support may be used in determining gross income. The reasonable earning potential of an asset may be determined by multiplying its equity by a reasonable rate of interest. The amount generated by that calculation should be added to the obligor's gross monthly income;~~

~~(4) Allowable expenses deducted to calculate self-employment income that personally benefit the obligor, or economic in-kind benefits received by an employed obligor, may be included in calculating the obligor's gross monthly income; and~~

~~(5) The amount of the obligor's child support obligation shall be determined by multiplying the obligor's gross income per pay period by a percentage based on the number of children for whom child support is being determined. The applicable percentages of gross income to be considered by the trier of fact are:~~

Number of Children	Percentage Range of Gross Income
~~1~~	~~17 percent to 23 percent~~

~~2 23 percent to 28 percent~~

~~3 25 percent to 32 percent~~

~~4 29 percent to 35 percent~~

~~5 or more 31 percent to 37 percent~~

~~Application of these guidelines shall create a rebuttable presumption that the amount of the support awarded is the correct amount of support to be awarded. A written finding or specific finding on the record for the award of child support that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case. Findings that rebut said presumption must state the amount of support that would have been required under the guidelines and include justification of why the order varies from the guidelines. These guidelines are intended by the General Assembly to be guidelines only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of trial.~~ The application of the guidelines contained in this Code section shall apply as a rebuttable presumption in all legal proceedings involving the child support obligation of a parent, including, but not limited to, orders entered in criminal and juvenile proceedings, orders entered in UIFSA proceedings, and voluntary support agreements and consent orders approved by the court. The guidelines do not apply to orders for prior maintenance for reimbursement of child related expenses incurred prior to the date an action for child support is filed or child support orders entered against stepparents or other persons or agencies secondarily liable for child support. The guidelines shall be used when the court enters a temporary or permanent child support order in a contested or noncontested hearing. The court, upon its own motion or upon motion of a party, may deviate from the guidelines if, after hearing evidence and making findings regarding the reasonable needs of the child for support and the relative ability of each parent to provide support, it finds by the greater weight of the evidence that application of the guidelines would not meet or would exceed the reasonable need of the child considering the relative ability of each parent to provide

support or would otherwise be unjust or inappropriate. If the court deviates from the guidelines, the court shall make written findings stating the amount of the supporting parent's presumptive child support obligation determined pursuant to the guidelines contained in this Code section, determining the reasonable needs of the child and the relative ability of each parent to provide support, supporting the court's conclusion that the presumptive amount of child support determined under the guidelines is inadequate or excessive or that application of the guidelines is otherwise unjust or inappropriate, and stating the basis on which the court determined the amount of child support ordered. The guidelines contained in this Code section are intended to provide adequate awards of child support equitable to the child and both of the child's parents. When the court does not deviate from the guidelines, an order for child support in an amount determined pursuant to the guidelines is conclusively presumed to meet the reasonable needs of a child considering the relative ability of each parent to provide support, and specific findings regarding a child's reasonable needs or the relative ability of each parent to provide support are, therefore, not required. Regardless of whether the court deviates from the guidelines or enters a child support order pursuant to the guidelines, the court shall consider incorporating in or attaching to its order or including in the case file the child support worksheet that the court uses to determine the supporting parent's presumptive child support obligation under the guidelines.

(c) ~~The trier of fact shall vary the final award of child support, up or down, from the range enumerated in paragraph (5) of subsection (b) of this Code section upon a written finding that the presence of one or more of the following special circumstances makes the presumptive amount of support either excessive or inadequate:~~

~~(1) Ages of the children;~~

~~(2) A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available;~~

~~(3) Educational costs;~~

~~(4) Day-care costs;~~

~~(5) Shared physical custody arrangements, including extended visitation;~~

~~(6) A party's other support obligations to another household;~~

~~(7) Income that should be imputed to a party because of suppression of income;~~

~~(8) In-kind income for the self-employed, such as reimbursed meals or a company car;~~

~~(9) Other support a party is providing or will be providing, such as payment of a mortgage;~~

~~(10) A party's own extraordinary needs, such as medical expenses;~~

~~(11) Extreme economic circumstances including but not limited to:~~

~~(A) Unusually high debt structure; or~~

~~(B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over $75,000.00 per annum;~~

~~(12) Historical spending in the family for children which varies significantly from the percentage table;~~

~~(13) Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact;~~

~~(14) In-kind contribution of either parent;~~

~~(15) The income of the custodial parent;~~

~~(16) The cost of accident and sickness insurance coverage for dependent children included in the order;~~

~~(17) Extraordinary travel expenses to exercise visitation or shared physical custody; and~~

~~(18) Any other factor which the trier of fact deems to be required by the ends of justice.~~

The guidelines contained in this Code section include a self-support reserve that ensures that obligors have sufficient income to maintain a minimum standard of living based on the 2002 federal poverty level for one person of $738.00 net per month. For obligors with adjusted gross incomes of less than $800.00 per month, the guidelines require, absent a deviation, the establishment of a minimum support order of $50.00 per month. For obligors with adjusted gross incomes above $800.00 per month, the Schedule of Basic Support Obligations incorporates a further adjustment to maintain the self-support reserve for the obligor. There shall be a self-support calculation for cases in which the obligor's adjusted gross income falls at or below $1,200.00 per month when there is one child to be supported, at or below $1,450.00 per month when there are two children to be supported, at or below $1,650.00 per month when there are three children to be supported, at or below $1,800.00 per month when there are four children to be supported, at or below $2,000.00 per month when there are five children to be supported, or at or below $2,150.00 per month when there are six or more children to be supported. For these cases, the basic child support obligation and the obligor's total child support obligation are computed using only the obligor's income and assuming for calculation purposes that the obligee's income is zero. In these cases, child care and health insurance premiums should not be used to calculate the child support obligation. However, payment of these costs by either parent may be a basis for deviation. This approach prevents disproportionate increases in the child support obligation with moderate increases in income and protects the integrity of the self-support reserve. In these self-support cases, there shall be no parenting time credit for the noncustodial parent in the alternative self-support calculation award since the basic support obligation in the Schedule of Basic Support Obligations is below actual child costs due to lack of income. For these self-support cases, the presumptive award shall be the lesser of the award calculated using just the obligor's adjusted gross income and the award based on combined adjusted gross income. In the determination of the lesser award for self-support situation cases, the parenting time credit shall still be applied to the award calculation based on combined adjusted gross income according to paragraph (12) of subsection (e) of this Code section.

For cases in which the custodial parent's monthly adjusted gross income is less than 125 percent of the poverty threshold for one adult as established each year by the United States Department of Health and Human Services, there shall be a minimum award of $50.00. This minimum is rebuttable, specifically taking into account the obligor's ability to pay. In all other cases, the basic child support obligation is computed using the combined adjusted gross income of both parents. In cases in which the parents' combined adjusted gross income is more than $20,000.00 per month, the basic support obligation for $20,000.00 per month necessarily becomes the presumptive basic support obligation for combined adjusted gross income exceeding $20,000.00 per month. The court shall be free to deviate in high-income cases just as for cases when the parents' combined adjusted gross income does not exceed $20,000.00 per month.

(d) ~~The guidelines shall be reviewed by a commission appointed by the Governor to ensure that their application results in the determination of appropriate child support award amounts. The commission will complete its review and submit its report within four years following July 1, 1989, and shall continue such reviews every four years thereafter. Nothing contained in such report shall be considered to authorize or require a change in the guidelines without action by the General Assembly having the force and effect of law.~~ The Schedule of Basic Support Obligations is based upon economic data which represents adjusted estimates of average total household spending for children between birth and age 18, excluding child care, health insurance, and health care costs in excess of $100.00 per year. Expenses incurred in the exercise of visitation are not factored into the schedule.

(e) (1) Gross income. ~~The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary or final order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the trier of fact, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a~~

~~secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for support provided in this subsection may be enforced by either parent or the **child** for whose benefit the support is ordered.~~ For the purposes of this Code section, the term 'gross income' means income before deductions for federal and state income taxes, social security and medicare taxes, health insurance premiums, retirement contributions, and other amounts withheld from income. Gross income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation shall be the amount of gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Ordinary and necessary business expenses do not include amounts allowable by the federal Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income. In general, income and expenses from self-employment or operation of a business should carefully be reviewed to determine an appropriate level of gross income available to the parent to satisfy a **child** support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursements or in-kind payments, such as the use of a company car, free housing, and reimbursed meals, received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Since persons who are self-employed pay FICA taxes at twice the rate that is paid by payroll employees, to put self-employment income on the same basis as income for payroll employees, the federal deduction for self-employment taxes shall be subtracted from self-employment income. This is equal to one-half of the self-employment tax on self-employment income.

(2) Income. For the purposes of this Code section, the term 'income' means a parent's actual gross income from any source, including, but not limited to, income from employment and self-employment, such as salaries, wages, commissions, bonuses,

dividends, and severance pay; ownership or operating of a business, partnership, or corporation; rental of property; retirement and pensions; interest; trusts; annuities; capital gains; social security benefits; workers compensation benefits; gifts; prizes; and alimony or maintenance received. Alimony paid is excluded from income. When income is received on an irregular, nonrecurring, or one-time basis, the court may average or prorate the income over a specified period of time or require the obligor to pay as **child** support a percentage of his or her nonrecurring income equivalent to the percentage of his or her recurring income paid for child support. Income shall not include benefits received from means tested public assistance programs, including, but not limited to, Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), food stamps, and general assistance. Social Security benefits received for the benefit of a child as a result of the disability or retirement of either parent are included as income attributed to the parent on whose earnings record the benefits are paid, but shall be deducted from that parent's child support obligation. Except as otherwise provided in this Code section, income does not include the income of a person who is not a parent of a child for whom support is being determined regardless of whether that person is married to or lives with the child's parent or has physical custody of the child.

(3) Potential or imputed income. If either parent is voluntarily unemployed or underemployed to the extent that the parent cannot provide a minimum level of support for himself or herself and his or her children when he or she is physically and mentally capable of doing so and the court finds that the parent's voluntary unemployment or underemployment is the result of the parent's bad faith or deliberate suppression of income to avoid or minimize his or her child support obligation, child support may be calculated based on the parent's potential, rather than actual, income. Potential income may not be imputed to a parent physically or mentally incapacitated or caring for a child under the age of three years and for whom child support is being determined. The amount of potential income imputed to a parent shall be based on the parent's employment potential and probable earnings level based on the parent's recent work history, occupational qualifications, and prevailing job opportunities and earning levels in the

community. Potential income shall not be determined contrary to the current local economic environment. Past income shall not be the basis for imputed income if current actual income reflects current economic potential. If the parent has no recent work history or vocational training, potential income shall not be less than the minimum hourly wage for a 40 hour work week.

(4) Income verification. Child support calculations under the guidelines contained in this Code section are based upon the parents' current incomes at the time the order is entered. Income statements of the parents shall be verified through documentation of both current and past income. Suitable documentation of current earnings shall cover at least one full month and include pay stubs, employer statements, and, if self-employed, business records and receipts. Documentation of current income shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. Sanctions may be imposed for failure to comply with this provision on the motion of a party or by the court on its own motion.

(5) Adjustment for second household. The Schedule of Basic Support Obligations is based on intact family data. The schedule assumes that only one set of adult overhead, such as mortgage or rent payment and housing utilities, is incurred. When appropriate, the court shall make an adjustment to combined adjusted income to reflect the reduction in available income due to two households being supported by the two parents instead of one. Such an adjustment for additional adult overhead would be separate from any credit for parenting time.

(6) Pre-existing child support obligations and responsibility for other children.

(A) Child support payments actually made by a parent under any preexisting court order, separation agreement, or voluntary support arrangement are deducted from the parent's gross income. The court may consider a voluntary support arrangement as a preexisting child support obligation when the supporting parent has consistently paid child support for a reasonable and extended period of time. A preexisting support order is one that is in effect at the time a child support order in the pending action is entered or

modified, regardless of whether the child or children for whom support is being paid were born before or after the child or children for whom support is being determined. Actual payments of alimony shall not be considered as a deduction from gross income but may be considered as a factor to vary from the final presumptive child support obligation.

(B) A parent's financial responsibility, as determined in accordance with this Code section, for his or her natural or adopted children who currently reside with the parent, other than children for whom child support is being determined in the pending action, is deducted from the parent's gross income. Use of this deduction is appropriate when a child support order is entered or modified, but may not be the sole basis for presumptively modifying an existing order. However, the guidelines are fully rebuttable, an additional dependent natural or adopted child shall be considered a material change for requesting a modification, and the court may deviate from the presumptive award for the modification of an existing award when the existence of a new dependent natural or adopted child is found to render the presumptive award unjust or inappropriate.

(C) A parent's financial responsibility for his or her natural or adopted children who currently reside with the parent, other than children for whom child support is being determined in the pending case, is equal to the basic child support obligation for such children based on the parent's income if the other parent of such children does not live with the parent and children, or is one-half of the basic child support obligation for such children based on the combined income of both parents of such children if the other parent of such children lives with the parent and children.

(7) Basic child support obligation. The basic child support obligation is determined using the Schedule of Basic Support Obligations. For combined monthly adjusted gross income falling between amounts shown in the schedule, the basic child support obligation shall be interpolated. The number of children columns on the Schedule of Basic Support Obligations refer to children for whom parents share joint legal responsibility and for whom support is being sought.

(8) Child care costs. Reasonable child care costs that are, or will be, paid by a parent due to employment or job search are added to the basic child support obligation and prorated between the parents based upon their respective incomes. When the gross monthly income of the parent paying child care costs falls below $1,000.00 when there is one child, $1,500.00 when there are two children, $1,700.00 when there are three children, $1,900.00 when there are four children, $2,100.00 when there are five children, or $2,300.00 when there are six or more children, 100 percent of child care costs shall be added. When the income of the parent who pays child care costs exceeds the amounts set forth in this paragraph, only 75 percent of the actual child care costs are added because such parent is entitled to an income tax credit for child care expenses.

(9) Health insurance and health care costs.

(A) The amount that is, or will be, paid by a parent for health insurance, including medical coverage or medical and dental coverage, for the children for whom support is being determined is added to the basic child support obligation and is prorated between the parents based upon their respective incomes. Payments made by a parent's employer for health insurance and not deducted from the parent's wages are not included. When a child for whom support is being determined is covered by a family policy, only the health insurance premium actually attributable to that child is added. If this amount is not available or cannot be verified, the total cost of the premium shall be divided by the total number of persons covered by the policy and then multiplied by the number of covered children for whom support is being determined.

(B) As used in this paragraph, the term 'uncovered medical expenses' means all medical expenses for the child not paid by insurance. The custodial parent shall pay the first $250.00 of uncovered medical expenses up to a maximum of $500.00 per year for all children. Uncovered medical expenses in excess of $250.00 per child or a maximum of $500.00 per year for all children shall be paid by the parents in proportion to their respective gross incomes. The custodial parent shall inform the noncustodial parent of uncovered medical expenses in a timely manner by providing copies of the expenses and

appropriate explanations of benefits by insurance providers. The noncustodial parent's share of uncovered medical expenses shall be paid to the custodial parent in a timely manner. Medical expenses shall include, but not be limited to, costs for reasonably necessary medical, orthodontic, or dental treatment; physical therapy; eye care, including eyeglasses or contact lenses; mental health treatment; substance abuse treatment; prescription drugs; and other uncovered medical expenses.

(C) The court may order either parent to obtain and maintain health insurance coverage, either medical coverage only or medical and dental coverage, for a child if it is actually and currently available to the parent at a reasonable cost. Health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of the delivery mechanism. If health insurance is not actually and currently available to a parent at a reasonable cost at the time the court orders child support, the court may enter an order requiring the parent to obtain and maintain health insurance for a child if and when the parent has access to reasonably priced health insurance for the child.

(10) Extraordinary expenses. Other extraordinary school expenses, including expenses related to special or private elementary or secondary schools to meet a child's particular educational needs and expenses for transporting the child between the parents' homes, may be added to the basic child support obligation and ordered paid by the parents in proportion to their respective incomes if the court determines the expenses are reasonable, necessary, and in the child's best interest. Extraordinary expenses are not presumptive and must be explicitly stated as a deviation and the basis explained.

(11) Child related tax benefits. Tax benefit offsets shall be calculated and shared between the parents in the same proportion as each parent's share of combined adjusted gross income. These child related tax benefits shall generally be limited to head of household status, child dependency exemptions, and child tax credits. Child care tax credits are taken into account separately as provided in paragraph (8) of this subsection. Unless the parents voluntarily have made a sharing arrangement of the tax benefits, the court shall allocate the value of the child related tax benefits as cost offsets. One or both

parents may have child related tax benefits. Each parent's value of the child related tax benefits is defined as the difference between a parent's after-tax income with the child related tax benefits and the parent's after-tax income as a single taxpayer without the tax benefits. This calculation shall be made net of alimony paid or received. At the court's discretion, the child related tax benefit of head of household status may be discounted if that parent's itemized deductions normally exceed the standard deduction for a single taxpayer. The child related tax benefits may be determined for a given case by simplified tables as established by court rule if such rule is promulgated by the Supreme Court of Georgia for use by the superior courts. Allocating the value of the child related tax benefits in determining child support does not affect which parent actually claims the child related tax benefits when filing income tax returns.

(12) Adjustment for costs associated with noncustodial parenting time.

(A) Because the Schedule of Basic Child Support Obligations is based on expenditures for children in intact households, there is no consideration for costs associated with the noncustodial parent's parenting time. When parenting time is exercised by the noncustodial parent, a portion of the costs for children normally expended by the custodial parent shifts to the noncustodial parent. Accordingly, when parenting time is, or is expected to be, exercised by the parent paying child support, an adjustment shall be made to that parent's proportionate share of the child support obligation.

(B) To adjust for the costs of noncustodial parenting time, the court shall first determine the total amount of noncustodial parenting time indicated in a court order or parenting plan or by the expectation or historical practice of the parents. The court shall then add together each period of visitation within twenty-four hours to arrive at the total number of noncustodial parenting days per year. For the purposes of making this determination, 'one day' means more than 12 continuous and consecutive hours or an overnight visit; 'one-half day' means more than four and up to and including 12 continuous and consecutive hours; and 'one-quarter day' means up to and including four continuous and consecutive hours. For the purposes of calculating noncustodial parenting time days, only

the time spent by a child with the noncustodial parent is considered. Time that the child is in school or child care is not considered. After determining the total number of noncustodial parenting time days, the appropriate adjustment for noncustodial parenting time shall be determined as follows:

NONCUSTODIAL PARENTING TIME - TABLE A

Number of Days	Adjustment Percentage
0-3	0
4-20	.012
21-38	.031
39-57	.050
58-72	.085
73-87	.105
88-115	.161
116-129	.195
130-142	.253
143-152	.307
153-162	.362
163-172	.422
173-182	.486

As the number of noncustodial parenting time days approaches equal time sharing (143 days and above), certain costs usually incurred only in the custodial household are assumed to be substantially or equally shared by both parents. These costs are for items such as the child's clothing and personal care items, entertainment, and reading materials. If this assumption is rebutted by proof that such costs are not substantially or equally

shared in each household, the appropriate adjustment for noncustodial parenting time shall be determined as follows:

NONCUSTODIAL PARENTING TIME - TABLE B

Number of Days	Adjustment Percentage
143-152	.275
153-162	.293
163-172	.312
173-182	.331

(C) The noncustodial parenting time adjustment percentage is applied to the basic child support obligation by multiplying the basic child support obligation by the adjustment percentage. The resulting number is then subtracted from the proportionate share of the child support obligation of the noncustodial parent who exercises visitation. If the time spent with each parent is essentially equal, the expenses for the children are equally shared and, if the adjusted gross incomes of the parents are essentially equal, no support shall be paid. If the parents' incomes are not equal, the total child support amount shall be divided equally between the two households, and the parent owing the greater amount shall be ordered to pay what is necessary to achieve that equal share in the other parent's household.

(13) Loss of income. In the event that the parent paying child support suffers an involuntary termination of employment, has an extended involuntary loss of average weekly hours, is involved in an organized strike, or incurs a loss of health or similar involuntary adversity resulting in a loss of income of 25 percent or more, then the portion of child support attributable to lost income shall not accrue.

~~(f) The provisions of subsection (e) of this Code section shall be applicable only to a temporary order or final decree for divorce, separate maintenance, legitimation, or paternity entered on or after July 1, 1992, and the same shall be applicable to an action for modification of a decree entered in such an action entered on or after July 1, 1992,~~

~~only upon a showing of a significant change of material~~ circumstances~~.~~ The adoption of these guidelines constitutes a significant material change in the establishment and calculation of child support orders. In any proceeding to modify an existing order, an increase or decrease of 15 percent or more between the amount of the existing order and the amount of child support resulting from the application of these guidelines shall be presumed to constitute a substantial change of circumstances warranting a modification. This differential is calculated by applying 15 percent to the existing award. In order to conform to federal requirements, if there is a material change in the father's income, the mother's income, the needs of the children, or the needs of either parent, either parent shall have the right to petition for modification of child support regardless of the length of time since the establishment or most recent modification of child support award. If there is a difference of 30 percent or more between a new award and a prior award, the court may, at its discretion, phase-in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(g) For split custody situations, a worksheet shall be prepared separately for the children for whom the father is custodial parent and for the children for whom the mother is the custodial parent and entered into the record. For each of these two custodial situations, the court shall enter which parent is the obligor, the presumptive award, and the actual award, if different from the presumptive award; how and when the net cash support owed shall be paid; and any other child support responsibilities for each of the parents.

(h) The Schedule of Basic Child Support Obligations shall be as follows:

SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS

Combined Monthly	One	Two	Three	Four	Five	Six or More

Gross Income	Child	Children	Children	Children	Children	Children
800	50	50	50	50	50	50
850	50	50	50	50	50	50
900	57	58	59	59	60	61
950	92	93	94	95	96	97
1,000	126	127	129	130	132	133
1,050	160	162	164	166	168	169
1,100	195	197	199	201	203	206
1,150	229	232	234	237	239	242
1,200	264	266	269	272	275	278
1,250	275	300	303	306	309	313
1,300	284	332	336	339	343	347
1,350	293	364	368	372	376	380
1,400	303	397	401	406	410	414
1,450	312	429	434	439	444	448
1,500	321	453	467	472	477	482
1,550	330	466	500	505	511	516
1,600	339	478	533	538	544	550
1,650	348	491	565	572	578	584
1,700	357	504	584	605	611	618
1,750	367	517	599	638	645	652
1,800	376	530	614	671	678	685
1,850	384	541	626	698	711	719
1,900	392	552	639	712	744	752

1,950	400	563	652	726	777	785
2,000	408	574	664	741	810	819
2,050	416	585	677	755	830	852
2,100	425	596	689	769	845	886
2,150	433	607	702	783	861	919
2,200	441	618	715	797	876	953
2,250	449	629	727	811	892	970
2,300	457	640	740	825	907	987
2,350	465	651	752	839	923	1,004
2,400	473	662	765	853	938	1,020
2,450	481	673	776	866	952	1,036
2,500	489	683	788	879	967	1,052
2,550	497	694	800	892	981	1,067
2,600	505	704	811	905	995	1,083
2,650	513	715	823	918	1,010	1,098
2,700	520	725	835	931	1,024	1,114
2,750	528	735	847	944	1,038	1,130
2,800	536	746	858	957	1,053	1,145
2,850	544	756	870	970	1,067	1,161
2,900	552	767	882	983	1,081	1,176
2,950	559	777	893	996	1,096	1,192
3,000	567	787	904	1,008	1,109	1,206
3,050	574	796	915	1,020	1,122	1,221
3,100	580	806	926	1,032	1,135	1,235

3,150	587	815	937	1,044	1,149	1,250
3,200	594	825	947	1,056	1,162	1,264
3,250	601	834	958	1,069	1,175	1,279
3,300	608	844	969	1,081	1,189	1,293
3,350	615	854	980	1,093	1,202	1,308
3,400	622	863	991	1,105	1,215	1,322
3,450	629	873	1,002	1,117	1,229	1,337
3,500	636	882	1,013	1,129	1,242	1,351
3,550	643	892	1,023	1,141	1,255	1,366
3,600	650	901	1,034	1,153	1,268	1,380
3,650	657	911	1,045	1,165	1,282	1,395
3,700	664	920	1,056	1,177	1,295	1,409
3,750	669	928	1,065	1,187	1,306	1,421
3,800	675	936	1,073	1,197	1,316	1,432
3,850	681	944	1,082	1,206	1,327	1,444
3,900	687	952	1,090	1,216	1,337	1,455
3,950	693	959	1,099	1,225	1,348	1,466
4,000	698	967	1,108	1,235	1,358	1,478
4,050	704	975	1,116	1,245	1,369	1,489
4,100	710	983	1,125	1,254	1,380	1,501
4,150	716	991	1,133	1,264	1,390	1,512
4,200	722	999	1,142	1,273	1,401	1,524
4,250	728	1,006	1,151	1,283	1,411	1,535
4,300	733	1,014	1,159	1,293	1,422	1,547

4,350	739	1,022	1,168	1,302	1,432	1,558
4,400	745	1,030	1,176	1,312	1,443	1,570
4,450	748	1,034	1,180	1,316	1,448	1,575
4,500	751	1,037	1,182	1,318	1,450	1,578
4,550	754	1,039	1,184	1,320	1,453	1,580
4,600	756	1,042	1,186	1,323	1,455	1,583
4,650	759	1,044	1,188	1,325	1,457	1,586
4,700	761	1,047	1,190	1,327	1,460	1,588
4,750	764	1,050	1,192	1,329	1,462	1,591
4,800	767	1,052	1,194	1,332	1,465	1,594
4,850	769	1,055	1,196	1,334	1,467	1,596
4,900	772	1,057	1,198	1,336	1,470	1,599
4,950	774	1,060	1,200	1,338	1,472	1,602
5,000	777	1,062	1,202	1,340	1,474	1,604
5,050	779	1,065	1,204	1,343	1,477	1,607
5,100	782	1,068	1,206	1,345	1,479	1,609
5,150	785	1,071	1,209	1,348	1,483	1,613
5,200	788	1,075	1,213	1,352	1,488	1,619
5,250	791	1,079	1,217	1,357	1,493	1,624
5,300	794	1,083	1,221	1,362	1,498	1,630
5,350	798	1,087	1,225	1,366	1,503	1,635
5,400	801	1,091	1,229	1,371	1,508	1,641
5,450	804	1,095	1,234	1,375	1,513	1,646
5,500	807	1,098	1,238	1,380	1,518	1,652

5,550	811	1,102	1,242	1,385	1,523	1,657
5,600	814	1,106	1,246	1,389	1,528	1,663
5,650	817	1,110	1,250	1,394	1,533	1,668
5,700	820	1,114	1,254	1,399	1,538	1,674
5,750	824	1,118	1,258	1,403	1,543	1,679
5,800	827	1,122	1,262	1,408	1,548	1,685
5,850	830	1,126	1,267	1,412	1,553	1,690
5,900	833	1,130	1,271	1,417	1,559	1,696
5,950	837	1,134	1,275	1,422	1,564	1,702
6,000	840	1,138	1,280	1,427	1,569	1,708
6,050	843	1,142	1,284	1,432	1,575	1,713
6,100	846	1,146	1,288	1,436	1,580	1,719
6,150	850	1,150	1,293	1,441	1,585	1,725
6,200	853	1,154	1,297	1,446	1,591	1,730
6,250	856	1,158	1,301	1,451	1,596	1,736
6,300	859	1,162	1,305	1,455	1,601	1,742
6,350	863	1,166	1,310	1,460	1,606	1,748
6,400	866	1,170	1,314	1,465	1,612	1,753
6,450	869	1,174	1,318	1,470	1,617	1,759
6,500	872	1,178	1,323	1,475	1,622	1,765
6,550	876	1,182	1,327	1,479	1,627	1,771
6,600	879	1,186	1,331	1,484	1,633	1,776
6,650	882	1,190	1,335	1,489	1,638	1,782
6,700	885	1,194	1,340	1,494	1,643	1,788

6,750	888	1,198	1,344	1,499	1,648	1,793
6,800	892	1,202	1,348	1,503	1,654	1,799
6,850	895	1,206	1,353	1,508	1,659	1,805
6,900	898	1,210	1,357	1,513	1,664	1,811
6,950	901	1,214	1,361	1,518	1,669	1,816
7,000	904	1,217	1,365	1,522	1,674	1,821
7,050	905	1,218	1,366	1,523	1,675	1,822
7,100	906	1,219	1,366	1,523	1,676	1,823
7,150	907	1,220	1,367	1,524	1,677	1,824
7,200	908	1,221	1,368	1,525	1,678	1,825
7,250	909	1,222	1,369	1,526	1,679	1,826
7,300	910	1,223	1,370	1,527	1,680	1,828
7,350	911	1,224	1,370	1,528	1,681	1,829
7,400	912	1,225	1,371	1,529	1,682	1,830
7,450	912	1,226	1,372	1,530	1,683	1,831
7,500	913	1,227	1,373	1,531	1,684	1,832
7,550	914	1,228	1,374	1,532	1,685	1,833
7,600	915	1,229	1,374	1,532	1,686	1,834
7,650	916	1,230	1,375	1,533	1,687	1,835
7,700	917	1,231	1,376	1,534	1,688	1,836
7,750	918	1,232	1,377	1,535	1,689	1,837
7,800	919	1,233	1,378	1,536	1,690	1,838
7,850	920	1,233	1,378	1,537	1,691	1,839
7,900	921	1,234	1,379	1,538	1,692	1,841

7,950	922	1,235	1,380	1,539	1,693	1,842
8,000	923	1,236	1,381	1,540	1,694	1,843
8,050	924	1,237	1,382	1,541	1,695	1,844
8,100	924	1,238	1,383	1,542	1,696	1,845
8,150	925	1,239	1,383	1,542	1,697	1,846
8,200	926	1,240	1,384	1,543	1,698	1,847
8,250	927	1,241	1,385	1,544	1,699	1,848
8,300	928	1,242	1,386	1,545	1,700	1,849
8,350	939	1,243	1,387	1,546	1,701	1,850
8,400	932	1,247	1,391	1,551	1,706	1,856
8,450	936	1,253	1,397	1,558	1,714	1,864
8,500	941	1,259	1,403	1,565	1,721	1,873
8,550	945	1,264	1,410	1,572	1,729	1,881
8,600	949	1,270	1,416	1,579	1,737	1,890
8,650	954	1,276	1,423	1,586	1,745	1,898
8,700	958	1,282	1,429	1,593	1,753	1,907
8,750	963	1,288	1,435	1,601	1,761	1,916
8,800	967	1,294	1,442	1,608	1,768	1,924
8,850	971	1,299	1,448	1,615	1,776	1,933
8,900	976	1,305	1,455	1,622	1,784	1,941
8,950	980	1,311	1,461	1,629	1,792	1,950
9,000	984	1,317	1,467	1,636	1,800	1,958
9,050	989	1,323	1,474	1,643	1,808	1,967
9,100	993	1,328	1,480	1,650	1,815	1,975

9,150	997	1,334	1,487	1,658	1,823	1,984
9,200	1,002	1,340	1,493	1,665	1,831	1,992
9,250	1,006	1,346	1,499	1,672	1,839	2,001
9,300	1,010	1,352	1,506	1,679	1,847	2,009
9,350	1,015	1,358	1,512	1,686	1,855	2,018
9,400	1,019	1,363	1,519	1,693	1,863	2,026
9,450	1,023	1,369	1,525	1,700	1,870	2,035
9,500	1,028	1,375	1,531	1,707	1,878	2,044
9,550	1,032	1,381	1,538	1,715	1,886	2,052
9,600	1,036	1,387	1,544	1,722	1,894	2,061
9,650	1,041	1,392	1,551	1,729	1,902	2,069
9,700	1,045	1,398	1,557	1,736	1,910	2,078
9,750	1,049	1,404	1,563	1,743	1,917	2,086
9,800	1,052	1,408	1,567	1,747	1,922	2,091
9,850	1,055	1,411	1,571	1,752	1,927	2,096
9,900	1,058	1,415	1,575	1,756	1,932	2,102
9,950	1,061	1,419	1,579	1,761	1,937	2,107
10,000	1,064	1,423	1,583	1,765	1,941	2,112
10,050	1,067	1,427	1,587	1,769	1,946	2,118
10,100	1,070	1,431	1,591	1,774	1,951	2,123
10,150	1,073	1,434	1,595	1,778	1,956	2,128
10,200	1,077	1,438	1,599	1,783	1,961	2,134
10,250	1,080	1,442	1,603	1,787	1,966	2,139
10,300	1,083	1,446	1,607	1,792	1,971	2,144

10,350	1,086	1,450	1,611	1,796	1,976	2,150
10,400	1,089	1,454	1,615	1,801	1,981	2,155
10,450	1,092	1,457	1,619	1,805	1,986	2,160
10,500	1,095	1,461	1,623	1,810	1,991	2,166
10,550	1,098	1,465	1,627	1,814	1,995	2,171
10,600	1,101	1,469	1,631	1,819	2,000	2,176
10,650	1,104	1,473	1,635	1,823	2,005	2,182
10,700	1,107	1,477	1,639	1,827	2,010	2,187
10,750	1,110	1,480	1,643	1,832	2,015	2,192
10,800	1,113	1,484	1,647	1,836	2,020	2,198
10,850	1,116	1,488	1,651	1,841	2,025	2,203
10,900	1,119	1,492	1,655	1,845	2,030	2,208
10,950	1,122	1,496	1,659	1,850	2,035	2,214
11,000	1,125	1,499	1,663	1,854	2,039	2,219
11,050	1,128	1,503	1,667	1,858	2,044	2,224
11,100	1,131	1,507	1,671	1,863	2,049	2,229
11,150	1,134	1,511	1,675	1,867	2,054	2,235
11,200	1,137	1,515	1,679	1,872	2,059	2,240
11,250	1,140	1,518	1,683	1,876	2,064	2,245
11,300	1,143	1,522	1,687	1,881	2,069	2,251
11,350	1,146	1,526	1,691	1,885	2,074	2,256
11,400	1,149	1,530	1,695	1,889	2,078	2,261
11,450	1,152	1,534	1,699	1,894	2,083	2,267
11,500	1,155	1,537	1,703	1,898	2,088	2,272

11,550	1,158	1,541	1,706	1,903	2,093	2,277
11,600	1,161	1,545	1,710	1,907	2,098	2,282
11,650	1,164	1,549	1,714	1,912	2,103	2,288
11,700	1,167	1,553	1,718	1,916	2,108	2,293
11,750	1,170	1,556	1,722	1,920	2,112	2,298
11,800	1,173	1,560	1,726	1,925	2,117	2,304
11,850	1,176	1,564	1,730	1,929	2,122	2,309
11,900	1,178	1,567	1,734	1,933	2,126	2,313
11,950	1,181	1,570	1,737	1,937	2,131	2,318
12,000	1,183	1,574	1,741	1,941	2,135	2,323
12,050	1,186	1,577	1,745	1,945	2,140	2,328
12,100	1,188	1,580	1,748	1,949	2,144	2,333
12,150	1,191	1,584	1,752	1,953	2,149	2,338
12,200	1,194	1,587	1,756	1,957	2,153	2,343
12,250	1,196	1,590	1,759	1,961	2,158	2,347
12,300	1,199	1,594	1,763	1,966	2,162	2,352
12,350	1,201	1,597	1,766	1,970	2,167	2,357
12,400	1,204	1,600	1,770	1,974	2,171	2,362
12,450	1,206	1,603	1,774	1,977	2,175	2,367
12,500	1,208	1,606	1,777	1,981	2,179	2,371
12,550	1,211	1,609	1,780	1,985	2,183	2,376
12,600	1,213	1,612	1,784	1,989	2,188	2,380
12,650	1,215	1,616	1,787	1,992	2,192	2,384
12,700	1,218	1,619	1,790	1,996	2,196	2,389

12,750	1,220	1,622	1,794	2,000	2,200	2,393
12,800	1,222	1,625	1,797	2,004	2,204	2,398
12,850	1,225	1,628	1,800	2,007	2,208	2,402
12,900	1,227	1,631	1,804	2,011	2,212	2,407
12,950	1,229	1,634	1,807	2,015	2,216	2,411
13,000	1,232	1,637	1,810	2,018	2,220	2,416
13,050	1,234	1,640	1,814	2,022	2,224	2,420
13,100	1,237	1,643	1,817	2,026	2,228	2,425
13,150	1,239	1,646	1,820	2,030	2,233	2,429
13,200	1,241	1,649	1,824	2,033	2,237	2,434
13,250	1,244	1,652	1,827	2,037	2,241	2,438
13,300	1,246	1,655	1,830	2,041	2,245	2,442
13,350	1,248	1,658	1,834	2,045	2,249	2,447
13,400	1,251	1,661	1,837	2,048	2,253	2,451
13,450	1,253	1,664	1,840	2,052	2,257	2,456
13,500	1,255	1,667	1,844	2,056	2,261	2,460
13,550	1,258	1,670	1,847	2,059	2,265	2,465
13,600	1,260	1,673	1,850	2,063	2,269	2,469
13,650	1,262	1,677	1,854	2,067	2,274	2,474
13,700	1,265	1,680	1,857	2,071	2,278	2,478
13,750	1,267	1,683	1,860	2,074	2,282	2,483
13,800	1,269	1,686	1,864	2,078	2,286	2,487
13,850	1,272	1,689	1,867	2,082	2,290	2,491
13,900	1,274	1,692	1,870	2,086	2,294	2,496

13,950	1,276	1,695	1,874	2,089	2,298	2,500
14,000	1,279	1,698	1,877	2,093	2,302	2,505
14,050	1,281	1,701	1,880	2,097	2,306	2,509
14,100	1,283	1,704	1,884	2,100	2,310	2,514
14,150	1,286	1,707	1,887	2,104	2,315	2,518
14,200	1,288	1,710	1,890	2,108	2,319	2,523
14,250	1,290	1,713	1,894	2,112	2,323	2,527
14,300	1,293	1,716	1,897	2,115	2,327	2,532
14,350	1,295	1,719	1,900	2,119	2,331	2,536
14,400	1,297	1,722	1,904	2,123	2,335	2,541
14,450	1,300	1,725	1,907	2,126	2,339	2,545
14,500	1,302	1,728	1,911	2,130	2,343	2,549
14,550	1,304	1,731	1,914	2,134	2,347	2,554
14,600	1,307	1,734	1,917	2,138	2,351	2,558
14,650	1,309	1,738	1,921	2,141	2,356	2,563
14,700	1,311	1,741	1,924	2,145	2,360	2,567
14,750	1,314	1,744	1,927	2,149	2,364	2,572
14,800	1,316	1,747	1,931	2,153	2,368	2,576
14,850	1,318	1,750	1,934	2,156	2,372	2,581
14,900	1,321	1,753	1,937	2,160	2,376	2,585
14,950	1,323	1,756	1,941	2,164	2,380	2,590
15,000	1,325	1,759	1,944	2,167	2,384	2,594
15,050	1,328	1,762	1,947	2,171	2,388	2,598
15,100	1,330	1,765	1,951	2,175	2,392	2,603

15,150	1,332	1,768	1,954	2,178	2,396	2,607
15,200	1,334	1,770	1,956	2,181	2,399	2,610
15,250	1,336	1,772	1,958	2,184	2,402	2,613
15,300	1,338	1,775	1,961	2,186	2,405	2,616
15,350	1,340	1,777	1,963	2,189	2,407	2,619
15,400	1,342	1,779	1,965	2,191	2,410	2,622
15,450	1,344	1,782	1,967	2,194	2,413	2,625
15,500	1,346	1,784	1,970	2,196	2,416	2,628
15,550	1,348	1,786	1,972	2,199	2,419	2,631
15,600	1,350	1,788	1,974	2,201	2,421	2,634
15,650	1,352	1,791	1,976	2,204	2,424	2,637
15,700	1,354	1,793	1,979	2,206	2,427	2,640
15,750	1,355	1,795	1,981	2,209	2,430	2,643
15,800	1,357	1,798	1,983	2,211	2,432	2,646
15,850	1,359	1,800	1,985	2,214	2,435	2,650
15,900	1,361	1,802	1,988	2,216	2,438	2,653
15,950	1,363	1,804	1,990	2,219	2,441	2,656
16,000	1,365	1,807	1,992	2,221	2,444	2,659
16,050	1,367	1,809	1,995	2,224	2,446	2,662
16,100	1,369	1,811	1,997	2,226	2,449	2,665
16,150	1,371	1,814	1,999	2,229	2,452	2,668
16,200	1,373	1,816	2,001	2,232	2,455	2,671
16,250	1,375	1,818	2,004	2,234	2,457	2,674
16,300	1,377	1,820	2,006	2,237	2,460	2,677

16,350	1,379	1,823	2,008	2,239	2,463	2,680
16,400	1,381	1,825	2,010	2,242	2,466	2,683
16,450	1,383	1,827	2,013	2,244	2,469	2,686
16,500	1,385	1,830	2,015	2,247	2,471	2,689
16,550	1,387	1,832	2,017	2,249	2,474	2,692
16,600	1,389	1,834	2,019	2,252	2,477	2,695
16,650	1,390	1,836	2,022	2,254	2,480	2,698
16,700	1,392	1,839	2,024	2,257	2,482	2,701
16,750	1,394	1,841	2,026	2,259	2,485	2,704
16,800	1,396	1,843	2,029	2,262	2,488	2,707
16,850	1,398	1,846	2,031	2,264	2,491	2,710
16,900	1,400	1,848	2,033	2,267	2,494	2,713
16,950	1,402	1,850	2,035	2,269	2,496	2,716
17,000	1,404	1,852	2,038	2,272	2,499	2,719
17,050	1,406	1,855	2,040	2,274	2,502	2,722
17,100	1,408	1,857	2,042	2,277	2,505	2,725
17,150	1,410	1,859	2,044	2,280	2,507	2,728
17,200	1,412	1,862	2,047	2,282	2,510	2,731
17,250	1,414	1,864	2,049	2,285	2,513	2,734
17,300	1,416	1,866	2,051	2,287	2,516	2,737
17,350	1,418	1,868	2,053	2,290	2,519	2,740
17,400	1,420	1,871	2,056	2,292	2,521	2,743
17,450	1,422	1,873	2,058	2,295	2,524	2,746
17,500	1,423	1,875	2,060	2,297	2,527	2,749

17,550	1,425	1,878	2,063	2,300	2,530	2,752
17,600	1,427	1,880	2,065	2,302	2,532	2,755
17,650	1,429	1,882	2,067	2,305	2,535	2,758
17,700	1,431	1,884	2,069	2,307	2,538	2,761
17,750	1,433	1,887	2,072	2,310	2,541	2,764
17,800	1,435	1,889	2,074	2,312	2,544	2,767
17,850	1,437	1,891	2,076	2,315	2,546	2,770
17,900	1,439	1,894	2,078	2,317	2,549	2,773
17,950	1,441	1,896	2,081	2,320	2,552	2,776
18,000	1,443	1,898	2,083	2,322	2,555	2,780
18,050	1,445	1,900	2,085	2,325	2,557	2,783
18,100	1,447	1,903	2,087	2,328	2,560	2,786
18,150	1,449	1,905	2,090	2,330	2,563	2,789
18,200	1,451	1,907	2,092	2,333	2,566	2,792
18,250	1,453	1,910	2,094	2,335	2,569	2,795
18,300	1,455	1,912	2,097	2,338	2,571	2,798
18,350	1,456	1,914	2,099	2,340	2,574	2,801
18,400	1,458	1,916	2,101	2,343	2,577	2,804
18,450	1,460	1,919	2,103	2,345	2,580	2,807
18,500	1,462	1,921	2,106	2,348	2,582	2,810
18,550	1,464	1,923	2,108	2,350	2,585	2,813
18,600	1,466	1,926	2,110	2,353	2,588	2,816
18,650	1,468	1,928	2,112	2,355	2,591	2,819
18,700	1,470	1,930	2,115	2,358	2,594	2,822

18,750	1,472	1,932	2,117	2,360	2,596	2,825
18,800	1,474	1,935	2,119	2,363	2,599	2,828
18,850	1,476	1,937	2,121	2,365	2,602	2,831
18,900	1,478	1,939	2,124	2,368	2,605	2,834
18,950	1,480	1,942	2,126	2,370	2,608	2,837
19,000	1,482	1,944	2,128	2,373	2,610	2,840
19,050	1,484	1,946	2,131	2,376	2,613	2,843
19,100	1,486	1,948	2,133	2,378	2,616	2,846
19,150	1,488	1,951	2,135	2,381	2,619	2,849
19,200	1,489	1,953	2,137	2,383	2,621	2,852
19,250	1,491	1,955	2,140	2,386	2,624	2,855
19,300	1,493	1,958	2,142	2,388	2,627	2,858
19,350	1,495	1,960	2,144	2,391	2,630	2,861
19,400	1,497	1,962	2,146	2,393	2,633	2,864
19,450	1,499	1,964	2,149	2,396	2,635	2,867
19,500	1,501	1,967	2,151	2,398	2,638	2,870
19,550	1,503	1,969	2,153	2,401	2,641	2,873
19,600	1,505	1,971	2,155	2,403	2,644	2,876
19,650	1,507	1,974	2,158	2,406	2,646	2,879
19,700	1,509	1,976	2,160	2,408	2,649	2,882
19,750	1,511	1,978	2,162	2,411	2,652	2,885
19,800	1,513	1,980	2,164	2,413	2,655	2,888
19,850	1,515	1,983	2,167	2,416	2,658	2,891
19,900	1,517	1,985	2,169	2,418	2,660	2,894

19,950	1,519	1,987	2,171	2,421	2,663	2,897
20,000	1,521	1,990	2,174	2,424	2,666	2,900

SECTION 3.

Said title is further amended by striking subsection (a) of Code Section 19-6-19, relating to revision of judgment for permanent alimony or child support generally, and inserting in lieu thereof a new subsection (a) to read as follows:

(a) The judgment of a court providing permanent alimony for the support of a spouse rendered on or after July 1, 1977, shall be subject to revision upon petition filed by either former spouse showing a change in the income and financial status of either former spouse. The judgment of a court providing permanent alimony for the support of a child or children rendered on or after July 1, 1977, shall be subject to revision upon petition filed by either former spouse showing a change in the income and financial status of either former spouse or in the needs of the child or children. In either case a petition shall be filed and returnable under the same rules of procedure applicable to divorce proceedings. ~~No petition may be filed by either former spouse under this subsection within a period of two years from the date of the final order on a previous petition by the same former spouse.~~ After hearing both parties and the evidence, the jury, or the judge where a jury is not demanded by either party, may modify and revise the previous judgment, in accordance with the changed income and financial status of either former spouse in the case of permanent alimony for the support of a former spouse, or in accordance with the changed income and financial status of either former spouse or in the needs of the child or children in the case of permanent alimony for the support of a child or children, if such a change in the income and financial status is satisfactorily proved so as to warrant the modification and revision. In the hearing upon a petition filed as provided in this subsection, testimony may be given and evidence introduced relative to the income and financial status of either former spouse.

SECTION 4.

This Act shall become effective on July 1, 2005.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.

2005 Georgia Senate Bill No. 25, Georgia 148th General Assembly --

2005-06 Regular Session

VERSION: Introduced

January 12, 2005

Seabaugh

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 5 of Title 19 of the Official Code of Georgia Annotated, relating to divorce, so as to require certain divorcing parents to participate in education classes that focus on the effect of divorce and separation on children; to provide for legislative findings; to provide for the types of persons who can provide the education; to provide for exceptions to the education classes; to change certain provisions relating to the time limit for granting a divorce on the ground that the marriage is irretrievably broken; to provide for different time frames for granting divorce based on certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

TEXT:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 19 of the Official Code of Georgia Annotated, relating to divorce, is amended by striking subsection (a) of Code Section 19_5_1, relating to granting total divorces and referral for alternative dispute resolution, and inserting in lieu thereof the following:

(a) Total divorces may be granted in proper cases by the superior court; provided, however, that the parties shall comply with Code Section 19_5_1.1 if it is applicable.

Unless an issuable defense is filed as provided by law and a jury trial is demanded in writing by either party on or before the call of the case for trial, in all petitions for divorce and permanent alimony the judge shall hear and determine all issues of law and of fact and any other issues raised in the pleadings.

SECTION 2.

Said chapter is further amended by inserting a new Code section to read as follows:

19_5_1.1.

(a) The General Assembly finds that children are the innocent victims of legal separation and divorce and that, when two parties separate or divorce, there is a devastating impact on their children who have had no voice in the decision to disrupt the family. Oftentimes, these children of divorce are negatively affected academically, socially, emotionally, and psychologically as a result of the stress and trauma placed on the family by the separation or divorce and by the associated discord between their parents occasioned by the process. The General Assembly finds that severe emotional trauma to the children can have short_term and long_term negative effects on these children. The General Assembly further finds that parents pursuing legal separation and divorce may be oblivious to or attempt to deny the harm they cause their children through the separation or divorce process. The General Assembly finds that education may benefit parties considering legal separation or divorce by educating them about the short_term and long_term negative effects that such a decision may have on their children. Accordingly, the General Assembly determines and declares that it is in the best interests of the children, families, and citizens of the State of Georgia to require that, in most cases, parties to a legal separation or divorce proceeding filed pursuant to this chapter or Chapter 6 of this title who have children younger than 18 years of age or who are expecting a child undertake, within 30 days of the filing of the answer to the petition, education classes focusing on the current and future potential negative impact on children of separation or divorce.

(b)(1) Except as otherwise provided in subsection (d) of this Code section, in proceedings pursuant to this chapter in which there are dependent children of the marriage who are younger than 18 years of age or in which the wife is pregnant, the court shall order the parties seeking legal separation or divorce to participate in education classes of their choice, focusing substantially on the potential impact of separation or divorce on children.

(2) The parties shall commence such education classes within 30 days after the filing of the answer to the petition for legal separation or divorce.

(3) The education classes shall be provided to parties in each judicial circuit by one or more of the following:

(A) A marriage and family therapist, social worker, or professional counselor licensed pursuant to Chapter 10A of Title 43 or psychologist licensed pursuant to Chapter 39 of Title 43;

(B) An unlicenced therapist acting under the supervision of a licensed marriage and family therapist, licensed psychologist, licensed social worker, or licensed professional counselor;

(C) A qualified member of the clergy; or

(D) A qualified person acting under the supervision of a member of the clergy.

(4) Persons providing the education classes may use the curriculum developed by the Georgia Board of Professional Counselors, Social Workers, and Marriage and Family Therapists or such other curriculum that focuses specially on the impact of legal separation and divorce on children.

(5) The education classes shall commence within 30 days after the filing of the answer to the petition for legal separation or divorce and shall consist of a minium total of four hours after the filing of the answer to the petition, unless the parties reconcile prior to completion of the education classes. Counseling in which the parties have participated at

any time within six months prior to the filing of the answer to the petition shall also count toward the hourly requirements set forth in this paragraph, if such counseling focused substantially on the potential impact on children of separation or divorce. The parties may elect to participate in the education classes together or separately. Whether the parties participate in the education classes together or separately, each party shall participate for a total of four hours.

(6) After a party has successfully completed the education classes, the person providing the education classes shall provide the participating party with a certificate of completion or a letter of verification or some other written documentation indicating successful completion of the education classes. The person providing education classes shall also provide to the party a list of resources for mental health counseling, marital counseling, child counseling, and other support services that may be available in the community to the party and the party's children.

(7) The court shall either provide payment for indigent parties to complete the education classes required by this Code section or shall waive such requirement.

(c) The parties may elect to attend the education classes together unless one of the following circumstances exist:

(1) A protective order has been issued against one of the parties pursuant to Article 1 of Chapter 13 of this title;

(2) There have been allegations of violence within the marriage; or

(3) One of the parties prefers to attend the education class without his or her spouse.

(d) The court shall not require the education classes prescribed in subsection (b) of this Code section if:

(1) Service of process was satisfied by publication and the whereabouts of one of the parties cannot be determined;

(2) One of the parties to the marriage at the time of the action is serving a sentence in the Department of Corrections;

(3) The youngest child of the parties is within six months of his or her eighteenth birthday;

(4) One of the parties to the proceeding does not live in this state; or

(5) The parties have been living separate and apart for more than five years.

(e) If the petition for legal separation or divorce is not dismissed, the costs, if any, associated with the education classes required by subsection (b) of this Code section shall be paid by the participating parties in accordance with each party's ability to pay, as the court deems appropriate.

SECTION 3.

Said chapter is further amended by striking paragraph (13) of Code Section 19_5_3, relating to grounds for divorce, and inserting in lieu thereof the following:

(13) The marriage is irretrievably broken. Under no circumstances shall the court grant a divorce on this ground until not less than 30 days from the date of service on the respondent and as further provided in Code Section 19_5_3.1.

SECTION 4.

Said chapter is further amended by inserting a new Code section to follow Code Section 19_5_3, relating to grounds for divorce, to read as follows:

19_5_3.1.

(a) Except as provided in subsection (c) of this Code section, a court shall grant a divorce only after 120 days from the date of service on the respondent where the parties do not have children who are 18 years of age or younger.

(b) Except as provided in subsection (c) of this Code section, a court shall grant a divorce only after 180 days from the date of service on the respondent where the parties have children who are younger than 18 years of age.

(c) The waiting periods provided by this Code section shall be waived where either party has obtained a protective order pursuant to Article 1 of Chapter 13 of this title or where either party alleges in a verified petition or verified answer or verified responsive pleading specific facts establishing probable cause that family violence as defined by Code Section 19_13_1 has occurred in the past.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.

2005 GA S.B. 25 (SN)

2005 Georgia Senate Bill No. 53, Georgia 148th General Assembly --

2005-06 Regular Session

VERSION: Introduced

January 25, 2005

Smith

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 19_7_22 of the Official Code of Georgia Annotated, relating to petition for legitimation of a child, notice to mother, court order, effect, and intervention by father, so as to provide that legitimation of a child may take place contemporaneously with the establishment of paternity with the consent of the mother and the father; to provide for related matters; to repeal conflicting laws; and for other purposes.

TEXT:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 19_7_22, relating to petition for legitimation of a child, notice to mother, court order, effect, and intervention by father, is amended by striking subsection (g) and inserting in lieu thereof the following:

(g) (1) ~~Consistent with the purpose of subsection (a) of this Code section, whenever the Department of Human Resources petitions the superior court or other authorized trier of fact to establish paternity~~ In any petition to establish paternity pursuant to Code Section 19_7_43 , the alleged father may include or intervene to include in such petition for the legitimation of the child born out of wedlock if the mother of the child consents to the filing of such legitimation petition. Upon the determination of paternity or if a voluntary acknowledgment of paternity has been made and has not been rescinded pursuant to Code Section 19_7_46.1, the court or trier of fact as a matter of law and pursuant to the provisions of Code Section 19_7_51 may enter an order or decree legitimating a child born out of wedlock ~~, provided that such is in the best interest of the child~~ .

(2) In any voluntary acknowledgment of paternity which has been made and has not been rescinded pursuant to Code Section 19_7_46.1, when both the mother and father freely agree and consent, the child may be legitimated by the inclusion of a statement indicating a voluntary acknowledgment of legitimation.

Issues of name change, visitation, and custody shall not be determined by the court until such time as a separate petition is filed by one of the parents or by the legal guardian of the child. Custody of the child shall remain in the mother until a court order is entered addressing the issue of custody.

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

2005 Georgia Senate Bill No. 94, Georgia 148th General Assembly --

2005-06 Regular Session

VERSION: Introduced

January 31, 2005

Harp

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, the 'Georgia Child Custody Intrastate Jurisdiction Act of 1978,' so as to change certain provisions relating to actions by physical or legal custodians not being permitted in certain circumstances; to prohibit other persons or entities from maintaining certain actions under certain circumstances; to repeal conflicting laws; and for other purposes.

TEXT:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, the 'Georgia Child Custody Intrastate Jurisdiction Act of 1978,' is amended by adding a new subsection (c) to Code Section 19_9_24, relating to actions by physical or legal custodians not being permitted in certain circumstances, to read as follows:

(c) A legal custodian, the state, or any state agency shall not be allowed to maintain any action for child support or any application for contempt of court so long as custody or visitation rights are withheld in violation of a valid custody or visitation order.

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.