

Jurisdiction

Barker v. Barker, S13A1705 (2/24/2014)

Supreme Court reversed and remanded the dismissal of the husband's petition to enforce some provisions of the parties' divorce decree by contempt, and to modify other provisions. The trial court erred in finding that it lacked jurisdiction over the nonresident wife.

The original decree was entered by a Georgia court with proper jurisdiction. The husband's petition sought to modify certain provisions of that decree with respect to support and enforcement, and visitation. Husband is a Georgia resident. The court had jurisdiction over the wife pursuant to O.C.G.A. 9-10-91(6), which recognizes the doctrine of continuing personal jurisdiction in divorce cases.

Wife argued that she lacked the constitutionally required contacts with Georgia, but the Court rejected that argument since she had received child support and maintained custody since 2005 pursuant to the decree of a Georgia court.

Contempt

Friday v. Friday, S13A1625 (3/3/2014)

The Supreme Court reversed an order requiring husband to submit a Qualified Domestic Relations Order (QDRO) in regard to his retirement accounts to pay child support arrearages to his ex-wife. The Court held that such an order constituted a reapportionment of the retirement accounts, which unlawfully modified the parties' final divorce decree.

However, the Court did uphold imputing income to husband in addition to what he received in monthly unemployment benefits because he refused to accept a job that paid less than \$100,000/year (he earned \$180,000 prior to involuntary termination and testified that he would accept \$120,000/year). The amount imputed was based on approximately half the amount he refused to accept as salary. The Supreme Court upheld the trial court's finding that the husband was wilfully unemployed or underemployed pursuant to O.C.G.A. § 19-6-15(f)(4)(D).

Trial court properly found him in willful contempt for failing to meet his support obligation. Father paid only \$179 per month of his \$2000/month obligation after filing for modification of support from December 2010 through February 2012, leading to a \$12,915 arrearage. He was ordered to make an \$8,000 purge payment.

Custody, Visitation, Child Support

Sahibzada v. Sahibzada, S13A1307 (3/17/2014)

The Supreme Court affirmed the provision of the parties' divorce decree restricting the husband's international travel with the parties' two children, holding that a trial court has the discretion to prohibit the removal of minor children from the US (see Mitchell v. Mitchell, 252 Ga. 46 (1) (1984)). Court justified due to: husband's frequent foreign travel, past lapses in communicating his whereabouts, his relatives in Pakistan have the ability to travel to the US to visit the children; and wife would have difficulty asserting her custodial rights in Pakistan, where husband is a citizen but she is not.

Supreme Court also held that the trial court did not abuse its discretion in ordering the husband to reimburse the wife up to \$250/month for her work-related childcare expenses. Although husband's job was flexible and he could work from home and watch the children, the younger child was diagnosed with high-functioning autism and needed special care, attention, consistency and the presence of his older brother, all of which the daycare provided.

Findings of Fact and Conclusions of Law/Attorneys' Fees

McCarthy v. Ashment-McCarthy, S14F0265 (5/5/2014)

In the parties' divorce, the trial court ordered an upward deviation in the amount of \$288.20. Correct means of opposing this is by Motion for New Trial, not motion to set aside, to complain of the trial court's failure to comply with the child support guidelines, including the court's failure to make findings required by OCGA 19-6-15.

Where deviation is ordered, the order must explain the reasons for the deviation, provide the amount of child support that would have been required had no deviation been ordered, and state how application of the presumptive amount of child support would be unjust or inappropriate and how the best interest of the children for whom support is being determined will be served by the deviation. The order must also include a finding that states how the court's application of the guidelines would be unjust or inappropriate considering the relative ability of each parent to provide support.

However, the issue was not raised, despite several pleadings and hearings and opportunities, until appeal and so was considered waived.

The case was remanded, though, for the trial court to make appropriate findings of fact on its order of \$12,500 in attorneys' fees on the main case. There was also a contempt, but the attorney fee award in that case in the amount of \$2,550 was upheld.

Modification, Adjustments

Wheeler v. Akins, A14A0075, A14A0076 (7/3/2014)

The Court of Appeals partially reversed the trial court's order granting Akins' motion to set aside a previous order of support and visitation, increasing Wheeler's child support obligation, decreasing her visitation and ordering her to pay back child support. The trial court improperly modified Wheeler's child support obligation retroactively, since the trial court determined that Wheeler owed an arrearage amount that included a time period prior to the order for her to begin child support payments.

In Akins' cross appeal, the Court of Appeals reversed and remanded the trial court's order adjusting Wheeler's child support obligation based on the fact that she supported another child, since the trial court failed to find whether the adjustment was in the child's best interest, noting that *adjustments for other qualified children are authorized but still must be based upon the best interest of the child for whom support is being awarded.*

Joinder

Adame v. Hernandez, A14A0150 (7/7/2014)

The Court of Appeals partially reversed an order legitimating Adame's twin daughters and granting joint legal custody to Adame and the twins' mother, visitation for both parents and an increase in Adame's child support payment from \$149 per week to \$814 per month, holding that the trial court erred in modifying Adame's existing support obligation without making the required findings. The trial court failed to make specific findings with regard to the adjustment it made for three "other qualified children" living in the mother's home, and in failing to find that such an adjustment was in the twins' best interest.

The court affirmed the grant of the mother's motion for joinder of the DHR as a necessary party, since Adame's prior child support obligation arose out of a case involving DHR. DHR thus had an interest in the case and its absence would have impaired or impeded its ability to protect that interest.

Legitimation

In re Estate of James Andrew Hawkins, A14A0468 (7/16/2014)

James Hawkins died unmarried and intestate in 2012. His girlfriend, Yvette Ridley, filed a petition to administer his estate and listing her son Makaleb, whom Hawkins had never adopted, as Hawkins' only heir at law. This was contested by decedent's sister, and after a hearing the probate court held that Hawkins was not the child's biological father and that the child was not Hawkins' heir at law. Ridley argued that when Hawkins executed a paternity acknowledgment and obtained the listing of his name as the father on the child's birth certificate, he complied with the provisions of OCGA 53-2-3 and made Makaleb his heir. The Court of Appeals disagreed, and affirmed the trial court.

Knowing that he was NOT the biological father of Makaleb, Hawkins completed a paternity acknowledgment form. Both Ridley and Hawkins also signed the legitimation portion of the form. The form stated that "this affidavit must be signed by the mother and the person to be identified as the father in the presence of a witness..." A worker at the Vital Records office signed the paternity acknowledgment form as a witness.

Hawkins did take a paternity test, which confirmed that he was not Makaleb's biological father. Yet he held Makaleb out as his son, and named the child as a dependent on his applications for VA and SS benefits.

The trial court held that although Ridley and Hawkins had executed a paternity acknowledgment, "this method for legitimating a child does not apply in the present case." OCGA 53-2-3 sets forth the circumstances in which a child may inherit from the father; essentially, there must be: (1) a judicial legitimation, (2) a judicial determination of paternity, (3) the father must have executed a *sworn statement* signed by him and attesting to the parent-child relationship, (4) the father must have signed the birth certificate of the child, or (5) other clear and convincing evidence must be presented that the child is the child of the father.

The Court held that the paternity acknowledgment signed by Ridley and Hawkins was not a “sworn statement” for purposes of OCGA 53-2-3 (2)(A). Nor did Hawkins ever sign the birth certificate of the child.

Concurrence by Judge Boggs:

“I write to reiterate my concerns about the unintended consequences of the administrative legitimation process. Rife with frailties, the process is unquestionably inequitable and susceptible to fraud . . . and potentially violative of the constitutional protections guaranteed to biological fathers and their children.”

“When, as here, the mother of a child born out of wedlock and a man known not to be the father deliberately misrepresent the facts in an administrative acknowledgment of paternity and legitimation, this may and does occur without any judicial inquiry, without any attempt by a fact finder to determine actual paternity by means of a DNA test or otherwise, and without any finding that legitimation is in the child’s best interest, all in direct conflict with OCGA 19-7-22 (a) – (f.1).”

“Opportunities for fraud and collusion abound in this flawed scheme.”

Right to Counsel in Civil Contempt Cases

Miller v. Deal, S13G1197 (7/11/2014, 7/17/2014)

The Supreme Court affirmed the judgment of the Court of Appeals in Deal v. Miller, 321 Ga. App. 220 (2013), holding that the Court of Appeals did not err under the “right for any reason” rule in reversing the judgment certifying a class of indigent parents led by five named plaintiffs, who alleged that they were denied government-funded counsel while facing incarceration in civil child support contempt proceedings in which the State had legal representation. The Court held that the plaintiffs failed to show the requisite commonality, typicality and propriety of class-wide relief since there is no categorical right to appointed counsel in such proceedings as a matter of due process.

The Supreme Court noted that the US Supreme Court in Turner v. Rogers made it clear that “the Due Process Clause does not automatically require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration.”

The Supreme Court stated that while the Court of Appeals reached the correct conclusion, its reasoning was not right because the Court of Appeals (seems to have) assumed that the named plaintiffs and other members of the class all had a constitutional right to appointed counsel in civil contempt proceedings of this sort. According to the Court of Appeals, the plaintiff failed to make a request for such counsel.

The Sixth Amendment, which guarantees the right to appointed counsel, applies only in criminal cases. Thus, the Court of Appeals reasoned wrongly in its decision, but was correct ultimately when it determined that the plaintiffs failed to show the requisite commonality, typicality and propriety of classwide relief.

“We do not decide in this case precisely when, if ever, a lawyer must be appointed for an indigent parent in a civil contempt proceeding about child support. We conclude only that there is no absolute, inflexible, and categorical right to appointed counsel in such proceedings as a matter of due process,

even when the Department, represented by its own lawyers, pursues the incarceration of an indigent parent.”

Res Judicata

Hardman v. Hardman, S14A1187 (9/22/2014)

Supreme Court reversed grant of summary judgment to mother in father’s case for declaratory judgment and contempt based on divorce decree, holding that the trial court erred in applying the doctrine of res judicata.

Under the parties’ settlement agreement, which was incorporated into the final decree, parents shared joint legal custody, mother had primary physical custody. Father had final decision-making authority as to educational issues.

Father paid mother \$7k/month in “alimony,” but agreement had no specific provision as to who paid for the children’s school expenses and no deviation was used for extraordinary educational expenses. Combined tuition was \$2.6k/month for both children, and mother refused to pay it. Father paid it, and filed a contempt/declaratory judgment action as to whether mother was supposed to pay tuition out of her monthly alimony payments.

Trial court ruled that res judicata barred the father from pursuing a new action to “supplement” the agreement with a term requiring the mother to pay tuition.

Supreme Court held that the trial court erred in granting the mother summary judgment. “Georgia’s child support laws establish a *presumption that the custodial parent will bear the expenses related to the children, assisted by child support paid by the non-custodial parent.*” (Emphasis supplied). Since there were no deviations outlined in the child support worksheet for extraordinary educational expenses, they remained the responsibility of the mother as the custodial parent to be paid out of child support, which in this case was presumably a component of her monthly alimony.

The Court also reversed an award of attorney’s fees to the mother.

Deviations/Findings of Fact

Carr-MacArthur v. Carr, S14A1194 (10/20/2014)

Mother had custody; moved to Florida. Florida Department of Children and Families removed the child from the mother, at which time mother surrendered physical custody to the father. When mother filed motion for return of custody, the father filed a deprivation petition in Georgia and at the same time, a petition for modification of custody, child support and alimony in Superior Court. Custody was awarded to the father; the Court held that the voluntary surrender of physical custody constituted a material change of condition. Mother filed motion for new trial, which was denied.

As to modification of support, the Court held that the trial court did not abuse its discretion in imputing income to mother because there was evidence that she and her new husband had determined that it was to their children’s advantage that she not work outside the home. However, the Court reversed the modification of child support because the trial court failed to include written findings of fact to support

its deviation from the presumptive amount of support, and remanded the case for entry of such findings.

Gross Income

Blumenshine v. Hall, A14A1328 (10/30/2014)

The Court of Appeals reversed the trial court's determination of child support the father owed mother for the support of the parties' three children, because the trial court erred in considering the father's new wife's income. The new wife had no legal obligation to contribute, directly or indirectly, to the support of father's children from his prior marriage, and nothing in OCGA 19-6-15 authorizes the court to consider the income of a new spouse as part of his child support obligation.

Deviations, Findings of Fact

Fladger v. Fladger, S14F1711 (11/3/2014)

Supreme Court held that the trial court failed to make sufficient findings of fact in support of its deviation from the presumptive amount of child support. While the order recited that the presumptive amount of child support would have been inappropriate and the best interests of the children would be served by the deviation, the Supreme Court stated that the trial court failed to "connect the dots" and explain how the application of the guidelines would have been unjust or appropriate and how the best interests of the children were served by the deviation from the presumptive amount of support.

Attorney's Fees

Mironov v. Mironov, S14A1051 (11/3/2014)

Original child support order of \$3,750/month in 2006. In 2008, the parties entered into a consent order lowering child support by \$1,700/month. In 2010, mother petitioned for modification because NCP's income had more than doubled since the consent order. The parties reached an agreement, based upon NCP's fluctuating income, setting support at \$1,834.27 and \$2,755.00 per month depending on the income. The parties were unable to resolve the issue of attorneys' fees, and the trial court held that since the agreement benefits both parents, no party prevailed and no fees would be awarded. The CP appealed and the Supreme Court reversed and remanded.

O.C.G.A. §19-6-15(k)(5) specifies that a trial court may award attorney's fees to the prevailing party. There is no basis for the determination thereunder that both parties prevail. Since there was a very slight increase in support (in the lower months) to mother, she is the prevailing party under the statute. The trial court may decide whether to award attorney fees to the prevailing party, but may not make designate who the prevailing party is.

Travel Deviation/Basic Housing Allowance

Wallace v. Wallace, S14F0646 (11/24/2014)

Court granted a deviation for travel expenses of \$400/month to father who was on active duty in the Navy. Parties waived findings of fact and conclusions of law at the beginning of the final hearing. After the Court announced its decision regarding the travel deviation, the mother orally requested the Court make findings of fact and conclusions of law only as it pertained to child support. The court agreed to do so if the Mother furnished a transcript of the hearing, which she failed to do.

Mother appeals based on failure to enter required findings of fact to support the travel deviation. Neither the Decree nor the associated child support worksheets set forth how the application of the child support guidelines would be unjust or inappropriate or how the best interest of the child would be served by the deviation. Father asserts that mother waived the requirement by agreeing to submit a transcript and then not doing so.

The Supreme Court held that the transcript is not necessary for the required findings of fact; the court must enter them even if no transcript exists. Also, the actions of the parties do not waive the trial court's obligation to comply with a mandate to enter findings pursuant to O.C.G.A. § 19-6-15(c)(2)(E). Even if a party agrees to deviate, it does not alter the statutory requirement.

Mother also challenged the court's failure to calculate the gross income attributed to the father. She argued that the father's entire monthly military basic allowance for housing (BAH) should have been included in his gross monthly income rather than the portion thereof that the court used to calculate gross income. O.C.G.A. § 19-6-15(f)(i)(E)(iv) provides that BAH is to be considered as gross income, but shall include only so much of the allowance that is not attributable to area of variable housing costs. The father was deployed in Bahrain, which accounted for the difference of \$2,851 per month, so no error was found on this issue.