**CASE LAW 2017**

**Georgia Court of Appeals**

**Contempt**

Tate v. Tate, A16A1613 (2/23/2017)

Mother was awarded primary physical custody of the parties' child on April 7, 2004 in the parties' divorce case. On 3/15/2010, the court modified custody, giving Father primary physical custody pursuant to a consent order. Mother filed for modification of custody and child support on 7/6/15, seeking to have primary physical custody revert back to her.

The trial court issued an order awarding immediate temporary custody of the child to Mother, suspending her support payments to Father, and instructing the parties to attend a hearing on August 13, 2010 (this was presumed to be a typo).

On January 5, 2016, Mother filed a petition of contempt against Father for failing to respond to her attorney about a proposed final order to pay child support and part of the non-covered medical expenses of the child, attorney fees and costs associated with bringing the contempt motion. The trial court held the Father in contempt on January 15, 2016, *nunc pro tunc* to August 13, 2015. There was no transcript or recording of the hearing.

Father appealed on the basis that the trial court erred by finding him in contempt and for issuing a final order that dates back to August 13, 2015, and for awarding the Mother attorney fees. Mother contended that the parties' counsel had reached a verbal agreement; however they had never submitted it to the trial court. CoA reversed on this issue.

Father also appealed the requirement for a purge payment but as the trial court could not hold Father in contempt, this is also reversed. Same with the award to Mother of attorney fees.

Finally, the CoA reversed the order of the trial court that was issued *nunc pro tunc* to August of 2015.

**Georgia Supreme Court**

**Contempt**

Brown v. Brown, S16A1677 (1/23/2017; Reconsideration denied 2/27/2017)

Mother appeals adverse judgment in action for contempt. Divorce was in 2011; neither party was represented. Final decree is a one-page form document that incorporates a form separation agreement that was signed by both parties and notarized. Father got the form documents from the

internet. Separation agreement not fully completed, but it "purports" to require Father to pay $513 per month as alimony and $647 as child support. The Supreme Court makes many notes and statements about the insufficiency of these documents. About the same time the separation agreement was signed, Father filed an unsigned document with the clerk stating that Mother could live in the marital residence and the alimony and support would cover the mortgage. This document is not referenced by or incorporated into the final decree.

Father made his alimony and child support payments by depositing the money into a joint bank account accessible by both parties. He testified he made withdrawals to pay the mortgage on the marital home. But he stopped making mortgage payments and the bank foreclosed on the home in February 2015, and Mother was evicted.

Mother filed contempt on May 15, 2015, alleging Father was required to make the alimony and child support payments to her directly, rather than by depositing the money into the joint bank account. The trial court found that Father paid $59,459.52 into the account from June 29, 2011 – May 29, 2015. Between September 30, 2011 and March 12, 2015, Mother withdrew $6,277. During the period from June 1, 2011 to June 1, 2015, Father's obligation was $55,680. The court declined to hold Father in contempt, that the documents filed in the divorce did not require him to make support payments directly to Mother. The trial court also found that the unsigned document was too vague to be enforceable even if it was deemed a part of the decree. Further, since the child no longer lived with the mother and was in the custody of the Father, his payments were to be immediately extinguished. Trial court also denied Mother's request from attorney's fees and request for consequential damages stemming from her eviction.

**Duration of Support; Contempt**

Albritton v Kopp, S16A1665 (2/6/2017)

Parties divorced in June 2011, with one child. Final Decree incorporated a settlement agreement and child support addendum in which Husband agreed to pay child support while daughter was a full-time high school student. Traditional language was used, with this sentence added: "This is conditional upon the child being enrolled or registered as a full-time high school student for the regular high school year."

The child was enrolled as a senior for the 2014-2015 school year, during which she turned 18 years old. Due to learning disabilities and medical issues, she was a few credits shy of graduating on time. She needed two semesters of advanced math, one semester of economics, "followed by" one

semester of government. She was enrolled as a fifth-year senior for the 2015-2016 school year. She took the required classes, and in October of 2015 added two elective courses.

Father stopped paying child support, claiming that child was not enrolled in enough classes to qualify as a "full-time high school student" as required. Mother filed motion for contempt. Trial court denied Mother's motion for contempt, finding that child was not a full time student and that the language of her IEP would not change the language of the order.

The Supreme Court reversed, holding that the trial court did not properly interpret the phrase "full-time high school student." While not defined in the settlement agreement, the court has construed the phrase to mean "continuous attendance during the normal school year." Father contended that the parties intended to adopt the school's definition, which means the student is scheduled into seven instructional segments per day. But this was not defined in the agreement. Thus, the trial court erred by, in effect, modifying the settlement agreement by adopting the Father's definition of "full time."

**Jurisdiction; Long Arm Statute; Sufficiency of Service of Process**

Eversole v. Eversole, S16A1517 (2/27/2017)

In a divorce in which Wife was seeking alimony and child support, Wife was unable to perfect personal service on Husband, who lived in SC; the court granted motion for service by publication. Wife claimed GA had jurisdiction pursuant to the Long Arm Statute. Husband did not answer timely, and did not appear at the hearing. After the hearing but before order was entered, Husband filed a late answer, admitting jurisdiction and that the marriage was irretrievably broken. He raised no objection to the sufficiency of service. He denied other allegations of the complaint and sought custody of the parties' minor child, child support, and alimony.

The trial court entered final judgment and decree of divorce on August 21, 2015, nunc pro tunc to July 13, 2015, the date of the hearing. Awarded custody to wife, child support, alimony, attorney fees and costs. Husband filed a motion to set aside on two grounds: (1) he never received personal service or service by mail; (2) the trial court lacked personal jurisdiction because he was a resident of SC. Trial court set aside award of alimony, child support, and attorney fees and costs because it found it lacked personal jurisdiction over Husband to make those awards. Trial court did not set aside the grant of divorce, division of personal property located in GA, award of real property in GA, or custody award.

Wife filed application for discretionary appeal. SC issued an order requiring parties to address whether the trial court erred in concluding it did not have personal jurisdiction over Husband pursuant to OCGA 9-10-91(5).

SC held that the trial court erred by disregarding the Long Arm Statute, as Husband had lived in Georgia prior to the commencement of the action. As to service of process, the trial court failed to note that Husband admitted personal jurisdiction and sought relief in his favor in the divorce proceeding.

Finally, the filing of a back dated order does not permit a court to ignore admissions or waivers made in a pleading filed by a party to the action prior to the actual date the final order was executed. Even if untimely, an answer that admits jurisdiction and waives sufficiency of service of process serves to waive these defenses.

**Contempt; Temporary Order**

Le v. Sherbondy, 301 Ga. 28, S17A0558 (4/17/2017)

Wife filed a contempt petition against Husband for failure to pay child support and other sums due under a temporary order in their divorce case. The trial court denied the contempt petition because the divorce action was dismissed before the contempt petition was filed.

The divorce action was filed on May 21, 2015. On September 22, 2015 the trial court entered a temporary order requiring Husband to pay Wife $800 in child support every month beginning on October 1, 2015; to pay Wife $350 as child support for the remaining portion of September; and to pay half of their child's education costs for the 2015-2016 school year. The parties were also ordered to attend a status conference hearing on January 12, 2016. The parties and their attorneys failed to appear at that hearing, and on February 11, 2016, the trial court dismissed the divorce complaint for Wife's failure to appear or file a motion for judgment on the pleadings.

On April 21, Wife filed a petition for contempt alleging that Husband had willfully failed to pay her the monthly child support due under the temporary order, as well as his share of the cost of their child's education. Father alleged his financial condition had declined, leaving him unable to pay the ordered sums, and that the dismissal of the divorce action nullified the temporary order. On June 21, 2016, the trial court denied the petition for contempt on the sole ground that Wife could not file a contempt petition after the case was dismissed.

After a long citation of previous cases, the Supreme Court held that the trial court's dismissal of the divorce action did not bar Wife from later seeking to hold Husband in contempt for his alleged failure to pay temporary child support that accrued before the dismissal. Reversed and remanded.

**Contempt; Laches**

Wynn v. Craven, 301 Ga. 30, S17A0580 (4/17/2017)

In 2000, the parties' divorce decree required Father to pay 20% of his gross weekly income but not less than $100 per week." Support was to be paid through the Superior Court Clerk's office and payments were to include a statutory handling charge and a copy of the Father's weekly earnings statement.

In May 2009, Mother's attorney sent a letter to Father informing him that he was in arrears $1500 based on the $100 per week. He paid that amount. This happened a second time, in 2014, with the assistance of the Division of Child Support Services.

In 2014, Father sought a change of custody. Mother, with a new attorney, filed a motion for contempt claiming that Father should have been paying 20% rather than just $100 per week. Father was $72,146 in arrears. Trial court granted Father's motion to change custody and denied Mother's motion for contempt on the basis that it was barred by the equitable doctrine of laches.

The Supreme Court reversed. Laches does not apply to claims for uncollected child support. Mother was not asserting her right to support; rather she was asserting her child's right to support.

**Duration of Support; Deviations; Preexisting Orders**

Heintz v. Heintz, S17A0959 (5/15/2017)

Appeal of an order modifying child support filed by Mother. Three questions: did the trial court err: (1) in applying a deviation for extraordinary educational expenses without complying with OCGA 19-6-15(c)(2)(E) (requiring findings of fact); (2) in ordering that child support would continue until the child reached the age of 20; (3) in adjusting Mother's gross income for a preexisting child support order?

Parties divorced in 2006 with one son, now a teenager. Mother filed for modification. Due to son's behavior problems, she enrolled him in military school and requested an increase in support from Father to help pay the tuition. Trial court granted Mother's request, and applied a deviation from the presumptive amount of child support for extraordinary educational expenses. Trial court also ordered, without limitation, that the increased child support amount had to be paid by Father until the parties' child became 20 years old.

The Supreme Court held that the trial court failed to include written findings of fact regarding (i) the amount of child support that would have been required if the presumptive amount of child support had not been rebutted; and (iii) a finding that states how the court's application of the child support guidelines would be unjust or inappropriate considering the relative ability of each parent to

provide support and how the best interest of the child who is subject to the child support determination is served by the deviation. Thus, the award of the deviation was reversed.

The trial court also erred in its award of the child support amount until the parties' son "shall reach the age of twenty, die, marry, or become self-supporting, whichever shall first occur." This language does not comply with the statute, which requires attendance at secondary school in order for support to continue to age twenty.

Finally, the trial court erred in giving Mother an adjustment for a preexisting order which simply did not exist.

**Habeas corpus; standing**

Bennett v Etheridge, S17A0762 (9/13/2017)

Mother filed a motion for new trial following a habeas court order discharging the payment of restitution and arrearage for back child support by the purported biological father of child. Trial court concluded that Mother was not a party to the underlying action and had no standing to challenge its order, and dismissed Mother's motion.

In September 2012, Father pled guilty to four counts of abandonment of a dependent child. He was sentenced to probation and ordered to pay $46,080 in restitution for past-due child support to Mother. In May 2015, Father filed an application for writ of habeas corpus alleging fraud, that his plea was invalid, the evidence was invalid to sustain his conviction, and that he had ineffective assistance of counsel. In March 2016, the habeas court entered an order finding that the Mother had blocked Father's attempts to legitimate the child, and she had filed the criminal complaint against him for abandonment requesting back child support. Father had moved out of state, was married and had a family and a steady job, and was ordered to pay back child support totaling over $40,000. The habeas court granted Father's petition for habeas corpus relief, finding that he had satisfied his debt of back child support and that "any further arrearage be discharged" but stated he was to continue paying child support in the court-ordered monthly amount of $377.00 by payroll deduction until the child reaches adulthood. Mother filed a motion for new trial, which the habeas court dismissed on the ground that she "is a non-party to this action." Mother appealed.

Mother claimed she had standing as the recipient of restitution based on a pre-existing arrearage and as the child's representative; even if she did not have standing on the Father's habeas corpus matter generally, she gained standing when her property rights were impaired. The Supreme

Court agreed, stating "where judgment is entered against a nonparty, that nonparty becomes a party with standing to appeal." Reversed and remanded.

**Jurisdiction, UIFSA**

Ross v. Ross, S17A0799 (9/13/2017)

This appeal arises from a granted application for interlocutory review. The parties were divorced in Connecticut on January 25, 2010. At that time, Husband's child support obligation was $279 per week for the parties' two minor children. On June 16, 2010, the Connecticut court entered an order of modification to facilitate Wife's move to Georgia with the children. In that order, the Connecticut court reduced Husband's child support obligation to $100 per week. Husband still resides in Connecticut. On January 12, 2016, Wife filed a petition to domesticate and modify the Connecticut divorce decree and the modified order, seeking only an increase in child support. The complaint was served personally on Husband while he visited the children in Georgia.

Husband moved to dismiss on the ground that the Georgia court lacked subject matter jurisdiction to modify the Connecticut child support order under the Uniform Interstate Family Support Act (UIFSA). Wife argued that jurisdiction was proper under the Uniform Enforcement of Foreign Judgments Law (UEFJL), to both enforce and modify the Connecticut child support order. The trial court denied Husband's motion to dismiss, reasoning that it had jurisdiction to modify the order, and granted Husband's request for a certificate of immediate review.

The Supreme Court reverses. UIFSA prohibits Georgia from modifying another state's child support order unless specific requirements are met divesting the foreign state of its continuing, exclusive jurisdiction. A Georgia tribunal may modify another state's child support order when:
(1)(a) neither of the parties nor the child live in the foreign/issuing state; (b) the petitioner who seeks modification is a nonresident of Georgia; and (c) the respondent is subject to the personal jurisdiction of a Georgia tribunal; or
(2)(a) the child is a Georgia resident or an individual party is subject to the personal jurisdiction of a Georgia tribunal and (b) all of the individual parties have filed written consents in the foreign tribunal for a Georgia tribunal to modify the child support order and assume continuing, exclusive jurisdiction, or
(3)(a) all the individual parties reside in Georgia and (b) the child does not reside in the foreign/issuing state.

Thus, Connecticut has continuing, exclusive jurisdiction over the child support order at issue because Husband is still a resident of Connecticut and neither party has provided written consent for a Georgia tribunal to exercise jurisdiction over the matter.