Legitimation/TPR/Adoption
Sauls v. Atchison, et al., A12A0776 (July 11, 2012)

Father's parental rights terminated in connection with grandparent adoption.

Father acknowledged paternity under OCGA 19-7-21.1(b), the "administrative legitimation statute." Parents separated a year after birth, mother gave kid to Father's mother and stepfather. They got temporary guardianship, and later filed for adoption.

Father claimed lack of service but COA said service was sufficient.

Father contends that trial court's orders are "facially defective" because they fail to include findings of fact and conclusions of law.

Remanded with direction for entry of new decree with specific findings of fact and conclusions of law.

Footnote 1 discusses OCGA 19-7-21.1(b):

"This statute…circumvents the safeguards inherent in our legitimation statute, OCGA 19-7-22, which requires a petition in Superior Court and a finding that legitimation is in the best interest of the child. There is no statutory time frame for the filing of these forms and thus no meaningful way for the courts or attorneys to know whether the form has been signed. On occasion this causes the filing of unnecessary petitions for legitimation, and could potentially cause inconsistent findings as well.

In short, under OCGA 19-7-21.1, the mother and any male may agree – whether by mistake or by plan – to have someone other than the biological father sign this form. And a male who simply signs a pre-printed form in the hospital (or within 12 months thereafter) is by that minimal act alone placed on the same legal footing as a father whose paternity has been judicially determined with the benefit of formal notice, evidence and a hearing at which the court must determine whether legitimation is in the best interest of the child.

…There is obvious potential for this statutory acknowledgment to create significant difficulties for our trial judges and practitioners. However, this is for the General Assembly, not this Court, to address.

Child Support Modification
Wetherington v. Wetherington, S12A1001 (October 15, 2012)

Trial court erred in failing to consider change in NCP's financial circumstances from date of decree to date of hearing on modification.

Trial Court also failed to apply child support guidelines.

While a party may be stopped from seeking a modification if that party expressly and specifically waived that right, this NCP did not do so simply by his agreement to pay support well in excess of the guidelines.

The trial court erred in determining CP's arrears on a jointly –owed condo, using the arrearage amount pled rather than the amount actually due as of the hearing date as an offset.

Upheld the trial court's contempt order v. NCP for failure to pay the child support amount ordered by the court, despite his reduction in income, prior to filing for a modification.

The trial court calculated the modification by determining that the father had a 20% reduction in income, and so could just pay 20% less than what was previously ordered, although it was far in excess of the amount specified by the guidelines. The Court of Appeals held that the trial court had to first make a finding that there was a substantial change in the father's circumstances warranting a modification, and then use the guidelines in computing the modified amount of child support

Substantial Change/Designation of CP
Stoddard v. Meyer, S12A1131 (October 15, 2012)

The Supreme Court affirmed the judgment.

The parents' equal parenting agreement, adopted post divorce, constituted a substantial change in the child's needs, authorizing modification.

Child spent equal time with both parents. Mother (Stoddard) had higher income and higher support obligation than father (Meyer). Because of this, statutory definitions at 19-6-15(a)(9) and (a)(14) required trial court to designate father as CP.

Mother was therefore required to pay support to CP.

Attorney Fees
Horn v. Shepherd, S12A0890 (October 15, 2012)

Supreme Court reversed judgment requiring appellant to pay $2,500 in attorneys' fees to purge a contempt order. Cannot make payment of a new attorney fee award a condition for purging contempt of a previous order.

Attorney Fees
Longe v. Fleming, A12A1262 (October 30, 2012)

The Court of Appeals vacated an award of attorney fees and remanded for further proceedings.

The trial court failed to cite any specific statute authorizing the award of attorney fees. Attorney fees must be authorized by contract or statute. Award by statute must be made pursuant to the statute under which the action was brought and decided.

Where a settlement agreement is incorporated into a final order, OCGA 13-6-11 ("stubbornly litigious") does not apply. OCGA 9-15-14(b) ("action/answer lacked justification or was interposed for purposes of delay or harassment, etc….") may apply, but the order must include specific findings of conduct to authorize the award.

Appeal
Collins v. Davis, A12A1445 (October 30, 2012)

Appellant entitled to direct appeal because order appealed from, although it dealt with child support, also modified visitation.

Calculation of Support/Health Insurance Premiums
Hendry v. Hendry, S12F1302 (November 15, 2012)

The trial court erred in calculating the NCP father's income to include $935/month his employer pays him to reimburse the cost of health insurance for the family. There was no evidence that he would continue to receive this $935 if premiums went down or that he could redirect those funds to ordinary living expenses.

The premiums were so designated by the employer, were paid directly to him, and he paid them to the insurance provider. The court held that they were "employer paid health insurance premiums," and not included in income.

The Court gave the CP mother credit for actually paying child care expenses even though NCP had actually been paying it while the mother was unemployed. At the time of the hearing, the mother worked 20 hours a week, and paid $775 per month in child care and preschool tuition.

The Court of Appeals notes that the guidelines provide for proof of the actual cost of work-related child care that will be necessary in the future. See 19-6-15(h)(1)(D).

Calculation of Income
Dodson v. Walraven, A12A1005 (November 16, 2012)

Court of Appeals found that the trial court erred in characterizing $3000/month the NCP father received from his parents while he lived with them as a monthly lump sum gift, and including it in his income for purposes of calculating support, because the record lacked any evidence in support of that finding. The Court of Appeals did note that the mother received similar support from her family, and that was not included in calculating child support by the trial court.

However, the record did indicate that during the 17 months of litigation, NCP's parents had paid $50,000 in legal fees on his behalf. The Court of Appeals remanded for a corrected calculation of support, and ordered that the $50,000 be averaged over that 17 month period in the calculation of income for support.

Trial court awarded attorney's fees to CP, based on NCP's unnecessarily expanding the proceedings because he did not begin paying child support as soon as paternity was established. The case began when NCP filed for legitimation, though, and once a determination of paternity was made she never made a request for temporary support. Thus, the Court of Appeals reversed the award of attorney's fees to CP.

Jurisdiction/Contempt
Ford v. Hanna S12A1739 (March 4, 2013)

In 2005, the parties were divorced in Gwinnett County. Hanna (Father) later moved to DeKalb County. In 2011, Ford (Mother) filed a petition in DeKalb County to modify the divorce decree with respect to child support and visitation. At the same time, the Mother also filed a motion in DeKalb County for contempt alleging the Father had failed to pay child support due under the decree. The Father moved the Court to dismiss the motion for contempt for want of jurisdiction and the Court granted the motion.

The Court reasoned that contempt of a decree is ordinarily punished only by the Court that granted the decree. DeKalb Court distinguished that *Buckholts* was limited to counterclaims for contempt. The Mother appeals and the Supreme Court reverses.

Contempt of a judicial decree generally is punished only by the Court that rendered the decree. A petition to modify a divorce decree, on the other hand, must be brought in the county in which the Respondent resides even if the decree is originally rendered in another county. In some cases, these principles, applied together will produce anomalous results by which a petition to modify an existing divorce decree may be litigated in one court and a motion to enforce the same existing decree of contempt be litigated in another. To avoid this result, there is an exception in *Buckholts* to the general rule for contempt of a divorce decree. If a Superior Court other than the court rendering the divorce decree acquires jurisdiction and venue to modify that decree, it likewise possesses the jurisdiction and venue to entertain a counterclaim alleging the Plaintiff is in contempt of the original decree. Therefore, the *Buckholts* exception permits a Court with jurisdiction to entertain a petition to modify a divorce decree to also entertain a motion for contempt of that decree, whether asserted as a counterclaim to the petition to modify or as an additional claim by the party seeking the modifications.

Modification
East v. Stephens, S12A1803 (March 18, 2013)

The parties were divorced in 2002 and entered into a Settlement Agreement that required Father to pay to Mother $125 a week as child support and reimburse the Mother for certain miscellaneous expenses that she incurred for the benefit of the children, including one-half of the minor children's school expenses. The Father later petitioned for a modification and the Trial Court granted the petition, in part, in March 2011, directing the Father to pay $904 each month for child support. The Order on modification said nothing expressly about the miscellaneous expenses but stated that any and all provisions of the incorporated Settlement Agreement not modified herein shall remain in full force and effect.

In 2012, the Mother filed a petition for contempt claiming the Father was in arrearage for non-payment of half of the miscellaneous expenses she incurred for the children. The Trial Court rejected the Father's contention that the 2011 modification superseded his obligation in 2002 and that the issue of the miscellaneous expenses had not been raised in the final modification hearing. The Trial Court stated it did not have jurisdiction to modify the miscellaneous expense provision and the March 2011 modification left the provision of the original decree in full force and effect.

The Father appeals and the Supreme Court reverses. The Father argues, among other things, that he is not required to pay the miscellaneous expenses for the children when the modification order directed him to pay the presumptive amount of child support and made no deviations for miscellaneous expenses. The child support provision applies not only to initial determinations but also to modifications. In this case, the Court entered an interlocutory order covering the obligations of the parties while the petition to modify was pending. The Court directed the miscellaneous expense provision shall no longer apply. This established the Court's authority in this regard and therefore the Trial Court had authority to modify the miscellaneous expense provision.

The Child Support Guidelines must be considered by any court setting child support; are the minimum basis for determining the amount of child support; and shall apply as a rebuttable presumption in all legal proceedings regarding child support responsibilities of the parent. Thus, the Trial Court was required to apply the guidelines to any redetermination of child support. Here, the issue of the deviation for miscellaneous expenses was not raised at the time of the final modification hearing and it was not addressed explicitly in the 2011 modification order.

The Court neither found a deviation from the presumptive amount nor specifically addressed the miscellaneous provision other than by a statement that "all provisions of the Divorce Decree not modified are to remain the same." It did not apply the guidelines to the miscellaneous expenses as it was required to do if the Father was to continue to be required to pay such expenses. The only legal construction of the March 2011 modification Order is that it lawfully encompassed and modifies the entire child support obligation.

Calculation of Income
Williams v. Williams, S13A0238 (May 6, 2013)

The parties divorced. Child support at the time of the divorce was based on NCP's income of $4,166.67 per month. Sixteen months after the divorce, NCP filed a petition to modify, and the court based support on his net income of $3400.

The case was reversed and remanded for proper calculation of gross monthly income.

Jurisdiction
Colbert v. Colbert, A13A0095 (May 22, 2013)

Mother filed in father's county of residence for a modification. Father filed a counterclaim seeking a change of custody. While county was improper for a modification of custody (child and mother resided in a different county), mother never raised the issue or asserted appropriate defenses.

As for contempt, "we now hold that where a superior court other than the superior court rendering the original divorce decree acquires jurisdiction and venue to modify that decree, it likewise possesses the jurisdiction and venue to entertain a counterclaim alleging the plaintiff is in contempt of the original decree."

Further, by filing suit in a county, a party submits herself, *for all purposes of that suit*, to the jurisdiction of the courts of the county in which the suit is pending.

Modification/Attorney Fees
Riddell v. Riddell, S13A0827 (June 17, 2013)

Wife moved to have Husband held in contempt for failure to pay child support, alleging he was $19,000 in arrears. Husband moved to have his child support obligation modified; it had been modified once before. Court granted Wife's motion and denied Husband's petition for a downward modification. The trial court's denial of Husband's modification petition held that there was no evidence as to the income and financial status of the parties at the time of the earlier (May 2009) order on Husband's first petition for a downward modification, and therefore there was no evidence before the court to justify even getting to the point of calculating a new child support amount.

The Supreme Court points out, however, that the May 2009 order, which was part of the record, states the amounts of both Husband's and Wife's income at that time.

Following the denial of his petition to modify child support, Husband filed a motion for new trial because the court's ruling was contrary to the evidence. The trial court denied the motion for new trial. The trial court awarded the Wife attorney's fees on the basis that he lacked justification in filing the motion for new trial. The Supreme Court reversed the award of attorney's fees, holding that the trial court abused its discretion under the facts of the case.

Legitimation/Custody/Child Support/Civil Practice
Georgia Dep't of Human Servs., ex rel. Jamie L. Gregory v. Patton, A13A0655 (June 18, 2013)

The Court of Appeals reversed the trial court's dismissal of a DCCS 2012 contempt action against Crystal Patton for failing to pay child support pursuant to a consent order that was signed by the parties and the court in 2000, but was not filed with the clerk until 2003. The trial court ruled that the consent order was automatically dismissed by operation of law because its entry in 2003 was not within five years of a 1997 temporary order in the case as required by OCGA § 9-2-60(b), and that violation of a void order cannot constitute contempt.

The Court of Appeals stated that the legislative intent was to clear up abandoned cases, not those cases that had been fully resolved and lacked only entry of a final order. Citing Jefferson v. Ross, 250 Ga. 817, 819 (1983), "judicial economy and fairness to the prevailing party dictate that that which should have been done be done."

Worksheets/Findings of Fact
Demmons v. Wilson-Demmons, S13F0340 (July 1, 2013)

The final order did not contain a finding as to the parents' gross income.

The court prepared the child support worksheets, which did contain information about the parents' gross income, but failed to attach them or incorporate them into the order.

Husband made other enumerations of error, but the Supreme Court held it could not address those until the trial court issued a correct order.

Remanded

Worksheets/Deviations/Jurisdiction of Appeal
Parker v. Parker, S13A0073 (July 1, 2013)

Supreme Court has jurisdiction over this case because the parties were married at the time the original child support order was entered. Otherwise it would go to the Court of Appeals. Further, the court considers child support to equal alimony, and it has jurisdiction over alimony cases.

The trial court prepared the final child support worksheets, which contained some erroneous information, and other information was missing completely, including private school tuition for one of the children. There was a worksheet for each child, as required by split parenting. The parties' counsel did not receive worksheets until the day after the hearing (but before entry of a final award). Despite this fact, the trial court found, in its final order, that "the parties have agreed and determined that deviations from the presumptive child support amounts reflected on the …worksheets are appropriate as shown on the worksheets." The court provided the worksheets to the parties after it issued its ruling. The fact that the parties did NOT agree on the deviations was evidenced by the fact that the mother filed a motion for reconsideration.

The Court's intent was to zero out support; used non-specific deviations. The worksheet did not equal the final order, and the deviations granted by the trial court lacked findings of fact and deviations were not supported by evidence that rebuts the presumptive amount of child support. See OCGA § 19-6-15(c)(2)(E) and (i)(1)(B).

Case remanded.

Child Support/Divorce
Georgia Dep't of Human Servs. v. Wright, S13A0186 (July 1, 2013)

The Supreme Court reversed the trial court's ruling that DHS could not seek an award against Mr. Wright for support of his child without an action for divorce having been taken, holding that DHS' statutory authority to seek such an award was not dependent on a prior court order designating a "custodial parent." The mother had applied for public assistance on the child's behalf and had assigned to DHS the right to any child support owed; however the mother and father were still married and there was no divorce or separate maintenance action filed. The trial court denied the petition for child support and to require the father to provide medical insurance for the child, and an income deduction order.

The Court held that DHS is proceeding under an assignment of rights to child support. For Mother to file a petition for an award of child support from Father, there is no need for a court to first designate her as the custodial parent. The parents are living separately and there is no pending action for divorce, conditions set forth in OCGA § 19-6-10.

Support to Noncustodial Parent
Williamson v. Williamson, S13A0953 (October 7, 2013)

The Supreme Court reversed the child support portion of the trial court's order, holding that the trial court erred in requiring Charles Williamson, the custodial parent, to pay Susan Williamson, the noncustodial parent, $1,087 in monthly child support.

The trial court incorrectly started with the father's presumptive amount and incorrectly applied a parenting time deviation that should have been available only to the noncustodial parent. The Supreme Court rejected the mother's contention that she was the custodial parent, since the trial court awarded the father 60% custodial parenting time, which made him the custodial parent pursuant to OCGA § 19-6-15.

The Court rejected the father's contention that a custodial parent may not be required to pay support to a noncustodial parent, since "a trial court, in the exercise of its discretion, may properly order a custodial parent to pay for the support of minor children when visiting with the non-custodial parent" where "the best interest of the child requires that money be provided the non-custodial parent to provide for a proper visitation."

Because the child support and parenting time deviations were incorrectly calculated, the case was remanded.

Modification
Strunk v. Strunk, S13A1217 (October 7, 2013)

Father sought a downward modification of child support and in doing so sought a travel deviation of $700 per month. The trial court rejected that, but then awarded a $200 monthly travel deviation without any explanation. The case was remanded for the trial court to re-determine the child support award and enter the statutorily-required written findings to support any travel deviation.

Deviations
Crook v. Crook, S13A1165 (October 21, 2013)

Trial court lowered father's child support from $2123/month to $1000/month "because of shared custody and the history of the parties." There were no child support worksheets or support schedules attached to or referenced in the order.

A parenting time deviation may be deducted from the presumptive amount of child support "when special circumstances make the presumptive amount of child support excessive or

inadequate due to extended parenting time as set forth in the order of visitation or when the child resides with both parents equally." OCGA § 19-6-15(i)(2)(K). The trial court failed to make any findings as to the presumptive amount of child support and did not cite "extended parenting time" as a basis for the deviation. The children did not reside with both parents equally.

Even as a nonspecific deviation, this order fails. There must be a finding that the nonspecific deviation is in the best interest of the child.