

Georgia Commission on Child Support

Case Law 2016

General Contract Construction

Coppedge v. Coppedge, S15A1450 (2/22/2016)

As to child support, the issue was that the parties' divorce settlement agreement clearly stated that the \$2,000/month support paid by the father included his contribution for the private schooling of the children and provision of after school and summer care at that particular private school. When the mother withdrew the children from that private school and hired a private babysitter for after school and summer care, the father petitioned for modification and reduced his child support payments by the amount of the tuition, after school and summer care provided by the school.

Trial court said he could not do that, but the Supreme Court reversed. Applying the rules of "general contract construction," the SC held that the father had a right to deduct from his "direct cash payment" his proportional share of expenses for child care provided by the school once the children's child care was no longer provided by that school. In such a case, there would be a decrease in the expenses connected with the school for the care of the children.

The SC pointed out that the ambiguity in the settlement agreement led to the conclusion that the trial court abused its discretion in holding the father in contempt for failing to pay the expenses for a particular private school once they no longer attended it.

Footnote 3: "Our ruling does not mean that husband may not be required to contribute to the cost of the children's after-school and summer care expenses regardless of the provider, but simply reflects our conclusion that the language of the divorce decree is insufficiently definite to support a contempt finding based on the proposition that the decree is unambiguous on this point."

Modification of Child Support; Uninsured Medical Expenses

Moore v. McKinney, A15A1905 (2/29/2016)

Father gained custody of children following abuse charges against mother. The parties entered into a temporary consent order, which modified custody and child support, and provided for payment of uninsured medical, dental and vision expenses. The father claimed that the mother should repay him for support he paid in January 2014. Final order issued mid-February 2015, ordered him to stop paying support as of January 31, 2014.

1. The trial court attempted to make a modification of child support retroactive, to the end of the previous month. Georgia Court of Appeals makes it clear that child support cannot be modified retroactively, even for this short period. So the father did owe the full support through the end of January.

2. The trial court failed, in its final order, to address the payment of uninsured medical, dental and vision expenses.

Case remanded.

Failure to Support Child, Termination of Parental Rights

In the Interest of M.M.R., a child, A15A2017 (3/2/2016)

In the Interest of D.J.T., a child, A15A2018 (3/2/2016)

This case involves two children; DJT, who was adopted by his grandmother; and MMR, whose Mother is the daughter of the grandmother. Grandmother's parental rights were terminated as to DJT, and Mother's parental rights were terminated as to MMR; Grandmother and Mother appeal. Similar story as to both cases, except that Mother was incarcerated for a period of time, during which Grandmother was caring for DJT, MMR, and three other relative children over whom she had no legal authority. While in charge of all of the children, she had lost her home and could not get another one. She was awaiting a determination in a disability case and had no income. Having nowhere else to go, she lived with the children in a campground for a period of time, along with an adult son and his wife. She called the police at one point because the adult son was stealing her property, at which point DFCS was called and removed the children due to neglect.

As to Mother, DFCS provided her with a case plan after she was released from incarceration (during which she had completed parenting classes and maintained contact with her child) dated April 5, 2013 – two days after filing its petition to terminate her parental rights. Mother completed psychological evaluation, alcohol and drug evaluation, and obtained a housing approval. She went to work in April 2013 as a crew trainer at a fast food restaurant and was going to take management classes, and intended to start college classes later in the year. She had a baby shortly before her incarceration, and had custody of this child without any reported instances of abuse or neglect. By the time of the termination trial, both the Mother and Grandmother had completed the steps on their case plan, had a place to live, had income, etc.

One of the causes of deprivation listed in the petition was "failure to support" under OCGA § 15-11-94(B)(2) – the mother testified that she had asked DFCS at least twice about child support payments, and was told they would get back to her about it.

In both cases, the caseworker admitted that the Department had not put a child support order in place and could not state whether the Department ever asked the mother or grandmother to provide an amount certain to a place certain in order to fulfill the requirement that they pay child support.

As to the Grandmother, the Court of Appeals held: "[W]e agree with the grandmother's contention that the juvenile court's finding that she failed to support D. J. T., thus supporting its order of termination, was without clear and convincing evidence. First, there is no order of support. To the extent that there is any mention in any document of a need to pay an unknown amount of support, it is only a general statement in the initial case plan. And finally, it is undisputed that the grandmother paid to have all five of the grandchildren including D. J. T. medically insured, which is evidence of support, in addition to gifts she

would bring during visitation. Because the juvenile court's findings were not supported by clear and convincing evidence, the court abused its discretion by terminating the grandmother's parental rights to D. J. T. Accordingly, we reverse the order in Case No. A15A2018."

As to the Mother, the Court held: "

[T]he Department never provided specific instructions or amounts for payment of support; instead, the Department apparently rebuffed the mother's attempts to obtain information regarding support payments. Accordingly, the trial court erred by finding that the mother had failed to provide support or that termination of her rights could be based on such a finding."

Contempt; Attorney's Fees

Jones v. Jones; S15A1927; S15A1928 (3/25/2016)

The Supreme Court partially affirmed the trial court's order on a petition for contempt finding that NCP was in willful contempt regarding child support obligation as set forth in the parties' divorce decree. Trial court's finding of contempt was proper and supported by ample evidence that the father was seriously delinquent on his child support payments.

The Supreme Court held that the trial court erred, however, in revisiting previously adjudicated arrearages, and erred in calculating the father's most recently accrued arrearage. The case was remanded for a redetermination of the arrearage consistent with the terms of the divorce decree, which the trial court had constructed erroneously. The trial court also ordered the father to obtain a life insurance policy for \$100,000 based on the amount of the erroneously calculated arrearage. The Supreme Court instructed that on remand, the amount of such remedy must coincide with the correct amount of the arrearage. An order for life insurance would also have to make it clear that such obligation would last only so long as the arrearage existed.

The court affirmed the award of \$14k attorney fees to mother; fees were incurred due to father's persistent non-compliance with child support order.

UCCJEA

Koegel v. Koegel; A16A0128 (5/18/2016)

Parties married in TX in 2011 and had one child, XK, born in 2013. In January 2014 the family relocated to GA, but in April 2014 mother returned to TX with XK, saying she was visiting a sick relative. She did not return. In July of 2014, the father filed for divorce in GA. In August 2014 the trial court held a hearing, but the mother had not filed an answer or appealed. The GA court awarded temporary custody of XK to the father, finding the mother was making a temporary sojourn to TX. Mother filed an answer and counterclaim in November 2014, and a motion to vacate the temp order in April 2015. Hearing in June 2015. The court found that the mother was leading the father on to make him think she was returning to GA when she wasn't. Mother's actions and misrepresentation of her intent and contempt of court appear

to be self-serving and contrary to the best interests of the child. The trial court also took issue with the timeliness of the mother's challenge to the subject matter jurisdiction. Mother's motion to vacate was denied. Mother appeals and the Court of Appeals reverses.

1. A court's lack of subject matter jurisdiction cannot be waived and may be raised at any time. The trial court erred in "taking issue" with the timeliness of mother's challenge.
2. With regard to subject matter jurisdiction, UCCJEA provides that a court has jurisdiction to make an initial child support determination if GA is the home state on the day of the commencement of the proceeding or was the home state of the child within six months prior. The mother left with the child and did not return, and under UCCJEA TX is the child's home state.
3. The child had more ties, extended family, church, etc. in TX. Neither of XK's parents had a significant connection with this state other than mere physical presence; GA did not have substantial evidence concerning KX's care, protection, training and personal relationships.

Imputation of Income

Jackson v. Sanders; S15G1895 (7/5/2016)

This case involves construction of OCGA § 19-6-15(f)(4)(B), which addresses modification proceedings in which a parent fails to produce reliable evidence of income.

The parties divorced in 2001 in Florida, and Cobb County domesticated that judgment which required father to pay \$1005/month support based on annual salary of \$250,000. Later, Father sought modification of custody and child support and mother counterclaimed, seeking an upward modification of support.

OCGA § 19-6-15(F)(4)(B) says that when there is a lack of reliable evidence of income . . . the court or jury may increase the child support of the parent failing or refusing to produce evidence of income by an increment of at least 10 percent per year of such parent's gross income for each year since the final child support was entered or last modified, and shall calculate the basic child support obligation using the increased amount as such parent's gross income. In this case, the trial court found a lack of reliable evidence of income and imputed an increase of 4% per year for each of the 13 years since the support order. This raised imputed income to \$380,000 and monthly child support to \$3,994/month.

The Court of Appeals vacated and remanded. It found that the trial court had not abused its discretion in imputing income, but it failed to follow the language of the statute by imputing 4% rather than 10% per year.

The Supreme Court looked at OCGA § 19-6-15(f)(4)(A) which provides that income shall be imputed based on a 40 hour workweek at minimum wage in a case establishing support. Thus, in 19-6-15(f)(4)(B), the court holds that the use of may makes this clause permissive rather than mandatory. However, once applied, the court must use the prescribed increment of at least 10%.

The Court also found that this statute is functional in that it provides a means of determining income,, but it is punitive in that it mandates the use of such a significant increase.

Income Tax Exemption; Calculation of Income

Hulsey v. Hulsey, 300 Ga. 45, S16F0940 (10/31/2016)

The parties were divorced, and Father applied for discretionary appeal. First, Father claims that the trial court erred in providing that Mother could claim the parties' three minor children on her income tax returns in alternating years. Georgia courts do not have the authority to award the federal income tax dependency exemption to a non-custodial parent. As long as Father continues to have the children for the greater portion of each calendar year, it is error for the trial court to prohibit him from claiming the children as dependents. This provision is reversed.

Father also contends the trial court erred in the calculation of his income for purposes of determining that neither party would receive child support. The trial court attributed salary and wages to him even though he was retired and had no salary or wages. The trial court may have intended to impute income, but if so should have listed the income as imputed income and not as salary and wages. This portion is remanded for a reconsideration of the amount of Father's income and to redetermine the amount of any child support.

Garnishment; Retroactive Modification of Support; Guidelines (Addressing only CS issues)

Marks v. Soles, et al.; A16A0723 (11/10/2016)

Child support order for two children issued in 2005 of \$100/week. In March 2012, mother filed a garnishment action against father for failure to pay child support. On May 30, 2012, the trial court issued a summons of continuing garnishment to father's employer. On August 21, 2012, father filed a traverse to the garnishment. Parents had joint custody, with mother having primary physical custody.

On March 9, 2013, mother was arrested for cruelty to children, disorderly conduct, and more. On March 19, 2013 the court granted temporary custody to father. On April 12, 2013, the court combined the custody actions (another father sought custody of a third child), suspended the support payments of both fathers, and put the proceeds of the garnishment action into the court registry.

Later, on August 2, 2013, the court denied mother's motion to dismiss the father's traverse to the garnishment action. The court ordered the parties to submit combined child support worksheets. The court ordered that father pay mother an arrearage of \$5000 at the rate of \$597/month. The court ordered that mother pay father \$597/month in child support retroactive to March 1, 2013.

In September, 2014, there was a hearing on a modification of custody. Mother testified that her income had decreased since September 2013 and she did not receive regular paychecks from her new job. In October 2014, the court dismissed mother's garnishment on the ground that any child support father owed her was eliminated by the child support mother now owed to father.

Following hearings on custody of three children with two fathers, the court held that the mother owed the father \$495/month in child support “to begin immediately.” This order did not refer to or vacate the trial court’s earlier order imposing retroactive child support payments on the mother.

Mother filed a motion for new trial and for reconsideration, both of which were denied.

On appeal, the Court of Appeals held as to child support that the trial court did not err in considering the traverse to the garnishment as the previous garnishment statute did not contain a time limit for filing a traverse, although the revised statute does.

The Court further held that the trial court erred when it imposed retroactive child support payments on the mother. A child support judgment cannot be modified retroactively, nor can the court forgive or reduce past due amounts owed under a valid child support order.

Finally, in calculating support, the Court found that the trial court used the Guidelines only as to the mother’s third child, not at issue in this case. Thus, the trial court erred when it entered a child support award as to the first and second children without using the Guidelines set out in OCGA § 19-6-15.