Case Law Summaries
Georgia Commission on Child Support

2015 Cases

Temporary Support/Underreporting Income/Theoretical Child Support Orders
Neal v. Hibbard; Neal v. Neal, S14A1669, S14A1673 (3/16/2015)

The father had two separate cases, two children with different mothers. He had shared custody of each child and paid support to each mother. At one point, the father, an attorney with a practice in Augusta, got into some legal trouble, which caused a major loss of business and suspension from the practice of law in South Carolina and the US District Court in the Southern District of Georgia. He moved to Atlanta to try to rebuild his business.

1) Both mothers sought a modification of custody and support, all of which were granted. However, during the proceedings, the trial court set temporary child support without using worksheets. Arrearages accrued on the temporary support beyond the final, and the cases were remanded for correct calculation of what the temporary support should have been.

2) The trial court, having found that the father was underreporting his income, imputed additional income. Father argued that there was no evidence to support the imputation of income. The Supreme Court held that O.C.G.A. § 19-6-15(f)(4)(D) does not require a trial court to make written findings as to why it decided to impute income. See Bankston v. Lachman, 286 Ga. 459, 689 S.E.2d 301 (2010).

3) The Court clearly explains how to determine what is or is not a pre-existing order.

4) The Supreme Court overruled Adame v. Hernandez, 327 Ga. App. 869, 761 S.E.2d 402 (Ga. App. 2014), to the extent it holds that the trial court must support, with written findings, its exercise of discretion and consideration of "the best interest of the child for whom child support is being awarded" when applying a theoretical child support order under O.C.G.A. 19-6-15(f)(5)(C).

Appeal/Modification/Arrears/Findings of Fact
Wright v. Burch, A14A2089 (3/30/2015)

Parties sought to modify child support; reached an agreement in 2013, which the mother later refused to sign. Appellant filed application for discretionary appeal, and four days later the trial court entered an order. That order was void because the trial court no longer had jurisdiction.

The original divorce agreement had a provision prohibiting modification unless "in writing signed by both parties." The parties did reach an agreement on the modification but the mother refused to sign. The Court of Appeals upheld enforcement of the modification agreement.

The parties also attempted to compromise on child support arrearages, however, the trial court is not authorized to modify payments which were already to have been paid. The trial court is only authorized to determine the amount of the arrearage and how it is to be paid.

The trial court failed to determine that the proposed modification was in the child's best interest pursuant to O.C.G.A. §§ 19-6-15(k)(4) and 19-6-15(k)(1).

Custody/Child Support/Attorney's Fees
Bankston v. Warbington and vice versa, A14A1514 and A14A1515 (04/13/2015)

This case has a very contentious history between the parties and there have been previous appeals.

In this instance, the trial court heard evidence that the mother had been withholding visitation and contact by the father with the parties' child. The trial court ordered a modification of custody for a period of 18 months so that the child could get to know more about her father. After 18 months, custody would revert back to the mother. The Court of Appeals reversed the trial court's self-executing modification order. There must be a determination that a change of custody is in the best interest of the child at the time the change occurs; thus, self-executing changes are prohibited. Therefore, there will be no future modification of child support based on this change of custody.

The trial court also erred when it failed to consider the father's request for attorney's fees, after it found the mother's filing of numerous motions and pleadings "frivolous and vexatious."

Calculation of Support/Modification
Marlowe v. Marlowe, S15A0573 (05/11/2015)

This was a modification of support filed by father based on a reduction of income. Mother counterclaimed for an increase in support based on work related child care expenses that were not applicable at the time of the parties' divorce. Trial court granted father's petition and the mother filed application for discretionary appeal.

1) The trial court applied the wrong figure from the Table of Basic Child Support Obligations, applying the amount of support for two children rather than three; case was remanded on this basis for recalculation of the correct amount of support for three children. Mother claimed the trial court erred in the amount it allowed as adjustments for work related child care; however, the Supreme Court found those amounts were substantiated by the evidence in the case.

2) Mother claimed the trial court erred by failing to impute income to father or finding he was willfully underemployed. The Supreme Court disagreed, holding that the evidence showed that the father had found another job for just $2.50/hour less than the job he lost and had been at that job for a year, and did not take other employment that would interfere with his available parenting time.

College Tuition and Expenses
Mims v. Mims, S15A0106 (05/11/2015)

When they divorced, the parties agreed that father would pay college tuition and expenses at Valdosta State University or another school which must be agreed upon. Two requirements were listed: she must pass, and she must attend school full time. Mother filed a contempt action in the daughter's second year of college for failure to pay the college tuition. Father argued that the child was required to be in school "full time" and she had dropped one class and therefore only carried 11 credits one quarter, since 12 credits was considered by the school to be full time. Once she was no longer in college full time, he believed his obligation had ended. Not so, said Trial Court, which determined that the use of the phrase "to attend school full time" only imposes a requirement on the daughter that she not interrupt her college career by taking time off during the normal college year. Summer quarter attendance was not required. The Supreme Court affirmed, holding that because the daughter was in continual attendance at college during the normal school year in the Fall semester of 2010 through the Fall semester of 2013 and maintained passing grades, she had met both conditions and the Husband was required to pay.

Alimony, Evidence, Support/Property Division
Partridge v. Partridge, S15F0038 (06/01/2015)

Husband appeals from an award of alimony based upon wife's testimony that she didn't want any alimony or property from husband in the divorce. Wife's attorney then redirected, asking if she needed some financial assistance from husband to maintain her lifestyle and care for the children, to which she responded that she did. The Supreme Court held that even if there was a conflict in the evidence, it was for the trial court to decide how to weigh that evidence.

The court also required the father to pay for a car in the possession of the parties' child, which he complained improperly amended the child support award. The Supreme Court held that since the car was titled in both parties' name, requiring the husband to make the payments was simply a part of the equitable division of property and debt.

UIFSA
Anderson Anesthesia, Inc. v. Anderson, A15A0120 (06/09/2015)

The parties were divorced in Louisiana; the wife was awarded support, and an income withholding order ("IWO") was issued. The Husband created Anderson Anesthesia, Inc. ("AA"), an Alabama corporation. The Husband became delinquent in making support payments. The Wife filed an UIFSA petition in Georgia against Premier to withhold income pursuant to the IWO. The IWO was served on Premier and AA (Husband) filed a petition to stay its enforcement asserting that the Louisiana court lacked authority to issue an order seizing income because it never had personal jurisdiction over AA. After the hearing, the Court found that under UIFSA, any obligor may contest the validity of an enforcement of an IWO issued in another state and received directly by an employer in Georgia. UIFSA defines obligor as an individual or estate of a decedent. Then, the Trial Court attempted to confer with the Louisiana court but was unable to. The Trial Court gave several weeks to allow AA to file the appropriate motions in Louisiana to set aside the income deduction order. Four months later, AA failed to provide the Court with any evidence that it had initiated any motion or made any type submission to the Louisiana court

seeking to have the IWO set aside. Therefore, the Trial Court dismissed AA's petition. AA appeals and the Court of Appeals affirms. AA asserts the Georgia Trial Court erred by concluding that it had no subject matter jurisdiction to inquire whether the Louisiana income support order qualified for full faith and credit in Georgia and concluding that it had no personal jurisdiction over the Louisiana resident and entering a final order without any supporting evidence.

Here, the Georgia Trial Court never expressly concluded it lacked substance matter jurisdiction or whether the IWO was entitled to full faith and credit in Georgia. Instead, the Trial Court dismissed the action because AA failed to establish it had taken an action in Louisiana to contest the income withholding order. However, the Trial Court was correct to question AA's standing to file the petition challenging the IWO. Under Georgia's UIFSA, only an individual or an estate meeting the criteria may petition a Georgia court to contest an IWO issued by another state. AA filed a petition under UIFSA, but does not fall within the statutory definition of an obligor under the act. Although the Husband would qualify as an obligor under the act, AA, a self-styled independent corporation, does not. Therefore, AA lacked standing to contest the income withholding order under UIFSA. AA also argues the Georgia Trial Court nevertheless should have considered the validity of the income withholding order under O.C.G.A. § 9-12-16 or under the provisions of the Uniform Enforcement of Foreign Judgment Laws (UEFJL). However, AA expressly invoked the provisions of UIFSA in filing all three versions of its petition and because AA filed the petitions without standing Georgia Trial Court had no jurisdiction over them and no basis to consider the validity of IWO. Moreover we note that the Wife never sought to enforce the IWO under the provisions of UEFJL but rather served the order on Premier under the provisions of UIFSA.

Support/Contempt/Attorney's Fees/Supersedeas Bond
Jackson v. Sanders, A15A0127 (07/16/2015)

Father filed a petition for modification of custody, and mother counterclaimed with a motion for contempt on child support. Following a bench trial, court denied petition for modification, held father in contempt on child support for more than the amount in the motion, increased child support by almost 300%, and changed the parenting plan to decrease father's parenting time even though neither party requested it. The court awarded substantial attorney fees to the mother.

While the court agreed that the Father was understating his income, OCGA 19-6-15(f)(4)(B) provides a formula for this type of situation:

> "When a parent fails to produce reliable evidence of income, the court 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 order was entered or last modified and shall calculate the basic child support obligation using the increased amount as such parent's gross income."

Remanded on this issue, first to consider whether 19-6-15(f)(4)(B) applies, and second, to use the formula contained therein.

On the contempt, Father showed that the parties had entered into an agreement, memorialized by email and affirmed in court by the Mother, that he would pay full tuition for the child and she would allow that to offset the child support. The trial court held that the parties could not modify their child

support without a court order. But in Pearson v. Pearson, 265 Ga. 100, 100 (454 SE2d 124) (1995), the Supreme Court held that there are certain equitable exceptions to that general rule. And included among these "equitable exceptions" are situations where the mother has consented to the father's voluntary expenditures as an alternative to his child support obligation, or where the father has been in substantial compliance with . . . the divorce decree, for example, where he has discontinued child support payments while he had the care and custody of the children and supported them at the mother's request. Here, the parties did not modify the amount of support, simply how it was to be paid. The contempt order was reversed.

Further, while the trial court set forth its findings of fact on application of the high income deviation, it failed to set forth in its order what the presumptive amount of support would have been prior to the deviation. Remanded for appropriate findings of fact.

The Trial Court awarded the Mother attorney's fees, but without any evidence of what was a reasonable amount of attorneys fees, so the case was remanded as to attorneys fees. Also, the trial court had required the father to post a supersedeas bond in the amount of $60,000.00, which far exceeded any award it had made – the attorney's fees that were about $27,000.

Findings of Fact/Child Support Worksheets
Black v. Ferlingere, A15A1040 (09/09/2015)

Dispute on modification of custody and child support. Black appealed the court's ruling, saying that the written order did not conform to the court's oral ruling. The written ruling always stands, and the parties had essentially shared physical custody of the child.

Black also appealed the court's ruling that neither party would pay child support to the other. No child support worksheet was prepared or attached, so of course the Court of Appeals remanded the case so that the child support worksheets could be prepared showing that no support was due between the parties.

Child Support/Fringe Benefits
Scott v. Scott, S15F1079 (10/05/2015)

In this case, the father worked for his parents' farm. The trial court imputed income for the truck he used, insurance, gas, ad valorum taxes, use of a house, utilities and his cell phone, all as fringe benefits.

The Supreme Court upheld the imputed income for the truck, but not gas because he provided evidence that he purchased gas; disallowed the $1,000/month for the house and utilities because the evidence did not support that they were employment related.

The Supreme Court did note that the house and utilities could be grounds for a non-specific deviation.

Findings of Fact
McLendon v. McLendon, S15F1254 (10/05/2015)

Father had primary physical custody; mother paid child support. In summer, mother has the child but no support is paid. Mother filed motion for new trial, regarding custody issues. At the hearing, she orally brought up property issues, some of which were granted by the court. The custody issues were denied. She appealed claiming there were no findings of fact on the issue of no child support during the summer, but the Supreme Court upheld the trial court because she failed to raise the issue in her motion for new trial, thereby waiving it on appeal.

Arrearage
Medley v. Mosley, 334 Ga. App. 589 (11/17/2015)

The child of parents never married was legitimated, and Mother was awarded primary physical custody. In a subsequent action, Father was awarded temporary primary custody on an emergency basis, and his child support obligation was suspended. In the final order, Father was awarded primary physical custody and Mother was ordered to pay back child support for the period of time between Father receiving temporary primary custody and the entry of the final order.

Mother was ordered to pay half of Father's proven child-related expenses during the period of time between Father receiving temporary primary custody and the entry of the final order. Mother argued that an award of back child support applies only to putative fathers who fail to support their children. The Court states that "the requirement to provide child support extends to both mothers and fathers, and the custodial parent may seek back support for at most the actual expenses the parent provided during the time the noncustodial parent failed to pay." 334 Ga. App. 589, 594 citing Smith v. Carter, 305 Ga. App. 479 (2010).

In calculating the amount of back child support, the trial court is required to follow the Child Support Guidelines as they would have been at the time in question.

Attorney Fees; Modification; Contempt
Hall v. Hall, A15A1032 (11/19/2015)

Does a non-parent custodian have standing to enforce a child support award?
What is required for an award of attorney's fees in child support modification actions?
What is required for an award of temporary attorney's fees in child support modification actions?
What is required for a temporary modification of child support?

Standing to seek enforcement of a child support award:

A non-parent custodian has standing to seek enforcement of a child support award pursuant to O.C.G.A. § 29-2-22(a)(3) which authorizes him or her to "[b]ring, defend, or participate in legal, equitable, or administrative proceedings, … as are appropriate for the support, care, education, health, or welfare of the minor in the name of or on behalf of the minor." 335 Ga. App. 208, 209.

Additionally, O.C.G.A. § 19-6-15(e) "permits a nonparent custodian to enforce the child support provisions in that subsection." 335 Ga. App. 208, 209.

O.C.G.A. § 19-6-35(a) contains the definitions of child support obligors and obligees.
Attorney's fees in a child support modification action:

A statute MUST be specified by the trial court when awarding fees! The Court of Appeals of Georgia was "constrained to agree" with Father on that issue. 335 Ga. App. 208, 210.

"Georgia appellate courts have repeatedly held: When there is more than one statutory basis for the attorney fee award and neither the statutory basis for the award nor the findings necessary to support an award is stated in the order and a review of the order does not reveal the basis of the award, the case is remanded for an explanation of the statutory basis for the award and the entry of any findings necessary to support it." 335 Ga. App. 208, 211 citing Viskup v. Viskup, 291 Ga. 103 (2012) and Blumenshine v. Hall, 329 Ga. App. 449 (2014).

Pursuant to O.C.G.A. § 19-6-2, fees are only allowed in a case involving "alimony, divorce and alimony, or contempt of court arising out of either an alimony case or a divorce and alimony case."

Temporary attorney's fees in a child support modification action:

The trial court cited O.C.G.A. § 19-6-15 in the temporary order awarding attorney's fees and modifying child support on a temporary basis. Father argued on appeal that he cannot be ordered to pay temporary attorney's fees under O.C.G.A. § 19-6-15 because there was no "prevailing party" since the order in question was only temporary. The Court of Appeals of Georgia disagreed and found no error.

Temporary modification of child support:

The trial court modified child support on a temporary basis and did not include in the temporary order a basis for the modification or the other information required in O.C.G.A. § 19-6-15(c)(2). The Court of Appeals of Georgia pointed out that this issue was previously decided in when it "specifically found that O.C.G.A. § 19-6-15 applies only to final verdicts or decrees, and this case involves a temporary ... order." 335 Ga. App. 208, 213 citing Baca v. Baca, 256 Ga. App. 514 (2002).