

12-1991

Appellate Practice and Procedure

Marion T. Pope Jr.

Ann H. Kelley

Follow this and additional works at: https://digitalcommons.law.mercer.edu/jour_mlr



Part of the [Civil Procedure Commons](#), and the [Litigation Commons](#)

Recommended Citation

Pope, Marion T. Jr. and Kelley, Ann H. (1991) "Appellate Practice and Procedure," *Mercer Law Review*: Vol. 43 : No. 1 , Article 4.

Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol43/iss1/4

This Survey Article is brought to you for free and open access by the Journals at Mercer Law School Digital Commons. It has been accepted for inclusion in Mercer Law Review by an authorized editor of Mercer Law School Digital Commons. For more information, please contact repository@law.mercer.edu.

SURVEY ARTICLES

Appellate Practice and Procedure

by Marion T. Pope, Jr.*
and
Ann H. Kelley**

I. INTRODUCTION

Practitioners in Georgia's state appellate courts recognize that the most important step in the appellate process is to first ascertain the proper procedure to insure that their appeal is properly before the court. Because the statutory and decisional law governing appellate practice and procedure is not immutable, the appellate practitioner must consistently strive to stay abreast of the law in this area. With these thoughts in mind, this Article will survey selected opinions of Georgia's state appellate courts pertaining to appellate practice and procedure rendered during the period from June 1, 1988 to May 31, 1991. The Article will also review

* Judge of the Court of Appeals of Georgia. South Georgia College (B.A., 1950); University of Georgia (LL.B., 1953); University of Virginia (LL.M., 1988). Former Judge of the Superior Court, Blue Ridge Judicial Circuit. Member, State Bar of Georgia.

** Staff Attorney to Judge Marion T. Pope, Jr., Court of Appeals of Georgia. Mercer University (B.A., 1979; J.D., 1984). Member, Mercer Law Review (1982-1984); Managing Editor, Mercer Law Review (1983-1984). Member, State Bar of Georgia.

recent legislative enactments and revisions to the rules of the appellate courts that resulted in changes in the appellate process.

II. LEGISLATION AND COURT RULES

During the 1991 session, the Georgia General Assembly passed several pieces of legislation directly impacting appellate practice and procedure. In the most significant piece of legislation, the General Assembly amended Official Code of Georgia Annotated ("O.C.G.A.") section 5-6-35(a)(6)¹ to require an application for discretionary appeal "in all actions for damages in which the judgment is \$10,000.00 or less."² Previously, applications to appeal were required in actions for damages involving judgments of \$2500 or less.³ This change is applicable to all appeals filed or presented for filing on or after July 1, 1991.⁴

Following the 1991 legislative session, it will cost more to file an application for writ of certiorari to the Georgia Supreme Court as well as an appeal, or application to appeal, in either appellate court.⁵ Effective July 1, 1991, O.C.G.A. section 5-6-4⁶ will provide for an \$80 filing fee to be paid at the time of filing the application or, in the case of direct appeals, at the time of filing the original brief of the appellant.⁷

Litigants who are unhappy with an appellate court decision may now file a motion for reconsideration instead of a motion for rehearing.⁸ This change can hardly be considered substantive; it was implemented to reflect more accurately the manner in which the courts handle such motions.

Effective April 1, 1991, parties must obtain permission from the court of appeals prior to filing supplemental briefs in that court.⁹

However, when pertinent and significant authorities come to the attention of a party subsequent to filing such party's brief, or after oral argument, but before decision, a party may, without leave of court, promptly inform the Clerk of Court by letter, with copy to all counsel, setting forth

1. O.C.G.A. § 5-6-35(a)(6) (1982 & Supp. 1991).

2. 1991 Ga. Laws ___ (codified as amended at O.C.G.A. § 5-6-35(a)(6) (1982 & Supp. 1991)); GA. CT. APP. R. 40(6).

3. O.C.G.A. § 5-6-35(a)(3) (1982 & Supp. 1991).

4. *Id.* § 5-6-35.

5. Compare 1991 Ga. Laws ___ (codified as amended at O.C.G.A. § 5-6-4 (1982 & Supp. 1991)) with 1982 Ga. Laws 1186 (codified at O.C.G.A. § 5-6-4 (1982)).

6. O.C.G.A. § 5-6-4 (1982 & Supp. 1991).

7. *Id.*

8. GA. CT. APP. R. 48; see also 1991 Ga. Laws ___; GA. CT. APP. R. 4, 17, 31, 32(e), 49, 51(f), (g) (in which the phrase "motion for reconsideration" was substituted for the phrase "motion for rehearing").

9. GA. CT. APP. R. 12.

the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain. The letter shall, without argument, state the reasons for the supplemental citations. Any response thereto shall be made promptly and similarly limited. Supplemental briefs addressing matters raised during oral argument may be filed with leave of court, either upon oral motion at argument or upon subsequent written motion.¹⁰

Note that an appellant or cross-appellant may file a reply brief within ten days from the date of filing of the appellee's or cross-appellee's brief.¹¹

III. APPEALABILITY

The questions of who can file an appeal and how the appeal must be brought—by direct appeal, application for discretionary review, or application for interlocutory review—continue to be concerns to the appellate practitioner. A related issue concerns the question of what issues may be raised in the appellate court once an appeal is properly before the court. Appellate courts have given a great deal of attention to the latter question during the survey period, particularly as it relates to criminal appeals. To facilitate discussion of these issues, this section of the Article is subdivided into criminal appeals and civil appeals.

A. Criminal Appeals

Prior to the Georgia Supreme Court's holding in *Smith v. State*,¹² a defendant who failed to assert a claim of ineffective assistance of counsel at the trial level waived the right to raise the issue before the appellate court.¹³ In *Smith* the supreme court "established the practice of remanding to the trial court the claim of ineffective assistance, when such claim was raised only on appeal."¹⁴ That does not mean, however, that every case which raises the issue of trial counsel's ineffectiveness for the first time on appeal will be remanded to the trial court for a hearing on that issue. "Rather, our Supreme Court, through a series of cases, has fashioned a procedure whereby the appellate court, in deciding whether it should remand the case, should look to whether the issue of ineffectiveness was raised 'at the earliest practicable moment.'¹⁵ Thus, in order to

10. *Id.*

11. GA. CT. APP. R. 14(c).

12. 255 Ga. 654, 341 S.E.2d 5 (1986).

13. *Id.* at 656, 341 S.E.2d at 7.

14. *Hutton v. State*, 192 Ga. App. 239, 241, 384 S.E.2d 446, 448 (1989) (quoting *Lloyd v. State*, 258 Ga. 645, 645 n.1, 373 S.E.2d 1, 1 n.1 (1988)).

15. *Weems v. State*, 196 Ga. App. 429, 430, 395 S.E.2d 863, 865 (1990) (quoting *Thompson v. State*, 257 Ga. App. 386, 388, 359 S.E.2d 664, 665 (1987)).

preserve a claim of ineffective assistance of trial counsel for appellate review, appellate counsel, or more rarely, a defendant proceeding pro se, must raise the issue at the "earliest practicable moment;" otherwise, it is waived.¹⁶

The determination of whether the issue of trial counsel's effectiveness has been raised at the earliest opportunity must necessarily be made on a case by case basis. During the survey period, the appellate courts have applied this concept in a number of cases to reach the following results: If appellate counsel enters the case after the filing of the notice of appeal, or after the denial of a motion for new trial, the appellate courts will remand the case to the trial court for a hearing on the claim of trial counsel's ineffectiveness if that issue subsequently is raised for the first time on appeal.¹⁷ The defendant then has the right to appeal an adverse ruling from the trial court on the ineffectiveness claim.¹⁸ On the other hand, if appellate counsel is appointed prior to the filing of the notice of appeal and prior to the filing of a motion for new trial, or if the trial court has yet to rule on a previously filed motion for new trial, the claim of ineffective assistance of trial counsel must be raised either by filing a motion for new trial or by amending an already filed motion for new trial to avoid waiver.¹⁹ Similarly, if the trial court grants a motion to file an out-of-time appeal, appellate counsel must raise the issue of trial counsel's ineffectiveness prior to filing the notice of appeal by way of motion for new trial filed in the trial court or the issue will be deemed waived.²⁰

The Georgia Supreme Court also has ruled recently that a criminal defendant appearing before the probate court who fails to demand a jury trial, or who fails to raise the issue of the absence of a waiver of jury trial in probate court, may not later assert the right to a jury trial for the first time in the superior court or the appellate court.²¹ Although the supreme court rulings dealt with this issue in the context of traffic offenses being tried before the probate court, the court of appeals acted quickly to apply this rule "to all courts granted jurisdiction in OCGA § 40-13-21(b) to try

16. *Id.* at 430, 395 S.E.2d at 865.

17. *See, e.g., Johnson v. State*, 259 Ga. 428, 430, 383 S.E.2d 115, 117 (1989); *Weems v. State*, 196 Ga. App. 429, 430-31, 395 S.E.2d 863, 865 (1990).

18. *See, e.g.,* 259 Ga. at 430, 383 S.E.2d at 117; 196 Ga. App. at 430-31, 395 S.E.2d at 865.

19. *See, e.g., McJunkin v. State*, 199 Ga. App. 353, 405 S.E.2d 110 (1991); *Ross v. State*, 195 Ga. App. 624, 394 S.E.2d 418 (1990); *Scott v. State*, 193 Ga. App. 577, 388 S.E.2d 416 (1989); *Huff v. State*, 191 Ga. App. 476, 382 S.E.2d 183 (1989).

20. *See, e.g., Ponder v. State*, 260 Ga. 840, 400 S.E.2d 922 (1991); *Bell v. State*, 259 Ga. 272, 381 S.E.2d 514 (1989).

21. *Dossett v. State*, 261 Ga. 362, 362, 404 S.E.2d 548, 548 (1991); *Nicholson v. State*, 261 Ga. 197, 200, 403 S.E.2d 42, 45 (1991).

misdemeanor traffic offenses arising under state law when the defendant waives a jury trial."²²

The authority of the State to appeal an adverse ruling in a criminal case is contained in O.C.G.A. section 5-7-1.²³ In *State v. McKenna*,²⁴ the court of appeals considered whether the State could appeal the trial court's grant of defendant's pretrial motion to exclude from evidence a print-out of defendant's Intoximeter test and any testimony relating to the test.²⁵ The court held that, pursuant to O.C.G.A. section 5-7-1(4),²⁶ the State did have the right to appeal from a ruling of the trial court granting the pretrial motion of a defendant seeking to exclude evidence on the basis that the evidence sought to be excluded was *obtained in violation of law*.²⁷ However, in *McKenna* the basis of the trial court's order granting defendant's motion was that the evidence of the Intoximeter test had been materially altered.²⁸ Thus, the court reasoned that section 5-7-1(4) did not authorize the appeal in this case, and the court dismissed the appeal.²⁹

In a criminal case,³⁰ an appeal that is filed while a motion for new trial is pending in the trial court will no longer be dismissed on the basis that it was prematurely filed.³¹ Likewise, a notice of appeal that is filed before the written entry of judgment will no longer be dismissed as premature when the judgment appealed from is subsequently reduced to writing.³² Of course, dismissal is proper in those cases in which no written judgment is entered.³³

B. Civil Appeals

Before appellate review can be obtained, the appellate practitioner must determine the proper procedure for bringing his appeal before the court. Thus, the practitioner must determine if she is entitled to file a direct appeal or if she must first secure permission from the court by filing an application for interlocutory or discretionary review.³⁴

-
22. *Kolker v. State*, 200 Ga. App. 72, 406 S.E.2d 514 (1991).
 23. O.C.G.A. § 5-7-1 (1982 & Supp. 1991).
 24. 199 Ga. App. 206, 404 S.E.2d 278 (1991).
 25. *Id.* at 206-07, 404 S.E.2d at 278.
 26. O.C.G.A. § 5-7-1(4) (1982 & Supp. 1991).
 27. 199 Ga. App. at 207, 404 S.E.2d at 278.
 28. *Id.* at 206, 404 S.E.2d at 278.
 29. *Id.* at 207, 404 S.E.2d at 279.
 30. The rule appears to be otherwise in a civil case. See *Auld v. Weaver*, 196 Ga. App. 782, 397 S.E.2d 51 (1990); *Drake v. Clutter*, 194 Ga. App. 644, 391 S.E.2d 473 (1990).
 31. *Shirley v. State*, 188 Ga. App. 357, 358, 373 S.E.2d 257, 258 (1988).
 32. *State v. Chambers*, 194 Ga. App. 609, 609-10, 391 S.E.2d 657, 658 (1990).
 33. *McKeever v. State*, 189 Ga. App. 445, 445, 375 S.E.2d 899, 899 (1988).
 34. See O.C.G.A. §§ 5-6-34 to -35 (1982 & Supp. 1991).

Although a notice of appeal filed in a criminal case while a motion for new trial is pending will no longer be dismissed as premature, in a civil case the rule remains otherwise.³⁵ Consequently, in a civil case, the appellate court is without jurisdiction to consider a notice of appeal from a judgment filed while a motion for new trial is pending unless it is accompanied by a certificate of immediate review.³⁶ "As to civil appeals, '[t]he appeal is not brought to maturity or perfected by the subsequent overruling of the motion for new trial'"³⁷

As is readily discernable from numerous decisions rendered during the survey period, the determination of what is a final judgment for purposes of O.C.G.A. section 5-6-34³⁸ can be particularly troublesome when more than one party or more than one claim is involved in the proceedings below. The appellate courts of this state have repeatedly held:

Where there is a case involving multiple parties or multiple claims, a decision adjudicating fewer than all the claims or the rights and liabilities of less than all the parties is not a final judgment In such circumstances, there must be an express determination under OCGA § 9-11-54 (b) or there must be compliance with the requirements of [the interlocutory appeal procedures provided in] OCGA § 5-6-34 (b).³⁹

In *Landor Condominium Consultants, Inc. v. Bankers First Federal Savings & Loan Association*,⁴⁰ plaintiff brought dispossessory proceedings against defendants to recover possession of portions of a condominium development. Defendants used one of the many condominium units as an office and another unit as a home. The trial court issued a writ of possession that was subsequently enforced against all of the units except the one defendants occupied as their home. Defendants continued to pay rent and occupy that unit.⁴¹

Defendants directly appealed the writ of possession pursuant to O.C.G.A. section 44-7-56.⁴² However, the court of appeals held that defendants were not entitled to appeal directly from the writ of possession because all claims had not been adjudicated below inasmuch as defend-

35. *Auld v. Weaver*, 196 Ga. App. 782, 397 S.E.2d 51 (1990); *Drake v. Clutter*, 194 Ga. App. 644, 391 S.E.2d 473 (1990).

36. 196 Ga. App. at 782-83, 397 S.E.2d at 52; 194 Ga. App. at 645, 391 S.E.2d at 474.

37. 196 Ga. App. at 783, 397 S.E.2d at 52 (quoting *Home Ins. Co. v. Fort Valley Mills, Inc.*, 132 Ga. App. 15, 16, 207 S.E.2d 590, 590 (1974)).

38. O.C.G.A. § 5-6-34 (1982 & Supp. 1991).

39. *King v. Bishop*, 198 Ga. App. 622, 623-24, 402 S.E.2d 307, 308 (1991) (quoting *Cleveland v. Fulton County*, 196 Ga. App. 168, 170-71, 396 S.E.2d 2, 4 (1990)).

40. 198 Ga. App. 274, 401 S.E.2d 305 (1991).

41. *Id.* at 274-75, 401 S.E.2d at 306.

42. O.C.G.A. § 44-7-56 (1991).

ants continued to be in possession of and pay rent on one of the units.⁴³ Thus, in the absence of an appealable final judgment, a determination by the trial court pursuant to O.C.G.A. section 9-11-54(b),⁴⁴ or compliance with the requirements of O.C.G.A. section 5-6-34(b), the court found it lacked jurisdiction over defendants' premature appeal and dismissed it on this basis.⁴⁵

An appeal from a final order on a main claim is premature when a counterclaim remains pending in the lower court. As the court noted in *Fasse v. Sexton*:⁴⁶

"[t]he pendency of the counterclaim plus the absence of a determination by the trial judge that there was no just reason for delay and express direction for entry of judgment under . . . [O.C.G.A. section 9-11-54 (b)] . . . coupled with the appellant's failure to follow the applicable procedure for review under [O.C.G.A. section 5-6-34(b)] . . . , subjects the instant appeal to dismissal [as premature]."⁴⁷

In *Department of Transportation v. B & G Realty, Inc.*,⁴⁸ the court of appeals held that this rule applies even if the pending counterclaim is unauthorized and, therefore, subject to ultimate dismissal by the trial court.⁴⁹ This result may seem somewhat harsh because the only impediment to the direct appeal is an unauthorized pending counterclaim. As the special concurrence, however, aptly noted:

[The court of appeals] has no jurisdiction to dismiss appellees' unauthorized counterclaim and nothing in OCGA §§ 9-11-54 (b) and 5-6-34 (b) provides an exception for the case, such as this, wherein finality is absent solely because of a clearly unviable claim that is still pending in the trial court.⁵⁰

An appeal from an order or judgment that fails to adjudicate the rights and liabilities of all the parties is also subject to dismissal as premature. For instance, in *Carlisle v. Travelers Insurance Co.*,⁵¹ the court of appeals dismissed plaintiff's direct appeal from the trial court's order dismissing the tortfeasor's insurer because the claim against the tortfeasor remained

43. 198 Ga. App. at 275, 401 S.E.2d at 306.

44. O.C.G.A. § 9-11-54 (1982).

45. 198 Ga. App. at 275-76, 401 S.E.2d at 306, 307; see also *Whiddon v. Stargell*, 192 Ga. App. 826, 386 S.E.2d 884 (1989).

46. 193 Ga. App. 9, 387 S.E.2d 17 (1989).

47. *Id.* at 9, 387 S.E.2d at 17 (quoting *Cleveland v. Watkins*, 159 Ga. App. 885, 885-86, 285 S.E.2d 546, 547 (1981)).

48. 193 Ga. App. 649, 388 S.E.2d 749 (1989).

49. *Id.* at 649, 388 S.E.2d at 749.

50. *Id.* at 650, 388 S.E.2d at 750 (Carley, C.J., concurring specially).

51. 195 Ga. App. 21, 392 S.E.2d 344 (1990).

pending in the court below.⁵² Thus, in a multiple party case, an order which "finally" adjudicates the rights and liabilities of one or more, but not all of the parties, will be subject to dismissal as premature, unless the trial court makes an express determination of finality pursuant to O.C.G.A. section 9-11-54(b), or the appellant receives permission from the court to pursue an interlocutory appeal as provided in O.C.G.A. section 5-6-34(b).⁵³

The appellate practitioner who secures a final judgment for his client is not necessarily entitled to bring his appeal directly to the appellate courts. Section 5-6-35 also provides for certain classes of cases which must proceed by way of an application for discretionary review.⁵⁴ In *Stone v. Dawkins*,⁵⁵ the court of appeals overruled its earlier decision in *Allstate Insurance Co. v. Clark*.⁵⁶ In *Allstate* the court had attempted to distinguish between orders denying a "discretionary" motion to set aside and orders denying a motion to set aside brought pursuant to O.C.G.A. section 9-11-60.⁵⁷ The court held that while the latter were subject to the discretionary appeal procedures pursuant to section 5-6-35(a)(8), the former were not and, therefore, were directly appealable.⁵⁸ The court in *Stone* held that while an order denying a motion to set aside is appealable subject to the discretionary appeal procedure outlined in section 5-6-35(a)(8) "[t]he denial of a 'discretionary' motion to set aside . . . is never appealable in its own right . . ."⁵⁹

O.C.G.A. section 5-6-35(a)(2) provides that an application for discretionary appeal is required in appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases.⁶⁰ In a case of first impression, the supreme court held in *Horton v. Kitchens*,⁶¹ that any party who seeks to appeal a judgment or order entered in a domestic relations case, including a third party defendant in a divorce action, must follow the discretionary appeal procedure set out in section 5-6-35(a)(2).⁶²

52. *Id.* at 22, 392 S.E.2d at 344.

53. *Id.*; see also *Stonica v. State Farm Fire & Casualty Co.*, 198 Ga. App. 717, 402 S.E.2d 553 (1991); *Hartley v. Taylor*, 198 Ga. App. 641, 402 S.E.2d 372 (1991).

54. O.C.G.A. § 5-6-35 (1982 & Supp. 1991).

55. 192 Ga. App. 126, 384 S.E.2d 225 (1989).

56. 186 Ga. App. 58, 366 S.E.2d 394 (1988), *overruled by Stone v. Dawkins*, 192 Ga. App. 126, 384 S.E.2d 225 (1989).

57. O.C.G.A. § 9-11-60 (1982 & Supp. 1991).

58. 186 Ga. App. at 59, 366 S.E.2d at 395.

59. 192 Ga. App. at 127, 384 S.E.2d at 226.

60. O.C.G.A. § 5-6-35(a)(2) (1982 & Supp. 1991).

61. 259 Ga. 446, 383 S.E.2d 871 (1989).

62. *Id.* at 446, 383 S.E.2d at 871-72.

In *Bales v. Shelton*,⁶³ the Georgia Supreme Court reversed the decision in *Barikos v. Vanderslice*,⁶⁴ in which the court of appeals held that amounts credited against a judgment received in a personal injury action must first be subtracted from the judgment before deciding whether the judgment falls within the purview of section 5-6-35(a)(6).⁶⁵ At that time section 5-6-35(a)(6) required that an application for discretionary appeal be filed in any case in which the judgment was between one cent and \$2500.⁶⁶ In *Bales* the court deemed that the legislature intended to require an application to appeal in those cases in which a jury had determined that the damage was less than \$2500.⁶⁷ Thus, set-offs for monies received from a collateral source should not be considered when deciding whether an application to appeal is necessary.⁶⁸

Questions concerning who has the right to file an appeal also arise under the Appellate Practice Act.⁶⁹ In *Centennial Insurance Co. v. Sandner, Inc.*,⁷⁰ the supreme court held that an appellee could file a cross-appeal against a party other than an appellant because "all parties to all proceedings in the lower court are parties on appeal."⁷¹ Similarly, in *Marsden v. Southeastern Sash & Door Co.*,⁷² the court of appeals denied appellees' motion to dismiss the appeal, urged on the basis that two of the parties had failed to file separate notices of appeal.⁷³ Relying on O.C.G.A. section 5-6-37⁷⁴ and *Centennial*, the court of appeals in *Marsden* reasoned that once a timely notice of appeal is filed, all parties to the proceedings below are to be considered parties to the appeal, "and may, subject to the rules governing practice before [the] court, participate in the appellate process."⁷⁵

63. 260 Ga. 335, 391 S.E.2d 394 (1990).

64. 177 Ga. App. 884, 341 S.E.2d 513 (1986), *overruled by Bales v. Shelton*, 260 Ga. 335, 391 S.E.2d 394 (1990).

65. 177 Ga. App. at 884-85, 341 S.E.2d at 513.

66. *Id.* Effective July 1, 1991, O.C.G.A. § 5-6-35(a)(6) requires that the discretionary appeal procedure be followed in any case in which the judgment is \$10,000 or less. O.C.G.A. § 5-6-35(a)(6) (1982 & Supp. 1991).

67. 260 Ga. at 336, 391 S.E.2d at 395.

68. *Id.*

69. O.C.G.A. §§ 5-6-30 to -51 (1982 & Supp. 1991).

70. 259 Ga. 317, 380 S.E.2d 704 (1989).

71. *Id.* at 317, 380 S.E.2d at 705; *see also* O.C.G.A. § 5-6-37 (1982).

72. 193 Ga. App. 597, 388 S.E.2d 730 (1989).

73. *Id.* at 597-98, 388 S.E.2d at 731-32.

74. O.C.G.A. § 5-6-37 (1982).

75. 193 Ga. App. at 598, 388 S.E.2d at 731.

IV. MISCELLANY

The two appearances before the court of appeals in *Ex rel. J.B.*⁷⁶ provide an example of several impediments to appellate review. In the first appearance of the case, the appellants, two juveniles, contended that the lower court had exceeded its authority in ordering them to have their hair cut.⁷⁷ The court of appeals, however, declined to address the merits of appellants' appeal because the trial court's order had not been reduced to writing.⁷⁸ Consequently, the court dismissed the appeal, but noted that appellants would have the right to bring another appeal upon entry of judgment.⁷⁹ On August 24, 1990, *nunc pro tunc* to August 18, 1989, the trial court entered a partial disposition order in which it reduced to writing its ruling ordering appellants to cut their hair. Appellants then sought to appeal this order to the court of appeals.⁸⁰ However, the court of appeals again dismissed appellants' appeal, noting that the order appealed from was not a final order and therefore was not directly appealable to the court.⁸¹ As a further basis for dismissal, the court also noted that the issue presented was now moot because appellants, instead of seeking a supersedeas, had complied with the court's order.⁸²

In *Friedman v. Friedman*,⁸³ appellant sought to dismiss the cross-appeal "because the issues raised in that appeal went beyond the issue the trial court had certified for immediate review."⁸⁴ The appellate court rejected this argument and noted that an interlocutory appeal loses its interlocutory character once the court grants the application for interlocutory appeal and the notice of appeal is filed.⁸⁵ Finding no procedural bar to the cross-appeal, the court thus denied appellant's motion to dismiss.⁸⁶

Following the court of appeals decision in *Fields v. State*,⁸⁷ appointed counsel in a criminal case may no longer file a motion to withdraw in that court pursuant to *Anders v. California*.⁸⁸ In so holding, the court of ap-

76. 195 Ga. App. 520, 394 S.E.2d 143 (1990); 199 Ga. App. 593, 405 S.E.2d 574 (1991).

77. 195 Ga. App. at 520, 394 S.E.2d at 143.

78. *Id.*

79. *Id.*, 394 S.E.2d at 144.

80. 199 Ga. App. at 593, 405 S.E.2d at 574.

81. *Id.* at 594, 405 S.E.2d at 575.

82. *Id.* For other examples of situations in which the appellate court has dismissed appeals on the basis of mootness, see *Royal v. Curry*, 199 Ga. App. 133, 404 S.E.2d 302 (1991); *Merrill v. Eiberger*, 198 Ga. App. 806, 403 S.E.2d 91 (1991).

83. 259 Ga. 530, 384 S.E.2d 641 (1989).

84. *Id.* at 531, 384 S.E.2d at 641.

85. *Id.*

86. *Id.*, 384 S.E.2d at 641-42.

87. 189 Ga. App. 532, 376 S.E.2d 912 (1988).

88. 386 U.S. 738 (1967); 189 Ga. App. at 533, 376 S.E.2d at 913-14.

peals merely followed the Georgia Supreme Court's lead as announced in *Huguley v. State*.⁸⁹

V. CONCLUSION

The appellate courts considered many interesting questions concerning appellate practice and procedure during the survey period. Hopefully, this review of those decisions, recently enacted legislation, and changes to the appellate court's rules will benefit the appellate practitioner in future appearances before Georgia's state appellate courts.

89. 253 Ga. 709, 710, 324 S.E.2d 729, 730-31 (1985); 189 Ga. App. at 533, 376 S.E.2d at 914.

