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Domestic Relations

by Barry B. McGough*

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This Article addresses significant case law that arose in Georgia domestic relations law from June 1, 2015 to May 31, 2016.[1]

I. PRENUPTIAL AGREEMENTS

Two cases reviewed this survey period involved enforcement of prenuptial agreements. In determining whether a prenuptial agreement should be enforced, trial judges should use three criteria: "(1) was the agreement obtained through fraud, duress or mistake, or through . . . . nondisclosure of material facts? (2) is the agreement unconscionable? (3) [h]ave the facts and circumstances changed since the agreement was executed, so as to make its enforcement unfair and unreasonable?"[2]

The first criterion, full and fair disclosure of assets, was at issue in both cases. In *Kwon v. Kwon*,[3] following the husband's death, the administrator of his estate sought to have the prenuptial agreement at issue enforced, an action opposed by the wife. At trial, evidence established

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1. For an analysis of Georgia domestic relations law during the prior survey period, see Barry B. McGough, Elinor H. Hitt & Katherine S. Cornwell, *Domestic Relations, Annual Survey of Georgia Law*, 67 MERCER L. REV. 47 (2015).

2. Scherer v. Scherer, 249 Ga. 635, 641, 292 S.E.2d 662, 666 (1982).

3. 333 Ga. App. 130, 775 S.E.2d 611 (2015).

that both the husband and wife owned assets when the prenuptial agreement was executed that were not listed in the agreement, and that the husband did not tell the wife what he owned prior to the execution of the agreement.[4] The trial court concluded the husband's failure to disclose his assets rendered the agreement unenforceable.[5]

On appeal, the estate administrator argued the wife did not prove that the husband owned any assets unknown to the wife when she signed the agreement.[6] However, this argument was futile, because the party seeking enforcement has the burden of establishing there was a full and fair disclosure of the assets of the parties prior to the execution of the agreement.[7] The administrator, not the wife, had the burden of proof.[8] The administrator then argued the wife waived her right to challenge the adequacy of the disclosure because the prenuptial agreement provided "that each party had made 'a substantially accurate disclosure' of all assets to the other, did not want an independent audit of the other's assets, and 'specifically waives and relinquishes any right to obtain further knowledge with regard to said holdings.'"[9] The administrator maintained that a full and fair disclosure was achieved via this waiver.[10] The Georgia Court of Appeals disagreed, and it found this language did not constitute a waiver of the wife's right to challenge the adequacy of the husband's disclosure and upheld the lower court.[11]

In *Dodson v. Dodson*,[12] the trial court found the parties' prenuptial agreement was unenforceable due to nondisclosure of material facts after the evidence established that no values for the husband's assets, including bank accounts and two closely held businesses, were listed in the prenuptial agreement, and that the husband did not allow the wife reasonable access to his personal or business bank accounts in order to obtain values. The husband appealed, claiming the wife had a duty to inquire and investigate with regard to the value of all of his assets, including bank accounts.[13] The reviewing court found this to be incorrect as a matter of fact and law.[14] Factually, the husband did not give the wife access

4. *Id.* at 130, 775 S.E.2d at 612.
5. *Id.* at 134, 775 S.E.2d at 615.
6. *Id.* at 134, 775 S.E.2d at 614.
7. *Id.* at 134, 775 S.E.2d at 615.
8. *Id.*
9. *Id.* at 135-36, 775 S.E.2d at 615.
10. *Id.* at 136, 775 S.E.2d at 615.
11. *Id.* at 136, 775 S.E.2d at 616.
12. 298 Ga. 117, 779 S.E.2d 638 (2015).
13. *Id.* at 119, 779 S.E.2d at 639.
14. *Id.*

to his bank accounts by which the wife could have determined the accounts' values.[15] Legally, the spouse seeking enforcement must show that the agreement contained full and fair disclosure of his or her material assets, and in the absence of full and fair disclosure, the other spouse does not have a general duty to investigate the assets of the other party.[16]

The husband also argued he was only required to list his material assets, and was not required to apprise the wife of the value of his assets. The Georgia Supreme Court again disagreed.[17] What is required is a "full and fair disclosure."[18] In this case, the disclosure was not full because the wife did not know the value of the husband's assets, and it was not fair because the husband did not allow the wife reasonable access to his accounts to learn their values.[19] The court of appeals affirmed the trial court.[20]

II. JURISDICTION

Several cases arose during this survey period regarding jurisdictional disputes under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).[21] The UCCJEA was promulgated to address "problems of competing jurisdictions entering conflicting interstate child custody orders, forum shopping, and the drawn out and complex child custody legal proceedings often encountered by parties [when] multiple states are involved."[22]

Roach v. Breeden[23] reversed a ruling by the Superior Court of Walker County which found Walker County was found to be the more convenient forum to litigate custody issues between the parties, and which legitimated the child and awarded sole legal custody to the mother.[24] The Juvenile Court of Knox County, Tennessee made an initial custody determination. The father still lived in Tennessee, and exclusive, continuing jurisdiction remained with the Tennessee court until that court determined if a court in another state was a more appropriate and convenient forum in which to hear the matter. The Tennessee court had made no

15. *Id.* at 119, 779 S.E.2d at 639-40.

16. *Id.* at 119, 779 S.E.2d at 640.

17. *Id.*

18. *Id.* at 119-20, 779 S.E.2d at 640.

19. *Id.*

20. *Id.* at 120, 779 S.E.2d at 640.

21. O.C.G.A. § 19-9-40 (2015).

22. Delgado v. Combs, 314 Ga. App. 419, 424, 724 S.E.2d 436, 440 (2012) (quoting Friedman v. Eighth Judicial Dist. Court of Nev., 264 P.3d 1161, 1165 (Nev. 2011)).

23. 333 Ga. App. 839, 777 S.E.2d 689 (2015).

24. *Id.* at 839-41, 843, 777 S.E.2d at 689-91.

such determination.[25] Accordingly, the trial court in Georgia lacked jurisdiction to modify the Tennessee order.[26]

In *Prabnarong v. Oudomhack*,[27] a custody dispute arose between the minor child's father and maternal uncle following the mother's death. The Superior Court of Gwinnett County improperly exercised emergency jurisdiction by modifying a custody order from the state of Washington, which had exclusive and continuing jurisdiction over the issue. Though the child's maternal uncle contended that V.P.'s father "has threatened to mistreat [V.P.] by removing her from everything she knows,"[28] and V.P. signed an affidavit expressing vague concerns about her safety if forced to relocate to Washington, emergency jurisdiction was not required to protect V.P.[29]

Pursuant to section 19-9-64(a) of the Official Code of Georgia Annotated (O.C.G.A.),[30] a court of this state has temporary emergency jurisdiction to modify a child custody determination made by a court of another state if the child is present in this state and it is necessary in an emergency to protect the child because "the child . . . is subjected to or threatened with mistreatment or abuse."[31] The long-held standard is whether there is immediate danger to the child.[32] In *Prabnarong*, there was no immediate danger under any version of the facts as alleged by the uncle or V.P. sufficient to invoke emergency jurisdiction under O.C.G.A. § 19-9-64(a). The appellate court reversed the lower court's judgment.[33]

In *Ward v. Smith*,[34] enforcement of a foreign custody order was at issue. The initial custody determination regarding the parties' child, P.W., was made in 2006 by an Indiana court, which retained continuing, exclusive jurisdiction over the matter. In 2008, the mother and P.W. relocated to Camden County, Georgia. In 2014, the father did not return P.W. to Georgia after his Labor Day visit. On September 11, 2014, the mother filed a Petition for Enforcement of Custody Determination in the Superior Court of Camden County, seeking, *inter alia*, to enforce the Indiana order and to find the father in contempt. Also on September 11, 2014, the

25. *Id.* at 840, 843, 777 S.E.2d at 690-92.

26. *Id.* at 843, 777 S.E.2d at 691.

27. 334 Ga. App. 723, 780 S.E.2d 393 (2015).

28. *Id.* at 724, 780 S.E.2d at 395.

29. *Id.*

30. O.C.G.A. § 19-9-64(a) (2015).

31. *Id.*

32. *Prabnarong*, 334 Ga. App. at 726-27, 780 S.E.2d at 396-97 (applying the standard articulated in Rozier v. Berto, 230 Ga. App. 427, 496 S.E.2d 544 (1998)).

33. *Id.*

34. 334 Ga. App. 876, 780 S.E.2d 702 (2015).

Camden County Court entered an order requiring the father to appear at a hearing on September 25, 2014, and return P.W. to the jurisdiction of the court so the mother could take custody. The father argued that Indiana retained continuing jurisdiction over the matter, and he did not turn over the child.[35]

On September 30, 2014, the Georgia and Indiana courts held a telephone conference, and the Indiana court surrendered jurisdiction to the Georgia court. Following an October 7, 2014 hearing, the father was found in contempt of the September 11, 2014 order for willfully refusing to return P.W. to the jurisdiction of the court as ordered.[36]

On appeal, the father argued the trial court erred in finding him in contempt of the September 11, 2014, order because Indiana still had jurisdiction at the time.[37] However, O.C.G.A. § 19-9-84(a)[38] provides that "'a court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing,' among other things, '[a] visitation schedule made by a court of another state.'"[39] The court of appeals affirmed that, under the UCCJEA, an order for the enforcement of a visitation agreement in a foreign custody determination is not void because of the originating court's continued jurisdiction.[40]

III. EQUITABLE DIVISION OF PROPERTY

During this period, the Georgia Supreme Court decided three cases regarding the application of the "source-of-funds" rule (the Rule) in equitably dividing property.[41] The Rule is a method employed by courts to equitably divide property upon divorce by entitling a spouse who contributed non-marital property to an interest in said property in the ratio of the non-marital investment to the total non-marital plus marital investment in the property.[42] After calculating and separating that spouse's interest, the remaining interest is marital property, subject to equitable division.[43] In order to benefit from the Rule, there must be evidence of

35. *Id.* at 877, 780 S.E.2d at 703-04.

36. *Id.* at 877-78, 780 S.E.2d at 704.

37. *Id.* at 879-80, 780 S.E.2d at 705.

38. O.C.G.A. § 19-9-84(a) (2015).

39. *Ward*, 334 Ga. App. at 881, 780 S.E.2d at 706 (quoting O.C.G.A. § 19-9-84(a)).

40. *Id.* at 882, 884, 780 S.E.2d at 706, 708.

41. Flory v. Flory, 298 Ga. 525, 783 S.E.2d 122 (2016); Horton v. Horton, 299 Ga. 46, 785 S.E.2d 891 (2016); Mallard v. Mallard, 297 Ga. 274, 773 S.E.2d 274 (2015).

42. Maddox v. Maddox, 278 Ga. 606, 607, 604 S.E.2d 784, 786 (2004).

43. *Id.*

appreciation of the property in relation to its fair market value during the parties' marriage.[44]

In *Mallard v. Mallard*,[45] the wife purchased a property in 2009, and then transferred ownership of the property to herself and to the soon-to-be husband as joint tenants in 2011. The parties married in January 2012, and the husband paid off the $268,314 debt on the property with his separate funds in April 2012. An appraisal of the fair market value of the property during the divorce action was $252,000. In awarding the husband 100% of the residence, the trial court applied the Rule and held that the husband's payment of the debt was not a gift to the marital estate.[46] The court reversed the trial court's decision on the basis that the Rule was inapplicable because the property was joint property brought into the marriage, not separate property, and that, based on his testimony, the husband's payment of the debt was a gift to the marital unit.[47]

In *Flory v. Flory*,[48] both the husband and wife requested that the trial court classify certain property as the separate property of each. Relying on the maxim that "[he] who would have equity must do equity and must give effect to all equitable rights of the other party respecting the subject matter of the action,"[49] the trial court found that the parties were "on equal footing"[50] and, therefore, each party's request for the separate property classification was granted.[51] In reversing and remanding the order, the court held the trial court was required to base the classification on a legal principle, such as the Rule, and relying simply on equitable principles to classify the property was an error.[52]

In *Horton v. Horton*,[53] the trial court granted the husband's motion for a directed verdict as to equitable division during the parties' jury trial. The wife appealed, arguing that there was evidence that she invested her separate property funds in the house (owned by husband prior to the marriage), and that the trial court erred in granting the husband's motion which stated that the house was the husband's separate property.[54] In affirming the trial court's grant of the husband's motion, the court

44. *Mallard*, 297 Ga. at 277, 773 S.E.2d at 277.
45. 297 Ga. 274, 773 S.E.2d 274 (2015).
46. *Id.* at 275-77, 773 S.E.2d at 276-77.
47. *Id.* at 278-79, 773 S.E.2d at 278-79.
48. 298 Ga. 525, 783 S.E.2d 122 (2016).
49. *Id.* at 525, 783 S.E.2d at 123.
50. *Id.*
51. *Id.* at 525-26, 783 S.E.2d at 123.
52. *Id.* at 526-27, 783 S.E.2d at 123-24.
53. 299 Ga. 46, 785 S.E.2d 891 (2016).
54. *Id.* at 46, 51, 785 S.E.2d at 893, 895.

stated that the wife did not present the evidence required to apply the Rule, because there was no evidence upon which to calculate wife's alleged investment, nor evidence of an appreciation in value.[55]

IV. CHILD CUSTODY

Both the court of appeals and the supreme court reviewed many child custody cases during this period. Significant cases included issues of self-executing custody provisions, a custody action between a parent and a third party, and grandparent visitation. Self-executing change of custody provisions "allow for an automatic change in custody based on a future event without any additional judicial scrutiny."[56] If the child's best interests are not given paramount import, such a provision "must be stricken as violative of Georgia public policy."[57]

In *Ezunu v. Moultrie*,[58] the trial court awarded sole legal and physical custody of the parties' two minor children to the mother. The father was awarded limited visitation, starting with telephone calls and followed by supervised visitation of short durations that gradually increased until the father had the children every other weekend. The children's therapist would implement the visitation and make decisions regarding when the father's visitation durations would increase.[59] The Georgia Court of Appeals determined the self-executing change of visitation provision impermissibly allowed material changes in visitation to occur without any judicial consideration of the children's best interests.[60] Thus, the court reversed the lower court's judgment in part and remanded to strike the self-executing provision.[61]

Three months later, in *Lester v. Boles*,[62] the court of appeals gave guidance regarding appropriate self-executing changes of custody. The father filed a petition to modify custody of the parties' five-year-old child. In April 2014, the trial court ordered the mother and father alternate physical custody of their son on a weekly basis until he began first grade, after which the child would live primarily with his mother and visit with his

55. *Id.* at 50, 785 S.E.2d at 895.

56. Lester v. Boles, 335 Ga. App. 891, 892, 782 S.E.2d 53, 55 (2015) (quoting Scott v. Scott, 276 Ga. 372, 373, 578 S.E.2d 876, 878 (2003)).

57. *Id.* at 892, 782 S.E.2d at 55.

58. 334 Ga. App. 270, 779 S.E.2d 44 (2015).

59. *Id.* at 270, 779 S.E.2d at 45.

60. *Id.* at 273, 779 S.E.2d at 47.

61. *Id.*

62. 335 Ga. App. 891, 782 S.E.2d 53 (2016).

father. On appeal, the father argued this was an improper self-executing custody provision.[63]

The court of appeals acknowledged that the provision in question was self-executing; however, the analysis continued.[64] First, the provision is not open-ended or "conditioned upon the occurrence of some future event that may never take place".[65] Instead, it is a "custody change coinciding with a planned event that will occur at a readily identifiable time."[66] Second, the triggering event is not an arbitrary change that may or may not affect the child's best interests at some unknown date; instead, the event is the child beginning first grade, at which time the trial court believed the child would need more stability of having one primary residence.[67] The appellate court upheld the lower court's decision because the custody provision at issue gave "paramount import to the child's best interests."[68]

In *Stone v. Stone*,[69] the Georgia Supreme Court addressed joint custody arrangements between a parent and a third party. As a result of the parties' second divorce, the mother was found to be unfit, and the father and maternal grandmother were awarded joint legal custody of the child.[70] On the father's appeal, the supreme court reasoned that Georgia statutory law supports joint custody arrangements only between parents, and it reversed the lower court.[71] O.C.G.A. § 19-9-3(a)(1)[72] shows a recognition that joint custody considerations remain with the parents of the child.[73] Further, O.C.G.A. § 19-9-3(d)[74] states an express desire to preserve the sharing of rights between parents and visitation with parents and grandparents.[75] The statutory definitions of joint legal custody and joint physical custody are limited to include parents.[76] Here, there was a parent suitable to exercise custody of the child, and, where there is a suitable parent, the statute does not allow parental power to be limited by a joint custody arrangement.[77] The lower court had no power to grant

63. *Id.* at 891-92, 782 S.E.2d at 53-55.
64. *Id.* at 893, 782 S.E.2d at 55-56.
65. *Id.* at 893, S.E.2d at 56.
66. *Id.*
67. *Id.*
68. *Id.* (quoting Dellinger v. Dellinger, 278 Ga. 732, 733, S.E.2d 734, 735 (2013)).
69. 297 Ga. 451, 774 S.E.2d 681 (2015).
70. *Id.* at 452, 774 S.E.2d at 682.
71. *Id.* at 452, 774 S.E.2d at 681.
72. O.C.G.A. § 19-9-3(a)(1) (2015).
73. *See id.*
74. O.C.G.A. § 19-9-3(d) (2015).
75. *Id.*
76. O.C.G.A. § 19-9-3 (2015).
77. *Stone*, 297 Ga. at 452, 774 S.E.2d at 682.

joint custody to the father and grandmother, and the award was vacated.[78] However, contact between grandparents and grandchildren is statutorily encouraged; O.C.G.A. § 19-7-3,[79] otherwise known as the "Grandparent Visitation Statute," provides a mechanism for the grant of visitation rights to grandparents.[80] In 2012, the Grandparent Visitation Statute was amended in part to add subsection (d), which provides a more favorable legal standard than is set forth in the remainder of the statute for grandparents seeking visitation with the minor children of the grandparent's deceased, incapacitated, or incarcerated adult child.[81] Two cases reviewed by the Georgia Court of Appeals during the survey period focused on this subsection.

In *Fielder v. Johnson*,[82] the grandparents filed an original action under O.C.G.A. § 19-7-3 "seeking visitation with the minor child of their deceased daughter."[83] The child was then living with her biological father and adoptive mother. The trial court dismissed the grandparents' petition relying on the following: (1) subsection (b) of the statute, which provides that an original action for visitation is not authorized where the parents of a minor child are not separated and the child is living with both parents, and (2) *Kunz v. Bailey*,[84] which clarified that the term "parents" in subsection (b) included adoptive parents.[85] The trial court also reasoned subsection (d) only allows grandparents to file a petition for visitation where one parent has died, "resulting in a single parent situation."[86] The trial court found that the grandparents did not have standing to file their petition, as the child was living with two parents, and subsection (d) did not apply.[87] The appellate court disagreed with the lower court's analysis of subsection (d), as nothing in the plain language of the statute indicates that it only applies when the child has one living parent.[88] The appellate court further determined the lower court's reliance on subsection (b) was in error, as O.C.G.A. § 19-7-3 had been amended to provide relief for grandparents whose adult child has died,

78. *Id.* at 455, 774 S.E.2d at 683.

79. O.C.G.A. § 19-7-3 (2015 & Supp. 2016). Effective July 1, 2016, this statute is expanded to also include great-grandparents and siblings. *Id.*

80. *Stone*, 297 Ga. at 455, 774 S.E.2d at 683.

81. O.C.G.A § 19-7-3(d) (2012).

82. 333 Ga. App. 658, 773 S.E.2d 831 (2015).

83. *Id.* at 658, 773 S.E.2d at 832.

84. 290 Ga. 361, 720 S.E.2d 634 (2012).

85. *Fielder*, 333 Ga. App. at 663, 773 S.E.2d at 835.

86. *Id.*

87. *Id.*

88. *Id.*

and such relief was expressly not precluded by the language of subsection (b).[89]

In *Vincent v. Vincent*,[90] the paternal grandparents sought visitation rights with their incarcerated son's minor children. The trial court denied the grandparents' request for visitation, relying on O.C.G.A. § 19-7-3(c)(1), which provides that, "the court may grant any grandparent of the child reasonable visitation rights if the court finds the health or welfare of the child would be harmed unless such visitation is granted and if the best interests of the child would be served by such visitation."[91] However, the petitioners' son was incarcerated, so the trial court should have relied on subsection (d) of the statute, which provides that such visitation would be granted if the court finds it would be in the best interest of the child, instead of the less favorable "harmed unless such visitation is granted"[92] standard set forth in subsection (c).[93] The court of appeals held that the trial court applied the incorrect legal standard, and it vacated the trial court's ruling.[94]

V. CHILD SUPPORT

Three cases decided during the survey period addressed the specific issue of past-due child support. In *Medley v. Mosley*,[95] the court of appeals held that it was not error for the trial court to award back child support to the father for a period of time prior to entry of an order, since child support obligations extend to both mothers and fathers, and since a custodial parent (here, the father) may seek back support for, at most, the actual expenses paid by the parent during the time the noncustodial parent failed to pay.[96] However, the court remanded the order for recalculation of the support amount since, in determining what portion of the amount expended must be borne by the noncustodial parent, a trial court must follow the Child Support Guidelines to include a review of each parent's income, and the record did not reflect that the trial court applied the Guidelines.[97]

89. *Id.*
90. 333 Ga. App. 902, 777 S.E.2d 729 (2015).
91. *Id.* at 903, 777 S.E.2d at 730; O.C.G.A. § 19-7-3(c)(1).
92. *Vincent*, 333 Ga. App. at 904, 777 S.E.2d at 730.
93. *Id.*
94. *Id.* at 904, 905, 777 S.E.2d at 730, 731.
95. 334 Ga. App. 589, 780 S.E.2d 31 (2015).
96. *Id.* at 593-94, 780 S.E.2d at 35.
97. *Id.* at 594, 780 S.E.2d at 35.

In *Moore v. McKinney*,[98] the trial court erred in entering a temporary consent order on February 18, 2014, providing that the father's obligations to pay child support "terminated retroactively to January 31, 2014."[99] The court of appeals reemphasized that a child support obligation may only be modified on a prospective basis.[100]

In *Jackson v. Sanders*,[101] the father filed a petition to modify custody, and the mother filed a counterclaim seeking past-due child support. The trial court denied the father's petition, awarded the mother $27,135 in past-due child support, and increased the father's child support obligation. The father appealed. Regarding the past-due child support, prior to the father filing his petition, the parties agreed that instead of the father paying child support to the mother directly, he would pay an equivalent amount to the child's new private school for the mother's one-half share of the tuition. Despite both parties acknowledging the agreement, the trial court ordered the father to pay $27,135 in past-due child support for the months when he made payments to the school instead of to the mother.[102] In reversing the trial court's award of past-due support, the appellate court determined that the trial court was correct to refer to the rule that parties can enter into an agreement modifying child support, but the agreement will only be enforceable when made an order of the court.[103] However, the court stated there are certain "equitable exceptions" to said rule, including "situations where the mother has consented to the father's voluntary expenditures as an alternative to his child support obligation."[104] The court held the parties' agreement did not modify the child support amount, but instead established an alternative payout of the support in the same amount, and therefore, the equitable exception applied.[105]

VI. CONTEMPT AND POST-JUDGMENT RELIEF

While many contempt and post-judgment cases were decided during this period, three contempt cases and two post-judgment cases are of particular interest.

98. 335 Ga. App. 855, 783 S.E.2d 373 (2016).
99. *Id.* at 856, 783 S.E.2d 375.
100. *Id.*
101. 333 Ga. App. 544, 773 S.E.2d 835 (2015).
102. *Id.* at 554-55, 773 S.E.2d at 845.
103. *Id.* at 555, 773 S.E.2d at 845.
104. *Id.* (quoting Daniel v. Daniel, 293 Ga. 466, 468, 238 S.E.2d 108, 110 (1977)).
105. *Id.* at 555-56, 773 S.E.2d at 845.

In *Coppedge v. Coppedge*,[106] the trial court held the father in contempt based upon the fact that he paid decreased child support after the children stopped attending summer and after-school programs at a certain school, St. Luke. The father appealed, arguing that the language of the agreement only obligates him to pay summer and after-school care at St. Luke and, therefore, he is not obligated to pay for child care obtained outside of St. Luke.[107] In concluding that the trial court abused its discretion in holding the father in contempt, the Georgia Supreme Court applied general rules of contract construction in order to decipher the parties' intent regarding payment of child care, and, ultimately, it found that the relevant language was too ambiguous to support a finding of the father's willful contempt.[108]

In *Gooch v. Gooch*,[109] contrary to the parties' divorce decree, the husband irrevocably designated his new wife (instead of his ex-wife) as the beneficiary of survivor benefits. The trial court held that the husband was in willful contempt, but no remedy currently existed to cure the contempt.[110] The wife appealed, and the supreme court reversed and remanded the trial court's order.[111] The supreme court held that evidence presented at trial was sufficient to show remedies for the contempt were currently available, and the trial court abused its discretion in failing to devise a remedy for the contempt.[112]

In *Froehlich v. Froehlich*,[113] the trial court found that the husband was in willful contempt of the parties' divorce decree insomuch as the husband failed to "transfer or otherwise make available for use by [Wife] . . . one half of the Marriot[t] points accumulated . . . so long as they are accumulated."[114] In response to the willful contempt, the trial court ordered the husband to make an accounting of the accumulated points, transfer 50% of the same to the wife within twenty days, and to make an annual accounting of future points each January and transfer them to the wife each February.[115] In affirming the trial court's order, the supreme court held that the evidence, including the husband's testimony at the hearing, supported the finding of a willful contempt, and that the relief fashioned

106. 298 Ga. 494, 783 S.E.2d 94 (2016).
107. *Id.* at 496, 783 S.E.2d at 96.
108. *Id.* at 497, 783 S.E.2d at 96-97.
109. 297 Ga. 189, 773 S.E.2d 247 (2015).
110. *Id.* at 189-90, 773 S.E.2d at 247-48.
111. *Id.* at 189, 773 S.E.2d at 247.
112. *Id.* at 191, 773 S.E.2d at 248.
113. 297 Ga. 551, 775 S.E.2d 534 (2015).
114. *Id.* at 552, 775 S.E.2d at 536.
115. *Id.* at 553, 775 S.E.2d at 536.

by the court—including the additional annual accounting requirements—was reasonable and necessary and did not modify the decree, but remedied the harm caused by the husband's contemptuous conduct.[116]

Regarding post-judgment relief cases, in *Robertson v. Robertson*,[117] the former husband and wife purchased real estate during the marriage and later conveyed it to their daughter to prevent the parties' creditors from obtaining a judgment against the property. The parties continued to reside there after the conveyance. The parties divorced in July 2008 and, although the wife swore under oath that the marriage was irretrievably broken, the parties continued to live together after the divorce and did not divide the marital assets. In August 2008, the daughter conveyed the home to the husband after the parties discovered she had mortgaged ten acres of the real estate. In July 2009, the husband convinced the wife's mother to move in with them and pay rent. In 2013, the husband remarried and demanded that the wife and her mother vacate the residence. The wife and her mother brought an action to set aside the divorce decree for enforcement of implied trust and for conversion of property. The trial court granted partial summary judgment in favor of the husband, and the wife and her mother appealed.[118]

The court of appeals held the trial court properly granted partial summary judgment in favor of the husband because the wife's motion to set aside was not filed within three years of the divorce, and no showing of fraud was made to toll the limitations period since the wife willfully participated in the sham divorce.[119] However, the court then reversed the trial court's grant of summary judgment as to the wife's claim for enforcement of implied trust, finding that a genuine issue of material fact existed with regard to said claim since the evidence showed the wife made substantial investments in the property due to the husband's assurances that the property was for both of them.[120] The court held that a reasonable jury could find that permitting the husband to retain sole ownership of the property would result in an inequitable windfall recovery to him and that a constructive trust may be imposed to prevent said windfall.[121]

In the post-divorce proceeding of *Mermann v. Tillitski*,[122] the parties' agreement incorporated into the divorce decree provided the wife would "receive 50% of the Husband's SEP IRA as of the date of [the] agreement

116. *Id.* at 556, 775 S.E.2d at 538.
117. 333 Ga. App. 864, 778 S.E.2d 6 (2015).
118. *Id.* at 866-67, 778 S.E.2d at 9.
119. *Id.* at 868, 778 S.E.2d at 10.
120. *Id.* at 873, 875, 778 S.E.2d at 13-14, 15.
121. *Id.* at 873-74, 778 S.E.2d at 14.
122. 297 Ga. 881, 778 S.E.2d 191 (2015).

and shall have her pro rata share of all investment experience, including earnings and losses,"[123] that the wife would prepare the Qualified Domestic Relations Order (QDRO) within thirty days of the date of the settlement agreement, and that the husband would review the QDRO prior to submission to the court. The wife submitted the QDRO to the court four years later, stating that the delay was due to the husband's failure to cooperate, and the court signed the QDRO. Six months later, realizing that the husband had not reviewed the QDRO, the wife filed a motion to vacate the QDRO and enter one approved by the husband. At the hearing on the wife's motion, the wife claimed that she had an interest in all gains in the IRA accruing to the date of hearing, July 9, 2014. The trial court disagreed, and ruled that the wife was not entitled to gains accruing after thirty days following the date of the agreement, which was the deadline for the wife to submit the QDRO. The wife appealed.[124]

The supreme court reversed the trial court's order, holding the trial court improperly modified a fixed division of the property as set forth in the agreement and incorporated into the decree by imposing the artificial thirty-day limit on the wife's interest in gains and losses on the IRA, and the agreement was devoid of any language indicating that the wife's failure to prepare the QDRO would affect her right to obtain her pro rata share of all investment experience in the IRA.[125]

123. *Id.* at 883, 778 S.E.2d at 193.

124. *Id.* at 883-84, 778 S.E.2d at 192-93.

125. *Id.* at 883-84, 778 S.E.2d at 193.