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Domestic Relations

by Barry B. McGough*
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This Article addresses significant case law that arose during the survey period,[1] minor statutory changes specific to child support, and changes to the Uniform Superior Court Rules.

I. PRENUPTIAL AGREEMENTS

In *Coxwell v. Coxwell*,[2] a lost antenuptial agreement was at issue. In this divorce action, the parties agreed there was a valid and enforceable antenuptial agreement; however, neither party was able to locate the document and they disagreed in their respective recollections of the antenuptial agreement's terms. After finding neither party intentionally failed to produce the agreement and each party honestly believed their recollection of the terms of the antenuptial agreement was correct, the trial court found that the husband failed to prove the terms of the agreement and denied the husband's motion to enforce the antenuptial agreement.[3] On appeal, the Georgia Supreme Court held the trial court properly denied the husband's motion and the appropriate standard of

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1. This Survey focuses on developments in Georgia domestic relations law from June 1, 2014 to May 31, 2015. For an analysis of Georgia domestic relations during the prior survey period, see Barry B. McGough, Elinor H. Hitt & Katherine S. Cornwell, *Domestic Relations, Annual Survey of Georgia Law*, 66 MERCER L. REV. 65 (2014).

2. 296 Ga. 311, 765 S.E.2d 320 (2014).

3. *Id.* at 312, 765 S.E.2d at 320.

proof for establishing the contents of a lost antenuptial agreement is a preponderance of the evidence.[4]

II. JURISDICTION, VENUE, AND PROCEDURAL ISSUES

The appellate courts reviewed questions of jurisdiction, venue, and service of process, while the new Uniform Superior Court Rules[5] addressed issues relating to the electronic filing of documents. The issues of jurisdiction and venue regarding the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)[6] arose in two cases.

In *Slay v. Calhoun*,[7] where the child's mother claimed to reside in Florida and the child's biological father resided in Georgia, the question was whether the jurisdictional rules of the UCCJEA, found in the Official Code of Georgia Annotated (O.C.G.A.) § 19-9-61(a),[8] or O.C.G.A. § 19-7-22,[9] which regards legitimation petitions, would control in a legitimation proceeding.[10] The father argued that the controlling statute was O.C.G.A. § 19-7-22, which provides that if the mother resides outside the state, the petition may be filed in the county of the father's residence.[11] However, the Georgia Court of Appeals disagreed with the father, holding that O.C.G.A. § 19-7-22 governs venue while O.C.G.A. § 19-9-61(a), which sets forth the circumstances in which a court of this state has jurisdiction to make an initial child custody determination, governs subject matter jurisdiction.[12]

In *Spies v. Carpenter*,[13] a second provision of the UCCJEA, regarding a court's decision to decline to exercise jurisdiction based on forum non conveniens, was at issue. The parties resided in Georgia from November 2011 until they separated in August 2013, when the wife moved to California with the parties' children and the husband relocated to Virginia. In October 2013, the wife filed suit for legal separation in the Superior Court of California. On November 21, 2013, the California court entered an order that temporarily awarded sole custody of the children to the wife. On the same day, the husband filed a petition for divorce in Fulton County Superior Court, requesting, inter alia, primary

4. *Id.* at 314, 765 S.E.2d at 322.
5. *See* Ga. Unif. Super. Ct. R. 1 to 47 (2015).
6. O.C.G.A. §§ 19-9-40 to -104 (2015).
7. 332 Ga. App. 335, 772 S.E.2d 425 (2015).
8. O.C.G.A. § 19-9-61(a) (2015).
9. O.C.G.A. § 19-7-22 (2015).
10. 332 Ga. App. at 339, 772 S.E.2d at 428.
11. *Id.* at 338-39, 772 S.E.2d at 428; *see also* O.C.G.A. § 19-7-22(a).
12. *Slay*, 332 Ga. App. at 338, 339, 341, 772 S.E.2d at 428, 429.
13. 296 Ga. 131, 765 S.E.2d 340 (2014); *see also* O.C.G.A. § 19-9-67 (2015).

child custody.[14] The wife moved to dismiss her husband's petition, arguing that the Fulton County trial court is an inconvenient forum, and the Fulton County trial court dismissed the husband's entire case based on O.C.G.A. § 19-9-67,[15] which is part of the UCCJEA.[16] On appeal, the Georgia Supreme Court held that the husband had a state constitutional right to litigate his divorce case in the county of his residence.[17] Thus, the supreme court concluded that the trial court was authorized to dismiss the custody portion of the husband's case on the basis of forum non conveniens, but it erred in dismissing the divorce case.[18]

In *Guerrero v. Guerrero*,[19] improper service of process was addressed by the Georgia Supreme Court. The parties lived in Butts County, Georgia together with their four minor children. However, by the time the wife filed a complaint for divorce in May 2012, the husband had become a resident of California.[20] After failed attempts at personal service, a process server returned an affidavit of service, indicating he served the husband by substitute service at the husband's home "by leaving the complaint 'with or in the presence of: Maria Schiemm, Occupant' who was a '[p]erson of suitable age and discretion.'"[21] The husband filed no responsive pleadings, and a final hearing was held in his absence. Upon learning of the final judgment, the husband filed a motion for new trial based on improper service, asserting that Maria Schiemm may have been the former occupant of his rental home but that she did not reside at his home and he did not know her.[22]

On appeal from the denial of the husband's motion for new trial, the Georgia Supreme Court held that proper service upon the husband could have been effectuated by serving him personally or by leaving a copy of the summons and complaint at his "dwelling place or usual place of abode with some person of suitable age and discretion then residing therein."[23] The court concluded that the process server's affidavit, on its face, established that the person with whom the process server left the complaint was an occupant, not a resident; thus, the court concluded

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14. *Spies*, 296 Ga. at 131-32, 765 S.E.2d at 341.
15. O.C.G.A. § 19-9-67.
16. *Spies*, 296 Ga. at 132, 765 S.E.2d at 341.
17. *Id.* at 132-33, 765 S.E.2d at 342 (citing Holtsclaw v. Holtsclaw, 269 Ga. 163, 496 S.E.2d 262 (1998)).
18. *Id.* at 133, 765 S.E.2d at 342.
19. 296 Ga. 432, 768 S.E.2d 451 (2015).
20. *Id.* at 432-33, 768 S.E.2d at 452.
21. *Id.* at 433, 768 S.E.2d at 452 (alterations in original).
22. *Id.*
23. *Id.* at 434, 768 S.E.2d at 453 (quoting O.C.G.A. § 9-11-4(e)(7) (2015)).

the service was improper and the husband's motion for new trial should have been granted.[24]

Reynolds v. Reynolds[25] also addressed improper service of process. The husband filed a complaint for divorce and obtained an order to serve the wife by publication after filing an affidavit, alleging she was a nonresident of Georgia and providing a last known address for her in Barnesville, Georgia. Several months after the divorce was finalized without the wife's participation, she filed a motion to set aside the final judgment and decree of divorce, which the court denied.[26]

On appeal, the Georgia Supreme Court held that the trial court erred in granting the order for service by publication and in denying the wife's motion to set aside the final decree.[27] The evidence showed that the husband could have obtained the wife's address "through reasonably diligent efforts but failed to do so."[28] In addition, the husband's affidavit in support of service by publication did not meet the requirements of O.C.G.A. § 9-11-4(f)(1)(A),[29] and this failure was further evidence of the husband's lack of due diligence in locating his wife.[30]

Effective May 7, 2015, the Georgia Supreme Court added two Uniform Superior Court Rules relating to the electronic filing of documents.[31] Uniform Superior Court Rule 36.16[32] allows for electronic filing of documents; addresses electronic signatures, time of filing, electronic service, and the effect of system errors; and establishes that documents filed electronically have the same force and effect as documents filed by traditional means.[33] Uniform Superior Court Rule 36.17[34] provides that documents must be in accord with O.C.G.A. § 9-11-7.1.[35] When documents are filed electronically,[36] O.C.G.A. § 9-11-7.1 requires redaction of certain sensitive information.[37]

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24. *Id.*
25. 296 Ga. 461, 768 S.E.2d 511 (2015).
26. *Id.* at 461, 462, 768 S.E.2d at 512.
27. *Id.* at 463, 768 S.E.2d at 513.
28. *Id.*
29. O.C.G.A. § 9-11-4(f)(1)(A) (2015).
30. 296 Ga. at 464, 768 S.E.2d at 513.
31. *Uniform Superior Court Rules*, SUPREME COURT OF GEORGIA (May 7, 2015), http://www.gasupreme.us/wp-content/uploads/2015/06/ORDER_MAY2015_FINAL.pdf.
32. Ga. Unif. Super. Ct. R. 36.16 (2015).
33. *Id.*
34. Ga. Unif. Super. Ct. R. 36.17 (2015).
35. O.C.G.A. § 9-11-7.1 (2015).
36. Ga. Unif. Super. Ct. R. 36.17.
37. O.C.G.A. § 9-11-7.1(a); *see also* Ga. Unif. Super. Ct. R. 36.17.

III. DISCOVERY

Also effective May 7, 2015, the Supreme Court of Georgia added two Uniform Superior Court Rules relating to discovery.[38] Uniform Superior Court Rule 5.4[39] provides that discovery conferences should be held early in a case, followed by the submission of a discovery plan to the court.[40] Uniform Superior Court Rule 5.5[41] provides steps to be taken if otherwise discoverable information is withheld by a party based on a claim of privilege and steps to be taken if information produced in discovery is subject to a claim of privilege.[42]

IV. CHILD CUSTODY

Numerous child custody modification cases were reviewed by the appellate courts during this survey period. In deciding whether to modify child custody, the trial court must first determine if there has been a material change of condition affecting the welfare of the children since the last custody award.[43] If there has been a material change in condition, then the trial court must base its new custody decision on the best interest of the child.[44] A trial court's decision regarding a change in custody or visitation will be upheld on appeal unless it is shown the court abused its discretion, and where there is any evidence to support the ruling, a reviewing court cannot say there was an abuse of discretion.[45]

The Georgia Supreme Court upheld the trial court in two cases involving custody modifications. In *Carr-MacArthur v. Carr*,[46] the supreme court affirmed a trial court that found there was a material change in condition sufficient to support a change of primary physical custody from the mother to the father.[47] The supreme court concluded that the mother's psychological and physical problems—manageable at the time of the parties' divorce—had subsequently become unmanageable: the mother had developed new psychological problems, and the mother had voluntarily surrendered the child to the father in the midst

38. *Uniform Superior Court Rules, supra* note 31.
39. Ga. Unif. Super. Ct. R. 5.4 (2015).
40. *Id.*
41. Ga. Unif. Super. Ct. R. 5.5 (2015).
42. *Id.*
43. O.C.G.A. § 19-9-3(b) (2015).
44. *Id.*
45. *See generally* Haskell v. Haskell, 286 Ga. 112, 686 S.E.2d 102 (2009).
46. 296 Ga. 30, 764 S.E.2d 840 (2014).
47. *Id.* at 32, 38, 764 S.E.2d at 843, 845.

of an investigation by the Florida Department of Child and Family Services.[48]

In *Neal v. Hibbard*,[49] the father had been arrested in connection with a sexual incident that resulted in a criminal prosecution that was covered extensively by the media. The father subsequently relocated from Augusta to Atlanta to restore his law practice. In separate cases filed by each of the father's two former wives, Mrs. Hibbard and Ms. Neal, the trial court found it in the best interest of the children, based on a material change in circumstances, to modify custody from both parents having joint physical custody to the mothers having primary physical custody.[50] The supreme court concluded that even though the children were not present in the father's home when the sexual incident occurred, in determining the best interests of the children, the court may consider the conduct of the parents.[51]

The Georgia Court of Appeals upheld the trial court in two cases involving custody modifications. In *Blumenshine v. Hall*,[52] there was evidence that the father denied the mother of the opportunity to have contact with the children and attempted to alienate the children from their mother.[53] The court of appeals affirmed the trial court, which found there was a material change in circumstance sufficient to support a modification from joint physical custody to primary physical custody being vested in the mother.[54]

In *Gordon v. Abrahams*,[55] even though the father argued that the mother's cohabitation with her boyfriend constituted a material change in circumstances justifying a change in custody, the trial court found no evidence that the mother's relationship with her boyfriend had an adverse effect on the child and denied the father's petition.[56] The court of appeals affirmed, stating that "a parent's cohabitation is not a basis for a change in custody absent some evidence of harm to the child."[57] The father also sought a morality clause to prevent the mother from having overnight guests—a request that was denied.[58] Of note is the

48. *Id.* at 32, 764 S.E.2d at 843.
49. 296 Ga. 882, 770 S.E.2d 600 (2015).
50. *Id.* at 883, 770 S.E.2d at 604.
51. *Id.* at 883-84, 770 S.E.2d at 604-05.
52. 329 Ga. App. 449, 765 S.E.2d 647 (2014), *cert. denied*, 2015 Ga. LEXIS 56 (2015).
53. *Id.* at 450, 765 S.E.2d at 650.
54. *Id.* at 450, 454, 765 S.E.2d at 650, 652.
55. 330 Ga. App. 795, 769 S.E.2d 544 (2015).
56. *Id.* at 797, 769 S.E.2d at 547.
57. *Id.* at 797, 800, 769 S.E.2d at 547, 549.
58. *Id.* at 795, 797, 769 S.E.2d at 546, 547.

court of appeals decision in *Norman v. Norman*,[59] which concluded that a morality clause in a settlement agreement that barred either party from having an overnight guest of the opposite gender while having physical custody of the parties' minor children was enforceable, even if there was no showing of harm to justify the restriction.[60]

The issue of passports arose in *Ansell v. Ansell*,[61] where the mother sought to renew the child's passport, but the father would not cooperate. The trial court ordered the father to execute the necessary documents for the child to obtain a passport.[62] The father appealed, arguing federal regulations require the other parent's consent and forced consent is not consent at all.[63] In declining to answer whether Georgia law impliedly grants a trial court the authority to require an objecting parent to execute passport documents for a minor child, the court of appeals noted that instead of ordering the father to execute the necessary documents for the child to obtain a passport pursuant to federal regulations, the trial court could have authorized, through court order, the mother to obtain a passport for the child without the consent of the father.[64]

V. CHILD SUPPORT

Several cases and legislative ammendments during the survey period addressed issues associated with child support.[65] In particular, three cases dealt with defining a parent's income for child support purposes. In *Wallace v. Wallace*,[66] the supreme court affirmed the trial court's calculation of the father's gross monthly income where, pursuant to O.C.G.A. § 19-6-15(f)(1)(E),[67] the trial court excluded from the father's income the portion of his monthly military pay attributable to area variable housing costs related to the father's deployment.[68]

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59. 329 Ga. App. 502, 765 S.E.2d 677 (2014).
60. *Id.* at 504, 507, 765 S.E.2d at 679, 681.
61. 328 Ga. App. 586, 759 S.E.2d 916 (2014), *cert. denied*, 2014 Ga. LEXIS 871 (2014).
62. *Id.* at 587, 759 S.E.2d at 917.
63. *Id.* at 587-88, 759 S.E.2d at 917-18; *see also* 22 C.F.R. § 51.28(a)(3)(ii)(E) (2015).
64. *Ansell*, 328 Ga. App. at 589, 759 S.E.2d at 918-19; *see also* 22 C.F.R. § 51.28 (2015).
65. Regarding legislative amendments associated with child support, Georgia Laws Act 579 consisted of multiple revisions to O.C.G.A. §§ 19-16-15, 19-6-53, 19-11-3, 19-11-30.2, 19-11-32, and 19-11-39, which should be reviewed by any domestic law practitioner. Ga. S. Bill 282, Reg. Sess., 2014 Ga. Laws 457.
66. 296 Ga. 307, 766 S.E.2d 452 (2014).
67. O.C.G.A. § 19-6-15(f)(1)(E) (2015).
68. 296 Ga. at 310, 311, 766 S.E.2d at 455.

In *Carr-MacArthur v. Carr*,[69] the mother appealed the trial court's order, inter alia, modifying child support.[70] The mother argued that the court erred in imputing income to her for the purpose of calculating child support since she was unemployed at the time of the final hearing, suffered from health issues, and acted as a caretaker for other young children in her home.[71] The supreme court affirmed the trial court's decision to impute income to the mother, citing to O.C.G.A. § 19-6-15(f)(4)(D)[72]—which states that a determination of willful unemployment "can be based on any intentional choice or act that affects a parent's income"—and noting there was evidence the mother and her new husband decided it would benefit their children if the mother refrained from working outside of the home until the children began school.[73]

In *Blumenshine v. Hall*,[74] the court of appeals held that the trial court erred in including a portion of the new wife's income in calculating the father's gross income for child support purposes because his new wife had no legal obligation to support the father's children from his prior marriage, and a nonparent custodian's income cannot be included in the calculation of the parent's gross income.[75]

In *Marlowe v. Marlowe*,[76] the supreme court affirmed the trial court's downward modification of the father's child support since the trial court did not err in failing to impute income to the father or in finding he was not willfully underemployed.[77] The record showed the father earned a significantly higher income in the past through a variety of jobs and voluntarily terminated some of those jobs. The record also included evidence such as the following: the father's employment record had no periods of prolonged unemployment; the father's efforts to become employed; and the testimony of the father regarding his choice to pursue a lower paying job that allowed him to exercise more parenting time.[78] The supreme court acknowledged that while there was conflicting evidence regarding the factors to consider in a downward child support

69. 296 Ga. 30, 764 S.E.2d 840 (2014).
70. *Id.* at 30, 764 S.E.2d at 842.
71. *Id.* at 35, 764 S.E.2d at 844-45.
72. O.C.G.A. § 19-6-15(f)(4)(D) (2015).
73. *Carr*, 296 Ga. at 35-36, 38, 764 S.E.2d at 845, 846 (quoting O.C.G.A. § 19-6-15(f)(4)(D)).
74. 329 Ga. App. 449, 765 S.E.2d 647 (2014), *cert. denied*, 2015 Ga. LEXIS 56 (2015).
75. *Id.* at 451-52, 765 S.E.2d at 651; *see also* O.C.G.A. §§ 19-6-15(a)(15), (f)(2)(D) (2015).
76. 297 Ga. 116, 772 S.E.2d 647 (2015).
77. *Id.* at 118, 119-20, 772 S.E.2d at 650-51.
78. *Id.* at 118, 772 S.E.2d at 649, 650.

modification, the trial court's findings were not clearly erroneous, and the supreme court affirmed the decision.[79]

In *Neal v. Hibbard*,[80] the supreme court overruled the court of appeals holding in a separate case, *Adame v. Hernandez*,[81] which also occurred during this survey period.[82] In *Neal*, the father appealed the trial court's modification of support and custody.[83] Regarding the father's child support obligation to his ex-wife, Mrs. Hibbard, the father argued that the temporary child support award was improper because the trial court did not attach a child support worksheet to the temporary order.[84] However, the supreme court held that no worksheet was required.[85] The supreme court explained, "The child support guidelines . . . are a minimum basis for determining the amount of child support and shall apply as a rebuttable presumption in all legal proceedings involving the child support responsibility of a parent."[86] There was no indication that the trial court used the guidelines in calculating the amount of temporary child support, and the supreme court reversed the temporary order, holding that "the fact that the temporary order was superseded by the final judgment for child support does not render it moot; the obligation thereunder was improperly imposed, and [the father's] obligation for child support during the relevant time is still not resolved."[87] The temporary child support order entered in the companion case with Ms. Neal included the same error and was also reversed.[88]

Regarding the final judgment modifying child support for Mrs. Hibbard, the father argued that the trial court erred in imputing to him a gross monthly income of $18,750 because his financial affidavit included only a gross monthly income of $7,032.27; there was no evidence of his underemployment; and his income had diminished since his criminal prosecution.[89] The supreme court held the trial court did not err in imputing income and the trial court may consider not only the father's income of record, but also the assets he owned.[90] The court

79. *Id.* at 19-20, 772 S.E.2d at 650-51.
80. 296 Ga. 882, 770 S.E.2d 600 (2015).
81. 327 Ga. App. 869, 761 S.E.2d 402 (2014).
82. *Neal*, 296 Ga. at 889, 770 S.E.2d at 607.
83. *Id.* at 882, 770 S.E.2d at 603.
84. *Id.* at 885, 770 S.E.2d at 605.
85. *Id.*; *see also* O.C.G.A. § 19-6-15(m) (2015).
86. *Neal*, 296 Ga. at 885, 770 S.E.2d at 605 (quoting O.C.G.A. § 19-6-15(c)(1) (2015)).
87. *Id.* at 885, 886, 770 S.E.2d at 605, 606.
88. *Id.* at 889, 770 S.E.2d at 608.
89. *Id.* at 886, 770 S.E.2d at 606.
90. *Id.* at 886-87, 770 S.E.2d at 606; *see also* O.C.G.A. § 19-6-15(f)(4)(D)(iv).

also held that the trial court did not err in failing to make written findings regarding the imputation of income.[91]

In addition, the father argued that the trial court erred in failing to include an adjustment to his gross income in the child support worksheets attached to the final order in Mrs. Hibbard's case for the child support paid to Ms. Neal.[92] The supreme court disagreed with the father's argument, stating that "[w]hile it is true that the court entered its final order modifying child support [in the companion case] on November 14, 2013, before the November 21, 2013 final order modifying child support [for Mrs. Hibbard], that [order] does not meet the definition of a 'preexisting order' for purposes of calculating child support. . . ."[93]

Finally, for the child support calculation, the father argued that the trial court failed to make written findings of fact regarding the child's best interest in support of the "theoretical child support order" adjustment to the mother's income to reflect that a child born of another father lived in her home as a "qualified child."[94] The court explained that an adjustment in child support for other qualified children is not a deviation from the presumptive amount, and that although an adjustment need not be supported by the same extensive factual findings as a deviation, such an adjustment, pursuant to O.C.G.A. § 19-6-15(f)(5)(C),[95] must be based on the best interest of the child for whom support is being awarded.[96] The court held, "To the extent that *Adame* . . . 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), it is hereby overruled."[97]

The case *Mironov v. Mironov*[98] addressed the issue of defining a "prevailing party" to award attorney fees in a child support action. The mother petitioned to modify child support upward. The parties reached an agreement upwardly modifying the father's obligation but were unable to resolve the issue of attorney fees. Each party claimed to have prevailed in the underlying action. The mother argued that she

91. *Neal*, 296 Ga. at 886, 770 S.E.2d at 606.
92. *Id.* at 887, 770 S.E.2d at 606.
93. *Id.* (citing O.C.G.A. § 19-6-15(a)(18) (2015)).
94. *Id.* at 887-88, 888, 770 S.E.2d at 607.
95. O.C.G.A. § 19-6-15(f)(5)(C) (2015).
96. *Neal*, 296 Ga. at 888, 770 S.E.2d at 607.
97. *Id.*
98. 296 Ga. 114, 765 S.E.2d 326 (2014).

prevailed because she secured an upward modification of child support, and the father argued that he prevailed because the settlement was less than the amount the mother had sought. The trial court found that both parties prevailed and declined to award fees.[99] Holding that the court may award fees to "the prevailing party as the interests of justice may require," the supreme court reversed the trial court's order and held that the mother was the prevailing party since there may exist only one prevailing party and the modification action resulted in an increase in the father's child support obligation, even if not to the extent the mother first requested.[100]

In *Wright v. Burch*,[101] the parties entered into an agreement stating that all child support arrearage issues were resolved and no back child support was owed by the father. A draft consent order was submitted to the court incorporating the agreement. The father filed a motion to enforce the agreement, while the mother's counsel argued that while the parties had reached an agreement, Georgia law does not allow parents to modify a child support arrangement retroactively.[102] The trial court held that the settlement was enforceable and entered the consent order as part of the judgment. The mother appealed. The court of appeals reversed the trial court, holding that the parties were not allowed to reach a compromise on the reduction of child support arrearages already due because that constituted an impermissible retroactive modification of the decree.[103]

Additionally, Uniform Superior Court Rule 24.12[104] was adopted and added to the Rules, effective as of June 4, 2015.[105] Rule 24.12 establishes the mandatory form to be used when pursuant to Uniform Superior Court Rule 24.11,[106] the court issues an income deduction order.[107]

VI. CONTEMPT AND POST-JUDGMENT RELIEF

In *Murphy v. Murphy*,[108] the court of appeals affirmed the trial court's order holding the mother's attorney in contempt for violating a

99. *Id.* at 114, 115, 765 S.E.2d at 326-27.
100. *Id.* at 115, 116, 765 S.E.2d at 327, 328 (quoting O.C.G.A. § 19-6-15(k)(5) (2015)).
101. 331 Ga. App. 839, 771 S.E.2d 490 (2015).
102. *Id.* at 839, 771 S.E.2d at 491.
103. *Id.* at 843, 771 S.E.2d at 493.
104. Ga. Unif. Super. Ct. R. 24.12 (2015).
105. *Uniform Superior Court Rules, supra* note 31.
106. Ga. Unif. Super. Ct. R. 24.11 (2015).
107. Ga. Unif. Super. Ct. R. 24.12.
108. 330 Ga. App. 169, 767 S.E.2d 789 (2014).

provision directed at the parties—discussing the case with the parties' children—since the mother's attorney had actual notice of the order and acted as the mother's representative when obtaining affidavits from the children.[109]

In *Pollard v. Pollard*,[110] the ex-husband sought to have his ex-wife held in contempt for failure to comply with a final judgment of divorce that required her to restore the ex-husband as the sole beneficiary of her pension benefits with survivorship rights. The trial court did not find the ex-wife to be in contempt, but ordered her to obtain a life insurance policy naming the ex-husband as the sole beneficiary or to establish a bank account payable on her death to the ex-husband. The trial court found that it was legally impossible for the ex-wife to comply with the terms of the divorce decree because she began receiving benefits before the entry of the divorce decree and was excluded from making the revision to her pension.[111] The supreme court reversed the trial court's order, holding that the trial court impermissibly modified the terms of the divorce decree because the order cited no evidence and contained no analysis to support the trial court's holding.[112] Such an analysis is required to ensure a contempt order is not an impermissible modification of a decree but is, instead, a permissible clarification with the intent and spirit of the final decree.[113]

In *Gunderson v. Sandy*,[114] the supreme court reversed the trial court's order, which found the ex-wife in contempt of a custody provision in the parties' divorce decree that required her to live within fifteen miles of the marital home while the child attended school.[115] The trial court's contempt order required her to move back into the child's school district.[116] The supreme court held that the order was an impermissible modification of the decree because it improperly imposed a new obligation upon the ex-wife instead of clarifying or enforcing the relocation provision.[117] The court held that the ex-wife could reside within a fifteen mile radius of the marital residence and still be outside of the relevant school district.[118]

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109. *Id.* at 169, 170, 767 S.E.2d at 792.
110. 297 Ga. 21, 771 S.E.2d 875 (2015).
111. *Id.* at 22, 771 S.E.2d at 876.
112. *Id.* at 24, 771 S.E.2d at 877.
113. *Id.* at 23, 24, 26, 771 S.E.2d at 877, 878, 879.
114. 295 Ga. 428, 760 S.E.2d 605 (2014).
115. *Id.* at 428, 429, 760 S.E.2d at 605, 606.
116. *Id.* at 428, 760 S.E.2d at 605.
117. *Id.* at 429, 760 S.E.2d at 605.
118. *Id.*

In *Hardman v. Hardman*,[119] the parties' final decree of divorce, incorporating the parties' settlement agreement, awarded primary physical custody of the children to the mother and joint legal custody. The father had final decision-making authority on education issues. However, the decree did not expressly identify which party was to pay for private school tuition. The mother refused to pay private school tuition, and the father filed a declaratory judgment action regarding whether the mother was required to pay the tuition out of her monthly alimony payments. The trial court granted the mother's motion for summary judgment on the ground that the father's action was barred by res judicata.[120]

The supreme court reversed the trial court's decision, determining that the trial court erred by applying the doctrine of res judicata because the rule of res judicata in divorce and alimony cases is that "a final decree has the effect of binding the parties . . . as to all matters which were actually put in issue and decided,"[121] and res judicata "does not bar litigation of matters that merely could have been put at issue in the earlier proceeding."[122] Additionally, the supreme court held that the mother, the custodial parent, was responsible for paying the private school tuition under the presumption that the custodial parent bears the expenses related to the children.[123] The presumption applied since the child support worksheet attached to the decree did not include any deviation for extraordinary educational expenses or provide findings that would necessitate shifting responsibility for paying the children's educational expenses to the father.[124]

In *Wheeler v. Akins*,[125] the mother argued that the trial court erred in granting the father's motion for judgment not withstanding the verdict.[126] The court of appeals disagreed and held that the trial court did not err in granting the father's motion because, regardless of its nomenclature, the motion sought to set aside the court's judgment on the ground that it was not supported by the evidence.[127] The court stated that "[d]uring the term in which a judgment is entered, a trial court has plenary control over it and has the discretion to set aside the judgment

119. 295 Ga. 732, 763 S.E.2d 861 (2014).
120. *Id.* at 733, 733-34, 734, 736, 763 S.E.2d at 863, 863-64, 864.
121. *Id.* at 735, 763 S.E.2d at 864 (quoting Brookins v. Brookins, 257 Ga. 205, 207, 357 S.E.2d 77, 79 (1987)).
122. *Id.*
123. *Id.* at 736, 734, 763 S.E.2d at 865, 867.
124. *Id.* at 737, 763 S.E.2d at 866.
125. 327 Ga. App. 830, 761 S.E.2d 383 (2014).
126. *Id.* at 830, 761 S.E.2d at 385.
127. *Id.* at 832, 761 S.E.2d at 386.

for irregularity, or because it was improvidently or inadvertently entered and for the purpose of promoting justice."[128]

VII. APPEALS

Two separate and unrelated cases styled as *Murphy v. Murphy* were decided during this survey period, as set forth below. In *Murphy v. Murphy*,[129] the supreme court held that while the court of appeals properly dismissed the mother's notice of appeal of the trial court's denial of her motion to recuse the judge, the court of appeals did so for the wrong reason.[130] The court of appeals reasoned that the amended statute at issue, which limited the scope of directly appealable orders in child custody cases, was a procedural statute that applied retroactively and precluded the mother's direct appeal.[131] While the amended statute had retroactive application, it did not retroactively apply in the mother's case because the filing of the action, the issuance of the order sought to be appealed, and the filing of the notice of appeal all occurred prior to the effective date of the amended statute.[132] As such, the prior version of the statute applied, but the statute did not provide for a right of direct appeal from the recusal order because the order did not involve custody.[133]

In *Murphy v. Murphy*,[134] the father filed a motion to hold the mother in contempt for violation of a temporary order in which the trial court ordered the parties to undergo a custody evaluation and to refrain from discussing the case with the children. The mother was held in contempt for refusing to cooperate with the custody evaluation, and the mother's attorney was held in contempt for discussing the case with the children.[135] Although the appeal of the temporary order was pending, the court of appeals held that the trial court maintained jurisdiction to hear the contempt motion since when an order granting non-monetary relief in a child custody case is appealed, the order remains effective until reversed or modified by the appellate court unless the trial court states otherwise in its judgment or order.[136] The court of appeals concluded

128. *Id.* (quoting Pope v. Pope, 277 Ga. 333, 334, 588 S.E.2d 736, 737-38 (2003)).
129. 295 Ga. 376, 761 S.E.2d 53 (2014).
130. *Id.* at 376, 761 S.E.2d at 54.
131. *Id.*
132. *Id.* at 377-78, 761 S.E.2d at 55.
133. *Id.*; *see also* O.C.G.A. § 5-6-34(a)(11) (2015).
134. 330 Ga. App. 169, 767 S.E.2d 789 (2014).
135. *Id.* at 169, 767 S.E.2d at 792.
136. *Id.* at 174, 767 S.E.2d at 795 (citing O.C.G.A. § 5-6-34(e) (2013)).

that the trial court did not state otherwise in the temporary order; therefore, the order remained enforceable.[137]

137. *Id.*