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Domestic Relations

By Barry B. McGough* and Lucy S. McGough**

Domestic relations cases continue to bombard the appellate courts. Approximately 100 such decisions were reviewed for the survey, but only a handful was truly significant. Perhaps the most important of these are the cases attempting to construe Georgia's new "no-fault" ground for divorce.[1] The subject matter of this report has been sub-divided for ease of use into six substantive areas: marriage, divorce, custody, alimony, adoption (including change of name), and legislation.

I. Marriage

Common law marriage continues ever present in Georgia domestic law. Two opinions rendered this survey year suggest that the practitioner would be well-advised to scrutinize cases involving non-celebrated liaisons, lest he be surprised by the discovery of a variant of the eternal triangle.

Edwards v. Edwards[2] was a contest between persons seeking to be appointed administrator of a decedent's estate. The caveator claimed the decedent's widow could not be administratrix because, *inter alia*, she had a previous, undissolved common law marriage to a third party. After noting the presumption favoring the validity of the second marriage and the burden of proof on the party attacking its validity, the court discounted evidence that the widow and her purported common law husband had once filed divorce proceedings which were dismissed for want of prosecution.

> While the statement in the divorce action that they were married on a day certain is sufficient to establish a marriage where there is no conflict of marriages, it is here, where there is a conflict of marriages, and there is no evidence to show the circumstances under which such common law marriage took place, who was present, what was the character of the ceremony, who officiated, etc., not evidence that they were married according to *any* formality to each other and the admitted marriage will not prevail over the ceremonial marriage . . . Nor would the presumption of

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1. GA. CODE ANN. § 30-102(13) (Supp. 1975). Forty five states now have some form of no-fault divorce procedure.
2. 136 Ga. App. 668, 222 S.E.2d 169 (1975).

> law, founded on cohabitation and repute, that a marriage had taken place prevail over proof of a subsequent ceremonial marriage. . . [citations omitted][3]

The rationale of *Edwards* is even more peculiar when contrasted to *Brown v. Brown*[4] which contains a comprehensive traditional analysis of common law marriage and is worthwhile reading as a summary of the applicable rules of law. In *Brown* the wife sued for divorce and alimony. The trial court granted judgment notwithstanding the verdict to the husband finding that the evidence failed to show a marriage contract. The appellate court found sufficient to establish the marriage contract evidence that the husband had said the parties were married and did not need a license or other paper to show it, the husband's insurance policy listing the plaintiff as his wife, and testimony of the plaintiff that she considered herself married. While circumstantial as well as direct evidence was admissible to prove the contract, the court did say it would be difficult for a jury to find a marriage contract where only circumstantial evidence was presented and both parties were available to testify.

II. DIVORCE

Never was the pen mightier than the sword than when the Georgia General Assembly engrafted the thirteenth ground for divorce onto Code § 30-102.[5] With a mere five words consisting of 32 letters the solons demolished more than a century of jurisprudence and the impact of that enactment has only just debuted. Listen to the 1976 Georgia Supreme Court in *McCoy v. McCoy*:[6]

> . . . where one of the parties to a marriage refuses to cohabit with the other and testifies that the marriage is irretrievably broken, the fact that the other party maintains hope for a reconciliation will not support a finding under *Harwell*[7] that there are "prospects for a reconciliation." Just as it takes two consenting parties to make a contract, it takes two consenting parties to make a reconciliation. Just as one party cannot make a contract, one party cannot make a marriage or a reconciliation thereof. . .[8]

The *McCoy* court's philosophy promises sweeping changes in divorce

3. *Id.* at 671, 222 S.E.2d at 171.
4. 234 Ga. 300, 215 S.E.2d 671 (1975).
5. GA. CODE ANN. § 30-102 (Supp. 1975) provides in part: "The following grounds shall be sufficient to authorize the granting of a total divorce; . . . 13. The marriage is irretrievably broken."
6. 236 Ga. 633, 225 S.E.2d 682 (1976).
7. Harwell v. Harwell, 233 Ga. 89, 209 S.E.2d 625 (1974).
8. 236 Ga. at 634, 225 S.E.2d at 683.

practice in contested cases. In *Friedman v. Friedman*[9] the court held that where both parties admit their marriage is irretrievably broken no factual issue remains for decision and divorce is properly granted by means of judgment on the pleadings. In *Loftis v. Loftis*[10] the husband employed the "no-fault" ground, while the wife counterclaimed based on cruel treatment. The court held:

> [W]here both parties by verified pleadings seek a total divorce, and the verified pleadings of one party assert that the marriage is irretrievably broken, it is not error for the trial judge to grant a divorce to both parties on the ground of irretrievable brokenness.[11]

In *McCoy*[12] the husband invoked the irretrievably broken ground and the wife denied the allegation and filed no counterclaim. The trial court's denial of the divorce on the theory that a marriage is not irretrievably broken solely because one spouse says it is was reversible error.

Presumably the case where both parties allege a fault ground still presents factual issues requiring trial, but counsel for the party with the worst facts would be ill-advised to allow such evidence to reach the ears of either judge or jury.[13] Common domestic trial strategy involves use of evidence relevant to a fault ground to influence the trier of fact on issues of alimony, property division and child custody. If divorce is granted on motion such evidence would appear no longer relevant and, indeed, could be prejudicial.[14] However, the *Loftis*[15] majority may have a different view, for it stated its holding

> . . . does not mean that, in the trial of other issues between the parties reserved for decision, either party is prevented from submitting relevant evidence to show, as he or she contends, the real cause of the separation and divorce. The fact finder, whether it be judge or jury, *may* consider such evidence in rendering a decision on the other issues between the parties.[16] [Emphasis supplied.]

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9. 233 Ga. 254, 210 S.E.2d 754 (1974); *See* McGough and McGough, *Domestic Relations*, 27 MER. L. REV. at 89-90 (1975).

10. 236 Ga. 637, 225 S.E.2d 685 (1976).

11. 236 Ga. at 639, 225 S.E.2d at 686.

12. 236 Ga. 633, 225 S.E.2d 682 (1976).

13. The courts appear eager to locate a no-fault basis for divorce and an inartful allegation of a fault ground can leave counsel without a case. In Marshall v. Marshall, 234 Ga. 393, 216 S.E.2d 117 (1975) the amended complaint alleged "[s]aid cruel treatment was wilful and intentional on the part of the defendant and has made it impossibly, [sic] for plaintiff to continue living with defendant." 234 Ga. at 393, 216 S.E.2d at 118. This allegation was held "equivalent to allegations of her inability to cohabit with her husband and the absence of prospects for a reconciliation." *Id.* at 394, 216 S.E.2d at 118. The trial court granted the defendant-husband's motion for judgment on the pleadings and the supreme court affirmed.

14. Of course, evidence relating to the desire of the party opposing divorce to reconcile remains relevant. Minielly v. Minielly, 234 Ga. 434, 216 S.E.2d 271 (1975).

15. 236 Ga. 637, 225 S.E.2d 685 (1976).

16. *Id.* at 639, 225 S.E.2d at 686.

Most trial judges, given this leeway, are unlikely to hear anything they can avoid. The inability to introduce evidence on the bad traits of the opposing spouse could lead to more out-of-court settlements, especially if one spouse is a considerably more likeable witness than the other.

The role of parties litigant may suddenly reverse when divorce is granted by motion. If plaintiff-husband seeks a divorce from defendant-wife who desires alimony, and divorce is granted by motion, when the trial date arrives the wife will find herself the plaintiff since she has the burden of proof on her alleged entitlement to alimony. She can offer evidence of her need and husband's financial ability, and husband can defend by showing wife's adultery or desertion. When the evidence is in, however, the wife (the original defendant) will have the right to open and close the argument to the jury. Of course an original plaintiff-wife would have the same posture, but it now appears that one off-shoot of the no-fault ground guarantees the wives the last word.

Not all the divorce cases turned on issues arising out of the irretrievably broken ground. In *Blois v. Blois*[17] the court ironically held that cruel treatment and desertion are not "like conduct"[18] which prohibit grants of divorce. In *Bullock v. Bullock*[19] the supreme court upheld the trial court's allowance of a jury trial where demand was not filed until after the parties had announced ready.

III. Custody

A. *Jurisdiction and Procedure*

Many of the troublesome jurisdictional questions in the area of custody law were laid to rest in decisions discussed in last year's survey article.[20] *Word v. Word*[21] summarized and reaffirmed many of those principles and held that a non-resident custodian physically in Georgia for the purpose of having her contempt petition heard could not validly be served with a petition to modify a Georgia custody decree. Once a Georgia custodian establishes residence in another state, the latter forum acquires jurisdiction over all questions relating to the welfare of the children except in certain instances.[22] One of those instances is kidnapping or child piracy as evidenced by *Dearman v. Rhoden*[23] and *Boggus v. Boggus*.[24]

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17. 234 Ga. 475, 216 S.E.2d 281 (1975).
18. *Id.* at 476, 216 S.E.2d at 282.
19. 234 Ga. 253, 215 S.E.2d 255 (1975).
20. McGough & McGough, *Domestic Relations*, 27 Mer. L. Rev. 79, 80-84 (1975).
21. 236 Ga. 100, 222 S.E.2d 382 (1976).
22. *Id.* at 101, 222 S.E.2d at 382; for discussion of the "exceptions" *see* Glover v. Sink, 230 Ga. 81, 195 S.E.2d 443 (1973); Padgett v. Penland, 230 Ga. 824, 199 S.E.2d 210 (1973); Moss v. Buhrman, 231 Ga. 288, 201 S.E.2d 472 (1973).
23. 235 Ga. 457, 219 S.E.2d 704 (1975).
24. 236 Ga. 126, 223 S.E.2d 103 (1976).

Dearman "is a re-run of *Padgett v. Penland*"[25] as Justice Gunter reminds us in his dissent.[26] The non-resident mother had been awarded custody by a Florida court and had permitted the father temporarily to visit with the children at his home in Georgia. He failed to return the children andwhen the mother appeared in Georgia to reclaim them she was served with a petition to change custody. Not only did the trial court give the father custody, but also it required the mother to post a $5,000 compliance bond prior to her summer visitation during which she could take the children to her home in Mississippi.

Although *Boggus*[27] primarily rests on other principles, it obliquely extends *Dearman* to situations where the Georgia resident goes to the non-resident's state, surreptitiously pirates the children, and whisks them back to the confines of the Georgia courts. The mother and father were Georgia residents until the former's sudden departure for California in company with the children. Two days later she filed proceedings in that state for custody, alimony, child support and attorney fees. The father was served by mail only and acknowledged by affidavit receipt of process but made only a special appearance, which he later withdrew, in the California proceeding. The wife's prayers were granted. The husband later instituted a divorce proceeding in Georgia in which a final decree making no custody determination was entered. Thereafter he snatched the children, without the mother's knowledge, from California, returned to his home and instituted the present action. The wife answered and appeared in the Georgia court. While the Georgia action was pending the California courts granted the wife a final divorce and awarded her custody. The Georgia court then granted custody to the husband, holding the California decree void for lack of personal jurisdiction over the husband and finding that changed conditions since that decree authorized changing the custodian to the father. The supreme court held that since the husband was not personally served and the children were not physically in California when any of the orders were entered, the foreign court was without jurisdiction and its orders were nullities and not entitled to full faith and credit.[28]

Perhaps the supreme court's holding was merely a case of tit for tat. Moreover, the parties and the children were all before the Georgia trial court. Yet the fact remains that the husbands defied the orders of courts of law in *Dearman* and *Boggus* and prevailed. Such results would appear to encourage child piracy in the future and may make Georgia a haven for non-custodians.

In other cases, the supreme court held awards of attorney fees were not

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25. 230 Ga. 824, 199 S.E.2d 210 (1973).
26. 235 Ga. at 459-60, 219 S.E.2d at 706.
27. 236 Ga. 126, 223 S.E.2d 103 (1976).
28. *See, e.g.*, Christian v. Gainer, 236 Ga. 376, ___ S.E.2d ___ (1976) in which a foreign custody order was held not entitled to full faith and credit where service on the Georgia resident was by publication only.

authorized in proceedings to modify child custody,[29] and that a trial court could modify its own custody order in the same term of court on its own motion or on motion of a party.[30] In *Jardine v. Jardine*[31] the court held that a litigant's answering questions on deposition without claiming the privilege against self-incrimination made "that testimony admissible at the subsequent hearing regardless of her later claim of privilege."[32]

B. *Substantive Custody Law*

Georgia courts have long had the discretion in custody disputes between parents to award custody to either parent or a third party as the best interests of the child dictate.[33] In *Todd v. Todd*[34] a husband's testimony regarding his wife's adultery did not require reversal of a custody award to the husband since the other evidence did not demand a contrary result and the mother was given custody for three months during the summer.

The rules regarding custody disputes between parents and third parties have been entirely different, however.[35] Three cases decided during the survey year accommodate nicely familiar general principles, but the fourth could stand this entire corner of the law on its head. In *Howell v. Gossett*[36] the supreme court reversed a trial court's refusal to give the natural father custody in his dispute with a stepfather. The natural mother, who obtained custody on divorce, had died and the stepfather retained the children. The divorce decree did not require child support and the natural father did not contribute nor seek visitation. Acquiescence in the decree was held not to be a contract releasing parental power pursuant to GA. CODE ANN. § 74-108(1), nor was it evidence of abandonment under terms of GA. CODE ANN. § 74-108(3). Since the natural father was not shown to be unfit he was entitled to custody.

In *White v. Bryan*[37] the natural father did not fare so well where the evidence indicated he had shown little interest in the children, drank excessively, had several arrests, lived with his paramour and had no plans

29. Wilkens v. Wilkens, 234 Ga. 404, 216 S.E.2d 302 (1975). In this case the husband instituted the modification proceeding and lost and an award to the wife's attorney was reversible error. *Query:* is not any proceeding to modify custody filed by a father under court order to pay child support implicitly an action to modify alimony?

30. Pekor v. Clark, 236 Ga. 457, 224 S.E.2d 30 (1976). The procedural device employed by the movant-husband was a motion to arrest judgment. The trial court transferred custody to the father, disregarding the separation agreement signed by the parties which had awarded custody to the mother.

31. 236 Ga. 323, ___ S.E.2d ___ (1976).

32. *Id.*

33. *See* McGough & McGough, *supra* note 20, at 84-86.

34. 234 Ga. 156 215 S.E.2d 4 (1975).

35. See McGough & McGough, *supra* note 20, at 86-89 for a review and discussion of the applicable rules.

36. 234 Ga. 145, 214 S.E.2d 882 (1975).

37. 236 Ga. 349, ___ S.E.2d ___ (1976).

for custody if he prevailed. Such facts rendered the natural father unfit to have custody.

Triplett v. Elder[38] held the mother's acquiescence in the paternal grandmother's custody since 1966 was a voluntary relinquishment per GA. CODE ANN. § 74-108(1) even in the absence of evidence showing her to be unfit.

Turner v. Head[39] may well be a landmark case in Georgia custody law perhaps surpassing in significance *Perkins v. Courson*.[40] The child over whom battle raged resided with his paternal grandparents. The natural father, whose paternity was undisputed, lived in a nearby trailer. The mother resided with the maternal grandmother to whom custody was awarded in this habeas corpus proceeding. The mother testified that she left the father because he would not marry her, but the father claimed they were common law spouses. The trial court refused to adjudicate the issue of the existence of a common law marriage, opined that the father could not raise the child in his present circumstances, and ". . . concluded that it was in the child's best interest that custody be awarded to the maternal grandmother with whom the natural mother resided."[41]

Affirming the trial court'e decision, the supreme court stated it knew

> . . . of no prior adjudication, and none has been cited to us, that throws any clarifying light on this factual situation that would lead to a proper and just determination of this case. We have carefully read the transcript of the evidence presented to the trial judge; the evidence adquately supports the decision that he rendered; and we conclude that he properly exercised his discretion in determining *what disposition of the child would be in the child's best interest*."[42] [Emphasis supplied.]

The court acknowledged that if there was no common law marriage the mother would be entitled to custody, yet the case was not remanded to the trial court for a finding on this question. Furthermore, neither parent was expressly found unfit, nor was any other traditional ground cited. The decision to award custody to the maternal grandmonther appears to rest solely on the basis of best interests of the child. Such a principle would bring custody disputes between parents and non-parents into harmony with rules governing custody clashes between natural parents and go a long way toward reducing all custodial decisions to their least, yet highest, common denominator: the welfare of the child.

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38. 234 Ga. 243, 215 S.E.2d 247 (1975).
39. 236 Ga. 483, 224 S.E.2d 360 (1976).
40. 219 Ga. 611, 135 S.E.2d 388 (1964).
41. 236 Ga. at 484, 224 S.E.2d at 361 (1976).
42. *Id.*

IV. ALIMONY

A. *The Alimony Obligation*

Several cases dealt with various aspects of the alimony obligation. Although the cases have been grouped by subject matter, no attempt has been made to synthesize them.

A jury verdict awarding alimony "of a minimum of twenty percent" of the husband's gross salary and/or wages until a total sum of $15,000 has been paid was not so vague as to invalidate the judgment or avoid enforcement by contempt.[43]

In *Shepherd v. Shepherd*[44] the wife was awarded alimony in her separate maintenance action. The husband then filed for divorce and a temporary order was entered denying alimony. The wife brought a contempt action to enforce the first alimony order and the trial court held the husband in contempt up until the date of entry of the temporary order. Affirming, the supreme court noted the temporary order only held the separate maintenance order in abeyance until a final judgment was entered. If the final judgment did not deal with alimony then the separate maintenance order would remain in effect. If it did deal with alimony the final judgment would entirely supersede the earlier award.

An agreement by a putative father to support his alleged child was held to discharge completely his obligation and render the mother without remedy to seek a different award or to modify the agreement.[45] Such a contract is valid even if parol and whether or not parentage is acknowledged. The result was bottomed on the policy encouraging settlement of bastardy proceedings.

In *Young v. Young*[46] the husband's adjudication as a bankrupt did not discharge him from the duty imposed by a divorce decree to pay one-half of a debt jointly incurred with his former wife where the debt was secured by a lien on the wife's residence. The court stated: "We construe the original judgment to mean that the appellee was awarded lump-sum alimony in the amount of one-half of the bank debt. . ."[47] The court reached this result in spite of the provision in the final decree specifically indicating neither party was intended to be barred "from seeking any debtor relief, including bankruptcy, . . . so as to effectively discharge their liability from any part or portion of the above indebtedness."[48] Other debts for which the husband was made responsible were deemed not to be alimony payments and were discharged, except for the attorney fees awarded to the wife's attorney which were held to be temporary alimony.

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43. McClure v. McClure, 235 Ga. 119, 218 S.E.2d 850 (1975).
44. 236 Ga. 425, ___ S.E.2d ___ (1976).
45. Warner v. Burke, 137 Ga. App. 185, 223 S.E.2d 234 (1976).
46. 234 Ga. 256, 215 S.E.2d 258 (1975).
47. *Id.* at 257, 215 S.E.2d at 259.
48. *Id.* at 256, 215 S.E.2d at 259.

In *Hagstrom v. Hagstrom*[49] the wife discharged her attorney prior to the final decree which incorporated an agreement by the terms of which she and her husband were each responsible for their own attorney fees. The wife's discharged attorney was prohibited from enforcing a subsequently obtained award[50] either under the lien statute[51] or by any action against the husband. Since the trial court had not reserved jurisdiction for an application for attorney fees prior to entry of the final decree, it could not bind the former husband. The discharged attorney must therefore look to his client for his fee. In another attorney fee case,[52] the husband appealed a $1,750 award by the trial judge rendered after a jury verdict was made the judgment of the court. The husband's contention that the trial court no longer had jurisdiction to grant attorney's fees after termination of the marriage was found to be non-meritorious.[53] On the wife's cross-appeal the court assessed ten percent of the award as damages, finding the husband's appeal to be for delay purposes only.

A phrase in the separation agreement that was incorporated in the divorce decree requiring the husband to bear the cost of "all doctor and hospital bills" was held to include reasonable dental bills but not those of a child psychologist.[54]

A property settlement agreement required the husband to maintain life insurance policies then in effect and name his children as beneficiaries so long as he had any financial responsibility to them. The husband remarried, increased his coverage, and named his new wife beneficiary; he had never named the children beneficiaries. In a contest over the $60,000 in proceeds the supreme court held: ". . . the minor children acquired a vested interest in the proceeds of the insurance contracts as those contracts existed on the date of the entry of the court decree. . .",[55] but that vested interest was limited to the value of the insurance provided at the time the decree was entered.

In *Rathkamp v. Rathkamp*[56] an action by the former husband-co-tenant to partition realty in which a divorce decree had awarded his former wife a one-half interest was dismissed by the trial court and affirmed by the court of appeals. The separation agreement provided:

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49. 235 Ga. 853, 221 S.E.2d 602 (1976).

50. The trial court had ruled in favor of the attorney's petition to order the husband to pay him $2,000 and presumably to make that order a part of the divorce decree. The petition was filed after the final decree but within the same term of court.

51. GA. CODE ANN. § 9-613(2) (Supp. 1975).

52. Hodges v. Hodges, 235 Ga. 848, 221 S.E.2d 597 (1976).

53. Both parties stipulated that the matter of attorney fees was reserved. The court found this stipulation to have the effect of reserving its jurisdiction.

54. Rodgers v. Rodgers, 234 Ga. 463, 216 S.E.2d 322 (1975).

55. Reeves v. Reeves, 236 Ga. 209, 212, 223 S.E.2d 112, 115 (1976).

56. 136 Ga. App. 423, 221 S.E.2d 221 (1975); See, Scales v. Scales, 235 Ga. 509, 220 S.E.2d 267 (1975) for an example of the dangers inherent in the transferring of title to realty by a husband to his wife during matrimony.

> . . . until the said real estate is sold by the parties, or until the Wife remarries, or until the Wife voluntarily removes herself from the said real estate, whichever event first occurs. . .;[57]

the parties would be tenants in common with a one-half undivided interest each and that the husband was to pay all charges against the property until it was sold. Until one of the named conditions occurred or the wife elected to sell her interest the husband could not escape his liability.

In *Moore v. Moore*[58] a provision in an agreement which required that the college to be attended by the child "be selected by mutual agreement" of the husband, wife and the child, was held to be a condition precedent to the husband's obligation to pay college expenses. In *McClain v. McClain*[59] an agreement to provide college expenses was held valid and enforceable by contempt where the agreement contained this clause:

> As further child support, [the husband] agrees to provide a college education for each and every one of the four minor children. This education is to be on a plane equal to the educational opportunities offered at the University of Georgia, in Athens, Georgia.[60]

The court held the agreement could be enforced beyond the 21st birthday of each child.[61]

B. *Modification of the Obligation*

A petition to modify alimony is not premature if filed within two years from the date of the last *order* modifying such payments, so long as it is not filed within two years of the *filing* of the last petition seeking modification.[62] The trial court is without jurisdiction to modify an alimony decree in a proceeding brought to set that judgment aside.[63] However, the supreme court in *Palmes v. Palmes*[64] affirmed a judgment reducing an alimony award which was entered the day after the petition was filed. The court held that since both parties were represented by counsel, evidence was heard and no objection was made, it was too late to attack the judgment on jurisdictional grounds. Justice Ingram dissented because the decision implied that parties could now obtain a divorce on the same day the complaint was filed if they consented thereto.[65]

In *Mitchell v. Mitchell*[66] the separation agreement provided that compli-

57. 136 Ga. App. at 423, 221 S.E.2d at 221-222.
58. 235 Ga. 512, 220 S.E.2d 133 (1975).
59. 235 Ga. 659, 221 S.E.2d 561 (1975).
60. 235 Ga. at 660, 221 S.E.2d at 562 (1975).
61. *Compare*, Anderson v. Powell, 235 Ga. 738, 221 S.E.2d 565 (1975).
62. Gerron V. Gerron, 235 Ga. 851, 221 S.E.2d 600 (1976).
63. Frost v. Frost, 235 Ga. 672, 221 S.E.2d 567 (1975).
64. 236 Ga. 115, 223 S.E.2d 86 (1976).
65. 236 Ga. at 117-18, 223 S.E.2d at 87-88.
66. 235 Ga. 101, 218 S.E.2d 747 (1975).

ance with its terms *"shall be in full and final settlement of any and all obligations of the Defendant to provide support and alimony of any kind and nature to the Plaintiff."* [Emphasis by the court.][67] That provision barred the husband's right to seek a modification of alimony but did not affect modification of his child support obligation. However, in *McLoughlin v. McLoughlin*[68] language in the agreement that it "is a full, complete and final settlement between the parties" was held insufficient to waive modification.

In *Livsey v. Livsey*[69] the supreme court all but expressly held that the income and property of a present wife could be used in measuring the husband's financial condition in a modification proceeding brought by his former wife. The jury increased child support by fifty percent although the husband's monthly income showed an increase of less than ten percent. But

> . . . the evidence showed the appellant was living in a home owned by his second wife and had the use of a motor vehicle supplied by her. There was evidence from which the jury could find both increased income and decreased expenses. The evidence supported the verdict . . . [citations omitted].[70]

However, since the evidence did not show the present wife's income, the court refused to decide squarely the question of whether such evidence was relevant and declined to find the following charge to the jury reversible error:

> The financial status of the husband, the value of his property, his estate, his income, the resources with which he procures income, the extent of his earning capacity, his training and his ability, and income of his present wife, if any was shown, all are factors which should be considered if the evidence revealed such to you.[71]

V. Adoption and Name Change

Nix v. Sanders[72] provided more impetus for the newest ground for exemption from the requirement of consent of a natural parent to the adoption of his child.[73] Evidence that the natural father failed to comply with a court decree requiring child support for a period of more than four years prior to the filing of the petition for adoption, that the father knew the children's general location and knew that his parents occasionally vis-

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67. 235 Ga. at 102, 218 S.E.2d at 747 (1975).
68. 234 Ga. 259, 214 S.E.2d 925 (1975).
69. 234 Ga. 53, 214 S.E.2d 520 (1975).
70. *Id.* at 54, 214 S.E.2d at 521.
71. *Id.* at 54, 214 S.E.2d at 522.
72. 136 Ga. App. 859, 223 S.E.2d 21 (1975).
73. Ga. Code Ann. § 74-403 (Supp. 1975).

ited them was sufficient to excuse the necessity of his consent to the adoption.

The rule that written consent to adoption is irrevocable as a matter of right may have itself been revoked by *Duncan v. Harden.*[74] The facts are too involved for reproduction here, but suffice it to say that the mother consented to the adoption at least twice and the father once, both changed their minds, and they successfully wrested custody of their child from the welfare agency by petition for habeas corpus.

In *Doe v. Roe*[75] the natural mother and her second husband registered a child in school in the husband's name. First husband sued to prevent change in the child's name. *Both* husbands claimed paternity. The mother stated the second husband was the father, but the child's birth certificate and the decree divorcing the mother and the first husband cited the latter as the father. The trial court restrained registration of the child by any name other than that appearing on the birth certificate. The appellate court affirmed, suggesting that the mother and her second husband could squarely raise the issue of paternity by filing a petition for change of name pursuant to GA. CODE ANN. §§ 79-501 *et seq.*

VI. LEGISLATION

Trial courts may now entertain actions to modify visitation rights every two years *without* any showing of changed conditions.[76] The court may also grant reasonable visitation rights to maternal and paternal grandparents.[77]

Attorneys may file actions in their own name to enforce a grant of attorney's fees awarded as temporary ailmony.[78]

The age of capacity to contract marriage has been lowered to sixteen years for all persons.[79]

The Georgia General Assembly has enacted a comprehensive Marriage and Family Counselor Licensing Act[80] which provides that communications between such a counselor and the counselee are privileged.[81]

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74. 234 Ga. 204, 214 S.E.2d 890 (1975).
75. 235 Ga. 318, 219 S.E.2d 700 (1975).
76. Ga. Laws, 1976, pp. 1050-54.
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80. Ga. Laws, 1976, pp. 659-71.
81. Ga. Laws, 1976, pp. 670-71.