

“FAMILY LAW OVERVIEW”

Presented by:

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Kessler, Schwarz & Solomiany, P.C. provides legal representation in all areas of family law, such as divorce, child custody, child support, modification, paternity/legitimation, contempt and pre/post nuptial agreements. We look forward to answering your legal questions and to the possibility of representing you.



ROADMAP

- **Divorce**

- Grounds/Other Issues
- Child Custody
- Child Support (old and new guidelines)
- Alimony
- Property Division

- **Modification Actions**

- Child Support & Alimony
- Custody
 - relocation,
 - 14 year old election,
 - interstate issues . . .

- **Other Issues**

- Legitimation
- Paternity
- Contempt
- Prenuptial Agreements
- Family Violence Actions / Restraining Orders



DIVORCE: GROUNDS/ JURISDICTION

- GA is a “No Fault” state.
- What is “No Fault”?
- Adultery is still relevant.
- Other fault can be relevant.
- If uncontested, divorce can be finalized 31 days after filing.
- To file, one side must live in GA at least 6 mos.
- Generally, divorce must be filed in county where Defendant resides.



Groucho Marx once said...



*“I was married by a Judge,
I should have asked for a jury. . .”*

Jury may determine property division, alimony
and child support (either side may request jury).

Only judge can determine custody & fees.



CHILD CUSTODY

- No jury for this issue.
- Judge determines custody and visitation issues.
- Standard:
 - “Best interests of child”.
- Court may look at all factors and circumstances.
- Whatever you can imagine, it’s relevant.
- Judge can and will usually “let it all in”.



Legal v. Physical (Custody)

- Legal custody:
 - Who makes decisions.
 - Who has access to records.
 - Who gets notified in emergencies.
- Physical custody:
 - Where child lives.
 - School district.
 - Right to relocate?

The real bottom line: Read the fine print. Don't get hung up on labels.



LEGAL CUSTODY

- “Joint legal custody” is very common.
- “Joint legal custody” allows both parents to have access to any and all records and to be involved in decisions.
- One parent must have final decision making authority over these issues; can be divided:
 - Medical, Educational, Extra Curricular, Religious.....



PHYSICAL CUSTODY

- Sole/Primary Physical Custody: the parent with whom the child spends more time...
- Other parent will be awarded visitation with child.
- Factors that affect visitation: age of child, role of parent prior to divorce case, etc . . .
- Child who is 14 years of age can elect who he/she will live with (as of 2008, judge can overturn the choice . .)
 - 11, 12 & 13 year old can voice their preference.



CUSTODY EXPERT WITNESSES

- Used in contested custody cases.
- *Guardian Ad Litem* (GAL): appointed by the court to investigate the circumstances related to the child.
- GAL issues report and a non-binding recommendation to the Court on custody and visitation.
- GAL has full access to most records of parties and child; very few constraints.



CUSTODY EXPERT WITNESSES

- Psychologist/Psychiatrist/M.D.
- Sometimes appointed to assist GAL .
- Mainly in highly contested cases.
- Can perform custody evaluations, fitness evaluations or other psychological evaluations to assist Court.
- Cost? \$5,000.00 to \$10,000.00 and up...



CHILD SUPPORT GUIDELINES

- O.C.G.A. Section 19-6-15
- Formerly based on gross income of non-custodian.
- New law as of Jan. 1, 2007. Complicated.
- Both parents' incomes input into chart.
- Special excel or internet calculator then used.
- BCSO is starting point.
- Then we argue for deviations.
- Let's explore it a little further.



NEW CHILD SUPPORT GUIDELINES

- Effective Jan. 1, 2007
- Income shares model (we now look at both parties' incomes).
- Most states now have "income shares" models.
- There is a chart for joint incomes up to \$30,000.00 per month.
- For income above that, we extrapolate.



The “Overview” of the new Guidelines:

One succinct description:

- (1) Adjust Gross Income to get “Adjusted Income”.
 - (The combined Adjusted Income of both parents determines the Basic Child Support Obligation (BCSO) from the Child Support Obligation Table.
- (2) The BCSO is then adjusted by Health Insurance and Work-Related Child Care Costs to get the “Presumptive Amount of Child Support”.
- (3) The Court, in its discretion, may then deviate from this amount to set the Child Support amount (Parenting Time?).



NEW CHILD SUPPORT GUIDELINES: OTHER ISSUES

- Once “Presumptive amount” is determined, Court can deviate.
- Factors court may consider to deviate: prior support obligations for other children, alimony, parenting time, travel expenses for visitation.
- WHAT DOES ALL THIS MEAN?
 - Generally, these new guidelines will result in lower amounts paid by high-income parents.
- Other changes:
 - interest
 - New rate
 - Discretionary
 - role of jury,
 - “theoretical” support.



ALIMONY

- Unlike child support, no “alimony guidelines”.
 - Some states do have them.
- Lifetime alimony, is becoming rare.
- Alimony is more of an alternative method to reallocate assets or income.
- Generally taxable to recipient; deductible by payor.
- Generally non-dischargeable in bankruptcy.
- Generally terminates upon remarriage or death.
- If adultery caused the separation or prevented reconciliation, adulterer is barred from seeking it.
- Factors: See next slide...



Alimony Factors

- (1) Standard of living while married;
- (2) Duration of marriage;
- (3) Age and physical and emotional condition of both parties;
- (4) Financial resources of each;
- (5) Time needed to acquire sufficient education or training to enable a party to find appropriate employment;
- (6) Contribution of each party to the marriage, including homemaking, child care, education, and career building of the other party;
- (7) Condition of the parties, including the separate estate, earning capacity, and fixed liabilities of the parties; and
- (8) Such other relevant factors as the court deems equitable and proper.



Adultery is a bar to alimony.

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DIVISION OF PROPERTY

- “Equitable division” (not “community property”).
- Equitable = fair. No statute on property division.
- Only “marital property” is subject to division.
- “Separate property” includes inheritance, gifts and property acquired prior to the marriage.
- Factors to consider:
 - “source of funds”, conduct of parties, income, etc . . .
 - “Thomas v. Thomas” is the main case.
- Prenuptial agreement can define this further.
 - Prenups to be discussed at the end.



MODIFICATION ACTIONS

Custody, Child Support & Alimony

Property Division is Never Modifiable
Parties can agree to waive modification of alimony.

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MODIFICATION OF CHILD CUSTODY

- (1) Has there been a “significant change” which materially affects the child?
- Election of a 14 year old is such a change.
 - Jan. 1 2008 law changes a bit.
- Relocation of a parent is now recognized as such a change.
- (2) Once a change is proved, inquiry becomes:
 - “What is in the child’s best interest?”
 - Attorney’s Fees can now be awarded in modification action.
 - To modify “Visitation”, only need to show it is in child’s best interests.
 - Only once every 2 years.



UCCJEA:

Uniform Child Custody Jurisdiction and Enforcement Act

- Covers jurisdiction when parents in different states.
- Generally, home state of child will determine custodial issues.
 - (where child has lived for the past 6 months).
- Modifications: state that has exclusive continuing jurisdiction (ECJ) is only state that can modify custody (unless it declines jurisdiction).
- If home state declines, state with most connections can determine custody issues.



MODIFICATION OF CHILD SUPPORT & ALIMONY

- Must prove a significant change in:
 - (1) Income of custodial or non-custodial parent; or
 - (2) Financial Situation of custodial or non-custodial parent; or
 - (3) Needs of the child.
- 2 years waiting period between modifications by same party.
- Prevailing party may be awarded attorney's fees from other party.



UIFSA

Uniform Interstate Family Support Act

- Jurisdiction for support when parties live in different states.
- For establishment, modification or enforcement of child support or alimony.
- State with ECJ over Order is only state that can modify support order.
- Once ECJ is lost, must modify where other party lives.
- To modify, both personal and subject matter jurisdiction is required (only one state).
- To enforce, only personal jurisdiction is required (can be in many states).



LEGITIMATION & PATERNITY

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LEGITIMATION & PATERNITY

- Legitimation:
 - Filed by father of child born out of wedlock.
 - Prior to legitimation, father has very few rights (but duty of support exists).
 - Once Legitimation is established, father may sue for custody.
 - Law recently changed to allow legitimation and custody to be litigated in same action.
- Paternity:
 - Filed by mother of child born out of wedlock.
 - Filed to obtain child support from father.
 - Attorney's fees awardable.
 - Georgia recently enacted a **Paternity Fraud Statute** (OCGA 19-7-54).
 - “Who’s Your Daddy” Statute.



CONTEMPT ACTIONS

- Actions filed “post-judgment” when a party is not abiding by a Court’s Order.
- Commonly filed for past due child support and/or alimony, or when visitation provisions violated.
- Possible relief:
 - attorney’s fees,
 - incarceration,
 - adjustments to visitation.
- Civil vs. Criminal Contempt.



PRENUPTIAL AGREEMENTS

3 requirements to enforce Prenuptial Agreement:

- (1) Agreement must not have been obtained through fraud, duress or mistake; or through misrepresentation or non-disclosure of material facts (**full financial disclosure is key!**); and,
- (2) The agreement is not unconscionable; and,
- (3) Facts and Circumstances have not changed so as to make its enforcement unfair or unreasonable . . .

Practice pointer: Both sides should have lawyers.



POST-NUPTIAL AGREEMENTS

- Same concept. Same legal standards.
- Only signed after, instead of before wedding.
- Why do people want them?
- Common reasons:
 - Ran out of time before wedding.
 - Gift coming that grantee wants to protect.
 - One spouse caught cheating, so other wants financial security in exchange for forgiveness,



FAMILY VIOLENCE PREVENTION ACT

- Civil relief when violence occurs between certain people.
- Can be filed by a spouse, father/mother of a child, or an individual who resides in the same house as the other.
 - Step-relatives can file.
 - Roommates can file.
- Ex Parte: Can be filed and obtained without prior notice when there has been an assault.
- If Family Violence found, then extraordinary relief can be granted (custody, child support, use and possession of residence, etc. . .).
- After initial, ex parte filing, a hearing must be held w/i 30 days.
- Problem: these are sometimes filed to obtain an advantage in subsequent divorce action.



Questions before we end?

- Family Law covers:
 - Divorce
 - Custody
 - Support
 - Prenuptial Agreements
 - Postnuptial Agreements
 - Paternity
 - Legitimation
 - Modification
 - Contempt
 - Adoption
 - Family Violence Petitions
 - Separate Maintenance
 - Grandparent's rights



A “PDF” version of this power point presentation is available at:

www.kssfamilylaw/resources/presentations

Any last questions?



Last bit of advice:
Be sure your parties don't rub it in:



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End of “**Family Law Overview**” and end of my time. Thank You For Your Time

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