2004-2005 Georgia Case Law and Legislative Update

BY:

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GEORGIA CASE LAW AND LEGISLATIVE UPDATE

I. DIVORCE

Popham v. Popham, 278 Ga. 852, 607 S.E.2d 575 (2005)

Facts: Wife filed for divorce from Husband on the grounds of cruel treatment and the marriage was irretrievably broken. Following a jury trial, the court incorporated the jury's verdict into a final divorce decree. Husband's requests for a judgment notwithstanding the verdict and for a new trial. Husband subsequently filed an application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether the trial court erred by:

(1) admitting evidence related to Husband's use of Viagra;

(2) admitting evidence related to Husband's infidelity which occurred 14 years before the parties' divorce.

Holding/Analysis: The Supreme Court affirmed the judgment of the trial court.

(1) The court did not err in admitting limited evidence related to Husband's use of Viagra, a prescription medicine which is used to treat erectile dysfunction. Wife claimed that Husband used Viagra during his participation in extramarital affairs during the marriage. Because a party in a domestic relations case may try to prove infidelity or sexual misconduct through circumstantial evidence, evidence related to Husband's Viagra use was relevant, including Husband's reasons for seeking Viagra from his physician and the condition that the Viagra treated.

(2) The court did not err in admitting limited evidence related to an extramarital relationship which Husband participated in 14 years before the divorce. Such evidence impeached Husband's testimony that he had never engaged in an extramarital

relationship and supported Wife's claim of cruel treatment by Husband.

II. CHILD CUSTODY

A. *Initial Determination*

Anderson v. Anderson, 278 Ga. 713, 606 S.E.2d 251 (2004)

Facts: Teena Marie Anderson (Wife) and her husband Anthony Ray Anderson (Husband) were divorced in 2003 pursuant to an amended final judgment and decree. Husband and Wife have two children: a son born in 1993 who Wife brought into the marriage and Husband adopted, and a daughter born of the marriage in 1999. The trial court awarded the parties with joint legal custody of the children, with primary physical custody of the son to Wife and primary physical custody of the daughter to Husband. The trial court denied Wife's motion for new trial, and Wife filed an application for discretionary review.

The Georgia Supreme Court granted Wife's application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether the trial court abused its discretion in making a custody award which separated the siblings.

Holding: The trial court did not abuse its discretion by awarding primary physical custody of one child to a parent and primary physical custody of another child to the other parent.

Analysis: The trial court repeatedly stated in its amended final judgment and decree of divorce that custody of the children must be determined based on what is in the best interests of the children in accordance with O.C.G.A. § 19-9-3(a)(2). The trial court found that Husband cared for the children when Wife was out of town, fed, clothed and

bathed them, took them to doctor's appointments and helped the son with his school work. The trial court found that although Wife loved the children, she "put her own desires and perceived needs ahead of and to the detriment of her children" and lacked "the moral fiber" to be a role model for the children. The trial court found further that Wife was not a credible witness and had "deliberately misrepresented matters to the court." There was no evidence that the trial court based its custody award on the children's biological relationship to Husband. Both parties participated in sexual indiscretions, but there was no evidence that the trial court made its custody determination by holding Wife to a higher standard regarding sexual indiscretion. The trial court's factual findings were supported by evidence; therefore, the trial court did not abuse its discretion in making a custody award which separated the siblings.

B. *Modification*

Hardin v. Hardin, 2005 WL 1692554 (Ga.App.)

Facts: Douglas ("Father") and Rita Hardin ("Mother") divorced in 2001. The divorce decree provided the parties with joint legal and physical custody of their two(2) minor children and Mother with primary physical custody of the children during the school year. Mother subsequently accepted an employment position in Minnesota. Her impending relocation led to the filing of custody modification petitions by Mother and Father. The trial court entered a temporary order providing that if either party moved from Atlanta, primary custody would revert to the nonmoving parent. Due to the terms of the temporary order, Mother remained in Atlanta. In July 2003, the trial court entered a final order which required each parent to notify the other at least 60 days prior to relocation. The final order did not include the automatic change of custody provision

which was part of the temporary order.

In August 2003, Mother accepted a job in Nashville, TN. Mother notified Father of the move on August 29, 2003, and she moved on September 17, 2003. Father filed a custody modification petition on September 26, 2003. The court held Mother in contempt for violating the 60 day notification provision of the order. On June 2, 2004, following a hearing, the trial court entered an order transferring primary physical custody of the children to Father during the school year and primary physical custody of the children to Mother during the summer. Mother moved back to Atlanta, and moved for reconsideration of the order in light of her return to Atlanta. The trial court reconsidered only the visitation portion of the order, and did not revise the custody portion. Mother appealed.

Issue: Whether the trial court erred by:

(1) changing custody based on Mother's relocation to Nashville;

(2) disregarding the connection between the children's welfare and Mother's financial security which was increased due to her employment out of state; and

(3) failing to reconsider the custody portion of the order after Mother returned to Atlanta.

Holding/Analysis: The Court of Appeals affirmed the judgment of the trial court.

(1) Relocation is a new and material change in condition substantially affecting the interest and welfare of a child which warrants an inquiry by the court into the best interests of a child.

(2) The trial court considered that an increase in Mother's income would benefit the

children. The trial court also considered how Mother's move would interfere with the contact between Father and the children, and the fact that the children had experienced academic problems and frequent tardiness problems in Nashville. There was evidence to support the trial court's conclusion, and the trial court did not abuse its discretion in awarding Father primary physical custody during the school year.

(3) The Court of Appeals disagreed with Mother's contention that by returning to Atlanta, she had removed the material change in circumstances upon which the trial court relied in modifying custody, and as a result, the trial court had abused its discretion by adhering to the custody modification. Problems such as the children's academic problems and tardiness would not necessarily be remedied by Mother's return to Atlanta. In addition, Mother had interfered with the children's relationship with their Father and had violated a court order requiring her to give 60 days notice to Father prior to Mother's relocation. Therefore, the trial court did not abuse its discretion in failing to restore physical custody to Mother during the school year.

Scott-Lasley v. Lasley, 278 Ga. 671, 604 S.E.2d 761 (2004)

Facts: Juana Scott-Lasley and Charles Lasley were divorced pursuant to a final decree which incorporated an agreement that the parties reached regarding custody of their three children. The custody portion of the decree provided that Scott-Lasley would have primary physical custody of the children. It also provided that "[i]n the event that one of the parents move outside the Atlanta metropolitan area (7 counties), he or she shall forfeit the right to physical custody of the children to the parent who remains in the 7 counties area."

With respect to child support, the trial court determined that Charles Lasley had

a gross monthly income of $9,716.66, and that the applicable percentage to be considered for the three children was twenty-five percent (25%) to thirty-two percent (32%). The trial court determined that the report of the guardian ad litem was a special circumstance. The court set Mr. Lasley's child support obligation as $2,430.00 per month, which amounts to 25% of his gross income.

The decree also provided that Mr. Lasley's child support obligation would be reduced by one-third each time a child reached the age of eighteen, married, died or otherwise became emancipated.

The Georgia Supreme Court granted Scott-Lasley's application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether the trial court erred by:

(1) incorporating the portion of the parties' agreement that provides for a self-executing modification of custody;

(2) reducing Mr. Lasley's obligation by one-third each time a child reaches the age of eighteen, marries, dies or otherwise becomes emancipated; thus, varying Mr. Lasley's child support obligation outside the child support guidelines; and

(3) declining to require Mr. Lasley's child support obligation to continue past the age of eighteen if any of the parties' children were still in high school.

Holding: *Affirmed in part, reversed in part.*

(1) The provision which provides for an automatic change of custody in the event a party moves outside of the 7 county, Atlanta metropolitan area violates the holding in Scott v. Scott, 276 Ga. 372, 578 S.E.2d 876 (2003). The Court's disapproval of self-

executing provisions applies whether the provision was agreed upon by the parties or issued by the trial court. Therefore, the trial court erred by incorporating the provision in to the divorce decree.

(2) When an award of child support is issued for more than one child, the trial court may provide for reduction in child support as the children reach the age of majority; however, the trial court may not reduce the child support on a per child or pro rata basis. The reduction must be made in accordance with the child support guidelines. In this case, when the oldest child reaches the age of eighteen, marries, dies or otherwise becomes emancipated, Mr. Lasley's child support obligation would be reduced from $2,430.00 per month to $1,620.00 per month, which amounts to 16.6% of Mr. Lasley's gross income. The applicable child support guideline range for two children is twenty-three percent (23%) to twenty-eight percent (28%). Even applying the low end of the percentage range of twenty-three percent (23%), Mr. Lasley's child support obligation would be $2,235.00, which is much greater than his obligation after the trial court's pro rata decrease. Furthermore, the one-third reduction when the parties' second child reaches the age of eighteen, marries, dies or otherwise becomes emancipated will result in a child support obligation below the guidelines. Therefore, the trial court erred in reducing the child support award by one-third as each child reaches the age of eighteen, marries, dies or otherwise becomes emancipated.

(3) O.C.G.A. § 19-5-15(e) permits the trial court to enter an award of child support which continues until age 20 if a child is still enrolled in high school. O.C.G.A. § 19-5-15(e) is discretionary, and the court is not required to include such a provision in all child support cases.

Cousens v. Pittman, 266 Ga.App. 387, 597 S.E.2d 486 (2004)

Facts: Kathleen Cousens and William Pittman divorced approximately 10 years ago and have one daughter, nearly 12 years old. The divorce decree provided the parties with joint legal custody of the child and Cousens with sole physical custody of the child. Both parties remarried, although Cousens recently divorced her second husband.

Since the divorce, the child had always lived with her mother. Cousens and the child live in Gwinnett County, where the child attends school, and Pittman lives in Vinings. Since the divorce, the parties' relationship has been hostile. Following the divorce, Pittman filed a petition to increase his visitation, which the court granted.

Pittman subsequently filed his petition to modify custody. At the final hearing, many witnesses, including the child in chambers, the parties and the child's psychologist, testified to the parties' tense relationship. The child testified further that she loved her father but did not want to spend more time with him; that she missed her mother when she was away from her; and that she wanted the custody and visitation arrangement to stay as it was.

The psychologist testified that the child (1) felt excluded from her father's new family; (2) felt that she was not able to spend much time with her father when she was with him for visitation; (3) was afraid of her father when he was angry; and (4) had suicidal thoughts as a way to avoid the entire dispute. However, according to the psychologist, the child had not expressed suicidal thoughts since Pittman agreed to the psychologist's request that he reduce his visitation temporarily. The psychologist believed that a custody change would increase the child's anxiety and that a continued acrimonious relationship between the parties would continue to hurt the child. The

psychologist could not predict what would occur if the child spent more time with her father, aside from an initial increase in the child's anxiety.

Although the Guardian *ad* Litem ("GAL") did a thorough investigation, the court neither read nor considered and sealed the GAL's report.

The court entered an order granting the parties joint physical custody in which the child would alternate weeks at each parent's house while remaining in school and in extra-curricular activities in Gwinnett County.

In support of its determination of a substantial change of circumstances, the trial court made specific findings that (1) the relationship between the child and her father was being irreparably harmed; (2) the child was suffering as a result of the parties' hostile relationship; and (3) the child's anxiety was a result of being caught in the middle of her parents.

Cousens filed an application for discretionary appeal which was transferred to the Court of Appeals from the Supreme Court.

Issue: Whether the trial court applied proper criteria to effectuate the change of custody and whether a change of custody was warranted based on the evidence.

Holding: *Judgment vacated and remanded* because the trial court used improper criteria to effectuate the change of custody and the evidence did not show the existence of a material change in condition or that a change of custody was in the child's best interests.

Analysis: The Court of Appeals notes that it granted the appeal because the order suggested error on its face. At the time that the appeal was granted, the Supreme Court had not yet decided the Bodne decision, *see infra*, and thus, custodial parents were still

entitled to a *prima facie* right to custody. The Court of Appeals did not decide whether the Bodne decision was applicable because the Court found that no material change in circumstances was shown and that there was no evidence in the record to support the trial court's conclusion that a change of custody was in the child's best interests.

Furthermore, even though the trial court made a specific finding that the child suffered from the parties' hostile relationship, the parent's behavior was not a new or material change in circumstances because their behavior had occurred since the divorce. The trial court's finding that the child's relationship with her father was not supported by evidence, and the record showed that the child's relationship with her father was improving. In addition, no evidence showed that the alternating schedule on a weekly basis would have a positive impact on the child or would be in her best interest.

Frank v. Lake, 266 Ga.App. 60, 596 S.E.2d 223 (2004)

Facts: Angela Lake and John Scott Frank divorced in 1997. The divorce decree, which incorporated the parties' settlement agreement, awarded custody of the parties' three children to Frank.

In 1998, Lake filed a petition to change custody. In 1999, the Dekalb County court denied Lake's request to modify custody, and instead, the court modified visitation.

In February 2002, Lake filed another petition to change custody. As grounds for her request, Lake alleged that Frank used illegal drugs in the children's presence and failed to obtain suitable medical care for the children. The parties' daughter stated in a sworn affidavit, filed with the court, that Frank frequently smoked marijuana in the children's presence, and as a result, he became neglectful and abusive.

On April 17, 2002 at a temporary hearing, Frank's attorney informed the court that the parties had entered into a consent agreement to transfer custody to Lake, and the consent agreement was subsequently made a temporary order of the court. At the time of the hearing, the Court met with the daughter in chambers with the consent of the parties.

In August 2002, the court appointed a Guardian *ad* Litem ("GAL"). Following the GAL's investigation, the GAL submitted a report that noted that Lake provided medical documentation which showed that Frank failed to obtain proper medical care for the children, including (1) not securing adequate treatment for his daughter's wrist and arm fracture in April 2001; (2) taking the daughter to a clinic which misdiagnosed her skin ailment in May 2001; and (3) removing a cast from the daughter's fractured foot in November 2001 so she could attend a dance. Nonetheless, the GAL did not find evidence of medical neglect, and she found the allegations of Frank's drug use to be exaggerated.

The GAL concluded that the homes of both parents were equally suitable and that there had been no material change in circumstances adversely affecting the health and welfare of the children.

In February 2003, at the final hearing, Frank objected to the court's consideration of any statements that the daughter made to the court in chambers at the temporary hearing. The court overruled the objection because the discussion in chambers occurred with both parties' consent. Frank objected to the court's consideration of the temporary custody agreement. The court ruled that, for the purpose of determining whether a material change in circumstances has occurred since

the prior custody order, the court would consider matters which developed at the temporary custody hearings. Frank did not object to the court's consideration of the GAL report. In fact, Frank's attorney stated on the record that the GAL's report stood for itself and that he wanted the court to consider the report without having the GAL present for questioning.

Following the hearing, the court found a change in circumstances materially affecting the welfare of the children and granted Lake's petition for change of custody, finding that (1) Frank failed to obtain proper medical care for the children; (2) the children's reports of Franks' drug use or possession were credible; (3) the children had expressed a desire to live with their mother; and (4) the children were prospering in their mother's care.

Frank filed a motion for new trial which the court denied.

Issue: Whether the trial court erred in granting Lake's petition for change of custody based on two enumerations of error:

(1) that the court erred in considering the GAL report and the statements made by the daughter in chambers; and

(2) that the court erred in granting a change in custody because there was neither a change in circumstances nor probative evidence in the record to support a change of custody.

Holding: *Judgment affirmed.*

Analysis: (1) Both parties agreed to allow the trial court to consider the GAL's report and to interview the child in chambers. Even though the GAL's report may have contained nonprobative hearsay and the child's statements were not transcribes so could

not be used to support the court's order, the trial court did not commit error. The Supreme Court has previously concluded that statements made by children, that are not on the record, could not be used to uphold a change of custody; however, "the trial court, within its broad discretion, and without objection by the parties, was authorized to relax the strict rules of evidence to ascertain the relevant and material circumstances to determine what resolution of the controversy would be in the best interest and welfare of the children." *See* Kohler v. Kohler, 234 Ga. 117, 214 S.E.2d 551 (1975).

(2) Although there may have been insufficient admissible evidence in the record to support the change of custody on the basis of Frank's drug use, the record contained sufficient evidence to support a finding of medical neglect by him, which adversely affected at least one child and that the children improved while in Lake's care. In exercising its discretion, the trial court was authorized to find a material change in circumstances affecting the best interests of the children which justified a change of custody.

Fish v. Fish, 266 Ga.App. 224, 596 S.E.2d 654 (2004)

Facts: Jeffrey and Darby Fish were divorced in Gwinnett County, Georgia on December 6, 1994. The divorce decree provided the parties with joint legal custody of their two minor children. Darby Fish was given sole physical custody of the children, and Jeffrey Fish was granted visitation rights.

In 1996, Darby Fish and the children moved to Florida, and they remain Florida residents. Jeffrey Fish has remained in the marital residence since the time of the divorce.

In July 1997, the parties entered into a consent order in Georgia which modified Jeffrey Fish's visitation rights as necessitated by the children's move to Florida. Darby Fish agreed that she was subject to the jurisdiction of the Georgia Court for the 1997 modification action.

On July 14, 2003, Jeffrey Fish filed a petition for change of custody in Gwinnett County, Georgia based on his son having turned fourteen (*see* O.C.G.A. § 19-9-3(a)(4)) and the son's desire to live with his father. Darby Fish was served in Florida with the petition and an affidavit stating the son's desire to live with his father.

Acting *sua sponte*, and without motion by either party or a hearing on the matter, the trial court dismissed Jeffrey Fish's petition. The trial court determined that it did not have exclusive, continuing jurisdiction, finding that neither the child nor Darby Fish had a significant connection to Georgia and that substantial evidence was no longer available in Georgia.

Issue: Whether the trial court erred in its application of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") in determining that it did not have exclusive, continuing jurisdiction over the child custody modification action.

Holding: *Reversed and remanded with direction* because Georgia has exclusive, continuing jurisdiction over the child custody modification case.

Analysis: Pursuant to the UCCJEA, the Gwinnett County court retains exclusive, continuing jurisdiction over the Fish's child custody matters until at least one of two situations occurs as set forth in O.C.G.A. § 19-9-62(a):

(1) A court of this state determines that neither the child nor the child's parents or any person acting as a parent has a significant connection with this state and that

substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(2) A court of this state or a court of another state determines that neither the child nor the child's parent presently resides in this state.

Georgia has not lost jurisdiction under O.C.G.A. § 19-9-62(a)(1) because Jeffrey Fish still resides in Georgia and has never moved from Georgia since the time of the divorce.

Georgia has not lost jurisdiction under O.C.G.A. § 19-9-62(a)(2) because the facts do not show that neither the child nor the child's parents lack a significant connection to Georgia. Not only has Jeffrey Fish continued to reside in Georgia since the divorce, but Darby Fish also agreed that she was subject to jurisdiction in the 1997 modification action, and that modification action provided Jeffrey Fish with extended visitation with the children in Georgia.

Note: Even when a Georgia court retains exclusive, continuing jurisdiction, the court may determine that Georgia has become an inconvenient forum for further custody matters as set forth by O.C.G.A. § 19-9-67. However, the doctrine of inconvenient forum was not the basis for the trial court's determination in this case.

C. *Grandparents*

Lively v. Bowen 272 Ga.App. 479, 612 S.E.2d 625 (2005)

Facts: In 1998, Mother filed a petition to establish paternity, and in that action, custody of the child was awarded to the paternal grandmother. Mother claims that custody was supposed to be awarded to Grandmother on a temporary basis, not on a permanent basis. Mother sought unsuccessfully to set aside the custody order. According to

Mother, after Mother expressed an interest in regaining custody, Grandmother began demanding money before she allowed Mother to see the child. Mother filed a petition for modification of custody based on her allegation that Grandmother was not allowing Mother to see the child. Mother and Grandmother introduced extensive evidence supporting why each of them should have custody of the child. The Guardian ad Litem testified that Mother was a fit parent, but that a transfer of custody to Mother would cause emotional harm to the child. The trial court found that Grandmother was more stable than Mother; that the child had developed a strong psychological bond with Grandmother in the five years that she had lived with Grandmother; that Mother had consistently failed to provide child support or maintain employment, and the failure of support was a risk for the child. The trial court denied Mother's petition under the best interest of the child standard of the O.C.G.A. § 19-7-1(b.1). The trial court determined that there was clear and convincing evidence of a threat of physical and emotional harm to the child if she was returned to her mother, and an award of custody to Grandmother would promote the child's health, welfare and happiness.

Issue: Whether the trial court erred in refusing to grant Mother's petition to modify custody of her minor daughter.

Holding: *Judgment affirmed.* The trial court did not err in refusing to award Mother custody of her minor daughter.

Analysis: The trial court must consider a variety of factors when contemplating the issues of harm and custody, including: (1) who are the past and present caretakers of the child; (2) with whom has the child formed psychological bonds . . .; (3) have the competing parties evidenced interest in, and contact with, the child over time; and (4)

does the child have unique medical or psychological needs that one party is better able to meet. "If the record contains any reasonable evidence to support the trial court's decision on a petition to modify custody, it will be affirmed." The trial court's order demonstrates that the court considered those factors, and there was reasonable evidence to support the finding of emotional harm is clear and convincing.

Walls v. Walls, 278 Ga. 206, 599 S.E.2d 173 (2004)

Facts: In 1974, Robert and Sherry Walls adopted John Walls when he was a minor. In 1998, John Walls, now John Conner, married Sharon Williams, now Sharon Walls. Conner and Walls are the parents of one child. Conner filed for divorce from Walls in the Superior Court of Henry County on May 1, 2002. Robert and Sherry Walls moved to intervene and sought custody of the child under O.C.G.A. § 19-7-1(b.1). On July 9, 2002, the trial court granted Robert and Sherry Walls' motion to intervene and awarded them temporary custody of the child. On February 5, 2003, Cathy L. Conner adopted John Conner in Fulton County. Subsequently, John Conner moved the Henry County court to: (1) set aside the order which allowed Robert and Sherry Walls to intervene; (2) set aside the award of temporary custody to Robert and Sherry Walls; and (3) dismiss Robert and Sherry Walls' petition for custody.

The trial court entered an interlocutory order, holding that Robert and Sherry Walls were no longer the legal grandparents of the child, dismissing their intervention, setting aside the award of temporary custody to Robert and Sherry Walls and awarding temporary custody to John Conner. The trial court certified its ruling for immediate review.

Issue: Whether the adult adoption of John Walls by Cathy L. Conner terminated the intervention of John Walls' parents in a custody action involving his child.

Holding: The adult adoption of the husband, John Walls, by his biological mother did not extinguish the legal status of his first adoptive parents in their motion to intervene in the husband's divorce case and for custody of the husband's child.

Analysis: The intervention by Robert and Sherry Walls and the award of temporary custody to them had already occurred when John Walls was adopted by his biological mother. In addition, although O.C.G.A. § 19-8-19 provides that an adoption decree terminates all legal relationships between the adopted individual and his relatives, the statute also provides that "an adoption does not affect those 'documents' and 'instruments' which 'expressly include the individual by name.'" The petition for intervention and the trial court's temporary custody order specifically named the child. Therefore, the petition for intervention and temporary custody order are not affected by the adoption.

Gordon v. Gordon, 269 Ga.App. 224, 603 S.E.2d 732 (2004)

Facts: Beverly Ann Moore Gordon is the mother of a minor child, A.M.G., born July 30, 1998. Beverly Ann Moore Gordon ("Mother") was imprisoned in early 2002 in the Davisboro Washington State Prison for Women in Washington County, Georgia. Mother assigned temporary guardianship of the child to her mother, Betty H. Gordon ("Grandmother") on July 8, 2002, so the child would be cared for while Mother was in prison.

On June 17, 2003, Mother revoked the temporary guardianship which she had granted to Grandmother, and Mother subsequently executed limited power of attorney

for child care to her boyfriend, William Gerlach. The limited power of attorney specifically stated that it would be revoked in December 2003. The Gwinnett County Probate Court also appointed Gerlach as temporary guardian of A.M.G.

In July 2003, Grandmother filed a petition for child custody in the Superior Court of Washington County, the county of Mother's incarceration. Mother answered the petition and admitted that she was a resident of Washington County. On August 23, 2003, a hearing was held on the petition.

The trial court subsequently entered an order finding that the petition should have been filed in the county of the guardian's residence, not in the county of Mother's residence because "suits in the nature of habeas corpus seeking a change of custody must be brought in the jurisdiction where the party who has possession of the child is located."

Issue: (1) Whether the Court of Appeals has jurisdiction over the appeal; (2) Whether the trial court erred by construing the proceeding as a habeas corpus proceeding; and

(3) Whether the trial court erred in concluding that the Superior Court of Washington County was an improper venue.

Holding: (1) The Supreme Court, not the Court of Appeals, has jurisdiction over habeas corpus proceedings. However, the Court of Appeals was the appropriate forum because the trial court incorrectly determined that the case was a habeas corpus action. Grandmother was seeking custody of the child based on her claim that having custody would be in the child's best interests. Therefore, the action was not a habeas corpus action because "habeas corpus is not an available remedy to inquire into the legality of

the custody of a child in a case where the alleged detention is not against the right of the applicant (seeking custody)."

(2) Because the action was not a habeas corpus action, the Court of Appeals has jurisdiction over the case.

(3) The trial court erred in concluding that the Superior Court of Washington County was an improper venue. The Georgia Constitution provides that venue in a civil case is located where the defendant resides, and if co-defendants reside in different counties, then venue is located in the county of residence of either defendant. Both Mother and Gerlach, the guardian, are defendants in this case. Therefore, Grandmother's petition was properly brought in the county of Mother's residence.

Jones v. Burks, 267 Ga.App. 390, 599 S.E.2d 322 (2004)

Facts: This case involves a custody dispute between Ralph Jones, the non-custodial biological father of two minor children, and Patricia Burks, the maternal grandmother of the children. Jones and the mother of the children, Jennifer Sturgis, never married. In February 2003, Sturgis died suddenly. Burks filed the custody action which Jones answered and counterclaimed. Following a hearing, Jones legitimated the children, and the Court awarded sole legal and physical custody of the children to Burks.

Issue: Whether the trial court erred by awarding custody to Burks, the maternal grandmother.

Holding: Awarding custody to Burks, the maternal grandmother, was error under the best interest of the child standard of the O.C.G.A. § 19-7-1(b.1). The sole issue for determination in any action involving the custody of a child between the parents or either parent and a third party shall be what is in the best interest of the child or

children. In order to meet the "best-interest-of-the-child" standard under O.C.G.A. § 19-7-1(b.1), the third party must show by clear and convincing evidence: (1) that parental custody would harm the child physically or emotionally (not socially or economically), to rebut the statutory presumption in favor of the parent; and, upon meeting its initial burden, the third party must show (2) that "an award of custody to him or her will best promote the child's health, welfare, and happiness." Because there were no such findings by clear and convincing evidence, the award of custody to Burks was improper.

Reeves v. Hayes, 266 Ga.App. 297, 596 S.E.2d 668 (2004)

Facts: David and Gloria Reeves are the paternal grandparents of a minor child. The Reeves' son died before the child was born and was not married to the child's mother. The child's mother entered into a consent order in 2001 which established paternity and provided the Reeveses with visitation. In 2001, the Reeveses, as administrators of the estate of their deceased son, and the child's mother entered into a consent order on the Reeveses' petition to legitimate their son's child.

In February 2003, the Reeveses filed a petition seeking custody of their son's child. In March 2003, the mother relinquished her parental rights to the maternal grandmother. In April 2003, the maternal grandmother filed a motion to dismiss the Reeveses' petition for custody. The trial court dismissed the Reeveses' petition, finding that the legitimation was void on its face because only a father has a right to legitimate a child.

Issue: Whether the trial court erred in finding that paternal grandparents lacked standing to challenge custody of their deceased son's child.

Holding: *Reversed and remanded.* Paternal grandparents had standing to challenge custody of child because the child's mother had entered into a consent order establishing paternity and granting visitation to paternal grandparents. Even though the child's father died before the child was born so the child was not legitimated by father, the rights of the grandparents were not affected by the father's failure to legitimate the child. Once paternity had been established, the father became a parent to the child, and therefore, the father's parents became the grandparents to the child.

III. VISITATION

Dellinger v. Dellinger, 278 Ga. 732, 609 S.E.2d 331 (2004)

Facts: Sonja Dellinger and Terry Dellinger were divorced after a final trial which was held in August 2003. The parties are the parents of two minor children. Prior to the parties' move to Georgia in late 2002, Sonja Dellinger had always resided in Alabama. During the hearing, Sonja Dellinger testified that she would return to Alabama with the children if she were awarded custody of the children.

The trial court awarded the parties joint legal custody of the children but awarded primary physical custody to Terry Dellinger. The trial court issued two visitation plans. "Plan A" provided that Sonja Dellinger would have the children for about half of the time and for four weeks during the summer. Under Plan A, the parties would alternate holiday visitation, and the parties would share equally in the transportation of the children for visitation. Plan A also provided that Sonja Dellinger would pay child support of ten percent (10%) of her gross income. "Plan B" automatically went into effect if Sonja Dellinger resided more than thirty-five (35) miles from Douglas County. Plan B provided that Sonja Dellinger would have the children for the first, third, and

fifth weekends of each month and for four weeks during the summer. She was required to transport the children for visitation, and she would pay child support of twenty-three percent (23%) of her gross income.

The Georgia Supreme Court granted Sonja Dellinger's application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether the trial court erred by implementing a self-executing modification of visitation if appellant moved more than thirty-five (35) miles from Douglas County without considering the best interests of the children at the time of a move.

Holding: *Reversed with direction.* "We hold that self-executing material changes in visitation violate this State's public policy founded on the best interests of a child unless there is evidence before the court that one or both parties have committed to a given course of action that will be implemented at a given time; the court has heard evidence how that course of action will impact upon the best interests of the child or children involved; and the provision is carefully crafted to address the effects on the offspring of that given course of action. Such provisions should be the exception, not the rule, and should be narrowly drafted to ensure that they will not impact adversely upon any child's best interests."

Analysis: The provision at issue provided that appellant's contact with her children would be automatically reduced from Sunday through Wednesday each week to two days every other weekend. The Court determined that this automatic decrease was substantial enough to constitute a material change in visitation.

The majority did not agree with the dissent's conclusion that the automatic change provision was based on evidence heard by the trial court that appellant intended

to return to Alabama after the divorce, and therefore, was able to consider the impact of the move on the best interests of the children. Instead, the majority determined that trial transcript showed that appellee testified that she would return to Alabama if she were awarded primary physical custody of the children. The evidence did not show that appellant would move to Alabama if she were not awarded primary physical custody of the children. Furthermore, the automatic change provision did not limit the application of the automatic change to a time near the divorce. In fact, it was open-ended and did not contain any expiration date. In addition, the triggering event of appellant's move to a residence further than thirty-five (35) miles from Douglas County was an arbitrary and tangential connection to the children's best interests. "As drafted, the challenged provision fails to reflect an individualized consideration of the children's best interests in this case and neither recognizes nor promotes those best interests as they may be affected by the triggering event."

IV. LEGITIMATION AND PATERNITY

Bailey v. Hall, 267 Ga.App. 222, 599 S.E.2d 226 (2004)

Facts: Bailey and Hall, who never married, are the parents of a child. Hall attempted to legitimate the child in 1996. However, in 1997, his petition was denied because he had no relationship with the child. Furthermore, Bailey had married, and the child had a secure relationship with his stepfather.

In 2003, Hall filed another petition for legitimation and alleged that the parties' circumstances had changed since 1997. Hall alleged that he had been paying child support for seven years, that he married, and that he wished to exercise visitation with

the child. In addition, Bailey had divorced, and her former husband had not adopted the child.

Bailey filed a motion to dismiss on the basis of res judicata. The trial court determined that res judicata applied to bar Hall's second legitimation action because the cause of action, parties and issues were the same in both suits. However, on the basis of public policy, the trial court declined to apply the doctrine of res judicata. Mother filed an application for interlocutory appeal.

Issue: Whether the trial court erred in denying Mother's motion to dismiss Father's legitimation action on res judicata grounds.

Holding: The Court of Appeals vacated the trial court's order denying Mother's motion to dismiss. The trial court's analysis of the factors in a res judicata determination was incomplete. The court failed to determine whether the evidence shows that "material facts have sufficiently changed or new events have sufficiently altered the legal rights of the litigants such that the question at issue should be reexamined." The trial court must determine whether res judicata applies before concluding that public policy prevents the application res judicata rules, thereby imposing a "narrow exception to a well established principle of law." "We will not establish here, as a matter of law, that the traditional doctrines of res judicata and collateral estoppel have only limited application in all cases involving legitimation."

V. CHILD SUPPORT

Lewis v. Lewis, 278 Ga. 570, 604 S.E.2d 485 (2004)

Facts: A temporary order was entered during the parties' divorce proceedings which provided Gloria Lewis (Mother) with custody of the parties' minor children and which

required Terry Lewis (Father) to pay $950.00 per month as child support. Following a jury trial, Mother was awarded legal custody of the children and Father was required to pay child support.

Approximately one month after the final trial, Mother filed a contempt action against Father in which she alleged that Father owed $3,325.00 in child support under the temporary order. The trial court determined that Mother waived her claim to child support under the temporary order by failing to raise the issue at the final trial.

Issue: Whether Mother's claim for arrearage of child support was waived by her failure to assert the claim at final trial.

Holding: *Reversed and remanded.* Mother's claim for arrearage of child support under the temporary order was not waived by her failure to assert the claim at the final trial. Child support belongs to the child and cannot be waived by the custodial parent.

Scott-Lasley v. Lasley, 278 Ga. 671, 604 S.E.2d 761 (2004); *see* p. 5

VI. ENFORCEMENT AND INTERPRETATION OF SETTLEMENT AGREEMENTS, PREMARITAL AGREEMENTS & ANTENUPTIAL AGREEMENTS

Langley v. Langley, 279 Ga. 374, 613 S.E.2d 614 (2005)

Facts: Prior to their marriage on July 4, 1999, Robert and Nancy Langley entered into an antenuptial agreement which provided, in part, that in the event of divorce, Mr. Langley would pay $25,000 to Ms. Langley as lump sum alimony and that each party waived their respective rights to seek periodic alimony, alimony in kind, additional lump sum alimony and attorney's fees. The agreement also stated that all property received as a gift would become the separate property of the recipient. After Mr. Langley had filed and dismissed three divorce petitions, Ms. Langley filed for divorce in August 2003. The

trial court incorporated the antenuptial agreement into the divorce decree, finding that Mr. Langley had already paid his $25,000 obligation to Ms. Langley through payment of temporary alimony and attorney's fees.

Issue: Whether the trial court failed to enforce the antenuptial agreement and erred by finding that Mr. Langley's obligation to pay $25,000 lump sum alimony had been satisfied by his previous payments of temporary alimony and attorney's fees.

Holding: The trial court erred and Mr. Langley's payment of temporary alimony and attorney's fees did not satisfy his obligation to pay lump sum alimony to Ms. Langley of $25,000.

Analysis: (1) The purpose of temporary alimony is different than permanent alimony. Temporary alimony takes into account the needs of the spouse during the divorce and enables the recipient spouse to contest the issues in the divorce case. The nature of temporary alimony prevents the offset of such amounts.

(2) The enforceability of antenuptial agreements is a public policy consideration. Mr. Langley's financial position was far superior to Ms. Langley's financial position. Ms. Langley incurred significant legal expenses as a result of Mr. Langley having initiated three previous divorce proceedings. A large portion of the amount which Mr. Langley contented he paid in satisfaction of his $25,000 obligation was paid as temporary support in the previous divorce proceedings which he dismissed. If Mr. Langley were permitted to offset his temporary alimony payments against his lump sum alimony obligation, then Mr. Langley could use the terms of the agreement to place Ms Langley in an unfair legal and financial position in a divorce case that proceeded to final

judgment by requiring Ms. Langley to spend her $25,000 on cases that were filed and dismissed.

(3) The language of the antenuptial agreement provided that the lump sum amount would become payable if the marriage dissolved and that the agreement would be binding if the marriage was terminated through legal proceedings. Thus, the agreement required the lump sum payment as a result of divorce and after the finalization of the divorce. The agreement did not address monies spent obtaining the divorce or litigating the three previous divorce cases between the parties.

Lerch v. Lerch, 278 Ga. 885, 608 S.E.2d 223 (2005)

Facts: Donald and Barbara Lerch were married in 1994. Prior to the marriage, parties entered into a prenuptial agreement. After the wedding, the parties lived in a residence which Husband owned prior to the marriage. In 1999, Husband executed and recorded a deed which transferred ownership of the residence to both parties as "tenants in common" with the right of survivorship.

The parties divorced in 2004. In the final decree of divorce, the trial court awarded $100,000.00 to Wife in accordance with the parties' prenuptial agreement. The trial court found that as a result of the transfer of ownership in 1999, one-half of the home qualified as marital property and one-half of the home remained the separate property of Husband. The court awarded the entire marital residence to Husband, with the marital portion being awarded as Husband's equitable division of marital property.

Issue: Whether the trial court erred in failing to treat the entire residence as marital property.

Holding: *Reversed and remanded.* The trial court erred in failing to treat the entire residence as marital property. Usually, a gift to one spouse becomes the separate property of the recipient. However, when a gift is made to a marital couple, the property will become marital property absent evidence a contrary intent by the donor. By deeding the residence to both Wife and himself as "tenants in common" with the right of survivorship, Husband's intent was to transform his separate property into marital property. The entire residence should have been treated as marital property because both Husband and Wife owned an undivided one-half interest in the residence.

Adams v. Adams, 278 Ga. 521, 603 S.E.2d 273 (2004)

Facts: Husband and Wife were married in 1994. They executed an antenuptial agreement two days before their wedding. At the time the parties executed the antenuptial agreement, Husband's assets were valued at $4,526,708.00, and Wife's assets were valued at $30,000.00. The agreement provided, in part, that if the parties separated, Wife would receive $10,000.00 for every year of marriage with a cap of $100,000.00. Both parties waived claims to the separately titled property of other, whether acquired during or prior to the marriage. In addition, Wife waived all claims to Husband's pre-marital property and all other claims she may have growing out of the marriage and its dissolution. Wife also agreed to forfeit her rights if she engaged in "unforgiven adultery" and agreed not to make a "continued lifestyle claim."

Wife filed for divorce in January 2003 on the basis of adultery, cruel treatment and that the marriage was irretrievably broken. Wife sought an equitable division of property and alimony. Husband filed an answer and counterclaim for divorce and a motion to enforce the antenuptial agreement. The trial court granted Husband's motion

to enforce, and then, Husband filed a motion for summary judgment to which Wife failed to respond. The trial court granted the divorce, ordering Husband to pay Wife a lump sum payment of $90,000.00, which represented the agreement provision of $10,000.00 per year for each year of marriage.

Issue: (1) Whether the antenuptial agreement is unconscionable as a matter of law; and

(2) Whether the trial court improperly limited the scope of the hearing on Husband's motion to enforce the antenuptial agreement by excluding evidence of Husband's alleged infidelity during the marriage.

Holding: The trial court did not abuse its discretion in enforcing the antenuptial agreement. The agreement was fair at the time the agreement was executed and at the time of its enforcement.

Analysis: (1) A trial court should consider three criteria in determining whether to enforce an antenuptial agreement: (1) whether the agreement was obtained through fraud, duress or mistake, or through misrepresentation or nondisclosure of material facts; (2) whether the agreement was unconscionable; and (3) whether the facts and circumstances have changed since the agreement was executed, so as to make its enforcement unfair and unreasonable. Scherer v. Scherer, 249 Ga. 635, 292 S.E.2d 662 (1982). Wife does not challenge the trial court's findings that Wife reviewed the agreement; that Wife was advised of her right to and was given sufficient opportunity to obtain counsel to review the agreement prior to executing the agreement; and that the agreement was entered into without fraud, duress, mistake, coercion or misrepresentation.

Wife alleges that the agreement is unconscionable when comparing Husband's financial status at the time of the execution of the agreement to the financial benefits that Wife is entitled to receive under the agreement. However, at the time of the execution of the agreement, both parties had already been married and divorced so it was reasonable for both parties to anticipate the possibility of divorce and to seek to protect their assets and define their property rights in the event of divorce. In a situation when there is a full disclosure of assets prior to the execution of the agreement, and Wife was offered the opportunity to consult with independent counsel, and she entered into the agreement voluntarily, an antenuptial agreement which may perpetuate an existing disparity in the parties' estates does not render the agreement unconscionable.

(2) Although there may be rare circumstances in which evidence a party's alleged infidelity could be relevant to demonstrate unconscionability or changed circumstances, Wife's allegations were irrelevant in this case.

VII. ATTORNEY'S FEES

Gomes v. Gomes, 278 Ga. 568, 604 S.E.2d 486 (2004)

Facts: Frances Gomes (Wife) sought an award of attorney's fees in her divorce action against her husband, Mario Gomes. The parties entered into a settlement agreement which was incorporated into a final divorce decree and which reserved the issue of attorney's fees for the court. Wife filed a "Motion for Attorney's Fees" and included a request for oral hearing, her legal bill and an affidavit from her attorney. Because she failed to cite statutory authority in her request for fees, the trial court denied Wife's request for fees.

Issue: Whether the trial court erred in denying Wife's request for attorney's fees in a divorce action because Wife failed to cite any legal authority in support of her request

Holding: *Reversed and remanded to consider Wife's request on the merits.* The trial court abused its discretion by requiring Wife to cite law in support of her request for attorney's fees. In this case, it was clear that Wife sought an award of attorney's fees under O.C.G.A. § 19-6-2(a)(1), which authorizes an award of attorney's fees in a divorce action. Wife's Motion for Attorney's Fees clearly demonstrated that Wife sought fees based on the financial circumstances of the parties, not based on any wrongdoing.

Reese v. Grant, 277 Ga. 799, 596 S.E.2d 139 (2004)

Facts: Hal Grant filed a contempt action against his former wife, Tanya Grant Reese, alleging that she was in wilful contempt of the parties' divorce decree. The trial court did not hold Reese in contempt, but the court ordered her to pay attorney's fees to Grant. Reese appealed.

Issue: Whether it was proper for the trial court to order a defendant to pay attorney's fees in a contempt action even though the defendant was not held in contempt of court

Holding: *Judgment vacated and case remanded with direction.* The trial court's order was insufficient because it failed to specify the basis of its ruling. The order did not state whether the fees were awarded pursuant to O.C.G.A. § 9-15-14 for Grant having to defend against groundless and frivolous litigation or whether the fees were awarded pursuant to O.C.G.A. § 19-6-2(a) which allows fees in a domestic relations case for contempt of property division.

Note: Grant is not precluded from receiving an award of attorney's fees under O.C.G.A. § 9-15-14 even though Reese was not held in contempt.

VIII. PROCEDURAL MATTERS

Withrow v. Withrow, 278 Ga. 525, 603 S.E.2d 276 (2004)

Facts: Husband filed action for divorce against Wife. The final hearing was scheduled for the morning of December 10, 2003. On November 19, 2003, counsel for Husband filed a notice of conflicts in accordance with Uniform Superior Court Rule 17.1. The notice of conflicts provided that the final hearing in this case should take precedence over the attorney's other legal matters. Neither the courts affected nor opposing counsel objected to the notice of conflicts.

Subsequently, Husband's attorney called the judge's office to request that the final hearing be removed from the court's calendar. On December 9, 2004, the judge's office informed Husband's attorney that the case was being rescheduled due to conflicts. On December 10, 2003, neither Husband nor his attorney appeared for the final hearing. The judge's office called Husband's attorney and instructed him to appear. The court conducted the hearing in the afternoon. Husband's attorney arrived in court after the final hearing had concluded and the court had entered a final divorce decree. Husband filed a motion for new trial asserting good cause as his reason for not appearing for the final hearing. The trial judge denied Husband's motion for new trial.

The Georgia Supreme Court granted Husband's application for appeal pursuant to the Domestic Relations Pilot Project.

Issue: Whether Husband was entitled to a new divorce trial.

Holding: *Judgment affirmed.* Husband was not entitled to a new divorce trial. Prioritization of cases and the filing of notices of conflicts are prescribed by U.C.S.R. 17.1. "Trial counsel has no discretion in determining the order in which cases are to be

tried. The order of cases to be tried can be changed only by the agreement of judges on affected courts." Husband's attorney may have spoken to court personnel, but he did not speak to the trial judge. "Where counsel attempts to relay information to the trial judge through a third person, he does so at his own peril and at the peril of his client." In addition, Husband never requested a continuance. The absence of counsel "without leave, to attend proceedings in other courts is no ground for continuance or postponement."

Husband's argues that he was not at fault because his attorney told him that the case was being reset. Because ineffective assistance of counsel does not apply to parties in a divorce case, the failure of Husband's counsel to inform Husband of the trial date does not, in and of itself, constitute a ground for new trial. However, Husband may have a claim against his counsel.

Wilson v. Wilson, 277 Ga. 801, 596 S.E.2d 392 (2004)

Facts: Husband E.D. Wilson filed for divorce from his wife, Brenda Copeland Wilson. The case involved disputed issues of property division and alimony. At the bench trial, Wife's attorney requested the opportunity to make a closing argument. Nonetheless, the trial court refused to allow closing arguments, stating "Y'all have worn me out. I don't think I want to hear any closing arguments." Wife appealed the final divorce decree pursuant to the Georgia Supreme Court's pilot project.

Issue: Whether there is a right to closing arguments in civil cases.

Holding: Wife was entitled to present a closing argument at a bench trial in a divorce action in which there were disputed issues of fact. The trial court committed reversible error by denying Wife the opportunity to closing argument.

Rationale: Georgia follows an intermediate approach in which the right to closing arguments exists in civil, non-jury trials. However, that right may be precluded when the parties waive the opportunity to present closing arguments or no factual issues exist.

IX. DOMESTIC RELATIONS PILOT PROJECT PRESS RELEASE

Supreme Court Extends Domestic Relations Pilot Project

Atlanta, November 4, 2004—The Supreme Court has extended for another year the Domestic Relations Pilot Project that has been in effect since January 6, 2003. All the Justices concurred, except Chief Justice Fletcher, who dissented. The Pilot Project will continue until December 16, 2005.

Under the terms of the Pilot Project, all non-frivolous applications in divorce and/or alimony cases, i.e. those discretionary applications timely filed from the final judgment and decree of divorce, will be automatically granted unless the application is found to be frivolous by the Court. If the Court finds that an application is frivolous, it will be denied and the applicant as well as his or her attorney may be assessed a penalty of up to $2,500.

The Court has been compiling statistics on the Pilot Project since its inception. To date, 130 domestic discretionary applications have been ruled on since January of 2003; 48 of those applications fell within the parameters of the Pilot Project. Of those, 34 (71%) were granted automatically, 1 (2%) was dismissed, 1 (2%) was remanded to the trial court, and 12 (25%) were denied as frivolous. Monetary penalties were assessed in five instances when the application was denied as frivolous.

Additionally, the Court has issued opinions in 23 domestic relations appeals granted pursuant to the Pilot Project. The Court affirmed 13 (57%), reversed 6 (26%), affirmed in part and reversed in part 2 (9%), and affirmed without opinion 2 (9%).

Of the 82 non-Pilot Project applications, 56 (68%) were denied, 13 (16%) were granted, 10 (12%) were dismissed, 2 (2%) were remanded to the trial court, and 1 (1%) was transferred to the Court of Appeals.

Additional information regarding the Pilot Project and recent decisions in domestic relations cases is available at the Court's website: www.gasupreme.us

X. LEGISLATIVE UPDATE

Ga. Code Ann., § 19-7-22. Petition to Legitimatize Child

(a) A father of a child born out of wedlock may render his relationship with the child legitimate by petitioning the superior court of the county of the residence of the child's mother or other party having legal custody or guardianship of the child; provided, however, that if the mother or other party having legal custody or guardianship of the child resides outside the state or cannot, after due diligence, be found within the state, the petition may be filed in the county of the father's residence or the county of the child's residence. If a petition for the adoption of the child is pending, the father shall file the petition for legitimation in the county in which the adoption petition is filed.

(b) The petition shall set forth the name, age, and sex of the child, the name of the mother, and, if the father desires the name of the child to be changed, the new name. If the mother is alive, she shall be named as a party and shall be served and provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

(c) Upon the presentation and filing of the petition, the court may pass an order declaring the father's relationship with the child to be legitimate, and that the father and child shall be capable of inheriting from each other in the same manner as if born in lawful wedlock and specifying the name by which the child shall be known.

(d) A legitimation petition may be filed, pursuant to paragraph (2) of subsection (e) of Code Section 15-11-28, in the juvenile court of the county in which a deprivation proceeding regarding the child is pending.

(e) Except as provided by subsection (f) of this Code section, the court shall upon notice to the mother further establish such duty as the father may have to support the child, considering the facts and circumstances of the mother's obligation of support and the needs of the child as provided under Code Section 19-6-15.

(f) After a petition for legitimation is granted, if a demand for a jury trial as to support has been properly filed by either parent, then the case shall be transferred from juvenile court to superior court for such jury trial.

(f.1) The petition for legitimation may also include claims for visitation or custody. If such claims are raised in the legitimation action, the court may order, in addition to legitimation, visitation or custody based on the best interests of the child standard. In a case involving allegations of family violence, the provisions of paragraph (2) of subsection (a) of Code Section 19- 9-1 shall also apply.

(g)(1) In any petition to establish paternity pursuant to paragraph (4) of subsection (a) of Code Section 19-7-43, the alleged father's response may assert a third-party action for the legitimation of the child born out of wedlock. Upon the determination of paternity or if a voluntary acknowledgment of paternity has been made and has not been rescinded

pursuant to Code Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the provisions of Code Section 19-7-51 may enter an order or decree legitimating a child born out of wedlock, provided that such is in the best interest of the child. Whenever a petition to establish the paternity of a child is brought by the Department of Human Resources, issues of name change, visitation, and custody shall not be determined by the court until such time as a separate petition is filed by one of the parents or by the legal guardian of the child, in accordance with Code Section 19-11-8; if the petition is brought by a party other than the Department of Human Resources or if the alleged father seeks legitimation, the court may determine issues of name change, visitation, and custody in accordance with subsections (b) and (f.1) of this Code section. Custody of the child shall remain in the mother unless or until a court order is entered addressing the issue of custody.

(2) In any voluntary acknowledgment of paternity which has been made and has not been rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely agree and consent, the child may be legitimated by the inclusion of a statement indicating a voluntary acknowledgment of legitimation."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

Ga. Code Ann., § 19-6-15. CHILD SUPPORT GUIDELINES
<Text of section effective July 1, 2006>

(a) As used in this Code section, the term:

(1) "Adjusted gross income" means the net determination of a parent" s income, calculated by deducting from that parent" s gross income any applicable self-employment taxes being paid by the parent and any preexisting child support order for current child support which is being paid by the parent.

(2) "Adjusted support obligation" means the basic child support obligation from the child support obligation table, adjusted for parenting time, health insurance, and work related child care expenses.

(3) "Basic child support obligation" means the amount of support displayed on the child support obligation table which corresponds to the combined adjusted gross income of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for parenting time or additional expenses.

(4) "Caretaker" means the person or entity providing care and supervision of a child more than 50 percent of the time. The caretaker may be the child" s custodial parent. The caretaker may be a parent of the child or a nonparent relative of the child who voluntarily or otherwise, pursuant to court order or other legal arrangement, is providing care and supervision of the child. A caretaker may also be a private or public

agency providing custodial care and supervision for the child through voluntary placement by the child" s parent, nonparent relative, or other designated caretaker or by court order or other legal arrangement.

(5) "Child support obligation table" means the chart created by the Georgia Child Support Commission which displays the dollar amount of the basic child support obligation corresponding to various levels of combined adjusted gross income of the children" s parents and the number of children for whom a child support order is being established or modified. The table shall be used to calculate the basic child support obligation according to the provisions of this Code section. Deviations from the table shall comply with the requirements of this Code section.

(6) "Combined adjusted gross income" means the amount of adjusted gross income calculated by adding together the adjusted gross incomes of both parents. This amount is then used to determine the basic child support obligation for both parents for the number of children for whom support is being calculated in the case immediately under consideration.

(7) "Credit worksheet" means the worksheet used for listing information regarding a parent" s preexisting child support order and self-employment tax.

(8) "Custodial parent" means the parent with whom the child or children resides more than 50 percent of the time. The term also means a nonparent caretaker who has been given physical custody of the child or children. If each parent spends exactly 50 percent of the time with the child or children, then the court shall designate the parent with the lesser child support obligation as the custodial parent and the other parent as the

noncustodial parent. If a custodial parent has not been designated, the caretaker with whom the child resides more than 50 percent of the time shall be the custodial parent.

(9) "Day" or "days" means that a child spends more than 12 hours of a calendar day with or under the control of a parent and that parent expends a reasonable amount of resources on the child during such time period, such as the cost of a meal or other costs directly related to the care and supervision of the child. Partial days of parenting time that are not consistent with this definition shall not be considered a "day" under the child support guidelines. A "day" under the control of a parent includes a day the child is not in the parent's home, but is under the parent's control, for example, with the parent's permission at camp or with friends.

(10) "Final child support order" means the presumptive child support order adjusted by any deviations ordered by the court.

(11) "Health insurance" means accident, sickness, health, medical, or dental insurance.

(12) "Noncustodial parent" means the parent with whom the child resides less than 50 percent of the time.

(13) "Parenting time adjustment" means an adjustment to the noncustodial parent's portion of the basic child support obligation upon the noncustodial parent's parenting time with the child.

(14) "Percentage of income" for each parent is obtained by dividing each parent's adjusted gross income by the combined total of both parents' adjusted gross income. The percentage of income is used to determine each parent's pro rata share of the basic child support obligation and each parent's share of the amount of additional expense for health insurance and work related child care. The percentage of income is also used to

designate the amount of uninsured medical expenses that each parent is financially responsible to pay, absent an order of a court setting a different amount.

(15) "Preexisting orders" means:

(A) An order in another case that requires a parent to make child support payments for another child or children, which child support the parent is actually paying, as evidenced by documentation including, but not limited to, payment history from a court clerk, Title IV-D agency, as defined in Code Section 19-6-31, the Department of Human Resources computer system, the department's Internet child support payment history, or canceled checks or other written proof of payments paid directly; and

(B) That the date of filing of the initial order for each such other case is earlier than the date of filing of the initial order in the case immediately before the court, regardless of the age of any child in any of the cases.

(16) "Presumptive child support order" means the amount of support to be paid for the child or children derived from the parent's proportional share of the basic child support obligation, adjusted for parenting time, plus the parent's proportional share of any additional expenses. This amount is rebuttably presumed to be the appropriate child support order.

(17) "Pro rata" means to the proportion of one parent's adjusted gross income to both parents' combined adjusted gross income, or to the proportion of one parent's support obligation to the whole support obligation. A parent's pro rata share of income is calculated by combining both parents' adjusted gross income and dividing each parent's separate adjusted gross income by the combined adjusted gross income. A parent's pro rata share of the basic support obligation is calculated by multiplying the basic child

support obligation obtained from the child support obligation table by each parent's pro rata percentage of the combined adjusted gross income.

(18) "Split parenting" can only occur in a child support case if there are two or more children of the same parents, where one parent is the custodial parent for at least one child of the parents, and the other parent is custodial parent for at least one other child of the parents. In a split parenting case, each parent is the custodial parent of any child spending more than 50 percent of the time with that parent and is the noncustodial parent of any child spending more than 50 percent of the time with the other parent. A split parenting situation will have two custodial parents and two noncustodial parents, but no child will have more than one custodial parent or noncustodial parent.

(19) "Standard parenting" means a child support case in which all of the children supported under the order spend more than 50 percent of the time with the same custodial parent. There is only one custodial parent and one noncustodial parent in a standard parenting case.

(20) "Theoretical support order" means a hypothetical order which allows the court to determine the amount of a child support obligation if an order existed. A theoretical support order is used to determine the amount of credit allowed as a deduction from a parent's gross income for a parent's qualified other child or children who are not under a preexisting child support order.

(21) "Uninsured health care expenses" means the child's or children's uninsured medical expenses including, but not limited to, health insurance copayments, deductibles, and such other costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical or health

problem or mental health illness, including counseling and other medical or mental health expenses, that are not covered by insurance.

(22) "Work related child care costs' means expenses for the care of the child or children for whom support is being determined which are due to employment of either parent. In an appropriate case, the court may consider the child care costs associated with a parent's job search or the training or education of a parent necessary to obtain a job or enhance earning potential, not to exceed a reasonable time as determined by the court, if the parent proves by a preponderance of the evidence that the job search, job training, or education will benefit the child or children being supported. The term shall be projected for the next consecutive 12 months and averaged to obtain a monthly amount.

(23) "Worksheet" or "child support worksheet" means the worksheet used to record information necessary to determine and calculate gross income and child support.

(b)(1) The child support guidelines contained in this Code section are a minimum basis for determining child support obligations and shall apply as a rebuttable presumption in all legal proceedings involving the child support obligation of a parent, including, but not limited to, orders entered in criminal and juvenile proceedings, orders entered pursuant to Article 3 of Chapter 11 of this title, the "Uniform Interstate Family Support Act," and voluntary support agreements and consent orders approved by the court. The child support guidelines do not apply to orders for prior maintenance for reimbursement of child care costs incurred prior to the date an action for child support is filed or to child support orders entered against stepparents or other persons or agencies secondarily liable for child support. The child support guidelines shall be used when the court enters a temporary or permanent child support order in a contested or

uncontested hearing. The rebuttable presumption award provided by these child support guidelines may be increased according to the best interest of the child for whom support is being considered, the circumstances of the parties, the grounds for deviation set forth in subsection (i) of this Code section, and to achieve the state policy of affording to children of unmarried parents, to the extent possible, the same economic standard of living enjoyed by children living in intact families consisting of parents with similar financial means.

(2) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent authorized by subsection (d) of this Code section. In the final judgment or decree in a divorce case in which there are minor children, or in other cases which are governed by the provisions of this Code section, the court shall;

(A) Specify in what amount and from which party the minor children are entitled to permanent support as determined by use of the worksheets;

(B) Specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid;

(C) Include a written finding of the gross income of the father and the mother as determined by the fact finder;

(D) Determine whether health insurance for the child or children involved is reasonably available at a reasonable cost to either parent. If the insurance policy is reasonably available at a reasonable cost to the parent, then the court may order that the child or children be covered under such insurance; and

(E) Include written findings of fact as to whether one or more of the deviations allowed under this Code section are applicable, and if one or more such deviations are applicable, the written findings of fact shall further set forth:

(i) The reasons the court deviated from the presumptive amount of child support;

(ii) The amount of child support that would have been required under the child support guidelines if the presumptive amount had not been rebutted; and

(iii) A finding that states how application of the child support guidelines would be unjust or inappropriate in the case immediately under consideration considering the relative ability of each parent to provide support and how the best interests of the child or children who are subject to the support award determination are served by deviation from the presumptive guideline amount.

(3) When support is awarded, the party who is required to pay the support shall not be liable to third persons for necessaries furnished to the child or children embraced in the judgment or decree. In any contested case, the parties shall submit to the court their worksheets and the presence or absence of other factors to be considered by the court pursuant to the provisions of this Code section. In any case in which the gross incomes of the father and the mother are determined by a jury, the court shall charge the provisions of this Code section applicable to the determination of gross income and the jury shall be required to return a special interrogatory. Based upon the jury's verdict as to gross income, the court shall determine the child support obligation in accordance with the provisions of this Code section.

(4) Nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement to the contrary which may be made the order of the court

pursuant to the review by the court of the adequacy of the child support amounts negotiated by the parties, including the provision for medical expenses and health insurance; provided, however, that if the agreement negotiated by the parties does not comply with the provisions contained in this Code section and does not contain findings of fact as required to support a deviation, the court shall reject such agreement. To assist in this determination by the court, the parties shall provide all child support worksheets utilized by the parties to determine the child support amounts proposed in the agreement.

(c) In the event of a hearing or trial on the issue of child support, the guidelines enumerated in this Code section are intended by the General Assembly to be guidelines only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of the hearing or trial.

(d) The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary or final order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the court, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20

years of age. The provisions for support provided in this subsection may be enforced by either parent or the child for whose benefit the support is ordered.

(e) Gross income.

(1)(A) Gross income of each parent shall be determined in the process of setting the presumptive child support order and shall include all income from any source, before deductions for taxes and other deductions such as preexisting child support orders and credits for other qualified children, whether earned or unearned, and includes, but is not limited to, the following:

(i) Salaries;

(ii) Commissions, fees, and tips;

(iii) Income from self-employment;

(iv) Bonuses;

(v) Overtime payments;

(vi) Severance pay;

(vii) Recurring income from pensions or retirement plans including, but not limited to, Veterans' Administration, Railroad Retirement Board, Keoughs, and individual retirement accounts;

(viii) Interest income;

(ix) Dividend income;

(x) Trust income;

(xi) Income from annuities;

(xii) Capital gains;

(xiii) Disability or retirement benefits that are received from the Social Security Administration pursuant to Title XI of the federal Social Security Act;

(xiv) Workers' compensation benefits, whether temporary or permanent;

(xv) Unemployment insurance benefits;

(xvi) Judgments recovered for personal injuries and awards from other civil actions;

(xvii) Gifts that consist of cash or other liquid instruments, or which can be converted to cash;

(xviii) Prizes;

(xix) Lottery winnings;

(xx) Alimony or maintenance received from persons other than parties to the proceeding before the court; and

(xxi) Assets which are used for the support of the family.

(B) Excluded from gross income are the following:

(i) Child support payments received by either parent for the benefit of a child or children of another relationship; and

(ii) Benefits received from means-tested public assistance programs such as, but not limited to:

(I) PeachCare for Kids Program, Temporary Assistance for Needy Families, or similar programs in other states or territories under Title IV-A of the federal Social Security Act;

(II) Food stamps or the value of food assistance provided by way of electronic benefits transfer procedures by the Department of Human Resources;

(III) Supplemental security income received under Title XVI of the federal Social Security Act;

(IV) Benefits received under Section 402(d) of the federal Social Security Act for disabled adult children of deceased disabled workers; and

(V) Low Income Heating and Energy Assistance Program payments.

(2)(A) When establishing an initial order of child support, if a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years, and the court has no other reliable evidence of the parent's income or income potential, gross income for the current year shall be determined by imputing gross income based on a 40 hour workweek at minimum wage.

(B) When cases with established orders are reviewed for modification and a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years, and the court has no other reliable evidence of that parent's income or income potential, the court may enter an order to increase the child support obligation of the parent failing or refusing to produce evidence of income by an increment of at least 10 percent per year of that parent's pro rata share of the basic child support obligation for each year since the support order was entered or last modified.

(C) In either circumstance in subparagraph (A) or (B) of this paragraph, either parent may later provide within 90 days, upon motion to the court, the reliable evidence necessary to determine the appropriate amount of support based upon reliable evidence. The court may increase or reduce the amount of current support from the date of filing of either parent's initial filing or motion to modify child support, but arrearages or retroactive amounts entered in an order based upon imputed income shall not be

forgiven. When a parent, whose income has been imputed under subparagraph (A) or (B) of this paragraph, provides reliable evidence to support a modification of the amount of income imputed for that parent, the parent is not required to demonstrate the existence of a significant variance otherwise required for modification of an order pursuant to subsection (l) of this Code section.

(3)(A) Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income. Income from self- employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership, limited liability company, or closely held corporation is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations. Ordinary and reasonable expenses of self-employment or business operations necessary to produce income do not include:

(i) Excessive promotional, travel, vehicle, or personal living expenses, depreciation on equipment, or costs of operation of home offices; or

(ii) Amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income.

In general, income and expenses from self-employment or operation of a business should be carefully reviewed by the fact finder and the court to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. Generally, this amount will differ from a determination of business income for tax purposes.

(B)(i) An additional deduction of 6.2 percent of FICA and 1.45 percent of medicare, or in any amount subsequently set by federal law as FICA and medicare tax, shall be deducted from a parent's gross income earned from self-employment, up to the amounts allowed under federal law.

(ii) Any self-employment tax paid shall be deducted from gross income as part of the calculation of a parent's adjusted gross income.

(4)(A) Fringe benefits for inclusion as income or "in kind" remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if they significantly reduce personal living expenses.

(B) Such fringe benefits might include, but are not limited to, use of a company car, housing, or room and board.

(C) Basic allowance for housing, basic allowance for subsistence, and variable housing allowances for members of the armed services are considered income for the purposes of determining child support.

(D) Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, including but not limited to employer paid portions of health insurance premiums or employer contributions to a retirement or pension plan.

(5)(A) Benefits received under Title XI of the federal Social Security Act by a child on the obligor's account shall be counted as child support payments and shall be applied against the child support obligation ordered to be paid by the obligor for the child.

(B) If after calculating the obligor's gross income as defined in this subsection, including the countable Social Security benefits in division (1)(A)(xiii) of this subsection, and after

calculating the amount of the child support obligation using the child support worksheet, the amount of the child support obligation is greater than the Social Security benefits paid on behalf of the child on the obligor's account, the obligor shall be required to pay the amount exceeding the Social Security benefit as part of the child support obligation in the case.

(C)(i) If after calculating the obligor's gross income as defined in this subsection, including the countable Social Security benefits in division (1)(A)(xiii) of this subsection, and after calculating the amount of the child support obligation using the child support worksheet, the amount of the child support obligation is equal to or less than the Social Security benefits paid to the caretaker on behalf of the child on the obligor's account, the child support obligation of that parent is met and no further child support obligation shall be paid.

(ii) Any benefit amounts under Title XI of the federal Social Security Act as determined by the Social Security Administration sent to the caretaker by the Social Security Administration for the child's benefit which are greater than the child support obligation ordered by the court shall be retained by the caretaker for the child's benefit and shall not be used as a reason for decreasing the child support order or reducing arrearages.

(D) The court shall make a written finding of fact in the child support order regarding the use of the Social Security benefits in the calculation of the child support obligation.

(6) Variable income such as commissions, bonuses, overtime pay, and dividends shall be averaged by the fact finder over a reasonable period of time consistent with the circumstances of the case and added to a parent's fixed salary or wages to determine gross income. When income is received on an irregular, nonrecurring or one-time basis, the court

may, but is not required to, average or prorate the income over a reasonable specified period of time or require the parent to pay as a one-time support amount a percentage of his or her nonrecurring income, taking into consideration the percentage of recurring income of that parent.

(7)(A) A determination of whether a parent is willfully or voluntarily unemployed or underemployed shall ascertain the reasons for the parent's occupational choices and assess the reasonableness of these choices in light of the parent's obligation to support his or her child or children and to determine whether such choices benefit the child or children. A determination of willful and voluntary unemployment or underemployment is not limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support. A determination of willful and voluntary unemployment or underemployment can be based on any intentional choice or act that affects a parent's income.

(B) Factors for the court to consider when determining willful and voluntary unemployment or underemployment include, but are not limited to:

(i) The parent's past and present employment;

(ii) The parent's education and training;

(iii) Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent's obligation to support his or her child or children and, to this end, whether the training or education may ultimately benefit the child or children in the case immediately under consideration by increasing the parent's level of support for that child or those children in the future;

(iv) A parent's ownership of valuable assets and resources, such as an expensive home or automobile, that appear inappropriate or unreasonable for the income claimed by the parent; and

(v) The parent's role as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker, which eliminates or substantially reduces the parent's ability to work outside the home, and the need of that parent to continue in that role in the future.

(C) When considering the income potential of a parent whose work experience is limited due to the caretaker role of that parent, the court shall consider the following factors:

(i) Whether the parent acted in the role of full-time caretaker immediately prior to separation by the married parties or prior to the divorce or annulment of the marriage or dissolution of another relationship in which the parent was a full-time caretaker;

(ii) The length of time the parent staying at home has remained out of the workforce for this purpose;

(iii) The parent's education, training, and ability to work; and

(iv) Whether the parent is caring for a child or children who are four years of age or younger.

(D) If the court determines that a parent is willfully and voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, as evidenced by educational level or previous work experience. In the absence of any other reliable evidence, income may be imputed to the parent pursuant to a

determination that gross income for the current year is based on a 40 hour workweek at minimum wage.

(E) A determination of willful and voluntary unemployment or underemployment shall not be made when an individual is activated from the National Guard or other armed forces unit or enlists or is drafted for full-time service in the armed forces of the United States.

(8)(A) An adjustment to the parent's gross income shall be made on the child support worksheet for current preexisting orders actually being paid under an order of support for a period of not less than 12 consecutive months immediately prior to the date of the hearing before the court to set, modify, or enforce child support.

(B) In calculating the adjustment for preexisting orders, the court shall include only those preexisting orders where the date of entry of the initial support order precedes the date of entry of the initial order in the case immediately under consideration.

(C) The priority for preexisting orders is determined by the date of the initial order in each case. Subsequent modifications of the initial support order shall not affect the priority position established by the date of the initial order.

(D) Adjustments are allowed for current preexisting support only to the extent that the payments are actually being paid as evidenced by documentation including, but not limited to, payment history from a court clerk, a Title IV-D agency, as defined in Code Section 19-6-31, the Department of Human Resources computer system, the department's Internet child support payment history, or canceled checks or other written proof of payments paid directly. The maximum credit allowed for a preexisting order is an average of the amount of current support actually paid under the preexisting order over the past 12 months prior to the hearing date.

(E) All preexisting orders shall be entered on the credit worksheet for the purpose of calculating the total amount of the credit to be included on the child support worksheet, but the preexisting orders shall not be used on the credit worksheet as a deduction against gross income for the purpose of calculating a theoretical child support order.

(F) Payments being made by a parent on any arrearages shall not be considered payments on preexisting or subsequent orders and shall not be used as a basis for reducing gross income.

(9)(A) In addition to the adjustments to gross income for self-employment tax provided in subparagraph (B) of paragraph (3) of this subsection and for preexisting orders provided in paragraph (8) of this subsection, credits for either parent's other child or children qualified under this paragraph may be considered by the court for the purpose of reducing the parent's gross income or as a reason for deviation. Credits may be considered for a qualified child:

(i) For whom the parent is legally responsible and in whose home that child resides;

(ii) The parent is actually supporting;

(iii) Who is not subject to a preexisting order for child support; and

(iv) Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

Stepchildren and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this credit. To consider a parent's qualified other child or children for credit, a parent must present documentary evidence of the parent-child relationship to the court.

(B) Credits against income pursuant to this paragraph may be considered in such circumstances in which the failure to consider such child or children would cause substantial hardship to the parent. Use of this credit is appropriate when a child support order is entered. Credits may also be appropriate when a child support order is modified to rebut a claim for increased child support brought by the custodial parent. If the court, in its discretion, decides to apply this credit, a parent's current financial responsibility for his or her natural or adopted child or children who currently reside with the parent, other than a child or children for whom child support is being determined in the pending action, can be no greater than an amount (i) equal to the basic child support obligation for that child or those children based on the parent's income if the other parent of such child or children does not live with the parent and child or children or (ii) one-half of the basic child support obligation for such child or children based on the combined incomes of both of the parents of such child or children if the other parent of such child or children lives with the parent and the child or children.

(C) Credits against income for another qualified child or other qualified children shall be calculated and recorded on the credit worksheet and then entered on the child support worksheet for the purpose of reducing the parent's gross income on the child support worksheet. However, except for self-employment taxes paid, no other amounts shall be subtracted from the parent's gross income on the credit worksheet when calculating a theoretical support order under this paragraph.

(10) Actual payments of alimony should not be considered as a deduction from gross income but may be considered as a factor to vary from the final presumptive child support order. If the court considers the actual payment of alimony, the court shall make a written

finding of such consideration as a basis for deviation from the final presumptive child support order.

(11) In multiple family situations, the adjustments to a parent's gross income shall be calculated in the following order:

(A) Preexisting orders according to the date of the initial order; and

(B) After applying the deductions on the child support worksheet for preexisting orders, if any, in subparagraph (E) of paragraph (8) of this subsection, any credit for a parent's qualified other child or children may be considered using the procedure set forth in subparagraph (A) of this paragraph.

(f) The basic child support obligation is determined based upon the parent's gross income and by using the corresponding child support obligation table as established and maintained by the Georgia Child Support Commission. If the combined monthly adjusted gross income falls between the amounts shown in the table, then the child support obligation shall be based on the income bracket mostly closely matched to the combined monthly adjusted gross income. The number of children column on the table corresponds to children for whom parents share joint legal responsibility and for whom support is being sought.

(g)(1) The child support obligation table does not include the cost of the child's work related child care costs or the cost of health insurance premiums or uninsured health expenses. The additional expenses for the child's health insurance premium and work related child care shall be included in the calculations to determine child support.

(2)(A) Work related child care expenses necessary for the parent's employment, education, or vocational training that are determined by the court to be appropriate, and that are

appropriate to the parents' financial abilities and to the lifestyle of the child or children if the parents and child or children were living together, shall be averaged for a monthly amount and entered on the child support worksheet in the column of the parent initially paying the expense. Work related child care expenses of a nonparent caretaker shall be considered when determining the amount of this expense.

(B) If a child care subsidy is being provided pursuant to a means-tested public assistance program, only the amount of the child care expense actually paid by either parent shall be included in the calculation.

(C) If either parent is the provider of child care services to the child or children for whom support is being determined, the value of those services shall not be added to the basic child support obligation when calculating the support award.

(D) If child care is provided by a family member, other unpaid person, or provided by a parent's employer without charge to the parent, then the value of these services shall not be added to the basic child support obligation.

(3)(A) The amount that is, or will be, paid by a parent for health insurance for the child or children for whom support is being determined shall be added to the basic child support obligation and prorated between the parents based upon their respective incomes. Payments made by a parent's employer for health insurance and not deducted from the parent's wages are not included. When a child or children for whom support is being determined are covered by a family policy, only the health insurance premium actually attributable to that child or those children is added. If this amount is not available or cannot be verified, the total cost of the premium shall be divided by the total number of

persons covered by the policy and then multiplied by the number of covered children for whom support is being determined.

(B) The amount of the cost for the child's or children's health insurance premium and work related child care expenses shall be determined and added to the basic child support obligation as "additional expenses' whether paid directly by the parent or through a payroll deduction.

(C) The total amount of the cost for the child's or children's health insurance premium and work related child care shall be divided between the parents pro rata to determine the total presumptive child support order and shall be included in the worksheet and written order of the court together with the amount of the basic child support obligation.

(4)(A) If health insurance that provides for the health care needs of the child or children can be obtained by a parent at reasonable cost, then an amount to cover the cost of the premium shall be added to the basic child support obligation. A health insurance premium paid by a nonparent caretaker shall be included when determining the amount of this expense. In determining the amount to be added to the order for this cost, only the amount of the insurance cost attributable to the child or children who are the subject of the support order shall be included.

(B) If coverage is applicable to other persons and the amount of the health insurance premium attributable to the child or children who are the subject of the current action for support is not verifiable, the total cost to the parent paying the premium shall be prorated by the number of persons covered so that only the cost attributable to the child or children who are the subject of the order under consideration is included. This amount shall be determined by dividing the total amount of the insurance premium by the number of

persons covered by the insurance policy and taking the resulting amount and multiplying it by the number of children covered by the insurance policy. This monthly cost shall be entered on the child support worksheet in the column of the parent paying the premium.

(C) Eligibility for or enrollment of the child or children in Medicaid shall not satisfy the requirement that the child support order provide for the child's or children's health care needs.

(h)(1) The court shall determine each parent's pro rata share of the additional expenses by multiplying the percentage of income of each parent by the combined total additional expenses.

(2)(A) In standard parenting situations, the adjusted support obligation is the parent's share of the basic child support obligation plus the parent's share of any additional expenses for the child's or children's health insurance premium and work related child care.

(B) In split parenting situations, the adjusted support obligation is each parent's basic child support obligation for the child or children in the other parent's care plus each parent's share of any additional expenses for the child or children's health insurance premium and work related child care.

(C) If a parenting time adjustment has been calculated in either a standard or split parenting situation and that parent's share of the basic child support obligation is adjusted as specified in paragraph (5) of this subsection, then each parent's adjusted support obligation is calculated pursuant to this paragraph.

(3)(A) If a parent pays directly or through payroll deduction the child's or children's health insurance premium, or pays through payroll deduction work related child care costs, the total amount of the expenses paid in this manner shall first be entered on the child support

worksheet to be used in calculating total additional expenses and each parent's adjusted support obligation.

(B) Once the adjusted support obligation has been calculated, the expenses paid by the parent as indicated in subparagraph (A) of this paragraph shall be deducted from the adjusted support obligation of that parent to credit the parent for the payment of these expenses. The amount of the deduction for the health insurance premium or payroll deduction for the work related child care expense shall be included in the child support order to identify the amount and nature of the child support obligation. These expenses shall not be included in the noncustodial parent's income deduction order. The order shall require that these expenses continue to be paid in the same manner as they were being paid prior to the instant action.

(C) To the extent that work related child care expenses are not included in subsection (g) of this Code section, the expense shall be accounted for in the noncustodial parent's income deduction order as part of the child support order. The custodial parent shall pay this expense in full out of his or her income and the child support award.

(4)(A) The child's or children's uninsured health expenses, including, but not limited to, deductibles, copayments, and dental, orthodontic, counseling, psychiatric, vision, hearing, and other medical needs not covered by insurance, shall be the financial responsibility of both parents. The order of the court shall include provisions for payment of the uninsured medical expenses. The parents shall divide these expenses pro rata, unless otherwise specifically ordered by the court.

(B) If a parent fails to pay his or her pro rata share of the child" s or children"s, uninsured medical expenses, as specified in the child support order, within a reasonable time after

receipt of evidence documenting the uninsured portion of the expense, the other parent, the nonparent caretaker, or the state or its Title IV-D agency, as defined in Code Section 19-6-31, may enforce payment of the expense by any means permitted by law.

(5) No adjustment to gross income shall be made in the calculation of a child support obligation which seriously impairs the ability of the custodial parent in the case immediately under consideration to maintain minimally adequate housing, food, and clothing for the child or children being supported by the order and to provide other basic necessities, as determined by the court.

(i)(1) The amount of child support established by this Code section and the child support obligation table are rebuttable and the court may deviate from the presumptive child support order in compliance with this subsection. In deviating from the child support guidelines, primary consideration shall be given to the best interest of the child or children for whom support under the child support guidelines are being determined.

(2) When ordering a deviation from the presumptive amount of child support established by the child support guidelines, the court's order shall contain written findings of fact stating:

(A) The reasons for the change or deviation from the presumptive child support order;

(B) The amount of child support that would have been required under the child support guidelines if the presumptive child support order had not been rebutted; and

(C) How, in its determination,

(i) Application of the child support guidelines would be unjust or inappropriate in the case immediately under consideration; and

(ii) The best interests of the child for whom support is being determined will be served by deviation from the presumptive child support order.

No deviation in the amount of the child support obligation shall be made which seriously impairs the ability of the custodial parent in the case immediately under consideration to maintain minimally adequate housing, food, and clothing for the child or children being supported by the order and to provide other basic necessities, as determined by the court.

(3)(A) For purposes of this paragraph, parents are considered to be high-income parents if their combined adjusted gross income exceeds $20,000.00 per month.

(B) For high-income parents, the court shall set the child support obligation at the highest amount allowed by the child support obligation table but may consider upward deviation to attain an appropriate award of child support for high-income parents which is considered in the best interest of the child or children.

(4) Deviation from the child support guidelines may be appropriate for reasons in addition to those established under subsection (g) of this Code section when the court finds it is in the best interest of the child, in accordance with the requirements of subsection (e) of this Code section and the following procedures:

(A) In making its determination regarding a request for deviation pursuant to this subsection, the court shall consider all available income of the parents and shall make a written finding that an amount of child support other than the amount calculated under the child support guidelines is reasonably necessary to provide for the needs of the child or children for whom support is being determined in the case immediately under consideration. If the circumstances which supported the deviation cease to exist, the child support order may be modified to eliminate the deviation;

(B) In cases where the child or children are in the legal custody of the Department of Human Resources, the child protection or foster care agency of another state or territory, or any other child caring entity, public or private, the court may consider a deviation from the presumptive child support order if the deviation will assist in accomplishing a permanency plan or foster care plan for the child or children that has a goal of returning the child or children to the parent or parents and the parent's need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child or children clearly justifies a deviation for this purpose;

(C) If parenting time related travel expenses are substantial due to the distance between the parents, the court may order the allocation of such costs by deviation from the basic child support obligation, taking into consideration the circumstances of the respective parties as well as which parent moved and the reason that the move was made; and

(D)(i) The child support obligation table includes average child rearing expenditures for families given the parents' monthly combined income and number of children. Extraordinary expenses are in excess of these average amounts and are highly variable among families. For these reasons, extraordinary expenses, other than the health insurance premium and work related child care, shall be considered on a case by case basis in the calculation of support and added to the basic support award as a deviation so that the actual amount of the expense is considered in the calculation of the final child support order for only those families actually incurring the expense.

(ii)(I) Extraordinary educational expenses may be added to the basic child support as a deviation. Extraordinary educational expenses include, but are not limited to, tuition, room and board, lab fees, books, fees, and other reasonable and necessary expenses associated

with special needs education or private elementary and secondary schooling that are appropriate to the parent's financial abilities and to the lifestyle of the child or children if the parents and child or children were living together.

(II) In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost reducing programs received by or on behalf of the child or children shall be considered.

(III) If a deviation is allowed for extraordinary educational expenses, a monthly average of these expenses shall be based on evidence of prior or anticipated expenses and entered on the child support worksheet in the deviation section.

(iii)(I) Special expenses incurred for child rearing, including but not limited to expense variations related to the food, clothing, and hygiene costs of children at different age levels, which can be quantified may be added to the child support obligation as a deviation from the presumptive child support order. Such expenses include, but are not limited to, summer camp, music or art lessons, travel, school sponsored extra curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social, or cultural development of a child but are not otherwise required to be used in calculating the child support order as are health insurance premiums and work related child care costs.

(II) A portion of the basic child support obligation is intended to cover average amounts of special expenses incurred in the rearing of a child. When special expenses exceed 7 percent of the monthly basic child support obligation, then the court shall consider additional amounts of support as a deviation to cover the full amount of these special expenses.

(iv) In instances of extreme economic hardship, such as in cases involving extraordinary medical needs not covered by insurance or other extraordinary special needs for the child or children of a parent's current family, deviation from the child support guidelines may be considered. In such cases, the court shall consider the resources available for meeting such needs, including those available from agencies and other adults.

(5)(A) For purposes of this paragraph, a parent is considered to be a low-income person if his or her annual gross income is at or below the federal poverty level for a single person.

(B) The court may consider the low income of the custodial parent or the noncustodial parent as a basis for deviation from the guideline amounts.

(C) The court shall consider all nonexempt sources of income available to each party and all expenses actually paid by each party.

(D) The party seeking a low-income deviation shall present to the court documentation of all his or her income and expenses or provide sworn statements of all his or her income and expenses in support of the requested deviation.

(E) The court shall make a written finding in its order that the deviation from the child support guidelines based upon the low income and reasonable expenses of a party are clearly justified and shall make the necessary written findings pursuant to this paragraph.

(F) The court may deviate from the lowest amount of child support provided for in the basic child support guideline table and shall make the necessary written findings if it chooses to deviate.

(j)(1) The child support guidelines presume that when parents live separately, the child or children will typically reside primarily with the custodial parent and stay overnight with the noncustodial parent a minimum of every other weekend from Friday to Sunday, two weeks

in the summer, and two weeks during holidays throughout the year, for a total of 80 days per year. The child support guidelines also recognize that some families may have different parenting situations and thus allow for an adjustment in the noncustodial parent's child support obligation, as appropriate, in compliance with the criteria specified in this subsection. The calculations made for each parenting situation shall be based on specific factual information regarding the amount of time each parent has with the child.

(2)(A) If the noncustodial parent spends 100 or more days per calendar year with a child or children, an assumption is made that the noncustodial parent is making greater expenditures on the child or children due to the duplication of some child rearing expenditures between the two households, for example, housing or food, and a reduction to the noncustodial parent's child support obligation may be made to account for these expenses.

(B) The noncustodial parent's child support obligation may be reduced for the days of additional parenting time based upon the following schedule:

Number of Days	Percent Reduction in Support
100 -136 days	10 percent
137 -151 days	20 percent
152 -166 days	30 percent
167 -181 days	40 percent
182 or more days	50 percent

(C) The presumption that more parenting time by the noncustodial parent shall result in a reduction to the noncustodial parent's support obligation may be rebutted by evidence.

(D) If there is more than one child in the case with whom the noncustodial parent spends 100 days or more per year, and the noncustodial parent is spending different amounts of time with each child, then the time the noncustodial parent spends with each child shall be averaged to determine the parenting time adjustment.

(3)(A) If the noncustodial parent spends 60 or fewer days per calendar year with a child or children, an assumption is made that the custodial parent is making greater expenditures on the child or children for items such as food and baby-sitting associated with the increased parenting time by the custodial parent, and an increase in the noncustodial parent's child support obligation may be made.

(B) The noncustodial parent's child support obligation may be increased for the reduction in days of the noncustodial parent's parenting time based upon the following schedule:

Number of Days	Percent Increase in Support
60-39 days	10 percent
38-24 days	20 percent
23-9 days	30 percent
8-0 days	35 percent

(C) The presumption that less parenting time by the noncustodial parent shall result in an increase to the noncustodial parent's support obligation may be rebutted by evidence.

(D) If there is more than one child in the case with whom the noncustodial parent spends 60 or fewer days per year, and the noncustodial parent is spending different amounts of time with each child, then the time the noncustodial parent spends with each child is averaged to determine the parenting time adjustment.

(4) If there are additional children for whom support is being calculated with whom the noncustodial parent spends more than 60 days but less than 100 days per calendar year, the days with these children are not included in the calculation for the parenting time adjustment.

(5) If a child support obligation is being calculated for multiple children, and the noncustodial parent spends 100 days or more per year with at least one child and 60 or fewer days with at least one child, then the percentage increase is offset against the percentage decrease and the resulting percentage is applied to the child support obligation.

(k) In the event a parent suffers an involuntary termination of employment, has an extended involuntary loss of average weekly hours, is involved in an organized strike, incurs a loss of health, or similar involuntary adversity resulting in a loss of income of 25 percent or more, then the portion of child support attributable to lost income shall not accrue from the date of the filing of the petition for modification, provided that service is made on the other parent.

(l)(1) The adoption of these child support guidelines constitutes a significant material change in the establishment and calculation of child support orders. In any proceeding to modify an existing order, an increase or decrease of 15 percent or more between the amount of the existing order and the amount of child support resulting from the application of these child support guidelines shall be presumed to constitute a substantial change of circumstances as may warrant a modification based upon the court's considerations of the parent's financial circumstances and the needs of the children. This differential shall be calculated by applying 15 percent to the existing award. If there is a material change in the father's income, the mother's income, the needs of the child or children, or the needs of

either parent, either parent shall have the right to petition for modification of the child support award regardless of the length of time since the establishment or most recent modification of the child support award. If there is a difference of 30 percent or more between a new award and a prior award, the court may, at its discretion, phase in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(2) In proceedings for the modification of a child support award pursuant to the provisions of this Code section, the court may award attorneys' fees, costs, and expenses of litigation to the prevailing party as the interests of justice may require. Where a custodial parent prevails in an upward modification of child support based upon the noncustodial parent's failure to be available and willing to exercise visitation as scheduled under the prior order, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to the custodial parent.

(3) No petition to modify child support may be filed by either parent within a period of two years from the date of the final order on a previous petition by the same parent except where the child support obligation table created by the Georgia Child Support Commission creates a difference of 15 percent or more between a new award and a prior award.

(m) For split custody situations, a worksheet shall be prepared separately for the child or children for whom the father is custodial parent and for the child or children for whom the mother is the custodial parent; and that worksheet shall be entered into the record. For each of these two custodial situations, the court shall enter which parent is the obligor, the

presumptive award, and the actual award, if different from the presumptive award; how and when the net cash support owed shall be paid; and any other child support responsibilities for each of the parents.

(n) The child support obligation table shall be proposed by the Georgia Child Support Commission and set as determined by joint resolution of the General Assembly.

Laws 1870, p. 413, § 2; Laws 1979, p. 466, § 12; Laws 1989, p. 861, § 1; Laws 1991, p. 94, § 19; Laws 1992, p. 1833, § 1; Laws 1994, p. 1728, § 1; Laws 1995, p. 603, § 2; Laws 1996, p. 453, § 6; Laws 2005, Act 52, § 5, eff. July 1, 2006.

Formerly Code 1873, § 1742; Code 1882, § 1742; Civil Code 1895, § 2462; Civil Code 1910, § 2981; Code 1933, § 30-207.

<For text of section effective until July 1, 2006, see § 19-6-15, ante>

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

The 2005 amendment by Act 52 rewrote the section, which had read:

"(a) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent expressly authorized in subsection (e) of this Code section; and in a divorce case in which there are no minor children the requirements of this Code section for findings of fact and inclusion of findings in the verdict or decree shall not apply. In the final verdict or decree, the trier of fact shall specify in what amount and from which party the minor children are entitled to permanent support. The final verdict or decree shall further specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid. The final verdict or decree shall further include a written finding of the gross income of the father and

the mother and the presence or absence of special circumstances in accordance with subsection (c) of this Code section. The trier of fact must also determine whether the accident and sickness insurance for the child or the children involved is reasonably available at reasonable costs through employment related or other group health insurance policies to an obligor. For purposes of this Code section, accident and sickness coverage shall be deemed available if the obligor has access to any policy of insurance authorized under Title 33 through an employer or other group health insurance plan. If the accident and sickness insurance is deemed available at reasonable cost, the court shall order the obligor to obtain the coverage; provided, however, if the obligee has accident and sickness insurance for the child or children reasonably available at reasonable costs through employment related or other group health insurance policies, then the court may order that the child or children be covered under such insurance and the obligor contribute as part of the child support order such part of the cost of providing such insurance or such part of any medical expenses incurred on behalf of the child or children not covered by such insurance as the court may deem equitable or appropriate. If currently unavailable or unreasonable in cost, the court shall order the obligor to obtain coverage when it becomes available at a reasonable cost, unless such insurance is provided by the obligee as provided in this subsection. When support is awarded, the party who is required to pay the support shall not be liable to third persons for necessaries furnished to the children embraced in the verdict or decree. In any contested case, the parties shall submit to the court their proposed findings regarding the gross income of the father and the mother and the presence or absence of special circumstances. In any case in which child support is determined by a jury, the court shall charge the provisions of this Code section and the jury shall be required to return a special

interrogatory similar to the form of the order contained in Code Section 19-5-12 regarding the gross income of the father and the mother and the presence or absence of special circumstances. Furthermore, nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement to the contrary which may be made the order of the court pursuant to the review by the court of child support amounts contained in this Code section; provided, however, any such agreement of the parties shall include a written statement regarding the gross income of the father and the mother and the presence or absence of special circumstances in accordance with subsection (c) of this Code section."

"(b) The child support award shall be computed as provided in this subsection:"

"(1) Computation of child support shall be based upon gross income;"

"(2) For the purpose of determining the obligor's child support obligation, gross income shall include 100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other income, except need-based public assistance;"

"(3) The earning capacity of an asset of a party available for child support may be used in determining gross income. The reasonable earning potential of an asset may be determined by multiplying its equity by a reasonable rate of interest. The amount generated by that calculation should be added to the obligor's gross monthly income;"

"(4) Allowable expenses deducted to calculate self-employment income that personally benefit the obligor, or economic in-kind benefits received by an employed obligor, may be included in calculating the obligor's gross monthly income; and"

"(5) The amount of the obligor's child support obligation shall be determined by multiplying the obligor's gross income per pay period by a percentage based on the number of children

for whom child support is being determined. The applicable percentages of gross income to be considered by the trier of fact are:"

Number of Children	Percentage Range of Gross Income
1	17 percent to 23 percent
2	23 percent to 28 percent
3	25 percent to 32 percent
4	29 percent to 35 percent
5 or more	31 percent to 37 percent

"Application of these guidelines shall create a rebuttable presumption that the amount of the support awarded is the correct amount of support to be awarded. A written finding or specific finding on the record for the award of child support that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case. Findings that rebut said presumption must state the amount of support that would have been required under the guidelines and include justification of why the order varies from the guidelines. These guidelines are intended by the General Assembly to be guidelines only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of trial."

"(c) The trier of fact shall vary the final award of child support, up or down, from the range enumerated in paragraph (5) of subsection (b) of this Code section upon a written finding that the presence of one or more of the following special circumstances makes the presumptive amount of support either excessive or inadequate:"

"(1) Ages of the children;"

"(2) A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available;"

"(3) Educational costs;"

"(4) Day-care costs;"

"(5) Shared physical custody arrangements, including extended visitation;"

"(6) A party's other support obligations to another household;"

"(7) Income that should be imputed to a party because of suppression of income;"

"(8) In-kind income for the self-employed, such as reimbursed meals or a company car;"

"(9) Other support a party is providing or will be providing, such as payment of a mortgage;"

"(10) A party's own extraordinary needs, such as medical expenses;"

"(11) Extreme economic circumstances including but not limited to:"

"(A) Unusually high debt structure; or"

"(B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over $75,000.00 per annum;"

"(12) Historical spending in the family for children which varies significantly from the percentage table;"

"(13) Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact;"

"(14) In-kind contribution of either parent;"

"(15) The income of the custodial parent;"

"(16) The cost of accident and sickness insurance coverage for dependent children included in the order;"

"(17) Extraordinary travel expenses to exercise visitation or shared physical custody; and"

"(18) Any other factor which the trier of fact deems to be required by the ends of justice."

"(d) The guidelines shall be reviewed by a commission appointed by the Governor to ensure that their application results in the determination of appropriate child support award amounts. The commission will complete its review and submit its report within four years following July 1, 1989, and shall continue such reviews every four years thereafter. Nothing contained in such report shall be considered to authorize or require a change in the guidelines without action by the General Assembly having the force and effect of law."

"(e) The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary or final order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the trier of fact, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for support provided in this subsection may be enforced by either parent or the child for whose benefit the support is ordered."

"(f) The provisions of subsection (e) of this Code section shall be applicable only to a temporary order or final decree for divorce, separate maintenance, legitimation, or

paternity entered on or after July 1, 1992, and the same shall be applicable to an action for modification of a decree entered in such an action entered on or after July 1, 1992, only upon a showing of a significant change of material circumstances."

Laws 2005, Act 52, § 1, provides:

"The General Assembly finds and declares that it is important to assess periodically child support guidelines and determine whether existing guidelines continue to be viable and effective or whether they have failed or ceased to accomplish their original policy objectives. The General Assembly further finds that supporting Georgia's children is vitally important to the citizens of Georgia. Therefore, the General Assembly has determined that it is in the best interests of the state and its citizenry to undertake an evaluation of the child support guidelines on a continuing basis. The General Assembly declares that it is important that all of Georgia's children are provided with adequate financial support whether the children's parents are living together or not living together. The General Assembly finds that both parents have a continuing obligation with respect to providing financial and emotional stability for their child or children. It is the hope of the members of the General Assembly that all parents work together to advance the best interest of their children."

Laws 2005, Act 52, § 13, provides:

"Section 11 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, and the remaining sections of this Act shall become effective on July 1, 2006."