



# The Family Law Review

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## Requiem for the Divorced Homemaker

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As I approach 30 years of practicing domestic relations law in Georgia, I am experiencing the same sense of wonder that a hiker experiences when he backpacks to the top of a mountain over several days, stops, turns and looks at how far he has come and how different the scenery appears. Over the last 30 years, the legal landscape as it affects homemakers has changed dramatically with respect to every issue that arises in the context of a divorce. And those changes have not been kind to women in the traditional role of homemakers.

The results that one can typically expect today for a homemaker in terms of alimony awards, child support awards, child custody awards, property division, the custodian's ability to relocate and prenuptial agreements have all diminished substantially.

### Alimony

Homemakers are receiving significantly less alimony awards than they did 30 years ago. Thirty years ago, if a homemaker had been married 20 years, had behaved herself and, if her husband had "looked outside the marriage", which frequently seemed to be the case, she was a candidate for lifetime alimony. Perhaps 15 years ago this general rule of thumb changed to one year of alimony for every two years of marriage. Today, that ratio is one year of alimony for every three to five years of marriage, depending on which attorney you ask. There are, of course, a host of variables that can easily render these general rules of thumb inapplicable. They nevertheless serve as a broad barometer of the extent to which the judicial system in Georgia might be expected to provide financial protection to a homemaker following a divorce. The watchword on alimony today is "rehabilitative."

There are a number of events that have driven this result. The first was the U.S. Supreme Court decision in *Orr vs Orr*, 440 U.S. 268 (1979), which held that statutes that apply to only one gender are unconstitu-

tional on Equal Protection Grounds. The alimony statute in Georgia was therefore amended to provide that men, as well as women, could seek alimony. When a few men actually endeavored to utilize this new found right, it caused judges, jurors and attorneys to revisit the issue of alimony and question the extent to which the concept of alimony, which derives from the latin term that means "sustenance", is a concept that has become anachronistic in today's society.

The second event was the tentative passage of the Equal Rights Amendment by Congress in 1972, intended to be the 27th Amendment to the United States Constitution, which sought to insure equal treatment of women in the workplace. While women have benefited in the workplace from the promulgation of equal rights for women, this Amendment has, in this observer's opinion, not been a friend of the homemaker. As more women enter the workforce and as they come closer to attaining parity with their male counterparts, the perception, and, in many instances, the expectation, has arisen that a woman should be able to support herself as well as a man, whatever the circumstance. Many have seen no inequity in telling a woman who had not swam a lap in the pool in 20 years to dive in, start swimming and swim fast.

The third seminal event was the enactment of the first Child Support Guidelines in Georgia on July 1, 1989. The practical effect of the calculations was a presumptive child support award that was approximately twice as much as one would have seen in a similar case prior to the enactment of the guidelines. These original guidelines (which have since been replaced) essentially diminished alimony awards inasmuch as the noncustodians were now paying much more child support than they had in the past, which left much less disposable income available to be awarded in the form of alimony. These guidelines also made the children

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## Editor's Corner

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**G**reetings. 2008 is one third done and we are now preparing for our Annual Family Law Institute in Destin, Fla., the weekend leading up to Memorial Day. The program and educational benefits will be tremendous, as will be the socializing. I personally look forward to it even more this year since I will be coming straight from a cold Denver, Colo., where the American Bar Association (ABA) Family Law Section's Trial Advocacy Institute is being held (it actually takes place the entire week of May 19 and concludes the same Saturday on which our own Institute ends). I hope to leave Denver in time to catch most of our program.

For those of you who may be interested in being involved in the American Bar Association, I can attest that the ABA Family Law Section is worth the involvement and has made me a better lawyer. Many of our own Georgia Family Law Section members such as Shiel Edlin, Jonathan Levine and Stephen Worrall are actively involved in the ABA Family Law Section and others like Ronnie Kaplan have even attended the ABA's Trial Advocacy Institute. Any of us would be happy to discuss it with you, or you can check it out at: <http://www.abanet.org/family/events/tai/home.shtml>.

The State Bar of Georgia Family Law Section continues to grow. Last year's Institute was the largest ever (approximately 450 people) and this year's will compete for that honor. Our other seminars are receiving great reviews and we are getting some wonderful contributions to the *Family Law Review* (FLR) (such as John Wilson's "Requiem for the Divorced Homemaker"). Our new Executive Committee is working hard considering ways to improve the Section and to increase member benefits, such as a possible section-wide e-mail discussion list (comments are welcome) and improvements to our website.

Please also continue to submit articles to us. Even if it is just a photo and a paragraph about a vacation you take, or an experience in court or with a client that you think is unique. We all want to know what others in the same profession are doing and how they are doing it. If you have any business tips (suggestions might include "How and when to turn down a case?") or even if you wish to just explain results you are proud of, unsure of, or even ones you don't understand, simply jot them down and send them in. Let's make this FLR more of a group effort. Just e-mail me your submissions and photos and we will get them in.

Have fun in the sun! **FLR**

If you would like to contribute to *The Family Law Review*, or have any ideas or suggestions for future issues, please contact Editor Randall M. Kessler at 404-688-8810 or [rkessler@kssfamilylaw.com](mailto:rkessler@kssfamilylaw.com).

The opinions expressed within *The Family Law Review* are those of the authors and do not necessarily reflect the opinions of the State Bar of Georgia, the Family Law Section, the Section's executive committee or the editor of *The Family Law Review*.



## Note from the Chair

By Kurt A. Kegel  
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As summer approaches, so does the end of my year as the chair of our Section. I have thoroughly enjoyed my year as chair, as well as the prior years that I have been involved with the Executive Committee and am truly amazed at how quickly the time has gone by. As my year comes to a close, I want to thank everyone on the Executive Committee, our liaison at the Bar Johanna Merrill and Steve Harper at ICLE. The assistance provided by all has truly made this a very enjoyable experience.

Since my year as the chair is coming to an end, it must mean that it is time once again for the Family Law Institute! This will be the 26th Annual Family Law Institute and our attendance and participation has been growing every year. This

year, our Vice-Chair Ed Coleman has put together a great program for us all; once again back at the Sandestin Hilton in Destin, Fla. If you have not made your reservations and registered for the Institute, please do so as soon as possible. As always, not only will you receive fantastic CLEs, but you will also have the opportunity to mix and mingle with other lawyers, judges and justices from all over the state. Where else can you get all of that in one place?!

As always, if you have any comments or questions about the Section or other business, please don't hesitate to send me, or any other member of the Executive Committee, an e-mail or give any of us a call. Thanks again for a great year and I'll see you at the beach! [FLR](#)

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## Requiem

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more valuable economic pawns to be captured in a chess game played out in divorce court. And, as men became more involved in their children's lives, more men were awarded custody. Since they were typically already working outside the home and not pursuing the role of homemaker, this made alimony awards to the custodian even less frequent.

Finally, as more and more women have entered the workforce, the practical need for alimony has arisen less frequently. And frequency affects the perception of the fundamental necessity of alimony.

## Child Support

The Child Support Guidelines that were enacted in 1989 were replaced effective Jan. 1, 2007, with a shared income model whereby the income of both parents is required to be considered, and the child support obligation allocated between the parents based upon their respective incomes. Under this new law, a judge or jury can determine whether a parent is willfully or voluntarily unemployed or underemployed and can ascertain the reasons for the parent's occupational choices and determine the reasonableness of these choices in light of the parent's responsibility to support his or her child and whether such choices benefit the child. O.C.G.A. §19-6-15(f)(4)(D). While the determination looks at whether there was an intent to avoid or reduce child support payments or an intentional act that affected the parent's income, the test implemented for determining willful or voluntary unemployment or under-employment examines whether there is a substantial likelihood that the parent could, with reasonable effort, apply his or her education, skills or training to produce income. While it remains to be seen what impact this will have on awards, the argument that a homemaker could be contributing to the income available to support the child, if only he or she would find employment, is apparent. It then becomes a self-fulfilling prophecy. As the homemaker is awarded even less in child support, this, in turn forces that parent to abandon the role of homemaker to make ends meet. Even without application of this aspect of the new guidelines, it is apparent that child support awards will generally be lower than they were under the original Child Support Guidelines. Lower awards mean less time in the home and more time at work outside the home.

## Custody

In 1973, a Supreme Court of Georgia justice stated in the case of *Mathews v. Mathews*, 230 Ga. 779, 1999 S.E. 2d. 179 (Hawes, J., dissenting): "The calf follows the cow." The message was clear: men do not get custody. While lawyers were not citing this proposition with

any great frequency thirty years ago, this same assumption was generally a given. Thirty years ago, if a lawyer walked into the courtroom and told the judge he represented the father and that the father wanted custody, the lawyer might want to duck to avoid being hit by the shoe that would be thrown at him for wasting the court's time. Custody was the province of the mother and everyone knew it. Custody awards to men were exceptional. The first few either resulted from a particular mother's desire to voluntarily abdicate the role of primary parent or resulted from some larger issue, such as impairment from substance abuse. As more and more women entered the workforce, however, fathers began taking more active roles in those aspects of the children's lives that influence a determination as to the appropriate custodian. Fathers became more willing to, and more desirous of, taking on a significant role, post divorce, and working mothers needed their involvement as well. Fathers began getting awards of custody more frequently. As time went by, and fathers began to win custody outright, the social stigma of a mother not being the custodian lessened. More and more parents agreed to joint custodial arrangements. The ability to describe legal and physical custody arrangements as joint while, as a practical matter ceding the important aspects of this issue (who made the final decisions affecting the children, the identity of the recipient of child support and the amount awarded) to the father allowed those mothers who were less inclined to continue in that role the political cover to step aside and permit the father to act as primary custodian. Today, when a father goes to court and says he wants custody, the judge's response is most likely to be "Okay. Show me what you have."

O.C.G.A. § 19-9-3, which had already been amended to provide that there is "no prima-facie right to the custody of the child or children in the father or mother", was amended effective Jan. 1, 2008, to provide that "there shall be no presumption in favor of any particular form of custody, legal or physical, nor in favor of either parent." O.C.G.A. § 19-9-3 continues to state that joint custody may be considered as an alternative form of custody. . . ." The statute goes on to specify 17 categories of evidence that the practitioner should carefully review before embarking upon a contested custody case. The recent amendment of O.C.G.A. § 19-9-1 to requiring each party to submit parenting plans in custody cases which include "a recognition that a close and continuing parent child relationship and continuity in the child's life that will be in the child's best interest", appears, to this commentator, to be an implicit push in the direction of a joint custody arrangement.



## Ability To Relocate

Thirty years ago, the homemaker, almost invariably the mother, would obtain sole custody. The legal environment was such that if a mother gave notice that she was leaving the state, it was a given that preventing her from doing so was not a viable option for the noncustodian.

The most common reasons for seeking to leave the state all related to the need for homemakers to have some form of support to continue in that role. A frequent reason for wanting to leave the state concerned remarriage. Once the custodian developed a relationship with a future spouse who worked outside the home, this permitted the custodian to continue in the role as homemaker. A second reason for leaving involved seeking the financial, emotional and caretaking support of the homemaker's birth family. By moving back to her state of origin, the homemaker might find living quarters for herself and the children, child care services provided by family members that were free of charge and emotional support that is not unwelcome when facing the challenges of acting as the primary custodian.

The law changed dramatically in 2003 with the Supreme Court's ruling in *Bodne v. Bodne*, 277 Ga. 445, 588 S.E. 2d 728 (2003). Prior to *Bodne*, the law in Georgia was that if a custodian moved outside the state, the non-custodian could not succeed in a change of custody action unless a two-prong test was satisfied. The first prong required a showing that there had been a new and material change in circumstances that affected the welfare of the child or children. In this regard, the move out of state alone could not satisfy this prong. Assuming the first prong was nevertheless satisfied, the second prong then required an investigation and determination as to whether the best interest of the child or children would be served by moving with the custodian or staying in state with the non-custodian.

The Supreme Court of Georgia in *Bodne* overruled many decades of precedent and held that the move out of state by the custodian, in and of itself, satisfied the first prong. In other words, the move itself constituted the new and material change without more. This meant that the test in a change of custody action now devolved to a determination as to whether it would be better for the child or children to move out of state with the custodian or remain in state with the non-custodian. The three dissenting justices in *Bodne* argued that while the best interests of the children always remains paramount, "because the best interest of the child are so interwoven with the well being of the custodial parent, the determination of the child's best interest requires that the interest of the custodial parent be taken into account." The dissent also cited a Wisconsin case and noted, "because removal may offer emotional and finan-

cial advantages to the custodial parent, removal may also foster the well being of the child, for the interest of the child and the custodial parent, the primary caretaker, are intricately connected." The Court's ruling in *Bodne* effectively constituted a diminishment in the significance of the role historically accorded the custodian following a divorce. The approach that the welfare of the custodian is symbiotic with the welfare of the minor child was no longer a given.

A custodian's ability to leave the state at this time, assuming the non-custodian has had a significant role in the child's life subsequent to the divorce, is substantially diminished. This in turn has diminished post-divorce support mechanisms that would allow the homemaker to continue in that role.

## Property Division

Thirty years ago the mother typically was awarded the marital residence as part of a divorce action. There were several reasons for this. The first was that often times, the house was already titled in the mother's name alone to shelter it from creditors and as a reflection of the generally more paternalistic attitude society held at the time. The Supreme Court of Georgia had not yet recognized (e.g. created) the concept of dividing marital property equitably as it eventually did in *Stokes v. Stokes*, 246 Ga. 765, 273 S.E. 2d. 169 (1980). And until 1979, Georgia law did not permit a husband to obtain title to property through the vehicle of alimony. For this reason, husbands were oftentimes forced to seek property through the legal fictions of an implied or resulting trust that were imperfect vehicles at best. The marital residence was often times the largest asset of the family.

Second, where the husband had a pension, the ERISA laws had not yet been amended to permit an exception to the anti-alienation clause, which would permit assignment of a portion of the pension to the non-titled spouse. This only became possible with the advent of Qualified Domestic Relations Orders, enacted in 1984.

Third, there was a general recognition that the home represented a retirement account of sorts for the wife to compensate her for the impairment of her income earning ability that resulted from working in the home rather than outside the home.

Today, the law with respect to separate property, that property inherited from one's family or brought into the marriage, essentially remains the same. It stays with the spouse with whom it originated. The disposition of marital property has changed. Overwhelmingly it is divided equally between the spouses regardless of their respective incomes and, frequently, regardless of their conduct during the course of the marriage. Inevitably, such a division is less favorable to the spouse with less income earning ability.

## Prenuptial Agreements

For many decades, prenuptial agreements were unenforceable in Georgia because they were viewed as facilitating divorces, and the public policy of the State of Georgia was considered to disfavor anything that made getting a divorce easier. *Reynolds v. Reynolds*, 217 Ga. 234, 123 S.E. 2d. 115 (1961). This policy changed in 1982 when the Supreme Court of Georgia held that prenuptial agreements could be enforced although under certain circumstances. *Scherer v. Scherer*, 249 Ga. 635, 292 S.E. 2d. 662 (1982). The criteria the trial courts were required to employ in scrutinizing prenuptial agreements and determining whether or not to enforce them included the following:

1. Was the agreement obtained through fraud, duress or mistake, or through misrepresentation or non-disclosure of material facts?
2. Is the agreement unconscionable?
3. Have the facts and circumstances changed since the agreement was executed so as to make its enforcement unfair and unreasonable?

In determining that prenuptial agreements could now be enforced under certain circumstances, the Supreme Court observed that the public policy toward divorces has changed by virtue of the adoption of the 13th ground for divorce: “irretrievably broken marriage” — generally referred to as a “no fault” divorce. The Supreme Court opined that this ground for divorce reflected a change in public policy and the desire to facilitate divorces without necessitating recrimination between the spouses and allegations of some form of misconduct.

Whatever remaining protections may exist to homemakers in the judicial system through the normal processes of obtaining a divorce, the Supreme Court’s decision to allow the moneyed spouse the opportunity to dictate further financial protections for himself has further impaired those rights and protections. Just how severely this pendulum has swung was demonstrated recently in the Supreme Court of Georgia’s decision in *Mallen v. Mallen*, 280 Ga. 43, 622 S.E. 2d 812 (2005). In *Mallen*, the Supreme Court of Georgia affirmed the trial court’s decision to enforce the prenuptial agreement that awarded the wife \$2,900 per month in alimony for four years and awarded the husband all of the assets that he had when he entered into the marriage and all of the assets he accumulated during the marriage. A review of the facts demonstrates just how hard it has become to demonstrate one of the bases for setting aside a prenuptial agreement.

Catherine Mallen and Peter Mallen had lived together unmarried for four years when Catherine

became pregnant in 1985. While she was at a clinic to terminate the pregnancy, Peter called her and requested that she not to have an abortion and marry him. She agreed. Approximately 10 days before the wedding Peter asked Catherine to sign a prenuptial agreement. Catherine contended that Peter told her that the agreement was just a formality and he would always take care of her. Catherine took the agreement to an attorney, whom she claimed Peter paid, who advised her that he did not have time to fully examine the agreement in the days preceding their wedding. She did not consult another attorney or postpone the wedding, but did meet with Peter and his attorney more than once. She agreed to sign the prenuptial agreement, but only after Peter agreed to increase the life insurance benefit and the alimony provision was modified to provide for increases for each year of marriage. Somewhat notably, at the time the agreement was executed, Catherine only had a high school education and was working as a restaurant hostess; whereas, Peter had a college degree and owned and operated a business. Moreover, Catherine had a net worth of approximately \$10,000, and Peter had a net worth of at least \$8,500,000.

After 18 years of marriage and the birth of four children, Peter filed for divorce and sought to enforce the prenuptial agreement. At the time Peter filed for divorce, it appeared that he was worth approximately \$22,700,000. The trial court held that the prenuptial agreement was enforceable and the Supreme Court affirmed, finding that (1) there was no fraud in the husband’s alleged statement that the agreement was a mere formality; (2) there was no duress because the wife could have declined to sign the prenuptial agreement; (3) there was adequate disclosure notwithstanding the lack of disclosure of the husband’s income given the wife’s general idea of his income and standard of living and her duty to make inquiry; (4) the agreement was not unconscionable and (5) the circumstances surrounding husband’s increased net worth of 14 million dollars was not such a change, given that the wife must have anticipated an increase, as would warrant refusing to enforce the agreement. The rules of engagement had indeed changed.

## Conclusion

The historical underpinnings that permitted a wife and homemaker to continue in the role of homemaker after divorce have been severely restricted. Alimony and child support awards have been diminished. Property settlements have been diminished. The ability to relocate and take advantage of support from family and friends has been severely restricted. Sole custody, once a given, is anything but in today’s legal environment. The Supreme Court’s expansive ruling permit-

ting moneyed spouses to essentially dictate the terms of the final judgment and decree of divorce, before the marriage has even occurred, through the terms of a prenuptial agreement, reflects a further erosion of those underpinnings. Whether the changes in the law are merely a reflection of changes in society or have acted as a catalyst to promote those changes is a matter of debate. The author holds the belief that an element of both exists. It will be left to the sociologists to determine what affect these changes have on the children we are raising. One cannot help but wonder what the landscape will look like 30 years hence. **FLR**



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**Endnotes**

1. Political correctness is the 21st century requires articles on the subject of custodians and homemakers to include a disclaimer that any reference to a homemaker as a woman is merely a reference to "traditional roles". This paper eschews this approach since the point of the paper itself is to address the extent to which the woman's role as homemaker has, in fact, changed. The convention and disclaimer are, themselves, stark testament to the transition that has occurred in a woman's role as homemaker subsequent to a divorce.
2. A general rule of thumb is always a starting point for discussions, not necessarily an end point.

3. The Equal Rights Amendment passed Congress in 1972 and would have become the 27th Amendment to the Constitution had three-fourths of the states ratified it by the original deadline in 1977 or the extended deadline of June 30, 1982. Those dates passed with only 35 of the necessary 38 state ratifications having occurred with five of the 35 purportedly rescinded. The ERA has been reintroduced into each session of Congress for the past approximately 25 years.
4. The entrance of women in the workplace is reflected in the Justice system itself. 1992 saw the first female Supreme Court justices with the arrival of Justices Leah Sears and Carol Hunstein. The Superior Court benches of DeKalb, Cobb and Fulton counties had their first female judges in the person of the Honorable Carol Hunstein in DeKalb in 1984, Honorable Dorothy Robinson in Cobb County in 1980 and Honorable Leah Sears in Fulton County in 1988, respectively. With respect to the composition of women judges who presently sit on the Superior Court bench in DeKalb, Cobb and Fulton counties, the number of women on those benches are four of 10, four of 10 and 18 of 19, respectively.
5. Some lawyers may recall that in the late 1970s, Fulton County had its own version of a shared income Child Support Worksheet. This consisted of a one-page grid with a vertical axis reflecting the income of one spouse and the horizontal axis reflecting the income of the other spouse. The point at which the two appropriate income numbers intersected reflected the suggested amount of child support. Use of this "calculator" was voluntary and this author does not recall ever seeing it used in practice. The consensus of family lawyers at that time seemed to be that such tools were merely a crutch to be resorted to by an inexperienced attorney who lacked the practical acumen necessary to factor the many variables into an appropriate level of child support. This "calculator" died without a death notice and disappeared into the fog of time.

## Past Family Law Section Chairs

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# Case Law Update: Recent Georgia Decisions

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## Child Support

*Sebby v. Costo*,  
A07A2138 (March 5, 2008)

After the parties' hearing, the father was awarded visitation rights and a child support obligation was established. Among other things, the father appeals the Trial court's failure to apply the revised child support guidelines provided in O.C.G.A. §19-6-15, et seq. It appears the trial court order was issued the 8th day of February 2007, *nunc pro tunc* Dec. 21, 2006. In Georgia, an order issued *nunc pro tunc* is designed to record some previously unrecorded action actually taken or judgment actually rendered. While it does not appear that the trial court applied the revised child support guidelines, such guidelines did not become effective until Jan. 1, 2007. Since the father did not attach a transcript to the appeal, it is presumed the trial court's judgment is correct. Judgment affirmed.

## Contempt

*Gary v. Gowins*,  
S07G1104 (March 10, 2008)

The mother and father were the parents of twins born in 2000, but were never married. In July 2002, a private settlement agreement was reached placing sole legal custody of the children with the mother and the father to pay child support in the amount of \$14,000 per month per child. This was a private agreement and was not pursuant to any filed lawsuit. In July 2004, the mother filed a complaint for paternity and child support asking the Court to incorporate the July 2002 settlement agreement into its final judgment and decree. The father answered and asked for the settlement agreement to be set aside arguing that he agreed to pay child support in the amount of \$14,000 per month for both children and not \$14,000 per month for each child. In April 2005, the

Court rejected the father's claim of mutual mistake and incorporated the July 2002 agreement into the final judgment and the father was ordered to pay \$14,000 per month per child. The father filed a motion for new trial and sought clarification as to whether he was required to pay back due child support. The trial court denied the motion specifically stating that no award of back child support had been granted in the final judgment.

In November 2005, the mother filed a contempt action stating that the father was in willful contempt for failure to pay child support as required under the April 2005 judgment. The trial court held the father in contempt for payments he did not make since the date the agreement was incorporated into the final judgment, but ruled that the father was not in contempt for failure to pay child support due under the parties' agreement prior to its incorporation. The Court of Appeals reversed stating that when the July 2002 settlement agreement was incorporated into the April 2005 judgment, the child support obligation imposed by the agreement from the date it was executed in July 2002 became the support obligation awarded by the Court.

The Supreme Court granted certiorari in this case to determine if the Court of Appeals erred by holding that the trial court had authority to consider holding a parent in contempt for failing to make a child support payment which accrued under a settlement agreement prior to the date the agreement was incorporated into the Court's judgment.

In this case, the trial court incorporated the settlement agreement into the final judgment though the judgment itself is silent as to the father's specific obligation to make child support payments that accrued under the parties' then private settlement agreement. The trial court, in its clarification order, stated the judgment did not



include an award of back child support, and refused to hold the father in contempt for failure to make child support payments due prior to the April 2005 judgment because there was no order requiring him to do so.

Before a person may be held in contempt for violating a court order, the order should inform him, in definite terms, as to the duties thereby imposed upon him. The trial court can approve or disapprove the settlement agreement in whole or in part. The Court of Appeals erred by giving no weight to the trial court's authority. Therefore, the Supreme Court reverses the Court of Appeals' unsupported conclusion that the trial court's general statement incorporating the settlement agreement into the judgment overruled the Court's more specific language in the trial court's clarifying order. Justice Hunstein and Chief Justice Sears concurred stating this ruling is a narrow holding under the particular facts of this case.

## Contempt/ Verbal Order

### *Shirley v. Abshire*, A07A2221 (Dec. 10, 2007)

The parties, Shirley (father) and Abshire (mother) divorced in 2003. The parties were given joint legal custody of the two minor children with the mother being awarded primary physical custody of both children. Under the divorce decree, visitation generally began at 6 p.m. The father petitioned for modification of custody and after a hearing in November 2006, the trial court awarded each parent primary physical custody of one of the children. The final order was signed and filed on Jan. 11, 2007, *nunc pro tunc* Nov. 16, 2006, providing that visitation would begin at 6 a.m. on the designated days.

In February 2007, the mother filed a motion for contempt alleging that she was denied visitation during the Christmas holiday of 2006. In the Court's written order, it stated, in pertinent part, that the Court verbally instructed the parties, through their counsel, during a telephone conference call in December 2006 that the exchange was to take place at 5:45 a.m. The new *pro*

*tunc* order said that the exchange time was 6 a.m. The Court finds that the verbal instructions of 5:45 a.m. to counsel for each party was not complied with by the father. The Court ordered the father to pay the mother's travel expenses for December 2006, visitation as well as her attorney's fees. The father appeals and the Court of Appeals reverses.

The pertinent part of O.C.G.A. §9-11-58(b) states that what a judge orally declares is no judgment until it has been put in writing and filed with the clerk. Therefore, the trial court erred in holding the father in contempt of a verbal modification order that had not been reduced to writing, signed by the judge and filed with the clerk.

## Equitable Division/ Pensions

### *Taylor v. Taylor*, S07F1634 (Jan. 28, 2008)

The parties filed for divorce and entered into a partial settlement agreement. The only two issues for consideration were equitable division of the parties' pensions and attorney's fees. The hearing was held and the trial court entered a final divorce decree approving and incorporating the parties' partial settlement agreement. The Court made an equitable division award to the wife based upon her and her husband's pension contributions as employees and ruled that each party shall be responsible for their own attorney's fees. The wife appeals and the Supreme Court affirms.

The trial court awarded the wife one-half of the difference between her own pension contributions and the greater amount of the husband's pension contributions. The wife contended that the trial court abused its discretion in failing to classify the employer contributions to the parties' pension accounts as marital property and failing to equitably divide the parties' entire pension benefits. The law is well settled that retirement benefits acquired during the marriage are marital property subject to equitable division whether they are vested or unvested benefits. Here, the final decree of divorce entered contains the results of the process, but doesn't contain any findings of facts to clarify the rationale used by the trial court to reach its results. Neither party asked the trial court to make factual findings, therefore,



Photo by Jimmy Emerson

the Court was unable to conclude that the trial court's equitable division of marital property was improper as a matter of law or as a matter of fact.

Notwithstanding the lack of findings of facts, equitable division of marital property does not necessarily mean equal division of property and the Court was not required to award the wife any of the husband's retirement account. Therefore, the Court cannot conclude that the trial court made an erroneous finding or improperly applied the law to its findings.

## **Insurance Beneficiary**

### ***Stanton v. Fisher, A07A1916 (March 13, 2008)***

The parties were divorced in 1998 and there were three children born as issue of the marriage. In 2003, the father remarried and obtained an accidental death and dismemberment insurance policy where the father designated his new wife as beneficiary. The father divorced his new wife in 2004. In 2006, the father died as a result of multiple traumatic injuries sustained in a motorcycle accident. The first wife and the father's children made a claim to the insurance proceeds. The first wife claimed that the father showed her a letter that the father sent to the insurance company stating that he was divorced from the second wife and wanted to change the beneficiary to his three children and the three children were named in the letter. The first wife did not produce a copy of the letter that the father allegedly sent. The father's second wife claimed an interest as the designated beneficiary of the insurance proceeds. The insurance company showed the second wife as the designated beneficiary. Because of the conflicting claims, the insurance company deposited funds into the registry of the Court and was discharged from the case. Both parties filed motions for summary judgment and the trial court granted the second wife's motion. The Court of Appeals affirms.

Georgia law with regards to the changing of a beneficiary is that when an insured is authorized by the insurance policy to change the beneficiary during his life and the insured dies without having exercised the authority, the named beneficiary has a vested interest in the proceeds of the policy. If, however, the insured has done substantially all that he is able to do to affect a change of beneficiary and all that remains to be done is ministerial action of the insurer, the change will take effect though the details are not complete before the death of the insured. Some affirmative act on the part of the insured to change the beneficiary is required and his mere intention will not suffice to work the change of beneficiary.

Even though the first wife filed an affidavit stating that the deceased father showed a letter that he allegedly sent stating he was changing the beneficiary,

said statement is hearsay without an exception and cannot be considered in support of a motion for summary judgment. Therefore, there was no genuine issue of material fact of whether the father did substantially all that he could do to affect the change of beneficiary.

## **Insurance Proceeds**

### ***Sparks v. Jackson, A07A1963 (Feb. 29, 2008)***

The parties were married in 1988 and were divorced in 1998. As part of the divorce decree, the husband agreed to maintain his current level of life insurance through his employment with death benefits of \$220,000 with the wife (Jackson) named as an irrevocable beneficiary for the benefit of the children. The husband remarried, and in June 2005, designated his new wife (Sparks) as the beneficiary of his life insurance policy. In November 2005, the husband died. Both the ex-wife (Jackson) and the widow (Sparks) filed a petition against the life insurance company for payment. The insurance company interplead the funds into the Superior Court Clerk's office for determination of division of the proceeds. The total proceeds including interest deposited into the registry of the Court totaled \$238,644. Both parties filed motions for summary judgment and the trial court granted summary judgment to the ex-wife and awarded all of the funds to her. Court of Appeals affirmed in part, reversed in part and remanded.

The widow argues, among other things, that she was the only beneficiary named on the life insurance policy and that the Court also erred by awarding the ex-wife more than \$220,000 that was stated in the divorce decree. As a general rule, if the insured names a beneficiary by revocable designation, the beneficiary does not acquire a vested right or interest in the policy and the insured may change the beneficiary at will. However, the insured may forfeit this right if he agrees for valuable consideration not to change the beneficiary. In the context of a divorce settlement, the terms of a property settlement agreement may preclude the insured from making a change of beneficiary even though he is given the right by the terms of the insurance policy. Therefore, where a divorce decree requires the husband to name his children or his former wife as beneficiary of his life insurance policy and to keep the policy in effect, the children or the former wife obtain a vested interest in the policy proceeds.

The widow also argues that the record does not show that the policy was the same insurance policy that was in effect at the time the deceased divorced the ex-wife. However, where one insurance policy replaces the policy of another specified in such settlement agreement, the minor's interest in the prior policy applies to the replacement policy. The widow also argues that ERISA preempts Georgia law that the set-

tlement agreement fails to meet the ERISA requirements for a change of the beneficiary designation. However, the widow did not make this claim to the trial court and the appellate court will not consider arguments raised for the first time on appeal, except in special circumstances which may include jurisdictional challenges, claim of sovereign immunity, serious issues of public policy, a change in the law, or errors that work manifest injustice. Here, the widow fails to show the existence of any special circumstances. However, the trial court did err in awarding all of the policy proceeds to the ex-wife. The settlement agreement gave the children a vested right of \$220,000. Therefore, the widow is entitled to the remainder of the proceeds and division of any interest thereof.

### **Modification Lump Sum/Periodic Alimony**

#### ***Shepherd v. Collins*, S07A1658 (Feb. 11, 2008)**

The parties were divorced in December 1998, and the settlement agreement provided, *inter alia*, that the wife would have primary custody of the parties' four minor children and the husband would pay child support in the amount of \$2,092.50 per month. The husband would also pay alimony to the wife for a period of 180 months, with \$1500 being paid per month for the first period of 60 months, \$1,000 per month for the second period of 60 months and \$500 being paid a month for the third period of 60 months. The payments were scheduled to begin on Nov. 1, 1998. Even though said payments were alimony, they were to continue if the wife should remarry and they shall cease only upon the death of the wife or until 180 payments have been made, whichever event shall first occur.

In September 2005, the husband filed a complaint for modification of alimony and child support pleading a substantial downward change in his income and financial status. The trial court found that there had been a significant change of circumstances and reduced the husband's child support obligation from \$2,092.50 to \$1,150 per month, but refused to modify the husband's alimony payments because it found the language in the agreement established a lump sum alimony obligation payable in installments. Supreme Court affirmed in part, reversed in part, and remanded.

The trial court determined that the language of the agreement established an obligation for lump sum alimony paid in installments rather than for periodic alimony. Periodic alimony is subject to modification where lump sum alimony in installments is not. In making a threshold distinction between periodic alimony and lump sum alimony, if the words of the document creating an obligation state the exact amount of each payment, and the exact number of the payments to be made without other limitations, condi-

tions, or statements of intent, the obligation is one for lump sum alimony payable in installments. In the instant case, there was a contingency regarding the wife's survival and therefore the amount of the husband's total alimony obligation was uncertain and therefore must be deemed to be periodic. Accordingly, that portion of the judgment finding lump sum alimony is reversed and remanded.

### **Prenuptial Agreement**

#### ***Blige v. Blige*, S07F1817 (Jan. 28, 2008)**

The parties had a child together in 1994 and were married in 2000. The day before the wedding, the husband took the wife to meet with an attorney he had hired for her to review the prenuptial agreement that the husband had drafted. The wife read through the agreement and signed it and the parties were married the following day as scheduled. The prenuptial agreement provided that the husband retain his sole and separate property of 19.5 acres of land in Bryan County that he had previously purchased together with any house or structure which may be situated upon said property. At the time of the wedding, there was no house or structure situated on the property. The husband worked as a delivery truck driver and his base pay was \$10 per hour. The husband had hidden away \$150,000 in cash for which he planned to use to build the home after the wedding. The husband did not disclose the \$150,000 in cash in the prenuptial agreement, nor did he tell the wife about the \$150,000.

In July 2005, the wife filed a complaint for divorce and in his answer and counterclaim, the husband sought enforcement of the prenuptial agreement. The wife moved to have the prenuptial agreement set aside for failure to comply with legal requirements for prenuptial agreements. The trial court conducted a pretrial evidentiary hearing on the issue, and in November 2006, the trial court entered an order setting aside the prenuptial agreement because the husband failed to make a fair and clear disclosure of his income, assets, and liabilities. Thereafter, a jury trial on the property division ensued. The evidence before the jury showed that the husband had used \$150,000 in cash he had concealed from the wife toward construction of the home. The cost to complete the construction on the home was approximately \$280,000 and by the time of trial, the property was worth \$375,000 to \$400,000. The jury returned a verdict awarding the house to the husband minus \$160,000 to be paid to the wife for her equitable interest in the marital property. In February 2007, the trial court entered a final judgment and decree of divorce incorporating the jury's verdict. The husband appeals and the Supreme Court affirms.

There are three prongs to determine the validity of



prenuptial agreements as established in *Scherer*. The burden of proof is on the party seeking to enforce the prenuptial agreement to show that (1) the prenuptial agreement was not the result of fraud, duress, mistake, misrepresentation, or non-disclosure of material facts; (2) the agreement is not unconscionable; and (3) taking into account all relevant facts and circumstances, including changes beyond the parties' contemplation when the agreement was executed, the enforcement of the prenuptial agreement would be neither unfair nor unreasonable. The *Scherer* test has been redefined and clarified by later decisions and continues to govern the enforceability of prenuptial agreements.

The husband contends the trial court erred by setting aside the prenuptial agreement under the first prong of *Scherer*. The trial court specifically found that the husband did not make a fair and clear disclosure of his income, assets, and liabilities before the parties signed the prenuptial agreement. The evidence presented at the pretrial hearing showed that at the time of the parties' marriage, the husband made a living as a vending and delivery person, his base pay was \$10 an hour. One year prior to the marriage, the husband purchased 19.5 acres of land in rural Bryan County for \$85,000. He owned no other property and the wife did not live with the husband prior to the marriage. The evidence is also undisputed that he never told her prior to the execution of the prenuptial agreement that he had \$150,000 cash in his possession. Therefore, the indications are that the husband actively hid his true financial status from the wife before the marriage and for some time thereafter. Therefore, the trial court was correct in setting aside the prenuptial agreement for not making a full and fair disclosure of his financial status before signing the prenuptial agreement under the first prong of *Scherer*.

The husband also argues that the trial court should have upheld the prenuptial agreement pursuant to *Mallen*. However, *Mallen* is distinguishable from this case in that (1) the trial court in *Mallen* upheld the prenuptial agreement; (2) the parties attached financial disclosure statements to the prenuptial agreement; and (3) the parties lived together for four years prior to the signing of the prenuptial agreement and the wife was aware of the standard of living that the parties enjoyed and that the husband received significant income from his business. Therefore, the failure of the husband in *Mallen* to disclose his income was not material given the unique circumstances of the case.

The husband also argues that *Mallen* establishes a general duty to inquire into the financial status of one's prospective spouse and if such inquiry is not made, a challenge to the enforceability of prenuptial agreement is barred. The husband's reading of *Mallen* turns *Scherer's* requirements on its head. *Mallen* did not overrule *Scherer* and this Court has repeatedly recognized

that *Scherer* imposes an affirmative duty of full and fair disclosure of all material facts on the parties entering into a prenuptial agreement and therefore, *Mallen* does not create a duty of inquiry. Judgment affirmed.

## TPO/Jurisdiction

### *Loiten v. Loiten*, A07A1092 (Nov. 29, 2007)

The wife, now a Georgia resident, initiated divorce proceedings in Alabama where the husband resided, but the wife filed her petition for protective order in Clayton County Superior Court under the Georgia Family Violence Act asserting that jurisdiction was proper in this state because the husband had committed acts at issue in Clayton County. The trial entered a temporary ex-parte order on June 7, 2006, and on July 1, 2006, the husband was served in Alabama with a copy of the order as well as a June 30, 2006, order extending temporary Protective Order pending service, which directed him to appear in the Clayton County Superior Court on July 25, 2006. The father was not served a copy of the wife's petition seeking the protective order.

The husband appeared at the July 5 hearing and counsel for husband filed a motion to dismiss alleging insufficient notice and lack of service as he was not served with the petition setting out the allegations against him. At the hearing, the trial court asked the husband to waive service of the petition, but he refused and the judge indicated that he would be served in court and the husband's attorney objected to the service. In response to the husband's attorney's objection, the trial court reset the hearing for July 7, 2006, to take the motion to dismiss under advisement. The sheriff served the husband with a copy of the petition in the parking lot of the courthouse as he was leaving the hearing. The husband filed another motion to dismiss arguing that service on him in the parking lot was inadequate.

At the July 7 hearing, the trial court announced that it would tentatively deny both motions and stated that the Court would reserve ruling on the matter until the Court had an opportunity to review it. The trial court continued with the hearing and entered a one-year protective order. The husband filed a timely application for discretionary appeal on Sept. 6, 2006. Six months later, on Jan. 2, 2007, the trial court entered a written order expressly denying the husband's petition to dismiss. Court of Appeals reverses.

The husband asserts that the trial court erred in denying his petition to dismiss on the grounds that service was insufficient and this Court agrees. The original service by sheriff in this case was insufficient as the documents served on the husband provided no notice of the allegations against him. Both the protective order and the order extending the protective order

were merely form documents with no explanation of the underlying allegations. The Court attempted to rectify this deficiency by directing the husband to be served as he left the July 5 hearing. The husband contends that the service in the parking lot was also insufficient. Georgia has a long standing rule that a suitor or a witness in attendance on a trial on any case in Court is privileged from arrest under any civil process, and is exempt from service of any writ or summons upon him or them while in attendance in such Court or any going to or returning there from. Certain exceptions have been carved out to the general rule. This rule does not apply to criminal defendants or nonresidents who are in the State temporarily for some purpose other than to appear in Court as a party or a witness. The Courts have also indicated that the rule is intended to insulate a party in attendance upon the trial of a case from service of process in a new action. The above outlined exceptions have no application in this case where the service issue was the initial service providing the husband with notice of an action against him. Therefore, the husband cannot be served while he was attending the noticed hearings in this case or when he was going to and from those proceedings. Service upon the husband in the parking lot was insufficient to confer jurisdiction over his person.

Even though the husband personally appeared with counsel at the noticed hearings, he raised the issue of insufficiency of service at both hearings and proceeded with the merits only after his motions were "tentatively denied." Therefore, his appearances were made subject to these motions and he cannot be deemed to have waived the service issue for appeal.

## UCCJEA/Contempt

*Daniels v. Barnes, et al.*,  
A07A1719 (March 4, 2008)

The parties had two children born as issue of the marriage and were divorced in December 2001 in the Eastern Judicial Circuit. The mother was awarded custody of the children and prohibited the father from having any contact with the children. The father had already entered a plea of *nolo contendere* to one count of child molestation of one of the two children and was already on probation for three counts of child molestation and six counts of public indecency with other victims. The order did not terminate the father's rights and also awarded grandparent visitation rights. In August 2006, the grandparents filed a petition for modification of custody and for contempt in the Superior Court of Chatham County. In October 2006, the mother was personally served with a copy of the summons and petition in Rhode Island. The mother did not file an answer, but filed a motion to dismiss the contempt action on the grounds that the Court

lacked personal jurisdiction over her.

In November 2006, the hearing was held for which the mother did not appear and the trial court judge denied the motion to dismiss basing its decision that Georgia was not an inconvenient forum. Among other things, the Court ordered a temporary modification of visitation that required the mother to fly the children to Savannah for their grandparent visitation and required her to pay the grandparents \$2,500 and their attorney's fees. In December 2006, the grandparents filed another contempt stating the mother had failed to send the children to Savannah. The trial court held the mother in criminal contempt and ordered her to pay \$500 for each of the ten visitation failures for a total of \$5,000 and ordered her to be incarcerated for a total of 200 days and entered a warrant for her arrest. Court of Appeals affirmed in part, reversed in part.

The mother contends the lower Court lacked personal jurisdiction over her for contempt under UCCJEA. Under the UCCJEA, the Court retains exclusive continued jurisdiction of the case so long as either child or parent resides in the state or either the child, the parents or person acting as a parent has a connection with Georgia and substantial evidence regarding the child is still available here. The father still remained in Georgia. Under the provisions of O.C.G.A. §19-9-61(c), personal jurisdiction over the parties for a modification of custody is not required. Here, the mother is not challenging the modification of visitation, but the court's ability to assert personal jurisdiction over her for contempt. Cases under the old UCCJA stated that a non-resident parent alleged to be in contempt of visitation provisions of a Georgia divorce judgment who was served outside of Georgia may divest the Court of its power to enforce the judgment by timely asserting a defense of lack of personal jurisdiction. The Court held that personal jurisdiction for contempt upon the non-resident mother required personal service or waiver of personal service and that personal service outside of Georgia was invalid. Therefore, under the UCCJA, the Supreme Court has held that Georgia courts did not have personal jurisdiction of the non-resident mother in contempt actions pursuant to the UCCJA, or the Long Arm §§§§statute.

The grandparents argue that the UCCJEA has provisions not found in the UCCJA and that it has its own long arm provision. However, the UCCJEA and UCCJA specifically address continuing jurisdiction of custody issues. There was no specific provision in the UCCJEA regarding jurisdiction over contempt nor appeal of the statutory provisions covering divorce, custody, alimony and child support procedures. Therefore, the trial court lacked personal jurisdiction over the mother for contempt and personal service outside of Georgia was invalid under the circumstances. **FLR**

# Hot Off the Floor—Senate Bill 483 Changes the “New” Child Support Guidelines

By Catherine Knight, Esq.  
Boyd Collar Knight, LLC

Many of us still refer to the child support guidelines that became effective Jan. 1, 2007, as the “new child support guidelines.” Perhaps this makes us feel better as we still struggle with the child support worksheet. However, as we approach mid-year 2008, the guidelines are not so new anymore. They are even old enough to be amended by the Georgia legislature. As of this writing, the legislature just modified O.C.G.A. §19-6-15 again. On March 28, 2008, Senate Bill 483 (SB 483) passed into law, amending the not-so-new child support guidelines.

What do these amendments have in store for us practitioners? Luckily for us perhaps, the legislature made limited changes to the child support guidelines. As follows is a summary of only the most significant changes, in no particular order. To review the complete new statute as passed, go to [www.legis.ga.gov](http://www.legis.ga.gov) and search for “sb483.”

## One

The legislature sought to clean up references to “parenting time,” because when the guidelines were originally adopted in 2006, many references to the parenting time “adjustment” remained in the statute in error, as a hold-over from the early drafts. SB 483 changes the parenting time “adjustment” to a parenting time “deviation” throughout the statute. This is merely a clarification that does not change the calculation. As a side note however, do not be confused by the fact that the child support worksheet and electronic calculator calculate the parenting time deviation in a different place on the worksheet than the other deviations. (Line five, rather than line 10, where all the other cumulative deviations from schedule E are entered.)

## Two

The statute is amended to clarify that any benefits that a child receives under Title II of the federal Social Security Act shall be applied against the child support award. However, note is made explicitly that the amount of child support that should be compared against the amount of social security benefits is the “presumptive amount of child support *as increased or decreased by deviations*” (emphasis added).

## Three

There is a new, detailed provision for the calculation of income for a parent who is an active member of the military.

## Four

Several amendments relate that while the child support guidelines apply to temporary protective orders for domestic violence (civil actions filed under O.C.G.A. § 19-13-4), a child support worksheet is not required as an attachments to temporary protective orders.

## Five

The award of health insurance coverage for a child which is “reasonably available at reasonable cost” for “either parent” is now mandatory rather than discretionary.

## Six

The statute is amended to provide that modification of child support may be appropriate where the circumstances of any deviation cease to exist. (The original statute was not clear as to whether this provision applied only to non-specific deviations.)

## Seven

The legislature amended the deviation for

**See SB 483 on page 18**



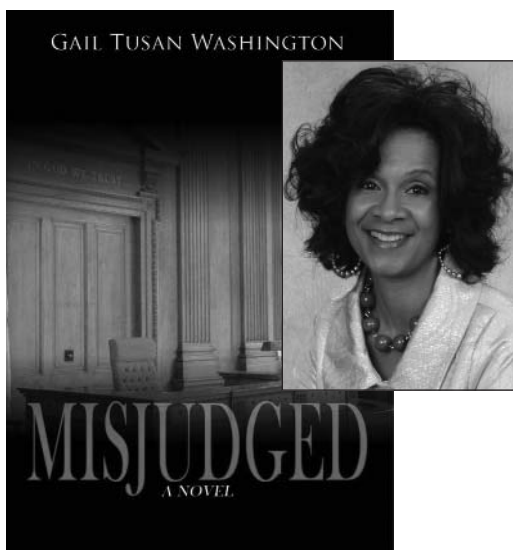
# Book Review: *Misjudged*

by Melody Z. Richardson  
Pachman Richardson, LLC

In her debut novel, the Hon. Gail Tusan has written a compelling story that draws the reader into the life of Judge Suzanne Vincent—a young, beautiful, brilliant, black judge who has sat on the bench of the Atlanta District Court for the last five years. Judge Vincent appears to have it all; after being made the first African-American female partner at the city’s top silk-stocking firm, she was appointed by the state’s female governor to the Superior Court at the age of 30. However, Judge Vincent is haunted by a secret that is exerting considerable control over her present life.

At the end of her freshman year of college, Suzanne Vincent was faced with a choice that ultimately left her feeling as though she had lost control of her destiny. Now that she controls the destiny of so many families that come before her in the family division, she wants to have a hand in the destiny of the child to whom she gave birth. The judge’s past has intruded upon her judicial demeanor, to the detriment of her love life and possibly even her career. The intrusion comes at an inopportune time, as Judge Vincent faces a contested election with her arch-nemesis, Chance Rotherman. Rotherman, it is soon learned, is willing to do anything to win the seat on the bench held by the protagonist. Judge Vincent’s career in the family division has been marred by tragedy, and Chief Judge Sam Haskell, mentor to and supporter of Judge Vincent’s opponent, is more than willing to capitalize on that misfortune, while unwittingly propelling Judge Vincent to face her destiny.

The compassionate Judge Vincent embarks on a search for her own personal justice. Supported by the love and understanding of her parents and her close-knit judicial staff, Judge Vincent decides to risk it all to fulfill the two promises she made 18 years ago. Along the way, Judge Vincent redefines “judicial activism,” going far beyond an order that grants a *pro se* mother custody to the dismay of the baby’s grandmother and no doubt the father’s attorney.



Although not flawless, the flaws in *Misjudged* do not detract from the story. For example, Chance Rotherman also has a secret; a gorgeous, salacious secret that would almost certainly cost him the election if it became public. However, Judge Vincent refuses to play dirty politics, even while ignoring her campaign manager’s advice to avoid controversy. Readers who want to see Rotherman get what is coming to him may be a little disappointed that Judge Vincent takes the high road on the campaign trail. Similarly, Judge Vincent, an otherwise practical and reasonable jurist, exercises poor judgment when she makes a decision that puts her on a collision course with her past.

Judge Tusan has done a remarkable job in writing a novel that builds tension, keeps the reader turning pages, and injects humor and wit into the world that is family law. In the end, we are reminded that those that wear the black robes are, in fact, mere mortals.



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# A Happy Divorce (Lawyer): Keeping it Positive

By Leigh F. Cummings  
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**F**amily lawyers have challenging jobs. We work with clients who are likely experiencing one of the worst times in their lives. The clients count on us for good advice and excellent results. Deadlines are myriad and always approaching. Opposing attorneys can be difficult. The list of challenges goes on and on. And, then to exacerbate things, members of our profession are consistently (and unfairly) ridiculed for being dishonest, greedy and self-serving.

I recently experienced a minor epiphany at the office when a former client called out of the blue. When I heard her name, I began to mentally prepare for a discussion concerning possible causes of action against her ex-husband -- whose conduct I was sure prompted the call.

I was surprised and a little perplexed when she said she called simply to tell me she was having a particularly good day. She said that she felt we, as her domestic attorneys, had a great deal to do with her current state of happiness. She told me about the positive changes in her life and her children's lives since her divorce. She explained that she used to think that family lawyers had a terrible profession, due to the pressures of counseling clients under tremendous emotional strains. She could not imagine why anyone would want to be a family lawyer. But, she said her perception of our profession changed. She realized that a family lawyer is in a position to help clients transition from a marriage in shambles and a quagmire of fears and questions about the divorce process onto the next phase of his or her life. She said she now understood that we have a wonderful profession and wanted to thank us for undertaking such challenging but meaningful work.

After hanging up the telephone, a little stunned, I realized how proud I feel of the work we, as family lawyers, are able to do.

But, that sense of pride can be easily overcome by the pressures and the sometimes negative perception of our profession.

Because calls from grateful former clients can be few and far between, I spoke with other family lawyers and inquired as to how they manage stress and maintain a positive outlook. Some of the advice was as follows:

## **Train Yourself to Accept the Right Type of Client**

The majority of clients will follow your advice (most of the time) and pay for your services. But, there are some clients who will never be pleased, regardless of the results or your level of devotion to their case. And, often those are the same clients who fail to pay your bill. This small percentage of clients can make your job feel like a thankless task, because they cause you to expend a disproportionate amount of your emotional energy in comparison to your total caseload. Avoid working with this type of client.

## **If You Already Accepted The Wrong Type of Client, Do Not Let the Tail Wag the Dog**

Be confident enough to reprimand your client when he or she is acting inappropriately to either his detriment or your own. Establish a set of rules for your practice and follow them. If your client refuses to follow those rules, give yourself the right to discontinue your working relationship with him or her.

## **Always Keep Your Sense of Humor**

I received this piece of advice from all of the attorneys I consulted for this article.

## **Talk to Other Attorneys Who Practice Family Law**

Communicating with other family lawyers not only helps to sharpen your

legal skills, but also provides some assurance that you are not alone when it comes to the challenges of our profession. Besides, some of the war stories are hilarious. (See tip above about keeping your sense of humor.)

### **Build Relationships with Non-Lawyers**

Of course, maintaining relationships with other lawyers is important for numerous reasons, but make sure you also establish friendships with non-lawyers. You need to socialize and engage in conversations that have nothing to do with the law. Undoubtedly, your significant other will be appreciative for this break from shop talk when you are at dinner with your non-lawyer friends.

### **Maintain a Healthy Lifestyle Outside of the Office**

The advantages of regular exercise and taking other steps to maintain a healthy lifestyle have been much touted. The attorneys with whom I consulted for this article confirmed that there is no better way to relieve the pressures associated with our profession than to exercise regularly.

### **Keep Perspective**

Make sure that you do not stay so busy with work that you fail to take time to reflect on your life as a whole. Remember that your life does not consist of only your job.

The next time you hear a particularly insulting lawyer joke or begin to wish you had foregone law school in favor of a career seemingly less fraught with danger or stress, such as a bull fighter or snake charmer, keep in mind the advice of other family lawyers who face the same challenges you do. And, remember to be proud of our profession. **FLR**

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# **An Income Approach to the Valuation of a Closely Held Business**

By Martin and Jennifer Varon

**T**here are three common methods often used in valuing an interest in a closely held business--market approach, adjusted net asset approach and income approach.

Not every method is applicable in every situation. The market approach may come into play if an interest in the subject company was recently sold in an arms length transaction. While this often happens in the context of publicly traded companies, this is the exception rather than the rule when the client is a closely held business. Another variation of the market approach is to locate a recent sale of a business interest in a comparable company. Once again, this is not common.

The adjusted net asset approach involves subtracting the fair market value of the entity's liabilities from the fair market value of the company's assets including intangibles. The balance sheet is of limited use since assets are typically valued at original cost. The method may be applicable for a holding company or a real estate entity that does not generate significant rental income.

A common approach used is the income approach. Pursuant to this method, the net cash flow generated by an entity is a good indicator of the benefit to a hypothetical buyer. For example, let's say that we estimate that an entity has generated an average of \$100,000 net after tax cash flow per year to a potential buyer. (This is after all adjustments are made for excessive compensation, adding back personal expenses, etc.). If we equate this to a bank account the question arises: How big is our bank account if it is generating \$100,000 in interest income annually? If we make this analogy, the question does not seem that ambiguous.

Consider the following: If we are earning 10 percent interest rate on that bank account, then the value of the account is \$1,000,000. (\$1,000,000 account multiplied by 10 percent interest rate generates \$100,000 in annual interest income). However, if we are only earning a 5 percent interest rate, then the value of the bank account is \$2,000,000. (\$2,000,000 account multiplied by 5 percent interest rate generates \$100,000 of annual interest income).

Interesting to note is that the higher the interest rate, the lower the value of the account. To better understand this, compare an oil and gas company (stable in this economy) generating a \$100,000 cash flow versus a new dot.com company generating \$100,000 annual cash flow. Would you pay the same amount for either entity? Definitely not! Since the dot-com is much riskier, you should demand a higher rate of return for the risk you are undertaking, and thus it is probably worth closer to the \$1,000,000 value. On the other hand, the oil and gas company is much more stable, and you may only require a 5 percent rate of return; thus this entity may be worth closer to \$2,000,000.

How do we know what interest rate is applicable in each situation? This is what the valuation expert brings to the table. **FLR**



## SB 483

*Continued from page 14*

extraordinary medical expenses so as to delete and exclude “a child of the parent’s current family.” In other words, in the original guidelines, if a parent had a sick child in a “new” family, the child support award for the child for whom the worksheet was being calculated and subject to this litigation, could be reduced. This is no longer the case.

### Eight

A new provision specifically allows for a “temporary modification of child support” while a modification action is pending.

### Nine

SB 483 clarifies that deviations may increase or decrease the presumptive amount of child support. This seems logical but the original guidelines only expressly provided that the deviations could increase support.

### Ten

The court, rather than the jury, will determine adjusted income, health insurance costs, and work related

child care costs.

### Eleven

Just in case you thought the definition of “gross income” in the original guidelines was too narrow (and you may recall that it listed 21 possible sources of income), there is a new catch-all for “other income.”

In sum, SB 483 makes both technical and substantive changes but none that will come close to rocking our legal world as did the “new” guidelines of Jan. 1, 2007. SB 483 does not contain an effective date (at least none is provided in the most recent online resources) so perhaps we can assume these changes are effective immediately.

As a final note, you may find the most current version of the child support worksheet by going to [www.georgiacourts.org/csc](http://www.georgiacourts.org/csc) and going to the green icon for “Downloadable Electronic Worksheet.” Should you have questions or suggestions you may go to this same link and follow prompts to reach the Georgia Child Support Commission through Jill Radwin. As an additional resource, Laurie Dyke with the Investigative Accounting Group ([laurie@iag-law.com](mailto:laurie@iag-law.com)), continues to volunteer her time to answer questions about the elec-

## 26th Annual Family Law Institute

May 22-24, 2008

Hilton Sandestin Beach Resort

<http://www.iclega.org/programs/6800.html>

### May 22

7:30 a.m. *Registration*  
8:25 a.m. *Opening Remarks*  
8:30 a.m. *Direct Examination of Business Valuation Expert*  
9:30 a.m. *Break*  
9:45 a.m. *Nation Trends in Family Law*  
10:45 a.m. *Daubert Challenges of Expert Witnesses Before and During Trial*  
11:45 a.m. *Break*  
12 p.m. *Small Town Domestic Relations Practice*  
1 p.m. *Recess*  
2:30 p.m. *Tennis Tournament*  
5:45 p.m. *YLD Reception*  
6:30 p.m. *Welcome Reception*

### May 23

8:30 a.m. *Hot Tips From the Experts*  
9:30 a.m. *Are You Smarter Than an Appellate Judge? Intelligent Practice in the Supreme Court and Court of Appeals*  
10:45 a.m. *Break*  
11 a.m. *Uniform Family Laws and Georgia: Opportunities Await*  
12 p.m. *Attorneys Fees in Domestic Cases: Ethics and Practice*  
1 p.m. *Recess*  
1:30 p.m. *Golf Tournament*  
6:30 p.m. *Section Reception*

### May 24

8:30 a.m. *Out of the Kettle and Into the Fire: When Domestic Relations Cases Become Criminal Cases*  
9:30 a.m. *Break*  
9:45 a.m. *Georgia’s New Child Custody Statute (H.B. 369) – Parenting Plans and Proving the “Factors”*  
10:45 a.m. *Real Estate Issues in Divorce*  
11:45 a.m. *Break*  
12 p.m. *Case Law Update and Recent Developments*  
1 p.m. *Adjourn*

# Q&A, Judge Tilman E. Self III Superior Court, Macon Judicial Circuit

Conducted by Jonathan J. Tuggle, Esq.  
jtuggle@wmbnlaw.com

**Q:** Where are you from originally?

**A:** Macon. Born and raised right here.

**Q:** Ever any question about whether or not you were coming back to Macon?

**A:** Like a lot of young Maconites, I had decided I was going to leave Macon and never come back. I left high school, went to Charleston where I attended the Citadel and then I joined the Army. I was determined to get as far away from the Southeast as possible—until the Army sent me to Lawton, Okla. After about three weeks of Lawton, the Army broke me of wanting to leave the South. After Lawton, the Army sent me to Korea. After 13 months of Uijongbu, Korea, I knew I wanted to come home and stay home. I transferred to Ft. Stewart in Hinesville, and after law school, I came home. After that there was never any doubt I would leave.

**Q:** What was the Citadel experience like?

**A:** I loved it. Charleston is a great town and a great place to live. I wanted to be in the military like my father and grandfather. My dad's advice was to go to military school.

**Q:** I saw that you graduated magna cum laude.

**A:** I did. Number 9 out of 516.

**Q:** Then went into the military?

**A:** I attended The Citadel on an Army ROTC scholarship. They paid for four years of tuition and board and I had to give them four years back. It was one of the best things I have ever done.

**Q:** When you finished your four-year stint, did you entertain a career in the military?

**A:** I did. I initially wanted to make my career in the military. But two things really influenced me. One was Bill Clinton getting elected President. Things changed remarkably in the military after that election. And the second thing was I knew I was going to have to leave Georgia again, which I did not want to do. Also, I wanted to be a lawyer. The Army had a program that would pay you while you attended law school. Even better,

the Army would pay tuition for any school that accepted you. The down side was that it would have turned into a 12-year commitment and I just was not willing to do that.

**Q:** So you decided to go to law school?

**A:** Yeah. I knew I was going to be a lawyer. There was no doubt that's what I wanted to do. So I went to Georgia Law School. I'm a third-generation lawyer, third-generation judge. It's sort of been bred into me that that's what I was going to do.

**Q:** Did I read correctly in the front of our office that you are a third successive generation judge?

**A:** Yeah, three generations in a row. My grandfather was a Bibb County Probate



Judge from 1980-89. When he died, my uncle ran, was elected to his place, and he has held that seat since. I ran in 2006.

**Q**: After you graduated from Georgia, you went right into private practice in Macon?

**A**: I did. I took my first job at Sell & Melton here in Macon, and it's the only place that I ever worked.

**Q**: Did you have any exposure to family law?

**A**: Yes. I had handled some contested divorces and several uncontested, but never tried a family law case.

**Q**: You took your seat on the bench Jan. 1, 2007? Was 2007 a long year?

**A**: Last year was a very fast year; 2006 was a long year. That was a long year of campaigning, of working hard. That's the hardest work I've ever done, by far.

**Q**: You were elected to your seat. What made you decide to run at that point in time?

**A**: Well, I knew I wanted to be a judge. I grew up on the judge side of the bench. And I also love politics. It was the right time. I thought I was at the right place in my career. We saw the opportunity, and we took it.

**Q**: You were 38 when elected. I understand that made you the youngest superior court judge elected by popular vote?

**A**: I still am. I was the youngest judge period until the governor appointed my friend, Katie Lumsden, in Houston County, and he appointed her the day after my election. So I called Katie and "thanked" her for taking away my title of the youngest judge in the state. She's the youngest judge in Georgia. And I'm the second youngest, but the youngest elected, at this time.

**Q**: What would you say has been the biggest surprise for you in your first year on the bench?

**A**: I get asked that question a lot. I would say probably three big things come to mind. One, some criminals are a lot dumber than I thought they were. Second, people are a whole lot meaner than I ever imagined that they could be. And finally, I am amazed at how many times both sides are right. A lot of times, both sides are just right. And that's been hard. In domestic cases, if I think people are being mean just for the sake of being mean, I usually punish them pretty hard, because what that seems to tell me is "I don't care about the children, I care about the money or the property instead." So I would generally try to take away the very things that they wanted so badly, just

because they're being mean for no reason.

**Q**: How would you describe your experience with family law issues since you took the bench?

**A**: It's certainly been a trial by fire, to say the least. To start off, we hit the ground running and went right into a lot of domestic issues at the same time the new child support guidelines became effective. I was trying to figure those out like everyone else. I then got thrown a case that was all over the front page of *The Daily Report* involving a lesbian adoption issue. Next, I tried a case with your firm that was worth \$2 million after only about four months on the bench. I got a true trial by fire and had to learn very, very fast.

I had done all I knew to do to prepare for the bench, but I don't think anything will prepare you to decide some of the issues we have to decide. I've never ever had anything so difficult as to tell someone, "you're not going home with your children today," or "I know you showed up today, dad, but I'm terminating your parental rights; you haven't showed up enough; I'm going to let that man adopt your daughter." And that's hard to do. I also got pretty blessed by having some very good lawyers who were very patient and helped educate me. That really helped a lot, and if I was a little off base, they gently reminded me how to get back on the path, even if it meant that the law may have gone against them. They don't want to see me get embarrassed early. I think they thought that they owed it to the profession, and I'm very grateful to them and always will be.

**Q**: Sure, we've had that experience with Family Court in Fulton County where you have judges who perhaps have had limited family law experience rotating onto the Family Court and they look to the lawyers, and are very much appreciative of their assistance.

**A**: I don't know anybody or any judge who would be so arrogant as to say, "I don't need any help." Now, that's just foolish. I don't know who would do that. I certainly would never take that position. Above all, I just want to get it right. People can disagree whether I got it right, that's OK, I don't mind that, but I at least want to be able to articulate and explain why I did what I did and even though they don't appreciate or like it, at least they can say, "Well, he found this to be true, and if that's what he hung his hat on, I understand."

**Q**: You may already know this, but Martha Christian is a past chair of the Family Law Section. Has she or any other judges offered you any advice on family law issues?

**A**: They've been tons of help. I could not be more thankful for the other judges on the bench, but



Martha certainly took up a ton of time with me in domestic cases. She had an outstanding reputation as a domestic lawyer, so I knew she was going to be the resident expert on family law. I went to her often to ask her about the law. She never told me how to rule or what to do, she just sort of helped talk me through as a mentor should, and as a more-experienced judge should. Lamar Sizemore and Bryant Culpepper also helped me a tremendous amount. By far, the best advice I got was from Lamar Sizemore. He said "Just rule." I try my best to make decisions quick because I realize that most litigants just want an answer. In regards to the lawyers, I think my role is to give them something to appeal, to move the case through the system to a final decision-maker, whatever that may be, and I try to remember that. I try to make it a point and I've tried to train my team here, especially in uncontested divorces, don't sit on those things. If an order comes in this office, I cannot fathom a reason that we can't turn it out in 24 hours if it's already been decided. I tell my assistant to bring those to me, put them on top of the stack, and let me sign it. I do that for two main reasons. First, the litigants want it over, they want a divorce, but secondly, I realize that most domestic lawyers cannot get paid until they get a divorce decree in their hand. I really try my best to keep that in the forefront of my mind that I've got to take care of the lawyers and I've got to help them keep their practice going. I've got to turn things out, if I'm not turning things out, things are going to grind to a halt and that's how they make money. I want to be cognizant of the lawyers' needs and, we're here to work with them.

**Q:** Will you take an uncontested final on the pleadings?

**A:** I will. I've always taken the position that divorce petitions are different. If the law requires that a divorce petition be verified, which is something more than a normal complaint, we ought to give it more deference after that. So if you filed a complaint, and the other side hasn't filed an answer, I don't see why I've got to drag you down here. And I'm going to trust the lawyer. If the lawyer tells me this case is ready, I may get burned by relying on his or her word, but I won't get burned by the same lawyer twice. I can promise you that. And I'll look through it and make sure that I have the addendum, the worksheets, that they match, and if there's a deviation, I want to know "why?" If that's there, I'll sign the thing and turn it around. And I do a lot of that for out of town lawyers. Why should I make them charge their client? If you're an Atlanta lawyer and you've got an uncontested divorce, it's not unfathomable that that could cost a client an extra 1,000 bucks if I make you drive down here. It just doesn't make sense to me.

**Q:** We were talking earlier and you were describing the local procedures by which the judges are assigned domestic calendars. How does that work?

**A:** Bottom line, the chief judge assigns, but generally, each judge gets two assignments, except for the judge who has major felonies, which usually counts as two assignments. So, for example, Judge Christian is the chief judge and has drug court in Crawford; Judge Brown has half of the domestic cases in Bibb and half of the civil cases in Bibb; Judge Sizemore has all the major felonies in Bibb; and I have all Peach County cases and the other half of the Bibb civil calendar. Judge Ennis has the other half of the Bibb domestic cases and the Bibb property crimes. And those are our 10 assignments. There are other things that go on. Judge Christian will handle every habeas case and I'll handle every criminal condemnation case that comes in. That's just sort of the way we internally work things out. Our circuit has always broken the courts into divisions instead of a judge getting a piece of every calendar. The assignments rotate through the five judges on a two-year cycle. My counties are Bibb, Peach and Crawford. Those three make up the Macon Judicial Circuit. We've had two judges leave in two years, so probably that's caused some folks to have to reassign and to move around some. So, I don't know, we're either going to change at the end of next year and then get back into a two-year cycle, or this year will begin a two-year cycle. But that's for the chief judge to decide.

**Q:** Any particular observations as to the family law issues you see in your courtroom?

**A:** What I have been most surprised by is the manner in which the guidelines are regressive. I firmly believe that under the current set of guidelines, the wealthier you are, the better you come out. The poorer you are, the worse you come out. And I don't think, I certainly don't think that was a consequence the legislature intended, but I think that is what has happened and I do think, I do find that more and more often, that the lower income pay a much greater percentage of their income than the higher income folks.

**Q:** I'm not sure where on the income axis it falls.

**A:** Right about between \$3,500 and \$5,000, depending upon how many children. That's the best I can tell. If it's one child, it may break at \$5,000 but if it's three children, it may break at \$3,500 a month. That's about the figures that I came up with. That's about the point that you take it, where it'd be even and how much it would work. Clearly though, the Legislature intended this to be a guideline, so I have become a big fan or user of general, non-specific downward devia-

tions to try to get around some of the ill-effects. But it's hard to know when to do that and when not to do that. I mean, you clearly can't do that in every case, because if you do, all you've done is turn the old guidelines into the new guidelines, which is not what the legislature said to do. The exceptions would swallow the rule. If you believe in federalism and if you have any judicial integrity, you can't do what you want to do. Again, I've just tried to just gain some experience and learn when to use that tool and when not to use that tool and it's a very inexact science, but I do the best I can do with it. That's the first observation that comes to mind.

**Q:** Are you all enforcing the filing requirements of the financial affidavits and worksheets at the beginning of the case?

**A:** The affidavits, yes. I think our former chief judge, Bryant Culpepper, signed an order that allowed our clerk to take blank worksheets. My greatest gripe with the child support guidelines is the filing requirements. More than anything else, I don't understand why I have to have a final child support worksheet attached to the decree. And I certainly don't understand why a party has to file it ahead of time when oftentimes, nobody knows the real information that should be included on the sheets. In order to comply with the Legislature's mandate, you have to allow people to file them blank, or file them with all zeros. I don't think it's appropriate to require a party to know the other side's financial information ahead of time. I mean, how do you tell that to a migrant worker from Peach County whose wife has fled back to Mexico? How do you enforce that against a Spanish-speaking woman, illegal immigrant, who's here in Peach County and her husband runs off, or beats her up and she wants a divorce? I just don't believe the Legislature intended to say that it meant for this woman not to be able to file a petition until she finds out her husband's exact income. You can't do that. What do you do for the woman whose husband is a corporate executive and she has no idea how much her husband makes? What do you do for the older woman who doesn't know how to drive, who doesn't have a driver's license, much less knows how much her husband's bank account is worth? Some requirements you cannot live up to. That's my biggest gripe is you must find these findings of fact and, of course, it whittles away at judicial discretion.

**Q:** Are you aware of the recent movement in the Legislature to adopt a statutory presumption of 50/50 custody between mom and dad?

**A:** I don't think a Legislature can ultimately decide who gets custody of the children. And you can say

there's a presumption of 50/50, that's OK, you can do that, but in order to do that, you still have to reconcile what's in the best interest of the child. And nobody would disagree that it's in the best interest of the child to have a good relationship with a good father. That's fine and I support that. If I absolutely believe a father's important, which I do, then I'm going to look to mom, and if she doesn't believe that, and she can't prove to me that this father is so bad that he shouldn't be involved in this child's life, then I would probably rule against her. But also I don't have any pity for the father that says, "Well she didn't let me visit the child so I didn't pay child support." I have no pity for them. Because I think they just made themselves the judge. They just decided their own case on their terms and they can't do that. If this guy is a good dad and he's working hard and the mom just wants to stop him from seeing the kids because she doesn't like him, she'll end up getting hurt over that. I think as judges from my generation, many of whose parents are divorced, begin to replenish the ranks, this kind of stuff works itself out. I think I'm like most judges, if we have two parents who are really interested in the children's welfare, we'll bend over backwards to help them. If one doesn't, if the dad interested in his new girlfriend instead of his child, I'll take that into consideration, too.

**Q:** Have you seen many cases where 50/50 custody is awarded?

**A:** They are few and far between. I think you can do it, but I think the people who can truly do a 50/50 split, there's got to be a lot more money. I've seen one case down here. I didn't do it, but Judge Culpepper awarded the house to the kids and made the parents move out. In that case, the parents had enough money to support three households. And so the parents moved in every other week and the kids stayed put. They had the same house, the same school, same everything.

**Q:** Have you had any divorce jury trials?

**A:** Just one. That was the one with your partner, Scott Berryman. I saw two or three get set and ready to go, and they were going to be big, major trials, but they've always settled right on the eve of trial except for maybe the custody issues. I've tried those. But the only one that went to a jury on property was Scott's. That was a very interesting case.

**Q:** What would you say is the best part of your job?

**A:** There's a lot of great parts of my job. One is certainly, I get to do something different every single

day, and I get to meet a whole lot of different people and a whole lot more lawyers than I ever would have. And I get to learn more law than I ever would have. Intellectually, that's the best part of my job. And it's also a nice feeling to know that you're contributing to the public good and you're a part of a very proud and noble profession.

**Q**: What's the worst part?

**A**: Having to make the tough decisions. There is nothing worse than telling a good parent that he or she can't go home with their children. I'd much rather send someone to prison, than to tell somebody that. But another good piece of advice that Judge Sizemore gave me, which I've tried to follow religiously, is "Agonize about the decision before you make it, not after." And I generally try to do that. I worry about stuff long and hard, but once the decision is made, I generally don't worry about it anymore. It's resolved, over with and that's it. And then we move on.

**Q**: Have any advice for lawyers who come into your court room?

**A**: Don't lie to me. Tell your clients not to lie to me. I have been very tough on those people who have lied to me. Or the people who just ignore the justice system. Those are the ones I'm hardest on. In that case with Scott, I cited a party that had filed false affidavits and generally ignored all of the Court's orders with 21 acts of criminal contempt. But generally, I don't have a whole lot of rules. I don't have any rules about approaching witnesses and those types of things. I just like everybody to appreciate and to remember that we're all part of a very noble, grand profession and we ought to act like it. The only other thing I would say is, I never appreciate lawyers who belittle another lawyer in a letter and then send me a copy of it. I don't like to get involved in those kinds of fights. And I certainly don't need people telling me how bad the other person is for the sake of telling me how bad the other person is.

**Q**: What's your favorite book? Favorite movie?

**A**: My favorite book of all time is *Atlas Shrugged*. Without a doubt. Favorite movie, I don't know. In one sense my favorite movie is *To Kill A Mockingbird*. It's the only black and white film I've ever watched. But I also like sophomoric, funny movies. I could tell you, I have no problem watching *Tommy Boy* again or *Wedding Crashers*. I will stop what I'm doing to watch that movie.

**Q**: So what do you do when you're not on the bench and when you're not with your family?

**A**: I referee college football in the Southern Conference. That takes a lot of my time. And I like to hunt and fish. Matter of fact, I'm so excited because Saturday is opening day of turkey season—I'm just shaking.

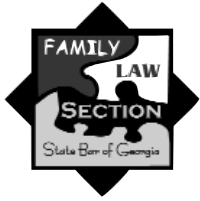
**Q**: Is there a story behind your daughter's name?

**A**: Walker? Yeah there is. I was a county chairman for George Bush's campaign in 2004 and I had an opportunity to meet the President at a fundraiser in Atlanta. So in January 2004, my wife Carlen, who was eight months pregnant then, and I go up there to meet him. We enter the line to meet the President, and the Secret Service is telling you, "Listen, don't chat with the President, say your name, introduce yourself and get your picture and let's keep the line going, 18 to 20 seconds or something like that, just move along." When we get to the President, I walk up and say, "Mr. President, my name is Tripp Self, we're from Macon, Ga., and it's an honor to meet you." And he puts his hand around me and says, "Tripp, good to see you, boy." I point to my wife's stomach and I said, "Mr. President, I wish I knew how to introduce you to our child, but we don't know what it is and haven't named the baby yet." And he says, "Y'all haven't named it yet?" And I said, "No sir, we haven't." And so the President literally says, "Well, you ought to just name it after me." And my wife says, "I'm sorry sir, we can't do that." At which point my eyes just drop, and I'm looking at her like, "What are you doing?" So the President sort of stops and says, "What do you mean you can't do that?" Carlen says, "We can't do that because we already named our dog after you." So at this point, I'm thinking, "This is it, I can't believe this. We have just told the President of the United States why we can't do something." The handlers are trying to usher us away, and the President says, "No, no, leave us alone." He looks at Carlen and says, "I want to hear this story. You named your dog after me?" Carlen says, "Yes sir, we named our dog after you. She's a Weimaraner, she was born on Election Day in 2000 and her name is 'Georgia Walker Bush.'" And he says, "Well, that's high praise where I come from. That's great." And then he says, "You ought to just name her after me anyway." A couple of days later, my wife and I decided that we would consider "Walker" as a girl's name. And when she was born, she just looked like a Walker, so we named her "Walker" after him. (For the record, I wanted to name the dog, "Manual Recount," but Carlen vetoed the name.)

**Q**: That's pretty good.

**A**: True story. FLR





# 2007-08 Family Law Section Executive Committee

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