

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 29 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0063

AMANDA L. LAND V. RTM, INC. D/B/A SHONEY'S ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

98007

96CV1584 258-67-3442

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 29

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 30 , 19

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0064
PERIMETER CREDIT, L.P. V. WILLIAM B. WALLACE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92008

95VS0100250

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 30 1996

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William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0065
SAV-A-LOT FOOD STORE V. TAMMY MACKENZIE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99008

96CV1937 259-13-3956

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 16 1996

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 28 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0067
SHELIA M. GODFREY V. SYNTEC INDUSTRIES ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

94008

96CV66662 257-047-6494

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 28 1996

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William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, November 4, 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0068. RAKER v. BAILEY.

Ruth Raker filed this application seeking an appeal of the superior court's order assessing \$2,500.00 in attorney fees against her after the court directed a verdict in favor of defendant Sue Bailey in this malicious prosecution action. The trial court concluded that Raker failed to prove a "carrying on of the prosecution" as a matter of law -- an essential element of her claim for malicious prosecution -- because the criminal case against her was dismissed without having come before a committing court. Walker v. Bishop, 169 Ga. App. 236 (312 SE2d 349) (1983). Therefore, Bailey was entitled to judgment in her favor.

Although the order on its face does not reveal whether the award of fees was made pursuant to OCGA § 9-15-14 (a) or (b), it is clear that the award of fees was based upon the court's entry of a directed verdict against Raker, who failed to present a prima facie case of malicious prosecution. Such an award may equated with bringing a case having a "complete absence of any justiciable issue of law." It would be unreasonable for Raker to believe the court would send the asserted malicious prosecution claim to a jury when she could not prove an essential element of her case as a

matter of law. See OCGA § 9-15-14 (a). Thus, the "any evidence" standard should apply to a review of the trial court's findings supporting the award of fees. Covrig v. Miller, 199 Ga. App. 864 (406 SE2d 239) (1991). In this case, Raker does not contest the trial court's directed verdict in Bailey's favor. Implicitly, therefore, she agrees with the court's finding that her claim of malicious prosecution was fatally defective. This undisputed finding is sufficient to sustain the award on appeal. See Id.

Further, the trial court's previous denial of summary judgment is not a binding determination that Raker's claim did not lack substantial justification under these circumstances. See Dills v. Bohannon, 208 Ga. App. 531 (431 SE2d 123) (1993). In this case, the trial court was not presented at the summary judgment stage with argument regarding Raker's inability to prove the essential element of "a carrying on of the prosecution." That issue was not before the court and thus no binding determination was made upon it. "The question therefore is whether such a motion, if filed by [Bailey], would have been denied." Id. at 533. The trial court found based upon the evidence presented that this essential element could not be satisfied. If, as a matter of law, records reveal no "carrying on of the prosecution," then the court would have been required to enter judgment for Bailey at the summary judgment stage just as it did at the directed verdict stage. Therefore, even if the trial court had denied summary judgment on this basis originally, that judgment would be clearly erroneous. For these reasons, the trial court is not prevented from awarding fees based upon the prior denial of summary judgment. See Id.

Finally, Raker argues that the court's order lacks the requisite specificity because it fails to state a factual basis sufficient to support the award. Although the order on its face does not appear to meet the criteria set forth in Aycock v. Re/Max of Georgia, 221 Ga. App. 587 (472 SE2d 137) (1996), this Court declines to exercise its discretionary jurisdiction on this basis. The award of fees was authorized and the amount is reasonable. Further litigation on this point would only result in the amassing of additional legal fees. Therefore, application is hereby ordered DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV - 4 1996

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 23 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0069

DOUGLAS HAMMOCK V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

97008

CR90096KA CR90097KA

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 23 1996

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William R. Marti

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 18 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0070

JAMES JONES, JR. V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

96008

I92RCCR1062

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 18 1996

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 31 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0071

WHITLEY U. MILLS, JR. V. BELLSOUTH TELECOMMUNICATIONS

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

90008

E49960

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 31 1996

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William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 01 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0073
DOUGLAS J. DAVIS V. MELANIE DAVIS

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92009

961575899

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV - 1 1996

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 29 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0074

RICHARD OWEN SALEMI V. REBECCA ANN BARRETT

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

93009

96CV88

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 29 1996

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 06 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0078

GOODYEAR AEROSPACE C/O LORAL SYSTEMS ET AL V. PATRICIA H. GARRETT

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

96009

96CV727 252-66-1178

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV -6 1996

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William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, October 28, 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0075. ROBERT J. BOSTON v. GUIDO GUIDI DI BAGNO et al.

Robert J. Boston filed an application seeking discretionary review of the trial court's order granting defendant Guido Guidi Di Bagno's motion to dismiss Boston's complaint for insufficiency of service of process. In the order, the trial court also specifically reserved ruling on Di Bagno's motion to add defendants by counterclaim. Therefore, the order appealed from is not a final judgment disposing of the case as the case remains pending below. In order to appeal, Boston was thus required to seek a certificate of immediate review, and if granted, to petition this Court for an interlocutory appeal. OCGA § 5-6-35 (b).

Moreover, it appears from the materials contained in the application, that the order appealed from is not of a type specifically enumerated as an order subject to the discretionary appeal procedure under OCGA § 5-6-35 (a) (1)-(11) and Boston does not suggest otherwise. However, even if the order fell within the category of orders listed in § 5-6-35 (a), a certificate of immediate review and an application for interlocutory appeal is still required in this case. See generally Scruggs v. Dept. of

Human Resources, 261 Ga. 587 (408 SE2d 103) (1991). Accordingly,
the application is hereby DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 28 1991

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Clerk.

William L. Martini

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 13 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0079

JOAN KIMBLE V. CATHOLIC ARCHDIOCESE OF ATLANTA ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90009

E49473

432-96-1415

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 13 1996

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Will E. Mast, ^{Clerk.}

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 29 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0080
OSBORNE BONDING AND SURETY CO. ET AL V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93011

95CR020076

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 29 1996

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William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 28 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0084
GLEN ANTHONY MATHEWS V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

94010

96141634

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 28 1996

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 15, 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0085

CHRISTOPHER J. RAMIG V. A. LAWRENCE FINCHER

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

91-010
E35456

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 15 1996

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Clerk.

William E. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 29 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0088

N.W. LEATHERS V. THE ESTATE OF ARTHUR PARKER ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98010

96001003

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 29 1996

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 18 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0089

TOMMY COUCH V. JEAN COUCH

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

96010

SU96CV2953

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 18 1996

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 05 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0091
JEROME DEAN ADAMS V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99010

96CR263

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV - 5 1996

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William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, November 22, 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0097. BRADBURY v. SHAPIRO.

The application for discretionary appeal in this case sought review of two orders entered by the trial court on September 6, 1996. The application was filed on October 9, 1996, upon payment of the filing costs.

On November 5, 1996, this Court dismissed the application as untimely, because it was not filed within 30 days after entry of the appealable judgment as required by OCGA § 5-6-35 (d). On motion for reconsideration, the applicant demonstrates that the application actually was mailed by certified mail on October 7, 1996, and contends that the application should be docketed as of that date in accordance with Court of Appeals Rule 4.

However, it is undisputed that the filing costs were not paid until October 9, 1996. Under OCGA § 5-6-4, the Clerk is prohibited from receiving an application for appeal until the costs have been paid or a sufficient affidavit of indigence is filed. Court of Appeals Rule 5 reiterates and implements that statutory requirement. Accordingly, the correct filing date of this application was October 9, 1996.

This Court properly dismissed the application as untimely, and this motion for reconsideration is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 22 1996

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 20 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0099
MOHAMAD A. WALIAGHA V. FLORENCE J. LYTLE, P.C.

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99011

95A63416

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 20 1996

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 14 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0101
CALVIN L. SEWELL V. GENERAL MOTORS CORPORATION

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92012

9698366 254-56-6429

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 14 1996

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William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 15 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0102

RONALD RIVERS V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

94012

96R154

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 15 1996

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 26 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0104

SUE THIGPEN F/K/A LILLIAN SUZANNE CLEMENS COX V. RICKY ALLEN COX

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

97012

94V442

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 26 1996

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 21 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0105
DENNIS GABRIEL V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96012

SU96CR0974

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 21 1996

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William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 18 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0107

MARK L. ROLLINS V. SCHNABLE FOUNDATION COMPANY ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99012

E50353

256-72-3032

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 18 1996

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Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, November 21, 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0108. Fulton County Government v. Alexander Willis.

This application for discretionary appeal seeks review of the trial court's affirmance of a decision of the State Board of Workers' Compensation. The final order appealed was entered by the clerk of the superior court on September 30, 1996. Although a subsequent order was entered on October 29, 1996, that order only approved the amount of attorney fees that were to be awarded and was not the order appealed in the application. The application was filed on November 4, 1996.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days after entry of the appealable judgment. The provisions of OCGA § 5-6-35 are jurisdictional. Boyle v. State of Georgia, 190 Ga. App. 734 (380 SE2d 57) (1989). Accordingly, inasmuch as the instant application was filed more than 30 days after the judgment appealed, it is untimely and must be dismissed for lack of jurisdiction. Further, Alexander Willis' request for a frivolous appeal penalty is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **NOV 21 1996**

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 18 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0110
IN THE INTEREST OF: C.C., A CHILD

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92013

10796J01041 10796J811

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 18 1996

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 22 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0111

TIDEWATER CONSTRUCTION COMPANY ET AL V. ESTINEVIL LESENE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

94013

96V103 264-95-1936

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 22 1996

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William S. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, November 26, 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0112. MCDUFFIE v. THE STATE.

On November 5, 1996, Robert McDuffie filed this pro se application for discretionary appeal from the revocation of his probation. McDuffie alleges that the superior court revoked his probation on October 1, 1996, but he failed to submit a stamped "filed" copy of the revocation order, or any other document, in support of his application, as required by OCGA § 5-6-35 (d).

On November 6, 1996, this Court ordered McDuffie to submit a stamped "filed" copy of the revocation order and clearly directed that this Court must physically receive the order within 10 days. McDuffie failed to comply with that order, and on November 15, 1996, instead filed a motion for extension of time to obtain the stamped "filed" copy. However, under Rule 16 (b) of the Rules of the Court of Appeals, no such extensions are permitted.

Under Court of Appeals Rule 7, a party's failure to comply with an order of this Court may subject the appeal to dismissal. Because of McDuffie's failure to comply with this Court's order to provide a stamped "filed" copy of the revocation order, neither the timeliness nor the merits of this application may be determined. Under these circumstances, this application is dismissed pursuant to Rule 7.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **NOV 26 1996**

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Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, December 4, 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0113. JOHN T. WILLIAMS V. SHARON J. STRANGE STEPLER.

John T. Williams ("Williams") filed this application for discretionary appeal from the trial court's order granting Sharon J. Strange Stepler's ("Stepler") motion for summary judgment in this tort action. OCGA § 9-11-56 (h) provides that an order granting summary judgment is subject to review by direct appeal.

In this case, Williams has attempted to utilize the discretionary appeal procedures apparently because this lawsuit arises out of a prior domestic relations dispute between the parties. A review of the complaint in this matter, however, reveals that it is a tort action, which seeks damages, and not a domestic relations case as is contemplated by OCGA § 5-6-35 (a) (2). Because Williams has failed to follow the applicable procedure to obtain review of the trial court's order granting Stepler's motion for summary judgment, this application is hereby dismissed for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC - 4 1996

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 02 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0118

GUS PAXTON V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92014

92CR1372

92CR1381

92CR1019

93CR648

93CR649

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC - 2 1996

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*Witness my signature and the seal of said court
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Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 11 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0119

DERRICK B. NELLOMS V. STORAGE INSTALLERS, INC. ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93014

96CV100398

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 11 1996

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 06 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0123

MIKE C. JENKINS V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

97014

94R89

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC - 6 1996

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 20 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0124
PAUL LEE CARTER V. WESTSTAR, INC. ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90014

256-94-1698 96CV69411

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 20 1996

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**of Appeals
the State of Georgia**

ATLANTA, JANUARY 08, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0125

WILEN MANUFACTURING COMPANY, INC. V. SCREEN PROCESS EQUIPMENT COMPANY

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

99-014
E47870

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 8 1997

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 11 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0128
DR. WILLIAM C. MALOY V. B.R. EWING ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93015

92VG29152

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 11 1996

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martine

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 11 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0131

JACQUELINE SMITH V. CLARKE COUNTY BOARD OF EDUCATION ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

97015

SU96CV1824J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 11 1996

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*Witness my signature and the seal of said court
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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 16 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0132
PLAINS LOGGING COMPANY ET AL V. ELLIS WINGFIELD

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96015

96CV0131 258-82-9870

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 16 1996

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the minutes of the Court of Appeals of Georgia.*

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Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 16 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0133
LINDA ADAMS V. JONES, CORK, AND MILLER ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90015

248-82-4675 96CV13186

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 16 1996

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 31 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0134

KENO MOSES V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99015

SU961146S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 31 1996

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

92

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 08 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0154
B. R. CALHOUN, INC. D/B/A CALHOUN OIL COMPANY V. T. JERRY JACKSON,
ACTING STATE REVENUE COMMISSIONER

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92018

96CV4208

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 8 1997

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 08 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0155
GSW, INC. ET AL V. GEORGIA BOARD OF NATURAL RESOURCES

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93018

E49699

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 8 1997

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the minutes of the Court of Appeals of Georgia.*

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William L. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, January 7, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0157. MUSCOGEE COUNTY SCHOOL DISTRICT v. PIERCE.

On November 18, 1993, Tony Pierce suffered a shoulder injury arising out of and in the course of his employment with the Muscogee County School District. The School District accepted compensability of the injury and paid temporary total disability and medical expenses.

Pursuant to OCGA § 34-9-202 (e), Pierce subsequently obtained an independent medical examination by an orthopedic physician of his own choosing. That physician recommended that Pierce undergo a functional capacity assessment by another medical care provider, and deferred giving an impairment rating until such an assessment was completed. The School District disputed Pierce's entitlement to the functional capacity assessment at its expense, but the ALJ concluded that the employer was also responsible for the assessment in connection with the independent medical examination under OCGA § 34-9-202 (e). The Appellate Division and superior court affirmed, and this application for discretionary appeal followed.

OCGA § 34-9-202 (e) provides that "[n]otwithstanding the rights afforded an employee under Code Section 34-9-201, the employee, after an accepted compensable injury and within 60 days of receipt of any income benefits, shall have the right to one examination at a reasonable time and place, within this state or within 50 miles of the employee's residence, by a duly qualified physician or surgeon designated by the employee and to be paid for by the employer. Such examination, of which the employer or insurer shall be notified in writing in advance, shall not repeat any diagnostic procedures which have been performed since the date of the employee's injury unless the costs of such diagnostic procedures which are in excess of \$250.00 are paid for by a party other than the employer or the insurer."

In the instant case, the School District contends that the functional capacity assessment cannot be considered as part of the "one examination" authorized by the statute. However, as the functional capacity assessment was necessary for the orthopedic physician to complete his independent medical examination in this

case, the assessment must be deemed part of that examination process.

There was no error in finding the School District liable for payment of that functional capacity assessment, and this application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 7 1997

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Mast ^{Clerk}

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 13 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0159
PATRICIA A WHIDDEN V. VENCOR, INC. ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

96018

96A070505 263-04-9269

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 13 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 08 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0158
CENTRAL STATE HOSPITAL V, VERONICA S. DRIVER

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

97018

96CV33008D 256-25-9875

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 8 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 03, 1997

The Honorable Court of Appeals met pursuant to adjournment.

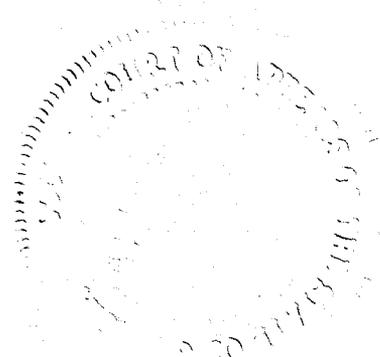
The Following order was passed:

Case No. A97D0160

PATTI SHERMAN V. RUSSELL SHERMAN

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

90-018
96V368



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 03 1997**

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 07 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0161
D & B BUILDERS ET AL V. JEFFREY J. SMITH

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99018

256-04-2806 96461506

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 7 1997

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 10 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0162
PATRICK POWELL V. TUCKER MILLWORKS, INC.

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

98018

96103935 237-31-3916

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 10 1997*

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martineau

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 15 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0163

CITY OF ALBANY ET AL V. WINSTON CHURCHILL THOMAS, SR.

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92019

96CV3441 256-66-1786

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 15 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0164
R. L. DAVIS V. CARL V. WHITE ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93019

96A016213

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 16 1997

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the minutes of the Court of Appeals of Georgia.*

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0165

LOUIS A. THOMPSON V. CANDLER MEDICAL GROUP, INC. ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

94019

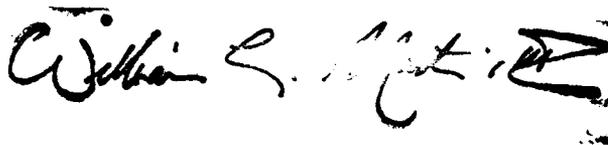
951087

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 16 1997

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*



Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 30, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0165

LOUIS A. THOMPSON V. CANDLER MEDICAL GROUP, INC. ET AL

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

94-019
951087

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 30 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 08 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0167
CITY OF ATLANTA V. VINCE HOUSTON ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

97019

E8047

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 9 1997

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 15 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0168

LARRY REESE V. L. E. HARPER CONSTRUCTION CO. ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96019

96CV322

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 15 1997

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*Witness my signature and the seal of said court
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William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0169
MICHAEL ANTHONY McBEE V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90019

50195

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 22 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 24, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0169

MICHAEL ANTHONY MCBEE V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

90-019
50195



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 24 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 29, 1997

The Honorable Court of Appeals met pursuant to adjournment.

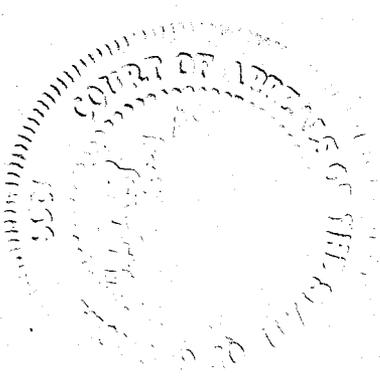
The Following order was passed:

Case No. A97D0170

ORENTHIUS F. BRIGHTWELL V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-019
SU96CR0769G



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 29 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 15 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0170
ORENTHIUS F. BRIGHTWELL V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

99019

SU96CR0769G

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 15 1997

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 18, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0171

ALBERT THOMAS V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

98-019
14163

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 18 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. McIntire

Court of Appeals of the State of Georgia

ATLANTA, January 16, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0171. THOMAS v. THE STATE.

Albert Thomas seeks a discretionary appeal from the trial court's denial of his motion for modification of his life sentences for armed robbery and kidnapping. He originally filed his application with the Supreme Court who transferred the application to this Court. This Court, however, lacks jurisdiction to review Thomas' application.

Thomas apparently filed the application pursuant to OCGA § 42-12-8 which provides that appeals by prisoners of all actions, except for actions involving a petition for writ of habeas corpus or an appeal of a criminal proceeding, shall be made by the discretionary application procedure set forth in OCGA § 5-6-35. OCGA § 42-12-8, however, does not govern the procedure for appealing the trial court's order.

An appeal of the denial of a motion to modify criminal sentences is an appeal of a criminal proceeding as it involves a post-conviction motion attacking the correctness of the sentence imposed by the trial court. The motion is merely a continuation of the previous criminal proceeding and not a new lawsuit, action or proceeding filed by the inmate. Therefore, the order sought to be

appealed by Thomas is not subject to the discretionary application procedure and must be directly appealed. The Court notes that Thomas has filed a direct appeal of the trial court's order which has been docketed in this Court as Case Number A97A1008. Accordingly, this application for discretionary appeal is not governed by OCGA § 42-12-8, and must be dismissed for lack of jurisdiction.

Moreover, under OCGA § 5-6-35 (d), an application for discretionary appeal must include a copy of the judgment for which an appeal is sought. Rule 32 (b) of the Court of Appeals Rules requires such to be a stamped "filed" copy. Thomas' application did not contain such a copy of the judgment appealed, and on January 2, 1997, this Court ordered him to submit such within 10 days and emphasized that the application would be dismissed if it was not physically received by that deadline.

However, Thomas failed to submit the requisite stamped "filed" copy of the judgment within that deadline, and this application is ordered DISMISSED. Rule 7 of the Court of Appeals Rules. In addition, Thomas' motion for appointment of counsel is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 16 1997**

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William L. Martin

Court of Appeals of the State of Georgia

ATLANTA, January 16, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A97D0172. RAEBURN S. JOSEY V. GLENLEAF CONDOMINIUM ASSOCIATION,
INC.**

Upon consideration of the application of defendant-applicant Raeburn S. Josey for discretionary appeal from a default judgment entered in an amount not exceeding \$10,000.00 in an action to recover outstanding condominium assessments plus interest, attorney fees, and costs, it is hereby ORDERED that the application be DENIED. Upon consideration of the motion by plaintiff-respondent Glenleaf Condominium Association, Inc., "to impose a penalty of not less than \$500.00 against [defendant]-[a]pplicant [Raeburn S. Josey], pursuant to [Georgia Court of Appeals] Rule 15 (b)," it is FURTHER ORDERED that the motion to impose a penalty be DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 16 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0173

THOMAS HOWELL V. BLUE BIRD BODY COMPANY ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93020

96V591

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 24 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
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William L. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, January 16, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0175. ST. JOSEPH'S HOSPITAL, et al. v. LOGAN.

On June 13, 1996, this court granted Priscilla Logan's application for an appeal in the above styled workers' compensation case. Logan timely filed her original notice of appeal on June 19, 1996. The record was prepared in the court below and a bill of costs was received by Logan's counsel on September 6, 1996. A deputy clerk of the superior court telephoned the office of Logan's counsel on September 18, 1996, to remind that the bill of costs had been prepared and had not been paid.

On November 19, 1996, the employer and servicing agent moved to dismiss Logan's appeal due to her continued failure to pay costs. OCGA § 5-6-48 (c). On December 6, 1996, the superior court entered an order denying the motion and allowing her to pay costs by that same day. The record was certified on December 6 and Logan's appeal was docketed in this court on December 11, 1996, as Appeal No. A97A0862. An "amended order" similar to the December 6 order was entered on December 18, 1996, changing certain findings to merely contentions of counsel.

The employer and self-insurer have filed both a notice of direct appeal and the above styled application for appeal from the orders of the trial court entered December 6 and December 18, 1996.

The first issue is whether such orders are directly appealable. If they are, an application to appeal is an improper method of appealing and the application must be dismissed. See, e.g., Cora v. Wagner, 196 Ga. App. 774 (397 SE2d 46) (1990). "[T]he underlying subject matter generally controls over the relief sought in determining the proper procedure to follow to appeal." Rebich v. Miles, 264 Ga. 467 (448 SE2d 192) (1994). Since the orders of which the employer and servicing agent now complain serve no purpose other than to establish Logan's continued right to pursue an appeal now pending in this court, this circumstance is paramount and OCGA § 5-6-35 (a) (1) is inapplicable. Instead, a direct appeal pursuant to OCGA § 5-6-34 lies.

Therefore, it is ORDERED that the above styled application is dismissed and applicants are given leave to ensure that their direct appeal from the orders complained of here is consolidated with Appeal No. A97A0862 when it is docketed in this court. See, e.g., Ovestco Corp. v. Bowen, 216 Ga. App. 121 (453 SE2d 94) (1995).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JAN 16 1997**

*I certify that the above is a true extract from
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*Witness my signature and the seal of said court
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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 02, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0178

IN RE: ESTATE OF JANETTE J. ZUKOWSKI, DECEASED

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

90-020
31516

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 2 1997

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Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, January 28, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0178. IN RE ESTATE OF JANETTE J. ZUKOWSKI, DECEASED.

Kenneth Harris, son of Janette Zukowski, filed this application for discretionary appeal from the order of the probate court of Muscogee County denying his motion to set aside an award of year's support and to allow late filing of an objection to the award. The discretionary application, as filed, did not contain a stamped "filed" copy of the order sought to be appealed as required by Rule 32 (b), Court of Appeals Rules. Accordingly, on January 8, 1997, this Court issued an order which required that the application be supplemented with a stamped "filed" copy of the order appealed from. The order further provided that in the event a stamped "filed" copy of the order was not physically received within 10 days of January 8, 1997, or taking into account weekends and holidays by January 21, 1997, the application would be dismissed. Although the applicant has submitted a copy of the order sought to be appealed with the probate court's seal, it is not a stamped "filed" copy, and therefore, does not satisfy the requirement of Rule 32 (b), Court of Appeals Rules. The purpose of the requirement that the applicant submit a stamped "filed" copy of the order appealed from is twofold: to verify that the order was, in fact, filed and to show the date on which the order was filed. Accordingly, the application is dismissed for failure to comply with Rule 32 (b). See Rule 7, Court of Appeals Rules.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 28 1997

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Clerk.

William L. Martin

2

Court of Appeals of the State of Georgia

ATLANTA, January 22, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A97D0179. ALLEN v. CITY OF ATLANTA.
A97D0180. ALLEN v. HARVARD.**

Kenneth Allen seeks discretionary review of two orders of the superior court, both of which were entered on December 6, 1996, in related superior court civil actions. In Appeal No. A97D0179, Allen seeks review of the order denying his motion to set aside the court's entry of a dismissal without prejudice. The court dismissed Allen's petition for a writ of certiorari to the Atlanta Civil Service Board "for want of prosecution." In Appeal No. A97D0180, Allen seeks review of the order which "denied" his complaint for declaratory judgment. In that case, the court found that a City of Atlanta Work Rule could be interpreted in a manner which did not conflict with state law. Both applications for appeal were filed with this Court by hand delivery on Tuesday, January 7, 1997.

An application for appeal must be filed within 30 days of the entry of the order appealed. OCGA § 5-6-35 (d). Both applications were filed 32 days after the entry of the order appealed and are, therefore, untimely. This Court lacks jurisdiction to entertain an untimely application. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991).

Further, the order at issue in Appeal No. A97D0180 appears to be a final order entering a declaratory judgment in favor of the defendants. Such an order is directly appealable. OCGA § 5-6-34 (a) (1); Spivey v. Safeway Ins. Co., 210 Ga. App. 775 (437 SE2d 641) (1993). To preserve the right to bring a direct appeal, an appellant must timely file a notice of appeal with the trial court. Jordan v. Caldwell, 229 Ga. 343 (191 SE2d 530) (1972). As no provision of OCGA § 5-6-35 has been urged or cited by Allen as a basis for a discretionary appeal in Appeal No. A97D0180, and as no such basis appears to exist, we must conclude that this Court lacks jurisdiction to consider this application. See Artis v. Gaither, 199 Ga. App. 114 (404 SE2d 322) (1991).

For these reasons, these appeals are hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 22 1997

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William R. Martini
Clerk.

Court of Appeals of the State of Georgia

ATLANTA, February 3, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0181. HAMMOCK v. WEBB.

Ann B. Webb sought to enforce a settlement agreement incorporated into a final divorce decree by filing a garnishment action against former husband John W. Hammock in the magistrate court. The magistrate court determined that the agreement's provisions regarding "college expenses" did not require Hammock to be responsible for his daughter's "travel expense, lunch, or living allowance," and entered a judgment for \$351.43 that did not reflect such expenses. Webb appealed to the superior court. That court entered a judgment holding that "college expenses" under the settlement agreement includes "reasonable living expenses," "which includes a travel allowance and a living expenses allowance." Hammock now applies to this court for an appeal from this order.

However, Webb asserts in her response that the judgment "is only an order arising from a preliminary hearing" and that the matter is still pending in the superior court for a determination of the exact amount owed by Hammock for the cost of his child's college education. Since plaintiff Webb is seeking a writ of garnishment for support and not merely a declaration of her rights

under the settlement agreement, it would appear that the judgment complained of was not intended to be the final judgment entered in the case but merely disposes of Hammock's traverse. Hammock's application is therefore premature and is dismissed accordingly. See generally English v. Tucker Federal Savings & Loan Assoc., 175 Ga. App. 69 (332 SE2d 365) (1985).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 03 1997

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Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0183
NATHANIEL DUGGER V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93021

36247

42759

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 22 1997

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Clerk.

William R. Martin

2

Court of Appeals of the State of Georgia

ATLANTA, January 27, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0184. MENSING V. LEGION INSURANCE COMPANY.

Pamela Mensing seeks to appeal the decision of the State Board of Workers' Compensation which was affirmed by operation of law on December 6, 1996. On October 7, 1996, Mensing filed with the board a notice appealing the board's order to the superior court. The superior court clerk's office advises that although a hearing was requested, no hearing date was ever set in the superior court.

OCGA § 34-9-105 (c) provides that unless the superior court hears the case within 60 days from the date the notice of appeal is filed with the board, the decision of the board is affirmed by operation of law unless a hearing originally scheduled within the 60 days has been continued to a date certain by order of the court. Because no hearing date was ever set in this case, the board's decision was affirmed by operation of law within 60 days, or on December 6, 1996. Mensing filed this application for discretionary appeal on January 8, 1997, more than 30 days after the decision of the board was affirmed by operation of law. An application for discretionary appeal, however, must be filed within 30 days of the entry of the order or judgment complained of. OCGA § 5-6-38 (a). Mensing's application for discretionary appeal is therefore

untimely. Accordingly, the application is ordered DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 27 1997

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Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, January 30, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0185. BROOKS v. SHAW INDUSTRIES, INC.

Claimant Brooks seeks an appeal of the superior court's order affirming an award of the appellate division of the workers' compensation board which denied Brooks temporary partial disability payments.

Brooks contends he suffered a diminution of earning capacity due to a back injury he suffered on March 31, 1995, while employed as an associate engineer with Shaw Industries. Brooks lost no time from work due to that injury. He continued to work for Shaw until he was terminated four months later. The ALJ and appellate division made a factual finding that Shaw terminated Brooks for reasons unrelated to his injury. Brooks then immediately accepted employment at a comparable wage with another employer, Frontier Contracting, as a job site superintendent engineer. Brooks did not advise Frontier that he had any back problems or work restrictions. Brooks claimed that Frontier fired him in March of 1996 because he was not physically able to endure the long drives associated with his job inspection duties. However, the ALJ found that Frontier fired Brooks because "he proved to lack the experience necessary to perform the particular work assigned to him." Within a week, Brooks

found employment with another company, Norcon, but as a designer of conveyor belts, a position that commanded a wage approximately a third less than what he had been paid by Shaw. Norcon was not aware that Brooks had any back injury or special restrictions. There is no record evidence demonstrating that Brooks attempted to secure an engineering position comparable in pay to those held at Frontier and Shaw.

The ALJ and appellate division concluded that Brooks failed to prove by a preponderance of competent and credible evidence that his diminished income was proximately caused by his work-related injury. Rather, Brooks' reduced income was attributed to "market conditions." Brooks sought and accepted a job that did not involve job-site engineering supervisory duties. The Norcon job required less and consequently paid less. Brooks presented no evidence which would support an inference that of the engineering jobs available the Norcon job was the only job suitable for a person with his education, ability, and work restrictions. Brooks, therefore, failed to prove that his diminished income was proximately caused by his previous injury. See Maloney v. Gordon County Farms, 265 Ga. 825, 828 (462 SE2d 606) (1995).

The factual findings of the ALJ and the appellate division are supported by competent record evidence. The superior court affirmed the appellate division, applying the "any evidence" standard. Neither the superior court nor this Court has the authority to substitute itself as a fact-finding body in lieu of the appellate division. Harris v. Seaboard Farms of Elberton, 207 Ga. App. 147 (427 SE2d 524) (1993). The appellate division's

findings of fact, when supported by the evidence, are conclusive and binding upon this Court. Dasher v. City of Valdosta, 217 Ga. App. 351 (457 SE2d 259) (1995).

Accordingly, this application is hereby ordered DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 30 1997

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Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, January 15, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0186. KNAPPER v. THE STATE

Anthony Knapper seeks an appeal from the order of the superior court entered December 10, 1996, revoking his probation. However, since Knapper failed to have his case docketed in this court within 30 days of the revocation order, this court is without jurisdiction to consider Knapper's application. OCGA § 5-6-35 (d). Specifically, Knapper's certified mail receipt does not bear the official postmark date as required under Rule 4 of the Rules of the Court of Appeals, and therefore it is deemed filed on January 10, 1996--the date the application was physically received.

Moreover, we note that even if Knapper's application had been timely filed, the filing includes neither a recitation of the facts adduced at the revocation hearing nor a transcript of that hearing. Likewise, Knapper fails to explain the basis for his conclusion that the evidence was insufficient to support the revocation of his probation. When an application fails to include sufficient argument and supporting exhibits to demonstrate that reversible error has occurred, this court is afforded no basis to consider granting an appeal. See Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989).

For the foregoing reasons, Knapper's application is dismissed as untimely filed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 15 1997

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the minutes of the Court of Appeals of Georgia.*

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William R. Martini

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, January 22, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0187. SORIANO et al. v. STONEGATE LOUISVILLE ASSOCIATION.

Stonegate Louisville Association brought a dispossessory action against Barrie Soriano and Ned Majors ("applicants"). Applicants filed an answer to the dispossessory and also filed a counterclaim raising various other issues. The magistrate granted judgment in applicants' favor on the dispossessory but denied them judgment as to their counterclaim. Applicants subsequently filed an appeal to the superior court but their appeal was dismissed as untimely. Applicants have now filed this application for discretionary appeal seeking review of the superior court's order dismissing their appeal. The Court, however, lacks jurisdiction to review their application.

Pursuant to OCGA § 5-6-35 (a) (3) an application for discretionary appeal is required in appeals from cases involving dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is \$2500.00 or less. Since the issues involved in this case concern other matters not involving the amount of rent due, the discretionary appeal procedures were not applicable. Accordingly, the application is DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 22 1997

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0188

JOHN ANTHONY CECCHINI, III V. COMMISSIONER, GEORGIA DEPARTMENT OF HUMAN
RESOURCES

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90021

E49725

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 24 1997

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 29 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0190

JAHMAL A. BOLDEN V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92022

95CC119

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 29 1997

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 29 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0191
REGINALD GLEN CAMPBELL V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92023

95CC119

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 29 1997

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William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 29 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0192

BRADLEY J. TAYLOR ET AL V. THE CITY OF ATLANTA ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93022

E49938

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 29 1997

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Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, February 17, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0193. BONDS v. CHEEK.

Sherman Dale Bonds' application for discretionary appeal was denied by this Court in an order dated January 23, 1997. On February 5, 1997, Bonds filed a motion for reconsideration. Court of Appeals Rule 37 (b) requires that such motions must be filed within ten days of a judgment or dismissal.

Accordingly, Bonds' motion for reconsideration is untimely and it is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 17 1997

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

William L. Martin

2

Court of Appeals of the State of Georgia

ATLANTA, January 27, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0194. OSBORNE BONDING AND SURETY COMPANY v. STATE OF GEORGIA.

This application for discretionary appeal seeks review of the denial of a motion to set aside a bond forfeiture.

In November 1988 Osborne Bonding and Surety Company signed as surety on an appearance bond for a criminal defendant. When the defendant failed to appear, the State initiated a bond forfeiture proceeding and eventually a Rule Absolute was issued on August 24, 1989. Osborne Bonding filed its motion to set aside the bond forfeiture on November 22, 1996.

Osborne asserted several grounds for setting aside the judgment, but the only basis arguably falling under OCGA § 9-11-60 (d) was its claim that the notice of the execution hearing was late. The trial court properly found that such late notice did not constitute a nonamendable defect on the face of the record that affected the court's exercise of personal jurisdiction over Osborne Bonding. See AAA Bonding Co. v. State of Ga., 192 Ga. App. 684 (2) (386 SE2d 50) (1989).

To the extent that Osborne Bonding's motion asserted other grounds other than lack of personal jurisdiction, the trial court also correctly found the motion to be untimely under OCGA § 9-11-60

(f). Moreover, to the extent Osborne Bonding's motion sought to set aside the bond forfeiture for reasons other than those set forth in OCGA § 9-11-60 (d), the denial of the motion is not properly the subject of an application for discretionary appeal.

For the above reasons, the application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 27 1997

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Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0196

AUBREY CHERYL ANN BEALL V. WARREN DEWAYNE POSS ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

90022

96V4095

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 03 1997**

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 31 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0197
COASTAL PLAIN AREA EOA ET AL V. TERESA PEARSON

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

96022

96251 252-94-9432

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 31 1997

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William L. Martini

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 29 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0198
RANDOLPH SCOTT DILLARD V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92024

95CC119

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 29 1997

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William L. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, FEB - 5 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0199. SMITH, et al. v. NATIONSBANK, N.A. (South) f/k/a Nationsbank of Georgia, N. A.

Gary W. Smith and Proto Systems of Atlanta, Inc., have filed an "application for appellate review" with this court. However, the judgment complained of is not subject to the discretionary appeal procedure, OCGA § 5-6-35, and applicants do not suggest otherwise. The clerk's office of the superior court has confirmed that the notice of appeal included in the application was filed in that court on January 15, 1997. Applicants are apparently under the mistaken impression that they must apply to this court in addition to filing their notice of direct appeal in the superior court. But since the above styled application serves no purpose and requires no response, the filing is dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB - 5 1997

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Clerk.


Court of Appeals of the State of Georgia

ATLANTA, February 5, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0201. ALBERT V. SUMMERS.

Teresa Louise Albert filed this discretionary appeal seeking review of the trial court's order that Albert was not entitled to attorney fees in connection with her petition to determine paternity and for child support. This Court, however, lacks jurisdiction to review this appeal.

"Generally, an order is final and appealable when it leaves no issues remaining to be resolved, constitutes the court's final ruling on the merits of the action, and leaves the parties with no further recourse in the trial court." Thomas v. Douglas Co., 217 Ga. App. 520 (457 SE2d 835) (1995). In this case, the trial court's order addresses attorney fees and does not rule on the other issues raised in the action, for example, child support, custody or visitation. Moreover, the superior court clerk's office advises that this case remains pending. Thus, this action was not finally resolved at the time the order was entered, and therefore, the order does not constitute the trial court's final ruling on the merits of the action.

Because the order appealed is not a final order, Albert was required to follow the interlocutory application procedures in OCGA

§ 5-6-34 (b) by obtaining a certificate of immediate review from the trial court within the requisite time period. Scruggs v. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991); Rogers v. Dept. of Human Resources, 195 Ga. App. 118 (392 SE2d 713) (1990). Because Albert did not follow the interlocutory appeal procedures, this Court lacks jurisdiction to consider this appeal at this time. Rogers, supra at 119. Accordingly, the application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB - 5 1997

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0202
CHRISTINE CHATFIELD V. CAGLE'S, INC. ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

94023

96CV13533

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB - 5 1997

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William R. Martine Clerk.

Court of Appeals of the State of Georgia

ATLANTA, January 30, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0203. OSBORNE BONDING & SURETY COMPANY v. STATE OF GEORGIA.

Osborne Bonding & Surety Company seeks an appeal from the order of the superior court denying its motion to set aside a bond forfeiture order entered by the court in November, 1991. However, because applicant failed to move the superior court to set the forfeiture aside within three years and there was no specific allegation that the court lacked personal jurisdiction or subject matter jurisdiction to enter the judgment, the superior court correctly concluded that it lacked authority to grant applicant's motion. OCGA § 9-11-60 (f); See Murphy v. Murphy, 263 Ga. 280, 283 at note 2 (430 SE2d 749) (1993). Accordingly, the application is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 30 1997

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 29 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0205

REGIONAL FINANCE CORPORATION OF GEORGIA V. JOHN W. OXENDINE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

96023

E47299

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 29 1997

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Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 30 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0200
IN THE INTEREST OF: T.N., A MINOR

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98022

569410674

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 30 1997

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Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0207

GREGORY STAFFORD V. THE STATE PERSONNEL BOARD OF THE STATE OF GEORGIA
ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99023

E31960

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB -5 1997

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William L. Martine

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 30 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0209

MARC. SIEGEL V. BEDFORD, KIRSHNER, & VENKER, P.C., a Georgia
Professional Corporation

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93024

95VS100300

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 30 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0208
IN THE MATTER OF: GORDON HOSPITAL ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98023

E47279

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB - 5 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

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Clerk.

William L. Marti

SUPREME COURT OF GEORGIA

Remittitur, Case No. S97C0920

Atlanta, May 30, 1997

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IN THE MATTER OF: GORDON HOSPITAL et al.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied.

All the Justices concur.

A97D0208
Bill of Costs, \$80.00

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta June 25, 1997

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.



Antonio J. Middleton Clerk.

Case No. A97D0208
Court of Appeals of Georgia

iled in office

:

Remittitur from the Supreme Court.
Clerk, Court of Appeals of Georgia.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 19, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0208

IN THE MATTER OF: GORDON HOSPITAL ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

98-023
E47279

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 19 1997

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William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0210

JAMES EDWARD BENSON V. SAM YODER TRUCKING, CO.

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

94-024
96CV0250

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 10 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, MAR 25 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0210. BENSON v. SAN YODER TRUCKING COMPANY et al.

On January 23, 1997, this Court dismissed as untimely the application for discretionary appeal filed in this case. The applicant then filed an untimely motion for reconsideration in which he demonstrated that the application was mailed by certified mail, and physically received by this Court, within the 30 day time period required for seeking discretionary appeal under OCGA § 5-6-35 (d). This Court denied the motion, and the applicant has now filed a motion for permission to file another out-of-time motion for reconsideration, again emphasizing that the application was timely sent and received by certified mail.

However, even though the application was physically received by the Court within 30 days of the judgment for which appeal was sought, the application could not be docketed until costs were paid. See OCGA § 5-6-4; Rule 5 of the Rules of the Court of Appeals. As costs were not paid until January 21, 1997, the application was not deemed filed until that date, which was four days past the deadline for filing an application for discretionary appeal. Accordingly, the motion for permission to file another motion for reconsideration is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 25 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S97C1028

Atlanta, April 4, 1997

The Honorable Supreme Court met pursuant to adjournment.

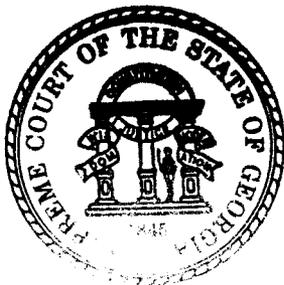
The following order was passed:

JAMES EDWARD BENSON V. SAM YODER TRUCKING COMPANY

It is ordered that this petition for certiorari is allowed withdrawn.

All the Justices concur.

A97D0210
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta May 2, 1997

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Daniel F. Middleton, Deputy Clerk.

Case No. A97D0210
Court of Appeals of Georgia

Filed in office
on:

Remittitur from the Supreme Court.
Clerk, Court of Appeals of Georgia.



SUPREME COURT OF GEORGIA

Case No. S97C1028

Atlanta April 4, 1997

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JAMES EDWARD BENSON v. SAM YODER TRUCKING COMPANY

On motion it is ordered that counsel for the petitioner be allowed to withdraw this case.

Court of Appeals No. A97D0210



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Chief Deputy Clerk

Court of Appeals of the State of Georgia

ATLANTA, January 30, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0211. STRONG V. STRONG.

This application for discretionary appeal seeks review of the trial court's dismissal of applicant Larry Dewayne Strong's motion to modify visitation rights. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the entry of the order appealed. In the instant case, the superior court entered its order on December 16, 1996; thus, the deadline for seeking discretionary review was January 15, 1997. Since the application was not filed with this Court until January 21, 1997, it is ordered DISMISSED as untimely. See Hamilton v. Deutscher, 201 Ga. App. 883 (412 SE2d 875) (1991).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 30 1997

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Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0212

JERRY SCOTT TAYLOR V. DONNA MARIE TAYLOR

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

97024

961404822

Court of Appeals of the State of Georgia

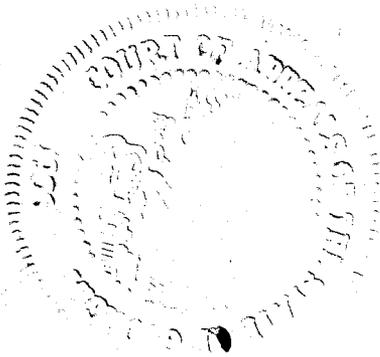
Clerk's Office, Atlanta FEB -6 1997

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Clerk.

William R. Martin



**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0213

RONALD WALKER V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

96024

96CR6701

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 24 1997

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the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 07 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0214
ROSALIND STEPHENS V. PLANTERS RIDGE CONDOMINIUM

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90024

96VS0075896

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB - 7 1997*

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*Witness my signature and the seal of said court
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William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 23, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0215

BOB WASHINGTON V. ALBANY-DUNWOODY BOARD OF ELECTIONS ET AL

The discretionary application received in the above docketed matter does not contain a stamped "filed" copy of the order which is being appealed as required by Rule 32 (b) of the Court of Appeals.

Applicant is hereby ordered to supplement the application with a stamped "filed" copy of the order instanter. If applicant does not cause a copy of said order to be physically filed with the Court within 10 days of the date of this order, the application will be dismissed. Applicant's submission in response to this order will be deemed filed only on the date it is physically received in the Clerk's office.

The Court is required to issue an order granting or denying the application within 30 days of the filing of the application. See OCGA 5-6-35 (f).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 23 1997

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 11 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0216
DONALD THOMAS HEARD V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98024

93CR1250V

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 11 1997

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Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, February 11, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0218. IN THE INTEREST OF S. A. W.

The mother of S. A. W., a child deemed deprived as a newborn in November, 1994, has filed an application for discretionary appeal from the order of the superior court finding that reunification was not possible as of the date of the order and noting that the Department of Family and Children Services would be filing a petition for termination of parental rights. Assuming, without deciding, that the order complained of may be deemed a final judgment within the meaning of OCGA § 5-6-34 (a), it is nevertheless not one of the types of judgments made subject to the discretionary appeal procedure under OCGA § 5-6-35 (a) (2). See generally In the Interest of A. L. L., 211 Ga. App. 767 (1) (440 SE2d 517) (1994).

For the foregoing reasons, the application is dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 11 1997

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*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Witness *Martinez*

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 24, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0220

FREDRICO HARDY V. THE STATE

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

91-025
94CR3458

Court of Appeals of the State of Georgia

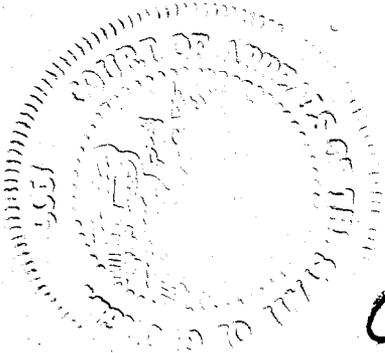
Clerk's Office, Atlanta

FEB 24 1997

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William R. Martin Clerk.



Court of Appeals of the State of Georgia

ATLANTA, February 11, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0220. HARDY v. THE STATE.

This application for discretionary appeal seeks review of the revocation of Frederico Hardy's probation, based on his commission of a subsequent criminal offense of aggravated assault. In this application, Hardy's sole contention is that there was no evidence to support the revocation.

However, the application materials contain no transcript of the hearing held in the matter, or any other account of the evidence adduced. In the absence of a transcript, this Court must assume that the evidence supported the trial court's decision. Gay v. State, 199 Ga. App. 80, 82 (1) (403 SE2d 895) (1991). Accordingly, this application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 11 1997

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Clerk.

William R. Martini

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0223

GEORGE HARLEN TROGDEN V. 1ST FRANKLIN FINANCIAL CORP. ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90025

95CV501S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 24 1997

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the minutes of the Court of Appeals of Georgia.*

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William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 11 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0224
GEVERNDOLYN F. REEZE V. KMART ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99025

96CV13717 258-82-5699

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

FEB 11 1997

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William L. Martini Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 17 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0225

COCA-COLA ENTERPRISES, INC. ET AL V. JACK P. BUICE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98025

96A77576 257-39-8347

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 17 1997

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the minutes of the Court of Appeals of Georgia.*

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 21 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0226

AMERICAN SATELLITE V. SANDRA MIMS D/B/A MIMS TRUCKING

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92026

2B96CV125

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 21 1997

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William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0227

THOMAS M. WILLIAMS V. SHERATON NORTHWEST ATLANTA

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

93026

259-73-2095

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -4 1997

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William L. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, FEB 10 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0228, A97D0229. OSBORNE BONDING & SURETY COMPANY v. STATE OF GEORGIA (two cases).

In each of the above styled cases, Osborne Bonding & Surety Company seeks an appeal from an order of the superior court denying a motion to set aside a bond forfeiture order entered by the court more than three years ago. However, since the superior court had jurisdiction over the movant as well as the subject matter when each of the forfeiture orders complained of was originally entered, the applicant's respective motions were correctly deemed untimely. OCGA § 9-11-60 (f); See Murphy v. Murphy, 263 Ga. 280, 283 at note 2 (430 SE2d 749) (1993). Accordingly, the applications are denied for the same reasons stated in applicant's previous applications A97D0203 and A97D0194.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 10 1997

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Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA,

FEB 10 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A97D0228, A97D0229. OSBORNE BONDING & SURETY COMPANY v. STATE OF
GEORGIA (two cases).**

In each of the above styled cases, Osborne Bonding & Surety Company seeks an appeal from an order of the superior court denying a motion to set aside a bond forfeiture order entered by the court more than three years ago. However, since the superior court had jurisdiction over the movant as well as the subject matter when each of the forfeiture orders complained of was originally entered, the applicant's respective motions were correctly deemed untimely. OCGA § 9-11-60 (f); See Murphy v. Murphy, 263 Ga. 280, 283 at note 2 (430 SE2d 749) (1993). Accordingly, the applications are denied for the same reasons stated in applicant's previous applications A97D0203 and A97D0194.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 10 1997

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William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0230
OSBORNE BONDING AND SURETY CO. EX REL PABLO CUEVAS SANCHEZ V.
THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

91026

95CR2464

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 24 1997

*I certify that the above is a true extract from
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William R. Martini

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0232
BACE STAFFING CORPORATION D/B/A STAFFAMERICA ET AL V. CURTIS E.
PRESTON

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90026

E53794 060-44-5330

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 24 1997

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William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0234

OSCAR BUCHANAN D/B/A/ BUCHANAN AUTO CITY V. LESLIE LUCAS D/B/A ROME
AUTO AUCTION

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99026

94CV14872

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR - 4 1997

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0236
FRANK PAUL BONJIORNO, M.D. V. COMPOSITE STATE BOARD OF MEDICAL
EXAMINERS

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92027

E50112

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 24 1997

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Clerk.

William L. Martin

Court of Appeals of the State of Georgia

ATLANTA, March 4, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0238. EBERHART v. DEPARTMENT OF HUMAN RESOURCES.

Willie Eberhart filed this application seeking an appeal of the superior court's order granting the Department of Human Resources' petition to establish payment of child support. The court found that although Eberhart was not in arrears in his child support payments, the department was "entitled to seek a determination as to [Eberhart's] obligation to provide future payments" pursuant to OCGA § 19-6-15 and to enforce that future payment by income deduction order. Eberhart contends the trial court erred in "awarding...future child support against [him] pursuant to the guidelines established in OCGA § 19-6-15" and that an award of future support in this case was "against the evidence."

Eberhart and his wife divorced in 1984. The divorce decree provided that Eberhart was to pay \$173.32 per month to support his two minor children. Both children received in excess of \$6,000 in public assistance from April 1994 through May 1996. The youngest child, Therone, is still receiving public assistance in the form of Medicaid. The department submitted evidence showing that the custodial parent subsisted on \$703.00 per month, which included her

wages, child support and public assistance. Eberhart, on the other hand, has an income of \$2,000.00 per month. His current support payments equal about 8.6% of that income. Applying the OCGA § 9-6-15 guidelines, the department asserted that Eberhart should be paying 17 - 23% of his income as child support, or \$340.00 to \$460.00 per month.

"The payment of public assistance to or on behalf of a child creates a debt due and owing the state by the parent or parents responsible for the support of the child." OCGA § 19-11-5. By accepting public assistance, the recipient of that assistance is deemed to have "made an assignment to the department of the right to any child support owed for the child." OCGA § 19-11-6 (a). Moreover, "[t]he department shall be subrogated to the right of the child or children or the person having custody to initiate any support action existing under the laws of this state and to recover payments ordered by the courts of this or any other state." Id. (Emphasis added.) Thus, the department may pursue its right to recover assistance paid by initiating any lawful action, including a petition for the modification of child support, regardless of whether the party owing child support is in arrears. 19-11-6 (a); Allen v. Department of Human Resources, 262 Ga. 521 (423 SE2d 383) (1992); Department of Human Resources v. Brandenburg, 211 Ga. App. 715 (440 SE2d 498) (1994). Moreover, the department has the duty to take appropriate action whenever it receives an application for public assistance to assure that the responsible parent supports the child in accordance with the guidelines set out in OCGA § 19-6-15. See e.g., OCGA §§ 19-11-2, -6(a), -7, -8, 10(c), 12, 21; Allen

v. Department of Human Resources, supra; Department of Human Resources v. Bagley, 240 Ga. 306 (240 SE2d 867) (1977); Department of Human Resources v. Hedgepath, 204 Ga. App. 755 (420 SE2d 638) (1992). And, it may enforce a child support order by providing for income deduction. OCGA § 9-6-32 (a) (2). Eberhart has failed to show the trial court erred in granting the department's petition.

For these reasons, the application for discretionary appeal is hereby ordered DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR - 4 1997

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0239

MARCUS W. LUKE V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

97027

94SPCR391

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -4 1997

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William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0240
JOSEPH PROFIT, SR. V. SHERRY SMOOT

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96027

E45630

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 24 1997

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William R. Martin

Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S97C1005

Atlanta, June 6, 1997

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JOHN L. MORRIS V. NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, P.A.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied.

All the Justices concur.

A97D0242
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta July 11, 1997

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Nathaniel J. Middleton, Deputy
Clerk.

Case No. A97D0242
Court of Appeals of Georgia

Filed in office
on:

Remittitur from the Supreme Court.
Clerk, Court of Appeals of Georgia.