

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: March 25, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S97C1005**

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

Clerk, Supreme Court of Georgia

By: _____

Case No. A97D0242

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA, MAR -5 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A97D0242. MORRIS V. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH,
P.A.**

This appeal arises out of a foreign judgment obtained in New York by National Union Fire Insurance Company of Pittsburgh, P.A. ("National") against John Morris which judgment was domesticated in Georgia. Morris filed a motion to set aside the judgment under OCGA § 9-11-60 (d) (1) and a motion to dismiss for insufficiency of process of the original New York action which also sought to set aside the domesticated judgment. On December 6, 1996, the trial court denied Morris' motions to set aside the judgment. On January 6, 1997, Morris filed a motion which in effect sought reconsideration of the trial court's December 6 order but was titled a "motion for new trial." On January 10, 1997, the trial court denied this motion on the ground that because there was never a trial in the case, the court lacked the authority to grant a new trial. On February 10, 1997, Morris filed an application for discretionary appeal.

An application for discretionary appeal must be filed within 30 days after entry of the appealable judgment. OCGA § 5-6-35 (d). Here, the appealable judgment was the trial court's order which denied Morris' motions which sought to set aside the judgment. Morris, however, failed

to take any action to perfect an appeal within 30 days of the entry of the trial court's December 6, 1996 order and did not file his application for discretionary appeal until February 10, 1997.

Moreover, Morris' "motion for new trial" will not operate so as to extend his time for filing his application for discretionary appeal. A motion for new trial is not the correct method for seeking review of a trial court's ruling on a motion to set aside. Citibank v. McCarr, 179 Ga. App. 172 (345 SE2d 682) (1986). And, "[w]here a motion for new trial is not a proper vehicle for review of a trial court's action, the motion has no validity and will not extend the time for filing the notice of appeal." Pillow v. Seymour, 255 Ga. 683 (341 SE2d 447) (1986). Thus, Morris' "motion for new trial" did not extend the time for filing his application for discretionary appeal, and therefore, his application, which was not filed until February 10, 1997, is untimely.

For these reasons, this appeal is DISMISSED for lack of jurisdiction. Further, National's request for attorney fees pursuant to OCGA § 5-6-6 is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR -5 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, MARCH 19, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0243

WAYNE STEVENS V. THE STATE

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

98-027
1E93CR015M7

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 19 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, MARCH 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0245
MARTIN FRIEDMAN V. LSP PROPERTIES, INC.

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

93028

94A60231

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR -4 1997

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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, MARCH 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0246
MOTOR WAREHOUSE, INC. V. BECKY DOMNICK ET AL

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

94028

96CV124235

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR -3 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

Clerk.

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:

A97D0247. Jo Ann Lydic et al. v. Robert Neil Lydic.

Applicants Jo Ann Lydic and Kessler & Sparks seek discretionary review of the trial court's grant of summary judgment to Robert Neil Lydic. This case concerns a dispute over interest on child support payments. On April 3, 1990 the trial court entered a consent order on a contempt action brought by Jo Ann Lydic. In the consent order, Robert Lydic agreed to pay Jo Ann Lydic \$45,776.00 arrearage on child support in monthly installments of \$500.00. Kessler & Sparks represented Jo Ann Lydic in negotiating the consent order.

There is no dispute that Robert Lydic has paid \$500.00 monthly installments in accordance with the consent order. The dispute concerns whether he owes post judgment interest on the \$45,776.00 or whether post judgment interest only accrues if he misses a \$500.00 monthly payment. The trial court ruled that there was no basis for charging interest on the contempt judgment and granted Robert Lydic's motion for summary judgment.

Jo Ann Lydic and Kessler & Sparks argue that OCGA § 7-4-12 provides for post judgment interest at the rate of twelve (12%) percent per annum whether or not the judgment specifically reflects the entitlement to such interest. Thus, they allege the trial

court erred in finding that interest did not accrue on the \$45,776.00 judgment entered in the consent order.

However, because the judgment in this case was an accruing judgment in that Jo Ann Lydic was not entitled to \$45,776.00 as of the date of the judgment, but was only entitled to \$500.00 monthly installments, the trial court did not err in granting Robert Lydic summary judgment. In this case, interest would accrue only if a \$500.00 monthly payment was missed. This decision is not contrary to the decisions cited by Jo Ann Lydic and Kessler & Sparks as in those cases the full judgment was due and payable as of the date of the judgment.

In response to this application, Robert Lydic filed a motion to dismiss on the grounds that this Court lacks jurisdiction because a grant of summary judgment is subject to direct appeal pursuant to OCGA § 5-6-34 (a). However, OCGA § 5-6-35 (a) (2) requires an application in a domestic relations case regardless of the fact that the appeal arose from a grant of summary judgment.

Accordingly, Robert Lydic's motion to dismiss is denied, and Jo Ann Lydic and Kessler & Sparks' application for discretionary review is also denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -4 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, MARCH 11, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0248
TIMOTHY RICARDO CHATMON V. THE STATE

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

97028

95CR17604

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 11 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, MARCH 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0250
MARVIN EUGENE JONES V. THE STATE

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

90028

43561

45636

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR -6 1997

*I certify that the above is a true extract from
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*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martine Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S97C1092

Atlanta, June 27, 1997

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CHARLTON COUNTY BOARD OF COMMISSIONERS et al. V. CLARENCE R. HEATON

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.

A97D0251
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta July 17, 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.

Tataniel J. McDaniel Clerk.

Case No. A97D0251
Court of Appeals of Georgia

Filed in office
on:

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

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: April 3, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S97C1092**

CHARLTON COUNTY BOARD OF COMMISSIONERS et al. V. CLARENCE R. HEATON

Clerk, Supreme Court of Georgia

By: _____

Case No. A97D0251

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA, MAR 14 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0251. CHARLTON COUNTY BOARD OF COMMISSIONERS et al. v. HEATON.

By order dated March 5, 1997, this Court dismissed as untimely the application for discretionary appeal filed in this case. On motion for reconsideration, the applicant supplemented the application materials and demonstrated that the application actually was timely. Accordingly, the order of dismissal is hereby vacated.

The application having been considered, it is now hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 14 1997

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William R. Martin

Clerk.

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

ATLANTA, MARCH 19 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0253

RONALD ARROWOOD V. THE STATE

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

92029

CR85230

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 19 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
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William L. Martin

Clerk.

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

ATLANTA, MARCH 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0254

R. T. BURGESS, SR. ET AL V. JOE STRICKLAND

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

93029

96114136

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 18 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,

MAR 11 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0255. KAPPELMEIER et al. v. WATERWAY TECHNOLOGY CORPORATION et al.

Gottfried A. Kappelmeier filed this application seeking discretionary review of the trial court's order denying his motion to set aside summary judgment granted in favor of Hydrotex Synthetics, Inc. and the order denying various "rule nisi order motions" filed by Kappelmeier. This Court, however, lacks jurisdiction to review the application.

OCGA § 5-6-35 (a) (8) provides that appeals "from orders under subsection (d) of Code Section 9-11-60 denying a motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying relief upon a complaint in equity to set aside a judgment" are made by application for discretionary appeal. A motion to set aside under § 9-11-60 (d) must be predicated on (1) lack of jurisdiction over the person or the subject matter; (2) fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or (3) a nonamendable defect which appears upon the face of the record or pleadings. It appears from the record that Kappelmeier's motion was not a proper § 9-11-60 (d) motion since none of the grounds asserted in his motion

included any of those grounds enumerated in § 9-11-60 (d) which would support a motion to set aside. Kappelmeier merely urged that the trial court reconsider its order granting summary judgment in Hydrotex's favor. Therefore, since Kappelmeier did not assert a proper § 9-11-60 motion, this Court lacks jurisdiction to review the trial court's order denying the motion to set aside summary judgment.

Moreover, the order denying Kappelmeier's motions for rule nisi orders cannot be reviewed by this Court by application for discretionary appeal. The trial court's order is not a final judgment as the case remains pending for trial on other issues. Accordingly, that order is not appealable without a certificate of immediate review from the trial court and this Court's grant of an application for interlocutory appeal. Scruggs v. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991); OCGA § 5-6-34 (b).

Since Kappelmeier has failed to follow the appropriate appellate procedures for obtaining this Court's review, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 11 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, MARCH 17, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0258

RODERICK JONES V. THE STATE

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

96029

SU96CR0816S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta | MAR 17 1997

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William L. Martine

Clerk.

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

ATLANTA, MARCH 12, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0261

JAMES DANIEL THOMASON V. FINANCIAL COLLECTION AGENCIES INTERNATIONAL,
INC.

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

98029

31921

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 12 1997

*I certify that the above is a true extract from
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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, APRIL 03, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0262

RANDY EARLY CONSTRUCTION COMPANY AND INA/CIGNA V. LARRY GENTRY

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

92-030
961094099 258-78-6174

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR -3 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, APRIL 01 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0263

UNITED STATES FIDELITY & GUARANTY COMPANY, INC. V. MIC ENTERPRISES ET
AL

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

93030

94115909

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 1 1997

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Clerk.

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

ATLANTA, APRIL 17, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0263

UNITED STATES FIDELITY & GUARANTY COMPANY, INC. V. MIC ENTERPRISES ET
AL

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

93-030
94115909

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 17 1997

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William L. Martin

Clerk.

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

ATLANTA, APRIL 01 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0266

CLAUDE PAUL, III ET AL V. UNITED STATES FIDELITY & GUARANTY COMPANY

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

93031

94115909

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR - 1 1997

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William R. Martin

Clerk.

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

ATLANTA, MARCH 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0267

MICHAEL WESLEY WOFFORD, M.D. V. GEORGIA COMPOSITE STATE BOARD OF
MEDICAL EXAMINERS

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

97030

E50226

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 18 1997

*I certify that the above is a true extract from
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, MARCH 20 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0268
MARTIN FRIEDMAN V. FRANK BARRETT

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

96030

96VX028500E

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 20 1997

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Clerk.

William L. Martin

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

ATLANTA, MARCH 31, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0269
RIVERS CONSTRUCTION COMPANY V. MICHAEL ALTMAN

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

90030

97CV13983

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 31 1997

*I certify that the above is a true extract from
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Clerk.

William R. McIntire

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

ATLANTA, APRIL 01 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0270

KARYN SMYTH V. GLENN L. SMYTH

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

99030

95CV8439

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR - 1 1997

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA, March 13, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0272. ALLEN MARLEY COLE v. THE STATE.

In September 1996, Allen Cole was placed on probation for a shoplifting conviction. That probation sentence also included a \$1000 fine plus surcharges totalling \$150. On January 27, 1997, Cole filed a motion to modify the probation sentence, which the trial court denied on February 4, 1997. Cole then filed this application for discretionary appeal.

However, although OCGA § 5-6-35 (a) (5) requires the discretionary appeal procedures for orders revoking probation, this case does not fall within the ambit of that Code section. See, e.g., Holbert v. State, 177 Ga. App. 461 (340 SE2d 25) (1986). Accordingly, the denial of Cole's motion to modify the sentence being directly appealable, this application is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 13 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 L. Martin

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

ATLANTA, MARCH 27, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0273

GERALD L. MAYFIELD V. SHARON C. MILAM ET AL

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

94031

96VG78071H

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 27 1997

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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, APRIL 01 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0275

PATRICK JOSEPH MCCOMBIE V. CATHERINE TANNER

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

97031

9101577

9201260

9300788

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR - 1 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, MAR 25 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0276. WEST v. THE STATE.

On March 6, 1997, William West filed this application for discretionary appeal seeking review of the trial court's February 4, 1997 order denying his motion for an out-of-time appeal. However, an order denying a motion for an out-of-time appeal is a final order from which a direct appeal lies. "A defendant denied an out-of-time appeal by the trial court . . . has 30 days from the trial court's action to file a notice of appeal to the appropriate appellate court." Rowland v. State, 264 Ga. 872 (452 SE2d 756) (1995); Lane v. State, 263 Ga. 517 (436 SE2d 9) (1993). Because West failed to follow the proper procedure to appeal the February 4, 1997 order, this Court lacks jurisdiction to consider the application.

The fact that West sought an out-of-time appeal for the purpose of seeking discretionary review of an order revoking his probation does not alter this analysis. The "underlying subject matter" of this appeal is not whether the order revoking West's probation was erroneous but whether the order denying the out-of-time appeal was proper under the circumstances. Therefore, West was not required to file an application. See OCGA § 5-6-35 (a) (5);

Prison Health Svcs. v. Dept. of Adm. Svcs., 265 Ga. 810 (462 SE2d 601) (1995); Adivari v. Sears Roebuck & Co., 221 Ga. App. 279 (471 SE2d 59) (1996).

Accordingly, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 25 1997

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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, MARCH 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0277

IN RE: ESTATE OF MARION LEROY TIDWELL, IV, A MINOR

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

90031

T1467

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 25 1997

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

William L. McIntire

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

ATLANTA, APRIL 07, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0277

IN RE: ESTATE OF MARION LEROY TIDWELL, IV, A MINOR

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

90-031
T1467

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR -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.

Clerk.

William R. Martin

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

ATLANTA, MARCH 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0278

SOUTHERN LAND AND CATTLE COMPANY V. BENNING AUTO PARTS

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

99031

96CV33

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 25 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, APRIL 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0280

DR. COMMODORE CONYERS IN HIS OFFICIAL CAPACITY AS THE CHAIRMAN OF THE
PROFESSIONAL PRACTICES COMMISSION V. FRAN GALISHOFF

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

92032

E49654

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 10 1997

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William R. Martin Clerk.

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

ATLANTA, APRIL 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0281
SYBIL COOPER V. THE STATE

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

93032

95CR417

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR -3 1997

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hereto affixed the day and year last above written.*

Clerk.

William L. Martin

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

ATLANTA, MARCH 27, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0282

CAPITOL MATERIALS OF SAVANNAH, INC. V. GASTER LUMBER AND HARDWARE

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

94032

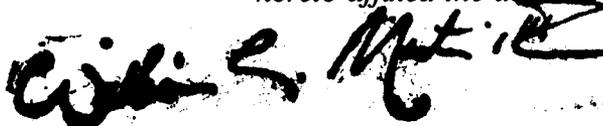
I961300G

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 27 1997

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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, APR -3 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0283. WENDELL TARWATER V. THE STATE.

Wendell Tarwater filed this discretionary application seeking review of the trial court's decision to revoke the balance of his probation. The State filed a petition to revoke Tarwater's probation based upon five separate probation violations. Tarwater stipulated to technical violations of probation but sought a full hearing on the violation of committing a new crime, burglary. Tarwater alleges that the State failed to prove that he committed the offense of burglary and that the only evidence of burglary was through hearsay testimony or impeachment testimony which cannot serve as substantive evidence.

At the revocation hearing, the State called Tarwater's parents and his sister to testify. Their testimony, however, differed from statements made to the officers on duty the day of the burglary. Tarwater alleges that the officer's testimony as to statements made by his parents and sister cannot serve as substantive evidence to support a revocation of his probation. However, the Supreme Court has held: "The prior inconsistent statement of a witness who takes the stand and is subject to cross-examination is admissible as substantive evidence (Gibbons v. State, 248 Ga. 858, 862 (286 SE2d 717) (1982)) and is not subject to a hearsay objection. Knight v. State, 266 Ga. 47, 48 (464 SE2d 201) (1995). In this case, Tarwater's parents and sister took the

stand and were subject to cross-examination; therefore, their prior inconsistent statements as recounted by the police investigator were admissible as substantive evidence.

With regard to whether the State proved the elements of burglary, the investigating officer testified that Tarwater's parents called, reported a burglary, and suspected their son committed the crime. Although their testimony at the hearing contradicted their statements as recounted by the investigating officer, there was evidence by the officer of a burglary by means of a forced entry through a rear window, that property was taken, and that Tarwater's parents suspected their son committed the crime. These statements negate the statements at the hearing that Tarwater was living at the home and that he had a key to the house.

Further, if Tarwater was actually living at the home and merely fabricated the break-in, the theft would constitute theft by taking, which is a lesser included offense to burglary. This offense would be sufficient to revoke Tarwater's probation regardless of whether the elements of burglary were met. Thus, it would have been harmless error if the trial court should have found preponderating evidence of theft by taking instead of burglary, as a violation of probation.

Accordingly, this discretionary application is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 3 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, APR - 4 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0284. Glynn County, Georgia v. Waters

On March 17, 1997, Glynn County filed this application for discretionary review of the superior court's order entering partial summary judgment in favor of plaintiff/respondent Larry H. Waters.

Waters filed a complaint against Glynn County alleging the county unlawfully discharged him. The superior court determined the county was not entitled to discharge Waters because the county commission's actions were "contrary to the provisions of Section 2-12-21(g) of the Glynn County Personnel Ordinance." Thus, the court concluded, implicitly, that Waters' employment was unlawfully terminated. The court then reasoned that the county's actions had no effect because "[t]he County Commission's refusal to grant Plaintiff relief from the decision of the County Administrator means the Administrator's decision to remove him as a Department Head [and transfer him to another position] must stand." The court did not enter a final judgment or order any particular form of relief. In fact, the court noted that Waters' remaining claims "shall be determined by a jury." Glynn County then brought this application for discretionary appeal.

However, the order appealed is not subject to the discretionary appeal procedure. Though the order, to the extent that it grants partial summary judgment in Waters' favor, is a final appealable judgment pursuant to OCGA § 9-11-56 (h), it does not fall within one of the categories listed in OCGA § 5-6-35 (a) for which an application for an appeal is required. The order is, therefore, subject to the direct appeal procedure. Smith v. Tommy Roberts Trucking Co., 209 Ga. App. 826 (1) (435 SE2d 54) (1996). To preserve the right to bring a direct appeal, an appellant must timely file a notice of appeal in the trial court. OCGA § 5-6-37; Caldwell v. Elbert County Sch. Dist., 247 Ga. 359 (276 SE2d 43) (1981). Thus, the filing of a discretionary appeal will not confer jurisdiction upon this Court to entertain a direct appeal. See Artis v. Gaither, 199 Ga. App. 114 (404 SE2d 322) (1991).

Accordingly, this application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 4 1997

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William R. Martin

Clerk.

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

ATLANTA, APRIL 21 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0285

PETER M. BLACKFORD ET AL V. JOHN E. GILCHRIST

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

96032

9710035499 246-92-5467

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 21 1997

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William R. Martin Clerk.

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

ATLANTA, APRIL 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0288

ERIC JACKSON V. THE STATE

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

98032

96CR45524

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 3 1997

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William R. Martin

Clerk.

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

ATLANTA, APRIL 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0291
SHERRY DANIELS V. THE STATE

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

94033

SU96CR0267

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR - 4 1997

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William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, APR 17 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0295. ANDERSON v. THE STATE.

Robert Wesley Anderson seeks a discretionary appeal from the order of the superior court denying his motion to reconsider a previous order denying his motion to amend sentence. However, the subject matter of the order complained of is not of a type covered under OCGA § 5-6-35 (a) (1-11). Moreover, unlike a motion for new trial, a motion for reconsideration does not extend the time allowed for filing a notice of direct appeal. Therefore even if it were within this court's discretion under current law to grant a discretionary appeal solely because no application for appeal was required, such relief would not be granted in the present case. Anderson's application would still be dismissed under such circumstances because it was filed more than 30 days from the date the trial court entered the original order denying Anderson's motion to correct sentence. See generally Stonecypher v. State, 168 Ga. App. 507 (308 SE2d 639) (1983).

For the foregoing reasons, Anderson's application for discretionary appeal is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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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, APRIL 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0296

THE AUTO GALLERY BODY SHOP, INC. V. SUNTRUST BANK, ATLANTA F/K/A TRUST
COMPANY BANK

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

99033

96VF71588

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 22 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, APRIL 11, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0297

JAMES HAROLD ARNOLD V. MANPOWER TEMPORARY SERVICES, INC. ET AL

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

98033

97A000291 259-88-2905

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 11 1997*

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William L. Martin

Clerk.

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

ATLANTA, APRIL 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0298

TERRANCE CARVER V. THE STATE

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

92034

SU97CR0005

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 10 1997

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Clerk.

William R. Martin

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

ATLANTA, MAY 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0299

J. WILLIAM SUMMEROUR ET AL V. CITY OF ATLANTA

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

93034

E41968

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY - 5 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, DECEMBER 19 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0135
ANDREW FOWLER V. ANGELA T. ALLEN

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

98015

9611623

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 19 1996

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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 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0136

LINDA WILLIAMS V. LITTON, INC. ET AL

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

92-016
406-78-9024 96A055982

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.*

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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:

Case No. A97D0136

LINDA WILLIAMS V. LITTON, INC. ET AL

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

92-016
406-78-9024 96A055982

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 10 1997

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William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, January 8, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0137. AKINWALE v. THE STATE.

On December 20, 1996, this Court dismissed the application for discretionary appeal filed in this case because of the applicant's failure to submit a stamped "filed" copy of the trial court's judgment. The deadline for filing a motion for reconsideration of that dismissal was December 30, 1996. Rule 37 (b) of the Court of Appeals Rules. Accordingly, the applicant's motion for reconsideration, which was filed on January 2, 1997, is hereby dismissed as untimely.

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 R. Martin

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

ATLANTA, DECEMBER 18 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0140

RAVI NAVARE ET AL V. VENEMA, DOHERTY, & DELASHMIT, P.C.

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

97016

95A69303

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 18 1996

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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, DECEMBER 31 , 1996

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0141
DAVID ALLEN MADDEN V. THE STATE

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

96016

91CR120941

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.*

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Clerk.

William R. Martine

**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. A97D0142

PATRICIA CAMPBELL-HINDS V. DALE E. CAMPBELL

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

90016

95V00519

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 8 1997

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Clerk.

William R. Martin

**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. A97D0143
TIMOTHY DILLARD V. THE STATE

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

99016

CR940077MI

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 7 1997

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Clerk.

William L. Martin

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

ATLANTA, JANUARY 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0144
REGINALD GATES ET AL V. THOMAS M. JAMES

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

98016

96CV3504B

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN -6 1997*

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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. A97D0145

LINDA FLATMAN, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF ROBERT
FLATMAN V. ROBERT SHEAROUSE

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

92017

CV951363BR

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 8 1997

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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. A97D0147

GENERAL CONSULTANTS OF ATLANTA, INC. D/B/A RIGHT HAND MAN ET AL
ULYSSES SIMMONS

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

94017

E53426 254-80-3249

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 8 1997

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Clerk.

William R. Martin

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:

A97D0148. Andrews v. Payne.

Applicant Donnie Joe Andrews seeks discretionary review of the trial court's grant of a motion to dismiss his action against Sandra Lee Payne. Andrews and Payne were divorced by order dated January 5, 1990. The divorce decree incorporated an agreement which established the rights and obligations of both Andrews and Payne concerning their child Mitchell Brent Andrews. Andrews contends that the divorce decree outlining his paternity was obtained by fraud and that the trial court erred in failing to order blood tests to determine whether he is the biological father of Mitchell.

The trial court correctly granted Payne's motion to dismiss based upon res judicata because the divorce litigation established the parties' rights and obligations concerning Mitchell. See Roddenberry v. Roddenberry, 255 Ga. 715 (342 SE2d 464) (1986). Further, Andrews' allegations concerning fraud on the part of Payne are insufficient to state a cause of action for fraud as there was no evidence that Payne knowingly made a false representation to Andrews that he was Mitchell's father at the time of the divorce

decree. Accordingly, Andrews' application for discretionary appeal is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 7 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 08 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0149
DAVID D. TURNER V. DYNALECTRIC ET AL

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

97017

256683683

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN - 8 1997*

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Clerk.

William R. 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. A97D0151
WILLIE MARK DAVIS V. THE STATE

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

90017

8689

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 8 1997

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Clerk.

William R. Martin

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. A97D0152
OSBORNE BONDING & SURETY CO. EX REL GARY CHARLES SCHENADYER V.
THE STATE

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

99017

95CR17194

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 7 1997

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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. A97D0153

OSBORNE BONDING & SURETY CO EX REL BRIAN KEITH WILLIAMS V. THE STATE

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

98017

96CR008124

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 8 1997

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Clerk.

William R. Martin

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

ATLANTA, APRIL 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0313
GENE OWENS ET AL V. RIO RITA BURGESS

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

96035

439-50-2916 97012

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 24 1997

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William R. Martin Clerk.

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

ATLANTA, APRIL 21 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0316
JAMES GEORGE PATSIOS V. THE STATE

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

93037

96CR02192

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 21 1997

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Clerk.

William R. Martin

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

ATLANTA, APRIL 21 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0317
SALLY MARTIN PATSIOS V. THE STATE

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

93038

96CR02192

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 21 1997

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Clerk.

William R. Martin

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

ATLANTA, MAY 02 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0318
EMC PROPERTIES, INC. V. ANTHONY L. GREGORY

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

98035

96VS0109968

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY - 2 1997

*I certify that the above is a true extract from
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*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



Court of Appeals of the State of Georgia

ATLANTA, MAY - 8 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0319. P.A.L. RECOVERY, INC. v. JAY H. COLLINS.

Plaintiff P.A.L. Recovery, Inc.'s contract action, alleging defendant Jay H. Collins was indebted to plaintiff on a series of notes, was "dismissed for want of prosecution," ostensibly "with prejudice." In response to defendant's motion for an award of the expenses of litigation under either quantum meruit or OCGA §§ 9-15-14 (a, b), the trial court determined "that the statute of limitations had run for at least two of the four notes prior to filing the . . . complaint," and awarded defendant "\$ 2,500.00 toward total fees and costs. . . ." The trial court's order does not specify the authority for its award.

The statute of limitation is an affirmative defense which is waived if not raised in the answer as amended or in a motion for summary judgment. OCGA § 9-11-8 (c); Searcy v. Godwin, 129 Ga. App. 827, 829 (1) (201 SE2d 670). "The advantage conferred upon the defendant by the statute of limitations being a mere privilege in his favor, and not a positive prohibition upon the power of the court to adjudicate a cause which may have been rendered stale by the lapse of time, it is necessary that the defendant show an indication of his election to avail himself of that advantage.

Without such an indication, the court will proceed to judgment even though the claim be actually barred, and the defense of the statute will not be considered.' Such judgment '. . . will possess all the attributes of, and be as effective as, a judgment rendered within the statutory period.' Davis and Shulman's Georgia Practice and Procedure, §26-3." Stone v. Green, 163 Ga. App. 18, 19 (2), 20 (293 SE2d 506). In our view, the bare commencement of an action upon four notes, two of which are subject to a waivable affirmative defense, does not itself amount to the assertion of a claim or position so completely lacking any justiciable issue of law or fact as would authorize the imposition of OCGA § 9-15-14 (a) expenses of litigation. Compare Brown v. Kinser, 218 Ga. App. 385, 387 (2) (461 SE2d 564). There, in a legal malpractice action, faced with a complete "absence of any justiciable issue because the statute of limitation had run without tolling," (Id. at 387 (2) the trial court abused its discretion in denying attorney's fees under OCGA § 9-15-14 (a). Id. at 389. But the failure to prosecute that stale claim, leading to a dismissal, is some evidence to support a determination that it lacked substantial justification within the meaning of OCGA § 9-15-14 (b). An award pursuant to OCGA § 9-15-14 (b) is discretionary and the appellate standard of review is abuse of discretion. Wrightson v. Wrightson, 266 Ga. 493, 496 (5) (467 SE2d 578). Upon consideration of plaintiff's application in the case sub judice for discretionary appeal from this award of OCGA § 9-15-14 litigation expenses, it is hereby ORDERED that the application be DENIED. The application is insufficient under the standard of Harper v. Harper, 259 Ga. 246 (378 SE2d 673) to

demonstrate any such abuse of discretion. It is FURTHER ORDERED that respondent's motion for frivolous appeal penalty be DENIED. The motion fails to demonstrate a controlling factual similarity to Bowden v. Pryor, 215 Ga. App. 351 (450 SE2d 845). An applicant is not entitled to an award of attorney's fees simply because he is the prevailing party. Brown v. Kinser, 218 Ga. App. 385, 387 (1), supra.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY - 8 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.

Will Z. Matlock

Clerk.

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

ATLANTA, MAY 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0320
CHRISTA D. GRAHAM V. THE STATE

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

94036

93CR142

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* MAY - 5 1997

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William S. Martin Clerk.

2

Court of Appeals of the State of Georgia

ATLANTA, APR 29 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0321. GOLD LEAF AGRICULTURAL CENTER, INC. v. SMITH

This application for discretionary appeal seeks review of a workers' compensation award. The sole issue is whether the injury arose out of and in the course of the claimant's employment.

Kathy Smith was employed as a shipping clerk with Gold Leaf Agricultural Center, Inc. Her husband was a truck driver for a sister corporation, Gold Leaf Milling, Inc. On November 19, 1995, Smith accompanied her husband in transporting a load of cotton to a storage warehouse. As they unloaded the truck, several bales of cotton fell on Smith and severely injured her. It was not routine for her to accompany her husband, but she had done so on this occasion because she had wanted to organize the load at the warehouse so that orders could be easily filled.

The ALJ and Appellate Division concluded that on this particular occasion, Smith acted in furtherance of her job duties when she accompanied her husband to the warehouse, and her injury thus arose out of and in the course of her employment. The findings of the State Board of Workers' Compensation must be upheld if supported by any evidence. Southwire Co. v. Molden, 223 Ga.

App. 389 (477 SE2d 646) (1996). The superior court upheld the award on that basis, and this Court does likewise. The application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 29 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, MAY 02 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0322

ROBERT B. HODDESON, M.D., P.C. V. SCOTT P. BROWN ET AL

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

97036

96CA9111

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY -2 1997

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Clerk.



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

ATLANTA, JUNE 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0354

JAMES PAUL WOOTEN, III V. TERRI DENIS MACKLIN

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

94040

96V1318W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -5 1997

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William L. Martin

Clerk.

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

JUN - 4 1997

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0358. LAMAR BAITY v. MAE ETHERIDGE

On May 9, 1997, appellant Baity filed an application for discretionary appeal from the trial court's order dated January 22, 1997. Because OCGA § 5-6-35 (d) requires the application to be filed within 30 days of entry of the order sought to be appealed, the application is DISMISSED as untimely.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN - 4 1997

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William R. Martin

Clerk.

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

ATLANTA, MAY 28 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0357
ROGER WILLIE HARRIS V. THE STATE

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

96040

96816

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 28 1997

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William L. Martin Clerk.

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

ATLANTA, MAY 29, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0356

JOHNNY BEASLEY V. GEORGIA DEPARTMENT OF CORRECTIONS

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

97040

96CV090

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 29 1997

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Clerk.

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

ATLANTA, JUNE 10 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0363
WENDALL BARNES ET AL V. INEZ BARNES ET AL

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

94041

96CA20845

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 10 1997

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Clerk.

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

ATLANTA, JULY 02, 1997

The Honorable Court of Appeals met pursuant to adjournment.

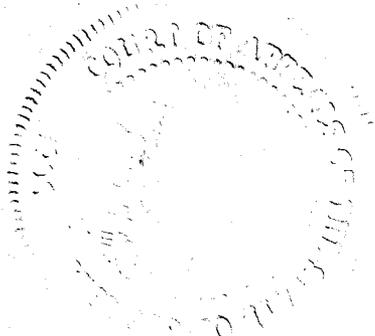
The Following order was passed:

Case No. A97D0363

WENDALL BARNES ET AL V. INEZ BARNES ET AL

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

94-041
96CA20845



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

JUL -2 1997

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Clerk.

William R. Martin

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

ATLANTA, JUNE 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0362

OLIVIA D. GARRETT V. SUNTRUST BANK, ATLANTA, F/K/A TRUST COMPANY BANK

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

90043

96A28442

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 5 1997

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William L. Matie Clerk.

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

ATLANTA, MAY 30 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0366
COATS & CLARK ET AL V. CYNTHIA G. THOMAS

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

96041

97V063 256-88-8520

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 30 1997

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William R. Martin Clerk.

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

ATLANTA, JUNE 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0367
MICHAEL CRUMLEY V. THE STATE

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

90041

35748B

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -5 1997

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William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN -2 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0368 Adako v. Adako

Emmanuel Osaro Adako, Sr. (Mr. Adako) brought this discretionary application seeking an out of time appeal. On May 19, 1997, this Court issued an order requiring Mr. Adako to file a stamped "filed" copy of the order appealed within 10 days. Mr. Adako failed to file the stamped "filed" order as required by this Court. Further, no extensions of time are authorized for filing an application for discretionary appeal. Rosenstein v. Jenkins, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, this application for discretionary appeal is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -2 1997

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Clerk.

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

ATLANTA, JULY 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0368

EMMANUEL OSARO ADAKO, SR. V. NANCY COTTLE ADAKO

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

99-041
9423623
9343753

9712873

93121643

9343763

Court of Appeals of the State of Georgia.

Clerk's Office, Atlanta, JUL 10 1997

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William S. Martin

Clerk.

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

ATLANTA, JUNE 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0369

MR. AND MRS. V. M. ROBERT MESHECHOK V. HERIBERTO J. BRITO ,
INDIVIDUALLY AND D/B/A BRITO DESIGN STUDIO, INC. ET AL

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

98041

E47568

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 19 1997

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John R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, July 8, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0369. MESHECHOK V. BRITO

Upon consideration of the motion for attorney's fees in the above stated case, said motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta July 8, 1997

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Clerk.



Court of Appeals of the State of Georgia

ATLANTA, June 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0370. JULIUS LAVERNE JENKINS v. THE STATE.

Proceeding pro se, Julius Laverne Jenkins seeks permission to appeal an order revoking his probation. No such revocation order appears as an exhibit to the application. The sole document included with Jenkins' original submission is a copy of the State's form petition to modify/revoke Jenkins' probation and the court's order setting the matter for an April 8, 1997, hearing. That part of the form designated for the court's disposition remains blank. Despite being ordered, under pain of dismissal, to submit a file-stamped copy of the revocation order as required by OCGA § 5-6-35 (c), petitioner failed to do so. It is hereby ORDERED that the application for discretionary appeal in Case Number A97D0370 be DISMISSED for failure to abide by this Court's order to file. Georgia Court of Appeals Rule 7, applicable to pro se parties per Georgia Court of Appeals Rule 1 (c).

William R. Martin

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

ATLANTA, JUNE 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0371
GLADYS M. FOSTER V. TAYLOR COUNTY HEALTH CARE

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

93042

254-64-2369 97CV040

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -3 1997

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William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN -5 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0373. GIBSON v. LINDALE MANUFACTURING COMPANY.

This application for discretionary appeal arises from the denial of a motion to set aside a workers' compensation award based on accident or mistake.

Janie Gibson's claim was originally denied on October 25, 1993. Her case then began an extended appellate history, including three appearances before the Appellate Division, the superior court, and the Court of Appeals. The last decision of the Appellate Division upheld the denial of the claim.

Gibson subsequently moved to set aside the award under OCGA § 9-11-60 (d), on the grounds that the Appellate Division mistakenly entered a decision upholding the denial. In support of that motion, Gibson submitted the affidavit of the Chairman of the State Board of Workers' Compensation, who averred that he had agreed to reverse the denial, not uphold it.

However, as noted by the superior court in denying the motion to set aside, the affidavit does not indicate or even suggest that the other two members of the Appellate Division had been similarly mistaken. Even changing the Chairman's vote, the award would

remain in favor of affirming the denial of the claim. Under these circumstances, the superior court correctly concluded that Gibson failed to demonstrate any basis for setting aside the award.

Accordingly, this application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -5 1997

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William R. Martin

Clerk.

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

ATLANTA, JUNE 11, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0376
JAMES THOMAS (TONY) PARROTT V. THE STATE

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

90042

SU97CR0354G

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 11 1997

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William L. Martin

Clerk.

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

ATLANTA, JUNE 17, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0377

KATHY M. LUNDY AUERBACH V. RONNIE LEE LUNDY

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

99042

D95V0813

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 17 1997

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Clerk.

William R. McRae

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

ATLANTA, JUN 18 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0378. State Farm Insurance Company v. The Stevenson Company, Inc. D/B/A Bert Maxwell Furniture et al.

State Farm Insurance Company's request to withdraw this discretionary appeal is hereby granted. Accordingly, The Stevenson Company, Inc., d/b/a Bert Maxwell Furniture and American Motorists Insurance Company's ("Respondents") motion to dismiss the appeal is moot. Respondents' motion for sanctions for frivolous appeal is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 18 1997

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William R. Martin

Clerk.

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

ATLANTA, JUNE 09 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0379
TERMINAL TECHNOLOGIES , INC. V. FRED SINCLAIR

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

92043

E56217 255-02-7164

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -9 1997

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William R. Martin

Clerk.

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

ATLANTA, JUN 16 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0382. HORDGE v. BARGE

Defendant Kenneth L. Hordge sought an appeal to the Supreme Court from the order of the superior court granting plaintiff Karen Marie Barge's motion to revive a previously domesticated Florida support judgment. The Supreme Court transferred Hordge's application for discretionary appeal to this court for disposition. Although Hordge enumerates several claims of errors in support of his application, he offers supporting argument for none of them. "[T]he applicant bears the burden of demonstrating that the application should be granted." Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989). Moreover, "a prudent applicant should support the assertions of error with relevant parts of the record or transcript." (Emphasis supplied.) *Id.* at 247. Since Hordge has failed to present any argument in support of his application, this court is presented with nothing to review and can only assume that Hordge's arguments on appeal, if granted, would be equally lacking. See Rule 27 (c) (2) of the Rules of the Court of Appeals.

For the foregoing reasons, Hordge's unsupported application for discretionary appeal is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 16 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, JUNE 09 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0383
MARY T PHILLIPS ET AL V. TACO BELL/ PEPSICO ET AL

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

97043

257-04-2652

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN -9 1997

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William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN 26 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0386. GAZELAH v. ROME GENERAL PRACTICE, INC.

Appellee Rome General Practice, Inc.'s motion for frivolous appeal damages pursuant to Court of Appeal's Rule 15 (b) is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 26 1997

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Will L. Martin, Jr. Clerk.

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

ATLANTA, JUN 17 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0386. DR. SHAWN GAZELAH et al v. ROME GENERAL PRACTICE, INC.

Dr. Shawn Gazelah, et al, defendants below in this interference with business case, seek a discretionary appeal from an order of the superior court directing Dr. Gazelah to comply with discovery requests as to matters she claims relate to confidential and proprietary patient information. Citing Johnson & Johnson v. Kaufman, A96A2468 (Decided 3/20/97), applicants state they are "reluctant to risk the entry of a contempt citation in order to obtain direct review of the Court's discovery order." However, as reiterated in Johnson & Johnson, the order complained of is not a final judgment and therefore the applicants were required to follow the interlocutory appeal procedure, OCGA § 5-6-34 (b), including obtaining a certificate of immediate review from the superior court, in order to seek immediate review of the order of which they complain. See Scruggs v. Ga. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991). Since the applicants did not obtain a certificate of immediate review as required, this court is without jurisdiction to consider their application on the merits. Accordingly, the application must be DISMISSED as premature.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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William R. Martin Clerk.

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

ATLANTA, JULY 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0387
JOSEPH J. SOFET V. OLDE DISCOUNT CORPORATION

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

98043

96C44323

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL -3 1997

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Clerk.



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

ATLANTA, JULY 02 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0388
KELLIE TURNER V. BRIAN T. STROUD

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

92044

95DR009152

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL -2 1997

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William R. Martin Clerk.

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

ATLANTA, JUNE 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0389
SOPHIA COLEMAN V. DANIEL BRANCH

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

93043

96V4161

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 25 1997

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William R. Martin

Clerk.

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

JUL -2 1997

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0392. GENN v. DEPARTMENT OF HUMAN RESOURCES.

Rebecca Genn, by and through her parent and next friend Nancy Genn, seeks an appeal from the judgment of the superior court affirming the decision of the Georgia Department of Human Resources denying her request for adoption assistance under 42 USC § 673 (a). The superior court's detailed order appears sound, however, and Genn offers no argument demonstrating why she should be afforded yet another appeal. Accordingly, Genn's application for appeal is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL -2 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, JUNE 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0393

LEON FOLDS V. THE STATE

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

97044

90506

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 25 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. M... [Signature]

Clerk.

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

ATLANTA, JUNE 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0393
LEON FOLDS V. THE STATE

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

97044

90506

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 25 1997

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Clerk.

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

ATLANTA, JUNE 26 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0395

MCINTOSH COUNTY BOARD OF EDUCATION V. PAMELA JORDAN

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

99044

96V329

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 26 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 R. Martin

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

ATLANTA, JUNE 19 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0396
SATILLA REGIONAL LIBRARY ET AL V. SHIRLEY HUNT

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

98044

97S040371 259-88-9933

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 19 1997

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William L. Martin

Clerk.

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

ATLANTA, JULY 02 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0397
THOMAS HOLDER V. MEDICAL CARE CENTER

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

92045

96VS108887G

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL -2 1997*

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the minutes of the Court of Appeals of Georgia.*

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William S. Martie Clerk.

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

ATLANTA, JUNE 26 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0398
FULLER PRODUCTS COMPANY ET AL V. JIM ABERCROMBIE

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

93045

97CI291 256-84-6393

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 26 1997

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Clerk.



Court of Appeals of the State of Georgia

ATLANTA,

JUL -2 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0400. TIMMONS v. SMITH

Ronald and Betty Timmons ("the applicants") filed this application for discretionary appeal seeking review of the superior court's order denying their motion to record a foreign judgment.

The applicants initially filed their motion in the Magistrate Court of Dougherty County. Smith objected, arguing the foreign court lacked personal jurisdiction. The magistrate court, after a hearing, determined the foreign judgment was "not entitled to recognition and enforcement" under OCGA § 9-12-131 et seq. The applicants failed to appeal this judgment. Seven months later, the applicants sought to record the foreign judgment in the Superior Court of Dougherty County. That court held that the previous magistrate court decision precluded relitigating whether the judgment may be recorded and enforced in Georgia. Therefore, the court denied the applicants' motion to file the judgment.

The judgment of the magistrate court was a final judgment of a court of competent jurisdiction. It resolved between these parties the issue of whether the foreign judgment could be enforced in Georgia. Consequently, the judgment of the magistrate court is

conclusive between the parties and their privies. OCGA § 9-12-40, -42. See Brinson v. First American Bank, 200 Ga. App. 552 (409 SE2d 50) (1991). The superior court properly denied the applicants' motion to file the foreign judgment on res judicata grounds. Accordingly, this application is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL -2 1997

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



Clerk.

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

ATLANTA, JUNE 26 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0402
MILES BROTHERS TIMBER, INC. ET AL V. MARION SCOTT

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

96045

974198C 260-29-4166

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 26 1997

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William L. Martin

Clerk.

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

ATLANTA, JULY 07 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0403

JAMES L. ARTIS V. RACO GENERAL CONTRACTORS ET AL

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

90045

97A026362 231-72-2650

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL -7 1997

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Clerk.

William R. Martine

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

ATLANTA, JUNE 26 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0404
BRANDY M. MCGOVERN V. THE STATE

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

99045

97CV217

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 26 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. Mott

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUL -3 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0405 Stevenson v. Marine

Gayle Stevenson seeks discretionary review of the trial court's "Second Amendment to a Temporary Custody Order of January 8, 1997". However, the order appealed is a temporary order which did not resolve all of the issues in the case. Thus, the order is interlocutory and the procedures for interlocutory review as set forth in OCGA § 5-6-34 (b) must be followed. Scruggs v. Ga. Dept. of Human Resources, 261 Ga. App. 587 (408 SE2d 103) (1991). The discretionary application statute does not relieve Stevenson from the interlocutory review requirements of a certificate from the trial judge. *Id.*

Because Stevenson did not follow the interlocutory review procedures, this Court lacks jurisdiction over this appeal. Accordingly, this appeal is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL -3 1997

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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, JULY 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0406

JEROME JERRY DAVIS V. ELIZABETH W. DAVIS

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

92046

X871400KA

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 10 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, JUNE 27 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0407

ROBERT L. MOORE V. WILLIAMS ENVIRONMENTAL SERVICES ET AL

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

93046

9752056 411-90-6725

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 27 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, JULY 02 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0408
TIMOTHY MABRY V. C. M. TANNER GROCERY ET AL

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

94046

260-66-7626 97V0454

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL -2 1997

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the minutes of the Court of Appeals of Georgia.*

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William S. Mat. E Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUL 10 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0409. BRENNER v. MILES.

Gregory Phillip Brenner seeks an appeal from the superior court's order affirming the suspension of his driver's license for refusing to submit to a State-administered breath test. While Brenner did supply samples for testing, the samples were insufficient to allow for valid testing. The ALJ found, based on all of the evidence presented, that Brenner's failure to give a sufficient sample amounted to a refusal to do so. Brenner appealed to the superior court, arguing that under OCGA § 40-5-67.1 (g) (2) (F), the Department of Public Safety was required to produce an original copy of the test results in order to establish that the test was properly administered, which was not done.

We agree with the lower tribunals that OCGA § 40-5-67.1 (g) (2) (F) has no application in Brenner's case since the Department had no test results to offer into evidence. Accord Brown v. State, 191 Ga. App. 357, 358 (1) (381 SE2d 543) (1989) (printout showing that an insufficient breath sample was given is not subject to pre-trial discovery because there is nothing to discover). The relevant question in Brenner's case is not whether the testing was

properly administered such that any results obtained could be used as evidence against him; the question is whether Brenner in fact refused to submit a sufficient sample of his breath to facilitate a properly administered breath test. In the absence of a transcript, it must be assumed that the arresting officer's testimony was sufficient to establish Brenner's refusal to submit to chemical testing. See, e.g., Koulianos v. State, 192 Ga. App. 90 (1) (383 SE2d 642) (1989).

For the foregoing reasons, Brenner's application for appeal is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 10 1997

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

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hereto affixed the day and year last above written.*

William L. Martie

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUL 10 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A97D0410. Panoro, Inc. et al. v. Waterway Technology Corporation
et al.**

Panoro, Inc. and Gottfried A. Kappelmeier filed this application for discretionary appeal on June 23, 1997 seeking an appeal of the trial court's April 4, 1997 order which directed that certain funds held in the registry of the court be paid to them. The order also dismissed the case with prejudice. An application for discretionary appeal must be filed within 30 days of the entry of the order appealed. OCGA § 5-6-35 (d). This application was not filed until June 23, 1997, more than thirty days after the entry of the order appealed and is, therefore, untimely. Accordingly, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 10 1997

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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, JULY 10 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0411
STEFAN VAN SANT V. WORLD OMNI LEASING, INC.

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

96046

96G61932

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 10 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.



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

ATLANTA, JULY 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0412
TIMOTHY STRIEBECK V. JAN SLUDER BROOKS

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

90046

961913222

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 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.*

Clerk.

William L. Martin

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

ATLANTA, JULY 01 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0414
WILLIAM GREENE V. THE STATE

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

98046

CR931871BR

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 1 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. Mat:ie

Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S97C1543

Atlanta, April 10, 1998

The Honorable Supreme Court met pursuant to adjournment.

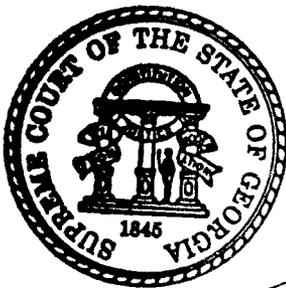
The following order was passed:

CITY OF ATLANTA BOARD OF EDUCATION V. NATHAN GRIGSBY

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.

A97D0324
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta May 6, 1998

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 Clerk.

Case No. A97D0324
Court of Appeals of Georgia

Filed in office
on:

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

MAY -7 1998

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: June 16, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S97C1543**

CITY OF ATLANTA BOARD OF EDUCATION V. NATHAN GRIGSBY

Clerk, Supreme Court of Georgia

By: _____

Case No. A97D0324

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

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

ATLANTA, MAY 27 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0324

CITY OF ATLANTA BOARD OF EDUCATION V. NATHAN GRIGSBY

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

96036

E53247

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 27 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

SUPREME COURT OF GEORGIA

Remittitur, Case No. S98C0461

Atlanta, April 10, 1998

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JAMES MCREE et al. v. ROY L. RUTTER 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.

A98D0100 96CV26
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta May 6, 1998

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.

Patton J. Middleberry Clerk.

Case No. A98D0100
Court of Appeals of Georgia

Filed in office
on:

MAY -7 1998

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

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

ATLANTA, NOVEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0100
JAMES MCREE ET AL V. ROY L. RUTTER ET AL

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

92012

96CV26

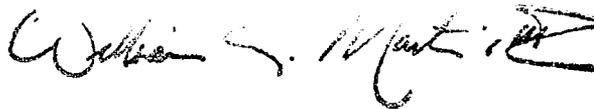
Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 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.



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

ATLANTA, MAY 05, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0325
BETTY LAWSON V. HAZELHURST TEXTILES INC.

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

94037

96CV488 260-23-3406

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY -5 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

MAY -2 1997

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0327. TURNER V. PRICE.

Margaret K. Turner and Daniel E. Turner filed this discretionary application seeking review of the trial court's order and judgment following a jury verdict in favor of Margaret Turner in the amount of \$633.33. The Turners contest the amount of the judgment. However, on April 18, 1997 this Court issued an order requiring the Turners to file a "filed" copy of the order being appealed as required by Rule 32 (b) of the Court of Appeals.

The "filed" copy of the order was required to be filed with this Court by April 28, 1997. The Turners failed to comply with this Court's order. Accordingly, this application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY -2 1997

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William R. Martin

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

ATLANTA, MAY 14, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0327

MARGARET K. TURNER ET AL V. JASON PRICE ET AL

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

99-036
SC93CV936

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 14 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, MAY 14, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0329
DAVID SAMMONS V. DIANNE L. COLEMAN

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

92037

CV950059FR

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 14 1997

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*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, MAY 15 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0330. IN THE INTEREST OF S.N.A., S.R.S., AND J.E.S., MINOR CHILDREN.

Petitioner Dorie Lynn Bedingfield seeks discretionary review of a portion of the court's order which changed custody of her child Sarah Appleton to Respondent Wayne Blair Smith (Smith).

Petitioner and Smith are the parents of eight-year-old Sasha Smith and six-year-old Joshua Smith. The mother has another child, ten-year-old Sarah Appleton, who is not Smith's biological child. The parties were divorced in 1993, with the mother retaining custody of the children. In November 1995, Smith filed an action seeking custody of the children, including Sarah, alleging the mother abandoned and abused the children. He has separately petitioned to adopt Sarah.

The trial court based its decision to change custody on the following conditions it found constituted a material change in circumstances: Bedingfield was evicted from her trailer and took all three children to Smith and left them. Although Smith believed the children were just to stay for one week, the mother never returned to get them. The children were sick and dirty, had poor eating habits and would wake up at night screaming. Since leaving her children, the mother has been continuously employed. She met and moved in with her present husband shortly after leaving her children. For three years, without justification or excuse, she did not communicate with the children or pay any support although she lived close by and was capable of paying support. The court determined nothing kept the mother from taking the children with her at any time, calling them, sending them cards or letters, or visiting them. She simply chose not to do so.

The court accordingly found clear and convincing evidence that the mother voluntarily released custody of the children to Smith for over three years, failed to provide the necessities for them and completely abandoned them with the intention of severing all parental relations and obligations, and that during the time they were with her, the children were abused and deprived, including

being sexually abused by the mother's male friends, and that the abuse and deprivation were likely to continue. The court also found Smith and his new wife provided a safe, moral and healthy environment and that the children were well-adjusted.

As to Sarah specifically, the court found that when it was time for her to return to school, members of Smith's family went to the mother's apartment, left notes for her to call and left messages with neighbors. The mother never responded, so Smith accordingly enrolled Sarah in school in the school district where he resided.

The court acknowledged that while Smith was the only father Sarah had ever known, the law considers him a third party as to custody (who does not fall within the ambit of OCGA § 19-7-1 (b) (1)) and recognizes the strong presumption that it is in the child's best interest to be with her natural parent, a presumption which can only be overcome by clear and convincing evidence that the parent has abandoned, deprived, or abused the child, or otherwise lost parental power under OCGA § 19-7-1 (b); or that the parent is unfit to have custody. See OCGA § 19-7-4; Gazaway v. Brackett, 241 Ga. 127, 129 (244 SE2d 238) (1978).

The appropriate standard of review in a case where a third party sues to obtain custody of a child and to terminate a parent's custodial rights is whether, after reviewing the evidence in a light most favorable to the natural parent, any rational trier of fact could have found by clear and convincing evidence that the parent's rights to custody have been lost. In re J.C.P., 167 Ga. App. 572, 573 (307 SE2d 1) (1983). In determining whether a material change of condition has occurred, the trial court is vested with a discretion which will not be disturbed by this court absent abuse. It will be affirmed if there is any reasonable evidence to support it. Hayes v. Hayes, 199 Ga. App. 132 (404 SE2d 276) (1991).

The hearing upon which the original order changing custody was based was apparently transcribed, but the applicant has not included any portions of the transcript in the application. Consequently we must apply the presumptions that the proceedings were regular and that the evidence supported the determination of the superior court. Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989).

1. Petitioner maintains it was an abuse of discretion for the court to find voluntary relinquishment of custody of her child absent an agreement to relinquish custody and contrary to all sworn testimony. The detailed factual findings made by the court in the final custody order reveal clear and convincing evidence that the mother relinquished custody of Sarah and her other children for three years.

2. Petitioner's contention that the court abused its discretion by premising a finding of abandonment on past pre-

divorce conduct is also without merit. The court cited an earlier temporary order removing two children from an earlier marriage from Petitioner's custody. That order found she had neglected the children and engaged in sexual relations in front of them with different men. She subsequently entered into an agreement relinquishing custody to the father. She has since made no effort to contact these children, although the final order allowed her liberal visitation, nor has she paid anything towards their support. While "[e]vidence of past unfitness, standing alone, is insufficient to terminate the rights of a parent in his natural child, . . . ' [Cit.]" In re J.C.P., supra at 574, the order at issue indicates the court's finding of abandonment was based on clear and convincing evidence of present unfitness, and that the court considered the mother's history merely as evidence that the neglect, abuse, abandonment and unfitness were likely to continue.

3. Finally, Petitioner contends the court erred in finding that the children were abused and deprived and that it was in Sarah's best interest to remain in the custody of Smith absent a finding of unfitness. The detailed factual findings made by the court support the trial court's determination that material changes in circumstances existed warranting a change in custody, as well as clear and convincing evidence that the mother has abandoned, deprived, or abused Sarah, and is unfit to have custody and that custody in Respondent Smith is proper.

The application is DENIED, as no reversible error is shown.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 15 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.



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

ATLANTA, MAY 06, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0332
WILLIAM G. VINSON V. CLINTON HETMEYER D/B/A FAITH CONSTRUCTION/
SCOTTSDALE INSURANCE COMPANY

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

90037

96CV12861 219-62-8052

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY -6 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, MAY 07 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0335

PERRY CLEMENT V. EARTH GRAINS COMPANY, F/K/A COLONIAL BAKING COMPANY

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

92038

9718409

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* MAY - 7 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.



Court of Appeals of the State of Georgia

ATLANTA, MAY 21 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0338. BENHAM v. BENHAM

Thomas B. Benham filed this application for discretionary appeal seeking review of the trial court's temporary order modifying child support. However, because the order appealed is not final, and because Benham has not complied with the interlocutory appeal procedure set forth in OCGA § 5-6-34 (b), this Court lacks jurisdiction to consider the application.

"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 explicitly stated that the order was temporary and "shall govern until the modification issue is finally resolved." Consequently, 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, Benham was required to follow the interlocutory appeal procedure of OCGA § 5-6-34 (b) by timely obtaining a certificate of immediate review from

the trial court. 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 Benham has not followed the required procedure, this Court lacks jurisdiction to consider the appeal. Rogers, supra at 119. Accordingly, the application for discretionary appeal is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 21 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, MAY 16, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0339

HEIDI MCMICKLE V. WILLIAM CODNER D/B/A BILL CODNER ASSOCIATES

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

96038

94266

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 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.*

William R. Martin Clerk.

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

ATLANTA, MAY 09 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0341
DOUGLAS ASPHALT ET AL V. DANNY R. SPIVEY

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

99038

264-49-3208

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 09 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, MAY 12, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0343
RICHARD SWAGGER V. FITZPATRICK & CAMP

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

92039

96MV687G

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 12 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, JUN 17 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0344. CHUNG LEE V. JAMES DAVENPORT ET AL.

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed as untimely filed.

93-039

96C6219S1

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 17 1997

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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, MAY 15, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0345

RAY THOMAS FORBES V. GREENPOINT MORTGAGE CORPORATION ET AL

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

94039

96CV2134

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 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, JUNE 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0349

JAMES T. NEAL V. THE STATE

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

90039

Z28987

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN - 4 1997

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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, JUNE 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0350

IN RE: JOHN DANIEL SMITH ET AL V. JILL ELAINE SMITH ET AL

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

99039

95A15736

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -3 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. McTear

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

ATLANTA, JUNE 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0353
AUTOMOBILE ACCEPTANCE CORPORATION V. GABRIEL PIERRE ET AL

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

93040

96C6501

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -3 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, JUNE 17, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0353

AUTOMOBILE ACCEPTANCE CORPORATION V. GABRIEL PIERRE ET AL

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

93-040
96C6501

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 17 1997

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William R. Martin Clerk.

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

ATLANTA, JULY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0416

JEFFREY SCOTT YOUNGBLOOD V. GINGER MARIE GRAHAM

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

93047

96CV531

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 24 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

Clerk.

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

ATLANTA, JULY 15 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0417

DAVID H. ACQUAH V. SCIENTIFIC LEASING, INC.

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

94047

95VS0096096B

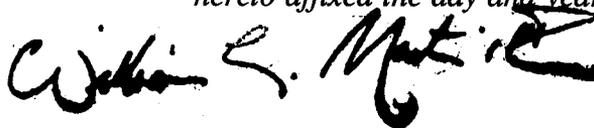
Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 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.

Court of Appeals of the State of Georgia

ATLANTA, JUL 16 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0418. CARTER v. FAYETTE COUNTY BOARD OF TAX ASSESSORS

On June 24, 1997, Anthony J. Carter filed this application seeking discretionary appeal of the superior court's February 28, 1997 order dismissing his ad valorem tax appeal from the Fayette County Board of Tax Assessors.

Although this is an appeal from a final order of the superior court reviewing a decision of a local administrative agency, it is not subject to the discretionary appeal procedure because it is a case "involving ad valorem taxes." OCGA § 5-6-35 (a) (1). Thus, Carter had a right to directly appeal the trial court's order pursuant to OCGA § 5-6-34 (a). If the application is "otherwise timely. . .the appellate court shall have jurisdiction to decide the case and shall grant the application." OCGA § 5-6-35 (j). This application, however, is not timely.

An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). The order appealed was entered on February 28, 1997 — 116 days prior to the date this application was filed. Although Carter filed a motion asking the trial court to reconsider its decision, a motion for

reconsideration does not extend the time for filing an application. OCGA § 5-6-35 (d); See also OCGA § 5-6-38 and Blackwell v. Sutton, 261 Ga. 284 (404 S.E.2d 114) (1991). Further, a denial of a motion for reconsideration is not itself appealable. Savage v. Newsome, 173 Ga. App. 271 (326 SE2d 5) (1985). Because the application is untimely, this Court lacks jurisdiction to consider it.

For these reasons, the application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 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.*

William S. Martin

Clerk.

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

ATLANTA, JULY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0419
PREFERRED FINANCIAL ADVISORY, INC V. LENOX WOODS I & II, GEORGIA
LIMITED PARTNERSHIP ET AL

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

97047

95VX0023614

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 24 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 L. Martin

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

ATLANTA, JULY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0421
GAYNELL SUTTON V. FEDERAL EXPRESS ET AL

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

90047

97V222

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 24 1997

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Clerk.

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

ATLANTA, JULY 31 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0424

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. V. ERIC J. EDEE

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

92048

95VS0104199

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 31 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, July 29, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A97D0424. AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.
V. ERIC J. EDEE**

Upon consideration of the motion for frivolous appeal in the above stated case, said motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUL 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.*

William R. Martine

Clerk.

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

ATLANTA, JULY 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0425

COLUMBUS, GEORGIA, A CONSOLIDATED GOVERNMENT V. THOMAS C. HYNEMAN, III

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

93048

SU95CV2482

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 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

Clerk.

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

ATLANTA,

JUL 10 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0427. HUFSTETLER v. WAFFLE HOUSE et al.

This application for discretionary appeal, which seeks review of the partial denial of a claim for workers' compensation benefits, was filed more than 30 days after entry of the superior court's order affirming the State Board of Workers' Compensation. Under OCGA § 5-6-35 (d), such an application must be filed within 30 days after entry of the appealable judgment, and that time requirement is jurisdictional. Hogan v. Taylor County Bd. of Education, 157 Ga. App. 680 (278 SE2d 106) (1981). Accordingly, this application is hereby dismissed as untimely.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 10 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, JULY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0428
DONALD WALTER WELCH V. THE STATE

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

97048

97CR000036

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 24 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 E. Matie Clerk.

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

ATLANTA, JULY 29 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0433
DON BRAXLEY ET AL V. LEE WALL PENNINGTON ET AL

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

98048

93CV30426C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 29 1997

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the minutes of the Court of Appeals of Georgia.*

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William R. McIntire Clerk.

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

ATLANTA, AUGUST 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0434

JIMMY CARL BARRETT V. DEKALD COUNY BOARD OD REGISTRATIONS AND
ELECTIONS

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

92049

9731976

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG -6 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 Clerk.

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

ATLANTA, JULY 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0435
BEERS CONSTRUCTION ET AL V. JAMES L. DOYLE ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94049

971377324 522-88-5737

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 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, AUGUST 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0436

LISA ANGELL ET AL V. DAN HART, AS POLICE CHIEF OF WARNER ROBINS,
GEORGIA ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91049

95V49542

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG -6 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, AUGUST 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0437

CITY OF LAWRENCEVILLE V. CLIFFORD RAY DAVIS

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97049

96A078181

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG -5 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

JUL 23 1997

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0438. DOWNEY, CLEVELAND, PARKER & WILLIAMS et al. v. DASHER.

This application for discretionary appeal seeks review of a superior court order affirming a workers' compensation award that denied an employer's request to suspend benefits based on a change in condition. However, the application is untimely.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days after entry of the appealable judgment, and that time requirement is jurisdictional. Hogan v. Taylor County Bd. of Education, 157 Ga. App. 680 (278 SE2d 106) (1981). In the instant case, the superior court entered its order on June 9, 1997, and the deadline for seeking discretionary appeal of that order was July 9, 1997. This application was filed on July 11, 1997, two days late.

The failure to comply with the time requirement of the discretionary appeal statute deprives this Court of the jurisdiction to consider this matter, and the application is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 23 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, AUG 12 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0439. JEANNE ANN DRISKELL BECKWITH v. THOMAS JOSEPH BECKWITH

Jeanne Ann Driskell Beckwith seeks discretionary review of the trial court's Order of June 13, 1997; however, the order appealed did not resolve all the issues in the case. Thus, the order is interlocutory and the procedures for interlocutory review as set forth in OCGA § 5-6-34 (b) were required to be followed. Scruggs v. Ga. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991). The discretionary application statute does not relieve Ms. Beckwith from the interlocutory review requirements of obtaining a certificate of immediate review from the trial court. *Id.* Because Ms. Beckwith did not follow the interlocutory review procedures, this Court lacks jurisdiction over this appeal. Accordingly, this appeal is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 12 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, AUGUST 27 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0479
DAN VADEN CHEVROLET V. JOHNNY C. MANN

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

93054

9701034 257-90-7187

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 27 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, September 08, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0478. DENNIS HOOPER v. THE PAULDING COUNTY BOARD OF COMMISSIONERS et al.

Dennis Hooper, an inmate proceeding pro se, attempts to appeal two rulings in a single application for discretionary appeal. Insofar as the application seeks to appeal from the May 28, 1997, order denying reconsideration of the superior court's April 25, 1997, order, granting the motion of defendant Paulding County Board of Commissioners to dismiss Civil Action Number 97CV0305, the application is untimely and is hereby DISMISSED IN PART.

Insofar as the application seeks to appeal from the July 27, 1997, order denying Hooper's Motion for Return of Personal Property as filed under criminal indictments 95CR135 and 95CR457, after consideration of the application on the merits, it is hereby ORDERED that the application be DENIED IN PART.

Application A97D0478 is hereby DISMISSED IN PART and DENIED IN PART.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 8 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, SEPTEMBER 11 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0477

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

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

98053

95CV501S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 11 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, AUGUST 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0440
TRACY KELLON SMITH V. THE STATE

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

99049

93CR016282

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG -5 1997

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William S. Martin
Clerk

Court of Appeals of the State of Georgia

ATLANTA, July 25, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0443. EDDIE B. SMITH D/B/A EDDIE'S WRECKER SERVICE v. STEVEN BRANTLEY.

This application for discretionary appeal seeks review of a superior court order remanding a workers' compensation appeal to the State Board of Workers' Compensation. However, the application is untimely.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days after entry of the appealable judgment, and that time requirement is jurisdictional. Hogan v. Taylor County Bd. of Education, 157 Ga. App. 680 (278 SE2d 106) (1981). In the instant case, the superior court entered its order on June 13, 1997, and the deadline for seeking discretionary appeal of that order was July 14, 1997. This application was filed on July 15, 1997, one day late.

The failure to comply with that requisite discretionary procedure deprives this Court of the jurisdiction to consider this matter, and the application is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 25 1997

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Will. Z. Mat. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, AUG 19 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0446 Hight v. West

Alfred Hight seeks reconsideration of this Court's order dated July 25, 1997 which dismissed his discretionary application on the ground that it was untimely. Hight's motion for reconsideration, however, was not filed with this Court until August 5, 1997. Court of Appeals Rule 37 (b) requires that motions for reconsideration be filed within ten days of the judgment or dismissal. Hight's motion, which was not filed until eleven days after this Court's order dismissing his application, is therefore untimely, and it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 19 1997

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William R. Martin Clerk.

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

ATLANTA, AUGUST 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0448

SYLVIA SUTTON V. FABRA CARE

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

90050

592-80-3795 SU97CV1438

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG -5 1997

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William S. McTigue Clerk.

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

ATLANTA, AUGUST 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0449

SID MILES, COMMISSIONER, GEORGIA DEPARTMENT OF PUBLIC SAFETY V. DAVID
B. TOMME

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

99050

97CV0752S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG - 5 1997

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Clerk.

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

ATLANTA, AUGUST 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0450

CHARLIE COPELIN V. CENTRAL STATE HOSPITAL ET AL

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

98050

96CV33149C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG - 4 1997

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William L. Martin

Clerk.

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

ATLANTA, AUGUST 11 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0451
ALONZO KING LEWIS V. THE STATE

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

92051

94R231

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 11 1997

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William L. Martin Clerk.

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

ATLANTA, AUGUST 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0453

THE ASSOCIATION OF WEST CASCADE COMMUNITIES ET AL V. FULTON COUNTY, GA

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

94051

E56373

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG - 4 1997

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William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, August 22, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A97D0453. THE ASSOCIATION OF WEST CASCADE COMMUNITIES ET AL V.
FULTON COUNTY, GA**

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed as untimely filed.

94-051

E56373

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 22 1997

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William R. Martin

Clerk.

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

ATLANTA, AUGUST 07 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0456
BRIAN KEITH JONES V. THE STATE

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

96051

Z82289

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG -7 1997

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William R. Martin Clerk.

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

ATLANTA, AUGUST 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0457

ROBERT UNDERWOOD V. STATE OF GEORGIA EX REL

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

90051

94CV290 97CV221

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 18 1997

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William R. Martin

Clerk.

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

ATLANTA, AUGUST 07 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0458
SYLVESTER DUGGER V. KOTONI TRADING, INC.

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

99051

97VS012437J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG -7 1997

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William L. Martineau Clerk.

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

ATLANTA, SEPTEMBER 02, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A97D0459

GAYLON ROGERS V. FORD MOTOR COMPANY ATLANTA PDC

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

98-051
97CV1302 254-13-3484

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP -2 1997

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 Clerk.

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

ATLANTA, AUGUST 13 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0459

GAYLON ROGERS V. FORD MOTOR COMPANY ATLANTA PDC

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

98051

97CV1302 254-13-3484

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 13 1997

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William R. Martin

Clerk.

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

ATLANTA, AUGUST 15 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0460
DALE GONZALEZ V. HERBERT OSWALD

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

92052

97V368

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 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, AUGUST 15, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0461

CALVIN GREEN V. THE STATE

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

93052

38808E

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 15 1997

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William R. Martin

Clerk.

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

ATLANTA, AUGUST 19 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0462
STATE OF GEORGIA V. BOB L. AKINS

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

94052

94R085

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 19 1997

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William R. Matie

Clerk.

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

ATLANTA, AUGUST 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0466

FRED B. BROWN V. CITY OF GAINESVILLE ET AL

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

90052

258-62-1680 97CV1160B

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 12 1997

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William R. Martin

Clerk.

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

ATLANTA, AUGUST 19 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0467
SARKIS, INC. D/B/A LITTLE CAESARS V. JARDINE INSURANCE AGENCY
MICHIGAN, INC.

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

99052

96VS110834G

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 19 1997

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Clerk.

William R. Martie

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

ATLANTA, AUGUST 19 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0468

JOHN H. CLARK (DECEASED) ET AL V. AMERICAN YARD PRODUCTS F/K/A
ROPER CORPORATION

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

98052

562-92-6708

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 19 1997

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William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, August 26, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0469. EMANUEL ECHOLS v. THE STATE.

Emmanuel Echols seeks a discretionary appeal following the alleged entry of an order revoking his probation. Echols is required under OCGA § 5-6-35 (c) to include a copy of the order he seeks to appeal as a part of an adequate application for discretionary appeal. However, Echols did not include a copy of the order complained of with his application, nor did he properly comply with the order of this court issued August 5, 1997 directing that he do so within ten days from that date. Echols instead sent this court a copy of the warrant for arrest issued by the superior court on March 12, 1997, which serves no useful purpose.

Since Echols has failed to comply with OCGA § 5-6-35 (c) as well as a previous order of this court, his application for appeal is hereby DISMISSED. See Rule 7 of the Rules of the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 26 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, SEP 12 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0470. CLAYTON BROWN v. CALLS USED AUTO PARTS

The applicant, Clayton Brown, filed this application for discretionary appeal pursuant to OCGA § 5-6-35 (a) (6), but failed to include a file stamped copy of the judgment appealed from, as required by OCGA § 5-6-35 (c) and Rule 32 (b) of the Court of Appeals. On August 20, 1997, this court issued an order to the applicant directing him to supplement the application within ten days with a file stamped copy of the order appealed from and stressed that the application would be dismissed if the document was not timely filed with this court. However, the applicant has failed to comply with this order. Accordingly, this appeal is DISMISSED. See Court of Appeals Rule 7.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 12 1997

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William R. [Signature]

Clerk.

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

ATLANTA, AUG - 8 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0472. WILLIAMS v. WILLIAMS.

Roberta Darcya Williams seeks an appeal to this court from a final judgment and decree of divorce. However, applications for appeal in divorce cases should be directed to the Supreme Court and not this court. Ga. Const. 1983, Art VI, § VI, ¶ III (6). Accordingly, Williams' application is hereby transferred to the Supreme Court for disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG - 8 1997

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Will. Z. Mart... Clerk.

Court of Appeals of the State of Georgia

ATLANTA, SEP -5 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A97D0473. TONY STEWART v. JOHN A. MULCARE

Tony Stewart pro se seeks a discretionary appeal from the purported denial of his motion to set aside a default judgment. In his application materials, Stewart maintains the court entered a judgment for writ of possession from an alleged default judgment on July 16, 1997. However, a copy of this order was not included in the application materials, and inquiry by this office revealed that the State Court of DeKalb County does not have such an order in its files. Although a copy of Stewart's motion to set aside the default judgment is included in the materials, there is no order included in the materials denying this motion, and the State Court apparently does not have such a document in its files. The only order included in the application materials is one requiring Stewart to pay rent into court. Upon request of this court, the State Court faxed another order denying Stewart's "Motion to Stay Writ/Motion for Reconsideration," which motion is not included in the application files. Apparently, this is also not the order appealed from. Accordingly, Stewart has failed to include in his application a copy of the order complained of as required by OCGA § 5-6-35 (c) and Rule 32 (b) of the Rules of the Court of Appeals. See Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989). Because Stewart has failed to comply with the clear mandate of OCGA § 5-6-35 (c) and Rule 32 (b), his application is fatally deficient and must therefore be DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP -5 1997

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William L. Martin

Clerk.

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

ATLANTA, AUGUST 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0474
JOHN W. HAMMOCK V. ANN B. WEBB

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

96053

96V215

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 22 1997

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Clerk.

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

ATLANTA,

SEPTEMBER 02 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A97D0475

OLGA M. JERVIS V. RENISON T. JERVIS ET AL

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

90053

97VG78543

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP -2 1997

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William R. Martin

Clerk.