

Court of Appeals of the State of Georgia

ATLANTA, SEP - 2 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0001. R. G. KELLY COMPANY et al. v. FRANCISCO SOTO.

The employer in this workers' compensation case, R. G. Kelly Company, and the employer's insurer, American Interstate Insurance Company, seeks review of an award made to Francisco Soto, an illegal alien. The case is controlled adversely to the employer's and the employer's insurer's position by this Court's recent decision in Dynasty Sample Co. v. Beltran, 224 Ga. App. 90 (479 SE2d 773) (1996). Accordingly, this application for discretionary appeal is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 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 R. Martin

Clerk.

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

ATLANTA,

SEPTEMBER 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0002
RUPELLAR MCKIBBONS V. THE STATE

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

93001

Z55376

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP - 3 1997

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William R. Martin

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. A98D0003
AMERICAN YARD PRODUCTS, F/K/A ROPER CORPORATION V. JOHN H. CLARK
(DECEASED) ET AL

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

98001

562-92-6708

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,

SEPTEMBER 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0004

MICHAEL DEAN HAMMOND V. AMERICAN FREIGHT WAYS

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

94001

256-02-6679 97V0751

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 12 1997

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Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, SEP 15 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0005. DEBORAH ANN CHENEY v. DAVID PHILLIPS CHENEY

Deborah Ann Cheney moved with the parties' two minor children to California, and after a little less than six months, she filed in a California court for legal separation from her husband, David Phillips Cheney, and sought custody of their two children. The day after being served with the action, David filed for divorce in Georgia without mentioning the pending California action. A month later, the California court entered an order of custody in favor of Deborah. David did not appear. Deborah then filed a special appearance answer to the Georgia complaint. The Georgia court and the California court then jointly issued an order declaring Georgia to be the home state of the children with jurisdiction to determine custody issues and ordering Deborah to answer David's divorce complaint. Deborah seeks discretionary appellate review of this order. This court, however, lacks jurisdiction to review this appeal.

"Generally, an order is final and appealable when it leaves no issues remaining to be resolved, constitutes the court's final ruling on the merits of the action, and leaves the parties with no further recourse in the trial court." Thomas v. Douglas Co., 217 Ga. App. 520 (457 SE2d 835) (1995). In this case, the order addresses only the issue of which state has jurisdiction to

determine the child custody issues and does not constitute a final ruling on the merits of the action.

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

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 15 1997

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William R. Martie

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:

Case No. A98D0005

DEBORAH ANN CHENEY V. DAVID PHILLIS CHENEY

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

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

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

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 18 1997

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William R. Martin

Clerk.

91

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

ATLANTA, September 29, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

COURT OF APPEALS CASE A98D0006
EAST TUCKER CIVIC ASSOCIATION, INC. V. DEKALB COUNTY, GEORGIA

It appearing the order of this Court issued September 11, 1997 is incorrect due to clerical error, it is hereby ordered that said order is vacated and that the order hereto be substituted thereof also correcting the date of the order.

91-001

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 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 L. Martin

Clerk.

91

Court of Appeals of the State of Georgia

ATLANTA, SEP 29 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0006. East Tucker Civic Association, Inc. v. DeKalb County, Georgia

Applicant East Tucker Civic Association, Inc. (ETCA) seeks an appeal from the grant of DeKalb County's motion to dismiss and East Coast Development's motion to dismiss or for summary judgment. This case arose from a November 26, 1996 decision of the County amending the land use plan and rezoning 54.28 acres of land in Tucker, Georgia.

A civic association such as ETCA does not have standing to enjoin rezoning unless it owns property affected or is joined by individual plaintiffs who have standing. Lindsey Creek Area Civic Assoc. v. Consolidated Gov't. of Columbus, Ga., 249 Ga. 488, 490 (292 SE2d 61) (1982). Because ETCA does not own property affected by the rezoning and was not joined by individual plaintiffs who had standing, the case was properly dismissed.

Even if ETCA had been allowed to join individuals as it proposed, they did not have standing. In order to challenge the decision of the County, the individuals would had to have shown to the County that the individuals had a substantial interest in the zoning decision and that they would suffer some special damage or

injury not common to all similarly situated property owners. Macon-Bibb County Planning & Zoning commission v. Vineville Neighborhood Association, 218 Ga. App. 668, 670 (462 SE2d 764) (1995). In this case, the individuals failed to provide sufficient evidence, at the hearings before the County, that they had a substantial interest sufficient to confer standing in that there was insufficient expert testimony for standing. Further, their alleged harm was not specific enough to constitute the special damage required to satisfy the aggrieved citizen test for standing. Their alleged harm was merely speculative with no documented evidence of a special damage not common to all property owners. See Id. and Columbus, Georgia v. Diaz-Verson, 258 Ga. 698, 699 (373 SE2d 208) (1988).

Accordingly, the application for discretionary appeal is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 29 1997

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William L. Matire

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. A98D0006

EAST TUCKER CIVIC ASSOCIATION, INC. V. DEKALB COUNTY, GEORGIA ET AL

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

91001

96142658

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 11 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

SUPREME COURT OF GEORGIA

Remittitur, Case No. S98C0121

Atlanta, February 20, 1998

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MOTOR WAREHOUSE, INC. V. BEATRICE ANDREWS

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.

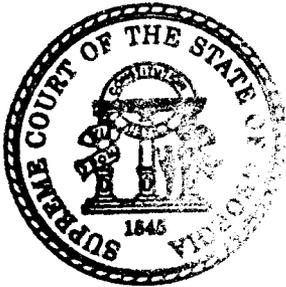
A98D0007
Bill of Costs, \$80.00

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 23, 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. Middlebrooks Deputy Clerk.

Case No. A98D0007
Court of Appeals of Georgia

FILED IN OFFICE

Filed in office
on: MAR 23 1998

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

CLERK COURT OF APPEALS OF GA.

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: October 6, 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 **S98C0121**

MOTOR WAREHOUSE, INC. V. BEATRICE ANDREWS

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0007

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, AUG 22 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0007. MOTOR WAREHOUSE, INC. v. ANDREWS

Motor Warehouse, Inc. filed this application for discretionary appeal on August 18, 1997 seeking review of the state court's July 16, 1997 order. 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 due on or before Friday, August 15, 1997. Because this application is untimely, this Court lacks jurisdiction to consider it. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991). Accordingly, it is hereby ordered DISMISSED.

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, SEP 15 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0007. MOTOR WAREHOUSE, INC. v. ANDREWS

On August 22, 1997, this court ordered Motor Warehouse's application for discretionary appeal dismissed because it was untimely filed. The application was due on or before August 15, 1997; however, it was not filed with this Court until August 18, 1997.

In its motion for reconsideration, Motor Warehouse contends the application should be deemed filed as of August 15, 1997 because it was deposited in the United States Postal Service certified mail on that date. The application would in fact have been deemed filed as of that date had Motor Warehouse delivered it with costs. Rule 5 provides that the "Clerk shall not file any matter unless the costs have been paid or a sufficient pauper's affidavit has been filed." Cost were not paid until August 18, 1997 when the \$80.00 filing fee was hand delivered. Consequently, the application was deemed filed on August 18, 1997. Because the application was untimely, this Court lacked jurisdiction to consider it. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991). The application was, therefore, dismissed.

Accordingly, the motion for reconsideration is hereby ordered DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 15 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, AUGUST 28 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0008

LINDA W. KENDALL V. BURLINGTON MOTOR CARRIERS 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.

90001

264-98-7570 97CV14441

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 28 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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Clerk.

William R. Martie

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

ATLANTA, SEPTEMBER 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0009
SHIRLEY S. SMITH V. CITY OF LAGRANGE

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

97001

D14699

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 4 1997

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William R. Martin

Clerk.

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

ATLANTA, SEPTEMBER 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0010
SID MILES V. ELIZABETH A. MARTIN

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

92002

97A13075

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP - 4 1997

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William R. Martin Clerk.

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: September 18, 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 **S98C0028**

SID MILES V. ELIZABETH A. MARTIN

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0010

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, SEPTEMBER 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0011
HOYT PATTON V. J. B. HUNT TRANSPORT, INC.

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

93002

97CV023772

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP - 4 1997

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William R. Martin Clerk.

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

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

COURT OF APPEALS CASE NO. A98D0011.

PATTON v. J.B. HUNT TRANSPORT, INC.

As Mr. Patton's motion for reconsideration was not filed within ten days of the rendition of the judgment of this court as required by Court of Appeals Rule 37 (b), it is ordered that the motion is dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 30 1997

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William L. Martin Clerk.

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

ATLANTA, SEPTEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0012
DEPARTMENT OF CORRECTIONS V. GREGORY DERRY

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.

94002

94CV0191

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 18 1997*

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William R. Martin

Clerk.

**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:

APPLICATION NO. A98D0013

MICHAEL L. KNIGHT V. JERRY HELLUMS, D/B/A DOUBLE "J" CONSTRUCTION

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

98002

259-41-9547 97A41245

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 8 1997

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William L. Martie Clerk.

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

ATLANTA, SEPTEMBER 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0014

CONCEPCION H. SOTELO V. CONAGRA BROILER COMPANY ET AL

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

96002

622-09-3865 97CV1267C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 4 1997

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William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, SEP - 8 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0015. CAPITAL CITY INSURANCE COMPANY et al. v. BAGWELL et al.

In this workers' compensation case, the employer seeks review of an assessment of attorney's fees under OCGA § 34-9-108 (b) (2).

That Code section provides that the reasonable quantum meruit fee of a claimant's attorney may be assessed against the employer "[i]f any provision of Code Section 34-9-221, without reasonable grounds, is not complied with and a claimant engages the services of an attorney to enforce his or her rights. . . ." In this case, it is undisputed that the employer failed to commence payments timely under OCGA § 34-9-221, but that it paid a penalty and began regular benefit payments after the claimants hired an attorney.

At the hearing to determine the reasonable value of his services in this case, the claimants' attorney presented evidence of the efforts taken to secure workers' compensation benefits for the claimants before and after they executed a contingency fee contract hiring him. The ALJ concluded that the contingency fee contract providing for a 25 percent recovery of income benefits constituted the reasonable value of the attorney's services in quantum meruit.

This Court has previously held that a contingency fee contract may be an appropriate measure of a reasonable quantum meruit fee. Bennett-Murray, Inc. v. Barnes, 222 Ga. App. 137 (2) (473 SE2d 166) (1996). In the absence of a transcript, this Court presumes that the evidence in this case supported the State Board's finding that the 25 percent contingency fee constituted a reasonable quantum meruit fee. Webb v. Sheu, 201 Ga. App. 769 (412 SE2d 289) (1991).

The employer also contends that the superior court erred in affirming the State Board's determination based on the "any evidence" rule, as OCGA § 34-9-105 (c) (4) has revised the standard of review to a "preponderance of the evidence" rule. However, although that Code section revised the standard of review to be applied by the Appellate Division, the superior court and this Court still apply an "any evidence" standard. See Southwire Co. v. Molden, 223 Ga. App. 389 (477 SE2d 646) (1996).

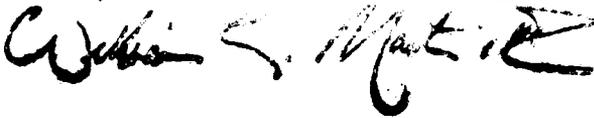
For the above reasons, the application is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 8 1997

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Clerk.

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

ATLANTA, SEPTEMBER 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0016
GEORGIA POWER COMPANY V. ROBERT E. ALLEN

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

99002

257-70-0206 CV971097

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP - 4 1997

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William R. McIntire 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. A98D0017
MELANIE ANN MARTIN V. JOHN FREDERICK TRUE III

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.

90002

95A5263

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 11 1997

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William R. Martin

Clerk.

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

ATLANTA, SEPTEMBER 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0018
JOSEPH WATSON MASONRY ET AL V. MICHAEL MCGEE

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

97002

97A044221

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 4 1997

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William L. Martin Clerk.

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

ATLANTA, SEPTEMBER 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0019

LEONARD DALE DANIELL V. CORPORATE PROPERTY INVESTOR

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

92003

E41034

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 12 1997

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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. A98D0020

BIG HAYNES CREEK RV RESORT, INC. V. ROCKDALE COUNTY

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

93003

96CV1857N

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 11 1997

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Clerk.

William R. Martin

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

ATLANTA, SEPTEMBER 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0021
PREMIER CORPORATE SERVICE ET AL V. PERRY BALL

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

94003

32877 258-48-3229

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 12 1997

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William R. Martin

Clerk.

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

ATLANTA, SEPTEMBER 05 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0022
WALTER B. LEVANT V. CRIDER POULTRY

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.

98003

260-80-1066

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP -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.*

William S. Matie

Clerk.

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

ATLANTA, SEPTEMBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0023
ALDEAN BOYINGTON V. THE STATE

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

96003

SC971389

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 16 1997

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

William S. Martine Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S98C0063

Atlanta, January 8, 1998

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JOSEPH WATSON MASONRY et al. V. MICHAEL E. MCGEE

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.

A98D0018
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 2, 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.

Antonie J. Middleton Clerk.

FILED IN OFFICE

MAR - 2 1998

Case No. A98D0018
Court of Appeals of Georgia

RECEIVED IN OFFICE
1998 MAR - 2 PM 4:05
8661

CLERK COURT OF APPEALS OF GA

Remittitur from the Supreme Court.

Filed in office
on:

Clerk, Court of Appeals of Georgia.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S98C0028

Atlanta, January 30, 1998

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

SID MILES V. ELIZABETH A. MARTIN

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, except Thompson, J., dissents.

A98D0010
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 2, 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.

Thomas J. Middlebrooks, Deputy
Clerk.

FILED IN OFFICE

MAR - 2 1998

Case No. A98D0010
Court of Appeals of Georgia

Filed in office
on:

1998 MAR - 2 - PM 4: 06

RECEIVED IN OFFICE

Remittitur from the Supreme Court.

Clerk, Court of Appeals of Georgia.

CLERK COURT OF APPEALS OF GA

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

ATLANTA, JULY 17, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0395

CHARLES CHATMAN V. THE STATE

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

90044

94CR213893

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 17 1998*

*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, JULY 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0396
MATTHEW SHANE ELROD V. THE STATE

Upon consideration of the Application for 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.

97044

97CR18123

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 27 1998*

*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, III

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

ATLANTA, JULY 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0397
CARRETTA TRUCKING, ET AL V. MICHAEL GRAINGER

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

92045

272-58-5456 98CV17704

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 27 1998

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hereto affixed the day and year last above written.*

Clerk.

William L. Matthews

MS

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

ATLANTA, JULY 21, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0398

MARIANNE SAMARINA THEDIECK V. T. MARK THEDIECK

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

94045

96CVD0228

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 21 1998

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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, AUGUST 24, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0398

MARIANNE SAMARINA THEDIECK V. T. MARK THEDIECK

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

94-045
96CVD0228

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 24 1998

*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. L. Martini, III Clerk.

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

ATLANTA, AUGUST 13, 1998

The Honorable Court of Appeals hereby passes the following order:

A98D0399 MARVIN YIZAR V. HILTON HALL

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

98-045

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 13 1998

I certify that the above is a true extract from 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. AUG 13 1998

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

A98D0399. YIZAR v. HALL

Marvin Yizar filed this discretionary appeal pursuant to OCGA §§ 42-12-8 and 5-6-35 seeking review of the trial court's May 22, 1998 order granting Warden Hilton Hall summary judgment. Yizar's application was docketed in this Court on July 9, 1998, 48 days after the order appealed was entered. However, pursuant to OCGA § 5-6-35 (d), an application for discretionary appeal must be filed with this Court within 30 days of the entry of the order, decision, or judgment appealed. Because Yizar's application is untimely, we lack jurisdiction to consider it. Bigham v. Wright, 194 Ga. App. 194 (390 SE2d 109) (1990). Accordingly, it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 14 1998

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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

JUL 24 1998

ATLANTA,

The Court of Appeals hereby passes the following order:

A98D0400. BOYD BROTHERS TRANSPORTATION CO., INC. v. COREY FONVILLE.

The issue in this workers' compensation application is whether the employee's injury arose out of and in the course of his employment.

After being hired as a truck driver by Boyd Brothers Transportation Co., Inc., Corey Fonville completed an orientation session in Alabama and then returned home to North Carolina to await assignment with a company trainer. Although he was paid a trainee's weekly salary while he waited, Fonville requested permission to go to the company's terminal in Austell, Georgia, where there was a greater opportunity of being assigned a trainer.

On October 3, 1995, a driver for Boyd Brothers picked up Fonville and transported him to the Austell terminal. Boyd Brothers provided lodging facilities for its drivers at that terminal, and at the hearing, Fonville testified that it was his understanding that he was supposed to stay at the terminal in case of a work assignment. In that regard, Fonville testified that he performed some minimal work at the terminal, and that he was told his training was scheduled to begin on October 6, 1995.

On the evening of October 5, 1995, Fonville decided to walk to a nearby convenience store to get food because the vending machines at the terminal only contained candy and chips. On the way to the store, he faced the oncoming traffic; but on the return he walked with his back to the traffic, and he was severely injured when a car struck him from behind. When it happened, he was walking on the edge of the road rather than the grass shoulder, because it was dark and he could not see his way to walk in the grass.

Boyd Brothers controverted Fonville's workers' compensation claim on the ground the injury occurred as Fonville attended to a personal mission and thus did not arise out of and in the course of his employment. In awarding benefits, however, the ALJ found that Fonville was in the continuous employment of Boyd Brothers during his stay at the Austell terminal, and that no break in that employment resulted merely from Fonville going to get food. The appellate division upheld that determination, and the superior court affirmed based on the any evidence rule.

An employee who is taken away from his home by his employment and who of necessity must eat and sleep away from home in order to further the employer's business, may be considered to be in the continuous employment of the employer, day and night. McDonald v. State Highway Dept., 127 Ga. App. 171, 174 (192 SE2d 919) (1972). In such a case, "[i]t can not be said that the employment is broken by mere intervals of leisure such as those taken for a meal." Id. at 175.

The evidence authorized a finding that Fonville was in the continuous employment of Boyd Brothers, and the superior court did

not err in affirming the State Board's award for the employee.
Accordingly, this application is hereby denied.

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 R. Martin Clerk. JUL 24 1998

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

ATLANTA, AUG 11 1998

The Court of Appeals hereby passes the following order:

A98D0400. BOYD BROTHERS TRANSPORTATION CO., INC. v. COREY FONVILLE.

By order dated July 24, 1998, this court denied the application for discretionary appeal filed in this workers' compensation case. Having received and reviewed the applicant's motion for reconsideration, it is ordered that the motion is granted. Accordingly, the order of July 24, 1998, is hereby vacated, and the application is granted for the purpose of determining the applicability of the "continuous employment" doctrine to this case.

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.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 11 1998

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William R. Martin Clerk.

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

ATLANTA, JULY 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0401
SOUTHEAST PAPER, INC., ET AL V. DAVID NORRIS

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

96045

980340F 257-84-5712

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 27 1998

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

Clerk.

Will: L. Marti, Jr.

MP

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

ATLANTA, AUGUST 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0402

JESSE WALTER HERRINGDINE V. NALLEY EQUIPMENT LEASING, LTD.

Upon consideration of the Application for 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 State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99045

91A372172

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG - 3 1998

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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 29, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0403

FRANK A. MCCLELLAND V. DEPARTMENT OF TRANSPORTATION

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

90045

97V110

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 29 1998*

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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, JULY 29, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0403

FRANK A. MCCLELLAND V. DEPARTMENT OF TRANSPORTATION

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

90045

97V110

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 29 1998*

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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, JULY 28, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0404

TERESA PEARSON WARREN V. HARRY JOHN PEARSON, JR.

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

97045

971098 971264

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 28 1998

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.

Will: L. Martin, Jr.

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

ATLANTA, SEPTEMBER 16, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0404

TERESA PEARSON WARREN V. HARRY JOHN PEARSON, JR.

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

97-045
971098

971264

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

SEP 16 1998

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

Will. L. Martin, III

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

ATLANTA, AUGUST 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0405

FELIX CLEVELAND MORING V. LEWIS A MASSEY, SECRETARY OF STATE

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

92046

E71138

Court of Appeals of the State of Georgia

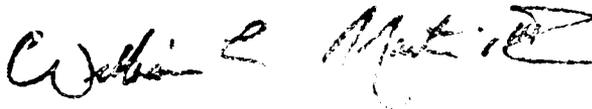
Clerk's Office, Atlanta

AUG - 3 1998

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Clerk.



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

ATLANTA, AUGUST 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0406

CLAUDE R. ADAMS, JR. V. ALBERT RAMSEY, ET AL

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

93046

284105

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG -5 1998

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William R. Martin

Clerk.

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

ATLANTA, AUGUST 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0407
MARSHA HITCHCOCK V. KAREN DAVIS

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

94046

95A136855

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG - 3 1998

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William R. Martine Clerk.

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

ATLANTA, JULY 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0408

Y.S. BROTHERS, INC. d/b/a FOLSTON GOLF CLUB V. LARRY MOORE

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

98046

259-15-5357 98V124

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

JUL 27 1998

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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.

Will: L. Martin

ML

Court of Appeals of the State of Georgia

ATLANTA, JULY 27, 1998

The Court of Appeals hereby passes the following order:

A98D0409. UNDERWOOD v. MERIWETHER COUNTY

On July 14, 1998, Charles Underwood, pro se, applied pursuant to the Prisoner Litigation Reform Act, OCGA § 42-12-1 et seq, for discretionary appeal of the superior court's June 10, 1998 order dismissing his civil complaint. An application for discretionary appeal must be filed with this Court "within 30 days of the entry of the order" appealed. OCGA § 5-6-35 (d); OCGA § 42-12-8. Because Underwood's application was untimely filed, we lack jurisdiction to consider it. Accordingly, it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 27 1998

*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.*

Clerk.

William L. Martin, Jr.

WLM

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

ATLANTA, AUGUST 19, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0409

CHARLES UNDERWOOD V. MERIWETHER COUNTY, ET AL

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

96-046
98CV000178

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* AUG 19 1998

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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, AUGUST 07, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0410
CITY OF ATLANTA, GEORGIA V. SCOTT KELLY

Upon consideration of the Application for 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.

91046

67283

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

AUG - 7 1998

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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, AUG 11 1998

The Court of Appeals hereby passes the following order:

A98D0411. IN RE: ESTATE OF MORRIS WOLFE THIERMAN

Jonathan H. Thierman filed an application for discretionary appeal in the Supreme Court on July 2, 1998, from the Fulton County Probate Court's order denying his motion to set aside judgment. The Supreme Court transferred the case to this Court on July 16, 1998. This Court ordered Thierman to supplement his application with a stamped "filed" copy of the order appealed from. The stamped "filed" copy of the probate court order submitted by Thierman indicates that it was entered on May 28, 1998. OCGA § 5-6-35 (d) requires that the application for discretionary appeal must be filed within 30 days of the date of entry of the order complained of. Thierman's application was not filed until July 2, 1998, 35 days after the probate court order was entered. The application was accordingly untimely. An applicant's failure to file a timely discretionary application deprives this Court of jurisdiction to consider the appeal. See Tobitt v. Tobitt, 249 Ga 245 (290 SE2d 49) (1982). Accordingly, the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 11 1998

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William L. Martin Clerk.

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

ATLANTA, AUGUST 26, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0411

IN RE: ESTATE OF MORRIS WOLFE THIERMAN

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

99-046
151853

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 26 1998

*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.*

Will. L. Mart, III

Clerk.

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

ATLANTA, JULY 16, 1998

The Court of Appeals hereby passes the following order:

Case No. A98D0411

IN RE: ESTATE OF MORRIS WOLFE THIERMAN

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

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

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

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 16 1998

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William R. Martin Clerk.

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

ATLANTA, AUGUST 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0412
HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA, V. MITCHELL
CONSTRUCTION COMPANY, INC.

Upon consideration of the Application for 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.

90046

E43308

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG - 3 1998

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William R. Martin Clerk.

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

ATLANTA, JULY 28, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0413
DARRYL N. HATCHER V. THE STATE

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

97046

94CR0182222

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 28 1998

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

Willie L. Martin

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

ATLANTA, AUGUST 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0414

RICHARD B. LEGGITT V. STACY DENARD f/k/a/ STACY LEGGITT

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

92047

97A078845 9760202

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 11 1998*

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hereto affixed the day and year last above written.*

William E. Martin

Clerk.

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

ATLANTA, AUGUST 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0415
BIBB COUNTY, GEORGIA V. RICKY DELTON SHORT

Upon consideration of the Application for 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.

93047

98CV1448 258-82-5071

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG -5 1998

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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, AUG 18 1998

The Court of Appeals hereby passes the following order:

A98D0416. MICHAEL WILLIAMS v. THE STATE

Michael Williams filed this discretionary appeal from the trial court's order denying his motion to withdraw guilty plea. The order was entered on June 1, 1998, and the application was filed with this Court on July 20, 1998, 49 days after the order was entered. OCGA § 5-6-35 (d) requires all applications for discretionary appeal to be filed within 30 days of the date of the order appealed from. Failure of an applicant to follow the required discretionary appeals procedures deprives this Court of jurisdiction to consider the appeal. See Tobitt v. Tobitt, 249 Ga 245 (290 SE2d 49) (1982). Accordingly, the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 18 1998

*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, AUG 18 1998

The Court of Appeals hereby passes the following order:

A98D0418. RHETT v. THE STATE.

Gregory C. Rhett pled guilty to burglary and received first offender treatment. Rhett was given ten years' probation with credit for time served by order entered July 3, 1996. In December, 1997, the State petitioned the court to adjudicate Rhett guilty and impose sentence for violation of the terms of his first offender sentence. Specifically, Rhett was accused of committing the new offenses of driving under the influence, running a stop sign, and driving with a suspended license, as well as failing to report to his probation officer and failing to pay restitution as directed.

After a hearing in which Rhett admitted the violations, the court adjudged him guilty of the burglary charge for which he originally received first offender treatment and sentenced him to five years to serve by order entered January 30, 1998. We note that although the hearing transcript reveals that the trial court actually intended to impose a ten year sentence to serve five with credit for time served, the remainder on probation, the sentencing order does not reflect that intent.

Rhett did not apply to this court for an appeal from the January 30 order, but thereafter filed in the trial court a "motion for reconsideration of sentence." The motion was based on the theory that "the sentence of the Court exceeded the maximum sentence provided by law in OCGA § 42-8-34.1 and was therefore invalid as a matter of law." Motion at page 2. Rhett's motion was denied by order entered July 10, 1998. Rhett now seeks an appeal to this court both from the order entered January 30 revoking Rhett's 10-year first offender probation, adjudicating him guilty and sentencing him to five years to serve, as well as from the order entered July 10 denying his motion for reconsideration of sentence.

As it relates to the January 30 order, Rhett's application is clearly untimely. Moreover, motions for reconsideration do not extend the time for filing a notice of appeal from a final order, nor are such motions generally appealable in their own right. However, it appears that the "motion for reconsideration" in this particular case is in substance a motion to correct an allegedly illegal sentence. The denial of such a motion is directly appealable. Jackson v. State, 223 Ga. App. 471 (1) (477 SE2d 893) (1996). As such, OCGA § 5-6-35 (j) mandates that this court grant rather than dismiss Rhett's application for appeal from the order entered July 10 without regard to whether Rhett's petition is otherwise meritorious.

For the foregoing reasons, Rhett's application for appeal from the order entered July 10 is hereby GRANTED. Rhett shall have ten days from the date of this order to file his notice of appeal. If

an appeal is filed, Rhett is directed to brief this court regarding the precise language of OCGA § 42-8-34.1 -- a provision normally understood to address the procedure for revoking the probationary portion of an otherwise established criminal sentence -- that also renders the Code section applicable in the context of criminal sentencing pursuant to OCGA § 40-8-60.

The clerk of the superior court is directed to include a copy of this order in the record transmitted to this court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 18 1990

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William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

AUG 14 1998

The Court of Appeals hereby passes the following order:

A98D0419. DENNIS HOOPER v. CHARLES CLEMONS

Dennis Hooper filed this discretionary application from an order denying his petition for mandamus. It appears that the mandamus relief sought in this action is ancillary to the underlying issues of law raised on appeal. Thus, Hooper properly filed this application in this Court and not the Supreme Court. See Board of Trustees of Fulton Co. v. Mabry, 221 Ga. App. 762, 763 n.3 (472 SE2d 542) (1996). However, the order denying his petition was entered on June 15, 1998, and his application was filed with this Court on July 22, 1998, 37 days after the order was entered. OCGA § 5-6-35 (d) requires all applications for discretionary appeal to be filed within 30 days of the date of the order appealed from. Failure of an applicant to follow the required discretionary appeals procedures deprives this Court of jurisdiction to consider the appeal. See Tobitt v. Tobitt, 249 Ga 245 (290 SE2d 49) (1982). Accordingly, the application is hereby DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 14 1998

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William R. Martin Clerk.

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

ATLANTA, AUGUST 31, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0419

DENNIS HOOPER V. CHARLES CLEMONS

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

91-047
98CV000964

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 31 1998

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Will. L. Mart, III

Clerk.

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

ATLANTA, AUGUST 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0420

R.G. BRUMBY, II V. BIG CANOE PROPERTY OWNERS ASSOCIATION, INC.

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

99047

94CV000163

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

AUG -3 1998

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Clerk.

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

ATLANTA, AUGUST 18, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0421
DEMETRIA RICHARDSON V. KEVIN HARLEY

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

90047

97CV26184

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

AUG 18 1998

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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, SEPTEMBER 08, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0421

DEMETRIA RICHARDSON V. KEVIN HARLEY

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

90-047
97CV26184

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP -8 1998*

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Will L. Martin, III

Clerk.

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

ATLANTA, AUGUST 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0422

CHARLES E. HALL V. THE STATE

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

97047

95R268

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 11 1998

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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 E. Martin

Clerk.

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

ATLANTA, AUGUST 20, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0423

KAUFMAN, CHAIKEN, MILLER & KLORFEIN V. KIMBERLY DAYLE MARLENE
WENTZELL STOKKER

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

92048

97CV55406

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 20 1998

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William R. Martin

Clerk.

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

ATLANTA, AUGUST 18, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0424

ALAN G. RICHARDS V. THE STATE

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

93048

97CR05832

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 18 1998

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Clerk.

William R. Martin

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

ATLANTA, AUGUST 24, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0425

MARY L. DINSMORE V. SAMUEL W. BRIGHT, JR.

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

94048

E55848

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 24 1998

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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.

Will. L. Martin, III

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

ATLANTA, AUGUST 20, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0426

GUARANTEE MUTUAL LIFE ET AL V. RICHARD L. DAVIS

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

98048

981305218 249-72-0936

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 20 1998

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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, AUGUST 31, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0426

GUARANTEE MUTUAL LIFE ET AL V. RICHARD L. DAVIS

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

98-048
981305218 249-72-0936

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* AUG 31 1998

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Will. L. Martin, III

Clerk.

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

ATLANTA, AUGUST 18, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0427

KELLEY ANN ROGERS V. JAMIE L. STRICKLAND ET AL

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

96048

94V026

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 18 1998

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Clerk.



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

ATLANTA, SEPTEMBER 16, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0427

KELLEY ANN ROGERS V. JAMIE L. STRICKLAND ET AL

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

96-048
94V026

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 16 1998*

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Will. L. Martin, III

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, AUG 20 1998

The Court of Appeals hereby passes the following order:

A98D0428. TOTAL NETWORK DESIGN, INC. ET AL v. MASSARI

Total Network Design, Inc., Mike Hall, and Kimberly Hall filed this application for discretionary appeal of an order granting partial summary judgment to third-party plaintiff Mike Massari in the amount of \$9,000.00.

The applicants argue the court erred in granting summary judgment because Massari was not entitled, as a matter of law, to judgment in his favor and because the applicants were not given proper notice of the motion hearing. However, the applicants have not supported these allegation of error with legal argument, citation of authority, or reference to exhibits. Consequently, we are unable to evaluate whether any of the claims of error are meritorious. The applicants have failed to carry their burden of demonstrating the application should be granted. Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989); Justice v. Musselman, 214 Ga. App. 762 (450 SE2d 460) (1994). Accordingly, the application is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 20 1998

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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, AUGUST 13, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0429
COLONIAL FREIGHT SYSTEMS, INC. V. TYRONE PITTS

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

99048

98CA109 249-11-2473

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 13 1998

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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, SEPTEMBER 01, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0429

COLONIAL FREIGHT SYSTEMS, INC. V. TYRONE PITTS

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

99-048
98CA109

249-11-2473

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* SEP - 1 1998

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

Will. L. Martin, III

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

ATLANTA, AUGUST 31, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0430
LEONARD RAMSEY V. WYVONNIA RODRIGUEZ

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

90048

97A329704

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 31 1998

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

Will. L. Martin, III

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

ATLANTA, AUGUST 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0431

ERIC L. HIGHSMITH V. DJUANA ANJEANETTE HIGHSMITH

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

97048

981170405

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 27 1998

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

Will. L. Martin, III

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

ATLANTA, AUGUST 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0432

MOBLEY COTTON GIN CO., ET AL V. MIGUEL GARCIA

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

92049

98CV256 524-89-5576

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 11 1998

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

Clerk.

William R. McIntire

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

ATLANTA, SEPTEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0027

CHARLES E. UNDERWOOD V. THE STATE OF GEORGIA EX REL PETER J.
SKANDALAKIS

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

97003

97CV221

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 18 1997

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William R. Marti Clerk.

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

ATLANTA, OCTOBER 03, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0027

CHARLES E. UNDERWOOD V. THE STATE OF GEORGIA EX REL PETER J.
SKANDALAKIS

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

97-003
97CV221

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT - 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, SEPTEMBER 15 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0028
MICHAEL CALVIN DIAS V. THE STATE

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

92004

96R1269

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 15 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, SEPTEMBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0029

FREDRICO J. JONES V. NORRELL TEMPORARY SERVICES ET AL

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

93004

254-29-6301 9795521

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 16 1997

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hereto affixed the day and year last above written.*

William R. Matie

Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S98C0093

Atlanta, February 27, 1998

The Honorable Supreme Court met pursuant to adjournment.

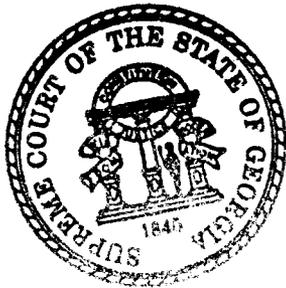
The following order was passed:

FREDRICO J. JONES V. NORRELL TEMPORARY SERVICES 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.

A98D0029
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 23, 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.

Daniel J. Middleton Deputy Clerk.

Case No. A98D0029
Court of Appeals of Georgia

FILED IN OFFICE
Filed in office
on: **MAR 23 1998**

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

Court of Appeals of the State of Georgia

ATLANTA, SEP 25 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0030. WILLIAMS v. PATTERSON

Merrill Williams filed this application for discretionary appeal seeking review of the superior court's August 1, 1997 order. An application for discretionary appeal must be filed within 30 days of the entry of the order appealed. OCGA § 5-6-35 (d). The application was due on or before Tuesday, September 2, 1997. Although the application was delivered via certified mail, neither the mailing envelope nor the certified mail receipt was stamped with the official United States Postal Service postmark as required by this Court's Rule 4. Consequently, the application may only be deemed filed on the date it was actually received, which was September 3, 1997.

Because this application is untimely, this Court lacks jurisdiction to consider it. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991). Accordingly, it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 25 1997

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA, OCT - 3 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0031. MARABLE v. FIRST UNION NATIONAL BANK.

Applicant Charles Edward Marable, Sr., seeks a discretionary appeal from the final order of the superior court granting plaintiff First Union National Bank a money judgment totaling less than \$10,000 and denying Marable's counterclaim for wrongful repossession of a vehicle. It would appear that the applicant's petition for appeal is based on OCGA § 5-6-35 (a) (6), which requires that the discretionary appeal procedure be followed "in all actions for damages in which the judgment is \$10,000.00 or less." However, because Marable is entitled to appeal directly from the denial of his counterclaim, all aspects of the judgment complained of may be reviewed by direct appeal and an application for discretionary appeal is therefore not necessary. See generally Denton v. Hogge, 208 Ga. App. 734 (1) (431 SE2d 728) (1993).

Accordingly, Marable's application for appeal is hereby GRANTED. OCGA § 5-6-35 (j). The applicant shall have 10 days from the date of this order to file his notice of appeal. OCGA § 5-6-35 (g). The clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT - 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, SEP 16 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0024. KATHY R. GODWIN v. STANLEY GORDON GODWIN

Kathy R. Godwin filed this petition for discretionary appeal pursuant to OCGA § 5-6-35 (a) (2). Although the primary dispute between the parties involves child custody, the order appealed from is the parties' Final Judgment and Decree of Divorce, and as such, jurisdiction lies in the Supreme Court. Ga. Const. Art. VI, Sec. VI, Par. III (6); Ashburn v. Baker, 256 Ga. 507, 508 (350 SE2d 437) (1986). Accordingly, this appeal is hereby TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 16 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, SEPTEMBER 17 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0026
GREGORY LEE MULLINAX V. THE STATE

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

90003

CR961546

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 17 1997

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

Court of Appeals of the State of Georgia

SEP 16 1997

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0025. Gregory K. Harrell et al. v. Little Pup Development and Construction, Inc.

On November 6, 1996, the Lowndes County Board of Commissioners approved rezoning of the property on which Summer Place subdivision is now located subject to a condition that the subdivision would have an entrance and an exit onto Besmiss-Knights Academy Road only. Applicants Gregory K. and Sherry S. Harrell claim that Little Pup Development and Construction, Inc. has violated the condition imposed by the Board by virtue of Little Pup's creation of a temporary entrance into Summer Place. The Harrells filed suit seeking to enjoin Little Pup from utilizing the temporary entrance and also sought to enjoin Little Pup from building homes in Summer Place under 1600 square feet. The trial court denied the Harrells' request for an interlocutory injunction as to the temporary entrance but granted it as to the square footage of the houses in the subdivision. This application for discretionary appeal is from that portion of the superior court's order denying the Harrells' request for an interlocutory injunction with respect to the temporary entrance.

The Supreme Court has jurisdiction over all equity cases. Ga. Const. 1983, Art. VI, Sec. VI, Par. III (2). The Supreme Court recently explained the test for determining its jurisdiction over equity cases as follows: "an equity case for purposes of our appellate jurisdiction is a case 'in which a substantive issue on appeal involves the legality or propriety of equitable relief sought in the superior court" (Citations omitted). Saxton v. Coastal Dialysis & Medical Clinic, Inc., 267 Ga. 177 (476 SE2d 587) (1996). In this case, the issue on appeal involves the propriety of the trial court's denial of the Harrells' request for equitable relief. Further, it does not appear that the Harrells would have an adequate remedy at law. For these reasons, this is an equity case, and this application is hereby transferred to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 16 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, AUGUST 19, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0433

DOUGLAS ASPHALT COMPANY, ET AL V. RONALD R. EMERSON

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

93049

98CV198 428-43-1712

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 19 1998

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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, SEPTEMBER 03, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0433

DOUGLAS ASPHALT COMPANY, ET AL V. RONALD R. EMERSON

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

93-049
98CV198 428-43-1712

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 3 1998

*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.

Will L. Martin, III

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

ATLANTA, AUGUST 24, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0434

GEORGIA DEPARTMENT OF HUMAN RESOURCES ex. rel. LESLIE CHISM, PAUL A.
CHISM V. PAUL CHISM, ET AL

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

94049

971365T

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

*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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Clerk.

Will. L. Martin, III

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

ATLANTA, AUGUST 19, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0435
LITHONIA LIGHTING, ET AL V. GAIL SKIPPER

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

98049

98V0151 254-78-4563

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 19 1998

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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, AUGUST 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0436

JAMES W. LASTINGER, JR. V. MILL & MACHINERY, INC., ET AL

Upon consideration of the Application for 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.

96049

9800677 262-53-5637

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 11 1998

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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, AUG 27 1998

The Court of Appeals hereby passes the following order:

A98D0437. Pleasant Hill BP Services, Inc. et al v. Brown

Pleasant Hill BP Services, Inc., and Gary S. McCurley, Inc. filed this application seeking discretionary review of the state court's judgment awarding Floyd D. Brown \$3,500.00 in damages. The state court's judgment was entered following a non-jury trial reviewing de novo the magistrate court's judgment in favor of Brown.

Upon consideration of the application and its exhibits, the application is GRANTED. The applicants shall address in their appeal brief whether their failure to request findings of fact and conclusions of law pursuant to OCGA § 9-11-52 (a) has any effect on the reviewability of their enumerations of error.

The applicants shall have 10 days from the date of this order to file a Notice of Appeal. The clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 27 1998

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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.*

Will L. Martin, III Clerk.

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

ATLANTA, AUGUST 28, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0438

HAROLD PARKS, III V. GEORGIA DEPARTMENT OF HUMAN RESOURCES, ex rel
TIMOTHY O. PARKS

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

99049

9816678

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

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hereto affixed the day and year last above written.*

Clerk.

Will L. Mat...

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

ATLANTA, AUGUST 19, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0439

WILLIAM SPELL, JR., ET AL V. MELVIN STEVENSON

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

90049

98CV70W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 19 1998

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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, AUGUST 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0440
JOHN WILDER GLOVER V. THE STATE

Upon consideration of the Application for 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

899,155324

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 12 1998

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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, AUGUST 31, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0441

DANIEL FLEMING SMITH V. MICHELLE SMITH

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

92050

97V376

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 31 1998

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Clerk.

Will. L. Martin, III

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

ATLANTA, AUGUST 19, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0442

DITTLER BROTHERS, INC., ET AL V. ARMANDO V. DIAZ

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

93050

98CV970A 260-83-5959

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 19 1998

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William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, AUG 27 1998

The Court of Appeals hereby passes the following order:

A98D0443. KLINGSHIRN, et al. v. McNEAL, et al.

Plaintiff Carol McNeal brought suit against homeowners Mike and Sherri Klingshirn and the Klingshirns' contractor, David McClure, for damages resulting from the removal by McClure of trees from McNeal's land. The Klingshirns filed a cross claim against McClure for contribution and indemnification. The court entered judgment solely against Mike Klingshirn in the total amount of \$9,800.00 plus \$110.00 court costs. The Klingshirns now seek a discretionary appeal to this court.

The Klingshirns' application is apparently based on OCGA § 5-6-35 (a) (6), which requires that the discretionary appeal process be followed where the judgment in an action for damages totals \$10,000 or less. However, the court's judgment here reflects not only a money judgment against Klingshirn, but also reflects a "zero" judgment against Klingshirn on the cross claim against McClure. Such a ruling is directly appealable even though it is included within a money judgment for less than \$10,000. Accord Denton v. Hogge, 208 Ga. App. 734 (1) (431 SE2d 728) (1993). Accordingly, the application for appeal is hereby granted pursuant to OCGA § 5-6-35

(j). Appellants shall have ten days from the date of this order to file their notice of appeal. The clerk of the superior court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Will. L. Mart, III

Clerk. AUG 27 1998

Court of Appeals of the State of Georgia

ATLANTA, AUG 19 1998

The Court of Appeals hereby passes the following order:

A98D0444. T.A.I. Computer, Inc. v. CLN Enterprises, Inc.

T.A.I. Computer, Inc. ("T.A.I.") filed this application for discretionary review of the trial court's denial of its Motion to Set Aside Judgment, Motion for New Trial, and Motion to Stay Enforcement of Judgment. This appeal arose out of a default judgment entered in favor of CLN Enterprises, Inc. The trial court awarded damages in the principal sum of \$20,287.30 plus interest, costs, and attorney fees following a determination that the action was not one ex delicto and that it did not involve unliquidated damages. In its motion for new trial, T.A.I. seeks review of the trial court's award of damages contending the damages were unliquidated requiring a hearing pursuant to OCGA § 9-11-55 (a).

If the damages had been unliquidated, T.A.I. would be entitled to an evidentiary hearing on the issue of damages. OCGA § 9-11-55 (a). Thus, a motion for new trial is an appropriate means to request such a hearing, and denial of that motion is directly appealable. Nova Group, Inc. v. M.B. Davis Electric Company, Inc., 258 Ga. 7 (364 SE2d 833) (1988).

Because this application involves a directly appealable issue, this application is hereby GRANTED pursuant to OCGA § 5-6-35 (j). T.A.I. shall have ten days from the date of this order to file its notice of appeal. The clerk is directed to include a copy of this order in the record transmitted to this Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 19 1998

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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, AUGUST 20, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0445
POPPELL-ELLER, INC., ET AL V. DANIEL BURGESS

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

96050

9800763 261-92-6990

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 20 1998

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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, AUG 21 1998

The Court of Appeals hereby passes the following order:

A98D0446. LUNSFORD v. THE STATE

Matthew Lunsford timely filed this application seeking an appeal of the trial court's order denying his motion for an out-of-time appeal. An order denying a motion for an out-of-time appeal is a final judgment which is directly appealable under OCGA § 5-6-34 (a). Rowland v. State, 264 Ga. 872, 876 (2) (452 SE2d 756) (1995). Therefore, pursuant to OCGA § 5-6-35 (j), the application for discretionary appeal is GRANTED.

Lunsford shall have 10 days from the date of this order to file a Notice of Appeal. The clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 21 1998

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William L. Martin Clerk.

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

ATLANTA, SEPTEMBER 02, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0447

BETSY MORGAN V. CITY OF ATLANTA BOARD OF EDUCATION

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

99050

E53323

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 2 1998

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.

Will. L. Martin, III

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

ATLANTA, SEPTEMBER 04, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0448

ROBERT JASON SPICER V. HEATHER IRIS CRANFORD a/k/a LONG

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

90050

97CV6910

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP - 4 1998

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the minutes of the Court of Appeals of Georgia.*

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Will. L. Martin, III

Clerk.

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

ATLANTA, AUGUST 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0449
COLLINS FUNERAL HOME, INC. V. HOWARD COOK

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

97050

98I370318 256-72-5581

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 27 1998

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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.

Will. L. Mat...

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

ATLANTA, SEPTEMBER 16, 1998

The Honorable Court of Appeals hereby passes the following order:

A98D0449 COLLINS FUNERAL HOME, INC. V. HOWARD COOK

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

97-050

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 16 1998

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

Will. L. Martin, III

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

ATLANTA, SEPTEMBER 04, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0450
MARSHALL OVERBY V. THE STATE

Upon consideration of the Application for 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.

92051

95FCR95B

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP -4 1998

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

Will. L. Martin, III

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

ATLANTA, AUGUST 28, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0452

BABY SUPERSTORE, ET AL V. ANTOINETTIA D. ARMSTRONG

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

94051

981219522 542-90-4624

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

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Will. L. Martin, III

Clerk.

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

ATLANTA, SEPTEMBER 10, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0453
JAMES A. ROSE V. ARNITA THORPE

Upon consideration of the Application for 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.

98051
E58513

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

SEP 10 1998

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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.*

Will. L. Martin, III Clerk.

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

ATLANTA, SEPTEMBER 01, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0454

ROBERT C. KLAVER, deceased, V. GOLDEN PANTRY, ET AL

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

96051

249-29-9039 SU98CV0887G

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP - 1 1998

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

Will. L. Martin, III Clerk.

Court of Appeals of the State of Georgia

ATLANTA, SEP 10 1998

The Court of Appeals hereby passes the following order:

A98D0455. Parvin Daneshvari v. Ahmad Ziemaran

Parvin Daneshvari filed this application for discretionary appeal seeking review of the trial court's order denying her motion for new trial, new arbitration or other relief and granting Ahmad Zeimaran's motion to enforce the stipulation to binding arbitration. The trial court's order also entered a final judgment incorporating a May 8, 1998 arbitration award.

In her application, Daneshvari asserts two enumerations of error. First, she claims that the trial court erred in failing to have a hearing to determine whether the arbitration award was supported by the evidence, and second, that the trial court erred in failing to grant her a new arbitration or new trial. Both of these enumerations are without merit. The parties, through their counsel, entered into a stipulation for binding arbitration and requested that the case be removed from the trial court's jury trial calendar. Such a stipulation is binding, and Daneshvari's attempt to avoid its consequences is unavailing. See Ekereke v. Obong, 265 Ga. 728 (462 SE2d 372) (1995). Accordingly,

Daneshvari's application for discretionary appeal is denied.
Likewise, Zeimaran's request for attorney fees is also denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 10 1998

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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.*

Will. L. Martin, III Clerk.