

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

ATLANTA JULY 21, 2004

The Court of Appeals hereby passes the following order:

A04D0423. JEFFREY MARK REYNOLDS v. THE STATE.

Upon consideration of the motion for withdrawal of the above styled application, it is hereby ordered that said motion be GRANTED.

96-036

96CR1072V

*Court of Appeals of the State of Georgia
Clerk's Office, JULY 21, 2004*

*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.*

C. Will. L. Martin, Jr.

, Clerk.

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

ATLANTA, AUGUST 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0424

CARLA TUCK ET AL V. CITY OF STONE MOUNTAIN GEORGIA

ET AL

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

98036

03CV123145

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 04 2004

*I certify that the above is a true extract fromd
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 above written.*

Clerk.

C. Jill L. Martin, Clerk

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

ATLANTA, JULY 23, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0425

STEVEN B. TRAINER V. TERRY K. STILLS, ET AL

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

71036

2003CV78837

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 23 2004

*I certify that the above is a true extract fromd
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 above written.*

Clerk.

Will Z. Martin

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: August 12, 2004

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 **S04C2079**

STEVEN B. TRAINER v. TERRY K. STILLS et al.

Clerk, Supreme Court of Georgia

Case No. A04D0425

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 20 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 05 2004**

A04D0426. Edenfield v. The State

George Patrick Edenfield filed this discretionary application seeking review of the trial court's denial of his motion for out of time appeal. A denial of a motion for out of time appeal is directly appealable. *Lunsford v. State*, 237 Ga. App. 696 (515 SE2d 198) (1999). This Court will grant a timely discretionary application pursuant to OCGA § 5-6-35 (j) if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. In this case, however, Edenfield has filed a timely notice of appeal in addition to the instant application. Thus, OCGA § 5-6-35 (j) does not apply, and this application is DISMISSED. The Clerk of the Superior Court of Toombs County is hereby directed to immediately transmit to this Court the record in Edenfield's direct appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 05 2004

*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. Mait; _____, Clerk.

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

ATLANTA, AUGUST 04, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0427

FRED ALLEN BRINKLEY, II V. BASS PRO SHOPS ET AL

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

93036

03A76337

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

AUG 04 2004

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Clerk.

Will. L. Martine

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

JUL 26 2004

A04D0428. TACKETT v. THE STATE.

Upon entry of a negotiated guilty plea, Duane Tackett began serving a life sentence for kidnapping in 1987. He seeks an appeal from an order denying his "motion to vacate conviction and sentence based on fraud, inadvertance and lack of jurisdiction." Tackett raises no issue in his motion that could not have been first raised by way of a timely direct appeal. Moreover, he does not make the type of challenge that would support a direct appeal from the denial of a motion to correct void sentence. See *Williams v. State*, 271 Ga. 686, 689 (1) (523 SE2d 857) (1999). Because Tackett's application is essentially an untimely attempt to appeal his original conviction and sentence, the application is hereby *dismissed* for lack of jurisdiction. *Beasley v. State*, 255 Ga. App. 522 (566 SE2d 333) (2002).

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

JUL 26 2004

*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.*

C. Will. L. Martin, Jr., 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: August 16, 2004

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 **S04C2075**

DUANE TACKETT v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0428

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

AUG 19 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUL 26 2004**

A04D0429. Winfield v. The State

Glen Orlando Winfield seeks discretionary review of the trial court's July 15, 2003 order revoking his probation. This application was filed on July 14, 2004. An application for discretionary appeal must be filed within 30 days after entry of the order sought to be appealed. OCGA § 5-6-34 (d). Thus, this application is untimely. To the extent Winfield seeks to appeal his subsequent conviction and the denial of his amended motion for new trial filed on June 24, 2004, he has indicated that he has filed a notice of direct appeal with the trial court. That appeal will be considered by this Court in accordance with this Court's jurisdiction and rules.

Winfield's failure to appeal the revocation of his probation within 30 days after entry of that order deprives this Court of jurisdiction to consider this application. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUL 26 2004**

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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.*

C. Jill L. Martin, Clerk.

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

ATLANTA, AUGUST 16, 2004

The Court of Appeals passed the following order

Case No. A04D0429

GLENN ORLANDO WINFIELD V. THE STATE

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

91-036
03CR56042

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 16, 2004*

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the minutes of the Court of Appeals of Georgia.*

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Clerk.

C. Vill. L. Mart; JR

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

ATLANTA, AUGUST 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0430
ALLEN M. GRIFFIN V. MILTON NIX JR.

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

70036

2004CV81881

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 06 2004**

*I certify that the above is a true extract fromd
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 above written.*

C. Will. L. Mart; JR
Clerk.

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

ATLANTA, AUGUST 05, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0431

MARK PHENNEGER V. BAE SYSTEMS NORTH AMERICA, INC

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

92036

04V0277

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 05 2004

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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 above written.*

Clerk.

Will. L. Mart; [Signature]

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

ATLANTA, AUGUST 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0432
GARRETT WILLIAM CHISM V. JAMES R. DAVIS

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.

94036

04CV177W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 06 2004

*I certify that the above is a true extract fromd
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 above written.*

Clerk.

William L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 04 2004**

A04D0433. LARRY COHRAN v. NARVAL MANGAL.

Larry Cohran, the attorney who represented the plaintiff-former husband in the underlying divorce action, filed this discretionary application seeking review of an order of the superior court granting the defendant-former wife's motion for award of attorney fees pursuant to OCGA § 9-15-14 and directing him to personally pay a portion of the sum awarded. However, we conclude that appellate jurisdiction properly lies in the Supreme Court because the order complained of is ancillary to the underlying divorce case. *Hallman v. Emory University*, 225 Ga. App. 247 (483 SE2d 362) (1997); see also *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979) (holding in an analogous context that "an application for contempt to enforce the divorce decree is ancillary to, and an incident of, the divorce action, and jurisdiction to hear an appeal of this nature is in this court"); compare *Kluge v. Renn*, 226 Ga. App. 898 (487 SE2d 391) (1997) (abusive litigation action brought subsequent to underlying divorce case treated as a new action not within the divorce and alimony jurisdiction of the Supreme Court). Also, see *Evers v. Evers*, 277 Ga. 132 (587 SE2d 22) (2003)

(recent physical precedent).

For the foregoing reasons, Cohran's application for appeal is hereby TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 04 2004

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. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 03 2004**

A04D0434. WEICKERT v. WEICKERT.

Myra Y. Johnson Weickert seeks an appeal from an unsuccessful motion for contempt in which she sought to enforce the child support provisions of the parties' final divorce decree. Because the ruling complained of directly addresses enforcement and/or modification of the non-custodial provisions of a final divorce decree, Weickert's application is hereby *transferred* to the Supreme Court for disposition. Const. of 1983, Art. VI, § VI, Par. III (6); *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979); see also *Brown v. King*, 266 Ga. 890 (472 SE2d 65) (1996); *Smith v. Smith*, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985); *Hines v. Hines*, 237 Ga. 755 (1) (229 SE2d 744) (1976); compare *Ashburn v. Baker*, 256 Ga. 507 (350 SE2d 437) (1986) (jurisdiction in contempt action involving child custody issues, but not issues relating to divorce and alimony, is with the Court of Appeals).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 03 2004**

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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.*

C. Will. L. Mart; R, Clerk.

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

ATLANTA, AUGUST 06, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0435

QAASIM WAJID V. VICTORIA CHEN

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

98037

02CV2818

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 06 2004

*I certify that the above is a true extract fromd
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 above written.*

C. J. L. Marti^{Clerk.}

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

ATLANTA, AUGUST 25, 2004

The Court of Appeals passed the following order

Case No. A04D0435

QAASIM WAJID V. VICTORIA CHEN

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

98-037
02CV2818

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 25, 2004*

*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. Mat; JR

Court of Appeals of the State of Georgia

ATLANTA,

AUG 16 2004

The Court of Appeals hereby passes the following order:

A04D0436. BOBBY HARDWICK v. JOHN WILLIAMS ET AL.;
A04D0445. BOBBY HARDWICK v. JOHN WILLIAMS ET AL.

Bobby Hardwick sued John Williams in the Civil Court of Richmond County for the alleged breach of an oral contract. Hardwick later moved to add the Executor of the Estate of Sarater Williams as a party defendant. The Civil Court granted this motion. Hardwick then moved for a continuance so that he might pursue discovery relating to the added party. The trial court denied the motion and also denied Hardwick's motion for reconsideration.

Hardwick then petitioned the Richmond County Superior Court for a temporary restraining order and preliminary injunction, asking the superior court to compel the Richmond County Civil Court to order a continuance in the case so that discovery might proceed. The superior court ultimately denied the motion. Hardwick filed an application for discretionary appeal to this Court, docketed as discretionary application A04D0436, seeking review of the superior court's order.

In the meantime, the case proceeded to trial in the Richmond County Civil Court, and a jury found in favor of the defendants and awarded Hardwick nothing. Hardwick filed another discretionary application to this Court, docketed as discretionary application A04D0445, seeking review of the judgment on the jury verdict.

As to application A04D0436, the superior court did not have jurisdiction to review the interlocutory order denying Hardwick's motion for reconsideration of the denial of his motion for continuance. Review by the superior court of orders of the Richmond County Civil Court is only by writ of certiorari¹ and then only in limit situations, none of which are applicable here.² Hardwick's petition for a temporary restraining order and preliminary injunction against the Richmond County Civil Court was accordingly improper. The correct manner of challenging the order denying the motion for reconsideration was by interlocutory application to this Court. See OCGA § 5-6-34 (b). The superior court thus properly denied the petition for temporary restraining order and preliminary injunction. Application A04D0436 is accordingly DENIED.

Because application A04D0445 seeks an appeal from a final judgment in which the jury found for the defendants and awarded Hardwick nothing, the case is directly appealable pursuant to OCGA § 5-6-34 (a) (1).³ When an otherwise timely application for discretionary appeal is filed in a case where a direct appeal could have been filed under OCGA § 5-6-34 (a), an appellate court has jurisdiction and shall grant the application. OCGA § 5-6-35 (j). Because this application falls under OCGA § 5-6-35 (j), it is hereby GRANTED. Hardwick shall have ten (10) days from the date of this order to file a notice of appeal. OCGA § 5-6-35 (g). The Clerk of the

¹The superior court may only correct errors of law of a lower tribunal by writ of certiorari, OCGA § 5-4-1 (a); *Cochran v. Rockmart*, 242 Ga. 732, 733-734 (251 SE2d 259) (1978), and then only where final judgment has been entered in the case. *Attwell v. Sears, Roebuck*, 159 Ga. App. 811, 812 (2) (285 SE2d 199) (1981).

²See Ga. L. 1971 Vol. 2, p. 2745, § 27, as amended, relating to appeals and certiorari from the Civil Court of Richmond County.

³*Robinwood, Inc. v. Baker*, 206 Ga. App. 202 (1) (425 SE2d 353) (1992).

Civil Court of Richmond County 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 16 2004**

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. Mait;  Clerk.

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

ATLANTA, AUGUST 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0437
LESLIE NEW V. CITY OF HAPEVILLE

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

71037

2002CV60486

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 16 2004

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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 above written.*

Clerk.

C. Will. L. Mait; JR

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

ATLANTA, AUGUST 16, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0438

KELSEY REID V. THE STATE

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

90037

02CR9182

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 16 2004

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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 above written.*

Clerk.

C. Vill. L. Mart; [Signature]

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

ATLANTA, AUGUST 17, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0439
NATHANIEL HARPER 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.

93037

93F186422

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 17 2004

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

C. Jill L. ^{Clerk} Mait; 

Court of Appeals of the State of Georgia

ATLANTA,

AUG 16 2004

The Court of Appeals hereby passes the following order:

A04D0440. COLLIER v. STEPNOWSKI, et al.

Jerry Larry Collier filed a civil action against several defendants based on claims of false arrest and false imprisonment. This application for discretionary appeal is from an order granting the defendants' motion to dismiss Collier's action. Because the order complained of is not subject to the discretionary appeal procedure, Collier's application is *granted* as required under OCGA § 5-6-35 (j). Collier shall have ten days from the date of this order to file a notice of appeal with the superior court. The superior court is instructed 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 16 2004

*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.*

C. Vill. L. Mart; [Signature], Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 05 2004**

A04D0441. Anthony Thompson v. The State

Anthony Thompson filed this application for discretionary appeal. It is not apparent exactly what Thompson seeks to appeal; however, the only order contained in the application is an order denying his Motion to Dismiss the Indictment. A copy of the motion that was denied was not contained in the application. The order on its face denied a motion to dismiss an indictment which is an interlocutory order requiring compliance with OCGA § 5-6-34 (b). Thompson has not complied with the interlocutory appeal requirements. The order also shows that it was presented to the trial court by Leon Larke, Attorney for Defendant. Thus, Thompson is represented by counsel. Because Thompson is represented by counsel, he may not also represent himself. *Goodwin v. State*, 202 Ga. App. 655, 656 (415 SE2d 472) (1992). Accordingly, this Court lacks jurisdiction to consider this application and it is ordered DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 05 2004**

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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.*

C. Will. L. Mart; [Signature], Clerk.

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

ATLANTA,

The Court of Appeals hereby passes the following order: **SEP 01 2004**

A04D0441. THOMPSON v. THE STATE

The Motion for Reconsideration filed in the above-referenced matter is hereby **DISMISSED** as untimely. Motions for Reconsideration or Notices of Intent to Apply for Certiorari must be filed within ten (10) days of the date of the order or decision disposing of the case in this Court. Rules 37(b) and 38(a).

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **SEP 01 2004**

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William L. 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 13, 2004

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 **S05C0092**

ANTHONY DEVON THOMPSON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0441

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

SEP 17 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, SEPTEMBER 03, 2004

The Court of Appeals passed the following order

Case No. A04D0442

MARY ANN MCELROY V. GENERAL MOTORS CORPORATION

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

70-037
02A20374

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 03, 2004*

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

Will. L. Martini

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

ATLANTA, AUGUST 18, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0443

ANNIE PEARL WHIPPLE V. MICHAEL L. THURMOND

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

92037

20031252S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 18 2004

*I certify that the above is a true extract fromd
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 above written.*

Clerk.

Will. L. Marti, Jr.

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

ATLANTA, AUGUST 12, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0444

JACKIE LYNN TAYLOR V. RACHEL ELAINE ALLEN

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

94037

2003V647

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 12 2004

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

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hereto affixed the day and year last above above written.*

Clerk.

C. Vill. L. Mant; JR

Court of Appeals of the State of Georgia

ATLANTA,

AUG 16 2004

The Court of Appeals hereby passes the following order:

A04D0436. BOBBY HARDWICK v. JOHN WILLIAMS ET AL.;
A04D0445. BOBBY HARDWICK v. JOHN WILLIAMS ET AL.

Bobby Hardwick sued John Williams in the Civil Court of Richmond County for the alleged breach of an oral contract. Hardwick later moved to add the Executor of the Estate of Sarater Williams as a party defendant. The Civil Court granted this motion. Hardwick then moved for a continuance so that he might pursue discovery relating to the added party. The trial court denied the motion and also denied Hardwick's motion for reconsideration.

Hardwick then petitioned the Richmond County Superior Court for a temporary restraining order and preliminary injunction, asking the superior court to compel the Richmond County Civil Court to order a continuance in the case so that discovery might proceed. The superior court ultimately denied the motion. Hardwick filed an application for discretionary appeal to this Court, docketed as discretionary application A04D0436, seeking review of the superior court's order.

In the meantime, the case proceeded to trial in the Richmond County Civil Court, and a jury found in favor of the defendants and awarded Hardwick nothing. Hardwick filed another discretionary application to this Court, docketed as discretionary application A04D0445, seeking review of the judgment on the jury verdict.

As to application A04D0436, the superior court did not have jurisdiction to review the interlocutory order denying Hardwick's motion for reconsideration of the denial of his motion for continuance. Review by the superior court of orders of the Richmond County Civil Court is only by writ of certiorari¹ and then only in limit situations, none of which are applicable here.² Hardwick's petition for a temporary restraining order and preliminary injunction against the Richmond County Civil Court was accordingly improper. The correct manner of challenging the order denying the motion for reconsideration was by interlocutory application to this Court. See OCGA § 5-6-34 (b). The superior court thus properly denied the petition for temporary restraining order and preliminary injunction. Application A04D0436 is accordingly DENIED.

Because application A04D0445 seeks an appeal from a final judgment in which the jury found for the defendants and awarded Hardwick nothing, the case is directly appealable pursuant to OCGA § 5-6-34 (a) (1).³ When an otherwise timely application for discretionary appeal is filed in a case where a direct appeal could have been filed under OCGA § 5-6-34 (a), an appellate court has jurisdiction and shall grant the application. OCGA § 5-6-35 (j). Because this application falls under OCGA § 5-6-35 (j), it is hereby GRANTED. Hardwick shall have ten (10) days from the date of this order to file a notice of appeal. OCGA § 5-6-35 (g). The Clerk of the

¹The superior court may only correct errors of law of a lower tribunal by writ of certiorari, OCGA § 5-4-1 (a); *Cochran v. Rockmart*, 242 Ga. 732, 733-734 (251 SE2d 259) (1978), and then only where final judgment has been entered in the case. *Attwell v. Sears, Roebuck*, 159 Ga. App. 811, 812 (2) (285 SE2d 199) (1981).

²See Ga. L. 1971 Vol. 2, p. 2745, § 27, as amended, relating to appeals and certiorari from the Civil Court of Richmond County.

³*Robinwood, Inc. v. Baker*, 206 Ga. App. 202 (1) (425 SE2d 353) (1992).

Civil Court of Richmond County 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 16 2004

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. Mait;  Clerk.

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

ATLANTA, AUGUST 24, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0446
EULER-SIAC S.P.A. (CREAMAR SPA) V. DRAMA MARBLE
COMPANY, 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 State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

95038

03GR014069J

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG 24 2004**

*I certify that the above is a true extract fromd
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. Martini

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 18 2004**

A04D0447. HOWE & ASSOCIATES, P. C., v. DANIELS.

Howe & Associates, P. C., seeks an appeal from an order granting attorney Jerry A. Daniels' motion to foreclose an attorney's fees lien. Although the amount of the lien itself is less than \$10,000.00, the underlying action is not an action for damages in which a final judgment of \$10,000.00 or less was entered. Moreover, an action or motion on a lien is not considered an action for damages to which OCGA § 5-6-35 (a) (6) applies. See *Kelly v. Pierce Roofing Company, Inc.*, 220 Ga. App. 391 (469 SE2d 469) (1996). Because we conclude that the order complained of is not subject to the discretionary appeal procedure, this application is *granted* as required under OCGA § 5-6-35 (j). Applicant shall have ten days from the date of this order to file a notice of appeal with the superior court. The superior court is instructed 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 2004**

*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. Martz, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 10 2004**

A04D0448. In the Interest of: J. A. T., a child

Kelvin A. Tomlinson seeks discretionary review of the trial court's order denying his motion to set aside the Letter of Guardianship issued to Deborah Turner finding Tomlinson lacked standing to contest the guardianship. The order Tomlinson seeks to appeal was entered in the trial court on May 4, 2004. This application was not filed until July 29, 2004. An application for discretionary appeal must be filed within 30 days after entry of the order sought to be appealed. OCGA § 5-6-34 (d). Tomlinson's failure to timely file this application for discretionary appeal deprives this Court of jurisdiction to consider this application. Accordingly, this application is hereby DISMISSED for lack of jurisdiction. See *Styles v. State*, 245 Ga. App. 90, 91 (537 SE2d 377) (2000).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 10 2004**

*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. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

AUG 26 2004

A04D0449. MELVIN WILLIS v. THE STATE.

Melvin Willis filed this application for discretionary appeal seeking review of the trial court's order denying his motion to correct an illegal and void sentence. Although the application includes a copy of the order sought to be appealed, it does not contain a stamped "filed" copy of the order as required by Court of Appeals Rule 31 (d). On August 3, 2004, this Court ordered Willis to supplement his application with a stamped "filed" copy of the order sought to be appealed within 10 days or the application would be dismissed. No stamped "filed" order has been filed within the time allowed. Therefore, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 26 2004

*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.*

C. Will. L. Mait; [Signature], Clerk.

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

ATLANTA, AUGUST 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0450
DELTA AIR LINES, INC., ET AL V. AUDREY WILBERN

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

71038

2004CV85325

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 30 2004**

*I certify that the above is a true extract fromd
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 above written.*

Clerk.

C. L. Martin

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

AUG 20 2004

**A04D0451. GEORGIA DEPARTMENT OF HUMAN RESOURCES, EX REL.,
HEIDI BASSETT ET AL v. SANDRA B. HENDERSON.**

Pursuant to OCGA § 5-6-35 (a) (2), an application for discretionary appeal was filed in this case, seeking review of a superior court order modifying a foreign child support judgment entered in default against Sandra B. Henderson. The style of this case notwithstanding, the instant application was not filed by the Georgia Department of Human Resources, but by Lewis R. Bassett, Henderson's former husband and the custodial parent of their two children. Bassett failed to timely seek intervention in the superior court and is not a party to this action. There is no precedent for this Court to review by application a case which has no appellant, but instead only a non-party seeking the reversal of a judgment of the superior court. *In re Stroh*, 272 Ga. App. 894, 895 (534 SE2d 790) (2000). Accordingly, this application is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 20 2004

*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. Maitz, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

SEP 09 2004

**A04D0451. GEORGIA DEPARTMENT OF HUMAN RESOURCES ex rel.
HEIDI BASSETT et al. v. SANDRA HENDERSON**

In this motion for reconsideration, Lewis R. Bassett asks this court to reconsider the dismissal of his application for discretionary appeal. Contrary to Bassett's assertion in his brief, this court has not denied or even ruled on his motion to intervene, which was filed in the trial court. As Bassett correctly points out in his brief, that motion remains pending below. This court dismissed Bassett's application because his motion to intervene had not yet been ruled on in the trial court, and Bassett was not a party with standing to appeal. This court is satisfied that its initial dismissal of Bassett's application on that ground was correct. The motion for reconsideration is therefore DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 09 2004

*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. Marti, Jr.
....., Clerk.

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

ATLANTA, AUGUST 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0452
2025 EMERY HIGHWAY, LLC D/B/A CLUB EROTICA ET AL
V. TOMMY C. OLMSTEAD ET AL

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

93038

03CV22050

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 27 2004

*I certify that the above is a true extract fromd
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 above written.*

Clerk.

C. J. L. Maiti

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

ATLANTA, SEPTEMBER 07, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0453
DAVID J. MACDONALD V. WILLIE CARL HARRIS A/K/A
WILLIE CARR HARRIS

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

91038

01CV37708

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **SEP 07 2004**

*I certify that the above is a true extract fromd
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 above written.*

Clerk.

C. Will. L. Mait; JR

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

ATLANTA, OCTOBER 05, 2004

The Court of Appeals passed the following order

Case No. A04D0453

DAVID J. MACDONALD V. WILLIE CARL HARRIS A/K/A
WILLIE CARR HARRIS

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

91-038
01CV37708

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 05, 2004*

*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

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 25, 2004

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 **S05C0354**

DAVID J. MCDONALD v. WILLIE CARL HARRIS, a/k/a WILLIE CARR HARRIS

Clerk, Supreme Court of Georgia

Case No. A04D0453

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 26 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, AUGUST 18, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0454

NAKEHIA T. PHILLIPS V. HONORABLE CATHERINE E.

MALICKI, JUDGE OF THE MUNICIPAL COURT OF THE CITY

OF ATLANTA, ET AL

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

70038

2004CV83600

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 18 2004

*I certify that the above is a true extract fromd
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 above written.*

Clerk
Will. L. Maiti

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

ATLANTA, AUGUST 31, 2004

The Court of Appeals passed the following order

Case No. A04D0454

NAKEHIA T. PHILLIPS V. HONORABLE CATHERINE E.
MALICKI, JUDGE OF THE MUNICIPAL COURT OF THE CITY
OF ATLANTA, ET AL

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

70-038
2004CV83600

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 31, 2004*

*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.

C. Will. L. Martin, Jr.

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 20, 2004

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 **S05C0144**

NEKEHIA T. PHILLIPS v. CITY OF ATLANTA et al.

Clerk, Supreme Court of Georgia

Case No. A04D0454

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

SEP 22 2004

Clerk, Court of Appeals of Georgia

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **AUG 27 2004**

A04D0455. CHRISTOPHER HAYES v. THE STATE.

On April 24, 1990, Christopher Hayes was convicted of child molestation and cruelty to children. He was allowed to serve a portion of his sentence on probation. The trial court, however, revoked his probation by order dated June 2, 2004, for failure to report, failure to provide an address, and failure to register as a sex offender. Hayes did not include a copy of this order with his application. He subsequently filed a "Motion to Modify/Reconsider Revocation," a copy of which is also not included with the application. The trial court denied this motion on July 30, 2004, on the basis that Hayes' request for appointed counsel was untimely and unwarranted and that he had admitted that he had failed to report and failed to provide a valid address. On August 4, 2004, Christopher Hayes filed this application for discretionary appeal from the trial court's denial of this motion.

It appears from the application materials, including the trial court's detailed order, that the motion was in substance a motion for reconsideration of the court's June 2, 2004 revocation order. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within thirty days of entry of the appealable judgment, which in this case was the original order of revocation entered on June 2, 2004. A motion for reconsideration does not extend the time for filing an application for discretionary appeal. See *Simmons v. State*, 228 Ga. App. 470 (491 SE2d 908)

(1997). The time requirement in OCGA § 5-6-35 (d) is jurisdictional, and because Hayes failed to file a timely application for appeal, it must be DISMISSED.

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

AUG 27 2004

*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.*

C. J. L. Marti, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **OCT 18 2004**

A04D0455. CHRISTOPHER HAYES v. THE STATE.

On September 22, 2004, Christopher Hayes filed a motion for reconsideration of this court's August 27, 2004 order dismissing his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days from the rendition of the judgment. Hayes's motion for reconsideration is thus untimely and is hereby dismissed.

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

OCT 18 2004

*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. Mast; JR., 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: November 1, 2004

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 **S05C0412**

CHRISTOPHER HAYES v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A04D0455

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 03 2004

Clerk, Court of Appeals of Georgia

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

ATLANTA, AUGUST 30, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0456

KERRY ROSS V. THE STATE

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

94038

02CR086

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 30 2004

*I certify that the above is a true extract fromd
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 above written.*

Clerk.

C. Jill. L. Mait; [Signature]

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

ATLANTA, AUGUST 27, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0457
CHAMPION FREIGHTWAYS ET AL V. EDDIE HANNAH ET AL

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

95039

2004RCCV524

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 27 2004

*I certify that the above is a true extract fromd
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 above written.*

C. L. Marti, Jr.
Clerk.