

# Court of Appeals of the State of Georgia

ATLANTA, September 9, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0001. Reese v. The State.**

Leonard Reese filed an application for discretionary review, seeking to appeal the trial court's denial of his motion to vacate sentence. Reese included a copy of the trial court's order with his application, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e). On August 17, 2009, this Court ordered Reese to supplement his application within 10 days with a stamped "filed" copy of the order to be appealed. We noted that failure to comply with this directive would result in dismissal of the application.

Over 10 days have passed since we issued the August 17, 2009 order, and Reese has not submitted a stamped "filed" copy of the trial court's order. Accordingly, Reese's application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 09 2009

*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.*

*Willie L. Martin*, Clerk.

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

ATLANTA, SEPTEMBER 03, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0002  
FREDERICO PURNELL V. THE STATE

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

96001

SU09CR0926



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* SEP 03 2009

*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.*

*Willie L. Martin*

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

ATLANTA, AUGUST 28, 2009

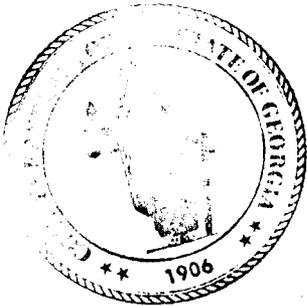
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0003  
AMY K. BELL V. ANTHONY JOHN GALIANO

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

98001

2007CV134441



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 28 2009**

*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.*

*Willie L. Martin*

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

ATLANTA, SEPTEMBER 10, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0004  
IN THE INTEREST OF: B. A. H. , A CHILD (FATHER)

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

90001

08J996



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 10 2009**

*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*

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

ATLANTA, SEPTEMBER 09, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0005  
JOHN RANDALL FUTCH V. ALLTEL COMMUNICATIONS, INC.

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

91001

STCV052151



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

SEP 09 2009

*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... [Signature]*

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

ATLANTA, SEPTEMBER 10, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0006  
IN THE INTEREST OF: B. A. H. , A CHILD (MOTHER)

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

90002  
08J996



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

SEP 10 2009

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, September 3, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0007. GREGORY GLOVER v. ASHMORE CONCRETE CONTRACTORS, INC. et al.**

Gregory Glover sued Ashmore Concrete Contractors and two individuals for breach of contract; Ashmore counterclaimed for money allegedly due under a promissory note. The trial court awarded summary judgment to Ashmore for approximately \$37,000. Glover filed a notice of appeal. Ashmore then filed a motion for a supersedeas bond, which the trial court granted. Rather than appeal that order, Glover filed a "Motion to Dismiss Defendant's Motion for Supersedeas Bond." He also filed a motion to proceed *in forma pauperis* in his appeal. The trial court denied both motions, and Glover now seeks discretionary review. We lack jurisdiction to consider the application.

Glover's motion to dismiss Ashmore's motion for supersedeas bond was, in effect, a motion for reconsideration of the trial court's order requiring Glover to post the bond. An order denying a motion for reconsideration is not itself appealable. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985). Nor does a motion for reconsideration extend the time for filing a discretionary application. *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (441 SE2d 452) (1994). Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the entry of the appealable judgment. Because Glover's application was filed 58 days after entry of the order requiring him to post a supersedeas bond, it is untimely.

With respect to the trial court's denial of Glover's motion to proceed as a pauper, "[i]t is clear under Georgia law that a trial court's discretion when reviewing an affidavit of indigence is not appealable." *Rolleston v. Estate of Sims*, 253 Ga. App.

182, 189 (9) (558 SE2d 411) (2002); see also OCGA § 5-6-47 (b); *Cottrell v. Askew*, 276 Ga. App. 717, 719 (624 SE2d 203) (2005). After Glover filed a pauper's affidavit, Ashmore filed a traverse. Glover then failed to present evidence or argument supporting his allegedly indigent status. Under these circumstances, we have nothing to review. See *Rolleston*, supra.

For these reasons, Glover's application for discretionary review is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 03 2009

*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.*

*Willie L. Martin*, Clerk.

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

ATLANTA,            OCTOBER    01, 2009

*The Court of Appeals passed the following order*

Case No. A10D0008

AUDREY MALONE V. ATLANTA POSTAL CREDIT UNION

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    OCT 01, 2009*

*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.*

*Willie L. Martin*

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

ATLANTA, SEPTEMBER 16, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0009  
IN THE INTEREST OF: Z. G. , A CHILD (FATHER)

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

92001

JUV090057

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta SEP 16 2009*

*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.*

*Willi Z. Mat...*

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

ATLANTA, SEPTEMBER 09, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0010

IN THE INTEREST OF: C. O. , A CHILD (FATHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97001

04409J00834



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 09 2009

*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*

# Court of Appeals of the State of Georgia

ATLANTA, September 3, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0011. CESAR ARAGON v. CORINA BRYANT.**

Cesar Aragon seeks discretionary review of a superior court order finding him in contempt of various non-custodial provisions of a divorce decree and subsequent consent order entered into between Aragon and his former wife. “[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court’s jurisdiction over ‘divorce and alimony cases.’ [Cits.]” *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004); see also Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). This application is therefore *TRANSFERRED* to the Supreme Court for disposition.

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

SEP 03 2009

*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.*

*Willie L. Martinez*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, September 8, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0012. PATH FOUNDATION, INC. v. THREE FORKS HERITAGE ALLIANCE, INC. ET AL.**

PATH Foundation, Inc. filed this discretionary application to appeal the award of OCGA § 9-15-14 attorney fees to Three Forks Heritage Alliance, Inc. and the other plaintiffs. In its application, PATH asserts that the superior court awarded the fees before entry of final judgment.

Generally, a party must follow the discretionary appeal procedures to appeal the award of OCGA § 9-15-14 attorney fees. OCGA § 5-6-35 (a) (10). However, PATH's assertion that the court awarded fees before entry of final judgment indicates that this case remains pending in the superior court. Therefore, PATH was required to follow the interlocutory appeal procedures. See OCGA § 5-6-34 (b); *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991). Its failure to do so deprives this Court of jurisdiction to consider this application, which is therefore **DISMISSED**.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 08 2009**

*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.*

*Willie L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 14, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0013. WAUCHOPE et al. v. LITTON LOAN SERVICES, LP.**

Radcliff and Sadie Wauchope have filed an application for discretionary appeal seeking review of an order of the magistrate court granting a writ of possession. This Court, however, lacks jurisdiction to consider the Wauchopes' application. "The only avenue of appeal available from [a] magistrate court judgment is provided by OCGA § 15-10-41 (b) (1), which allows for a de novo appeal to the state or superior court." *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991). Because we can only address magistrate court matters that have been reviewed by the state or superior court, we have no authority to consider this application for discretionary appeal. See *Westwind Corp. v. Washington Federal Savings & Loan Assn.*, 195 Ga. App. 411 (1) (393 SE2d 479) (1990). Accordingly, the application is hereby DISMISSED for lack of jurisdiction.



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

SEP 14 2009

*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, SEPTEMBER 03, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0015

IN THE INTEREST OF: N. N. , H. N. , CHILDREN (FATHER)

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

96002

03508J0389



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 03 2009

*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*

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

ATLANTA, SEPTEMBER 08, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0016  
CHARLES PRUITT ET AL V. ERNEST JOHNSON

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

98002

09A05183



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 08 2009

*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*

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

ATLANTA, SEPTEMBER 15, 2009

*The Court of Appeals hereby passes the following order:*

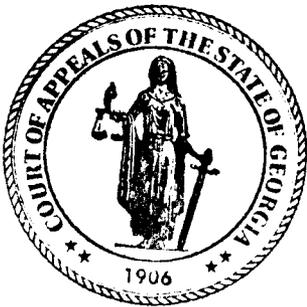
APPLICATION NO. A10D0017

IN THE INTEREST OF: K. M. V. AND T. C. V., CHILDREN (FATHER)

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

91002

09JV00462



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **SEP 15 2009**

*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*

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

ATLANTA, SEPTEMBER 10, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0018  
PERRY W. CONNELL V. LOWNDES COUNTY BOARD OF  
COMMISSIONERS 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.

71002

2009CV1351



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 10 2009

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

## **A10D0019. JOSEPH T. JOINES v. THE STATE.**

Joseph T. Joines was convicted of three counts of child molestation. We affirmed the convictions on direct appeal. *Joines v. State*, 264 Ga. App. 558 (591 SE2d 454) (2003). He later filed a “Motion for Void Judgement Based on Illegality of the Arrest and Void Indictment.” The trial court denied the motion, and Joines now seeks discretionary review.

Under OCGA § 17-9-4, “[t]he judgment of a court having no jurisdiction of the person or subject matter, or void for any other cause, is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it.” The denial of a motion filed under this provision is directly appealable. *Chester v. State*, 284 Ga. 162, 163 (2) (664 SE2d 220) (2008). To qualify as a § 17-9-4 motion, however, a defendant’s pleading “must allege a ground upon which the judgment of conviction entered against [him] can be declared void.” *Id.* If the pleading does not allege such a ground, an order denying it cannot be appealed. See *id.*; *Wallace v. State*, 284 Ga. 429 (667 SE2d 590) (2008).

In his motion, Joines asserted that his arrest was illegal because his “record” does not contain an arrest warrant signed and filed by a magistrate showing probable cause for his arrest. However, “illegal arrest or detention does not void a subsequent conviction.” *State v. Houston*, 234 Ga. 721, 722 (218 SE2d 13) (1975); see also *Morrison v. State*, 280 Ga. 222, 223-224 (626 SE2d 500) (2006).

Joines also asserted that his convictions are void because the state’s witnesses were not sworn before the grand jury. He surmises that the witnesses were not sworn because the “record” does not contain the subpoenas compelling their attendance. The

proper time to raise challenges to the legality of grand jury proceedings is before trial. See *Chatterton v. State*, 221 Ga. 424, 436 (11) (144 SE2d 726) (1965). "Even if there was some error in the grand jury proceedings, the verdict of guilty beyond a reasonable doubt demonstrates *a fortiori* that there was probable cause to charge the defendant with the offenses for which he was convicted." (Punctuation and citation omitted.) *Isaacs v. State*, 259 Ga. 717, 720 (2) (b) (386 SE2d 316) (1989); see also *Ferrell v. State*, 203 Ga. App. 479, 480 (1) (416 SE2d 903) (1992). Any possible error in the proceedings would not void the conviction.

Because Joines' motion did not allege a ground that could have voided his convictions, the order denying the motion is not subject to appellate review. We therefore DISMISS this application. See *Wallace*, supra; *Collins v. State*, 277 Ga. 586 (591 SE2d 820) (2004).



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 09 2009

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. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 14, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0020. IN THE INTEREST OF: N.A.U.E., A CHILD (FATHER).**

The father of N.A.U.E. seeks discretionary review of the juvenile court's order terminating his parental rights. Among other arguments, the father challenges the constitutionality of OCGA § 5-6-35 (a) (12), which requires an application for discretionary appeal from an order terminating parental rights. The Supreme Court has exclusive appellate jurisdiction over all cases in which the constitutionality of a statute is called into question. See Ga. Const. Art. VI, Sec. VI, Par. II (1). "[I]n order to invoke that jurisdiction, the record must show that the trial court specifically passed on the constitutional issue." *Fulton County v. Galberaith*, 282 Ga. 314, 315 (1) (647 SE2d 24) (2007).

The father's application materials do not demonstrate that his constitutional challenge has been preserved for appellate review. Out of deference to the Supreme Court's appellate jurisdiction, however, this Court deems it appropriate to assume for present purposes that an unsuccessful constitutional challenge to the validity of OCGA § 5-6-35 (a) (12) was properly made and expressly denied, or that this issue has otherwise been preserved for potential appellate review.<sup>1</sup>

We therefore **TRANSFER** this application to the Supreme Court for disposition.

---

<sup>1</sup>As a practical matter, we question whether a challenge to the constitutionality of an *appellate* procedure can be litigated in a *trial* court.



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

**SEP 14 2009**

*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.*

*Willie L. Mantz*, Clerk.

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

ATLANTA, SEPTEMBER 17, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0021

BRUCE JONES V. THE STATE

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

97002

CR042249

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* SEP 17 2009

*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.*

*Willi Z. Mart; R*

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

ATLANTA, SEPTEMBER 11, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0022  
GREGORY N. CRAWFORD V. ELAINE GROOMS ET AL

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

70002

CV051832



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 11 2009

*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.*

*Willie L. Mat... [Signature]*

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

ATLANTA, SEPTEMBER 09, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0023  
OLVIN GOMEZ V. INDALEX INC., ET AL

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

99002

2009CV2832



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 09 2009

*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. McIntire*

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

ATLANTA, SEPTEMBER 10, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0024  
LOWNDES COUNTY BOARD OF COMMISSIONERS ET AL V. PERRY  
W. CONNELL

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.

71003

2009CV1351



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 10 2009

*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.*

*Willie L. Martin*

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C0251

Atlanta, March 01, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**SAMUEL SCROGGINS v. THE STATE**

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.

Court of Appeals Case No.

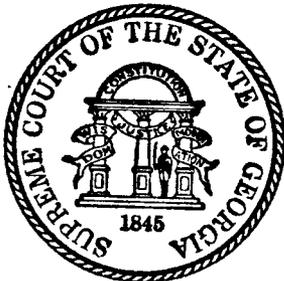
A10D0025

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 17, 2010

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.



*Pamela M. Smith*, Deputy Clerk

RECEIVED  
MARCH 16 11 21 10

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0251

Atlanta, March 01, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**SAMUEL SCROGGINS v. THE STATE**

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 and the application for appeal be granted.

All the Justices concur.

Court of Appeals Case No.  
A10D0025

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta March 17, 2010

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.



*Pamela M. Smith*, Deputy Clerk



SUPREME COURT OF GEORGIA  
Case No. S10C0251

Atlanta, March 01, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

**SAMUEL SCROGGINS v. THE STATE**

Upon consideration of the Petition for Certiorari to review the judgment of the Court of Appeals in this case, it is ordered that it be hereby granted.

It is further ordered that the application for appeal is hereby granted. Notice of Appeal directed to the Supreme Court should be filed in the trial court within 10 days from the date of this order, timely enumeration of errors and briefs to be filed in this Court after the record is docketed here. The case will be automatically assigned to an oral argument calendar upon docketing. Oral argument is mandatory in granted certiorari cases. All the Justices concur.

The Court is particularly concerned with the following:

Whether a trial court has the authority to grant an out-of-time discretionary appeal in a criminal case as a remedy for counsel's failure to timely file a discretionary application?

Court of Appeals Case No. A10D0025

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from  
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.

*Theresa S. Barnes*, Clerk

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

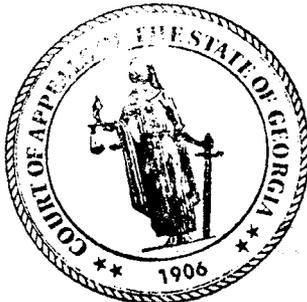
ATLANTA,                      OCTOBER      01, 2009

*The Court of Appeals passed the following order*

Case No. A10D0025

SAMUEL SCROGGINS V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    OCT 01, 2009*

*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.*

*Willie L. Martin*

RECEIVED  
OCT 15 10 54 AM '09  
CLERK'S OFFICE  
COURT OF APPEALS  
STATE OF GEORGIA

# Court of Appeals of the State of Georgia

ATLANTA, September, 17, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0025. SAMUEL SCROGGINS v. THE STATE.**

Samuel Scroggins seeks discretionary review of the trial court's orders revoking his probation. An application for discretionary appeal must be filed within thirty days of the order sought to be appealed. OCGA § 5-6-35 (d). The orders that Scroggins seeks to appeal were entered on August 5, 2008, but Scroggins did not file this application until more than one year later, on August 25, 2009. Consequently, this application is untimely, and we lack jurisdiction to consider it.

Scroggins relies on an August 13, 2009 order of the trial court granting his motion for an out-of-time discretionary appeal, but an out-of-time discretionary appeal is not authorized by OCGA § 5-6-35 or any other Code section. The trial court had no authority to extend the time for filing a discretionary appeal. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). We therefore **DISMISS** this application.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 17 2009

*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.*

*Willi Z. Mant*

Clerk.

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

ATLANTA,

SEPTEMBER 10, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0026  
BOARD OF TRUSTEES FOR THE FULTON COUNTY EMPLOYEES  
RETIREMENT SYSTEM ET AL V. CYNTHIA LAURIE

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.

95003

2007CV128125



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 10 2009

*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.*

*Willie L. Martin*

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

ATLANTA, SEPTEMBER 10, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0027

CYNTHIA LAURIE ET AL V. BOARD OF TRUSTEES FOR THE FULTON  
COUNTY EMPLOYEES RETIREMENT SYSTEM, 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.

95004

2007CV128125



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 10 2009

*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*

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

ATLANTA, SEPTEMBER 11, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0028  
SUNDAY N. UDOINYION V. REMAX OF ATLANTA, ET AL

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

96003

09GC124945



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* SEP 11 2009

*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 above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**A10D0028. Udoinyion v. ReMax of Atlanta et al.**

Respondents ReMax of Atlanta, Bill Reed, and Katie Milling have requested that this Court impose a penalty against Sunday Udoinyion pursuant to Court of Appeals Rule 15 for filing a frivolous application for discretionary appeal. Upon due consideration, the motion is hereby DENIED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* SEP 11 2009

*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. McIntosh*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 11, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0029. ANN ROYSTON DOVE v. TY COBB HEALTHCARE SYSTEMS, INC.**

Ann Royston Dove brought a medical malpractice action against Ty Cobb Healthcare Systems, d/b/a Brown Memorial Convalescent Center. After the trial court awarded partial summary judgment to the defendant on statute of limitations grounds, Dove filed this application for discretionary appeal. The grant of a motion for partial summary judgment is directly appealable. OCGA § 9-11-56 (h); see also *Whiddon v. Stargell*, 192 Ga. App. 826, 828 (386 SE2d 884) (1989). Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, Dove's application is hereby GRANTED. Dove shall have 10 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 appellate record.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **SEP 11 2009**

*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.*

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, SEP 21 2009

*The Court of Appeals hereby passes the following order:*

**A10D0030. CITY OF HOSCHTON ET AL. v. TOWN OF BRASELTON.**

The Town of Braselton filed an action for declaratory and injunctive relief, seeking, among other things, to invalidate the City of Hoschton's annexation of certain property. The parties moved for summary judgment. The trial court granted Braselton's motion for summary judgment and denied Hoschton's motion for summary judgment. Hoschton filed this application for discretionary appeal, as well as a notice of appeal, from the trial court's order.

This is not an appeal from superior court review of an administrative proceeding, OCGA § 5-6-35 (a) (1), nor does it fall within any other provision of OCGA § 5-6-35 (a). The order is thus directly appealable and is not subject to the discretionary appeal requirements. This Court will grant an otherwise 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, Hoschton states that it has filed a notice of appeal in the trial court. Thus, OCGA § 5-6-35 (j) does not apply, and the application is accordingly **DISMISSED** as superfluous.

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

SEP 21 2009

*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.*

*Willi Z. Mart*

, Clerk.

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

ATLANTA, SEPTEMBER 17, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0031

SCOTT AND SONS HOLDINGS, LLC V. AZTEC STONE EMPIRE, INC

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

91003

2008CV160224

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta SEP 17 2009*

*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.*

*Willi Z. Mart; [Signature]*

# Court of Appeals of the State of Georgia

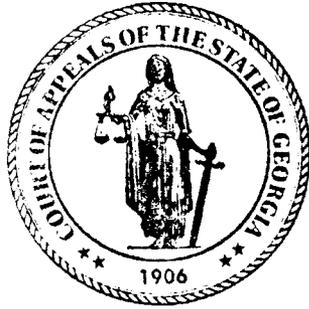
ATLANTA, September 15, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0032. Scott v. Estate of Geraldine Scott, deceased.**

Richard Scott seeks discretionary review of an order determining the heirs of Geraldine Scott, who died intestate in 2007. The record shows that in March 2009, the administrator of Geraldine Scott's estate filed a Petition for the Determination of Heirs with the Probate Court of Dekalb County. The petition listed seven potential heirs, including Richard Scott. Following an evidentiary hearing, the probate court determined the status of each potential heir, and with respect to Richard Scott, concluded that he was not an heir-at-law.

Richard Scott filed a timely application for discretionary appeal from the probate court's ruling. The ruling, however, is directly appealable and not subject to the discretionary appeal requirements. See OCGA § 15-9-120 (2); OCGA § 15-9-123 (a); OCGA § 5-6-33 (a) (2); *O'Regan v. Brennan*, 204 Ga. App. 50 (418 SE2d 389) (1992). Accordingly, the application for discretionary appeal is hereby GRANTED pursuant to OCGA § 5-6-35 (j). Richard Scott shall have ten days from the date of this order to file his notice of appeal in the probate court. OCGA § 5-6-35 (g). The clerk of the probate 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* **SEP 15 2009**

*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.*

*Willi L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 17, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0033. ANDRE TESSIER DU CROS v. ANN HERRERA.**

Georgia Bevis filed a claim for separate maintenance against her husband, Andre Tessier Du Cros. The superior court ordered Du Cros to make temporary alimony payments to Bevis, who has since died. Du Cros now seeks discretionary review of an order finding him in contempt for failing to make the required payments to Bevis's estate. He argues, among other things, that his alimony obligations ended upon his wife's death.

"[T]he Supreme Court shall have appellate jurisdiction of . . . [a]ll divorce *and* alimony cases. . . ." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6) (emphasis supplied). Because this application solely involves alimony, it lies outside the jurisdiction of this Court. See generally *Morris v. Morris*, 284 Ga. 748 (670 SE2d 84) (2008); *Anthony v. Anthony*, 236 Ga. 508 (224 SE2d 349) (1976); *Shepherd v. Shepherd*, 233 Ga. 228 (210 SE2d 731) (1974). The application is therefore TRANSFERRED to the Supreme Court.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      SEP 17 2009

*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.*

*Willi Z. Mant*;  , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 15, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0034. SHONTAE SCOTT v. TALBOT STATE BANK**

Upon consideration of this application for discretionary appeal, the application is **DENIED**. The "Motion for Supersedeas, Motion to Stop Pending Action Emergency" is **DISMISSED AS MOOT**.



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

**SEP 15 2009**

*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,            OCTOBER    05, 2009

*The Court of Appeals passed the following order*

Case No. A10D0034

SHONTAE SCOTT V. TALBOT STATE BANK

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

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    OCT 05, 2009*

*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.*

*Willie L. Martin*



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

ATLANTA, SEPTEMBER 15, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0035  
CAPITAL CITY INSURANCE COMPANY V. TIMOTHY BEARDEN

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.

70003

07CV805



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 15 2009

*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 above written.*

*Clerk.*

*Will L. Martin*

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

ATLANTA, SEPTEMBER 22, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0036  
BILLY JOE DENNIS V. LAURA I. DENNIS

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.

99003

DR060879



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* SEP 22 2009

*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...*

# Court of Appeals of the State of Georgia

ATLANTA, September 16, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0037. CHARLES SPRY v. AMY LYONS a/k/a AMY PHILLIPS.**

Charles Spry seeks discretionary review of the denial of his petition to modify his child support obligation set forth in a final divorce decree. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over “[a]ll divorce and alimony cases.” In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985). As the underlying subject matter in this case involves child support, this Court lacks jurisdiction over this application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Accordingly, this application is *TRANSFERRED* to the Supreme Court of Georgia.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      SEP 16 2009

*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.*

*Willi Z. Mantz*, Clerk.

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

ATLANTA, SEPTEMBER 29, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0038  
SCOTT CRAWFORD V. BEKAERT CORPORATION ET AL

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

96004

09CV02280



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* SEP 29 2009

*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.*

*W. L. Clerk*  
*Matthew*

# Court of Appeals of the State of Georgia

ATLANTA, September 17, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0039. NEELEY v. HUGHES.**

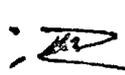
Danielle Neeley, the biological mother of J. N., filed an application for discretionary appeal seeking review of the trial court's order terminating her parental rights and granting an adoption petition filed by Amanda Hughes. Because the appeal stems from adoption proceedings, however, no application is required. See *Families First v. Gooden*, 211 Ga. App. 272, 274 (1) (439 SE2d 34) (1993). This is true even if the order also serves to terminate parental rights. See, e. g., *id.*

Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, Neeley's application is hereby GRANTED. She shall have 10 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 appellate record.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      SEP 17 2009

*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.*

*Willi Z. Mart* 

, Clerk.

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

ATLANTA,

SEPTEMBER 28, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0040

RICHARD WILLIAMS V. THE STATE

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

90004

932363



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **SEP 28 2009**

*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. Matia*

# Court of Appeals of the State of Georgia

ATLANTA, September 16, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0041. DAVID SHEARN v. CERAMIC PRINTS, INC.**

David Shearn sought an interlocutory injunction to restrain his former employer from enforcing restrictive covenants in the parties' employment agreement. The trial court denied the motion, and Shearn now seeks discretionary review in this Court. The denial of a motion for interlocutory injunction is directly appealable under OCGA § 5-6-34 (a) (4). See *Haygood v. Tilley*, 295 Ga. App. 90 n. 1 (670 SE2d 800) (2008). Because the trial court's order is directly appealable, we hereby GRANT Shearn's application for appeal. See OCGA § 5-6-35 (j). If he has not already filed one, Shearn shall have ten days from the date of this order to file a notice of appeal in 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*      **SEP 16 2009**

*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.*

*Willi Z. Mantz*, Clerk.

# Court of Appeals of the State of Georgia

*[Handwritten Signature]*  
ATLANTA,

<b>PROPOSED ORDER</b> (A10D0041.91) September 14, 2009 (by Doyle)	
<b>AGREE</b>	<b>DISAGREE</b>

*The Court of Appeals hereby passes the following order:*

## **A10D0041. DAVID SHEARN v. CERAMIC PRINTS, INC.**

David Shearn sought an interlocutory injunction to restrain his former employer from enforcing restrictive covenants in the parties' employment agreement. The trial court denied the motion, and Shearn now seeks discretionary review in this Court. The denial of a motion for interlocutory injunction is directly appealable under OCGA § 5-6-34 (a) (4). See *Haygood v. Tilley*, 295 Ga. App. 90 n. 1 (670 SE2d 800) (2008). Because the trial court's order is directly appealable, we hereby GRANT Shearn's application for appeal. See OCGA § 5-6-35 (j). If he has not already filed one, Shearn shall have ten days from the date of this order to file a notice of appeal in 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*

*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, September 22, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0042. IN THE INTEREST OF: V.D., A CHILD (MOTHER).**

Rena Crespo filed this application seeking a discretionary appeal of an order finding her daughter to be deprived and placing temporary legal custody of the child with the Department of Family and Children Services. A juvenile court order finding a child to be deprived and placing her in the temporary custody of the Department of Family and Children Services is a final order from which a direct appeal will lie.<sup>1</sup> *In the Interest of S.A.W.*, 228 Ga. App. 197 (491 SE2d 441) (1997). Therefore, Crespo's application is **GRANTED** as required by OCGA § 5-6-35 (j). She shall have ten days from the date of this order to file her notice of appeal in the juvenile court. The clerk of the juvenile court is instructed to include a copy of this order in the record transmitted to this court.

---

<sup>1</sup>In 2007, the Georgia Legislature amended OCGA § 5-6-35 as to appeals of orders terminating parental rights. Act 264, H. B. No. 369 (the "Act"). Before the changes, orders terminating parental rights were directly appealable as a matter of right. *In re S. N. S.*, 182 Ga. App. 803 (357 SE2d 127) (1987); *In the Interest of R. L. Y.*, 180 Ga. App. 559 (349 SE2d 800) (1986). The Act now requires an application for discretionary appeal to appeal such orders. OCGA § 5-6-35 (a) (12). Although deprivation proceedings are part of the termination process, by its terms subsection (12) only applies to "[a]ppeals from orders terminating parental rights," not orders finding deprivation.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 22 2009**

*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,            OCTOBER    01, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0043

GEORGIA DEPARTMENT OF COMMUNITY HEALTH V. TERESE'S, INC.,  
D/B/A PEACH ORCHARD DRUGS

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.

93004

2007RCC



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

OCT 01 2009

*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.

*Willi L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

October 1, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0044. Postell v. McKee et al.**

Following the entry of judgment in his lawsuit against James McKee, Crandall Postell filed a notice of appeal in the trial court, as well as a pauper's affidavit. Thereafter, the trial court clerk's office informed Postell that it would prepare the appellate record upon payment of \$481.00 in costs by July 6, 2009. Postell filed a "Motion to Abate and Toll the Time for Filing Fees," asking the trial court to extend the date for paying costs until it ruled on his request to proceed in forma pauperis. The trial court denied the motion, and Postell filed this application for discretionary appeal.

We lack jurisdiction. Postell's request to proceed in forma pauperis remains pending below. The trial court has not yet ruled on the issue, and its order denying the "Motion to Abate and Toll the Time for Filing Fees" cannot be viewed as a final order. To appeal that ruling, therefore, Postell was required to obtain a certificate of immediate review pursuant to the interlocutory appeal procedures in OCGA § 5-6-34 (b). His failure to do so deprives this Court of jurisdiction over the application, which is hereby DISMISSED. See *Pace Constr. Corp. v. Northpark Associates*, 215 Ga. App. 438, 439-440 (215 SE2d 438) (1994).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **OCT 01 2009**

*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.*

*Willie L. McIntosh* Clerk.

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

ATLANTA,                      OCTOBER      06, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0045

IN THE INTEREST OF : D. G. & R. R. , CHILDREN (MOTHER)

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

97004

08J1261



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 06 2009**

*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.*

*Willie L. Martinez*

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

ATLANTA,                      SEPTEMBER 30, 2009

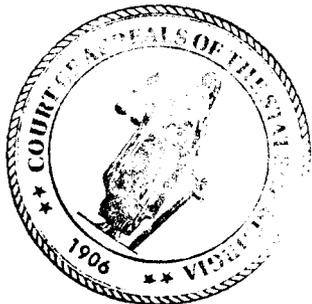
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0046  
EDDIE CHARLES VICKERS V. THE STATE

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

70004

2004FE040



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      SEP 30 2009

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, September 17, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0047. ATKINS v. THE STATE.**

Dwayne Atkins was found guilty of numerous criminal offenses, including methamphetamine possession, and his convictions were affirmed on appeal. See *Atkins v. State*, 291 Ga. App. 863 (663 SE2d 286) (2008). He subsequently filed a motion to supplement the record, which the trial court denied on August 3, 2009. On September 8, 2009, Atkins filed an application for discretionary appeal seeking review of that ruling.

An application for discretionary review must be filed within 30 days of the order sought to be appealed. OCGA § 5-6-35 (d). Because Atkins file his application 36 days after entry of the order, it is untimely, and we lack jurisdiction to consider it. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). The application is therefore DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      SEP 17 2009

*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 Z. Mart* , Clerk.

—

# Court of Appeals of the State of Georgia

ATLANTA, October 5, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0048. Cain v. The State.**

Joseph Hinton Cain seeks discretionary review of the trial court's order denying his "Pro Se Motion for Out of Time Withdrawal of Guilty Plea." The order was entered on July 31, 2009, but Cain did not file this discretionary application until September 9, 2009.

To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Cain filed his application 40 days after entry of the order at issue here.<sup>1</sup> Accordingly, we lack jurisdiction to consider the application, which is hereby DISMISSED. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      OCT - 5 2009

*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.*

*Willi Z. Mart*, Clerk.

---

<sup>1</sup> Although Cain initially submitted his application on August 26, 2009, we could not file or docket the application at that time because it did not include a certificate of service showing the complete name and mailing address of opposing counsel. See Court of Appeals R. 6.

# Court of Appeals of the State of Georgia

ATLANTA, September 22, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0049. JENKINS v. CITY OF LAKE CITY.**

Angelo Jenkins sued Lake City for malicious prosecution. In an order entered May 15, 2009, the trial court granted the city's motion for summary judgment. Instead of filing a direct appeal from that order, Jenkins filed a "motion to set aside or reconsider" the order. The trial court denied Jenkins' motion, and he now seeks discretionary review.

Under OCGA § 5-6-35 (a) (8), the denial of a motion to set aside a judgment under OCGA §§ 9-11-60 (d) or (e) may be appealed by following the discretionary application procedures. See *MMT Enterprises v. Cullars*, 218 Ga. App. 559, 561 (2) (462 SE2d 771) (1995). In determining whether Jenkins' motion was, in actuality, a motion to set aside, we look to the substance of the motion rather than its nomenclature. See *Martin v. Williams*, 263 Ga. 707, 708 (1) (438 SE2d 353) (1994). In the motion, Jenkins argued that material disputes of fact precluded summary judgment; he did not seek to set aside the judgment on any of the bases set forth in OCGA §§ 9-11-60 (d) or (e). Thus, the motion was, in substance, one for reconsideration, not to set aside. The denial of a motion for reconsideration is not appealable in its own right, nor does it extend the time to file an application for appeal. *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000).

Because this application is taken from a non-appealable order, the application is *DISMISSED* for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**SEP 22 2009**

*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.*

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 29, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0050. STAN'S PHARMACY, INC. ET AL. v. THE GEORGIA STATE BOARD OF PHARMACY.**

Stan's Pharmacy, Inc. and Stanley N. Smith (together, "Smith") filed this negligence action against the Georgia State Board of Pharmacy and its members. The trial court granted the defendants summary judgment and dismissed Smith's action. Smith then filed this application for discretionary appeal, as well as a notice of appeal.

This is not an appeal from superior court review of an administrative proceeding, OCGA § 5-6-35 (a) (1), nor does it fall within any other provision of OCGA § 5-6-35 (a). The order is thus directly appealable and is not subject to the discretionary appeal requirements. This Court will grant an otherwise 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, Smith has filed a notice of appeal in the trial court. In fact, that appeal has been docketed and is pending as Case No. A10A0124. Thus, OCGA § 5-6-35 (j) does not apply, and the application is accordingly **DISMISSED** as superfluous.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **SEP 29 2009**

*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.*

*Willie L. Martinez*, Clerk.

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

ATLANTA, SEPTEMBER 30, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0051  
CHRISTOPHER SHANE BAGLEY 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 STATE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98005

07M5580

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 30 2009

*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 above written.*

*Clerk.*

*Willie L. Mat...*



# Court of Appeals of the State of Georgia

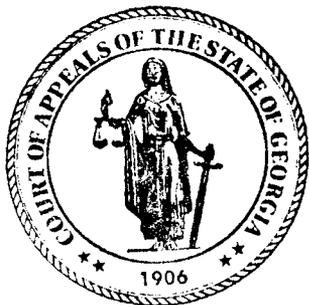
ATLANTA, October 7, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0052. Stone v. The State.**

Duncan E. Stone filed an application for discretionary review, seeking to appeal the trial court's order denying his motion to set aside his sentence. Duncan included a copy of the trial court's order with his application, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e). On September 14, 2009, this Court ordered Duncan to supplement his application within 10 days with a stamped "filed" copy of the order to be appealed. We noted that failure to comply with this directive would result in dismissal of the application.

Over 10 days have passed since we issued the September 14, 2009 order, and Duncan has not submitted a stamped "filed" copy of the trial court's order. Accordingly, Duncan's application is hereby **DISMISSED**.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **OCT 07 2009**

*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.*

*Willie L. Martinez*, Clerk.

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

ATLANTA,                      OCTOBER      08, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0053  
IN THE INTEREST OF: C. J. B. , A CHILD (MOTHER)

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

91005  
09JV29



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 08 2009**

*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. Martinez*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** October 29, 2009

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 **S10C0354**

**NEESMITH ESTATE v. LIFE OF THE SOUTH**

Clerk, Supreme Court of Georgia

Case No. A10D0054

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 05 2009

Clerk, Court of Appeals of Georgia

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

ATLANTA,            OCTOBER    16, 2009

*The Court of Appeals passed the following order*

Case No. A10D0054

NEESMITH ESTATE V. LIFE OF THE SOUTH

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    OCT 16, 2009*

*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*

# Court of Appeals of the State of Georgia

ATLANTA, September 29, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0054. NEESMITH ESTATE v. LIFE OF THE SOUTH.**

On August 6, 2009, the superior court entered an order granting summary judgment to defendant Life of the South in this action brought by the Estate of Thomas Melvin Neesmith. Instead of filing a direct appeal from this order, the Estate filed a motion for reconsideration. On August 20, 2009, the superior court denied the motion for reconsideration. The Estate filed this application for discretionary appeal on September 11, 2009. We lack jurisdiction.

The Estate's application, filed 36 days after the order granting summary judgment, is untimely relative to that directly appealable order. And the subsequent order denying the Estate's motion for reconsideration is not appealable in its own right, nor does such a motion serve to extend the time for filing an application for appeal. *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). The Estate's argument in its application that the motion for reconsideration was in effect a motion to set aside is unavailing. The Estate did not allege in the motion for reconsideration any of the grounds for setting aside a judgment under OCGA § 9-11-60 (d).

Because the Estate did not file its application within 30 days of an appealable order, this application for appeal is hereby **DISMISSED** for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **SEP 29 2009**

*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.*

*Willie L. Martin*      , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 22, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0055. HAYGOOD et al. v. STILES et al.**

Johnny and Donna Haygood have filed an application for discretionary appeal seeking review of an order of the magistrate court setting bond and imposing special conditions of bond. This Court, however, lacks jurisdiction to consider the Haygoods' application.

“The only avenue of appeal available from [a] magistrate court judgment is provided by OCGA § 15-10-41 (b) (1), which allows for a de novo appeal to the state or superior court.” *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991). Because we can only address magistrate court matters that have been reviewed by the state or superior court, we have no authority to consider this application for discretionary appeal. See *Westwind Corp. v. Washington Federal Savings & Loan Assn.*, 195 Ga. App. 411 (1) (393 SE2d 479) (1990).

Moreover, the lower court's bond order is not a final order because the case in magistrate court remains pending below. See, e. g., *Pruett v. Commercial Bank of Georgia*, 211 Ga. App. 692, 694 (440 SE2d 85) (1994). Thus, the Haygoods' failure to comply with the interlocutory appeal requirements would also deprive this Court of jurisdiction. See OCGA § 5-6-34 (b). For these reasons, this appeal is hereby DISMISSED for lack of jurisdiction.



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

**SEP 22 2009**

*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,                    OCTOBER    13, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0056  
DONNIE JEROME ROBINSON V. THE STATE

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

92005  
07CR242



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **OCT 13 2009**

*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.*

*Willie L. Martin*

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

ATLANTA,                      OCTOBER      14, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0057  
RANDALL BRYAN SHERROD V. THE STATE

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

97005

1J06CR052



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 14 2009**

*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... [Signature]*

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

ATLANTA, SEPTEMBER 30, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0058  
LARRY KEITH WORSHAM 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.

70005

2009CV167684



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP 30 2009

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, October 13, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0060. Cole v. The State.**

Alfred Cole filed an application for discretionary review, seeking to appeal the trial court's order denying his extraordinary motion for new trial. Cole included a copy of the trial court's order with his application, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e). On September 16, 2009, this Court ordered Cole to supplement his application within 10 days with a stamped "filed" copy of the order to be appealed. We noted that failure to comply with this directive would result in dismissal of the application.

Over 10 days have passed since we issued the September 16, 2009 order, and Cole has not submitted a stamped "filed" copy of the trial court's order. Accordingly, Cole's application is hereby DISMISSED.<sup>1</sup>

---

<sup>1</sup> Cole asks us to review his application based on the trial court order that he submitted with the application, which lacks a filing stamp and filing date. That order, however, shows that it was signed by the trial court on August 7, 2009. If we were to treat that date as the lower court filing date, Cole's application, which was filed on September 14, 2009, would be untimely and subject to dismissal. See OCGA § 5-6-35 (d) (application for discretionary appeal must be filed within 30 days of the date of the order sought to be appealed).

Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **OCT 13 2009**

*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. Martinez*, Clerk.

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

ATLANTA,            OCTOBER    15, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0061

CHRIS TIMPSON V. THE STATE

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

95006

09CR68



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **OCT 15 2009**

*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.

*Willie L. Martin*

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

ATLANTA,            OCTOBER    01, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0062

SONNIE IRVIN V. THE STATE

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

96006

09CR71



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 01 2009**

*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 above written.*

*Clerk.*

*Will L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, September 24, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0059. BAY VILLAGE OF SAINT PETERSBURG, INC. et al. v.  
IMPERIAL CAPITAL BANK.**

Bay Village of Saint Petersburg, Inc., and its two principals, Julious Mosley and Michael Shimshoni, filed an application for discretionary appeal seeking review of the trial court's denial of a temporary restraining order. The case, however, remains pending below, which renders the appeal interlocutory in nature. "The discretionary-application statute does not relieve [an] appellant who seeks review of an interlocutory order of the requirement of a certificate [of immediate review] from the trial judge." (Punctuation omitted.) *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991). The applicants' failure to comply with interlocutory appeal procedures deprives this Court of jurisdiction to consider the application for discretionary appeal, which is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **SEP 24 2009**

*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.*

*W. L. Martin* Clerk.

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

ATLANTA,            OCTOBER    01, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0063

SONNIE IRVIN V. THE STATE

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

96007

09CR65



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 01 2009**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, October 6, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0064. CROUCH v. CROUCH.**

Katherine Anne Crouch and Christopher Crouch divorced in 2005. Pursuant to the divorce decree, both parties were required to pay 50 percent of the medical expenses incurred by their children for expenses not covered by insurance. Katherine contended that her husband was in arrears in paying medical expenses, and she sought a writ of fieri facias for the arrearage. Christopher moved to have the writ set aside. The trial court granted the motion and ordered Katherine to pay Christopher's attorney fees.

Katherine filed an application for discretionary appeal in this Court, arguing inter alia that she had a right to seek a writ of fieri facias to enforce the terms of the divorce decree. Such an attempt to enforce a divorce decree is ancillary to, and an incident of, the parties' final judgment and decree of divorce. See *Iannicelli v. Iannicelli*, 169 Ga. App. 155 (1) (311 SE2d 850) (1983). Accordingly, jurisdiction is proper in the Supreme Court. See, e. g., *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008) (judgment in contempt action to enforce divorce decree other than child custody falls within Supreme Court's jurisdiction). This application for discretionary appeal is therefore TRANSFERRED to the Supreme Court for disposition. See id.; Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 06 2009**

*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.*

*Willie L. Martin*

, Clerk.

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

ATLANTA,            OCTOBER    07, 2009

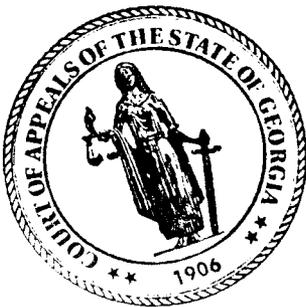
*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0065  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM OF  
GEORGIA V. LEROY AYERS

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.

90006

04VS070625



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 07 2009**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, October 15, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0066. ALLEN v. SANTANA.**

Keith Santana brought an action in state court against Rowland Allen to foreclose on personal property and recover damages. After a non-jury trial, the court awarded Santana a writ of possession for the property, as well as \$40,000 in damages plus \$10,000 interest. Allen seeks discretionary review of the court's order.

The order appears to be a final, directly appealable judgment within the meaning of OCGA § 5-6-34 (a). Moreover, no provision of OCGA § 5-6-35 (a) relating to discretionary appeals appears to apply to the order. This application for discretionary appeal is therefore *GRANTED* pursuant to OCGA § 5-6-35 (j). Allen shall have ten days from the date of this order to file his notice of appeal in the state court. OCGA § 5-6-35 (g). The clerk of the state 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 15 2009**

*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,            OCTOBER    05, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0067  
MICHAEL MCKELVEY 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.

71006

SU07CR3549

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta        OCT -5 2009*

*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.*

*Willi Z. Mantz*

# Court of Appeals of the State of Georgia

ATLANTA, October 13, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0068. PRICE v. THE STATE.**

Claudis Lee Price filed this application for discretionary appeal of an order denying a motion for an out-of-time appeal. The denial of a motion for out-of-time appeal is directly appealable, however. *Lunsford v. State*, 237 Ga. App. 696 (515 SE2d 198) (1999). Therefore, Price's application is GRANTED under OCGA § 5-6-35 (j). Price shall have ten days from the date of this order to file his notice of appeal with the trial court. The clerk of the state 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*

**OCT 13 2009**

*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. Mat... , Clerk.*

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

ATLANTA,            OCTOBER    13, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0069  
GINA CONTEH V. FULTON COUNTY EMERGENCY SERVICES  
DEPARTMENT, FULTON COUNTY, GA

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

92006

2009CV169258



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

**OCT 13 2009**

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

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

*Clerk.*

*William L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, October 15, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0070. TAN DINH VU v. GEORGIA REAL ESTATE COMMISSION.**

Tan Dinh Vu seeks discretionary review of the superior court's order affirming an administrative decision to revoke his real estate broker's license. The order was entered on August 19, 2009, but Vu did not file this application until September 21, 2009.

To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Vu filed his application 33 days after entry of the order at issue here. Accordingly, we lack jurisdiction to consider the application, which is hereby DISMISSED. See *Hill*, supra.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **OCT 15 2009**

*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.*

*Willie L. Martinez*, Clerk.



CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** October 24, 2009

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 **S10C0298**

JOHN G. ESSEX v. LYNNE C. ESSEX

Clerk, Supreme Court of Georgia

Case No. A10D0071

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 26 2009

Clerk, Court of Appeals of Georgia

# Court of Appeals of the State of Georgia

ATLANTA, October 1, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0071. JOHN G. ESSEX v. LYNNE CHRISTINE ESSEX.**

On September 17, 2009, John G. Essex filed this application to appeal the August 11, 2009 order denying his petition for contempt.<sup>1</sup> An application for discretionary appeal must be filed with the clerk of the court within 30 days of entry of the order the applicant seeks to appeal. OCGA § 5-6-35 (d). Because Essex filed his application 37 days after entry of the order he seeks to appeal, the application is untimely and we lack jurisdiction. *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001). Therefore, this application is hereby **DISMISSED**.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **OCT 01 2009**

*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.*

*Willie L. Martinez*, Clerk.

---

<sup>1</sup>Although the court initially received Essex's application on September 8, 2009, the application was not accepted for filing because Essex failed to include either the filing fee or a pauper's affidavit. OCGA § 5-6-4, Court of Appeals Rule 5.

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

ATLANTA,            OCTOBER    16, 2009

*The Court of Appeals passed the following order*

Case No. A10D0071

JOHN G. ESSEX V. LYNNE CHRISTINE ESSEX

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

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    OCT 16, 2009*



*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.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, October 15, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0072. ROTENSTREICH v. ROSENSTEIN.**

Julie Rotenstreich seeks discretionary review of an order of the trial court modifying her ex-husband's child support obligation as set forth in a final divorce decree. According to Rosenstreich, the trial court abused its discretion in retroactively reducing the support obligation under OCGA § 19-5-17 (j) (1) and in declining to hold her ex-husband in contempt.

Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985). As the underlying subject matter in this case involves child support, this Court lacks jurisdiction over the application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Accordingly, this application is TRANSFERRED to the Supreme Court of Georgia.



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

*I certify that the above is a true and correct copy 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.*

*Willie L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, November 6, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0073. Expedia, Inc. v. Columbus, Georgia.**

Expedia, Inc. ("Expedia") has requested that we reconsider our October 13, 2009 order dismissing its application for discretionary appeal. Expedia's motion for reconsideration is hereby GRANTED, and our October 13, 2009 dismissal order is VACATED. Expedia's application for discretionary appeal is also GRANTED. Expedia shall have 10 days from the date of this order in which to file a notice of appeal. The clerk of the superior court is directed to include a copy of this order in the appeal record transmitted to this Court.

The parties are directed to address in their appellate briefs whether the trial court's September 14, 2009 order falls within the collateral order exception to the final judgment rule.

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

**NOV 06 2009**

*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.*

*Willie L. Martin*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, October 8, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0074. SRADER et al. v. MIDKIFF.**

In June 2009, Pamela and Dennis Srader filed a petition seeking custody of their minor granddaughter. The superior court denied their petition, and the Sraders now seek discretionary review.

Under newly amended OCGA § 5-6-34 (a) (11), “[a]ll judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody . . .” are directly appealable. See *Moore v. Moore-McKinney*, 297 Ga. App. 703, 704 (1) (678 SE2d 152) (2009). The amendment applies “to all child custody proceedings and modifications of child custody filed on or after January 1, 2008.” Ga. Laws 2007, p. 554, § 8. Because the new law applies here, the order that the Sraders seek to challenge is directly appealable.

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 *GRANTED*. The Sraders shall have ten days from the date of this order to file a notice of appeal. OCGA § 5-6-35 (g). 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*

**OCT 08 2009**

*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. Mat...*, Clerk.

# Court of Appeals of the State of Georgia

October 23, 2009

ATLANTA,

*The Court of Appeals hereby passes the following order:*

## **A10D0075. DEMING CHEN v. GWINNETT COUNTY POLICE DEPARTMENT.**

The superior court order affirming the decision of the Gwinnett County Police Department to deny Deming Chen's request for expungement was entered August 21, 2009. Chen, who is proceeding pro se, apparently delivered his application - whether by mail or by hand is not clear - to the clerk of our court before the September 20 deadline.<sup>1</sup> However, our clerk returned the application because the certificate of service did not comply with our Rule 6. Instead of listing the solicitor as having been served, Chen listed the "opposing party," the GCIC manager at the Gwinnett County Police Department. He has requested that we consider his application filed on the original date. He persuasively argues that in preparing his application, he relied on our "Citizen's Guide to Filing Appeals in the Court of Appeals of Georgia,"<sup>2</sup> which indicates that one must serve the opposing party.

In that document, we define certificate of service as

***A statement by a party that he or she has served (delivered to or provided) the opposing party with a copy of a document prior to its filing with the Court. The Certificate of Service must be dated and signed by the party filing the***

---

<sup>1</sup>Our form letter returning Chen's documents is dated September 9, implying the document was filed that date or before. In Chen's request to change the filing date, he states that he filed the application on September 18.

<sup>2</sup><http://www.gaappeals.us/csguide/>

document and *it must contain the name and complete address of the opposing party*. No document will be accepted for filing without a Certificate of Service.

In describing the filing of discretionary appeals, the guide states that “[a]n original and two copies of the application must be filed with service made to the opposing counsel or party.” It goes on to include in “the list of the items which should be included with a discretionary application” “[a] certificate of service containing the full name and postal address of the opposing party.” We do warn, however, that “[t]he pamphlet should be used in conjunction with the state statutes and court rules,” and Rule 6 provides “[a]ll documents shall show copies have been furnished to opposing counsel.”

Rule 6 is not jurisdictional.<sup>3</sup> Therefore, given the misleading information in the Citizen’s Guide,<sup>4</sup> this court exercises its discretion and deems the application to have been timely filed. Further, although the clerk’s office says that no order is required on Chen’s request, we issue this order to make clear to Chen that we have considered his concerns.

Chen’s application lacks merit. The superior court ruled that expungement was prohibited under OCGA § 35-3-37 (d) (7) (c) which prohibits expungement when an accusation is dismissed because “a material witness refused to testify or was unavailable to testify against the individual unless such witness refused to testify based on his or her statutory right to do so. “The victim, Yinan Lu who is apparently Chen’s wife, failed to appear when the case was called for trial. There is no indication that Lu invoked her spousal privilege and refused to testify. Rather, she merely failed to appear.

Chen asserts that OCGA § 35-3-37 (d) (7) (c) is not applicable because Lu confessed that she lied to the arresting officer, refused to sign the police report and asked the arresting officer not to arrest Chen. Those facts do not except the case from

---

<sup>3</sup>*See Sapp v. Gem Line, Inc.*, 267 Ga. 438, 439 (479 SE2d 712) (1997) (holding that our Rule 4 is not jurisdictional but “simply provides a means by which [the] court establishes when a document is deemed filed in the Clerk’s office.”)

<sup>4</sup>The clerk’s office has attempted to correct these ambiguities in the Citizen’s Guide.

the statute's prohibition of expungement. Chen primarily argues that the charges were false and that he was the victim of his wife's violence. Such arguments do not go to the correctness of the superior court's refusal to expunge the arrest.

For these reasons, this court deems the application to have been timely filed but denies it on the merits.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 23 2009**

*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, September 29, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0076. MADESIAH et al. v. SOHANI et al.**

Plaintiffs Ramesh Madesiah and Sowmee Enterprises, Inc., filed this application for discretionary appeal from the trial court's September 14, 2009 order granting summary judgment to the defendants, Amin Sohani, Saleemuddin Boghani, Alkarim Thawer, and Sky Way Investments, LLC. No application is required, however, as an order granting summary judgment is subject to direct appeal. See OCGA § 9-11-56 (h). This Court will grant an otherwise timely discretionary application if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. OCGA § 5-6-35 (j) Since it does not appear that the plaintiffs have filed a notice of appeal, this application for discretionary appeal is hereby GRANTED.

Madesiah and Sowmee Enterprises, Inc., shall have 10 days from the date of this order in which 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* **SEP 29 2009**

*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. Martinez*, Clerk.

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

ATLANTA,                      OCTOBER      23, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0077  
DUNWOODY FOREST RENAISSANCE HOMES, LLC V. DEKALB  
COUNTY BOARD OF ZONING APPEALS ET AL

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

91007

08CV13481



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

OCT 23 2009

*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.*

*Willie L. Martinez*

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

ATLANTA,                      OCTOBER      08, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0078

IN THE INTEREST OF: R. E. K. M. P. , T. A. D. P. , AND T. B. L. P. ,  
CHILDREN (MOTHER)

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

71007

0901193



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 08 2009**

*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. Martinez*

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

ATLANTA,                      JANUARY      14, 2010

*The Court of Appeals passed the following order*

Case No. A10D0078

IN THE INTEREST OF: R. E. K. M. P. , T. A. D. P. , AND T. B. L. P. ,  
CHILDREN (MOTHER)

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 14, 2010*

*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.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, October 6, 2009

*The Court of Appeals hereby passes the following order:*

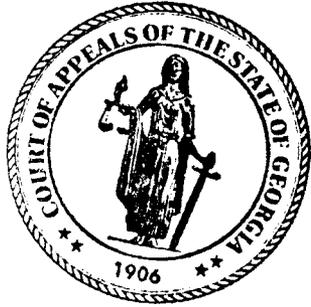
## **A10D0079. DAREN R. DICKSON v. THE STATE.**

Daren R. Dickson seeks discretionary review of a September 16, 2009 order. Without elaboration, the order merely denies an unspecified motion. Dickson has not included the motion with his application for discretionary review. But a review of his application indicates that Dickson contends that his convictions are void.

Under OCGA § 17-9-4, “[t]he judgment of a court having no jurisdiction of the person or subject matter, or void for any other cause, is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it.” The denial of a motion filed under this provision is directly appealable. *Chester v. State*, 284 Ga. 162, 163 (2) (664 SE2d 220) (2008). To qualify as a § 17-9-4 motion, however, a defendant’s pleading “must allege a ground upon which the judgment of conviction entered against [him] can be declared void.” *Id.* If the pleading does not allege such a ground, an order denying it cannot be appealed. See *id.*; *Wallace v. State*, 284 Ga. 429 (667 SE2d 590) (2008).

In the application, Dickson asserts, in essence, that his convictions are void because the indictment charging him with aggravated assault and aggravated battery failed to specify that his hands were considered to be weapons. Such a defect, however, does not render the indictment fatally flawed. See *State v. English*, 276 Ga. 343 (578 SE2d 413) (2003).

Because Dickson does not allege a ground that could have voided his convictions, the order denying the motion is not subject to appellate review. We therefore *DISMISS* this application. See *Wallace*, *supra*.



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

**OCT 06 2009**

*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.*

*Willie L. Martin*, Clerk.

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

ATLANTA,                      OCTOBER      19, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0080

RODNEY SAMPSON V. HAYWIRE VENTURES, INC., ET AL

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

92007

2002CV56406



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 19 2009**

*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.*

*Willie L. Martin*

FILED IN OFFICE

SEP 25 2009

CLERK, COURT OF APPEALS OF GEORGIA

Atlanta September 10, 2009

RECEIVED IN OFFICE  
2009 SEP 25 PM 3:52  
Clerk of Court Administrator  
COURT OF APPEALS OF GA.  
COLIN R. METZGER



SUPREME COURT OF GEORGIA

Case No. S09D2061

The Honorable Supreme Court met pursuant to adjournment.

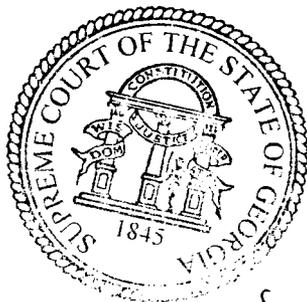
The following order was passed:

**PAMELA L. SRADER et al. v. SHAWN THOMAS MIDKIFF**

Applicants seek review of the trial court's order dismissing their petition for change of custody in which they sought to obtain custody of their deceased daughter's child from respondent, the child's biological father. The child's biological parents were never married, however, and this Court's divorce and alimony jurisdiction does not extend to appeals arising out of petitions seeking modification of child custody or visitation where those appeals do not also involve a judgment for divorce. See Carter v. Foster, 247 Ga. 26 (273 SE2d 614) (1981); Munday v. Munday, 243 Ga. 863 (257 SE2d 282) (1979). Accordingly, this application is transferred to the Court of Appeals.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta



I 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.

*[Handwritten Signature]* → Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, October 15, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0081. SRADER et al. v. MIDKIFF.**

Pamela and Dennis Srader seek dismissal of their application for discretionary appeal on the ground that it has become moot. The Sraders' motion is GRANTED, and the application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **OCT 15 2009**

*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.*

*Willie L. Martin*, Clerk.

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

ATLANTA,            OCTOBER    14, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0082  
EDWARD L. NEAL V. AUGUSTA-RICHMOND COUNTY  
PERSONNEL BOARD

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.

97007

2008RCCV1779



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 14 2009**

*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.*

*W. L. Martin*

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** November 30, 2009

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 **S10C0485**

CITY OF FOLKSTON et al. v. ANDREW JENKINS

Clerk, Supreme Court of Georgia

DEC 02 2009

Case No. A10D0083

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,                      OCTOBER      22, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0083  
CITY OF FOLKSTON ET AL V. ANDREW JENKINS

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

70007  
09V207



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 22 2009**

*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*

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

ATLANTA,            NOVEMBER 09, 2009

*The Court of Appeals passed the following order*

Case No. A10D0083

CITY OF FOLKSTON ET AL V. ANDREW JENKINS

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    NOV 09, 2009*

*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.  
Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, October 5, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0084. MICHAEL L. LARKIN v. AL ST. LAWRENCE et al.**

Michael L. Larkin, a prisoner proceeding pro se, filed a 42 USC § 1983 action alleging federal and state law claims against the Chatham County sheriff and others. Larkin seeks to appeal the trial court's denial of his "motion to alter/amend judgment," in which he sought reconsideration of the court's order dismissing his amendments to his state law claims. We lack jurisdiction.

There is no indication in his application materials that his federal claims have been resolved. Indeed, Larkin asserts that the trial court denied the defendants' motion to dismiss the federal claims. Therefore, Larkin's action remains pending below, and he was required to obtain a certificate of immediate review pursuant to the interlocutory appeal procedures in OCGA § 5-6-34 (b) in order to appeal. His failure to do so deprives this Court of jurisdiction over the application, which is therefore **DISMISSED**. See *Pace Constr. Corp. v. Northpark Associates*, 215 Ga. App. 438, 439-440 (215 SE2d 438) (1994).

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **OCT -5 2009**

*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.*

*Willi Z. Mantz*, Clerk.

Blackburn + Harris

# Court of Appeals of the State of Georgia

<b>PROPOSED ORDER</b> (A10D0084.99) October 1, 2009 (by DERRICO)	
<b>AGREE</b>	<b>DISAGREE</b>
 [Signature]	

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**A10D0084. MICHAEL L. LARKIN v. AL ST. LAWRENCE et al.**

Michael L. Larkin, a prisoner proceeding pro se, filed a 42 USC § 1983 action alleging federal and state law claims against the Chatham County sheriff and others. Larkin seeks to appeal the trial court's denial of his "motion to alter/amend judgment," in which he sought reconsideration of the court's order dismissing his amendments to his state law claims. We lack jurisdiction.

There is no indication in his application materials that his federal claims have been resolved. Indeed, Larkin asserts that the trial court denied the defendants' motion to dismiss the federal claims. Therefore, Larkin's action remains pending below, and he was required to obtain a certificate of immediate review pursuant to the interlocutory appeal procedures in OCGA § 5-6-34 (b) in order to appeal. His failure to do so deprives this Court of jurisdiction over the application, which is therefore **DISMISSED**. See *Pace Constr. Corp. v. Northpark Associates*, 215 Ga. App. 438, 439-440 (215 SE2d 438) (1994).

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

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, October 14, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0085. THE HARTFORD UNDERWRITERS INSURANCE COMPANY v. LAFARGE NORTH AMERICA, INC.**

The Hartford Underwriters Insurance Company (“Hartford”) obtained a default judgment against garnishee Lafarge North America, Inc. The trial court set aside the default, and Hartford Underwriters Insurance Company filed an application for discretionary appeal. Because the order was interlocutory, we dismissed the application by order dated July 2, 2009. Hartford then voluntarily dismissed the action without prejudice and filed an application within 30 days of its dismissal seeking to challenge the trial court’s earlier order setting aside default.

In *Studdard v. Satcher, Chick, Kapfer, Inc.*, 217 Ga. App. 1, 3 (456 SE2d 71) (1995), this court held that a plaintiff cannot use a “voluntary dismissal as the vehicle for appellate review of rulings entered by the trial court more than 30 days from the filing of the notice of appeal.” Accordingly, this Court is without jurisdiction to entertain this appeal, which is hereby DISMISSED.<sup>1</sup> See *id.*; *Mitchell v. Wyatt*, 192 Ga. App. 127, 129 (1) (384 SE2d 227) (1989).

---

<sup>1</sup> The respondent has filed a motion “for imposition of penalties for prosecuting [a] frivolous appeal.” That motion is hereby denied.



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

OCT 14 2009

*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.

*Willie L. Martin*

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

ATLANTA,            OCTOBER    13, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0086  
VICTORIA HARDIN V. DIRK HARDIN

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.

96008  
2006CVD1049



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **OCT 13 2009**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, October 19, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0087. SHEETS v. THE STATE.**

Mulik Sheets, who has been convicted of aggravated assault and other charges, has filed this application for discretionary appeal from an order denying his motion for an appeal bond. An order denying a motion for appeal bond is directly appealable. *Wade v. State*, 218 Ga. App. 377 (1) (461 SE2d 314) (1995); see also *Browning v. State*, 254 Ga. 478 (330 SE2d 879) (1985). Therefore, this application is GRANTED as required by OCGA § 5-6-35 (j). Sheets shall have ten days from the date of this order to file his notice of appeal in the superior court. OCGA § 5-6-35 (g). 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*

**OCT 19 2009**

*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.*



*W. L. Martin*, Clerk.

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

ATLANTA,                      OCTOBER     19, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0088  
WILLIAM HIX V. CARSON BOLT 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.

90008  
07CV43



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*     **OCT 19 2009**

*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*

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

ATLANTA,            OCTOBER    27, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0089  
MICHAEL MILLER V. MOLLY WHEATLEY

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

91008

2007CV140457



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 27 2009**

*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. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

October 20, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0090. Walker v. The State.**

Wilson K. Walker seeks discretionary review of the trial court's order denying his extraordinary motion for new trial. The order was entered on June 12, 2009, but Walker did not file his discretionary application until September 29, 2009.<sup>1</sup>

To be valid, an application for discretionary appeal must be filed within 30 days of entry of the order or judgment to be appealed. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Walker filed his application 109 days after entry of the order at issue here. Although Walker asks us to grant this discretionary appeal "out-of-time," nothing in OCGA § 5-6-35 or any other code section authorizes an out-of-time discretionary application. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001) ("[T]his court lacks the authority to grant an extension of time for the filing of an application for discretionary appeal."). Accordingly, we lack jurisdiction to consider Walker's untimely application, which is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

OCT 20 2009

*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. Martinez*, Clerk.

---

<sup>1</sup> Walker originally submitted his discretionary application in July 2009. That application, however, did not contain a stamped "filed" copy of the June 12, 2009 order, as required by Court of Appeals Rule 31 (e), and was later dismissed.

# Court of Appeals of the State of Georgia

ATLANTA, October 22, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0091. JONES v. THE STATE.**

Paul R. Jones, Jr. seeks discretionary review of the trial court's order denying his request to proceed in forma pauperis in his appeal of the denial of his motion for an out-of-time criminal appeal. The order in question is directly appealable. See, e.g., *Quarterman v. Weiss*, 212 Ga. App. 563 (442 SE2d 813) (1994); *Saylor v. Emory Univ.*, 187 Ga. App. 460 (370 SE2d 625) (1988). Accordingly, this application for discretionary appeal is *GRANTED* pursuant to OCGA § 5-6-35 (j). Jones shall have ten days from the date of this order to file his notice of appeal in the superior court. OCGA § 5-6-35 (g). 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*

**OCT 22 2009**

*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.

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** November 23, 2009

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 **S10C0450**

CORDELL HUDSON v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A10D0092

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

NOV 24 2009

Clerk, Court of Appeals of Georgia

# Court of Appeals of the State of Georgia

ATLANTA, October 28, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0092. CORDELL HUDSON v. THE STATE.**

Cordell Hudson filed an application for discretionary review, seeking to appeal the trial court's order denying his motion to vacate his sentence. Hudson included a copy of the trial court's order with his application, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e). On October 2, 2009, this Court ordered Hudson to supplement his application within 10 days with a stamped "filed" copy of the order to be appealed. We noted that failure to comply with this directive would result in dismissal of the application.

More than 10 days have passed since we issued the October 2, 2009 order, and Hudson has not submitted a stamped "filed" copy of the trial court's order. Accordingly, Hudson's application is hereby **DISMISSED**.



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

OCT 28 2009

*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. Mat...*, Clerk.

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

ATLANTA,            OCTOBER    15, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0093  
JUBAL PATRICK BRYAN V. THE STATE

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

97008

2008CR132



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 15 2009**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, October 16, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0094. Vaughn v. Stafford.**

Peri Briana Vaughn and Joshua Dane Stafford were divorced through a final judgment and decree entered November 2, 2006. Pursuant to the divorce decree, Stafford received custody of the couple's minor son, and Vaughn was granted visitation privileges. In May 2008, Vaughn petitioned for a change in custody, asserting that a material change in condition affecting the child's welfare had occurred. The superior court denied the petition, and Vaughn now seeks discretionary review.

Under newly amended OCGA § 5-6-34 (a) (11), "[a]ll judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody" are directly appealable. See *Moore v. Moore-McKinney*, 297 Ga. App. 703, 704 (1) (678 SE2d 152) (2009). The amendment applies "to all child custody proceedings and modifications of child custody filed on or after January 1, 2008." Ga. Laws 2007, p. 554, § 8. Because the new law applies here, the order that Vaughn seeks to challenge is directly appealable.

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Vaughn's application is hereby GRANTED. Vaughn shall have ten days from the date of this order to file a notice of appeal with the superior court. See OCGA § 5-6-35 (g). 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*

**OCT 16 2009**

*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.*

*Willie L. Martin*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, October 20, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0095. PRINCE v. BAILEY DAVIS, LLC et al.**

The superior court confirmed a \$10,000 arbitration award against Jeffrey Prince and in favor of Bailey Davis, LLC and Charles Lee Davis, Jr. Prince now seeks discretionary review in this Court to challenge the procedures used below. The discretionary appeal procedure is required where a money judgment is entered in an action for damages that totals \$10,000 or less. OCGA § 5-6-35 (a) (6); *Orgertrice v. Nash*, 215 Ga. App. 119 (450 SE2d 708) (1994). Arbitration award confirmation proceedings, however, are special statutory proceedings; they are not civil actions for money damages. See *Hardin Constr. Group v. Fuller Enterprises*, 265 Ga. 770, 771 (462 SE2d 130) (1995). Thus, OCGA § 5-6-35 (a) (6) does not apply here, and no discretionary application was required.

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Prince's application is hereby GRANTED. Prince shall have ten days from the date of this order to file a notice of appeal with the superior court. See OCGA § 5-6-35 (g). 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*

OCT 20 2009

*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.*

*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, October 15, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0096. WILLIAM TROUT, JR. v. JULIE TROUT.**

William Trout, Jr. seeks discretionary review of a superior court order finding him in contempt of various non-custodial provisions of a divorce decree and subsequent orders. “[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court’s jurisdiction over ‘divorce and alimony cases.’ [Cits.]” *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004); see also Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). This application is therefore **TRANSFERRED** to the Supreme Court for disposition.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 15 2009**

*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*

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

ATLANTA,                      OCTOBER                      27, 2009

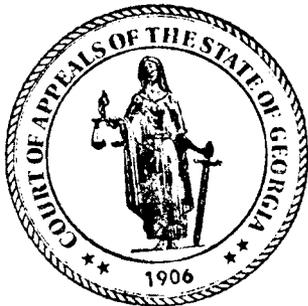
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.                      A10D0097  
DARRELL PEGUES V. DOUGLASVILLE WINLECTRIC ET AL

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

95009

09CV02486



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**OCT 27 2009**

*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.*

*Willie L. Martin*

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

ATLANTA,            OCTOBER    26, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0098

LAWRENCE BYNUM V. COBB COUNTY SCHOOL SYSTEM

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

96009

091302349



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **OCT 26 2009**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, October 26, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0099. AMBROSE v. BROADHURST.**

Avner Ambrose seeks discretionary review of the denial of his motion to set aside an order that, according to Ambrose, finds him in contempt for failing to make certain payments to his ex-wife that were ordered in the parties' divorce decree. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." "[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over 'divorce and alimony cases.' [Cits.]" *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004); see also *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). Because the underlying subject matter of this application is Ambrose's obligations under the divorce decree, this application is hereby TRANSFERRED to the Supreme Court for disposition.

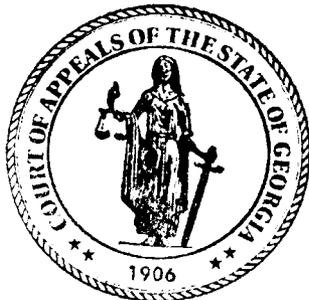
*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta*

OCT 26 2009

*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,            OCTOBER    28, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0100

IN THE INTEREST OF: D. A. D. , J. R. M. L. , CHILDREN (MOTHER)

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

90009

0703025



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

OCT 28 2009

*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... [Signature]*

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

ATLANTA,                      NOVEMBER 09, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0101

JAMES MITCHELL V. DEPARTMENT OF TRANSPORTATION ET AL

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

91009

08CV2622



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 09 2009

*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.*

*Willie L. Martin*

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

ATLANTA,            OCTOBER    28, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0102  
DAVID LAMAR MARSHALL V. THE STATE

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

71009  
07R455



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

**OCT 28 2009**

*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*

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

ATLANTA,                      NOVEMBER    04, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0103  
PACT ATLANTA, LLC V. ALEXIS A. FILLOS

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

93009

08A96939



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **NOV 04 2009**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, October 22, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0104. MICHAEL TUMLIN v. CHET STEELE ET AL.**

Michael Tumlin, the biological father of A.M.T., filed an application for discretionary appeal seeking review of the trial court's order terminating his parental rights and granting an adoption petition filed by Chet and Melissa Steele. Because the appeal stems from adoption proceedings, however, no application is required. *Families First v. Gooden*, 211 Ga. App. 272, 274 (1) (439 SE2d 34) (1993). This is true even if the order also serves to terminate parental rights. See, e. g., *id.*

Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, Tumlin's application is hereby **GRANTED**. He shall have 10 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 appellate record.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **OCT 22 2009**

*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,                      NOVEMBER 13, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0105  
BOBBY STRICKLAND V. WALL TIMBER PRODUCTS, INC.

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

97009  
CV09334



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

**NOV 13 2009**

*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.*

*Willie L. Martin*

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

ATLANTA, NOVEMBER 02, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0106  
CS-LAKEVIEW AT GWINNETT, INC., V. SIMON PROPERTY GROUP, 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.

70009

02A02160



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 02 2009**

*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*  
*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, November 6, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0107. LEE BOURNEY v. SHARON WOOD et al.**

The children of the late Marilyn McDannald sued Lee Bourney, their mother's friend, alleging that he had exerted undue influence over McDannald during the final years of her life. Among other things, the children sought the appointment of a receiver to protect property in Bourney's possession that, according to the children, had belonged to McDannald. In conjunction with their complaint, the children filed an "Emergency Motion for *Ex Parte* Appointment of Receiver, Temporary Restraining Order, and Preliminary Injunction." The trial court granted the motion, appointing a temporary receiver to take control of certain disputed property and restraining Bourney from engaging in certain activities. By its terms, the order expired on October 27, 2009. Bourney has filed this application for discretionary appeal, as well as a notice of direct appeal.

Because the order that Bourney seeks to appeal has already expired, this application is moot. See *Carlock v. Kmart Corp.*, 227 Ga. App. 356, 361 (3) (a) (489 SE2d 99) (1997) (a "moot" issue is one where a ruling is sought on a matter that has no practical effect on the alleged controversy or where the issues have ceased to exist). The application is therefore DISMISSED. See OCGA § 5-6-48 (b) (3).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 08 2009

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

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

*William L. Martin*, Clerk.

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

ATLANTA, NOVEMBER 04, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0108  
JOE GREEN V. BRIDGETTE GREEN

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.

94009

2008V93406



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 04 2009

*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.*

*Willie L. Martinez*

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

ATLANTA, NOVEMBER 04, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0109  
ANDREW BEACHAM V. CALVARY PORTFOLIO SERVICES, LLC

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.

95010

2008SV054



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 04 2009**

*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*

# Court of Appeals of the State of Georgia

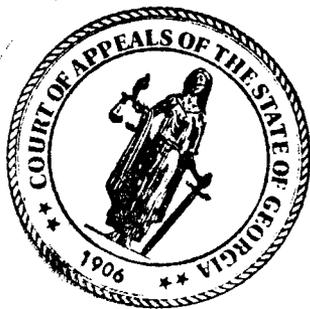
ATLANTA, November 2, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0110. Bedingfield v. Bedingfield.**

Charles and Donna Bedingfield were divorced in June 2005. Pursuant to the divorce decree, Charles received custody of the couple's minor daughter, Melissa. In August 2009, Donna moved for contempt, alleging, among other things, that Charles had improperly asked the Social Security Administration to divert to him payments that Donna had been receiving on behalf of Melissa. The trial court denied the motion, and Donna filed an application for discretionary appeal. Several key issues permeate this application, including who is entitled to the Social Security benefits, whether they should be viewed as child support, and whether Charles breached the divorce decree by keeping the payments.

Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over “[a]ll divorce and alimony cases.” And in Georgia, child support is a form of alimony. See *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985). Moreover, “an appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over divorce and alimony cases.” (Punctuation omitted.) *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). Accordingly, this Court lacks jurisdiction over the application, which is hereby TRANSFERRED to the Supreme Court for disposition. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005).



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

NOV 02 2009

*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, November 12, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0111. KLINKO et al. v. DALEY.**

Mary and Christopher Klicko seek discretionary review of the trial court's order denying their motion for entry of default judgment. The denial of a motion for default judgment is an interlocutory ruling. *Ware v. Handy Storage*, 222 Ga. App. 339 (474 SE2d 240) (1996); see also *Standridge v. Spillers*, 263 Ga. App. 401, 403 (1) (587 SE2d 862) (2003). A party seeking appellate review of an interlocutory order must follow the interlocutory appeal procedure set forth in OCGA § 5-6-34 (b), which includes obtaining a certificate of immediate review from the trial court. Because the Klickos failed to follow the interlocutory appeal procedure, we lack jurisdiction to consider this application, which is therefore DISMISSED. See *Ware*, supra; see also *Pace Constr. Corp. v. Northpark Associates, L. P.*, 215 Ga. App. 438, 439 (450 SE2d 828) (1994).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* NOV 12 2009

*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.*

*Willie L. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, October 28, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0112. JONATHAN JARMAN v. NANCY BAUER JARMAN.**

Jonathan Jarman filed this application to challenge the trial court's order clarifying its prior orders finding Jarman to be in contempt of certain non-custodial provisions of the parties' divorce decree. "[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over divorce and alimony cases." (Punctuation omitted.) *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). See also, Const. of 1983, Art. VI, § VI, Par. III (6); *Morris v. Morris*, 284 Ga. 748 (670 SE2d 84) (2008). This application is therefore **TRANSFERRED** to the Supreme Court for disposition.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **OCT 28 2009**

*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. Mat... , Clerk.*



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

ATLANTA,                    NOVEMBER 18, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0113  
MCKEBIA BRAY V. THE STATE

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

91010

01R1267



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta    **NOV 18 2009**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, January 27, 2010

Honorable Court of Appeals hereby passes the following order:

A10D0113. MCKEBIA BRAY v. THE STATE

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

91-010

01R1267

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 27 2010**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, November 3, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0114. Price v. The State.**

Keith Gerald Price seeks discretionary and/or interlocutory review of the trial court's August 31, 2009 order denying his motion to modify his sentence. Price, however, did not file his application until October 21, 2009.

To be valid, an application for discretionary appeal must be filed within 30 days of the order or judgment to be appealed. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Price filed his application 51 days after entry of the order at issue here.<sup>1</sup> Similarly, to the extent Price seeks interlocutory review, he failed to meet the timing requirements of OCGA § 5-6-34 (d).<sup>2</sup> He did not obtain a certificate of immediate review from the trial court within ten days of entry of the order or file his application within ten days after the grant of a certificate. See OCGA § 5-6-34 (d); *Genter v. State*, 218 Ga. App. 311 (460 SE2d 879) (1995). Whether viewed as a request for discretionary or interlocutory review, Price's application is untimely and we lack jurisdiction to consider it. Accordingly, the application is hereby DISMISSED.

---

<sup>1</sup> It appears that Price attempted to file the application on October 7, 2009, but his submission did not meet the filing requirements. Even if he had successfully filed the application that day, however, it would have been untimely.

<sup>2</sup> Although Price styled his application as a request for interlocutory review, the trial court's order was not interlocutory.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **NOV 03 2009**

*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.*

*Willie L. Martin*, Clerk.

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

ATLANTA, NOVEMBER 09, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0115  
TIMOTHY G. HOLLOWAY V. KRISTI BURSON ET AL

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

93010

2009CV0131



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

NOV 09 2009

*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. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **NOV 19 2009**

## **A10D0116. GREGORY MACK v. THE STATE.**

Gregory Mack filed this application for discretionary appeal seeking to appeal the trial court's order denying his motion for sentence modification. In his application, Mack asserts that the sentence he challenges was entered August 15, 2008 and that he timely filed his motion for sentence modification on July 26, 2009. See OCGA § 17-10-1 (f). Because the motion was timely, Mack has the right to file a direct appeal from the order denying the motion. Compare *Burg v. State*, 297 Ga. App. 118 (676 SE2d 465) (2009) (holding that trial court's denial of appellant's motion for sentence modification was not subject to direct appeal because motion was untimely under OCGA § 17-10-1 (f) and appellant did not allege a colorable claim of a void sentence).

We will grant an otherwise 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, Mack has filed a notice of appeal in the trial court. Thus, OCGA § 5-6-35 (j) does not apply, and the application is accordingly **DISMISSED** as superfluous.



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

**NOV 19 2009**

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,                      NOVEMBER 13, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0117  
IN THE INTEREST OF: B. P. , A CHILD (MOTHER)

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

97010

0900848



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 13 2009**

*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.*

*Willie L. Martin*

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

ATLANTA,                      NOVEMBER 20, 2009

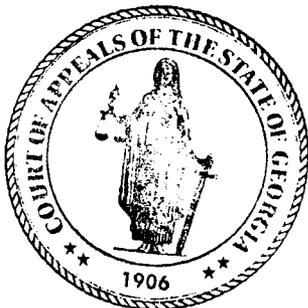
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0118  
MARY BAKRANIA V. PRABHU BAKRANIA ET AL

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

70010

2008V86128



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

**NOV 20 2009**

*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. Mant...*

# Court of Appeals of the State of Georgia

ATLANTA, November 6, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0119. IN RE: HOFFMAN.**

E. Faith Hoffman and Isaac Hoffman have applied for discretionary review of the trial court's order awarding attorney fees and court costs to the lawyer who represented the proposed ward in this adult guardianship proceeding. Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within thirty days of entry of the appealable judgment. The attorney fee award was entered on September 28, 2009, but the Hoffmans did not file this application until 31 days later, on October 29, 2009. Because the application is untimely, we lack jurisdiction to consider it, and it is hereby DISMISSED. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

The Hoffmans have also moved to seal the materials related to this application on the ground that they are participants in state and federal confidentiality programs to protect domestic violence and stalking victims. The motion is GRANTED, and this application is hereby placed UNDER SEAL.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **NOV 06 2009**

*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.*

*Willie L. Martin*, Clerk.

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C0562

Atlanta, March 29, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

UNIVERSITY HEALTH SERVICES, INC., et al. v. GEORGIA  
DEPARTMENT OF COMMUNITY HEALTH 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.

Lower Court Case No.

2009RCCV0108

Court of Appeals Case No.

A10D0120

APR 27 2010

APR 27 2010

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta April 23, 2010

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.



*Pamela M. Smith*, Deputy Clerk

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** December 14, 2009

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 **S10C0562**

UNIVERSITY HEALTH SERVICES, INC., et al. v. GEORGIA DEPARTMENT OF COMMUNITY HEALTH et al.

Clerk, Supreme Court of Georgia

Case No. A10D0120

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 15 2009

Clerk, Court of Appeals of Georgia

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

ATLANTA, NOVEMBER 23, 2009

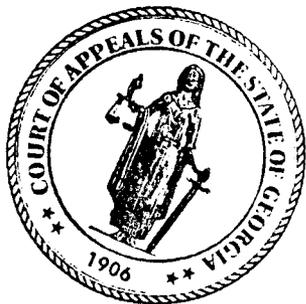
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0120  
UNIVERSITY HEALTH SERVICES, INC., ET AL V. GEORGIA DEPARTMENT  
OF COMMUNITY HEALTH ET AL

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

94010

2009RCCV0108



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 23 2009**

*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.*

*Willie L. Martin*

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

ATLANTA,                      NOVEMBER 16, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0121

IN THE INTEREST OF: B. C. , H. C. , K. C. & C. C. , CHILDREN (MOTHER)

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

95011

0901280



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 16 2009**

*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.*

*Willie L. Martin*

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0560

Atlanta, April 19, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

FRED L. MURRAY, JR. v. FRED L. MURRAY, SR., 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.

Lower Court Case No.

05CV13733

Court of Appeals Case No.

A10D0122

RECEIVED IN OFFICE  
2010 APR 19 PM 1:32  
Clerk's Office  
Supreme Court of Georgia

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta May 12, 2010

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.

*Pamela M. Smith*, Deputy Clerk

CLERK'S OFFICE

SUPREME COURT of GEORGIA

244 Washington Street, Room 572  
Atlanta, Georgia 30334

(404) 656-3470

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

**Docketing Date:** December 14, 2009

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 **S10C0560**

FRED L. MURRAY, JR. v. FRED L. MURRAY, SR., et al.

Clerk, Supreme Court of Georgia

Case No. A10D0122

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

DEC 15 2009

Clerk, Court of Appeals of Georgia

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

ATLANTA,            DECEMBER 04, 2009

*The Court of Appeals passed the following order*

Case No. A10D0122

FRED L. MURRAY JR V. FRED L. MURRAY SR ET AL

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    DEC 04, 2009*

*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*

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

ATLANTA, NOVEMBER 20, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0122

FRED L. MURRAY JR V. FRED L. MURRAY SR ET AL

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

96011

05CV13733



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 20 2009**

*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 above written.*

*Clerk.*

*Will L. Martin*

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

ATLANTA,                      NOVEMBER 17, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0123  
BIG LOTS ET AL V. ROBYN KIKER

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.

98011

09CV02393



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    NOV 17 2009

*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.*

A handwritten signature in black ink, appearing to read "W. L. Martinez".

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

ATLANTA,            NOVEMBER 24, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0124  
IN THE INTEREST OF: J. P. G. , A CHILD (MOTHER)

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

90011

09CV0713



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

*Clerk.*

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

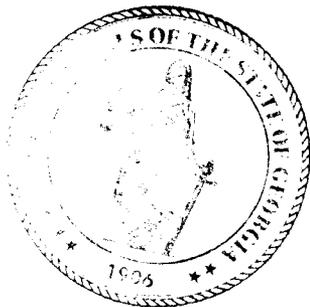
ATLANTA,                      NOVEMBER 18, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0125  
JOSEPH ANDRE HERNDON V. THE STATE

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

91011  
Z85389



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

NOV 18 2009

*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*

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

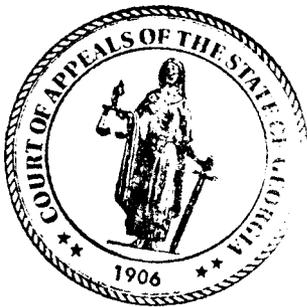
ATLANTA,                      NOVEMBER 19, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0126  
MASISA USA, INC ET AL V. EMILIA GARCIA

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.

71011  
0917751



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    NOV 19 2009

*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.*

*Willie L. Martinez*

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

ATLANTA,                      NOVEMBER 18, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0127

IN THE INTEREST OF: D. B. , Q. B. , J. B. , J. B. , & J. H., CHILDREN  
(FATHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93011

01108J3176

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 18 2009**



*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*

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

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**A10D0128. IN THE INTEREST OF: R.W., a child.**

This is an action alleging that R. W. is a deprived child. On November 4, 2009, we received from the mother a document entitled "Discretionary Appeal." The document had a second title, "Brief of Appellant, P.W., Biological Mother of Minor Child." Even though the mother had a direct appeal pending in the court, Appeal No. A10A0312, she failed to list that case number in her document.

Upon receipt of this document, the clerk of Court docketed it as the instant application for discretionary appeal. Upon further review, however, it appears that it was intended to be the mother's brief in support of her direct appeal, and that the document was improvidently docketed as an application for discretionary appeal.

We observe that on the same day we received this apparent brief, we dismissed the mother's direct appeal for failure to file a brief and enumeration of errors. The fact that the mother filed a brief on November 4, 2009, is unavailing, as her brief and enumeration of errors were due on October 26, 2009.

Moreover, if the document received on November 4, 2009, was intended to be an application for discretionary appeal, then it is untimely. The November 4, 2009 document challenges an order entered more than a year earlier, on July 11, 2008. To be valid, an application for discretionary appeal must be filed within 30 days of the order or judgment to be appealed. See OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).

For these reasons, this application for discretionary appeal is hereby ***DISMISSED.***



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 19 2009**

*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. Mat...* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, December 2, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0129. McGORDON v. THE STATE.**

Todd Emanuel McGordon filed an application for discretionary review, seeking to appeal the trial court's order denying his extraordinary motion for new trial. McGordon included a copy of the trial court's order, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e).<sup>1</sup> On November 5, 2009, this Court ordered McGordon to supplement his application within 10 days with a stamped "filed" copy of the order to be appealed. We noted that failure to comply with this directive would result in dismissal of the application.

Over 10 days have passed since we issued the November 5, 2009 order, and McGordon has not submitted a stamped "filed" copy of the trial court's order. Accordingly, McGordon's application is hereby DISMISSED.



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

DEC 02 2009

*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.

---

<sup>1</sup> A stamped "filed" copy is required in order for this Court to ascertain that the application was filed within 30 days, which is a jurisdictional prerequisite. See OCGA § 5-6-35 (d) (application must be filed within 30 days of the date of the order appealed); *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989) (OCGA § 5-6-35 requirements are jurisdictional).

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

ATLANTA,            DECEMBER 03, 2009

*The Court of Appeals hereby passes the following order:*

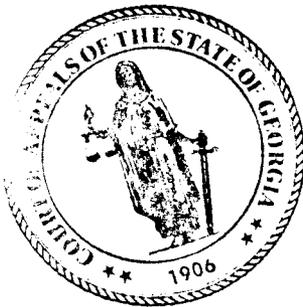
APPLICATION NO.        A10D0130

JENNIFER LYNN GATES V. BYRON FRANKLIN DEAN

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

97011

07CV03025



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 03 2009

*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*

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

ATLANTA,                      NOVEMBER 18, 2009

*The Court of Appeals hereby passes the following order:*

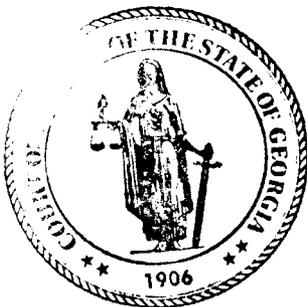
APPLICATION NO.            A10D0131

MICHAEL MCNAIR V. THE STATE

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

70011

93RCCR1526



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV 18 2009**

*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 above written.*

*Clerk.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, November 17, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0132. COX v. RIEBE.**

Valerie Ann Cox has filed an application for discretionary appeal in this court from an order that, among other things, found her to be in contempt for her failure to pay child support and other expenses. Cox advises that she has also filed an application for discretionary appeal in the Supreme Court as well as notices of direct appeal to both courts. Under these circumstances, this court will not address the merits of the application nor the preliminary matter of which appellate court has jurisdiction. We instead defer to the Supreme Court.

Because, according to Cox, this same application is pending before the Supreme Court, her application to this court is hereby **DISMISSED** as superfluous. If the Supreme Court concludes that this court has appellate jurisdiction over the application now before it, we will address the application in due course upon transfer to this court.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **NOV 17 2009**

*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.*

*Willie L. Martin* , Clerk.

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

ATLANTA,            DECEMBER 08, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0133  
CITY OF HOGANSVILLE ET AL V. TERRY TOWNSEND

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

94011

09CV1253



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    DEC 08 2009

*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.*

*Willie L. Martin*

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

ATLANTA,                      NOVEMBER 30, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0134  
JAHMIR WARD V. THE STATE

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

96012

08CR1659



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

NOV 30 2009

*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*

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

ATLANTA,            DECEMBER 03, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0135  
DAMON SCOTT 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.

98012  
962223



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **DEC 03 2009**

*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.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

## **A10D0136. CURRY v. THE STATE.**

On December 9, 2009, this Court dismissed Willis Curry, Jr.'s application for discretionary appeal as Curry had failed to establish that his motion for new trial was timely filed. Curry filed a motion for reconsideration, attaching a copy of his motion for new trial, which shows it was filed within 30 days of the entry of the trial court's order. Accordingly, the motion was timely filed and this Court has jurisdiction to consider the application.

Curry's motion for reconsideration is therefore **GRANTED**; this Court's prior order dismissing the application is **VACATED**; and the application is **REINSTATED**. Upon full consideration of the merits of the application, however, the application is hereby **DENIED**.



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

**JAN 14 2010**

*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.*

*Willie L. Martin, Jr.* Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, December 9, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0136. CURRY v. STATE.**

Willis Curry, Jr. filed this application for discretionary appeal to challenge the revocation of his probation. The trial court entered its order revoking probation on September 4, 2008. Curry filed a motion for new trial, which he has failed to include with his application. The trial court denied the motion for new trial, and within 30 days, on November 10, 2009, Curry filed this application.

Pursuant to OCGA § 5-6-35 (c) and Court of Appeals Rule 31 (b), an applicant should “include a copy of any petition or motion which led directly to the order or judgment being appealed.” Here, a copy of the motion for new trial would enable us to ascertain if we have jurisdiction over this matter.

In order for this Court to have jurisdiction, we must have a timely filed application for discretionary appeal. *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). An application is timely if it is filed within 30 days of the entry of the order the applicant seeks to appeal. OCGA § 5-6-35 (d). Although a motion for new trial may extend the time in which appellate relief may be sought, such motion must also be filed within 30 days of the entry of judgment. OCGA §§ 5-5-40 (a), 5-6-35 (d). An untimely motion for new trial is void and does not toll the time for filing the application. See *Wright v. Rhodes*, 198 Ga. App. 269 (401 SE2d 35) (1990). We cannot determine whether Curry’s motion for new trial was timely filed, and thus whether it tolled the time for filing his application, because he has not included the motion with his application.

An applicant to this Court bears the burden of demonstrating that his application should be granted. See *Harper v. Harper*, 259 Ga. 246 (378 SE2d 673) (1989). Curry

has failed to demonstrate that this Court has jurisdiction to consider his application. Thus, his application for discretionary appeal is hereby **DISMISSED**.



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

**DEC 09 2009**

*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**

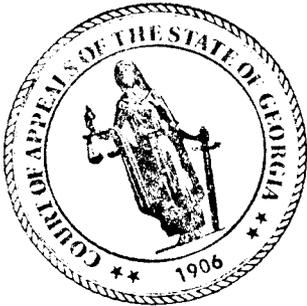
ATLANTA,                      JANUARY      14, 2010

*The Court of Appeals passed the following order*

Case No. A10D0137

WILLIS L. METHENY V. GEORGIA DEPARTMENT OF CORRECTIONS  
ET AL

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 14, 2010*

*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.*

*Willis L. Metheny*

# Court of Appeals of the State of Georgia

ATLANTA, December 8, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0137. METHENY v. GEORGIA DEPARTMENT OF CORRECTIONS et al.**

On October 2, 2009, the trial court granted the defendants' motion to dismiss prisoner Willis Metheny's civil suit. On November 12, 2009, Metheny filed an application for discretionary appeal seeking to challenge this ruling.<sup>1</sup> To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because Metheny filed his application 41 days after entry of the order he seeks to appeal, his application is untimely. The application is therefore DISMISSED for lack of jurisdiction.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **DEC 08 2009**

*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.*

*Willis L. Metheny*, Clerk.

---

<sup>1</sup> Metheny mailed documents to this Court on October 27, 2009, but

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

ATLANTA,            DECEMBER 10, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0138

DEBORAH LYNN KNIGHTEN V. RICKEY FRAZIER

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

71012

1B08CV241



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 10 2009

*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*

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

ATLANTA,                      DECEMBER 08, 2009

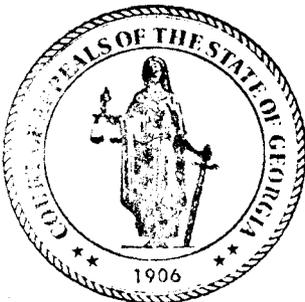
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0139  
ELBERT CORDY, JR., V. MICHAEL L. THURMOND, COMMISSIONER,  
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.

93012

09CV50906



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 08 2009**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, December 3, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0140. GRIFFIN v. THE STATE.**

On November 17, 2009, Daniel Althone Griffin filed this application for discretionary appeal, challenging an August 19, 2009 order modifying his probation.<sup>1</sup> To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Griffin filed his application 90 days after entry of the order he seeks to appeal. His application is therefore untimely and is **DISMISSED** for lack of jurisdiction.



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

**DEC 08 2009**

*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. Martinez*, Clerk.

---

<sup>1</sup>Griffin first submitted his application to the Georgia Supreme Court, which transferred it to this Court. We did not accept the original submission for filing because it lacked a filing fee or sufficient pauper's affidavit as required by OCGA § 5-6-4 and Court of Appeals Rules 5, 31 (d).

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

ATLANTA,                    DECEMBER 03, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0141

CHARLES FARRIS 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.

97012

09CR592



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 03 2009

*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.*

*Willie L. Martin*

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

ATLANTA,            DECEMBER 10, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0142

HUGHSTON ORTHOPEDIC HOSPITAL ET AL V. WANDA WILSON

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.

70012

SU09CV3360



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 10 2009**

*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.*

*Willie L. Martinez*

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

ATLANTA,            DECEMBER 14, 2009

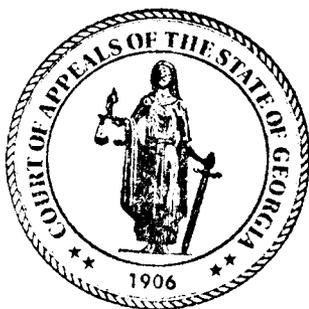
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0143  
FLETCHER ANDERSON V. FUTURE COATING ET AL

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

99012

09CV0638



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 14 2009

*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.

*Willie L. Martin*

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

ATLANTA,            DECEMBER 15, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0144

IN THE INTEREST OF: R. J. D. B. ,    A CHILD (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94012

09CV1875



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 15 2009**

*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.*  
*Willie L. Martin*

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

ATLANTA,            DECEMBER 16, 2009

*The Court of Appeals hereby passes the following order:*

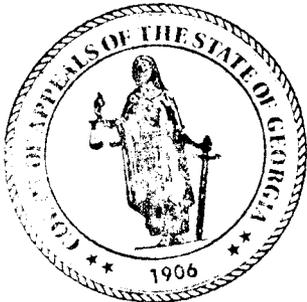
APPLICATION NO.        A10D0145

KERRY R. COBB V. THE STATE

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

95013

08CR00252



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 16 2009

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, December 11, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0146. Cobble v. The State.**

On November 24, 2009, David Cobble filed an application for discretionary review, seeking to challenge the trial court's October 2, 2009 order denying his Motion to Vacate Void Conviction and Sentence.<sup>1</sup> To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Cobble filed his application 53 days after entry of the trial court's order. Accordingly, we lack jurisdiction to consider the application, which is hereby DISMISSED as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 11 2009**

*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.*

*Willie L. Martin*, Clerk.

---

<sup>1</sup> Although we initially received Cobble's application on October 21, 2009, the application was not accepted for filing because Cobble failed to include either the filing fee or a sufficient pauper's affidavit, as required by OCGA § 5-6-4 and Court of Appeals Rule 5.

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

ATLANTA,            DECEMBER 28, 2009

*The Court of Appeals hereby passes the following order:*

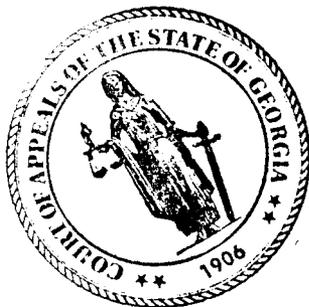
APPLICATION NO.        A10D0147

ALVESTER BASS V. PILGRIM'S PRIDE CORPORATION ET AL

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

98013

2009CV3533



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 28 2009**

*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.*

*Willie L. Martinez*

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

ATLANTA,            DECEMBER 16, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0148  
PLACIDO SOTO GARCIA V. THE STATE

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

90013

05CR00206



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    DEC 16 2009

*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. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

## **A10D0149. Fuller v. The State.**

Sterling T. Fuller filed an application for discretionary review, seeking to appeal the trial court's order revoking probation. Fuller included a copy of the trial court's order, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e).<sup>1</sup> On December 1, 2009, this Court ordered Fuller to supplement his application within 10 days with a stamped "filed" copy of the order to be appealed. We noted that failure to comply with this directive would result in dismissal of the application.

Over 10 days have passed since we issued the December 1, 2009 order, and Fuller has not submitted a stamped "filed" copy of the trial court's order. Accordingly, Fuller's application is hereby DISMISSED.



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

**DEC 30 2009**

*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.

---

<sup>1</sup> A stamped "filed" copy is required in order for this Court to ascertain that the application was filed within 30 days of the trial court's order, which is a jurisdictional prerequisite. See OCGA § 5-6-35 (d) (application must be filed within 30 days of the date of the order appealed); *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989) (OCGA § 5-6-35 requirements are jurisdictional).

# Court of Appeals of the State of Georgia

ATLANTA, December 11, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0150. Collier v. American Express Centurion Bank.**

Jerry Larry Collier has filed an application for discretionary review, requesting permission to appeal the trial court's order denying his motion to dismiss the complaint in this matter. The materials submitted by Collier, however, demonstrate that the trial court's order is not a final judgment. On the contrary, the trial court refused to dismiss the case, which remains pending below. Accordingly, Collier was required to follow the interlocutory appeal procedures in OCGA § 5-6-34 (b) and obtain a timely certificate of immediate review. His failure to do so deprives us of jurisdiction over the application, which is hereby **DISMISSED**. See *Pace Constr. Corp. v. Northpark Associates*, 215 Ga. App. 438, 439-440 (215 SE2d 438) (1994).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 11 2009**

*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,            DECEMBER 30, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0151

DEKALB COUNTY, GEORGIA V. MICHELE VAN DER WESTHUIZEN ET AL

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

93013

07CV8934



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 30 2009

*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. Martinez*

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

ATLANTA, **DEC 22 2009**

*The Court of Appeals hereby passes the following order:*

**A10D0152. HAWK v. THE STATE.**

Upon consideration of this application for discretionary appeal, the application is hereby ***DENIED***. The “application for leave to exceed page limit” is hereby ***DISMISSED AS MOOT***.

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

**DEC 22 2009**

*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.*

*Willi Z. Mantz*

, Clerk.

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

ATLANTA,                    DECEMBER 29, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0153  
IN THE INTEREST OF: S.B., A CHILD (MOTHER)

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

97013

03509J0062



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 29 2009**

*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.*

*W. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, December 10, 2009

*The Court of Appeals hereby passes the following order:*

**A10D0154. Mark Vogel, P. A. v. Bellsouth Advertising & Publishing Corporation.**

Mark Vogel, P. A. (“Vogel”) seeks discretionary review of the trial court’s order denying its motion to set aside a judgment entered for Bellsouth Advertising & Publishing Corporation (“Bellsouth”). The record shows that the trial court granted summary judgment to Bellsouth on June 22, 2009. According to Vogel, the trial court failed to notify it of the judgment, and it did not learn of the adverse decision until July 23, 2009, after the period for filing a notice of appeal had expired. Vogel subsequently moved to set the judgment aside under OCGA § 9-11-60, arguing, among other things, that it did not receive proper notice of the ruling. The trial court denied the motion to set aside on November 2, 2009, and Vogel filed a timely application for discretionary review.

Vogel apparently followed the discretionary appeal procedures because an order denying a motion to set aside under OCGA § 9-11-60 (d) may only be reviewed through discretionary application. See OCGA § 5-6-35 (a) (8). But “[m]otions to set aside brought on the grounds that the court failed to notify the losing party of its decision are cognizable as motions to correct a clerical error pursuant to OCGA § 9-11-60 (g) and are properly the subject of a direct appeal.” *Downs v. C. D. C. Federal Credit Union*, 224 Ga. App. 869 (1) (481 SE2d 903) (1997). Vogel, therefore, was not required to file an application for discretionary appeal. See *Leventhal v. Moseley*, 264 Ga. 891, 892 (453 SE2d 455) (1995).

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly,

Vogel's application is hereby GRANTED.<sup>1</sup> Vogel shall have ten days from the date of this order to file a notice of appeal with the trial court. See OCGA § 5-6-35 (g). If, however, Vogel has already filed a notice of appeal, it need not file a second notice. 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*

**DEC 10 2009**

*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.

---

<sup>1</sup> As part of its appeal, Vogel may also challenge portions of the trial court's November 2, 2009 ruling that might otherwise be subject to the discretionary appeal procedures in OCGA § 5-6-35 (a) (8). See *Zitrin v. Ga. Composite State Bd. of Medical Examiners*, 288 Ga. App. 295, 296-298 (1) (653 SE2d 758) (2007); OCGA § 5-6-34 (d).

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

ATLANTA,                    DECEMBER 28, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0155

IN THE INTEREST OF: J. B. , A CHILD (MOTHER)

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

99013

0109TP00180



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **DEC 28 2009**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, December 16, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0156. WILLS v. ARNETT.**

Linda S. Wills filed this application for discretionary appeal from the order granting summary judgment to David R. Arnett on Wills's third-party complaint against him.

Arnett and Wills were formerly married. Arnett's mother filed this action against Wills, contending that Wills took money from her bank account without permission. Wills filed a third-party complaint against Arnett, seeking contribution and indemnity on the ground that any money she took was used to pay marital debt. Wills also asserted claims of false arrest, false imprisonment and malicious prosecution against Arnett. The trial court granted Arnett summary judgment on the third-party complaint. Wills timely filed this application for discretionary appeal on the ground that this is a domestic relations case.

Even if the grant of summary judgment on Wills's claim for contribution and indemnity were subject to the discretionary appeal procedure,<sup>1</sup> Wills was entitled to file a direct appeal. This is because Wills seeks to appeal the grant of summary judgment to Arnett not only on the contribution and indemnity claim, but also on her claims of false arrest, false imprisonment and malicious prosecution, torts that are independent of the divorce.<sup>2</sup> Further, the grant of summary judgment as to one or more

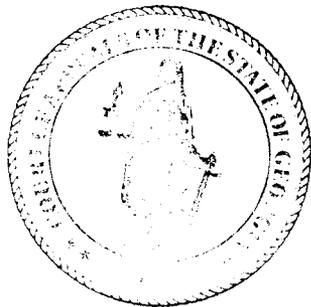
---

<sup>1</sup>See *Stone v. Stone*, 295 Ga. App. 783 n. 1 (673 SE2d 283) (2009).

<sup>2</sup>Arnett concedes in his response to the application that Wills's allegations of false arrest, false imprisonment and malicious prosecution concern events that occurred subsequent to the divorce.

but fewer than all the claims or parties may be directly appealed.<sup>3</sup> When an appeal involves a complaint that asserts two independent claims, one that is subject to the discretionary appeal statute and one that is directly appealable, a party may file a direct appeal.<sup>4</sup>

This court will grant an otherwise 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. Therefore, this application is hereby **GRANTED**.<sup>5</sup> Wills shall have ten days from the date of this order to file a notice of appeal with the trial court. See OCGA § 5-6-35 (g). If, however, she has already filed a notice of appeal, she need not file a second notice. 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*      **DEC 16 2009**

*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.

---

<sup>3</sup>See OCGA § 9-11-56 (h); *Olympic Dev. Group, Inc. v. American Druggists' Ins. Co.*, 175 Ga. App. 425 (1) (333 SE2d 622) (1985).

<sup>4</sup>*Zitrin v. Ga. Composite State Bd. of Med. Examiners*, 288 Ga. App. 295 (1) (297 653 SE2d 758) (2007).

<sup>5</sup>We observe that regardless of whether or not the ruling as to the contribution and indemnity claim is subject to the discretionary appeal statute, Wills may challenge that portion of the order in her direct appeal. See *Zitrin*, supra; OCGA § 5-6-34 (d).

# Court of Appeals of the State of Georgia

ATLANTA, December 10, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0157. MERILIEN v. SUNTRUST BANK et al.**

Prison inmate Jean Jocelyn Merilien filed an application for discretionary appeal from the superior court's order dismissing the civil action he filed against SunTrust Bank and Paula Khoury.<sup>1</sup> The order that Merilien seeks to appeal was entered on April 2, 2009, but he did not file his application for discretionary appeal until November 30, 2009. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Merilien filed his application 242 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. See *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, Merilien's application is hereby DISMISSED.



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

**DEC 10 2009**

*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.*

*Willie L. Martinez*, Clerk.

---

<sup>1</sup> Although Merilien currently has an appeal pending in A10A0576, it appears that the order Merilien is attempting to appeal in this matter is unrelated.

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

ATLANTA,            DECEMBER 17, 2009

*The Court of Appeals hereby passes the following order:*

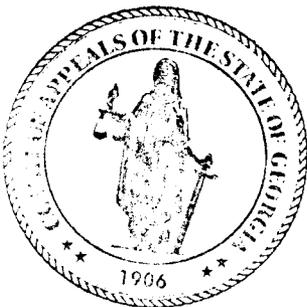
APPLICATION NO.        A10D0158

ERNEST EBERHARDT V. MICHAEL THURMOND ET AL

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

96014

2009CV171972



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 17 2009**

*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*

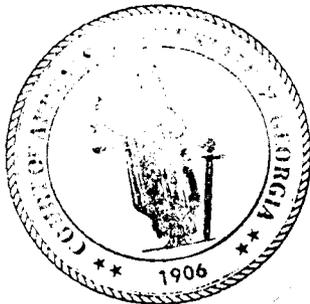
# Court of Appeals of the State of Georgia

ATLANTA, December 28, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0159. Randy M. Hudson v. The State.**

On August 20, 2009, the trial court entered an order denying a number of pro se motions filed by Randy M. Hudson seeking to challenge his criminal convictions. On October 19, 2009, Hudson filed an application for discretionary appeal of that order.<sup>1</sup> To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because Hudson filed his application 60 days after entry of the order he seeks to appeal, his application is untimely. The application is therefore DISMISSED for lack of jurisdiction.



*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  
hereto affixed the day and year last above written.

*Will. L. Martin*, Clerk.

<sup>1</sup> Hudson filed his application in the Supreme Court, which transferred it here.

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

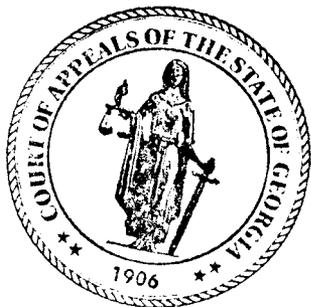
ATLANTA,            JANUARY    15, 2010

*The Court of Appeals passed the following order*

Case No. A10D0159

RANDY M. HUDSON V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 15, 2010*

*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. Martinez*

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0901

Atlanta, June 07, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**ROBERTO BAEZ v. THE STATE**

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.

Court of Appeals Case No.

A10D0160

RECEIVED IN OFFICE  
2010 AUG -2 AM 10:10  
Clerk's Office

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta July 29, 2010

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.

*Pamela M. Smith*, Deputy Clerk

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

ATLANTA,            DECEMBER 30, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0160

ROBERTO BAEZ V. THE STATE

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

90014

06CR635



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

DEC 30 2009

*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*



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

ATLANTA,                      JANUARY      27, 2010

*The Court of Appeals passed the following order*

Case No. A10D0160

ROBERTO BAEZ V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 27, 2010*

*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*

# Court of Appeals of the State of Georgia

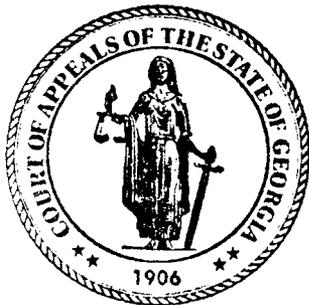
ATLANTA, December 10, 2009

*The Court of Appeals hereby passes the following order:* **DEC 10 2009**

## **A10D0161. Lawrence v. The State.**

Gary Lawrence filed an "Out-of-Time Motion In Arrest of Judgment" asserting that his criminal conviction was void. The trial court dismissed the motion as untimely, and Lawrence filed an application for discretionary appeal.

The order that Lawrence seeks to appeal was entered on October 15, 2009, but he did not file his application for discretionary appeal until December 7, 2009. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). Because Lawrence filed his application 53 days after entry of the order he seeks to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. See *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, Lawrence's application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **DEC 10 2009**

*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.*

*Willie L. Mat... A*, Clerk.



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

ATLANTA,                      JANUARY      14, 2010

*The Court of Appeals passed the following order*

Case No. A10D0161

GARY LAWRENCE V. THE STATE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN 14, 2010*

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, December 15, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0162. Danny Hawk v. Poncho Siskey.**

Danny Hawk sued Poncho Siskey in magistrate court for claims relating to the termination of his employment. The magistrate court dismissed his complaint, and Hawk appealed to the superior court, which also dismissed his complaint with prejudice by order entered November 4, 2009, in Case No. 09107760-42. Hawk now seeks discretionary review of the superior court's ruling.

We lack jurisdiction. A discretionary application must be filed within 30 days of entry of the order sought to be appealed. See OCGA § 5-6-35 (d). Hawk submitted his application on December 7, 2009, 33 days after entry of the November 4, 2009 order. Although he filed a motion for reconsideration and clarification, which the trial court denied on November 19, 2009, such motion did not extend the time for filing this discretionary application. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994). Accordingly, Hawk's application is hereby DISMISSED as untimely.



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

*Will L. Martinez*, Clerk.



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

ATLANTA,                      JANUARY      14, 2010

*The Court of Appeals passed the following order*

Case No. A10D0162

DANNY HAWK V. PONCHO SISKEY

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN 14, 2010*

*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*

# Court of Appeals of the State of Georgia

ATLANTA, December 15, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0163. Danny Hawk v. Cindy Siskey.**

Danny Hawk sued Cindy Siskey in magistrate court for claims relating to the termination of his employment. The magistrate court dismissed his complaint, and Hawk appealed to the superior court, which also dismissed his complaint with prejudice by order entered November 4, 2009, in Case No. 09107758-42. Hawk now seeks discretionary review of the superior court's ruling.

We lack jurisdiction. A discretionary application must be filed within 30 days of entry of the order sought to be appealed. See OCGA § 5-6-35 (d). Hawk submitted his application on December 7, 2009, 33 days after entry of the November 4, 2009 order. Although he filed a motion for reconsideration and clarification, which the trial court denied on November 19, 2009, such motion did not extend the time for filing this discretionary application. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994). Accordingly, Hawk's application is hereby DISMISSED as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 15 2009**

*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.*

*Willie L. Martin*, Clerk.

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

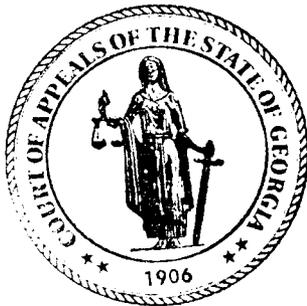
ATLANTA,            JANUARY    14, 2010

*The Court of Appeals passed the following order*

Case No. A10D0163

DANNY HAWK V. CINDY SISKEY

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 14, 2010*

*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*

# Court of Appeals of the State of Georgia

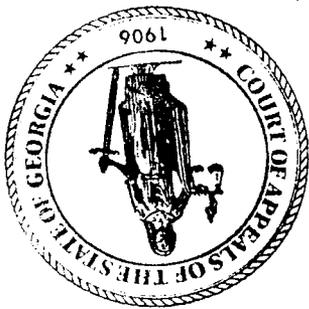
ATLANTA, December 15, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0164. Danny Hawk v. Siskey Hauling Co., Inc.**

Danny Hawk sued Siskey Hauling Co., Inc. in magistrate court for claims relating to the termination of his employment. The magistrate court dismissed his complaint, and Hawk appealed to the superior court, which also dismissed his complaint with prejudice by order entered November 4, 2009, in Case No. 09107762-42. Hawk now seeks discretionary review of the superior court's ruling.

We lack jurisdiction. A discretionary application must be filed within 30 days of entry of the order sought to be appealed. See OCGA § 5-6-35 (d). Hawk submitted his application on December 7, 2009, 33 days after entry of the November 4, 2009 order. Although he filed a motion for reconsideration and clarification, which the trial court denied on November 19, 2009, such motion did not extend the time for filing this discretionary application. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994). Accordingly, Hawk's application is hereby DISMISSED as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 15 2009**

*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. Mat... Clerk.*

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

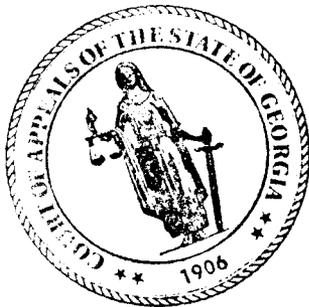
ATLANTA,                      JANUARY      14, 2010

*The Court of Appeals passed the following order*

Case No. A10D0164

DANNY HAWK V. SISKEY HAULING CO. INC .

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    JAN 14, 2010*

*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*

# Court of Appeals of the State of Georgia

ATLANTA, December 15, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0165. Danny Hawk v. David Colee.**

Danny Hawk sued David Colee in magistrate court for claims relating to the termination of his employment. The magistrate court dismissed his complaint, and Hawk appealed to the superior court, which also dismissed his complaint with prejudice by order entered November 4, 2009, in Case No. 09107757-42. Hawk now seeks discretionary review of the superior court's ruling.

We lack jurisdiction. A discretionary application must be filed within 30 days of entry of the order sought to be appealed. See OCGA § 5-6-35 (d). Hawk submitted his application on December 7, 2009, 33 days after entry of the November 4, 2009 order. Although he filed a motion for reconsideration and clarification, which the trial court denied on November 19, 2009, such motion did not extend the time for filing this discretionary application. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994). Accordingly, Hawk's application is hereby DISMISSED as untimely.

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

**DEC 15 2009**

*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.*



*Willie L. Martin*, Clerk.

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

ATLANTA,            JANUARY    14, 2010

*The Court of Appeals passed the following order*

Case No. A10D0165

DANNY HAWK V. DAVID COLEE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JAN 14, 2010*

*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.

*Willie L. Martin*

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

ATLANTA,                      DECEMBER 30, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0166

IN THE INTEREST OF: J. L. Z. , J. M. Z. , & P. B. Z. , CHILDREN  
(MOTHER)

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

93014

03509J0055



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**DEC 30 2009**

*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.*

*Willie L. Martin*

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0850

Atlanta, June 01, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ASTANIEL JARVIS MANN v. THE STATE

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.

Court of Appeals Case No.

A10D0167

JUN 17 2010

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta June 16, 2010

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.

*Pamela M. Smith*, Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JAN 21 2010**

**A10D0167. MANN v. THE STATE.**

On January 7, 2010, Astaniel Jarvis Mann filed a motion for reconsideration of this court's December 18, 2009 order dismissing his application for discretionary appeal. Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days of the order or judgment for which reconsideration is sought. Mann's motion for reconsideration, filed 20 days after the dismissal of his application, is thus untimely and is hereby **DISMISSED**.



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta **JAN 21 2010**

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*

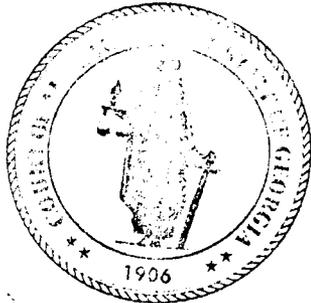
# Court of Appeals of the State of Georgia

ATLANTA, December 18, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0167. MANN v. THE STATE.**

On November 4, 2009, the trial court entered an order denying Astaniel Jarvis Mann's extraordinary motion for new trial. Thirty-three days later, on December 7, 2009, Mann filed this application for discretionary appeal. An application for discretionary appeal must be filed within 30 days of the order sought to be appealed. OCGA § 5-6-35 (d). Because this application is untimely, we lack jurisdiction to consider it. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Therefore, this application is **DISMISSED**.



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

**DEC 18 2009**

*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,            DECEMBER 29, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0168

IN THE INTEREST OF: R. K. , T. K. , A. K. , CHILDREN (MOTHER)

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

97014

08J067



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

**DEC 29 2009**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, December 22, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0169. Ofume v. Georgia State Board of Pharmacy.**

Rosemary E. Ofume filed an application for discretionary review, seeking to challenge the superior court's order affirming a decision by the Georgia State Board of Pharmacy ("the Board") to sanction her pharmacist's license. At the administrative level and in the superior court, Ofume argued that an administrative inspection and seizure conducted at her pharmacy pursuant to OCGA § 16-13-46 (c) violated the Fourth Amendment. In particular, she claimed that the Board's interpretation of OCGA § 16-13-46 (c) was both overly broad and unconstitutional. Ofume raises these same arguments in her discretionary application, and her claims appear to present issues of first impression regarding the constitutionality of OCGA § 16-13-46 (c).

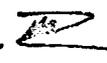
The Supreme Court "has exclusive jurisdiction over all cases involving construction of the Constitution of the State of Georgia and of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been called into question." *Atlanta Independent School System v. Lane*, 266 Ga. 657 (1) (469 SE2d 22) (1996); Ga. Const. of 1983, Art. VI, Sec. VI, Para. II. Because Ofume's discretionary application involves an allegedly unconstitutional application of OCGA § 16-13-46 (c), it is hereby TRANSFERRED to the Supreme Court for disposition. Georgia Constitution of 1983, Art. VI, Sec. I, Para. IV; see also *Atlanta Independent School System*, supra (Supreme Court generally has jurisdiction where "the issue raised on appeal relates either to the constitutional construction or to the constitutionality of a law, ordinance or constitutional provision").

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **DEC 22 2009**

*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.*

*Willi Z. Mont* ; 

, Clerk.

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0752

Atlanta, May 17, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ATLANTIC COAST CARRIERS et al. v. RAFAEL LARA

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.

Court of Appeals Case No.

A10D0170

JUN 25 2010

*William R. McEachern*  
CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA.

2010 JUN 17 AM 9:12

RECEIVED IN OFFICE

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta June 16, 2010

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.

*Pamela M. Smith*, Deputy Clerk

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

ATLANTA,            JANUARY    04, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0170  
ATLANTIC COAST CARRIERS ET AL V. RAFAEL LARA

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

99014

2009SUV378



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 04 2010**

*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 above written.*

*Clerk.*

*Will. L. Martinez*

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

ATLANTA,            DECEMBER 30, 2009

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0171  
TRAVIS CREWS V. ADVANCE FLUID SYSTEMS, 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.

94014

CE0901154063

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **DEC 30 2009**



*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*

# Court of Appeals of the State of Georgia

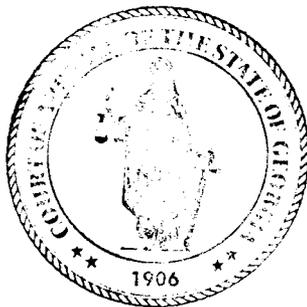
ATLANTA, December 18, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0172. COBB v. GEORGIA DEPARTMENT OF CORRECTIONS.**

William L. Cobb seeks discretionary review of the trial court's order dismissing, without prejudice, a civil case he filed against the Georgia Department of Corrections. The order was entered on September 23, 2009, but Cobb did not file this discretionary application until December 8, 2009.

To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Cobb, however, filed his application 76 days after entry of the order at issue.<sup>1</sup> Accordingly, we lack jurisdiction to consider the application, which is hereby **DISMISSED**. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).



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

**DEC 18 2009**

*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.

---

<sup>1</sup> Although Cobb initially submitted his application on October 13, 2009, we could not file or docket the application at that time because it did not include a certificate of service showing the complete name and mailing address of opposing counsel. See Court of Appeals Rule 6; OCGA § 5-6-35 (d). In any event, Cobb's failure to demonstrate either that the trial court committed reversible error or that precedent is desirable precludes the granting of his application for discretionary appeal. See Court of Appeals Rule 31 (a).

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

ATLANTA,                      JANUARY      05, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.                      A10D0173

LUIS M. SANTANA V. CITY OF HINESVILLE MUNICIPAL COURT

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.

96015

2009R473



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 05 2010**

*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.*

*Willie L. Martinez*

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

ATLANTA,                      JANUARY      05, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0174  
IN THE INTEREST OF: E. B. ,    A CHILD (FATHER)

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

98015

03509J0187



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 05 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,            JANUARY    07, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0175  
CITIZENS FOR ETHICS IN GOVERNMENT, LLC ET AL  
V. THE ATLANTA DEVELOPMENT AUTHORITY ET AL

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

94015

2008CV159232



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **JAN 07 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,            JANUARY    13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0176  
SECURITAS SECURITY SERVICES, ET AL V. BETTY PARKER

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

90015

2009CV175524



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JAN 13 2010**

*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*

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

ATLANTA,                      JANUARY      14, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0177

IN THE INTEREST OF:    J. S. , AND S. S. , CHILDREN (MOTHER)

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

91015

08DE00095



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 14 2010**

*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.*

*Willie L. Mat... [Signature]*

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

ATLANTA,            JANUARY    13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0178  
ROB WALLACE V. ENVIRONMENTAL LIGHTING FOR ARCHITECTURE,  
INC., D/B/A ELA LIGHTING

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

93015

09C08730



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 13 2010**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

January 5, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0179. ROBINSON v. THE STATE.**

Antonio Robinson filed an application for discretionary appeal from the denial of his "Motion to Correct a Void Sentence," in which he alleged that his life sentences for armed robbery were void because he could be sentenced only to 10 years imprisonment in accordance with OCGA § 17-10-6.1, the statute under which he was sentenced. He further asserts that even assuming life imprisonment is an appropriate sentence under OCGA § 16-8-41 (b), as the trial court held in denying his motion, there is a conflict between the two statutes that must be resolved in his favor.

A direct appeal lies from the denial of a motion to correct a void sentence if the defendant raises a colorable claim that the sentence is, in fact, void or illegal. See *Harper v. State*, \_\_\_ Ga. \_\_\_, n. 1 (Case No. S09A1019, decided Nov. 23, 2009); *Burg v. State*, 297 Ga. App. 118, 119 (676 SE2d 465) (2009). This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j) if the lower court's order is subject to direct appeal. Accordingly, Robinson's application is hereby **GRANTED**. Robinson shall have 10 days from the date of this order to file a notice of appeal with the superior court, if he has not already done so. The superior court is instructed to include a copy of this order in the appellate record transmitted to this court.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 05 2010**

*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. Mat...*, Clerk.

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

ATLANTA,                      JANUARY                      07, 2010

*The Court of Appeals hereby passes the following order:*

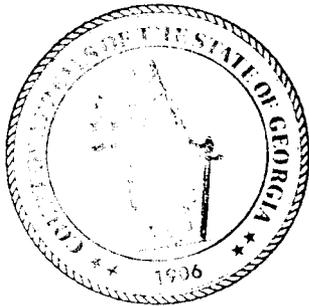
APPLICATION NO.                      A10D0180

LEROY BETHEL V. THE STATE

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

97015

04CR356



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 07 2010**

*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*

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

ATLANTA,            JANUARY    06, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0181

DEVON MOSELY V. THE STATE

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

70015

2009250



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 06 2010**

*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*

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

ATLANTA,            JANUARY    19, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0182  
IN THE INTEREST OF: T. B. R. , A CHILD (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99015

09JV0902



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 19 2010**

*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. Martinez*

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

ATLANTA,            JANUARY    14, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0183  
IN THE INTEREST OF: E. B. ,    A CHILD (FATHER)

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

98016

03509J0187



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **JAN 14 2010**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, December 30, 2009

*The Court of Appeals hereby passes the following order:*

## **A10D0184. HOOD v. DOE et al.**

Linda Hood filed a timely application for discretionary appeal from an order granting State Farm partial summary judgment and denying Hood's motion for summary judgment. The grant of a motion for partial summary judgment is directly appealable. OCGA § 9-11-56 (h); see also *Whiddon v. Stargell*, 192 Ga. App. 826, 828 (386 SE2d 884) (1989). Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, Hood's application is hereby **GRANTED**. Hood shall have 10 days from the date of this order to file a notice of appeal with the state court, if she has not already done so. The state court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **DEC 30 2009**

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

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

*William L. Martin*, Clerk.

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

ATLANTA,            JANUARY    13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0185

IN THE INTEREST OF: T. G., K. H. AND S. H., CHILDREN (MOTHER)

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

96016

09JV0899



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **JAN 13 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,            JANUARY    19, 2010

*The Court of Appeals hereby passes the following order:*

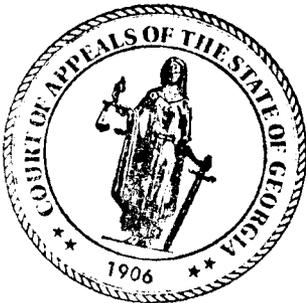
APPLICATION NO.            A10D0186

IN THE INTEREST OF: T. B. R.

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99016

09JV0902



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 19 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,            JANUARY    19, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0187

IN THE INTEREST OF: T. B. R., A CHILD (FATHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99017

09JV0902



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 19 2010**

*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. Martinez*

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

ATLANTA,                      JANUARY    13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0188  
BRADDRICK D. SMITH 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.

90016

09R94



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 13 2010**

*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 above written.*

*Clerk.*

*Will. L. Martin*

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

ATLANTA,            JANUARY    14, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0189  
OCTAVIUS CULPEPPER V. THE STATE

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

91016

SU2007CR1657



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 14 2010**

*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*

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

ATLANTA,            JANUARY    13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0190  
KELVIN BERNARD SLOAN V. THE STATE

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

93016

92R182



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 13 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,                    JANUARY    20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0191

IN THE INTEREST OF: Q. A. P. ,    C. D. P. ,    & T. C. P. , CHILDREN  
(MOTHER)

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

92016

0900839



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

**JAN 20 2010**

*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.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, January 20, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0192. Lee v. Macy's Information Systems.**

Jimmie Lee sued Macy's Information Systems in superior court for wrongful discharge. On February 2, 2009, the trial court granted Macy's motion to dismiss for insufficient service of process. Later that month, Lee filed a new action against Macy's in superior court, which he styled as a "Petition for Judicial Review." Through the new action, Lee sought review of the February 2, 2009 order dismissing his original suit. On November 30, 2009, however, the trial court entered a final order in the second action, through which it essentially dismissed Lee's petition. The court found that "dismissal of an action by one superior court judge is not subject to review by another superior court judge." It thus concluded that it lacked authority to consider the petition. Lee now seeks discretionary review of the November 30, 2009 ruling.

It is not clear why Lee proceeded in this case by discretionary application. Under OCGA § 5-6-35 (a) (1), the discretionary appeal procedures apply to cases involving superior court review of a decision by an administrative agency or lower court. In his second action, however, Lee sought superior court review of a superior court decision. The final order denying that review does not fall within OCGA § 5-6-35 (a) (1) and thus was not subject to the discretionary appeal requirements.

This court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. OCGA § 5-6-35 (j). Accordingly, Lee's application is hereby GRANTED.<sup>1</sup> Lee shall have 10 days from the date of this order

---

<sup>1</sup> The grant of this application does not, in any way, constitute a ruling on the merits of Lee's appeal.

to file a notice of appeal with the superior court. 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*

**JAN 20 2010**

*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,                      JANUARY      15, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.                      A10D0193  
JEANNE B. PINTARELL V. MICHAEL THURMOND

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

70016

2009CV169944



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 15 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,                      JANUARY      21, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0194  
CARY QUATTROCCHI V. JULIE CLARK

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

94016

2009CV177232



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 21 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,            JANUARY    19, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0195  
RONALD LAMAR WILLIAMS V. THE STATE

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

95017

03CR0097



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

**JAN 19 2010**

*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. Martinez*

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

ATLANTA,            JANUARY    19, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0196

DAVID CASPER 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.

96017

SU09CR1691



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 19 2010**

*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.*

*Willie L. McIntosh*

# Court of Appeals of the State of Georgia

ATLANTA, January 26, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0197. DANIEL HIXSON v. PHYLLIS HIXSON.**

Daniel Hixson has filed an application for discretionary appeal seeking review of a superior court order that granted summary judgment to the executor of his mother's estate in this probate case. The superior court heard the matter after an appeal from the probate court. Appeals from decisions of superior courts reviewing decisions of probate courts are specifically excluded from the discretionary appeal requirements set forth in OCGA § 5-6-35 (a) (1). Thus, the superior court order is directly appealable.<sup>1</sup> Accordingly, this application is GRANTED pursuant to 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 Clerk of the Superior Court is directed to include a copy of this order in the appeal record transmitted to this Court.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 26 2010**

*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.

---

<sup>1</sup> Hixson has styled his application as one for "Appeal of Probate Case in Which the Judgment is \$10,000 or Less," suggesting that he believes that OCGA § 5-6-35 (a) (6) requires an application here. That code section, however, applies only to appeals in actions for money damages where the judgment is \$10,000. See *Denton v. Hogge*, 208 Ga. App. 734 (1) (431 SE2d 728) (1993). It does not apply in this probate matter.

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

ATLANTA,            JANUARY    27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0198  
ALLEN ALPHONZO ADAMS V. THE STATE

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

90017

2006CR122



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JAN 27 2010**

*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.

*Willie L. Martin*

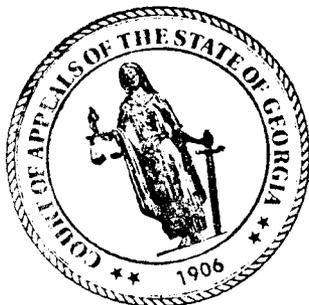
# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JAN 28 2010**

**A10D0198. ADAMS v. THE STATE.**

Allen Alphonzo Adams filed an application for discretionary appeal seeking to appeal the denial of his extraordinary motion for new trial. He has now filed a motion to dismiss the state's response to the application as untimely. The state, however, has not filed a response to the application. Therefore, Adams's motion to dismiss the response is ***DISMISSED AS MOOT***.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JAN 28 2010**

*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.*

*Willie L. Martin*, Clerk.

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

ATLANTA,            FEBRUARY 18, 2010

*The Court of Appeals passed the following order*

Case No. A10D0198

ALLEN ALPHONZO ADAMS V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    FEB 18, 2010*

*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

(404) 656-3470

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

**Docketing Date:** February 17, 2010

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 **S10C0923**

ALLEN ALPHONZO ADAMS v. THE STATE

Clerk, Supreme Court of Georgia

Case No. A10D0198

FEB 22 2010

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia



**SUPREME COURT OF GEORGIA**  
Case No. S10D0523

Atlanta December 18, 2009

The Honorable Supreme Court met pursuant to adjournment.

A10D0198

The following order was passed:

**ALLEN ALPHONZO ADAMS v. THE STATE**

From the Superior Court of Putnam County.

Applicant filed this application for discretionary appeal seeking review of the trial court's denial of his extraordinary motion for new trial. As applicant sets out no basis for this Court's subject matter jurisdiction and as none appears from the record, the appeal must be and hereby is transferred to the Court of Appeals.

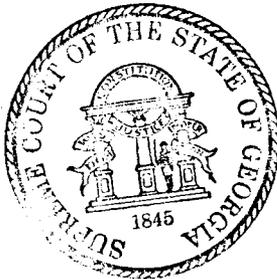
RECEIVED IN OFFICE  
2010 JAN -4 PM 2:11  
CLERK OF SUPREME COURT  
CLERK OF DISTRICT COURTS

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

JAN 4 2010

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.



*[Handwritten Signature]*, Chief Deputy Clerk

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

ATLANTA,            FEBRUARY 18, 2010

*The Court of Appeals passed the following order*

Case No. A10D0198

ALLEN ALPHONZO ADAMS V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    FEB 18, 2010*

*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*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* **JAN 28 2010**

**A10D0198. ADAMS v. THE STATE.**

Allen Alphonzo Adams filed an application for discretionary appeal seeking to appeal the denial of his extraordinary motion for new trial. He has now filed a motion to dismiss the state's response to the application as untimely. The state, however, has not filed a response to the application. Therefore, Adams's motion to dismiss the response is ***DISMISSED AS MOOT.***



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JAN 28 2010**

*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.*

*Willie L. Martin*, Clerk.

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0923

Atlanta, June 01, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ALLEN ALPHONZO ADAMS v. THE STATE

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.

Court of Appeals Case No.

A10D0198

JUN 17 2010

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta June 16, 2010

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.

*Pamela M. Smith*, Deputy Clerk

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

ATLANTA,            JANUARY    27, 2010

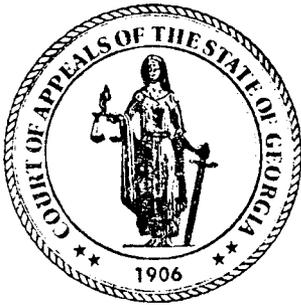
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0198  
ALLEN ALPHONZO ADAMS V. THE STATE

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

90017

2006CR122



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JAN 27 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,            JANUARY    21, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0199  
DARRELL LAMAR MILLS V. THE STATE

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

91017

06CR416



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta        JAN 21 2010*

*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,                    JANUARY    25, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0200  
THEODORE GHOLSTON V. JAMES GIBBS ET AL

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

93017

09CV51755



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

**JAN 29 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,                      JANUARY      28, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0201  
WILLIAM TRAVIS BENTLEY V. JENNI PRITT

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

92017

09F02692



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            JAN 28 2010*

*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. Mat...*

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

ATLANTA,                      JANUARY    12, 2010

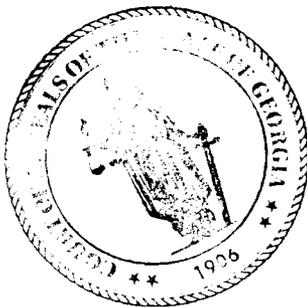
*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0202  
GARY BARNER V. THELMA C. BINKLEY

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.

97017

08CV01539



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 12 2010**

*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*

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

ATLANTA,                      JANUARY      27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0203  
BRAYTON EDWARDS V. NICOLE PACE

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

70017

2009CV171188



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

**JAN 27 2010**

*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.

*Willie L. Martin*

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

ATLANTA,                      FEBRUARY 12, 2010

*The Court of Appeals passed the following order*

Case No. A10D0203

BRAYTON EDWARDS V. NICOLE PACE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    FEB 12, 2010*

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, January 20, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0204. Bailey v. EMS Ventures, Inc.**

Bataski Bailey seeks discretionary review of the trial court's December 7, 2009 order denying, among other things, his request for an award of expenses pursuant to OCGA § 9-11-11.1, Georgia's anti-SLAPP statute. See OCGA § 9-11-11.1 (f). Orders resolving anti-SLAPP requests for fees and expenses, however, do not fall within the categories of cases subject to discretionary review. See OCGA § 5-6-35 (a). Moreover, the materials submitted with Bailey's application indicate that the December 7, 2009 order is the final judgment in this action, which was dismissed by the plaintiff in September 2009. It appears, therefore, that the order is directly appealable.

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Bailey's application is hereby GRANTED. Bailey shall have ten days from the date of this order to file a notice of appeal with the trial court. 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*

**JAN 20 2010**

*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.*

*Willie L. Martin*, Clerk.

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

ATLANTA,                      FEBRUARY 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0205  
HASHEM BAZZAZ V. OFFICE OF SOLICITOR GENERAL OF STATE  
COURT OF FULTON COUNTY ET AL

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

95018

2009CV176796



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB - 2 2010**

*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*

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

ATLANTA,                      JANUARY      27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0206  
TRIAD HEALTH MANAGEMENT OF GEORGIA, LLC V.  
WILLIAM M. FOSTER

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

96018

2009V069



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta    **JAN 27 2010**

*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.

*Willie L. Martin*

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0897

Atlanta, July 12, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**TRIAD HEALTH MANAGEMENT OF GEORGIA, LLC v. WILLIAM M. FOSTER**

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.

Court of Appeals Case No.  
A10D0206

RECEIVED IN OFFICE  
2010 AUG -2 AM 10:11

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta July 29, 2010

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.

*Pamela M. Smith*, Deputy Clerk

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

ATLANTA,            JANUARY    27, 2010

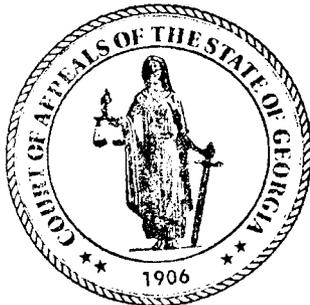
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0206  
TRIAD HEALTH MANAGEMENT OF GEORGIA, LLC V.  
WILLIAM M. FOSTER

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

96018

2009V069



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta    **JAN 27 2010**

*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 above written.*

Clerk.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, January 26, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0207. REYNOLDS PROPERTIES, INC. d/b/a COLDWELL BANKER  
LAKE OCONEE REALTY v. BICKELMAN.**

Reynolds Properties, Inc., filed a discretionary application seeking to appeal the award of OCGA § 9-15-14 attorney fees to Bruce Bickelman. Reynolds Properties now seeks to withdraw the application “due to a settlement having been reached by the parties.” Reynold’s Properties’ request to withdraw its application is hereby GRANTED.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JAN 26 2010*

*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.*

*Willie L. Martin*, Clerk.

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

ATLANTA,            JANUARY    27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0208

GERARDO PEQUENO V. THE STATE

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

90018

01R107



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JAN 27 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,                      JANUARY      29, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.                      A10D0209

DOROTHEA CORNELIUS V. DEUTSCHE BANK NATIONAL TRUST CO.

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

91018

2009CV1384



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 29 2010**

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

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

*Clerk.*

*William L. Martin*

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0921

Atlanta, July 12, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

DOROTHEA CORNELIUS v. DEUTSCHE BANK NATIONAL TRUST  
CO.

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.

Court of Appeals Case No.  
A10D0209

RECORDED IN OFFICE  
2010 JUL -2 AM 10:10  
DOROTHEA CORNELIUS  
v. DEUTSCHE BANK NATIONAL TRUST  
CO.

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta July 29, 2010

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.

*Pamela M. Smith* , Deputy Clerk

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

ATLANTA,                      JANUARY        29, 2010

*The Court of Appeals hereby passes the following order:*

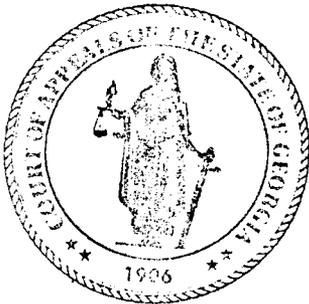
APPLICATION NO.            A10D0209

DOROTHEA CORNELIUS V. DEUTSCHE BANK NATIONAL TRUST CO.

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

91018

2009CV1384



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JAN 29 2010

*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.*

*W. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, January 21, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0210. WAYE v. THE STATE.**

Donnell Waye filed an application for discretionary review of the trial court's order denying his motion for reconsideration of a probation revocation order. An order denying a motion for reconsideration is not appealable in its own right. *Savage v. Newsome*, 173 Ga. App. 271 (326 SE2d 5) (1985); see also *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Nor did the motion for reconsideration extend the time for filing a challenge to the revocation order. See *Bell v. Cohran*, *supra*. Further, Waye's January 7, 2010 application is clearly untimely as to the October 1, 2009 revocation order itself. OCGA § 5-6-35 (d). This application is therefore **DISMISSED** for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JAN 21 2010**

*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.*

*Willie L. Martinez*, Clerk.

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

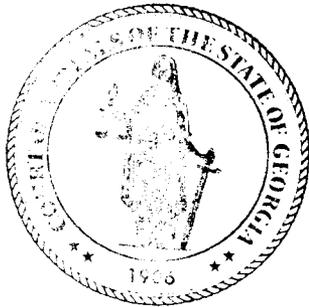
ATLANTA,                    JANUARY    29, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0211  
CLEO D. MAGBY V. RONALD FREEMAN ET AL

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

93018  
2009CV03416



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

**JAN 29 2010**

*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*

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C0922

Atlanta, June 28, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CLEO MAGBY v. RONALD FREEMAN 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.

Court of Appeals Case No.

A10D0211

RECEIVED IN OFFICE  
2010 JUL 22 AM 9:28  
Clerk's Office

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta July 19, 2010

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.

*Pamela M. Smith*, Deputy Clerk

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

ATLANTA,            JANUARY    29, 2010

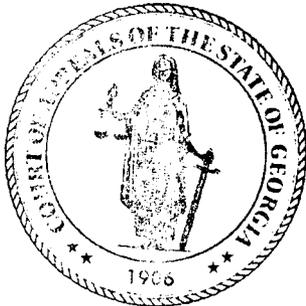
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0211  
CLEO D. MAGBY V. RONALD FREEMAN ET AL

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

93018

2009CV03416



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

JAN 29 2010

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

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

*Clerk.*

*William L. Martin*

# Court of Appeals of the State of Georgia

January 13, 2010

ATLANTA,

*The Court of Appeals hereby passes the following order:*

## **A10D0212. Aleman et al. v. UHS-Pruitt Holdings, Inc.**

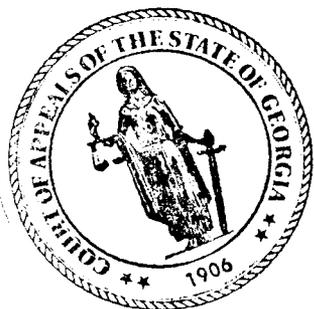
Marcos Aleman seeks discretionary review of the trial court's order denying his motion for class certification. Pursuant to OCGA § 9-11-23 (g), "[a] court's order certifying a class or refusing to certify a class shall be appealable in the same manner as a final order to the appellate court which would otherwise have jurisdiction over the appeal from a final order in the action." Thus, the order at issue here may be appealed directly.

Under OCGA § 5-6-35 (j), this court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal.<sup>1</sup> Aleman's application, therefore, is hereby GRANTED. Aleman shall have 10 days

---

<sup>1</sup> Aleman submitted his application to this Court on December 18, 2009, within 30 days of the trial court's order as required by OCGA § 5-6-35 (d). We initially refused to accept the application because it did not contain the certificate of immediate review necessary for an interlocutory appeal. See OCGA § 5-6-34 (b). The application, however, did not explicitly designate itself as a request for interlocutory review, and the order at issue is not subject to the interlocutory appeal procedures. See OCGA § 9-11-23 (g). Accordingly, we hereby construe the original application as an application for discretionary appeal and deem it timely filed on December 18, 2009.

from the date of this order to file a notice of appeal with the trial court. If, however, he has already filed a notice of appeal, he need not file a second notice. The clerk of the trial court is directed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JAN 13 2010**

*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. Mat...*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 2, 2010

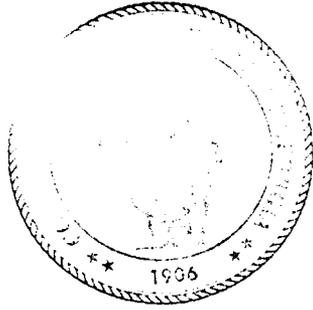
*The Court of Appeals hereby passes the following order:*

## **A10D0213. Homer Gable v. The State.**

On July 30, 2009, the trial court denied Homer Gable's extraordinary motion for new trial. Gable was required to file an application for discretionary appeal from that judgment. See OCGA § 5-6-35 (a) (7). Instead, he filed a direct appeal, docketed as A10A0512, which we dismissed for lack of jurisdiction. After receiving our dismissal, Gable filed in the trial court a "Motion for Leave to File an Out-of-Time Discretionary Appeal." On December 11, 2009, the trial court granted the motion, and Gable filed this application.

Pursuant to OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of the order, decision or judgment sought to be appealed. The requirements of OCGA § 5-6-35 are jurisdictional and this Court cannot accept an appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Here, Gable did not file his application within 30 days of the trial court's order denying his extraordinary motion for new trial. Accordingly, this Court lacks jurisdiction to consider the application. The fact that the trial court purported to grant an extension does not change this result. We are aware of no legal authority permitting either this Court or the trial court to grant an extension of time for the filing of an application for discretionary appeal. See OCGA § 5-6-35 (d); *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983); Court of Appeals Rules 16 (c) and 31 (g).

Thus, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* FEB - 2 2010

*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.

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C0938

Atlanta, January 13, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

HOMER GABLE v. THE STATE

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 certiorari and application granted, notice of appeal to this court.

All the Justices concur.

Court of Appeals Case No.

A10D0213

RECEIVED  
2011 FEB - 1 AM 9:23  
CLERK'S OFFICE  
SUPREME COURT OF GEORGIA



## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta January 31, 2011

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.

*Pamela M. Fishburne*, Deputy Clerk



SUPREME COURT OF GEORGIA  
Case No. S10C0938

Atlanta, January 13, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

**HOMER GABLE v. THE STATE**

Upon consideration of the Petition for Certiorari to review the judgment of the Court of Appeals in this case, it is ordered that it be hereby granted.

It is further ordered that the application for appeal is hereby granted. Notice of Appeal directed to the Supreme Court should be filed in the trial court within 10 days from the date of this order, timely enumeration of errors and briefs to be filed in this Court after the record is docketed here. The case will be automatically assigned to an oral argument calendar upon docketing. Oral argument is mandatory in granted certiorari cases. All the Justices concur.

The Court is particularly concerned with the following:

Whether a trial court has the authority to grant an out-of-time discretionary appeal in a criminal case as a remedy for counsel's failure to timely file a discretionary application?

Court of Appeals Case No. A10D0213

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I certify that the above is a true extract from 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.

*Theresa A. Barnes*, Clerk

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

ATLANTA,                    JANUARY        28, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0214

MARTIN E. EVERHARD V. DONNA HOLDEN MCELHANEY

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

70018

DR051763



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 28 2010**

*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*

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

ATLANTA,            FEBRUARY 18, 2010

*The Court of Appeals passed the following order*

Case No. A10D0214

MARTIN E. EVERHARD V. DONNA HOLDEN MCELHANEY

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    FEB 18, 2010*

*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.

*Willie L. Martin*

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C1015

Atlanta, June 28, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MARTIN E. EVERHARD v. DONNA HOLDEN MCELHANEY

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.

Court of Appeals Case No.

A10D0214

RECEIVED IN OFFICE  
2010 JUL 22 AM 9:28  
Clerk of the Supreme Court  
OFFICE OF THE CLERK

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta July 19, 2010

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.

*Pamela M. Smith*, Deputy Clerk

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

ATLANTA,            FEBRUARY 18, 2010

*The Court of Appeals passed the following order*

Case No. A10D0214

MARTIN E. EVERHARD V. DONNA HOLDEN MCELHANEY

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    FEB 18, 2010*

*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*

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

ATLANTA,            JANUARY    28, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0214  
MARTIN E. EVERHARD V. DONNA HOLDEN MCELHANEY

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

70018

DR051763



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*        **JAN 28 2010**

*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 above written.*

*Clerk.*

*Will L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, February 8, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0215. William F. Kelley v. Marie Susan Baughman.**

On November 13, 2009, the trial court entered an order assessing OCGA § 9-15-14 attorney fees against both the defendant and counsel for the defense, William Kelley. To appeal from such an award, Kelley was required to file an application for discretionary appeal. See OCGA § 5-6-35 (a) (10). Kelley, however, believed the order to be directly appealable, and obtained a 30-day extension of time in which to file a notice of appeal pursuant to OCGA § 5-6-39. Upon discovering that the order was subject to discretionary application procedure, Kelley filed an application on January 11, 2010.

Pursuant to OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days of the date of the order, decision or judgment sought to be appealed. The requirements of OCGA § 5-6-35 are jurisdictional and this Court cannot accept an appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989).

Here, Kelley did not file his application within 30 days of the trial court's ruling assessing OCGA § 9-15-14 attorney fees. Accordingly, this Court lacks jurisdiction to consider the application. The fact that the superior court purported to grant an extension does not change this result. We are aware of no legal authority permitting either this Court or the trial court to grant an extension of time for the filing of an application for discretionary appeal. See OCGA § 5-6-35 (d); *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304

SE2d 740) (1983); Court of Appeals Rules 16 (c) and 31 (g).<sup>1</sup> Thus, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta FEB - 8 2010*

*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.*

*Willie L. Martin*, Clerk.

---

<sup>1</sup> Kelley contends that Court of Appeals Rule 16 conflicts with OCGA § 5-6-39 (a) (5), which permits an appellate court to grant a 30 day extension for “[a]ny other similar motion, proceeding, or paper for which a filing time is prescribed.” Even if this were true, it would require Kelley to seek permission from this Court to file an application beyond the 30 day deadline. Compare Supreme Court Rule 12. Accordingly, we decline to overrule *Wilson*, supra and *Rosenstein*, supra at this juncture.

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

ATLANTA,                      FEBRUARY 08, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0216  
DANIELLE WHEELER V. THE STATE

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

94018

06CR0844



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB - 8 2010**

*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...*

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

ATLANTA,                      FEBRUARY 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0217

A.M. BUCKLER & ASSOCIATES, INC., V. C.R. SANDERS, 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.

95019

2009RCSC1592

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB - 2 2010**



*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*

# Court of Appeals of the State of Georgia

ATLANTA, January 25, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0218. KNIGHT v. THE STATE.**

On January 12, 2010, Wallace Knight filed this application for discretionary appeal to challenge the December 10, 2009 order denying his extraordinary motion for new trial. To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d). Because Knight filed his application 33 days after entry of the order he seeks to appeal, his application is untimely. The application is therefore **DISMISSED** for lack of jurisdiction.

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

**JAN 25 2010**

*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.*

*Willie L. Martin* Clerk.



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

ATLANTA,            FEBRUARY 09, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0219  
ALI S. MAHAMMAD V. DEUTSCHE BANK NATIONAL TRUST  
COMAPANY, AS TRUSTEE

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

98019

2009CV4324



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **FEB -9 2010**

*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. Martinez*

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C0990

Atlanta, June 28, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ALI S. MUHAMMAD v. DEUTSCHE BANK NATIONAL TRUST  
COMPANY

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.

Court of Appeals Case No.  
A10D0219

RECEIVED M. C. 1101  
2010 JUL 22 AM 9:20  
Clerk's Office  
Supreme Court of Georgia

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta July 19, 2010

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.

*Pamela M. Smith*, Deputy Clerk

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

ATLANTA,                      FEBRUARY 09, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0219  
ALI S. MAHAMMAD V. DEUTSCHE BANK NATIONAL TRUST  
COMAPANY, AS TRUSTEE

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

98019

2009CV4324



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    FEB - 9 2010

*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*

# Court of Appeals of the State of Georgia

ATLANTA, February 10, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0220. Clark et al. v. City of Atlanta Police Department et al.**

Baker Edman Clark, who is incarcerated at the Augusta State Medical Prison, seeks discretionary review of the trial court's November 12, 2009 order dismissing his complaint. See OCGA § 42-12-8 (appeals of all actions filed by prisoners must proceed by discretionary application). A discretionary application, however, must be filed within 30 days of entry of the order sought to be appealed. See OCGA § 5-6-35 (d). Clark did not file his application until January 12, 2010, 61 days after the trial court entered its order.<sup>1</sup> Although the trial court also granted Clark's "Motion for an Out of Time Appeal" on November 12, 2009, an out-of-time discretionary appeal is not permitted by OCGA § 5-6-35. To the extent the trial court sought to extend the time for filing this discretionary application, it lacked authority to do so. See *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, Clark's application is hereby DISMISSED as untimely.

---

<sup>1</sup> Clark initially submitted his application on December 15, 2009, but it was procedurally deficient and not accepted for filing. Even if Clark had successfully filed his application that day, however, it would have been untimely, requiring dismissal.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 10 2010**

*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, March 29, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0220. Clark et al. v. City of Atlanta Police Department et al.**

Baker Edman Clark has filed a motion for reconsideration, asking us to reconsider our February 10, 2010 order dismissing this discretionary application as untimely. Clark, however, failed to file his motion within ten days after we issued the dismissal order, as required by Court of Appeals Rule 37 (b). Moreover, Clark has not demonstrated that his application for discretionary review was timely. Accordingly, Clark's motion for reconsideration is hereby DENIED. His "Motion to Stay the Remittitur" is also DENIED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* MAR 29 2010

*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. Martinez*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, February 9, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0221. William L. Norton, Jr. et al. v. City of Gainesville, Georgia.**

Seeking to challenge the issuance of a certificate of appropriateness for the placement of a sign in a Gainesville historic district, William Norton, James Brooks, and the Hall County Historical Society sued the city in superior court asserting claims for declaratory and injunctive relief, as well as judicial review of the city council's decision. On August 3, 2009, the superior court dismissed the claim for judicial review, leaving pending the claims for declaratory and injunctive relief. On December 14, 2009, plaintiffs dismissed their remaining claims without prejudice. Within 30 days of that dismissal, they filed this application seeking to challenge the superior court's earlier dismissal order. The City of Gainesville has moved to dismiss this application as untimely.

In *Studdard v. Satcher, Chick, Kapfer, Inc.*, 217 Ga. App. 1, 3 (456 SE2d 71) (1995), this Court held that a plaintiff cannot use a "voluntary dismissal as the vehicle for appellate review of rulings entered by the trial court more than 30 days from the filing of the notice of appeal." See also *Mitchell v. Wyatt*, 192 Ga. App. 127, 129 (1) (384 SE2d 227) (1989) (a party cannot appeal from a ruling it has procured). Because this application was filed more than 30 days after entry of the only order from which the plaintiffs could have sought an appeal (the August 3, 2009 dismissal order), it is untimely. See OCGA § 5-6-35 (d). The City's motion to dismiss the application is therefore GRANTED, and this application is hereby DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **FEB - 9 2010**

*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, January 26, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0222. WALKER v. THE STATE.**

On January 14, 2010, Bennie James Walker filed this application for discretionary appeal to challenge the November 23, 2009 order denying his motion to set aside. To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d). Because Walker filed his application 52 days after entry of the order he seeks to appeal, his application is untimely. The application is therefore **DISMISSED** for lack of jurisdiction.

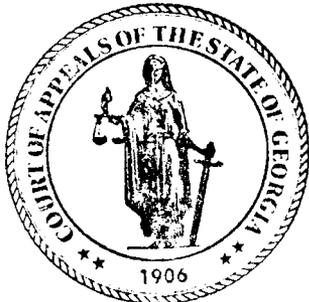
*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JAN 26 2010**

*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. Martinez*

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

ATLANTA,                      FEBRUARY 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.                      A10D0223

ROBERT A. SMITH V. MICHAEL L. THURMOND ET AL

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

93019

07CV0707

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 11 2010



*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. McIntosh*

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

ATLANTA,                      FEBRUARY 08, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0224  
JEANIE SMITH V. MOLLY M. MCCOLLUM 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.

92019

09CV51974



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB - 8 2010**

*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.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, February 10, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0225. CITY OF ALBANY, GEORGIA et al. v. JOSEPH PAIT.**

After Joseph Pait was terminated from his job as firefighter for the City of Albany, he sought a hearing before the city manager, who upheld the termination. Pait then petitioned the superior court for a writ of certiorari to review the decision. His petition also asserted other claims against the city and the chief and deputy chief of the fire department, including slander and defamation, intentional infliction of emotional distress, and due process and equal protection violations. The superior court issued an order granting the petition for certiorari and reversing Pait's termination. The court expressly reserved ruling on Pait's other claims. The city defendants now seek discretionary review in this Court. We lack jurisdiction.

The order that the city defendants wish to appeal is not a final judgment. Because the action remains pending below, the city defendants were required to obtain a certificate of immediate review pursuant to the interlocutory appeal procedures in OCGA § 5-6-34 (b) in order to appeal.<sup>1</sup> Their failure to do so deprives this Court of jurisdiction over the application, which is therefore *DISMISSED*. See *Scruggs v. Georgia Dept. of Human Resources*, 261 Ga. 587, 588 (408 SE2d 103) (1991).

---

<sup>1</sup> The city defendants argue that it was improper for Pait to assert new claims in his petition for certiorari. That issue, however, is not before us. Because those claims – proper or not – remain pending below, compliance with the interlocutory appeal procedures was necessary.



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

*William L. [Signature], Clerk.*

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

ATLANTA,            MARCH            31, 2010

*The Court of Appeals passed the following order*

Case No. A10D0225

CITY OF ALBANY, GEORGIA ET AL V. JOSEPH PAIT

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    MAR 31, 2010*

*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.*

*Willi L. Martin*

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

ATLANTA,                      FEBRUARY 03, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0226  
JONATHAN L. HUGGINS V. KAREN D. BOYD

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.

70019  
SU07CV0402

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            FEB -3 2010*



*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.*

*Willie L. Martin*

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

ATLANTA,                      FEBRUARY 08, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0227  
LINDA GASSES V. RONALD FREEMAN ET AL

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

99019

2009CV03418



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

**FEB - 8 2010**

*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*

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

ATLANTA,                      FEBRUARY 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0228  
MERANDA VENABLE V. MARK PARKER

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.

94019

08111210



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 11 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, February 5, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0229. In the Interest of: T. J. H., a Child (Mother).**

On January 19, 2010, the mother of T. J. H. filed an application for discretionary review of the juvenile court's December 7, 2009 order terminating her parental rights.<sup>1</sup> An application for discretionary appeal must be filed within 30 days of the order to be appealed. OCGA § 5-6-35 (d). This Court lacks jurisdiction to consider an untimely application. *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Because the mother filed this application 43 days after entry of the order she seeks to appeal, we lack jurisdiction to consider it. The application is therefore DISMISSED.

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

, Clerk.

*Willi Z. Mant; [Signature]*



---

<sup>1</sup> Although the mother initially submitted her application on January 6, 2010, we could not file or docket it at that time because it did not include a copy of the order she sought to appeal. See OCGA § 5-6-35 (c) (application for discretionary review “shall include as exhibits to the petition a copy of the order or judgment being appealed . . .”) (emphasis supplied); Court of Appeals Rule 31 (b).

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

ATLANTA,                      FEBRUARY 23, 2010

*The Court of Appeals passed the following order*

Case No. A10D0229

IN THE INTEREST OF: T. J. H., A CHILD (MOTHER)

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    FEB 23, 2010*

*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*

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

ATLANTA,                      FEBRUARY    04, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0230

IN THE INTEREST OF: C. R. K., A CHILD (MOTHER)

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

96020

05108J310



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB - 4 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, February 11, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0231. Long v. The State.**

Following a criminal conviction, Stacey Shane Long filed a motion to correct or modify his sentence. The trial court dismissed this motion by order signed December 17, 2009. Long apparently filed a “Motion to Set Aside, Vacate, and Reconsider” the order, which the trial court denied on January 10, 2010. On January 20, 2010, Long filed an application for discretionary appeal seeking review of this ruling. We, however, lack jurisdiction.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within thirty days of entry of the appealable judgment. A motion for reconsideration does not serve to extend the time for filing an application for appeal. *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (441 SE2d 452) (1994). Further, an order denying a motion for reconsideration is not appealable in its own right. *Bell v. Cochran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Although the denial of a motion to set aside under OCGA § 9-11-60 (d) may be made by application for discretionary appeal, there is no suggestion in the application that Long moved to set aside the trial court’s order on this basis.<sup>1</sup> See OCGA § 5-6-34 (a) (8). Because Long did not seek

---

<sup>1</sup> OCGA § 9-11-60 (d) provides for collateral attack on a judgment that is void on its face. See *Nally v. Bartow County Grand Jurors*, 280 Ga. 790, 791 (633 SE2d 337) (2006). Based upon the trial court’s order, it does not appear that Long moved to set aside the court’s order on this basis. Moreover, Long failed to include a copy of the motion in violation of Court of Appeals Rule 31 (b). Thus, even if he had raised this argument, his failure to include his motion precludes appellate review. See *Harper v. Harper*, 259 Ga. 246 (378 SE2d 673) (1989) (applicant bears burden of demonstrating that application should be granted).

to appeal within 30 days of the trial court's December 17, 2009 order, this Court lacks jurisdiction over the application, which is hereby DISMISSED.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta FEB 11 2010*

*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*

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

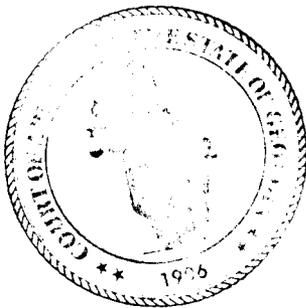
ATLANTA,            FEBRUARY 26, 2010

*The Court of Appeals passed the following order*

Case No. A10D0231

STACEY SHANE LONG V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    FEB 26, 2010*

*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. Matz*

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

ATLANTA,                      FEBRUARY 03, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0232  
IMERYS KAOLIN ET AL V. J.W. BLACKSHEAR

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.

90020  
2009V425

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB - 3 2010**



*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.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

## **A10D0233. Joseph R. McKenzie v. The State.**

On January 22, 2010, Joseph R. McKenzie filed an application for discretionary appeal, seeking review of an October 28, 2009 order revoking his probation. To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because McKenzie filed his application 86 days after entry of the order he seeks to appeal, his application is untimely. The application is therefore DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **FEB 12 2010**

*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. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 4, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0234. HOLT v. THE STATE.**

On January 20, 2010, Justin L. Holt filed this application for discretionary appeal to challenge the December 17, 2009 order denying his motion for jail credit.<sup>1</sup> To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d). Because Holt filed his application 34 days after entry of the order he seeks to appeal, his application is untimely. The application is therefore **DISMISSED** for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **FEB - 4 2010**

*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.*

*Willie L. Martin*

, Clerk.

---

<sup>1</sup>Although we initially received Holt's application on January 8, 2010, we could not file or docket the application at that time because it did not include a certificate of service. See Court of Appeals R. 6.

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

ATLANTA,                      FEBRUARY 10, 2010

*The Court of Appeals hereby passes the following order:*

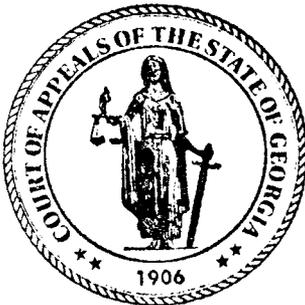
APPLICATION NO.            A10D0235

LIONEL DANIEL V. EVEREST SECURITY INSURANCE COMPANY

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

93020

09SV4085



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 10 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, February 22, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0236. Jackson v. The State.**

On January 21, 2010, Curtis Jackson filed an application for discretionary appeal, seeking appellate review of various orders denying his pro se motions in this case.<sup>1</sup> The latest order referenced in Jackson's application, however, was entered on December 4, 2009. To be timely, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Jackson filed his application 48 days after entry of the trial court's latest order. Accordingly, we lack jurisdiction to consider the application, which is hereby DISMISSED as untimely.



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

**FEB 22 2010**

*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. Mat... Clerk.*

---

<sup>1</sup> Although we initially received Jackson's application on January 4, 2010, the application was not accepted for filing because, among other deficiencies, Jackson failed to include either the filing fee or a sufficient pauper's affidavit, as required by OCGA § 5-6-4 and Court of Appeals Rule 5.

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

ATLANTA, MARCH 29, 2010

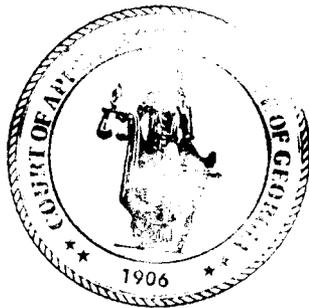
*The Court of Appeals passed the following order*

Case No. A10D0236

CURTIS JACKSON V. THE STATE

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

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAR 29, 2010*



*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. Martinez*

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

ATLANTA,                      FEBRUARY 10, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0237

IN THE INTEREST OF: J. E. , A CHILD (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97020

10871



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 10 2010**

*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. McIntosh*

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

ATLANTA,                      FEBRUARY 18, 2010

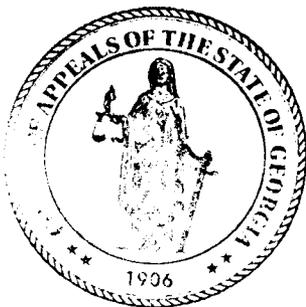
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0238  
LORRAINE PRICE V. THE STATE OF GEORGIA

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

70020

2007V301



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 18 2010**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, February 16, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0239. In the Interest of: J. F., a child.**

In November 2008, the juvenile court found J. F. to be deprived and awarded custody to the maternal grandmother for a period of two years. In September 2009, the mother petitioned the court for a return of custody, which the trial court denied. The mother filed an application for discretionary appeal seeking appellate review of that ruling.

Under newly amended OCGA § 5-6-34 (a) (11), “[a]ll judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody” are directly appealable. See *Moore v. Moore-McKinney*, 297 Ga. App. 703, 704 (1) (678 SE2d 152) (2009). The amendment applies “to all child custody proceedings and modifications of child custody filed on or after January 1, 2008.” Ga. Laws 2007, p. 554, § 8. Because the new law applies here, the order that the mother seeks to challenge is directly appealable.

This Court will grant an otherwise timely discretionary application if the lower court’s order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, the mother’s application is hereby GRANTED, and she shall have ten days from the date of this order to file a notice of appeal with the superior court. See OCGA § 5-6- 35 (g). 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*

**FEB 16 200**

*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.*

*Willie L. Martin* , Clerk.

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

ATLANTA,                      FEBRUARY 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0240  
THE HOME DEPOT ET AL V. CATHY MCCREARY

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.

94020

2009CV0838

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta    FEB 11 2010*



*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 above written.*

*Clerk.*

*Willie L. Martinez*

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

ATLANTA,                      FEBRUARY 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0241  
ALI S. MUHAMMAD V. FULTON COUNTY BOARD OF CODE  
ENFORCEMENT

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

95021

2009CV176675



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 11 2010

*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.*

*Willie L. Martin*

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C0996

Atlanta, June 28, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**ALI S. MUHAMMAD v. FULTON COUNTY BOARD OF CODE ENFORCEMENT**

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.

Court of Appeals Case No.  
A10D0241

RECEIVED IN OFFICE  
2010 JUL 22 AM 9:23  
Clerk's Office

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta July 19, 2010

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.

*Pamela M. Smith*, Deputy Clerk

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

ATLANTA,                      FEBRUARY 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0241

ALI S. MUHAMMAD V. FULTON COUNTY BOARD OF CODE  
ENFORCEMENT

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

95021

2009CV176675



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 11 2010

*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*

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

ATLANTA,                      FEBRUARY 10, 2010

*The Court of Appeals hereby passes the following order:*

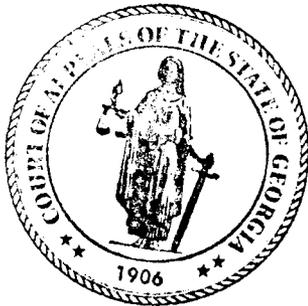
APPLICATION NO.            A10D0242

DOLLY THORN GREGA ET AL V. WILLIAM DAVISON

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

96021

08CV4628



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 10 2010

*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*

# Court of Appeals of the State of Georgia

ATLANTA February 12, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0243. In the Interest of: C. H., a Child (Father);**

**A10D0244. In the Interest of: L. B., H. H., & C. H., Children (Mother).**

On September 4, 2009, the juvenile court entered an order finding L. B., H. H., and C. H. to be deprived. The parents filed a timely notice of appeal from this order, and the case was docketed on February 4, 2010 as Case Number A10A1034. On December 28, 2010, the trial court entered an order terminating the parental rights of both the mother and father. Both parents have filed separate applications for discretionary appeal seeking to challenge the termination order.

Although an order terminating parental rights is subject to the discretionary appeal procedure, a deprivation order may be directly appealed. See OCGA § 5-6-35 (a) (12); *In the Interest of W. P. B.*, 269 Ga. App. 101 (1) (603 SE2d 454) (2004); *In the Interest of S. A. W.*, 228 Ga. App. 197, 199 (1) (491 SE2d 441) (1997). Under the circumstances of this case, the interest of judicial economy would best be served by considering the parents' challenge to the termination of their parental rights at the same time we consider their direct appeal of the deprivation order. Accordingly, these applications for discretionary appeal are hereby GRANTED. The parents shall have ten days from the date of this order to file notices of appeal. The clerk of the juvenile 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*      **FEB 12 2010**

*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, February 12, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0243. In the Interest of: C. H., a Child (Father);**

**A10D0244. In the Interest of: L. B., H. H., & C. H., Children (Mother).**

On September 4, 2009, the juvenile court entered an order finding L. B., H. H., and C. H. to be deprived. The parents filed a timely notice of appeal from this order, and the case was docketed on February 4, 2010 as Case Number A10A1034. On December 28, 2010, the trial court entered an order terminating the parental rights of both the mother and father. Both parents have filed separate applications for discretionary appeal seeking to challenge the termination order.

Although an order terminating parental rights is subject to the discretionary appeal procedure, a deprivation order may be directly appealed. See OCGA § 5-6-35 (a) (12); *In the Interest of W. P. B.*, 269 Ga. App. 101 (1) (603 SE2d 454) (2004); *In the Interest of S. A. W.*, 228 Ga. App. 197, 199 (1) (491 SE2d 441) (1997). Under the circumstances of this case, the interest of judicial economy would best be served by considering the parents' challenge to the termination of their parental rights at the same time we consider their direct appeal of the deprivation order. Accordingly, these applications for discretionary appeal are hereby GRANTED. The parents shall have ten days from the date of this order to file notices of appeal. The clerk of the juvenile 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*      **FEB 12 2010**

*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.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, February 10, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0245. Garnsey v. Buice.**

Zachary Buice petitioned the trial court for a temporary protective order to prevent his neighbor, Tom Garnsey, from stalking him. Following a hearing, the trial court found that Garnsey had violated Georgia's stalking provisions and entered a 12-month protective order pursuant to OCGA § 16-5-94. Garnsey filed a timely application for discretionary appeal from that order. A discretionary application, however, was not necessary in this case. As noted above, the appeal arose from a disagreement between neighbors, rather than a domestic dispute, and thus does not fall within OCGA § 5-6-35 (a) (2). Moreover, we have consistently treated temporary stalking protective orders as directly appealable. See *Thornton v. Hemphill*, 300 Ga. App. 647 (686 SE2d 263) (2009); *Rawcliffe v. Rawcliffe*, 293 Ga. App. 264 (641 SE2d 255) (2007); *McKlin v. Ivory*, 266 Ga. App. 298 (596 SE2d 673) (2004); *Johnson v. Smith*, 260 Ga. App. 722 (580 SE2d 674) (2003).

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Garnsey's application is hereby GRANTED. Garnsey shall have ten days from the date of this order to file a notice of appeal with the superior court.<sup>1</sup> See OCGA § 5-6-35 (g). The clerk of the superior court is DIRECTED to include a copy of this order in the record transmitted to the Court of Appeals.

---

<sup>1</sup> If, however, Garnsey has already filed a notice of appeal below, he need not file a second notice.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

FEB 10 2010

*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.*



*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 26, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0246. Major Fortson v. Clifford H. Hardwick.**

Major Fortson sued Clifford Hardwick for damages. On August 5, 2009, the trial court granted summary judgment to Hardwick and, in the same order, awarded Hardwick \$6,360 in attorney fees pursuant to OCGA § 9-15-14. Fortson filed a timely direct appeal from that order, which has been docketed as Case No. A10A0833. In addition, on January 29, 2010, Fortson filed this application for discretionary appeal from the same order.

To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582, 583 (420 SE2d 393) (1992). Fortson, however, filed this application 177 days after entry of the order he seeks to appeal. Moreover, this application is duplicative, as Fortson already has a pending direct appeal from the same order.

For these reasons, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      FEB 26 2010

*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.*

*Willie L. McIntosh*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 10, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0247. IN THE INTEREST OF: H. B., A CHILD (MOTHER).**

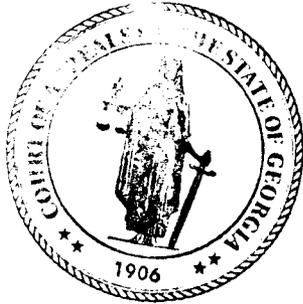
By order entered November 24, 2009, the juvenile court terminated the mother's parental rights. On January 29, 2010, the mother filed an "extraordinary motion to file out of time application to appeal," which this court docketed as an application for discretionary appeal of the order terminating the mother's parental rights. To the extent the filing is indeed an application for discretionary appeal of the termination order, it is untimely. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). The mother filed the instant document 66 days after the entry of the order terminating her parental rights.

To the extent the document is a motion to allow the mother to file an out-of-time application for discretionary appeal, her motion fails. There is no basis in law for permitting out-of-time applications.<sup>1</sup> Moreover, the Supreme Court has held that out-of-time appeals are not available in parental rights termination cases.<sup>2</sup> Consequently, we lack jurisdiction over this matter, which is hereby **DISMISSED**.

---

<sup>1</sup>*Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001) (holding that this court lacks authority to grant an extension of time for the filing of an application for discretionary appeal).

<sup>2</sup>*In the Interest of B. W.*, Case No. S99C1333 (1999 Ga. LEXIS 989, decided November 15, 1999), citing *Woodall v. Woodall*, 248 Ga. 172 (281 SE2d 619) (1981) ("The granting of an out-of-time appeal by the superior court is ineffective to confer jurisdiction upon this court in civil cases.").



Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta FEB 10 2010

*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, February 23, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0248. TAYLOR v. THE STATE.**

Randall Taylor filed an application for discretionary appeal from the trial court's order dismissing his "Motion for Contempt." Although Taylor's motion is not included with the application, the trial court found that "[t]he Motion for Contempt, although improperly titled, should have been a [petition for] a Writ of Mandamus and the Court has considered it as such."

In construing pleadings, substance controls over nomenclature. See *Roberts v. State*, Ga. (Case Number S09A1451, decided Jan. 25, 2010). Here, the trial court found the pleading to be, in substance, one seeking a writ of mandamus. The Supreme Court has exclusive appellate jurisdiction over all cases involving extraordinary remedies, including mandamus. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (5); *Ladzinske v. Allen*, 280 Ga. 264 (626 SE2d 83) (2006) ("[C]ases involving the grant or denial of mandamus are within the exclusive jurisdiction of [the Supreme] Court without regard to the underlying subject matter or the legal issues raised."). Accordingly, this application for discretionary appeal is hereby TRANSFERRED to the Supreme Court for disposition.



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

FEB 23 2010

*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. Martinez*

, Clerk.

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

ATLANTA, MARCH 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0249  
USA TRUCKM INC., ET AL V. WILLIAM JACOB WILSON

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

92021

2009CV4696



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR -2 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, February 24, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0250. In the Interest of: C. M. A., a Child.**

The mother of C. M. A. filed a petition in juvenile court to terminate the parental rights of the child's biological father, who consented to the termination. On December 3, 2009, the juvenile court dismissed the petition for lack of jurisdiction, apparently because there were no allegations that the child was deprived. The mother and father filed a joint motion for reconsideration, which the court denied. On February 3, 2010, they filed this application for discretionary review. We lack jurisdiction.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within thirty days of entry of the appealable judgment. A motion for reconsideration does not serve to extend the time for filing an application for appeal. *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (1) (441 SE2d 452) (1994). Further, an order denying a motion for reconsideration is not appealable in its own right. *Bell v. Cochran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Because this application was filed 62 days after entry of the order sought to be appealed, it is hereby DISMISSED as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **FEB 24 2010**

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

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

*William L. Martin*, Clerk.

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

ATLANTA,                      FEBRUARY 24, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0251  
ANNA WADDY D/B/A WADDY'S ELECTRICAL ENTERPRISE, INC.,  
V. CITY OF ATLANTA, OFFICE OF CONTRACT COMPLIANCE ET AL

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

70021

2009CV172562



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

**FEB 24 2010**

*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.*

A handwritten signature in black ink, appearing to read "Wilk L. Martinez".

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

ATLANTA,            FEBRUARY 24, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0252  
TARA TARGOVNIK, ET AL V. CITY OF DUNWOODY ZONING  
BOARD OF APPEALS 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.

99021

09CV9909



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta    FEB 24 2010*

*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 Clerk. Mant*

# Court of Appeals of the State of Georgia

ATLANTA, April 15, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0253. Pullum v. The State.**

On March 22, 2010, Karl L. Pullum filed a motion for reconsideration of this Court's February 24, 2010 order dismissing his application for discretionary appeal. Under Court of Appeals Rule 37 (b), "[m]otions for reconsideration must be physically received in the Court for filing within 10 days of the order or judgment for which reconsideration is sought." Pullum failed to meet this deadline. Accordingly, his motion for reconsideration is hereby **DISMISSED** as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta APR 15 2010*

*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.*

*Willi Z. Mat:R* , Clerk.

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

ATLANTA,            FEBRUARY 18, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0254

IN THE INTEREST OF: S.R.W., A.L.W., A.T.M.W.JR., C.M.W., R.A.M.W.,  
CHILDREN ( MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

95022

0109TPO6086



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta            FEB 18 2010*

*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*

# Court of Appeals of the State of Georgia

ATLANTA, February 17, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0255. MORGAN v. MORGAN.**

Tina Morgan filed a petition for contempt against her former husband, Jeffrey Morgan, seeking to resolve a dispute concerning the division of Mr. Morgan's military retirement pay. Mr. Morgan filed this application to challenge the superior court's order interpreting the parties' settlement agreement, apparently incorporated into their divorce decree, and awarding Ms. Morgan a portion of Mr. Morgan's military retirement benefit. "[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over divorce and alimony cases." (Punctuation omitted.) *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). See also, Const. of 1983, Art. VI, § VI, Par. III (6); *Morris v. Morris*, 284 Ga. 748 (670 SE2d 84) (2008). This application is therefore **TRANSFERRED** to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **FEB 17 2010**

*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. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 18, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0256. Judith Hurt-Whitmire v. The State.**

Judith Hurt-Whitmire seeks discretionary review of the trial court's order denying her motion to set aside a prior order. We, however, lack jurisdiction. A discretionary application must be filed within 30 days of entry of the order sought to be appealed. OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989).

Here, the trial court entered its order on December 14, 2009, and Hurt-Whitmire did not file her application until 53 days later on February 5, 2010.<sup>1</sup> Her application for discretionary appeal is thus untimely, and it is therefore DISMISSED.



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

FEB 18 2010

*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.*

*Willie L. Martin*, Clerk.

---

<sup>1</sup> Hurt-Whitmire attempted to file her application earlier, but she failed to include an appealable order and thus her application could not be accepted. See OCGA § 5-6-35 (c); Court of Appeals Rule 31 (e).

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: **JUL 23 2010**

**A10D0256. JUDITH HURT-WHITMIRE v. THE STATE**

On February 18, 2010, this Court issued an order dismissing the above pro se application. The appellant filed an Untimely Motion for Reconsideration on March 4, 2010, which this Court dismissed on April 20, 2010. On May 26, 2010, appellant filed a "Motion to Set Aside and Vacate Order to Dismiss Discretionary Application for Extraordinary Circumstances", which this Court docketed as a second Motion for Reconsideration.

However, pursuant to Court of Appeals Rule 31(j), "[N]o pleadings will be accepted on an Application for Discretionary appeal which are filed more than 30 days after the date of the order granting, denying or dismissing the application or the order granting, denying or dismissing the Motion for Reconsideration filed on the application."

The order dismissing the untimely Motion for Reconsideration was entered more than 30 days prior to the filing of the pro se's last pleading, the "Motion to Set Aside and Vacate Order to Dismiss Discretionary Application for Extraordinary Circumstances". As such, the clerk of this Court is hereby directed to remove the pleading from the docket and return the pleading to the pro se applicant, and the application stands DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 23 2010



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.

*Willie L. Mat...* Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, APRIL 20, 2010

Honorable Court of Appeals hereby passes the following order:

A10D0256. JUDITH HURT-WHITMIRE v. THE STATE

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

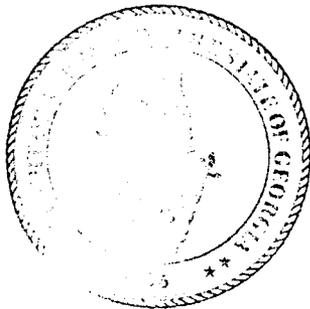
90-022

08SUCR001C

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 20 2010



*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.*

*Willie L. Martin*

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

ATLANTA,                      FEBRUARY 25, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0257

IN THE INTEREST OF: S. A. S. , C. R. S. , CHILDREN (MOTHER)

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

91022

0901139



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 25 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, March 3, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0258. Larry Martin Ray v. Linda Carol Ray et al.**

Larry Martin Ray has filed this application for discretionary review of the trial court's order denying his motion to recuse. "Denials of motions to recuse are interlocutory in nature. An appeal of such an order requires compliance with the interlocutory appeal provisions of OCGA § 5-6-34 (b)," including obtaining a certificate of immediate review within ten days of the order sought to be appealed. *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002); see also *Warringer v. Warringer*, 204 Ga. App. 86 (418 SE2d 446) (1992). Because Ray failed to follow the required appellate procedure, we lack jurisdiction to consider this application. This is true even if, as Ray asserts, the trial court failed to notify him of its ruling within the time frame for obtaining a certificate of immediate review. See generally *Atlantic-Canadian Corp. v. Hammer, Siler, George Associates*, 167 Ga. App. 257, 257-258 (1) (306 SE2d 22) (1983). This application is therefore DISMISSED for lack of jurisdiction.

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

MAR - 3 2010

*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.

**SUPREME COURT OF GEORGIA**

Remittitur, Case No. S10C1155

Atlanta, July 12, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

LARRY MARTIN RAY v. LINDA CAROL RAY 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.

Court of Appeals Case No.

A10D0258

CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA.

*William R. Martin*

2010 AUG - 2 AM 9:53

RECEIVED IN OFFICE

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta July 29, 2010

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.

*Pamela M. Smith*, Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, March 3, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0258. Larry Martin Ray v. Linda Carol Ray et al.**

Larry Martin Ray has filed this application for discretionary review of the trial court's order denying his motion to recuse. "Denials of motions to recuse are interlocutory in nature. An appeal of such an order requires compliance with the interlocutory appeal provisions of OCGA § 5-6-34 (b)," including obtaining a certificate of immediate review within ten days of the order sought to be appealed. *Ellis v. Stanford*, 256 Ga. App. 294, 295 (2) (568 SE2d 157) (2002); see also *Warringer v. Warringer*, 204 Ga. App. 86 (418 SE2d 446) (1992). Because Ray failed to follow the required appellate procedure, we lack jurisdiction to consider this application. This is true even if, as Ray asserts, the trial court failed to notify him of its ruling within the time frame for obtaining a certificate of immediate review. See generally *Atlantic-Canadian Corp. v. Hammer, Siler, George Associates*, 167 Ga. App. 257, 257-258 (1) (306 SE2d 22) (1983). This application is therefore DISMISSED for lack of jurisdiction.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR - 3 2010**

*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*

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

ATLANTA, MARCH 01, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0259

IN THE INTEREST OF: M. D. M. & D. RL M. , CHILDREN (MOTHER)

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

93022

2009A014



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

**MAR - 1 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*  
March 2, 2010

## **A10D0260. Joan K. Dillard v. HSBC Bank USA, N. A.**

Joan Dillard seeks discretionary review of the trial court's December 11, 2009, order granting summary judgment to HSBC Bank USA in this dispossessory action. We lack jurisdiction.<sup>1</sup>

Under OCGA § 44-7-56, appeals in dispossessory actions must be filed within seven days after entry of the order at issue. Dillard, however, filed her application 25 days after the order granting summary judgment. Although Dillard contends that the issue below is an alleged fraud perpetrated upon her, the trial court's order speaks only to a writ of possession issued to HSBC Bank. Under these circumstances, Dillard was required to file her application within seven days. See, e. g., *Ray M. Wright, Inc. v. Jones*, 239 Ga. App. 521 (521 SE2d 456) (1999). Compare *America Net, Inc. v. U.S. Cover, Inc.*, 243 Ga. App. 204, 206-207 (1) (532 SE2d 756) (2000) (the seven-day time limitation of OCGA § 44-7-56 for filing an appeal did not apply in an action begun as a dispossessory proceeding, where the issue of possession was resolved by agreement and the payment of rent into the trial court was suspended, leaving only the issues of unpaid rent and breach of the lease contract). Accordingly, Dillard's application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      MAR - 2 2010

*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. Martinez*, Clerk.

<sup>1</sup> Dillard initially filed her application in the Supreme Court, which transferred the matter to this Court.

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

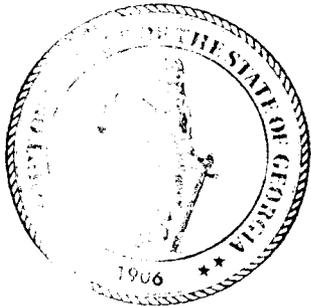
ATLANTA, APRIL 15, 2010

*The Court of Appeals passed the following order*

Case No. A10D0260

JOAN K. DILLARD V. HSBC BANK USA, N. A.

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 15, 2010*

*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.

A handwritten signature in black ink, which appears to read "William L. Martinez".

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

ATLANTA, MARCH 08, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0261  
THE PROFESSIONAL STANDARDS COMMISSION V. PRISCILLA  
ADAMS

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.

97022

2009CV175660



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR - 8 2010

*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. McIntire*

# Court of Appeals of the State of Georgia

ATLANTA, March 3, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0262. James Stowell v. Kathleen Huguenard.**

James Stowell seeks discretionary review of the trial court's denial of his motion for new trial in this action to modify a child support obligation set forth in a final divorce decree. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985). As the underlying subject matter in this case involves child support, this Court lacks jurisdiction over this application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005). Accordingly, this application is *TRANSFERRED* to the Supreme Court of Georgia.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **MAR - 3 2010**

*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, February 18, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0263. ADAMS v. ADAMS.**

Charles Adams filed this discretionary application seeking to appeal the denial of his motion for reconsideration of an order finding him to be in contempt of certain non-custodial provisions of the parties' divorce decree. "[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court's jurisdiction over divorce and alimony cases." (Punctuation omitted.) *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). See also, Const. of 1983, Art. VI, § VI, Par. III (6); *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). This application is therefore **TRANSFERRED** to the Supreme Court for disposition.



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

**FEB 18 2010**

*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. McIntosh*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, February 16, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0264. Austin v. Metropolitan Atlanta Rapid Transit Authority.**

Plaintiff Edward E. Austin filed this timely application for discretionary appeal from the trial court's January 12, 2010 order granting summary judgment to defendant Metropolitan Rapid Transit Authority (MARTA). No application is required, however, as an order granting summary judgment is subject to direct appeal.<sup>1</sup> See OCGA § 9-11-56 (h). This Court will grant an otherwise timely discretionary application if the order is subject to direct appeal and the applicant has not timely filed a notice of appeal. OCGA § 5-6-35 (j) Since it does not appear that Austin has filed a notice of appeal, this application for discretionary appeal is hereby GRANTED.

Austin shall have 10 days from the date of this order in which 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.

---

<sup>1</sup> It appears from the trial court's order that a co-defendant may remain in the case following the trial court's grant of summary judgment in favor of MARTA. This does not change the result as the grant of partial summary judgment also may be appealed directly. See OCGA § 9-11-56 (h); see also *Whiddon v. Stargell*, 192 Ga. App. 826, 828 (386 SE2d 884) (1989).

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**FEB 16 2010**

*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.*



*Willie L. Martin*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA February 24, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0265. MORA v. THE STATE.**

On February 11, 2010, Cesar Uribe Mora filed an application for discretionary review, seeking to challenge the trial court's January 6, 2010 order denying his extraordinary motion for new trial. To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Mora filed his application 36 days after the trial court entered its order. Accordingly, we lack jurisdiction over the application, which is hereby DISMISSED as untimely.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* FEB 24 2010

*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. McIntosh*, Clerk.



# Court of Appeals of the State of Georgia

ATLANTA, March 29, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0265. MORA v. THE STATE.**

On March 11, 2010, Cesar Mora filed a motion for reconsideration of this Court's February 24, 2010 order dismissing his application for discretionary appeal. Under Court of Appeals Rule 37 (b), "[m]otions for reconsideration must be physically received in the Court for filing within 10 days of the order or judgment for which reconsideration is sought." Mora failed to meet this deadline. Accordingly, his motion for reconsideration is hereby **DISMISSED** as untimely.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **MAR 29 2010**

*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.*

*Willie L. Martinez* , Clerk.

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

ATLANTA, MARCH 03, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0266  
DEBORAH A. MCGONIGAL V. PATRICK SEAN MCGONIGAL

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

96023

06A10664



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* MAR - 3 2010

*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.*

*Willie L. Mat...*



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

ATLANTA, MARCH 11, 2010

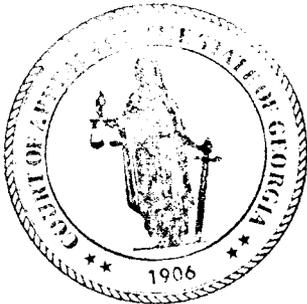
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0267  
LAFARGE NORTH AMERICA ET AL V. MARVIN BILLINGS

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

98023

09CV2987



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta MAR 11 2010*

*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. Martinez*



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

ATLANTA,            MARCH            16, 2010

*The Court of Appeals hereby passes the following order:*

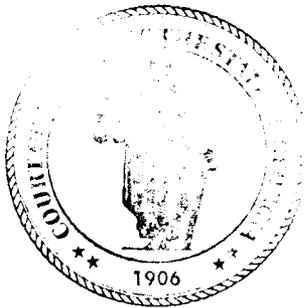
APPLICATION NO.            A10D0268

IN THE INTEREST OF: C. H. , M. H. & M. H. , CHILDREN

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

90023

09JV1264



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 16 2010

*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.*

*Willie L. Martin*

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

ATLANTA, MARCH 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0269  
THOMAS GORE V. BENJAMIN GORE 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 PROBATE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91023

G4553



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 11 2010**

*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. Martinez*

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

ATLANTA, MARCH 18, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0270

ANTHONY M. WHITE V. MILLIKEN & COMPANY ET AL

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

71023

09V358



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 18 2010

*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*

# Court of Appeals of the State of Georgia

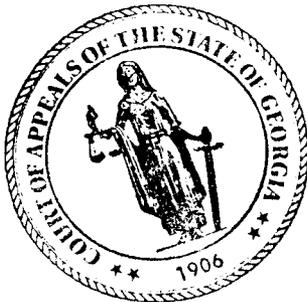
ATLANTA, March 8, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0271. NEELY ET AL. v. BRASWELL HOME IMPROVEMENT, INC.**

Joyce and Hulet Neely, Jr. seek discretionary review of a Newton County Magistrate Court order denying their motion to set aside a default judgment entered against them. We lack jurisdiction to consider the Neelys' application. The Neelys' only recourse for review was by application for writ of certiorari to the superior or state court. OCGA § 15-10-41 (b) (2) provides that "[n]o appeal shall lie from a default judgment [in magistrate court]. . . . Review, including review of a denial of a postjudgment motion to vacate a judgment, shall be by certiorari to the state court of that county or to the superior court of that county." See *Cardenas v. Limon*, 250 Ga. App. 694 (552 SE2d 884) (2001).

The Georgia Constitution provides that "[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere." 1983 Ga. Const., Art 6, § 1, ¶ 8; *Bosma v. Gunter*, 258 Ga. 664 (373 SE2d 368) (1988). Therefore, this application is **TRANSFERRED** to the Superior Court of Newton County for disposition.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    MAR - 8 2010

*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. Martinez* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 10, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0272. BRANNON v. GARCIA.**

Workers' Compensation claimant Daniel Garcia filed a petition in superior court pursuant to OCGA § 34-9-106 to enforce a workers' compensation award against his former employer, Gary Brannon, allegedly doing business as Brannon Roofing Co. The superior court granted the award, and Brannon filed an application for discretionary appeal. However, compliance with discretionary application procedure is not required; a party may appeal directly from a such an order. See *Hansche v. City of Atlanta Police Dept.*, 242 Ga. App. 606, 608 n.1 (530 SE2d 512) (2000); *Kingery Block &c. Co. v. Luttrell*, 174 Ga. App. 481, 482, 330 SE2d 181 (1985).

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Brannon's application is hereby GRANTED, and he shall have ten days from the date of this order to file a notice of appeal with the superior court. See OCGA § 5-6-35 (g). 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* MAR 10 2010

*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. Martinez*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, March 11, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0273. Williams v. Department of Human Resources.**

Michael E. Williams was divorced from his wife, Jacqueline, pursuant to a final judgment and decree entered on October 7, 1992. The divorce decree placed the parties' minor daughter in Jacqueline's custody and ordered Williams to pay child support.

In 2007, the Department of Human Resources ("DHR") notified Williams that Jacqueline had requested DHR's assistance in collecting unpaid child support and that it intended to intercept his State and Federal tax refunds to offset against the arrearage. Williams requested review before the Office of State Administrative Hearings, asserting that he had paid all sums owed for support. Following an evidentiary hearing, an administrative law judge affirmed DHR's decision to intercept the tax refunds. Upon further appeal, the superior court also affirmed.

Williams now seeks discretionary review in this Court. At base, however, this action involves an effort to enforce the child support provisions of a divorce decree. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." And in Georgia, child support is a form of alimony. See *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985).

DHR's effort to enforce Williams' child support obligation is ancillary to the parties' final judgment and decree of divorce. See *Iannicelli v. Iannicelli*, 169 Ga. App. 155 (1) (311 SE2d 850) (1983). Jurisdiction over this matter thus lies in the Supreme Court, not the Court of Appeals. *Id.* See also *Spurlock v. Dept. of Human Resources*, Ga (1) (Case No. S09A1475, decided Feb. 15, 2010) (The Supreme

Court has "jurisdiction over a case involving an original claim for child support which arose in either a divorce or alimony proceeding"). Accordingly, Williams' discretionary application is hereby TRANSFERRED to the Supreme Court for disposition. See, e.g., *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008) (Supreme Court has jurisdiction over contempt action to enforce alimony provisions of divorce decree); *Iannicelli*, supra.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAR 11 2010**

*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.*



*Willie L. Martinez*, Clerk.

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

ATLANTA, MAY 19, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0274  
MICHAEL KING V. ALIEKA ANDERSON ET AL

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

70023

2009CV01293

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 19 2010**

*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.*

*Willi Z. Marti, Jr.*

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

ATLANTA, MARCH 17, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0275  
IN THE INTEREST OF: T. L. P. , A CHILD (MOTHER)

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

99023

04409J00703



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 17 2010

*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*

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

ATLANTA, MARCH 11, 2010

*The Court of Appeals hereby passes the following order:*

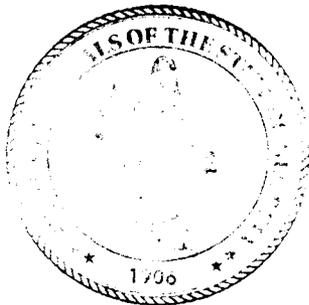
APPLICATION NO. A10D0276

DONNYE FORD V. THE STATE

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

94023

44445



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 11 2010

*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. Martinez*

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

ATLANTA, MARCH 18, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0277

SAID ABRAHIM ET AL V. RAYMOND CARL VOORHEES

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

95024

2008EV004158



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 18 2010

*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.*

*Willie L. Martin*

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

ATLANTA, MARCH 23, 2010

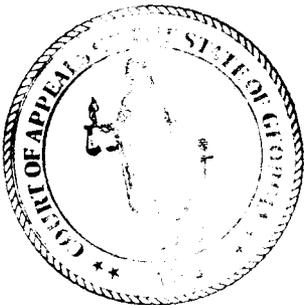
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0278  
IN THE INTEREST OF: A. M. S. , A CHILD (FATHER)

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

96024

2009104



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

MAR 23 2010

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, March 11, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0279. BENTON-EL v. THE STATE.**

On March 3, 2010, Christopher A. Benton-El filed this application for discretionary appeal to challenge the April 30, 2009 denial of his demand for release on bond pending appeal. To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Benton-El filed his application 307 days after the trial court entered its order. Accordingly, we lack jurisdiction over the application, which is hereby **DISMISSED** as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAR 11 2010**

*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,            MARCH            26, 2010

*The Court of Appeals passed the following order*

Case No. A10D0279

CHRISTOPHER A. BENTON-EL V. THE STATE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    MAR 26, 2010*

*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.*

A handwritten signature in black ink, appearing to read "William L. Martinez", is written over a horizontal line.

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

ATLANTA,                      MARCH                      29, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0280  
MELANIE ROSS ET AL V. DANIEL DAY

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

90024

05CV27590



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 29 2010

*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*

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

ATLANTA, APRIL 19, 2010

*The Court of Appeals passed the following order*

Case No. A10D0280

MELANIE ROSS ET AL V. DANIEL DAY

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 19, 2010*

*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*

# Court of Appeals of the State of Georgia

ATLANTA, March 26, 2010

*The Court of Appeals hereby passes the following order:*

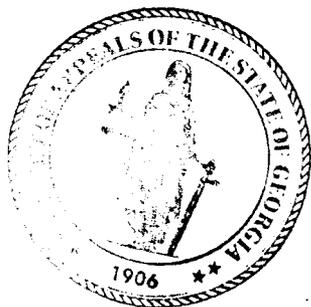
**A10D0281. Brown v. The State.**

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED. The State's motion to dismiss is DENIED.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **MAR 26 2010**

*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, MARCH 25, 2010

*The Court of Appeals hereby passes the following order:*

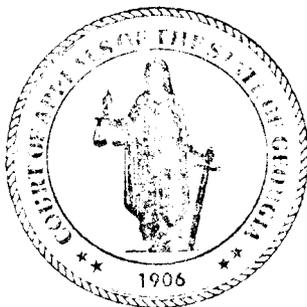
APPLICATION NO. A10D0282

IN THE INTEREST OF: B. H. , J. H. , M.A.H. (FATHER)

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

71024

11509870



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 25 2010

*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.

*Willie L. Martinez*

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

ATLANTA,            MARCH            26, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0283

IN THE INTEREST OF: B. H. , J. H. , & M. A. H., CHILDREN (MOTHER)

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

71025

11509870



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 26 2010

*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.*

*Willie L. McIntosh*

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

ATLANTA, MARCH 30, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0284

CARLA M. BELMONT V. COMMISSIONER OF GEORGIA DEPARTMENT  
OF LABOR ET AL

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

93024

09A10425



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAR 30 2010

*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.*

*W. L. Martin*

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: April 15, 2010**

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 **S10C1247**.

CLARA M. BELMONT v. COMMISSIONER OF GEORGIA DEPARTMENT OF  
LABOR et al.

Clerk, Supreme Court of Georgia

APR 20 2010

Case No. A10D0284

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C1247

Atlanta, July 15, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CARLA M. BELMONT v. COMMISSIONER OF GEORGIA  
DEPARTMENT OF LABOR 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 allowed withdrawn.

All the Justices concur.

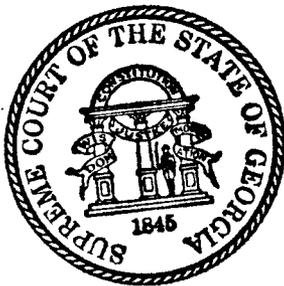
Court of Appeals Case No.  
A10D0284

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta August 04, 2010

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.



*Pamela M. Smith*, Deputy Clerk



SUPREME COURT OF GEORGIA  
Case No. S10C1247

Atlanta, July 15, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

**CARLA M. BELMONT v. COMMISSIONER OF GEORGIA  
DEPARTMENT OF LABOR et al.**

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

**SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I certify that the above is a true extract from  
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.

*Theresa A. Barnes*, Clerk

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

ATLANTA, JUNE 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0285

DENISE MOORE-EBHOHIMEN V. GEORGIA BOARD OF DENTISTRY

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

92024

09CV51583



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN - 2 2010**

*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.*

*Willie L. Martin*

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

ATLANTA, MARCH 31, 2010

*The Court of Appeals hereby passes the following order:*

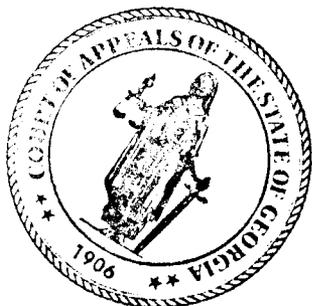
APPLICATION NO. A10D0286

PARK RIDGE CONDO ASSOCIATION INC., ET AL V. JACK MORSE

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

97024

071080533



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

MAR 31 2010

*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.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, March 26, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0287. Bruce Jones v. Garland Hunt et al.**

Prison inmate Bruce Jones seeks discretionary review of the trial court's order dismissing his civil action against various defendants. The dismissal order was entered on May 15, 2009, but Jones did not file this application until March 1, 2010. A discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Because Jones filed his application 290 days after the trial court entered its order, the application is untimely and is therefore DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      MAR 26 2010

*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. Martinez* , Clerk.

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

ATLANTA, APRIL 20, 2010

*The Court of Appeals passed the following order*

Case No. A10D0287

BRUCE JONES V. GARLAND HUNT, ET AL

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 20, 2010*

*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*

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

ATLANTA, APRIL 05, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0288

CEDRIC JEFFERIES V. THE STATE

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

99024

SU09CR1983



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR - 5 2010

*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.

*Willie L. Martin*

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

ATLANTA, APRIL 30, 2010

*The Court of Appeals passed the following order*

Case No. A10D0288

CEDRIC JEFFERIES V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 30, 2010*

*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.*

A handwritten signature in black ink, which appears to read "W. L. Martinez".

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

ATLANTA, MARCH 30, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0290

IN THE INTEREST OF: K. J. H. , M. D. , & P. H. , CHILDREN (MOTHER)

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

95025

04409J03166



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

**MAR 30 2010**

*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.*

*Willie L. Martin*

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

ATLANTA, MARCH 31, 2010

*The Court of Appeals hereby passes the following order:*

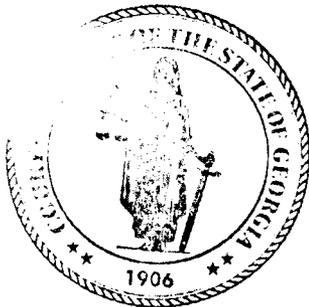
APPLICATION NO. A10D0291

IN THE INTEREST OF: M. L. H., & L. H. , CHILDREN (MOTHER)

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

96025

09DP006



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      M17 31 2010

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, March 31, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0292. Donna Denson Livaudais v. Barry Denson.**

Donna Denson Livaudais filed this application for discretionary appeal seeking review of a final judgment rendered in superior court.<sup>1</sup> The final judgment was entered on October 23, 2009, but Livaudais did not file this application until 137 days later, on March 9, 2010. A discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). This untimely application is therefore DISMISSED for lack of jurisdiction.

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

MAR 31 2010

*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.

---

<sup>1</sup> Livaudais also appealed directly from the superior court's judgment. See Case No. A10A1157. Because this case originated in magistrate court, however, we dismissed the unauthorized direct appeal. See OCGA § 5-6-35 (a) (1).

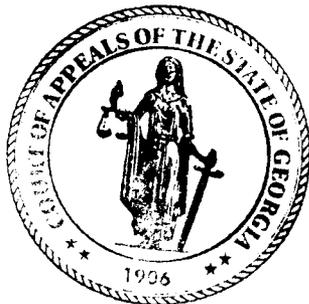
# Court of Appeals of the State of Georgia

ATLANTA, March 29, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0293. JERRY LARRY COLLIER v. AMERICAN EXPRESS  
CENTURION BANK.**

Jerry Larry Collier filed this application for discretionary appeal to challenge the judgment entered against him in the amount of \$31,729.62 plus interest and costs. The judgment is a final judgment within the meaning of OCGA § 5-6-34 (a) (1) and therefore may be appealed directly. Under OCGA § 5-6-35 (j), this court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, Collier's application is hereby **GRANTED**. Collier shall have 10 days from the date of this order to file a notice of appeal with the state court, if he has not already done so. The clerk of the state court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **MAR 29 2010**

*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.*

*Willie L. Martin* , Clerk.

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

ATLANTA, APRIL 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0294  
SONIA D. MYERS V. ST. GEORGE WAREHOUSE CO. OF  
GEORGIA, INC., ET AL

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

91025

2009CV05028



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR - 2 2010

*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.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, March 30, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0295. Level One Contact, Inc., et al. v. North Star Chemicals, Inc.**

In January 2008, B JL Enterprises, LLC sued Level One Contact, Inc. and Samuel J. Winters for breach of contract and other claims. During the course of that litigation, third party discovery requests were served on North Star Chemicals, Inc. North Star subsequently moved for a protective order and an award of attorney fees pursuant to OCGA §§ 9-11-26 and 9-11-37. The trial court denied North Star's motion for protective order, but deferred ruling on the attorney fee request.

On July 7, 2009, judgment was entered in the underlying contract dispute. That judgment is currently on appeal in Case No. A10A1196. The trial court then returned to the issue of North Star's attorney fees. By order dated February 11, 2010, the trial court awarded North Star approximately \$20,000 in fees and expenses incurred in connection with the parties' discovery efforts. The court specifically found that the parties to the contract action and their counsel were jointly and severally liable for the fees and expenses.

Level One, Winters, and their counsel seek discretionary review of the trial court's fee award. Orders resolving requests for fees and expenses under OCGA §§ 9-11-26 and 9-11-37, however, do not fall within the categories of cases subject to discretionary review. See OCGA § 5-6-35 (a). Moreover, judgment has been entered in the contract action, and it appears that no other issues remain pending below. Under these circumstances, the February 11, 2010 order is a directly appealable final judgment. See OCGA § 5-6-34 (a).

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this

application is hereby GRANTED. The applicants shall have ten days from the date of this order to file a notice of appeal with the trial court.<sup>1</sup> 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* MAR 30 2010

*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.*

*Willi Z. Mat; R* , Clerk.

---

<sup>1</sup> If the applicants have already filed a notice of appeal, they need not file a second notice.

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

ATLANTA, APRIL 05, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0296  
TERRENCE CORTEZ SMITH V. THE STATE

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

93025

2009CR0610



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* APR - 5 2010

*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. Martinez*

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

ATLANTA, APRIL 01, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0297

IN THE INTEREST OF: K. S. , A CHILD (FATHER)

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

92025

15809J075

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **APR - 1 2010**

*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.*

*Willi Z. Mart; [Signature]*

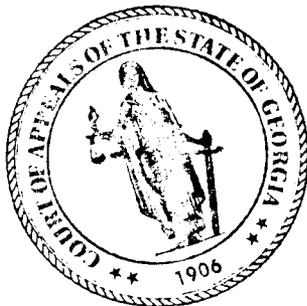
# Court of Appeals of the State of Georgia

ATLANTA, March 24, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0298. BAKER v. BAKER.**

Michelle Baker seeks discretionary review of the trial court's order denying her motion to set aside a divorce decree, which incorporates the parties' separation agreement.<sup>1</sup> The Georgia Supreme Court has jurisdiction over all divorce and alimony cases, including those cases ancillary to the divorce proceedings. See Ga. Const. 1983, Art. VI, § VI, ¶ III (6); *Morris v. Surges*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). As the underlying subject matter of this application is divorce, it is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      MAR 24 2010

*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.

---

<sup>1</sup> The trial court also declined to hold Michelle Baker in contempt, but it does not appear that Robert Baker is challenging this ruling.

# Court of Appeals of the State of Georgia

ATLANTA, APR - 1 2010

*The Court of Appeals hereby passes the following order:*

**A10D0299. Hawk v. Colee et al.**

Upon due consideration, the Court hereby DENIES Danny Hawk's application for discretionary appeal. Respondents' request that we assess Hawk with a frivolous appeal penalty pursuant to Court of Appeals Rule 15 (b) is also DENIED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* APR - 1 2010

*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.*

*Willi E. Matz*, Clerk.

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

ATLANTA, APRIL 05, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0300

MASTER CRAFT FLOORING ET AL V. MICHAEL DUNHAM

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.

99025

CE0902165



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta APR - 5 2010*

*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.*

*W. L. Martin*  
Clerk

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

ATLANTA, APRIL 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0301  
PHILIP MOORE V. WILLIAM CHARLES MOORE

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.

94025  
2007CV143501



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR -2 2010**

*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*

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

ATLANTA, APRIL 02, 2010

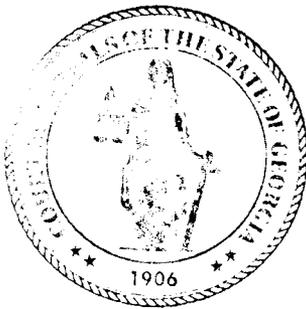
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0302  
COREY ELLINGTON V. THE STATE

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

95026

2003FE585



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR - 2 2010**

*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*

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

ATLANTA, APRIL 06, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0303  
PEARLINE PERRY V. DART CONTAINER CORPORATION

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

98026

09CV14840



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta APR - 6 2010*

*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.*

*Willie L. Martinez*

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

ATLANTA, APRIL 15, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0304  
SIR TODD ANDERS V. FELLOWS LABRIOLA, LLP

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

90026

2008EV005730



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

APR 15 2010

*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.

*Willie L. Martin*



**SUPREME COURT OF GEORGIA**

Case No. S10D0662

Atlanta January 21, 2010

**FILED IN OFFICE**

The Honorable Supreme Court met pursuant to adjournment.

FEB 08 2010

The following order was passed:

**CLERK, COURT OF  
APPEALS OF GEORGIA**

**LARRY MARTIN RAY v. LINDA CAROL RAY et al.**

From the Superior Court of Fannin County.

In this pending divorce case, applicant seeks to appeal the denial of a motion to recuse. Such issues do not invoke this Court's subject matter jurisdiction over divorce and alimony cases. See Egeland v. Egeland, 279 Ga. 565 (619 SE2d 596) (2005) (transferring to the Court of Appeals the appeal from an interlocutory order awarding custody of the divorcing parties' children); Stevens v. Myers, 190 Ga. App. 61 (378 SE2d 334) (1989) (Court of Appeals has jurisdiction where recusal was the sole issue on appeal in a partition case). Therefore, the Court hereby transfers the application to the Court of Appeals.

RECEIVED  
2010 FEB - 8 PM 10:08  
CLERK/COURT OF APPEALS OF GEORGIA  
K

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

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

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

*Lynne M. Strickland*, Chief Deputy Clerk

# Court of Appeals of the State of Georgia

ATLANTA, March 26, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0305. SAMUEL v. SAMUEL.**

Adric B. Samuel seeks to appeal the trial court's dismissal of his motion to hold Donna Samuel in contempt for violation of the visitation provisions of the parties' final judgment and decree of divorce. Under OCGA § 5-6-34 (a) (11), "[a]ll judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody or holding or declining to hold persons in contempt of such child custody judgment or orders" are now directly appealable. Under Georgia law, "[v]isitation is considered a custody issue." *Daniels v. Barnes*, 289 Ga. App. 897, 899 n. 1 (658 SE2d 472) (2008); see also *Moore v. Moore-McKinney*, 297 Ga. App. 703, 704-05 (1) (678 SE2d 152) (2009); OCGA § 19-9-41 (4) (defining "child custody proceeding" as "a proceeding in which legal custody, physical custody, or visitation with respect to a child is in issue."). Thus, the order that Samuel seeks to appeal is directly appealable.

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, Samuel's application is hereby *GRANTED*. Samuel shall have ten days from the date of this order to file a notice of appeal with the superior court, if he has not already done so. See OCGA § 5-6-35 (g). 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*

**MAR 26 2010**

*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.*

*Willi L. Mat; R*

, Clerk.

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

ATLANTA, APRIL 01, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0306  
JAMES MICHAEL GRIMES V. CATOOSA COUNTY SHERIFF'S  
OFFICE 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.

71026  
2008SUCV1138

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **APR - 1 2010**

*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.*

*Willi Z. Mantz*

# Court of Appeals of the State of Georgia

ATLANTA,

MAR 30 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0307. Allen v. MRC Receivables.**

Albertha Allen seeks discretionary review of the trial court's February 4, 2010 order granting MRC Receivables's petition to confirm an arbitration award. It does not appear, however, that a final judgment has been entered in this case. Although the trial court confirmed the arbitration award, the statutory procedures "specifically contemplate[] the entry of a separate judgment on the award." *Barge v. St. Paul Fire & Marine Ins. Co.*, 245 Ga. App. 112, 117 (2) (535 SE2d 837) (2000); see also OCGA § 9-9-15 (a) (upon confirmation of an arbitration award, "judgment shall be entered in the same manner as provided by Chapter 11 of this title and enforced as any other judgment or decree"). Moreover, the order confirming the arbitration award and the judgment "must be on separate documents." *Barge*, supra.

The February 4, 2010 order is not final, and Allen has not otherwise demonstrated that the trial court entered final judgment. Accordingly, Allen was required to follow the interlocutory appeal procedures in OCGA § 5-6-34 (b) and obtain a timely certificate of immediate review. Her failure to do so deprives us of jurisdiction over this application, which is hereby DISMISSED. See *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991) ("The discretionary-application statute does not relieve [an] appellant who seeks review of an interlocutory order of the requirement of a certificate [of immediate review] from the trial judge."); *Pace Constr. Corp. v. Northpark Associates*, 215 Ga. App. 438, 439-440 (215 SE2d 438) (1994).



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      MAR 30 2010

*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.*

*Willie L. Martin* , Clerk.

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

ATLANTA, APRIL 15, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0308  
THENOPOLIS JAMES V. THE STATE

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

92026

96R352



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 15 2010

*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.

*Willie L. Martin*

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

ATLANTA,            MAY            11, 2010

*The Court of Appeals passed the following order*

Case No. A10D0308

THENOPOLIS JAMES V. THE STATE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    MAY 11, 2010*

*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.*

*Willie L. Martin*

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

ATLANTA, APRIL 15, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0309

IN THE INTEREST OF: D. J. F. L. , A CHILD (MOTHER)

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

97026

0901853



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 15 2010*

*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 above written.*

*Clerk.*

*Will L. Martin*

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

ATLANTA, APRIL 01, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0310  
STEVEN SMITH V. CARRIE CARTER

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.

70026

09CV0347

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **APR - 1 2010**

*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.

*Willi L. Mantz*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

## **A10D0311. English v. The State.**

On March 18, 2010, Robert English filed an application for discretionary review, seeking to challenge the trial court's February 1, 2010 order denying his motion for out-of-time appeal. To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). English filed his application 45 days after the trial court entered its order. Accordingly, we lack jurisdiction over the application, which is hereby DISMISSED as untimely.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **APR - 2 2010**

*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.*

*Willi I. Mat:R*      , Clerk.

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

ATLANTA, APRIL 15, 2010

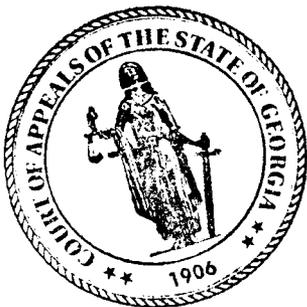
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0312  
CARLANDO CARSON V. CHOICE INSULATION CORP ET AL

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

94026

09CV1969



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* APR 15 2010

*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*

# Court of Appeals of the State of Georgia

ATLANTA, April 29, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0313. JONES v. THE STATE.**

On April 21, 2010, Bruce T. Jones filed a motion for reconsideration of this Court's March 31, 2010 order dismissing his application for discretionary appeal. Under Court of Appeals Rule 37 (b), "[m]otions for reconsideration must be physically received in the Court for filing within 10 days of the order or judgment for which reconsideration is sought." Jones failed to meet this deadline. Accordingly, his motion for reconsideration is hereby **DISMISSED** as untimely.



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

*Will. Z. Mat:R* , Clerk.

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

ATLANTA, APRIL 08, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0314

JEFFERY GILHAM V. THE STATE

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

96027

SU09CR1526



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **APR - 8 2010**

*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 above written.*

*Clerk.*

*Willie L. Mat... [Signature]*

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

ATLANTA, APRIL 06, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0315

IN THE INTEREST OF: M. M. M. & S. R. M. , CHILDREN (FATHER)

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

98027

08J007



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR - 6 2010

*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.*

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, March 29, 2010

A10I0192. IN RE: SHERIFF JOHN BOWENS.

The Honorable Court of Appeals hereby passes the following order:

It appearing the DISCRETIONARY application A10D0316 was incorrectly filed due to clerical error, it is hereby ordered that said application is hereby changed to an INTERLOCUTORY application with the case number A10I0192 as stated above.



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

*Clerk.*

*Will. L. Martin*

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

ATLANTA, APRIL 15, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0317  
IN THE INTEREST OF : D . L . , A CHILD (FATHER)

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

97027

0901853



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 15 2010*

*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. Martinez*

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

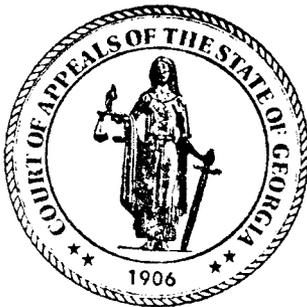
ATLANTA, APRIL 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0318  
MARK ANDREW WHITE V. THE STATE

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

91027  
07CR23



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 16 2010*

*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... [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA, April 15, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0319. Cleek v. Cleek.**

David Carroll Cleek seeks discretionary review of the trial court's order denying his petition to modify the child support obligation set forth in the parties' final divorce decree. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985). Because the underlying subject matter in this case involves child support, we lack jurisdiction over Cleek's application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Accordingly, the application is hereby TRANSFERRED to the Supreme Court of Georgia for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta APR 15 2010*

*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.*

*Willi Z. Mat:R*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, April 12, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0320. In the Interest of: A. E. D., a Child (Mother).**

On July 16, 2009, the juvenile court entered an order terminating the parental rights of the biological mother of minor child A. E. D. The mother later filed an extraordinary motion for reconsideration, which the juvenile court denied in an order entered on March 19, 2010. On March 26, 2010, the mother filed this application for discretionary review. We lack jurisdiction.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within thirty days of entry of the appealable judgment. A motion for reconsideration does not serve to extend the time for filing an application for appeal. *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (1) (441 SE2d 452) (1994). Further, an order denying a motion for reconsideration is not appealable in its own right. *Bell v. Cochran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). Because this application was filed 253 days after entry of the order sought to be appealed, it is hereby DISMISSED as untimely.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* APR 12 2010

*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.*

*Willie L. Martinez*, Clerk.

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

ATLANTA, APRIL 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0321

IN THE INTEREST OF: A. F. , A CHILD (MOTHER)

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

92027

09JV01187



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

APR 16 2010

*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*

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

ATLANTA, APRIL 13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0322  
IN THE INTEREST OF: J. N. H. , A CHILD (FATHER)

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

70027

05409JV27



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 13 2010*

*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.*

*Willie L. Martin*

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

ATLANTA, APRIL 14, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0323

THE STATE V. JAMATHAN HORTON

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.

99027

2007SUCR1222



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta APR 14 2010*

*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*

# Court of Appeals of the State of Georgia

ATLANTA, April 8, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0324. JOHNSON et al. v. STEIL et al.**

Tony Johnson and Mike Nichols, d/b/a J&N Holdings (“J&N”) seek discretionary review of the trial court’s order denying their motion to set aside a judgment in favor of Frank Steil, d/b/a Gary Thacker Insurance Agency a/k/a GTI Insurance and Frank Steil, individually (“Steil”). The application shows that the trial court’s order granting Steil’s motion for summary judgment was filed with the clerk on September 29, 2009. Ex. 14 According to J&N’s motion to set aside,<sup>1</sup> neither the trial court nor the clerk notified J&N of the entry of the order granting summary judgment to Steil, notwithstanding the trial court’s obligations under OCGA § 15-6-21 (c), and J&N did not learn of the grant until on or about December 1, 2009. Ex. 2, p. 6 Among other things, J&N asked the trial court to set aside the order and reenter the same so as to allow it to file a direct appeal pursuant to OCGA § 9-11-56 (h). Ex. 2, p. 6 The trial court denied the motion, and J&N filed a timely application for discretionary appeal.<sup>2</sup>

---

<sup>1</sup> It appears from J&N’s application that the trial court denied J&N’s previous motion to set aside the grant of summary judgment to Steil, but copies of the previous motion are not included in the application. Pretermitted whether the full record might show otherwise, the motion at issue here does not appear to be a motion for reconsideration of the order on the previous motion to set aside.

<sup>2</sup> Steil claims that the application was untimely. However, the 30th day following the trial court’s February 25, 2010 order denying J&N’s motion to set aside fell on March 27, 2010, a Saturday, and the application was filed the following Monday, March 29, 2010. See OCGA § 1-3-1 (d) (3).

“Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party . . . .” OCGA § 9-11-60 (g). “Motions to set aside brought on the grounds that the court failed to notify the losing party of its decision are cognizable as motions to correct a clerical error pursuant to OCGA § 9-11-60 (g) and are properly the subject of a direct appeal.” *Downs v. C.D.C. Fed. Credit Union*, 224 Ga. App. 869 (1) (481 SE2d 903) (1997). Accordingly, J&N was not required to file an application for discretionary appeal.<sup>3</sup> See *Leventhal v. Moseley*, 264 Ga. 891, 892 (453 SE2d 455) (1995).

This Court will grant an otherwise timely discretionary application if the lower court’s order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, J&N’s application is hereby GRANTED.<sup>4</sup> J&N shall have ten days from the date of this order to file a notice of appeal with the trial court. See OCGA § 5-6-35 (g). If, however, J&N has already filed a notice of appeal, it need not file a second notice. The clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

---

<sup>3</sup> That J&N’s motion did not specifically refer to OCGA § 9-11-60 (g) does not alter the substance of the motion. See *Crawford v. Kroger Co.*, 183 Ga. App. 836 (1) (360 SE2d 274) (1987) (motion termed “motion to reopen,” and made on the ground that the trial judge failed to properly notify the losing party of his decision, treated as a motion to correct a clerical error under OCGA § 9-11-60 (g)).

<sup>4</sup> As part of its appeal, J&N may also challenge portions of the trial court’s ruling that might otherwise be subject to the discretionary appeal procedures in OCGA § 5-6-35 (a) (8). See *Zitrin v. Ga. Composite State Bd. of Medical Examiners*, 288 Ga. App. 295, 296-298 (1) (653 SE2d 758) (2007); OCGA § 5-6-34 (d).



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **APR - 8 2010**

*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.*

*Willie L. Martin* , Clerk.

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

ATLANTA, APRIL 28, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0325  
ALICE R. BROWN V. FIRST DISTRICT RESA AGENCY

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

94027

09V2030



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 28 2010

*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. McIntire*

# Court of Appeals of the State of Georgia

ATLANTA, April 19, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0326. SUSSMAN v. SUSSMAN.**

Kenneth Sussman seeks to appeal the trial court's February 17, 2010 order denying his motion to enforce a settlement agreement in a domestic relations matter. We lack jurisdiction.

Sussman submitted his application on March 19, 2010. The application was not accepted for filing, however, because instead of submitting the \$300 filing fee in effect as of July 1, 2009, he submitted \$80, the filing fee in effect before July 1, 2009. See OCGA § 5-6-4; Court of Appeals Rules 5, 31 (d). An application is deemed filed only when it is accompanied by sufficient costs. See Court of Appeals Rule 4. Sussman re-submitted the application with the correct filing fee on March 29, 2010, and the application was filed on that date.

To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Sussman filed his application 40 days after the trial court entered its order. Accordingly, we lack jurisdiction over the application, which is hereby **DISMISSED** as untimely.

Sussman has filed a motion requesting that we consider his untimely application on the ground that the Clerk of Court could not rescind the original March 19 date stamp. "The clerk is prohibited from receiving the application for appeal . . . unless the costs have been paid. . . ." OCGA § 5-6-4. See also Court of Appeals Rule 31 (d). Consequently, because sufficient costs had not been paid as of March 19, the March 19 date stamp is a nullity. "[T]he *completed* application was not filed within 30 days of the entry of the order, as required under OCGA § 5-6-35 (d), and this court has no jurisdiction of an untimely application. Moreover, this court lacks the authority to

grant an extension of time for the filing of an application for discretionary appeal.”(Emphasis in original.) *Wilson v. Carver*, 252 Ga. App. 174, 174 (555 SE2d 848) (2001). For these reasons, Sussman’s “Motion to Consider Out of Time Application for Discretionary Appeal” is hereby **DENIED**.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* APR 19 2010

*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.*

*Willi E. Mat:R* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

APR 08 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0327. Paradise v. Walker County et al.**

Prison inmate Bobby Paradise seeks discretionary review of the trial court's order refusing to accept his civil action for filing. See OCGA § 9-15-2 (d). The dismissal order was entered on February 9, 2010, but Paradise did not file a completed application until March 30, 2010.<sup>1</sup>

A discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Because Paradise filed his application 49 days after the trial court entered its order, the application is untimely and is therefore DISMISSED for lack of jurisdiction.



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

*Will I. Mat:R*, Clerk.

---

<sup>1</sup> Paradise attempted to file his application before this date, but this Court could not accept it because it was not accompanied by either filing fees or a pauper's affidavit, and it lacked the requisite stamped "filed" copy of the trial court's order. See OCGA § 5-6-4; Court of Appeals Rules 5, 30 (b) & 31 (e).

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

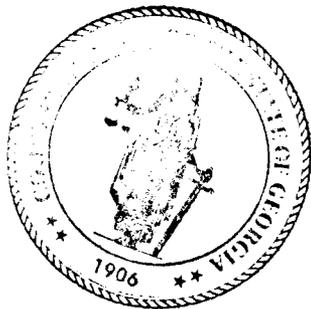
ATLANTA,            MAY            26, 2010

*The Court of Appeals passed the following order*

Case No. A10D0327

BOBBY PARADISE V. WALKER COUNTY ET AL

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    MAY 26, 2010*

*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*

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

ATLANTA,            APRIL            20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0328  
SOUTHERN CONCRETE/WATKINS ASSOCIATED INDUSTRIES,  
INC., ET AL V. CAREY E. SPIRES

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.

98028  
10CV57



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 20 2010

*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*

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

ATLANTA, APRIL 19, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0329  
FRED L. MURRAY, JR., V. STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY ET AL

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

91028

06A47394



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 19 2010

*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*

# Court of Appeals of the State of Georgia

ATLANTA, April 21, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0330. Melissa Tanner v. Joshua Perkins et al.**

Melissa Tanner filed this application for discretionary review of the trial court's order denying her motion to set aside a judgment. Tanner now seeks to withdraw the application. Her motion to withdraw is hereby GRANTED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      APR 21 2010

*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.*

*Willi E. Mat:R*      , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, April 22, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0331. SMITH v. THE STATE.**

On April 2, 2010, Mark A. Smith filed this application for discretionary appeal seeking to challenge a February 26, 2010 order related to his probation.<sup>1</sup> To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Smith filed his application 35 days after entry of the order he seeks to appeal. His application is therefore untimely and is **DISMISSED** for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      APR 22 2010

*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.*

*Willi E. Mat:R* , Clerk.

---

<sup>1</sup>Smith's original submission was not accepted for filing because it lacked a filing fee or sufficient pauper's affidavit as required by OCGA § 5-6-4 and Court of Appeals Rules 5 and 31 (d), it did not contain a certificate of service in violation of Court of Appeals Rule 6, and it lacked the number of copies required by Court of Appeals Rule 6.

# Court of Appeals of the State of Georgia

ATLANTA, April 16, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0332. IN RE: ESTATE OF ROBERT P. SMITH, DECEASED.**

Mark and Kerry Smith sought to appeal a probate court ruling to superior court. On February 23, 2010, the superior court dismissed the appeal as untimely. The Smiths filed a motion for discretionary appeal from this ruling on April 2, 2010.<sup>1</sup> To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). The Smiths filed their application 38 days after the trial court entered its order. Accordingly, we lack jurisdiction over the application, which is hereby DISMISSED as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* APR 16 2010

*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.*

*Willi L. Matz, Jr.* , Clerk.

---

<sup>1</sup> The Smiths sought to file their application on March 18, 2010, but we could not accept the application for filing because it was not accompanied by filing fees or a pauper's affidavit, did not contain a certificate of service, and lacked sufficient copies. See OCGA § 5-6-4; Court of Appeals Rules 5 & 6.

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

ATLANTA, MAY 07, 2010

*The Court of Appeals passed the following order*

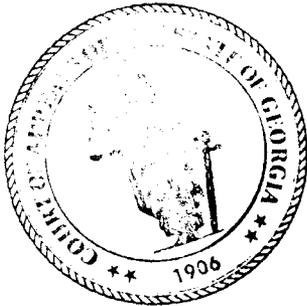
Case No. A10D0333

CINDY WALLACE V. GWINNETT DAILY POST

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

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta MAY 07, 2010*



*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*

# Court of Appeals of the State of Georgia

ATLANTA, April 21, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0333. Wallace v. Gwinnett Daily Post.**

Following an adverse ruling from the State Board of Workers' Compensation, Cindy Wallace appealed to the superior court. The superior court scheduled a hearing on the matter for November 23, 2009. Wallace failed to appear, and the superior court dismissed her appeal on December 4, 2009. Wallace objected to the dismissal, which the superior court treated as a motion for reconsideration. When she again failed to appear for a scheduled hearing, the superior court denied the motion and reaffirmed the dismissal by order dated March 9, 2010. Wallace has now filed a discretionary application challenging the dismissal of her workers' compensation appeal.

We lack jurisdiction. An application for discretionary review must be filed within 30 days of entry of the order at issue. See OCGA § 5-6-35 (d). Wallace submitted her application on April 6, 2010, 123 days after the superior court dismissed her appeal in December 2009. Although she requested reconsideration of that dismissal, her request did not extend the time for filing the discretionary application. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994). Moreover, the order denying her motion for reconsideration is not appealable in its own right. *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). We thus lack authority to consider Wallace's application, which is hereby DISMISSED as untimely.

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

APR 21 2010



*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.*

*Willi Z. Mat:R* , Clerk.

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

ATLANTA, APRIL 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0334  
BARRY V. SMITH V. KATHRYN B. SMITH

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

70028

08CV04403



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* APR 23 2010

*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.*

*Willie L. Martin*

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

ATLANTA, APRIL 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0335  
KAREN MCKINNEY V. STATE OF GEORGIA

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.

99028  
09CV764



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 23 2010

*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*

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

ATLANTA, MAY 07, 2010

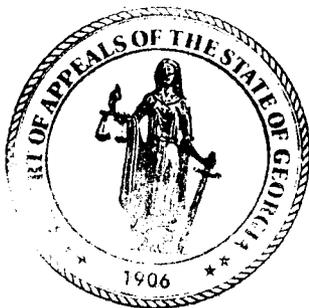
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0336  
PAMELA DELORES GREEN V. THE STATE

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

94028

08CR83



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

**MAY -7 2010**

*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 above written.*

*Clerk.*

*Willie L. Martin*

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

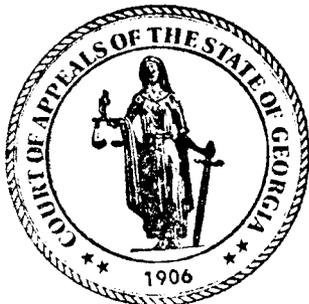
ATLANTA, JUNE 03, 2010

*The Court of Appeals passed the following order*

Case No. A10D0336

PAMELA DELORES GREEN V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 03, 2010*

*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.

*Willi L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, JUNE 04, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0336. GREEN v. THE STATE**

Pamela Delores Green filed an Application for Discretionary Review on April 7, 2010. By this Court's order of May 7, 2010, the application was dismissed. Green filed a Motion for Reconsideration of the dismissal of her application. In response thereto, this Court issued an order dated June 3, 2010, denying the Motion for Reconsideration.

Upon consideration of the Court's order of June 3, 2010, the same is hereby VACATED. The attached order is substituted therefore.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 04, 2010



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. Mat... [Signature]*

Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

JUN 04 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0336. GREEN v. THE STATE.**

Pamela Delores Green filed an application for discretionary review on April 7, 2010. The only order attached to the application was an unstamped order denying Green's motion for modification of sentence. Because the application failed to comply with Court of Appeals Rule 31 (e), this Court issued an order on April 9, 2010, directing Green to submit a stamped "filed" copy of the order she was seeking to appeal within 10 days. Green failed to comply with the April 9 order and, therefore, this Court dismissed her application on May 7, 2010.

Green now seeks reconsideration of the dismissal of her application. Green however, has failed to show that she complied with this Court's April 9 order. In fact, Green still has not submitted any stamped "filed" order to this Court. Thus, this Court's dismissal of the application was proper. Accordingly, Green's motion for reconsideration is hereby **DENIED**.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUN - 4 2010

*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.*

*Willi E. Mat:R*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

JUL - 5 2010

**A10D0336. GREEN v. THE STATE.**

Upon consideration of Pamela D. Green's motion to vacate the dismissal of her application for discretionary appeal and the denial of her motion for reconsideration, the motion is hereby ***DENIED***.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL - 5 2010

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.

*Willi E. Mat:R*

, Clerk.

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

ATLANTA, APRIL 22, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0337  
MARK ANTHONY MANFRED JR., V. DONISHA BRYANT

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

95029

08DR04913



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 22 2010

*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.*

*Willie L. Martin*

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

**ATLANTA,            MAY            25, 2010**

*The Court of Appeals passed the following order*

Case No. A10D0337

MARK ANTHONY MANFRED JR., V. DONISHA BRYANT

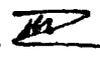
Upon consideration of the motion for reconsideration filed  
in this case, it is ordered that it be hereby denied.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    MAY 25, 2010*

*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.*

*Willi Z. Mant; *

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

ATLANTA, APRIL 29, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0338

YINKA T. OMOLE & ASSOCIATES V. VANCE NICKLSON ET AL

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

96029

2010CV00382



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 29 2010

*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.*

*Willie L. Mat... [Signature]*

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

ATLANTA, APRIL 28, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0339  
THE CITY OF ATLANTA BOARD OF ZONING ADJUSTMENT  
(BZA) ET AL V. STARSHIP ENTERPRISES OF ATLANTA, 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.

98029

2009CV169453



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

APR 28 2010

*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.*

*Willie L. Martin*

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

ATLANTA, MAY 06, 2010

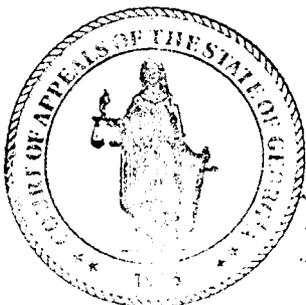
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0340  
MONROE OLIVER V. THE STATE

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

90029

1S01CR068



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

*Clerk.*

*Willie L. Martin*

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C1537

Atlanta, November 01, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MONROE OLIVER v. THE STATE

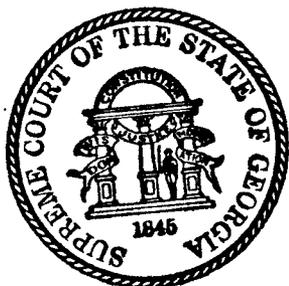
Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ dismissed.

All the Justices concur.

Court of Appeals Case No.

A10D0340

RECEIVED IN OFFICE  
2010 DEC 21 AM 10:15  
Clerk's Office  
OFFICE OF COURT ADMINISTRATION  
STATE OF GEORGIA



## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta December 17, 2010

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.

*Pamela M. Fishburne*, Deputy Clerk



**SUPREME COURT OF GEORGIA**  
Case No. S10C1537

Atlanta      November 1, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**MONROE OLIVER v. THE STATE.**

Because petitioner did not file his petition for writ of certiorari within 20 days after entry of the order denying his application for discretionary appeal, the petition is untimely and hereby is dismissed. Supreme Court Rule 38 (2).

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

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

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

 , Chief Deputy Clerk

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

ATLANTA, MAY 12, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0341

IN THE INTEREST OF: A. A. A. , W. A. A. , C. L. A. , & B. N. A. ,  
CHILDREN (FATHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91029

08CV6631



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 12 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, May 7, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0342. Harrell v. Harrell.**

Rebecca Harrell has filed an application for discretionary appeal seeking review of the trial court's order finding her in contempt and finding Harry Harrell not responsible for payment of certain attorney fees. Because Ms. Harrell has provided insufficient information to invoke the jurisdiction of this Court, her application is dismissed.

Based upon the application material submitted, it appears that an application for discretionary appeal is not the appropriate vehicle for seeking appellate review here. The application demonstrates that, in connection with divorce proceedings, Rebecca and Harry Harrell signed a memorandum of understanding that resolved all issues in the divorce matter except for child custody. But nothing in the application suggests that the child custody issue was resolved or that any final divorce decree was entered.<sup>1</sup> Accordingly, this appeal appears to be interlocutory in nature. See *Thomas v. Douglas Co.*, 217 Ga. App. 520, 522 (1) (457 SE2d 835) (1995) ("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").

---

<sup>1</sup> We note that, if a divorce decree had been entered, jurisdiction would be in the Supreme Court. See *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004) (appeal from contempt action seeking to enforce a portion of a divorce decree other than child custody is ancillary to the divorce action and falls with the Supreme Court's exclusive jurisdiction over divorce cases).



# Court of Appeals of the State of Georgia

ATLANTA, April 29, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0343. Paradise v. The State.**

Bobby Paradise seeks discretionary review of the trial court's order denying his motion to set aside a February 9, 2010 order denying his extraordinary motion for new trial. In his application, Paradise asserts that he moved to set aside the prior order because the trial court failed to timely serve him with the ruling, thus frustrating his effort to appeal.

“Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party.” OCGA § 9-11-60 (g). A motion to set aside claiming that the trial court failed to notify the moving party of a decision constitutes a motion to correct a clerical error under OCGA § 9-11-60 (g). *Downs v. C.D.C. Federal Credit Union*, 224 Ga. App. 869 (1) (481 SE2d 903) (1997); see also *Wilson v. State*, 259 Ga. App. 627, 629 (4) (578 SE2d 260) (2003) (indicating that OCGA § 9-11-60 (g) applies in criminal cases). And as we have explained, the denial of such motion is directly appealable. *Downs*, supra. Paradise, therefore, was not required to file an application for discretionary appeal.

This Court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Paradise shall have ten days from the date of this order to file a notice of appeal with the trial court. If, however, he has already filed a notice of appeal, he need not file a second notice. 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*      APR 29 2010

*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.*

*Willi L. Mat:R*      , Clerk.

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

ATLANTA, APRIL 30, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0344  
WILLIAM A. LIPHAM V. WILLIAM TERRY ET AL

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

92029

2009CV264



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**APR 30 2010**

*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*

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

ATLANTA, MAY 12, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0345

IN THE INTEREST OF: A. A. A. , C. A. , W. A. , & B. N. A. ,  
CHILDREN (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91030

08CV6631



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **MAY 12 2010**

*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.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, April 22, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0346. WATERS v. FULTON COUNTY, GEORGIA ET AL.**

After Fulton County revoked and refused to renew his alcoholic beverage license, Thomas Ned Waters, Jr. proceeded to superior court where he filed an appeal, a petition for writ of certiorari, and a complaint for mandamus and damages. The superior court clerk apparently lost the administrative record, so the superior court ordered the parties to file a second copy of the record. When the parties failed to file a second copy of the record, the superior court entered an order affirming “the finding below.” Waters filed this application for appeal.

The Supreme Court has exclusive appellate jurisdiction over all cases involving extraordinary remedies, including mandamus. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (5); *Ladzinske v. Allen*, 280 Ga. 264 (626 SE2d 83) (2006) (“[C]ases involving the grant or denial of mandamus are within the exclusive jurisdiction of [the Supreme] Court without regard to the underlying subject matter or the legal issues raised.”). Although it is not absolutely clear that the superior court intended its order to resolve Waters’ claims for mandamus and damages, which were not “findings below,” in deference to the Supreme Court’s jurisdiction, this application is hereby **TRANSFERRED** to the Supreme Court for disposition. See *Ewing v. City of Atlanta*, 281 Ga. 652 (642 SE2d 100) (2007).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **APR 22 2010**

*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.*

*Willi E. Mat:R*      , Clerk.

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

ATLANTA,            MAY            06, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0347  
RONALD LEE NESLEIN V. THE STATE

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

70029

05CR00978



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **MAY - 6 2010**

*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*

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

ATLANTA, MAY 05, 2010

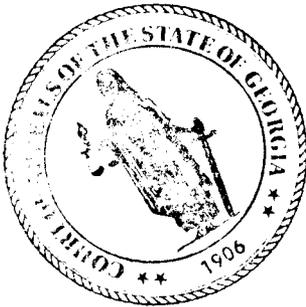
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0348  
DERRICK B. JACKSON V. OFFICER JOE KUMP, MCINTYRE  
POLICE OFFICER

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

99029

2009CV0005



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **MAY - 5 2010**

*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. McIntyre*

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

ATLANTA, MAY 13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0349  
JASON L. SMITH V. CYNTHIA D. KOHLER

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

94029

0915196

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta MAY 13 2010



*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.

*Willie L. Martin*

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

ATLANTA, MAY 11, 2010

*The Court of Appeals hereby passes the following order:*

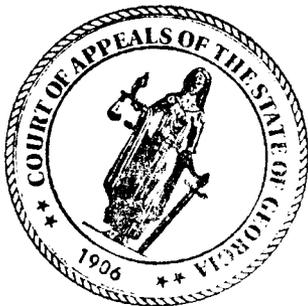
APPLICATION NO. A10D0350

IN THE INTEREST OF: R. D. N. , A. N. N. & A. D. S. , CHILDREN  
(FATHER)

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

95030

0901876



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

**MAY 11 2010**

*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.*

*Willie L. Martinez*

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

ATLANTA, APRIL 29, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0351

MICHAEL HENRY ET AL V. HSBC BANK USA, ET AL

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

96030

2009CV169112



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta APR 29 2010*

*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.  
Willie L. Martin*

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

ATLANTA, MAY 11, 2010

*The Court of Appeals hereby passes the following order:*

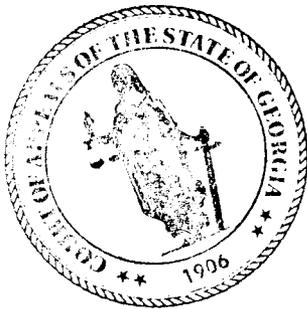
APPLICATION NO. A10D0352

IN THE INTEREST OF: N. D., A CHILD (FATHER)

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

98030

03509J0428



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 11 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, May 6, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0353. Dillard Smith Construction Co. et al. v. Hogue.**

Upon due consideration, the Court hereby DENIES the application for discretionary appeal filed in the above referenced matter. Joseph W. Hogue's motion to dismiss is also DENIED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **MAY -6 2010**

*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.*

*Willi E. Matz*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 12, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0354. JAMES v. THE STATE.**

Melvin G. James filed an application for discretionary review seeking to appeal the trial court's order denying his motion to withdraw his guilty plea. James included a copy of the order, but it was not a stamped "filed" copy as required by Court of Appeals Rule 31 (e).<sup>1</sup> On April 21, 2010, we ordered James to supplement his application for discretionary appeal within ten days with a stamped "filed" copy of the order to be appealed. We provided that failure to comply with this directive would result in dismissal of the application.

James has not submitted a stamped "filed" copy of the order, and more than ten days have passed since the April 21, 2010 order. Accordingly, James's application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **MAY 12 2010**

*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.*

*Willi E. Mat:R* , Clerk.

---

<sup>1</sup> Without the stamped "filed" copy of the order we cannot ascertain if the application was filed within 30 days, a jurisdictional requirement. See OCGA § 5-6-35 (d); *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989).

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

ATLANTA, MAY 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0355

MIGUEL GONZALEZ V. ADMINISTRATIVE MANAGERS, INC., ET AL

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

71030

10CV145610



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 11 2010**

*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. Martinez*

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

ATLANTA, MAY 20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0356  
LILLIE MCKINNIE V. CAGLE'S INC., ET AL

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

93030  
10CV073

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **MAY 20 2010**

*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.

*Willie L. Mantz*

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

ATLANTA, MAY 06, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0357

IN THE INTEREST OF: V. B. L. , A CHILD (GRANDMOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

92030

0900577



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY - 6 2010**

*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.*

A handwritten signature in black ink, appearing to read "W. L. Mat..." followed by a stylized flourish.

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

ATLANTA, MAY 14, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0358  
STATESBORO ONCOLOGY ASSOCIATES D/B/A SOUTH GEORGIA  
CENTER FOR CANCER CARE V. THE DEPARTMENT OF COMMUNITY  
HEALTH ET AL

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

97030

1B09CV1305



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **MAY 14 2010**

*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.

*Willie L. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, May 12, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0359. BOWEN v. IBARRA.**

Upon due consideration, the Court hereby DENIES ReVonda Bowen's application for discretionary appeal. Respondent Jason Ibarra's request that we assess Bowen with a frivolous appeal penalty pursuant to Court of Appeals Rule 15 (b) is also DENIED.



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

*Willi E. Mat:R* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 10, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0360. Minnie Lou Green-Adams et al. v. City of Milton.**

The City of Milton sued Justin Adams and Minnie Lou Green-Adams, seeking an injunction requiring the couple to stop using their residential property for purposes not authorized under city ordinances. The trial court entered a permanent injunction that, among other things, directed Adams and Green-Adams to remedy their ordinance violations immediately. From that injunction, Adams and Green-Adams filed an application for discretionary appeal in this Court.

Actions in equity for injunctive relief that is not ancillary to the underlying action fall under subsection (2) of the general appellate jurisdiction of the Supreme Court of Georgia under Art. VI, Sect. VI, Par. III of the Georgia Constitution of 1983. For purposes of the Supreme Court's subject matter jurisdiction, " 'equity cases' are those in which a substantive issue on appeal involves the legality or propriety of equitable relief sought in the superior court – whether that relief was granted or denied." *Beauchamp v. Knight*, 261 Ga. 608, 609 (2) (409 SE2d 208) (1991). It appears from the application materials that the only issue below was the propriety of injunctive relief. Moreover, it is well-settled that the ultimate responsibility for determining appellate jurisdiction is vested in the Supreme Court of Georgia. See *Saxton v. Coastal Dialysis &c.*, 267 Ga. 177, 178 (476 SE2d 587) (1996). Therefore, this application is TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **MAY 10 2010**

*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.*

*Willi L. Mat: [Signature]*      , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, May 13, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0361. JACKSON v. LEHERN MCGOVERN BOVIS, INC.**

On April 23, 2010, Jim Linzell Jackson, Sr. filed this application for discretionary appeal seeking to challenge a February 16, 2010 order dismissing his action in superior court. To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Jackson filed his application 66 days after entry of the order he seeks to appeal. His application is therefore untimely and is hereby **DISMISSED** for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **MAY 13 2010**

*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 E. Mat:R* , Clerk.

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

ATLANTA, JUNE 03, 2010

*The Court of Appeals passed the following order*

Case No. A10D0361

JIM L. JACKSON SR. V. LEHERN MCGOVERN BOVIS INC

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 03, 2010*

*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*

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C1625

Atlanta, November 22, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JIM L. JACKSON, SR. v. LEHERN MCGOVERN BOVIS, INC.

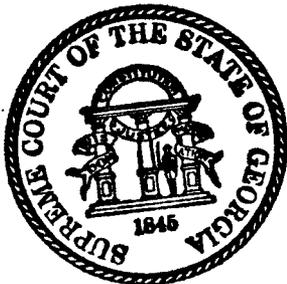
Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby writ denied.

All the Justices concur.

Court of Appeals Case No.

A10D0361

RECEIVED IN OFFICE  
2010 DEC 21 AM 10:16  
CLERK'S OFFICE / ADMINISTRATOR



## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta December 17, 2010

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.

*Pamela M. Fishburne*, Deputy Clerk

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

ATLANTA, MAY 10, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0362  
RANDY LAVAR WALKER V. THE STATE

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

95031

SU09CR1882



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

**MAY 10 2010**

*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. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, May 11, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0363. Ordelt v. The State.**

On April 23, 2010, Matthew Ordelt filed an application for discretionary review, seeking to challenge the trial court's March 11, 2010 order revoking his probation. To be timely, however, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Ordelt filed his application 43 days after the trial court entered its order. Accordingly, we lack jurisdiction over the application, which is hereby DISMISSED as untimely.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **MAY 11 2010**

*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.*

*Willi Z. Mat; R*      , Clerk.

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

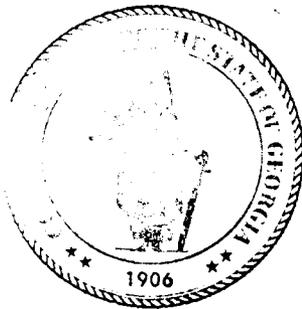
ATLANTA, JUNE 16, 2010

*The Court of Appeals passed the following order*

Case No. A10D0363

MATTHEW ORDELT V. THE STATE

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 16, 2010*

*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*

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

ATLANTA, MAY 21, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0364  
JOHN BATTLE V. BRIGGS CONSTRUCTION EQUIPMENT

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

90031

07SV0845



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **MAY 21 2010**

*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.*

*Willi Z. Mantz*

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

ATLANTA, JULY 05, 2010

*The Court of Appeals passed the following order*

Case No. A10D0364

JOHN BATTLE V. BRIGGS CONSTRUCTION EQUIPMENT

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

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 05, 2010*



*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.*

*Willie L. Martin*

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

ATLANTA,            MAY            18, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0365  
IN THE INTEREST OF: E. O. ,    A CHILD

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

91031

08JCV112



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

**MAY 18 2010**

*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*

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

ATLANTA, MAY 26, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0366

IN THE INTEREST OF: A. R. AND J. R. , CHILDREN (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

71031

09DP890



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 26 2010**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, May 14, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0367. Dyer v. Ellis.**

Andrew Dyer was found in contempt for willfully failing to pay alimony, and the trial court ordered his incarceration. Dyer moved for his release, arguing that he lacks the ability to pay and thus purge himself of the contempt. The trial court denied the motion, and Dyer filed this application for discretionary appeal.

The Georgia Supreme Court has jurisdiction over all divorce and alimony cases, including those cases ancillary to the divorce proceedings. See Ga. Const. 1983, Art. VI, § VI, ¶ III (6); *Morris v. Surges*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). As the underlying subject matter of this application is divorce, it is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **MAY 14 2010**

*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 E. Mat:R*, Clerk.

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

ATLANTA, MAY 21, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0368

IN THE INTEREST OF: C. J. E. , & A. C. E. , CHILDREN (MOTHER)

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

92031

JUV100004

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **MAY 21 2010**

*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.*

*Willie Z. Mantz*

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

ATLANTA, MAY 21, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0369  
MELISSA TANNER V. JOSHUA PERKINS 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.

97031

2006V85882

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta MAY 21 2010

*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.

*Willie Z. Mantz*

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

ATLANTA, MAY 12, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0370

PEL ASSOCIATES, INC., D/B/A COMMOTIONS V. NAKETA DIX

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

70031

10CV99



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

**MAY 12 2010**

*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. Martinez*

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

ATLANTA, MAY 14, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0371  
GEORGE BERNARD WRIGHT 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.

99031  
Z612112



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 14 2010**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, May 19, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0374. JACKSON v. THE STATE.**

On April 28, 2010, Kelivan Juan Jackson filed his application for discretionary appeal seeking to challenge the trial court's order entered March 26, 2010, denying his "motion to vacate void sentence." To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Jackson filed his application 33 days after entry of the order he seeks to appeal. His application is therefore untimely and is hereby *DISMISSED* for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **MAY 19 2010**

*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 E. Matz* ..... , Clerk.

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

ATLANTA, MAY 27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0375

MICHAEL A. LEVY V. MICHAEL A. REINER ET AL

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

98032

03VS054746



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 27 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, May 26, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0377. GRAHAM v. GEORGIA POWER COMPANY et al.**

Georgia Power Company, The Southern Company, and Southern Power Company (“the plaintiffs”) filed tax refund claims with the Revenue Commissioner of the State of Georgia, Bart Graham. The Revenue Commissioner never ruled on the refund request, and the plaintiffs filed suit in superior court in accordance with OCGA § 48-2-35 (c). The parties filed cross-motions for summary judgment, and the trial court granted the plaintiffs’ motion. The Revenue Commissioner seeks to appeal this ruling and has filed both an application for discretionary appeal and a notice of appeal.

Pursuant to OCGA § 5-6-35 (a) (1), compliance with the discretionary appeal procedure is required for “[a]ppeals from decisions of the superior courts reviewing decisions of . . . state and local administrative agencies.” Where, as here, the superior court order does not involve review of an administrative decision, no application for discretionary appeal is required. See *Harrell v. Fulton County*, 272 Ga. App. 760, 763 (1) (612 SE2d 838) (2005); compare *C. W. Matthews Contracting Co. v. Collins*, 210 Ga. App. 1 (435 SE2d 221) (1993) (discretionary application required where superior court reviews denial of tax refund).

We will grant an otherwise 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, the plaintiffs also have filed a notice of appeal in the trial court. Thus, OCGA § 5-6-35 (j) does not apply, and the application is hereby *DISMISSED* as superfluous.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*    **MAY 26 2010**

*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 E. Matz* , Clerk.

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

ATLANTA, MAY 27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0379  
MOHAWK INDUSTRIES V. JESUS VALDES

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

93032

10CI244



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* MAY 27 2010

*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. Martinez*

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

ATLANTA, MAY 21, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0380  
CORTEZ E. JONES III, ET AL V. GERALD B. JONES

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

92032

208064

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**MAY 21 2010**

*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.*

*Willi Z. Mart*

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

ATLANTA, JUNE 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0381  
IN THE INTEREST OF: A. J., A CHILD

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97032

JUV090707



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN - 2 2010**

*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.*

*Willie L. Martin*

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

ATLANTA, JUNE 03, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0383  
DARREN O. CURRY V. MICHAEL L. THURMOND, COMMISSIONER,  
GEORGIA ET AL

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

99032

2009CV176137



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN - 3 2010**

*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.*

*Willie L. Martinez*

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

ATLANTA, JUNE 07, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0384

DEKALB COUNTY, GEORGIA V. MICHELE VAN DER WESTHUIZEN

ET AL

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

94032

07CV8934



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN -7 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, **MAY 25 2010**

*The Court of Appeals hereby passes the following order:*

**A10D0385. HNAN ALHALLAQ v. MICHAEL L. THURMOND et al.**

On February 12, 2010, the superior court entered an order affirming a decision by the State Department of Labor that disqualified Alhallaq from receiving unemployment compensation benefits. Alhallaq filed a direct appeal from that order. We dismissed the appeal because OCGA § 5-6-35 (a) (1) required Alhallaq to follow the discretionary appeal procedure. Alhallaq then filed in the superior court an “Emergency Motion for Reconsideration of the Court’s Dismissal of Plaintiff’s Petition for Judicial Review: To Set Aside Dismissal, Remedy Void Order, and Reinstate the Right to Appeal.” The superior court denied Alhallaq’s motion. On May 10, 2010, she filed this application for discretionary review. We lack jurisdiction.

An application for discretionary review must be filed within 30 days of entry of the order at issue. See OCGA § 5-6-35 (d). Alhallaq filed her application 87 days after the superior court affirmed the Department of Labor’s decision. Although she filed a motion requesting reconsideration of that affirmance, her motion did not extend the time for filing the discretionary application. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994). Moreover, the order denying her motion for reconsideration is not appealable in its own right. *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). To the extent that her motion for reconsideration can be construed as a request for an out-of-time discretionary appeal, OCGA § 5-6-35 does not permit out-of-time discretionary appeals. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001); *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983).

Because we lack jurisdiction to consider Alhallaq's untimely application, it is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **MAY 25 2010**

*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.*

*Willi Z. Mat:R*      , Clerk.

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

ATLANTA,            MAY            26, 2010

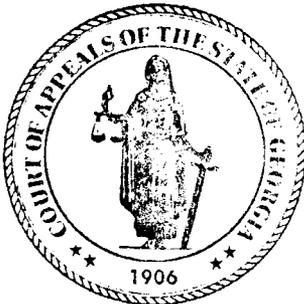
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.        A10D0386  
IN THE INTEREST OF: T. D. T. ,    A CHILD (MOTHER)

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

96033

0109TP05622



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta        **MAY 26 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, May 17, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0387. Mushtaq v. Mushtaq.**

Pamela Mushtaq and Javeed Mushtaq divorced in 2005. In 2008, Pamela Mushtaq filed a petition in Fulton County Superior Court to modify the divorce decree and to hold Javeed Mushtaq in contempt. Javeed Mushtaq moved to transfer the action to Forsyth County Superior Court, where the divorce decree was entered. He also sought OCGA § 9-15-14 attorney fees. On February 4, 2009, the trial court transferred the matter to Forsyth County Superior Court, but reserved the attorney fee issue. By order entered April 9, 2010, the trial court entered awarded Javeed Mushtaq \$4,180.00 in attorney fees. Pamela Mushtaq seeks discretionary review of this ruling.

The Georgia Supreme Court has jurisdiction over all divorce and alimony cases, including those cases ancillary to the divorce proceedings. See Ga. Const. 1983, Art. VI, Sec. VI, Par. III (6); *Morris v. Surges*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). As the underlying subject matter of this application is divorce, it is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **MAY 17 2010**

*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.*

*Willi E. Mat:R* , Clerk.

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

ATLANTA, JUNE 08, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0388  
RENE J. CLINTON V. CITY OF ATLANTA ET AL

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

90033

2010CV181629



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN - 8 2010*

*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*

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

ATLANTA, JUNE 03, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0389  
LINDA GASSES V. RONALD FREEMAN 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.

91033

2010CV00149



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN - 3 2010**

*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*

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

ATLANTA, MAY 27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0390

DAVID WARD V. THE STATE

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

71033

2010FE0007



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

MAY 27 2010

*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.*

*Willie L. Martin*

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

ATLANTA, JUNE 07, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0391  
JOSHUA ISAIAH NELSON V. THE STATE

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

93033

2007C38774



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN - 7 2010**

*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.*  
*Willie L. Martinez*

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

ATLANTA, JUNE 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0392

IN THE INTEREST OF: X. S., A. S. & K. L.

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

92033

1172008142



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN - 2 2010**

*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, June 10, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0393. Winters v. The State.**

**A10D0399. Winters v. The State.**

On April 6, 2010, Davey L. Winters filed an application for discretionary appeal in the Supreme Court, seeking permission to challenge the denial of his motion to modify a sentence imposed following a probation revocation. The Supreme Court transferred Winters's application to this Court by order dated April 27, 2010. We received the application on May 14, 2010, and docketed it as Case No. A10D0393. Five days later, we received a duplicate copy of the application and transfer order, causing the application to be docketed a second time as Case No. A10D0399. The applications in A10D0393 and A10D0399 are the same.

After due consideration, the Court hereby DENIES the application in Case No. A10D0393. The duplicative application docketed as Case No. A10D0399 is DISMISSED as moot.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUN 10 2010

*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.*

*Willi Z. Mat:R* , Clerk.



**SUPREME COURT OF GEORGIA**

Case No. S10D1184

**FILED IN OFFICE**

**MAY 14 2010**

**CLERK, COURT OF  
APPEALS OF GEORGIA**

Atlanta April 27, 2010

2010 MAY 14 AM 9:46  
RECEIVED IN OFFICE  
Clerk of Court  
Court of Appeals of Georgia

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**DAVEY L. WINTERS v. THE STATE**

From the Superior Court of Bartow County.

Appellant appeals the denial of his motion to modify his sentence on the revocation of probation for his convictions for sexual battery and enticing a child for indecent purposes. He fails to state any basis for jurisdiction in this Court and as none appears from the application, the appeal hereby is transferred to the Court of Appeals.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

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

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

  
Lynn M. Stinchcomb, Chief Deputy Clerk

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

ATLANTA, JUNE 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0394

OTIS MARKS 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.

70033

09CR1063



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN - 2 2010**

*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*

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

ATLANTA, JUNE 14, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0395  
JOHNNY ALLEN MARTIN V. THE STATE

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

99033

00CR1572



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta **JUN 14 2010**

*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.

*Willie L. Martin*

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

ATLANTA, JUNE 10, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0396  
GEORGIA DEPARTMENT OF JUVENILE JUSTICE-MACON  
YOUTH DEVELOPMENT CAMPUS ET AL V. GWENETTE LITTLE

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

94033

10CV135



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 10 2010**

*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. Martinez*

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

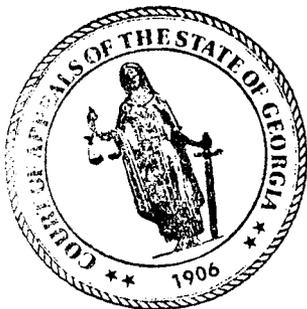
ATLANTA, JUNE 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0397  
RUTH L. WEBB V. BROWN INDUSTRIES, INC., ET AL

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

95034  
10CI395



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta JUN 11 2010*

*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 above written.*

*Clerk.*

*Will L. Martin*

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

ATLANTA, JUNE 04, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0398  
BLAKE ANTHONY JOHNSON 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.

96034

08CR17787



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN - 4 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, June 10, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0393. Winters v. The State.**

**A10D0399. Winters v. The State.**

On April 6, 2010, Davey L. Winters filed an application for discretionary appeal in the Supreme Court, seeking permission to challenge the denial of his motion to modify a sentence imposed following a probation revocation. The Supreme Court transferred Winters's application to this Court by order dated April 27, 2010. We received the application on May 14, 2010, and docketed it as Case No. A10D0393. Five days later, we received a duplicate copy of the application and transfer order, causing the application to be docketed a second time as Case No. A10D0399. The applications in A10D0393 and A10D0399 are the same.

After due consideration, the Court hereby DENIES the application in Case No. A10D0393. The duplicative application docketed as Case No. A10D0399 is DISMISSED as moot.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUN 10 2010

*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.*

*Willi Z. Mat: [Signature]*, Clerk.



**SUPREME COURT OF GEORGIA**  
Case No. S10D1184

A10D 0399

Atlanta April 27, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**DAVEY L. WINTERS v. THE STATE**

From the Superior Court of Bartow County.

Appellant appeals the denial of his motion to modify his sentence on the revocation of probation for his convictions for sexual battery and enticing a child for indecent purposes. He fails to state any basis for jurisdiction in this Court and as none appears from the application, the appeal hereby is transferred to the Court of Appeals.

RECEIVED IN OFFICE  
2010 MAY 19 AM 8:16  
CLERK'S OFFICE ADMINISTRATION

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

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

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

  
Lynn M. Stinchcomb, Chief Deputy Clerk

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

ATLANTA, JUNE 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0400  
CONSOLIDATED PIPE & SUPPLY COMPANY, INC. V. GENOA  
CONSTRUCTION SERVICES, INC. ET AL

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

98034

2004CV94104



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUN 16 2010

*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.*

*Willie L. Martin*

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

ATLANTA, JUNE 15, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0401

TODD C. HEATH V. PORTFOLIO RECOVERY ASSOCIATES, LLC

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

90034

09CV4770



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

**JUN 15 2010**

*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. Martinez*

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

ATLANTA, JUNE 10, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0403

IN THE INTEREST OF: S. J. D. AND A. J. D., CHILDREN (MOTHER)

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

71034

2008J357



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUN 10 2010

*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.*

*W. L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, June 4, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0405. BECOATS v. THE STATE.**

Phyllip Jerrod Becoats seeks discretionary review of the trial court's order denying his extraordinary motion for new trial. The trial court's order was entered on February 8, 2010, but Becoats's application was not filed with this court until May 18, 2010. A discretionary application must be filed within 30 days of the entry of the order at issue. OCGA § 5-6-35 (d). The requirements of OCGA § 5-6-35 are jurisdictional, and this court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). Because Becoats filed his application 99 days after the trial court entered its order, the application is untimely and is therefore DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      JUN - 4 2010

*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.*

*Willi Z. Mat:R* , Clerk.

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

ATLANTA, JUNE 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0406  
IN THE INTEREST OF: K. N. M., C. L. M., AND  
C. L. M., CHILDREN (MOTHER)

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

70034

1000126



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta JUN 11 2010*

*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*

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

ATLANTA, JUNE 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0407  
RAPID TAXI CO., INC. V. EUGENE BISHOP 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.

99034

08CV670



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUN 16 2010

*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.

*Willie L. Martin*

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

ATLANTA, JUNE 10, 2010

*The Court of Appeals hereby passes the following order:*

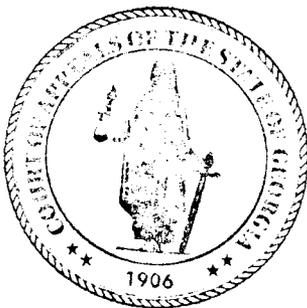
APPLICATION NO. A10D0408

IN THE INTEREST OF: A. C. W. AND A. M. W., CHILDREN (FATHER)

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

94034

1000171



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUN 10 2010**

*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.*

A handwritten signature in black ink, which appears to read "William L. Martinez". The signature is written in a cursive style.

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

ATLANTA, JUNE 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0409  
AMBER M. IVERY V. JERMAINE L. BROWN

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.

95035

2009CV168154



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 16 2010**

*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.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, July 6, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0410. COOPER v. SPOTTS et al.**

Ellen Cooper has requested that we reconsider our June 11, 2010 order dismissing without prejudice her application for discretionary appeal. Cooper's motion for reconsideration is hereby GRANTED, and our June 11, 2010 dismissal order is VACATED. Cooper's application for discretionary appeal is also GRANTED. Cooper shall have 10 days from the date of this order in which to file a notice of appeal. The clerk of the state court is directed to include a copy of this order in the appeal record transmitted to this Court.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **JUL - 6 2010**

*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 E. Mat:R* , Clerk.

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

ATLANTA, JUNE 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0411

IN THE INTEREST OF: S. T. N. R. , A CHILD (FATHER)

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

98035

0900308



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta JUN 16 2010

*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*

# Court of Appeals of the State of Georgia

ATLANTA, June 15, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0412. SUGGS v. THE STATE.**

Jeffery Suggs entered guilty pleas to one count of marijuana trafficking and one count of use of a telephone in facilitation of a drug transaction. He filed this discretionary application seeking to appeal the trial court's order denying his pro se Motion to Modify Void Judgment. The trial court denied the motion on the ground that Suggs's sentence falls within the statutory range of punishment for his convictions.

In violation of OCGA § 5-6-35 (c), Suggs has not included his motion with his application. Therefore, we cannot determine the grounds he raised before the trial court. See *Harper v. Harper*, 259 Ga. 246 (378 SE2d 673) (1989) (party seeking discretionary review bears the burden of demonstrating that the application should be granted). In his application, Suggs alleges, in essence, that his convictions are void because the indictment was insufficient and because he received ineffective assistance of counsel. In *Harper v. State*, 286 Ga. 216, 218 (1) (686 SE2d 786) (2009), our Supreme Court determined that "a petition to vacate or modify a judgment of conviction is not an appropriate remedy in a criminal case." Any appeal from an order denying or dismissing such a motion, therefore, must be dismissed. *Harper v. State*, supra; see also *Roberts v. State*, 286 Ga. 532 (690 SE2d 150) (2010).

Suggs also alleges that his sentence is void because the two crimes merged. A direct appeal lies from an order denying or dismissing a motion to correct a void sentence if the defendant raises a colorable claim that the sentence is, in fact, void or illegal. See *Harper v. State*, supra at n.1; *Burg v. State*, 297 Ga. App. 118, 119 (676 SE2d 465) (2009). But a claim that a trial court failed to merge two convictions is a

challenge to the convictions, not the sentence. *Williams v. State*, Case No. S10A0467 (decided May 17, 2010).

For these reasons, we cannot consider Suggs's claims. His application, therefore, is hereby **DISMISSED** for lack of jurisdiction.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **JUN 15 2010**

*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.*

*Willi E. Mat:R*      , Clerk.

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

ATLANTA, JUNE 28, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0413  
BRYAN YOUNG V. TRISTA YOUNG

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

91035

20101991



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 28 2010**

*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.*

*Willie L. Martinez*

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

ATLANTA, JUNE 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0414  
IN THE INTEREST OF D. M. S. (A CHILD)

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

71035

1000036



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 23 2010**

*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.*

*Willie L. Martinez*

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

ATLANTA, JUNE 24, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0415  
IN THE INTEREST OF: T. B. R., A. B. R.  
AND J. B. R., CHILDREN (GRANDMOTHER)

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

93035

09CV0957



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 24 2010*

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, June 25, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0416. Marilyn K. Edge v. Mark Anthony Edge.**

Marilyn K. Edge seeks discretionary review of the trial court's order setting aside a previous order that, among other things, modified her ex-husband's child support obligations under the parties' divorce decree. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985). Because the underlying subject matter in this case involves child support, we lack jurisdiction over Edge's application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Therefore, the application is TRANSFERRED to the Supreme Court of Georgia for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUN 25 2010

*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 E. Mat:R*

, Clerk.

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

ATLANTA, JUNE 23, 2010

*The Court of Appeals hereby passes the following order:*

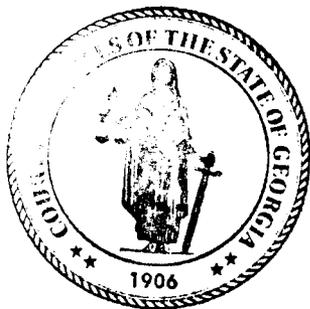
APPLICATION NO. A10D0418

INYANG PETER ODUOK V. COBB COUNTY BOARD OF COMMISSIONERS

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

70035

10G30602



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 23 2010**

*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.*

*Willie L. Martin*

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

ATLANTA, JUNE 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0418

INYANG PETER ODUOK V. COBB COUNTY BOARD OF COMMISSIONERS

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

70035

10G30602



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

**JUN 23 2010**

*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.*

*Willie L. Martin*

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

ATLANTA,            AUGUST            05, 2010

*The Court of Appeals passed the following order*

Case No. A10D0418

INYANG PETER ODUOK V. COBB COUNTY BOARD OF COMMISSIONERS

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

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    AUG 05, 2010*



*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.*

*Hally K. O. Spaw*

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

ATLANTA, JUNE 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0421

IN THE INTEREST OF: M. S. S. , A CHILD, (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

95036

09CV5492



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUN 23 2010**

*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.*

*Willie L. Martin*

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

ATLANTA, JUNE 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0422

DANIEL P. KATZ V. GEORGIA COMPOSITE MEDICAL BOARD,  
F/K/A COMPOSITE STATE BOARD OF MEDICAL EXAMINERS FOR  
THE STATE OF GEORGIA

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

96036

2008CV162101



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 23 2010*

*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.*

*Willie L. Martin*

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

ATLANTA, JUNE 30, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0423  
IN THE INTEREST OF: A. E. S. , A CHILD (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98036

0109TP07207



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **JUN 30 2010**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, July 1, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0424. Marion Davis v. Robert Foreman et al.**

Marion Davis, defendant below, filed this discretionary application seeking to appeal the trial court's grant of summary judgment in favor of the plaintiffs. An order granting summary judgment may be appealed directly; no application is required. OCGA §§ 5-6-34 (a) (1) and 9-11-56 (h). 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 already filed a notice of appeal in the trial court. Because it does not appear that Davis has filed a notice of appeal, this application for discretionary appeal is *GRANTED*. Davis shall have 10 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.

Plaintiffs'/respondents' motion to dismiss this application is *DENIED*.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL - 1 2010**

*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. *Willi Z. Mat:R*

# Court of Appeals of the State of Georgia

ATLANTA,

July 6, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0425. LANGE v. McKINLEY.**

Dennis K. Lange filed this application for discretionary appeal of an order denying his motion to set aside the partial grant of summary judgment to Vernon A. McKinley. We lack jurisdiction.

Generally, an appeal from an order denying a motion to set aside under OCGA § 9-11-60 (d) must be taken by application for discretionary review. See OCGA § 5-6-35 (a) (8); *Stone v. Dawkins*, 192 Ga. App. 126 (384 SE2d 225) (1989). Here, however, in granting McKinley partial summary judgment, the trial court expressly reserved judgment on the issues of interest and attorney fees.<sup>1</sup> Because these claims remain pending before the trial court, the order Lange seeks to appeal, the order denying his motion to set aside, is not a final order. See *First Christ Holiness Church, Inc. v. Owens Temple First Christ Holiness Church, Inc.*, 282 Ga. 883, 884 (655 SE2d 605) (2008). Consequently, Lange was required to follow the interlocutory appeal procedure set forth in OCGA § 5-6-34 (b). Compare *Conseco Fin. Servicing Corp. v. Hill*, 252 Ga. App. 774 (1) (556 SE2d 468) (2001).

Lange's failure to follow the interlocutory appeal procedure deprives this court of jurisdiction to consider this application for discretionary appeal, which is accordingly **DISMISSED**. See *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 589 (408 SE2d 103) (1991) (discretionary appeal statute, OCGA § 5-6-35, does not supersede the more stringent requirements of OCGA § 5-6-34 (b), where applicable).

---

<sup>1</sup>We observe that under OCGA § 9-11-56 (h), a party generally may file a direct appeal of an order granting partial summary judgment.



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

*Will E. Mat:R* ..... , Clerk.

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

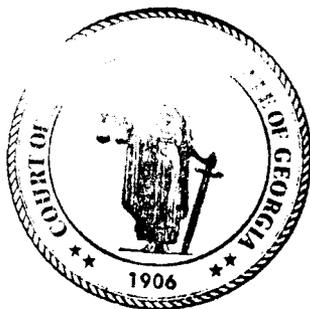
ATLANTA,            SEPTEMBER 09, 2010

*The Court of Appeals passed the following order*

Case No. A10D0425

DENNIS K. LANGE V. VERNON A. MCKINLEY

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    SEP 09, 2010*

*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.*

*Hally K. O. Sparrow*

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

ATLANTA, JUNE 25, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0426

MARK NORRIS V. GEORGIA PACIFIC CORPORATION ET AL

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

71036

10DV0093



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUN 25 2010

*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. Martinez*

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

ATLANTA, JUNE 25, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0427

GEORGIA PACIFIC CORPORATION ET AL V. MARK NORRIS

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

71037

10DV0093



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

JUN 25 2010

*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*

# Court of Appeals of the State of Georgia

ATLANTA, June 25, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0428. Evan Lewis v. The State.**

Evan Lewis has filed an application for discretionary appeal from an order revoking his pre-trial bond. However, “[t]he interlocutory appeal procedures set forth in OCGA § 5-6-34 (b) are required to obtain review of an order denying or setting pre-trial bond.” *Mullinax v. State*, 271 Ga. 112 (1) (515 SE2d 839) (1999); see also *Howard v. State*, 194 Ga. App. 857 (392 SE2d 562) (1990). Compliance with the interlocutory appeal procedure includes obtaining a certificate of immediate review from the trial court within ten days of entry of the order to be appealed. See OCGA § 5-6-34 (b). Because Lewis failed to follow the interlocutory appeal procedure, we are without jurisdiction to consider his discretionary application, which is therefore DISMISSED. See *Howard*, supra.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*     **JUN 25 2010**

*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.*

*Willi Z. Mat; R*     , Clerk.

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

ATLANTA, JUNE 25, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0429  
UNITED HEALTH SERVICES D/B/A HERITAGE HEALTHCARE OF  
FORSYTH ET AL V. DEBORAH JAMES

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

92036

2010CV221



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

JUN 25 2010

*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*

# Court of Appeals of the State of Georgia

ATLANTA, June 18, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0430. SUGG v. SUGG.**

Robert W. Sugg seeks discretionary review of the denial of his motion for new trial in this divorce case. Under the Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), the Supreme Court has appellate jurisdiction over “[a]ll divorce and alimony cases.” Accordingly, this application is hereby TRANSFERRED to the Supreme Court for disposition.



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

**JUN 18 2010**

*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.*

*Willi L. Mat...*

, Clerk.

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

ATLANTA, JULY 06, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0431  
MORRISON AND ZURICH AMERICAN INSURANCE CO. C/O  
CAMBRIDGE INTEGRATED SERVICES GROUP, INC., V.  
DAPHENE TYSON

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

70036

10CV52925



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUL - 6 2010

*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*

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

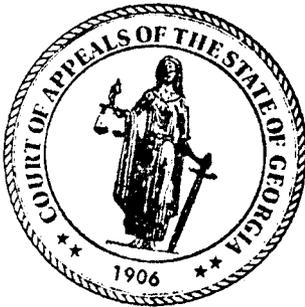
ATLANTA, JULY 27, 2010

*The Court of Appeals passed the following order*

Case No. A10D0431

MORRISON AND ZURICH AMERICAN INSURANCE CO. C/O  
CAMBRIDGE INTEGRATED SERVICES GROUP, INC., V.  
DAPHENE TYSON

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta JUL 27, 2010*

*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.*

*Willie L. Martin*

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

ATLANTA, JULY 07, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0432

IN THE INTEREST OF: C. M. , A CHILD (MOTHER)

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

99036

1000220



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL -7 2010**

*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*

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

ATLANTA, JULY 01, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0433  
ALLEN ALPHONZO ADAMS V. THE STATE

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

94036

92CR138



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUL - 1 2010

*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*

2010 JUL 01 10:50  
CLERK'S OFFICE  
ATLANTA, GA

# Court of Appeals of the State of Georgia

ATLANTA, July 6, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0434. TOMMY PEARSON v. THE STATE.**

Following his guilty plea to kidnapping and aggravated assault, Tommy Pearson moved for an out-of-time appeal. The trial court denied his motion, and we affirmed that denial on appeal. *Pearson v. State*, 265 Ga. App. 574 (594 SE2d 769) (2004). Pearson later filed a “Motion for Void Judgment and Motion to Vacate Sentence,” arguing that he received ineffective assistance of counsel and that he was not competent to plead guilty. The trial court denied the motion, and Pearson filed this application for discretionary appeal. We lack jurisdiction.

First, in *Harper v. State*, 286 Ga. 216, 218 (1) (686 SE2d 786) (2009), our Supreme Court determined that “a petition to vacate or modify a judgment of conviction is not an appropriate remedy in a criminal case.” Any appeal from an order denying or dismissing such a motion, therefore, is subject to dismissal. *Harper*, supra; see also *Roberts v. State*, 286 Ga. 532 (690 SE2d 150) (2010).

Second, even if Pearson were entitled to appeal the denial of his motion, his application is untimely. An application for discretionary appeal must be filed within

30 days of entry of the order the applicant seeks to appeal. OCGA § 5-6-35 (d). The order denying Pearson's motion was entered on March 24, 2010, but Pearson did not file this application until 43 days later, on May 6, 2010.<sup>1</sup> Therefore, this application is untimely, and we lack jurisdiction to consider it. See *Wilson v. Carver*, 252 Ga. App. 174 (555 SE2d 848) (2001).

For these reasons, Pearson's application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUL - 6 2010

*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.*

*Willi Z. Mat:R* , Clerk.

---

<sup>1</sup> Pearson filed his application in the Supreme Court, which transferred it here.

# Court of Appeals of the State of Georgia

ATLANTA, July 16, 2010

*The Court of Appeals hereby passes the following order:*

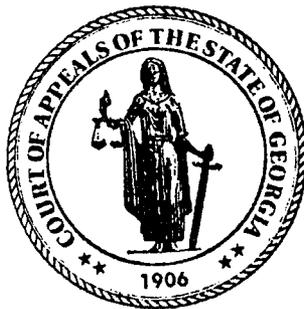
**A10D0435. MICHAEL W. ELLICOTT v. PAMELA E. ELLICOTT**

On June 25, 2010, this Court issued an order dismissing the above application. On July 15, 2010, through clerical error, an error issued from this Court dated June 25, 2010 and certified as July 15, 2010 that the application had been granted. That order issued in error and the application was not granted. The order dated June 25, 2010, which issued July 15, 2010 is hereby vacated. The application remains DISMISSED.

APPROVED FOR THE COURT OF APPEALS OF THE STATE OF GEORGIA

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 16 2010



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.

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA, June 25, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0435. ELLICOTT v. ELLICOTT.**

On February 10, 2010, the trial court entered a permanent protective order pursuant to the Family Violence Act, OCGA § 19-13-1 et seq., against Michael W. Ellicott. On May 12, 2010, Ellicott filed an application for discretionary appeal of that order.<sup>1</sup> To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Because Ellicott filed his application 91 days after entry of the order he seeks to appeal, his application is untimely. The application is therefore **DISMISSED** for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **JUN 25 2010**

*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 E. Mat:R* , Clerk.

---

<sup>1</sup>Ellicott filed his application in the Supreme Court, which transferred it here.

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

ATLANTA, JUNE 25, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0435  
MICHAEL W. ELLICOTT V. PAMELA E. ELLICOTT

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.

96037

2009V0166



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUL 15 2010

*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*

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

ATLANTA, JULY 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0436  
DOROTHY ST. FRANCIS V. CLYDE REESE

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.

98037

09CV1968



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUL 16 2010

*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*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:* JUL 13 2010

## **A10D0437. Sabra Gail Richey v. Doss Printing, Inc.**

Sabra Gail Richey seeks to appeal an adverse workers' compensation decision. After the appellate division of the State Board of Workers' Compensation denied her request for benefits, Richey filed a timely notice of appeal to the superior court. On March 15, 2010, the state board transmitted its record to the superior court. A hearing was scheduled in the superior court for July 8, 2010. On June 17, however, Richey filed this application for discretionary appeal. In her application, Richey claims that the state board's decision was affirmed by operation of law due to the superior court's failure to hear the matter within the time provided by OCGA § 34-9-105 (b).<sup>1</sup> According to Richey, that affirmation by operation of law occurred on May 17, 2010.

In order for this Court to have jurisdiction, we must have a timely filed application for discretionary appeal. *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). An application is timely if it is filed within 30 days of the entry of the order the applicant seeks to appeal. OCGA § 5-6-35 (d). Thus, Richey had to file her application within 30 days of the date that the state board's decision was affirmed by operation of law. See *Coronet Carpets v. Reynolds*, 199 Ga. App. 383 (405 SE2d 103).

---

<sup>1</sup> OCGA § 34-9-105 (b) provides, in relevant part, that "if the court does not hear the case within 60 days of the date of docketing in the superior court, the decision of the board shall be considered affirmed by operation of law. . . ."

Unfortunately, Richey has submitted no proof of the date her appeal was docketed in superior court.<sup>2</sup> Without such proof, we cannot determine when the superior court affirmed the state board by operation of law. An applicant to this Court bears the burden of demonstrating that her application should be granted. See *Harper v. Harper*, 259 Ga. 246 (378 SE2d 673) (1989). Richey has failed to show that this Court has jurisdiction to consider her application.

As noted, Richey states that the affirmance by operation of law occurred on May 17, 2010. Assuming that date is accurate, her application was filed on the 31st day after entry of the order she seeks to appeal and is therefore untimely. Because Richey has failed to show that her application is timely, it is hereby DISMISSED.



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

JUL 13 2010

*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.*

*Willi I. Mat:R*, Clerk.

---

<sup>2</sup> The date of docketing is not necessarily the same date that the superior court received the record from the state board.

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

ATLANTA,            AUGUST            03, 2010

*The Court of Appeals passed the following order*

Case No. A10D0438

IN THE INTEREST OF: J. L. , H. L. , M. L. , A. L. , G. L. , D. L. ,  
A. L. , C. L. , D. L. , CHILDREN

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    AUG 03, 2010*

*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.*

*Hally K. O. Spencer*

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

ATLANTA, AUGUST 03, 2010

*The Court of Appeals passed the following order*

Case No. A10D0439

IN THE INTEREST OF: J. L. , H. L. , M. L. , A. L. , G. L. , D. L. ,  
A. L. , C. L. , D. L. , CHILDREN (MOTHER)

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta AUG 03, 2010*

*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.*

*Hally K. O. Spawr*

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

ATLANTA, JULY 08, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0440  
WILLIAM H. DUNLAP V. GEORGIA DEPARTMENT OF HUMAN  
RESOURCES, EX REL., DEIDRA R. FREEMAN

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

08CV2678

*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta JUL - 8 2010

*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.

*Willi Z. Mat...*

# Court of Appeals of the State of Georgia

ATLANTA, July 15, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0441. Richard Scott v. Estate of Geraldine Scott.**

Richard Scott filed an application for discretionary appeal of a probate court order determining the heirs of Geraldine Scott. See A10D0032. We granted the application under OCGA § 5-6-35 (j) because the order that Scott sought to appeal was directly appealable. Scott then apparently filed a notice of appeal in the probate court. That court, however, dismissed the notice of appeal under OCGA § 5-6-48 (c), finding that Scott had inexcusably delayed the transmission of the record to this Court. Scott now seeks discretionary review of the dismissal order.

“[A] trial court’s order dismissing a properly filed direct appeal is itself subject to a direct appeal.” *American Medical Security Group v. Parker*, 284 Ga. 102, 103 (2) (663 SE2d 697) (2008). Accordingly, this application is hereby GRANTED pursuant to OCGA § 5-6-35 (j). Scott shall have 10 days from the date of this order to file his notice of appeal in the probate court. OCGA § 5-6-35 (g). The clerk of the probate 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

JUL 15 2010

*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. *Willi E. Mat:R*

# Court of Appeals of the State of Georgia

ATLANTA, June 30, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0442. CHILDERS v. OLSEN ET AL.**

Stephanie Childers filed this application for discretionary appeal, seeking to challenge the superior court's May 21, 2010, order granting summary judgment to Jory Olsen and Greater Atlanta Veterinary Medical Group, Inc. in Childers's appeal from a judgment of the magistrate court. To be valid, however, an application for discretionary appeal must be filed within 30 days of entry of the order at issue.<sup>1</sup> OCGA § 5-6-35 (d). Childers filed her application on Tuesday, June 22, 2010, 32 days after the superior court entered its order. Accordingly, we lack jurisdiction over the application, which is hereby **DISMISSED** as untimely.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 30 2010*

*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.*

*Willi E. Mat:R* , Clerk.

---

<sup>1</sup>The 30th day following the trial court's order fell on Sunday, June 20, 2010, so the application was due the following Monday, June 21, 2010. See OCGA § 1-3-1 (d) (3).

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

ATLANTA, JULY 21, 2010

*The Court of Appeals passed the following order*

Case No. A10D0442

STEPHANIE CHILDERS V. JORY W. OLSEN, ET AL

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



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 21, 2010*

*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*

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

ATLANTA, JULY 13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0443  
WILLIAM CHARLES KAYLOR 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.

70037

2000CR008



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUL 13 2010

*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. Martinez*

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

ATLANTA, JULY 26, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0444  
DARRELL CARTWRIGHT V. THE STATE

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

99037

44320

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 26 2010*

*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.*

*Willi Z. Mart; [Signature]*

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

ATLANTA, JULY 19, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0445  
IN THE INTEREST OF: L. N. C. , A CHILD (FATHER)

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

94037

12509J133



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

**JUL 19 2010**

*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.*

*Willie L. Martin*

# Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order: July 7, 2010

**A10D0446. Johnson et al v. Haley et al.**

Jackie Johnson and Adlisa Johnson filed an application for discretionary appeal seeking review of the trial court's May 28, 2010 order granting a petition to confirm an arbitration award filed by Barbara and Richard Haley.<sup>1</sup> Although the trial court confirmed the arbitration award, the statutory procedures "specifically contemplate[] the entry of a separate judgment on the award." *Barge v. St. Paul Fire & Marine Ins. Co.*, 245 Ga. App. 112, 117 (2) (535 SE2d 837) (2000); see also OCGA § 9-9-15 (a) (upon confirmation of an arbitration award, "judgment shall be entered in the same manner as provided by Chapter 11 of this title and enforced as any other judgment or decree"). Moreover, the order confirming the arbitration award and the judgment "must be on separate documents." *Barge, supra*.

Here, the Johnsons have not demonstrated that the trial court entered final judgment as contemplated by OCGA § 9-9-15. Accordingly, the Johnsons were required to follow the interlocutory appeal procedures in OCGA § 5-6-34 (b) and obtain a timely certificate of immediate review. Their failure to do so deprives us of jurisdiction over this application, which is hereby DISMISSED. See *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991).



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 7 2010

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 E. Mat:R*, Clerk.

<sup>1</sup> It is unclear why the Johnsons filed an application for discretionary appeal rather than a notice of appeal. See OCGA § 5-6-35 (a) (listing limited cases in which an application for discretionary appeal is required).

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C1957

Atlanta, January 24, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

BARBARA CUNNINGHAM v. HARTLEY CONSTRUCTION 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 writ denied.

All the Justices concur.

Court of Appeals Case No.

A10D0447

MAR - 7 2011

2011 MAR - 7 11:11:54  
Clerk's Office  
Supreme Court of Georgia



## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 04, 2011

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.

*Pamela M. Fishburne*, Deputy Clerk

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

ATLANTA, JULY 26, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0447

BARBARA CUNNINGHAM V. HARTLEY CONSTRUCTION ET AL

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

96038

2010CV350

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUL 26 2010*

*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.*

*Willi Z. Mantz*

**CLERK'S OFFICE  
SUPREME COURT of GEORGIA**

244 Washington Street, Room 572

Atlanta, Georgia 30334

(404) 656-3470

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

---

**Docketing Date: August 09, 2010**

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 **S10C1957**.

BARBARA CUNNINGHAM v. HARTLEY CONSTRUCTION et al.

Clerk, Supreme Court of Georgia

AUG 12 2010

AUG 12 2010

Case No. A10D0447

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

AUG 12 2010

Clerk, Court of Appeals of Georgia

# Court of Appeals of the State of Georgia

ATLANTA,

July 21, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0448. COOPER v. SPOTTS ET AL.**

On April 28, 2010, the state court entered an order against Ellen Cooper in her appeal from magistrate court. Cooper timely moved for a new trial. On June 15, 2010 she voluntarily withdrew her motion for new trial, and on June 28, 2010, filed this application for discretionary appeal. We lack jurisdiction.

An application for discretionary appeal must be filed within 30 days of the judgment being appealed. See OCGA § 5-6-35 (d). Generally, the timely filing of a motion for new trial extends the running of this 30-day clock until the trial court disposes of the motion. *Id.* (“When a motion for new trial . . . has been filed, the application shall be filed within 30 days after the entry of *the order* granting, overruling, or otherwise finally disposing of the motion.”) Absent a court order resolving the motion, however, the 30-day period is not extended. As found by our Supreme Court, “a trial court order granting, denying, or otherwise finally disposing of a party’s motion for new trial” is required in order to extend the appeal time. *Heard v. State*, 274 Ga. 196 (552 SE2d 818) (2001) (interpreting OCGA § 5-6-38 (a), a provision analogous to OCGA § 5-6-35 (d) but applying to direct appeals).

A unilaterally withdrawn motion for new trial does not, standing alone, toll the time. *Id.* In fact, a withdrawal of a motion for new trial leaves a party in the same position as if the motion had never been filed. *Id.* Consequently, Cooper’s motion for new trial did not extend the 30-day period for filing her application; her application, filed 61 days after the entry of the order she seeks to appeal, is untimely; and we lack jurisdiction to consider it. See *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, this application for discretionary appeal is hereby **DISMISSED**.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      JUL 21 2010

*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.*

*Willi L. Mat:R*      , Clerk.

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

ATLANTA, AUGUST 10, 2010

*The Court of Appeals passed the following order*

Case No. A10D0449

OLLECE LAMONT MCCRANNY V. THE STATE

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta AUG 10, 2010*

*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.*

*Holly K. O. Spawr*

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

ATLANTA, JULY 20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0449  
OLLECE LAMONT MCCRANNY V. THE STATE

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

90038

08CR1021



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **JUL 20 2010**

*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. Martinez*

# Court of Appeals of the State of Georgia

ATLANTA, July 16, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0450. Albert L. Jeffcoat v. The State.**

Albert L. Jeffcoat, who was convicted of kidnapping in 2006, seeks discretionary review of the trial court's order denying his motion to set aside a void judgment. However, in *Harper v. State*, 286 Ga. 216, 218 (1) (686 SE2d 786) (2009), our Supreme Court determined that "a petition to vacate or modify a judgment of conviction is not an appropriate remedy in a criminal case." Any appeal from an order denying or dismissing such a motion, therefore, is subject to dismissal. *Harper*, supra; see also *Roberts v. State*, 286 Ga. 532 (690 SE2d 150) (2010). Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUL 16 2010

*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.*

*Willi E. Mat:R* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, July 21, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0451. LEWIS v. THE STATE.**

Kenneth Gregory Lewis seeks discretionary review of the trial court's order denying his motion for out of time appeal. The order was entered on May 26, 2010, but Lewis did not file this discretionary application until June 29, 2010. To be valid, an application for discretionary appeal must be filed within 30 days of the entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Lewis filed his application 34 days after entry of the order at issue here.<sup>1</sup> We therefore lack jurisdiction to consider the application, which is hereby **DISMISSED**. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*     **JUL 21 2010**

*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.*

*Willi Z. Mat:R*     , Clerk.

---

<sup>1</sup>Although Lewis initially submitted his application on June 17, 2010, we could not file or docket the application at that time because it did not include a filing fee or sufficient pauper's affidavit as required by OCGA § 5-6-4 and Court of Appeals Rules 5 and 31 (d).

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

ATLANTA, AUGUST 04, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0452  
PETER I. OTOH V. GEORGIA DEPARTMENT OF HUMAN  
RESOURCES, EX REL OBIAJULU C. GREENE

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

92038

08CV3488



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG - 4 2010**

*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.*  
*Hally K. O. Spencer*

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

ATLANTA, JULY 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0453  
MICHEAL CRUMPTON V. THE STATE

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

97038

2009SC12684

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUL 23 2010

*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.*

*Willi L. Mart; [Signature]*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

AUG 26 2010

**A10D0454. HURT-WHITMIRE v. THE STATE.**

On August 4, 2010, Judith Hurt-Whitmire filed a motion for reconsideration of this Court's July 23, 2010 order denying her application for discretionary appeal. Under Court of Appeals Rule 37 (b), "[m]otions for reconsideration must be physically received in the Court for filing within 10 days of the order or judgment for which reconsideration is sought." Hurt-Whitmire failed to meet this deadline. Accordingly, her motion for reconsideration is hereby **DISMISSED** as untimely.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* AUG 26 2010

*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.*

*Hally K. O. Spawort*, Clerk.

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

ATLANTA, JULY 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0454  
JUDITH HURT-WHITMIRE V. THE STATE

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

70038

08SUCR001

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta JUL 23 2010*

*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.*

*Willi L. Mantz*

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

ATLANTA, AUGUST 03, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0455  
TY COBB HEALTHCARE/COBB MEMORIAL HOSPITAL  
ET AL V. WILMA CARPENTER

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

99038

10FV0481



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **AUG - 3 2010**

*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.*

*Hally K. O. Spawar*

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

ATLANTA,                      OCTOBER      18, 2010

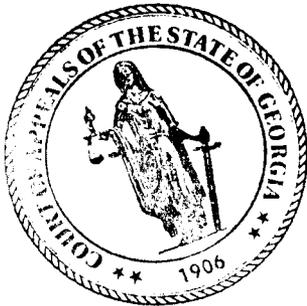
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0456  
JAMES DYER POWELL V. RITA MARBAN POWELL

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

94038

09112388



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta      OCT 18 2010*

*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.*  
*Hally K. O. Spencer*



**SUPREME COURT OF GEORGIA**

Case No. S10D1914

A10D0456

Atlanta

August 31, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**JAMES DYER POWELL v. RITA MARBAN POWELL**

Because applicant seeks to appeal an order domesticating a divorce judgment and holding him in contempt, the case is a suit on a foreign judgment and not a divorce and alimony case within the meaning of the Georgia Constitution, Ga. Const. of 1983, Art. VI, Sec. VI, Para. III (6), and jurisdiction lies in the Court of Appeals. Lewis v. Robinson, 254 Ga. 378 (329 SE2d 498) (1985). Therefore, the Court hereby directs that the application be returned to the Court of Appeals.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

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

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

  
Lynn M. Stinchcomb, Chief Deputy Clerk

RECEIVED IN OFFICE  
2010 SEP 17 AM 11:05  
CLERK'S OFFICE  
SUPREME COURT OF GEORGIA

# Court of Appeals of the State of Georgia

ATLANTA, July 30, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0456. James Dyer Powell v. Rita Marban Powell.**

James Dyer Powell seeks discretionary review of a trial court order holding him in contempt for failure to pay alimony required under a Minnesota divorce decree that has been domesticated here. “[A]n appeal from the judgment in a contempt action seeking to enforce any portion of [a] divorce decree other than child custody is ancillary to divorce and alimony and falls within [the Supreme] Court’s jurisdiction over divorce and alimony cases.” (Punctuation omitted.) *Rogers v. McGahee*, 278 Ga. 287, 288 (1) (602 SE2d 582) (2004). See also Const. of 1983, Art. VI, Sec. VI, Par. III (6); *Morris v. Morris*, 284 Ga. 748, 750 (2) (670 SE2d 84) (2008). This application is therefore *TRANSFERRED* to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **JUL 30 2010**

*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.*

*Willi Z. Mat: [Signature]* , Clerk.

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

ATLANTA,            JULY            27, 2010

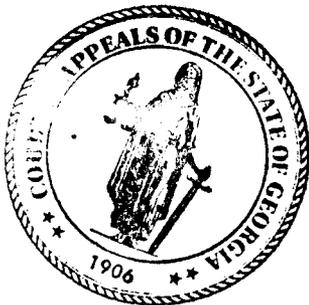
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0457  
BART L. GRAHAM IN HIS CAPACITY AS REVENUE COMMISSIONER  
OF THE STATE OF GEORGIA V. BEHR PROCESS CORPORATION

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.

95039

07CV1646



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    JUL 27 2010*

*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.*

*Willie L. Martinez*

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

ATLANTA, JULY 14, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0458  
BENJAMIN RUSSELL LUOPA V. THE STATE

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

96039

09CR00568



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

**JUL 14 2010**

*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*

# Court of Appeals of the State of Georgia

ATLANTA, July 27, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0459. Anqous Cosby v. First Horizon Tennessee Bank et al.**

Anqous Cosby filed this discretionary application seeking review of two trial court orders.<sup>1</sup> The first order granted First Horizon Tennessee Bank's motion for a supersedeas bond pursuant to OCGA § 5-6-46, and the second order denied Cosby's application for a certificate of immediate review. We lack jurisdiction.

With respect to the order granting a supersedeas bond, the court later entered another order ruling that Cosby could file an affidavit of indigency in lieu of a supersedeas bond. Thus, the issue of the validity of the order granting a supersedeas bond is now moot. See OCGA § 5-6-48 (b) (3); *Carlock v. Kmart Corp.*, 227 Ga. App. 356, 361 (3) (a) (489 SE2d 99) (1997) (a "moot" issue is one where a ruling is sought on a matter that has no practical effect on the alleged controversy or where the issues have ceased to exist).

With respect to the order denying a certificate of immediate review, "[t]he denial of a certificate for interlocutory appeal is not reviewable." *Price v. State*, 237 Ga. 352 (2) (227 SE2d 368) (1976); see also *Thomas v. State*, 276 Ga. 853, 854 n.7 (583 SE2d 848) (2003).

For these reasons, Cosby's application for discretionary appeal is hereby DISMISSED.

---

<sup>1</sup> Cosby filed this application in the Supreme Court, which transferred it here.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**JUL 27 2010**

*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.*

*Willi E. Mat; R*

, Clerk.



SUPREME COURT OF GEORGIA  
Case No. S10D1490

**FILED IN OFFICE**

JUL 08 2010

CLERK, COURT OF APPEALS OF GEORGIA

Atlanta June 21, 2010

CLERK'S OFFICE  
1500 10TH ST  
ATLANTA, GA 30334

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

A10 00459

**ANQOUS COSBY v. FIRST HORIZON TENNESSEE BANK et al.**

Applicant filed this application for discretionary appeal seeking review of two trial court orders entered on May 14, 2010. The first order granted respondent's motion for supersedeas bond pursuant to OCGA § 5-6-46 and the second denied, as 45 days late, applicant's petition for a certificate of immediate review from an earlier order entered in the case. Applicant contends that this Court has subject matter jurisdiction because he "desires" an extraordinary remedy, Appl., 1, but it does not appear that he has sought an extraordinary remedy within the meaning of Ga. Const. of 1983, Art. VI, Sec. VI, Para., III (5). See Spence v. Miller, 176 Ga. 96 (167 SE 188) (1933) ("extraordinary remedies" refers only to "mandamus, prohibition, quo warranto, and the like"). Further, the case below appears to be a dispossessory action, which does not invoke this Court's title to land jurisdiction, see Jordan v. Atlanta Neighborhood Housing Services, Inc., 251 Ga. 37 (302 SE2d 568) (1983). As no other basis for jurisdiction appears from the record, this application hereby is transferred to the Court of Appeals.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

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

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

*Laura M. Stinchcomb*, Chief Deputy Clerk

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

ATLANTA, AUGUST 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0460  
GEORGIA DEPARTMENT OF COMMUNITY HEALTH ET AL  
V. PHOEBE SUMTER MEDICAL CENTER (F/K/A SUMTER REGIONAL  
HOSPITAL)

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.

90039

10CV30



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta AUG -2 2010*

*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.*

*Hally H. O. Spencer*

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

ATLANTA, AUGUST 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0461

PALMYRA PARK HOSPITAL, INC., D/B/A PALMYRA MEDICAL  
CENTER V. PHOEBE SUMTER MEDICAL CENTER (F/K/A SUMTER  
REGIONAL HOSPITAL )

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.

90040

10CV30



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* **AUG -2 2010**

*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.*

*Hally K. O. Spawor*

# Court of Appeals of the State of Georgia

ATLANTA, NOVEMBER 08, 2010

Honorable Court of Appeals hereby passes the following order:

A10D0462. REYNOLDS v. THE STATE

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

91-039

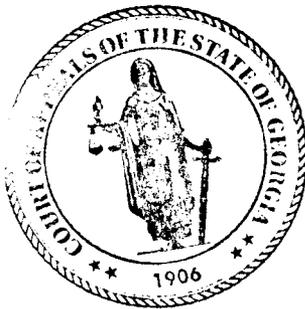
2006CR1142

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**NOV - 8 2010**

*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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, July 15, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0462. REYNOLDS v. THE STATE.**

On July 7, 2010, Julius Shawn Reynolds, Jr. filed an application for discretionary appeal, seeking to challenge a June 3, 2010 order denying his motion for out-of-time appeal. The denial of a motion for out-of-time appeal is directly appealable. Ordinarily, when a party applies for discretionary review of a directly appealable order, we grant the application under OCGA § 5-6-35 (j). To fall within this general rule, however, the application must be filed within 30 days of entry of the order or judgment to be appealed. OCGA § 5-6-35 (d); *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992). Reynolds filed his application 34 days after entry of the order at issue here. Accordingly, his application is untimely and must be DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta July 15, 2010*

*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 E. Matz:R*....., Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 4, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0463. Enrique Dowdy v. The State.**

On July 9, 2010, Enrique Dowdy filed this discretionary application seeking review of the trial court's June 8, 2010 order revoking his probation. To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d). Because Dowdy filed his application 31 days after entry of the order he seeks to appeal, his application is untimely. The application is therefore *DISMISSED* for lack of jurisdiction. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta August 4, 2010*

*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.*

*Henry K. A. Lawrence*, Clerk.

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

ATLANTA, JULY 29, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0464

EDWARD W. DAVIS V. EVELYN D. BALLINGER

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

93039

DR070949

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* JUL 29 2010

*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.*

*Willi Z. Mantz*



**SUPREME COURT OF GEORGIA**  
Case No. S10D1544

FILED IN OFFICE

Atlanta June 25, 2010

JUL 13 2010

CLERK, COURT OF  
APPEALS OF GEORGIA

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**EDWARD W. DAVIS v. EVELYN D. BALLINGER.**

From the Superior Court of Chatham County.

Applicant appeals the order granting summary judgment because the parties were never married and thus the trial court did not have jurisdiction over the divorce action. As no final decree of divorce was entered and no alimony awarded, the appeal does not invoke this Court's jurisdiction over cases involving divorce and alimony, see Gates v. Gates, 277 Ga. 175 (586 SE2d 32) (2003). Accordingly, the appeal hereby is transferred to the Court of Appeals. All the Justices concur, except Hunstein, C. J., and Carley, P. J., who dissent.

RECEIVED IN OFFICE  
2010 JUL 13 7:12:03  
CLERK OF SUPERIOR COURT  
CHATHAM COUNTY

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

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

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

  
Lynn M. Stucke, Chief Deputy Clerk

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

ATLANTA,            SEPTEMBER 02, 2010

*The Court of Appeals passed the following order*

Case No. A10D0465

MCCOMBS FAMILY PARTNERS, LTD., V. MICRON SEMICONDUCTOR,  
INC., ET AL

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

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta    SEP 02, 2010*



*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.

*Hally K. O. Spencer*

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

ATLANTA, AUGUST 11, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0465  
MCCOMBS FAMILY PARTNERS, LTD., V. MICRON SEMICONDUCTOR,  
INC., ET AL

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

92039

10G1853



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

AUG 11 2010

*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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

## **A10D0466. Danny Hawk v. Recorder's Court of DeKalb County et al.**

On June 9, 2010, the superior court entered an order dismissing Danny Hawk's petition for writ of certiorari to review a decision of the Recorder's Court of DeKalb County. Hawk filed a motion for reconsideration of the dismissal, but the superior court denied his motion. On July 15, 2010, Hawk filed this application for discretionary appeal.<sup>1</sup> We lack jurisdiction.

An application for discretionary appeal must be filed within 30 days of entry of the order to be appealed. See OCGA § 5-6-35 (d). Hawk filed his application 36 days after the superior court dismissed his petition for writ of certiorari. Although Hawk requested reconsideration of that dismissal, his request did not extend the time for filing the discretionary application. See *Cheeley-Towns v. Rapid Group, Inc.*, 212 Ga. App. 183 (441 SE2d 452) (1994). Moreover, the order denying his motion for reconsideration is not appealable in its own right. See *Bell v. Cohran*, 244 Ga. App. 510, 511 (536 SE2d 187) (2000). We thus lack authority to consider Hawk's application, which is hereby DISMISSED as untimely.

---

<sup>1</sup> Although we initially received Hawk's application on July 9, 2010, we could not file or docket it at that time because it did not contain a certificate of service as required by Court of Appeals Rule 6.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **AUG 13 2010**

*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.*

*Hally K. O. Spaw*      , Clerk.

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C2068

Atlanta, April 18, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MIKE J. REDFORD v. COLLIER HEIGHTS APARTMENTS 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 writ denied.

All the Justices concur.

Court of Appeals Case No.

A10D0467

MAY 6 2011

RECEIVED IN OFFICE  
2011 MAY -6 AM 11: 27  
CLERK/COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta May 05, 2011

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.



*Pamela M. Fishburne*, Deputy Clerk

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: August 23, 2010**

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 **S10C2068**.

MIKE J. REDFORD v. COLLIER HEIGHTS APARTMENTS et al.

Clerk, Supreme Court of Georgia

AUG 27 2010

Case No. A10D0467

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, AUGUST 05, 2010

*The Court of Appeals hereby passes the following order:*

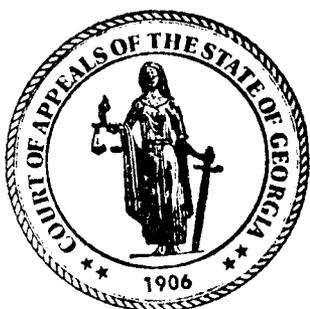
APPLICATION NO. A10D0467

MIKE J. REDFORD V. COLLIER HEIGHTS APARTMENTS ET AL

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

70039

2008CV153499



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG - 5 2010**

*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.*

A handwritten signature in cursive script, reading "Holly K. O. Spawr".

# Court of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

JUL 28 2010

## **A10D0468. PARKER v. SPEEDY SIGNS & PRINTING.**

Adrienne Parker filed an application for discretionary appeal from the June 16, 2010 order of the Clayton County Magistrate Court finding her liable to Speedy Signs & Printing in the amount of \$581.50. We, however, lack jurisdiction to consider the application.

“The only avenue of appeal available from the magistrate court judgment is provided by OCGA § 15-10-41 (b) (1), which allows for a de novo appeal to the state or superior court.” *Handler v. Hulsey*, 199 Ga. App. 751 (406 SE2d 225) (1991). The Georgia Constitution provides that “[a]ny court shall transfer to the appropriate court in the state any civil case in which it determines that jurisdiction or venue lies elsewhere.” 1983 Ga. Const., Art 6, § 1, ¶ 8; *Bosma v. Gunter*, 258 Ga. 664 (373 SE2d 368) (1988). This application is thus TRANSFERRED to the Superior Court of Clayton County for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

JUL 28 2010

*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 E. Mat:R*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 12, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0469. Sang Hyon Kim v. Bank of America, N.A.**

Sang Hyon Kim seeks discretionary review of the trial court's order awarding attorney fees to Bank of America, N.A. Because Kim has provided insufficient information to invoke this Court's jurisdiction, this application must be dismissed.

Kim sued Bank of America, but apparently later voluntarily dismissed the claims. Shortly thereafter, the trial court awarded Bank of America attorney fees that it had incurred in preparing a motion to dismiss or for more definite statement. Kim then filed this application. However, according to Bank of America's response to the application, a counterclaim remains pending against Kim.

Accordingly, this appeal appears to be interlocutory in nature. See *Thomas v. Douglas Co.*, 217 Ga. App. 520, 522 (1) (457 SE2d 835) (1995) ("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"). Ordinarily, a party seeking review of an OCGA § 9-15-14 attorney fee award must apply for discretionary review. See OCGA § 5-6-35 (a) (10). However, "[t]he discretionary-application statute does not relieve [an] appellant who seeks review of an interlocutory order of the requirement of a certificate [of immediate review] from the trial judge." (Punctuation omitted.) *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991).

It is axiomatic that an applicant to this Court bears the burden of demonstrating that the application for discretionary appeal should be granted. See *Harper v. Harper*, 259 Ga. 246 (378 SE2d 673) (1989). Of utmost importance in doing so is showing that this Court has jurisdiction to consider the application. Because Kim has failed to

demonstrate that the case is no longer pending below, this application is DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 12 2010**

*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.*

*Hally H. O. Spaw* , Clerk.

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

ATLANTA, AUGUST 13, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0470

IN THE INTEREST OF: J. E. & C. E. , CHILDREN (FATHER)

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

95040

0900899



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

**AUG 13 2010**

*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.*

*Hally K. O. Spawor*

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

ATLANTA, AUGUST 04, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0471  
GEORGIA MOUNTAIN EXCAVATION, INC., ET AL V.  
PHILLIP DOBBINS

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.

96040

2010V452



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG - 4 2010**

*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.*

*Hally H. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA,

AUG - 9 2010

*The Court of Appeals hereby passes the following order:*

**A10D0472. In the Interest of: K. B. K. and L. M. L., Children (Grandfather).**

After determining that minor children K. B. K. and L. M. L. were deprived, the juvenile court awarded custody of them to their grandfather. The court later entered an order returning custody of the children to the Jenkins County Department of Family and Children Services. The grandfather then filed this application for discretionary appeal.

“An order within a deprivation proceeding deciding temporary custody of the child is a ‘final order’ within the meaning of OCGA § 5-6-34 (a) (1), from which a direct appeal lies.” *In the Interest of S. J.*, 270 Ga. App. 598, 608 (1) (a) (607 SE2d 225) (2004); see also *Sanchez v. Walker County Dept. of Family & Children Svcs.*, 235 Ga. 817 (221 SE2d 589) (1976). Under OCGA § 5-6-35 (j), this Court will grant an otherwise timely discretionary application if the lower court’s order is subject to direct appeal. Accordingly, the grandfather’s application is hereby GRANTED. The grandfather shall have 10 days from the date of this order to file a notice of appeal with the juvenile court. The juvenile court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*    **AUG - 9 2010**

*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.*

*Hally H. O. Spaw*

, Clerk.

# ApCourt of Appeals of the State of Georgia

ATLANTA,

*The Court of Appeals hereby passes the following order:*

**AUG 18 2010**

**A10AD0473. HARBEN v. FEDERAL NATIONAL MORTGAGE ASSOCIATION.**

Upon consideration of Appellant's motion to **WITHDRAW** the Application for Discretionary Appeal, the same is hereby **GRANTED**.

The pending motion to dismiss the Discretionary Application is moot.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 18 2010**

*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.*



*Hally K. O. Spencer*, Clerk.

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

ATLANTA,            AUGUST            06, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0474

IN THE INTEREST OF: L. G., A CHILD (MOTHER)

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

71040

0290901105



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta    AUG - 6 2010*

*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.*

*Hally K. O. Spawar*

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

ATLANTA, AUGUST 17, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0475  
IN THE INTEREST OF: C. A. S. , A CHILD (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93040  
1000466



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **AUG 17 2010**

*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.*

*Hally K. O. Spencer*

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

ATLANTA, AUGUST 11, 2010

*The Court of Appeals hereby passes the following order:*

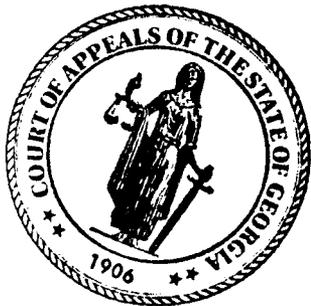
APPLICATION NO. A10D0476

IN THE INTEREST OF: N. T. , A CHILD (MOTHER)

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

92040

JUV090261



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 11 2010**

*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.*

A handwritten signature in cursive script, appearing to read "Holly H. A. Spawr".

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

ATLANTA, AUGUST 02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0477  
GEORGIA DEPARTMENT OF COMMUNITY HEALTH ET AL  
V. PHOEBE PUTNEY MEMORIAL HOSPITAL

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.

90041

10CV97



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG - 2 2010**

*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.*

*Hally K. O. Spaw*

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

ATLANTA,            AUGUST            02, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0478  
PALMYRA PARK HOSPITAL, INC., D/B/A PALMYRA MEDICAL  
CENTER V. PHOEBE PUTNEY MEMORIAL HOSPITAL

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.

90042  
10CV97



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta            AUG - 2 2010*

*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.*

*Hally K. O. Spencer*

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

ATLANTA, AUGUST 20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0479  
STATE OF GEORGIA V. DARRELL F. WALLER

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

97040

030251



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta AUG 20 2010*

*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.*

*Holly K. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, July 27, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0480. ROSAS v. MANN.**

On July 22, 2010, Juan Rosas filed an application for discretionary appeal from the trial court's June 21, 2010 order. To be valid, however, an application for discretionary appeal must be filed within 30 days of the entry of the order to be appealed. OCGA § 5-6-35 (d). Because Rosas filed his application 31 days after entry of the order he seeks to appeal, his application is untimely and must be DISMISSED for lack of jurisdiction. See *Hill v. State*, 204 Ga. App. 582 (420 SE2d 393) (1992).



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUL 27 2010

*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 E. Matz*, Clerk.

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S11C0103

Atlanta, February 07, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

VICTOR BERNARD HARRIS v. THE STATE

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 writ dismissed.

All the Justices concur.

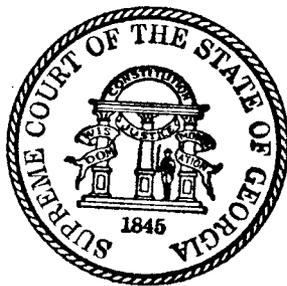
Court of Appeals Case No.

A10D0481

RECEIVED  
CLERK'S OFFICE  
MARCH 04 2011

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 04, 2011



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.

*Pamela M. Fishburne*, Deputy Clerk



**SUPREME COURT OF GEORGIA**  
Case No. S11C0103

Atlanta February 07, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**VICTOR BERNARD HARRIS v. THE STATE.**

On August 16, 2010, the Court of Appeals denied petitioner's application to appeal the denial of his extraordinary motion for new trial. Thus, his petition for certiorari was required to be filed by September 7, 2010. Sup. Ct. R. 38 (2). Because the petition was not filed until September 10, 2010, it is untimely, and the Court hereby orders that it be dismissed.

**SUPREME COURT OF THE STATE OF GEORGIA**  
Clerk's Office, Atlanta

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

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

*Lee C. Bullock*, Chief Deputy Clerk

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

ATLANTA, AUGUST 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0481  
VICTOR BERNARD HARRIS V. THE STATE

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

99040

2003R5



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

AUG 16 2010

*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.*

*Holly K. O. Spencer*

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: September 10, 2010**

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 **S11C0103**.

VICTOR BERNARD HARRIS v. THE STATE

Clerk, Supreme Court of Georgia

SEP 16 2010

Case No. A10D0481

Court of Appeals of Georgia

Notice of Petition for Certiorari filed in office

Clerk, Court of Appeals of Georgia

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S11C0067

Atlanta, April 18, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

HAROLD J. FARRIS v. NATIONSBANC MORTGAGE CORPORATION  
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 writ denied.

All the Justices concur.

Court of Appeals Case No.  
A10D0482

RECEIVED IN OFFICE  
2011 JUN - 6 AM 11:54  
CLERK COURT ADMINISTRATOR  
COURT OF APPEALS OF GA

JUN - 6 2011

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta June 03, 2011



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.

*Pamela M. Fishburne*, Deputy Clerk

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

ATLANTA, AUGUST 20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0482  
HAROLD J. FARRIS V. NATIONSBANC MORTGAGE  
CORPORATION ET AL

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

94040

E49766



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

AUG 20 2010

*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.*

*Hally K. O. Spencer*

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: September 07, 2010**

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 **S11C0067**.

HAROLD J. FARRIS v. NATIONSBANC MORTGAGE CORPORATION et al.

Clerk, Supreme Court of Georgia

SEP - 9 2010

Case No. A10D0482

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, AUGUST 18, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0483

SAVE ETOWAH TERRACE, ET AL V. SOUTH ROME REDEVELOPMENT AGENCY, 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.

95041

09CV02987



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

AUG 18 2010

*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.

*Hally K. O. Spawr*

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

ATLANTA, AUGUST 18, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0484

SAVE ETOWAH TERRACE, ET AL V. SOUTH ROME REDEVELOPMENT, 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.

95042

09CV01744



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

AUG 18 2010

*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.

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, August 6, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0485. GRANITE STATE OUTDOOR ADVERTISING, INC. ET AL. v. CITY OF SANDY SPRINGS, GEORGIA ET AL.**

Granite State Outdoor Advertising, Inc. and KH Outdoor, LLC sued the City of Sandy Springs and its assistant director of planning and zoning for mandamus and injunctive relief. The plaintiffs contended that the city's sign ordinance is invalid, so the defendants should be ordered to permit them to erect signs in the city. The superior court granted the defendants summary judgment, and this application followed.

"[C]ases involving the grant or denial of mandamus are within the exclusive jurisdiction of [the Supreme] Court without regard to the underlying subject matter or the legal issues raised." (Citations and punctuation omitted.) *Ladzinske v. Allen*, 280 Ga. 264 (626 SE2d 83) (2006). See also *Lamar County v. E.T. Carlyle Co.*, 277 Ga. 690 (594 SE2d 335) (2004). Because the plaintiffs seek mandamus relief, this appeal is **TRANSFERRED** to the Supreme Court.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **AUG - 6 2010**

*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.*

*Hally K. O. Spawr*, Clerk.

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

ATLANTA, AUGUST 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0486

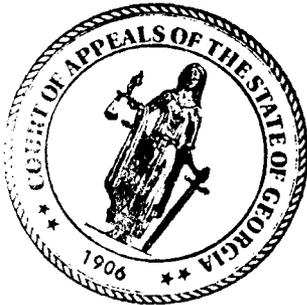
EDGERTON HARTWELL V. ATLANTA FALCONS FOOTBALL CLUB

ET AL

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

98041

2010CV1754



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 16 2010**

*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.*

*Hally H. O. Spawr*

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

ATLANTA, AUGUST 23, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0488

VEOLIA ENVIRONMENTAL SERVICES ET AL V. JEFFREY VICK

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.

71041

2010CV775

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 23 2010**



*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.

*Hally K. O. Spencer*

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S11C0178

Atlanta, February 07, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

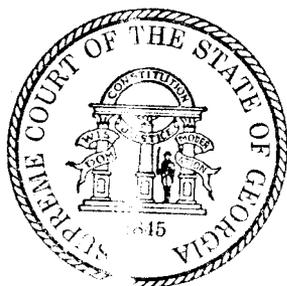
MCINTYRE LUMBER COMPANY et al. v. BRANDON MOMON

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 writ denied.

All the Justices concur.

Court of Appeals Case No.

A10D0489



## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta February 23, 2011

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.

*Pamela M. Fishburne* Deputy Clerk

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

ATLANTA, SEPTEMBER 07, 2010

*The Court of Appeals passed the following order*

Case No. A10D0489

MCINTYRE LUMBER COMPANY ET AL V. BRANDON MOMON

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



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta SEP 07, 2010*

*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.*

*Hally K. O. Sparrow*

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

ATLANTA,            AUGUST            17, 2010

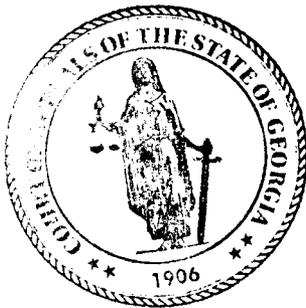
*The Court of Appeals hereby passes the following order:*

APPLICATION NO.            A10D0489  
MCINTYRE LUMBER COMPANY ET AL V. BRANDON MOMON

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

93041

2010CV01061



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 17 2010**

*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.*

*Hally H. O. Spawar*

# Court of Appeals of the State of Georgia

ATLANTA,

AUG 11 2010

*The Court of Appeals hereby passes the following order:*

**A10D0490. PICCADILLY PLACE CONDOMINIUM ASSOCIATION, INC. v.  
CITY OF ATLANTA.**

In this garnishment action, Piccadilly Place Condominium Association, Inc., (“Piccadilly”) obtained a default judgment against the City of Atlanta. The trial court set aside the default judgment by order entered June 29, 2010. Piccadilly filed an application for discretionary appeal from this ruling.

Although Piccadilly characterizes the trial court’s order as final, it is not final as an order setting aside a judgment leaves the case pending in the trial court. See *Vangoosen v. Bohannon*, 236 Ga. App. 361, 363 (2) (511 SE2d 925) (1999); *Guy v. Roberson*, 214 Ga. App. 391, 392 (1) (448 SE2d 60) (1994); *English v. Tucker Federal Savings & Loan Assn.*, 175 Ga. App. 69 (332 SE2d 365) (1985). Such non-final orders must be appealed through the interlocutory appeal procedure set forth in OCGA § 5-6-34 (b). *Guy*, supra. Although appeals in garnishment cases are typically by discretionary application, see OCGA § 5-6-35 (a) (4), where both discretionary and interlocutory application procedures apply, the applicant must follow the interlocutory appeal procedure and obtain a timely certificate of immediate review before filing an application. See *Scruggs v. Ga. Dept. of Human Resources*, 261 Ga. 587, 588 (1) (408 SE2d 103) (1991). Because Piccadilly failed to follow the

interlocutory appeal procedure, this application is DISMISSED for lack of jurisdiction.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 11 2010**

*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.*

*Hally K. O. Spencer* ..... , Clerk.

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

ATLANTA,            AUGUST        20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION    NO.            A10D0491  
BONUS STORES, INC., ET AL V. EDWARD HENSLEY

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.

97041  
10CV240



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 20 2010**

*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.*

*Hally K. O. Sparrow*

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

ATLANTA, AUGUST 20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0492

IN THE INTEREST OF: D. L. T. C. & S. F. L. C., CHILDREN (MOTHER)

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

70041

10DP020



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 20 2010**

*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.*

*Holly K. O. Sparrow*

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

ATLANTA, AUGUST 16, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0493

LANIER PROPERTY COM, INC., ET AL V. CHESTATEE STATE  
BANK

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

99041

08CV865



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 16 2010**

*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  
Hally K. O. Sparrow*

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

ATLANTA, AUGUST 20, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0494

IN THE INTEREST OF: D. L. T. C. & S. F. L. C., CHILDREN (FATHER)

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

70042

10DP020



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 20 2010**

*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.*

*Hally K. O. Sparrow*

# Court of Appeals of the State of Georgia

ATLANTA, August 26, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0495. GRANT v. THE STATE.**

Harvey Lee Grant was convicted of selling cocaine, and his conviction was affirmed on appeal. See *Grant v. State*, 248 Ga. App. 203 (546 SE2d 339) (2001). In 2009, Grant filed a motion to correct an allegedly void sentence.<sup>1</sup> The trial court denied the motion on June 7, 2010, and Grant filed an application for discretionary appeal on July 30, 2010.<sup>2</sup> Grant argues, inter alia, that the trial court failed to timely provide him a copy of the order denying his motion in order to hinder his appeal.

To be valid, a discretionary application must be filed within 30 days of entry of the order at issue. OCGA § 5-6-35 (d). Grant, however, filed his application 53 days after the superior court entered its order. The requirements of OCGA § 5-6-35 are jurisdictional, and this Court cannot accept an application for appeal not made in compliance therewith. See *Boyle v. State*, 190 Ga. App. 734 (380 SE2d 57) (1989). We have held that, even when untimeliness is attributable to the clerk, it does not cure the jurisdictional defect. See *Cranman Ins. Agency v. Wilson Marine Sales & Svc.*, 147 Ga. App. 590, 591 (249 SE2d 631) (1978); *Banks v. Green*, 205 Ga. App. 589 (423 SE2d 31) (1992).

Under OCGA § 15-6-21 (c), the trial court was required to notify Grant of its

---

<sup>1</sup> Grant subsequently filed a motion to compel the trial court to issuing a ruling.

<sup>2</sup> A direct appeal lies from an order denying or dismissing a motion to correct a void sentence if the defendant raises a colorable claim that the sentence is, in fact, void or illegal. See *Harper v. State*, 286 Ga. 216, 218 n.1 (686 SE2d 786) (2009). Thus, it is unclear why Grant filed an application for discretionary appeal rather than a notice of appeal.

ruling. See *Cambron v. Canal Ins. Co.*, 246 Ga. 147 (269 SE2d 426) (1980). But the trial court's alleged failure to do so does not extend the time for filing a notice of appeal. Rather, such failure furnishes a basis for setting aside the order and reentering it, permitting the 30-day period within which Grant could appeal to run from the date of reentry. See *id.*

Under these circumstances, we lack jurisdiction over this application, which is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **AUG 26 2010**

*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.*

*Hally H. O. Spawort* ..... , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 13, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0496. Musser v. Van Zandt.**

Kenneth Daryl Musser, Jr. filed an application for discretionary appeal in this Court, seeking review of the final judgment and decree of divorce entered by the trial court on July 2, 2010. The Supreme Court, however, has general appellate jurisdiction over divorce and alimony cases. Ga. Const. of 1983, Art. VI, § VI, Par. III (6). Accordingly, Musser's application is hereby TRANSFERRED to the Supreme Court for disposition.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **AUG 13 2010**

*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.*

*Hally K. O. Spawort*      , Clerk.

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

ATLANTA, AUGUST 24, 2010

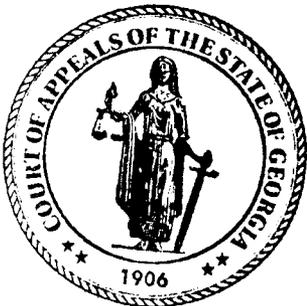
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0497  
YULIN MA V. JESSIE L.-S. AU ET AL

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

98042

09GC05749



*Court of Appeals of the State of Georgia*  
Clerk's Office, Atlanta AUG 24 2010

*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  
*Hally K. O. Spencer*

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

ATLANTA, AUGUST 26, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0498

IN THE INTEREST OF: C. M. R., A CHILD (MOTHER)

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

91042

1000614



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 26 2010**

*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.*

*Holly K. O. Spencer*

# Court of Appeals of the State of Georgia

ATLANTA, August 6, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0499. HARRISON et al v. PROBUILD SOUTH, LLC.**

Jerry Harrison filed a timely application for discretionary appeal from an order granting partial summary judgment in favor of ProBuild South, LLC, as successor of Jasper Lumber Company.<sup>1</sup> The grant of partial summary judgment may be directly appealed. See OCGA § 9-11-56 (h); see also *Whiddon v. Stargell*, 192 Ga. App. 826, 828 (386 SE2d 884) (1989). Under OCGA § 5-6-35 (j), this court will grant an otherwise timely discretionary application if the lower court's order is subject to direct appeal. Accordingly, Harrison's application is hereby GRANTED. Harrison shall have 10 days from the date of this order to file a notice of appeal with the superior court, if he has not already done so. The superior court is instructed to include a copy of this order in the appellate record.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta*      **AUG - 6 2010**

*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.*

*Holly H. O. Spawor* , Clerk.

---

<sup>1</sup> A claim against Harrison Builders, Inc., apparently remains pending below.

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

ATLANTA, AUGUST 25, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0500

RICHARD MOULDED BRICK COMPANY, INC., V. PROSERVICES USA,  
LLC D/B/A ARTISAN MOULDED BRICK CO ET AL

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

93042

09GC04243



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 25 2010**

*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.*

*Hally K. O. Spencer*

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

ATLANTA, AUGUST 25, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0501

CROSSMARK, INC., ET AL V. MARY ANN STRICKLAND

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.

92042

2005018700



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta AUG 25 2010*

*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.*  
*Hally K. O. Spaw*

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

ATLANTA, AUGUST 27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0502

IN THE INTEREST OF: T. A. H., I. S. H. & D. M. , CHILDREN (MOTHER)

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 JUVENILE COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97042

00510138



*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta AUG 27 2010*

*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.*

*Hally K. O. Spawort*

# Court of Appeals of the State of Georgia

ATLANTA, August 31, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0503. RUMBAUGH v. FAYETTE COUNTY BOARD OF COMMISSIONERS et al.**

Richard Rumbaugh sought recommencement of workers' compensation benefits, arguing that the Fayette County Board of Commissioners had improperly suspended his benefits under OCGA § 34-9-240 (a). The administrative law judge (ALJ) found in favor of Rumbaugh. Fayette County appealed to the appellate division, which found that the ALJ employed the wrong inquiry in determining whether Rumbaugh was entitled to recommencement of benefits. Accordingly, the appellate division remanded the award back to the trial division.

Rumbaugh appealed this ruling to the superior court. Although the superior court affirmed the decision of the appellate division, it did not issue its order within 20 days as required by OCGA § 34-9-105 (b), and thus the award of the appellate division was affirmed by operation of law. See *Coronet Carpets v. Reynolds*, 199 Ga. App. 383 (405 SE2d 103) (1991). Rumbaugh then filed this application for discretionary appeal, seeking to challenge the award of the appellate division. We, however, lack jurisdiction.

“Only a *final* award, order, judgment or decision of the Appellate Division is subject to appeal to the superior court.” (Punctuation omitted.) *Strickland v. Crossmark*, 298 Ga. App. 568, 570 (1) (680 SE2d 606) (2009). Nothing in the workers' compensation scheme permits an interlocutory appeal. See *id.* Here, the appellate division remanded the case to the ALJ for additional proceedings. Under these circumstances, the award was not final and cannot serve as the basis for either an appeal to superior court or an application for discretionary appeal. See *id.* For

these reasons, this application for discretionary appeal is hereby DISMISSED.



*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* **AUG 31 2010**

*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.*

*Hally H. O. Spaw* , Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, August 19, 2010

*The Court of Appeals hereby passes the following order:*

## **A10D0504. Beringer v. Emory.**

Marybeth S. Beringer filed a petition against her ex-husband, Jimmy R. Emory, Jr., to modify the child custody provisions of the parties' divorce decree. Emory counterclaimed, seeking to modify the decree's custody and child support provisions and to hold Beringer in contempt. He also requested an award of attorney fees. Following a bench trial, the trial court modified custody and child support, but reserved the issue of attorney fees for further briefing. Approximately one month later, the trial court ordered Beringer to pay Emory's counsel \$18,500 in fees.

Beringer filed a notice of appeal challenging the modification order and attorney fee award. On July 8, 2010, the trial court dismissed the notice of appeal after concluding that Beringer was required, but failed, to follow the discretionary appeal procedures in OCGA § 5-6-35 (a) (2). Beringer has now filed an application for discretionary appeal in this Court, requesting review of that order, as well as the trial court's prior rulings.

The issues in this case arise out of the child support and custody provisions of a divorce decree. Although the Court of Appeals may review cases relating solely to child custody, the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6). In Georgia, child support is a form of alimony. Jurisdiction over actions to modify a divorce decree's child support provisions, therefore, lies in the Supreme Court. See *Spurlock v. Dept. of Human Resources*, 286 Ga. 512, 513 (1) (690 SE2d 378) (2010); *Smith v. Smith*, 254 Ga. 450, 451 (1) (330 SE2d 706) (1985). Accordingly, because this matter involves child support modification, we lack jurisdiction over Beringer's

application, which is hereby TRANSFERRED to the Supreme Court for disposition.  
See *Spurlock*, supra at 513-514.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

**AUG 19 2010**

*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.*

*Hally K. O. Spencer*

, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 1, 2010

*The Court of Appeals hereby passes the following order:*

**A10D0505. VERNON FRASER et al. v. PHOENIX RECOVERY GROUP.**

On August 6, 2010, Vernon and Jonia Fraser filed this application for discretionary appeal, seeking review of the trial court's July 6, 2010 order denying their motion to set aside. An application for discretionary appeal must be filed within 30 days of the order to be appealed. OCGA § 5-6-35 (d). Because the Frasers filed this application 31 days after entry of the order they seek to appeal, it is untimely. This Court lacks jurisdiction to consider an untimely application. See *Rosenstein v. Jenkins*, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, this application is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **SEP - 1 2010**

*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.*

*Hally K. O. Spaw* , Clerk.

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

ATLANTA, AUGUST 27, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0506

EDELL ROBINSON V. MICHAEL L. THURMOND 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.

96043

1S10CV090



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **AUG 27 2010**

*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.*  
*Hally K. O. Lewis*

# SUPREME COURT OF GEORGIA

Remittitur, Case No. S11C0109

Atlanta, February 07, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**BRIAN CHRISTOPHER ALWIN v. THE STATE**

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 writ denied.

All the Justices concur.

Court of Appeals Case No.

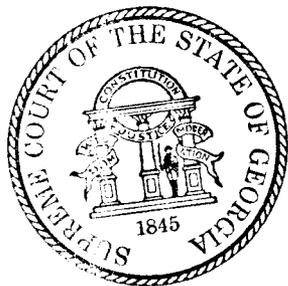
A10D0507

## SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta February 23, 2011

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.



*Pamela M. Fishburne*, Deputy Clerk

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

ATLANTA, AUGUST 27, 2010

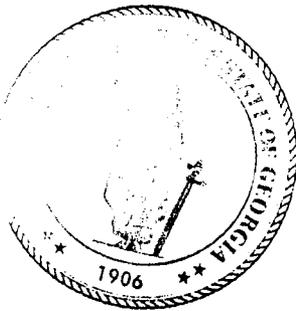
*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0507  
BRIAN CHRISTOPHER ALWIN V. THE STATE

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

98043

10RCCR748



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

AUG 27 2010

*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.*

*Hally K. O. Sparrow*

**CLERK'S OFFICE**  
**SUPREME COURT of GEORGIA**  
244 Washington Street, Room 572  
Atlanta, Georgia 30334  
(404) 656-3470

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

---

**Docketing Date: September 15, 2010**

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 **S11C0109**.

BRIAN CHRISTOPHER ALWIN v. THE STATE

Clerk, Supreme Court of Georgia

SEP 16 2010

Case No. A10D0507

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, AUGUST 25, 2010

*The Court of Appeals hereby passes the following order:*

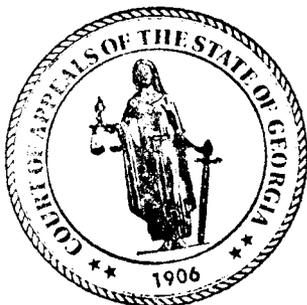
APPLICATION NO. A10D0508

JOEL HENLEY 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.

90043

2001CR102



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

AUG 25 2010

*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.*

*Hally K. O. Spawor*

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

ATLANTA,

SEPTEMBER 07, 2010

*The Court of Appeals hereby passes the following order:*

APPLICATION NO. A10D0509  
DONTE D. SMITH V. ANDREA L. SMITH

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

91043

2007DR04370



*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*

SEP - 7 2010

*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.*  
*Hally K. O. Sparrow*