

COURT OF APPEALS OF GEORGIA
EMERGENCY MOTIONS

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218	Sauls v. The State	Emergency Motion for Stay of Grand Jury Proceedings
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221	In the Interest of: J. N. T., a Child	Motion for Emergency Supersedeas in a child custody case
222	Shaw v. The State	Emergency Motion; defendant's bond and release pending trial be not further interfered with
223	Smith v. The State	Extraordinary Motion for Stay of Trial Pending Appeal Based upon Double Jeopardy
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237	Knapp v. The State	Claim of error in the trial court's failure, after a sentence of imprisonment had been imposed, to make a fresh determination of appellant's custody pending a final decision on appeal of conviction
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244	Garrett v. Easterling	Seek supersedeas from the trial court's order finding him in contempt for failure to pay child support and failure to appeal at a compliance hearing held
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248	Jernigan v. The State	Emergency Motion requesting an order compelling the trial court to honor the Notice of Appeal filed in the underlying case instead of progressing to trial
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255	Rapps v. Cooke, et al.	Stay Action to stay the trial court's order requiring that a supersedeas bond be filed by the end of business today
256	Liebman v. Lane	Seeking an injunction to stop the sale of a certain parcel of land or alternatively, an order setting aside the sale of the land
257	Daniel v. Robins	Seeking to preclude the trial of her case during the pendency of her direct appeal from the trial court's denial of her plea in bar alleging double jeopardy.
258	Brinkley v. The State	Request that this Court allow his out-of-time appeal which was denied by the trial court
259	Hardin v. RTP Townhouse Association, Inc.	Seeking an order allowing his appeal as indigent
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261	Roberts v. Roberts	Seeking supersedeas from the trial court's order finding him in contempt for failure to pay child support
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263	Rehberger v. The State	Emergency motion for expedited hearing with this Court
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265	Roberts v. Roberts	Wilful contempt of order requiring supersedeas bond
266	Dunn v. The State	Second emergency regarding the preparation of the trial transcript
267	Norman v. The State	After the trial court denied Motion for supersedeas bond with this Court following his conviction for interference with custody, a misdemeanor
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275	In the Matter of: Myrlin Earle	Second Extraordinary Motion for Supersedeas Bond pending appeal with this Court
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278	Morgan v. Ross	Emergency order in this Court concerning visitation order entered by the Superior Court of Cobb County affecting one of the two minor children
279	Masters, et al. v. Talbott, et al.	Motion to Quash Plaintiffs' subpoena requiring production of certain of the Board's records from Executive Director
280	Miller v. Griffith	The sale of land order by the Superior Court of Chatham County as part of a partnership dissolution judgment be stayed or, in the alternative, that this Court reduce the amount of the supersedeas bond set by the trial court
281	Shah v. Goldberg	Preclude mootness pursuant to Court of Appeals Rule 40(b)
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283	Aycock v. Werbin & Tenebaum	Motion for Reconsideration and amended MFR
284	Baker v. The State	Trial court erroneously failed to grant a supersedeas bond
285	Knott, et al. v. Superior Court of Cobb County, et al.	Writ of Prohibition
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287	Jacobs v. Washington	Court use its inherent powers to preserve jurisdiction over appeal from an order denying motion to set aside a protective order issued under the Georgia Family Violence Act
288	Home Depot v. NAP Chesterfield, L.P., et al.	Motion to Expedite Appeal
289	Merritt v. The State	Grant of bond pending appeal from conviction of one count of felony theft by taking
290	Patel v. Bryant	Motion pursuant to Rule 40(b)
291	Roberts v. Roberts	Seeking supersedeas from the trial court's order finding him in willful contempt for failure to pay child support and repeated refusal to obey court orders
292	Roberts v. Roberts	Contempt order and incarceration sanction and remove the bond condition as in the trial court's order
293	Hay v. Joint Development Authority of Jasper County	Revenue bond validation case
294	Wilbar Developers, LLC, et al. v. Blaiss Productions, Inc., et al.	Emergency motion considered for injunction and find it does not meet the criteria
295	In the Matter of : T. Kevin Mooney	Extraordinary Motion for Supersedeas Bond Pending Appeal with this Court on behalf of an attorney
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298	Sewnath v. Steele	Emergency Motion for Relief requesting the Court to review the trial court's order requiring the post supersedeas bond or alternatively dismiss the case for lack of subject matter jurisdiction

299	Roberson v. Administrator of the Estate of Julia M. Shiggs	Seeking supersedeas bond pending appeal of the order of the Probate Court of Chatham County directing incarceration because of the refusal to pay into the registry of that court
301	Urquhart v. The State	Vacate and reverse the order for mental evaluation and committal entered by the Superior Court
302	The State v. Reese	Emergency order to stay proceedings in the City Court of Atlanta
303	The State v. McDowell	Emergency order to stay proceeding in the City Court of Atlanta challenging the constitutionality of the City Court of Atlanta
304	Cook, et al. v. Farmers Bancshares, Inc.	Seeking to enjoin Farmers Bancshares and the remaining defendant majority shareholders (officers and directors) from voting on a reorganizational plan involving a reverse stock split
305	Petition of Edmondson's	Motion for Emergency Supersedeas and Motion for Penalty and Sanction filed by the respondent
306	Longino v. Petereit	Emergency motion for supersedeas of the trial court's order granting an injunction
307	The Service Master Tire Company, et al. v. Martin	Petitioned this Court for an emergency reduction in supersedeas bond pending the outcome of an appeal from a judgment in favor of the appellee
308	Stagl v. Assurance Company of America	Emergency motion under Rule 40(b) to recuse the trial judge from further proceedings in this case due to various discovery orders
309	Meriwether v. The State	Emergency Motion for Relief

	Trainer v. Stills	Stay of Proceedings in the Superior Court
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311	Stagl v. Assurance Company of America	Second emergency motion to recuse the trial judge from further proceedings in this case due to various orders which the court entered adverse to appellant
312	In Re: J. S. J., a Child	Emergency supersedeas to expedite the appeal
313	Morton v. Morton	Emergency motion and Interlocutory Appeal under Court of Appeal Rules 30 and 40(b)
314	In Re: J. S. J., a Child	Seeking to expedite this appeal in three particulars
315	Pegg v. The State	Emergency motion requesting an Order compelling the State Court of Fulton County to grant supersedeas bond
316 and 317	Stills, et al. v. Johnson and vice versa	Emergency motions concerning a continuing controversy over the custody of a minor child
318	Smith v. Cox, et al.	Seeking to enjoin the State from removing a nursing license
319	Zbosnik, et al. v. Partridge Greene, Inc.	Involves constitutional issues of free speech under the First Amendment of the United States Constitution and Art. 1, Sec. 1, Para v. of the Georgia Constitution
320	Hall v. Hall	Petition for change of custody filed by the appellee
321	Cielinski v. VFH Captive Insurance Co	To stay consideration by this Court of the direct appeal filed

322	Autolife Automotive, Inc. v. Alford	Set aside a writ of possession issued by the State Court of Gwinnett County arising out of a dispossessory action in that court
323	In RE: Attorney Joseph L. Waitz v. Our Loving Mother's Children, Inc.	Supersedeas pending appeal, it is hereby ordered that the trial court grant bond to movant and that said bond be granted as a personal recognizance bond upon signature of movant.
324 and 325	Carlisle v. The State and Steel v. The State	324 - Stay her trial in the Gwinnett Superior Court on double jeopardy grounds. 325 - Release from an order of the superior court holding counsel in civil contempt for refusal to proceed with the trial
326	Doman v. Stapleton	MFR denied
327	Willett v. Stookey	Upon docketing of the appeals, pursuant to two Notice of Appeals filed in the state court, this Court remanded the appeals to the trial court for a hearing and ruling on movant's Motion to Recuse and movant's Motion to Set Aside filed in the trial court
328	Coliseum Medical Center, LLC v. Georgia Department of Community Health, et al.	Stay pending an appeal pursuant to Court of Appeals Rule 40(b), seeking a stay of an order of the superior court of Bibb County filed.
329	Little v. The State	Motion for supersedeas bond.
330	Beers Construction Company, et al. v. Atlanta Gift Mart, L.P.	Directing the State Court of Fulton County that it has not jurisdiction to try a civil case designated in the motion.
331	Boutin v. The State	Emergency motion for supersedeas, contending that the trial court failed to grant bond pending appeal in that case in violation of OCGA § 17-6-1(b)(1).
332	PCC AirFoil, Inc., et al. v. Sanks	Motion for stay of appeal denied. Emergency motion filed to stay appeal in order to file motions for new trial, to set aside the judgment, and judgment as a matter of law with the trial court.

333	AKHTAR, et al. v. Misty Ruby Partners, L.P.	Motion for supersedeas following an order for disbursement of funds.
334	Davis v. Schwall	Contempt of the State Court of Fulton County and ordering her to serve four consecutive 20-day sentences, one for each finding of contempt.
335	In Re: W. Henry Toler, III	Emergency Relief in connection with a finding of contempt against him by State Court judge.
336	Hill v. Cook	Stay the trial court's order permitting an inventory of personal property in the marital estate.
337	Byrd v. The State	Enjoin the trial court from proceeding to trial in criminal action for failure of the State to provide responses to appellant's discovery requests.
338	Gipson v. Gipson	Emergency supersedeas in a child custody case. We are without jurisdiction to grant supersedeas.
339	Florescu v. The State	Speedy trial demand
340	Florescu v. The State	Continuance of trial in the trial court
341	Allen v. The State	Felony offenses of cruelty to children in the first degree and aggravated assault. Emergency motion asking reversal of the trial court's decision.
342	LaFarge Building Materials v. Watkins Engineers	Seeking supersedeas to stay the arbitration
A03A1116	City of Riverdale v. Clayton County	Challenging annexation and moving for summary judgment
A03A0980	Atlanta Area Broadcasting, Inc. v. James Brown Enterprises, Inc., et al.	Request that the Court set aside the superior court's order requiring posting of a supersedeas bond

343	Plantation Properties, Inc. v. Ellis, et al.	Review of the denial of a motion to enjoin the execution of a writ of possession
344	The State v. Hart	Detainer placed on an inmate serving time in another state.
345	Howell v. Commonwealth Acceptance Corp., et al.	Review and reverse a finding by the trial court
346	Barber v. Greater Atlanta Brokerage Solutions, LLC	Real Estate Dispute, paying attorney fees
347	Leventhal, et al. v. Cumberland Development	Consent order involving the use of certain real property located in Cobb County
348 and 349	Baptist Convention of the State of Georgia, et al. v. Shorter College, et al; Price et al. v. Shorter College, et al	Request that the Court review the trial court's order vacating a temporary restraining order preventing the dissolution of Shorter College and transfer of its assets to a new Shorter College Foundation created for the purpose.
A03A1794 A03A1795	In RE: Estate of Natividad Jimenez del Ray	Issuance of a writ of supersedeas to prevent filing suit in Fulton County to preserve, protect and marshal assets of decedent that may exist in this State.
350	Stephens v. Equity Management Company	Landlord-tenant dispute. Tenant asks this Court to hold a hearing and render a legal determination as to whether she is entitled to remain in possession of the premises.
351	In Re: A.F.A., et al.	Delinquent juveniles requesting that the Juvenile Court issue a supersedeas bond and stay all proceedings.
A03A1750	Yohanne T. Agber, Jr. v. DLJ Mortgage Capital, Inc.	An order requiring to pay rent into the court registry during the pendency of the appeal.
A03A1386	In RE: Christina May Whitfield	Remand the case to Probate Court with specific directions.
353	In Re: Benjamin Davis	Bench warrant issued for contempt of court.

354	Mitchell v. Fish	Emergency Writ of Supersedeas denied.
355	Lee, et al. v. East Court Square II, LLC	Motion to Stay Appeal
356	Cornetta, et al. v. Fulton County, Georgia	Appellant Motion for Writ of Supersedeas
357	In RE: Daniel Kane	Contempt for acts that occurred in the trial court
358	Shirley P. Hester v. The State	To preserve jurisdiction of appellant's appeal and to stay trial and other proceedings concerning appellant
359	In RE: July-August Grand Jury Presentment for the July-August 2003 Term	Emergency application for supersedeas
360	State v. Downtown Development Authority of Forsyth and the City of Forsyth	Stay the superior court's order requiring them to post a bond pursuant to OCGA §50-15-2.
361	Suraiya A. Mateen v. Frank Dicus	Stay proceedings in the State Court and Bankruptcy Court until the Appellate Court decides on the appeal.
362	In the Interest of S.W., a Child	Juvenile released pending the outcome of the appeal
363	Massey v. The State	Motion asking the Court to set a supersedeas bond.
2004 EMERGENCY MOTIONS		
MD-04-01	Timothy Thornton v. Robert Lee, Jr., et al.	Extension of time to file Notice of Appeal.
MD-04-02	Guy v. The State	Attorney found in contempt in the trial court for failing to promptly appear for trial
MD-04-03	Wright and Evans, Inc. v. Satislla Community Bank	Amended Rule 40(b) proceeded by Motion for Courtesy Appearance
MD-04-04	Cynthia Lucas v. Cobblestone Flats Rex Road Partners	Stay an eviction.

MD-04-05	Elliott Hague v. Mercedes-Benz USA, LLC	Request to stay the time to obtain a Certificate of Immediate Review from the trial court's order granting partial summary judgment.
MD-04-06	Liston Ken Desouza v The State	Stay the criminal trial.
MD-04-07	Anthony Echols v. The State	Correction of Void Sentence
MD-04-08	Gregory Glover v. Steve Shuey	Lease Agreement
MD-04-09	Jane Hamley v. J.W. Equities, LLC	Supersedes under Rule 40(b) arguing that the trial court erred in denying her application for a temporary restraining order concerning pending foreclosure of real property.
MD-04-10	James Cornelius v. Kyle Wicker	Denial of application for temporary restraining order concerning foreclosure advertisement to be placed in the Fulton County Daily Reporter
MD-04-11	John Alexander, et al. v. Michael Alexander, et al.	Defendant refused to sign a formal settlement agreement and litigation ensued.
MD-04-12	Richard Alexander v. The State	Sentence modification/reduction
MD-04-13	Thomas H. Coleman v. City of Atlanta	Emergency supersedes; conviction and sentence for contempt of court
MD-04-14	Bobby Hardwick v. John Williams, et al.	Injunction
MD-04-15	Dr. Monroe R. Parker, Jr. and Mrs. Tonia R. Parker v. Cendant Mortgage Corporation, et al.	Property foreclosure; MFR Dismissed
MD-04-16	Thomas P. Lypka v. Mercantile Bank f/k/a Central Bank of Tampa, Susan K. Woodard, Trustee	Denial of motion for emergency temporary restraining order

Court of Appeals of the State of Georgia

ATLANTA, February 14, 1995

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motion Docket No. 202. Thomas Arthur Early v. The State

Thomas Arthur Early has filed an emergency motion for declaration and release on bond under rule 40(b) of this Court which permits this Court to issue orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent a contested issue from becoming moot.

Movant alleges, without supporting record, that the criminal trial of Thomas Arthur Early v. The State, indictment number 50, CR93-252 is unlawful, illegal and unconstitutional by alleging that an assistant district attorney who prosecuted the case was not a member of the State Bar of Georgia.

The issues raised by movant are not appropriate for a rule 40(b) motion, but are more properly before the Court on direct appeal, a right which appellant may proceed with pursuant to the order of this Court dated October 21, 1994 in Case No. A94A2794. Thomas Arthur Early v. The State.

Movant prays that this Court release him on his original bond or an appeal bond which he claims was previously set by the trial court. There is nothing before this Court on which to base a release on bond. A review of the record in the previous case, A94A2794, is devoid of a motion for bond made in the trial court nor is there any order denying a motion for bond.

Therefore, the emergency motion for declaration and release on bond is denied.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta February 14, 1995*

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

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

William R. Martin Clerk

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

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET NO. 203. ROBINSON v. MILES.

Douglas Dean Robinson moves this Court, pursuant to Court of Appeals Rule 40 (b), for an order granting supersedeas pending appeal of this case. By way of his pending application for discretionary appeal, Robinson seeks to appeal the superior court's order which affirmed the decision of the Department of Public Safety to suspend Robinson's driver's license. Robinson's motion fails to set forth sufficient grounds supported by the record to authorize this Court to overrule the trial court as to the relief requested.

Therefore, it is hereby ORDERED that Robinson's motion for supersedeas pending appeal be 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.*

Clerk.

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

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motion Docket No. 204. Connell v. Georgia Dept. of Human Resources

Freddie L. Connell, Sr., filed his motion for supersedeas pending his appeal from the contempt order of the trial court filed December 28, 1994. Connell has also filed a motion for supersedeas in this court. He complains that the trial court never ruled on his motion for supersedeas filed January 31, 1995 at the time of a hearing, apparently in connection with a habeas corpus petition, which matter is not presently before us.

Connell's notice of appeal was not filed within thirty days of the filing of the trial court's December 28, 1994 order finding him in contempt. Therefore, Connell's notice of appeal is untimely and this court is without jurisdiction to hear the matters asserted therein. Furthermore, this court lacks jurisdiction over habeas corpus matters should a timely appeal be filed in connection with the January 31, 1995 hearing. Therefore, for the above stated reasons movant's petition is 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.*

Clerk.

IN THE COURT OF APPEALS
STATE OF GEORGIA

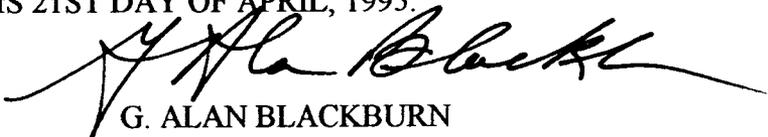
IN RE BRUCE HARVEY

ORDER

Defendant/Appellant Bruce Harvey, filed his Motion for Supersedeas Bond in this Court on April 21, 1995, with Notice of Appeal from the order of the Superior Court of Douglas County, Judge Robert James, of same date, holding said Defendant in criminal contempt, and ordering his immediate incarceration and denying his Motion for Supersedeas Bond, also being properly filed on said date.

It is hereby ordered that Bruce Harvey be released instanter from the custody of the Douglas County Sheriff on his own recognizance until such time as a hearing, if any, may be held on the contempt charges or the holding and sentence resulting therefrom, and until any appeal right of said Appellant under the laws of the State of Georgia in connection therewith have been exhausted.

SO ORDERED, THIS 21ST DAY OF APRIL, 1995.


G. ALAN BLACKBURN
JUDGE,
GEORGIA COURT OF APPEALS

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

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motion Docket 206. Living Word Christian Center, Inc. v. Alvah Breitweiser & Associates, Inc. et al.

Appellant Living Word Christian Center, Inc. filed a motion for supersedeas to stay arbitration number 30 110 00043 95 pending the outcome of the appeal in the above-referenced case. Upon consideration, we hereby grant the motion for supersedeas and order that the arbitration be stayed until this court has rendered its opinion in this matter.

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,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET 208. CLAYWELL v. THE STATE.

David William Claywell moved this court for emergency supersedeas bond upon the trial court's denial of his motion to set reasonable appeal bond. Claywell's motion and attached affidavits indicate that the trial court failed to hold a hearing prior to denying bond. Claywell is entitled to a hearing on his motion for reasonable appeal bond and the trial court is directed to hold such hearing promptly, if same has not been held, and to make the findings required by Birge v. State, 238 Ga. 88 (230 SE2d 895) (1976). See also OCGA § 17-6-1 (e). After the court rules, Claywell may pursue such appeal as authorized by law.

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,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motion Docket 209. CARTER v. THE STATE.

As the Supreme Court of Georgia has jurisdiction over writs of mandamus, see Ga. Const. of 1983, Art. VI, Sec. VI, Par. II and Brown v. Johnson, 251 Ga. 436 (306 SE2d 655) (1983), the Application for Writ of Mandamus filed by Thomas Monroe Carter is hereby TRANSFERRED to that Court. See Court of Appeals Rule 11 (b).

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,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motion Docket 210. WILLIAMS v. THE STATE.

Counsel for Al Williams, the defendant in the underlying criminal action, filed a motion entitled "Motion for Writ of Mandamus" in this Court which was docketed as an emergency motion. Although the Supreme Court of Georgia has jurisdiction over writs of mandamus, see Ga. Const. of 1983, Art. VI, Sec. VI, Par. II and Brown v. Johnson, 251 Ga. 436 (306 SE2d 655) (1983), the substance of Williams's motion seeks an order granting appeal bond. A request for an emergency grant of appeal bond is correctly addressed to this Court; , we cannot grant such a request without a proper record. The record before us contains neither a motion for appeal bond nor an order by the trial court denying such motion.

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,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motion Docket 211. VANALSTINE v. VANALSTINE.

James E. Vanalstine, a State prisoner acting pro se, filed a motion in this Court entitled "Motion for Supersedes Appeal" from the trial court's order denying the filing of Vanalstine's civil complaint. The trial court's order indicates that Vanalstine failed to pay the appropriate filing fee, but did request to proceed in forma pauperis. The trial court found that insufficient evidence of indigence existed in order to relieve Vanalstine from paying the required filing fee.

OCGA § 9-15-2 (a) (1) provides that any indigent party to an action, upon the filing of an affidavit subscribing to such indigency, shall be relieved from paying costs. Subsection (b) of that Code section provides that "[i]n the absence of a traverse affidavit contesting the truth of an affidavit of indigence, the court may inquire into the truth of the affidavit of indigence. After a hearing, the court may order the costs to be paid if it finds that the deposit, fee, or other costs can be paid and, if the costs are not paid within the time permitted in such order, may

deny the relief sought."

It appearing that the trial court failed to follow the procedures outlined in OCGA § 9-15-2 (b), by holding a hearing regarding Vanalstine's indigency affidavit or issuing an order to pay costs prior to its order denying filing, this case is remanded. The trial court is directed to follow the procedures provided in OCGA § 9-15-2 (b).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

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

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**Motions Docket-212. BAKERY SERVICES, INC. v. THORNTON CHEVROLET,
INC.**

Appellant Bakery Services, Inc. filed a motion with this Court titled "Extraordinary Motion for Extension of Time to Enable the Court Reporter to Complete the Transcript of the Trial." Pursuant to OCGA § 5-6-42, "it shall be the duty of the trial judge to grant such extensions of time as may be necessary to enable the court reporter to complete his transcript of evidence and proceedings." Therefore, appellant's motion is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motion Docket-213. ROBINSON v. THE STATE.

Fonte D. Robinson, pro se, moves this Court for an order requiring the clerk of the Fulton County Superior Court to file a stamped-filed copy of the trial court's order denying his motion for out-of-time appeal, or alternatively, Robinson request that this Court waive its Rule 32 (b) which requires that a stamped-filed copy of the order appealed from be included with an application of discretionary appeal. Robinson has failed establish that the clerk of the Fulton County Superior Court declined to provide him with the required order upon a proper request. Robinson's motion is DENIED to the extent that it seeks a waiver of this Court's Rule 32 (b). The additional relief sought by Robinson is in the form of mandamus which is within the exclusive jurisdiction of our Supreme Court. See Ga. Const. of 1983, Art. VI, Sec. VI, Par. II. Therefore, Robinson's motion is hereby TRANSFERRED to the Supreme Court pursuant to Court of Appeals Rule 11 (b).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

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

ATLANTA, DEC 28 1995

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MD214. JOE DOBBS v. LINDA WEAVER and RONALD D. MORELAND, ET AL

MD215. EMMETT PARSONS v. LINDA WEAVER and RONALD D. MORELAND, ET AL

Upon consideration of appellants' requests for extension of time to file notice of appeal in the above styled matters, and there being no basis presented to this court upon which to grant such a request, the same is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 28 1995

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Clerk.

Will. L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET-216. RAWLS v. THE STATE.

On February 1, 1996, Kenneth Rawls filed with this court an emergency application and motion for supersedeas bond pursuant to OCGA § 17-7-50 asserting that he had been incarcerated for more than 90 days and had not been indicted for any offense. However, Rawls' motion is rendered moot by the return of an indictment against him for drug trafficking, Case No. 96-CR-1373, also on February 1, 1996. Therefore, Rawls' motion is hereby DISMISSED as moot. See Burke v. State, 234 Ga. 512 (5) (216 SE2d 812) (1975).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET-217. STALEY v. THE STATE.

Edward Alan Staley's motion for stay of execution of sentence is hereby DENIED. It appears that Staley's motion is a further attempt to have this Court review the trial court's order requiring that Staley successfully complete a Sex Offender Program. We previously declined to review the trial court's order when we denied Staley's application for discretionary appeal (Application No. A96D0260), on June 22, 1995.

To the extent that Staley complains he will face probation revocation proceedings, we find his motion to be premature.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET-218. SAULS v. THE STATE.

At 8:50 a.m., today, February 7, 1996, movant filed his Emergency Motion for Stay of Grand Jury Proceedings pursuant to Georgia Court of Appeals Rule 40 (erroneously cited as Rule 41), seeking to stay the Fulton County Grand Jury Proceedings scheduled to begin today at 9:00 a.m., until such time as the State has provided movant with copies of all witness statements. Movant seeks the witness statements prior to making a sworn statement before the grand jury.

OCGA §§ 17-7-52 and 45-11-4 provide to certain public officials, including police officers, rights not available to ordinary citizens. The legislature has seen fit to allow public officials against whom an indictment is being sought, the right to receive a copy of the proposed indictment at least 15 days prior to the presentation to the grand jury, the right to be present with counsel during the testimony of witnesses, and the right to make a sworn statement to the grand jury. OCGA § 45-11-4.

Movant seeks to expand the extraordinary rights which the

above statutes provide to include a right to review all witness statements prior to the Grand Jury Proceeding. Movant cites no statute or case authority for the expansion he seeks and no such right is included in the statutes as written.

Under Georgia law, there is no authority to grant movant's request. OCGA § 17-16-4 requires the State to provide certain witness statements to a defendant who has been indicted, at least 10 days prior to trial but is not applicable to an unindicted individual. Movant will hear everything the grand jury hears in considering his case and will thus have an advantage in preparing his sworn statement which ordinary citizens do not enjoy.

Movant's Emergency Motion is hereby DENIED, this seventh day of February, 1996, 10:30 a.m.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET - 219. BARSH v. RODATUS et al.

On March 11, 1996, Bettie Jene Barsh, pro se, filed a motion to reconsider this Court's order dated February 28, 1996, in which we denied her Extraordinary Motion to Compel. The documents attached to Barsh's motion establish that she refused court-appointed counsel and then failed to file a timely application for appeal from the trial court's order from which she seeks review. See OCGA § 5-6-35 (a) (2). Absent a timely application, this Court is without jurisdiction to grant Barsh's appeal. Therefore, her motion for reconsideration is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET-220. VANALSTINE v. MERRITT.

On February 29, 1996, James E. Vanalstine, pro se, filed a motion entitled "Motion for Supersedeas Appeal." By his motion, Vanalstine seeks an order from this Court granting him the relief he sought in the trial court where the trial court granted Merritt's motion for summary judgment. Vanalstine contends he has filed a notice of appeal from the trial court's order. As our review of the record indicates that the relief sought by Vanalstine is not necessary to preserve jurisdiction or prevent an issue from becoming moot, Vanalstine's motion is hereby DENIED. See Court of Appeals Rule 40 (b).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 221. IN THE INTEREST OF J. N. T., a child.

On March 7, 1996, William Gosney and Claudia Gosney filed their motion for emergency supersedeas in a child custody case. They also filed an application for discretionary review of the trial court's order (A96D0239). However, OCGA § 15-11-64 provides that no final order of a juvenile court judge "shall be superseded except in the discretion of the judge; rather, the judgment or order of the court shall stand until reversed or modified by the reviewing court." It appears, therefore, that the granting of supersedeas in the present case is a matter left entirely in the judge's discretion, and that we are without jurisdiction to grant supersedeas in such a case. The Gosneys' motion for supersedeas is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET 222. SHAW v. THE STATE.

The emergency motion in the above matter having been read and considered, it appears to this Court that:

- (1) Defendant Robert M. Shaw was charged with felony vehicular homicide in indictment # 95 CR 212-12, Putnam Superior Court on December 5, 1995; and
- (2) Defendant Shaw procured a property (real estate) bond satisfactory to the court in the amount of \$45,000.00 through Mr. Sidney Parks of Eatonton, Ga; and
- (3) Counsel was appointed for defendant Shaw; and
- (4) Defendant Shaw became concerned with the level of trial experience of appointed counsel and retained William C. Head as his trial counsel on February 18, 1996; and
- (5) On February 19, 1996, defendant's case was called for trial for the first time; and
- (6) On February 20, 1996, when defendant's trial counsel was unable to proceed with trial due to a conflict with a criminal jury trial in Clayton County State Court, State v. Kenneth Hessel, defendant's bond was summarily revoked and defendant was remanded to the custody of the Putnam County Sheriff's Department; and
- (7) The bond revocation occurred without any showing of a violation of OCGA § 17-6-70, or other legal basis and

without any meaningful hearing thereon meeting the due process requirements provided by law, the defendant's bond was changed to a \$25,000.00 "cash only" bond; and (8) As a result of the above, defendant has been denied due process of law and effectively denied bond by the imposition of a "cash only" basis on the arbitrarily established change in bond; and

WHEREFORE, it is hereby ORDERED:

That the original bond in the amount of \$45,000.00, through Sidney Parks, or such other financially qualified bondsman as defendant may select, who is approved as provided by law, be reinstated instanter;

That defendant be released from the custody of the Putnam County Sheriff, instanter; and

That defendant's bond and release pending trial be not further interfered with, except upon notice and hearing meeting due process requirements, or as otherwise provided by law.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET 223. SMITH v. THE STATE.

On March 19, 1996, Rodney Neil Smith, through counsel, filed an Extraordinary Motion for Stay of Trial Pending Appeal Based upon Double Jeopardy. In his plea in bar asserting double jeopardy, Smith contended that the administrative license suspension procedure constituted former jeopardy barring any subsequent criminal prosecution. The trial court denied Smith's plea of former jeopardy and determined that it was frivolous and dilatory thereby allowing the trial court to proceed with trial despite Smith's appeal of the trial court's determination on his plea. See Strickland v. State, 258 Ga. 764 (373 SE2d 736) (1988); Waters v. State, 174 Ga. App. 438 (330 SE2d 177) (1985); Rielli v. Oliver, 170 Ga. App. 699 (318 SE2d 173) (1984).

Smith contends that the trial court's determination that his plea in former jeopardy is frivolous and dilatory is clearly erroneous. We cannot agree. This court, in a recent unanimous whole court opinion decided Smith's position adversely to him. See Nolen v. State, 218 Ga. App. 819 (463 SE2d 504) (1995). See also Cantwell v. State, Ga. App. (Case No. A96A0418, decided March 19, 1996). Smith argues that our decision in Nolen should be reconsidered in light of a recent opinion issued by the United States District Court for the Eastern District of Virginia in which the court determined that an administrative license suspension of one year was a punitive civil sanction which barred subsequent

criminal prosecution for the same alleged conduct. See United States v. Imngren, Case No. 95-00458-A, decided December 13, 1995.

The Imngren case does not require reconsideration of this Court's opinion in Nolen, supra. Initially, we note that an opinion from the United States District Court for the Eastern District of Virginia is not binding on this court. Furthermore, our Supreme Court has determined that administrative sanctions are not considered punishment for the purposes of double jeopardy. See Coates v. Seay, 234 Ga. 635 (238 SE2d 422) (1977); Middlebrook v. Allen, 234 Ga. 481, 482 (216 SE2d 331) (1975). This Court is bound by the opinions of the Georgia Supreme Court. Therefore, without direction from the Supreme Court, we cannot change the position expressed in Nolen, supra, based upon the cases cited by applicant.

In light of the precedents binding this Court, Smith's plea in former jeopardy is without merit, and the trial court determination that such plea was frivolous and dilatory is not clearly erroneous. Smith's Extraordinary Motion for Stay of Trial Pending Appeal Based upon Double Jeopardy is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET 224. SIMPSON v. CLERK OF GEORGIA COURT OF APPEALS.

Dale Simpson has petitioned this Court for a copy of his Motion for Reconsideration in Case No. A94A1750. Simpson maintains that correctional officers removed this document from his possession. Simpson previously was informed of the copying charges for the requested copies by the clerk of this Court. In Simpson's present petition he asserts that he is indigent and requests an order requiring the clerk of this Court to prepare the requested copies free of charge.

To the extent that Simpson's petition is an attempt to file a civil action against the Clerk of the Georgia Court of Appeals, we are without jurisdiction to receive such a complaint which must be filed originally in a lower court.

Records are generally available for inspection in the Georgia Court of Appeals Clerk's office during regular business hours pursuant to OCGA § 50-18-71. Simpson's indigency does not require that such records be produced free of charge, and while his incarceration might require movant to have a third party perform

the review for him, it does not authorize or require special efforts on his behalf by the clerk of this court. Therefore, Simpson's request is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**MOTIONS DOCKET 225. IN RE INVESTIGATION OF JUDICIAL CONDUCT BY
DOUGLAS COUNTY GRAND JURY.**

David McDade, District Attorney of the Douglas Judicial Circuit, moves this Court to enter an Order vacating the Douglas Superior Court's Order disqualifying the District Attorney and his entire staff from advising the Douglas County Grand Jury in the Grand Jury's investigation of Douglas County Juvenile Court Judge Steven J. Messinger. The record indicates that in an earlier order in a related matter, Steven J. Messinger v. Tommy Waldrop, Civil Case No. 96CV-0495, the judges of Douglas Judicial Circuit were disqualified or voluntarily recused themselves from further participation in the case. Despite his earlier disqualification or voluntary recusal, Judge Emerson, sua sponte and without a motion to disqualify the District Attorney pending before him, entered the order which is the subject matter of the District Attorney's motion pending in this Court. We further note that although McDade filed a notice of appeal from Judge Emerson's order, Judge Emerson directed the superior court clerk to hold the transmittal of the appeal pending his determination of whether the appeal of his order

constituted a supersedeas.

In State v. Evans, 187 Ga. App. 649, 650 (371 SE2d 432) (1988), we determined that an order disqualifying the solicitor and appointing a special prosecutor was directly appealable. "An order requiring action which is enforceable by a contempt action against the individual so ordered 'is in the nature of an interlocutory mandatory injunction which is appealable under (OCGA § 5-6-34 (a) (4)).' [Cit.]" Id. at 650. OCGA § 9-11-65 (a) provides that "[n]o interlocutory injunction shall be issued without notice to the adverse party." In the present case, not only did the adverse party not receive notice and a hearing, no actual motion for injunction or disqualification was ever brought. Furthermore, Judge Emerson's previous disqualification from participating in this matter renders his orders void ab initio.

Should any petition to disqualify the District Attorney be filed in this matter, the procedures for the appointment of a designated judge from outside the Seventh Judicial District as outlined in OCGA § 15-1-9.1 shall be followed. See Evans, supra.

The District Attorney's motion is hereby GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET-226. FELTS v. BENSON.

Donald W. Felts has filed with this Court a motion titled "Motion for Supersedeas Appeal," in which he requests an out-of-time appeal in the underlying civil action for legal malpractice. Felts contends that he did not receive a copy of the order dismissing his action until after the time for filing a notice of appeal had expired. The clerk of Tift County Superior Court confirms that the order was mailed to Felts at the address provided in the file; however, Felts, who is a State prisoner, was moved prior to receiving the order.

Felts' request for relief is premature as he has also filed a motion for an extension of time to file an appeal in the trial court. This Court is without jurisdiction to render a decision in this matter until after the trial court has ruled on Felts' motion. Therefore, Felts' motion is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**MOTIONS DOCKET-227. SECURITY LIFE INSURANCE COMPANY OF AMERICA v.
CLARK et al.**

Security Life Insurance Company of America seeks supersedeas from the trial court's order requiring it to pay the plaintiffs "all reasonable costs of liability discovery, including reasonable attorney's fees, from November 21, 1995 to [March 19, 1996] within 10 days of receiving plaintiffs' statement for same." The plaintiffs have submitted claims for reimbursement of costs exceeding \$275,000.00. Although no specific objection to the reasonableness of plaintiffs' submitted cost has been raised by the defendant, neither does the record contain any indication that the trial court has approved the reasonableness of said invoices that are contended to be due under the court's order. The trial court has great discretion in addressing discovery abuses and that discretion will not be disturbed by this Court absent an abuse of discretion; however, any financial sanctions imposed by the trial court must be specifically established and approved by such court based on competent evidence after hearing with notice to the violating party. Sanction orders may not be left open-ended with

the amounts to be determined by the moving party. By this Order, we do not address the merits of the trial court's decision to impose sanctions in this matter.

Security Life Insurance Company of America's emergency petition for supersedeas is hereby GRANTED. Court of Appeals Rule 40 provides that the notice of appeal shall serve as supersedeas upon payment of all costs in the trial court by the appellant. See O.C.G.A. § 5-6-46.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET 228. IN RE: WANDA S. JACKSON.

Wanda Jackson's petition for supersedeas is hereby GRANTED. OCGA § 5-6-13 (a) provides that "[a] judge of any trial court or tribunal having the power to adjudge and punish for contempt shall grant to any person convicted of or adjudged to be in contempt of court a supersedeas upon application and compliance with the provisions of law as to appeal and certiorari, where the person also submits, within the time prescribed by law, written notice that he intends to seek review of the conviction or adjudication of contempt. It shall not be in the discretion of any trial court judge to grant or refuse a supersedeas in cases of contempt." The application before us indicates that the issuing trial judge is attending a conference out of town. The application also contains a Notice of Appeal of the trial court's citation of contempt and arrest order which has been filed with the State Court of DeKalb County. Therefore, supersedeas is appropriate pursuant to OCGA § 5-6-13 (a) and Court of Appeals Rule 40.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**Motions Docket - 229. ELECTRONIC DATA SYSTEMS CORPORATION v.
 HEINEMANN et al.**

Pursuant to Court of Appeals Rule 40, Electronic Data Systems Corporation (EDS) filed an Application for Injunction Pending Appeal with this Court requesting an order enjoining the defendants from selling their products which were the subject of the underlying action.¹ After a trial and jury verdict, the trial court enjoined Heinemann from soliciting certain enumerated customers, enjoined defendants from disclosing trade secrets relating to certain enumerated projects, and required defendants to pay royalties of seven percent of all revenues received, on either a cash or accrual basis for the four month period following the date of the trial court's order. The trial court also awarded monetary damages to the defendants on their counterclaims for unpaid bonuses. After the entry of the trial court's judgment, EDS filed its Application for Injunction During Pendency of Appeal in

¹ For a summary of the underlying facts see Electronic Data Systems Corp. v. Heinemann, 217 Ga. App. 816 (459 SE2d 457) (1995).

the trial court. It was denied.

The trial court's judgment was within its discretion as OCGA § 10-1-762 (a) does not mandate an injunction for actual or threatened misappropriation of trade secrets. Furthermore, the payment of reasonable royalties is authorized as a remedy. See OCGA §§ 10-1-762 (b) and 10-1-763.

"The granting and continuing of injunctions shall always rest in the sound discretion of the judge, according to the circumstances of each case. This power shall be prudently and cautiously exercised and, except in clear and urgent cases, should not be resorted to." OCGA § 9-5-8. This Court cannot determine whether or not the trial court has abused its discretion without benefit of reviewing the evidence presented during two weeks of trial which is not before us.

As we cannot determine any error by the trial court based on the record before us, EDS' Application for Injunction Pending Appeal is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN 12 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket No. 230. Hawkins v. The State

James Dale Hawkins has filed this emergency motion to extend the time for obtaining a proper transcript and to require the preparation of a transcript that complies with Court of Appeals Rule 18.

On May 8, 1996, the trial court denied Hawkins's motion for extension of time to file a notice of appeal that was based on the court reporter's submission of a transcript that contained allegedly improper margins and type face. The emergency motion before this Court does not reflect whether a notice of appeal has been filed, but Hawkins does not appeal the trial court's denial of the requested extension to file such.

Under Court of Appeals Rule 16, requests for extensions of time pursuant to OCGA Section 5-6-39 may be addressed to this Court only upon a showing that a bona fide effort has been made to obtain the extension from the trial court and the reason why it could not be obtained. It appearing that Hawkins now seeks a different extension than what he sought before the trial court, and it further appearing that the complained of transcript did not prevent Hawkins from timely filing a notice of appeal, a proper showing under Rule 16 has not been made and this emergency motion is denied.

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

JUN 12 1996

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

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

William L. Mc... Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket - 231. SKILLERN v. THE STATE.

Warren R. Skillern, pro se, filed his motion entitled "Motion for Supersedeas Appeal." To the extent that, by this motion, Skillern seeks to appeal the trial court's May 31, 1996 Order denying his Motion to Withdraw his Plea, it is hereby DENIED as his Notice of Appeal filed in the trial court initiates such an appeal. To the extent that, by the present motion, Skillern seeks a supersedeas bond pending his appeal, it is hereby DENIED as such motion is properly directed to the trial court for its consideration. See OCGA § 5-6-45.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET - 232. FELTS v. BENSON.

On May 1, 1996, we dismissed Donald W. Felts' "Motion for Supersedeas Appeal" as premature because his extension of time to file an appeal was still pending before the trial court. On July 12, 1996, Donald W. Felts filed a second "Motion for Supersedeas Appeal" with this Court. Once again, his motion must be dismissed as premature due to the pendency in the trial court of his motion for extension of time to file an appeal.

We further note that the prisoner's affidavit in forma pauperis attached to Felts' motion fails to contain all the necessary information as required by OCGA § 42-12-5, and that such failure subjects Felts' action to dismissal. See OCGA § 42-12-5 (a).

Felts' "Motion for Supersedeas Appeal" is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET-233. DIXON v. THE STATE.

This Order is entered on Kevin Dixon's pro se motion entitled: "Motion for Copy of Court Records, Files, Transcripts, and Other Papers and Motion for Extension of Time to File Appellant's Brief." The documents attached to Dixon's Motion indicate that a Habeas Corpus Hearing was held at which Dixon was granted an out-of-time appeal, and that an order was filed on November 1, 1995; however, no notice of appeal has been filed.

"A defendant granted an out-of-time appeal by the trial court will have 30 days from the grant to file a notice of appeal to the appellate court with subject-matter jurisdiction." Rowland v. State, 264 Ga. 872, 876 (452 SE2d 756) (1995). As no notice of appeal has been properly filed, we are without jurisdiction to rule on Dixon's motion; therefore, it is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET - 234. WINDFORD v. SGE MORTGAGE FUNDING CORP.

Windford E. Head, Jr., as administrator for the Estate of Windford E. Head, Sr. requests emergency supersedeas of the trial court's order lifting a preliminary injunction issued in the underlying action. As this matter concerns only the appropriateness of the underlying injunction, the Supreme Court of Georgia, rather than this Court, has jurisdiction. See Citizens to Save Paulding County v. City of Atlanta, 236 Ga. 125 (223 SE2d 101) (197). Therefore, Head's motion is hereby TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**MOTIONS DOCKET - 235. SECURITY LIFE INSURANCE COMPANY v. CLARK
et al.**

Security Life Insurance Company requests emergency supersedeas of the trial court's order granting an injunction in the underlying action. As petitioner's emergency motion concerns only the appropriateness of the underlying injunction, the Supreme Court of Georgia, rather than this Court, has jurisdiction. See Citizens to Save Paulding County v. City of Atlanta, 236 Ga. 125 (223 SE2d 101) (1976). Therefore, Security Life Insurance Company's motion is hereby TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MD236. KELLER v. THE STATE.

Less than 30 days after Keller was convicted of a felony in Fayette County Superior Court, his attorney filed a motion for new trial and a petition requesting that the appellant remain in the Fayette County jail, as the attorney needed his assistance in preparing and prosecuting the motion for new trial and, if necessary, any subsequent appeal from the conviction. The trial court's order allows the appellant to remain in that jail for only seven days.

Pursuant to OCGA § 42-5-50 (c), however, once a convicted defendant's attorney files a written request to the court stating that the defendant's presence is needed in the county of conviction or incarceration to properly prepare and prosecute an appeal, "the convicted person shall remain in the custody of the local jail or lockup until all appeals of the conviction shall be disposed of or until the attorney of record for the convicted person shall file with the trial court an affidavit setting forth that the presence of the convicted person is no longer required in the county in

which the conviction occurred, or in which the convicted person is incarcerated, whichever comes first." (Emphasis supplied).

As the language of the statute is mandatory, the trial court is without authority to deny defendant the relief therein provided. The trial court is ordered to comply with OCGA § 42-5-50 (c) and to order defendant be held in the local jail consistent therewith.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.



Court of Appeals
of the State of Georgia

ATLANTA, OCT 18 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET 237. KNAPP v. THE STATE

In his emergency motion, Knapp claims error in the trial court's failure, after a sentence of imprisonment had been imposed, to make a fresh determination of appellant's custody pending a final decision on appeal of his conviction for driving under the influence in violation of OCGA § 40-6-391 (a) (5) pursuant to Birge v. State, 238 Ga. App. 88 (230 SE2d 895) (1976). Knapp also enumerates as error the trial court's refusal to grant him bond pending his appeal of his misdemeanor conviction.

The governing statute, OCGA § 17-6-1, which previously provided for bail in misdemeanor cases as a matter of right, was amended effective September 1, 1996, to provide that the grant or denial of an appeal bond in certain misdemeanor cases, including convictions under OCGA § 40-6-391, is in the discretion of the convicting court. OCGA § 17-6-1 (g). The effect of this statutory change is to treat the subject misdemeanor cases in the same manner as felony conviction bail cases are generally treated.

Defendant was convicted on October 16, 1996 of Driving Under the Influence in violation of OCGA § 40-6-391 (a) (5). On October 17, 1996 was sentenced to twelve months, with the first five days

in jail, with the balance to be probated and a \$1,000.00 fine. On October 17, 1996, defendant filed a Motion for New Trial and a request for supersedeas bond which was denied without an evidentiary hearing by the trial court. On October 17, 1996 defendant's counsel requested that the court immediately hold a bond hearing. As of the date of this order the court has not set an appeal bond or scheduled a bond hearing in this case. This case is subject to OCGA § 17-6-1, as amended.

The standards to be applied in determining whether bail pending appeal should be granted or denied are described in Birge v. State, 238 Ga. 88 (230 SE2d 895) (1976) and Moore v. State, 151 Ga. App. 413 (260 SE2d 350) (1979).

"The procedure required by the law is that '(A)fter a sentence of imprisonment has been imposed, the question of the appellant's custody pending final decision on appeal should be reviewed and a fresh determination made by the trial court." (Emphasis supplied.) Birge v. State, 238 Ga. 88, 89, supra. In doing so, the court must give applicant notice of the hearing and a chance to appear and be heard.' Moore v. State, 151 G. App. 413, 414 (260 SE2d 350) (1979), modifying the procedure outline and overruling anything to the contrary in the order of court in White v. State, 146 Ga. App. 147, 148 (245 SE2d 870) (1978). See Edwards v. State, 166 Ga. App. 270, 271 (304 SE2d 438) (1983), which noted Moore's refinement of the White procedure." Ingle v. State, 216 Ga. App 836, 838 (456 SE2d 281) (1995).

While the trial court is free to exercise its discretion consistent with Birge in determining whether or not to grant bond,

it is not free to refuse to exercise its discretion or to provide defendant the opportunity to be heard on this issue in an evidentiary hearing. "The trial court's refusal to consider [bond] constitutes a refusal to exercise . . . discretion." Jones v. The State, 208 Ga. App. 472 (431 SE2d 136) (1993).

Under the clear language of the amended statute, the trial court is required to exercise discretion in determining whether to grant appeal bond. Pursuant to Moore, the trial court must hold an evidentiary hearing at which it may consider evidence presented during the trial of the case as well as additional oral or documentary evidence. The trial court must then answer four questions: 1) whether there is a substantial risk the defendant will flee; 2) whether there is a substantial risk the defendant will pose a danger to others in the community; 3) whether there is a substantial risk the defendant will intimidate witnesses or otherwise interfere with the administration of justice; and 4) whether it appears the appeal is frivolous or intended only for delay. An affirmative answer to any of these four questions will uphold denial of bond. Moore, supra at 414, n. 1. See also Ingle, supra.

The trial court is ordered to hold, immediately, an evidentiary hearing on the question of Knapp's appeal bond so as to prevent the issues raised in this case from becoming moot. If the trial court is unable to hold this hearing instanter, the court shall release Knapp pending its holding of the hearing herein provided.

Knapp shall be entitled to appeal the ruling of the trial

court on the bond hearing as provided by law and to address therein all other issues not herein addressed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 18 1995

I certify that the above is a true extract from the minutes of the 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. Mart

Court of Appeals of the State of Georgia

ATLANTA,

NOV - 1 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MD 238. JERRY CHEESMAN v. STATE OF GEORGIA.

On October 31, 1996, Appellant Jerry Cheesman filed with this Court a Motion for Supersedeas Pending Appeal and a Motion for Evidentiary Hearing. In the Motion for Supersedeas Pending Appeal, Appellant asks that this Court on an emergency basis grant supersedeas pending appeal of his conviction for possession of more than one ounce of marijuana in the Superior Court of Rockdale County. In the Motion for Evidentiary Hearing, Appellant moves this Court for an evidentiary hearing on the issue of ineffective assistance of counsel. For the reasons set forth below, Appellant's motions are denied.

Although Appellant has apparently filed a Notice of Appeal with the trial court, the record is not before this Court at this time. Accordingly, the Court must rule on Appellant's emergency motions on the basis of the record currently before it.

Appellant apparently was convicted on February 22, 1996 of possession of more than one ounce of marijuana and possession of more than one ounce of marijuana with intent to distribute, and was sentenced to seven years in prison. Appellant apparently has been

in prison since his conviction. On or about March 25, 1996, Appellant apparently filed a motion for new trial. Appellant also filed numerous other post-conviction motions with the trial court, including, apparently, a motion for supersedeas. On October 4, 1996, the trial court denied Appellant's motion for a new trial and his other pending motions. A copy of the trial court's order is attached as an exhibit to Appellant's Motion for Supersedeas Pending Appeal. However, no other documents from the trial court's record are included with the Motion.

With respect to the Motion for Supersedeas Pending Appeal, Appellant has not demonstrated that he is entitled to emergency relief. Although he states in his motion that he filed a motion for supersedeas with the trial court, and that the motion was denied, Appellant has not included a copy of the motion with his Motion for Supersedeas Pending Appeal. Appellant also has not included a transcript of the hearing on the motion or any other evidence that the trial court erred in denying the motion. The granting or refusing of bail in felony cases after conviction is a matter within the sound discretion of the trial court. Watts v. Grimes, 224 Ga. 227 (161 SE2d 286) (1968). There being no evidence in the record before this Court to demonstrate that the trial court abused its discretion in denying Appellant's motion for supersedeas after conviction or that Appellant is entitled to emergency relief, the Motion for Supersedeas Pending Appeal is denied.

With respect to the Motion for Evidentiary Hearing, Appellant has not presented this Court with a proper issue for appellate review. Appellant asks this Court to grant an evidentiary hearing

into his claim of ineffective assistance of counsel. Although Appellant asserts in his motion that this issue was raised before the trial court, there is nothing in the record before this Court to demonstrate that the trial court has ruled on the issue of ineffective assistance of counsel or on Appellant's request for an evidentiary hearing. Accordingly, there is nothing for this Court to review, and the Motion for Evidentiary Hearing is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV - 1 1996

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Clerk.

Will. L. Martin, Jr.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MD239. JACKSON v. STATE.

Defendant Russell Wayne Jackson by emergency motion seeks to stay his retrial on a simple battery charge, pending his appeal of the trial court's declaration of a mistrial during the original trial.

The denial of a plea of double jeopardy is directly appealable. The double jeopardy clause guarantees against being twice put to trial for the same offense. A defendant's double jeopardy challenge must be reviewed before he is exposed to such by a second trial, or his complaint would be rendered moot. Patterson v. State, 248 Ga. 875 (287 SE2d 7) (1982).

Defendant's motion to stay his retrial on the subject charge until his pending appeal on the denial of his double jeopardy motion has been ruled on by this Court is hereby GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA, DEC 13 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET 240. PAUL HINCKLEY v. THE STATE.

In his emergency motion filed pursuant to rule 40 (b), Hinckley claims error in the trial court's failure, after a sentence of imprisonment had been imposed for a misdemeanor, to grant bail pending appeal of his conviction for driving under the influence in violation of OCGA § 40-6-391, pursuant to OCGA § 17-6-1 (b) (1).

OCGA § 17-6-1, which previously provided for bail in misdemeanor cases as a matter of right, was amended effective September 1, 1996, to provide that the grant or denial of an appeal bond in certain misdemeanor cases, including convictions under OCGA § 40-6-391, is in the discretion of the convicting court. OCGA § 17-6-1 (g). The effect of this statutory change is to treat the subject misdemeanor cases in the same manner as felony conviction bail cases are generally treated.

Defendant was convicted on December 11, 1996, of driving under the influence in violation of OCGA § 40-6-391 and was sentenced to twelve months for this offense. Defendant immediately filed a motion for new trial and a request for supersedeas bond. The latter was denied for the reason that the court found that there was a substantial risk that Hinckley would not appear to answer the judgment and was likely to commit a serious crime pending further proceedings.

First, it appearing that the court has not ruled on the motion for new trial, the case is still pending in the trial court. Thus, the motion denying bond is an interlocutory order. Wade v. State, 218 Ga. App. 377 (1) (461 SE2d 314) (1995). Whether the interlocutory procedure set out in OCGA § 5-6-34 (b) is required or, on the other hand, a direct appeal from an order denying appeal bond can be considered on the merits, *id.* at 378, in either event a motion in this court pursuant to Rule 40 (b) is inappropriate for the purpose invoked by Hinckley.

Second, it does not appear that the trial court erred, even if what is at stake is an appeal bond (since a motion for new trial is pending and no appeal has yet been taken). Discretion was exercised, as required by OCGA § 17-6-1 (g).

The motion is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 13 1996

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

Will. Z. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**MOTIONS DOCKET-241. TRAMMELL v. CLAYTON COUNTY BOARD OF
COMMISSIONERS et al.**

Plaintiff's emergency motion to have this Court review the trial court's denial of his motion for a temporary restraining order is hereby TRANSFERRED to the Supreme Court as this Court lacks jurisdiction over such issue.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket - 242. KNIGHTON v. THE STATE.

Damon Knighton has filed an emergency motion for supersedeas requesting that this Court require the trial court to set reasonable bond pursuant to OCGA § 17-7-50. The trial court found that Knighton did not meet the requirements of OCGA § 17-6-1 (e) and, therefore, denied Knighton's request for bond. The mandates of OCGA § 17-7-50 appear to conflict with the provisions of OCGA § 17-6-1 (e) in cases where the defendant is not indicted within 90 days. OCGA § 17-6-1 (e) requires that the superior court make certain factual findings before the defendant is entitled to bond. However, we are constrained to follow our Supreme Court which has determined that the language of OCGA § 17-7-50 is unambiguous and that if an incarcerated person is not indicted within 90 days, bail is mandatory upon request. See Rawls v. Hunter, 267 Ga. 109 (475 SE2d 609) (1996).

As Knighton was incarcerated for more than 90 days without indictment, the trial court erred in denying Knighton's request for a reasonable bond. Knighton's motion is hereby GRANTED; however,

this order is stayed for five days in the event the State wishes to seek review by the Supreme Court of Georgia.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 0243. GARRETT v. EASTERLING.

Thomas E. Garrett was found in contempt for failure to pay child support. The contempt order was filed on December 9, 1996, and it specifically stated that a compliance hearing would be set for January 13, 1997, if Garrett failed to give notice to the court of current compliance on January 1, 1997. Thereafter, Garrett filed a motion for new trial on the contempt order. Garrett has filed an emergency motion with this Court requesting that we require the trial court judge to rule on his motion for new trial prior to holding the compliance hearing. He further complains that he was notified only by a telephone message left for him on January 10, 1997, that the compliance hearing would be held on January 16, 1997.

A ruling on Garrett's motion for new trial on the contempt order is within the discretion of the trial court and we will not disturb its discretion absent abuse. As Garrett has not shown this Court that the trial court held the compliance hearing prior to ruling on his motion for new trial, we cannot say that the trial

court has abused its discretion. Furthermore, any hearing held regarding compliance with the contempt order would implicitly deny Garrett's motion for new trial.

Garrett's complaint regarding lack of notice of the hearing is without merit. Garrett was on notice from December 9, 1996, that a compliance hearing was to be held on January 13, 1997, if he did not meet certain specified requirements. Continuance of the hearing until January 16, 1997, only gave Garrett additional time to prepare for the hearing. As Garrett has failed to show that he is entitled to relief, his motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motion Docket 244. GARRETT v. EASTRELING.

Thomas E. Garrett has filed a motion for supersedeas with this Court. Pursuant to OCGA § 5-6-13, Garrett seeks supersedeas from the trial court's order finding him in contempt for failure to pay child support and failure to appear at a compliance hearing held on January 16, 1997. The trial court's order was filed February 18, 1997.

OCGA § 5-6-13 creates an absolute right to supersedeas only upon application for same and compliance with the provisions of law as to appeal and certiorari. In the present case, Garrett has given the trial judge a letter indicating his intent to seek review of the trial court's order and request for supersedeas, however, he has not shown this Court that he has complied with the provisions of law to appeal the trial court's contempt order. See Smoak v. Department of Human Resources, 221 Ga. App. 257 (471 SE2d 60) (1996) (application for discretionary appeal required in order to appeal a finding of contempt arising out of an arrearage in child support). Without such evidence, we cannot say Garrett is entitled to supersedeas, and his motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket - 245. WILLIAMSON v. STATE OF GEORGIA.

Chris Williamson has filed an emergency motion for supersedeas requesting that this Court require the trial court to set reasonable bond pursuant to OCGA § 17-7-50. The trial court found that Williamson did not meet the requirements of OCGA § 17-6-1 (e) and, therefore, denied Williamson's request for bond. The mandates of OCGA § 17-7-50 appear to conflict with the provisions of OCGA § 17-6-1 (e) in cases where the defendant is not indicted within 90 days. OCGA § 17-6-1 (e) requires that the superior court make certain factual findings before the defendant is entitled to bond. However, we are constrained to follow our Supreme Court which has determined that the language of OCGA § 17-7-50 is unambiguous and that if an incarcerated person is not indicted within 90 days, bail is mandatory upon request. See Rawls v. Hunter, 267 Ga. 109 (475 SE2d 609) (1996).

As Williamson was incarcerated for more than 90 days without indictment, the trial court erred in denying Williamson's request for a reasonable bond. Williamson's motion is hereby GRANTED.

It is noted that an emergency order was granted by this court involving the identical issue on December 27, 1996, Knighton v. State, Emergency Motion Docket # 242. In that case, the State filed an emergency motion in our Supreme Court. In its order, the Supreme Court followed the same analysis as we do herein.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET 246. MATHIS v. THE STATE.

Eddie Wayne Mathis has filed an Emergency Motion for Supersedeas. Mathis contends the trial court failed to grant bond in the underlying action for probation revocation in violation of OCGA § 17-6-1 (b). However, Mathis misapplies OCGA § 17-6-1 (b), which requires bond when a person charged with a misdemeanor is indicted, or after a motion for new trial is made, or while an appeal is pending. Mathis is not necessarily entitled to bond while waiting for a hearing on probation revocation. See OCGA § 42-8-38 (b) which provides that the court may commit probationer with or without bail to await further hearing.

Pursuant to the foregoing, Mathis' motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 247. GARRETT v. EASTRELING.

On March 7, 1997, this Court granted Thomas E. Garrett's Emergency Motion for Supersedeas of the trial court's order finding him in contempt. Thereafter, Garrett's application for discretionary appeal was transferred to the Supreme Court of Georgia. The Supreme Court docketed Garrett's application and ruled upon it by dismissing it for Garrett's failure to pay costs or file a current pauper's affidavit. Garrett filed written notice with the trial court of his intent to seek review of the Supreme Court's order by way of a motion for reconsideration. See OCGA § 5-6-13. Thereafter, the trial court revoked his supersedeas and Garrett was arrested and jailed based upon the trial court's order of contempt. Garrett's motion for reconsideration of the Supreme Court's order is pending in that Court. Therefore, as Garrett's present Motion for Emergency Supersedeas depends for its resolution on an interpretation of the Rules of Court for the Supreme Court, it is hereby TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 248. JERNIGAN v. THE STATE.

Janet T. Jernigan has filed an emergency motion with this Court requesting an order compelling the trial court to honor the Notice of Appeal filed in the underlying case instead of progressing to trial on May 27, 1997. However, as no adverse action has been taken against Jernigan's interests at the present time, this Court is without jurisdiction to render an advisory opinion. Therefore, Jernigan's motion is hereby DISMISSED as premature.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 249. STATE OF GEORGIA v. JANET T. JERNIGAN.

On May 28, 1997, the State (appellee) filed its motion for reconsideration of this court's order of May 27, 1997, staying defendant's trial pending the resolution of said defendant's appeal from the trial court's denial of her motion to dismiss due to the State's failure to hold a speedy trial as required by the Federal and Georgia Constitutions. Defendant's motion to dismiss, the trial court's denial thereof, and defendant's notice of appeal were all filed on May 22, 1997.

No response was filed by the State to defendant's emergency motion filed May 23, 1997, and thereafter. The State, in its motion for reconsideration, now seeks to dispute some of the representations of defendant which arguments should properly be raised in a response to defendant's appeal.

The State, in its motion for reconsideration, does not dispute the fact that the defendant has properly appealed the May 22, 1997,

ruling of the trial court on her motion to dismiss. Neither does the State dispute the authority of Hubbard v. State, 254 Ga. 694, 695 (333 SE2d 827) (1985) or Patterson v. State, 248 Ga. 875 (287 SE2d 7) (1982). Indeed, the State cites not a single case or statute which supports its request.

This court does not issue advisory opinions as to how the trial court should proceed at this point as requested by the State. The sole responsibility of this court is to review the actions of the trial court for error. The trial court's responsibility is to follow the law. Appellee's motion for reconsideration is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET 250. O S ADVERTISING COMPANY OF GEORGIA v. RUBIN et al.

O S Advertising Company of Georgia, Inc., seeks an emergency stay pending appeal of the trial court's order which granted an injunction against it based upon its continued maintenance of an advertising sign which fails to conform to applicable zoning regulations. See O S Advertising Company of Georgia v. Rubin, 263 Ga. 761 (438 SE2d 907) (1994); O S Advertising Company of Georgia v. Rubin, 267 Ga. 723 (SE2d) (1997). As the only issue on appeal involves the correctness of the issuance of the injunction, the Georgia Supreme Court has exclusive jurisdiction over the appeal and this emergency motion. "[A]n equity case for purposes of [the Supreme Court's] appellate jurisdiction is a case in which a substantive issue raised on appeal involves the legality or propriety of equitable relief sought in the superior court." (Punctuation omitted.) Saxton v. Coastal Dialysis and Medical Clinic, 267 Ga. 177, 178-179 (476 SE2d 587) (1996). Therefore, this emergency motion is hereby TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET 251. SMITH v. THE STATE.

Cheryll Smith was found guilty by a jury of voluntary manslaughter. The trial judge sentenced her to serve ten years in prison. Thereafter, Smith filed a notice of appeal, and the trial court denied Smith's motion for appeal bond. Smith contends in her emergency motion to this Court that the trial court abused its discretion in denying her motion for appeal bond.

This Court finds that Smith has failed to demonstrate any evidence of abuse of discretion by the trial court and has stated no legal or factual basis for this Court to grant her emergency motion in this matter.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET 252. VALUJET AIRLINES et al. v. CARLETON.

The defendants in the underlying action, ValuJet Airlines, Inc. and ValuJet, Inc., have filed an emergency motion requesting a stay of the trial in this matter pending the appeal. On June 6, 1997, the defendants filed a Notice of Appeal of the trial court's order granting the plaintiff's motion for partial summary judgment.¹ Defendants also seek review of several interlocutory orders rendered by the trial court. The trial in this matter has been specially set to begin on August 18, 1997. The trial court denied the defendants' motion to stay the trial pending the appeal, and the defendants filed the present motion before this Court.

The general rule is that the trial court loses jurisdiction of a case in which an appeal has been taken as to all matters related to the appeal. See Argonaut Ins. Co. v. Atlantic Wood Indus., 187 Ga. App. 477, 478 (370 SE2d 770) (1988). However, "[m]atters independent of and distinct from the questions involved in the appeal are not taken from the jurisdiction of the trial court. Such matters as the appeal does not cover are purely collateral or supplemental, lying outside the issues framed in the case, or arising subsequent to the delivery of the judgment from which the appeal is prosecuted." (Punctuation omitted.) *Id.*

¹ As defendant's appeal has not yet been docketed in this Court, we do not reach the merits or the appropriateness of defendant's appeal, but we affirm our jurisdiction to hear defendant's emergency motion pursuant to Court of Appeals Rule 40 (b).

A review of the cases relied upon by the trial court and cited in the plaintiff's response filed with this Court reveals that they are distinguishable from the present case. In Young v. Reese, 119 Ga. App. 179 (166 SE2d 420) (1969), this Court determined that the trial court did not err in proceeding with trial while an appeal of the denial of the defendants' motion to dismiss was pending. In Cohran v. Carlin, 249 Ga. 510 (291 SE2d 538) (1982), our supreme court, citing Young, determined that the trial court retained jurisdiction to allow discovery and enter contempt orders while an appeal of the defendants' motion to dismiss was pending. In Argonaut, supra, we reaffirmed the trial court's jurisdiction to allow discovery while an appeal of the trial court's rulings on the defendant's motion to dismiss was pending.

Significantly absent from these cases is the possibility of a second trial being required upon reversal on appeal. If the trial court errs in failing to grant a motion to dismiss, upon such a determination by the appellate court, the case is terminated. The goal of expediting litigation is served by allowing discovery or even a trial while an appeal is pending on a motion to dismiss. However, where an appeal is pending of the grant of a motion for partial summary judgment against defendant which involved issues directly affecting its liability, we cannot say that a trial of the case is collateral to the pending appeal. Unlike the cases cited by plaintiff, if, on appeal it is determined that the trial court erred in granting plaintiff's summary judgment motion a new trial may well be required.

Some of the trial court's rulings from which defendant appeals preclude issues of liability from going to the jury, defendants from bringing in a third-party defendant, and defendants from applying foreign law. These rulings are so central to the trial of the case that their reversal could in fact require a second trial in which the material presented to the trier of fact would be greatly altered. While the law requires a speedy resolution of litigation, it also requires a just and economical process. See OCGA § 9-11-1. Here, the potential cost of a second trial clearly outweighs any advantage of an expedited trial.

In the present case, the trial court's decision to proceed with trial affirms and enforces its earlier decisions which are presently being appealed. Therefore, the orders appealed from cannot be considered collateral to the trial. The trial court abused its discretion in denying the defendants' motion to stay the trial in the underlying case pending a resolution of its appeal. Therefore, defendants' emergency motion is hereby GRANTED.

Audience of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 254. STEWART v. MULCARE.

Tony Stewart has filed an emergency motion seeking a stay of the proceedings below. Stewart was previously ordered by the trial court to pay his monthly rent into the DeKalb County State Court by the fifth day of the month prior to 4:45 p.m. Stewart asserts that on August 5, 1997, he attempted to pay his rent into the court at 4:50 p.m., but the clerk refused to take the payment as the court's rules did not allow the acceptance of funds within the last fifteen minutes of office hours. In his motion, Stewart contends that the opposing party is now entitled to writ of eviction.

This Court does not have jurisdiction over Stewart's request for a stay. See Court of Appeals Rule 40. Stewart has failed to present any evidence to this Court that he has requested a remedy in the trial court and such remedy has been denied. As this Court is without jurisdiction to render a remedy to Stewart on his motion, it is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET 255. RAPPS v. COOKE et al.

Betsy Luise Rapps has filed an Emergency Motion to Stay Action to stay the trial court's order requiring that a Supersedeas Bond in the amount of \$45,000.00 be filed by the end of business today, August 29, 1997. Rapps asserts that she has filed an affidavit of indigency, and that therefore, she is not required to file a supersedeas bond. See OCGA § 5-3-22 (b). However, Rapps has failed to file a copy of a stamped-filed pauper's affidavit with this Court. Therefore, Rapps' Emergency Motion is hereby DENIED. If Rapps has filed an affidavit of indigency, the court may hold a hearing to determine its timeliness, truth, and validity. See Walker v. Crane, 216 Ga. App. 765, 767 (455 SE2d 855) (1995). Furthermore, Rapps' failure to post the supersedeas bond required by the trial court will result in the Cookes' ability to enforce the underlying judgment, however, failure to post it cannot result in the dismissal of Rapps' appeal. See Hawn v. Chastain, 246 Ga. 723 (273 SE2d 135) (1980).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET 256. LIEBMAN v. LANE.

Max, Pauline, and Jay Liebman have filed an emergency motion with this Court seeking an injunction to stop the sale of a certain parcel of land or alternatively, an order setting aside the sale of the land. They also seek an order of visitation of Max and Pauline's grandchildren, who are apparently in Patricia Lane's physical custody (the children's mother and Jay's former wife). Additionally, movants seek an order requiring Patricia Lane to return Jay's interest in the parcel of land at issue.

With their motion, movants attached an order from the Superior Court of Cobb County dated May 11, 1995, granting Patricia Lane a default judgment against Max and Pauline Liebman in the amount of \$41,850.00 and the right to foreclose on the real property at issue herein. A Notice of Levy dated August 5, 1997, containing notice of a sale of the property scheduled for September 2, 1997, is also contained in the record. Movants contend that they filed a motion to stop the September 2, 1997 sale, and that their motion was denied by the Cobb County Superior Court. However, movants have failed to present this Court with a copy of such motion or the

trial court's order denying such motion. The only Notice of Appeal provided appears to be an attempt to appeal the May 11, 1995 Judgment, not any recent order denying a restraining order or other such action.

This Court's authority to issue orders in emergency situations is not unlimited. Such authority is exercised to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. See Court of Appeals Rule 40 (b). In the present case, we have not been presented with evidence that such an emergency situation exists in which we have the authority to grant relief. Movants' motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET 257. DANIEL v. ROBINS.

Mary Louise Daniel has filed an emergency motion with this Court seeking to preclude the trial of her case during the pendency of her direct appeal from the trial court's denial of her plea in bar alleging double jeopardy. Daniel's case was placed on a trial calendar on September 12, 1997. On September 17, 1997, Daniel filed a plea in bar alleging that the \$210.00 fee she was required to pay in order to reinstate her driver's license was a punitive measure thereby barring any subsequent criminal prosecution based upon double jeopardy. Although Daniel has failed to provide a copy of the trial court's order denying her plea in bar, she asserts that the trial court determined that the "matter had been previously addressed and denied [her plea] on grounds that it was a frivolous and dilatory motion." Daniel contends that the trial court then improperly proceeded with her criminal trial.

In Rielli v. Oliver, 170 Ga. App. 699 (318 SE2d 173) (1984), we adopted the analysis of the United States Supreme Court in Abney v. United States, 431 U. S. 651 (97 SC 2034, 52 LE2d 651) (1977), wherein it held "that if the plea of double jeopardy 'is found to

be frivolous, the filing of a notice of appeal by the defendant shall not divest the (trial) court of jurisdiction over the case.'" Rielli, supra at 700. This position was subsequently adopted by the Georgia Supreme Court when it cited Rielli with approval and determined that the trial court could proceed with the trial during the pendency of the defendant's appeal of the denial of his plea in bar based upon double jeopardy. See Strickland v. State, 258 Ga. 764 (373 SE2d 736) (1988). Our Supreme Court held that "[f]iling a notice of appeal may deprive a court of its power to execute the sentence but it does not supersede every other activity of the trial court." Id. at 766.

Therefore, in light of the trial court's determination that Daniel's plea in bar was frivolous and dilatory, the trial court was authorized to proceed with Daniel's trial during the pendency of her direct appeal.

Court of Appeals of the State of Georgia

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Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTIONS DOCKET 258. BRINKLEY v. THE STATE.

Marvin Brinkley has filed a motion for supersedeas requesting that this court allow his out-of-time appeal which was denied by the trial court. Brinkley was tried and convicted in 1983. His conviction was affirmed in Brinkley v. State, 253 Ga. 541 (322 SE2d 49) (1984). Because Brinkley has already had a direct appeal, his request must be made in a habeas corpus proceeding.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 259. HARDIN v. RTP TOWNHOUSE ASSOCIATION, INC.

On October 3, 1997, Eugene Hardin filed an emergency motion with this Court seeking an order allowing his appeal as an indigent. Attached to his original motion was an order issued by Judge Hilton Fuller granting the defendants' motions for summary judgment in the underlying action and an order issued by Senior Appellate Court Judge Arnold Shulman finding that Hardin was indigent. Hardin asserted in his emergency motion that the DeKalb County Superior Court threatened to dismiss his appeal if he did not pay the costs for the preparation of the record for transmittal to this Court. Hardin argued that Judge Shulman's finding of indigency exempted him from payment of such costs.

This Court ordered Hardin to file any additional orders regarding his indigency status before any ruling would be made on his emergency motion. Thereafter, Hardin filed an order issued by

Judge Shulman vacating his earlier order regarding Hardin's status as a pauper. Judge Shulman determined that Hardin had failed to obtain the proper referral to the senior judges' division from the case's assigned judge. Hardin failed to disclose the existence of the September 22, 1997, vacation order originally, and now argues that Judge Shulman's second order was issued outside the term of court in which his first order was issued and that, therefore, it is void. However, a party is not free to fail to disclose to this Court a relevant order in the case below because the party thinks the order is void. Such a determination is for this Court, not a party. Hardin failed to supply this Court with Judge Shulman's second order until he was specifically ordered to produce any such orders. In any event, the rule Hardin refers to deals with final orders in a case and Judge Shulman's order regarding his pauper status does not fall within such class of orders. It further appears from Judge Shulman's vacation order, that Hardin failed to have the motion below properly presented to him originally, and Judge Shulman was authorized to vacate same. Although in the exercise of this Court's discretion we will not impose sanctions on Hardin for his conduct in this matter, nothing herein precludes the trial court from exercising its contempt authority in connection with movant's conduct in said court.

For the reasons stated herein, Hardin's emergency motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

MOTION DOCKET 260. WRIGHT v. SUNTRUST BANK.

Paul Troy Wright's extraordinary motion is hereby DENIED. Wright's motion for contempt sanctions is also DENIED. The underlying action arose out of a personal property foreclosure by Suntrust Bank. Alleging that he complied with OCGA § 44-14-234 (1), Wright demanded that Suntrust return the subject vehicle during the pendency of the action. On October 10, 1997, Senior Judge Watson White entered an order denying Wright's motion. Thereafter, on October 14, 1997, the matter was presented to Judge Michael Stoddard, who, apparently having no knowledge of Judge White's order, entered an order granting Wright's motion for possession of the vehicle. Judge Stoddard's order made no reference to Judge White's previous order. On October 16, 1997, Judge Robert Flournoy entered an order vacating Judge Stoddard's order and reinstating Judge White's order. Wright's emergency motion before this Court sought an order reversing Judge Flournoy's order and reinstating Judge Stoddard's order.

The underlying case is assigned to Judge Flournoy. Judge White and Judge Stoddard entered their orders as presiding judges.

The record raises serious questions as to the appropriateness of Wright's conduct in the handling of this matter. While such conduct cannot be condoned, this Court in the exercise of its discretion will not impose sanctions on Wright for such conduct before this Court, including the failure to disclose the existence of Judge White's order. Nothing herein in any way limits the trial court from exercising its authority to sanction Wright in this matter.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 261. ROBERTS v. ROBERTS

Thurman Charles Roberts has filed a motion for emergency supersedeas with this Court. Pursuant to OCGA § 5-6-13, Roberts seeks supersedeas from the trial court's order finding him in contempt for failure to pay child support. The trial court's order was filed December 17, 1997, and Roberts has been held in jail since that time.

OCGA § 5-6-13 creates an absolute right to supersedeas immediately upon notice of the party's intention to seek review of the contempt charges. See Calvert Enterprises v. Griffin-Spalding County Hosp. Auth., 197 Ga. App. 727 (399 SE2d 287) (1990). Roberts has filed a notice of intent to appeal and a motion for supersedeas in the trial court. Therefore, Roberts is entitled to the supersedeas requested and his motion is hereby GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 262. IN RE: CONTEMPT PROCEEDING BRUCE HARVEY AND W.

SANDER CALLAHAN

Bruce Harvey and W. Sander Callahan have filed a motion for emergency supersedeas with this Court. Appellants seek supersedeas from an oral order allegedly issued by Judge Isaac Jenrette finding them in contempt. Their motion notes that Judge Jenrette intends to file a written order on January 15, 1998. The appellants are presently incarcerated pursuant to Judge Jenrette's oral contempt order. Also, appellants have filed notices of appeal from the Judge's oral order, which notices are premature, but will be treated as notices of the intent to appeal any written contempt order which may be filed in this matter, in view of their present state of incarceration.

Judge Jenrette's contempt finding was apparently based on the appellants' failure to be ready to begin the criminal trial of Byron Barlow. The incarceration of the contemners without written order or the granting of supersedeas constitutes an abuse of discretion. OCGA § 5-6-13 (a). Contemners motion for supersedeas is hereby GRANTED and it is ordered that they be released from the

custody of the Sheriff of Fulton County instanter, pending the appeal of any written contempt order which might be issued in this matter.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 263. REHBERGER v. THE STATE

Robert L. Rehberger, pro se, has filed an emergency motion for expedited hearing with this Court. Rehberger requests that this Court expedite his appeal from the trial court's denial of his motion for bond pending appeal. Pretermittting whether the trial court's order dated December 10, 1997, is an order denying Rehberger's second motion for bond pending appeal and is properly appealable to this Court, we note that Rehberger's appeal is already expedited pursuant to OCGA § 5-6-43 (c) due to his incarceration, and Rehberger has failed to provide any basis by which this Court is authorized to futher expedite an appeal. Therefore, Rehberger's motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MD264. DUNN v. THE STATE.

Phillip Dunn has filed an emergency motion with this Court seeking an order requiring the State to prepare its recollection of the trial pursuant to OCGA § 5-6-41 (g). No such requirement is contained in OCGA § 5-6-41 (g), as the statute requires that the parties agree to the transcript or that the trial judge resolve any disputes. However, the trial judge has entered an affidavit stating that he has no independent recollection of Dunn's trial. Therefore, based on the evidence before us it is apparent that no transcript will be available and Dunn's motion is hereby DENIED.

On November 19, 1997, this Court remanded Dunn's appeal for the preparation of the trial transcript in accordance with OCGA § 5-6-41 (g). As no transcript can be produced pursuant to that Code Section, Dunn is hereby ordered to refile his Notice of Appeal within 30 days of the date of this order should he still desire to pursue his appeal, and not thereafter. This order in no way precludes the grant of any order by the trial court authorized by law prior to the expiration of 30 days as herein provided.

Dunn's emergency motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 12 1997

The Court of Appeals hereby passes the following order:

MOTION DOCKET 265. ROBERTS v. ROBERTS.

On December 19, 1997, this Court issued an order granting Thurman Charles Roberts' motion for emergency supersedeas based upon Roberts representation that he intended to appeal the trial court's contempt order. Roberts failed to pursue his appellate remedies per his notice of intent to appeal. This notice was the basis of our grant of supersedeas. He elected instead, to file a motion for new trial which he asserts was denied by the trial court on March 2, 1998. Thereafter, the trial court found that Roberts was in wilfull contempt of its order requiring supersedeas bond.

Roberts, as movant, has the responsibility of providing this court with sufficient portions of the record to enable this court to affirm the basis for the relief sought. Given movant's history of not appealing to this Court when he seeks relief on that basis, the trial court's clear intention that supersedeas of the underlying judgment is to be conditioned upon the payment of supersedeas bond, see OCGA § 9-11-62 (b), and movant's failure to provide this Court with evidence of record to support his request, this Court elects not to intervene at this time, pursuant to OCGA § 9-11-62 (e), and Roberts motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 12 1997

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Will. Z. Mart...

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 266. DUNN v. THE STATE.

Phillip Dunn has filed a second emergency with this Court regarding the preparation of the trial transcript. Dunn's appeal was originally remanded for the preparation of a trial transcript pursuant to OCGA § 5-6-41 (g). Dunn then filed an emergency motion with this Court seeking an order requiring the State to prepare its recollection of the trial. Dunn's motion was denied as OCGA § 5-6-41 (g) does not require such action. Dunn was given 30 days to refile his notice of appeal if he so desired. Dunn filed his notice of appeal; however, the appeals clerk in DeKalb County State Court has refused to transmit the transcript prepared by Dunn in the underlying matter. The appeals clerk contends that the transcript must be accepted by both parties or the trial court judge. The clerk's duty is to submit the entire record to the court of appeals. See OCGA § 5-6-43 (a).

Dunn's remedy in the instant case is to file a writ of mandamus to compel the clerk to comply with her official duties. "All official duties should be faithfully performed; and whenever, from any cause, a defect of legal justice would ensue

from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance, if there is no other specific legal remedy for the legal rights.' OCGA § 9-6-20; Wofford Oil Co. of Ga. v. City of Calhoun, 183 Ga. 511 (189 SE 5) (1936). Mandamus is the remedy for official inaction. Coastal Svc. v. Jackson, 223 Ga. 238 (154 SE2d 365) (1967); Touchton v. Echols County, 211 Ga. 85 (84 SE2d 81) (1954)." Rolleston Living Trust v. Glynn County Bd. of Tax Assessors, 228 Ga. App. 371, 373-374 (491 SE2d 812) (1997).

As Dunn's remedy is a writ of mandamus, his emergency motion filed in this Court is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

Motion Docket 267. NORMAN v. THE STATE.

Keith D. Norman has filed an emergency motion for supersedeas bond with this Court after the trial court denied such motion following his conviction for Interference with Custody, a misdemeanor, in the State Court of Clayton County. The record does not contain the trial court's order denying Norman's motion for supersedeas; however, the transcript of the March 11, 1998 hearing on such motion reflects that the trial court denied the motion. Norman has filed a Notice of Appeal from his conviction of Interference with Custody. See OCGA § 16-5-45 (2) (A) - (C) (first two convictions are misdemeanors and third conviction is a felony). It is clear that Norman was convicted of a misdemeanor as the trial court does not have felony jurisdiction.

OCGA § 17-6-1 (b) (1) provides that "at no time, either before a court of inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal is pending, shall any person charged with a misdemeanor be refused bail." While this Court is reluctant to overrule the trial court in this matter, we are bound by the law, which requires that supersedeas be granted in this

case. The trial court's denial of supersedeas bond based on its determination as to the merits of the appeal is inappropriate where the appellant is entitled to supersedeas as a matter of law. See Copeland v. State, 224 Ga. App. 402 (480 SE2d 623) (1997).

Norman is entitled to supersedeas and his motion is hereby GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 268. GUILMAIN v. GOSBEE et al.

Petitioner Corinne Guilmain's Motion for Supersedeas is before this Court after being transferred by the Georgia Supreme Court. Petitioner seeks supersedeas from the Gilmer County Superior Court's order which vacated its protective order and declined to accept jurisdiction of the matter.

On March 17, 1998, petitioner filed a complaint for divorce in Gilmer County Superior Court. Petitioner failed to inform the court that a prior action concerning the same issues was pending in Washington Family Court in the State of Vermont. In fact, that court had already assumed jurisdiction of the divorce action and at a temporary hearing on September 12, 1997, awarded temporary custody to Gosbee. At a second temporary hearing on October 1, 1997, the original order was modified including a division of custody between the parties. Petitioner filed an answer to the complaint and participated in the temporary hearings in the Washington Family Court. A guardian ad litem was appointed for the child by the Washington Family Court and participated in the October 1, 1997 hearing. By her actions, the petitioner submitted

to the jurisdiction of the Washington Family Court.

Upon learning of the action in the Washington Family Court, the judge in the present action voided her protective order and declined to accept jurisdiction of this matter. Petitioner contends that the Gilmer County Superior Court should exercise jurisdiction pursuant to the UCCJA. However, pursuant to such Act, where a court has assumed jurisdiction, the matter is still pending, and the parties have submitted to the jurisdiction therein, an award of custody cannot be changed by another court absent a showing of emergency circumstances. In the present case, the trial court determined that it had no basis under which to exercise jurisdiction in Georgia and that the matter should be tried in Vermont. Additionally, there is nothing in the record before us which demonstrates any error by the trial court. Petitioner is not without relief as her arguments can be presented to the Washington Family Court in Vermont.

Petitioner's motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

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Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUL 09 1998

The Court of Appeals hereby passes the following order:

269. DONNA MARIE SMITH v. MELODIE H. CLAYTON.

On June 18, 1998, the State Court of Cobb County, Judge Melodie H. Clayton presiding, entered an order denying Donna Marie Smith's motion for supersedeas pending appeal. The court determined that Smith had not complied with OCGA § 5-6-13 (a), which requires the judge to grant the person convicted of or adjudged to be in contempt of court a supersedeas "where the person also submits, within the time prescribed by law, written notice that he intends to seek review of the conviction or adjudication of contempt." The order adjudging Smith in contempt was entered on December 11, 1997. It does not appear that Smith has filed a timely notice of appeal from the contempt order in accordance with OCGA § 5-6-38 (a). Smith's emergency motion for supersedeas of the trial court's June 18, 1998 order is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 09 1998

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Clerk.

William L. Matz

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MOTION DOCKET 270. RAY v. THE STATE.

Defendant Dexter J. Ray has filed an Emergency Motion seeking to appeal the trial court's denial of his motion to proceed pro se in the direct appeal of his underlying conviction for armed robbery. The record before this Court on Ray's motion reveals that the trial court allowed Ray's trial counsel to withdraw and appointed new counsel to represent Ray on appeal, despite Ray's motion to proceed pro se. While Ray has the right to proceed pro se, such a right must be knowingly and intelligently waived.

"An indigent defendant is entitled to have counsel appointed to represent him on the first level of appellate review. Douglas v. California, 372 U. S. 353 (83 SC 814, 9 LE2D 811); Ross v. Moffitt, 417 U. S. 600 (94 SC 2437, 41 LE2d 341). Chapman v. State, 183 Ga. App. 376, 377 (359 SE2d 14). However, when an indigent criminal defendant elects to waive the right to counsel and represent himself during post-conviction proceedings, the record should reflect a finding on the part of the trial court that the defendant has validly chosen to proceed pro se. The record should also show that this choice was made after the defendant was

made aware of his right to counsel and the dangers of proceeding without counsel. Clarke v. Zant, 247 Ga. 194, 197 (275 SE2d 49) (1981). Burnett v. State, 182 Ga. App. 539, 540 (1) (356 SE2d 231). More specifically, the record should reflect a defendant's appreciation of the charges for which he has been convicted and possible avenues of post-judgment relief. Moss v. State, 196 Ga. App. 81, 82 (1) (395 SE2d 363). A defendant should also be aware that post-judgment practice involves strict compliance with rules of practice and procedure; that failure to comply with these rules may result in waiver of important issues and that pro se parties are generally bound by the same rules of practice and procedure as a lawyer. Carver v. State, 198 Ga. App. 676, 677 (1) (403 SE2d 230)." (Punctuation omitted.) Weber v. State, 203 Ga. App. 356, 357 (416 SE2d 868) (1992).

In the present case, the required findings are not a part of the record; therefore, we cannot determine whether Ray's right to counsel has been validly waived. As Ray has failed to support his motion with evidence showing the trial court erred, his motion is hereby 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.*

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

AUG -7 1998

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 271. GENERAL MOTORS CORPORATION v. BAMPOE-PARRY et al.

Movant, Willene Bampoe-Parry, individually and as Administratrix of the Estate of George Yaw Bampoe-Parry, has filed an Emergency Motion in this Court to dismiss a direct appeal from the trial court's order requiring the production of documents, filed by General Motors Corporation.

The order of the trial court, filed June 29, 1998, reads as follows:

"The above-styled action having come before the Honorable Court on Defendant General Motors Corporation's (hereinafter 'GM') Motion for Protective Order and on Plaintiffs' Motion to Deny Privilege and Protection Claims With Respect to GM's 5/22/98 Privilege Log and the Court having instructed GM to provide the Court with a privilege log setting forth the requisite criteria to enable the Court to determine applicability of asserted discovery protections and the Court having reviewed the same, the Court finds as follows:

"This Court had previously ordered that any party claiming protection from discovery based on the attorney-client privilege, the attorney work-product doctrine or other legal doctrine must prepare and file with the Court the allegedly protected documents, written responses to discovery, and a privilege log setting forth the facts and circumstances establishing the foundation for the asserted privilege or protection. GM was well aware of the Court's requirements at the time it submitted the subject privilege log because GM had previously filed a similar privilege log regarding certain other discovery which was deemed to be inadequate. The Court has gone to great length and has extended ample lenience to GM in its quest to respond to Plaintiffs' exhaustive but legitimate discovery efforts in this case. After having been fully informed and instructed that the Court would require the parties to provide the Court with full disclosure, GM has provided this Court a privilege log which falls far short of the Court's clearly articulated requirements. GM has disregarded this Court's directives to it own peril.

"The privilege log serves several purposes: (1) to assist the Court in the efficient and effective preliminary determination of the applicability of asserted protections; and (2) to provide the opponent with minimally sufficient non-privileged information to enable the same to determine the nature of the document and to challenge the applicability of the asserted privilege or protection. GM's privilege log fails greatly in both respects. The vast number of descriptions of the general subject matter for each document contains boilerplate language regarding the purpose

for which the document was created while completely failing to describe the general nature of the document. The Court finds the privilege log to be substantially deficient in the following specific respects:

"1. The privilege log fails to designate, with respect to a large number of documents, persons who received a particular document. Instead, GM's privilege log merely states that a particular document was distributed to 'GM Legal' of 'GM Product Discovery Group.' See, e.g., Documents BPP001354-55.

"2. Additionally, the privilege log fails to set forth the identity of the recipients or other evidence to indicate that a particular document claimed to be subject to the attorney-client privilege was disseminated to the client. See, e.g., Documents BPP001393-395, BPP002040-044, BPP001915-931, and BPP002043-044.

"3. The privilege log contains wholly insufficient descriptions of numerous documents with said descriptions being limited to restatements of the boilerplate language protecting such documents from discovery. See, e.g., Document BPP000043 regarding which GM describes the general subject matter as 'Confidential correspondence from GM Legal Staff evaluating litigation and containing thoughts and mental impressions.'

"4. Certain documents on the privilege log are claimed to be protected by the work-product doctrine; however, said documents bear no date, author, or recipient. See, e.g., Documents BPP001422-1423.

"5. Certain documents which are claimed to be protected by the attorney-client privilege were created by an attorney,

distributed to an attorney and carbon-copied to attorneys, all of whom are members of the same firm. Oddly, there is no indication on the log that said documents claimed to be attorney-client communication were ever distributed to GM employees. See, e.g., Documents BPP001444-1453 (distributed to only King & Spalding lawyers); Documents BPP001397-401 (authored by and distributed to 'GM Legal Staff').

"6. The privilege log sets forth a sequential order of documents by the document number which is greatly at odds with the order of the documents produced for in camera review. Such 'out-of-order' submission has created an undue burden on the Court to juggle documents, affidavits and privilege logs to simply examine the documents.

"7. Several documents contain a designation of '??Confidential' with no explanation of the reason for such designation. The Court is unclear as to whether the use of question marks preceding 'confidential' is meant to affect the secret nature of said documents. See, e.g., Documents BPP001757 and BPP001758-1771.

"Based on the above and foregoing defects, the Court deems waived the privileges and/or protections asserted with respect to the following documents and therefore, finds the subject documents to be discoverable due to GM's failure to comply with the Court's direction regarding the proper showing required of a supporting privilege log: [Privilege log omitted.]

"Accordingly, the Court **ORDERS** GM to produce to the Plaintiffs the above discoverable documents no later than 5:00 p.m. on July 6,

1998. With respect to the remaining documents on GM's privilege log, the Court finds that GM properly objected to the discovery of the same based on the attorney-client privilege and/or the work-product doctrine. Said remaining documents subject to work-product protection are not discoverable absent a showing by the Plaintiffs of substantial need for the same in the preparation of their case and undue hardship resulting from its protection from discovery. Additionally, said remaining documents subject to the attorney-client privilege are discoverable only upon a prima facie showing by the Plaintiffs that the attorney-client communications were made in furtherance of illegal or fraudulent activity. With respect to said remaining documents, the Court **ORDERS** GM to file with the Court and serve upon Plaintiffs' counsel no later than 5:00 p.m. on July 6, 1998 a supplemental privilege log setting forth non-privileged identifying information with sufficient specificity in order to enable Plaintiffs to determine the nature of the document and the applicability of asserted objections."

On July 6, 1998, General Motors filed a notice of appeal from the trial court's order, without first obtaining a certificate of immediate review. Movant seeks to dismiss General Motors' appeal, asserting that the order appealed from is not directly appealable, but requires an interlocutory application pursuant to OCGA § 5-6-34. Movant contends that General Motors' direct appeal has been filed solely for the purpose of delay, and seeks dismissal of the appeal under the emergency procedures of Court of Appeals Rule 40 (b).

General Motors contends that the trial court erred in holding that General Motor's privilege log was inadequate to preserve its claims, citing Gen. Motors Corp. v. Conkle, 226 Ga. App. 34, 46 (486 SE2d 180, 191) (1997). We note that this case is physical precedent only, based on Judge Blackburn's special concurrence. General Motors also contends that, as the order of the trial court deals with communications protected by the attorney/client privilege, and attorney opinion work product, it is directly appealable under OCGA § 5-6-34 (a), pursuant to the "collateral order" doctrine adopted by our Supreme Court in Scroggins v. Edmondson, 250 Ga. 430, 431-32 (297 SE2d 469, 471-72) (1982). Regarding the appealability of discovery orders requiring production of materials, in Dept. of Transp. v. Hardaway Co., 216 Ga. App. 262 (454 SE2d 167) (1995), this Court held that discovery orders requiring production of materials could be directly appealed even though no final judgment had been entered, based on the "collateral order" doctrine established in Scroggins, supra.

However, this Court overruled Hardaway Co., in Johnson & Johnson v. Kaufman, 226 Ga. App. 77 (485 SE2d 525) (1997), and held that such discovery orders require the interlocutory appeal procedures set forth in OCGA § 5-6-34 (b).

The Georgia Supreme Court subsequently granted certiorari in S97C1214, S97C1321, Rankin v. MAG Mutual Insurance Company, for the purpose of considering "[w]hether Johnson & Johnson v. Kaufman, 226 Ga. App. 77 (1997), relied upon by the Court of Appeals, is in conflict with Scroggins v. Edmondson, supra." The appeal in Rankin

has been withdrawn however, without being addressed by our Supreme Court.

We review first, the appropriate use of the emergency motion procedures pursuant to Court of Appeals Rule 40 (b), which provides: "In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court."

Movants do not argue that this Court must act to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot, the underlying purposes of the rule. The rule also provides that it will be used sparingly and generally only after the case has been docketed in this Court. This case has not been docketed in this Court. In the absence of any authorized emergency action, appeals in this Court must proceed as provided by the Rules of the Court of Appeals.

Movants' contention is that General Motors' appeal is an unauthorized interlocutory appeal strategically timed to delay or hinder its deposition efforts. Movant is authorized to seek relief in the trial court in such instance. A trial court has authority to impose sanctions for discovery abuses, and to dismiss a notice of appeal where the judgment appealed from is interlocutory and the appellant fails to get the judgment certified for immediate review. See OCGA § 5-6-48 (b). Our Supreme Court specifically approved a

trial court's dismissal of an appeal for that reason in Jones v. Singleton, 253 Ga. 41, 42 (1) (316 SE2d 154) (1984).

For the above reasons, the motion to dismiss General Motors' appeal is hereby DENIED. The clerk of the State Court of Fulton County is instructed to file a copy of this order in the record of this case.

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. Z. Martin

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 272. WELDON et al. v. LANE COMPANY.

Ibrahim Weldon and Sandra Weldon, defendants in the underlying dispossessory action, have filed a motion in this Court entitled, "Emergency Motion for Temporary Injunction." Movants contend that the issues involved in their appeal from the trial court's denial of their motion for a temporary restraining order will become moot if their emergency motion is not granted. Although the movants request that this Court grant them a temporary restraining order to prevent the "order of the trial court from becoming moot," it is clear that movants are attempting to have this Court rule on the merits of their direct appeal through the filing of the present motion.

The present emergency motion is filed pursuant to Court of Appeals Rule 40 (b). Such rule provides: "In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has

been docketed in this Court."

By movants' Notice of Appeal filed on August 12, 1998, they seek to appeal the trial court's orders dated August 7, 1998 and August 12, 1998. The trial court, therein, denied movants' "Petition to Stay the Lower Court's Order or Motion for Temporary Restraining Order or in the Alternative a Preliminary Injunction," and movants' "Motion for Review and Reconsideration of Plaintiff's Emergency Petition to Stay the Lower Court's Order or Motion for Temporary Restraining Order or in the Alternative a Preliminary Injunction," respectively. These motions were filed after the magistrate court dismissed movants' Notice of Appeal from the magistrate court's order granting a writ of possession to Lane Company. Movants' Notice of Appeal from the writ of possession was dismissed as untimely.

Because it is apparent that movants' present motion seeks a resolution on the merits of their substantive appeal, without affording the opposing side an opportunity to respond and brief the issues involved and without allowing this Court the benefit of the entire record, their motion is hereby DISMISSED as it is not an authorized motion under Court of Appeals Rule 40 (b).

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,

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 273. KEALEY et al. v. BELGER et al.

Dean B. Belger has filed a motion for supersedeas of the trial court's order finding her in wilful contempt. The trial court expressly found Belger to be in wilful civil contempt for possessing knowledge of certain cash assets and failing to provide such information to the court upon its order to do so.

Belger has failed to meet her burden of showing that she was not in wilful contempt or that she was not, in fact, able to comply with the order of the trial court. Belger has provided no transcript of the hearing or substitute therefor, for our review. While OCGA § 5-6-13 (a), provides for the grant of supersedeas, the trial court has provided such relief in this case by setting bond at \$110,000 (cash). Based on the record submitted, we cannot say that the trial court erred in this matter. Therefore, Belger's motion is hereby 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.*

Clerk.

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

DEC - 7 1998

ATLANTA,

*The Court of Appeals hereby passes the following order:
Motion Docket 274*

IN THE MATTER OF: MYRLIN EARLE.

Fulton County District Attorney Paul L. Howard, Jr., has filed an Extraordinary Motion for Supersedeas Bond Pending Appeal with this Court on behalf of Myrlin Earle. Earle is presently incarcerated pursuant to Judge Bensonetta Lane's oral contempt order issued December 7, 1998.

Judge Lane's contempt finding was based on Earle's failure to dead docket all counts or to proceed to trial on all counts in a criminal matter as previously ordered by Judge Lane.

Upon consideration of this matter, said motion is hereby Granted and it is ordered that Earle be released from the custody of the Sheriff of Fulton County instanter.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC - 7 1998

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

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

Clerk.

Will. Z. Mat. [Signature]

94-275

Court of Appeals of the State of Georgia

ATLANTA,

DEC 8 1998

The Court of Appeals hereby passes the following order:

Motion Docket 275
IN THE MATTER OF MYRLIN EARLE

Fulton County District Attorney Paul L. Howard, Jr., has filed a second Extraordinary Motion for Supersedeas Bond Pending Appeal with this Court on behalf of Myrlin Earle, an Assistant Fulton County District Attorney.

Earle was incarcerated pursuant to Judge Bensonetta Lane's oral contempt order on December 7, 1998. Upon consideration of this matter, on December 7, 1998, this court granted the first Extraordinary Motion for Supersedeas Bond Pending Appeal and ordered that Earle be released from the custody of the Sheriff of Fulton County.

On December 8, 1998, Judge Bensonetta Lane entered a written order finding Earle in civil contempt of court and remanding him to the custody of the Fulton County Sheriff's Department. In the order, Judge Lane outlined the reasons for the finding of contempt; stated that she was proceeding under OCGA § 5-6-13 (b); that the contempt was a civil one; and that the Court had provided Earle with a specific method of purging himself of the contempt. The court found that Earle was not entitled to bond pending appeal of

the contempt order.

Also on December 8, 1998, Paul Howard, Fulton County District Attorney, filed a second Extraordinary Motion for Supersedeas Bond Pending Appeal of Contempt Order with this court. In his motion, the District Attorney argued that under Rule 40 (b), the Court of Appeals should exercise its inherent power and "give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot." The District Attorney represented that he will file an appeal in this matter on the underlying substantive issue of contempt.

Upon consideration of this matter, the motion is hereby Granted and it is ordered that Earle be released from the custody of the Sheriff of Fulton County instanter and bond be set in a reasonable amount until such time as the trial court shall hold a hearing on the matter.

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. Mat, Jr.

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

ATLANTA, JAN 27 1999

The Court of Appeals hereby passes the following order:

**MD 276. JOYCE DANIELS, Individually, and as Administratrix of the
Estate of Stephanie Nicole Daniels v. FREDERICK HOWARD**

On Emergency Petition of plaintiff in the case of Daniels v. Howard, Superior Court of DeKalb County Georgia, Civil Action 98-4779-7, this Court granted supersedeas and ordered the clerk of the superior court not to pay or disburse funds being held.

The petitioner has now moved this Court to take further action because the contemplated appeal will not be pursued. Accordingly:

1. The withdrawal of the emergency petition is DENIED because it has already been acted on;

2. The order of December 31, 1998 is VACATED;

3. The request for direction to the superior clerk is ~~DISMISSED~~ as it is moot in that the order not to pay or disburse is herein vacated.

SO ORDERED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 27 1998

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

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

Will. L. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 09 1999

The Court of Appeals hereby passes the following order:

**Motion Docket 277. WILLIAM S. SCOTT v. TISH JOHNSON, CLERK,
SUPERIOR COURT OF BARTOW COUNTY.**

In order to support William S. Scott's petition for habeas corpus relief, he filed a petition in the Superior Court of Bartow County for copy of records of the criminal proceeding which resulted in his incarceration. The court denied the petition and dismissed it on January 21, 1999, and Scott filed what appears to be a timely notice of appeal. The appeal has not been docketed in this Court yet.

A hearing has been set for April 28 on Scott's habeas corpus petition in the Superior Court of Tattnall County. For that reason, Scott has filed a request for emergency relief pursuant to Court of Appeals Rule 40(b). He seeks a favorable ruling on his appeal so that he can produce the record he seeks from the trial court, at the habeas court hearing.

Scott's recourse is not for this Court to reverse the trial court's ruling on his request for records before the appeal even reaches this Court or even to expedite the disposition of that appeal when it does become docketed in this Court. Rather, his

recourse is to seek a continuance in the habeas court until such time as his appeal is decided, or to proceed without the records.

Scott's petition to this Court does not fit within the contemplation of the emergency matters for which Rule 40 (b) exists and thus it is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 09 1999**

I certify that the above is a true extract from the minutes of 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. Martin

Clerk.

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

ATLANTA, APR 02 1999

The Court of Appeals hereby passes the following order:

Motions Docket 278. MORGAN v. ROSS

Movant, Angela Ellen Morgan, has filed an Emergency Order in this court concerning a visitation order entered by the Superior Court of Cobb County affecting one of the two minor children of movant and respondent, Mitchell S. Ross. This court having reviewed the motion and all attachments thereto, it is hereby DENIED. The clerk of the Superior Court of Cobb County is instructed to file a copy of this order in the record of this case.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 02 1999**

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

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

Motion Docket 279. MASTERS et al. v. TALBOTT et al.

The Composite State Board of Medical Examiners (Board) has filed an Emergency Motion seeking review of the trial court's order which denied movant's motion to quash plaintiffs' subpoena requiring production of certain of the Board's records from Karen A. Mason, as Executive Director. The subpoena called for the production of documents containing information on licensees and applicants including investigative information. The Board contends that such documents are protected from discovery by subpoena pursuant to OCGA § 43-34-37 (b). By its emergency motion, the Board seeks injunctive relief from the trial court's order requiring production of such documents.

The Board obtained a certificate of immediate review from the trial court, and has filed a petition for interlocutory appeal with this Court seeking review of the same issue discussed herein. Pursuant to OCGA § 5-6-34 (b) the notice of appeal filed upon the grant of an application for interlocutory appeal "shall act as a supersedeas as provided in Code Section 5-6-46 and the procedure thereafter shall be the same as in an appeal from a final

judgment." Therefore, as the applicable Code Section and case law indicate that the Boards' records are not subject to subpoena, the Board is relieved from any duty to comply with such subpoena or other discovery vehicle until such time as this Court rules on movants' application for interlocutory review. The Board's emergency motion is hereby GRANTED.

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.

96-280

Court of Appeals of the State of Georgia

ATLANTA,

MAY 18 1999

The Court of Appeals hereby passes the following order:

Motion Docket Number 280. Miller v. Griffith.

Appellant Judy Miller filed an "Emergency Motion for Stay or Supersedeas Pending Determination on Appeal" in which she prays that the sale of land ordered by the Superior Court of Chatham County as part of a partnership dissolution judgment be stayed or, in the alternative, that this court reduce the amount of the supersedeas bond set by the trial court. Having considered the motion, this Court declines to stay the sale of the property ordered by the trial court, inasmuch as the trial court's grant of a supersedeas bond provides adequate means for appellant to protect her interest pending appeal. Furthermore, based upon the information provided by appellant in support of her motion, this Court finds that the amount of the supersedeas bond set by the trial court is appropriate in view of the interests of all the parties which are to be protected pending a resolution of the appeal on its merits. Accordingly, the "Emergency Motion for Stay or Supersedeas Pending Determination on Appeal" is hereby denied.

The Clerk is directed to send a copy of this Order to the trial court and all parties.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 18 1999

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

MS 281

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

ATLANTA,

MAY 25

The Court of Appeals hereby passes the following order:

A99I0319. SHAH v. GOLDBERG.

Petitioner Shah has moved for an emergency order to preclude mootness pursuant to Court of Appeals Rule 40 (b). Having considered this motion, this Court orders that it is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 25

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

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

Clerk.

Will. L. Martin, III

Court of Appeals of the State of Georgia

ATLANTA, JUN 23 1999

The Court of Appeals hereby passes the following order:

Motion Docket Number 282. BROOKS v. THE STATE.

Dennis Brooks was convicted of simple battery, a misdemeanor, and sentenced to 12 months incarceration. Brooks filed a motion for new trial on March 22, 1999, along with a motion for supersedeas bond. On April 1, 1999, the trial court denied Brooks' motion for bond. The trial court subsequently denied Brooks' motion for new trial, and Brooks filed his notice of appeal on June 11, 1999.

Brooks has filed an emergency motion for bond, arguing that he was entitled to bond as a matter of right to OCGA § 17-6-1 (b) (1) because his conviction was for a misdemeanor offense. However, OCGA § 17-6-1 (g) provides that the granting of an appeal bond to a person convicted of a misdemeanor offense involving an act of family violence "shall be in the discretion of the convicting court." In this case, Brooks was convicted of committing simple battery upon the mother of his children. This constitutes an act of family violence as defined in OCGA § 19-13-1. Accordingly, the granting of an appeal bond was in the discretion of the trial court. Because Brooks has not shown that the trial court abused

that discretion in denying his request for bond, his emergency motion is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 23 1999

I certify that the above is a true extract from the minutes of 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. Martini

Clerk.

✓

Court of Appeals of the State of Georgia

ATLANTA, JUL 23 1999

The Court of Appeals hereby passes the following order:

MOTION DOCKET NUMBER 283. AYCOCK v. WERBIN & TENEBBAUM

Upon consideration of the Motion for Reconsideration and amended Motion for Reconsideration filed in this matter, the same is hereby DENIED. The clerk of this Court is directed to transmit a copy of this order to the clerk of Superior Court of Fulton County, and the clerk of the Superior Court of Fulton County is instructed to file a copy of this order in the trial court's record of this case.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 23 1999

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

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

ATLANTA, JULY 7, 1999

The Court of Appeals hereby passes the following order:

MOTION DOCKET 284. BAKER v. THE STATE.

Jeremiah Baker was convicted on three charges of failing to stop for a stop sign and one charge of speeding. He files this emergency motion contending that the trial court erroneously failed to grant a supersedeas bond. Because Baker was not convicted of any crime delineated or described in OCGA § 17-6-1 (g) (1), which sets forth the circumstances in which a trial court may deny bond pending appeal, it appears he was entitled to bond under OCGA § 17-6-1 (b) (1). The trial court is therefore directed to set a reasonable bond on Baker's behalf, as provided by law.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 7 1999

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

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

Clerk.

Will. L. Martin, III

97-285

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

ATLANTA, AUGUST 27, 1999

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 285. KENNETH G. KNOTT, ET AL. v. SUPERIOR COURT
OF COBB COUNTY, ET AL.**

On August 27, 1999, movants filed a Rule 40(b) motion in the Court of Appeals seeking a Writ of Prohibition. A Writ of Prohibition is an extraordinary remedy and pursuant to Georgia Constitution 1983, Article VI, Section VI, Paragraph III(5) all cases involving extraordinary remedies are in the general appellate jurisdiction of the Supreme Court. Therefore, this Rule 40(b) motion is hereby transferred to the Supreme Court of Georgia.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 27 1999**

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

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

Clerk.

Will. L. Martin, III

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

Judge Eldridge
74 I
YAB
9/10/99

ATLANTA,

The Court of Appeals hereby passes the following order:

Motion Docket 286
IN THE MATTER OF MYRLIN EARLE

Fulton County District Attorney Paul L. Howard, Jr., has filed an Extraordinary Motion for Supersedeas Bond Pending Appeal with this Court on behalf of Myrlin Earle, an Assistant Fulton County District Attorney. Earle was ordered incarcerated pursuant to Judge L. A. McConnell, Jr.'s, order of contempt filed on September 10, 1999, in the Superior Court of Fulton County.

In his motion, the District Attorney argued that under Rule 40 (b), the Court of Appeals should exercise its inherent power and "give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot." The District Attorney has implicitly represented that he will file an appeal in this matter on the underlying substantive issue of contempt in the Extraordinary

Motion herein involved, which was served upon Judge L. A. McConnell
September 10, 1999.

Upon consideration of this matter, the motion is hereby
granted and it is ordered that Earle be released from the custody
of the Sheriff of Fulton County instanter and bond be set in a
reasonable amount until such time as a timely appeal is filed and
resolved by this Court. This order is issued in order to prevent
the contested issue from becoming moot and is not in any way an
indication as to the merits of the underlying order.

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 15, 1999

The Court of Appeals hereby passes the following order:

MD287. FRANKIE D. V. JACOBS v. CHRISTIE L. WASHINGTON.

Mr. Jacobs, pro se, has filed a motion under Court of Appeals Rule 40 (b) asking that this court use its inherent powers to preserve jurisdiction over his appeal from an order denying his motion to set aside a protective order issued under the Georgia Family Violence Act. OCGA § 19-13-4. For the reasons stated below, we must dismiss this motion.

The discretionary appeal procedures, OCGA § 5-6-35 (b)-(e), are applicable to cases involving the Family Violence Act, Schmidt v. Schmidt, 270 Ga. 461 (510 SE2d 810) (1999), and appeals from orders denying motions to set aside under OCGA § 9-11-60 (d) are also subject to those procedures. OCGA § 5-6-35 (8). Therefore, a direct appeal from the order denying the motion to set aside is not authorized because Mr. Jacobs was required to follow the procedures in OCGA § 5-6-35 (b)-(e). The failure to comply with these procedures is a jurisdictional defect requiring dismissal of the appeal. Turner v. Binswanger, 203 Ga. App. 319 (417 SE2d 221) (1992).

Therefore, this court having no jurisdiction over the underlying appeal, the motion under Court of Appeals Rule 40 (b) must be dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 15 1999

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

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

Clerk.

Will. L. Martin, III

93-288

Court of Appeals of the State of Georgia

ATLANTA, October 28, 1999

The Court of Appeals hereby passes the following order:

MD288. HOME DEPOT, USA, INC. v. NAP CHESTERFIELD, L.P. et al.

Appellant filed with this Court a Motion to Expedite Appeal. The Constitution of the State of Georgia, Article VI, Section XI, Paragraph II requires that the appellate courts of this state dispose of every case at the term for which it is docketed for hearing, or the next term. By statute, the appellate courts must expedite civil cases in which the State of Georgia is the plaintiff (OCGA §9-10-1), criminal cases in which the defendant is incarcerated (OCGA §5-6-43(c),) and cases filed under the Parental Notification Act (OCGA §15-11-110 et seq.). By Court policy, the Court expedites cases involving child custody.

The Court recognizes the importance of this case to the parties involved; the Court further recognizes the importance of every case pending before the Court to all parties involved. While the Court will make every effort to dispose of this case as quickly as is reasonably possible, the Court is constrained to DENY the motion to expedite.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 28 1999

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the minutes of the Court of Appeals of Georgia.*

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

Clerk.

Will. Z. Mart...

Court of Appeals of the State of Georgia

ATLANTA, NOV 23 1999

The Court of Appeals hereby passes the following order:

Motion Docket No. 289. MERRITT v. THE STATE.

On November 22, 1999, Hope Merritt filed his Petition for Supersedeas Appeal Bond pursuant to Rule 40 (b), asking this Court to grant him bond pending appeal from his conviction of one count of felony theft by taking. Merritt had a hearing before the trial court on this issue, and on November 10, 1999, the trial court denied his motion for bond pending appeal. On November 19, 1999, Merritt filed a notice of appeal from that order. His motion for new trial is still pending.

This Court exercises its emergency power "sparingly" and only in cases where it "may be necessary to preserve jurisdiction or to prevent the contested issue from becoming moot." Rule 40 (b). Even though his motion for new trial remains pending below, Merritt may preserve his right to directly appeal the order denying appeal bond, see Wade v. State, 218 Ga. App. 377 (1) (461 SE2d 314) (1995), by timely filing a notice of appeal -- which he has done. Thus, Merritt's motion does not present circumstances which demand the exercise of our emergency power. Further, because we expedite

appeals from orders denying appeal bond(s), the issue Merritt raises is receiving the "emergency" treatment it is due.

For these reasons, Merritt's Petition for Supersedeas Appeal Bond is hereby ordered DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 23 1999

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

William Z. Martini

Clerk.

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

ATLANTA,

DEC 14 1999

The Court of Appeals hereby passes the following order:

Motion Docket No. 290 PATEL v. BRYANT ET AL

Upon consideration of Patel's Motion Pursuant to Rule 40 (b),
the same is hereby ordered DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 14 1999

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the minutes of the Court of Appeals of Georgia.*

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

Clerk.

Will Z. Mat...

Court of Appeals of the State of Georgia

ATLANTA,

DEC 17 1999

The Court of Appeals hereby passes the following order:

Motion Docket No. 291 Roberts v. Roberts

Pursuant to Rule 40 (b), Thurman Charles Roberts filed a motion for emergency supersedeas with this Court. Roberts seeks supersedeas from the trial court's order finding him in willful contempt for failure to pay child support and for his repeated refusal to obey court orders. The trial court's order was filed December 17, 1999, and provides that if Roberts does not purge himself of the "Contempt by paying to the Defendant the full amount of the \$50,075.77 on or before" December 27, 1999 the Cobb County Sheriff is directed to arrest him.

Upon a proper motion in the trial court, OCGA § 5-6-13 creates an absolute right to supersedeas immediately upon notice of the party's intention to seek review of the contempt charges. See Calvert Enterprises v. Griffin-Spalding County Hosp. Auth., 197 Ga. App. 727 (399 SE2d 287) (1990). Roberts filed the requisite notice of his intent to appeal. Exhibit "B." Roberts also submitted as Exhibit "C" to his motion in this Court what purports to be a motion for supersedeas in the trial court. There is no evidence, however, that this motion was actually filed or that the trial

court has improperly refused to grant supersedeas. This Court's emergency power is to be exercised sparingly. Rule 40 (b). Emergency motions are not a substitute for proper action in the appropriate forum. Because Roberts has a remedy yet available to him in the trial court, our emergency power is not necessary to preserve jurisdiction or to prevent the contested issue from becoming moot. Accordingly, the emergency motion for supersedeas is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 17 1988

*I certify that the above is a true extract from
the minutes of the 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. Mart, III

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

ATLANTA,

DEC 28 1999

The Court of Appeals hereby passes the following order:

Motion Docket No. 292. ROBERTS v. ROBERTS.

Thurman Charles Roberts' motion to this Court for emergency supersedeas pursuant to Rule 40 (b) "of this trial court's 12/7/99 contempt order and incarceration sanction, and remove the bond condition as in the trial court's 12/20/99 order" is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 28 1999

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the minutes of the Court of Appeals of Georgia.*

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Will Z. Mat...
Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

DEC 30

The Court of Appeals hereby passes the following order:

Motion Docket 293. HAY v. JOINT DEVELOPMENT AUTHORITY OF JASPER COUNTY, MORGAN COUNTY, NEWTON COUNTY AND WALTON COUNTY ET AL.

In this revenue bond validation case, Samuel M. Hay, III filed an emergency motion seeking to stay the trial court's December 23, 1999 order requiring Hay to file a supersedeas bond in the amount of \$35,000.00. Hay's failure to file the bond within ten days of the trial court's order will subject his appeal to dismissal. See OCGA § 50-15-2. Based on Hay's motion and the trial court's order, it appears that the trial court acted within its discretion in requiring the supersedeas bond under OCGA § 50-15-2. Specifically, it appears that the court conducted a show cause hearing on the petition for a supersedeas bond with notice to Hay, that the trial court found that requiring a bond was in the public interest, and that the amount of the bond was reasonable under the circumstances in that it was based on the expected additional interest to be paid as a result of the delay from Hay's appeal. Cf. Haney v. Development Authority of Bremen, 271 Ga. 403, 404 (1999) (\$3 million surety bond reversed where no reason given for amount of bond). Furthermore, Hay has not explained the substantive basis

for his appeal. Id. at 406 (intervenors raised meritorious claims concerning the validation of the revenue bonds).

No abuse of discretion having been shown, Hay's motion to stay the supersedeas bond is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 30

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

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

Clerk.

Gill L. Martin, III

Court of Appeals of the State of Georgia

ATLANTA, APR -7 2000

The Court of Appeals hereby passes the following order:

MOTION DOCKET 294. WILBAR DEVELOPERS, LLC, et al. v. BLAISS PRODUCTIONS, INC., et al.

We have considered this emergency motion for an injunction and find that it does not meet the criteria set out in Court of Appeals Rule 40 (b) for the issuance of such an injunction. It appears from the motion and other documents filed by the appellants that they have an adequate remedy at law, and that an injunction is not necessary to preserve jurisdiction of an appeal or to prevent the contested issues from becoming moot. The emergency motion for an injunction is therefore denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR -7 2000

I certify that the above is a true extract from the minutes of 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. Mant, III
Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN -7 2000

The Court of Appeals hereby passes the following order:

Motion docket 29⁵~~4~~.
IN THE MATTER OF T. KEVIN MOONEY

Albert A. Myers, III has filed an Extraordinary Motion for Supersedeas Bond Pending Appeal with this court on behalf of T. Kevin Mooney, an attorney. Mooney was ordered incarcerated pursuant to Judge Sidney L. Nation's order of contempt filed on June 7, 2000, in the Superior Court of Rockdale County.

Myers has attached to his motion a notice of appeal, indicating that an appeal will be filed on the underlying issue of contempt. He shows this court that Mooney was ordered incarcerated for 24 hours and that supersedeas bond was denied.

Upon consideration of this matter, under the authority of OCGA § 5-6-16, and in order to prevent the issue from becoming moot, the motion is hereby GRANTED. It is ordered that Mooney be released from the custody of the Sheriff of Rockdale County instanter and that bond be set in a reasonable amount until such time as the appeal is resolved by this court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN - 7 2000

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

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

Clerk.

Will. L. Martin, III

Court of Appeals of the State of Georgia

ATLANTA, JUN 21 2000

The Court of Appeals hereby passes the following order:

Motion docket 296, 297

ADAMA MORTGAGE BANKERS, INC. v. THE GEORGIA DEPT. OF BANKING AND FINANCE.

Adama Mortgage Bankers, Inc. has filed a "Motion to Stay Pending Appeal." It seeks an order enjoining the Department of Banking and Finance (the "Department") from revoking its mortgage lending license during the pendency of appeals of the superior court's orders dismissing Adama's petitions for judicial review of two decisions of the department.

We first note the general rule that the filing of a notice of appeal in a civil case acts as a supersedeas upon payment of costs in the trial court.¹ And the effect of a supersedeas is to prevent steps to enforce or carry a judgment into effect. See Walker v. Walker, 239 Ga. 175 (236 SE2d 263) (1977); Int'l Images, Inc. v. Smith, 181 Ga. App. 543, 544 (352 SE2d 846) (1987). But to the extent that the notice of appeal may not have acted as an automatic

¹Unless otherwise notified by the Department, we assume that costs have been paid in the trial court by Adama.

supersedeas in this case, Adama's motion is GRANTED in order to prevent any contested issue from becoming moot. See Court of Appeals Rule 40 (b); OCGA § 9-11-62 (e). Should the Department desire a supersedeas bond, the Department must comply with the provisions of OCGA § 5-6-46 (a) concerning application for such bond in the trial court within 10 days of this order.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 21 2000

I certify that the above is a true extract from the minutes of 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. Z. Martz, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUNE 26, 2000

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET - 298. SEWNATH v. STEELE.

Appellant Marjorie Sewnath filed an Emergency Motion for Relief pursuant to Court of Appeals Rule 40 (b), requesting that this court review the trial court's order requiring Sewnath to post a supersedeas bond, or "alternatively dismiss the case for lack of subject matter jurisdiction." The appeal is not yet docketed, and this Court does not have the benefit of the record or the transcript of the trial below.

Rule 40 (b) provides in pertinent part:

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court.

To the extent Sewnath seeks a resolution on the merits of her substantive appeal, without affording the opposing side an opportunity to respond and brief the issues involved and without allowing this Court the benefit of the record below, her motion is

hereby DISMISSED as it is not an authorized motion under Court of Appeals Rule 40 (b).

To the extent Sewnath seeks review of the trial court's imposition of a supersedeas bond, we find no basis in the limited materials before us on which to find error on the part of the trial court. "Under OCGA § 5-6-46 the trial court has the discretion to fix the amount of the bond when a motion is filed requesting a supersedeas bond." Cloud v. Georgia Cent. Credit Union, 214 Ga. App. 594, 597 (7) (448 SE2d 913) (1994). Without benefit of the record and trial transcript in this case, we cannot determine whether the trial court has abused its discretion. Sewnath's Emergency Motion for Relief is therefore DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 26 2000

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

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hereto affixed the day and year last above written.*

Clerk.

John Z. Martin, III

Court of Appeals of the State of Georgia

ATLANTA, AUG 03 2000

The Court of Appeals hereby passes the following order:

**MOTIONS DOCKET - 299. DAVID ROBERSON v. ADMINISTRATOR OF THE
ESTATE OF JULIA M. SHIGGS.**

David Roberson has filed an emergency motion under Court of Appeals Rule 40 (b) seeking a Supersedeas Bond Pending Appeal of the order of the Probate Court of Chatham County, dated July 21, 2000, directing that he be incarcerated because he refused to pay into the registry of that court \$835,000, the amount deemed necessary by the Court to purge his contempt. The circumstances leading to this contempt are thoroughly discussed in In Re Woodall, 241 Ga. App. 196 (526 SE2d 96) (1999).

Although typically a person incarcerated for contempt would be entitled to relief under OCGA § 5-6-16 pending resolution of the appeal on the contempt finding, Roberson is not in the typical position. On January 21, 1997, the Probate Court found Roberson in willful contempt of the Probate Court's order of November 8, 1996, to pay into the court's registry his share of the money that the probate court found had been improperly removed from the estate of Julia M. Shiggs, and directed that he be confined in jail until he purged himself of the contempt by paying the amount ordered into the registry. Although Roberson appealed that order, our Supreme Court in Gnann v. Woodall, 270 Ga. 516 (511 SE2d 188) (1999), and

this court in In Re Woodall, supra, 241 Ga. App. 196, rejected Roberson's contentions, and this court found "the evidence was sufficient to support the trial court's finding that Roberson acted in wilful contempt of its November 8 order." Id. at 202.

Further, the matters submitted by Roberson in support of his motion show that the probate court did not order that Roberson be confined until after the remittitur was received from this court and that the probate court's confinement order was based upon receipt of the remittitur. Even though the probate court allowed Roberson to remain on bond until an evidentiary hearing was conducted and ultimately reduced the amount Roberson was required to pay to purge himself of the contempt, we find that Roberson's confinement is based on the contempt order of January 21, 1997, which has been affirmed by this court. Therefore, the order of July 21, 2000, is not a new finding of contempt which would entitle Roberson to bonding pending appellate review, but a continuation of the probate court's earlier order.

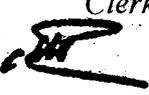
Under these circumstances, OCGA § 5-6-16 is not applicable to this case, and Roberson's motion under Rule 40 (b), therefore, is denied.

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

AUG 03 2000

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

William Z. Martini  Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

OCT -2 2000

The Court of Appeals hereby passes the following order:

MD301. GENINE MARIA URQUHART v. THE STATE.

Pursuant to Court of Appeals Rule 40 (b), Genine Maria Urquhart has filed an emergency motion asking this Court to vacate and reverse the Order for Mental Evaluation and Committal entered by the Superior Court of Columbia County on September 12, 2000, so as to prevent a contested issue in this case from becoming moot. The motion is hereby GRANTED for the following reasons.

Urquhart was indicted for theft by taking and was released on bond. Prior to trial, she filed a notice of intent to present a defense of insanity at the time of the offense. A hearing was scheduled to consider the State's request under OCGA § 17-7-130.1 for an order requiring Urquhart to undergo a psychiatric evaluation. At this hearing held on September 8, 2000, the court received two affidavits indicating that in 1993 and 1995 Urquhart had been hospitalized for mental illness, one of which arose from an attempted suicide. The court ordered that a mental evaluation be completed on Urquhart.

But over Urquhart's vigorous objection, the court further ordered (pursuant to the order prepared by the State) that Urquhart be **confined**, pending the mental evaluation, in the Columbia County Detention Center, and that Urquhart be **committed** to the Georgia Regional Hospital or the Central State Hospital once she could be admitted. When presented with the fact that Urquhart was out on bond, the court without explanation announced orally it was surrendering the bond. When Urquhart pointed out she had done nothing to violate the bond, the court stated it was not going to debate the matter with counsel. When Urquhart offered to voluntarily submit to an evaluation, the court stated it was "not going to listen to that." When Urquhart pointed out that the order prepared by the State found that she was a danger to the community, and that there had been absolutely no evidence of such, the court stated that it would amend the order and find that she was a danger to herself.

The court acted completely without authority in ordering the confinement and the commitment. No statute, regulation, or case law allows a court to so summarily order the confinement and commitment of an individual who has chosen to exercise her right to present a defense of insanity. The fundamental concepts of due process and the presumption of innocence are clearly violated by such actions.

It is hereby ORDERED that the Order for Mental Evaluation and Committal, signed September 8, 2000 and filed in Columbia County

Superior Court on September 12, 2000, is VACATED AND REVERSED. It is further ORDERED that Urquhart be immediately released, instanter, from confinement, commitment, or any other detention.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT - 2 2000

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Clerk.

Will. L. Martin, III

Court of Appeals of the State of Georgia

ATLANTA,

OCT -2 2000

The Court of Appeals hereby passes the following order:

MD301. GENINE MARIA URQUHART v. THE STATE.

Pursuant to Court of Appeals Rule 40 (b), Genine Maria Urquhart has filed an emergency motion asking this Court to vacate and reverse the Order for Mental Evaluation and Committal entered by the Superior Court of Columbia County on September 12, 2000, so as to prevent a contested issue in this case from becoming moot. The motion is hereby GRANTED for the following reasons.

Urquhart was indicted for theft by taking and was released on bond. Prior to trial, she filed a notice of intent to present a defense of insanity at the time of the offense. A hearing was scheduled to consider the State's request under OCGA § 17-7-130.1 for an order requiring Urquhart to undergo a psychiatric evaluation. At this hearing held on September 8, 2000, the court received two affidavits indicating that in 1993 and 1995 Urquhart had been hospitalized for mental illness, one of which arose from an attempted suicide. The court ordered that a mental evaluation be completed on Urquhart.

But over Urquhart's vigorous objection, the court further ordered (pursuant to the order prepared by the State) that Urquhart be **confined**, pending the mental evaluation, in the Columbia County Detention Center, and that Urquhart be **committed** to the Georgia Regional Hospital or the Central State Hospital once she could be admitted. When presented with the fact that Urquhart was out on bond, the court without explanation announced orally it was surrendering the bond. When Urquhart pointed out she had done nothing to violate the bond, the court stated it was not going to debate the matter with counsel. When Urquhart offered to voluntarily submit to an evaluation, the court stated it was "not going to listen to that." When Urquhart pointed out that the order prepared by the State found that she was a danger to the community, and that there had been absolutely no evidence of such, the court stated that it would amend the order and find that she was a danger to herself.

The court acted completely without authority in ordering the confinement and the commitment. No statute, regulation, or case law allows a court to so summarily order the confinement and commitment of an individual who has chosen to exercise her right to present a defense of insanity. The fundamental concepts of due process and the presumption of innocence are clearly violated by such actions.

It is hereby ORDERED that the Order for Mental Evaluation and Committal, signed September 8, 2000 and filed in Columbia County

Superior Court on September 12, 2000, is VACATED AND REVERSED. It is further ORDERED that Urquhart be immediately released, instanter, from confinement, commitment, or any other detention.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT - 2 2000

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

Clerk.

W. Z. Martin, III

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

ATLANTA, OCT 18 2000

The Court of Appeals hereby passes the following order:

MD 302. THE STATE v. REESE.

The above-named defendant has filed a motion "FOR EMERGENCY ORDER TO STAY PROCEEDINGS IN THE CITY COURT OF ATLANTA." As the underlying application for appeal challenging the constitutionality of the City Court of Atlanta has been docketed in the Supreme Court under the authority of the Ga. Const. of 1983, Art. VI, Sec. VI, Par. II, it appears that this court is without subject matter jurisdiction to rule upon the motion. As the defendant's application is docketed in the Supreme Court of Georgia, Application No. S01I0157, it is hereby ORDERED that the related motion is TRANSFERRED to that court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 18 2000

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the minutes of the Court of Appeals of Georgia.*

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

Will. Z. Mart...

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, OCT 18 2000

The Court of Appeals hereby passes the following order:

MD 303. THE STATE v. MCDOWELL.

The above-named defendant has filed a motion "FOR EMERGENCY ORDER TO STAY PROCEEDINGS IN THE CITY COURT OF ATLANTA." As the underlying application for appeal challenging the constitutionality of the City Court of Atlanta has been docketed in the Supreme Court under the authority of the Ga. Const. of 1983, Art. VI, Sec. VI, Par. II, it appears that this court is without subject matter jurisdiction to rule upon the motion. As the defendant's application is docketed in the Supreme Court of Georgia, Application No. S01I0130, it is hereby ORDERED that the related motion is TRANSFERRED to that court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 18 2000

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hereto affixed the day and year last above written.*

Will: L. Marti Clerk.

Court of Appeals of the State of Georgia

ATLANTA, October 31, 2000

The Court of Appeals hereby passes the following order:

MOTION DOCKET 304. LOUISE M. COOK, FRANK COOK, CAROLYN COOK, and ROBERT COOK v. FARMERS BANCSHARES, INC., W. E. DOWLING, KENNETH S. DOWLING, DAVID BILLING, WILBUR HOLLAND, EDWARD E. MORRIS, and CHESTER L. TUCKER.

The plaintiff-applicants are minority shareholders in defendant Farmers Bancshares. The Cooks filed a verified complaint seeking to enjoin Farmers Bancshares and the remaining defendant majority shareholders (officers and directors) of Farmers Bancshares, from voting on a reorganization plan involving a reverse stock split, which plan allegedly is unfair to minority shareholders while preferential to the defendant majority shareholders. The trial court declined to stay a vote on the plan and the Cooks subsequently sought an injunction to stay the plan's requirement that shareholders make certain elections under the plan. After an evidentiary hearing on October 18, 2000, the trial court declined to grant interlocutory injunctive relief, and instead, on October 26, 2000, granted defendant's motion to dismiss which had been filed the day of the hearing. A notice of appeal was filed on October 26, 2000, and by order dated October 30, 2000,

the Georgia Supreme Court transferred the instant "Motion for Injunction Pending Appeal" to the Court of Appeals.

A shareholder of a close corporation can maintain a direct action if he alleges a special injury, i.e., an injury which is separate and distinct from that suffered by other shareholders, and the allegation that defendants breached their fiduciary duty to minority shareholders by imposing onerous conditions on minority shareholders which do not affect the majority shareholders is prima facie sufficient to meet this test. Grace Bros. v. Farley, 264 Ga. 817, 819 (2) (450 SE2d 814) (1995). But claims that a fiduciary acted unfairly cannot be used to litigate valuation issues appropriately disposed of in appraisal proceedings, Grace Bros., supra, 264 Ga. at 820 (3), fn. 11. Where applicable, the dissenters' rights statute, OCGA § 14-2-1302 (b), provides appraisal as the exclusive remedy. Grace Bros., supra, 264 Ga. 820 (3). It is hereby ORDERED that the Motion for Injunction Pending Appeal be DENIED. OCGA § 9-11-62 (e).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 31 2000

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

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

ATLANTA, NOV 7 2000

The Court of Appeals hereby passes the following order:

MOTION DOCKET 305. PETITION OF SCOTT AND TRACI EDMONDSON

On November 1, 2000, the Court issued an order denying the relief sought by the movant under Rule 40(b) of this Court. On November 2, 2000, the Court received a response to the Rule 40(b) Motion for Emergency Supersedeas and also the Motion for Penalty and Sanction filed by the respondent.

After consideration of the response and the Motion for Penalty and Sanction, said motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 7 2000

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the minutes of the Court of Appeals of Georgia.*

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

Clerk.

Will. Z. Martin

Court of Appeals of the State of Georgia

ATLANTA, NOV 22 2006

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET - 306. LONGINO v. PETEREIT.

John T. Longino filed an emergency motion for supersedeas of the trial court's order granting an injunction. He has filed a notice of appeal of the trial court's order, but this does not serve as a supersedeas in an injunction case. Citizens to Save Paulding County v. City of Atlanta, 236 Ga. 125 (223 SE2d 101) (1976). In order to prevent his appeal from becoming moot, it was incumbent upon Longino to seek a supersedeas from the trial court. Jackson v. Bibb County School Dist., 271 Ga. 18, 19 (515 SE2d 151) (1999). As Longino has failed to exhaust this available remedy, his motion for emergency supersedeas in this Court is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 22 2006

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

Court of Appeals of the State of Georgia

ATLANTA, NOV 29 2000

The Court of Appeals hereby passes the following order:

MOTION DOCKET 307. THE SERVICE MASTER TIRE COMPANY ET AL v. MARTIN

The ServiceMaster Tire Company, L. P. and its successor, The ServiceMaster Company, petitioned this Court for an emergency reduction in a supersedeas bond pending the outcome of an appeal from a judgment in favor of Ray D. Martin. We agree that this issue will effectively become moot upon resolution of the underlying appeal. Therefore, pursuant to Rule 40 (b), we exercise our emergency power and order the trial court to withdraw the original supersedeas bond and enter a new bond in the amount stated below.

Following a suit on the issue of damages only, the jury awarded Martin \$814,584.79 in compensatory damages and \$135,000,000 in punitive damages. While ServiceMaster's motion for new trial was pending, the trial court granted Martin's request for a supersedeas bond of \$168,000,000. ServiceMaster filed this bond on

December 1, 1999. Service Master concedes this amount represented the full amount of the judgment plus two year's future interest. Six months later, the trial court entered an order pursuant to OCGA § 51-12-12 which granted ServiceMaster's motion for new trial in the event that Martin did not accept the court's proposed remittitur of damages. On May 23, 2000, Martin filed an "Election of Remittitur," accepting the trial court's proposal. On June 1, 2000, the trial court entered final judgment for Martin, with remitted compensatory damages of \$461,440 and remitted punitive damages of \$45,000,000. On that same date, ServiceMaster timely filed its notice of appeal from this order. Martin cross-appealed, challenging the remittitur. On June 20, 2000, ServiceMaster asked that the original bond be withdrawn and replaced with a reduced bond reflecting the remittitur. On October 13, 2000, the trial court denied the request without explanation and this petition followed. Martin has filed no response with this Court.

As a threshold matter, the trial court retained jurisdiction to modify the amount of the supersedeas bond. As the Georgia Supreme Court has explained:

[W]hile a trial court is without jurisdiction to modify or enforce a judgment during the period of supersedeas, it has jurisdiction to consider other matters in the case and even to conduct a trial, subject to the peril that a decision which conflicts with that of the appellate court will be made nugatory.

(Emphasis added.) Fairburn Banking Co. v. Gafford, 263 Ga. 792, 794 (439 S.E.2d 482) (1994). ServiceMaster is not seeking to change the judgment, but pursuing "supersedeas relief, a subject concerning which the trial court had not lost jurisdiction." Bank South, N. A. v. Roswell Jeep Eagle, Inc., 200 Ga. App. 489 (1) (408 SE2d 503) (1991).

OCGA § 5-6-46 (a) provides that an appellee shall be entitled to the posting of a supersedeas bond upon motion. The purpose of the bond is to protect a money judgment "from non-satisfaction in the event appellant has insufficient assets to satisfy the judgment when the judgment is affirmed on appeal." Bank South, N. A. v. Roswell Jeep Eagle, 200 Ga. App. at 489 (1). The amount of the bond is left to the trial court's discretion and will not be disturbed by this Court absent a showing of abuse. Cloud v. Georgia Central Credit Union, 214 Ga. App. 594, 597-598 (7) (448 SE2d 913) (1994). In setting the amount,

the trial court shall require that supersedeas bond be given with such surety and in such amount as the court may require, conditioned for the satisfaction of the judgment in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or is found to be frivolous, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after

notice and hearing and for good cause shown fixes a different amount or orders security other than the bond.

OCGA § 5-6-46 (a).

Upon reviewing the record in this case, we saw no financial justification or other "good cause" for posting a bond which exceeds by over \$100,000,000 the amount necessary to cover the remitted judgment in full, together with costs, interest, and damages for delay. We are mindful that Martin is challenging in his cross-appeal the remittitur and is seeking the original amount of damages. However, under existing precedent, "Georgia retains the general rule at common law, that a plaintiff cannot accept a remittitur and then appeal the entry of the lesser judgment." Interagency v. Danco Financial Corp., 203 Ga. App. 418, 429-430 (417 SE2d 46) (1992), citing Sparks v. Aetna Ins. Co., 62 Ga. 198 (1879). Although it is possible that this Court may revisit this rule on appeal, it is unreasonable to assume, for the purposes of setting the amount of supersedeas bond, that it would reverse long-standing precedent originally set by the Georgia Supreme Court. Consequently, we direct the trial court to enter an order withdrawing the original bond and setting a new bond in an amount, to be determined by the trial court, which will protect the remitted judgment, including any interest, costs, and damages for delay.

ServiceMaster also argues that OCGA § 5-6-46 (e) limits the "supersedeas bond for the punitive damages portion of the judgment to \$25,000,000." This subsection became effective on March 30, 2000, two months before the judgment appealed was filed but five months after the original judgment was entered. There are no cases construing this Code section and we have found no Georgia precedent which states whether supersedeas rules are substantive or procedural in nature and, therefore, amenable to retroactive application. Because the law on this point has not been settled by a panel of this Court, we decline to exercise our emergency power to further reduce the supersedeas bond on this basis.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 29 2000

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

DEC - 8 2009

ATLANTA,

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 308. KEVIN A. STAGL v. ASSURANCE COMPANY OF AMERICA

Kevin Stagl has filed an emergency motion under Court of Appeals Rule 40 (b) to recuse the trial judge from further proceedings in this case due to various discovery orders which the court entered adverse to Stagl. Because it does not appear from the record that Stagl has presented legally sufficient grounds for recusal of the trial judge, or that the court erred in denying these motions, or that the issues sought to be raised by Stagl at this juncture could not be raised on direct appeal of a final judgment, the motion is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC - 8 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. Z. Mart Clerk.

Court of Appeals of the State of Georgia

ATLANTA, DEC 18 2000

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 309. ROBERT L. MERIWETHER v. THE STATE.

Meriwether was convicted of numerous criminal offenses in the Superior Court of Meriwether County. He has filed a notice of appeal in the superior court. The appeal has not yet been docketed. Meriwether has now filed an "emergency motion for relief." In the motion, he contends that the superior court erred in denying his motion for new trial. He asks this court to reverse the order of the superior court denying his motion for new trial. Because it does not appear that grant of the emergency motion is "necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot," the motion is denied. See Court of Appeals Rule 40 (b).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 18 2000

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

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

JAN 11 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET 310. TRAINER v. STILLLS.

Steven Brian Trainer has filed a motion in this court, pursuant to Court of Appeals Rule 40 (b), for a Stay of Proceedings in the Superior Court of Fulton County in a case styled IN RE: Petition of Terry K. Stills et al. for the Adoption of Brian Stills, a minor child, Adoption File No. 2000-CV-25799, and for an order to Expedite Appeals Process and Procedures in the Juvenile Court of Houston County, in the case of In Re: Brian Alexander Stills, a child, Case Number 0762000J1717. Upon consideration, we find that this Court is without sufficient information to act on the Motion for Stay of Proceedings in the Superior Court of Fulton County and hereby order Steven Trainer to provide us the following additional information within 10 days of the issuance of this order:

1) Whether the Superior Court of Fulton County, Adoption File No. 2000-CV-25799, has been properly notified, in writing, that a

notice of appeal has been filed from the order terminating Trainer's parental rights;

2) Whether a proper motion to stay the adoption proceedings in the Superior Court of Fulton County, Adoption File No. 2000-CV-25799, during pendency of the appeal has been made in that court, and if so, whether a ruling has been made on that motion;

3) Whether a hearing scheduled for November 13, 2000 in the Superior Court of Fulton County, Adoption File No. 2000-CV-25799, was held, and if so, whether any orders have been issued following that hearing.

Further, we order the Motion to Expedite the Appeal Process and Procedures in the Juvenile Court of Houston County be denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 11 2001

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

Clerk.

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

ATLANTA, MAR 7 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 310. TRAINER v. STILLS.

Appellees have filed a motion requesting that we dismiss or deny any remaining issues raised by appellant Steven Trainer in his Emergency Motion previously filed in this Court. Having considered said motion, we hereby deny Trainer's request to stay the proceedings in the case styled IN RE: Petition of Terry K. Stills, Fulton Superior Court, Civil Action File Number 2000 CV 25799.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 7 2001

*I certify that the above is a true extract from
the minutes of the 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 Z. Mart...

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

ATLANTA,

JAN 31 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 311. KEVIN A. STAGL v. ASSURANCE COMPANY OF AMERICA

Kevin Stagl has filed a second emergency motion under Court of Appeals Rule 40 (b) to recuse the trial judge from further proceedings in this case due to various orders which the court entered adverse to Stagl. Because it does not appear from the record that Stagl has presented legally sufficient grounds for recusal of the trial judge, or that the court erred in denying these motions, or that the issues sought to be raised by Stagl at this juncture could not be raised by a properly and timely filed application for interlocutory appeal or on direct appeal of a final judgment, the motion is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 31 2001

*I certify that the above is a true extract from
the minutes of the 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, MAR 29 2001

The Court of Appeals hereby passes the following order:

Mot. Doc. 312. In Re J. S. J., a child.

The father of J. S. J. has filed a notice of appeal from a DeKalb County Juvenile Court order of March 2, 2001 placing the child in the temporary custody of the DeKalb County Department of Family and Children Services. The appeal has not been docketed in this court because the record of proceedings below has not been received from the Clerk of the trial court. The appellant father has moved this court to issue an emergency supersedeas, or, in the alternative, to expedite the appeal.

This court may issue emergency supersedeas orders only as may be necessary to preserve appellate jurisdiction or to prevent the contested issues from becoming moot. Court of Appeals Rule 40 (b). In this case, the appellant has made no showing that an emergency order is needed to preserve our jurisdiction or to prevent the issues on appeal from becoming moot. Accordingly, the motion for an emergency supersedeas is denied.

We agree with the appellant, however, that this matter, like all child custody matters, should be resolved expeditiously.

Except as set out below regarding the preparation of the record and transcript, no special order from this court is necessary to accomplish expeditious review in this case. The Clerk of the trial court is directed to immediately prepare and transmit the record, including the transcript of the hearing or hearings below, to the Clerk of this court. Once the case is docketed in this court, it shall be resolved expeditiously.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 29 2001

*I certify that the above is a true extract from
the minutes of 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. [Signature]

Clerk.

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

ATLANTA,

APR 3 - 2001

The Court of Appeals hereby passes the following order:

Motions Docket No. 313. MORTON v. MORTON

Movant, Angela Morton, has filed "Appellant's Emergency Motion and Interlocutory Appeal Under Court of Appeals Rules 30 and 40B," based on the ruling of DeKalb Superior Court on March 30, 2001.

Therein the court issued its order, which provided, inter alia, that movant had filed a petition to modify visitation of the defendant father with their child, 11-year-old, Bronson. Neither movant's complaint, nor respondent's answer and counterclaim is a part of the record before us. A complicated history of the litigation between the parties, concluding in an order of the Florida court dated March 8, 2001, reinstating visitation rights to respondent is outlined in the court's order. The court recognized the Florida order and that it had been properly domesticated. The court indicated that it would enforce the Florida court's order in its ruling, which would be memorialized in a separate order, no copy of which is contained in the record. The trial court stayed

the pending Georgia action while it inquired of the Florida court as to the action there pending, and until it could determine the threshold issue of its jurisdiction.

Movant has failed to provide copies of all materials from the record, pursuant to Rule 30 (c), and has failed to provide a certification from the trial court for immediate review, pursuant to OCGA § 5-6-34 (b) and must be dismissed as an interlocutory appeal under Rule 30 of the Rules of the Court of Appeals.

The movant has failed to demonstrate in her petition and attachments, any action by the trial court which would justify the grant of her prayers for an emergency order under Rule 40 (b) of the Rules of the Court of Appeals, and her petition is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 3 - 2001

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

Clerk.

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

ATLANTA, MAY - 5

The Court of Appeals hereby passes the following order:

Mot. Doc. 314. In Re J.S.J., a child.

The father of J.S.J. has filed an emergency motion, dated May 4, 2001, seeking to expedite this appeal in three particulars. Petitioner has not shown that the requested action is necessary to preserve the jurisdiction of an appeal “or to prevent the contested issue from becoming moot,” as required by Court of Appeals Rule 40 (b), and as explained in a prior order on a previous emergency motion, dated March 29, 2001. The motion is therefore denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY - 5

*I certify that the above is a true extract from
the minutes of 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. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN 12 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET 315. PEGG v. THE STATE

Michael Goodwin Pegg was convicted of driving under the influence, and the trial court sentenced him to 30 days in jail. Pegg's trial attorney sought a supersedeas bond pending appeal, which the trial court denied. Pegg then retained William Head, who filed an emergency motion requesting an "order compelling the State Court of Fulton [County] to grant supersedeas bond" pending Pegg's appeal.

OCGA § 17-6-1 (b) (1) provides, in pertinent part, "[e]xcept as provided in subsection (g) of this Code section, at no time, either before a court of inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal is pending shall any person charged with a misdemeanor be refused bail." Subsection (g) provides the following exception: "The granting of an appeal bond to a person who has been convicted of . . . any offense set forth in Code Section 40-6-391 [driving under the influence] shall be in the discretion of the convicting court." In determining whether to grant an appeal bond, the trial court must consider:

- 1) whether there is a substantial risk the defendant will flee;
- 2) whether there is a substantial risk the defendant will pose a danger to others in the community;
- 3) whether there is substantial risk the defendant will intimidate witnesses or otherwise interfere with the administration of justice; and
- 4) whether it appears the appeal is frivolous.¹

¹ *Knapp v. State*, 223 Ga. App. 267, 268-269 (477 SE2d 621) (1996).

Pegg was convicted of driving under the influence. Accordingly, the trial court had discretion to deny his motion for supersedeas bond.² “An appellate court will not question the trial court’s discretion unless it has been flagrantly abused.”³ During the hearing on Pegg’s motion for supersedeas bond, the State pointed out that Pegg had at least 17 traffic violations, including at least one prior DUI. Based upon Pegg’s “extensive traffic record,” the trial court concluded that he was a danger to society and denied his motion. As this is a proper basis for denying bond, we cannot say that the trial court abused its discretion.⁴

Court of Appeals of the State of Georgia
Clerk’s Office, Atlanta JUN 12 2001

*I certify that the above is a true extract from
the minutes of 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. Martin, Clerk.

² See *id.*

³ *Brooks v. State*, 232 Ga. App. 115, 120 (19) (501 SE2d 286) (1998).

⁴ See *Abernathy v. State*, 245 Ga. App. 857, 858 (1) (539 SE2d 203) (2000).

Court of Appeals of the State of Georgia

ATLANTA, July 2, 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET 316, 317. STILLS et al. v. JOHNSON and visa versa.

These companion emergency motions concern a continuing controversy over the custody of a minor child, B.T. For the past two years, the child's paternal grandmother, Gertrude Johnson, has been his physical custodian¹ pursuant to orders issued in a custody action pending in the Superior Court of Houston County.² That custody action is still pending. In a second action, the Juvenile Court of Houston County terminated the parental rights of the child's biological father, Steven Trainer.³ That decision is on appeal to this Court. In a third action, the Stills petitioned the Superior Court of Fulton County to adopt the child.⁴ On March 28, 2001, the Fulton

¹ See OCGA § 19-9-22 (3) (defining "physical custodian"). See also *Stills v. Johnson*, 272 Ga. 645, 649 (2) (533 SE2d 695) (2000) (ruling that neither party was a "legal custodian").

² See *Trainer v. Stills*, Civ. No. 97V60169-L (Superior Court of Houston County, June 21, 1999, Aug. 1, 2000) (orders granting temporary custody of child to Johnson).

³ See *In the Interest of B.A.S.*, No. 076000J1717 (Juvenile Court of Houston County, Sept. 25, 2000) (order terminating parental rights).

⁴ *In Re: Petition of Terry K. Stills*, Adoption file No. 2000-25799.

County court entered a visitation order which, among other things, permitted the Stills "to visit with the child in Georgia for six (6) weeks during his summer vacation, beginning at noon on June 21, 2001."⁵ On June 19, 2001, the Fulton County court granted the petition of Terry K. Stills and Christal J. Stills to adopt the child.⁶ In the adoption order, the court stated that the child's "best interests are served by the adoption of him by and immediate transfer of his custody to the [Stills]."⁷ Accordingly, the court ordered that the Stills "are authorized to pick up Brian and his possessions from Ms. Johnson's home at noon on June 23, 2001."⁸

On June 21, 2001, Johnson, an intervener in the Stills' adoption action, filed a Notice of Appeal of the Court's June 19th order. Johnson filed the instant emergency motion (Motion Docket 317), requesting the Court to grant supersedeas while her appeal is pending. The Stills filed their own motion (Motion Docket 316), opposing the grant of supersedeas. In addition, the Stills recently filed a separate response to Johnson's motion asserting that, pursuant to a June 27, 2001 order of the Superior Court of New Jersey, they have taken the child to Georgia. It appears that the New

⁵ Id. (Superior Court of Fulton County, March 28, 2001) (visitation order).

⁶ Id. (Superior Court of Fulton County, June 19, 2001) (order granting adoption petition).

⁷ Id. at 8.

⁸ Id. at 9.

Jersey Superior Court authorized such action based the Fulton County court's March 28th visitation order permitting six weeks visitation during the summer. Upon carefully considering the circumstances, and for reasons which follow, the Court grants Johnson's motion for supersedeas and denies the Stills' motion.

As a general rule, the filing of a notice of appeal in civil cases serves as supersedeas upon payment of all costs by the appellant.⁹ In custody cases such as this, trial courts are permitted to modify the supersedeas by including a special provision in the final custody order "that the custody award is effective as of the date of the judgment to protect the best interest and welfare of the child. Subject to review by this court, this type of order would effectively modify the automatic supersedeas as it regards custody and would be enforceable through contempt proceedings in the trial court."¹⁰ Although the superior court had authority to modify the supersedeas, as an appellate court, we have the "power to grant supersedeas in such manner as [we] may determine to meet the ends of justice."¹¹

In this troublesome case, justice is best served by maintaining the status quo. Significantly, our Legislature has recognized that multi-jurisdictional custody battles such as this "have in the past resulted in the shifting of children from county to

⁹ See OCGA § 5-6-46 (a).

¹⁰ *Walker v. Walker*, 239 Ga. 175, 176 (236 SE2d 263) (1977).

¹¹ OCGA § 5-6-46 (c).

county with harmful effects on their well-being."¹² Thus, our focus must be at all times on the "best interests, welfare and happiness" of the children.¹³ In this case, we decline to speculate concerning the ultimate outcome of the three separate "custody" actions involving the child. We cannot ignore, however, the *possibility* that either of the Houston County actions or the Fulton County action could eventually result in a decree which requires custody to be placed with Johnson. Although the child is now in Georgia for scheduled visitation, if "permanent" custody of the child is now transferred to the Stills pursuant to the Fulton County adoption order, such future decree would, as recognized by the Legislature, result in the child being shifted "from county to county with harmful effects on [his] well-being."¹⁴ Likewise, since the child has been in Johnson's custody for the last two years, we find that it is not in his best interests to abruptly change custody at this time. Considering these circumstances, we believe that maintaining the status quo will mitigate, to the extent possible, the harm that these rather bitter proceedings are having on the child.

Accordingly, Johnson's motion filed under Motion Docket 317 is hereby granted, and the Stills' motion filed under Motion Docket 316 is hereby denied.

¹² OCGA § 19-9-21 (a) (1).

¹³ See *Stills*, 272 Ga. at 650.

¹⁴ OCGA § 19-9-21 (a) (1).

Finally, we note that our grant of supersedeas merely precludes enforcement of the Fulton County Superior Court's June 19, 2001 order. The parties are hereby ordered to comply with the trial court's March 28, 2001 visitation order and with such further visitation orders as the trial court may impose while the appeal is pending.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL - 2 2001

*I certify that the above is a true extract from
the minutes of 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. Z. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN 27 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET 318. SMITH v. COX, et al.

It appears that on January 19, 2001, the State issued a final decision revoking Donna Marie Smith's nursing license. At some point, Smith filed an action in Fulton County Superior Court, seeking to enjoin the State from removing her license. The trial court dismissed that action, and Smith filed a Notice of Appeal on March 5, 2001. The appeal has not yet been docketed in this Court.

On June 25, 2001, Smith filed a Motion for Emergency Order under Court of Appeals Rule 40 (b), asking this Court "to restrain and enjoin [the State] from enforcing the . . . administrative 'Final Decision' revoking [her] Georgia Board of Nursing License." According to Smith, she filed this Motion to preserve the jurisdiction of the appeal and to prevent contested issues from becoming moot.

Under Court of Appeals Rule 40 (b),

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court.

As noted above, the appeal has not yet been docketed, and we have no record before us. Our review is limited to Smith's two-page motion, which lacks any argument supporting her bald assertion that emergency relief is necessary.

Smith's extremely limited submission provides no basis for concluding that the requested relief is required to preserve appellate jurisdiction or prevent contested issues from becoming moot. Emergency relief under Rule 40 (b) is not appropriate in this case. Accordingly, Smith's motion is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 27 2001

I certify that the above is a true extract from the minutes of 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. Martin, Clerk.

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

JME

ATLANTA,

PROPOSED ORDER (A01A9999.99) July 31, 2001	
AGREE	DISAGREE
<i>[Signature]</i>	

The Court of Appeals hereby passes the following order:

MOTION DOCKET 319. ZBOSNIK, et al. v. PARTRIDGE GREENE, INC.

Appellants' motion to reinstate supersedeas having been considered by this Court, the same is hereby 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.*

....., Clerk.

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

ATLANTA, AUG - 8 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET 319. ZBOSNIK, et al. v. PARTRIDGE GREENE, INC.

Appellants' motion to reinstate supersedeas having been considered by this Court, the same is hereby denied.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG - 8 2001*

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

GINA -
ORIGINAL filed -

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

JME

ATLANTA,

PROPOSED ORDER (A00A0001.99) July 3, 2001	
AGREE	DISAGREE

The Court of Appeals hereby passes the following order:

MOTION DOCKET 319. ZBOSNIK, et al. v. PARTRIDGE GREENE, INC.

This case involves constitutional issues of free speech under the First Amendment of the United States Constitution and under Art. I, Sec. I, Para V. of the Georgia Constitution as well as equitable relief in the form of an injunction which affects the underlying constitutional free speech rights of appellants. Therefore, this appeal is hereby transferred to the Supreme Court.

This Court hereby stays the order of June 21, 2001, granting an interlocutory injunction to appellee Partridge Greene until this case can be considered by the appropriate court on appeal.

*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, July 3, 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET 319. ZBOSNIK, et al. v. PARTRIDGE GREENE, INC.

This case involves constitutional issues of free speech under the First Amendment of the United States Constitution and under Art. I, Sec. I, Para V. of the Georgia Constitution as well as equitable relief in the form of an injunction which affects the underlying constitutional free speech rights of appellants. Therefore, this appeal is hereby transferred to the Supreme Court.

This Court hereby stays the order of June 21, 2001, granting an interlocutory injunction to appellee Partridge Greene until this case can be considered by the appropriate court on appeal.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL - 3 2001*

*I certify that the above is a true extract from
the minutes of 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. Z. Martin, Jr.
....., Clerk.

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

JME

ATLANTA,

PROPOSED ORDER (MOTION DOCKET 320) July 13, 2001	
AGREE	DISAGREE

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 320. HALL v. HALL.

This case involves a petition for change of custody filed by the appellee/plaintiff Rhonda K. Hall. Appellant/defendant Joey Kyth Hall has filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting that this Court allow him to appeal the "SECOND TEMPORARY ORDER" issued by the trial court on June 29, 2001, which, among other things, changed physical custody of the minor child from the appellant/defendant to the appellee/plaintiff. Appellant/defendant further requests that this Court issue an emergency stay of such temporary order. After reviewing the emergency motion, this Court finds that the appellant/defendant has failed to demonstrate in his petition and attachments that an emergency exists which would justify the grant of his prayers for an emergency order under Rule 40 (b) of the Rules of the Court of Appeals.

Further, the order which appellant/defendant seeks to appeal is not subject to the discretionary appeal procedure of OCGA § 5-6-35 because it is not a final order. Regardless of appellant/defendant's understanding that the trial court was issuing a final order, the order is clearly captioned "SECOND TEMPORARY ORDER" and sets a date for a final hearing. The appeal of such order must be under the interlocutory appeal provisions of OCGA § 5-6-34 (b). Appellant/defendant has failed to provide a certification from the trial court for immediate review as required by such code section. Without a certificate of immediate review this Court has no jurisdiction to consider the appeal. *Parker v. Kennon*, 235 Ga. App. 272 (509 SE2d 152) (1998). Therefore, this Court denies appellant/defendant's application for appellate review and his request for an emergency stay of the June 29, 2001 order.

*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.

99-320

Court of Appeals of the State of Georgia

ATLANTA, JUL 16 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 320. HALL v. HALL.

This case involves a petition for change of custody filed by the appellee/plaintiff Rhonda K. Hall. Appellant/defendant Joey Kyth Hall has filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting that this Court allow him to appeal the "SECOND TEMPORARY ORDER" issued by the trial court on June 29, 2001, which, among other things, changed physical custody of the minor child from the appellant/defendant to the appellee/plaintiff. Appellant/defendant further requests that this Court issue an emergency stay of such temporary order. After reviewing the emergency motion, this Court finds that the appellant/defendant has failed to demonstrate in his petition and attachments that an emergency exists which would justify the grant of his prayers for an emergency order under Rule 40 (b) of the Rules of the Court of Appeals.

Further, the order which appellant/defendant seeks to appeal is not subject to the discretionary appeal procedure of OCGA § 5-6-35 because it is not a final order. Regardless of appellant/defendant's understanding that the trial court was issuing a final order, the order is clearly captioned "SECOND TEMPORARY ORDER" and sets a date for a final hearing. The appeal of such order must be under the interlocutory appeal provisions of OCGA § 5-6-34 (b). Appellant/defendant has failed to provide a certification from the trial court for immediate review as required by such code section. Without a certificate of immediate review this Court has no jurisdiction to consider the appeal. *Parker v. Kennon*, 235 Ga. App. 272 (509 SE2d 152) (1998). Therefore, this Court denies appellant/defendant's application for appellate review and his request for an emergency stay of the June 29, 2001 order.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 16 2001

*I certify that the above is a true extract from
the minutes of 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. Z. Hunt, Jr. Clerk.

99-320

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

ATLANTA, JUL 16 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 320. HALL v. HALL.

This case involves a petition for change of custody filed by the appellee/plaintiff Rhonda K. Hall. Appellant/defendant Joey Kyth Hall has filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting that this Court allow him to appeal the "SECOND TEMPORARY ORDER" issued by the trial court on June 29, 2001, which, among other things, changed physical custody of the minor child from the appellant/defendant to the appellee/plaintiff. Appellant/defendant further requests that this Court issue an emergency stay of such temporary order. After reviewing the emergency motion, this Court finds that the appellant/defendant has failed to demonstrate in his petition and attachments that an emergency exists which would justify the grant of his prayers for an emergency order under Rule 40 (b) of the Rules of the Court of Appeals.

Further, the order which appellant/defendant seeks to appeal is not subject to the discretionary appeal procedure of OCGA § 5-6-35 because it is not a final order. Regardless of appellant/defendant's understanding that the trial court was issuing a final order, the order is clearly captioned "SECOND TEMPORARY ORDER" and sets a date for a final hearing. The appeal of such order must be under the interlocutory appeal provisions of OCGA § 5-6-34 (b). Appellant/defendant has failed to provide a certification from the trial court for immediate review as required by such code section. Without a certificate of immediate review this Court has no jurisdiction to consider the appeal. *Parker v. Kennon*, 235 Ga. App. 272 (509 SE2d 152) (1998). Therefore, this Court denies appellant/defendant's application for appellate review and his request for an emergency stay of the June 29, 2001 order.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 16 2001

*I certify that the above is a true extract from
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hereto affixed the day and year last above written.*

W. Z. Hunt, Jr. , Clerk.

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

ATLANTA, AUG 27 2001

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 321. MICHAEL P. CIELINSKI, Trustee in Bankruptcy
for Gregory Edward Gray v. VFH CAPTIVE INSURANCE CO.**

We have considered the motion of VFH Captive Insurance Company to stay consideration by this court of the direct appeal filed by Michael P. Cielinski on July 30, 2001. The Company's motion was filed under Court of Appeals Rule 40 (b) pursuant to the suggestion of our Supreme Court in *Housing Authority of the City of Atlanta v. Geter*, 252 Ga. 196, 197 (312 SE2d 309) (1984).

As no appeal concerning this case has been docketed in this court, the motion to stay is premature. Therefore, the motion to stay is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 27 2001

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

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hereto affixed the day and year last above written.*

W. Z. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, 19

The Court of Appeals hereby passes the following order:

MOTION DOCKET 322. AUTOLIFE AUTOMOTIVE, INC. v. ALFORD.

Autolife Automotive, Inc. has filed an emergency motion with this Court to set aside a writ of possession issued by the State Court of Gwinnett County arising out of a dispossessory action in that court (Case No. 01-C-5006-2). Autolife apparently defaulted by failing to file its answer and funds in the proper court and by failing to appear at a hearing.

According to this Court's Rule 40 (b), this Court's inherent power to issue emergency orders to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot should be exercised sparingly. This is particularly true in an undocketed appeal, as here. Autolife's reasons for this extraordinary procedure of an emergency motion all focus on perceived errors in the court below, most of which appear to be of its own making. In any case, none of these reasons shows a persuasive rationale why an emergency motion should be granted to preserve jurisdiction or to prevent mootness. Accordingly, the motion is DENIED.

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

*I certify that the above is a true extract from
the minutes of 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. Mart..., Clerk.

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

ATLANTA, NOV 13 2001

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 323. IN RE ATTORNEY: JOSEPH L. WAITZ vs. OUR
LOVING MOTHER'S CHILDREN, INC., ROBERT J. HUGHES,
BERNICE A. HUGHES, JACK SWEENEY & MICHAEL O'CONNER.**

The Court having considered movant Joseph L. Waitz's Motion for Supersedeas Pending Appeal, it is hereby ordered that the trial court grant bond to movant and that said bond be granted as a personal recognizance bond, upon signature of movant.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 13 2001

*I certify that the above is a true extract from
the minutes of 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. Matlock, Clerk.

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

ATLANTA, NOV 13 2001

The Court of Appeals hereby passes the following order:

MOTION DOCKET 324. JANICE MARIE CARLISLE vs. STATE OF GEORGIA.

MOTION DOCKET 325. BRIAN STEEL vs. STATE OF GEORGIA.

In Motion Docket 324, Janice Marie Carlisle has filed an emergency motion to stay her trial in the Gwinnett Superior Court on double jeopardy grounds. In Motion Docket 325, Carlisle's counsel of record has filed an emergency motion for release from an order of the superior court holding counsel in civil contempt for refusal to proceed with the trial.

On June 5, 1997, Carlisle entered a negotiated plea of guilty to four counts of an eleven-count indictment. As part of the plea agreement, the State nolle prossed the remaining seven counts. Carlisle subsequently filed a petition for habeas corpus challenging the voluntariness of her plea. On August 16, 2000, the habeas court vacated Carlisle's plea.

On November 2, 2001, the Gwinnett Superior Court entered an order denying Carlisle's oral motion to be tried on only the four counts of the indictment to which

she had pled guilty. On November 6, Carlisle filed a notice of appeal from the order denying her oral motion, which she described as a "plea of former jeopardy."

On November 13, the Gwinnett Superior Court entered another order ruling that "[w]hile normally a denial of a plea of former jeopardy would allow a direct appeal, the substance of defendant's motion is a plea in bar, raising a statute of limitations defense." In its November 2 and November 13 orders, the superior court also found that the habeas court had reinstated the original indictment and ruled that Carlisle may not now attack the order granting the writ after she has taken advantage of those portions favorable to her.

In reliance on *Buice v. State*, 272 Ga. 323 (2000) (holding that the trial court has no power to try a defendant under a nolle prossed indictment unless the nolle pros is reinstated during the term of court in which it was filed), Carlisle argues that the State is limited to trying her on only the four counts to which she pled guilty and is precluded from trying her on the remaining seven counts. Finding *Buice* distinguishable in its November 2 order, the Gwinnett Superior Court ruled that the State is entitled to proceed on all counts of the indictment as originally returned.

In our opinion, whether *Buice* is distinguishable is debatable. Therefore, we grant the emergency motions in Motion Dockets 324 and 325. We order that Carlisle's appeal of the November 2 order be allowed to proceed, the trial court immediately release counsel from civil contempt, and all other proceedings below,

including any hearing on contempt, be hereby stayed pending resolution of Carlisle's appeal or further order of this court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 13 2001

I certify that the above is a true extract from the minutes of 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. Martin, Clerk.

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

ATLANTA, NOV 27 2001

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 326. ALEXANDER DOMAN v. THEODORE
STAPLETON.**

Stapleton's Motion for Reconsideration filed in the above styled case is hereby denied. See OCGA § 5-6-34 (d).

*Court of Appeals of the State of Georgia, NOV 27 2001
Clerk's Office, Atlanta*

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the minutes of the Court of Appeals of Georgia.*

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

Will Z. Mat..., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, DEC 5 - 2001

The Court of Appeals hereby passes the following order:

M.D. 327. HAROLD E. WILLETT, JR. V. RUSSELL M. STOOKEY, P.C. AND RUSSELL M. STOOKEY

Movant, Harold M. Willett, Jr., filed with this Court a Rule 40(b) Motion, asking that upon the docketing of the appeals, pursuant to two (2) Notices of Appeal filed in the State Court of Chatham County, Georgia, in Civil Action No. I00-1855-G, that this Court remand the appeals to the trial court for a hearing and ruling on movant's Motion to Recuse and movant's Motion to Set Aside filed in the trial court on November 28, 2001 and November 30, 2001, respectively.

A request for this Court to remand the appeals which have not been docketed with this Court is premature. Upon the docketing of the direct appeals described in the Rule 40(b) Motion, either party is free to file whatever motions the parties feel appropriate and/or to respond to any motions that are filed.

A review of this Court's Rule 40(b) finds that the relief sought by this motion is not within the ambit of the types of cases that this Court will address under its emergency powers. Therefore, the motion is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 5 - 2001

*I certify that the above is a true extract from
the minutes of 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. Z. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JAN 24 2002

The Court of Appeals hereby passes the following order:

MOTION DOCKET 328. Coliseum Medical Center, LLC v. Georgia Department of Community Health et al.

Coliseum Medical Center, LLC (Coliseum) has filed an Emergency Motion for Stay Pending Appeal pursuant to Court of Appeals Rule 40 (b), seeking a stay of an order of the Superior Court of Bibb County filed January 18, 2002 in the case styled *Medical Center of Central Georgia, Inc. v. Georgia Department of Community Health and Coliseum Medical Center, LLC, Civil Action No. 00CV10891* pursuant to which Coliseum was required to cease and desist operation of its open-heart adult surgery program as of the date of the order.

Having considered said motion, along with accompanying exhibits, we hereby GRANT Coliseum's Emergency Motion to Stay the January 18, 2002 order requiring Coliseum to cease and desist operation of its open-heart adult surgery program. In its motion, Coliseum has represented to this Court that it will file an application for discretionary appeal in a timely manner; if Coliseum fails to file such application within 30 days of the entry of the January 18, 2002 order, as prescribed by OCGA § 5-6-35 (d), the stay imposed by this order will automatically dissolve, and Coliseum will be required to cease and desist operation of its open-heart surgery program immediately. However, if Coliseum properly and timely files an application for discretionary appeal, the stay imposed by this order will remain in effect during the pendency of such application and in the event that the application is granted, the stay imposed by this order will remain in effect until this Court issues an order or opinion resolving the appeal filed pursuant to the grant of said application.

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

JAN 24 2002

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

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



....., Clerk.

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

ATLANTA,

JAN 31 2002

The Court of Appeals hereby passes the following order:

MOTION DOCKET 329. VICTORIA LITTLE v. THE STATE.

Defendant/Appellant, Victoria Little, filed her Motion for Supersedeas Bond in this Court on January 31, 2001, with Notice of Appeal from the order of the Superior Court of Newton County, Judge Bernard J. Mulherin, of same date, holding said Defendant in criminal contempt, and ordering her immediate incarceration and denying her Motion for Supersedeas Bond.

It is hereby ordered that Victoria Little be released instanter from the custody of the Newton County Sheriff on her own recognizance until such time as a hearing, if any, may be held on the contempt charges or the holding and sentence resulting therefrom, and until any appeal right of said Appellant under the laws of the State of Georgia in connection therewith have been exhausted.

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

JAN 31 2002

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

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

Will. L. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

Motion Docket 330. Beers Construction Company, et al., v. Atlanta Gift Mart, L.P.

Beers Construction Company and Allison-Smith Company have moved this court to enter an order, pursuant to this court's Rule 40 (b), directing the State Court of Fulton County that it has no jurisdiction to try a civil case designated in the motion because, it contends, a notice of appeal filed by Allison-Smith Company acts as a supersedeas under OCGA § 5-6-46 (incorrectly designated several places in the motion as OCGA § 5-4-46). We disagree, and deny the motion.

In the present case, Atlanta Gift Mart sued Beers Construction Company. Beers Construction Company denied liability and filed a third-party action against Allison-Smith Company, seeking, among other things, indemnity or contribution. Allison-Smith Company, in turn, filed a third-party and fourth-party action against Mayer Electric Company and Square D Company, seeking indemnity or contribution. Both Mayer Electric Company and Square D Company filed motions for summary judgment, which the trial court granted. Allison-Smith Company filed its notice of appeal from the grant of these motions. However, contrary to Allison-Smith Company and Beers Construction Company's argument, the trial court has informed all parties that the case will be tried beginning March 11, 2002, notwithstanding the pending appeal. Beers Construction Company and Allison-Smith Company filed this emergency motion, requesting that we issue an order directing the trial court that it has no jurisdiction to move forward with the trial of the case at this time.

This court's authority to issue orders in emergency situations is not unlimited, and our review of the record indicates that the relief sought by Beers Construction Company and Allison-Smith Company does not meet the stringent requirements of Rule 40 (b). Rule 40 (b) provides:

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court.

Here, we have not been presented with evidence that such an emergency situation exists in which we have the authority to grant relief. It is not necessary to grant the relief requested in order to preserve jurisdiction of the pending appeal. Nor is it necessary to grant the motion so as to prevent a contested issue from becoming moot.

Moreover, even if this court did have the authority to grant relief in this case, Beers Construction Company and Allison-Smith Company do not present a valid claim for relief. The general rule is that the trial court loses jurisdiction of a case in which an appeal has been taken as to all matters related to the appeal. See *Argonaut Ins. Co. v. Atlantic Wood Indus.*, 187 Ga. App. 477, 478 (370 SE2d 770) (1988). However,

[m]atters independent of and distinct from the questions involved in the appeal are not taken from the jurisdiction of the trial court. Such matters as the appeal does not cover are purely collateral or supplemental, lying outside the issues framed in the case, or arising subsequent to the delivery of the judgment from which the appeal is prosecuted. (Punctuation and citation omitted.) *Id.*

In the present case, Allison-Smith Company filed the third-party and fourth-party actions against Mayer Electric Company and Square D Company as permissive third-party actions pursuant to OCGA § 9-11-14 (a). These types of claims are subject to a severance or a separate trial if such a motion is granted by the trial court. See OCGA § 9-11-14 (a). They are truly collateral or supplemental actions. Thus, while the trial court is divested of jurisdiction with regard to the actions between Allison-Smith Company, Mayer Electric Company and Square D Company, the trial court retains jurisdiction with regard to the main action between the plaintiff and Beers Construction Company, and the action between Beers Construction Company and Allison-Smith Company.

Accordingly, the motion is 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.*

....., Clerk.

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

ATLANTA, MAR 29 2002

The Court of Appeals hereby passes the following order:

Motion Docket 331. Boutin v. The State.

Angela Elaine Boutin entered a guilty plea to the misdemeanor charge of obstructing an officer, and was sentenced to one year. Her sentence was probated. She filed this emergency motion for supersedeas, contending that the trial court failed to grant bond pending her appeal in that case in violation of OCGA § 17-6-1 (b) (1). However, as her motion itself asserts, she was not sentenced to serve jail time upon her conviction; rather, she was subsequently arrested by the an officer of the Probation Department, and she "does not know what the charges against her are." While Boutin is entitled to a bond pending appeal of her misdemeanor conviction as a matter of law, she is not necessarily entitled to a bond while awaiting a hearing on a probation revocation petition. See OCGA § 42-8-38 (b), which provides that the trial court may commit a probationer with or without bail to await further hearing.

The emergency motion for supersedeas is therefore denied.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 29 2002*

*I certify that the above is a true extract from
the minutes of the 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, APR 9 2002

The Court of Appeals hereby passes the following order:

Motion Docket No. 332. PCC AIRFOILS, INC. et al. v. SANKS.

The motion for stay of appeal, filed by Appellants/Defendants, is denied.

It appears that Defendants filed a notice of appeal with this Court on March 18, 2002, following the entry of a default judgment against them on December 7, 2001 and the entry of a judgment of damages (\$700,000 in compensatory damages and \$4 million in punitive damages) against them on March 12, 2002. Thereafter, on April 8, 2002, Defendants filed this emergency motion to stay appeal in order to file motions for new trial, to set aside the judgment, and judgment as a matter of law with the trial court. The case has not been docketed in this Court and there is no case in this Court to stay.

Defendants rely upon *Housing Authority v. Geter*, 252 Ga. 196 (312 SE2d 309) (1984), as authority for their motion. This case differs from *Geter* because, in that case, it was the plaintiff who filed a notice of appeal and the defendants who wished to file a motion for new trial with the trial court. Here, the Defendants filed the notice of appeal and now seek to stay their own appeal. *Geter* has no application to these facts. The Defendants were free to file their motion for new trial, which would have extended their time to appeal until the trial court ruled on their motion for new trial. The filing of a motion for reconsideration on the other hand does not extend the time in which a notice of appeal can be filed. Here, Defendants prematurely filed their notice of appeal. Notwithstanding this premature filing, the trial court is not divested of its authority to rule on a timely filed motion for new trial. See *Geter*, supra.

We note, however, that Defendants also wish to file pleadings in the nature of motions for reconsideration, which do not extend the time for filing a notice of appeal.

The pending notice of appeal precludes the trial court's reconsideration of its findings as requested in the motions for reconsideration. *Cheeley-Towns v. Rapid Group*, 212 Ga. App. 183 (1) (441 SE2d 452) (1994). Should Defendants dismiss their present notice of appeal, they would be authorized to then appeal the trial court's ruling on the motion for new trial.

When a motion for new trial is filed, an appeal may be taken within 30 days of the ruling on it. OCGA § 5-6-38 (a). During this 30 days, the trial court is not divested of jurisdiction. *Id.* Therefore, to the extent that Defendants wish to file a motion for new trial with the trial court, they are free to do so as long as they act within the appropriate 30-day period. No stay is warranted or permitted under the facts here, and the motion to stay is denied.

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

APR 9 2002

*I certify that the above is a true extract from
the minutes of 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. Martin, Clerk.

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

ATLANTA, APR 12 2002

The Court of Appeals hereby passes the following order:

Motion Docket No. 333. AKHTAR et al. v. MISTY RUBY PARTNERS, LP.

In this action concerning the trial court's denial of a motion for supersedeas following an order for disbursement of funds from its registry in satisfaction of an underlying claim of specific enforcement, Parvaz Akhtar, Jeff Akhtar, and Jog Singh (Applicants) have filed this emergency motion for supersedeas, asking this Court to enjoin the disbursement. Applicants contend that some of the disbursements are inappropriate.

As an initial matter, we must point out that, according to Applicants, the funds in this matter were to be disbursed on April 11, 2002, and Applicants concede that, once disbursement has been effected, their motion is moot. We also note that, although this motion was filed with our Supreme Court on April 10, 2002, it was not transferred to this Court until April 12, 2002. Pursuant to Applicant's motion, disbursement should have already occurred on April 11, 2002. Therefore, this motion is now moot and presents nothing for our review.

Moreover, even if this Court had received this motion prior to disbursement of the funds below, Applicants have failed completely to identify any abuse of discretion by the trial court in denying their claim for supersedeas. As such, Applicants have neither presented this Court with any error supporting their request to overturn the trial court's denial of supersedeas, nor have they provided this Court with a compelling reason to exercise its discretion pursuant to OCGA § 9-11-62(e).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 12 2002

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the minutes of the Court of Appeals of Georgia.*

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

William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAY 8 - 2002

The Court of Appeals hereby passes the following order:

Motion Docket No. 334. DAVIS v. SCHWALL.

Jevelle Davis has moved this court for supersedeas pending her appeal from an order finding her in contempt of the State Court of Fulton County and ordering her to serve four consecutive 20-day sentences, one for each finding of contempt.

Procedural problems abound in Davis's motion. Rule 40 (b) of this Court, which governs emergency motions for supersedeas, provides that such a motion "must: (i) contain a stamped filed copy of the order being appealed; (ii) contain a copy of the notice of appeal, if such has been filed in the trial court; (iii) show that service has been perfected upon the opposing party before filing the motion with the Court; (iv) be accompanied by" the filing fee. The motion was filed on May 6, 2002 from the trial court's order entered on April 4, 2002. But no certificate of service was provided. The certificate of service was filed May 7, 2002, but it does not show that service upon the opposing party was perfected before the motion was filed in this court. In addition, the motion, even now, does not include a copy of the notice of appeal, although the motion recites in several places that a copy is "attached."

Nevertheless, we address the merits of the motion. OCGA § 5-6-13 (a), providing that it "shall not be in the discretion of any trial court judge to grant or refuse a supersedeas in cases of contempt," is not applicable to contempt in the presence of the court during the progress of a proceeding. OCGA § 5-6-13 (b). A hearing was held in the trial court, and the court heard evidence from three persons, all officers of the court: a judge, a Fulton County Marshal, and the court's case manager. The trial court found that because Davis's deliberate contumacious conduct over the telephone to these officers of the court was intended to deceive the court and was committed in the court's presence "or so near thereto as to obstruct the administration of justice." OCGA § OCGA § 15-1-4 (a) (1). The trial court concluded that it had the power "to prevent interruption, disturbance, or hindrance to its proceedings" by inflicting

immediate punishment. While the grant of supersedeas for contempt committed in the presence of the court is a matter within the sound discretion of the trial court, given Davis's history of failing to appear in court and her history of deception and fraud, as well as flight, as recounted in the trial court's order, we find that the trial court did not abuse its discretion in denying supersedeas bond. Davis's emergency motion for supersedeas is therefore hereby DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 8 - 2002

I certify that the above is a true extract from the minutes of 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. Martin
....., Clerk.

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

ATLANTA, MAY 24 2002

The Court of Appeals hereby passes the following order:

MD 335. In Re: W. Henry Toler, III

Movant filed his Motion for Supersedeas Pending and Bond (sic) pursuant to Rule 50 (now Rule 40 (b)), seeking emergency relief in connection with a finding of contempt against him by Judge Melody Clayton, State Court of Cobb County.

Movant has failed to file a copy of the order being appealed pursuant to Court of Appeals Rule 40 (b) (i). Movant acknowledges that the contempt order was reduced to writing. Movant represents that Judge Clayton did not deny supersedeas, she simply refused to sign the order submitted by Movant for that purpose.

Movant does not indicate why Judge Clayton refused to sign the supersedeas order, or point to any error in her having done so. No copy of the subject order is included in the record before this Court. Therefore, there is no basis for this Court to grant Movant's emergency motion and same is hereby denied.

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

MAY 24

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

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

ATLANTA, JUN 5 2002

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 336. SHANNON DEANNE HILL v. JOHNNY
WAYNE COOK**

Shannon DeAnne Hill has filed a Rule 40(b) Motion for Emergency Supersedeas asking this Court to stay the trial court's order permitting an inventory of personal property in the marital estate. There is no indication that movant has attempted to appeal the trial court's order with an interlocutory application. See Court of Appeals Rule 40(b)(ii).

At this point in time, it appears the trial court's order only concerns an inventory of the personalty located at the marital residence. Movant is not without an adequate remedy should the respondent fail to comply with the trial court's order insofar as the inventory is concerned.

While the parties may have some disagreement about the terms, conditions and effect of the mediation, this Court cannot say that the trial court has abused its discretion. The Rule 40(b) Motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 5 2002

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

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

ATLANTA, 'JUL 12 2002'

The Court of Appeals hereby passes the following order:

MOTION DOCKET 337. BYRD v. STATE.

Appellant has filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting that this Court enjoin the trial court from proceeding to trial in this criminal action on Monday, July 15, 2002, for failure of the State to provide responses to appellant's discovery requests. Appellant has filed a request for a speedy trial pursuant to OCGA § 17-7-170. OCGA § 17-16-6 provides the trial court with discretion to implement various remedies for the State's failure to comply with discovery requests and does not mandate that the trial court grant a continuance especially under circumstances such as this where a speedy trial demand has been filed. Therefore, appellant's motion is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 12 2002

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the minutes of the Court of Appeals of Georgia.*

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William L. Mat... Clerk.

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

JME

PROPOSED ORDER (A02A1111.99) July 12, 2002	
AGREE	DISAGREE

ATLANTA,

The Court of Appeals hereby passes the following order:

MOTION DOCKET 337. BYRD v. STATE.

Appellant has filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting that this Court enjoin the trial court from proceeding to trial in this criminal action on Monday, July 15, 2002, for failure of the State to provide responses to appellant's discovery requests. Appellant has filed a request for a speedy trial pursuant to OCGA § 17-7-170. OCGA § 17-16-6 provides the trial court with discretion to implement various remedies for the State's failure to comply with discovery requests and does not mandate that the trial court grant a continuance especially under circumstances such as this where a speedy trial demand has been filed. Therefore, appellant's motion is 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.*

....., Clerk.

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

ATLANTA, **SEP 12 2002**

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Motions Docket 338. Gipson v. Gipson

On September 9, 2002, Michele Durham filed an emergency supersedeas in a child custody case. She also filed an application for discretionary review of the trial court's order (A03D0031). However, OCGA § 15-11-3 provides that no final order of a juvenile court judge "shall be superseded except in the discretion of the judge; rather, the judgment or order of the court shall stand until reversed or modified by the reviewing court." It appears, therefore, that the granting of supersedeas in the present case is a matter left entirely in the judge's discretion, and that we are without jurisdiction to grant supersedeas in such a case. Durham's motion for supersedeas is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **SEP 12 2002**

*I certify that the above is a true extract from
the minutes of the 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 Z. Martin, III

Court of Appeals of the State of Georgia

ATLANTA, September 30, 2002

The Court of Appeals hereby passes the following order:

MD339. FLORESCU v. THE STATE.

Vasile Florescu, defendant in a misdemeanor trial scheduled for October 7, has moved this Court under Georgia Court of Appeals Rule 40 (b) to order the trial court to continue the trial until the last week of October, just before the time runs out to try Florescu based on his speedy trial demand. Florescu claims that a family emergency of his counsel, possible lack of transcripts, and inadequate time to prepare for the trial mandate that this Court order the continuance.

Florescu has submitted no evidence to support any of the allegations made in his emergency motion. Nor has he explained the nature of the family emergency, the type of misdemeanor with which he is charged, why a mistrial of this case was declared on September 4, the efforts he has made to investigate the case since the mistrial, or other matters. If Florescu's motion were granted, he in effect would be forcing the trial court to try him during a particular one-week period that happens to fit his counsel's schedule. We do not countenance such manipulations. On the other hand, if Florescu chose to withdraw his speedy trial demand, then his request for continuance could be reconsidered by the trial court.

Accordingly, it is hereby ordered that Florescu's emergency motion be **DENIED.**

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 30 2002

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the minutes of the Court of Appeals of Georgia.*

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

W. L. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, OCTOBER 07, 2002

The Court of Appeals hereby passes the following order:

MD340. FLORESCU v. THE STATE.

Vasile Florescu, for the second time in just over a week, has moved this court under Georgia Court of Appeals Rule 40 (b) to order the trial court to continue the trial of his case until the last week of October, just before the time runs out to try Florescu based on his speedy trial demand. As we previously ruled: "Florescu has submitted no evidence to support any of the allegations made in his emergency motion. . . . If Florescu's motion were granted, he in effect would be forcing the trial court to try him during a particular one-week period that happens to fit counsel's schedule. *We do not countenance such manipulations.* On the other hand, if Florescu chose to withdraw his speedy trial demand, then his request for continuance could be reconsidered by the trial court." (Emphasis supplied.) *Florescu v. The State*, MD 339 (September 30, 2002).

The instant motion, filed on the day Florescu's case was scheduled for trial, is equally without evidentiary support. Moreover, Florescu has a remedy at law, that is, to enumerate as error upon appeal any abuse of discretion in denying him a continuance. Finally and more importantly, this motion is a patent manipulation of the emergency motion process, plainly designed to force a continuance during the pendency of the appeal. The defendant and his attorney, Ralph J. Villani, are hereby warned that any further abuse of the emergency motion process will result in the imposition of frivolous appeal penalties pursuant to Court of Appeals Rule 15 (b).

Accordingly, it is hereby ordered that Florescu's emergency motion be **DENIED**.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT - 7 2002

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

*Witness my signature and the seal of said court
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Will. L. Martineau, Jr.
Clerk

Court of Appeals of the State of Georgia

ATLANTA, NOV 15 2002

The Court of Appeals hereby passes the following order:

MOTION DOCKET 341. ARTHUR ALLEN et al. v. STATE OF GEORGIA

On October 17, 2002, Arthur Allen, Jr., and the other appellants were convicted of the felony offenses of cruelty to children in the first degree and aggravated assault, and they were sentenced to imprisonment for periods ranging from 20 to 90 days followed by probation. Following a hearing, the trial court denied their motion to continue bond pending appeal by written order entered on November 15, 2002, nunc pro tunc to the October 24, 2002 date of the appeal bond hearing. Appellants have filed an emergency motion asking this court to reverse the trial court's decision.

"Granting or refusing to grant bail in non-capital felony cases after indictment and conviction is a matter within the sound discretion of the trial court; this Court will not control that discretion unless it has been flagrantly abused. *Birge v. State*, 238 Ga. 88, 89 (230 SE2d 895) [(1976)]. 'The burden of seeking a stay of execution and release may properly be placed on the appellant.' *Id.* Pursuant to the holding in *Birge*, supra, 'the trial court should not grant bond unless defendant meets his burden of presenting sufficient evidence to convince the trial court that (1) there is no substantial risk the applicant will flee, (2) he is unlikely to commit a serious crime, (3) he will not intimidate witnesses or otherwise interfere with the administration of justice, and (4) his appeal is not frivolous or taken for delay.' *Prayor v. State*, 214 Ga. App. 132 (447 SE2d 155) [(1994)]; *Birge*, supra at 90. Thus, unless the trial court determines in the exercise of its sound discretion that there exists no substantial risk as to each and every one of the above factors, it should not grant the defendant's release." *Williams v. State*, 228 Ga. App. 289, 290-291 (2) (491 SE2d 500) (1997).

We cannot say that the trial court abused its discretion in finding that appellants did not carry their burden of showing they are unlikely to continue to commit the serious crimes of which they were convicted if they are released on appeal and that their appeal is not frivolous. Appellants' emergency motion and their request for oral argument are denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **NOV 15 2002**

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

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

Will. L. Martz, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 27 2002

The Court of Appeals hereby passes the following order:

MD342. LAFARGE BUILDING MATERIALS, INC. v. WATKINS ENGINEERS AND CONSTRUCTORS, INC.

Watkins Engineers and Constructors, Inc. sought to arbitrate certain claims against Lafarge Building Materials, Inc., pursuant to the parties' contract. Lafarge filed a motion to stay arbitration in Fulton County Superior Court, pursuant to OCGA § 9-9-6 (b) (2), contending that Watkins had failed to comply with contractual provisions providing for arbitration. After a hearing, the superior court issued an order denying the motion, compelling the parties to arbitrate, and dismissing the case. Lafarge filed a notice of appeal. (It also subsequently filed in the superior court an emergency motion to grant supersedeas of the superior court's order, which the superior court denied and again ordered the parties to proceed with arbitration.)

Lafarge has filed an emergency motion in this court, seeking a supersedeas to stay the arbitration. Upon consideration of Lafarge's motion, the same is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 27 2002

I certify that the above is a true extract from the minutes of the 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. Z. Mart, JR

Court of Appeals of the State of Georgia

ATLANTA, MAR 17 2003

The Court of Appeals hereby passes the following order:

Motion Docket No. 344. The State v. Hart.

Woodson R. Hart had been serving time in a federal correction facility in Arkansas, and it appears that, during this time, a detainer was mistakenly placed against Mr. Hart in connection with a sentence imposed against him in Georgia on March 1, 2001. On February 6, 2003, the Superior Court of Dougherty County, after reviewing the transcript from Hart's Plea and Sentencing Hearing on his crime in Georgia, clarified Hart's sentence, to reflect the sentence it actually intended to impose on March 1, 2001. In order to comply with the clarified sentence, the trial court ordered that (1) the detainer placed against Hart be removed and (2) Hart serve no additional time in a Georgia correctional facility after he was released from the Arkansas correctional facility on March 14, 2003.

On March 12, 2003, the District Attorney of Dougherty County filed a notice of appeal with this Court, taking issue with the trial court's correction and clarification of Hart's sentence. At the same time, the District Attorney, in spite of and in direct opposition to the trial court's clarification order, requested that the Georgia Department of Corrections reinstate the detainer against Hart, requiring him to report to Jackson State Prison on March 17, 2003. The District Attorney also indicated that, if Hart failed to show up, a fugitive warrant would be taken out against him.

In response to the District Attorney's action, on March 15, 2003, the trial court considered and granted a motion by Hart for supersedeas bond. In its order, the trial court explicitly ruled, in pertinent part:

4. If Bond is not granted [Hart] faces the prospect of serving three and a half months in prison contrary to the Order of this Court directing that he serve no additional time in a Georgia State Prison once released from the Federal Prison System.

5. If Bond is not granted [Hart] faces the prospect of serving much if not all of the three and a half months the State is seeking before the Court of Appeals will make a decision in this case. The undersigned originally sentenced [Hart], and it was my intent that [Hart] not serve any additional state prison time after release from federal prison.

Given the trial court's order clarifying his original intent in sentencing Hart and its order granting supersedeas bond, the District Attorney is not free to disregard the orders of the Dougherty Superior Court or to seek detainer against Hart, force Hart to serve additional time in a Georgia prison, prior to the overruling or vacation of the trial court's order, or to seek a fugitive warrant against Hart for failing to serve such time.

The District Attorney contends that, by filing a notice of appeal, the trial court's original order clarifying Hart's sentence was immediately rendered null and void. This contention is patently erroneous. OCGA § 5-6-45 (a) provides: "In all criminal cases, the notice of appeal filed as provided in Code Sections 5-6-37 and 5-6-38 shall serve as supesedeas in all cases where a sentence of death has been imposed or where the defendant is admitted to bail." Neither is the case here.

Nonetheless, in defiance of the trial court's order, the District Attorney has sought to ensure that Hart serves three-and-one-half months of additional incarceration by fashioning his own remedies, as it would take the appellate court that long to rule on his appeal. However, pursuant to the trial court's order issued on February 6, 2003, Hart has already served his time in jail. An order of a Superior Court is presumed to be valid and enforceable until it is overruled or vacated by an appellate court or an authorized trial court. The District Attorney simply has no authority to subjugate an

order of the Superior Court to his own will, thereby circumventing the orderly imposition of justice.

Moreover, at this time, the trial court has issued a valid order granting supersedeas bond which the District Attorney is not free to ignore. The trial court has been given the statutory authority to grant supersedeas bonds, and this authority must be respected. See OCGA § 5-6-45; OCGA § 17-6-1.

Accordingly, the District Attorney must comply with the trial court's orders in this case. He has presented this Court with no evidence of record or legal authority which would allow him to circumvent these rulings. Given the fact that Hart has completely served his time under the existing order of the trial court, the State has no lawful authority to incarcerate him at this time. As such, the District Attorney may not seek to impose a detainer against Hart or subject him to further imprisonment for the crimes underlying this matter, and any attempt to do so is at his own risk.

In accordance with this order, Hart shall be released from the custody of Jackson State Prison instantler. Hart, Hart's counsel, the District Attorney, and the Warden of Jackson State Prison shall be notified of this decision immediately, and copies of this order will also immediately be conveyed to these parties.

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

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.*

Will. L. Mait, Jr. , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 21 2003

The Court of Appeals hereby passes the following order:

Motion Docket No. 345. Howell v. Commonwealth Acceptance Corp. et al.

In the above-referenced case, LaShonne S. Howell has filed an emergency motion with this Court asking that we review and reverse a finding by the trial court that she is not indigent and may not proceed *in forma pauperis*. Howell states in her motion that the trial court received evidence on her claim of indigency, but found that she had not satisfied her burden of proof.

The ruling of the trial court on all issues of fact concerning the ability of a party to pay costs . . . is final under the provisions of OCGA § 9-15-2 (b) and is not subject to review. The factual issue of [Howell's] indigency was submitted to the trial court and resulted in the determination that [she] lacked that status based upon the record. This ruling is final and not subject to review by this [C]ourt.

(Punctuation omitted.) *Morris v. Dept. of Transp.*, 209 Ga. App. 40 (432 SE2d 638) (1993).

Accordingly, Howell's motion in this matter is denied.

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

MAR 21 2003

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

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

....., Clerk.

C. Will. L. Martini

Court of Appeals of the State of Georgia

ATLANTA, MARCH 28, 2003

The Court of Appeals hereby passes the following order:

Motion Docket No. 346. Barber v. Greater Atlanta Brokerage Solutions, LLC.

In this case involving a real estate dispute, the trial court entered a verdict requiring Andre P. Barber to pay attorney fees to Greater Atlanta Brokerage Solutions, LLC, in the amount of \$35,228.83 on February 3, 2003. Barber currently has a motion for a discretionary appeal pending before this Court in which he questions the efficacy of the award of attorney fees. On March 11, 2003, the trial court, pursuant to OCGA § 5-6-46, granted Greater Atlanta's motion for a supersedeas bond in the full amount of the judgment. Barber then filed a notice of appeal regarding the order for supersedeas bond on March 17, 2003, contending, in essence, that the trial court violated his due process rights in granting the order for supersedeas bond.

Barber has now filed this emergency motion, requesting that we stay the trial court's order requiring him to post supersedeas bond pending his appeal of the trial court's order requiring such bond. Barber argues that, should he be required to post bond, his appeal would become moot. This contention is erroneous. Posting of bond will not moot the due process contentions which Barber proposes to argue before this

Court on appeal. Generally, a matter becomes moot when the issues it involves cease to exist. That is not the case here. The posting of a supersedeas bond by Barber does not moot the underlying issues regarding the violation of his due process rights. He will not be foreclosed from arguing them before this Court. Accordingly, this emergency motion is based on an incorrect premise, and it is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 28 2003

I certify that the above is a true extract from the minutes of 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. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, February 21, 2003

The Court of Appeals hereby passes the following order:

A03A0980. ATLANTA AREA BROADCASTING, INC. v. JAMES BROWN ENTERPRISES, INC. et al.

Atlanta Area Broadcasting, Inc. (AAB) has filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting that this court set aside the superior court's order requiring that AAB post a supersedeas bond no later than February 24, 2003, in the amount of \$250,000 "as a condition for continuing its appeal." Because AAB's right to continue its appeal cannot be conditioned on posting the supersedeas bond, the portion of the superior court's order stating otherwise is set aside. *Hawn v. Chastain*, 246 Ga. 723, 725 (273 SE2d 135) (1980). However, we decline to exercise our emergency powers to set aside the trial court's order requiring AAB to post the supersedeas bond, and the portion of the emergency motion requesting this relief is denied. To the extent the emergency motion seeks an additional ruling from this court prohibiting unspecified further proceedings which might occur in the superior court during the pendency of this appeal, it is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 21 2003

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

Will. L. Mart, Clerk

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

ATLANTA, February 19, 2003

The Court of Appeals hereby passes the following order:

MOTION DOCKET 343. PLANTATION PROPERTIES, INC. v. ELLIS et al.

William Ellis has filed an emergency motion with this Court, seeking a review of the denial of his motion to enjoin the execution of a writ of possession issued to Plantation Properties.

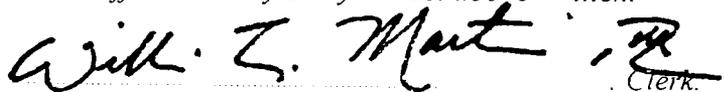
According to Court of Appeals Rule 40 (b), this Court's inherent power to issue emergency orders to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot should be exercised sparingly. This is particularly true in an undocketed appeal, as here. Ellis' reasons for this extraordinary procedure of an emergency motion focus on errors he alleges occurred in the court below, or anticipates may occur in a hearing scheduled for February 20, 2003. Nothing in the motion and other documents he has filed in this Court persuades us that an emergency motion must be granted to preserve our jurisdiction or to prevent any of the issues he raises from becoming moot. Accordingly, the motion is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 19 2003

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the minutes of the Court of Appeals of Georgia.*

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Will. L. Mart 
Clerk.

Court of Appeals of the State of Georgia

ATLANTA, April 25, 2003

The Court of Appeals hereby passes the following order:

MD347. LEVENTHAL et. al. v. CUMBERLAND DEVELOPMENT.

On January 16, 2003, the trial court entered a consent order involving the use of certain real property located in Cobb County. Ronald Leventhal and Cumberland Creek Properties, Inc. ("Applicants") now seek to stay this order pursuant to Court of Appeals Rule 40 (b), which provides:

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court.

Although the appeal has not yet been docketed, the applicants request that this Court intervene by staying the consent order. In their motion, however, the applicants have failed to adequately explain why such intervention is necessary. Although the applicants' arguments are far from clear, it appears that most of them revolve around the propriety of the underlying complaint. However, the motion is not particularly illuminating regarding the underlying dispute. Cumberland Properties notes only that

the complaint sought "*inter alia*, a Temporary Restraining Order, an Interlocutory Order and a permanent (mandatory) injunction, as to certain documents in the Deed Records of the Cobb Judicial Circuit, together with purported damages arising out of the filing of the documents the Complaint seeks to have canceled." The complaint is not included with the motion. As noted above, the appeal has not been docketed and this Court thus lacks the record. Having failed to provide adequate explanation of the underlying dispute, the applicants have failed to demonstrate that the motion meets the stringent requirements of Rule 40 (b). Accordingly, the motion is hereby denied.

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

*APR 25 2003
I certify that the above is a true extract from
the minutes of 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, April 30, 2003

The Court of Appeals hereby passes the following order:

Motion Docket Nos. 348, 349. BAPTIST CONVENTION OF THE STATE OF GEORGIA et al. v. SHORTER COLLEGE et al.; PRICE et al. v. SHORTER COLLEGE et al.

Appellants Baptist Convention of the State of Georgia and The Executive Committee of the Baptist Convention of the State of Georgia filed an Emergency Motion for Relief pursuant to Court of Appeals Rule 40 (b), requesting that this court review the trial court's order vacating a temporary restraining order preventing the dissolution of Shorter College and transfer of its assets to a new Shorter College Foundation created for the purpose. Seven members of the Shorter College board of trustees filed another emergency motion making essentially the same request. The appeal is not yet docketed, and this Court does not have the benefit of the record below.

Shorter College and the Shorter College Foundation have responded, asserting two arguments in opposition to the emergency motion. First, they contend that jurisdiction of this appeal properly lies in the Georgia Supreme Court. They also contend that the motion should be dismissed because it is moot.

We first consider the question of jurisdiction. The Georgia Constitution provides that the Supreme Court shall have appellate jurisdiction of “all equity cases.” Ga. Const. of 1983, Art. VI, Sec. VI, Par III (2). That jurisdiction has been limited, however, to exclude appeals in which equitable relief is merely “ancillary.” *Pittman v. Harbin Clinic Professional Assn.*, 263 Ga. 66 (428 SE2d 328) (1993). More specifically, “[f]or a matter to come within [the Supreme] Court’s equity jurisdiction, the lower court must have rendered a judgment based upon equitable principles, and that decision must be the primary issue on appeal.” *Warren v. Board of Regents*, 272 Ga. 142, 145 (527 SE2d 563) (2000).

Here, the only issues ruled upon by the trial court are questions of law: the voting rights of members under the terms of the Shorter charter, and the propriety under the charter and the Georgia Corporations Code of the membership, process of dissolution, and distribution of assets. Jurisdiction is therefore properly with this court, and we consider this emergency motion.

Rule 40 (b) provides in pertinent part:

In the exercise of its inherent power this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly. Generally, no order will be made or direction given in an appeal until it has been docketed in this Court.

The trial court's order on all pending motions in this case was entered on April 22, 2003. On April 24, the Georgia Secretary of State issued a Certificate of Dissolution nunc pro tunc April 23. This emergency motion was not filed until April 25. Consequently, any mootness which appellants sought to prevent by staying the dissolution had already occurred at the time the motion was filed.

Appellants' emergency motions for a stay pending appeal are therefore DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 30 2003

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

Will. L. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, FEB 12 2003

The Court of Appeals hereby passes the following order:

A03A1116. CITY OF RIVERDALE v. CLAYTON COUNTY

The City of Riverdale annexed 134 acres that had been part of unincorporated Clayton County. The county filed this lawsuit to challenge the annexation, and moved for summary judgment. The trial court granted summary judgment to the county, finding that the annexation is null and void. Riverdale appealed from that judgment. Subsequently, the trial court entered an order clarifying that Riverdale is not to exercise municipal authority in the previously annexed area. Specifically, the court enjoined both the county and Riverdale from issuing building or other permits in the area. The court further enjoined Riverdale from collecting taxes; issuing citations; providing primary police, fire or emergency services; or acting in any other way that treated the subject property as if it were not within unincorporated Clayton County. Riverdale petitioned the trial court to supersede that injunctive order, but the court denied the petition. Riverdale amended its notice of appeal to include the trial court's injunctive order.

Now, some two months after the trial court issued that injunctive order, Riverdale has filed what it deems an emergency motion for supersedeas, asking this court to stay the effect of the trial court's order. Riverdale claims that if supersedeas is not granted then there may be confusion about who is administering services to the disputed area and that residents of the area will not be protected by the city's ordinances and services.

We disagree because it is apparent from the trial court's rulings that the property in question is to be treated as part of unincorporated Clayton County, and municipal services should be provided accordingly. More importantly, even if there

is some confusion about services, mere confusion does not amount to an emergency justifying an order from this court staying the trial court's actions. This court may issue emergency orders "as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot." Court of Appeals Rule 40 (b). Riverdale has made no showing that the contested issues in this case will become moot or that an emergency order is needed to preserve our jurisdiction. Accordingly, the request for an emergency order is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 12 2003

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the minutes of the Court of Appeals of Georgia.*

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

C. Will. L. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, May 5, 2003

The Court of Appeals hereby passes the following order:

A03A1794, A03A1795. IN RE: ESTATE OF NATIVIDAD JIMENEZ DEL RAY.

Ambrosio Aznar Alba and Alberto Ferriero Delgado, executors of the estate of Natividad Jimenez Del Ray in Spain, have filed an emergency motion with this Court, requesting that we issue a writ of supersedeas preventing Rosario Diego Jimenez, as temporary administrator of the same estate in Georgia, from filing suit in Fulton County to preserve, protect, and marshal assets of the decedent that may exist in this State.

It appears that Gregorio Jimenez, the decedent's son, died in Fulton County. During his lifetime, he advised the decedent regarding her assets, and certain heirs of the decedent's estate now wish to file a cause of action to determine whether Gregorio, in Georgia, improperly absconded with assets rightfully belonging to decedent's estate. To do so, these heirs filed a petition to probate decedent's will in Fulton County, and the Fulton County Probate Court, after determining that it had jurisdiction over the matter pursuant to OCGA § 53-5-36 and OCGA § 15-9-31 (b), ruled that the will could be probated in Fulton County. Whether the Fulton County Probate Court correctly asserted jurisdiction in this case is the subject matter of the underlying appeal, and we do not reach it here.

In addition to accepting the petition to probate, the Fulton County Probate Court also appointed Rosario Diego Jimenez as temporary administrator of the estate in Georgia for the sole purpose of filing, on behalf of the estate, any complaints deemed necessary to preserve, protect, and marshal assets of the estate. The Letters of Administration indicate, however, that the temporary administrator shall take no action to prosecute the complaints until this Court has determined the propriety of jurisdiction

in the matter, and discovery, if any, must be limited to only that which is necessary to preserve evidence.

In this motion, the Spanish executors argue that: (1) allowance of a law suit by a temporary administrator "allows for the material alteration of the facts of the case such that the arguments before this Court may be mooted by creating property within the state;" and (2) appointment of a temporary administrator is not necessary because each of the dissenting heirs can file lawsuits on his or her own behalf. Neither argument supports a grant of this emergency motion.

First, allowance of a law suit by the temporary executor with the strict limitations imposed by the Letters of Administration will not moot the question of jurisdiction now before this Court. It will not, as the Spanish executors contend, *create* property in this state. Second, the argument that appointment of a temporary administrator is *not necessary* bears no legal consequence. The Spanish executors offer no precedent that the appointment of a temporary administrator must be an absolute necessity, and, as such, we summarily reject any such contention.

Accordingly, this emergency motion for a writ of supersedeas is hereby DENIED.

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

MAY - 5 2003

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Will. T. Mart

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

ATLANTA, June 27, 2003

The Court of Appeals hereby passes the following order:

A03A1386. IN RE: CHRISTINA MAY WHITFIELD.

Larry Whitfield, the father of Christina May Whitfield, has moved this Court to remand this case to the Probate Court of Athens-Clarke County with specific direction that an emergency guardian be appointed during the pendency of this appeal. Inasmuch as the Probate Court has already appointed Larry Whitfield to be Christina's guardian under certain conditions, we discern no need to remand the matter. Instead, under the present emergent circumstances, we hereby ORDER that the supersedeas be lifted and that the guardianship order already in place (dated 6 January 2003) be immediately effective and in force pending the appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 27 2003

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the minutes of the Court of Appeals of Georgia.*

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Will. L. Marti, Jr.
....., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, July 1, 2003

The Court of Appeals hereby passes the following order:

Motion Docket No. 353. In re: Benjamin Davis.

ON MOTION FOR RECONSIDERATION.

The District Attorney of the Rockdale Judicial Circuit has filed a motion for reconsideration of the order issued by this Court granting Benjamin Davis' Emergency Motion for Supersedeas with regard to his arrest and imprisonment on a bench warrant issued for contempt of court when Davis failed to appear for trial. In said motion, the District Attorney states that, "Movant has not been adjudged to be in contempt of court," and that the bench warrant under which Davis was arrested was "issued by the trial court to ensure the attendance at court of a person who had already demonstrated disregard for the court's orders by failing to appear for a criminal jury trial." The District Attorney then argues that this Court has no authority to exercise emergency jurisdiction over the execution of a bench warrant. Under the circumstances presented here, we disagree.

A bench warrant is a warrant issued by a judge for the arrest of a person accused of a crime by a grand jury or for the arrest of a person charged with a crime who has failed to appear in court after actual notice to the defendant in open court or notice to the person by mailing to his last known address or otherwise being notified personally in writing by a court official or officer of the court of the time and place to appear or for

the arrest of a person charged with a crime upon the filing by the prosecutor of an accusation supported by affidavit.¹

The legal basis for the arrest and imprisonment of a defendant on a bench warrant is the formal criminal charge against the defendant and the failure to appear to answer for such after notice was given. Without a formal charge directed to the person named therein and notice to appear for that charge, there is no legal basis for a bench warrant, its execution, and the subsequent imprisonment for "failure to appear."

In the instant case, the Superior Court of Rockdale County issued a bench warrant which stated only that attorney Davis,

did fail to appear for a Jury Trial as ordered by Judge Sidney L. Nations. Now, Therefore, You And Each Of You [law enforcement officers] are commanded in the name of the State of Georgia to apprehend the within-named Attorney and bring him before me or some other judicial officer of this State to be dealt with as the law directs.

Davis was not noticed that the trial court contemplated holding him in contempt.² Further, the bench warrant did not issue as an attachment for failure to respond to a rule nisi for contempt.³ The bench warrant in this case was issued solely for the attorney's "failure to appear" at a named defendant's jury trial. On the face of the

¹ OCGA § 17-7-90.

² Compare *In re Booker*, 195 Ga. App. 561, 562-563 (1) (394 SE2d 791) (1990) (physical precedent only) (trial judge specifically informed Booker over the telephone that failure to appear would result in contempt).

³ "The proper course to have pursued would have been to have issued an attachment for the person who had failed to respond to [a] rule nisi for contempt, have him arrested and brought into court, and have dealt with him in the manner provided by law." *Martin v. Waters*, 151 Ga. App. 149, 151 (2) (259 SE2d 153) (1979), citing *Auto Highball Co. v. Sibbett*, 11 Ga. App. 618, 620 (75 SE 914) (1912).

bench warrant, then, there is no legal basis for Davis' arrest and imprisonment other than the implicit finding that he was in contempt of court for allegedly disobeying an order to appear at the jury trial. The conclusion that Davis was imprisoned on a finding of contempt is further reinforced by (a) the District Attorney's statement that the bench warrant issued because Davis "demonstrated disregard for the court's orders by failing to appear"; (b) apparently a bond/supersedeas was not granted; and (c) no contempt hearing was scheduled or seemingly contemplated until after this Court ordered Davis released and ordered a hearing to be held on the issue of contempt. Ergo, Davis was jailed on a contempt judgment.⁴ And we will not allow our emergency jurisdiction under Rule 40 (b) to be thwarted because the punishment for contempt came without an express order finding contempt.⁵

We do not address the issue of whether Davis' conduct was, in fact, contumacious. We hold only that the requirements of due process must be followed.⁶ In each case cited to us by the District Attorney in his motion, either a hearing was held on the issue of contempt *before* the contemnor was punished or the contumacious act was committed *directly* in the immediate presence of the trial court in direct violation of an order just given and was thus authorized under OCGA § 15-1-4 (a)

⁴ OCGA § 5-6-34 provides for a direct appeal of all final judgments "where the case is no longer pending in the court below." "Besides final judgments, the statute provides for the direct appeal of judgments or orders that may have an irreparable effect on the rights of parties, such as rulings in contempt, injunction, and mandamus actions." *In re Paul*, 270 Ga. 680 (513 SE2d 219) (1999).

⁵ Compare *In re Crudup*, 149 Ga. App. 214 (253 SE2d 802) (1979) (contempt order *without punishment* renders case still pending and thus not directly appealable). Contra, punishment without a contempt order carries the implicit judgment allegedly authorizing the punishment.

⁶ *Moody v. State*, 131 Ga. App. 355 (206 SE2d 79) (1974). See *In re Siemon*, 264 Ga. 641 (2) (449 SE2d 832) (1994).

(1).⁷ Not one cited case supports the notion that an attorney may be summarily arrested and imprisoned on a bench warrant for “failure to appear” at a named defendant’s jury trial without an opportunity to explain the failure.⁸ OCGA § 15-1-4

⁷ See *In re Omole*, 258 Ga. App. 725, 726 (574 SE2d 912) (2002) (court began contempt proceedings immediately upon attorney’s arrival late to court); *In re Earle*, 248 Ga. App. 355, 356 (545 SE2d 405) (2001) (attorney given opportunity “to explain his conduct” before contempt finding and imprisonment); *In re Brant*, 230 Ga. App. 283 (1) (496 SE2d 321) (1998) (court called attorney to bench to explain conduct before holding him in contempt); *In re Bergin*, 178 Ga. App. 454, 455 (343 SE2d 743) (1986) (“Appellant was afforded a full hearing wherein he was given the opportunity to explain his conduct.”); *Shafer v. State*, 139 Ga. App. 360 (228 SE2d 382) (1976) (during hearing, attorney adjudicated in contempt and fined); *Garland v. State*, 253 Ga. 789 (325 SE2d 131) (1985) (attorney, after show cause hearing, held in contempt and fined); *In re Booker*, supra at 562-563 (judge directly ordered attorney to appear at a time specific and attorney, to the judge directly, refused whereupon the court ordered an attachment for direct contempt). See also *Barlow v. State*, 237 Ga. App. 152, 155 (513 SE2d 273) (1999) (even after finding of contempt, imprisonment of attorney is an abuse of discretion absent written order supporting such finding).

⁸ An attorney’s failure to appear for trial has been labeled both a “direct” and an “indirect” form of contempt. See *In re Omole*, supra (failure to answer call of case for trial is “direct” contempt); cf. *Thomas v. State*, 174 Ga. App. 476, 477 (330 SE2d 412) (1985) (attorney’s failure to report for trial is “indirect criminal contempt[.]”). Regardless of the label, however, the point for purposes of due process is that an attorney who fails to appear for a jury trial is not “in the presence” of the court so as to have immediate notice that the court contemplates contempt and an immediate opportunity to be heard on the issue. “During trial, a trial judge has the power, when necessary to maintain order in the courtroom, to declare conduct committed in her presence and observed by her to be contemptuous, and, after affording the contemnor an opportunity to speak in his or her own behalf, to announce punishment summarily and without further notice or hearing.” *Pleas v. State*, 268 Ga. 889, 891 (3) (495 SE2d 4) (1998). Thus, the labels “direct” or “indirect” contempt notwithstanding, an attorney is given an opportunity to be heard before he or she is “summarily” punished. “Even where summary punishment for contempt is imposed during trial, the contemnor has normally been given an opportunity to speak in his own behalf in the nature of a

states that certain attorney misbehavior is subject to "summary punishment." However, such summary punishment "must yield to the fundamental constitutional right to due process of law."⁹ "Contempt is a drastic remedy which ought not to deprive one of his liberty unless it rests upon a firm and proper basis."¹⁰

The State's Motion For Reconsideration is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 1 2003

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C. Jill L. Martin, Clerk

right of allocution." *Taylor v. Hayes*, 418 U. S. 488, 497 (94 SC 2697, 41 LE2d 897) (1974).

⁹*McDaniel v. State*, 202 Ga. App. 409 (1) (414 SE2d 536) (1992), distinguished on other grounds in *Felix v. State*, 271 Ga. 534, 537 (523 SE2d 1) (1999).

¹⁰ (Citations and punctuation omitted.) *Ford v. Ford*, 270 Ga. 314, 316 (509 SE2d 612) (1998), citing with approval *McDaniel v. State*, supra. at 413.

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

ATLANTA, JULY 03, 2003

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 354. MITCHELL et al. v. FISH.

Upon consideration, the Motion for Emergency Writ of Supersedeas filed by Tandra D. Mitchell and David P. Mitchell pursuant to Rule 40 (b) of this Court is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL -3 2003

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Clerk.

Will. L. Matier

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

ATLANTA, July 25, 2003

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 355. RALEIGH R. LEE et al. v. EAST COURT SQUARE
II, LLC.**

Raleigh R. Leigh and Raleigh's BBQ & Blues, LLC have filed a "Motion to Stay the Appeal." This Court cannot stay an appeal that has not yet been docketed in this Court. Accordingly, the motion is denied.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 25 2003*

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C. Will. L. Maitland, Clerk.

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

ATLANTA, AUG - 5 2003

The Court of Appeals hereby passes the following order:

Motion Docket No. 356. CORNETTA et al. v. FULTON COUNTY, GEORGIA.

Appellants' Motion for Writ of Supersedeas having come on to be heard before this Court, we hereby order that the motion is DENIED.

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

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William Z. Mat... , Clerk.

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

ATLANTA, SEP 12 2003

The Court of Appeals hereby passes the following order:

MD 357. IN RE: DANIEL KANE.

The trial court held Daniel Kane in contempt for acts that occurred in the court's presence. Kane timely moved for supersedeas and filed a notice of appeal with the clerk of court.

Although the trial court may, in its discretion, refuse to grant supersedeas pending appeal for contempt committed in the court's presence, OCGA § 5-6-13 (b), we nevertheless retain inherent power to grant supersedeas to prevent the appeal from becoming moot. *Garland v. Tanksley*, 99 Ga. App. 201 (107 SE2d 866) (1959). So that we may reach the merits of this matter, Kane's petition for supersedeas pending appeal of his criminal contempt is hereby GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 12 2003

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Will. L. Martin, Jr.

, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, October 7, 2003

The Court of Appeals hereby passes the following order:

MOTION DOCKET 358. HESTER v. THE STATE.

Shirley Hester has filed an emergency motion with this Court seeking to stay the trial and a motions hearing in her case during the pendency of her direct appeal from the trial court's denial of her motion to dismiss the indictment for violation of her constitutional right to speedy trial.

At a hearing held on September 9, 2003, the trial court denied Hester's motion to dismiss the indictment. On September 11, Hester filed a notice of appeal from that ruling. On September 15, the trial court issued a written order denying Hester's motion to dismiss the indictment. On September 19, the trial court issued an order "denying pretrial appeal & specially setting trial." In that order, the trial court found that Hester's attempt to appeal the denial of her motion to dismiss the indictment was frivolous, dilatory and made solely for the purpose of delay. The court also set the trial and pretrial motions hearing for October 27, 2003. In a later order, the court reset the motions hearing for October 10, 2003, during a scheduled leave of absence for Hester's counsel. On October 6, Hester filed a notice of appeal from all of the orders mentioned above.

In *Callaway v. State*, 275 Ga. 332 (567 SE2d 13) (2002), the Georgia Supreme Court held that a defendant may directly appeal from the pre-trial denial of either a constitutional or statutory speedy trial claim. In *Rielli v. Oliver*, 170 Ga. App. 699 (318 SE2d 173) (1984), this Court held that when a trial court denies a plea of double

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

ATLANTA, OCT 22 2003

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 359. IN RE: JULY-AUGUST GRAND JURY
PRESENTMENT FOR THE JULY-AUGUST 2003 TERM.**

The Court, having considered the Emergency Application for Supersedeas filed by DeKalb County, Georgia and Vernon Jones, Chief Executive Officer of DeKalb County, hereby denies the application.

Court of Appeals of the State of Georgia,
Clerk's Office, Atlanta OCT 22 2003

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the minutes of the Court of Appeals of Georgia.*

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C. Jill L. Maitland, Clerk.

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

OCT 22 2003

ATLANTA,

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 359. IN RE: JULY-AUGUST GRAND JURY
PRESENTMENT FOR THE JULY-AUGUST 2003 TERM.**

The Court, having considered the Emergency Application for Supersedeas filed by DeKalb County, Georgia and Vernon Jones, Chief Executive Officer of DeKalb County, hereby denies the application.

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

OCT 22 2003

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the minutes of the Court of Appeals of Georgia.*

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C. Will. L. Martini Clerk.

Court of Appeals of the State of Georgia

ATLANTA, November 18, 2003

The Court of Appeals hereby passes the following order:

**MD360. STATE OF GEORGIA v. DOWNTOWN DEVELOPMENT
AUTHORITY OF FORSYTH AND THE CITY OF FORSYTH v.
HUDSON, et al.**

The intervenors have filed an emergency motion asking this court to stay that portion of the judgment which required them to post a bond as a condition of continued participation in the lawsuit. It appears that the contentions of the intervenors are not frivolous. Therefore it was an abuse of discretion for the trial court to require the bond. It is therefore

ORDERED that the judgment is stayed until final disposition of the intervenors' appeal, in so far as it requires posting of a bond.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 2003

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the minutes of the Court of Appeals of Georgia.*

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C. Will. L. Maitland
....., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, **NOV 14 2003**

The Court of Appeals hereby passes the following order:

MD360. STATE v. DOWNTOWN DEVELOPMENT AUTHORITY OF FORSYTH AND THE CITY OF FORSYTH.

Intervenors have filed an emergency motion asking this Court to stay the superior court's order requiring them to post a bond pursuant to OCGA § 50-15-2. The record furnished to this Court with the motion does not reveal whether the bond was required after a "show cause" hearing. Nor does the record reveal whether an order was obtained, and served, as required by the second and third sentences of that code section. According to the statute, the intervenors will be dismissed by operation of law if the bond is not posted within ten (10) days after entry of the order requiring the bond. The order was entered on November 6, 2003, and filed with the clerk of court on November 7, 2003. It appearing that the deadline may occur before this Court has adequate opportunity to consider the emergency motion, it is hereby

ORDERED that the portion of the superior court's order of November 6, 2003, which required the posting of a bond is stayed pending further order of this Court. It is further ordered that:

1. Any party who desires to assist the Court in its consideration of this matter may, but is not required to, file a short brief, not to exceed ten pages, by facsimile, e-mail, or hand-delivery to the Clerk of this Court not later than 11:00 a.m., Monday, November 17, 2003. Service upon other parties shall be by facsimile, e-mail, or hand-delivery, as the party prefers, provided that the service copies of the brief are actually received by the other parties not later than 11:00 a.m. on Monday. Service by mail is

not permitted. The Clerk's e-mail address is martinw@appeals.courts.state.ga.us., and the FAX number is (404) 651-6187.

2. All parties are represented by counsel. They are expected to cooperate to insure the timely receipt of briefs. Specifically, any counsel who does submit a brief shall telephone other counsel in the case by 12:00 noon on Monday to insure that his or her brief was received.

3. Parties are not required to submit any briefs. However, any party which desires to submit an optional reply brief may do so provided it is filed and served by e-mail, facsimile, or hand-delivery so as to be actually received not later than 4:30 PM on Monday, November 17, 2003. The Court will issue an order by the close of business on Tuesday, November 18, 2003.

4. Page 4 of the superior court's order of November 3, 2003, was not submitted with the motion. Counsel for intervenors will furnish it to the Court by e-mail or facsimile not later than 11:00 a.m., Monday, November 17, 2003.

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

NOV 14 2003

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William R. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, : NOVEMBER 18, 2003

The Court of Appeals hereby passes the following order:

MD361. MATEEN v. DICUS.

The appellant has filed an emergency motion asking the Court to stay proceedings in the Bankruptcy Court and the Superior Court. As to the Bankruptcy Court, this Court has no jurisdiction. As to the Superior Court, it is clear that the order appealed from is not a final order and is subject to the interlocutory appeal provisions, which have not been followed. Moreover, the appeal may or may not be subject to OCGA § 5-6-35 (a) (6). The motion for a stay is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 2003

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C. Will. L. Maiti
Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 25 2003

The Court of Appeals hereby passes the following order:

MD362. IN THE INTEREST OF S.W., a child.

The juvenile appellant, S. W., has filed an emergency motion asking for a supersedeas pending appeal. The motion is granted in part, and it is hereby

ORDERED that the juvenile be released, pending the outcome of the appeal, upon the posting of an appeal bond in the amount of two hundred dollars (\$200.00), either in cash or by a professional bondsman acceptable to the Sheriff of Spalding County; provided, however, that the granting of said appeal bond is subject to the juvenile's strict observance of the following special conditions:

1. She must have no contact with, and must stay at least 100 feet away from, any member of the Gauldin family; and
2. She must obey her mother; and
3. She must regularly attend school; and
4. She must submit to supervision by the Spalding County Juvenile Office, including reporting to a Probation Officer not later than 4:30 p.m. on Monday, December 1, 2003, and reporting thereafter as the Probation Officer shall direct; and obeying all laws and rules and regulations of the Spalding County Juvenile Office; and

5. In the event of any violation of the terms of the bond, the state may petition the Juvenile Court of Spalding County to revoke the bond, and after notice to appellant's counsel and an opportunity to be heard, the Juvenile Court of Spalding County shall have the authority to revoke the bond or to allow it to remain in force, as that court shall decide based on a preponderance of the evidence.

The sentencing provisions of the disposition orders of October 24, 2003, including community service, CAPS/TAPS classes, a 6:00 p.m. curfew, payment of the supervision fee, the 90-day program, and remaining at the GRYDC pending placement, are all stayed pending appeal, unless the bond is revoked for violation of the special conditions of the bond.

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

NOV 25 2003

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, Clerk.

William L. Martini

Court of Appeals of the State of Georgia

ATLANTA,

NOV 26 2003

The Court of Appeals hereby passes the following order:

MOTION DOCKET 363. MASSEY v. THE STATE.

Sherri Massey has filed a motion asking this court to set a supersedeas bond. Although the motion is not denominated as such, we consider it to be an emergency motion pursuant to Rule 40 (b).

The motion asserts that the superior court has "failed and refused" to hold a hearing on the bond. However, the motion papers contain no affidavit or other evidence showing what efforts, if any, the appellant has made to request a hearing or otherwise bring the matter to the trial court's attention. Rather, the papers show only that a motion for bond has been filed in the trial court. In order to obtain relief in this court, it is incumbent upon the appellant to demonstrate by legally admissible evidence that the trial court has refused to set bond. Moreover, this court does not decide whether to set bond. "Granting or refusing to grant bail in non-capital felony cases after indictment and conviction is a matter within the sound discretion of the trial court[.]" *Williams v. State*, 228 Ga. App. 289, 290 (2) (491 SE2d 500) (1997), citing *Birge v. State*, 238 Ga. 88, 89 (230 SE2d 895) (1976). See OCGA § 17-6-1 (e). See also our unpublished order on Motion Docket 208, *Claywell v. State*, a copy of which is attached hereto for the convenience of the parties and the court below.

The motion is denied based on the lack of evidence submitted in support thereof. However, appellant may bring a new motion after thirty (30) days if she can demonstrate that a hearing has been requested but not held by that time.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 26 2003

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C. V. J. Marti, Jr., Clerk.

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

ATLANTA,

JANUARY 06, 2004

The Court of Appeals hereby passes the following order:

MD-04-01. TIMOTHY THORNTON v. ROBERT LEE, JR., ET AL.

Movant has requested an extension of time to file Notice of Appeal in the above styled case. There being no basis presented to this Court upon which to grant such a request, the same is hereby DENIED. There is a Motion for Extension of Time to File Notice of Appeal pending in the Superior Court. Should the Court deny that motion, movant may appeal that order at that time.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 6 2004

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Clerk.

Will. L. Marti

Court of Appeals of the State of Georgia

ATLANTA, FEB -6 2004

The Court of Appeals hereby passes the following order:

MD-04-02. GUY v. THE STATE.

The attorney for the defendant in this case was found in contempt in the trial court for failing to promptly appear for trial on January 8, 2004. According to the court's order in the case, when counsel did appear several hours late, he stated that he had business involving other cases that morning in other counties, but denied that he had a conflict or needed to file a conflict letter with the court. The court held counsel in contempt and fined him \$250, to be paid within 30 days.

Counsel filed a notice of appeal from the contempt order and a motion for supersedeas bond. When the trial court denied the motion for supersedeas bond, counsel filed an emergency motion for supersedeas bond in this Court pursuant to Court of Appeals Rule 40 (B). Under Rule 40 (B), this Court may issue an order as may be necessary to preserve jurisdiction of an appeal or to prevent a contested issue from becoming moot. Such an order is not necessary in this case, where the movant has only been ordered to pay a fine for contempt. The motion presents no emergency inasmuch as counsel has not been ordered to serve time in jail. Had he been ordered to serve jail time, and he actually served it before we heard the appeal, his appeal from the order would be moot. This is because he could not get back the time he spent in jail. That is not the case where a monetary fine has been imposed. If counsel has paid a fine, and then successfully secures a reversal of the order on appeal, he would be reimbursed for the improperly assessed fine. Thus, payment of the fine pending an appeal of the contempt order does not render the case moot, and this Court would retain jurisdiction over the appeal.

The motion is hereby DENIED.

Court of Appeals of the State of Georgia **FEB -6 2004**
Clerk's Office, Atlanta

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Will. L. Matz , Clerk.

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

ATLANTA, February 17, 2004

The Court of Appeals hereby passes the following order:

MD-04-03. WRIGHT AND EVANS, INC., A GEORGIA CORPORATION, AND C.A. WRIGHT, III v. SATILLA COMMUNITY BANK

Movants have filed with this Court an Amended Rule 40(b) Motion for Emergency Supersedeas proceeded by a Motion for Courtesy Appearance in this Court, pursuant to Rule 9(c). Upon consideration of the Motion for Courtesy Appearance, the same is hereby GRANTED.

Now, this Court turns to the merits of the Rule 40(b) Emergency Motion. Movants have filed their Rule 40(b) Motion asking this Court to invoke its jurisdiction. Upon consideration of the Amended Rule 40(b) Motion for Emergency Supersedeas and the attachments thereto, this Court finds that the contested issue will not become moot, and that the movants are not without adequate remedies at law or equity and the matter does not come within the purview of matters intended for Rule 40(b). Therefore, the Motion for Emergency Supersedeas is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **FEB 17 2004**

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Clerk.

C. Will. L. Mait; JR

Court of Appeals of the State of Georgia

ATLANTA, February 19, 2004

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 04-04. CYNTHIA LUCAS v. COBBLESTONE FLATS REX ROAD APARTMENTS.

This case is before us on Cynthia Lucas' motion for an emergency order to stay an eviction. According to the motion and documents attached to it, Cobblestone Flats Rex Road Apartments obtained a writ to evict Lucas from her apartment for failure to pay rent. On October 20, 2003, Lucas challenged the eviction by filing a petition for writ of certiorari in Clayton County Superior Court. On February 17, 2004, the superior court issued an order dismissing Lucas' petition. Lucas has now attempted to file a direct appeal from the superior court order dismissing her petition and to invoke this court's emergency order authority. Both attempts must fail.

An appeal from a superior court order reviewing a lower court decision by certiorari must be taken by application for discretionary appeal, and not by a direct appeal. OCGA § 5-6-35 (a) (1). Lucas has failed to file the required application for discretionary appeal, and has instead improperly attempted to directly appeal the superior court's order. Accordingly, the jurisdiction of this court has not been properly invoked and there is no basis for us to issue an emergency order.

We may exercise our inherent power to issue emergency orders in order to preserve jurisdiction of an appeal, but this power is exercised sparingly and generally no order will be made until an appeal has been docketed in this court. Court of Appeals Rule 40 (b). Because we have no jurisdiction over Lucas' improperly filed direct appeal, there is nothing for us to preserve and no reason for us to exercise our

emergency order power. Lucas' motion for an emergency order is therefore denied.

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

FEB 19 2004

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

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

Will. L. Mait, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, February 20, 2004

The Court of Appeals hereby passes the following order:

**MOTION DOCKET NO. 04-05. ELLIOTT HAGUE v. MERCEDES - BENZ
USA, LLC.**

Hague has filed an emergency motion pursuant to Rule 40 (b), asking this Court to stay the time to obtain a certificate of immediate review from the trial court's order granting partial summary judgment to Mercedes-Benz. This Court is without jurisdiction to change the statutory interlocutory review requirements. In any event, it is not necessary for Hague to obtain a certificate of immediate review, as a direct appeal may be taken from the grant of a partial motion for summary judgment within 30 days from the date the judgment is entered notwithstanding that other issues remain pending in the trial court. Planet Insurance Co. v. Ferrell, 228 Ga. App. 264 (491 SE2d 471) (1997).

The motion is hereby DENIED.

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

FEB 20 2004

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William L. Martin, Jr......, Clerk.

Accordingly, pursuant to standing caselaw, Defendant does not have the right to have his case stayed below. Nonetheless, Defendant contends that our Supreme Court's recent opinion in *Callaway v. State*, 275 Ga. 332 (567 SE2d 13) (2002), implicitly overrules the precedent set forth in the cases cited above. We disagree. However, in light of the importance of double jeopardy protection, we hereby grant Defendant's motion to stay the criminal proceedings below until Thursday, March 25, 2004, for the sole purpose of allowing Defendant the opportunity to petition our Supreme Court for consideration of his contentions regarding *Callaway*. On such date, absent some ruling from our Supreme Court to the contrary, Defendant's criminal trial may proceed in accordance with the caselaw cited herein.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 19 2004

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

C. Jill L. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, March 23, 2004

The Court of Appeals hereby passes the following order:

MD 04-07. ECHOLS v. STATE OF GEORGIA.

Appellant Anthony Mark Echols filed an emergency motion with this Court pursuant to Rule 40 (b) of the Rules of the Court of Appeals. Echols complains that on February 2, 2004, he filed a notice of appeal with the Superior Court of Walton County, Georgia, from the denial of his Motion for Correction of Void Sentence and that the clerk of the court has failed to send his appeal to this Court. Echols was sentenced approximately ten years ago on asserted felony charges.

Rule 40 (b) provides that it will be used sparingly, and as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. Echols fails to satisfy the requirements of the rules of this Court to authorize the exercise of its emergency powers, and the motion is denied.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 23 2004*

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

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

Will. L. Martz, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, March 19, 2004

The Court of Appeals hereby passes the following order:

Motion Docket No. 04-06. DESOUZA v. THE STATE.

Pursuant to Court of Appeals Rule 40 (b), Liston Ken Desouza (Defendant) has filed this emergency motion to stay his criminal trial. At the calendar call for such trial, Defendant made a plea in bar of double jeopardy, which the trial court denied after finding the motion to be frivolous. Thereafter, Defendant filed a notice of appeal regarding the trial court's denial of his plea. Defendant now contends that his notice of appeal regarding the trial court's denial of his plea in bar of double jeopardy wholly divests the trial court of jurisdiction over the case and, thereby, requires his requested stay.

However, as this Court explained in *Baker v. State*, 263 Ga. App. 462, 466 (2) (588 SE2d 288) (2003):

The denial of a plea of former jeopardy may be directly appealed without resort to the procedures for interlocutory appeal. *Patterson v. State*, 248 Ga. 875 (287 SE2d 7) (1982). If the trial court finds a plea of former jeopardy to be frivolous and dilatory, then the filing of an appeal from the denial of the plea does not divest the trial court of jurisdiction of the case. *Rielli v. Oliver*, 170 Ga. App. 699, 700 (318 SE2d 173) (1984). *But even if the trial court does not make such a finding, the trial court does not lose all jurisdiction of the case during an appeal of the denial of the plea, but only the jurisdiction to execute the sentence.* *Strickland v. State*, 258 Ga. 764, 765-766 (1) (373 SE2d 736) (1988).

(Emphasis in original.)

Court of Appeals of the State of Georgia

ATLANTA, April 6, 2004

The Court of Appeals hereby passes the following order:

MD 04-08. GLOVER v. SHUEY.

Gregory Glover has filed a "Motion for Emergency Order or for Emergency Injunctive Relief" with this court. Glover has attempted to appeal directly to this court the grant of a dispossessory warrant in the Magistrate Court of Richmond County, contending that he should be allowed to appeal to "the Court of his choice." This contention is in error.

Glover complained to the magistrate court below that he should be allowed to appeal to this court, citing the general appeals provisions of OCGA § 5-6-34. But Glover overlooks the more specific provisions of OCGA § 15-10-41 (b) (1). Under that Code section, all appeals from judgments in the magistrate court are to the state or superior court of the county. This includes appeals from dispossessory warrants under OCGA § 44-7-56. "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).

Glover's motion for emergency order or emergency injunctive relief is therefore DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR -6 2004

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the minutes of the Court of Appeals of Georgia.*

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C. Will. L. Mart, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, APR 30 2004

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 04-09. HAMLEY v. J.W. EQUITIES, LLC

Jane Hamley has filed an emergency motion for supersedeas under Court of Appeals Rule 40 (b), arguing that the trial court erred in denying her application for a temporary restraining order concerning the pending foreclosure of certain real property located at Mellbrook Lane in Alpharetta, Georgia. Hamley first contends that the deed to secure the debt that is the subject of this action does not give the Mellbrook Lane property as security for the subject promissory note. The deed recites that the grantor conveys to the lender "all that certain tract of land in the County of Gwinnett, City of Buford, State of Georgia described in Exhibit A attached hereto and made part hereof." Exhibit A lists two properties: Tract I, 4325 Woodward Way, Sugar Hill (Buford), Georgia, and Tract II, 555 Mellbrook Lane, Alpharetta, Georgia. Hamley seems to argue that under the above-quoted language in the deed, only the Sugar Hill property was conveyed. But the first paragraph of the deed explicitly references both tracts in connection with the deed. More importantly, in her complaint filed March 17, 2004, Hamley admits that the Mellbrook lane property was "pledged as collateral for the Note."

Hamley also contends that appellee is barred by OCGA § 44-14-161 from foreclosing on the Mellbrook Lane property because it did not report the sale of the foreclosure of the Woodward Way property to the appropriate Superior Court judge and did not obtain an order of confirmation and approval. She maintains that this was a condition precedent to obtaining a deficiency judgment. But appellee is not seeking a deficiency judgment. Rather, it is simply seeking to sell the Mellbrook Lane property, which was pledged as collateral for the promissory note, in a non-judicial

foreclosure sale. See *Lawson v. Habersham Bank*, 233 Ga. App. 88 (503 SE2d 341) (1998); *Salter v. Bank of Commerce*, 189 Ga. 328 (6 SE2d 290) (1939). Hamley has provided no basis for granting her emergency motion, and it is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 30 2004

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

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

C. Jill L. Maitland, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, May 3, 2004

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 04-10. CORNELIUS et al. v. WICKER et al.

Dorothea and James Cornelius (“applicants”) have filed an emergency motion appealing the denial of their application for temporary restraining order. In their application, they sought to restrain the foreclosure on their property. They claim on appeal, as they did below, that a quitclaim deed executed by Kyle Wicker acted as a full final satisfaction of a promissory note and security deed executed by Dorothea Cornelius. The trial court concluded that the applicants failed to establish a likelihood of success on the merits, implicitly finding that execution of the quitclaim deed did not cancel the debt. The court’s conclusion is supported by the record, and the Cornelius’s motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk’s Office, Atlanta

MAY -3 2004

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the minutes of the Court of Appeals of Georgia.*

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

C. Jill L. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, May 18, 2004

The Court of Appeals hereby passes the following order:

MD0411. Alexander et al. v. Alexander et al.

Proceeding pro se, appellant Ne'Chanta Alexander seeks emergency relief from this Court to stay enforcement of the trial court's final order pending appeal. Appellant Alexander's submission shows that, on May 12, 2004, the trial court entered judgment against the appellants and in favor of appellees in this insurance dispute. The trial court also ordered the clerk of court to pay to Appellee Ella Mae Watson's attorney over \$95,000 in insurance proceeds that had been deposited into the registry of the court. Appellant Alexander filed a Notice of Appeal on May 14, 2004. That same day, Appellant Alexander filed with this Court an emergency motion to stay further proceedings in the trial court, including the distribution of the insurance proceeds, during the pendency of her appeal.

Under OCGA § 5-6-46 (a), “[i]n civil cases, the notice of appeal . . . shall serve as supersedeas upon payment of all costs in the trial court by the appellant.” Thus, the filing of the notice of appeal and payment of costs “preclude[s] the issuance of an execution on the judgment prior to the appeal, suspend[s] the judgment, and act[s] as supersedeas staying any execution attempts during the appeal.”¹ If Appellant Alexander has paid all costs below, she does not need emergency relief from this Court because an automatic stay is already in place. If she has not paid the costs below, we decline to grant her any relief because she has not complied with OCGA

¹*Groover v. Commercial Bancorp of Ga.*, 220 Ga. App. 13, 18 (2) (467 SE2d 355) (1996)

§ 5-6-46.² Accordingly, Appellant Alexander's emergency motion for a stay is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 18 2004

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

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

C. John L. Martin, JR. Clerk.

²We note that, except in certain limited circumstances, “[n]o execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten days after its entry.” OCGA § 9-11-62 (a). This provision offers “the party against whom a judgment has been entered the right to be free from execution *and* from proceedings for enforcement of the judgment for a period of ten days in order to determine his future course of action.” *Bank South v. Roswell Jeep Eagle*, 200 Ga. App. 489, 490 (3) (408 SE2d 503) (1991). If the party desires to appeal, “he can file a notice of appeal (in which case the issue of supersedeas is resolved as provided in OCGA § 5-6-46).” *Id.*

Court of Appeals of the State of Georgia

ATLANTA, May 18, 2004

The Court of Appeals hereby passes the following order:

MD 04-12. ALEXANDER v. THE STATE.

Richard Alexander pleaded guilty to a criminal offense in Cobb County.¹ He subsequently filed a motion to modify or reduce his sentence. The trial court denied the motion, and Alexander has appealed.² Although the appeal has not yet been docketed, Alexander has filed an “emergency motion” in this Court. Although the relief Alexander seeks is not entirely clear, it appears that he wants this Court to rule on the merits of the underlying appeal. Under Court of Appeals Rule 40 (b), “this Court may issue such orders or give such direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. This power will be exercised sparingly.” Here, the relief sought by Alexander does not fall within the narrow rule of this Court. Thus, his motion is hereby denied.

¹ In his motion, Alexander does not specify the crime to which he pleaded guilty.

² Although Alexander did not timely file his notice of appeal, he contends he is entitled to an out-of-time appeal. For the purpose of this motion only, we will treat this contention as true.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 18 2004**

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the minutes of the Court of Appeals of Georgia.*

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

Will. L. Mat, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, June 8, 2004

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 04-013. COLEMAN v. CITY OF ATLANTA.

After being found guilty of criminal contempt by the trial court below, Thomas H. Coleman has filed this emergency motion for supersedeas pending his appeal of the trial court's ruling. OCGA § 5-6-13 (a) provides:

A judge of any trial court or tribunal having the power to adjudge and punish for contempt shall grant to any person convicted of or adjudged to be in contempt of court a supersedeas upon application and compliance with the provisions of law as to appeal and certiorari, where the person also submits, within the time prescribed by law, written notice that he intends to seek review of the conviction or adjudication of contempt. It shall not be in the discretion of any trial court judge to grant or refuse a supersedeas in cases of contempt.

Coleman's pending motion indicates that the trial court has refused to grant supersedeas and includes a copy of his notice of appeal of the trial court's finding of

contempt filed in the trial court. Accordingly, pursuant to the mandate of OCGA § 5-6-13, Coleman's emergency motion for supersedeas is hereby GRANTED, and the conviction and sentence of Coleman for contempt of court is hereby STAYED pending appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -8 2004

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

C. Will. L. Mait, Jr. Clerk

Court of Appeals of the State of Georgia

ATLANTA, AUGUST 10, 2004

The Court of Appeals hereby passes the following order:

MOTION DOCKET 04-15. DR. MONROE R. PARKER, JR. et al v. CENDANT MORTGAGE CORPORATION et al.

On August 6, 2004, Dr. Monroe R. Parker, Jr., and Mrs. Tonia R. Parker filed a motion for rehearing of this court's denial on July 23, 2004, of their Rule 40 (b) motion seeking an emergency injunction pending the appeal of the denial of their petition for a Temporary Restraining Order from the Superior Court of Fulton County to stay a hearing in magistrate court on July 20, 2004, to consider a dispossessory action that had been filed against them.

Court of Appeals Rule 37 (b), however, requires that all motions for reconsideration must be filed within 10 days from the rendition of the judgment or dismissal. Therefore, because the decision of this court was rendered on July 23, 2004, and the Parkers' motion for reconsideration was not filed until August 6, 2004, their motion for reconsideration is untimely.

Additionally, as the hearing that the Parkers sought to enjoin was set for July 20, 2004, and the record does not reflect that the hearing was rescheduled, it appears that the issue presented is now moot. Finally, although the Parkers have filed a notice of direct appeal in the Superior Court of Fulton County, as stated in this Court's order denying their motion, appeals of the denial of requests for temporary restraining orders must be taken by an application to appeal under OCGA § 5-6-35 (b-d). OCGA § 5-6-35 (a) (9).

Accordingly, for the reasons stated above, the Parkers' motion for

reconsideration is dismissed.

Court of Appeals of the State of Georgia

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

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

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

C. Will. L. Mait, Jr., Clerk.

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

ATLANTA, JULY 23, 2004

The Court of Appeals hereby passes the following order:

**MOTION DOCKET 0415. DR. MONROE R. PARKER, JR., et al. v. CENDANT
MORTGAGE CORPORATION et al.**

Pursuant to Court of Appeals Rule 40 (b), Dr. Monroe R. Parker, Jr., and Mrs. Tonia R. Parker seek an emergency injunction pending their appeal of the denial of their petition for a Temporary Restraining Order by the Superior Court of Fulton County. In the court below the Parkers' sought to stay a hearing in magistrate court on a dispossessory action that had been filed against them.

According to the motion, however, while the superior court has apparently orally denied the motion, it has not yet issued order denying the relief they requested, and consequently, the Parkers have not attempted to appeal that decision. In these circumstances, we have no jurisdiction to consider the issue because it remains pending in the superior court. Moreover, appeals of the denial of request for temporary restraining orders must be taken under the provisions of OCGA § 5-6-35 (a) (9).

Therefore, the Parker's motion is denied because it fails to satisfy the criteria established in Court of Appeals Rule 40 (b).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 23 2004

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the minutes of the Court of Appeals of Georgia.*

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William L. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, : NOVEMBER 18, 2003

The Court of Appeals hereby passes the following order:

MD361. MATEEN v. DICUS.

The appellant has filed an emergency motion asking the Court to stay proceedings in the Bankruptcy Court and the Superior Court. As to the Bankruptcy Court, this Court has no jurisdiction. As to the Superior Court, it is clear that the order appealed from is not a final order and is subject to the interlocutory appeal provisions, which have not been followed. Moreover, the appeal may or may not be subject to OCGA § 5-6-35 (a) (6). The motion for a stay is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 2003

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the minutes of the Court of Appeals of Georgia.*

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C. Will. L. Maiti
Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 25 2003

The Court of Appeals hereby passes the following order:

MD362. IN THE INTEREST OF S.W., a child.

The juvenile appellant, S. W., has filed an emergency motion asking for a supersedeas pending appeal. The motion is granted in part, and it is hereby

ORDERED that the juvenile be released, pending the outcome of the appeal, upon the posting of an appeal bond in the amount of two hundred dollars (\$200.00), either in cash or by a professional bondsman acceptable to the Sheriff of Spalding County; provided, however, that the granting of said appeal bond is subject to the juvenile's strict observance of the following special conditions:

1. She must have no contact with, and must stay at least 100 feet away from, any member of the Gauldin family; and

2. She must obey her mother; and

3. She must regularly attend school; and

4. She must submit to supervision by the Spalding County Juvenile Office, including reporting to a Probation Officer not later than 4:30 p.m. on Monday, December 1, 2003, and reporting thereafter as the Probation Officer shall direct; and obeying all laws and rules and regulations of the Spalding County Juvenile Office; and

5. In the event of any violation of the terms of the bond, the state may petition the Juvenile Court of Spalding County to revoke the bond, and after notice to appellant's counsel and an opportunity to be heard, the Juvenile Court of Spalding County shall have the authority to revoke the bond or to allow it to remain in force, as that court shall decide based on a preponderance of the evidence.

The sentencing provisions of the disposition orders of October 24, 2003, including community service, CAPS/TAPS classes, a 6:00 p.m. curfew, payment of the supervision fee, the 90-day program, and remaining at the GRYDC pending placement, are all stayed pending appeal, unless the bond is revoked for violation of the special conditions of the bond.

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

NOV 25 2003

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the minutes of the Court of Appeals of Georgia.*

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

, Clerk.

Will. L. Mart; JR

Court of Appeals of the State of Georgia

ATLANTA,

NOV 26 2003

The Court of Appeals hereby passes the following order:

MOTION DOCKET 363. MASSEY v. THE STATE.

Sherri Massey has filed a motion asking this court to set a supersedeas bond. Although the motion is not denominated as such, we consider it to be an emergency motion pursuant to Rule 40 (b).

The motion asserts that the superior court has "failed and refused" to hold a hearing on the bond. However, the motion papers contain no affidavit or other evidence showing what efforts, if any, the appellant has made to request a hearing or otherwise bring the matter to the trial court's attention. Rather, the papers show only that a motion for bond has been filed in the trial court. In order to obtain relief in this court, it is incumbent upon the appellant to demonstrate by legally admissible evidence that the trial court has refused to set bond. Moreover, this court does not decide whether to set bond. "Granting or refusing to grant bail in non-capital felony cases after indictment and conviction is a matter within the sound discretion of the trial court[.]" *Williams v. State*, 228 Ga. App. 289, 290 (2) (491 SE2d 500) (1997), citing *Birge v. State*, 238 Ga. 88, 89 (230 SE2d 895) (1976). See OCGA § 17-6-1 (e). See also our unpublished order on Motion Docket 208, *Claywell v. State*, a copy of which is attached hereto for the convenience of the parties and the court below.

The motion is denied based on the lack of evidence submitted in support thereof. However, appellant may bring a new motion after thirty (30) days if she can demonstrate that a hearing has been requested but not held by that time.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta.

NOV 26 2003

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the minutes of the Court of Appeals of Georgia.*

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

C. V. J. Maitland, Clerk.