

COURT OF APPEALS OF GEORGIA

EMERGENCY MOTIONS

INDEX

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COURT OF APPEALS OF GEORGIA

EMERGENCY MOTIONS

INDEX

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MOTIONS DOCKET

DATE 1/2/04 MOTION DOCKET # MD-04-01

COSTS PAID BY: Allan Khoshkeni
RECEIPT # 8591

CHARGE Motion to File Out-of-Time Appeal

STYLE Timothy Thornton v. Robert Lee, Jr. et al

ATTY. FOR APLT Danielle C Johnson
2505 Chamblee Tucker Rd
Suite 300
Chamblee, Ga 30341 ~~404~~ 404 455-3022
770

ATTY. FOR APLE J. Benjamin Fenley
Chad W. Braddy
2991 North Druid Hill Rd
Suite C
Atlanta, Georgia 404 320-9979

LOWER CT. JUDGE Johnny L Caldwell
LOWER CT. # Superior
COUNTY Fayette

OUR JUDGE'S CODE 95

BRIEFS FILED _____

JUDGMENT DATE: 1/5/04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

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

ATLANTA, JANUARY 05, 2004

The Court of Appeals hereby passes the following order:

MD401. 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 - 5 2004

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

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

Clerk.

Will. L. Martin, Jr.

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

Clerk.

William L. Marti, Jr.

MOTIONS DOCKET

DATE 2/5/04 MOTION DOCKET # MD-04-02

COSTS PAID BY: Timothy Herring
RECEIPT # 78887

CHARGE _____

STYLE Jacqueline Merkguy vs. State of Georgia

ATTY. FOR APLT Timothy T. Herring
142 Mitchell St, SW Suite 215
Atlanta, GA 30303
404-521-1999

ATTY. FOR APLE Mary Leonard
DA's office Gwinnett Co. Superior Court
75 Langley Drive
Lawnside, GA 30045

LOWER CT. JUDGE William M. Ray, II
LOWER CT. # 03-B-3483-1
COUNTY Gwinnett

OUR JUDGE'S CODE 96

BRIEFS FILED _____

JUDGMENT DATE: 2/6/2004 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

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
Clerk's Office, Atlanta

FEB - 6 1964

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

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

W. L. Clerk.

MOTIONS DOCKET

DATE 2-16-04 MOTION DOCKET # MD-04-03

COSTS PAID BY: Clinton A. Wright, III
RECEIPT # 28831

CHARGE Supersedeas

STYLE Wright & Evans v. Seville Comm. Bank

ATTY. FOR APLT Clinton A. Wright, III
1617 Shirl Lane
Jacksonville, FL 32207

ATTY. FOR APLE Terry K. Floyd
P.O. Box Drawer 766
St. Marys, GA 31558

LOWER CT. JUDGE James R. Tubee, Jr.
LOWER CT. # _____
COUNTY Camden

OUR JUDGE'S CODE 96-04-03

BRIEFS FILED NT

JUDGMENT DATE: 2/17/04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

**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 preceded 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

I certify that the above is a true extract from the minutes of the 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. Mait, Jr.

MOTIONS DOCKET

DATE 2-19 MOTION DOCKET # MD-04-04

COSTS PAID BY: Cynthia Lucas

RECEIPT # 28996

CHARGE Supersedeas

STYLE Cynthia Lucas v. Cobblestone Flats Per Road Partners

ATTY. FOR APLT Cynthia Lucas

ATTY. FOR APLE Larry King

P.O. Box 1648
Jonesboro, GA 30237

LOWER CT. JUDGE Stephen E. Boswell

LOWER CT. # Clayton Superior

COUNTY Clayton

OUR JUDGE'S CODE 96

BRIEFS FILED NT

JUDGMENT DATE: 2/19/04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

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.*

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

MOTIONS DOCKET

DATE 2-20-04 MOTION DOCKET # MD 0405

COSTS PAID BY: George Johnson
RECEIPT # 79017

CHARGE _____

STYLE Elliott Hayer v. Mercedes-Benz
USA, LLC

ATTY. FOR APLT E. Scott Fortas
Krohn & Moss
1100 Spring Street N.W. suite 350
Atlanta, Ga 30309

ATTY. FOR APLE Johna Jonathan Friedman
Lord Bessell & Booth
1170 Peachtree St. suite 1900
Atlanta, Ga 30309

LOWER CT. JUDGE Brenda Cole
LOWER CT. # 02 VS 039636 E
COUNTY _____

OUR JUDGE'S CODE 96

BRIEFS FILED NT

JUDGMENT DATE: 2-²⁰4-04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

**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

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

MOTIONS DOCKET

DATE 3-18-04 MOTION DOCKET # MD-04-06

COSTS PAID BY: Dwight Thomas
RECEIPT # 79235

CHARGE Double Jeopardy

STYLE Desonza v. The State

ATTY. FOR APLT Dwight L. Thomas

ATTY. FOR APLE Sam Lengen
Att Cobb Ind. Cir.
10 E. Park Sq Marietta, GA 30090

LOWER CT. JUDGE Frank R. Cox
LOWER CT. # Cobb Superior
COUNTY Cobb

OUR JUDGE'S CODE 98

BRIEFS FILED NT

JUDGMENT DATE: 3-18-04 JUDGMENT: Denied/Stayed until March 25.

Cost Denied 5/18/04

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED 3/24/04

Cost - 3/25/04
Jan Esten picked up
104C1197

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.)

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

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

SUPREME COURT OF GEORGIA

Remittitur, Case No. S04C1197

Atlanta, April 19, 2004

The Honorable Supreme Court met pursuant to adjournment.

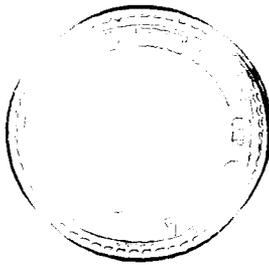
The following order was passed:

LISTON KEN DESOUZA v. THE STATE

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied.

All the Justices concur.

Court of Appeals Case No. MO.04-06



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta May 18, 2004

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

Nathaniel J. Medalla
Clerk.

MOTIONS DOCKET

DATE 3-22-04 MOTION DOCKET # MD-04-07

COSTS PAID BY: pauper
RECEIPT # 9999

CHARGE Correction of Void Sentence

STYLE Anthony Echols v. The State

ATTY. FOR APLT Pro Se - Anthony Echols

ATTY. FOR APLE Alan A. Cook
Dist. Atty
116 S. Broad Street
Monroe, GA 30655

LOWER CT. JUDGE Marvin W. Sorells
LOWER CT. # _____
COUNTY _____

OUR JUDGE'S CODE 98

BRIEFS FILED NT

JUDGMENT DATE: 3-23-04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

**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.*

C. Jill L. Maitland, Clerk.

MOTIONS DOCKET

DATE 4-6-04 MOTION DOCKET # MD-04-08

COSTS PAID BY: pauper's affidavit
RECEIPT # _____

CHARGE Dispossession -

STYLE Gregory Glover v. Steve Shuey

ATTY. FOR APLT pro se -

ATTY. FOR APLE Bill Williams
265 Denis Road
Augusta, Ga 30907

LOWER CT. JUDGE Carl C. Brown, Jr.
LOWER CT. # _____
COUNTY Richmond (Superior)

OUR JUDGE'S CODE 90

BRIEFS FILED NT

JUDGMENT DATE: 4/6/04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

Supreme Court 4/6/04
S 04C1285

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

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

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: April 6, 2004

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S04C1285**

GREGORY GLOVER v. STEVE SHUEY

Clerk, Supreme Court of Georgia

Case No. MD 04-08

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

MOTIONS DOCKET

DATE 4-30-04 MOTION DOCKET # MD-04-09

COSTS PAID BY: Robert A. Moss
RECEIPT # 79591

CHARGE Denial of TRO

STYLE Jane C. Hawley v. J.W. Equities, LLC

ATTY. FOR APLT Robert A. Moss 526590
1872 B Independence Sq.
Atlanta, GA 30338

ATTY. FOR APLE Jeffrey H. Schneider
One Alliance Center, 4th Floor
3500 Lenox Rd. Atlanta, GA 30326

LOWER CT. JUDGE Judge Cynthia Wright
LOWER CT. # _____
COUNTY Fulton

OUR JUDGE'S CODE _____

BRIEFS FILED NT

JUDGMENT DATE: 4-30-04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

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.*

Will. L. Mait, Jr. , Clerk.

MOTIONS DOCKET

DATE 4/30/04 MOTION DOCKET # MD-04-10

COSTS PAID BY: James Cornelius
RECEIPT # 79600

CHARGE Restraining Order Forclosure

STYLE Dorothea Cornelius et al v. Kyle Walker et al

ATTY. FOR APLT C. Samuel Rael
2221 Peachtree Street
Suite D-114
Atlanta, Ga 30304 404 522-2555

ATTY. FOR APLE Theodore A. Speaker
4651 Roswell Rd. N.E.
Atlanta, Ga 30342

LOWER CT. JUDGE Rechelo Morrison
Marquis one Tower Suite 502
2450 Peachtree Cent Ave
Atlanta, 30307

LOWER CT. # 2902 CV 57892
COUNTY Fulton

OUR JUDGE'S CODE 90

BRIEFS FILED NT (430)

JUDGMENT DATE: 5-3-04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

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

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

MOTIONS DOCKET

DATE 5-14-04 MOTION DOCKET # 04-11

COSTS PAID BY: Nechanta D. Alexander
RECEIPT # 79728

CHARGE Motion to Stay Disbursement of Funds

STYLE John Alexander et al v. Michael Alexander et al

ATTY. FOR APLT Ne' Chanta Alexander pro se
1605 Colomint South Drive
Conley, GA 30094 770-602-3047

ATTY. FOR APLE Mark C. Bips Esq.
Bips & Bips P.C.
125 Clainmont Road D.C. Suite 480
Decatur, GA 30030

LOWER CT. JUDGE Sr. Judge Elizabeth Long
LOWER CT. # _____
COUNTY Fulton

OUR JUDGE'S CODE 97

BRIEFS FILED NT

JUDGMENT DATE: 5/18/04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

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.

William L. Martini 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.*

MOTIONS DOCKET

DATE 5/17/04 MOTION DOCKET # 04-12

COSTS PAID BY: Pauper
RECEIPT # _____

CHARGE Sentence Reduction

STYLE Richard Alexander v. The State

ATTY. FOR APLT Richard Alexander
1A # 500699 CCF
1150 N. Liberty Street
Nicholls, Georgia 31554

ATTY. FOR APLE Patricia Head
10 E. Park Square, 5th Floor
Marion, Georgia

LOWER CT. JUDGE Kenneth Neil
LOWER CT. # Cobb 037
COUNTY Cobb

OUR JUDGE'S CODE 97

BRIEFS FILED _____

JUDGMENT DATE: 5/18/04 JUDGMENT: Denied

M.F.R. FILED _____ RESPONSES _____

N.O.I. FILED _____

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**

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

MOTIONS DOCKET

DATE 6-8-04 MOTION DOCKET # MD 04-13

COSTS PAID BY: M^{rs} Neill Stokes
RECEIPT # 79931

CHARGE ~~Thomas H. Coleman~~ Contempt / Super se deas

STYLE Thomas H. Coleman v. City of Atlanta

ATTY. FOR APLT M^{rs} Neill Stokes
1040 Peachtree Battle Ave.
Atlanta, GA 30327

ATTY. FOR APLE Lisa Y. S. West
150 Garnett St. S.W.
Atlanta, GA 30335

LOWER CT. JUDGE Lisa Y. S. West
LOWER CT. # City Court of Atlanta
COUNTY Fulton

OUR JUDGE'S CODE 99 → 98

BRIEFS FILED NT

JUDGMENT DATE: 6/8/04 JUDGMENT: Granted

M.F.R. FILED 6-9-04 - Denied RESPONSES 6/10/04

N.O.I. FILED _____

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

I certify that the above is a true extract from the minutes of 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, JUN 10 2004

The Court of Appeals hereby passes the following order:

MOTION DOCKET 04-013. COLEMAN v. CITY OF ATLANTA.

On June 8, 2004, this Court granted Thomas H. Coleman's Rule 40 (b) emergency motion for supersedeas and stay of conviction and sentence pending his appeal of the trial court's finding that he was in criminal contempt of court on May 20, 2004, over the disputed use and control of his cell phone. See OCGA § 5-6-13 (a). On the following day, the trial court judge, by personal letter, requested that this Court reconsider its ruling, arguing: (1) Coleman failed to timely serve the trial court with a copy of the Rule 40 (b) motion; and (2) the trial court never refused to grant supersedeas.

This Court cannot consider the trial judge's request as a valid motion for reconsideration for two reasons. First, the trial judge in a case such as this does not represent the State and is not a party to the action with the power to argue for her own ruling or to direct others to do so. The appropriate parties are Coleman and the State of Georgia through its solicitors, and they are the only ones who have standing to raise a motion for reconsideration with this Court upon the exercise of their independent judgment.

Second, a personal letter is not the appropriate vehicle by which to file a motion with this Court in any event. Court of Appeals Rule 37 and Rule 41 clearly set forth the requirements and formats for appellate motions. If these rules are not properly followed, as in this case, this Court cannot consider the inappropriately formatted correspondence as a viable motion.

For both of the reasons given above, we cannot consider the arguments personally raised by the trial judge in this matter.

Finally, we note that, pursuant to the record as revealed to this Court following the grant of Coleman's Rule 40 (b) motion, it appears that the trial court did grant Coleman's motion for supersedeas and stayed his conviction on Friday, June 4, 2004, approximately 14 days following conviction. The supersedeas order is postmarked June 7, 2004. Coleman maintains that he did not receive notice of the trial court's ruling until he had already filed his Rule 40 (b) motion with this Court on June 8, 2004. For the above reasons, the subject motion is dismissed.

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

JUN 10 2004

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

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

Will. L. Martz, Jr. , Clerk.

MOTIONS DOCKET

JUDGE # 99-98 MOTION DOCKET NUMBER MA 04-14

DATE: 6-22-04 REC #: 9999 PAID BY: 9999

CHARGE: Injunction

STYLE: Bobby Hardwick v. John Williams et al

ATTY. NT: Bobby Hardwick
P.O. Box 365
Augusta, GA 30903

ATTY. EE: Mr. David B. Bell
P.O. Box 1011
Augusta, GA 30903

LOWER CT. JUDGE: Bernard J. Mulheir, Jr.
LOWER CT. CASE # 2004-RCCV-642
COUNTY: Richmond

BRIEFS FILED: NT

JUDGEMENT DATE: 6-22-04 JUDGMENT: Denied

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, JUN 22 2004

The Court of Appeals hereby passes the following order:

MD 04-014. BOBBY HARDWICK v. JOHN WILLIAMS et al.

Pro se movant Bobby Hardwick filed this Rule 40 (b) motion on June 22, 2004, requesting this court stay a trial scheduled for June 23, 2004, in the civil court of Richmond County.

Upon consideration of this motion, the same is hereby denied because the movant has failed to satisfy the criteria set forth in Court of Appeals Rule 40 (b) authorizing this court to exercise its jurisdiction.

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

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

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

C. Will. L. Mait, Jr., Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD0415

DATE: 7/20/04 REC #: 80316 PAID BY: Monroe Packer

CHARGE: Foreclosure

STYLE: Monroe Packer et al v. Cendant Mortgage Corp

ATTY. NT: Monroe R Packer Jr Zonia R. Packer
P.O. Box 424
Alpharetta, Ga 30009
770 752 3113

ATTY. EE: R. Kyle Williams
One Alliance Center
4th Floor
3500 Lenox Road
Atlanta, Ga 30326

LOWER CT. JUDGE: Jackson Bedford
LOWER CT. CASE # 03CV 78824
COUNTY: _____

BRIEFS FILED: _____

JUDGEMENT DATE: 7-23-04 JUDGMENT: Denied -

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

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

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

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

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

Court of Appeals of the State of Georgia

ATLANTA, AUGUST 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. Jill L. Martz; , Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-0416

DATE: 7-26-04 REC #: _____ PAID BY: _____

CHARGE: Thomas P. Lypha v. Mercantile Bk

STYLE: 120

ATTY. NT: Thomas P. Lypha

ATTY. EE: Weisz & Assoc.
5 Concourse Pkwy Ste. 1240
Atlanta, GA
30326

LOWER CT. JUDGE: T. Russell Mc Clelland
LOWER CT. CASE # 04CO-1340
COUNTY: Forsyth

BRIEFS FILED: NT

JUDGEMENT DATE: 7-29-04 JUDGMENT: Dismissed

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JULY 29, 2004

The Court of Appeals hereby passes the following order:

MD0416. THOMAS P. LYPKA v. MERCANTILE BANK f/k/a CENTRAL BANK OF TAMPA, SUSAN K. WOODARD, TRUSTEE.

Mr. Lypka has filed a pleading entitled "Notice of Appeal of Order Denying Motion for Emergency Temporary Restraining Order Pursuant to OCGA § 9-11-65" stating that he gives notice that he appeals to this court under Court of Appeals Rule 40 (b). He states that he seeks relief from the order of the Superior Court of Forsyth County, entered July 23, 2004, denying his motion for an emergency temporary restraining order under OCGA § 9-11-65.

Under Court of Appeals Rule 40 (b) this court may issue such orders or give such direction as may be necessary to preserve or jurisdiction of an appeal or to keep a contested issue from becoming moot. It is not, however, a basis for asserting jurisdiction over an appeal.

Indeed, appeals of orders granting or denying temporary restraining orders must be taken under OCGA § 5-6-35 (a) (9), and

the failure to comply with these procedures is a jurisdictional defect requiring dismissal of an appeal. Turner v. Binswanger, 203 Ga. App. 319 (417 SE2d 221) (1992). Therefore, a direct appeal from the order denying the motion to set aside is not authorized.

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

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 29 2004

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

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

Clerk.

Will. L. Mart; JR

MOTIONS DOCKET

0501

JUDGE # _____

MOTION DOCKET NUMBER MD ~~0117~~

DATE: 9/2/04 REC #: 0756 PAID BY: Switzerland Ashby & Brenner

CHARGE: Supersedeas

STYLE: Ford Motor Company v. Artemus G. Gibson

ATTY. NT: Wm. D. Barwick

999 Peachtree Street
Atlanta, Georgia 30309

ATTY. EE: George W. Fryhofer

2719 Buford Highway
Atlanta, Ga 30324

LOWER CT. JUDGE: Kent Lawrence

LOWER CT. CASE # ST 00 CV 011

COUNTY: Clarke

BRIEFS FILED: NT - 9/2/04

EE - 9/3/04

Reply - 9-3-04

MFR on Emergency Motion EE 9/7/04 Response to MFR 9/8/04

JUDGEMENT DATE: 9/7 JUDGMENT: Granted Reply & response A MFR 9/8/04

M.F.R. FILED: 9/7/4

REPOSSES: _____

N.O.I. FILED: _____

MFR Denied 9/8/04

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

ATLANTA, September 8, 2004

The Court of Appeals hereby passes the following order:

MD05-01. FORD MOTOR COMPANY et al. v. ARTUMUS G. GIBSON, et al.

Plaintiffs' motion for reconsideration of our grant of defendants' petition for supersedeas is hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP -8 2004

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

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

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

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD 0502

DATE: 9/3/04 REC #: 80759 PAID BY: Jason Schwiller

CHARGE: Child Custody

STYLE: Shannon Thompson v Joseph Moreno-Palett

ATTY. NT: Jason T. Schwiller 404 276-2628
2117 Main St.
Dallas, Tex 30132 678 898-6552

ATTY. EE: Smolth James Mc Miller
418 Bradley Street
Carrollton, Tex 00117

LOWER CT. JUDGE: Marion Cummings
LOWER CT. CASE # Paulding Superior OICV 2192
COUNTY: Paulding

BRIEFS FILED: 70

JUDGEMENT DATE: 9-3-03 JUDGMENT: Denied

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, SEPTEMBER 03, 2004

The Court of Appeals hereby passes the following order:

MOTION DOCKET 05-02. THOMPSON v. MORENO-BARTLETT.

The Superior Court of Paulding County denied Shannon Sherree Thompson's petition for a change of custody of L. M., V. M., and J. M. and ordered her to return the minor children to Joseph F. Moreno-Bartlett at 6:00 p.m. on September 3, 2004. Thompson has now filed a motion, pursuant to Court of Appeals Rule 40 (b), asking this court to stay that judgment pending appeal. Because Thompson has failed to support her motion by showing that the matter comes within the purview of Rule 40 (b), her motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **SEP - 3 2004**

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

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

Clerk.

C. Jill L. Martin; JR

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-05-03

DATE: 10-15-04 REC #: _____ PAID BY: 9999

CHARGE: Contempt

STYLE: Edwin Lewis Moore v. City of Atlanta

ATTY. NT: Clark D. Cunningham 404-827-0027 Ext. 36
GA Justice Project
438 Edgewood Av.
Atlanta, GA 30312

ATTY. EE: _____

LOWER CT. JUDGE: Lisa Y.S. Smith
LOWER CT. CASE # _____
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 10-15-04 JUDGMENT: Granted

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 15 2004

The Court of Appeals hereby passes the following order:

MD05-03. MOORE V. CITY OF ATLANTA.

Edwin Lewis Moore filed pursuant to Court of Appeals Rule 40 (b) an "Emergency Motion for Supersedeas Pending Appeal." The record shows that on September 14, 2004, the City Court of Atlanta entered a written order sentencing Moore to serve 20 days in jail, consecutive, for each of three separate instances of contempt in the presence of the court during the progress of a proceeding in which Moore was also sentenced to serve 21 days for a traffic violation. Moore is currently serving the contempt sentence. On September 23, 2004, Moore filed in the City Court a Motion for Supersedeas Pending Appeal. The record does not show that the City Court has ruled on Moore's motion for supersedeas.

We note that under OCGA § 5-6-13 (b) "the grant of a supersedeas for contempts committed in the presence of the court is within the sound discretion of the trial court before whom the contempt is committed." *Garland v. Tanksley*, 99 Ga. App. 201, 212 (2) (107 SE2d 866) (1959). But "such a judgment of the trial court is nevertheless reviewable by this court." *Id.* A court that refuses or fails to exercise its discretion, when properly petitioned, necessarily abuses its discretion. The City Court's inaction on Moore's motion while he is serving the sentence could render moot his appeal on the supersedeas issue. Accordingly, Moore's motion for supersedeas is hereby GRANTED pending the written disposition of his motion for

supersedeas in the City Court. The Atlanta Detention Center is hereby ordered to release Moore instanter.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 15 2004

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

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

....., Clerk.

Will. L. Mart; JR

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD-05-04

DATE: 11/4/04 REC #: 81292 PAID BY: Amy Mc Chesney

CHARGE: Supersedeas

STYLE: The State v. Robert Clark, Jr.

ATTY. NT: Patrick Head DA Thomas Weather
10 East Park Square Amy Mc Chesney
Marquette, MI

ATTY. EE: Vanessa Patkin Aimee Maxwell
100 Fifth Ave 3rd floor
New York Chris Mc Fadden

LOWER CT. JUDGE: Dorothy Robinson
LOWER CT. CASE # 82 0481
COUNTY: Cobb Superior

BRIEFS FILED: NT 11-4 Shurbert Kake
EE 11-4

JUDGEMENT DATE: 11-5-04 JUDGMENT: Granted

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

* See A05D0096 - related application

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

ATLANTA, NOVEMBER 05, 2004

The Court of Appeals hereby passes the following order:

MD05-04. THE STATE v. CLARK

The State's Rule 40(b) Motion for Emergency Relief is GRANTED. Proceedings in the court below are stayed until further order of this Court. This Court will determine its jurisdiction within the next 30 days and will dismiss any appeal which was improperly taken.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV -5 2004

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

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

Clerk.

Will. L. Martz, Jr.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MW 05-05

DATE: 12/8/04 REC #: _____ PAID BY: _____

CHARGE: Supersedeas

STYLE: Waverly Hall Baptist Church Inc. et al
v. Lepton Brinkman et al

ATTY. NT: W. Wray Esbl Neal J. Callahan

ATTY. EE: Deron R. Hester Joshua R. McKoon

LOWER CT. JUDGE: Frank Jordan
LOWER CT. CASE # 04 CV 269
COUNTY: Harris

BRIEFS FILED: 12/8/04 Supp brief filed 12-14-04
12/15/04 Response of EE & Reconsideration

JUDGEMENT DATE: 12/13/04 JUDGMENT: Granted

M.F.R. FILED: 12-17-04 Denied 12-29-04
REPOSSES: 12-28-04

N.O.I. FILED: _____

~~12/15/04 11-23-05~~
10510893
See

12/16/04 Second Supplemental
Emergency Motion to Recognize
Automatic Supersedeas in
the trial court
12/17/04 EE MFR
(over)

Court of Appeals of the State of Georgia

ATLANTA, December 15, 2004

The Court of Appeals hereby passes the following order:

MD05-05. Waverly Hall Baptist Church, Inc. et al. v. Branham et al.

The Court of Appeals having considered the emergency motion of appellants to grant a supersedeas pending appeal in the above-styled case, it is hereby ordered that the "special church conference" ordered by the Superior Court of Harris County, Civil Action No. 04-CV-266, dated November 24, 2004, is hereby stayed during the pendency of this appeal. All other interlocutory rulings of the trial court shall remain in full force and effect.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC 15 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, Jr., Clerk.

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

ATLANTA, DEC 29 2004

The Court of Appeals hereby passes the following order:

**MD05-05. WAVERLY HALL BAPTIST CHURCH, INC., et al. v. BRANHAM,
et. al.**

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

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* DEC 29 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.

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD-05-06

DATE: 1/19/05 REC #: _____ PAID BY: NT ^{#8} receipt 31922
cash

CHARGE: Stay trial (proceedings)

STYLE: Garry Felder v. Bank of America, N.A.

ATTY. NT: Garry Felder
pro se
P.O. Box 685
Red Oak, GA

ATTY. EE: William S. Dorniny

LOWER CT. JUDGE: Susan B. Forsling
LOWER CT. CASE # 02 VS01146-F
COUNTY: Fulton State

BRIEFS FILED: NT

JUDGEMENT DATE: 1-24-05 JUDGMENT: Denied

M.F.R. FILED: 1/29/05 NT
REPOSSES: Denied 1-31-05

N.O.I. FILED: 2/8/05
Notice of filing Cert Petition 2/17/05 NT Supreme Ct Cert Pet.
Denied 6/6/05

2/25/05 - Motion for Judgment Permal fees

10/24/05 - " " " "

Court of Appeals of the State of Georgia

ATLANTA, January 24, 2005

The Court of Appeals hereby passes the following order:

MOTION DOCKET NUMBER 05-06. GARRY FELDER v. BANK OF AMERICA, N.A.

This case is before the Court on Garry Felder's Emergency Motion to Stay Proceedings and Petition for Writ of Prohibition. The motion was filed after the trial court granted Bank of America's motion to dismiss Felder's Notice of Appeal, filed in the trial court on February 2, 2004. Felder's notice specified a transcript of the proceedings below was to be included in the record on appeal. Felder never ordered the transcript from the court reporter and on January 6, 2005, the trial court granted Bank of America's motion to dismiss and also ordered Felder to turn over to Bank of America a vehicle in his possession.

In light of the above, we conclude that Felder's motion does not meet the requirements for this Court's Rule 40 (b) emergency motion and the same is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 24 2005

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

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

William Z. Mart..., Clerk.

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

ATLANTA, January 31, 2005

The Court of Appeals hereby passes the following order:

MD 05-06. GARRY FELDER v. BANK OF AMERICA, N.A.

Having considered Garry Felder's Motion for Reconsideration of this Court's order of January 24, 2005, said motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 31 2005

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

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MA-05-07

DATE: 1/26/05 REC #: 91990 PAID BY: Wm Head

CHARGE: Motion & Stay
William

STYLE: Kuehler v. The State

ATTY. NT: Wm. Head
750 Hammond Dr.
Beale, S
Atlanta, Georgia 30328

~~Joseph Drolet~~
~~150 Garnett St~~
~~Atlanta, Ga 30303~~

ATTY. EE: Joseph Drolet
150 Garnett Street
Atlanta, Ga 30303

LOWER CT. JUDGE: Calvin S. Graves

LOWER CT. CASE # 241465

COUNTY: Fulton - City Court of Atlanta

BRIEFS FILED: 1/26/05 ee

JUDGEMENT DATE: 1.26.05 JUDGMENT: granted

M.F.R. FILED: 1-26-05
REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, JAN 26 2005

The Court of Appeals hereby passes the following order:

MD 05-07. WILLIAM KREKELER v. STATE OF GEORGIA.

William Krekeler having moved, pursuant to Rule 40 (b), for an emergency stay of the Municipal Court (formerly City Court of Atlanta) proceedings against him for a misdemeanor traffic offense pending resolution of his appeal to this Court on double jeopardy grounds of the Municipal Court's refusal to dismiss the proceedings or transfer them to State Court for a trial by jury, said motion is hereby granted.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 26 2005*

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

Transferred
from Supreme Court M9-005

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER M9 05-08

DATE: 2/4/05 REC #: 8208 PAID BY: Supreme Court

CHARGE: Supremacy

STYLE: Mike S. Apolito v. Municipal Court of Atlanta

ATTY. NT: Wm. C. Head
750 Hammond Drive
Bedg 5
Atlanta, Ga 30328

Frank Drolet
450 Spruett Street S.W.
Atlanta, Georgia 30307

ATTY. EE: _____

LOWER CT. JUDGE: _____
LOWER CT. CASE # 240956 Graves
COUNTY: Fuller

BRIEFS FILED: 2/4/05

JUDGEMENT DATE: 02/07/05 JUDGMENT: Denied

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____



SUPREME COURT OF GEORGIA

Case No. S05M0859

Atlanta

FEB 03 2005

The Honorable Supreme Court met pursuant to adjournment.

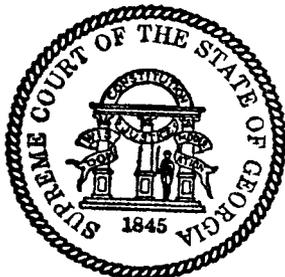
The following order was passed.

MILO S. IPPOLITO v. MUNICIPAL COURT OF ATLANTA

The motion for emergency supersedeas not falling within this Court's subject-matter jurisdiction, it is hereby transferred to the Court of Appeals. Patterson v. State, 248 Ga. 875 (1982).

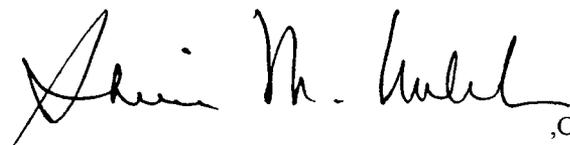
SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta



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

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


Clerk

Court of Appeals of the State of Georgia

ATLANTA, February 7, 2005

The Court of Appeals hereby passes the following order:

MD 05-08. IPPOLITO v. MUNICIPAL COURT OF ATLANTA.

Milo Ippolito has filed an emergency motion, pursuant to Court of Appeals Rule 40 (b), to stay proceedings in the City Court of Atlanta, urging that the trial court lacks jurisdiction to conduct a jury trial of his DUI case.

1. Court of Appeals Rule 40 (b) 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 the contested issue from becoming moot. This power will be exercised sparingly. Ippolito filed this motion to stay proceedings on the ground that the lower court allegedly lacks jurisdiction to hear a jury trial. This is an argument he can raise at any time in the trial court, and if that court rules adversely to him and tries the case, Ippolito can appeal to this Court at that time. He has not shown that the issue is time-sensitive, that an order from this Court is necessary to preserve the appellate jurisdiction of this Court, or that the issue will be rendered moot. Therefore, the motion in this case does not present an emergency as contemplated by Rule 40 (b).

2. In addition, in January 2005 the attorney for Ippolito filed an emergency motion in another case, Krekeler v. State (Case No. MD 05-07), raising the same argument he raises here (that the City Court of Atlanta is now relegated to the status of a municipal court and lacks subject matter jurisdiction to hear a jury trial). On January 27, 2005, this Court issued an order denying the motion, holding that Krekeler had not shown that the condition precedent necessary for the legislation upon which he based his position to take effect had been satisfied.

3. Inasmuch as this Court has now decided the issue raised in this motion twice, no similar emergency motions should be filed in this Court. See Court of

Appeals Rule 15 (b).

This motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB -7 2005

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

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD-05-09

DATE: 02/04/05 REC #: _____ PAID BY: _____

CHARGE: Supersedeas (Stay Execution of Sentence)

STYLE: Lawrence Kaitgeb v. State of Georgia

ATTY. NT: Douglas W. McDonald, Sr.
P.O. Box 396
Cornelia, GA 30531

ATTY. EE: Rick Bridgeman, ADA
205 N Alexander St, Suite 208
Toccoa, GA 30577

LOWER CT. JUDGE: James E. Connolly, Jr.
LOWER CT. CASE # 04-CR-2705
COUNTY: Stephens

BRIEFS FILED: N?

JUDGEMENT DATE: 2-4-05 JUDGMENT: Deny - order hearing

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, FEB -4 2005

The Court of Appeals hereby passes the following order:

MOTION DOCKET NUMBER 05-09. LAWRENCE LEITGEB v. THE STATE.

Lawrence Leitgeb has filed an emergency motion for an appeal bond. We deny his request for an emergency appeal bond, but order the trial court to hold a hearing on Leitgeb's pending motion for an appeal bond.

According to Leitgeb's emergency motion and attached documents, a jury found him guilty of one count of felony obstruction of an officer and one count of misdemeanor obstruction. On December 17, 2004, the trial court imposed consecutive probated sentences of five years for the felony obstruction and 12 months for the misdemeanor obstruction. But as a condition of probation, the court ordered Leitgeb to serve 90 to 120 days in a State Probation Detention Center. Leitgeb, who has been serving the detention portion of the sentence since his conviction, moved for a new trial, for a bond pending appeal and sought a hearing on the motions. The trial judge, however, indicated in a letter to Leitgeb's attorney that he is not inclined to schedule any hearings until the trial transcript is prepared.

Contrary to the judge's indication in his letter, the absence of a trial transcript is not a valid basis for the trial court to fail to hold a hearing on Leitgeb's motion for an appeal bond. "After 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. In doing so, the court must give applicant notice of the hearing and a chance to appear and be heard." (Citations and punctuation omitted.) *Knapp v. State*, 223 Ga. App. 267, 268 (477 SE2d 621) (1996). While the trial court is free to exercise its discretion in determining whether to grant

an appeal bond, it is not free to refuse to provide the applicant the opportunity to be heard on this issue in an evidentiary hearing. Id. Accordingly, the trial court in the instant case must, and is hereby directed to, hold an evidentiary hearing to consider Leitgeb's request for an appeal bond at the first available calendar so as to prevent the issue from becoming moot.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB -4 2005

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

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-05-10

DATE: 3-3-05 REC #: _____ PAID BY: Montgomery State Prison
82389

CHARGE: Disqualification of Judge

STYLE: Steven Bone v. The State

ATTY. NT: Steven Bone

ATTY. EE: Ann Harris

LOWER CT. JUDGE: Lark Ingram

LOWER CT. CASE # ~~03~~ 03-9-0165-34

COUNTY: Cobb

BRIEFS FILED: NT

JUDGEMENT DATE: 3-4-05 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, March 4, 2005

The Court of Appeals hereby passes the following order:

MOTION DOCKET NO. 05-10. THE STATE v. BONE.

Steven G. Bone has filed an emergency motion under Court of Appeals Rule 40 (b) to recuse the trial judge from further proceedings in this case, contending that the trial judge is "neglectful" and "intends on stopping [him] from his appeal of his false charges." Because it does not appear from the record that Bone has presented legally sufficient grounds for recusal of the trial judge, the motion is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -4 2005

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

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD -05-11

DATE: 3-30-05 REC #: _____ PAID BY: Supreme Court
transferred 3-30-05

CHARGE: Supersedeas

STYLE: Landmark Development v. Wallace Development
Supplement filed 3/30/05

ATTY. NT: Kevin Ward, Joseph L. Kelley, Kara Cullinane-Smith
Schulten, Ward & Turner LLP _____
Ste 2700, 260 Peachtree St _____ 404-688-6800
Atlanta, GA 30303 _____

ATTY. EE: Alison P. Danaceau _____
One Atlantic Center, Ste 3000 _____
1201 West Peachtree _____
Atlanta, GA 30309 _____

LOWER CT. JUDGE: John J. Goger
LOWER CT. CASE # _____ 2005 CV 97775
COUNTY: Fulton

BRIEFS FILED: NT
EE

JUDGEMENT DATE: 3/30/05 JUDGMENT: Denied

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, March 30, 2005

The Court of Appeals hereby passes the following order:

**MD-05-011. LANDBANK DEVELOPMENT CORPORATION et al. v. AVARY
WALLACE DEVELOPMENT COMPANY, LLC.**

Appellants Landbank Development Corporation and Navarre Beach Venture, L.L.C., have moved this Court in an emergency motion under Rule 40 for issuance of supersedeas to stay enforcement of the trial court's order compelling appellants to produce certain documents. When requested for such a supersedeas, the trial court declined, noting that its order compelling the document production "made no findings on the merits but rather was a very narrow interim injunction to preserve the *status quo* pending arbitration in Florida on other matters between the parties." The court further noted that both Georgia and Florida law (and the parties' Operating Agreement) required immediate access to the sought-after books and records.

Having carefully reviewed the parties' arguments, we hereby decline to exercise our Rule 40 emergency power (which is to be exercised sparingly) to stay enforcement of the trial court's mandatory injunction; accordingly, we DENY appellants' motion for supersedeas.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 30 2005

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

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD05-012

DATE: 3-30-05 REC #: _____ PAID BY: Supreme Court

CHARGE: ^{Style} William Knecker v. Municipal Court of Atlanta

STYLE: Supremedea

ATTY. NT: William C. Head
750 Hammond Dr.
Bldg # 5
Atlanta, GA 30328

ATTY. EE: Joseph Dvolet
150 Garnett St.
Atlanta, GA 30303

LOWER CT. JUDGE: Calvin S. Gravel
LOWER CT. CASE # 241465
COUNTY: City Court of Atlanta

BRIEFS FILED: NT

JUDGEMENT DATE: _____ JUDGMENT: _____

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, March 30, 2005

The Court of Appeals hereby passes the following order:

MD 05-012. KREKELER v. THE STATE.

William Krekeler, by and through his attorney, has filed a motion to withdraw his emergency motion in this matter as the issue he wished to raise has now become moot. Krekeler's motion to withdraw is hereby GRANTED, and this emergency motion is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 30 2005

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

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD05-013

DATE: 3-30-05 REC #: _____ PAID BY: 9999

CHARGE: Supersedeas

STYLE: T.H. Brown v. GA Power Co.

ATTY. NT: T. H. Brown 404-758-0449
1177 Simpson Rd. Apt. A-9 FAX 4-758-2288
Atlanta, GA 30314

ATTY. EE: Mayo D. Breedlove
BoA Plaza 800 Peachtree St. NE
Suite 5200 Atlanta GA
30308-2216

LOWER CT. JUDGE: Merwin S. Arrington
LOWER CT. CASE # 2004 CV 89445
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 3/31/05 JUDGMENT: Denied

M.F.R. FILED: 4/27/05 NT Denied
REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, April 27, 2005

The Court of Appeals hereby passes the following order:

MD-05-013. BROWN v. GEORGIA POWER COMPANY.

Upon consideration of appellant Brown's motion for reconsideration of this Court's order of MARCH 31, 2005, the same is hereby DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta April 27, 2005*

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

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

Willie L. Martin , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, March 31, 2005

The Court of Appeals hereby passes the following order:

MD-05-013. BROWN v. GEORGIA POWER COMPANY.

Following an evidentiary hearing, the trial court entered final judgment against appellant Brown on his complaint against Georgia Power Company and in favor of Georgia Power on its counterclaim for \$979.67. Brown filed a notice of appeal and has moved this Court under Rule 40 for an emergency injunction to enjoin Georgia Power from turning off service to Brown's property pending the appeal.

Having carefully considered Brown's motion, we hereby DENY said motion.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 31 2005

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

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD-05-14

DATE: 5/10/05 REC #: 2969 PAID BY: Supreme Ct (transfer)
1625

CHARGE: _____

STYLE: Bland Farms, Inc. v. National Onion Labs

ATTY. NT: Hugh McNatt,
Michael Bowers,
T. Joshua R. Archer

Balch & Bingham LLP
3535 Piedmont Rd, Bldg 14 Suite 1106
Atlanta, GA 30305

ATTY. EE: Hugh J. McCullough
Glen A. Cheney
J. Franklin Edenfield

Cowart & McCullough
Cheney, Waters, Gross & Gray
Spivey, Carlton, & Edenfield, PC

LOWER CT. JUDGE: Robert L. Russell, III
LOWER CT. CASE # 2005-V-187
COUNTY: Tattnell

BRIEFS FILED: NT

JUDGEMENT DATE: 5/11/05 JUDGMENT: Denied

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, May 11, 2005

The Court of Appeals hereby passes the following order:

MD-0514. BLAND FARMS, LLC et al. v. NATIONAL ONION LABS, INC. et al.

This case involves individuals and farms that grow Vidalia onions. Bland Farms, LLC and other individuals and farms (collectively, “plaintiffs”) sought a temporary restraining order prohibiting the defendants from certifying, advertising, or otherwise labeling its onions as “Certified Sweet” or “Certified Extra Sweet.” The trial court denied the motion, and the plaintiffs appealed. The plaintiffs also filed an emergency motion, petitioning this Court to enjoin the defendants from labeling onions pending the resolution of the appeal.¹

Court of Appeals Rule 40 (b) provides, in relevant part, that this Court, in the exercise of its inherent power,

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.

¹ The plaintiffs initially filed the appeal with the Supreme Court, which subsequently transferred the matter to this Court.

The appeal in this matter has not yet been docketed. Nonetheless, the plaintiffs seek to invoke this Court's authority under Court of Appeals Rule 40 (b). Having reviewed the trial court's order, however, we do not find that this is a case in which such extraordinary relief is appropriate. Accordingly, the emergency motion is hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAY 11 2005**

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

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD-05-15

DATE: 5/20/05 REC # payen PAID BY: _____

CHARGE: Revocation of Bond

STYLE: State v. Noel Gann

ATTY. NT: Steven Scarborough 137 Peachtree St, S.W.
Atlanta, GA 30303

ATTY. EE: Paul Howard District Attorney
136 Pryor St, 3rd Flr.
Atlanta, GA 30303

LOWER CT. JUDGE: Judge Stephanie Morris
LOWER CT. CASE # 04 SC 22485
COUNTY: Fulton County

BRIEFS FILED: NI

JUDGEMENT DATE: 5/23/05 JUDGMENT: Denied

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAY 23 2005

The Court of Appeals hereby passes the following order:

MD05-15. GUNN v. THE STATE.

Noel Gunn alleges that while out on bond, he was scheduled for a plea hearing on May 20, 2005. Prior to the hearing, Gunn was belligerent, and the trial court called him into the courtroom. Apparently, Gunn takes medication, which he failed to take the morning of the plea hearing. Based upon Gunn's failure to take his medication, the trial court refused to accept his plea and sua sponte revoked his bond and remanded Gunn into custody.

Gunn then filed an emergency motion with this Court arguing that the trial court violated due process by revoking his bond when he had not violated any condition of his bond. Gunn also asserts that he needs his medication, which he contends that he will be deprived of if he is incarcerated. Thus, he seeks to invoke this Court's authority to grant extraordinary relief.

Pursuant to Court of Appeals Rule 40 (b), this Court has the inherent authority to issue emergency orders "as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot." In order to invoke this Court's

emergency authority, however, a Rule 40 (b) motion “must . . . [c]ontain a stamped 'filed' copy of the order being appealed [and must] . . . [c]ontain a copy of the notice of appeal, if such has been filed in the trial court.” Indeed, it is the notice of appeal that is fundamental to this Court’s jurisdiction.¹

Here, Gunn has filed neither a copy of the trial court’s order nor a copy of a notice of appeal. As he has failed to comply with this Court’s rules, we are without authority to grant the relief sought. It follows that this motion is hereby denied.

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

MAY 23 2005

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

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

Willie L. Matz, Clerk.

¹ See *Jordan v. Caldwell*, 229 Ga. 343, 344 (191 SE2d 530) (1975) (“The proper and timely filing of a notice of appeal is an absolute requirement to confer jurisdiction upon the appellate court.”).

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-05-16

DATE: 8/11/05 REC #: 3748 PAID BY: Kathryn Rice

CHARGE: To attend time to have Court Reporter prepare Trans.

STYLE: Andrew Rice et al v. Lost Mountain Home Owners

ATTY. NT: J. Andrew Rice Kathryn W. Rice
8106 Lost Mountain Place
Powder Springs Ga 30127 →

ATTY. EE: Richard Calhoun
49 Atlanta Street
Maricella, Ga 30060

LOWER CT. JUDGE: Arthur Judge / George Kreeger
LOWER CT. CASE # 05 1 0437 18
COUNTY: Cobb

BRIEFS FILED: _____

JUDGEMENT DATE: 8/12/05 JUDGMENT: Denied

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Cert Denied 1/30/06
We received Remittitur on
3/6/06

Facsim copy of Order
of 8/12/05
A Mr. Rice on
8/23/05 to
770 382-826

since he did not
receive by mail

Court of Appeals of the State of Georgia

ATLANTA, AUGUST 12, 2005

The Court of Appeals hereby passes the following order:

MOTION DOCKET 05-16. RICE ET AL. v. LOST MOUNTAIN HOMEOWNERS ASSOC., INC.
ET AL.

J. Andrew Rice and Kathryn W. Rice moved this Court pursuant to Rule 16 (a) to order "whatever extension of time is necessary" for a court reporter to file a transcript in a Cobb County writ of prohibition case they intend to appeal or have appealed to the Supreme Court of Georgia. The Rices admit they have no intention of seeking appellate review in this Court. Moreover, it appears they have already sought an extension of time with the trial court to file a transcript in their case. The Rices have failed to demonstrate a justiciable issue over which we have any jurisdiction. Further, they have they shown no emergency which implicates the inherent power of this Court pursuant to Rule 40 (b). Consequently, this motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 12 2005

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



08-12-05

The Court of Appeals hereby passes the following order:

MOTION DOCKET 05-16. RICE ET AL. v. LOST MOUNTAIN HOMEOWNERS ASSOC., INC.
ET AL.

J. Andrew Rice and Kathryn W. Rice moved this Court pursuant to Rule 16 (a) to order "whatever extension of time is necessary" for a court reporter to file a transcript in a Cobb County writ of prohibition case they intend to appeal or have appealed to the Supreme Court of Georgia. The Rices admit they have no intention of seeking appellate review in this Court. Moreover, it appears they have already sought an extension of time with the trial court to file a transcript in their case. The Rices have failed to demonstrate a justiciable issue over which we have any jurisdiction. Further, they have they shown no emergency which implicates the inherent power of this Court pursuant to Rule 40 (b). Consequently, this 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.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-05-17

DATE: 8/12/05 REC #: 3757 PAID BY: Veronica E. Brunson

CHARGE: Supersedeas

STYLE: Lerry Chatfield v. Celeste Atkins - Chatfield

ATTY. NT: Veronica E. Brunson
Attorney at Law
401 Cherry Street Suite 207
Macon, Georgia 31201

ATTY. EE: Lewis Patterson
Attorney at Law
P. O. Box 563
Haddock, Ga 31033

LOWER CT. JUDGE: Hugh Wingfield
LOWER CT. CASE # 03CV19341
COUNTY: Jones

BRIEFS FILED: _____

JUDGEMENT DATE: 8/15/05 JUDGMENT: Transfer to S.C.

M.F.R. FILED: _____
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, August 15, 2005

The Court of Appeals hereby passes the following order:

MD-0517. CHATFIELD v. CHATFIELD.

On August 11, 2005, Terry Chatfield filed an emergency motion with this Court asking for an order imposing supersedeas. He contends the trial court issued an oral order finding him in contempt for his failure to pay an award of alimony that resulted from divorce trial. Because it appears we lack jurisdiction to entertain this motion, *Griffin v. Griffin*, 243 Ga. 149 (253 SE2d 80) (1979), we hereby TRANSFER this case to Supreme Court of Georgia.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 15 2005*

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

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER M D - 05-18

DATE: 8/12/05 REC #: 376/ PAID BY: Law Department

CHARGE: Supersedeas

STYLE: Katny Cox v. Academy of Lithonia

ATTY. NT: Alfred Evans, Jr.
Thurbert E. Baker
Dennis R. Dunn
Stefan Ritter

ATTY. EE: David H. Flint
Scott W. Peters
Nathan M. Wheat

LOWER CT. JUDGE: Sloneville
LOWER CT. CASE # 2005CV99805
COUNTY: Superior Court / Fulton

BRIEFS FILED: 8/15/05 ee

Granted, in part

JUDGEMENT DATE: 8/16/05 JUDGMENT: Denied, in part

M.F.R. FILED:
REPOSSES: 8/15/05

N.O.I. FILED:

Court of Appeals of the State of Georgia

ATLANTA, August 16, 2005

The Court of Appeals hereby passes the following order:

MD05-18. COX et al. v. ACADEMY OF LITHONIA, INC.

The Georgia Department of Education, Superintendent of Schools Kathy Cox, and the members of the Georgia Board of Education filed pursuant to Court of Appeals Rule 40 (b) an emergency motion to affirm automatic supersedeas. The motion is hereby GRANTED in part, as explained below.

The record shows the following proceedings. On July 29, 2005, the trial court entered an order finding for the Academy of Lithonia, Inc. on the school's complaint for a declaratory judgment. The declaratory judgment action asked the trial court to determine, pursuant to the Charter Schools Act of 1998, OCGA § 20-2-2060 et seq., and related regulations, whether the school's charter expired June 30, 2005 or continues in effect until June 30, 2006. The trial court determined that under the circumstances the Board lacked the authority to approve the renewal of the school's charter for only one year after the DeKalb County Board of Education had approved the school's petition to renew the charter for two years. Accordingly, the trial court declared that the charter continues in effect until June 30, 2006.

On August 3, 2005, the Board and the other defendants below filed a notice of appeal from the trial court's July 29, 2005 order. On August 8, the appellants filed a notice of supersedeas. The affidavit of the appellants' attorney shows that the appellants attempted to pay the costs in the trial court on that day. The clerk of court, however, refused to prepare a bill of costs until such time as the transcript had been

filed. On August 10, the school filed in the trial court an emergency motion in opposition to the notice of supersedeas. The same day, the trial court entered an order granting the school's emergency motion. In that order, the trial court declared that the appellants' notice of appeal did not act as supersedeas because the July 29, 2005 order "granted [the school] injunctive type relief" subject to OCGA § 9-11-62 (a) (absent an order, an interlocutory or final judgment in an action for an injunction shall not be stayed during appeal) and not subject to OCGA § 5-6-46 (a) (automatic supersedeas in civil cases). The trial court also found the appellants failed to comply with the requirements of OCGA § 5-6-46 (a).

OCGA § 5-6-46 (a) provides that a notice of appeal automatically serves as supersedeas "upon payment of all costs in the trial court by the appellant[s]." The Supreme Court of Georgia has held that "[t]he notice of appeal serves as supersedeas from the time of filing." *Vowell v. Carmichael*, 235 Ga. 387, 389 (1) (219 SE2d 732) (1975). We have clarified that "costs" includes appeal preparation costs. *Lott v. Arrington & Hollowell, P.C.*, 258 Ga. App. 51, 54 (2) (a) (572 SE2d 664) (2002); *Leventhal v. Seiter*, 208 Ga. App. 158, 165-166 (11) (430 SE2d 378) (1993). But see *J. M. Clayton Co. v. Martin*, 177 Ga. App. 228, 229 (1) (339 SE2d 280) (1985) ("costs" means trial costs and does not include the costs of preparing the appeal).

The order from which appeal was taken plainly shows that the school did not seek or obtain injunctive relief. See *Jones v. Douglas County*, 262 Ga. 317, 320 (1) (a) (418 SE2d 19) (1992) (a petition for declaratory judgment is an action at law). Contrary to the school's assertion, the appealed order did not compel the appellants to amend the charter; rather, the order declared that the appellants lacked authority to curtail the charter as it did with the result that the charter continues to exist in the form initially approved by the DeKalb County Board of Education. Because the appealed order is not a judgment in an action for an injunction, OCGA § 9-11-62 (a) does not apply and the appellants were entitled to the benefit of supersedeas as provided by OCGA § 5-6-46 (a).

The school contends the appellants failed to comply with OCGA § 5-6-46 (a) in only one way: by failing to pay costs in the trial court. But when a litigant files a

notice of appeal and appears before the clerk of court ready to otherwise comply with OCGA § 5-6-46 (a), a clerk of court may not thwart that Code section and prevent the effect of the automatic supersedeas by refusing to calculate or accept payment for trial costs. See OCGA § 15-6-61 (duties of clerks generally).

The appellants' motion is GRANTED to the extent it seeks confirmation that the trial court's July 29, 2005 order is subject to OCGA § 5-6-46 (a) and is not exempted by OCGA § 9-11-62 (a). To the extent the motion sought any other relief, it is hereby DENIED. For the purposes of clarity, we note that the trial court's August 10, 2005 order, having been entered without the notice required by OCGA § 9-10-2, is void and without effect.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 16 2005

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