

COURT OF APPEALS OF GEORGIA

EMERGENCY MOTIONS

INDEX

2006 EMERGENCY MOTIONS	
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MD-06-03	J. Andrew Rice and Kathryn W. Rice v. Lost Mountain Homeowners Association, Inc., et al. Motion for Reconsideration.
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MD-06-12	Warren Skillern v. The State	Certain inactions in court
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MD-06-20	Kathy Noble v. Karen Layman	Enforcement of a trial court order.
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MD-06-24	Warren Skillern v. The State	Notice of Appeal and record transmittal
MD-06-25	Steven M. Moore v. Center Court Sports & Fitness, LLC, et al.	Compel court reporter to produce a copy of the trial transcript.
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MD-06-27	Greg Powers v. Fayette County Board of Elections and Voter Registration, Fayette County, Georgia, et al.	Disqualification of petitioner to offer as a candidate for the Fayette County Board of Education.
MD-06-28	McChesney Capital Partners, LLC v. IH Riverdale, LLC	Property subject to lis pendens is under contract to be sold.
MD-06-29	IH Riverdale, LLC, et al. v. McChesney Capital Partners, LLC, et al.	Order canceling Notice of Lis Pendens.
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MD-05-02	Shannon Thompson v. Joseph Moreno-Bartlett Child Custody
MD-05-03	Edwin Lewis Moore v. City of Atlanta Reckless Driving; Contempt of Court
MD-05-04	The State v. Robert Clark, Jr. Emergency relief granted; proceedings in the court are stayed until further order of this Court.
MD-05-05	Waverly Hall Baptist Church, Inc., et al. v. Tipton Branham, et al. Emergency grant of supersedeas pending appeal.
MD-05-06	Garry Felder v. Bank of America, N.A. Emergency Motion to Stay Proceedings and Petition for Writ of Prohibition; denied.
MD-05-07	The State v. William Krekeler Motion to Stay Proceedings in the City Court of Atlanta
MD-05-08	Milo S. Ippolito v. The State Halt prosecution of DUI case in the City Court of Atlanta.
MD-05-09	Lawrence Leitgeb v. The State Emergency Motion for Appeal Bond. Denied request for emergency appeal bond but ordered the trial court to hold a hearing on pending motion for an appeal bond.
MD-05-10	The State v. Steven G. Bone Recusal of the trial judge from further proceedings.

MD-05-11	LandBanc Development Corporation, et al. v. Avary Wallace Development Company, LLC	Issuance of supersedeas to stay enforcement of the trial court's order compelling appellants to produce certain documents.
MD-05-12	William Krekeler v. Municipal Court of Atlanta	Stay proceedings in the Municipal Court of Atlanta
MD-05-13	Brown v. Georgia Power Company	Emergency injunction to enjoin Georgia Power from turning off service to property pending appeal.
MD-05-14	Bland Farms, LLC, et al. v. National Onion Labs, Inc., et al.	Emergency motion to stay pending appeal
MD-05-15	Noel Gunn v. The State	Revoking of bond
MD-05-16	Andrew Rice, et al. v. Lost Mountain Homeowners	Extension to have court reporter prepare transcript
MD-05-17	Terry Chatfield v. Celeste Adkins-Chatfield	Supersedeas
MD-05-18	Kathy Cox, et al. v. Academy of Lithonia	Supersedeas

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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 ensured.
MD-04-12	Richard Alexander v. The State	Sentence modification/reduction
MD-04-13	Thomas H. Coleman v. City of Atlanta	Emergency supersedeas; 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

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202	Early v. The State	Declaration and release on bond under Rule 40(b)
203	Robinson v. Miles	An order granting supersedeas pending appeal
204	Connell v. Ga Dept of Human Resources	For supersedeas pending appeal from contempt order of the trial court
205	In Re: Bruce Harvey	Order defendant be released instanter from custody
206	Living Word Christian Center, Inc. v. Alvah Breitweiser & Associates, Inc., et al.	Motion for supersedeas to stay arbitration pending outcome of appeal
208	Claywell v. The State	Emergency supersedeas bond
209	Carter v. The State	Transfer of application for Writ of Mandamus to the Supreme Court
210	Williams v. The State	Motion for Writ of Mandamus filed and docketed as an emergency motion
211	Vanalstine v. Vanalstine	Motion for Supersedeas Appeal by state prisoner acting pro se
212	Bakery Services, Inc. v. Thornton Chevrolet, Inc.	Extraordinary Motion for Extension of Time to Enable the Court Reporter to Compete the Transcript of the Trial

213	Robinson v. The State	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 motion for an out-of-time appeal
214 and 215	214 - Dobbs v. Weaver and Moreland, et al. 215 - Parson v. Weaver and Moreland, et al.	Requests for Extension of Time to File Notice of Appeal
216	Rawls v. The State	Emergency Application and Motion for Supersedeas bond pursuant to OCGA §17-7-50 asserting incarcerated for more than 90 days and no indictment for any offense.
217	Staley v. The State	Motion for Stay of Execution of Sentence
218	Sauls v. The State	Emergency Motion for Stay of Grand Jury Proceedings
219	Barsh v. Rodatus, et al.	Motion to Reconsider this Court's order in which denied Extraordinary Motion to Compel
220	Vanalstine v. Merritt	Motion for Supersedeas Appeal
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
224	Simpson v. Clerk of Georgia Court of Appeals	Petitioned this Court for a copy of his Motion for Reconsideration
225	In Re: Investigation of Judicial Conduct of Douglas County Grand Jury	Moves this Court to enter an order vacating the Superior Court's Order disqualifying the DA and his entire staff from advising the Grand Jury
226	Felts v. Benson	Motion for Supersedeas Appeal in which an out-of-time appeal in the underlying civil action for legal malpractice

227	Security Life Insurance Company of America v. Clark, et al.	Seeking supersedeas from the trial court's order requiring it to pay the plaintiffs "all reasonable costs of liability discovery, including reasonable attorneys fees within 10 days of receiving plaintiffs' statement for same
228	In Re: Wanda S. Jackson	Petition for supersedeas
229	Electronic Data Systems Corporation v. Heinemann, et al.	Application for Injunction Pending Appeal with this Court
230	Hawkins v. The State	Emergency Motion to extend the time for obtaining a proper transcript and to require the preparation of a transcript that complies with the Court of Appeals Rule 18.
231	Skillern v. The State	Motion for Supersedeas Appeal seeking to appeal the trial court's order denying Motion to Withdraw Plea
232	Felts v. Benson	Motion for Supersedeas Appeal as premature
233	Dixon v. The State	Motion for Copy of Court Records, Files, Transcripts and Other Papers and Motion for Extension of Time to File Appellant's Brief
234	Windford v. SGE Mortgage Funding Corporation	Emergency supersedeas of the trial court's order lifting a preliminary injunction issued
235	Security Life Insurance Company v. Clark, et al.	Emergency supersedeas of the trial court's order granting a junction in the underlying action
236	Keller v. The State	Attorney filed a motion for new trial and a petition requesting that appellant remain in 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.

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
238	Cheesman v. The State	Motion for Supersedeas Pending Appeal and Motion for Evidentiary Hearing
239	Jackson v. The State	Stay retrial on simple battery charge, pending appeal of the trial court's declaration of a mistrial during the original trial
240	Hinckley v. The State	Error in the trial's court's failure, after a sentence of imprisonment had been imposed for a misdemeanor, to grant bail pending appeal of conviction for driving under the influence in violation of OCGA §40-6-391, pursuant to OCGA §17-6-1(b) (1)
241	Trammell v. Clayton County Board of Commissioners, et al.	This Court review the trial court's denial of motion of temporary restraining order
242	Knighton v. The State	Require the trial court to set reasonable bond pursuant to OCGA §17-7-50
243	Garrett v. Easterling	Contempt for failure to pay child support
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
245	Williamson v. The State	Motion for supersedeas requesting this Court require the trial court to set reasonable bond pursuant to OCGA §17-7-50
246	Mathis v. The State	Contend the trial court failed to grant bond in the underlying action for probation revocation in violation of OCGA §17-6-1(b)
247	Garrett v. Easterling	Application for discretionary appeal transferred to the Supreme Court.

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
249	The State v. Jernigan	Motion for Reconsideration of this Court's order
250	O. S. Advertising Company of Georgia v. Rubin, et al.	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
251	Smith v. The State	Emergency motion to this Court that the trial court abused its discretion in denying motion for appeal bond.
252	Valujet Airlines, et al. v. Carleton	Requesting a stay of the trial in this matter pending appeal
254	Stewart v. Mulcare	Seeking a stay of the proceedings
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
260	Wright v. SunTrust Bank	Extraordinary motion and contempt sanctions

261	Roberts v. Roberts	Seeking supersedeas from the trial court's order finding him in contempt for failure to pay child support
262	In Re: Contempt Proceeding Bruce Harvey and W. Sander Callahan	Seek supersedeas from an oral order allegedly issued by Judge finding them in contempt
263	Rehberger v. The State	Emergency motion for expedited hearing with this Court
264	Dunn v. The State	Seeking an order requiring the State to prepare its recollection of trial pursuant to OCGA §5-6-41(g).
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
268	Guilmain v. Gosbee, et al.	Motion for supersedeas is before this Court after being transferred by the Georgia Supreme Court
269	Smith v. Clayton	State Court judge denied motion for supersedeas pending appeal. The court determined not in compliance with OCGA §5-6-13(a)
270	Ray v. The State	Seeking to appeal the trial court's denial of motion to proceed pro se in the direct appeal of underlying conviction for armed robbery
271	General Motors Corporation v. Bampoe-Parry, et al.	Dismiss a direct appeal from the trial court's order requiring the production of documents filed
272	Weldon, et al. v. Lane Company	Emergency Motion for Temporary Injunction
273	Kealey, et al. v. Belger, et al.	Wilful contempt

274	In the Matter of: Myrlin Earle	District Attorney filed Extraordinary Motion for Supersedeas Bond pending appeal with this Court
275	In the Matter of: Myrlin Earle	Second Extraordinary Motion for Supersedeas Bond pending appeal with this Court
276	Daniels v Howard	Emergency petition of plaintiff, Court granted supersedeas and order the clerk of the superior court not to pay or disburse funds being held
277	Scott v. Johnson, Clerk, Superior Court of Bartow County	Petition for habeas corpus relief
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)
282	Brooks v. The State	Emergency motion for bond
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
286	In the Matter of Myrlin Earle	DA filed Extraordinary Motion for Supersedeas Bond

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
296 and 297	ADAMA Mortgage Bankers, Inc. v. The Ga Dept of Banking and Finance	Motion to Stay Pending Appeal
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
310		
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.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD 06-01

DATE: 8/16/05 REC #: 83778 PAID BY: Robert B. Seamon

CHARGE: Supersedeas

STYLE: Robert B. Seamon v. George H. Seamon

ATTY. NT: Robert B. Seamon, 678-3⁶⁸ 6774
5511 Preserve Circle
Alpharetta, Ga 30005

ATTY. EE: Ronald Francis Debranski #
Slachnaci + Debranski
321 Creeksome Ridge
Woodstock, Ga 30188-2745

LOWER CT. JUDGE: Shelma Wyatt Cummings Moore
LOWER CT. CASE # 2004 CV 189341
COUNTY: Fulton Superior

BRIEFS FILED: _____

JUDGEMENT DATE: 8-17-05 JUDGMENT: Dismissed

M.F.R. FILED: 8/29/05 + additional filings & MFR
REPOSSES: _____

N.O.I. FILED: _____ MFR Denied 9/2/05

Court of Appeals of the State of Georgia

ATLANTA, August 17, 2005

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 0601. SEAMON v. SEAMON.

Robert Seamon filed this emergency motion asking for this Court to issue an injunction preventing George Seamon from dispossessing Robert Seamon's family from their home while his appeal is pending. The underlying facts as presented in this pro se motion are confusing, but appear to be as follows: The trial court issued a writ of possession in favor of George Seamon in a dispossessory action. The emergency motion does not include a copy of the order or show that Robert Seamon appealed from that order. At some point, the trial court issued a temporary restraining order prohibiting George Seamon from selling or encumbering the property, which order apparently remained in effect as long as Robert Seamon made timely mortgage payments. Again, the order is not part of the emergency motion and it does not appear that either party appealed this order.

Then, on July 22, 2005, the trial court dissolved the temporary restraining order after finding that Robert Seamon had failed to make a mortgage payment. In so ruling, the court found Robert Seamon's claim to the contrary to be "without merit." Robert Seamon immediately filed a notice of appeal from the trial court's judgment dissolving the restraining order. The appeal has not yet been docketed in this Court.

Under OCGA § 9-11-62 (a), the filing of a notice of appeal from an order dissolving an injunction does not act as a supersedeas while the appeal is pending. Under Court of Appeals Rule 40 (b) and OCGA § 9-11-62 (c), however, this Court may, in its discretion, grant an injunction in order to prevent the contested issue from becoming moot while the appeal is pending. As Rule 40 (b) further states, this power is exercised sparingly and, generally, this Court will not issue an order in an appeal

until it has been docketed in this Court.

In this emergency motion, Robert Seamon asks this Court to grant an injunction to prevent his family from being dispossessed and to give him an opportunity to pursue claims of fraud against George Seamon. Because it is apparent that this emergency motion seeks a resolution on the merits of his 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, we find that Robert Seamon has failed to show that this motion is authorized under Court of Appeals Rule 40 (b). It is, therefore, DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 17 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. Mat... Clerk.

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

ATLANTA, September 2, 2005

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 06-01. SEAMON v. SEAMON.

Upon consideration of the Motion for Reconsideration filed in the above-styled case, it is hereby ordered that such motion be DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP -2 2005

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

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hereto affixed the day and year last above written.*

Will L. Martin, Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD06-02

DATE: 8-17-05 REC #: 83788 PAID BY: Schneider, Wheeler & Flint

CHARGE: Superseadeas

STYLE: Kathy Cox v. Academy of Hithonia

ATTY. NT: Nathan M. Whoot
Schneider, Wheeler & Flint, LLP
1600 Candler Bldg., 127 Peachtree St, NE
Atlanta, GA 30303

ATTY. EE: Alfred L. Evans, Jr
Dennis Dunn, Stefan Ritter
GA Law Dept.
232 State Judicial Bldg.
40 Capitol Sq. S.W.
Atlanta, GA 30334

LOWER CT. JUDGE: Ural Glanville
LOWER CT. CASE # 2005 CV 99805
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 8/17/2005 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA,
AUG 17 2005

The Court of Appeals hereby passes the following order:

MD06-02. COX et al. v. ACADEMY OF LITHONIA, INC.

This appeals concerns the order of the Superior Court of Fulton County, entered July 29, 2005, declaring that the charter under which the Academy of Lithonia, Inc. operates continues in effect until June 30, 2006. The parties are in agreement that without the trial court's order, the charter expired on June 30, 2005. In this Court's order entered August 15, 2005, we confirmed that the timely notice of appeal filed by the Georgia Department of Education, Superintendent of Schools Kathy Cox, and the members of the Georgia Board of Education ("the Board") shall serve as supersedeas upon payment of costs in the trial court, as provided by OCGA § 5-6-46 (a). We now consider the school's emergency motion pursuant to Court of Appeals Rule 40 (b) to modify supersedeas. The school contends that we should exercise our discretion to modify or suspend the supersedeas to prevent the contested issue from becoming moot.

The record shows that on November 10, 2003, the DeKalb County Board of Education approved the school's petition to renew its charter for two years (2004-2005 and 2005-2006). On April 13, 2004, the Board approved the renewal of the school's charter, but only for one year, i.e., through June 30, 2005, and the DeKalb County Board of Education accepted the Board's decision. The record is silent as to whether during the year following the Board's decision the school again petitioned to renew its charter for the 2005-2006 school year. The record shows, however, that

the school opted to litigate the issue of the Board's authority and filed the instant action on April 15, 2005. On July 29, 2005, the school obtained the appealed ruling and began enrolling students for the 2005-2006 school year; classes began on August 15.

We are sympathetic to the school's plea that it be allowed to continue in operation pending the appeal. Although enforcement of the appealed order is suspended by the automatic supersedeas, the 2005-2006 school year is *not* suspended. The school's students must attend classes elsewhere, if they cannot attend their chosen school; the school's employees may seek other employment. There is no guarantee the school will be able to resume operations mid-year, assuming the appellants fail to carry their burden on appeal of showing trial court error.

Despite our sympathy, however, we are mindful of the importance placed on the right to supersedeas. Rule 40 (b) warns that this Court will exercise *sparingly* its inherent power to issue orders to prevent the contested issue from becoming moot. "Generally, no order will be made or direction given in an appeal until it has been docketed in this Court." *Id.* Litigants are almost always inconvenienced, sometimes severely, by the delay inherent in appellate review. We are particularly reluctant to curtail the appellants' rights when it appears the school acted less than diligently.

We find under the circumstances presented here that relief under Rule 40 (b) the school is not warranted. The school's motion is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 17 2005

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

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hereto affixed the day and year last above written.*

Will Z. Marti Clerk.

MOTIONS DOCKET

JUDGE # _____ MOTION DOCKET NUMBER MD 06-03

DATE: 9-6-05 REC #: 83953 PAID BY: J. Andrew Rice

CHARGE: P

STYLE: Rice et al v. Lost Mountain Homeowners et al

ATTY. NT: J. Andrew Rice
Kathryn Rice
81 Old Mountain Place
Powder Springs, GA 30127

770-499-8716

Fax 770-499-2378

ATTY. EE: Richard Calhoun
49 Atlanta Street
Marietta, GA 30060
770-422-1776

770-426-6155 (fax)

LOWER CT. JUDGE: Adele Grubbs
LOWER CT. CASE # 02-1-4560-42
COUNTY: Cobb

BRIEFS FILED: NT

JUDGEMENT DATE: 9/8/2005 JUDGMENT: Denied / Frivolous Mot.
Penalty \$1000

M.F.R. FILED: 9-16-05 NT
REPOSSES: _____

N.O.I. FILED: _____

NOF Cert 10-11-05

Court of Appeals of the State of Georgia

ATLANTA, SEP -8 2005

The Court of Appeals hereby passes the following order:

MOTION DOCKET 06-03. J. ANDREW RICE and KATHRYN W. RICE v. LOST MOUNTAIN HOMEOWNERS ASSOCIATION, INC. et al.

Lost Mountain Homeowners Association, Inc. sued homeowners Andrew and Kathryn Rice for constructing and maintaining a fence in violation of the association's restrictive covenants. On appeal in *Rice v. Lost Mountain Homeowners Assoc.*, 269 Ga. App. 351 (2004), we affirmed the trial court's entry of final judgment in favor of the homeowners association. In an attempt to relitigate the same issues resolved against them in the appeal, the Rices filed a motion to declare the final judgment void. Under Court of Appeals Rule 40 (b), the Rices have now filed an emergency motion for a protective order, complaining of delay by the clerk of the trial court in transmitting the record to this court in their appeal of the order of the trial court denying their post-judgment motion. Because the post-judgment motion is a patently unauthorized attempt to relitigate the issues decided in the Rices' appeal, we find the emergency motion to be frivolous, deny it as such, and impose a \$1000 penalty against the Rices under Court of Appeals Rule 15 (b) for filing a frivolous motion in this court. Pursuant to Rule 15 (c), imposition of such penalty shall constitute a money judgment in favor of the homeowners association against the Rices and may be collected as are other money judgments.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP -8 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 L. Matz

, Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD 06-04

DATE: 9-19-05 REC #: 84047 PAID BY: Supreme Court

CHARGE: NT's Motion for A Supersedeas

STYLE: Morris Communications Co. v. The State and Albert Jeffcoat

ATTY. NT: David Hudson
P.O. Box 1564
Augusta, GA 30903-1564

ATTY. EE: Richard Mallard
One Courtland St. 2d Floor
Statesboro, GA 30458

Albert Jeffcoat
% Sheriff Jimmy M. Duffie
P.O. Box 1015
Springfield, GA 31329

LOWER CT. JUDGE: John R. Turner
LOWER CT. CASE # _____
COUNTY: _____

BRIEFS FILED: NT

JUDGEMENT DATE: 9-21-05 JUDGMENT: Denied

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

N.O.I. FILED: 10-3-05

Court of Appeals of the State of Georgia

ATLANTA, September 21, 2005

The Court of Appeals hereby passes the following order:

MD 06-04. MORRIS COMMUNICATIONS COMPANY, LLC, d/b/a THE SAVANNAH MORNING NEWS v. THE STATE AND ALBERT JEFFCOAT.

Morris Communications Company, LLC, d/b/a The Savannah Morning News, sought permission from the Superior Court of Effingham County to install a still camera in the courtroom to take photographs during the criminal prosecution of Albert Jeffcoat. The trial court denied the motion. Morris Communications now seeks a supersedeas order allowing it to use a camera in the courtroom under conditions that it claims will not create distracting noises, not require extra space in the courtroom and will allow such limitations on the number of photographs as the trial court may reasonably require.

In its order, the trial court stated that it had considered the standards set forth in OCGA § 15-1-10.1 and USCR 22 and determined that the presence of cameras and/or recording equipment would be harmful to the rights of the parties and potential jurors. The trial court made specific findings of fact – the courthouse has limited space and the presence of cameras in the courtroom

would impact upon the administration of the court and would interfere with court process and detract from the ends of justice. See OCGA § 15-1-10.1 (a), (b) (5) and (b) (7). The court also found that the presence of a camera would not increase public access to the court or openness of judicial proceedings. See OCGA § 15-1-10.1 (b) (3). The court stated that its actions would not prevent the press from being present during the trial and reporting on the proceedings as they take place.

Whether electronic or photographic equipment will be allowed in the courtroom is a question for the trial court's discretion. *WALB-TV v. Gibson*, 269 Ga. 564, 565 (1) (501 SE2d 821) (1998). In this case, the trial court considered Morris Communications' request under the appropriate standards and made specific findings to support its decision. We find no abuse of discretion by the trial court and therefore deny the motion of Morris Communications.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 21 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 # 70 MOTION DOCKET NUMBER MD06-05

DATE: 9-28-06 REC #: 9999 PAID BY: _____

CHARGE: Supersedeas

STYLE: Michael Lane Brewer v. The State

ATTY. NT: Michael L. Brewer
G.D.C.# 705156
GA State Prison
2164 GA Hwy 147
Reidsville, GA 30499

ATTY. EE: _____
Daniel J. Craig
J.A. Augusta Just. Ctr
551 Greene St.
Augusta, GA 30901

LOWER CT. JUDGE: Carlyle Owen Street
LOWER CT. CASE # 1992 GA-CCA 1308
COUNTY: Richmond

BRIEFS FILED: NT

JUDGEMENT DATE: 9/29/05 JUDGMENT: Denied

Motion for Frivolous Appeal 10/11/05 denied 10/11/05

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, September 29, 2005

The Court of Appeals hereby passes the following order:

Motion Docket No. 06-05. BREWER v. THE STATE.

Upon consideration of Brewer's motion pursuant to Court of Appeals Rule 40 (b), the same is hereby ordered DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 29 2005

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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 Z. Martini, Clerk.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER 7119 06-06

DATE: 10/6/05 REC #: 84202 PAID BY: Berry Hayer

CHARGE: Motion for Best Pending Appeal

STYLE: Marc Christopher Wiggins v. The State

ATTY. NT: W. Scott Smith & Barry Hayer
206 Gough St. S.W.
100 Piedmont St. N.W.
Atlanta, Georgia 30307

ATTY. EE: Shawn Lu Sue
Selucan
500 DeKalb County Courthouse
556 N.W. Monroeh St.
Decatur, Ga 30030

LOWER CT. JUDGE: Barbara Mobley
LOWER CT. CASE # 05C 6355 25
COUNTY: DeKalb State

BRIEFS FILED: _____

JUDGEMENT DATE: 10/6/05 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, October 6, 2005

The Court of Appeals hereby passes the following order:

MD-06-06. WIGGINS v. STATE.

Marc Christopher Wiggins was convicted of misdemeanor obstruction of a law enforcement officer, OCGA § 16-10-24 (a), and sentenced to 12 months to serve 90 days. Wiggins filed a motion for new trial on September 18, 2005, along with a motion for supersedeas bond. On October 3, 2005, the trial court denied Wiggins' motion for bond. He files this emergency motion contending that the trial court erroneously failed to grant a supersedeas bond. Because Wiggins was not convicted of a felony, driving under the influence, an act involving family violence, or a high and aggravated misdemeanor, he is entitled to bond under OCGA § 17-6-1 (b) (1). Accordingly, Wiggins' emergency motion for bond is hereby GRANTED. The trial court is ordered to set a reasonable bond on Wiggins' behalf, as provided by law.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT -6 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.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD-06-07

DATE: 10/20/05 REC #: • PAID BY: pauper's affidavit

CHARGE: To Stay Proceedings

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

ATTY. NT: _____

ATTY. EE: William S. Dominy
Trauner, Cohen & Thomas L.P.
2880 Dresden Dr.
Atlanta, GA 30341-3920

William S. Dominy
1000 Wachovia Bank Bldg.
315 West Peachtree Street
Decatur, GA 30030

LOWER CT. JUDGE: Judge Susan Forsling
LOWER CT. CASE # 02 VF 00 1148
COUNTY: Fulton

BRIEFS FILED: _____

JUDGEMENT DATE: 10/21/05 JUDGMENT: ~~Denial~~ Granted
10/20/05 Denial w/ REBA

Second Motion to Stay 10/20/05 Denied 10/26/05

M.F.R. FILED: _____
REPOSSES: 10/25/05 by me 11-14-05

N.O.I. FILED: _____ 10-28-05 Em
" Contempt.

- Appt MFR 11/4/2005

12/1/05 Emergency Motion to Lift Stay
12/2/05 Motion Granted to lift Stay

Court of Appeals of the State of Georgia

ATLANTA, October 21, 2005

The Court of Appeals hereby passes the following order:

MD 06-07. FELDER v. BANK OF AMERICA, N. A.

Petitioner Garry Felder, who is pro se, has moved for an emergency order to stay proceedings pursuant to Court of Appeals Rule 40 (b). The motion is GRANTED in part. The trial court's contempt order is stayed until 5:00 p.m. on Tuesday, October 25, 2005. The stay will expire at that time unless the Court, after further review, grants a further stay.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 21 2005

*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.*

William Z. Martini, Clerk.

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

ATLANTA, October 26, 2005

The Court of Appeals hereby passes the following order:

MD 06-07. FELDER v. BANK OF AMERICA, N.A.

Petitioner Garry Felder's emergency motion to stay proceedings pursuant to Court of Appeals Rule 40 (b) is DENIED. Our temporary stay of the trial court's order is hereby dissolved.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 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. Martini Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

NOV 14 2005

The Court of Appeals hereby passes the following order:

MD 06-07. FELDER v. BANK OF AMERICA, N.A.

ORDER ON MOTION FOR RECONSIDERATION

On October 20, 2005, the appellant, defendant below (hereinafter "Felder") filed an emergency motion asking us to stay the proceedings below. The motion was denied. He asks for reconsideration. The matter is important to both parties. Felder is faced with possible incarceration. The Bank of America, N. A., (hereinafter "the Bank") is faced with the on-going depreciation of collateral (a large recreational vehicle, hereinafter RV) allegedly securing a sizable loan. Therefore, the matter merits additional consideration. And deciding whether to grant a stay requires a detailed review of the timing of numerous appeals and the precise nature of the orders appealed.

FACTUAL BACKGROUND

The litigation began in 2002 when the Bank filed an affidavit and summons to foreclose a security interest pursuant to OCGA § 44-14-230, et seq. Felder answered and counterclaimed.

The various records on appeal show disputed facts. At a hearing in January 2004, the Bank entered into evidence a promissory note allegedly signed by Felder on May 25, 2000, in the principal amount of \$112,054.00, a "Collateral and Security Agreement" dated May 25, 2000, allegedly signed by Felder, a Georgia vehicle title application allegedly signed by Felder, dated May 25, 2000, and a replacement copy of a Georgia Certificate of Title, issued January 15, 2004, reflecting an original purchase date of May 25, 2000, and reflecting that the owner was Felder and that the

Bank held a first security interest. There is also in the record in Case No. A05A1741, R.1, p. 296, a photocopy of a Georgia Certificate of Title issued April 4, 2000, showing that Emily Scott had purchased the RV in March of 2000, and that she had used it as collateral for a loan from the Bank. Her loan was apparently paid in full before Felder allegedly used the RV as collateral in May.

A Bank employee testified regarding the business records and asserted that no payments had been made since October of 2002 and that the loan was in arrears on that date.

In his testimony, Felder did not deny borrowing money from the Bank, but asserted that the loan was supposed to be unsecured, and that he had not owned the RV on May 25, 2000. When questioned by the trial judge about the paragraph in the Security Agreement in which he warranted that he did own the collateral, he denied that the signature on the document was his. He admitted to making some payments on the loan and, in fact, asserted that "as of the time of the filing the affidavit with the court, the payments were not behind." (Record, Case No. A05A1741, 2 of 2 T., p. 54, ll. 19-22).

The trial court found on January 21, 2004, by a preponderance of the evidence that the Bank was entitled to monthly payments pending the outcome of the litigation, and in lieu thereof, was entitled to possession. *Id.* Felder filed a direct appeal of that interlocutory order. He did not pay the costs of court but instead filed an affidavit of indigence. There was no traverse to his affidavit.

1. THE FIRST APPEAL

The notice of appeal dated February 2, 2004, recited that the order appealed from was the order of January 21, 2004, which had ordered monthly payments pursuant to OCGA § 44-14-234, and in default thereof, a writ of possession. That appeal was never docketed in this court and was dismissed by the trial court on January 6, 2005, by an order filed January 13, 2005, under OCGA § 5-6-48 because of Felder's failure to order a transcript. The order of January 6, 2005, also recites that the Bank was entitled to a writ of possession and a turnover order. Felder appeared

and argued at the hearing on January 6, making what he called a “special appearance” to question jurisdiction. On January 14, 2005, the trial court signed a “Turnover Order.”

2. THE SECOND APPEAL

Felder filed a Notice of Appeal on January 13, 2005, and an Amended Notice of Appeal on January 18, 2005, challenging the trial court’s dismissal of his earlier appeal and challenging the “Turnover Order.” This time a transcript was prepared. The appeal was docketed in this court as Case No. A05A1741. On January 25, 2005, the trial court issued a Writ of Possession for the RV. The Bank moved to require Felder to post a supersedeas bond. Felder filed an affidavit of indigence, which was traversed by the Bank. No hearing was held on the traverse or on the motion to require a supersedeas bond.

On July 21, 2005, this court dismissed the appeal on the ground that a direct appeal can not be taken from a trial court’s dismissal of an appeal when the appeal dismissed by the trial court should have been taken via application. The Supreme Court of Georgia refused certiorari.

3. THE THIRD APPEAL

On August 24, 2005, the trial court entered an order, found on page 43 of the record in Application No. A06D0040. Although the order contained lengthy recitals, its only effect was to transfer the case from the assigned state court judge to a “presiding judge.” On September 1, 2005, Felder moved the trial court for a certificate of immediate review, which was not granted. On September 2, 2005, he filed a notice of appeal from the order of August 24, 2005. This appeal was docketed in the court as A06D0040.

On September 21, 2005, the trial court entered an order entitled “Proposed Order for Incarceration.” Despite its title, it was in effect a judgment of civil contempt. It found that Felder had failed to obey the trial court’s order to turn over the RV and that he “remains in contempt of this court.” It ordered his incarceration

until he obeyed the turnover order. Felder immediately filed a notice of appeal, dated September 22, 2005. This notice was treated in our court as an amendment to the September 2, 2005, notice of appeal and included in Application No. A06D0040. On September 27, 2005, the trial court set aside the "Proposed Order of Incarceration." On that same day, September 27, 2005, this court dismissed the appeal in A06D0040 on the ground that Felder had filed an application for interlocutory appeal without attaching a certificate of immediate review. Felder has filed a notice of intent to apply for certiorari to the Supreme Court of Georgia from our decision dismissing A06D0040. Application No. A06D0040 included two notices of appeal, one from the order assigning the case to a "Presiding Judge" and one from the incarceration order dated September 22, 2005. But the incarceration order was set aside by the trial court, so the certiorari procedure would seem to involve only the disputed order reassigning the case.

4. THE FOURTH APPEAL

Meanwhile, according to an order of the trial court dated September 6, 2005, furnished to this court by Felder with an emergency motion, both parties appeared at a hearing on that date. The trial court then entered an order finding Felder in contempt and allowing him to purge himself by turning over the RV. Felder filed a timely notice of appeal, dated October 5, 2005.

Meanwhile, Felder filed an Emergency Motion (Motion Docket No. 06-07) with this court seeking supersedeas and stay of his incarceration. This court on October 20, 2005, granted a temporary stay to expire at 5:00 p.m. on October 25, 2005. Felder has furnished a trial court Order of Incarceration purportedly signed by the judge on October 25, 2005, at an unspecified hour. However, the Clerk of State Court of Fulton County stamped the order as filed at 7:39 a.m. on October 18, 2005, before this court issued its temporary stay. On October 26, 2005, we denied the Emergency Motion and dissolved the temporary stay. Felder has moved for reconsideration.

The trial court's order of September 6, 2005, finding Felder in civil contempt

would appear to be directly appealable.¹ The Notice of Appeal, dated October 5, 2005, would act as an automatic supersedeas but only as to the contempt finding and only “upon payment of all costs in the trial court by the appellant.”² The record does not reflect whether a current, valid, untraversed affidavit of indigence was filed with the notice of October 5. Felder has attached to his Emergency Motion a “Pauper’s Affidavit,” purporting to have the jurat of a judge, dated March 9, 2005. It is not probative of his current indigent status, in November 2005.

5. MOTIONS

Felder’s various emergency motions are not discussed in detail because the rulings on such motions are not *res judicata*, do not establish the law of the case, and are not an automatic supersedeas unless they specifically order a stay of all proceedings below.

6. ANALYSIS

It is axiomatic that an appellant must demonstrate error by pointing to the record.³ Because of Felder’s pro se status, he may not be aware that allegations in briefs are not evidence of record which may be considered by an appellate court.⁴ For example, he asserts that certain orders were improperly entered *ex parte*.⁵ But orders allegedly entered *ex parte* are not void on their face, and their propriety or impropriety is a matter for proof.

¹ See *Hamilton Capital Group v. Equifax Credit Info. Svcs.*, 266 Ga. App. 1, 2 (1) (596 SE2d 656) (2004).

² OCGA § 5-6-46 (a).

³ See *Ferqueron v. State Farm &c*, 271 Ga. App. 572, 575 (610 SE2d 184) (2005).

⁴ See *Hallsy v. Snyder*, 219 Ga. App. 128, 129 (2) (464 SE2d 219) (1995).

⁵ See generally *Walker v. First Nat. Bank*, 149 Ga. App. 52 (253 SE2d 442) (1979).

Moreover, it is well settled in Georgia that the pendency of an appeal deprives the trial court of jurisdiction *only as to subject matter of the judgment appealed*.⁶ The litigation may proceed in the trial court during interlocutory appeals so long as the trial court's orders do not touch on the specific subject matter of the order from which an appeal was taken. All appeals taken so far in this litigation, including the two currently pending, are interlocutory. The only two appeals currently pending are:

(1) The certiorari of our dismissal of A06D0040. That appeal would seem to touch only on the validity of the trial court's order assigning the case to a presiding judge, and

(2) The Notice of Appeal dated October 5, 2005, challenging the judgment of contempt dated September 6, 2005.

Therefore, the motion for reconsideration is GRANTED IN PART, and the trial court is directed as follows:

(1) The order of August 24, 2005, transferring the case from Judge Forsling to a presiding judge is stayed pending resolution of the certiorari. The notice of intent filed October 31, 2005, seems to have been untimely since this court dismissed the appeal September 27, 2005. Rule 38 (1) of the Supreme Court imposes a ten (10) day deadline for filing such notices. Nonetheless we stay the complained of order pending a jurisdictional review; and

(2) The various orders finding Felder in contempt and ordering his incarceration are stayed provided that Felder is in "compliance with the provisions of law as to appeal and certiorari."⁷ The "provisions of law as to appeal and certiorari" include payment of all costs in the trial court or filing an affidavit of indigence; and

(3) If there is a traverse of an affidavit of indigence, the trial court is requested to schedule a hearing within thirty (30) days to hear evidence and determine, on the

⁶ See *Cohran v. Carlin*, 249 Ga. 510 (291 SE2d 538) (1982).

⁷ OCGA § 5-6-13 (a). See *Blake v. Spears*, 254 Ga. App. 21, 25 (5) (561 SE2d 173) (2002).

record, the precise amount of the costs, and Felder's present ability to pay, earn or borrow the amount needed.⁸ If a traverse is filed, the burden of establishing indigence will be upon the appellant. If he fails to appear at the hearing, after having properly been given notice thereof, the trial court may find against him on that issue and dismiss the appeal. The parties are reminded that the trial court's ruling on the issue is not subject to appeal.⁹

(4) Except for matters touching on the two issues on appeal, the transfer of the case and the finding of contempt, the litigation may proceed to include post-judgment discovery, an execution of the writ of possession, if the collateral can be found, and such other orders or procedures the trial court considers might advance a speedy conclusion of this litigation.

(5) Felder's motion to find the Bank and its attorney in contempt is denied because the record shows that the disputed order was filed with the Clerk of Court before this court issued its temporary stay.

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

NOV 14 1994

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

⁸ See OCGA §§ 5-6-13 (a), 5-6-46, 5-6-47.

⁹ OCGA § 5-6-47; *Quarterman v. Weiss*, 212 Ga. App. 563, 564 (5) (442 SE2d 813) (1994); See generally *Hubbard v. Farmers Bank*, 153 Ga. App. 497 (265 SE2d 845) (1980).

Court of Appeals of the State of Georgia

ATLANTA, December 2, 2005

The Court of Appeals hereby passes the following order:

MD 06-07. FELDER v. BANK OF AMERICA, N.A.

This court's order of November 14, 2005, imposed a stay as to two aspects of this long-pending litigation. We granted a stay of the order transferring the case from Judge Forsling to a "presiding judge," and we granted a stay of execution of Garry Felder's incarceration for civil contempt provided that Felder is in "compliance with the provisions of law as to appeal and certiorari" including the payment of costs of the filing of a valid affidavit of indigency. Bank of America, N.A. has now filed an emergency motion to lift stay, which is hereby GRANTED. Accordingly, the first stay, the stay of the transfer order, is lifted and the case may proceed to trial as scheduled before a "presiding judge."

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC -2 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 # 92 MOTION DOCKET NUMBER MD 06-08

DATE: 10-21-05 REC #: 9999 PAID BY: L. Hardy # 84407

CHARGE: ~~Londyell Hardy~~ Supersedeas Bond

STYLE: Londyell Hardy v. Washington Mutual Bank, F.A.

ATTY. NT: Londyell Hardy 770-641-5989 - Home
P.O. Box 767922
Roswell, GA 30076 678-525-5598 - cell

ATTY. EE: Tamera S. Lester, Esq.
Morris, Schneider & Prior LLC
1587 N.E. Express Way
Atlanta, GA 30329

LOWER CT. JUDGE: B.T. Lane
LOWER CT. CASE # 2004CV87357
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 11-1-05 JUDGMENT: Denied

M.F.R. FILED: 11-1
REPOSSES: MFR Denied 11-14-05

N.O.I. FILED: _____

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

ATLANTA, November 1, 2005

The Court of Appeals hereby passes the following order:

MD 06-08. LONDZELL HARDY v. WASHINGTON MUTUAL BANK, F.A.

Appellant Londzell Hardy filed an emergency motion to modify or stay the trial court's order for supersedeas bond. Whether to require a supersedeas bond and the size of the bond are matters within the discretion of the trial court. Therefore, the appellant's emergency motion is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV - 1 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: [Signature], Clerk.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD 06-09

DATE: 10-30-05 REC #: 9999 PAID BY: _____

CHARGE: Supersedeas

STYLE: Warren Skillern v. The State

ATTY. NT: Warren Skillern

GDC # 786640
GSP 2164 Rt Hwy 147
Redslike, GA 30499-9701

ATTY. EE: John C. Jones
Law Dept

Judge Frank Mills
Canton, Ga

LOWER CT. JUDGE: N. Jackson Harris
LOWER CT. CASE # 05CV 1857
COUNTY: _____

BRIEFS FILED: NT

JUDGEMENT DATE: 11-1-05 JUDGMENT: Dismissed

M.F.R. FILED: 11-9-05 MFR Denied 11-23-05
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, November 1, 2005

The Court of Appeals hereby passes the following order:

MD 06-09. WARREN SKILLERN v. THE STATE.

It appearing that petitioner has not filed a notice of appeal, this Court lacks jurisdiction to entertain his Rule 40 (b) motion for emergency relief. Therefore, the motion is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV -1 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.

Court of Appeals of the State of Georgia

ATLANTA,

The Court of Appeals hereby passes the following order:

MD 06-09. WARREN SKILLERN v. THE STATE.

Petitioner has filed a motion for reconsideration of this Court's order dismissing his Rule 40 (b) motion for emergency relief. Having been read and considered, the 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,

NOV 23 2005

The Court of Appeals hereby passes the following order:

MD 06-09. WARREN SKILLERN v. THE STATE.

Petitioner has filed a motion for reconsideration of this Court's order dismissing his Rule 40 (b) motion for emergency relief. Having been read and considered, the motion is hereby DENIED.

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

NOV 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.*

, Clerk.

Will. Z. Martin

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD 06-10

DATE: 11-4-05 REC #: 84449 PAID BY: Law Dept.

CHARGE: Supersedeas

STYLE: IN THE INTEREST OF : F.N., ES., and A.M. minor
children

ATTY. NT: Therbert Baker
Charissa Ruel
40 Capital Sq
Atlanta 30374 6-3357

ATTY. EE: John P. Howell
1110 Clum St. SE Ste B
Atlanta
Connington, GA 30014

LOWER CT. JUDGE: Billy J. Waters
LOWER CT. CASE # 107-055-1347, 1348, 1349
COUNTY: Newton

BRIEFS FILED: NT

JUDGEMENT DATE: 11-4-05 JUDGMENT: Granted

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, November 4, 2005

The Court of Appeals hereby passes the following order:

**MD 06-10. IN RE: CONTEMPT PROCEEDING JANICE TIDWELL,
RACHEL TAYLOR, MARGARITA SHAW, AND KRISTINE FRENCH.**

The Juvenile Court of Newton County issued an order on November 4, 2005, holding Janice Tidwell, Rachel Taylor, Margarita Shaw and Kristine French in criminal contempt, ordering each of them to serve 24 hours in jail. These individuals have filed a notice of appeal from this order and now seek an emergency order of supersedeas.

As this Court retains the inherent power to grant supersedeas to prevent an appeal from becoming moot, *Garland v. Tanksley*, 99 Ga. App. 201 (107 SE2d 866) (1959), and so that we may reach the merits of this matter, the appellants' motion for supersedeas is GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV - 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.*

Willie L. Matz _____, Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD 06-11

DATE: 11-4-05 REC #: 84450 PAID BY: Law Dept.

CHARGE: Supersedes

STYLE: In The Interest of: F.N., E.S., And A.M. Children

ATTY. NT: Therese Babin - Charrisa Ruel
40 Capitol Sq.
Atlanta 30334
404-658-3357

ATTY. EE: John D. Howell
1110 Clumh St. SE
Suite B
Lawrenceville, GA 30044

LOWER CT. JUDGE: Lilly Watson
LOWER CT. CASE # 107-055-1347, 48, 49
COUNTY: Newton

BRIEFS FILED: NT, amended

JUDGEMENT DATE: 11-08-05 JUDGMENT: Granted

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, November 8, 2005

The Court of Appeals hereby passes the following order:

MD06-11. IN THE INTEREST OF: F. N., E. S., and A. M.

Appellants have filed a motion for supersedeas seeking a stay of the juvenile court's order dated November 4, 2005 directing the incarceration of Kristine French "until such time as she provides answers to all relevant questions" in the above matter. To the extent that the juvenile court has not vacated such order, the same is hereby stayed pending resolution of the issues raised on appeal relating to the invocation by Kristine French of her Fifth Amendment rights and Appellants' Amended Motion for Emergency Supersedeas Pursuant to Rule 40 (B) is accordingly GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV -8 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 Z. Martin Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD 06-12

DATE: 11-8-05 REC #: 9999 PAID BY: 9999

CHARGE: Pro Se motions

STYLE: Warren Skillern v. The State

ATTY. NT: Warren Skillern 786640
2164 Ga Hwy 147
Reidsville, Ga 30499

ATTY. EE: Garry T. Moss, A.A.
90 North St. Ste. 390
Canton, GA 30114-0428
770-479-1488

LOWER CT. JUDGE: Frank C. Mills
LOWER CT. CASE # 93-CR-0432
COUNTY: Cherokee

BRIEFS FILED: NT

JUDGEMENT DATE: 11-5-05 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, November 15, 2005

The Court of Appeals hereby passes the following order:

MD 06-12 WARREN SKILLERN v. THE STATE

Petitioner has filed a motion pursuant to our Rule 40 (b), complaining of certain inactions in the court below. However, no order of this Court is necessary to preserve jurisdiction of the appeal filed in this case on September 19, 2005 but not yet docketed in this Court, or to prevent the issues raised in this motion from becoming moot. Therefore, the motion is DENIED.

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

NOV 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.*

Will Z. Mat... Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD06-13

DATE: 11-8-05 REC #: 9999 PAID BY: 9999

CHARGE: Pro Se Motions

STYLE: Skillen v. The State

ATTY. NT: Warren Skillen
786640 2169 Hwy 147
Ridgely, GA 30499

ATTY. EE: Gary T. Moss, GA
90 North St. Ste 390
Canton, GA
50114-2791

LOWER CT. JUDGE: Mike Roach (deceased)
LOWER CT. CASE # 93 CR 0432
COUNTY: Cherokee

BRIEFS FILED: NT

JUDGEMENT DATE: 11-15-05 JUDGMENT: Dismissed

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, November 15, 2005

The Court of Appeals hereby passes the following order:

MD 06-13 WARREN SKILLERN v. THE STATE

Petitioner has filed a motion pursuant to our Rule 40 (b), complaining of certain inactions in the court below. No notice of appeal has been filed nor is any appeal currently pending in this matter, the Court having issued its opinion in the underlying case on August 27, 1999. *Skillern v. State*, 240 Ga. App. 34 (1999). In any event, our review discloses this motion does not meet our criteria for the exercise of emergency jurisdiction. Therefore, the motion is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 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.*

Will. Z. Martineau, Clerk.

MOTIONS DOCKET

JUDGE # 99 MOTION DOCKET NUMBER MD06-14

DATE: 12-07-05 REC #: 84709 PAID BY: Alston & Bird

CHARGE: Stay

STYLE: Thurbert E. Baker et al v. Metro Atlanta CO/C, Inc.

ATTY. NT: James C. Grant 404-881-7000
Alston & Bird
1201 West Peachtree St.
Atlanta, GA 30309-3424

ATTY. EE: Stefan Ritter Peter Canfield
Law Dept 40 Capital Sq Dow, Lohnes, Albenston PLLC
Atlanta, GA 30334 One Raminia Dr. Ste 1600
Atlanta GA 30346

LOWER CT. JUDGE: Michael D. Johnson
LOWER CT. CASE # 2005-CV-105088
COUNTY: Fulton

BRIEFS FILED: NT NT Reply Brief 12/9/05
EE 12/8/05

JUDGEMENT DATE: 12-9-05 JUDGMENT: Granted

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

N.O.I. FILED: _____

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

ATLANTA, DEC -9 2005

The Court of Appeals hereby passes the following order:

**MD06-14. METROPOLITAN ATLANTA CHAMBER OF COMMERCE INC.;
CENTRAL ATLANTA PROGRESS INC.; ATLANTA 2009 SUPER
BOWL BID COMMITTEE INC.; and NASCAR HALL OF FAME
COMMITTEE; Movants v. THURBERT E. BAKER in his official
capacity as the Attorney General of the State of Georgia; and THE
ATLANTA JOURNAL-CONSTITUTION; Respondents**

The Movants' Emergency Motion for Stay having come before this Court, the same is hereby GRANTED. The November 17, 2005 order of the Fulton County Superior Court requiring the defendants in Civil Action No. 2005-CV-105088 to produce specified records pursuant to the Georgia Open Records Act (OCGA § 50-18-70 et seq.) is stayed until further order of this Court. Court of Appeals Rule 40 (b).

Court of Appeals of the State of Georgia DEC -9 2005
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. Mat...

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD 06-15

DATE: 1-6-06 REC #: 84967 PAID BY: Edwards Law Group

CHARGE: Supersedeas

STYLE: ~~How~~ Heure/mam vs. DeVane

ATTY. NT: V. Jay Edwards, The Edwards Law Group EE
3350 Riverwood Parkway Roger J. Dodd, Esq.
Suite 1900 P.O. Box 1066
Atl, GA 30339 613 N. Patterson St.
770-723-7211 Valdosta, GA 31601

ATTY. EE: _____

LOWER CT. JUDGE: Tracy E. Maulton
LOWER CT. CASE # 05-CVD-997
COUNTY: Lowndes

BRIEFS FILED: NT

JUDGEMENT DATE: 1/6/06 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, January 6, 2006

The Court of Appeals hereby passes the following order:

MD 06-15. HEUVELMAN v. DEVANE.

This case is before us on Elizabeth Heuvelman's emergency motion for supersedeas. Heuvelman has also filed an Application for Discretionary Appeal under OCGA § 5-6-35(a) (2). Pursuant to OCGA § 5-6-35(h) and OCGA § 5-6-46 (a), this Application serves as supersedeas, unless the trial court includes in the final order a special provision that the custody award is effective as of the date of the judgement to protect the best interest and welfare of the child. *Walker v. Walker*, 239 Ga. 175, 176 (236 SE2d 263) (1977). We find no such provision in the trial court's order. Therefore, the application acts as supersedeas and the above emergency motion is DISMISSED as moot.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN -6 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.*

William Z. Mart... Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-06-14

DATE: 3/13/06 REC # 5601 PAID BY: Jim Keller

CHARGE: DUI Appeal Bond

STYLE: Gerald W Keller v. The State

ATTY. NT: Gerald W. Keller Jim Keller
2289 Brascomb-Carmel Rd 404 643-0878
Woodstock, Ga. 30189

ATTY. EE: Davis Cannon
Solisiloe
90 North Street Suite 380
Canton, Ga 30114

LOWER CT. JUDGE: CJ Fisher
LOWER CT. CASE # OST 5550
COUNTY: Cherokee State Court

BRIEFS FILED: _____

JUDGEMENT DATE: 3/13/06 JUDGMENT: Denied

M.F.R. FILED: 3/20/2006 by EE
REPOSSES: Denied 3/21/06

N.O.I. FILED: _____

Cent Notice from SC Cent Denied 7/14/2006
4/19/06

SUPREME COURT OF GEORGIA

Remittitur, Case No. S06C1435

Atlanta, July 14, 2006

The Honorable Supreme Court met pursuant to adjournment.

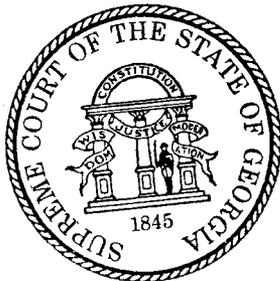
The following order was passed:

GERALD KELLER 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.

Bill of Costs, \$80.00
Court of Appeals Case No. MDKT0616 MDKT0618



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta August 04, 2006

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 D. Madole, Clerk.

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

ATLANTA, MAR 21 2006

The Court of Appeals hereby passes the following order:

MD-06-16. GERALD KELLER v. THE STATE.

Appellee State has moved this Court to reconsider its order of March 13, 2006 in this matter. This motion is hereby DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* MAR 21 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. Mat. Clerk.

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

ATLANTA , MARCH 21, 2006

The Court of Appeals hereby passes the following order:

MD-06-16. GERALD KELLER v. THE STATE

It appearing the order of this Court issued March 13, 2006, is incorrect due to clerical error, it is hereby ordered that the order attached hereto be substituted for the original order.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 21 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.*

Clerk.



Court of Appeals of the State of Georgia

ATLANTA, MAR 21 2006

The Court of Appeals hereby passes the following order:

MD-06-16. GERALD KELLER v. THE STATE.

Appellant Gerald Keller was convicted of DUI in violation of OCGA § 40-6-391 (a) (1) (less safe) and of driving with an expired license in violation of OCGA § 40-5-20 (a). On February 27, 2006, the court sentenced him to two consecutive sentences of twelve months imprisonment. Keller immediately moved the trial court for an appellate bond. Whether a hearing has been held and whether the trial court has ruled on this motion, however, is unclear.

On March 13, Keller filed an emergency motion in this Court, requesting an emergency order directing the trial court to set a reasonable appellate bond in this case. OCGA § 17-6-1 (g), however, provides that “[t]he granting of an appeal bond to a person who has been convicted . . . of any offense set forth in Code Section 40-6-391, shall be in the discretion of the convicting court.” The trial court holds an evidentiary hearing and makes a fresh determination on the matter. *Knapp v. State*, 223 Ga. App. 267, 268-269 (477 SE2d 621) (1996). See *Carter v. State*, 267 Ga. App. 520, 526-527 (13) (600 SE2d 637) (2004). We see no reason to deviate from this procedure in this case.

Accordingly, Keller's emergency motion for an order directing the trial court to set a reasonable bond is DENIED. Nevertheless, to the extent the trial court has not yet held an evidentiary hearing on the matter or has not yet ruled, we direct the trial court do to so immediately. *Knapp*, supra. “If the trial court is unable to hold this hearing instanter, the court shall release [Keller] pending its holding of the hearing herein provided.” *Id.* at 269.

“[Keller] 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.” Id.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 21 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.

William Z. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 13 2005

The Court of Appeals hereby passes the following order:

MD-06-16. GERALD KELLER v. THE STATE.

Appellant Gerald Keller was convicted of DUI in violation of OCGA § 40-6-391 (a) (1) (less safe) and of driving with an expired license in violation of OCGA § 40-5-20 (a). On February 27, 2006, the court sentenced him to two consecutive sentences of twelve months imprisonment. Keller immediately moved the trial court for an appellate bond. Whether a hearing has been held and whether the trial court has ruled on this motion, however, is unclear.

On March 13, Keller filed an emergency motion in this Court, requesting an emergency order directing the trial court to set a reasonable appellate bond in this case. OCGA § 17-6-1 (g), however, provides that “[t]he granting of an appeal bond to a person who has been convicted . . . of any offense set forth in Code Section 40-6-391, shall be in the discretion of the convicting court.” The trial court holds an evidentiary hearing and makes a fresh determination on the matter. *Knapp v. State*, 223 Ga. App. 267, 268-269 (477 SE2d 621) (1996). See *Carter v. State*, 267 Ga. App. 520, 526-527 (13) (600 SE2d 637) (2004). We see no reason to deviate from this procedure in this case.

Accordingly, Keller's emergency motion for an order directing the trial court to set a reasonable bond is DENIED. Nevertheless, to the extent the trial court has not yet held an evidentiary hearing on the matter or has not yet ruled, we direct the trial court to do so immediately. *Knapp*, supra. “If the trial court is unable to hold this hearing instanter, the court shall release [Keller] pending its holding of the hearing herein provided.” *Id.* at 269.

“[Keller] 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." Id.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 13 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.

W. L. Martinez

, Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-06-17

DATE: 3/14/06 REC #: pauper PAID BY: _____

CHARGE: Stay

STYLE: Michael Anthony et al v. US Bank, National Assn, Trustee et al

ATTY. NT: Michael Anthony
PO Box 21071
Decatur, GA 30031-9999

ATTY. EE: Robert Michael Sheffield
1544 Old Alabama Rd
Roswell, GA 30076

LOWER CT. JUDGE: Mary W. Whitman
LOWER CT. CASE # 06D93279
COUNTY: DeKalb

BRIEFS FILED: NT

JUDGEMENT DATE: 3/14/06 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR 14 2006

The Court of Appeals hereby passes the following order:

MD-06-17. MARK ANTHONY et al. v. U. S. BANK et al.

Mark Anthony and Florence-Elizabeth Mason a/k/a Florence-Elizabeth Phillips, pro se defendants in a dispossessory action in the State Court of DeKalb County, filed an extraordinary motion in the Supreme Court of Georgia requesting oral argument and stay of a writ of possession granted below. The Supreme Court found no constitutional issue and transferred the request to this Court. Petitioners have not presented this Court with any basis to grant their motion, as such motions are not generally considered until an appeal has been docketed and no appeal has been docketed as of the date of this order. Pursuant to Court of Appeals Rule 40 (b), the motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 14 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.*

William Z. Martineau, Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-0618

DATE: 3/23/06 REC #: 85709 PAID BY: Gerald Keller

CHARGE: Excessive Bond D.U.I.

STYLE: Gerald Keller v. The State

ATTY. NT: Gerald W. Keller
2289 Pascagoula - Carmel Rd.
Woodstock, Georgia 30189 Gerald Keller
404 643-0828

ATTY. EE: David Cannon
Solicitor
92 North Street
Canton Ga 30114

LOWER CT. JUDGE: CJ Sobel
LOWER CT. CASE # 05 T 5550
COUNTY: Cherokee State

BRIEFS FILED: _____

JUDGEMENT DATE: 3/27/06 JUDGMENT: Denied

M.F.R. FILED: 4-4-06
REPOSSES: 4/6/06 Denied 4-5-06

N.O.I. FILED: moot
file per judge

Cost Notes from S.C
4/19/06

Called at 2:45
per court & advise that
Motion was denied
Order will go out as soon as
our computers are fixed
Cert Denied 7/14/2006

SUPREME COURT OF GEORGIA

Remittitur, Case No. S06C1435

Atlanta, July 14, 2006

The Honorable Supreme Court met pursuant to adjournment.

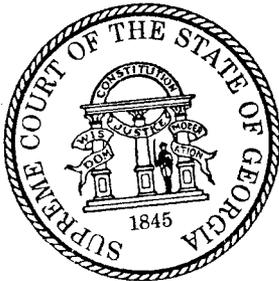
The following order was passed:

GERALD KELLER 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.

Bill of Costs, \$80.00
Court of Appeals Case No. MDKT0616 MDKT0618



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta August 04, 2006

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 D. Madole, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, March 27, 2006

The Court of Appeals hereby passes the following order:

MD-06-18. KELLER v. THE STATE.

Following his convictions of DUI (less safe) and driving without a license, Gerald Keller filed an emergency motion with this Court challenging the convicting court's order setting his appeal bond at \$50,000. Such a ruling is in the discretion of the convicting court and will not be disturbed absent an abuse of such discretion. OCGA § 17-6-1 (g); see *Jones v. Grimes*, 219 Ga. 585, 587 (2) (134 SE2d 790) (1964).

In exercising its discretion, a 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 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. *Knapp v. State*, 223 Ga. App. 267, 268-269 (477 SE2d 621) (1996). "An affirmative answer to any of these questions will uphold the denial of bond." *Id.*

Here, as reflected in the transcript of the appeal bond hearing, the circumstances considered by the trial court included Keller's history of twenty-four arrests for DUI, fourteen arrests for criminal trespass, sixteen arrests for resisting arrest, six arrests for aggravated assault and assault, and twelve arrests for theft, burglary, forgery, fraud, and false report. The court cited the more than fifty aliases used by Keller and ten prior citations for contempt or failure to appear in court. The court also noted an occasion when Keller failed to return to court during a lunch recess in a trial in Cobb County.

In light of the circumstances considered by the trial court, we cannot say the

court abused its discretion. We therefore DENY Keller's motion challenging the amount of his appeal bond.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 27 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.

William Z. Martineau, Clerk

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

ATLANTA, APRIL 05, 2006

The Court of Appeals hereby passes the following order:

MD-06-18. GERALD KELLER V. THE STATE

Upon consideration of the Motion for Reconsideration filed in the above matter, the same is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR -5 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.*

Clerk.

Will Z. Martin

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD 06-19

DATE: 3/27/06 REC #: 85 777 PAID BY: Wray Eckel + Lankham

CHARGE: Motion for Protective Order

STYLE: Childtime Childcare, Inc. v. Jane Doe et al

ATTY. NT: W. Wray Eckel
Barbara A. Marchant
880 West Peachtree St
Atlanta, Ga 30309

ATTY. EE: A. A. Alexander
Alexander Law Firm
2162 Highpoint Trail
Atlanta, Ga 30331

Charles A. Mathis
The Mathis Law Firm
Fifteen Piedmont Center, Suite 1500
3575 Piedmont Rd. NE
Atlanta, Ga 30305

LOWER CT. JUDGE: Diane Bessen
LOWER CT. CASE # 04VS067931
COUNTY: Fulton State

BRIEFS FILED: NT

JUDGEMENT DATE: 3-28-06 JUDGMENT: Denied

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

N.O.I. FILED: _____

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD 06-19

DATE: 3/27/06 REC #: 85 111 PAID BY: Drew Eckel + Larnkan

CHARGE: Motion for Protective Order

STYLE: Childtime Childcare, Inc. v. Jane Doe et al

ATTY. NT: W. Wray Eckel
Barbara A. Marsanagh
880 West Peachtree St.
Atlanta, Ga 30309

ATTY. EE: H. A. Alexander
Alexander Law Firm
2160 Highpoint Trail
Atlanta, Ga 30331

Charles A Mathis
The Mathis Law Firm
Fifteen Piedmont Center, Suite 1500
3575 Piedmont Rd. NE
Atlanta, Ga 30305

LOWER CT. JUDGE: Diane Bessen
LOWER CT. CASE # 0418067931
COUNTY: Fulton State

BRIEFS FILED: NT

JUDGEMENT DATE: 3-28-06 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, March 28, 2006

The Court of Appeals hereby passes the following order:

MD-06-19. CHILDTIME CHILDCARE, INC. v. JANE DOE.

Following the trial court's In Camera Review and March 22, 2006 Order, Childtime filed an emergency motion with this Court challenging the trial court's production of documents reviewed by Childtime's experts which are allegedly subject to attorney work product and opinion work product privileges. Specifically, Childtime contends that the documents to be produced, which include summaries of medical records, deposition testimony, and compilation of crucial facts, constitute opinion work product protected under OCGA § 9-11-26 (b) (3).

We note, first and foremost, that “absent abuse, an appellate court will not interfere with the trial court's exercise of its discretion and this policy is applicable to a trial judge's exercise of the broad discretion granted to him under the discovery provisions of the Civil Practice Act.” (Punctuation omitted.) *Mixon v. City of Warner Robins*, 214 Ga. App. 519 (2) (448 SE2d 377) (1994). Specifically with regard to the discovery of attorney work product presented to expert witnesses, our Supreme Court has held that

one seeking discovery of facts known and opinions held by an expert acquired or developed in anticipation of litigation or for trial may do so without exhibiting a substantial need for the material and establishing the undue hardship that will result should the seeker have to employ other means to develop evidence. However, discovery seeking the facts known and opinions held by the expert is subject to [OCGA § 9-11-26] (b) (3)'s provision against the disclosure of the mental impressions, conclusions, opinion, or legal theories of an attorney or other

representative of a party concerning the litigation.

(Punctuation omitted.) *McKinnon v. Smock*, 264 Ga. 375, 378 (2) (445 SE2d 526) (1994).

Here, the trial court conducted an in camera review of the subject documents and determined, despite Childtime's protestations, that such documents contained discoverable facts and not protected "mental impressions, conclusions, opinion, or legal theories of an attorney or other representative of a party concerning the litigation." *Id.* In light of the trial court's order containing its recitation of the correct law and its specific application of that law to the documents it reviewed, and in light of the fact that the documents were not included in the record for this emergency motion, this Court cannot find that the trial court abused its discretion. See *Tidwell v. Tidwell*, 251 Ga. App. 863, 864 (554 SE2d 822) (2001); *Brown*, *supra*, 237 Ga. App. at 148 (3). Accordingly, Childtime's emergency motion to stop the production of the subject documents is DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 28 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. Martini, Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-06-20

DATE: 3-30-06 REC #: 9999 PAID BY: pauper

CHARGE: Stay of Writ of Possession

STYLE: Katlyn Noble v. Karen Layman

ATTY. NT: Katlyn Noble
P.O. Box 444
Pendergrass GA 30567
770-503-6073

~~Nancy Val Preda Atty~~
~~4179 Ellison Farm Rd.~~
~~Braxton, GA 30517~~

ATTY. EE: Nancy Val Preda
Atty at Law
4179 Ellison Farm Rd.
Braxton, GA 30517

LOWER CT. JUDGE: Joseph Booth
LOWER CT. CASE # 009-CV-1564
COUNTY: Jackson

BRIEFS FILED: NT

JUDGEMENT DATE: 3-30-06 JUDGMENT: Denial

M.F.R. FILED: 4-5-06
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR 30 2006

The Court of Appeals hereby passes the following order:

MD-06-20. NOBLE v. LAYMAN.

Appellant Kathy Noble has moved this Court for an emergency order under Rule 40 (b) to stay the enforcement of a trial court order. The trial court order requires her to pay rent into the registry of the trial court pending the final outcome of a dispute between herself and her landlord Karen Layman, or else the court will issue an immediate writ of possession to evict her from the premises. Inasmuch as the trial court was authorized to make such an order (see OCGA §§ 44-7-54 (a); 44-7-56; *Burnett v. Reeves*, 258 Ga. App. 846 (2002); *Bellamy v. FDIC*, 236 Ga. App. 747 (1999)), we hereby DENY the emergency motion to stay enforcement of the order or to stay execution of any writ of possession issued pursuant thereto.

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

MAR 30 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.*

Willie L. Martinez, Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD06-21

DATE: 3/22/06 REC #: 9999 PAID BY: 9999

CHARGE: Produce Transcript

STYLE: Monica Brown v. The State

ATTY. NT: Monica Brown
2870 Peachtree Rd
Suite 188
Atlanta 30305

ATTY. EE: _____

LOWER CT. JUDGE: N/A
LOWER CT. CASE # N/A
COUNTY: _____

BRIEFS FILED: NT

JUDGEMENT DATE: 3/31/06 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MARCH 31, 2006

The Court of Appeals hereby passes the following order:

MD06-21. MONICA BROWN V. THE STATE

This Court received on March 22, 2006 a "Motion to Reproduce Trial Transcript at the Court's Expense" filed by Monica Brown who was the appellant in A03A2255, *Monica Brown v. The State*. The Court of Appeals affirmed the judgment of the trial court by this Court's opinion dated March 1, 2004. An Application for Certiorari was sought in the Supreme Court of Georgia which was denied on November 22, 2004. This Court received the remittitur from the Supreme Court on February 1, 2005, and this Court issued its remittitur on February 3, 2005, divesting this Court of jurisdiction.

The Constitution of the State of Georgia provides the appellate courts dispose of every case at the term for which it is entered on the Court's docket for hearing or the following term. Ga. Const. Art. VI, Sec. IX, Para. II. As such, this Court no longer has jurisdiction to entertain motions in A03A2255. In the interest of justice and having the matter reviewed on the merits, this Court has directed that the clerk of this Court docket this motion as a Rule 40 (b) Motion.

In order to docket a Rule 40 (b) Motion, it must be accompanied by the \$80.00 filing fee or sufficient pauper's affidavit. This motion was not accompanied by either. Again, in the interest of justice and in order to deal with the matter on the merits, this Court notices that A03A2255, *Monica Brown v. The State* was docketed as a pauper case and the Court will assume that Ms. Brown, who is acting pro se in this matter, is still in a pauper status and directs that the clerk docket this Rule 40 (b) Motion as an indigent filing.

In reviewing the motion of Ms. Brown, she states that she was entitled to receive the transcript one year after the ruling on the case and the transcript is needed in order for her to pursue a Federal habeas petition.

In 1991, State Archives, a division of the Office of Secretary of State of Georgia, notified the Court of Appeals that it would no longer receive and accept the records from the Court of Appeals of Georgia. This decision by State Archives was based upon the fact that State Archives would soon reach its capacity for the storage of records. As a result, this Court developed and implemented a Record Retention Schedule which provides the Court maintain the record for a period of one year after the remittitur date. The record received by the Court of Appeals of Georgia is a copy of the record, the original is maintained by the clerk at the trial court. The transcript received by the Court of Appeals of Georgia is an original transcript, a copy of the transcript is to be maintained by the trial court.

Since the trial courts have Record Retention Schedules exceeding one year, it is the policy of this Court to destroy, by recycling, the transcript and copies of the records received in this Court, one year after the remittitur date, unless the parties notify the Court to hold the record.

In this particular instance, Ms. Brown did notify the Court to maintain the record. In fact, the Court had put a "hold" on the record.

Through no fault of Ms. Brown, nor the Court, the Court has been forced to utilize three different off-site record storage facilities in the past year. The move of these records was accomplished by vendors and/or contractors, and not Court personnel.

After a thorough and diligent search, the transcript requested by Ms. Brown cannot be located, and is either misplaced, or more likely, lost.

While the Court's Record Retention Schedule provides that the Court will maintain the record for a period of one year, this is done as a courtesy to attorneys and parties. There is no legal requirement that the Court do so and on occasion, records may or have become lost.

If the Court loses or misplaces the record of an active case in this Court, then the Court will take responsibility to reproduce the record. However, once the case has been disposed of by the Court, and the Court has carried out its Constitutional duty, the Court does not assume responsibility to maintain records except as noted above.

In *DeKalb County v. Deason*, 221 Ga. 237, 238 (144 SE2d 446) (1965), the Georgia Supreme Court has held that "it is generally accepted that the one essential

feature necessary to constitute a court of record is that a permanent record of the proceedings of the court must be made and kept." The Georgia Court of Appeals is not a court of record. See *Bowen v. Ball*, 215 Ga. App. 640 (451 SE2d 502) (1994) and A94A1161, *Ovestco Corp. v. Bowen*, 216 Ga. App. 121 (453 SE2d 94) (1994).

The records of her criminal appeal which Ms. Brown now seeks are for use in a new habeas corpus civil action. These records, which were created at public expense, cannot now be located on this Court. Ms. Brown should seek these records from the court of record in the underlying case, and she can seek pauper relief, if appropriate, from that court. This Court assumes no responsibility to attempt to reconstruct those records which are maintained as a courtesy in the event they are lost.

Therefore, upon consideration of the motion filed by Ms. Brown, the Motion to Reproduce the Transcript at the Court's Expense, the same is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 31 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.*

Clerk.

Will Z. Mat...

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD 06-22

DATE: 4-14-06 REC #: 5955 PAID BY: Robert L. Crowe

CHARGE: Supersedeas Bond

STYLE: Charles Gerald Critchley v. The State

ATTY. NT: Robert L. Crowe
601 I Street
P.O. Box 1891
Brunswick, GA 31521-1891

ATTY. EE: Richie Braun
Solicitor
103 Memorial Drive
Hinesville, GA 31313
912-876-8088

LOWER CT. JUDGE: O. Dale Jenkins
LOWER CT. CASE # DSST-0357
COUNTY: McIntosh

BRIEFS FILED: NT

JUDGEMENT DATE: 4-14-06 JUDGMENT: GRANTED

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

N.O.I. FILED: _____

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD-06-23

DATE: 4/21/06 REC #: 86026 PAID BY: Sharion Arnold

CHARGE: "Petition for Preservation and Jurisdiction"

STYLE: Sharion Arnold v. Zena Lewis

ATTY. NT: pro se
2067 Chesnut Log Drive
Lithia Springs, GA 30122
~~770~~ 770-745-6935

ATTY. EE: (pro se) Zena Osikew's
4891 White Ash Cove
Stone Mtn, GA 30083

LOWER CT. JUDGE: Gail Tuson
LOWER CT. CASE # 2005 CV 110279
COUNTY: Fulton Superior Ct

BRIEFS FILED: _____

JUDGEMENT DATE: 4/21/06 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, APR 21 2006

The Court of Appeals hereby passes the following order:

MD-06-23. SHARION ARNOLD v. ZENA LEWIS.

Sharion Arnold has filed a "Petition for Preservation and Jurisdiction" with this court following the trial court's issuance of a March 29, 2006, final order declaring Zena Lewis the father of a minor child. Arnold requests this court to compel the trial court to rule on her pending motion to dismiss filed March 30. However, this court is not the proper forum through which to address such motion. Arnold's motion appears to be a motion for writ of mandamus. Such motion must first be addressed by the trial court before this court is presented with an appealable issue. Accordingly, Arnold's motion is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 21 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.*

Willie L. Martin, Clerk.

90

MOTIONS DOCKET

JUDGE # ~~10-06-24~~ MOTION DOCKET NUMBER MO-06-24

DATE: 4-25-06 REC #: 9999 PAID BY: W. Skillen

CHARGE: Transmit Record & NDA

STYLE: Warren Skillen v. The State

ATTY. NT: Warren Skillen 786640
2164 GA Hwy 147
Deidswille, GA 30499

ATTY. EE: Garry Moss
Cherokee Ind. Bldg
90 North Street
Carters, GA 30114

LOWER CT. JUDGE: Frank C. Mills
LOWER CT. CASE # 93-CR-0432
COUNTY: Cherokee

BRIEFS FILED: NT

JUDGEMENT DATE: 4-26-06 JUDGMENT: Denied

M.F.R. FILED: 5-4-06
REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA,

APR 26 2006

The Court of Appeals hereby passes the following order:

MD-06-24. WARREN SKILLERN v. THE STATE.

Upon consideration of Petitioner's Rule 40 (b) motion, the same is hereby DENIED.

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

APR 26 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.*

....., Clerk.

Will Z. Mat...

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD-06-25

DATE: 4/28/06 REC #: 86078 PAID BY: Robert Kenner, Jr.

CHARGE: Motion to Compel Court Reporter to Produce Transcript

STYLE: Steven M. Moore v. Center Court Sports & Fitness, LLC et al.

ATTY. NT: Robert Kenner, Jr.
The Barrister Bldg.
3992 Redan Rd.
Stone Mountain, GA 30083

Donald E. Pollard, Jr.
8517 Hospital Dr, Ste. H
Douglasville, GA 30134

ATTY. EE: William V. Hearnburg, Jr.
Smith, Gambrell & Russell, LLP
Suite 3106, Promenade II
1230 Peachtree St, NE
Atlanta, GA 30309-3592

LOWER CT. JUDGE: Senior Judge Robert P. Maltz

LOWER CT. CASE # 03 CV 5143-5

COUNTY: DeKalb

BRIEFS FILED: NT

JUDGEMENT DATE: 4/28/2006 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, APRIL 28, 2006

The Court of Appeals hereby passes the following order:

**MD-06-25. STEVEN M. MOORE v. CENTER COURT SPORTS & FITNESS,
LLC et al.**

Petitioner has filed a Rule 40 (b) motion from the trial court's denial of his "Motion to Compel the Court Reporter to Produce a Copy of the Trial Transcript." The trial court also denied Petitioner's "Motion for Copy of Transcript of the Trial Evidence." In denying Petitioner's motions, the trial court specifically found that Petitioner "expressly refused to participate in takedown costs prior to the trial," and that such refusal was noted in the consolidated pre-trial order presented to the court. The trial court also found as fact that petitioner "again expressly refused to participate in takedown costs" at the beginning of trial.

Petitioner argues, however, that he requested a copy of the transcript during trial and was willing to share in the costs of the takedown. This court is grateful for the specific findings made by the trial court, and we defer to those findings. However, we cannot determine based on the record before us whether the trial court found that Petitioner requested to participate in the takedown mid-trial or what effect, if any, such request has on Petitioner's initial refusal. We therefore remand this case to the trial court with direction for the court to make further and specific findings regarding Petitioner's alleged request during trial for a copy of the transcript and to pay the costs of the takedown. Petitioner's Rule 40 (b) motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 28 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.*

Willi E. Matz Clerk.

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD 0626

DATE: 5/1/06 REC #: 6095 PAID BY: Drew Eckel & Farnham

CHARGE: Supersedeas

STYLE: Kroger Company v. Judge K. Downum et al

ATTY. NT: Joseph C. Chanson
Benjamin H. Downum
890 W. Peachtree St.
Atlanta, Ga 30357

ATTY. EE: David E. Hudson
J. Chris Wagner
801 Broad Street
7th Floor
Augusta, Ga 30901

LOWER CT. JUDGE: William Thompson
LOWER CT. CASE # Columbia Superior 2005CV0895
COUNTY: Columbia Superior

BRIEFS FILED: _____

JUDGEMENT DATE: 5/2/06 JUDGMENT: Transfer of Superior Court

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, May 2, 2006

The Court of Appeals hereby passes the following order:

MD-0626. THE KROGER COMPANY v. DOWNIE, et al.

Judy and Wilfred Downie purchased property located within a Kroger shopping center for the purpose of developing a restaurant. Under a duly recorded Declaration of Easements and Restrictions, Kroger retains approval rights over any new development. Because of purported concerns regarding insufficient parking for the proposed restaurant, Kroger withheld its approval. The Downies then filed suit, seeking injunctive relief, declaratory judgment, and damages.

Before the issues were litigated, the Downies commenced construction of the restaurant. Kroger petitioned the trial court for an injunction, which the trial court summarily denied. Pursuant to OCGA § 5-6-34 (a) (4), Kroger appealed this order and filed an emergency motion for supersedeas. Kroger argues, inter alia, that “[a] balancing of the equities in this matter supports entry of a temporary injunction.”

As our Constitution makes clear, the Supreme Court has appellate jurisdiction in “all equity cases.”¹ “Whether an action is an equity case for the purpose of

¹ Georgia Const. 1983, Art. VI, Sec. VI, Para. III (2).

determining jurisdiction on appeal depends upon the *issue* raised on appeal, not upon how the case is styled nor upon the kinds of relief which may be sought by the complaint.”² Here, the sole issue presented is the propriety of equitable relief. Accordingly, jurisdiction properly lies in the Supreme Court.³ Thus, we hereby transfer this emergency motion and appeal to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY -2 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.*

William Z. Martini Clerk.

² *Beauchamp v. Knight*, 261 Ga. 608, 609 (2) (409 SE2d 208) (1991).

³ See *Saxton v. Coastal Dialysis and Medical Clinic*, 267 Ga. 177, 178-179 (476 SE2d 587) (1996) (“an equity case for purposes of [Supreme Court] appellate jurisdiction is a case ‘in which a substantive issue on appeal involves the legality or propriety of equitable relief sought in the superior court’”).

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-06-27

DATE: 6-13-06 REC #: 86553 PAID BY: Christopher Ramig

CHARGE: ~~Greg~~ Supercedes?

STYLE: Greg Powers v. Fayette Co. Bd of Ed.

ATTY. NT: Christopher Ramig
110 Haversham Dr. Suite 206
Fayetteville, GA 30214
7-486-7280

ATTY. EE: Dennis A. Davenport
100 Haversham Dr.
Fayetteville, GA 30214

LOWER CT. JUDGE: Tommy R. Hankinson
LOWER CT. CASE # 2006 v - 0698 (H)
COUNTY: Fayette

BRIEFS FILED: NT
- Suppl 6/15
response - 6/15

JUDGEMENT DATE: 06/22/06 JUDGMENT: Dismissed

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, June 22, 2006

The Court of Appeals hereby passes the following order:

MD-06-027. GREG POWERS v. FAYETTE COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION, FAYETTE COUNTY, GEORGIA, et al.

Greg Powers has filed a motion under Court of Appeals Rule 40 (b) asking that this court reverse the decision of the of the Superior Court of Fayette County affirming the decision of the Fayette County Board of Elections and Voter Registration that disqualified Powers as a candidate for Post 4 of the Fayette County School Board and order the Board to take the steps necessary to see that his name appears as a candidate for election to Post 4. Powers also named as defendants Marilyn Watts, Richard Hobbs, and Al Lemonthe, the members of the Board of Elections and Voter Registration, as defendants in their individual and official capacities. For the reasons stated below, we must dismiss this motion.

Pretermittting whether this court generally would have the authority in a motion under Court of Appeals Rule 40 (b) to grant relief as Powers has requested, we have no jurisdiction to grant the relief in this case. The discretionary appeal procedures, OCGA § 5-6-35, are applicable to “[a]ppeals from decisions of the superior courts reviewing decisions of the State Board of Workers’ Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings.” OCGA § 5-6-35 (a) (1). The superior court’s order shows that this is such a case.

Therefore, a direct appeal from the superior court’s order affirming the Board’s decision is not authorized because Powers 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 an 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 JUN 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.

William Z. Martineau, Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-06-028

DATE: 6-13-06 REC #: 86560 PAID BY: Hartman, Simons, Spielman & Ward

CHARGE: Stay Lis Pendens

STYLE: M^{rs} Chesney Capital Partners, LLC. v. IH Riverside, LLC.

ATTY. NT: David L. Pardue
Hartman, Simons, Spielman & Wood LLP
6400 Powers Ferry Rd. NW Suite 400
Atlanta, GA 30326

ATTY. EE: Jason Carter Edward Krugman
Bondurant, Nixon & Elmore, LLP Jill Puyor
1201 W. Peachtree St. Ste. 3900
Atlanta, GA 30309

LOWER CT. JUDGE: Michael O. Johnson
LOWER CT. CASE # 2006 CV 114780
COUNTY: Fulton

BRIEFS FILED: NT
EK Response 6/16/06

JUDGEMENT DATE: 6/22/06 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, June 22, 2006

The Court of Appeals hereby passes the following order:

**MD-06-28, MD-06-29. IH RIVERDALE, LLC, et al. v. MCCHESENEY
CAPITAL PARTNERS, LLC, et al and VICE
VERSA**

Appellant IH Riverdale, LLC and Geoffrey Nolan seek an emergency appeal of the trial court's cancellation of their lis pendens notice filed against property owned by Riverdale Capital Investments, LLC (RCI). After considering the motions, briefs, and exhibits of the parties, the motions for emergency appeal are hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 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.*

Clerk.



MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-06-029

DATE: 6-13-06 REC #: 86561 PAID BY: Hartman, Simons & Spielman Wood

CHARGE: Stay of his Remand

STYLE: IH Riverdale, LLC et al v. Mc Chesny Capital et al.

ATTY. NT: David L. Gardner 770-955-3535
Hartman, Simons, Spielman & Wood LLP
6400 Powers Ferry Rd NW Ste 400 770-878-1097
Atlanta, GA 30326

ATTY. EE: Edward Krugman Jill Pryor
Bondurant, Nixon Elmore LLP Jason Carter
1201 W. Peachtree St., Ste 3500
Atlanta, GA 30309

LOWER CT. JUDGE: Annalisa D. Wright
LOWER CT. CASE # 2003 CV 73603
COUNTY: Fulton

BRIEFS FILED: NT
Response 6/16/06

JUDGEMENT DATE: 06/22/06 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, June 22, 2006

The Court of Appeals hereby passes the following order:

**MD-06-28, MD-06-29. IH RIVERDALE, LLC, et al. v. MCCHESNEY
CAPITAL PARTNERS, LLC, et al and VICE
VERSA**

Appellant IH Riverdale, LLC and Geoffrey Nolan seek an emergency appeal of the trial court's cancellation of their lis pendens notice filed against property owned by Riverdale Capital Investments, LLC (RCI). After considering the motions, briefs, and exhibits of the parties, the motions for emergency appeal are hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 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.*

Clerk.



MOTIONS DOCKET

JUDGE # ⁷¹ ~~100/100/100~~ MOTION DOCKET NUMBER MD-06-30

DATE: 7/21/2006 REC #: 6909 PAID BY: Deanna Powell

CHARGE: Supersedeas

STYLE: John M. Bailey v. Debra Bailey

ATTY. NT: Deanna Powell

ATTY. EE: George O. Lawson, Jr.

LOWER CT. JUDGE: Melvin K. Westmoreland
LOWER CT. CASE # 05 CV 109374
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 7-24-06 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, July 24, 2006

The Court of Appeals hereby passes the following order:

MD06-30. BAILEY v. BAILEY.

John M. Bailey filed an Emergency Motion for Supersedeas following an order of the Fulton County Superior Court that removed Bailey's minor child from his primary custody and provided primary custody of the child to the child's mother.

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, Bailey 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, his Emergency Motion for Supersedeas is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* JUL 24 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.*

William Z. Martineau, Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD 06-031

DATE: 7-21-06 REC #: 9999 PAID BY: _____

CHARGE: _____

STYLE: Glenn W. Stephenson v. The State

ATTY. NT: Glenn W. Stephenson
GDC# 530727
WCT P.O. Box 466
Alamo, GA 30411

ATTY. EE: Danny Craig, D.A.
Richmond Co. Augusta Jud Circuit
501 Greene St. Suite 400
Augusta, GA 30901

LOWER CT. JUDGE: Carlisle Overstreet

LOWER CT. CASE # 02 RCCR 12

COUNTY: Richmond

BRIEFS FILED: NT

JUDGEMENT DATE: 7-25-06 JUDGMENT: Denied

M.F.R. FILED: 08/04/06
REPOSSES: _____ 08/07/06 Denied

N.O.I. FILED: _____

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

ATLANTA, July 25, 2006

The Court of Appeals hereby passes the following order:

MD06-031. STEPHENSON v. THE STATE.

On July 14, 2006, appellant Glenn Stephenson filed a pro se emergency motion, requesting that this Court reconsider its June 5, 2006 decision to dismiss his appeal. Since Stephenson's request for reconsideration is untimely, as his motion was filed more than ten days following the order dismissing his appeal (see Court of Appeals Rule 37 (b)), and since his emergency motion does not provide any additional basis that would give rise to the granting of such a motion (see Court of Appeals Rule 40 (b)), the motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 25 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.*

William Z. Matlock Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD-06-032

DATE: 7-26-06 REC #: 86936 PAID BY: Mrs. Ann Arnold
88 Howard St NW Apt 30314

CHARGE: Supersedeas

STYLE: Sharon Nicole Arnold v. ZENA Osi Lewis

ATTY. NT: Sharon N. Arnold
2067 Chestnut Log Drive
Little Springs, GA 30122
770-745-6935

ATTY. EE: Mr. ZENA O. Lewis
4891 White Ash Cove
Stone Mtn, GA 30083

LOWER CT. JUDGE: Gail S. Tusan
LOWER CT. CASE # 2005 CV 110 279
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 7-27-06 JUDGMENT: denied

M.F.R. FILED: 8-8-06
REPOSSES: Denied (no copy in file)
~~Denied 8/14/06~~

N.O.I. FILED: _____

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

ATLANTA, August 3, 2006

The Court of Appeals hereby passes the following order:

MD06-032. ARNOLD v. LEWIS.

This Court's order of July 27, 2006 in the above-styled case is hereby vacated due to clerical error. The attached order is substituted therefore.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG -3 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.*

William Z. Martini, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JULY 27, 2006

The Court of Appeals hereby passes the following order:

MD06-032. ARNOLD v. LEWIS.

Sharion Nicole Arnold, pro se, filed an Emergency Motion for Supersedeas pending her appeal from a contempt order, as amended, of the Family Division of Fulton County Superior Court directing that she be incarcerated.

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, Arnold 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, Arnold's Emergency Motion for Supersedeas is DENIED

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 27 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.*

William Z. Martini, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JULY 27, 2006

The Court of Appeals hereby passes the following order:

MD06-032. ARNOLD v. LEWIS.

Zena Osi Lewis, pro se, filed an Emergency Motion for Supersedeas pending her appeal from a contempt order, as amended, of the Family Division of Fulton County Superior Court directing that she be incarcerated.

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, Lewis 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, Lewis' Emergency Motion for Supersedeas is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 27 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.*

William Z. Martini, Clerk.