

COURT OF APPEALS OF GEORGIA

EMERGENCY MOTIONS

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MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD 07-01

DATE: 8-25-06 REC #: 87227 PAID BY: Jessie Cox
80.00 (Cash)

CHARGE: Injunction & HABEAS Corpus

STYLE: Jessie Ray Cox v. Robert B. Struble et al

ATTY. NT: Jessie R. Cox
3446 Winder Hwy # M 232
Howery Branch, GA 30542

ATTY. EE: Calandra Almond
40 Capital Sq. SW
Atlanta, GA 30334-1300

~~Tom~~ Steven Adkins, Esq.
1292 Rockledge Rd. Ste D
Stone Mtn, GA 30087

Chief Judge

LOWER CT. JUDGE: Robert W. Moad, Sr.
LOWER CT. CASE # State Court of Gwinnett 05-A-07224
COUNTY: Gwinnett

BRIEFS FILED: NT

JUDGEMENT DATE: 8/31/06 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUGUST 31, 2006

The Court of Appeals hereby passes the following order:

MD07-01. Jessie Ray Cox v. Hon. Robert B. Struble, et al.

Petitioner Jessie Ray Cox filed the instant application with this Court seeking injunctive, mandamus, or habeas corpus relief. The Clerk of Court docketed this application as a Court of Appeals Rule 40 (b) “emergency motion” as a courtesy to the petitioner, since the application cannot properly be docketed as an appeal. The application seeks redress for tortious acts allegedly committed by the named respondents and comprising a conspiracy to deprive the petitioner of his constitutional rights and his liberty.

1. The Court of Appeals is constrained by the Constitution of the State of Georgia to act as “a court of review and shall exercise appellate and certiorari jurisdiction[.]” Ga. Const. 1983, Art. 6, § 5, ¶ 2. That is, this Court reviews the final decisions of lower tribunals through an appellate process. *Id*; see also, OCGA §§ 5-6-30 through 5-6-51 (Appellate Practice). The Court of Appeals is not a court of original jurisdiction and may not take evidence in an original lawsuit. *Harmon v. Southern Rwy.*, 123 Ga. App. 309 (180 SE2d 604) (1971) (“The Court of Appeals of Georgia was created in 1906 as an arm of the Supreme Court of Georgia solely as a reviewing court, with no original jurisdiction, for the purpose of correcting errors of law in lower tribunals.”) Because the petitioner has not properly or timely brought an appeal from a final order of a lower court, and because we have no power to hear the petitioner's original action for habeas corpus, mandamus, or other injunctive relief, the application cannot be docketed in this Court. Had the Clerk done so, we would be required to dismiss the application for lack of jurisdiction.

2. The Rule 40 (b) emergency powers of this Court are also limited. We may

only issue "such orders or give direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot." The petitioner has not shown us that exercising our inherent power would preserve a contested issue in a matter that is ripe for appellate review in this Court. In fact, he cites to numerous *pending* actions for *habeas corpus* relief or for *mandamus*. Because a pending action is yet unresolved, there is nothing currently at risk of become moot. Moreover, appeals from orders denying writs of mandamus or habeas corpus must be addressed to the Supreme Court of Georgia, as those are a matters within that Court's general jurisdiction. See Ga. Const. 1983, Art. 6, § 6, ¶ 3; see also OCGA § 19-14-52 (appeal process for habeas corpus) and OCGA § 9-6-28 (appeal process for mandamus). For these reasons, the petitioner's emergency motion must be and is hereby DENIED.

3. The petitioner is cautioned against filing future motions or pleadings in this Court that have no substantial basis in law. Rule 15 permits this Court to levy penalties for frivolous appeals, applications, or motions against a party or his counsel (including pro se litigants pursuant to Rule 1 (d)) with a penalty of up to \$1,000.00, and the penalty shall constitute a money judgment. Further, the Court will not tolerate discourteous or disparaging remarks regarding opposing counsel, any judge, or the Court or its personnel. Such remarks are strictly forbidden pursuant to Rule 10. Applications, motions, and briefs containing such opprobrious language may be rejected. Finally, we feel that it is our duty to warn the petitioner that repeated frivolous or abusive litigation may result in his access to the courts being restricted. See *Smith v. Adamson*, 226 Ga. App. 698 (487 SE2d 386) (1997).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 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.*

Will Z. Mat. Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD07-02

DATE: 10-3-06 REC #: 87564 PAID BY: Robert A. Moss

CHARGE: Production of Minor Child

STYLE: Lakeisha Jones v. William Kimes

ATTY. NT: Robert A. Moss 770-351-0830
Moss & Rothenberg
1872 B Independence Sq.
Atlanta, GA 30338

ATTY. EE: Patrick D. Deering, Esq. Clint Rhodes, Esq
Candler Bldg 2992 W. Main St.
127 Peachtree St. NE Ste 1300 Ste 215
Atlanta, GA 30303 Snellville, GA 30078

LOWER CT. JUDGE: C.J. Becker
LOWER CT. CASE # 03-CV-6806-6
COUNTY: DeKalb

BRIEFS FILED: NT Need A06D 0409
A06D 0409 -

JUDGEMENT DATE: 10/11/06 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCTOBER 11, 2006

The Court of Appeals hereby passes the following order:

MD 07-02. JONES v. KIMES

Appellant has filed an emergency motion seeking to enforce a supersedeas on the trial court's order of June 23, 2006, and to restore custody of the minor child to that prescribed by the original judgment, dated August 29, 2003. The motion is governed by OCGA § 9-11-62 (e). See also *Frazier v. Frazier*, 280 Ga. 687, 691 (5) (631 SE2d 666) (2006).

This Court has considered the motion, the appellant's reply to the appellee's response, the application for discretionary appeal, the response to the application for discretionary appeal, and the exhibits attached to the application for discretionary appeal. A transcript of the June 2006 hearing has not yet been received. A response by the appellee to the motion was apparently served on the appellant, because the appellant filed and served a reply to the response. But that response was not filed with this Court.

The statute authorizes this Court to "make any order appropriate to preserve that status quo or the effectiveness of the judgment subsequently to be entered." What judgement will subsequently be entered is unknown. But at this stage the appropriate order in this particular case is one which defers pending the appeal to the discretion of the trial court. The trial court has handled the litigation since 2003, has seen the demeanor of the witnesses as they testified, has experienced the compliance or non-compliance of the parties with orders regarding visitation, and has weighed the conflicting evidence. Therefore, it is

ORDERED that the emergency motion is **DENIED**.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 11 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 # 99 MOTION DOCKET NUMBER MD07-03

DATE: 12/19/2006 REC #: 9999 PAID BY: paper

CHARGE: Extension Notice of Appeal

STYLE: Gottfried Kappelmeier v. Household Internatl. Inc.

ATTY. NT: Gottfried Kappelmeier
402 Berkeley Woods Dr.
Duluth, Ga. 30096
770-623-4871

ATTY. EE: _____

LOWER CT. JUDGE: _____

LOWER CT. CASE # 03-A-06167-9

COUNTY: Gwinnett Co.

amended cert. of svc. 12/20/06

BRIEFS FILED: _____

JUDGEMENT DATE: 12/20/06 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, December 20, 2006

The Court of Appeals hereby passes the following order:

MD-07-03. KAPPELMEIER v. HOUSEHOLD INTERNATIONAL, INC. et al.

Before this Court is Plaintiff Gottfried A. Kappelmeier's Emergency Motion for Extension of Time for Filing Notice of Appeal. The said motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **DEC 20 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 Z. Mant;  Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD07-04

DATE: 3/5/07 REC #: _____ PAID BY: Kirschner & Venker

CHARGE: Extension Time to file Appeal

STYLE: Ronnie Thomas et. al. v. Peachtree Orthopaedic Clinic et. al

ATTY. NT: Andrew Kirschner
Kirschner & Venker, P.C.
2727 Paces Ferry Rd. Suite 2-1740
Atlanta, GA 30339

ATTY. EE: Lori E. Cohen
Darcy E. Coty
Greenberg Traub, LLP
3290 Northside Parkway, Suite 300
Atlanta, GA 30309

Adam Jaffe
1401 Peachtree St. Suite 300
Atlanta, GA 30309

LOWER CT. JUDGE: Michael Johnson
LOWER CT. CASE # 2005CV101201
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 3/5/07 JUDGMENT: Granted - filing date 4/3/07

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, March 5, 2007

The Court of Appeals hereby passes the following order:

MD-04. THOMAS et al. v. PEACHTREE ORTHOPAEDIC CLINIC, P.C. et al.

Pursuant to OCGA § 5-6-39 (a) (1) and to Court of Appeals Rule 40 (b), plaintiffs Ronnie Thomas and Lynette Thomas have moved this Court for an extension of time to file a notice of appeal with regard to two court orders entered by the Superior Court of Fulton County on February 2, 2007 in Civil Action File No. 2005CV101201, one of which grants summary judgment to defendants on all claims. Specifically, plaintiffs have asked that we extend the time for the filing of the notice of appeal through April 3, 2007, so as to allow the bankruptcy court to approve Thomas J. Venker as counsel for plaintiffs (who are in a Chapter 13 bankruptcy) in this case. The approval hearing is scheduled for March 15, 2007, and cannot be heard sooner. Plaintiffs currently are unrepresented in this matter based on the bankruptcy court's striking all executory contracts, which included plaintiffs' contract with their prior counsel. The trial court has declined to consider a motion extending time and refuses to consider any filings from attorney Venker on the ground that he has not yet been approved by the bankruptcy court.

We hereby GRANT the plaintiffs' emergency motion to extend the time for filing a notice of appeal with regard to the February 2 orders. The deadline for filing the notice of appeal is extended through and including April 3, 2007.

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

MAR -5 2007

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

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD 07.05

DATE: 3/6/07 REC #: 88873 PAID BY: Charles Pekar

CHARGE: Supersedeas - Contempt

STYLE: Sasha Harris

ATTY. NT: Chas B. Pekar (404) 221-8884
270 Peachtree Street, N.W.
Suite 1060
Atl 30303

ATTY. EE: _____

LOWER CT. JUDGE: Linda Hunter
LOWER CT. CASE # 02 CV 22358
COUNTY: DeKalb

BRIEFS FILED: _____

JUDGEMENT DATE: 3/6/07 JUDGMENT: Granted

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

N.O.I. FILED: _____

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

ATLANTA, MAR 08 2007

The Court of Appeals hereby passes the following order:

MOTION DOCKET 07-05. IN THE MATTER OF SASHA HARRIS.

Due to clerical error, the attached order is hereby substituted for the Court's order which issued March 6, 2007.

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

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

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

Willi Z. Mat; [Signature] Clerk.

Court of Appeals of the State of Georgia

ATLANTA, March 6, 2007

The Court of Appeals hereby passes the following order:

MOTION DOCKET 07-05. IN THE MATTER OF SASHA HARRIS.

The Superior Court of DeKalb County issued an order on March 5, 2007 holding Sasha Harris in contempt, ordering her to serve 48 hours in jail. Harris has filed a notice of appeal from this order and now seeks an emergency order of supersedeas.

As this Court retains inherent power under Rule 40(b) to grant supersedeas to prevent an appeal from becoming moot, and so that we may reach the merits of this matter, appellant's motion for supersedeas is GRANTED and the appellant shall be released from incarceration instanter.

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

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

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

Willi L. Mart Clerk.

MOTIONS DOCKET

(MD07.05)

JUDGE # 98 MOTION DOCKET NUMBER MD 07-04A

DATE: 03/06/07 REC #: 88973 AID BY: Charles Rekor

CHARGE: Supersedeas - Contempt

STYLE: Sasha Harris

ATTY. NT: Charles B. Rekor of 404 221-8884
279 Peachtree St N.W.
Atlanta, Ga 30307

ATTY. EE: _____

LOWER CT. JUDGE: Linda Hunter
LOWER CT. CASE # 02 CV 27 258
COUNTY: Duval

BRIEFS FILED: _____

JUDGEMENT DATE: 2/6/07 JUDGMENT: Granted

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

N.O.I. FILED: _____

IN THE COURT OF APPEALS
STATE OF GEORGIA

IN THE MATTER OF)
)
SASHA HARRIS)
)
)
)
)
)
)

MD 07-04

EMERGENCY MOTION FOR SUPERSEDEAS PENDING APPEAL

NOW COMES the Appellant, SASHA HARRIS, pursuant to the Court of Appeals of the State of Georgia Rule 50(c), and moves this Court to grant a supersedeas pending appeal of this case and requests a prompt hearing on this motion for supersedeas pending the docketing of the appeal and as grounds therefore states the following:

1.

There are substantive issues for determination in this appeal and the appeal is neither frivolous nor is taken for the purpose of delay.

2.

The Appellant, who was previously ^{not CP} a party to any action pending in the Superior Court of Dekalb County, was adjudged to be in contempt of said Court and sentenced, without bond, to 48 hours to be served in the

Dekalb County Jail, by Judge Linda Hunter, Superior Court of Dekalb County on March 5, 2007.

3.

The Order adjudicating the contempt was entered on March 5, 2007. A copy of said order is attached herein as Exhibit "A".

4.

Appellant is certified as a Georgia Detention Officer and currently works for the Department of Juvenile Justice as a Corrections Officer at the Youth Detention Center, in Atlanta, Georgia.

5.

Appellant offers absolutely no danger to the community.

6.

Appellant filed a Motion for Bond with the trial court on this day, March 6, 2007. Said motion was ~~denied~~ not heard by the Court. A copy of Appellant's Motion for Bond is attached herein as Exhibit "B". ~~A copy of the Order of denial is attached herein as Exhibit "C".~~ CP

7.

Appellant timely filed Notice of Appeal ~~attached herein as Exhibit~~ ^{CP} and the said appeal is being pursued by the fastest methods available to Appellant.

8.

Appellant hereby requests this Court to exercise its inherent power under Rule 50(c), to issue a Supersedeas Order staying the execution of the trial court's order, since such stay is necessary to preserve jurisdiction of the appeal and to prevent a contested issue from becoming moot. Without such a stay, the sentence will have been served and Appellant will be denied an opportunity to have such contested issues reviewed by this Court.

9.

WHEREFORE, Appellant prays that this Motion be delivered to the Court for prompt consideration and hearing; that Appellant be allowed a supersedeas with bond fixed in a reasonable amount until such time as the Court can consider and pass upon the appeal, and for such other and further relief as the Court may grant.

Respectfully submitted this 6th day of MARCH, 2007.



DANIEL DEWOSKIN
Attorney for Appellant
Georgia Bar No. 220327



CHARLES B. PEKOR
Attorney for Appellant
Georgia Bar No. 220327

Pekor & DeWoskin, LLC
270 Peachtree Street, NW
Suite 1060
Atlanta, Georgia 30303
(404) 221-8887

IN THE SUPERIOR COURT OF ~~DEKALB~~ ^{DEKALB} COUNTY
STATE OF GEORGIA ³⁵⁵ ~~ADoption~~

Melvin Diamond Randolph,

vs.

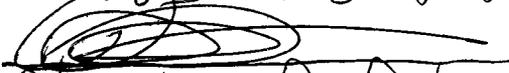
Civil Action File
No. 02CV2235-8

Jaewana Dexon Singletary Randolph

NOTICE OF APPEAL

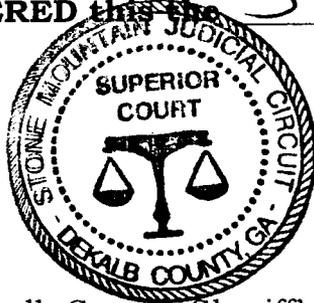
COMES NOW, SASHA HARRIS,
held in Direct Criminal Contempt
by the Court in the above
and foregoing matter on March
5, 2007, and files this her
appeal from said Order of
Contempt, attached hereto as
Exhibit "A".

The Court of Appeals has
jurisdiction of this appeal as it
involves a subject upon which
jurisdiction is not conferred
upon the Supreme Court of
Georgia by the 1983 Constitution
of Georgia


Charles D. Pekar
Attorney for Appellant SASHA HARRIS
GA BAR # 570601

Order. As a result of the foregoing, Barbara Killingsworth (DOB: 8/23/55) and Sasha Harris (DOB: 10/2/72) are **HEREBY HELD IN DIRECT CONTEMPT OF COURT**. They shall be incarcerated *instanter* to be released in 48 hours, on March 7, 2007.

SO ORDERED this 5th day of March 2007.



LINDA WARREN HUNTER
JUDGE LINDA WARREN HUNTER
SUPERIOR COURT OF DEKALB COUNTY

cc: Dekalb County Sheriff's Department

State of Georgia, DeKalb County.
The undersigned, Clerk of DeKalb County Superior Court, do hereby certify that this is a true and correct copy of the original of the within and a part of a record in the Office of the Clerk of DeKalb County Superior Court, and seal of the Superior Court of DeKalb County, Georgia.
This 6th day of March 2007
Signature: Gerrit Anderson
Deputy Clerk, DeKalb County Superior Court

CLERK OF SUPERIOR COURT
DEKALB COUNTY GA
2007 MAR -5 P 3:03
FILED

IN THE SUPERIOR
COURT OF DEKALB COUNTY

STATE OF GEORGIA

CERTIFICATE OF SERVICE

I, Charles B. Bekor, a member of the State Bar of Georgia, hereby certify that the attached Notice of Appeal is being filed on behalf of SASHA MORRIS, in connection with a contempt order for said person. I know of no "opposing party" to same, as my said client is NOT a party to the above action.

This 6 day of March, 2007.


Charles B. Bekor
GA BAR NO. 570601

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD 07-06

DATE: 3/14/2007 REC #: _____ PAID BY: 9999 Pauper's Affidavit

CHARGE: Stay of Custody & Transport Order

STYLE: Arnell Preston v State of Georgia

ATTY. NT: Gerald Kleiarock, PD
Room 418, Callaway Bldg.
120 West Trinity Place
Decatur, Ga 30030

ATTY. EE: John Melvin, DA
Stone Mtn. Circuit
707 DeKalb Co. Courthouse
Decatur, Georgia 30030

LOWER CT. JUDGE: William Leroy McMurray, Jr.
LOWER CT. CASE # 07-014
COUNTY: DeKalb

BRIEFS FILED: NT

JUDGEMENT DATE: 3/15/2007 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR 15 2007

The Court of Appeals hereby passes the following order:

MD07-06. ARNELL PRESTON v. THE STATE.

Pursuant to Rule 40 (b) of this Court, appellant Arnell Preston has moved this Court to issue a stay of the trial court's order below,¹ in which the trial court ordered that the DeKalb County Sheriff (in whose custody Preston is now) deliver Preston to law enforcement authorities of Harris County, Texas for transport to Harris County, where Preston is to appear as a witness in an already-commenced trial of a murder prosecution. This delivery is to take place by noon on Friday, March 16, 2007. Preston seeks to stay this order so that he may remain in Georgia during the pendency of his appeal of this order and so that his appeal may not be mooted by the execution of the order.

As per the text of the Rule, we exercise our power under Rule 40 (b) only sparingly. Based on our review of the law and the proceedings below, we exercise our discretion to DENY the emergency motion. Specifically, we note that the governing statute (OCGA § 24-10-92) provides in relevant part:

(a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court . . . , that a person within this state is a material witness in such prosecution . . . , and that his presence will be required for a specified number of days, upon presentation of

¹ The court proceeding below is in DeKalb County Superior Court, Georgia Case No. 07-014 (Texas Case No. 1086694-96).

such certificate to any judge of a court of record in the county in which the person is found, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing. . . .

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution . . . , and the laws of the state in which the prosecution is pending . . . will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending In any such hearing the certificate shall be prima-facie evidence of all the facts stated therein.

(c) If such certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that the witness be forthwith brought before him for the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima-facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

Preston does not contest that the facts show he is a material witness to the Texas trial and that he is protected from arrest and from service of civil and criminal process in Texas. Nor has he forwarded any extraordinary reasons showing that this compelled attendance in Texas would constitute an undue hardship. Rather, he primarily contests the decision to have him immediately taken into custody and delivered to Texas

authorities (as opposed to the issuance of a summons directing him to travel to Texas on his own with the expectation he will comply).

Here, the certificate issued by the Texas court specifically recommended, as per the language of subsection (c), that Preston be taken into immediate custody and delivered to an officer of Georgia to assure his attendance in Texas. The trial court exercised its discretion to direct that Preston be forthwith brought before him for the hearing. Relying on the certificate of the Texas court, which “certificate shall be prima facie proof of” the desirability of such custody and delivery, the trial court determined at the hearing to order that Preston be forthwith taken into custody and delivered to an officer of Texas, which order would appear to be fully authorized by OCGA § 24-10-92 (c).

Preston complains, however, that the facts and reasoning underlying the Texas court’s decision (which are not expressly set forth in that decision) to request immediate custody and delivery to Texas are lacking in merit.² However, the statute specifically provides that in determining the desirability of such custody and delivery, the Georgia court shall consider the foreign court’s certificate making such a request as “prima-facie proof of such desirability.” In other words, the mere fact that a foreign court has recommended that the witness be taken into custody and delivered so as to assure his attendance in the foreign state alone constitutes sufficient grounds for the Georgia court (if the Georgia court in its discretion so chooses) to be satisfied of the desirability of such custody and delivery.

Because the trial court below could rely on the mere fact of the request to make its own determination that Preston should be taken into custody and delivered, Preston’s arguments on appeal that the facts and reasoning underlying that request are faulty is not a ground for reversing that determination, which is a discretionary factual question to be determined by the trial court. Moreover, we note that Preston has not

² The Texas prosecutor represented to the Texas court that Preston was an unreliable and uncooperative witness in that he refused to discuss the case with detectives and was currently charged in Fulton County with assault, battery, and obstruction charges.

provided us with the transcript of the hearing below, at which additional evidence may have been taken. As prima-facie evidence supports the trial court's determination, we will not at this preliminary stage act to stay that order, which appears to be fully authorized.

Accordingly, we DENY Preston's motion for an emergency stay.

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

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

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

Willi L. Mat: [Signature], Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD07-07

DATE: 3-16-07 REC #: 88973 PAID BY: Coyen & O'Connor

CHARGE: Supersedeas

STYLE: Crystal J. Simpson v. Radio One, Incorp.

ATTY. NT: Samuel S. Woodhouse
Coyen & O'Connor
SunTrust Plaza, Ste 2200
Atlanta, GA 30308

EG Daniel R. Meadum, Esq.
1895 North Park Place Ste 250
Atlanta GA 30339

ATTY. EE: 404-572-2000

LOWER CT. JUDGE: Judge Wendy L. Shoob

LOWER CT. CASE # 2007 CV 129828

COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 3-19-07 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, March 19, 2007

The Court of Appeals hereby passes the following order:

MD 07-07. SIMPSON v. RADIO ONE, INC.

Radio One, Inc. has filed an emergency motion to stay the enforcement of an interlocutory order enjoining enforcement of a non-compete provision in the employment contract of a former employee. Radio One, Inc. contends that allowing enforcement of the trial court's order during the regular appeal process would render the six-month non-compete provision moot. However, due to the six-month term of the non-compete provision, granting the relief sought here would have the effect of enforcing the non-compete provision regardless of the correctness of the trial court's order. Accordingly, we hereby DENY Radio One, Inc.'s motion.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 19 2007

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Willie Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD 07-08

DATE: 4/30/2007 REC #: 89418 PAID BY: Jash F. Wilber

CHARGE: Contempt

STYLE: Scottie L. Cousins v. Macedonia Baptist Church

ATTY. NT: Daniel B. Greenfield
P.O. Drawer 1230
Bremen, Ga 30110

ATTY. EE: Carmelia Melonie Jackson
114 New Street A-2
Decatur, Ga 30030

LOWER CT. JUDGE: Craig L. Schwall, Sr.
LOWER CT. CASE # 2007 CV 131798
COUNTY: Fulton Superior

BRIEFS FILED: NT

JUDGEMENT DATE: 4-30-07 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, April 30, 2007

The Court of Appeals hereby passes the following order:

**MD -07-08. MACEDONIA BAPTIST CHURCH OF ATLANTA v. COUSINS,
SR. et al.**

Scottie Cousins, Sr. filed a Motion for Emergency Writ of Supersedeas with this court on April 30, 2007, after the Superior Court of Fulton County, Judge Craig L. Schwall, Sr. found him in criminal contempt, sentenced him to immediately serve 20 days in jail, and denied his motion for supersedeas. The motion complies with the requirements of Court of Appeals Rule 40 (b).

It is HEREBY ORDERED that Scottie Cousins, Sr. be released instanter from the custody of the Fulton County Sheriff on his own recognizance until such time as a hearing, if any, may be held on the contempt charges or the holding and sentence resulting therefrom, and until any appeal rights of Cousins under the laws of the State of Georgia in connection therewith have been exhausted. See *Garland v. Tanksley*, 99 Ga. App. 201 (107 SE2d 866) (1959).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 30 2007

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Willi Z. Marti, Jr. , Clerk.

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MO-07-09

DATE: 5/7/2007 REC #: 19487 PAID BY: Frank X. Moore

CHARGE: Motion for Expedited Appeal

STYLE: Deborah Hamilton v. Renewed Hope, Inc.

ATTY. NT: Beth E. Rogers
3343 Peachtree Rd, NE
East Tower, Ste. 1150
Atlanta, GA 30326

Frank X. Moore

ATTY. EE: Robert J. Proctor, et al
Procter & Chambers
8010 Roswell Rd., Ste 245
Atlanta, GA 30350

Matthew A. Schub
Taylor, Busch, Slipakoff & Dema LLP
1600 Parkwood Cir., Suite 200
Atlanta, GA 30339

LOWER CT. JUDGE: Jerry W. Baxter

LOWER CT. CASE # 2002 CY 61547

COUNTY: Fulton Superior Ct.

BRIEFS FILED: _____

JUDGEMENT DATE: 5/10/07 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: 5/21/2007

cut. App. filed 6-8-07

Court of Appeals of the State of Georgia

ATLANTA, May 10, 2007

The Court of Appeals hereby passes the following order:

MD07-09. HAMILTON v. RENEWED HOPE, INC.

Deborah Hamilton and her counsel, Francis X. Moore and FXM, P.C. d/b/a Frank X. Moore and Associates, filed an emergency motion with this Court arguing that the trial court improperly granted a supersedeas bond in the amount of a judgment for attorney's fees and expenses under OCGA § 9-15-14. Hamilton has appealed the judgment separately in *Hamilton v. Renewed Hope, Inc.*, Civil Action No. A07D0276.

Pursuant to Court of Appeals Rule 40 (b), this Court has the inherent authority to issue emergency orders "as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot." In order to invoke this Court's emergency authority, however, a Rule 40 (b) motion must "[c]ontain an explanation why an order of this Court is necessary and why the action requested is time sensitive." Here, no such showing has been made.

The trial court granted a supersedeas bond in the amount of the underlying judgment, as it is authorized to do.¹ Appellants' argument that the underlying judgment was erroneously entered is not properly before us in this action, as it will be addressed in Civil Action No. A07D0276. And Appellants' contention that they may

¹ See OCGA § 5-6-46 (a).

be unable to post a bond likewise does not demonstrate that an order of this Court is necessary, as failure to post a supersedeas bond would not deprive us of jurisdiction of the appeal of the underlying judgment.² As Appellants have failed to satisfy the requirements of Rule 40 (b), it follows that this motion is hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 10 2007

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the minutes of the Court of Appeals of Georgia.*

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Willie Z. Martin, Jr. , Clerk.

² See *Jonas v. Jonas*, 280 Ga. App. 155, 157 (1) (633 SE2d 544) (2006).

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD-07-10

DATE: 5-15-07 REC #: 89590 PAID BY: Western Union No. 08-685337757

CHARGE: Supersedeas - denial of Bond

STYLE: Derrick B. Jackson v. Butch Reece, Sheriff - State

ATTY. NT: Derrick Jackson
P.O. Box 874
Gray, GA 31032

Jones Co. Jail

~~Butch Reece~~
~~P.O. Box 874~~
~~Gray~~

ATTY. EE: Butch Reece, Sheriff
P.O. Box 874
Gray, GA 31032

LOWER CT. JUDGE: Judge Hugh V. Wingfield
LOWER CT. CASE # Civil Case NO 07-CV-22184
COUNTY: Jones

BRIEFS FILED: NT

JUDGEMENT DATE: 5/16/2007 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, May 16, 2007

The Court of Appeals hereby passes the following order:

MD07-10. JACKSON v. REECE.

Derrick B. Jackson has filed a pro se “Petition for an Emergency Order in the Appeals Court.” Pursuant to Court of Appeals Rule 40 (b), this Court has the inherent authority to issue emergency orders “as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot,” and “[g]enerally, no order will be made or direction given in an appeal until it has been docketed in this Court.” In order to invoke the Court’s emergency authority, a Rule 40 (b) motion must “contain a stamped ‘filed’ copy of the order being appealed” and “a copy of the notice of appeal, if such has been filed in the trial court.” Here, Jackson has no appeal docketed in this Court. Moreover, he failed to attach a stamped filed copy of the order being appealed. Thus, as Jackson has failed to satisfy the requirements of Rule 40 (b), it follows that **this motion is hereby denied.**

We note that this case appears to involve an appeal from an order denying Jackson’s petition for writ of habeas corpus. Habeas corpus actions lie within the exclusive jurisdiction of the Supreme Court of Georgia.¹

¹ See *Fullwood v. Sivley*, 271 Ga. 248, 249 (517 SE2d 511) (1999).

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

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MAY 16 2007

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Willi Z. Mat: [Signature], Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD 07-11

DATE: 6-1-07 REC #: 9771 PAID BY: Boudurant, Mixson & Elmore LLP

CHARGE: MANDAMUS

STYLE: Athando Holdings, LLC v. Cathelene Robinson, Clerk

ATTY. NT: Emm J. Boudurant & Frank M. Lowrey, IV
3900 One Atlantic Cfr. Boudurant, Mixson & Elmore
1201 W. Peachtree St.
Atl, GA 30309-3417 404-881-4100

ATTY. EE: Cathelene Robinson Peter J. Anderson & Grayson S. Smith
Clerk Fulton Superior Ct. Suteland, Arbill and Brennan, LLP
136 Pryor St. SW 999 Peachtree St. NE, Ste 2300
Atl, GA 30303 Atl, 30309-3896
Wm C. Spencer, Mitchell, McNeel & Sams
P.O. Box 7120, Tupelo MS 38802

LOWER CT. JUDGE: Ural D. Glanville
LOWER CT. CASE # E-38327
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 6-5-07 JUDGMENT: Transferred to Supreme Court

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUNE 5, 2007

The Court of Appeals hereby passes the following order:

MD07-11. ATLANDO HOLDINGS, LLC a Georgia limited liability company, f/k/a MINDIS ACQUISITION CORPORATION, a Georgia Corporation v. CATHELENE ROBINSON, CLERK OF THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA, in her official and individual capacities

On June 1, 2007, moveant filed with this Court a motion under our Rule 40(b) seeking a Petition for Writ of Mandamus to direct the clerk of Fulton County Superior Court to prepare and transmit certain records on appeal. Moveant cites statutes and case law which purport to give this Court original jurisdiction to hear a mandamus action.

After the Constitution of the State of Georgia 1983 and the Supreme Court's decision in *Brown v. Johnson*, 251 Ga. 436, 437 (306 SE2d 655) (1983), however, the Supreme Court has determined that a Petition for Writ of Mandamus should be filed in the superior court and that the Supreme Court of Georgia is the proper Court to determine the appellate issues.

Therefore, the above appeal is transferred to the Supreme Court of Georgia pursuant to Art. VI, Sec. VI, Par. III(5), Georgia Constitution 1983.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN -5 2007

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Clerk.

Willi Z. Marti, Jr.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD 07-12

DATE: 6/7/2007 REC #: _____ PAID BY: payser's affidavit

CHARGE: Supersedeas Bond
Dexter Trasher v. The State

STYLE: ✓

ATTY. NT: Deirdre L. O'Connor phone: 404-727-9565
Emory Univ. School of Law
1301 Clifton Rd.
Atlanta, GA 30322

ATTY. EE: A' Sheikh Penn
5th Floor DeKalb Co Courthouse
556 N. McDonough St.
Decatur, GA

LOWER CT. JUDGE: Judge Barbara J. Mobley
LOWER CT. CASE # 06 C79192
COUNTY: DeKalb Co. State Court

BRIEFS FILED: NT

JUDGEMENT DATE: 6-8-07 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, June 8, 2007

The Court of Appeals hereby passes the following order:

Motion Docket 07-012. THRASHER v. THE STATE.

Dexter Thrasher has filed an emergency motion, contending that the trial court failed to consider his motion for a supersedeas bond and failed to postpone his June 11, 2007 surrender date following his convictions in the State Court of DeKalb County for driving under the influence in violation of OCGA § 40-6-391 (a) (1). Thrasher was convicted on May 29, 2007, and sentenced to 12 months, with the first 30 days to be served in jail and the balance probated, as well as a fine and community service. The trial court orally denied Thrasher's motion for a stay of the sentence pending appeal, and ordered Thrasher to report to jail on June 11, 2007. Thrasher subsequently filed a notice of appeal on June 4, 2007, and filed an application for an appeal bond requesting a hearing or an extension of the surrender date. The emergency motion contains copies of email messages purportedly between Thrasher's defense counsel, an assistant solicitor for DeKalb County, and the law clerk for the trial court, in which defense counsel confirms telephone conversations indicating that the court would not hear the motion for an appeal bond before June 11, 2007, and would not extend the surrender date.

The grant or denial of an appeal bond in convictions of any offense set forth in OCGA § 40-6-391 is in the discretion of the convicting court. OCGA § 17-6-1 (g). The procedure required by the law is that "after a sentence of imprisonment has been imposed, the question of the appellant's custody pending final decision on appeal should be reviewed and a fresh determination made by the trial court." *Birge v. State*, 238 Ga. 88, 89 (230 SE2d 895) (1976). In reviewing the question of Thrasher's custody pending the appeal, "the court must give applicant notice of the hearing and

a chance to appear and be heard. [Cit.]” *Knapp v. State*, 223 Ga. App. 267, 268 (477 SE2d 621) (1996).

While the trial court is free to exercise its discretion in determining whether or not to grant bond, “it is not free to refuse to exercise its discretion or to provide defendant the opportunity to be heard on this issue in an evidentiary hearing. The trial court's refusal to consider bond constitutes a refusal to exercise discretion. [Cit.] (Punctuation omitted.) Id.

The trial court must hold an evidentiary hearing on Thrasher’s application for an appeal bond, at which it may consider evidence presented during the trial of the case as well as additional evidence.

The trial court must then answer four questions: 1) whether there is a substantial risk the defendant will flee; 2) whether there is a substantial risk the defendant will pose a danger to others in the community; 3) whether there is a substantial risk the defendant will intimidate witnesses or otherwise interfere with the administration of justice; and 4) whether it appears the appeal is frivolous or intended only for delay. An affirmative answer to any of these four questions will uphold denial of bond.

Id. at 268-269

Therefore, the trial court is ordered to stay the sentence and hold an evidentiary hearing on the question of Thrasher’s appeal bond so as to prevent the issues raised in this case from becoming moot and, “if it again determines that the application should be denied, clarify the basis for its denial.” *Carter v. State*, 267 Ga. App. 520, 527 (13) (600 SE2d 637) (2004). Thrasher shall be entitled to appeal the ruling of the trial court on the bond hearing as provided by law and to address therein all other issues not herein addressed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN -8 2007

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Willie L. Martin, Jr.
....., Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-07-13

DATE: 6/7/2007 REC #: 89845 PAID BY: David Marshall

CHARGE: Stay-Criminal Trial Proceedings

STYLE: James Woodrow Henderson, Jr. v. The State

ATTY. NT: David D. Marshall
P.O. Box 519
Hiram GA 30141
404-213-1358

ATTY. EE: . DA.
135 West Cherokee Ave.
Suite 368, Cartersville, GA 30120

LOWER CT. JUDGE: Shepherd Howell

LOWER CT. CASE # 2007-CR-779

COUNTY: Superior Court Cherokee Judicial Circuit

BRIEFS FILED: NT
Addendum -NT - 6/8/07

JUDGEMENT DATE: 6/8/07 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, June 8, 2007

The Court of Appeals hereby passes the following order:

MD-07-13. JAMES WOODROW HENDERSON, JR. v. THE STATE.

Under Court of Appeals Rule 40 (b), Henderson has moved this court to stay his criminal trial pending the resolution of his appeal of the trial court's order of June 6, 2007, denying his motion to dismiss the indictment against him because the State allegedly violated his constitutional right to a speedy trial by failing to bring him to trial for over 68 months. His notice of appeal and this motion were filed on June 7, 2007. His trial is scheduled to start on June 11, 2007.

A defendant is authorized to take a direct appeal of the denial of such motions, and the notice of appeal in such cases normally operates to stay the proceedings, unless the trial court determines that the appeal is frivolous. In the order denying Henderson's motion, the trial court specifically held that the motion was frivolous and filed for purpose of delay.

In *Hubbard v. State*, 254 Ga. 694, 695 (333 SE2d 827) (1985), our Supreme Court recognized that if a defendant is to be afforded the full protection of his Constitutional right to a speedy trial, a defendant must have the right to appellate review before he is exposed to trial. "In the absence of a right to a speedy trial the accused might suffer uncertainty, emotional stress, and the economic strain of a pending prosecution indefinitely." *Id.* Should a trial court find a speedy trial motion to dismiss was frivolous and dilatory, however, the filing of an appeal from the denial of the motion does not divest the trial court of jurisdiction of the case. *McAlister v. State*, 236 Ga. App. 609, 610 (2) (512 SE2d 53) (1999). See also *Rielli v. Oliver*, 170 Ga. App. 699, 700 (318 SE2d 173) (1984).

In this case, the trial court's findings that Henderson's motion was frivolous and

filed for purpose of delay would ordinarily prevent Henderson's notice of appeal to delay the trial until his appeal was decided. Because Henderson, in addition to alleging that the trial court erred by denying the motion on the merits, also is asserting that the trial court erred by making such findings, and that claim would be moot if the case proceeds to trial, *Baker v. State*, 263 Ga. App. 462, 466-467 (2) (588 SE2d 288) (2003), we must exercise our authority under Court of Appeals Rule 40 (b) to stay the proceedings to keep that issue from becoming moot.

Accordingly, Henderson's motion is granted and trial of the charges against him will be delayed pending disposition of his appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -8 2007

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Willi L. Mat...

, Clerk.

MOTIONS DOCKET

JUDGE # _____ MOTION DOCKET NUMBER MD07-14

DATE: 6-29-07 REC #: 90066 PAID BY: Genarlow Wilson

CHARGE: Bond Motion

STYLE: Genarlow Wilson v. The State

ATTY. NT: B. J. Bernstein
621 North Ave NE Bldg 8100
Atlanta, GA 30308

404-522-1200
-404-523-4611 → Rodney Zell
Fax 404-810-9092
BJ Bernstein

ATTY. EE: David McCade
8700 Hospital Drive
Douglasville, GA 30134
770-920-7292

Fax 7123 770-920-7123

LOWER CT. JUDGE: David Emerson
LOWER CT. CASE # 04CR00842-D
COUNTY: Douglas

BRIEFS FILED: NT - 6/29
EE - 6/29

JUDGEMENT DATE: 6/29/07 JUDGMENT: Transferred to Supreme Ct.

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA,

JUN 29 2007

The Court of Appeals hereby passes the following order:

MD07-14. GENARLOW WILSON v. THE STATE.

Pursuant to Court of Appeals Rule 40 (b), Genarlow Wilson has filed a motion seeking emergency relief from the order of the Superior Court of Douglas County dismissing Wilson's motion for bond pending appeal. Review of the motion, the order of the Superior Court of Monroe County granting habeas corpus, and the order of the Superior Court of Douglas County show that the underlying appeal in this case is from a ruling on a petition for habeas corpus in which the habeas court held that the statute under which Wilson was sentenced was unconstitutional.

As appeals in cases concerning the constitutionality of statutes and habeas corpus petitions are within the exclusive and general jurisdiction of the Supreme Court of Georgia, Ga. Const. 1983, Art. VI, § VI, Paras. II (1) and III (4); OCGA § 9-14-22, and this motion involves an appeal bond under OCGA § 9-14-52 (c), this motion is transferred to the Supreme Court of Georgia for disposition.

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

JUN 29 2007

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Willie Z. Mart

, Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD 07-015

DATE: 8-6-07 REC #: 9999 PAID BY: Pumper

CHARGE: Recall Remittitur

STYLE: Skillem v. The State

ATTY. NT: Warren Skillem
2164 US Hwy 147
Reidsville, GA 30479

ATTY. EE: GARY T. MOSS, D.A. Blue Ridge Circuit
90 North Street, Suite 390
Canton, GA 30114-0428
770-479-1488

LOWER CT. JUDGE: Frank Mills
LOWER CT. CASE # _____
COUNTY: Cherokee

BRIEFS FILED: NT

JUDGEMENT DATE: 8-7-07 JUDGMENT: Dismissed

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

N.O.I. FILED: 8-16-07 - Cont. Denied 11-27-07

11-13-07- motion for Aopen order
11-28-07 " " Denied

Court of Appeals of the State of Georgia

ATLANTA, AUG -7 2007

The Court of Appeals hereby passes the following order:

MD07-15. Skillern v. The State

On August 6, 2007, Warren Skillern filed the instant “Rule 40 (b) Motion” seeking to challenge an unspecified order arising from his Cherokee County Case No. 93 CR 0432. Skillern contends that he has a right to “a timely and proper appeal of [his] convictions,” and to that end, this Court should vacate its decision in Case No. A99A1417. In that opinion, we affirmed Skillern’s convictions for child molestation, aggravated child molestation, rape, and cruelty to children. *Skillern v. State*, 240 Ga. App. 34 (521 SE2d 844) (1999). Since we issued that opinion, Skillern has challenged or collaterally attacked his convictions on numerous occasions, primarily in the form of extraordinary motions for new trial, appeals from which were denied by this Court. See, e.g., Case Nos. A06D0252, A06D0139, A06A0802, A06D0114, A05D0017, A04A0069, and A04D0146.

1. Because Skillern has not properly identified an appealable order of a lower court for which this Court has jurisdiction to review, we are required to DISMISS his motion for lack of jurisdiction.

2. We further note for Skillern’s edification that the Rule 40 (b) emergency powers of this Court are extremely limited. We may only issue “such orders or give direction to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot.” The petitioner has not shown us that exercising our inherent power would preserve a contested issue in a matter that is ripe for appellate review in this Court. In fact, he cites only to closed actions for which all avenues of appeal appear to be exhausted. Therefore, had we not dismissed the motion, we would have denied it.

3. Because Skillern has filed numerous applications and motions in this Court pertaining to the same closed appeal, we caution him against filing future motions or pleadings in this Court that have no substantial basis in law. Rule 15 permits this Court to levy penalties for frivolous appeals, applications, or motions against a party or his counsel (including pro se litigants pursuant to Rule 1 (d)) and the penalty shall constitute a money judgment that may be levied against a prison account. Finally, it is our duty to warn Skillern that repeated frivolous or abusive litigation may result in his access to the courts being restricted. See *Smith v. Adamson*, 226 Ga. App. 698 (487 SE2d 386) (1997).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG -7 2007

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Willi Z. Mantz, Clerk.

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

ATLANTA, NOV 28 2007

The Court of Appeals hereby passes the following order:

MD07-15. Skillern v. The State

The order issued on August 7, 2007 was proper. The motion for proper order is **DENIED**.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 28 2007*

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the minutes of the Court of Appeals of Georgia.*

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Willie L. Mant, Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-07-016

DATE: 8/9/2007 REC #: 90500 PAID BY: Jonathan Melnick

CHARGE: Motion To Set Aside Order of Incarceration - Contempt

STYLE: In Re: Gregory Flamer

ATTY. NT: Jonathan Melnick
1718 Peachtree St
Suite 999
Atlanta, GA 30309

ATTY. EE: Mr. Larry Cobb
4400 N. Point Pkway
Suite 105
Alpharetta, GA 30023

LOWER CT. JUDGE: Judge Craig L. Schwall
LOWER CT. CASE # 2005 CV 97531
COUNTY: Fulton Superior Ct

BRIEFS FILED: NT

JUDGEMENT DATE: 8-10-07 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUG 10 2007

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 07-016. IN RE: GREGORY FLAMER.

Gregory Flamer filed an emergency motion asking this Court to set aside an order of incarceration arising from a contempt order entered by Judge Craig Schwall of the Fulton County Superior Court. According to Flamer, the trial court erred when it failed to grant supersedeas pending appeal from the contempt order.

In an order dated June 27, 2007, the court found that Flamer had committed at least five separate acts of perjury in conjunction with proceedings on a personal injury claim filed by Flamer. The court also found that these acts occurred in the court's immediate presence or "so near thereto as to obstruct the administration of justice." OCGA § 15-1-4 (a) (1). The court ruled that Flamer was in criminal contempt and sentenced him to serve 100 days in the Fulton County Jail (20 days per contumacious act, to run consecutively). See OCGA § 15-6-8 (5). The court also found Flamer in civil contempt and ordered him to remain in the custody of the Fulton County Sheriff until he paid \$26,752.79 in attorney fees and \$1,000 in litigation expenses arising from the underlying civil action.

On July 11, 2007, Flamer filed a notice of appeal from the June 27, 2007 contempt order. On July 16, 2007, Flamer filed a motion in the trial court to set aside or stay the order of incarceration, asserting that the filing of a notice of appeal in this Court operated as a supersedeas of the order, pursuant to OCGA § 5-6-13 (a) and 5-6-46. On August 2, 2007, the trial court granted the motion in part, ordering that the portion of the contempt order requiring the reimbursement of attorney fees and expenses be stayed pending the appeal. The court refused to stay the order of incarceration based upon Flamer's criminal contempt, citing OCGA § 5-6-13 (b).

OCGA § 5-6-13 (b) provides that, when a finding of contempt is based upon conduct in the trial court's presence during a proceeding, the court has the discretion to decide whether to grant supersedeas while an appeal from the contempt order is pending.

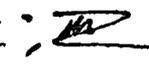
Having reviewed Flamer's emergency motion, we find that he has failed to show that the trial court abused its discretion in denying his motion to grant the supersedeas and stay the order of incarceration pending appeal. Accordingly, this emergency motion is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 10 2007

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Willi Z. Mart 

, Clerk.

COURT OF APPEALS OF GEORGIA
EMERGENCY MOTIONS

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MD-08-07	WARREN SKILLERN V. THE STATE	DENIAL OF ACCESS TO COURT
MD-08-08	WARREN SKILLERN V. JUDGE FRANK MILLS	DENIAL OF PAUPER STATUS
MD-08-09	WILEY CURRY V. GABLES RESIDENTIAL SERVICES, INC. ET. AL	DIRECT THE TRIAL COURT TO GRANT PLAINTIFF'S "AFFIDAVITS OF INDIGENCE"
MD-08-10	WARREN SKILLERN V. ROBERT PARIS, SHERIFF, ET AL.	DENIAL
MD-08-11	CHRISTY BEDFORD THOMAS V. JAMES BYRON THOMAS	CONTEMPT AND SUPERSEDEAS BOND

	WARREN SKILLERN V. THE STATE	RECALL REMITTITUR
MD-08-12	WARREN SKILLERN V. THE STATE	RECALL REMITTITUR
MD-08-13	CHARLES G. WILLIAMS, III V. THE GEORGIA PROFESSIONAL STANDARDS COMMISSION	MOTION FOR STAY OF THE DECISION OF THE LEE COUNTY SUPERIOR COURT OF DECEMBER 10, 2007
MD-08-14	SHANNEL GILFORD V. THE STATE	STAY OF DETENTION CENTER SENTENCE OR SUPERSEDEAS BOND
MD-08-15	WARREN SKILLERN V. ROBERT PARIS, SHERIFF	MOTION TO SET ASIDE JUDGMENT
MD-08-16	ANITREA HWANG V. THE STATE	MOTION TO STAY
MD-08-17	CHRIS YAGER V. JERRY WALKER, ET AL.	MOTION TO STAY
MD-08-18	RESEARCH IN MOTION, LTD, ET AL. V. RASTEREX HOLDINGS, LLC	CONFIDENTIAL EXHIBIT UNDER SEAL
MD-08-19	IN RE: A.L.R.	MOTION TO STAY
MD-08-20	RHONDA SPRATLEY SPARKS V. SONYA SPARKS JACKSON AS LEGAL CUSTODIAN OF ALEXA SPARKS AND GRETA SPARKS, MINORS	STAY - STOP PAYMENT OF FUNDS
MD-08-21	DAVID WHICKER V. THE STATE	SPEEDY TRIAL
MD-08-22	JOSETTE SCOTT V. EUDEMIE MATHIAS	DISMISS DISPOSSESSORY ACTION WITH PREJUDICE
MD-08-23	FERNANDO PRICE V. THE STATE	MERIWETHER COUNTY PROBATE COURT TO RESCIND ITS ORDER TRANSFERRING THE CASE TO MERIWETHER SUPERIOR COURT.
MD-08-24	DANIEL A. SPOTTSVILLE V. RANDY TILLMAN, ET AL.	EXTRAORDINARY MOTIONS FOR RECONSIDERATION OF A08A0994, A08D0281 AND A08A1655.
MD-08-25	IN THE MATTER OF MICHAEL D. MANN	MOTION FOR SUPERSEDEAS BOND
MD-08-26	CARL HAYES V. THE STATE	SUPERSEDEAS - CONTEMPT

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MS08-001

DATE: 8/24/07 REC #: 0666 PAID BY: Bondurant Mixson + Elmore

CHARGE: emergency motion for supersedeas

STYLE: Enduracare Therapy Management, Inc. v. Henry Drake et al

ATTY. NT: Jill A. Pryor
3900 One Atlantic Center
1201 W. Peachtree Street NW
Atlanta GA 30309-3417

ATTY. EE: see attached

LOWER CT. JUDGE: Raymond S. Gordon, Jr.

LOWER CT. CASE # 151-05-CVS-0020

COUNTY: Wayne State

BRIEFS FILED: NT - 8-24
EE - 9-6 Br 9-7
OTM - 9-6

JUDGEMENT DATE: 9-12-07 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, August 27, 2007

The Court of Appeals hereby passes the following order:

MD08001. ENDURACARE THERAPY MANAGEMENT, INC. v. DRAKE et al.

Enduracare Therapy Management, Inc. filed this emergency motion for supersedeas to stay pending appeal enforcement of a November 9, 2006 judgment obtained against it by Henry Drake and Mamie Bryant (State Court of Wayne County, Civil Action No. 151-05-CVS-0020).

Pursuant to OCGA § 9-11-62 (e) and Court of Appeals Rule 40 (b), proceedings in this case and in the lower court are hereby STAYED pending further ruling on this motion by this Court. This Court shall consider any brief regarding this motion which is filed by any litigant in this case and physically received by this Court on or before September 6, 2007.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 27 2007**

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

Court of Appeals of the State of Georgia

ATLANTA, SEP 12 2007

The Court of Appeals hereby passes the following order:

MD08001. ENDURACARE THERAPY MANAGEMENT, INC. v. DRAKE et al.

On November 9, 2006, the State Court of Wayne County entered judgment in favor of Henry Drake and Mamie Bryant against CLC of Jesup/Jesup Healthcare Center and Enduracare Therapy Management, Inc. ("Enduracare") (Civil Action No. 151-05-CVS-0020). Enduracare filed a notice of appeal from the judgment. On August 2, 2007, the trial court ordered any defendant who wishes to have the benefits of supersedeas to file a supersedeas bond, with good surety, in the amount of \$7,700,000. On August 23, 2007, Enduracare filed an affidavit of indigence pursuant to OCGA § 5-6-47. On August 24, 2007, Enduracare filed this emergency motion for supersedeas requesting that this Court maintain supersedeas despite its inability to post a supersedeas bond as ordered by the trial court. Three former defendants in the action, Brentwood Nursing, LLC, Brentwood Healthcare, LLC, and Jesup Healthcare, LLC also filed a motion for supersedeas. Henry Drake and Mamie Bryant filed a brief opposing Enduracare's motion.

Pursuant to OCGA § 5-6-47 (a), "[i]n all civil cases where the party taking an appeal files an affidavit stating that because of [its] indigence [it] is unable to pay costs or to post a supersedeas bond, if any, as may be required by the trial judge as provided in Code Section 5-6-46, the notice of appeal and affidavit of indigence shall act as supersedeas." Accordingly, Enduracare's notice of appeal and affidavit of indigence acts as supersedeas. As a result, Enduracare's emergency motion is hereby

DENIED as moot.

Drake and Bryant have taken the position that Enduracare is not indigent. If Drake and Bryant were to comply with OCGA § 5-6-47 (b), and contest the truth of Enduracare's affidavit of indigence by verifying affirmatively under oath that the same is untrue, issue would thereby be joined for determination by the trial court under the rules of the court. We note that "[t]he judgment of the [trial] court on all issues of fact concerning the ability of a party to pay costs or give bond shall be final."

Furthermore, the motion for supersedeas filed by Brentwood Nursing, LLC, Brentwood Healthcare, LLC, and Jesup Healthcare, LLC, is hereby DENIED as moot since the judgment shows on its face that these litigants were no longer defendants in the action when the trial court entered judgment.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 12 2007

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

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

Willie L. Mantz, Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MO-08-002

DATE: 9-17-2007 REC #: 90870 PAID BY: Timothy Herring

CHARGE: Supersedeas Bond

STYLE: In the Matter of Inquiry Concerning a Judge
(of Andre Shiel)

ATTY. NT: Timothy Herring
P.O. Box 13
Palmetto, GA 30268
fax # 678-277-9974

ATTY. EE: _____

LOWER CT. JUDGE: Judge Guillian Boddarin, Jr.

LOWER CT. CASE # 07-8 R-240

COUNTY: Troup Co.

BRIEFS FILED: _____ ^{NT} Supplement 9/18/2007
_____ Info 10-9-07
_____ Order 9/11/07

JUDGEMENT DATE: 9/19/07 JUDGMENT: GRANTED

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, SEP 19 2007

The Court of Appeals hereby passes the following order:

MD-08-002. GRIER v. THE STATE.

Andre Grier was tried on a misdemeanor charge of obstructing an officer and a felony charge of the sale of cocaine. The jury found him guilty of the misdemeanor offense, and the court declared a mistrial on the felony offense. The court sentenced him for the misdemeanor charge to twelve months to serve and to pay a fine. On August 6, 2007, Grier filed a motion for new trial, as well as a motion for supersedeas bond pursuant to OCGA § 17-6-1 (b) (1) and a rule nisi for August 15, 2007 on his motion for supersedeas bond.

Grier complains that, as of the filing date of his Rule 40 (b) motion, neither bond nor hearing therefor has been set, yet he remains unlawfully incarcerated on only a misdemeanor conviction. Because it appears that Grier has shown that he is entitled to bond with respect to his misdemeanor conviction, the trial court is hereby ORDERED to set such bond immediately in accordance with OCGA § 17-6-1 (b) (1).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 19 2007

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

Court of Appeals of the State of Georgia

ATLANTA, SEP 19 2007

The Court of Appeals hereby passes the following order:

MD-08-002. GRIER v. THE STATE.

Andre Grier was tried on a misdemeanor charge of obstructing an officer and a felony charge of the sale of cocaine. The jury found him guilty of the misdemeanor offense, and the court declared a mistrial on the felony offense. The court sentenced him for the misdemeanor charge to twelve months to serve and to pay a fine. On August 6, 2007, Grier filed a motion for new trial, as well as a motion for supersedeas bond pursuant to OCGA § 17-6-1 (b) (1) and a rule nisi for August 15, 2007 on his motion for supersedeas bond.

Grier complains that, as of the filing date of his Rule 40 (b) motion, neither bond nor hearing therefor has been set, yet he remains unlawfully incarcerated on only a misdemeanor conviction. Because it appears that Grier has shown that he is entitled to bond with respect to his misdemeanor conviction, the trial court is hereby ORDERED to set such bond immediately in accordance with OCGA § 17-6-1 (b) (1).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 19 2007

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

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

Willi Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-08-003

DATE: 9-26-07 REC #: 90966 PAID BY: Supreme Court

CHARGE: Motion For Stay

STYLE: Georgia Commissary Suppliers, LLC v. Brad Douglas,
Comm. et al

ATTY. NT: Michael J. Bowers Atlanta, GA 30308
balda & Bingham, LLP
30 Allen Plaza
30 Ivan Allen Jr. Blvd. NW

ATTY. EE: Therese Baker, Julie A. Jacobs
40 Capital Square 404-463-5989
Atlanta, GA 30334

LOWER CT. JUDGE: _____
LOWER CT. CASE # _____
COUNTY: _____

BRIEFS FILED: _____

JUDGEMENT DATE: 9/28/07 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, SEP 28 2007

The Court of Appeals hereby passes the following order:

MD-08-003. GEORGIA COMMISSARY SUPPLIERS, LLC v. DOUGLAS.

Georgia Commissary Suppliers, LLC (“GCS”) seeks a stay of the “State of Georgia prison commissaries procurement (Solicitation No. 46700-019-0000007383)” pending appellate review of the trial court’s final order dismissing GCS’s action for a declaratory judgment and injunctive relief.

In its complaint, GCS sought to enjoin the Georgia Department of Administrative Services (“DOAS”), through its Commissioner Brad Douglas, from “reissuing the prison commissaries RFP [request for proposal].” It appears from the filings before this Court, however, that the request for proposal has since been reissued. Thus, GCS now asks the Court to “enjoin the rebidding of the contract of any bids,” specifically to enjoin the DOAS from “accepting bids on any re-issued RFP during the pendency of GCS’s appeal.”

“It is a rather fundamental rule of both equitable jurisprudence and appellate procedure, that if the thing sought to be enjoined in fact takes place, the grant or denial of the injunction becomes moot.” *Jackson v. Bibb County School Dist.*, 271 Ga. 18, 19 (515 SE2d 151) (1999) (citation and punctuation omitted); see also *Brown v. Spann*, 271 Ga. 495, 496 (520 SE2d 909) (1999). A party cannot avoid this rule by expanding after the fact the nature of the injunctive relief sought. See *Bd. of Commrs. of Richmond County v. Cooper*, 259 Ga. 785 (387 SE2d 138) (1990).

Because the reissuance of the request for proposal has occurred, the denial of GCS’s request to enjoin the reissuance is now moot. GCS cannot, under the guise of supersedeas, ask for a different form of injunctive relief than what it sought below. GCS’s motion for a stay is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 28 2007

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

, Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-08-004

DATE: 9/28/07 REC #: 0987 PAID BY: Brian J. Morrissey

CHARGE: Supersedes

STYLE: Moody Family Housing, LLC v. Regions Bank

ATTY. NT: Brian J. Morrissey ~~_____~~
Ragsdale, Beals, Sigler Patterson & Gray, ~~_____~~
229 Peachtree St, NE LLP ~~_____~~
2400 International Tower ~~_____~~
Atlanta, GA 30303-1629 ~~_____~~
 ATTY. EE: Walter Gus Elliott, II ~~_____~~
Elliott, Blackburn Barnes & Gooding, PC ~~_____~~
3016 North Patterson St ~~_____~~
Valdosta, GA 31602 ~~_____~~

LOWER CT. JUDGE: H. Arthur McHane
 LOWER CT. CASE # 2007 CV 1326
 COUNTY: Lowndes Co.

Order to Supplement Motion 10-1-2007

BRIEFS FILED: NT Supplement 10/5/07

JUDGEMENT DATE: 10/1/07 JUDGMENT: Grant?

Army 10-10-07

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 1 2007

The Court of Appeals hereby passes the following order:

MD-08-004. MOODY FAMILY HOUSING, LLC v. REGIONS BANK.

Moody Family Housing, LLC has filed a motion for a Rule 40 (b) emergency order. It seeks from this Court a writ of supersedeas, summarily asserting it “will suffer irreparable harm if the appointment of a receiver is permitted to move forward while [its] appeal is pending” and that “[t]he receiver will oust [it] from, and take control of, the project underlying the dispute, including the project assets.”

A Rule 40 (b) motion for an emergency order must contain, among other things, “a stamped ‘filed’ copy of the order being appealed” and an “explanation why an order of this Court is necessary.” Moody Family Housing’s motion fails to include such an order and fails to provide a sufficient explanation why an order of this Court is necessary. Moody Family Housing may supplement its motion within five (5) days of this order to comply fully with this Court’s Rule 40. Failure to supplement as ordered herein may result in the dismissal or denial of Moody Family Housing’s motion for a Rule 40 (b) emergency order.

Court of Appeals of the State of Georgia
Clerk’s Office, Atlanta OCT 1 2007

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

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

Willi Z. Mat, Clerk.

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

ATLANTA, October 10, 2007

The Court of Appeals hereby passes the following order:

MD-08-004. MOODY FAMILY HOUSING, LLC v. REGIONS BANK.

Moody Family Housing, LLC has filed a motion for a Rule 40 (b) emergency order, seeking a writ of supersedeas. Because Moody Family Housing, LLC has failed to show that such an order is warranted, its motion is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **OCT 10 2007**

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

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

Willi L. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD-08-005

DATE: 10-17-07 REC #: _____ PAID BY: _____

CHARGE: Extraordinary Motion For New Trial

STYLE: Warren Skillern v. The State

GDC

ATTY. NT: Warren Skillern in Se
786640 2164 45 Hwy 147
Reidsville, GA 30499

ATTY. EE: Garry T. Moss
90 North Street, Ste 390
Conston, GA 30114

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

BRIEFS FILED: NT

JUDGEMENT DATE: 10-18-2007 JUDGMENT: denied

M.F.R. FILED: 10/25/07
REPOSSES: denied 10/30/07

N.O.I. FILED: _____

- 11-13-07 - motion for sealed order - denied 1-4-08
- 11-13-07 - " for copy of order " 1-4-08
- 11-13-07 - motion for stay & copies " 1-4-08
- ~~11-13-07 - motion for sealed order~~

Court of Appeals of the State of Georgia

ATLANTA, OCT 19 2007

The Court of Appeals hereby passes the following order:

MD08-005. SKILLERN v. THE STATE.

On October 16, 2007, Warren Skillern filed the instant "Rule 40 (b) Motion" seeking to challenge the trial court's "Order Denying His Extraordinary Motion for New Trial," issued on October 20, 2003. The instant motion augments a "Rule 40 (b) Motion" Skillern filed on August 6, 2007, which this Court dismissed for lack of jurisdiction on August 7, 2007, finding that Skillern had not properly identified an appealable order of a lower court. As noted in that order, had we not dismissed the motion, we would have denied it because Skillern "has not shown us that exercising our inherent power would preserve a contested issue in a matter that is ripe for appellate review in this Court. In fact, he cites only to closed actions for which all avenues of appeal appear to be exhausted." Though Skillern's instant motion rectifies the omission in his previous motion, it does not change the result. Skillern previously filed an application for interlocutory appeal of the trial court's order denying his extraordinary motion for new trial, which we properly denied. Skillern's emergency motion challenging that same order is likewise DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 19 2007

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

Court of Appeals of the State of Georgia

ATLANTA,

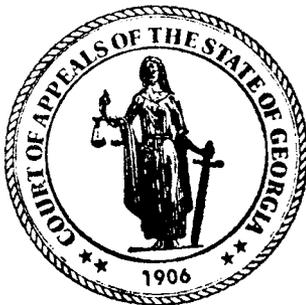
OCT 30 2007

The Court of Appeals hereby passes the following order:

MD08-005. SKILLERN v. THE STATE.

On October 25, 2007, Warren Skillern filed a "Rule 37 (d) Motion for Permission to File a Second Motion for Reconsideration" with an accompanying "Second Motion for Reconsideration;" a "Motion for Sanctions Against District Attorney Garry Moss;" and a "Motion for Reconsideration."

Having considered the motions, they are hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 30 2007

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

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

Willi Z. Mat: [Signature]

....., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JAN 4 2008

The Court of Appeals hereby passes the following order:

MD08-005. SKILLERN v. THE STATE.

The Court's Order of October 19, 2007, is hereby vacated and this Order substituted in its place:

On October 16, 2007, Warren Skillern filed the instant "Rule 40 (b) Motion" seeking to challenge the trial court's "Order Denying His Extraordinary Motion for New Trial," issued on October 20, 2003. The instant motion augments a "Rule 40 (b) Motion" Skillern filed on August 6, 2007, which this Court dismissed for lack of jurisdiction on August 7, 2007, finding that Skillern had not properly identified an appealable order of a lower court. As noted in that order, had we not dismissed the motion, we would have denied it because Skillern "has not shown us that exercising our inherent power would preserve a contested issue in a matter that is ripe for appellate review in this Court. In fact, he cites only to closed actions for which all avenues of appeal appear to be exhausted." Though Skillern's instant motion rectifies the omission in his previous motion, it does not change the result. Skillern previously filed an application for discretionary appeal of the trial court's order denying his extraordinary motion for new trial, which we properly denied. Skillern's emergency motion challenging that same order is likewise DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 4 2008

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

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

Willi Z. Mart, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JAN 4 2008

The Court of Appeals hereby passes the following order:

MD08-005. SKILLERN v. THE STATE.

On November 13, 2007, Warren Skillern filed three motions, including Motion for Proper Orders, Motion for Copy of "Application for Interlocutory Appeal" and Copy of Denial Order, and Motion for Stay of Judgements (sic). Having read and considered the motions, it is hereby ORDERED as follows:

(1) This Court's Order of October 19, 2007, contained a typographical error and should have stated that "Skillern previously filed an application for *discretionary* appeal of the trial court's order denying his extraordinary motion for new trial, which we properly denied." Because a substitute Order correcting the error is being issued concurrently with this Order, the Motion for Copy of "Application for Interlocutory Appeal" and Copy of Denial Order is hereby DENIED as moot.

(2) As discussed above, "a fraudulent document [i.e., application for interlocutory appeal]" has not been filed in Skillern's name. Accordingly, the Motion for Stay of Judgements (sic) is DENIED as moot.

(3) Finally, as a substitute Order vacating this Court Order of October 19, 2007, is being issued concurrently with this Order, Skillern's request to receive a proper copy of the vacated Order is moot. Accordingly, the Motion for Proper Orders also is DENIED as moot.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 4 2008

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

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD-08-006

DATE: 10/23/2007 REC #: _____ PAID BY: Tauper

CHARGE: Injunctive Relief

STYLE: Shack Lawal v. Select Portfolio
Services, Inc.

ATTY. NT: Shack Lawal #
Pro Se
6319 South Gordon Rd.
Austell, Ga 30168
770 948-5743

ATTY. EE: Howell A. Hall
Rendogost + Jones P.C.
South Lakes Plaza, Suite 1000
115 Perimeter Center Place
Atlanta, Ga 30346

LOWER CT. JUDGE: N. Conly Ingram
LOWER CT. CASE # 0515024
COUNTY: Cobb Superior

BRIEFS FILED: _____

JUDGEMENT DATE: 10/24/07 JUDGMENT: Denied

M.F.R. FILED: 10-25-07
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 24 2007

The Court of Appeals hereby passes the following order:

MD08-006. LAWAL v. SELECT PORTFOLIO SERVICING, INC.

Shade Lawal has filed an emergency motion with this Court seeking a temporary restraining order against Select Portfolio Servicing, Inc., to prevent it from foreclosing on appellant's home on November 6, 2007. Movant seeks the issuance of the injunction through November 12, 2007, the date upon which a show cause hearing will occur in the Superior Court of Cobb County. Based on appellant's motion, issues to be considered at the November 12, 2007, hearing pertain to the nonmovant's contempt of court, tampering with a court order, and refusal to obey a court order.

Lawal appeals from an order of the Presiding Judge of the Superior Court of Cobb County denying Lawal's request for an emergency hearing on his emergency motion for preliminary injunction and temporary restraining order, which was issued after review of Lawal's motion and the judgment entered by Judge Staley of the Superior Court. With his motion, movant attached the order from the Presiding Judge denying his motion, but he did not attach the motion or the judgment entered by Judge Staley.

Appellant has moved for a temporary restraining order and preliminary injunction. The evidence does not warrant such order. The granting or denying of

a pending appeal is a decision within this court's discretion. This court has exercised its discretion and denies the motion.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 24 2007

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

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

Willi Z. Mat..., Clerk.



MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD08-007

DATE: 10-25-07 REC #: 9999 PAID BY: _____

CHARGE: Denial of Access to Court

STYLE: Warren Skillern v. The State

ATTY. NT: Warren Skillern
Ga State Prison
2164 GA Hwy 147.
Reidsville, GA 30499

ATTY. EE: Garry T. More
90 North St. Ste 390
Canton, GA 30114

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

BRIEFS FILED: NT

JUDGEMENT DATE: 10/30/07 JUDGMENT: Denial

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 30 2007

The Court of Appeals hereby passes the following order:

MD08-007. SKILLERN v. THE STATE.

On October 25, 2007, Warren Skillern filed a "Rule 40 (b) Motion.
Having considered the motion, it is hereby DENIED.

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

OCT 30 2007

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

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

Willi Z. Marti, Jr., Clerk.



MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD 08-008

DATE: 11-6-07 REC #: 9999 PAID BY: Pauper

CHARGE: Denial of pauper status

STYLE: Warren Skillern v. Judge Frank Mills

ATTY. NT: Warren Skillern 786640

2164 Old Hwy 147
Reidsville, GA 30499

ATTY. EE: Judge Frank Mills

90 N. Street Suite 270
Canton, GA 30114

LOWER CT. JUDGE: N. Jackson Harris

LOWER CT. CASE # 07-CV-2587-JH

COUNTY: Cherokee

BRIEFS FILED: NT

JUDGEMENT DATE: 11-9-07 JUDGMENT: Denied

M.F.R. FILED: 11-19-07

REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, November 9, 2007

The Court of Appeals hereby passes the following order:

MD08-008. SKILLERN v. JUDGE FRANK MILLS, III.

On November 6, 2007, Warren Skillern filed a "Rule 40 (b) Motion."
Having considered said motion, it is hereby DENIED.

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

NOV -9

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

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD08-009

DATE: 12/30/2007 REC #: 9999 PAID BY: _____

CHARGE: Expedited Appeal and Supersedeas

STYLE: Wiley Curry v Gables Residential Services

ATTY. NT: Wiley Curry
P.O. Box 190411
Atlanta, GA 31119-0411

ATTY. EE: J. Mike Williams
Fowler, Wein, Chastwood, Passino & Williams, P.A.
Suite 220, Park Central, 2970 Clairmont Rd.
Atlanta, GA 30329

LOWER CT. JUDGE: Clarence F. Seeliger
LOWER CT. CASE # 05CV12712-3
COUNTY: DeKalb Co. Superior Court

BRIEFS FILED: NT

JUDGEMENT DATE: 12/4/07 JUDGMENT: Denied

M.F.R. FILED: 12/14/2007 Denied 12-18-07
REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, **DEC -4 2007**

The Court of Appeals hereby passes the following order:

**MD08-009. WILEY CURRY v. GABLES RESIDENTIAL SERVICES, INC.,
D/B/A DUNWOODY GABLES APARTMENTS, JULIE COBB-EMPLOYEE,
AMANDA GRIFFIN-EMPLOYEE, CEDRIC BENTON-EMPLOYEE**

Appellant/Plaintiff Wiley Curry's "Motion to Emergency Expedited Appeal and Supersedeas" is hereby DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC -4 2007***

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

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

Willi Z. Mant , Clerk.

MOTIONS DOCKET

JUDGE # 99 MOTION DOCKET NUMBER MD-08-0010

DATE: 12-04-07 REC #: _____ PAID BY: 9999

CHARGE: ? - Just complaining

STYLE: Warren Skilleen v Robert Paris and Gordon Co. Bd of Comm

ATTY. NT: Warren Skilleen 786640
2164 Old Hwy 147
Reidsville, GA 30499

ATTY. EE: Buckley Brown, P.C
2970 Clairmont Rd. Ste 1010
Atlanta, GA 30329
or 30327

LOWER CT. JUDGE: David K. Smith
LOWER CT. CASE # 07 CV 45215
COUNTY: _____

BRIEFS FILED: NT

JUDGEMENT DATE: 12-20-07 JUDGMENT: Denied -

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

N.O.I. FILED: _____

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

ATLANTA, DEC 20 2007

The Court of Appeals hereby passes the following order:

MD08-010. SKILLERN v. PARIS, et al.

On December 3, 2007, Warren Skillern filed an emergency motion under Court of Appeals Rule 40 (b) in conjunction with an application for discretionary appeal. Skillern's motion fails to satisfy the requirements of Rule 40 (b), and is accordingly DENIED. We also note that Skillern's application for discretionary appeal, Application No. A08D0145, was denied on December 14, 2007.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC 20 2007*

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

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

Willi Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 99 MOTION DOCKET NUMBER MD-08-0011

DATE: 12/14/2007 REC #: 1698 PAID BY: Russell Pope

CHARGE: Contempt/Supersedeas Bond

STYLE: Christy Bedford Thomas v. James Byron Thomas

ATTY. NT: Mr. Russell Pope
P.O. Box 81221
Conyers, GA. 30013

ATTY. EE: Mr. Michael S. Waldrop
Walker & Waldrop, P.C.
861 Commerce Dr.
Conyers, Ga. 30094

LOWER CT. JUDGE: Sidney H. Nation, Sr.
LOWER CT. CASE # 2006-VCV-2541 N
COUNTY: Rockdale Co. Superior Court

BRIEFS FILED: NT

JUDGEMENT DATE: 12-14-07 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA,

DEC 14 2007

The Court of Appeals hereby passes the following order:

MD-08-0011. THOMAS v. THOMAS.

Appellant Christy Bedford Thomas filed a Motion for Emergency Relief on December 14, 2007. Appellant's motion fails to satisfy the criteria set forth in Court of Appeals Rule 40 (b) and therefore, the motion is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 14 2007

*I certify that the above is a true extract from
the minutes of the 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 # 99 MOTION DOCKET NUMBER MD - 08 - 012

DATE: 12-13-07 REC #: 9999 PAID BY: _____

CHARGE: Motion to Recall Recantation

STYLE: Warren Skillen v. The State

ATTY. NT: Warren Skillen
Georgia State Prison
2164 Old Hwy 147
Reidsville, GA 30499

ATTY. EE: Garry T. Moss, DA
Blue Ridge Ind Cir.
90 North St. Ste 390 770-479-1488
Canton, GA 30114

LOWER CT. JUDGE: Frank C. Mills
LOWER CT. CASE # 93CR0432
COUNTY: Cherokee

BRIEFS FILED: NT

JUDGEMENT DATE: 2-6-08 JUDGMENT: Denied

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

N.O.I. FILED: _____
cert filed 2-14-08, cert Denied 5-19-08

Court of Appeals of the State of Georgia

ATLANTA, FEB -7 2008

The Court of Appeals hereby passes the following order:

MD08-012. WARREN SKILLERN v. THE STATE

Warren Skillern, the pro se movant, has filed a Motion to Recall the Remittitur in A07A2487, Skillern v. The State. That appeal was dismissed by this Court's order of August 27, 2007. Thereafter, Skillern filed an Application for Certiorari with the Supreme Court of Georgia which was denied by that Court on November 27, 2007. The remittitur issued from this Court on November 29, 2007 divested this Court of jurisdiction.

This Court cannot recall the remittitur, unless it was issued through mistake, neglect, inadvertence or the like. *Slappey v. Georgia Power*, 109 Ga. App. 850 (137 SE2d 537) (1964). The issuance of the remittitur in this case did not occur under such circumstances as would permit this Court to recall the remittitur. As such, Skillern's remedy to have the remittitur recalled is to petition the Supreme Court of Georgia or the Supreme Court of the United States. Therefore, Skillern's motion is hereby DENIED.

This Court notes that since his initial appeal in 1996, Skillern has filed some 29 additional actions in this Court. Skillern has had a full and complete review of the issues in his convictions raised on appeal. Additionally, it appears the Supreme Court of Georgia has done a thorough and complete job in reviewing his Application for Habeas Corpus and other prayers for relief, that Court having at least 29 different actions in his name.

The following lists enumerate the cases docketed in this Court and the Supreme Court of Georgia in the name of Warren Skillern.

The Court of Appeals of Georgia

A96A2212	Warren Skillern v. The State
A99A1150	Warren Skillern v. The State
A99A1417	Warren Skillern v. The State
A02D0058	Warren Skillern v. The State
A03A1572	Warren Skillern v. Judge Shepherd Howell
A03A2184	Warren Skillern v. Fred Brown
A03D0446	Warren Skillern v. The State
A04A0069	Warren Skillern v. The State
A04D0146	Warren Skillern v. The State
A05D0017	Warren Skillern v. The State
A06A0802	Warren Skillern v. The State
A06D0114	Warren Skillern v. Kathy Carter
A06D0139	Warren Skillern v. Kathy Carter
A06D0211	Warren Skillern v. Wallace Rogers
A06D0252	Warren Skillern v. Kathy Carter
A07A2487	Warren Skillern v. The State
A07D0212	Warren Skillern v. Robert Paris, Sheriff
A08D0145	Warren Skillern v. Robert Paris, Sheriff
MD-231	Warren Skillern v. The State
MD-06-09	Warren Skillern v. The State
MD-06-12	Warren Skillern v. The State

MD-06-13	Warren Skillern v. The State
MD-06-24	Warren Skillern v. The State
MD-07-15	Warren Skillern v. The State
MD-08-05	Warren Skillern v. The State
MD-08-07	Warren Skillern v. The State
MD-08-08	Warren Skillern v. The State
MD-08-10	Warren Skillern v. The State
MD-08-12	Warren Skillern v. The State
MD-08-15	Warren Skillern v. Paris, et al.

The Supreme Court of Georgia

S01D1692	Warren Skillern v. The State
S02D1773	Warren Skillern v. The State
S02O1904	Warren Skillern v. Shepherd Lee Howell, Judge
S03A1229	Warren Skillern v. Shepherd Lee Howell, Judge
S03D1593	Warren Skillern v. The State
S03D1704	Warren Skillern v. Albert Rahn, III, et al.
S03D1855	Warren Skillern v. Charles P. Rose, Judge
S03H1863	Warren Skillern v. Hugh Smith, Warden
S04C0562	Warren Skillern v. The State
S04C1185	Warren Skillern v. The State
S04D0254	Warren Skillern v. Department of Corrections
S04D1072	Warren Skillern v. The State
S04H1406	Warren Skillern v. Hugh Smith, Warden
S04O2020	Warren Skillern v. Frank C. Mills, III, Judge
S05C0475	Warren Skillern v. The State

S05D0573	Warren Skillern v. The State
S05O1430	Warren Skillern v. Sherie M. Welch, Clerk
S05T0303	Warren Skillern v. The State
S05T1263	Warren Skillern v. Tony Howerton, Warden
S06C1074	Warren Skillern v. Wallace Rogers, Jr.
S06C1224	Warren Skillern v. Kathy Carter, et al.
S06D0936	Warren Skillern v. Kathy Carter, et al.
S06H0016	Warren Skillern v. Hilton Hall, Warden
S06H0555	Warren Skillern v. Hugh Smith, Warden
S06T1556	Warren Skillern v. The State
S07C1345	Warren Skillern v. Robert Paris, Sheriff, et al.
S07C1904	Warren Skillern v. The State
S07D1905	Warren Skillern v. The State
S08C0056	Warren Skillern v. The State

Parties are not entitled to re-litigate their appeals. To do so trivializes the entire judicial process and wastes valuable resources of the courts.

On August 7, 2007, this Court issued an order in MD 07-015, Warren Skillern v. The State, stating that “Because Skillern has filed numerous applications and motions in this Court pertaining to the same closed appeal, we caution him against filing future motions or pleadings in this Court that have no substantial basis in law.” Additionally, this Court cautioned the movant that monetary penalties may result and that repeated frivolous abuse of litigation may result in his access to this Court being restricted. See *Smith v. Adamson*, 226 Ga. App. 698 (487 SE2d 386)(1997).

Since this Court’s order in MD07-015, Skillern has filed six Rule 40(b) Emergency

Motions and has had one direct appeal docketed. We note that the date of the Notice of Appeal in the direct appeal was prior to the Court's order in MD07-015.

Since Skillern's filings subsequent to the Court's order of August 7, 2007 have all been frivolous and/or abusive litigation, it is hereby ordered that Skillern be fined \$ 250.00, and that the clerk of this Court notify and direct the Superintendent of the facility where Skillern is being housed to freeze his prison inmate account until that amount is accumulated. The Superintendent of the facility is then directed to forward the \$250.00 fine to the clerk of this Court as set out in Court of Appeals Rules 7 and 15.

Skillern is further advised that the filing of continued frivolous and abusive litigation matters may result in additional fines and penalties.

Finally, this Court orders and directs that the clerk of this Court not docket or file any future pleadings from Skillern until such time as the Court has reviewed the pleadings and made a determination that there is a justiciable issue to be decided by the Court. Without such review and decision, this Court will order and direct that the clerk return the pleadings to Skillern.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB -7 2008

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

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

Clerk.

Willi Z. Mantz

MOTIONS DOCKET

JUDGE # 99 MOTION DOCKET NUMBER MD-08-013

DATE: 12-21-07 REC #: 91755 PAID BY: Howard Stiller

CHARGE: To Stay Revocation of Teachers Prof. License

STYLE: Charles G. Williams III v. The Georgia Professional Standards Comm.

ATTY. NT: Howard J. Stiller, P.C. 229-435-8444
2410 Westgate Dr. Ste 100
P.O. Box 71742 fax - 229-435-4127
Albany, GA 31708-1742

ATTY. EE: Calandra Almond, Esq.
Georgia Dept. of Law
40 Capitol Sq. SW
Atlanta, GA 30334-1300 404-657-9932 (fax)

LOWER CT. JUDGE: W. James Sizemore, Jr.
LOWER CT. CASE # 2007 CV 401 JS
COUNTY: Lee

BRIEFS FILED: NT 12-21
EE 12-21

JUDGEMENT DATE: 12-21 JUDGMENT: Denied
and Sanctions

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, DEC 21 2007

The Court of Appeals hereby passes the following order:

MD08-013. WILLIAMS v. THE GEORGIA PROFESSIONAL STANDARDS COMMISSION.

On December 21, 2007, Charles G. Williams, III filed an emergency motion for a stay of the Lee County Superior Court's decision, which affirmed the administrative agency's revocation of his teaching certificate. No application for discretionary appeal for review of this decision has been filed or granted in this Court. Williams's motion fails to satisfy the requirements for the exercise of this Court's power under Rule 40 (b), and therefore, the motion is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* DEC 21 2007

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

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

Will: Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 75 MOTION DOCKET NUMBER MD-08-14

DATE: 1/18/2008 REC #: 91967 PAID BY: The Federal Law Group

CHARGE: Stay; Supersedeas Bond

STYLE: Shannel Gilford v. State of Georgia

ATTY. NT: Ann Marie Fitz
The Federal Law Group
5180 Roswell Rd., Suite 5-S
Atlanta, GA 30318

ATTY. EE: Greg Lohmeier
AAG
40 Capitol Sq., S.W.
Atlanta, GA 30334-1300

LOWER CT. JUDGE: Judge Gail C. Flako
LOWER CT. CASE # 07-CR-3790-4
COUNTY: DeKalb County Superior Court

BRIEFS FILED: NT

JUDGEMENT DATE: 1-18-08 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, JAN 18 2008

The Court of Appeals hereby passes the following order:

MD-08-14. GILFORD v. THE STATE.

Shannel Gilford has filed an emergency motion requesting that this Court stay her detention center sentence or, in the alternative, grant her a supersedeas bond pending appeal.

The grant or denial of an appeal bond is a matter within the sound discretion of the trial court and this Court will not control that discretion unless it has been flagrantly abused. See, e.g., *Branan v. State*, 285 Ga. App. 717, 718 (647 SE2d 606) (2007). The trial court, having held a hearing at which Gilford had an opportunity to present evidence and argument, has exercised its discretion and denied Gilford's motion to stay her sentence and also denied her motion for supersedeas bond pending appeal. Gilford having shown no flagrant abuse of that discretion, her emergency motion is accordingly DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 18 2008

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

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

Willi L. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD-08-15

DATE: 1/24/2008 REC #: 9999 PAID BY: _____

CHARGE: _____

STYLE: SKillern v. Paris

ATTY. NT: Warren Skillern
Georgia State Prison # 786640
2164 GA HWY 147
REIDSVILLE, GA 30477

ATTY. EE: Tracy K. Hoff
2931 N. Druid Hills Rd Ste C
Atlanta, GA 30329

LOWER CT. JUDGE: David K. Smith

LOWER CT. CASE # 07CV45215

COUNTY: Cherokee County Superior Court Circuit, Gordon Superior Court

BRIEFS FILED: NT
EE 2/6

JUDGEMENT DATE: 1-28-08 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, **JAN 28 2008**

The Court of Appeals hereby passes the following order:

MOTION DOCKET-08-15. SKILLERN v. PARIS et al.

Warren Skillern, a prisoner proceeding pro se and in forma pauperis, has filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting that this Court direct the Superior Court of Gordon County to vacate its order filed on January 9, 2008, dismissing Skillern's motion to set aside judgment pursuant to OCGA § 9-11-60 (d) in Civil Action No. 07CV45215 brought by Skillern against Robert Paris, Sheriff, and the Gordon County Board of Commissioners. The Superior Court order attached to the motion notes that the Superior Court dismissed the action by order dated March 2, 2007, and that, on December 14, 2007, this Court denied Skillern's application for a discretionary appeal from the Superior Court's prior order denying a motion to set aside dismissal of the action.

According to Skillern, he filed two motions to set aside in the action, and an emergency order vacating the Superior Court's dismissal order on the current motion to set aside is necessary so that the Superior Court can rule on the motion and he will "have something to appeal." Pursuant to a Rule 40 (b) emergency motion, "[i]n the exercise of its inherent power this Court may issue such orders or give such direction

to the trial court as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot.”

Because the emergency motion shows no basis for this Court to exercise its inherent power under Rule 40 (b), the motion is denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JAN 28 2008**

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

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

Willi L. Martini, Clerk.

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD08-016

DATE: 2-7-08 REC #: _____ PAID BY: 9999

CHARGE: Stay

STYLE: Anitrea Hwang v. The State

ATTY. NT: Gerard Kleinrock 404-371-2222
DeKalb P.D. Room 408 Cullway Bldg
120 W. Trinity Pl.
Decatur, GA 30030

ATTY. EE: Ms. Debra Nichols
Asst. Sol. Stone Mtn Jud Cir.
556 N. Mc Donough St.
Decatur, GA 30030

LOWER CT. JUDGE: Jamie C. Gordon
LOWER CT. CASE # 07 C 95225-1
COUNTY: DeKalb

BRIEFS FILED: NT

JUDGEMENT DATE: 2-6-08 JUDGMENT: GRANTED, Bond Ordered

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, FEB -7 2008

The Court of Appeals hereby passes the following order:

MOTION DOCKET-08-016. HWANG v. THE STATE.

On January 23, 2008, in the State Court of DeKalb County, Criminal Action No. 07C095225-1A, Anitrea Hwang pled guilty to driving with a suspended license and the trial court imposed a 12 month sentence, ordering Hwang to serve 10 days of the sentence in confinement. Hwang is currently serving her sentence in the DeKalb County Jail with a projected release date of February 11, 2008. Hwang filed a notice of appeal on January 25, 2008, and then waited until January 28, 2008, to file a motion for appeal bond. She has now filed an emergency motion with this court, asking us to stay her sentence of 10 days in confinement on the ground that the trial court imposed the sentence under the mistaken impression that it did not have the discretion to probate or suspend the entire sentence.

OCGA § 17-6-1 (b) (1) provides that, except in cases inapplicable here, “at no time . . . while an appeal is pending, shall any person charged with a misdemeanor be refused bail.” While we will not stay the execution of the sentence, we do direct the trial court to set a reasonable appeal bond *instanter* or, in the alternative, to order the release of Hwang on her own recognizance pending the resolution of her appeal. The Clerk of this Court is hereby directed to immediately transmit a copy of this Order to the Clerk of the State Court of DeKalb County.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB -7 2008

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

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

Willi L. Mantz, Clerk.

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD08-017

DATE: 2-8-08 REC # 92164 PAID BY: Edea Caldwell, P.C.

CHARGE: Motion to Stay

STYLE: Chris Yager v. Jerry Walker et al

ATTY. NT: Edea M. Caldwell 770-954-1255
330 Griffin St.
P.O. Box 2255
MS. Dorough, GA 30253

ATTY. EE: Timothy N. Stupperd, Esq.
124 North Hill St.
P.O. Box 767
Griffin, GA 30224

LOWER CT. JUDGE: Wade Crambley
LOWER CT. CASE # 08-CV-0337-W
COUNTY: Henry

BRIEFS FILED: NT

JUDGEMENT DATE: 2-8-08 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA,

FEB -8 2008

The Court of Appeals hereby passes the following order:

MD08-017. CHRIS YAGER v. JERRY WALKER, ET AL.

The movant has filed an Emergency Motion pursuant to Court of Appeals Rule 40(b) asking that we stay an order of the Superior Court of Henry County. Because this Court would not be deprived of jurisdiction to consider the merits of the Application for Discretionary Appeal or, should that application be granted, the merits of the appeal itself, this matter is not an emergency within the meaning of Rule 40(b).

Therefore, the motion is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* FEB -8 2008

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

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

Clerk.

Willi Z. Mantz

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MO-08-018

DATE: 2/11/2008 REC #: 92192 PAID BY: Bondurant, Mixson & Elmore

CHARGE: To file Exhibit Under Seal

STYLE: Research in Motion Limited et al v. Rastex Holdings, LLC

ATTY. NT: John E. Floyd
Bondurant, Mixson & Elmore
3900 One Atlantic Center
1201 W. Peachtree St, N.W.
Atlanta, GA 30309

ATTY. EE: Matthew H. Patton
K. Patrick Stockton
Suite 2800
1100 Peachtree St.
Atlanta, GA 30309-4530

LOWER CT. JUDGE: _____
LOWER CT. CASE # 2003 CV 76785
COUNTY: Fulton Co Superior Ct.

BRIEFS FILED: NT

JUDGEMENT DATE: 12 Feb 08 JUDGMENT: GRANTED

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

N.O.I. FILED: _____

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

ATLANTA, FEB 12 2008

The Court of Appeals hereby passes the following order:

MOTION DOCKET 80-018. RESEARCH IN MOTION LIMITED, et al. v. RASTEREX HOLDINGS, LLC.

Research in Motion Limited ("Movant") has filed an "Emergency Motion to File Confidential Exhibit Under Seal" pursuant to Court of Appeals Rules 30 (e) and 40 (b). Movant intends to file an application for interlocutory review on or before February 15, 2008, and file therewith one exhibit from the trial court which purportedly contains trade secrets or confidential information. That exhibit is the trial court's order on summary judgment, dated February 1, 2008, which Movant states is already under seal in the trial court. The motion to file the exhibit under seal is hereby GRANTED.

Movant is instructed to attach to its application for interlocutory review a copy of this order.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* FEB 12 2008

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

MOTIONS DOCKET

JUDGE # 96

MOTION DOCKET NUMBER ^{MD-} 08-019

DATE: 2/19/2008 REC #: 2275 PAID BY: J.L. King

CHARGE: Stay

STYLE: In Re A.L.R.

ATTY. NT: J.L. King, II
205 E. Taylor St.
Griffin, GA 30223

ATTY. EE: Wilson H. Bush
464 West Third St, Ste 110
Jackson, GA 30233

Kristi Rowell
P.O. Box 333
Jackson, GA 30233

Charles O'Neil
9840 US Highway 19
Zebulon, GA 30295

LOWER CT. JUDGE: William A. Fears

LOWER CT. CASE # 07-A-8

COUNTY: Lamar County Superior Court

BRIEFS FILED: NT

JUDGEMENT DATE: 2/19/08 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA,

FEB 19 2008

The Court of Appeals hereby passes the following order:

MD-08-019. In re A. L. R.

The above-styled matter came before this court pursuant to an emergency motion under this court's Rule 40 (b). The movants, petitioners below, seek a stay of the order of the Superior Court of Lamar County entered February 14, 2008, which dismissed their petition for adoption upon the grounds that petitioners are not *bona fide* residents of the State of Georgia as required by OCGA § 19-8-3 (a) (3).

Petitioners filed a Notice of Appeal on February 19, 2008, seeking review of the same trial court order which is the subject of their emergency motion. The filing of the Notice of Appeal serves as supersedeas upon payment of all costs in the trial court by the appellants. See OCGA § 5-6-37 and OCGA § 5-6-38. Therefore, it is unnecessary for this court to issue any order to preserve its jurisdiction, nor is it necessary for this court to issue any order to prevent the issue in the underlying appeal from becoming moot. This, then, is not an "emergency" within the meaning of Rule 40 (b), and the motion for a stay is denied.

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

FEB 19 2008

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

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-08-020

DATE: 03/27/2008 REC #: 2692 PAID BY: G. Gerald Kunes

CHARGE: Stay-Stop Payment of Funds

STYLE: Rhonda Sparks v. Sonya Sparks Jackson

ATTY. NT: G. Gerald Kunes
230 E. 2nd St.
Tifton, GA 31794

ATTY. EE: Edward Meeks, Jr
P.O. Drawer 720
143 Robert B. Lee Dr
Leesburg, GA 31763
fax 229-382-6506

LOWER CT. JUDGE: Judge horing Gray

LOWER CT. CASE # 2006 CV-818-11

COUNTY: Daugherty Superior Ct

BRIEFS FILED: NT

JUDGEMENT DATE: 3/27/2008

JUDGMENT: Granted

new order 3-28-08

granted

Vacated by order of 4-3-08

M.F.R. FILED: 4-3-08

REPOSSES: _____

Granted 4/2/2008

N.O.I. FILED: _____

Motion for Sanctions 3/27/2008 Denied 4/3/2008

Court of Appeals of the State of Georgia

ATLANTA, MAR 27 2008

The Court of Appeals hereby passes the following order:

A07A1963. SPARKS v. JACKSON.

Appellant Rhonda Spradley Sparks has moved this Court under Rule 40 (b) for an emergency order directing the clerk of the Superior Court of Dougherty County to stop payment on check No. 025249 (payable to Sonya Jackson) in the amount of \$251,029.21. Sparks points out that the amount of the check exceeds that authorized in our opinion in this matter. See *Sparks v. Jackson*, __ Ga. App. __, slip op. at 8 (1) (Case No. A07A1963; decided February 29, 2008).

We agree with Sparks. Our opinion expressly states:

We agree with Sparks, however, that the trial court erred in awarding all of the Policy proceeds to Jackson. Jackson's vested interest in the proceeds of the Policy is limited to the amount of insurance the deceased agreed to maintain at the time of the settlement agreement, which was \$220,000. Thus, Jackson, for the benefit of the deceased's children, is entitled to \$220,000 of the interpleaded funds and that portion of the \$10,644.16 in interest deposited with the court that is attributable thereto. Sparks is entitled to the remainder of the proceeds. On remand, the trial court is directed to enter judgment accordingly.

Slip op. at 8 (1).

Despite this language, the trial court on March 21, 2008 authorized the Clerk of the Superior Court to distribute \$251,029.51 to Jackson. This appears to exceed the amount we authorized in our opinion. Accordingly, we hereby order the Clerk of the Superior Court of Dougherty County to immediately stop payment on the check. We

further order the trial court to inquire into the matter and to recalculate the payment in accordance with our opinion. Furthermore, the trial court shall take measures to recoup any excess funds that may already be in the hands of Jackson. The emergency motion is accordingly GRANTED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 27 2008

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

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

Willi Z. Mat: [Signature] , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 28 2008

The Court of Appeals hereby passes the following order:

MD-08-020. SPARKS v. JACKSON.

Due to a clerical error, we vacate our prior order, dated March 27, 2008, and hereby substitute this order.

Movant Rhonda Spradley Sparks has moved this Court under Rule 40 (b) for an emergency order directing the clerk of the Superior Court of Dougherty County to stop payment on check No. 025249 (payable to Sonya Jackson) in the amount of \$251,029.21. Sparks points out that the amount of the check exceeds that authorized in our opinion in this matter. See *Sparks v. Jackson*, __ Ga. App. __, slip op. at 8 (1) (Case No. A07A1963; decided February 29, 2008).

We agree with Sparks. Our opinion expressly states:

We agree with Sparks, however, that the trial court erred in awarding all of the Policy proceeds to Jackson. Jackson's vested interest in the proceeds of the Policy is limited to the amount of insurance the deceased agreed to maintain at the time of the settlement agreement, which was \$220,000. Thus, Jackson, for the benefit of the deceased's children, is entitled to \$220,000 of the interpleaded funds and that portion of the \$10,644.16 in interest deposited with the court that is attributable thereto. Sparks is entitled to the remainder of the proceeds. On remand, the trial court is directed to enter judgment accordingly.

Slip op. at 8 (1).

Despite this language, the trial court on March 21, 2008 authorized the Clerk of the Superior Court to distribute \$251,029.51 to Jackson. This appears to exceed the

amount we authorized in our opinion. Accordingly, we hereby order the Clerk of the Superior Court of Dougherty County to immediately stop payment on the check. We further order the trial court to inquire into the matter and to recalculate the payment in accordance with our opinion. Furthermore, the trial court shall take measures to recoup any excess funds that may already be in the hands of Jackson. The emergency motion is accordingly GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 28 2008

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

, Clerk.

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

ATLANTA, APR - 3 2008

The Court of Appeals hereby passes the following order:

MD-08-020. SPARKS v. JACKSON.

Respondent Sonya Sparks Jackson has moved this Court to rescind its emergency order of March 28, 2008. Considering the motion to rescind as a motion for reconsideration, and having considered the arguments of counsel, we hereby GRANT the motion for reconsideration and vacate the order of March 28, 2008. All motions for sanctions are hereby DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR - 3 2008*

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

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

Willi Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD 08 021

DATE: 4/22/08 REC #: 92911 PAID BY: The Fuller Law Group

CHARGE: Speedy Trial

STYLE: David Whicker v. The State

ATTY. NT: Mawuli M. Davis Marcia M. Fuller
4153 Flat Shoal Pkwy
Sub 204
Decatur, Ga 30034

ATTY. EE: Paul Howard Charissa Ruel
W A
126 Pryor St.
Atlanta Ga 30307

LOWER CT. JUDGE: Tom Campbell
LOWER CT. CASE # _____
COUNTY: Fulton Superior

BRIEFS FILED: _____

JUDGEMENT DATE: _____ JUDGMENT: _____

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, APR 23 2008

The Court of Appeals hereby passes the following order:

MOTIONS DOCKET 08-021. WHICKER v. THE STATE.

David Whicker has filed an emergency motion to stay the trial of his case in light of his filing a notice of appeal from the trial court's denial of his motion to dismiss on speedy trial grounds. In criminal cases, however, a notice of appeal serves as a supersedeas in cases where a sentence of death has been imposed or where the defendant is admitted to bail. OCGA § 5-6-45 (a). As neither of those circumstances appear to be present here, Whicker's emergency motion is **DENIED**.

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

APR 23 2008

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

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

Willi Z. Mant

, Clerk.

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD 08 022

DATE: 5/8/08 REC #: 3050 PAID BY: Josette A. Scott

CHARGE: Wipessey

STYLE: Josette Scott v. Eudemea Mathias

ATTY. NT: Josette A. Scott
5858 Crescent Ridge Court
Lithonia, Ga 30058

ATTY. EE: Merbaum Law Group
North Point Park
5775 North Point Pkwy
Suite 89
Alpharetta, Ga 30022

LOWER CT. JUDGE: Johnny Panoz
LOWER CT. CASE # 07A 759184
COUNTY: De Kalb State

BRIEFS FILED: _____

JUDGEMENT DATE: 5/9/2008 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAY 9 2008

The Court of Appeals hereby passes the following order:

MD-08-022. Scott v. Mathias.

Josette Scott, proceeding pro se, has filed an emergency motion, petitioning this Court to dismiss Eudemie Mathias's dispossessory action with prejudice and to "grant all relief" we deem proper.¹ Scott has attached to her motion an order of the State Court of DeKalb County, dismissing her notice of appeal, continuing the proceeding for a contempt hearing, and finding Scott indebted to Mathias for both rent from July 1, 2007 through May 31, 2008 and assessed attorney fees.

Pursuant to Court of Appeals Rule 40 (b), this Court has the inherent authority to issue emergency orders "as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot." As our rules state, "[t]his power shall be exercised sparingly." Here, Scott has utterly failed to explain why an emergency order is required or why the action requested is time-sensitive.² Thus, we

¹ We note that this is not Scott's first appeal in a dispossessory action. She filed two appeals last year in cases A07A1282 and A07A1283, which were dismissed by order dated April 27, 2007.

² See Court of Appeals Rule 40 (b) (1).

decline to exercise our inherent power, and this motion is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 9 2008**

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

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

Willi Z. Mat; [Signature]

, Clerk.

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD 08023

DATE: 5/22/08 REC #: 3172 PAID BY: Timothy Herring

CHARGE: Change of Venue - Probate & Superior

STYLE: Fernando Price v. The State

ATTY. NT: Timothy Herring
P.O. Box 13
Palmetto, Ga 30268

ATTY. EE: Robert Peterokini Pete S Kandalakis
Accountant O.A.
P.O. Box 522
Greenville, Ga 30222

LOWER CT. JUDGE: Stiles Estes
LOWER CT. CASE # 5751 5752
COUNTY: Ware Probate

BRIEFS FILED: _____

JUDGEMENT DATE: 5/23/2008 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAY 23 2008

The Court of Appeals hereby passes the following order:

MD08-023. PRICE v. THE STATE.

Fernando Price has filed an emergency motion, petitioning this Court to enter an order directing the Meriwether County Probate Court to: rescind its order transferring Price's case to the Superior Court of Meriwether County; set the case on an arraignment calendar; permit defense counsel to examine the case file; and "refrain from interfering in any way with any defense counsel carrying out of his duties under the 6th Amendment of the United States Constitution and other applicable Georgia Sections." He also requests that this Court enter a separate order: directing the prosecutor to refrain from interfering with defense counsel's performance of his duties; and disqualifying the prosecutor from his case and any other case involving defense counsel Timothy T. Herring.

Pursuant to Court of Appeals Rule 40 (b), this Court has the inherent authority to issue emergency orders "as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot." As our rules state, "[t]his power shall be exercised sparingly." Here, Price has utterly failed to explain why an emergency order is required or why the action requested is time-sensitive.¹ Thus, we decline to exercise our inherent power, and this motion is hereby denied.

¹ See Court of Appeals Rule 40 (b) (1).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 23 2008**

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

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

Willi Z. Mart;  , Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD08-024

DATE: 6-23-08 REC #: 9999 PAID BY: _____

CHARGE: Reinstatement

STYLE: Spottsville v. Tillman et al

ATTY. NT: Daniel Spottsville # 977050
Hancock State Prison
P.O. Box 339
Spartan GA 31087

ATTY. EE: Thurman E. Baker 404-656-3300
132 State Ind Bldg
40 Capital Sq
Atlanta 30334

LOWER CT. JUDGE: Dwayne H. Billis
LOWER CT. CASE # 0780418
COUNTY: Ware

BRIEFS FILED: NT

JUDGEMENT DATE: 7/3/2008 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUL -3 2008

The Court of Appeals hereby passes the following order:

MD08-024. DANIEL A. SPOTTSVILLE v. RANDY TILLMAN et al.

The movant has filed several pleadings referencing A08A1655. Daniel A. Spottsville v. Randy Tillman et al.; A08A0994. Daniel A. Spottsville v. Randy Tillman et al.; and A08D0281. Daniel A. Spottsville v. Randy Tillman et al. All of these cases docketed in the Court of Appeals derive from the same civil case from Ware County Superior Court. Although the movant does not term his pleading a Rule 40 (b) Motion, this Court will treat the pleading as such in order to give the movant a review by this Court.

Daniel A. Spottsville, a prison inmate, filed a Notice of Appeal from an order dismissing without prejudice a civil action filed by him in Ware County Superior Court. The appeal was docketed as A08A0994. Daniel A. Spottsville v. Randy Tillman et al. and was dismissed by this Court's order of February 12, 2008.

Movant then filed discretionary application A08D0281. Daniel A. Spottsville v. Randy Tillman et al. which was dismissed because it was untimely filed, thus depriving this Court of jurisdiction.

Finally, movant initiated his third appeal in A08A1655. Daniel A. Spottsville v. Randy Tillman et al. which this Court dismissed by its order of May 1, 2008.

In each instance the Court dismissed movant's appeals or application because the Court did not have jurisdiction to consider same. In his Rule 40 (b) Motion which includes Extraordinary Motions for Reconsideration of each of these appeals, the Court finds no basis upon which to change its earlier judgment or to grant relief under Rule 40 (b) since the exercise of its inherent power in this instance is not necessary to preserve jurisdiction or to prevent the contested issue from becoming MOOT.

Upon consideration of the Rule 40 (b) Motion, the same is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 3 2008

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

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

Willi Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD-08-025

DATE: 7/3/2008 REC # 3543 PAID BY: Michael Hauptman

CHARGE: Supersedeas Bond

STYLE: In Re: Michael D. Mann

ATTY. NT: Michael R. Hauptman
1950 The Equitable Bldg
Atlanta, GA 30303
404-525-4110

ATTY. EE: _____

LOWER CT. JUDGE: Cynthia Becker
LOWER CT. CASE # 08-CR-2020-6
COUNTY: DeKalb

BRIEFS FILED: _____

JUDGEMENT DATE: 7/3/2008 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, July 3, 2008

The Court of Appeals hereby passes the following order:

MD-08-025. IN THE MATTER OF MICHAEL D. MANN.

The Superior Court of DeKalb County issued an order on July 3, 2008 holding Michael D. Mann in contempt, ordering him to serve 72 hours in jail beginning at 6:00 p.m. on July 3, 2008 and ending at 6:00 p.m. on July 6, 2008. Mann has filed a Motion for Supersedeas Bond thereon.

As this Court retains inherent power under Rule 40 (b) to grant supersedeas to prevent an appeal from becoming moot, and so that we may reach the merits of this matter, appellant's motion for supersedeas is GRANTED and the appellant shall be released from incarceration instantan.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 3 2008

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

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

Willi L. Mart

. Clerk.

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD-08-026

DATE: 8/15/2008 REC #: 98980 PAID BY: Gary Wilson Jones

CHARGE: Supersedeas - Contempt

STYLE: Carl Hayes v. State of Georgia

ATTY. NT: Gary W. Jones
399 Washington Ave
Marietta, GA 30060

ATTY. EE: Loisie Abernathy, Sol. - Genl.
100 Courthouse Sq
Cumming, GA 30040

LOWER CT. JUDGE: T. Russell McClelland III
LOWER CT. CASE # 07M-5311
COUNTY: Forsyth Co. State Court

BRIEFS FILED: NT

JUDGEMENT DATE: 8/15/08 JUDGMENT: GRANTED
Corrective order 8/19/08

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA,

AUG 15 2008

OLD

The Court of Appeals hereby passes the following order:

MD08-026. HAYES v. THE STATE OF GEORGIA.

Carl Hayes filed pursuant to Court of Appeals Rule 40 (b) an "Emergency Motion for Supersedeas." The record shows that on August 13, 2008, Hayes pleaded guilty to DUI in Forsyth County. The court accepted the plea and sentenced Hayes to a term of probation. Sometime later that day, after Hayes' attorney had left the courthouse, the trial court, upon ex parte motion by the solicitor, held Hayes in contempt of court for having a blood alcohol content of .035. The circumstances giving rise to the discovery of Hayes' intoxication are unclear, and it appears Hayes did not have the benefit of counsel, notice, or a hearing. Nevertheless, the court granted the motion, held Hayes in contempt, vacated his sentence on the DUI charges, deemed his current bond insufficient, and remanded him into custody. On August 15, 2008, the court ordered Hayes' counsel to draft a new "bond order," which reinstated Hayes' bond and imposed numerous new conditions. Hayes has filed a notice of appeal from the finding of contempt. He now seeks supersedeas to prevent the issues on appeal from becoming moot.

We note that under OCGA § 5-6-13 (b) "the grant of a supersedeas for contempts committed in the presence of the court is within the sound discretion of the trial court before whom the contempt is committed." *Garland v. Tanksley*, 99 Ga. App. 201, 212 (2) (107 SE2d 866) (1959). But "such a judgment of the trial court is nevertheless reviewable by this court." *Id.* A court that refuses or fails to exercise its discretion, when properly petitioned, necessarily abuses its discretion. The lower

error 8/15

court's failure to grant supersedeas while Hayes remains incarcerated could render moot his appeal on the supersedeas issue. Accordingly, Hayes' motion for supersedeas is hereby GRANTED. We also VACATE the August 18, 2008, bond order and direct the trial court to conduct a hearing to determine whether any previous bond is, in fact, insufficient. Until such a hearing is held, the Forsyth County Jail is hereby ordered to release Hayes instantler.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 15 2008

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

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

....., Clerk.

Willi Z. Mant; [Signature]

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

ATLANTA, AUGUST 19, 2008

The Court of Appeals hereby passes the following order:

MD08-026. HAYES v. THE STATE OF GEORGIA

It appearing the order of this Court which issued AUGUST 15, 2008, is incorrect due to a 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 AUG 19 2008

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

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

Willi Z. Mant, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, AUG 15 2008

The Court of Appeals hereby passes the following order:

MD08-026. HAYES v. THE STATE OF GEORGIA.

Carl Hayes filed pursuant to Court of Appeals Rule 40 (b) an “Emergency Motion for Supersedeas.” The record shows that on August 13, 2008, Hayes pleaded guilty to DUI in Forsyth County. The court accepted the plea and sentenced Hayes to a term of probation. Sometime later that day, after Hayes’ attorney had left the courthouse, the trial court, upon ex parte motion by the solicitor, held Hayes in contempt of court for having a blood alcohol content of .035. The circumstances giving rise to the discovery of Hayes’ intoxication are unclear, and it appears Hayes did not have the benefit of counsel, notice, or a hearing. Nevertheless, the court granted the motion, held Hayes in contempt, vacated his sentence on the DUI charges, deemed his current bond insufficient, and remanded him into custody. On August 15, 2008, the court ordered Hayes’ counsel to draft a new “bond order,” which reinstated Hayes’ bond and imposed numerous new conditions. Hayes has filed a notice of appeal from the finding of contempt. He now seeks supersedeas to prevent the issues on appeal from becoming moot.

We note that under OCGA § 5-6-13 (b) “the grant of a supersedeas for contempts committed in the presence of the court is within the sound discretion of the trial court before whom the contempt is committed.” *Garland v. Tanksley*, 99 Ga. App. 201, 212 (2) (107 SE2d 866) (1959). But “such a judgment of the trial court is nevertheless reviewable by this court.” *Id.* A court that refuses or fails to exercise its discretion, when properly petitioned, necessarily abuses its discretion. The lower

court's failure to grant supersedeas while Hayes remains incarcerated could render moot his appeal on the supersedeas issue. Accordingly, Hayes' motion for supersedeas is hereby GRANTED. We also VACATE the August 15, 2008, bond order and direct the trial court to conduct a hearing to determine whether any previous bond is, in fact, insufficient. Until such a hearing is held, the Forsyth County Jail is hereby ordered to release Hayes instantler.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 15 2008**

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

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

William L. Martin , Clerk.

**COURT OF APPEALS OF GEORGIA
EMERGENCY MOTIONS**

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MOTIONS DOCKET

JUDGE # _____ MOTION DOCKET NUMBER MD09-001

DATE: 8-27-08 REC #: 4084 PAID BY: Cozen & O'Connor
Cozen

CHARGE: _____

STYLE: Quixtar Inc. v. Todd Campbell et al

ATTY. NT: Kenan G. Loomis Cozen & O'Connor
2200 Ste 2200, Sun Trust Plaza
303 Peachtree St. NE
Atlanta, GA 30308

ATTY. EE: Steven P. Gilliam Wm. Charles Bunchen Esq.
Smith, Gilliam, Williams & Niele, PA 2591 Dallas Parkway, Ste 300
P.O. Box 1088 Frisco, TX 75034
Gainesville, GA 30503

LOWER CT. JUDGE: Judge David E. Barrett
LOWER CT. CASE # 2008 - CV - 553 - DB
COUNTY: White

BRIEFS FILED: NT

JUDGEMENT DATE: 8-28-08 JUDGMENT: Denied

M.F.R. FILED: 9/23/2008
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUG 28 2008

The Court of Appeals hereby passes the following order:

MD09-001. QUIXTAR, INC. v. CAMPBELL, et al.

Quixtar, Inc. filed this emergency motion from an order of the Superior Court of White County entered in Civil Action File No. 2008-CV-553-DB on August 25, 2008. In that order, the trial court stated, "pending a hearing on the 20th day of October, 2008, at 9:00 a.m., the Plaintiffs' Motion for Interlocutory Injunction is granted." The order purporting to grant an injunction failed to identify the persons to be restrained or to describe in any way the acts that are prohibited thereby. Quixtar filed a notice of appeal on August 27, 2008. The materials submitted by Quixtar to this Court do not reveal whether Quixtar filed in the trial court a motion to stay the injunction pending its appeal. See OCGA § 9-11-62 (c).

In its motion asking that this Court stay and vacate the trial court's order, Quixtar argues various bases for finding that the order is void and unenforceable. Quixtar argues both that the injunction is unenforceably vague in its terms, see OCGA § 9-11-65 (d), and that the injunction will cause it to lose valuable contract rights by staying certain pending arbitration proceedings. The motion does not show, however, how granting the motion is necessary to preserve this Court's jurisdiction over Quixtar's upcoming appeal or to prevent the contested issue from becoming moot. See Court of Appeals Rule 40 (b) (Emergencies). Accordingly, Quixtar's emergency motion is DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 28 2008

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

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

Willi Z. Mant, Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-09-002

DATE: 9/18/08 REC #: 94275 PAID BY: Hendricks, Phillips & Salzman Flatt

CHARGE: Supersedeas

STYLE: Dalton Pavings & Construction, Inc v. South Green Constr. of Georgia, Inc. et. al

ATTY. NT: William D. Flatt Bart W. Reed
Hendricks, Phillips & Salzman
230 Peachtree St, NW Suite 2500
Atlanta, GA 30303

ATTY. EE: W. Henry Parkman James H. Phillips
Sutherland Asbill & Brennan McCamy, Phillips, Tugger & Fordham
999 Peachtree St, NE 411 West Crawford St
Atlanta, GA 30309 Dalton, GA 30722
Brian R. Neary Stankreimer, Jr.
Webb, Zschunke, Neary & Dikeman Johnson & Ward

LOWER CT. JUDGE: Judge Robert Adams
LOWER CT. CASE # 90477-A
COUNTY: Whitfield County Superior Ct

BRIEFS FILED: NT - 9-18
EE - 9-19

JUDGEMENT DATE: 9-22-08 JUDGMENT: Denied

M.F.R. FILED: 9-23-08
REPOSSES: 9-25-08 Denied
9-29-08

N.O.I. FILED: _____

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

ATLANTA, SEP 22 2008

The Court of Appeals hereby passes the following order:

**MD-09-002. SOUTH GREEN CONSTRUCTION OF GEORGIA, INC. et al. v.
DALTON PAVING & CONSTRUCTION INC.**

The above styled emergency motion for South Green Construction of Georgia, Inc. and Mark Breen is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 22 2008

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

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

Willi Z. Mart, Clerk.

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

ATLANTA, SEP 25 2008

The Court of Appeals hereby passes the following order:

**MD-09-002. DALTON PAVING & CONSTRUCTION, INC. v. SOUTH GREEN
CONSTRUCTION OF GEORGIA, INC. et al.**

The motion for reconsideration in the above-styled matter is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 25 2008

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

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

Willi Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-09-003

DATE: 9/24/2008 REC #: 94324 PAID BY: Ellis C. Smith

CHARGE: Supersedeas - Revocation of Bond

STYLE: Timothy Evans v. The State

ATTY. NT: Julianne H. Lynn
107 Ridley Ave.
LaGrange, GA 30240

Ellis C. Smith
107 Ridley Ave.
LaGrange, GA 30240

ATTY. EE: Monique Kirby, ADA
Coweta Judicial Cir.
Troup County Government Cntr.
100 Ridley Ave
LaGrange, GA 30240

LOWER CT. JUDGE: Judge A. Quillian Baldwin, Jr.
LOWER CT. CASE # 08-R-585
COUNTY: Troup County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 9.25.08 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, SEP 25 2008

The Court of Appeals hereby passes the following order:

MD-09-003. EVANS v. THE STATE.

Pursuant to Ct. App. R. 40 (b), Timothy Evans seeks an order requiring the trial court to rescind its revocation of his pre-trial bond.

Evans is a defendant in a criminal action pending in trial court. On September 10, 2008, the court revoked his bond, sua sponte, during the guilty plea hearing of his co-defendant, after the co-defendant testified that Evans had attempted to contact him. Evans moved the court to rescind the revocation, and at a September 11 hearing on the motion the court stated that it would not rescind the revocation without an evidentiary hearing. The court offered to hold the evidentiary hearing on that day or a subsequent day, when the co-defendant and his attorney were available. No evidentiary hearing occurred, however, and on September 23 the trial court denied the motion to rescind the bond revocation.

Evans argues that the trial court denied him due process in revoking his bond without first giving him notice and an opportunity to be heard on the issue. “[T]he decision to revoke bond must meet minimal due process requirements, including notice to the individual whose bond is to be revoked and an opportunity for that individual to be heard.” *Smith v. Nichols*, 270 Ga. 550, 555 (2) (c) (512 SE2d 279) (1999) (citation omitted). But “[d]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Hood v. Carsten*, 267 Ga. 579, 580 (481 SE2d 525) (1997) (citation and punctuation omitted). Thus, due process requirements may be met if, within a reasonable time of the revocation, the trial court holds a hearing to determine if bond should be reinstated. See *id.* at 582.

We find that the September 11 hearing on Evans’s motion to rescind the bond

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD-09-004

DATE: 10-6-2008 REC #: 94430 PAID BY: Murble Wright

CHARGE: Supersedeas

STYLE: Kelly Marie Mills v. State of Georgia

ATTY. NT: Murble A. Wright
195 Jonesboro Road
Jonesboro, GA 30236

ATTY. EE: Mr. Gilbert Crosby
Asst. Solicitor General
1 Courthouse Sq.
McDonough, GA 30253

LOWER CT. JUDGE: Ernest D. Bloant
LOWER CT. CASE # 2008-ST-SR-01443
COUNTY: State Court Henry Co

BRIEFS FILED: NT

JUDGEMENT DATE: 10-7-08 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, OCT 7 2008

The Court of Appeals hereby passes the following order:

MD-09-004. MILLS v. THE STATE.

Upon consideration of Mills's emergency 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 OCT 7 2008*

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

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

Willi Z. Mantz, Clerk.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD09-005

DATE: 10-14-08 REC #: 94508 PAID BY: Hall, Booth, Smith & Sloner

CHARGE: STAY APPEAL

STYLE: Gwinnett Hospital System, Inc v. Richard Wyckstandt,

ATTY. NT: W. Scott Henwood Hall, Booth, Smith & Sloner
1180 W. Peachtree St. N.W.
Ste 900
Atlanta, GA 30309

ATTY. EE: Frederick Massey
Hicks Massey & Gardner, LLP
P.O. Box 721
Winder, GA 30680

Jeffrey R. Harris, Esq.
Darren Penn
817 W. Peachtree St. Ste 105
Atlanta, GA 30308

LOWER CT. JUDGE: Michael C. Clark
LOWER CT. CASE # 05 A - 06215 - 4
COUNTY: Gwinnett

BRIEFS FILED: NT

JUDGEMENT DATE: 12/16/08 JUDGMENT: DENIED

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

N.O.I. FILED: _____

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

ATLANTA, OCT 16 2008

The Court of Appeals hereby passes the following order:

MD09-005. GWINNETT HOSPITAL SYSTEM, INC. v. WYCKSTANDT.

On October 14, 2008, Gwinnett Hospital System, Inc., filed an "Emergency Motion to Stay Direct Appeal and Remand for the Limited Purpose of Ruling on Extraordinary Motion for New Trial Based on Juror Misconduct" pursuant to Court of Appeals Rule 40 (b). Rule 40 (b) provides that

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

Because the appeal of this case has not been docketed in this Court, it is hereby ORDERED that the emergency motion be DENIED without prejudice.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 16 2008*

*I certify that the above is a true extract from
the minutes of 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 # 92 MOTION DOCKET NUMBER MD09-006

DATE: 10/27/08 REC #: 4610 PAID BY: Robert Kenner, Jr

CHARGE: motion to compel

STYLE: Steven M. Moore v. Center court sports + Fitness, LLC et al

ATTY. NT: Robert Kenner, Jr.
3992 Redan Road
Stone Mountain GA 30083

ATTY. EE: Center court sports + fitness LLC
90 Sharon Levister, president
Suite 3100 promenade II
1230 Peachtree Street, N.E.
Atlanta GA 30309-3592

Sharon Levister
2105 Sugarstone Court
Lawrenceville GA 30043

* Enrique Jones
907 Fieldstone Parkway
Jonesboro GA 30236

LOWER CT. JUDGE: Gregory A. Adams
LOWER CT. CASE # 03CV5143
COUNTY: Dekalb superior

BRIEFS FILED: _____

JUDGEMENT DATE: 10/28/2008 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, OCT 28 2008

The Court of Appeals hereby passes the following order:

MD-09-06. MOORE v. CENTER COURT SPORTS & FITNESS, LLC et al.

We have read and considered appellant's Rule 40 (b) motion to compel the trial court to appoint another court reporter to transcribe the trial evidence in this case. Said motion is hereby DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 28 2008*

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

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

Willi L. Mart..., Clerk.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD-09-007

DATE: 10-28-08 REC #: 94616 PAID BY: Louis Levenson

CHARGE: Extension of Time to File NOA

STYLE: W. Bobby Brown v. B.E. Thomas

ATTY. NT: Louis Levenson Levenson & Assoc
125 Broad St. SW
Atlanta, GA 30303

ATTY. EE: George G. Chenggis, Esq.
Richard & Chenggis
1900 Century Blvd.
Atlanta, GA 30345-3307

LOWER CT. JUDGE: Warren Lewis
LOWER CT. CASE # 05 A 03939-10
COUNTY: Gwinnett

BRIEFS FILED: NT

JUDGEMENT DATE: 10-30-08 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, OCT 30 2008

The Court of Appeals hereby passes the following order:

MD 09-007. BROWN v. THOMAS.

MD 09-008. BROWN v. THOMAS et al.

On October 28, 2008, movant W. Bobby Brown filed motions requesting an extension of time to file a notice of appeal pursuant to OCGA § 5-6-39 and Court of Appeals Rule 16 in two actions pending in the Superior Court of Gwinnett County. The actions were consolidated below and the terms of a settlement agreement in both actions were read into the record on August 26, 2008. Movant was present and represented by counsel when the terms of the settlement agreement were read into the record and offered his consent to the terms. On October 1, 2008, the trial court entered a judgment in the cases, adopting the terms of the settlement agreement.

On October 8, 2008, movant filed an "Application for Extension of Time for Filing Notice of Appeal" on the ground that he planned to file a motion for reconsideration and/or motion to vacate the judgment. The trial court denied movant's application, stating that movant's request was in anticipation of filing certain motions, which had not yet been filed. On or about October 20, 2008, movant filed his "Defendant's Supplemental Application for Extension of Time For Filing of Notice of Appeal" contemporaneously with his "Defendant's Motion for Reconsideration and/or Motion to Vacate Judgment." The trial court has not ruled on either motion.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD09-008

DATE: 10-28-08 REC #: 98616 PAID BY: Louis Levenson

CHARGE: Extension of Time To File Notice of Appeal

STYLE: W. Bobby Brown v. P.E. Thomas et al

ATTY. NT: Louis Levenson 404-659-5000
Levenson & Associates Fax 404-659-1355
125 Broad St. SW
Atlanta, GA 30303

ATTY. EE: George G. Changis, Esq. plus five more attys -
Richardson & Changis see file folder
1900 Century Blvd. Ste 10
Atlanta, GA 30345-3307

LOWER CT. JUDGE: Warren Davis

LOWER CT. CASE # 05-4-03939-10

COUNTY: Gwinnett

BRIEFS FILED: NT

JUDGEMENT DATE: 10-30-08 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 30 2008

The Court of Appeals hereby passes the following order:

MD 09-007. BROWN v. THOMAS.

MD 09-008. BROWN v. THOMAS et al.

On October 28, 2008, movant W. Bobby Brown filed motions requesting an extension of time to file a notice of appeal pursuant to OCGA § 5-6-39 and Court of Appeals Rule 16 in two actions pending in the Superior Court of Gwinnett County. The actions were consolidated below and the terms of a settlement agreement in both actions were read into the record on August 26, 2008. Movant was present and represented by counsel when the terms of the settlement agreement were read into the record and offered his consent to the terms. On October 1, 2008, the trial court entered a judgment in the cases, adopting the terms of the settlement agreement.

On October 8, 2008, movant filed an "Application for Extension of Time for Filing Notice of Appeal" on the ground that he planned to file a motion for reconsideration and/or motion to vacate the judgment. The trial court denied movant's application, stating that movant's request was in anticipation of filing certain motions, which had not yet been filed. On or about October 20, 2008, movant filed his "Defendant's Supplemental Application for Extension of Time For Filing of Notice of Appeal" contemporaneously with his "Defendant's Motion for Reconsideration and/or Motion to Vacate Judgment." The trial court has not ruled on either motion.

MOTIONS DOCKET

JUDGE # 092 MOTION DOCKET NUMBER MD-09-009

DATE: 10/30/2008 REC #: 9999 PAID BY: pauper

CHARGE: Motion to Recall Remittitur

STYLE: Warren Skillern v. The State

ATTY. NT: Warren Skillern, prose
786640
2164 GA Hwy 1417
Reidsville, GA 30499

ATTY. EE: District Attorney, Cherokee Co.
90 North Street
Canton, GA 30114

LOWER CT. JUDGE: _____
LOWER CT. CASE # A99A1417
COUNTY: _____

BRIEFS FILED: _____

JUDGEMENT DATE: 11/7/2008 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, NOV -7 2008

The Court of Appeals hereby passes the following order:

MD-09-009. SKILLERN v. THE STATE.

On October 29, 2008, Warren Skillern filed a "Rule 40 (b)" motion asking the court to recall the remittitur in Appeal No. A99A1417 (*Skillern v. State*, 240 Ga. App. 34 (521 SE2d 844) (1999)).

After careful consideration of said motion, it is hereby DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV -7 2008*

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

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

Willi Z. Mart..., Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD-09-010

DATE: 11/21/08 REC #: 94738 PAID BY: Louis Levenson

CHARGE: motion for supersedeas

STYLE: Robin Morgan et al v. Floyd E. Probst et al

ATTY. NT: Louis Levenson
125 Broad Street S.W.
Atlanta GA 30303

ATTY. EE: Preyesh K. Maniklal
Maniklal & Dennis, LLP
3250 Peachtree Industrial Blvd.
Suite 101
Duluth GA 30096

Terry D. Jackson
600 Edgewood Avenue
Atlanta GA 30312

Bobby Lee Cook
Cook & Connolly
P.O. Box 370
Summerville GA 30747

LOWER CT. JUDGE: Gail C. Flake

LOWER CT. CASE # 06CV10670-4

COUNTY: DeKalb Superior

BRIEFS FILED: NT (11-12-08)
EE - 11-17

JUDGEMENT DATE: 11-19-08 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, NOV 19 2008

The Court of Appeals hereby passes the following order:

MD 09-010. ROBIN MORGAN, as temporary administrator of the Estate of Cynthia M. Schmidt, and John Does 1-5 v. FLOYD E PROPST, as administrator of the Estate of Murela J. Schmidt and Thomas L. Schmdt, Jr. as administrator of the Estate of a Thomas L. Schmidt. Sr.

Appellant Robin Morgan has 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. Moreover, it appears from the trial court's order that the trial court directed Morgan to file her response "in opposition to the bond *amount* sought by Plaintiffs" and that Morgan filed a response, which has not been included with this Emergency Motion, but according to the trial court's order, Morgan "did not . . . present any argument or authority showing the requisite 'good cause' for a reduction in the amount of the supersedeas bond sought by Plaintiffs."

Based on the forgoing, the Appellant's emergency motion is denied.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 19 2008*

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

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD 09-011

DATE: 11/19/08 REC #: 94818 PAID BY: Callner Portney & Strawser

CHARGE: Stay

STYLE: Anne Marie Riether v. Bryant Killian Smith

ATTY. NT: Joseph M. Winter
Peachtree Center S. Twr Ste. 1925
225 Peachtree St, NE
Atlanta, GA 30303

ATTY. EE: Alan W. Connell
201 N. Green St, PO Box 1206
Thomaston, GA 30288-0017

Larry Jack Overman II
1447 Peachtree St, NE, Suite 414
Atlanta, GA 30309

Stephen Douglas Ott
380 Stone Wall Ave., West
Fayetteville, GA 30214

LOWER CT. JUDGE: Judge Tarey Schell
LOWER CT. CASE # 56 07 1395, 1396, 1591, 1592
COUNTY: Fayette Co. Juvenile Court

BRIEFS FILED: _____

JUDGEMENT DATE: 11/20/08 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, NOV 20 2008

The Court of Appeals hereby passes the following order:

MD-09-011. RIETHER v. SMITH.

Ann Marie Reither filed an emergency motion pursuant to Rule 40 (b) of this Court. The case background shows that on August 5, 2008, the Juvenile Court of Fayette County entered an order modifying the custody and visitation provisions, but deferring a modification of the child support obligations, of the 2004 divorce decree of Reither and Bryant Killian Smith; that on September 4, the court entered an order terminating the child support obligations of the divorce decree and setting new support obligations; that Reither filed a notice of appeal of the September 4 order; that this Court granted an application for discretionary appeal of the same order; and that in response, Reither filed the necessary notice of appeal on November 4, 2008.

Pursuant to OCGA § 5-6-46 (a), the notices of appeal operate as supersedeas, which deprives the trial court of jurisdiction to enforce the judgment. See also OCGA § 5-6-35 (h). In this case, Smith filed a motion to except the issues of custody, child support and visitation from the supersedeas, and on November 18, the juvenile court granted the motion based on *Frazier v. Frazier*, 280 Ga. 687 (631 SE2d 687) (2006). Now, it appears Smith has threatened Reither with contempt for failure to pay the new support ordered on September 4, and Reither files this emergency motion requesting that this Court nullify the trial court's November 18 order. But the trial court has not taken any steps to enforce the child support aspect of the judgment.

We also note that *Frazier* addressed only the trial court decision to except the custody provisions of an order from the supersedeas authorized by OCGA § 9-11-62 (b) pertaining to motions for new trial or for judgment notwithstanding the verdict; it did not address OCGA § 5-6-46. Compare *Walker v. Walker*, 239 Ga. 175 (236 SE2d

263) (1977). Moreover, in *Frazier* the appellee addressed the child support order by filing a motion to require the appellant to post a supersedeas bond. See OCGA § 5-6-46 (a); *Barngrover v. Hins*, 289 Ga. App. 410 (657 SE2d 14) (2008).

Because we find that the trial court has not attempted to enforce the child support judgment, no emergency has been presented to this Court, and Reither's motion is hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **NOV 20 2008**

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

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

Willi Z. Mant,  , Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD-09-012

DATE: 11/25/2008 REC #: 94871 PAID BY: Lifen Feld, P.C.

CHARGE: Stay

STYLE: Prosaige, LLC v. Jose Ramon Var

ATTY. NT: David M. lifenfeld fax ~~770-871~~ 404-835-3336
Manning lifenfeld
3340 Peachtree Rd, NE
Suite 2000, Atlanta, GA 30326

ATTY. EE: George P. Shingler
Casey Gilson, P.C.
Six Concourse Parkway, Suite 2200

LOWER CT. JUDGE: Christopher Brasher
LOWER CT. CASE # 2007CV142729
COUNTY: Fulton County Superior Court

BRIEFS FILED: NT

JUDGEMENT DATE: 11/25/08 JUDGMENT: denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, November 25, 2008

The Court of Appeals hereby passes the following order:

MD 09-012. VAZ v. PRESAGE, LLC.

Appellant Jose Ramon Vaz filed an emergency motion pursuant to Ct. App. R. 40 (b) to stay the trial court's Order Requiring Payment of Funds from Registry of Court. Because Vaz fails to provide sufficient grounds for emergency relief, said motion is DENIED. See OCGA § 5-6-46 (addressing supersedeas in civil appeals).

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

NOV 25 2008

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

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

Willi Z. Mat; [Signature]

, Clerk.

MOTIONS DOCKET

JUDGE # 99 (98) MOTION DOCKET NUMBER MD-09-013

DATE: 12-16-08 REC #: 98104 PAID BY: Wiley Curry

CHARGE: Stay - Supersedeas

STYLE: Wiley Curry v. Gables Residential Services, Inc.

ATTY. NT: Wiley Curry
P.O. Box # 190 411
Atlanta, GA 31119-0411
770-842-4152

ATTY. EE: _____

EE
J. Mike Williams
Fowler, Hein, Chestwood
Passino & Williams, PA
Ste 220 Park Central,
2970 Clairmont Rd.
Atlanta, GA 30329

LOWER CT. JUDGE: Clarence F. Seeliger
LOWER CT. CASE # 05-CV12712-03
COUNTY: DeKalb

BRIEFS FILED: NT

JUDGEMENT DATE: 12/17/2008 JUDGMENT: Denied

M.F.R. FILED: 12/29/2008
REPOSSES: mfr denied 12/30/08

N.O.I. FILED: 1/7/09

Notice of Cert Filed 1-21-09

Cert Denied 3-9-09

Court of Appeals of the State of Georgia

ATLANTA, DEC 17 2008

The Court of Appeals hereby passes the following order:

**MD09-013. CURRY v. GABLES RESIDENTIAL SERVICES, INC. d/b/a
DUNWOODY GABLES APARTMENTS, et al.**

On December 16, 2008, Wiley Curry, appearing pro se, filed an emergency motion seeking an expedited appeal and supersedeas to stay the DeKalb County Superior Court's proceedings in the underlying civil action. In this regard, Curry requests that this court issue an order directing the trial court to grant his request for a certificate of immediate review of the trial court's order denying his motion for leave of absence, for continuance, and for an indigency hearing. Curry contends that emergency relief is required in this matter since the trial court intends to conduct a hearing as to whether attorney fees should be assessed against him pursuant to OCGA § 9-15-14.

Upon review and consideration, Curry's motion fails to satisfy the requirements for this Court's exercise of its power under Court of Appeals Rule 40 (b), and therefore, the motion is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC 17 2008*

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

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

W. Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD 09-014

DATE: 7/5/2008 REC #: 95539 PAID BY: Supreme Ct of Ga.

CHARGE: Stay of Proceedings

STYLE: Teresa Watson et al v Stephanie Dennis

ATTY. NT: L. Vincent Anderson
1119 Trammell St
Dalton, GA 30720

ATTY. EE: Jack Harris
100 East 2nd Ave, 4th Flr.
Rome, GA 30161

LOWER CT. JUDGE: Walter Matthews
LOWER CT. CASE # 07 CV 05202
COUNTY: Floyd Superior Ct.

BRIEFS FILED: _____

JUDGEMENT DATE: 2/6/09 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, FEB -6 2009

The Court of Appeals hereby passes the following order:

MD-09014. DENNIS v. WATSON et al.

Teresa Watson and RomeNewsByWatson.Com, Inc. (collectively, "Watson") filed this motion with the Supreme Court of Georgia, and the motion was transferred to this Court on February 5, 2009. Watson seeks a stay of an order of the Superior Court of Floyd County, in which the trial court required certain action be taken by Watson no later than 5:00 p.m. on February 3, 2009. Watson fails to show how granting the motion is necessary to preserve this Court's jurisdiction over any upcoming appeal or to prevent the contested issue from becoming moot. See Court of Appeals Rule 40 (b). Accordingly, Watson's emergency motion is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB -6 2009

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

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

Willi Z. Mantz, Clerk.

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD09-015

DATE: 2-9-09 REC #: 9999 PAID BY: _____

CHARGE: Recall Remittitur

STYLE: Warren Skillern v. The State

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

ATTY. EE: Garry T. Moss, District Attorney
90 North Street, Suite 380
Canton, GA 30114

LOWER CT. JUDGE: C. Michael Roach (Send to CJ Frank Mills)
LOWER CT. CASE # A99A 1417
COUNTY: Cherokee

BRIEFS FILED: NT

JUDGEMENT DATE: 3/6/09 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR -6 2009

The Court of Appeals hereby passes the following order:

MD09-015. WARREN SKILLERN v. THE STATE

On February 7, 2007, this Court issued an order denying Skillern's Motion to Recall the Remittitur. This Court listed the 57 appellate actions Skillern had filed in the Supreme Court of Georgia and the Court of Appeals of Georgia and, in addition to fining Skillern \$250.00 for frivolous and/or abusive litigation, this Court ordered and directed the clerk of this Court not docket or file any future pleadings from Skillern until such time as the Court reviewed the pleadings and made a determination that there was a justiciable issue to be decided by the Court.

Since that order, Skillern has submitted numerous pleadings, most of which were to recall the remittitur, stemming from the affirmance of his convictions for child molestation, rape and cruelty to children. See Skillern v. State, 240 Ga. App. 34 (1999).

On November 7, 2008, in MD09-009. Skillern v. The State, this Court again reviewed Skillern's Motion to Recall the Remittitur, in an effort to give Skillern the benefit of the doubt, and after careful consideration of said motion, it was DENIED.

Still, Skillern continues to file pleadings with this Court, none of which have a justiciable issue, including this, his latest attempt to recall remittitur, which is hereby DENIED.

This Court is aware of the order of the Supreme Court dated September 22, 2008, in which that Court directed the clerk of the Supreme Court to refuse to receive further motions or documents from Skillern in connection with this case.

The resources of this Court are not unlimited. Skillern has had a complete and thorough review of the issues raised in his appeal and subsequent motions. Skillern does not have the right to re-litigate simply because he does not like the outcome.

Therefore, this Court directs the clerk of the Court of Appeals of Georgia to refuse to receive further filings, pleadings, motions or documents from Skillern in connection with this case. If he attempts to file any more documents in this matter, the clerk is directed to return the original and all copies of any motions or documents to Skillern by mailing them to his last known address.

Skillern has been provided all the process he is due under the Fourteenth Amendment of the United States Constitution and Art. I, Sec. I, Par. 1 of the Georgia Constitution. No matters remain pending in this case and no further action by this Court is required.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR -6 2009

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

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

Clerk.

Willi Z. Mart; [Signature]

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD-09-016

DATE: 2/12/2009 REC #: 95595 PAID BY: Paula Rubin

CHARGE: To Extend Time for Filing Notice of Appeal

STYLE: Paula Rubin v. Matthew Essig

ATTY. NT: Paula Rubin, Pro Se
1302 Parkview Lane
Alpharetta, GA 30005

ATTY. EE: Mr. Michael Katz Mr. William Tinkler, Jr.
150 East Ponce DeLeon Ave, Ste 250
Decatur, GA 30030-2553 same address as Katz

Mr. Jeffrey Yashinsky
same address as Katz

LOWER CT. JUDGE: Judge Roger Bradley
LOWER CT. CASE # 2008 SaCV 590
COUNTY: Pickens County Superior Ct.

BRIEFS FILED: NT

JUDGEMENT DATE: 2-13-09 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, FEB 13 2009

The Court of Appeals hereby passes the following order:

MD-09016. RUBIN v. ESSIG.

Upon consideration of Paula J. Rubin's emergency motion for an extension of time to file a notice of appeal in the above-styled matter, such motion is hereby DENIED. Rubin has failed to present a sufficient basis to this Court upon which it should, in its discretion, grant such a request on an emergency basis pursuant to OCGA § 5-6-39 and Court of Appeals Rule 40 (b).

We note that the order of which Rubin is considering an appeal was entered on January 15, 2009. Pursuant to OCGA § 5-6-38, Rubin has until February 16, 2009 to file a notice of appeal unless an extension is granted by the trial court. We further note that the notice of appeal need only include the information included in OCGA § 5-6-37, and Rubin should be in a position to file such a notice with the trial court even if, as she speculates in her motion, the trial court does not review her request for an extension until February 13, 2009.

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

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

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

Willi Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD09-017

DATE: 3-5-09 REC #: 95798 PAID BY: Anthony Pew

CHARGE: Injunction/Stay/Modification

STYLE: NYE LAVALLE v. Joseph Grenuk

ATTY. NT: NYE LAVALLE

10675 Pebble Cove Lane

Deer Lake, FL 33498

561/210-7171

ATTY. EE: _____

Louis Levenson

125 Broad St. SW

Atlanta, GA 30303

LOWER CT. JUDGE: Karen S. Woodson

LOWER CT. CASE # 2007 CV 144220

COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 3/5/09 JUDGMENT: denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR -5 2009

The Court of Appeals hereby passes the following order:

MD09-017. LAVALLE v. GRENUK.

Appellant Nye Lavalley has moved this Court under Court of Appeal Rule 40 (b) for an emergency supersedeas to forestall the effect of the trial court's December 10, 2008 order holding him in contempt for violating that court's earlier order of January 4, 2008. We DENY that emergency motion for the following reasons.

OCGA § 5-6-13 (a) provides:

A judge of any trial court or tribunal having the power to adjudge and punish for contempt shall grant to any person convicted of or adjudged to be in contempt of court a supersedeas upon application and compliance with the provisions of law as to appeal and certiorari, where the person also submits, within the time prescribed by law, written notice that he intends to seek review of the conviction or adjudication of contempt. It shall not be in the discretion of any trial court judge to grant or refuse a supersedeas in cases of contempt.

Here, Lavalley has made no showing that he has complied with this statute, which governs the grant of supersedeas in cases of contempt. *Blake v. Spears*.¹ He has made no showing that he made an application to the trial court for supersedeas, which is required for the issuance of a supersedeas in a contempt matter. *Id.* (“[t]his Code Section requires a court to grant supersedeas only if a person applies for supersedeas . . .”). “The proper procedure for preventing this point [of incarceration] from

¹ *Blake v. Spears*, 254 Ga. App. 21, 25 (5) (561 SE2d 173) (2002).

becoming moot on appeal would be to obtain a supersedeas. See OCGA § 5-6-13.” *In re Kendall*.² Accordingly, we decline to consider issuing a supersedeas in a contempt matter in which Lavalley has failed to pursue the mandatory supersedeas available at the trial level.

Moreover, to the extent the trial court’s order could be considered an injunction, no supersedeas will attach to stay an injunction unless application is first made to the trial court under OCGA § 9-11-62 (a) & (c). Lavalley has made no showing that such an application was made.

For these reasons, Lavalley’s emergency motion is DENIED.

Court of Appeals of the State of Georgia

Clerk’s Office, Atlanta MAR -5 2009

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

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

Willi Z. Mat..., Clerk.

² *In re Kendall*, 220 Ga. App. 591, 593 fn. 2 (469 SE2d 836) (1996).

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD 09-018

DATE: 3-26-09 REC #: 96009 PAID BY: Peter Popham

CHARGE: Ext. of Time to file NOA / Mot. to Requite Transcript

STYLE: Peter Norwood Popham v. The City of Kenneraw, GA
& Butch Thompson Enterprises, Inc.

ATTY. NT: Peter N. Popham
2933 Moon Station Rd.
Kenneraw, GA 30144
770-425-3400

ATTY. EE: Clare Michaud
Carlson, Copeland, Semler & Stair
P.O. Box 56887
Atlanta GA 30343-0887

Douglas Burrell
Drewicko Cell Farnham
P.O. Box 7600
Atlanta, GA

LOWER CT. JUDGE: C. Latain Kell, Sr.
LOWER CT. CASE # 03-1-6620-49
COUNTY: Cobb

BRIEFS FILED: NT

JUDGEMENT DATE: Amical JUDGMENT: 3/26/09

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR 26 2009

The Court of Appeals hereby passes the following order:

MD-09-018. POPHAM v. THE CITY OF KENNESAW et. al

Citing Court of Appeals Rule 40 (b), appellant Peter Norwood Popham has moved this Court (i) to extend the time for filing his notice of appeal pursuant to OCGA § 5-6-39 (a) (3), and (ii) to order the court reporter to produce transcripts for the appellate record as required by OCGA § 5-6-41 (e). Popham argues that unless this Court so acts, his appeal will become moot.

Popham has already filed a notice of appeal, which filing took place on February 13, 2009 (within 30 days of January 15, 2009 order being appealed). Thus, there is no need for extending the time to file the notice of appeal. The motion to extend time for filing the notice of appeal is DENIED.

With regard to request for an order requiring the court reporter to produce the transcripts, any such request is better directed at the trial court rather than the appellate court. Moreover, Popham has made no showing that the delay in receiving the transcripts will cause his appeal to become moot. The summary judgment order of the trial court simply entered judgment on Popham's claims against the City of Kennesaw. Nothing presented to this Court shows that a delay in the appeal will cause the appeal to become moot. Accordingly, Popham's motion to order the court reporter to produce transcripts is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 26 2009

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

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

Willi L. Mantz

, Clerk.

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD09-019

DATE: 4/8/2009 REC #: 96116 PAID BY: William Reilly

CHARGE: Supersedeas

STYLE: In the Interest of C.B.

ATTY. NT: William Reilly
Box 2153
Blue Ridge, GA 30513

ATTY. EE: Joe Hendricks, DA
Gilmer Co. Courthouse
Ellijay, GA 30540

LOWER CT. JUDGE: Judge John Worchester-Holland
LOWER CT. CASE # 2008 JV-325
COUNTY: Gilmer Co. Juvenile Court

BRIEFS FILED: NT

JUDGEMENT DATE: 4-8-09 JUDGMENT: Denied

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

N.O.I. FILED: 4/24/2009
Cont. denied 7/7/2009

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

ATLANTA, APR 17 2009

The Court of Appeals hereby passes the following order:

MD09-019. IN THE INTEREST OF C. B., A CHILD.

Movant's Motion for Supersedeas under Court of Appeals Rule 40 (b) is hereby DENIED.

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

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

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

Willi Z. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD09-020

DATE: 5-22-09 REC #: 9999 PAID BY: _____

CHARGE: Stag

STYLE: James Prather v. The State

ATTY. NT: Steven E. Phillips Bar# 576855
160 Trinity Av. SW
Atlanta, GA 30303

ATTY. EE: ~~James Prather~~ Stephanie Luttrell, ADA
Atlanta Fed Civ.
ADD Paul Horvath 136 Poplar St. SW
Atlanta GA 30303 (2)

LOWER CT. JUDGE: Christopher Brasher
LOWER CT. CASE # 02 SC 01472
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 5-29-09 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA,

MAY 29 2009

The Court of Appeals hereby passes the following order:

MD-09-020. JAMES PRATHER v. THE STATE.

Under the provisions of Court of Appeals Rule 40 (b) James Prather has filed an emergency motion for a stay of his criminal trial now pending in the Superior Court of Fulton County until this court decides his appeal of the trial court's order, entered May 15, 2009, denying his plea in bar based upon former jeopardy. Prather's notice of appeal was filed on May 20, 2009, and, according to the trial court's order, his case is set for trial on the trial court's June 8, 2009, calendar.

A defendant is authorized to file a direct appeal from the denial of a motion asserting a plea in bar based upon former jeopardy and in such cases the notice of appeal operates to stay the proceedings, unless the trial court determines that the appeal is frivolous and dilatory. In this case, however, the trial court explicitly "DECLINE[D] to find that an appeal by the Defendant of this Order would be 'frivolous and dilatory,'" but also found that it had authority to bring Prather's case to trial while his appeal of the denial of the plea in bar is pending.

In *Patterson v. State*, 248 Ga. 875, 876-877 (287 SE2d 7) (1982), our Supreme Court held the denial of a plea in bar on double jeopardy grounds is directly appealable when the plea was filed sufficiently in advance of trial so as not to constitute a delaying device. The holding in *Patterson* is derived from the rationale of the U.S. Supreme Court expressed in *Abney v. United States*, 431 U. S. 651, 659 (97 SC 2034, 52 LE2d 651) (1977), that the denial of a double jeopardy claim is a collateral order that is immediately appealable despite not being final. Our Supreme Court also stated that it based its opinion in *Patterson* "[f]inally, and perhaps of greatest importance," on the holding in *Abney* that

the rights conferred on a criminal accused by the Double Jeopardy Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence. To be sure, the Double Jeopardy Clause protects an individual against being twice convicted for the same crime, and that aspect of the right can be fully vindicated on an appeal following final judgment. However it has long been recognized that the Double Jeopardy Clause protects an individual against more than being subjected to double punishments. It is a guarantee against being twice put to *trial* for the same offense. Obviously, this aspect of the guarantee's protections would be lost if the accused were forced to "run the gauntlet" a second time before an appeal could be taken; even if the accused is acquitted, or, if convicted, has his conviction ultimately reversed on double jeopardy grounds, he has still been forced to endure a trial that the Double Jeopardy Clause was designed to prohibit. *If a criminal defendant is to avoid exposure to double jeopardy and thereby enjoy the full protection of the Clause, his double jeopardy challenge to the indictment must be reviewable before that subsequent exposure occurs.* [Abney, 431 U.S. at 660-662.]

(Citation and punctuation omitted, and emphasis supplied in the last sentence.) *Patterson*, supra, 248 Ga. at 866. This court later held that if the plea of double jeopardy "is found to be frivolous, the filing of a notice of appeal by the defendant shall not divest the [trial] court of jurisdiction over the case." *Rielli v. Oliver*, 170 Ga. App. 699, 700 (318 SE2d 173) (1984). Additionally, our Supreme Court held in *Hubbard v. State*, 254 Ga. 694, 695-696 (333 SE2d 827) (1985), "that a criminal defendant is not required to follow the interlocutory procedures of OCGA § 5-6-34 (b) when appealing, prior to the conclusion of a trial on the merits, from the denial of a plea in bar" based on a speedy trial demand because the "circumstances bearing on the right to appeal are analogous" to a double jeopardy claim. Defendants in either cases are asserting that they "may not now be tried."

In rejecting the State's request to find Prather's appeal to be frivolous and dilatory, the trial court also found that Prather's appeal of the denial of his former jeopardy plea would not delay the trial. The trial court relied upon *Strickland v. State*, 258 Ga. 764, 765-766 (1) (373 SE2d 736) (1988); *Roberts v. State*, 279 Ga. App. 434, 437 (631 SE2d 480) (2006)¹; *Baker v. State*, 263 Ga. App. 462, 466 (2) (588 SE2d 288) (2003); and *Waters v. State*, 174 Ga. App. 438, 439 (1) (330 SE2d 177) (1985), for the proposition that a trial court does not lose all jurisdiction of the case during an appeal of the denial of the plea, but only the jurisdiction to execute the sentence.

Examination of all those cases reveal, however, that while they state that the trial court has authority to put a defendant on trial while his appeal of the denial of his plea in bar based upon former jeopardy is pending, none of the cases actually involved such a circumstance. *Strickland* concerned the trial court's authority to amend its order nunc pro tunc to hold that Strickland's motion was frivolous and dilatory after the defendant filed a notice of appeal; *Roberts* concerned the State's attempt to bring a second indictment while the notice of appeal was pending; *Baker* concerned the authority of the trial court to hold a second trial, but the notice of appeal was filed only *after* his second conviction; and *Waters* concerned the State's attempt to file a nolle prosequi petition after the notice of appeal was filed.

Therefore, it is not apparent that when the issue is directly presented, this court will hold that a second trial may proceed despite a determination that the appeal of the denial of a double jeopardy plea in bar was not frivolous or dilatory. See *McDaniel v. State*, 224 Ga. App. 5 (479 SE2d 779) (1996) (the court cannot find the right to directly appeal a denial of former jeopardy unauthorized, because the right was firmly established in *Patterson v. State*, supra.); *Allender v. State*, 222 Ga. App. 358, 359 (474 SE2d 257) (1996) (affirmance of refusal to halt a trial in one case must be balanced against the observation in another case that "in double jeopardy claims the

¹*Roberts v. State* was overruled in part by *DeSouza v. State*, 285 Ga. App. 201, 202, fn 2 (645 SE2d 684) (2007), on other grounds. *DeSouza* held that the second trial could proceed while the appeal was pending because the trial court found the plea was frivolous and dilatory. *Id.* at 203.

accused is saying, 'I may not now be tried because I have previously been placed in jeopardy' ”).

Prather indicates in his emergency motion for a stay that he intends to enumerate as error the trial court's determination that it retained jurisdiction to try him notwithstanding his notice of appeal and the trial court's determination that his appeal is not frivolous and dilatory. As this claim would be moot if the case proceeds to trial, *Baker v. State*, supra, 263 Ga. App. at 466-467 (2), we must exercise our authority under Court of Appeals Rule 40 (b) to stay the proceedings.

Accordingly Prather's motion is GRANTED and trial of the charges against him shall be delayed pending disposition of his appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 29 2009

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

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

Willi Z. Mart; 

, Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER M009-021

DATE: 5-29-09 REC #: 96605 PAID BY: John Woodham

CHARGE: _____

STYLE: John F. Woodham et al v. The Atlanta Development Authority et al

ATTY. NT: John F. Woodham, Prose 404-862-2480
Glasgow Bar No. 775 066
2625 Piedmont Rd. Ste 56-295
Atlanta, GA 30324

ATTY. EE: Michelle Barnett Cory Echter
1545 Peachtree St., Ste 700 Paul Howard
Atlanta, GA 30324 Thurbert Baker

LOWER CT. JUDGE: Michael S. Johnson
LOWER CT. CASE # 2008 CV 159232
COUNTY: Fulton

BRIEFS FILED: NT 5-29 EE response 6/4/2009
EE 6-1

JUDGEMENT DATE: 6/12/09 JUDGMENT: Denied

M.F.R. FILED: 6/18/09 amended 6/18/09 NT
REPOSSES: 6/24/09 Denied

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 12 2009

The Court of Appeals hereby passes the following order:

**MD-09-021. JOHN F. WOODHAM et al. v. THE ATLANTA DEVELOPMENT
AUTHORITY et al.**

John F. Woodham and Citizens for Ethics in Government have filed a motion under Court of Appeals Rule 40 (b) to stay further proceedings by the trial court pending their appeal of the trial court's order of May 8, 2009, initiated by their filing of a notice of appeal on May 11, 2009. The trial court's order of May 13, 2009, however, shows that on May 11, 2009, the trial court conducted a hearing at which it notified the parties that it was sustaining Woodham's objection to the May 8, 2009 Final Order, and accordingly it had withdrawn and vacated its order of May 8, 2009. These statements were formalized in the court's order of May 13, 2009, which stated that the order was vacated and withdrawn as of May 11, 2009. Courts may enter an order nunc pro tunc to record an action taken previously. *Pendergrass v. Duke*, 147 Ga. 10 (2) (92 SE 649) (1917).

OCGA § 5-6-46 (a) provides that “[i]n civil cases, the notice of appeal filed as provided in Code Sections 5-6-37 and 5-6-38 shall serve as supersedeas upon payment of all costs in the trial court by the appellant. . . .” Therefore, even if Woodham filed his notice of appeal before the trial court withdrew and vacated the order, the trial court had authority to withdraw and vacate the May 8, 2009 Final Order because costs were not paid until May 12, 2009. The trial court having granted the relief Woodham sought, no order by this court is “necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot.” See Court of Appeals Rule 40 (b).

Accordingly, the Rule 40 (b) motion filed by Woodham and Citizens for Ethics in Government is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 12 2009

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

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

Willi Z. Mant;  , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN 24 2009

The Court of Appeals hereby passes the following order:

**MD-09-021. WOODHAM et al. v. THE ATLANTA DEVELOPMENT
AUTHORITY et al.**

Appellants John F. Woodham and Citizens For Ethics in Government have filed a motion under Court of Appeals Rule 40 (b) for reconsideration of this Court's June 12, 2009 order denying their original motion under Rule 40 (b) to stay further proceedings by the trial court pending their appeal of the trial court's final order, dated May 8, 2009, initiated by their filing of a notice of appeal thereon on May 11, 2009. By the instant motion, appellants request that this Court vacate its June 12 order or, at a minimum, stay such order. Appellants contend that the transcript of a May 11, 2009 hearing before the trial court would establish that this Court erred in giving nunc pro tunc effect to the trial court's order of May 13, 2009 insofar as the May 13 order purported to memorialize an action which had not taken place at the May 11 hearing, i.e. that at such hearing the trial court sustained Woodham's objection to the May 8 order and withdrew and vacated the same as a result. See *Pendergrass v. Duke*, 147 Ga. 10 (2) 92 SE 649 (1917) ("A nunc pro tunc entry is for the purpose of recording some action that was taken or judgment rendered previously to the making of the entry, which is to take effect as of the former date. Such an entry can not be made to serve the office of correcting a decision however erroneous, or of supplying non-action on the part of the court.")

The trial court's representation as to the basis for its action in vacating and withdrawing the May 8 order is entitled to the presumption of regularity. Appellants have come forward with nothing to the contrary. *Perryman v. Lucas*, 277 Ga. App. 349, 349-350 (2) (626 SE2d 550) (2006). Now therefore, the instant motion for

reconsideration of this Court's June 12 order, is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 24 2009

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

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

Willie L. Mat..., Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD-09-22

DATE: 6/15/09 REC #: 96755 PAID BY: James Whitfield

CHARGE: Supersedeas

STYLE: James Whitfield v. The State

ATTY. NT: pro se
James Whitfield
58 6th Street Unit 2107
Atlanta GA 30308

ATTY. EE: Leon Benham
Solicitor General
160 Pryor Street Suite J-301
Atlanta GA 30303

LOWER CT. JUDGE: Brenda H. Cole
LOWER CT. CASE # 07CR 326024-E
COUNTY: Fulton

BRIEFS FILED: _____

JUDGEMENT DATE: 6/16/09 JUDGMENT: Moot

M.F.R. FILED: 6/18/09 MAR Denied 6-24-09
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 16 2009

The Court of Appeals hereby passes the following order:

MD-09-22. WHITFIELD v. THE STATE.

On June 10, 2009, James Whitfield, pro se, filed a notice of appeal from the trial court's June 5, 2009 order which denied his motion styled "Motion for New Trial" upon a 2008 DUI conviction and required him to meet with his probation officer "no later than June 12, 2009 at 12:30 p.m." or face contempt of court. On June 15, 2009, Whitfield filed his motion styled "Emergency Supersedeas Motion," seeking supersedeas from the trial court's June 5 order subjecting him to the requirements of his sentence to probation. The requirement to meet with his probation officer was effective three days before he filed the instant motion for emergency supersedeas. Accordingly, the said emergency motion is MOOT.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 16 2009

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

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

Willie L. Martin, Jr., Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD09-023

DATE: 6-17-09 REC #: 96789 PAID BY: Sell & Melton

CHARGE: Stay

STYLE: Jeremiah C. Brown v. QBE Insurance Corporation

ATTY. NT: Mitchel P. House Jr.
Sell & Melton
P.O. Box 229
Macon, GA 31202-0229

Jaffey B. Hanson &
Att. M. Deulin Cooper
Same address

Fax 478-745-
6426
Phone 478-
746-8521

ATTY. EE: John D. Dixon
Dennis Coyle, Porter & Smith LLP
Piedmont Fourteen
3535 Piedmont Rd., Ste 900
ATL, 30305

LOWER CT. JUDGE: Donald Gillis
LOWER CT. CASE # ~~2005-0117~~ 2005-0117
COUNTY: ~~Butts~~ Laurens

BRIEFS FILED: NT

JUDGEMENT DATE: 6/22/09 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 22 2009

The Court of Appeals hereby passes the following order:

MD-09-023. BROWN v. QBE INSURANCE CORPORATION.

On June 17, 2009, this Court received a Rule 40 (b) Motion asking the Court to direct the trial court to return the remittitur in Case No. A08A2416. *Jeremiah C. Brown v. QBE Ins. Corp.* A Notice of Intent to Apply for Certiorari was filed in this Court on April 16, 2009; however, no Notice of Filing Application for Certiorari was filed in this Court nor was an Application for Certiorari filed in the Supreme Court of Georgia in Case No. A08A2416. As such, the remittitur issued from this Court on June 10, 2009. The issuance of remittitur from this Court to the trial court divests this Court of jurisdiction. Given the foregoing, this Court cannot recall the remittitur unless the remittitur was issued as a result of fraud, neglect, or the like. *Slappy v. Georgia Power Co.*, 109 Ga. App. 850, 856 (137 SE2d 537) (1964).

In Case No. A08A2417. *QBE Ins. Corp. v. Jeremiah C. Brown*, this Court reversed the judgment of the trial court. In response to the opinion of this Court, a Notice of Intent to Apply for Certiorari was filed in this Court on April 16, 2009. On April 28, 2009, an Application for Certiorari was filed in the Supreme Court of Georgia denominated as Case No. S09C1349. *Jeremiah C. Brown v. QBE Ins. Corp.* The filing of the Application for Certiorari in the Supreme Court of Georgia divests this Court of jurisdiction in this matter. This Court will be directed to proceed as determined by the order of the Supreme Court of Georgia on the Application for Certiorari in Case No. A08A2417. Since the Application for Certiorari in such case is now pending in the Supreme Court of Georgia, this Court has no jurisdiction therein.

Since this Court lacks jurisdiction over either appeal referenced by the instant

Rule 40 (b) Motion, the said Motion is hereby DISMISSED as MOOT.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 22 2009

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

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

Willi Z. Mat..., Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD 09-024

DATE: 6-24-09 REC #: 96851 PAID BY: Supreme Court of Georgia

CHARGE: Supersedeas & Stay

STYLE: Edgar Pounds et al v. Dwight Brown et al

ATTY. NT: W. Pitts Carr
10 North Parkway Square
4200 Northside Parkway
Atlanta, GA 30327

Hilton B. Dupree, Jr.
P.O. Box 525
Marietta GA 30061
770 424-7171

404-442-9000
ATTY. EE: Daniel Flint, Esq.
1110 Peachtree St., Ste 800
Atlanta, GA 30309

Dwight Dennis, Esq.
King & Spalding
1180 Peachtree St. NE
Atlanta, GA 30309

LOWER CT. JUDGE: J. Stephen Schuster

LOWER CT. CASE # 07-1-9408-48

COUNTY: Cobb

BRIEFS FILED: NT

JUDGEMENT DATE: 6/24/09 JUDGMENT: Granted

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 24 2009

The Court of Appeals hereby passes the following order:

MD-09-024. POUNDS et al. v. BROWN et al.

Movants, members of Cobb Electric Management Corporation (“Cobb EMC”), have filed an emergency motion under Rule 40 (b). Movants ask this Court for supersedeas, stay, and expedited appeal in the underlying derivative action against Respondents, certain of Cobb EMC’s directors, in a dispute over the interpretation and enforcement of a settlement agreement incorporated into the final order and judgment appealed from (the “Order”) which specified guidelines and timing as to two elections involving more than 170,000 Cobb EMC members. In the first election that is the subject of the Order, voters must fill out and return proxies by July 6 or appear at a meeting called for such purpose. In joining the Movants in their request for a stay, Cobb EMC informs this Court that it will have to print and send voting materials to 170,000 members, at considerable expense, by the close of business this date, June 24, 2009. Given the foregoing, the Movants’ request for a stay in this action is hereby GRANTED pending the disposition of Movants’ appeal which operates as a supersedeas in this matter. OCGA § 5-6-35 (h).

As to Movants’ request to expedite appeal, the Constitution of the State of Georgia, Article VI, Section XI, Paragraph II requires that the appellate courts of this State dispose of every case at the term for which it is docketed for hearing, or by the close of the next term. By statute, the appellate courts must expedite, among others, civil cases in which the State of Georgia is the plaintiff (OCGA § 9-10-1), criminal cases in which the defendant is incarcerated (OCGA § 5-6-43 (c)), and cases filed under the Parental Notification Act (OCGA § 15-11-110 et seq.). By Court policy, this Court expedites emergency motions, as here, cases involving child custody, cases

involving appeals bonds. and civil cases involving appeals from denial of supersedeas.

This Court recognizes the importance of this case to the parties involved; the Court also recognizes the importance of every case pending before the Court to all parties involved. While the Court will make every effort to dispose of this case as quickly as is reasonably possible, this Court is constrained to and does hereby DENY Movants' motion for expedited appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 24 2009

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

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

Willie I. Mat..., Clerk.

MOTIONS DOCKET

JUDGE # _____ MOTION DOCKET NUMBER MD 09-025

DATE: 6/24/09 REC #: 6858 PAID BY: Carlock, copeland + Stair

CHARGE: motion to seal

STYLE: Mark Bergeson et al v. Suborn

ATTY. NT: Andrew Eaton
Carlock, copeland + Stair, LLP
2600 Marquis Two Tower
285 Peachtree Center Avenue
Atlanta GA 30303

ATTY. EE: Charlotte B. Perreel
Perreel + Wright, LLC
3005 Woodruff Pl.
Atlanta GA 30305

Christine L. Mast
Hawkins + parnel
4000 Suntrust Plaza
303 Peachtree Street
Atlanta GA 30308

LOWER CT. JUDGE: n/a
LOWER CT. CASE # 07A 77585-5
COUNTY: DeKalb State

BRIEFS FILED: _____

JUDGEMENT DATE: 6/26/09 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 26 2009

The Court of Appeals hereby passes the following order:

MD-09-025. BERGESON et al. v. SUBOH.

Alembik, Fine & Callner, P.A. ("Alembik"), pursuant to Court of Appeals Rules 30 (f) and 40 (b), has filed a motion for permission to file under seal (1) a joint application for interlocutory appeal it intends to file together with Mark Bergeson and (2) the supporting materials from the record submitted pursuant to Court of Appeals Rule 30 (e). Alembik asserts in its motion that the joint application will refer to a confidential settlement agreement that is subject to a consent protective order in the trial court below and that the settlement agreement will also be attached as an exhibit to the joint application. Alembik's motion having been read and considered, such motion is hereby GRANTED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 26 2009

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

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

Willi Z. Mant, Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-09-026

DATE: 7/8/2009 REC #: 96980 PAID BY: James Whitfield

CHARGE: Supersedeas Motion

STYLE: James Whitfield v. The State

ATTY. NT:

James Whitfield, Pro Se
58 6th Street UNIT 2107
Atlanta, GA 30308

ATTY. EE: Leon Benham

Solicitor General Fulton County
160 Pryor St, SW Suite J-301
Atlanta, GA 30303

LOWER CT. JUDGE: Judge Brenda H. Cole

LOWER CT. CASE # 09-CR-326024

COUNTY: Fulton County State Court

BRIEFS FILED: NT

JUDGEMENT DATE: 7-10-09 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, July 10, 2009

The Court of Appeals hereby passes the following order:

MD-09-026. WHITFIELD v. THE STATE.

On July 8, 2009, James Whitfield, pro se, filed this “second emergency supersedeas motion.” About a month before, he filed a first motion on the same issue: Whitfield asked this Court to find that he was not required to meet with a probation officer pending the outcome of his appeal. See MD-09-22, *Whitfield v. The State*. Neither the first motion nor the instant second motion reveal why Whitfield was required to meet with a probation officer nor do they demonstrate that such a meeting was a condition of a probated sentence. Whitfield states that he is not in custody and he does not appear to be on bail. Further, we find no record of a docketed appeal in this Court. (Whitfield acknowledges that his appeal in Case No. A09A0888 was dismissed on January 23, 2009, for lack of jurisdiction.) Pursuant to Court of Appeals Rule 40 (b) pertaining to emergency motions, “[g]enerally, no order shall be made or direction given in an appeal until it has been docketed in this Court.”

Moreover, in our order resolving the first motion, we found that “[t]he requirement to meet with his probation officer was effective three days before he filed the instant motion for supersedeas. Accordingly, the said emergency motion is MOOT.” The passage of time has not made this issue any less moot. Moreover, Whitfield has not carried his burden of showing, by reference to any proper record evidence, that the exercise of our emergency powers should be employed in this case to preserve jurisdiction or to prevent a contested issue from becoming moot.

For these reasons, Whitfield’s second emergency motion for supersedeas is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 10 2009

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

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

Willie L. Mantz, Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-09-0207

DATE: 7/16/09 REC #: 9999 PAID BY: pauper

CHARGE: Supersedeas

STYLE: Bonita Guilford, et. al. v Cheryl Starks Rougier

ATTY. NT: Bonita Guilford
P.O. Box 76243
Atlanta, GA 30358

ATTY. EE: Cheryl Starks Rougier
8810 Glasgow Pointe
Duluth, GA 30097

LOWER CT. JUDGE: Judge Philip C. Smith
LOWER CT. CASE # 09SC-1114
COUNTY: Forsyth County State Court

BRIEFS FILED: _____

JUDGEMENT DATE: 7/17/09 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUL 17 2009

The Court of Appeals hereby passes the following order:

MD-09-027. GUILFORD et. al. v. ROUGIER.

Appellant Bonita Guilford (and family) filed an emergency motion in this Court, pursuant to OCGA § 5-6-46 (e) and Court of Appeals Rule 40 (b), asking this Court to issue an order granting supersedeas pending her appeal of an order of the State Court of Forsyth County. In the order, the court ruled that Cheryl Rougier was entitled to a writ of possession of the premises currently occupied by Guilford, and ordered Guilford to pay Rougier \$7,250, plus court costs.

In the emergency motion, Guilford admits that she has not paid, and is unable to pay, the \$7,250 judgment at this time, but asks this Court to grant the supersedeas pending appeal so that she may remain in possession of the premises.

Under OCGA § 44-7-56, “[i]f the judgment of the trial court is against the tenant and the tenant appeals this judgment, the tenant shall be required to pay into the registry of the court all sums found by the trial court to be due for rent in order to remain in possession of the premises.” Thus, because Guilford has not paid the judgment into the registry of the trial court, she is not entitled to remain in possession of the premises, and this Court must DENY her emergency motion.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 17 2009

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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.*

Willi Z. Mart,  , Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MO-09-028

DATE: 7/30/2009 REC #: 97153 PAID BY: Jarrad Davis

CHARGE: To Amend Order to Enjoin

STYLE: Coffman Grading Company v. Forsyth County

ATTY. NT: Christopher Hamilton
Jarrad Davis
165 Pilarim Village Dr, Ste. 200
Cumming, GA 30042

ATTY. EE: William M. Druze
Trudman Sanders LLP
Bank of America Plaza
600 Peachtree St, NE, Ste 5200
Atlanta, GA 30309-2216

LOWER CT. JUDGE: Jeffrey Bayley
LOWER CT. CASE # Superior Ct Forsyth Co
COUNTY: Forsyth Co

BRIEFS FILED: 7/31/09 NT

JUDGEMENT DATE: 7/31/09 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUL 31 2009

The Court of Appeals hereby passes the following order:

MD-09-028. COFFMAN GRADING COMPANY, INC. et al. v. FORSYTH COUNTY et al.

On July 28, 2009, pursuant to a motion filed by Coffman Grading Company, Inc. and Coffman Equipment Leasing, LLC (“the Coffman Entities”), this Court enjoined Forsyth County and the Forsyth County Tax Commissioner from seizing or selling certain personal property of the Coffman Entities in order to collect upon tax *fi. fas.*, pending the pendency of any appeal from the order of the Superior Court of Forsyth County, dated July 10, 2009, in Civil Action No. 09-cv-1804.

Now before the Court is the motion filed by Forsyth County and the Forsyth County Tax Commissioner to alter or amend this Court’s July 28, 2009 order to include a provision that enjoins and restrains the Coffman Entities from selling, contracting to sell, or otherwise disposing of its personal property or assets. The movants fear that, during the pendency of the Coffman Entities’ appeal from the trial court’s order in Civil Action No. 09-cv-1804, which has yet to be docketed in this Court, the Coffman Entities will abscond with their personal property and prevent the movants from rightfully collecting taxes owed.

Unlike the Coffman Entities, the movants have not shown that they sought such an injunction in the trial court pursuant to OCGA § 9-11-62 (c) before petitioning this Court for emergency relief. Further, no evidence before this Court shows that any such disposal of the subject personal property is imminent or even contemplated by the Coffman Entities. Because the movants may have an adequate remedy in the trial

court, they have not shown the necessity of an order from this Court pursuant to Court of Appeals Rule 40 (b). Accordingly, the motion is hereby DENIED.

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

JUL 31 2009

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

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

Willie L. Martin, Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-09-029

DATE: 8/3/2009 REC #: 97184 PAID BY: Supreme Court Transfer

CHARGE: Stay - Criminal Contempt

STYLE: Henry Cook, et. al ~~vs~~ v. Don Smith et. al

ATTY. NT: Maurice h, King, Jr.
PO Box 72071
Albany, GA 31708-2071

ATTY. EE: Tommy Coleman
Post Office Box 71209
Albany, GA 31708-1209

LOWER CT. JUDGE: J. Kevin Chason, Superior Court
LOWER CT. CASE # 2009-CV-065; 2009-CV-067
COUNTY: Randolph County

BRIEFS FILED: _____

JUDGEMENT DATE: 8/3/2009 JUDGMENT: Dismissed

M.F.R. FILED: _____
REPOSSES: 8/3/2009

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUG - 4 2009

The Court of Appeals hereby passes the following order:

MD-09-029. COOK et al. v. SMITH, et al.

Pursuant to OCGA § 5-6-13 (a), Henry Cook and Bobby Jenkins seek a writ of supersedeas pending their appeal of an order finding them in criminal contempt of court. The superior court originally denied their applications for supersedeas. Subsequently, however, the superior court vacated the denials and granted supersedeas to both men. Accordingly, Cook and Jenkins have obtained the relief sought and their motion for emergency relief is MOOT.

The motion is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG - 4 2009**

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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.*

Willi Z. Mat , Clerk.