

**COURT OF APPEALS OF GEORGIA
EMERGENCY MOTIONS**

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MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD10-001

DATE: 8/24/1999 REC #: 9786 PAID BY: David E. Oles

CHARGE: Supersedeas

STYLE: Jonathan Jarman v. Nancy Bauer Jarman

ATTY. NT: David E. Oles
480 Tumbling Creek Dr
Alpharetta, GA 30005
davidr@deoleslaw.com

ATTY. EE: Anne H. Jarrett
707 Whitlock Ave., SW Ste G-5
Marietta, GA 30064

Stephen A. Yaklin
Mathew M. Wilkins
King & Yaklin, LLP
840 Roswell St, SE
Marietta, GA 30060

LOWER CT. JUDGE: Mary Staley

LOWER CT. CASE # 081-1-2582-28

COUNTY: Superior Court of Cobb County

BRIEFS FILED: NT

JUDGEMENT DATE: 8/25/09 JUDGMENT: Transferred to

Supreme Court

M.F.R. FILED: 12-10-09
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUG 25 2009

The Court of Appeals hereby passes the following order:

MD-10-001. JONATHAN JARMAN v. NANCY BAUER JARMAN.

Jonathan Jarman seeks emergency relief from the trial court's order granting Nancy Bauer Jarman's motion to set aside supersedeas and recall orders. As set forth in this court's June 4, 2009 order in Case No. A09D0382, Jonathan Jarman's appeal from multiple trial court orders falls within the Supreme Court of Georgia's jurisdiction over divorce and alimony cases. This motion for emergency relief is therefore transferred to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 25 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 # 92 MOTION DOCKET NUMBER MD10-002

DATE: 9-9-09¹⁵ REC #: 9999 PAID BY: _____

CHARGE: _____

STYLE: Vardis J. Frowe v. City of Riverdale

ATTY. NT: Vardis J. Frowe
7478 Windgate Court
Riverdale, GA 30274

ATTY. EE: Mr Jerry Patrick
c/o Clerk of Court
City of Riverdale
6690 Church St.
Riverdale, GA 30274

LOWER CT. JUDGE: Ronald J. Freeman, Sr.

LOWER CT. CASE # OSP 63066

COUNTY: Clayton

BRIEFS FILED: NT

JUDGEMENT DATE: 9/24/2009 JUDGMENT: Denied

M.F.R. FILED: 9/28/2009
REPOSSES: Denied

N.O.I. FILED: cert app filed 10-19-09

SUPREME COURT OF GEORGIA

Remittitur, Case No. S10C0259

Atlanta, February 01, 2010

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

VADIS FRONE v. CITY OF RIVERDALE

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

All the Justices concur.

Lower Court Case No.

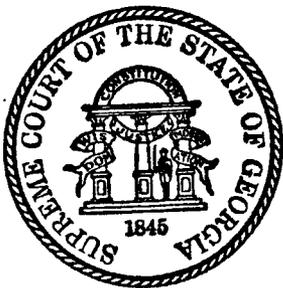
08P63066

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta February 28, 2010

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

Pamela M. Smith, Deputy Clerk



2010 NOV 18 AM 9:17

RECEIVED IN OFFICE

Court of Appeals of the State of Georgia

ATLANTA, SEP 24 2009

The Court of Appeals hereby passes the following order:

MD10-002. FRONE v. CITY OF RIVERDALE.

The Municipal Court of the City of Riverdale found Vadis J. Frone guilty of speeding on February 10, 2009, and fined him \$250. On September 9, 2009, Frone filed a notice of appeal from that finding, which has not yet been docketed in this Court. Frone has filed an emergency motion “to halt 45 day incarceration,” alleging that the lower court ordered him to appear on October 1, 2009, and either pay a fine of \$250 or serve 45 days in jail.¹ Frone asks this Court to halt his incarceration pending the outcome of his appeal.

This Court may issue emergency supersedeas orders only as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. Court of Appeals Rule 40 (b). The motion presents no emergency inasmuch as Frone has only been ordered to pay a fine; he has not been ordered to serve time in jail. Additionally, we note that it appears this Court does not have jurisdiction over Frone’s appeal. A notice of appeal must be filed within 30 days after the entry of an appealable judgment. OCGA § 5-6- 38 (a). The proper and timely filing of a notice of appeal is an absolute requirement to confer jurisdiction upon this Court. See

¹ The disposition form filed in support of Frone’s motion indicates only that Frone must pay a \$250 fine; there is no evidence that Frone may be subject to jail time.

Couch v. United Paperworkers Int'l. Union, 224 Ga. App. 721 (482 SE2d 704) (1997). Frone's notice of appeal was filed almost seven months after the trial court's order of February 10, 2009. As Frone cannot satisfy the requirements of Rule 40 (b), his motion is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 24 2009

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

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

Willie Z. Mantz

....., Clerk.

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

ATLANTA, OCT -1 2009

The Court of Appeals hereby passes the following order:

MD10-002. FRONE v. CITY OF RIVERDALE.

The motion for reconsideration of motion to halt 45-day incarceration having been read and considered, it is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT -1 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 I. Mantz, Clerk.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD10-003

DATE: 9-18-09 REC#: 97645 PAID BY: Bernard Brody

CHARGE: Supersedeas

STYLE: In The Interest of: A.S., A.S., A.A.S., children

ATTY. NT: Bernard S. Brody
101 Marietta St. Ste 3300
Atlanta 30303
404-223-3310

ATTY. EE: Sanders B. Deen, Esq.
272 Washington Ave.
Marietta, GA 30060

LOWER CT. JUDGE: James R. Whitfield - Juvenile
LOWER CT. CASE # 08-CV-4799-04, 09-CV-1640-04; 09-CV-4315-04
COUNTY: Cobb
08-CV-4798-04; 09-CV-1639-04; 09-CV-4314-04
09-CV-16388-04 - 09-CV-4314-04
BRIEFS FILED: NT

JUDGEMENT DATE: 9/23/09 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, SEP 23 2009

The Court of Appeals hereby passes the following order:

MD10-003. IN THE INTEREST OF: A. S., A. S., AND A. A. S.

The Juvenile Court of Cobb County held a review hearing on the disposition placement of A. S., A. S., and A. A. S. on September 15, 2009, in which appellant Lewis Alan Carlton, the named father, invoked his Fifth Amendment privilege against self-incrimination in response to several questions regarding his contact with the mother and the children, their whereabouts, and the financial support of their necessities. The court held Carlton in contempt and directed his incarceration "until such time as he seeks to purge his contempt by providing such information as known to him. . . ." Appellant has filed a motion for emergency supersedeas seeking a stay of the juvenile court's order, dated September 15, 2009. To the extent that the juvenile court has not vacated such order, the same is hereby stayed pending resolution of the issues raised on appeal relating to the invocation by Lewis Alan Carlton of his Fifth Amendment rights, and Appellant's Motion for Emergency Supersedeas pursuant to Rule 40 (b) is accordingly GRANTED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 23 2009*

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

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

Willi Z. Mat: [Signature], Clerk.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD10-004

DATE: 9/25/09 REC #: 97708 PAID BY: Maurice L. King

CHARGE: To Stay

STYLE: Bobby Jenkins v. Don Smith, et al

ATTY. NT: Maurice King, Jr.
P.O. Box 72071
Albany, Georgia 31708-2071

ATTY. EE: Tommy Coleman
P.O. Box 71209
Albany, GA 31708-1209

LOWER CT. JUDGE: Kevin Chason
LOWER CT. CASE # 09-CV-065/67
COUNTY: Randolph

BRIEFS FILED: NT

JUDGEMENT DATE: 9/25/2009 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, SEP 25 2009

The Court of Appeals hereby passes the following order:

MD 10-004. JENKINS v. SMITH, et al.

The appellant wants an order imposing a stay and supersedeas because the trial court has scheduled a hearing for September 30, 2009. We do not know whether that hearing will or will not take place and we do not know what action, if any, will be taken at that hearing. If any party is dissatisfied with actions taken at that hearing, it may appeal after the hearing if the orders issued then are appealable. But we decline to grant anticipating relief. The motion is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta SEP 25 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 # 94 MOTION DOCKET NUMBER MD10-005

DATE: 9/30/09 REC #: 7758 PAID BY: The connector

CHARGE: _____

STYLE: The connector, Inc. v. Bright From the Start, Georgia Department of Early Care and Learning

ATTY. NT: Mike Terrell
3405 Dallas Hwy.
Suite 827
Manetta GA

ATTY. EE: Jason Naunas
GA Law Dept
40 Capitol Sq., SW
Atlanta, GA 30334

Thurbert Baker
Attorney General
40 Capitol Sq., SW
Atlanta, GA 30334

LOWER CT. JUDGE: Wendy Shoob

LOWER CT. CASE # 091-CV-175538

COUNTY: Fulton Co. Superior Court

BRIEFS FILED: NT

JUDGEMENT DATE: _____ JUDGMENT: _____

M.F.R. FILED: _____

REPOSSES: EE 10-5-2009

N.O.I. FILED: _____

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD-10-006

DATE: 10/16/2009 REC #: 97892 PAID BY: Thompson O'Brien

CHARGE: _____

STYLE: Lee Bourney v. Sharon Wood et al

ATTY. NT: Aaron Kappler + Kevin Kovalchik
Thompson, O'Brien, Kemp + Nasuti, PC
40 Technology Pkway So, Suite 300
Norcross, GA 30092

fax 770-925-8597 cell 404-234-2369

ATTY. EE: F. Skip Sugarman
100 Peachtree St, Ste 2140
Atlanta, GA 30303

Kevin J. Tallant
320 Dahlonega St, Ste 200
Cumming, GA 30040

Alexandra M. Dishun
100 Peachtree St, Ste 2140
Atlanta, GA 30303

LOWER CT. JUDGE: Judge David Dickinson

LOWER CT. CASE # 09CV2659

COUNTY: Forsyth County Superior Court

BRIEFS FILED: NT
EE 10/19/2009

JUDGEMENT DATE: 10/22/09 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 22 2009

The Court of Appeals hereby passes the following order:

MD-10-006. BOURNEY v. WOOD et al.

Before this Court is Appellant's Emergency Motion for Expedited and/or Emergency Review and Appellant's Emergency Motion to Stay Enforcement of the Ex Parte October 5, 2009 Order (collectively, the "Emergency Motions"). At issue in the Emergency Motions is the propriety of the October 5, 2009 order entered by the Superior Court of Forsyth County appointing a temporary receiver and temporarily enjoining appellant from certain activities (the "Order").

We are concerned about the scope of the Order. See generally *Patel v. Patel*, 280 Ga. 292, 293-295 (627 SE2d 21) (2006) (discussing receiverships). Nevertheless, the Order is set to expire on October 27, 2009, and the trial court is scheduled to conduct a hearing on that date to address whether the Order should be extended.¹ Accordingly, appellant will have a full and fair opportunity to be heard before the trial court on the propriety of the Order and on the issue of whether or not the Order should be extended or its terms narrowed. The Emergency Motions, therefore, are DENIED. Nothing in this order shall preclude appellant from seeking further emergency relief following the trial court's entry of a new order after the October 27, 2009 hearing.

¹ Appellant has filed a direct appeal from the order appointing the temporary receiver. See OCGA § 5-6-34 (a) (4); *Patel*, 280 Ga. at 293. The filing of a direct appeal from an order appointing a temporary receiver does not divest the trial court of jurisdiction over the case. See OCGA § 9-11-62 (a); *Black v. Graham*, 266 Ga. 154, 156 (3) (464 SE2d 814) (1996).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 22 2009

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

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

Willi Z. Mat;  , Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD-10-007

DATE: 10/23/2009 REC #: 97949 PAID BY: Supreme Court of Georgia
(Transfer to COA)

CHARGE: Supersedeas

STYLE: Orbitz, LLC v City of Columbus

ATTY. NT: Jerry Buchanan
Buchanan & hand
P.O. Box 2848
Columbus, GA 31902

ATTY. EE: Michael McGlamry, C. Neal Pope, Wade Tomlinson
R. Timothy Morrison, N. Kirkland Pope P.O. Box 2128
P.O. Box 191625 Columbus, GA 31902-2128
Atlanta, GA 31119-1625

Robert M. Travis, John Bielema, Jr., Michael P. Carey
One Atlantic Center, 14th Fl., 1201 W. Peachtree St, NW, Atlanta, GA 30309

LOWER CT. JUDGE: Douglas Pullen

LOWER CT. CASE # SU-06-CV-1895-F

COUNTY: Superior Court of Muscogee County

BRIEFS FILED: NT
EE

JUDGEMENT DATE: 10/27/09 JUDGMENT: Dismissed

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 27 2009

The Court of Appeals hereby passes the following order:

MD-10-007. ORBITZ, LLC v. CITY OF COLUMBUS.

On October 16, 2009, Orbitz, LLC, filed a direct appeal to the Supreme Court of Georgia, along with an “Emergency Motion for Supersedeas Order Immediately Vacating Injunction Order.” The appeal was from a Ruli Nisi order setting a hearing on a motion for discovery sanctions for Saturday, October 17, 2009 at 11 a. m., and the emergency motion sought a stay of that hearing. The Supreme Court initially issued an order granting the motion, staying the hearing and requesting further briefing. On October 23, however, the Supreme Court vacated its earlier order and lifted the stay, finding it lacked jurisdiction to consider the motion. The Supreme Court then transferred the motion to this Court but did not transfer the appeal. Accordingly, no appeal is currently pending in the Court of Appeals between these parties.

Moreover, in determining that it did not have jurisdiction to consider Orbitz’s motion, the Supreme Court specifically found that the motion involved “a trial court’s order setting a hearing regarding a civil discovery dispute.” The Court further held that the order was not “transformed into an ‘injunction’ appealable to [the Supreme] Court because it directs that a corporate party must appear through its human representative, in this case its CEO.” Additionally, the Supreme Court concluded that “Orbitz’s complaint that the order is directed to its CEO is misplaced. The order on its face is directed to Orbitz, and [the CEO’s] attendance is clearly in his official capacity as a corporate representative. [The CEO] is not involved in this matter in his personal capacity, nor has he appeared in his personal capacity to raise any

objections.” Although Orbitz raises arguments contradicting these findings, this Court is bound by the Supreme Court’s order, which transferred the motion here. *Buchan v. Hobby*, 288 Ga. App. 478, 480 (654 SE2d 444) (2007).

Accordingly, because appellate consideration of interlocutory discovery issues requires adherence to the procedures outlined in OCGA §5-6-34 (b), which procedures have not been followed here, and considering that no appeal is pending in this Court, it is clear that this Court lacks jurisdiction to consider the emergency motion and it is hereby DISMISSED. See *Reliance Ins. Co. v. Cobb County*, 235 Ga. App. 685, 687 (510 SE2d 129) (1998).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 27 2009

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

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

Willi Z. Mat ; 

, Clerk.

MOTIONS DOCKET

JUDGE # 99 MOTION DOCKET NUMBER MD-10-008

DATE: 11/30/2009 REC #: _____ PAID BY: 9999

CHARGE: Fayer's Affidavit

STYLE: Inyang Peter Oduak v. Jay Stephenson et al

ATTY. NT: Inyang Peter Oduak
P.O. Box 370971
Decatur, GA 30037

Thurbut Baker
40 Capitol Sq., SW.
Atlanta, GA 30334

ATTY. EE: Jay Stephenson
Cobb Co Superior Ct
P.O. Box 3370
Marietta, GA 30061

George Weaver
Hollberg Weaver LLP
2921 Piedmont Rd, NE, Suite C

LOWER CT. JUDGE: Robert Flournoy
LOWER CT. CASE # 03-1-1628-40
COUNTY: Superior Court Cobb County

BRIEFS FILED: _____

JUDGEMENT DATE: 12/1/09 JUDGMENT: Denied

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

N.O.I. FILED: 12-28-09

*motion to set aside the order
denying appellants emergency motion
filed 12/14/09.*
motion to stay remittitur - 12-28-09 / Denied 12-31-09
cert filed 2-19-10 S10C0931
cert dismissed 6-28-10 remittitur 7-29-10

Court of Appeals of the State of Georgia

ATLANTA, DEC - 1 2009

The Court of Appeals hereby passes the following order:

MD-10-008. ODUOK v. STEPHENSON et al.

Before this Court is appellant's emergency motion seeking review of the trial court's order denying appellant's motion to proceed in forma pauperis on appeal. Appellant's emergency motion is hereby DENIED. See Court of Appeals Rule 40 (b). The trial court's ruling on all factual issues concerning the ability of appellant to pay costs is final and not subject to review. See OCGA § 9-15-2; *Morris v. Dept. of Transp.*, 209 Ga. App. 40 (432 SE2d 638) (1993); *Harris v. State*, 170 Ga. App. 726 (318 SE2d 315) (1984).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **DEC - 1 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, DEC 15 2009

The Court of Appeals hereby passes the following order:

MD-10-008. ODUOK v. STEPHENSON et al.

Before this Court is Appellant's "Motion to Set Aside the Order Denying Appellant's Emergency Motion Seeking Review of the Trial Court's Order Denying Appellant's Motion to Proceed in Forma Pauperis on Appeal." Appellant's motion is hereby DENIED.

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

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

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

Willi Z. Mant, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

DEC 31 2009

The Court of Appeals hereby passes the following order:

MD10-008. ODUOK v. STEPHENSON, et al.

On November 30, 2009, the movant filed a Rule 40(b) Motion in this Court. Upon consideration of the motion, the Court issued an order on December 1, 2009, denying the motion.

On December 28, 2009, the movant filed a Notice of Intention to Apply to the Supreme Court of Georgia for a Writ of Certiorari. That notice has been docketed and requires no action on the part of this Court.

Contemporaneously with the filing of the Notice of Intent to Apply for Certiorari, movant filed a "Motion for Stay of Issuance of Mandate or Remittitur". Since this Court does not issue remittiturs on the deposition of Rule 40(b) Motions, the "Motion for a Stay of Issuance of Mandate or Remittitur" is hereby DISMISSED as MOOT.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 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.*

Clerk.

Willi Z. Montez

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD 10-009

DATE: 12-1-09 REC #: 98271 PAID BY: Jackie Patterson

CHARGE: _____

STYLE: Dorian Joyner v. The State

ATTY. NT: Jackie G. Patterson 566511
950 Dannon View Ste 4201 404-629-2998
Atlanta, GA 30331
Fax 404-629-2898

ATTY. EE: Keith Gammage
Chief Asst. Sol. Clayton Co.
9151 Tara Blvd
Jonesboro, GA

LOWER CT. JUDGE: Morris Braswell
LOWER CT. CASE # 2009 CR 08828 E
COUNTY: Clayton

BRIEFS FILED: NT

JUDGEMENT DATE: 12/1/09 JUDGMENT: Granted

M.F.R. FILED: 12/9/09
REPOSSES: denied 12/10/09

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, DEC - 1 2009

The Court of Appeals hereby passes the following order:

MD10-009. JOYNER v. THE STATE.

Appellant Dorian Joyner has filed an emergency motion with this Court pursuant to Court of Appeals Rule 40 (b), asking that this Court vacate a trial court order directing him to personally appear for formal arraignment and enter a plea on December 2, 2009, or face issuance of a bench warrant. We GRANT the emergency motion because the law allows a defendant to waive formal arraignment and enter a not guilty plea through his attorney,¹ which Joyner attempted to do on November 9, 2009.

Accordingly, the trial court's November 24, 2009 order is vacated to the extent that it directs the Joyner to personally appear in court or face issuance of a bench warrant. In the event that Joyner gives his trial counsel proper permission, counsel may waive formal arraignment and enter a plea on Joyner's behalf at the December

¹ See *Loggins v. State*, 225 Ga. App. 713, 714 (2) (484 SE2d 758) (1997).

2, 2009 hearing, and Joyner is not required to personally appear.

Court of Appeals of the State of Georgia

Clerk's Office, **DEC - 1 2009**

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Clerk.

Willie L. Martin, Jr.

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD 10-010

DATE: 12-2-09 REC #: 8289 PAID BY: Timothy Herring

CHARGE: _____

STYLE: Victor Youngblood v. The State

ATTY. NT: Timothy Herring
P.O. Box 13
Palmetto, GA 30268
404-521-1899

ATTY. EE: Peter J. Skou dalakis
Dist Atty
209 Courtyard Sq.
Carroll Co. Courthouse Annex
Carrollton, GA 30112

LOWER CT. JUDGE: Dennis T. Blackburn
LOWER CT. CASE # _____
COUNTY: Carroll

BRIEFS FILED: NT

JUDGEMENT DATE: 12/2/09 JUDGMENT: Denied
MFR - Denied 12-14-09

M.F.R. FILED: 12/10/09
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, DEC - 2 2009

The Court of Appeals hereby passes the following order:

MD10-10. YOUNGBLOOD v. THE STATE.

Victor Youngblood has filed a "Request for Rule 40 (B) Emergency Motion." 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. This power shall be exercised sparingly." Rule 40 (b) further provides that "[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 "[c]ontain a stamped 'filed' copy of the order being appealed."¹ Here, Youngblood has failed to attach a stamped filed copy of the order being appealed. Accordingly, this motion is hereby **DENIED**.

Court of Appeals of the State of Georgia

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

¹ Court of Appeals Rule 40 (b) (2).

Court of Appeals of the State of Georgia

ATLANTA, DEC 14 2009

The Court of Appeals hereby passes the following order:

MD10-10. YOUNGBLOOD v. THE STATE.

Victor Youngblood has filed a motion for reconsideration of the denial of his "Request for Rule 40 (B) Emergency Motion." 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. This power shall be exercised sparingly." Having considered the pleadings submitted in support of the motion, we conclude that the emergency relief sought by Youngblood is not warranted. Accordingly, Youngblood's motion for reconsideration is hereby **DENIED**.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 14 2009

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

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

Willie L. Mant Clerk.

MOTIONS DOCKET

JUDGE # a7 MOTION DOCKET NUMBER MD10-011

DATE: 12/10/09 REC #: 98367 PAID BY: Timothy Herring

CHARGE: _____

STYLE: Merwin Santos v. The State

ATTY. NT: Timothy T. Herring
 P.O. Box 13
 Palmetto ga 30268
 404-521-1999

ATTY. EE: Peter J. Skandalakis
 District attorney
 209 Courtyard Square
 Carroll County Courthouse Annex
 Carrollton ga 30117

LOWER CT. JUDGE: Dennis T. Blackmon

LOWER CT. CASE # _____

COUNTY: Carroll

* NO order included

BRIEFS FILED: _____

JUDGEMENT DATE: 12/11/09 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, DEC 11 2009

The Court of Appeals hereby passes the following order:

MD10-011. SANTOS v. THE STATE.

Appellant Merwin Santos has filed an emergency motion with this Court pursuant to Court of Appeals Rule 40 (b), asking that this Court vacate a trial court order directing him to pay a \$250 fee for representation by a public defender. Because Santos has failed to attach a stamped “filed” copy of the order being appealed,¹ we DENY the emergency motion. Moreover, as Rule 40 (b) (1) states, the power to grant emergency motions shall be exercised sparingly, and Santos’s argument that his return to state custody fails to support issuance of an emergency order or to adequately explain why the action requested is time-sensitive.

¹ Court of Appeals Rule 40 (b) (2).

Court of Appeals of the State of Georgia

Clerk's Office, **DEC 11 2009**

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

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

Clerk.

Willi L. Mant; 

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD 10 - 012

DATE: 1-12-10 REC #: 9999 PAID BY: Paup

CHARGE: Stay? Interment?

STYLE: Cedric A. Small v. The State

ATTY. NT: Cedric A. Small
960030 G-1 219 B D.S.P.
P.O. Box 750
Una-dilla, GA 31091

ATTY. EE: Mr. Gregory Edwards
Dist. Office
225 Pine Ave
Albany, GA 31701

LOWER CT. JUDGE: Judge L. Gray
LOWER CT. CASE # 98RD1423
COUNTY: Dougherty

BRIEFS FILED: NT

JUDGEMENT DATE: 1/13/10 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JAN 13 2010

The Court of Appeals hereby passes the following order:

MD-10-012. SMALL v. THE STATE.

On January 9, 2010, Cedric A. Small filed a Motion for Emergency Relief. Small's motion fails to satisfy the criteria set forth in Court of Appeals Rule 40 (b) and is therefore DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 13 2010*

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

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

Willi Z. Mart

, Clerk.

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD 10-013

DATE: 1-19-10 REC #: 98616 PAID BY: 98616 Alston & Bird

CHARGE: Stay of Arbitration

STYLE: Atlantic Station, LLC v. VRATSINAS Const Co.

ATTY. NT: John I. Spangler ^{GBN} 669025

Alston & Bird, LLP
1201 W. Peachtree St.
Atlanta, GA 30309-3424

404-881-7000 - FAX: 404-881-7777

ATTY. EE: Kent P. Smith
Smith, Currie & Hancock LLP
2700 Marquis One Tower
245 Peachtree St.

Atlanta, GA 30303-1227

LOWER CT. JUDGE: Ural D. Granville

LOWER CT. CASE # 2009 CV 172 615

COUNTY: Fulton

BRIEFS FILED: NT REPLY TO EE 1.25.10
EE 1/27/2010

JUDGEMENT DATE: 1/26/10 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA,

JAN 26 2010

The Court of Appeals hereby passes the following order:

MD10-013. ATLANTIC STATION, LLC v. VRATSINAS CONSTRUCTION COMPANY.

Atlantic Station has filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting an order staying arbitration of a contract dispute between the parties pending a determination of the direct appeal filed by Atlantic Station in this Court. The notice of appeal acts as a supersedeas until the appeal is disposed of in this Court. *12052 Associates v. W. C. Carson, Inc.*, 202 Ga. App. 731 (415 SE2d 298) (1992). We therefore decline to exercise our emergency powers under Rule 40 (b) and the emergency motion for stay of arbitration is denied.

Court of Appeals of the State of Georgia JAN 26 2010
Clerk's Office, Atlanta

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

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

, Clerk.

Willie Z. Mantz

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD10-014

DATE: 1-19-10 REC # 98619 PAID BY: Schulter, Ward & Turner

CHARGE: Motion to Stay

STYLE: James Fisher v. Alyson Fisher

ATTY. NT: Erin S. Stone, Esq.
Schulter, Ward & Turner, LLP
260 Peachtree St, Ste 2700
Atl, Ga 404-688-6800

ATTY. EE: J. Matthew Anthony Esq
Warren, Mayone, Bates, Nolin PC
Ste 2300, 3350 Riverwood Pky SE
Atlanta, Ga 30339

LOWER CT. JUDGE: Judge Baronetta Tipton Lane
LOWER CT. CASE # 2010 CV 179685
COUNTY: Fulton

BRIEFS FILED: NT

JUDGEMENT DATE: 1/21/10 JUDGMENT: Withdrawn

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

N.O.I. FILED: _____

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

ATLANTA, JAN 21 2010

The Court of Appeals hereby passes the following order:

MD10-14. JAMES FISHER v. ALYSON FISHER

Upon consideration of the applicant's Motion for Permission to Withdraw the Rule 40(b) Emergency supersedeas, the same is hereby GRANTED.

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

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

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

Clerk.

Willi Z. Mart

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD-10-015

DATE: 2/5/2010 REC #: _____ PAID BY: Supreme Court
Transferred from Supreme Court

CHARGE: To Stay Hearing

STYLE: Ramsey Suphi Agan v. Ga Dept. of Banking and Finance

ATTY. NT: John F. Woodham
Woodham & Associates, LLC
2625 Piedmont Rd Ste. 56-295
Atlanta, GA 30324

ATTY. EE: Oscar B. Fears, III
Senior Asst. Atty. General
40 Capital Sq. SW
Atlanta, GA 30334-1300

LOWER CT. JUDGE: _____
LOWER CT. CASE # 2010 CV 186776
COUNTY: Fulton Co

BRIEFS FILED: _____

JUDGEMENT DATE: 2/8/10 JUDGMENT: Denied

M.F.R. FILED: 2/8/2010 Denied 2/9/2010
REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, FEB - 8 2010

The Court of Appeals hereby passes the following order:

MD-10-015. AGAN v. GEORGIA DEPARTMENT OF BANKING AND FINANCE.

Ramsey Suphi Agan filed this emergency motion with the Supreme Court of Georgia on February 3, 2010, and the motion was transferred to this Court on February 5, 2010. Agan seeks a stay of a pending mortgage lender license revocation hearing, which is scheduled to take place on February 10, 2010. Agan fails to show how granting this emergency 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, Agan's emergency motion is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB - 8 2010*

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

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

Willi L. Martini, Clerk.

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

ATLANTA, FEB - 9 2010

The Court of Appeals hereby passes the following order:

**Case No. MD-10-015. AGAN v. GEORGIA DEPARTMENT OF BANKING
AND FINANCE.**

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

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB - 9 2010

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

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

Willi L. Mart, Clerk.

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD-10-016

DATE: 2/5/2010 REC #: _____ PAID BY: 9999

CHARGE: Motion for Supersedeas

STYLE: Nicole Borden v. Donald Moran

ATTY. NT: Valerie Adams
191 Peachtree St
Suite 3300
Atlanta, GA 30303

ATTY. EE: Trey Phillips
860 Duluth Hwy Suite 310
Lawnenceville, GA 30043

LOWER CT. JUDGE: Carla Brown
LOWER CT. CASE # 10-C-01471-53
COUNTY: Gwinnett Co.

BRIEFS FILED: _____

JUDGEMENT DATE: 2/8/10 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, FEB - 8 2010

The Court of Appeals hereby passes the following order:

MD-10-016. BORDEN v. MORAN.

Nicole Borden filed this emergency motion seeking an order granting supersedeas pending her appeal of a dispossessory judgment issued against her. The writ of possession issued against Borden by the Magistrate Court of Gwinnett County required that Borden pay into the court registry an amount equal to the past due rent plus additional monthly rental payments in order to maintain possession of the premises during the pendency of any appeal. OCGA § 44-7-56 provides that where a dispossessory judgment is entered against the tenant, as here, the trial court shall require the tenant to make such payments if he or she pursues an appeal. As a result of Borden's failure to make such payments, she is not entitled to maintain possession of the premises pending appeal. Borden has failed to show how granting an emergency 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, Borden's emergency motion is DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB - 8 2010*

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

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

Willi Z. Mant, Clerk.

MOTIONS DOCKET

JUDGE # 96 MOTION DOCKET NUMBER MD-10-017

DATE: 2/12/2010 REC #: 98855 PAID BY: Jeffrey Sakas

CHARGE: Contempt - Incarceration

STYLE: Miguel A. Jimenez v. Hanna Raab

ATTY. NT: Jeffrey K. Sakas
150 E. Ponce de Leon Ave.
Suite 260
Decatur, GA 30030

ATTY. EE: Lawrence O. Anderson
Flint, Connolly & Walker, LLC
131 East Main St
Canton, GA 30114

LOWER CT. JUDGE: G. Gary Nelson, III
LOWER CT. CASE # 04-cv-000050
COUNTY: Bartow Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 2/12/2010 JUDGMENT: Granted

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, FEB 12 2010

The Court of Appeals hereby passes the following order:

MD-10-017. JEMINEZ v. RAAB.

Miguel A. Jeminez filed this emergency order asking this Court to vacate an order of the Superior Court of Bartow County, issued on February 4, 2010, which found him in contempt and ordered his incarceration for failing to pay a money judgment previously issued against him. We have held that a money judgment cannot be enforced by an action for contempt, except where explicitly allowed by statute, *Backus v. Backus*, 299 Ga. App. 122, 123 (1) (682 SE2d 138) (2009), and we therefore GRANT Jeminez's motion for emergency relief. The order of contempt entered by the Superior Court of Bartow County is hereby stayed until such time that Jeminez can appeal the order holding him in contempt and ordering his incarceration. The Clerk of this Court is directed to transmit a copy of this order to the Superior Court of Bartow County immediately, and the trial court is hereby directed to cause the release of Jeminez, if he has already been incarcerated, *instanter* pending resolution of his appeal of the contempt order on the merits.

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

JUDGE # 98 MOTION DOCKET NUMBER MD-10-018

DATE: 3/4/2010 REC #: 99043 PAID BY: Pearson Law Group

CHARGE: Supersedeas

STYLE: Rachelle Louise Hippo v. Michael Lee Hippo, Sr.

ATTY. NT: Romero T. Pearson
Pearson Law Group, LLC
16 Towne Park Dr.,
Lawrenceville, GA 30044

ATTY. EE: Lawrence A. Stagg
P.O. Box 429
Ringgold, GA 30736

LOWER CT. JUDGE: Ralph Van Pelt, Jr.

LOWER CT. CASE # 2009-SU-CV-2397

COUNTY: Superior Court Catonsville County

BRIEFS FILED: NT

JUDGEMENT DATE: 3/5/2010 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR - 5 2010

The Court of Appeals hereby passes the following order:

MD-10-018. HIPPO v. HIPPO.

In this child custody dispute between Rachelle Louise Hippo and her former husband, Michael Lee Hippo, Sr., Ms. Hippo has filed an emergency motion for supersedeas, pursuant to Court of Appeals Rule 40 (b). As best we can discern from the brief in support of her motion, Ms. Hippo is seeking to prevent the enforcement of a temporary order entered by the trial court, which order awarded custody of the couple's two minor children to Mr. Hippo. For the reasons explained below, that motion is DENIED.

The facts currently available to us show that, following the parties' divorce in 2002, Ms. Hippo was awarded physical custody of the couple's two minor children. Sometime in 2009, Mr. Hippo filed a petition seeking a change in custody, and a temporary hearing was held on that motion on November 18, 2009. The trial court entered a temporary order on December 15, 2009, granting Mr. Hippo custody of the children and appointing a guardian ad litem for the children.

In her brief, Ms. Hippo asserts that the trial judge who conducted the temporary hearing and entered the temporary order had a conflict of interest, because Mr. Hippo's counsel served as chairman and treasurer of the judge's re-election committee. That trial judge subsequently recused himself from the case and Ms. Hippo moved to vacate the temporary order. In response, Mr. Hippo filed a motion for contempt, seeking to enforce that order. The new trial judge held a hearing on both motions on February 17, 2010 and entered an order denying Ms. Hippo's motion to

vacate and granting Mr. Hippo's motion for contempt.¹ The contempt order, entered on February 19, 2010, provided that Ms. Hippo could purge herself of contempt by paying Mr. Hippo's attorney fees and by removing a billboard she had erected on a local highway. Later that same day, Ms. Hippo was taken into custody by the Catoosa County Sheriff's Department and was held for approximately one hour, until the billboard was successfully removed.

Ms. Hippo thereafter filed a request for a certificate of immediate review of the temporary order. The trial court denied that motion on February 23, 2010. On March 5, 2010, Ms. Hippo filed the instant motion for emergency supersedeas, requesting that this Court enter an order staying the proceedings in the trial court – i.e., she seeks to have us issue an order preventing the enforcement of the temporary order entered by the trial court on December 15, 2009. This we decline to do.

Court of Appeals Rule 40 (b) provides:

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

(Emphasis supplied.) The Rule further requires that any motion made thereunder “must . . . [c]ontain a stamped ‘filed’ copy of the order being appealed.” Court of Appeals Rule 40 (b) (2).

As the above language demonstrates, emergency relief under Rule 40 (b) requires both the existence of an appealable order and an intent to appeal the same. Thus, the Rule contemplates situations where relief beyond the supersedeas normally afforded by the filing of a notice of appeal is necessary. See OCGA § 5-6-46 (a) (“[i]n

¹ The facts regarding the motion to vacate and the contempt motion are taken solely from Ms. Hippo's brief, as she failed to attach copies of either the motions or the orders.

civil cases, the notice of appeal . . . shall serve as supersedeas upon payment of all costs in the trial court by the appellant”).

Given the language and purpose of Rule 40 (b), Ms. Hippo’s claim for relief under the same fails for two reasons. First, she has not evidenced any intent to appeal the temporary order, because she has not filed a timely notice of appeal from the same.² Second, Ms. Hippo offers no argument to explain why an emergency order would be necessary either to preserve our jurisdiction over an appeal from the trial court’s order or to prevent a contested issue in the custody proceeding from becoming moot. Hence, she has failed to meet the requirements for relief under Rule 40 (b). Accordingly, Ms. Hippo’s motion is hereby DENIED.

Court of Appeals of the State of Georgia
Clerk’s Office, Atlanta **MAR - 5 2010**

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

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

Willi Z. Mantz, Clerk.

² Given that the order at issue was labeled temporary, Ms. Hippo apparently contemplated following the procedures for an interlocutory appeal, as evidenced by her failed attempt to obtain a certificate for immediate review. Effective January 1, 2009, however, the Georgia Legislature amended OCGA § 5-6-34 to allow direct appeals from “[a]ll judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody or holding or declining to hold persons in contempt of such child custody judgment or orders.” (Emphasis supplied.) OCGA § 5-6-34 (a) (11). Interpreting this statutory provision, this Court has held that it allows direct appeals even from temporary orders of child custody. See *Taylor v. Curl*, 298 Ga. App. 45 (679 SE2d 80) (2009).

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-10-019

DATE: 3/26/2010 REC # 99238 PAID BY: Law Dept.

CHARGE: Adoption - Placement

STYLE: In Re: Petition of Teresa Goudeau to Adopt Minor Child

ATTY. NT: Law Dept.
Thurbert E. Baker
Dennis R. Dunn
Shalen S. Nelson

Elizabeth Williamson
Gary A. Glover

ATTY. EE: Alice W. Padgett
1223 George C. Wilson Drive
Augusta, GA 30309

Janet Weinberger
P.O. Box 312464
Augusta, GA 30901

LOWER CT. JUDGE: J. David Roper

LOWER CT. CASE # 2009 RCA 60

COUNTY: Superior Court of Richmond Co.

BRIEFS FILED: _____

JUDGEMENT DATE: 3/26/10 JUDGMENT: Granted

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, APR - 8 2010

The Court of Appeals hereby passes the following order:

**MD10-019. IN RE: PETITION OF TERESA GOUDEAU TO ADOPT A
MINOR CHILD**

The attached order is hereby substituted for the Court's order of March 26, 2010 in which the style of the order contained a typographical error. The correct style should be MD-10-019 rather than MO-10-019.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR - 8 2010*

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

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

Clerk.

Willi Z. Marti

Court of Appeals of the State of Georgia

ATLANTA, MAR 26 2010

The Court of Appeals hereby passes the following order:

MD-10-019. IN RE: THE PETITION OF THERESA GOUDEAU TO ADOPT A MINOR CHILD.

The Georgia Department of Human Services, acting by and through the Richmond County Department of Family and Children Services (“the Department”) has moved this Court for an emergency motion to bar the Superior Court of Richmond County from taking any further action in this case, which is currently on appeal to this Court. For the reasons set forth below, that motion is GRANTED and the Superior Court of Richmond County is hereby ORDERED to refrain from taking any further action in this case unless and until the same should be remanded to that court.

This case arises out of the trial court’s denial of Theresa Goudeau’s petition to adopt a minor child. That child was born on July 22, 2007, immediately entered the Department’s custody, and was placed in foster care with Ms. Goudeau and her companion, Mortimer Lovett, two days later. The child has remained with Ms. Goudeau and Mr. Lovett since that time. Earlier this year, the Department approved Ms. Goudeau to adopt the minor child and filed a petition for adoption in the Superior Court of Richmond County. On March 10, 2010, the superior court entered an order denying that petition on the grounds that Goudreau and Lovett were not married and that continued exposure to their meretricious relationship would have an adverse effect on the child’s moral character. The order further required the Department to remove the child from Ms. Goudeau’s home and to “place her with an appropriate custodian within fifteen days from the entry of this judgment.” On March 24, 2010, the Department filed a notice of appeal from the trial court’s order. On March 25, the superior court issued a notice of an “emergency” hearing directing the child’s

guardian ad litem, counsel for the Department, and counsel for Goudeau to appear for a March 26 hearing “to determine the temporary custodial disposition of the minor child.” The Department then filed the instant motion.

An order entered on a petition for adoption, regardless of whether it grants or denies the petition, is a final order. *In re J. S. J.*, 180 Ga. App. 873 (350 SE2d 843) (1986). Thus, the Department’s filing of the notice of appeal from that order operated to divest the superior court of jurisdiction over the case. See, e.g., *In re Estate of Zeigler*, 259 Ga. App. 807, 808 (1) (578 SE2d 519) (2003); OCGA § 5-6-46 (a).

Moreover, even assuming that the superior court retained jurisdiction to determine the issue of child custody, we nevertheless find that the relief requested by the Department is appropriate under Court of Appeals Rule 40 (b). That rule allows this Court to exercise its inherent power to “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.” Here, the trial court explicitly stated that it was holding an emergency hearing on the issue of child custody “[i]n view of the notice of appeal filed by the Department.” An appeal from the trial court’s order, however, does not constitute an “emergency” requiring an immediate hearing. Additionally, acting on the issue of custody prior to the appeal poses a threat of harm to the child. The child has known no home other than Goudeau’s; the Department and the child’s guardian ad litem have each expressed that removing the child from this home would cause the child irreparable harm; and the child is not in imminent danger of harm. Therefore any custody proceedings, if necessary, can be conducted following the conclusion of the appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 26 2010**

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

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

Willie L. Martin, Jr., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 26 2010

The Court of Appeals hereby passes the following order:

**MO-10-019. IN RE: THE PETITION OF THERESA GOUDEAU TO ADOPT
A MINOR CHILD.**

The Georgia Department of Human Services, acting by and through the Richmond County Department of Family and Children Services (“the Department”) has moved this Court for an emergency motion to bar the Superior Court of Richmond County from taking any further action in this case, which is currently on appeal to this Court. For the reasons set forth below, that motion is GRANTED and the Superior Court of Richmond County is hereby ORDERED to refrain from taking any further action in this case unless and until the same should be remanded to that court.

This case arises out of the trial court’s denial of Theresa Goudeau’s petition to adopt a minor child. That child was born on July 22, 2007, immediately entered the Department’s custody, and was placed in foster care with Ms. Goudeau and her companion, Mortimer Lovett, two days later. The child has remained with Ms. Goudeau and Mr. Lovett since that time. Earlier this year, the Department approved Ms. Goudeau to adopt the minor child and filed a petition for adoption in the Superior Court of Richmond County. On March 10, 2010, the superior court entered an order denying that petition on the grounds that Goudreau and Lovett were not married and that continued exposure to their meretricious relationship would have an adverse effect on the child’s moral character. The order further required the Department to remove the child from Ms. Goudeau’s home and to “place her with an appropriate custodian within fifteen days from the entry of this judgment.” On March 24, 2010, the Department filed a notice of appeal from the trial court’s order. On March 25, the superior court issued a notice of an “emergency” hearing directing the child’s

guardian ad litem, counsel for the Department, and counsel for Goudeau to appear for a March 26 hearing “to determine the temporary custodial disposition of the minor child.” The Department then filed the instant motion.

An order entered on a petition for adoption, regardless of whether it grants or denies the petition, is a final order. *In re J. S. J.*, 180 Ga. App. 873 (350 SE2d 843) (1986). Thus, the Department’s filing of the notice of appeal from that order operated to divest the superior court of jurisdiction over the case. See, e.g., *In re Estate of Zeigler*, 259 Ga. App. 807, 808 (1) (578 SE2d 519) (2003); OCGA § 5-6-46 (a).

Moreover, even assuming that the superior court retained jurisdiction to determine the issue of child custody, we nevertheless find that the relief requested by the Department is appropriate under Court of Appeals Rule 40 (b). That rule allows this Court to exercise its inherent power to “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.” Here, the trial court explicitly stated that it was holding an emergency hearing on the issue of child custody “[i]n view of the notice of appeal filed by the Department.” An appeal from the trial court’s order, however, does not constitute an “emergency” requiring an immediate hearing. Additionally, acting on the issue of custody prior to the appeal poses a threat of harm to the child. The child has known no home other than Goudeau’s; the Department and the child’s guardian ad litem have each expressed that removing the child from this home would cause the child irreparable harm; and the child is not in imminent danger of harm. Therefore any custody proceedings, if necessary, can be conducted following the conclusion of the appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 26 2010

*I certify that the above is a true extract from
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*Witness my signature and the seal of said court
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Willi Z. Mart  *, Clerk.*

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD10-020

DATE: 4-20-2010 REC #: 9999 PAID BY: _____

CHARGE: Injunction

STYLE: Shade Lawal v. The State

ATTY. NT: Shade Lawal
219715 R-1
Cobb Co. Jail.
P.O. Box 100110 Marietta, GA 30061

ATTY. EE: Patrick H. Head
District Attorney, Cobb Judicial Circuit
10 E. Park Square, 5th Floor
Marietta, GA 30090 770-528-3080

LOWER CT. JUDGE: Adele Grubbs
LOWER CT. CASE # 08-9-5344
COUNTY: Cobb

BRIEFS FILED: NT

JUDGEMENT DATE: 4-20-10 JUDGMENT: Denied

M.F.R. FILED: 5/5/2010
REPOSSES: Denied 5/6/2010

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, APR 20 2010

The Court of Appeals hereby passes the following order:

MD10-020. LAWAL v. THE STATE

Appellant Shade Lawal filed an Emergency Appeal for Preliminary Injunction to Release Appellant on April 19, 2010. Appellant's motion fails to satisfy the criteria set forth in Court of Appeals Rule 40 (b). The motion is therefore DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 20 2010

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the minutes of the Court of Appeals of Georgia.*

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hereto affixed the day and year last above written.*

Willi Z. Mat: [Signature], Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAY - 6 2010

The Court of Appeals hereby passes the following order:

MD10-020. LAWAL v. THE STATE

Appellant Shade Lawal filed an Emergency Appeal for Preliminary Injunction to Release Appellant on April 19, 2010 that was denied by this Court April 20, 2010. On May 5, 2010, Appellant filed a motion for reconsideration that fails to satisfy the criteria set forth in Court of Appeals Rule 37 (e) for the grant of a motion for reconsideration. The motion for reconsideration is therefore DENIED. Appellant is reminded that Court of Appeals Rule 37 (d) provides:

No party shall file a second motion for reconsideration unless permitted by order of the Court. The filing of a motion for permission to file a second motion for reconsideration does not toll the 10 days for filing a notice of intent to apply for certiorari with the Supreme Court of Georgia.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **MAY - 6 2010**

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*Witness my signature and the seal of said court
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Willi Z. Mat: [Signature] , Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-10-021

DATE: 5/4/2010 REC #: 99571 PAID BY: Simon Weinstein

CHARGE: RICO

STYLE: Natverlal R. Patel et al v.
State of Georgia, ex rel. Hayward Altman, District
Attorney for the Middle Judicial Circuit

ATTY. NT:

Simon Weinstein
3730 Mayfair Road NE
Atlanta GA 30342

Malcolm Bryant, Jr.
Bryant + Cook PC
502 Jackson St.

ATTY. EE: Mr. S. Hayward Altman
Middle Judicial Circuit
P.O. Drawer J
Swainsboro GA 30401

P.O. Box 28 Vidalia ga 30475
Mr. Michael G. Lambros
Mr. Andrew J. Ekonomou
450 The Hurt Bldg.
50 Hurt Plazase
Atlanta GA 30303

LOWER CT. JUDGE: Kathy S. Palmerz
LOWER CT. CASE # 10CV256
COUNTY: Toombs Superior

BRIEFS FILED: NT
EE

JUDGEMENT DATE: ~~4/9/10~~ JUDGMENT: Denied
5-7-10

M.F.R. FILED: 5/13/10
REPOSSES: ~~4/6/2010~~ 5-6-10 Denied 5/20/10

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAY - 7 2010

The Court of Appeals hereby passes the following order:

MD-10-21. NATVERLAL R. PATEL, SANGITA N. PATEL, OJES FOOD, INC., d/b/a CITGO FOOD MART v. STATE OF GEORGIA, ex rel. HAYWARD ALTMAN, District Attorney for the Middle Judicial Circuit.

Natverlal R. Patel, Sangita N. Patel, Ojes Food, Inc., d/b/a Citgo Food Mart (“the Patels”), have moved for an order from this court under Court of Appeals Rule 40 (b) dismissing the complaint, without prejudice, filed by the State of Georgia, ex rel, Hayward Altman, District Attorney for the Middle Judicial Circuit, vacating the trial court’s order appointing a temporary receiver and granting a temporary restraining order, and permitting the Patels to return to the premises and operate the business. In the alternative, the Patels ask this court to dissolve such parts of the temporary restraining order entered on March 8, 2010, that would be necessary to dissolve the receivership, grant them access to store and the business assets, and permit them to operate the store. They also ask us to make that order applicable to 28 other businesses affected by the trial court’s orders.

Court of Appeals Rule 40 (b), Emergencies, authorizes this court, “[i]n the exercise of its inherent power” to “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.*” (Emphasis supplied.) See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV (“Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments. . .”). In accordance with Rule 40 (b), this power is “exercised sparingly.”

It is apparent that the Patels' motion seeks a ruling on the merits of the substantive issues in their case. That is not the function of a Rule 40(b) motion. Further, because no notice of appeal has been filed, the Patels appear to be asking this court to exercise original jurisdiction. Such action, however, is beyond the jurisdiction of this court. The Court of Appeals exists as a court of review to correct errors of law committed by lower tribunals. Ga. Const. 1983, Art. VI, Sec. V, Par. III; *Austin v. State*, 286 Ga. App. 149, 155 (3) (e) n. 6 (648 SE2d 414) (2007). Although this court can, in limited circumstances, grant emergency motions to preserve our jurisdiction or to prevent issues from becoming moot, we lack original jurisdiction and cannot address substantive issues other than for purposes of reviewing a lower court's ruling. *Wilshin v. State*, 289 Ga. App. 683, 685 (3) (658 SE2d 224) (2008). Accordingly, the Patel's motion is denied.



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

MAY - 7 2010

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

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

Will E. Mat:R , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAY 20 2010

The Court of Appeals hereby passes the following order:

MD-10-21. NATVERLAL R. PATEL, SANGITA N. PATEL, OJES FOOD, INC., d/b/a CITGO FOOD MART v. STATE OF GEORGIA, ex rel. HAYWARD ALTMAN, District Attorney for the Middle Judicial Circuit.

Natverlal R. Patel, Sangita N. Patel, Ojes Food, Inc., d/b/a Citgo Food Mart (“the Patels”), have moved for reconsideration of this court’s order of May 7, 2010, denying relief under Court of Appeals Rule 40 (b). The relief sought in their motion was to dismiss the District Attorney’s complaint, without prejudice, to vacate the trial court’s order appointing a temporary receiver and granting a temporary restraining order, and to permit the Patels to return to the premises and operate their business. In the alternative, they asked this court to dissolve the parts of the temporary restraining order necessary to dissolve the receivership, grant them access to the store and the business assets, and permit them to operate the store. They also asked this court to make the order of this court granting that relief applicable to all 28 other businesses affected by the trial court’s orders.

Such relief, however, would grant affirmative relief altering the status quo and returning the Patels, their business, and those of the other 28 businesses affected to the conditions existing before the receiver was appointed and the temporary restraining order was granted. These actions are not required to preserve this court’s jurisdiction over the Patel’s appeal, if one¹ is filed, and these actions are not required to prevent any contested issues from becoming moot. The receiver has been appointed and has

¹At the time the motion for reconsideration was filed, the Patels had not filed a Notice of Appeal.

taken control of the Patels' business as well as the other businesses. Therefore, it is too late now to obtain an order preventing those events from happening. Neither *Jackson v. Bibb County School District*, 271 Ga. 18, 19 (515 SE2d 151) (1999), nor *Citizens for Ethics in Government, LLC, v. The Atlanta Development Authority*, ___ Ga. App. ___ (Appeal No. A09A2105, decided March 30, 2010), require a different result. In *Jackson* the action sought to be prevented had already occurred and thus it was too late to seek such relief from the appellate court, and in *Citizens for Ethics in Government* the emergency motion seeking a stay was denied because the trial court's earlier actions made the relief sought moot.

In this case, assuming proper compliance with the rules of appellate practice, the Patels will not be prevented from challenging the trial court's actions because their original motion was denied. Therefore no action by this court is required to preserve the jurisdiction of this court or to prevent their appeal from becoming moot

Accordingly, the Patel's motion for reconsideration is DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 20 2010

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

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

Will E. Mat:R

, Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-10-022

DATE: 5/5/2010 REC #: 9999 PAID BY: Carl Erickson pauper

CHARGE: STAY

STYLE: Radcliff Wauchoupe et al vs hitton loan Servicing, LP et al

^{prose}
ATTY. NT: Carl Erickson
7456 Sandstone lane
Union City, GA. 30291
~~770~~ 678-768-0768

^{party}
ATTY. EE: Howell A. Hall
c/o Pendergast & Jones, PC
115 Perimeter Center Place Ste 1000
Atlanta, GA 30346

hitton loan Servicing
c/o Pendergast & Jones, PC
115 Perimeter Center Place Ste 1000
Atlanta, GA 30346

LOWER CT. JUDGE: Judge Livingston

LOWER CT. CASE # 10ED475660

COUNTY: Magistrate Court of Fulton Co.

BRIEFS FILED: _____

JUDGEMENT DATE: 5/15/10 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAY 10 2010

The Court of Appeals hereby passes the following order:

**MD-10-22. RADCLIFF WAUCHOUPE and CARL ERICKSON v. LITTON
LOAN SERVICING, LP, and HOWELL A. HALL.**

Radcliff Wauchoupe and Carl Erickson have filed an emergency motion under Court of Appeals Rule 40 (b) for a stay or temporary restraining order of the decision of the Magistrate Court of Fulton County granting a writ of possession apparently to Litton Loan Servicing, LP, and Howell A. Hall on April 15, 2010. As no copy of the writ is included with the motion, we cannot ascertain the relief granted or when the writ was entered.

Court of Appeals Rule 40 (b) requires that a motion under the Rule must: Contain an explanation why an order of this Court is necessary and why the action requested is time sensitive; Contain a stamped "filed" copy of the order being appealed; Contain a stamped "filed" copy of the notice of appeal, if such has been filed in the trial court; Show that service has been perfected upon the opposing party before filing the motion with the Court; and Be accompanied by a filing fee, a sufficient pauper's affidavit, or a form showing a public defender has been appointed to represent the party, unless the motion is filed in a pending case already docketed with the Court.

Other than a pauper's affidavit and a notice of appeal which were submitted with the motion, this motion does not comply with these requirements.

Further, because OCGA § 15-10-41 (b)(1) provides that “appeals may be had from judgments returned in the magistrate court to the state court of the county or to the superior court of the county,” this court has no jurisdiction to consider any appeal from the judgment of the magistrate court. Moreover, it is likely that any appeal based upon the notice of appeal filed on May 5, 2010, may be untimely as appeals in dispossessory actions must be filed within seven days of entry of the writ of possession. OCGA § 44-7-56.

Court of Appeals Rule 40 (b) authorizes this court, “[i]n the exercise of its inherent power” to “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.*” (Emphasis supplied.) See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV (“Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments. . . .”). This power is “exercised sparingly” and “[g]enerally, no order shall be made or direction given in an appeal until it has been docketed in this Court.” Rule 40 (b).

Because Wauchoupe and Erickson have not shown that this is a matter within the jurisdiction of this court, or than order is necessary to prevent an issue from becoming moot, their motion is denied.



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

MAY 10 2010
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Witness my signature and the seal of said court
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Willi Z. Mat:R , Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-10-023

DATE: 5/12/2010 REC #: 99651 PAID BY: The Myer law Firm

CHARGE: To file Exhibits under Seal

STYLE: Donna Aden v. Melissa Stafford et al

ATTY. NT: Mari L. Myer
The Myer law Firm
755 Commerce Dr, Ste 800
Decatur, GA 30030

ATTY. EE: Kimberly Childs
The Childs law Firm
100 Galleria Pkwy, Suite 1130
Atlanta, GA 30339

Erick J. Brael
The Brael law Firm, LLC
503 Commerce Park Dr., Ste. G
Marietta, GA 30060

LOWER CT. JUDGE: Robert E. Flournoy, III
LOWER CT. CASE # 09-1-0264-40
COUNTY: Cobb County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 5/14/10 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA,

MAY 14 2010

The Court of Appeals hereby passes the following order:

MD-10-023. DONNA ADEN v. MELISSA STAFFORD and CONVERGE SOLUTIONS UNLIMITED, INC.

Donna Aden has filed an emergency motion under Court of Appeals Rule 40 (b) for leave to file under seal certain confidential exhibits to her application to appeal an interlocutory order of the Superior Court of Cobb County. See Court of Appeals Rule 30 (f). The exhibits in question contain social security numbers and various tax returns. These exhibits were filed under seal in the trial court, and Melissa Stafford and Converge Solutions Unlimited, Inc., do not object to the sealing of these exhibits. Because the Certificate of Immediate review was entered on May 10, 2010, any application for appeal under OCGA § 5-6-34 (b) must be filed no later than May 20, 2010. Thus, an order authorizing the exhibits to be filed under seal must be entered before that date or these exhibits cannot be filed under seal with the application and the court may lose jurisdiction to consider the application.

Court of Appeals Rule 40 (b), Emergencies, authorizes this court, “[i]n the exercise of its inherent power” to “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.” See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV (“Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments. . . .”).

Accordingly, to preserve this court’s jurisdiction over Aden’s application to

appeal this motion is GRANTED.



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

MAY 14 2010

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the minutes of the Court of Appeals of Georgia.*

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

Will Z. Mat:R , Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-10-024

DATE: 5/12/2010 REC #: 99662 PAID BY: Alston & Bird

CHARGE: Stay of Enforcement of Judgment

STYLE: First National Bank v. Michael J. Kistler

ATTY. NT: Daniel F. Diffley
Jason D. Papp
Alston & Bird, LLP
1201 West Peachtree St
Atlanta, GA 30309-3424

ATTY. EE: Patrick T. O'Connor
Douglas E. Herman
Oliver, Manov, LLP
218 West State Street
Savannah, GA 31401

Ronald C. Berry
P.O. Box 10223
Savannah, GA 31412

LOWER CT. JUDGE: John E. Morse, Jr.

LOWER CT. CASE # CV09-2222-MO

COUNTY: Superior Ct. of Chatham County

BRIEFS FILED: _____

JUDGEMENT DATE: 5/21/10 JUDGMENT: Denial

M.F.R. FILED: _____

REPOSSES: 5/17/2010 Reply to Response 5/19/10

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAY 21 2010

The Court of Appeals hereby passes the following order:

MD-10-024. FIRST NATIONAL BANK v. MICHAEL J. KISTLER.

The First National Bank has moved for an order from this court under Court of Appeals Rule 40 (b) staying the trial court's order holding that the Bank had no right to set off an amount Kistler allegedly owed because of his personal guaranty of an unsecured loan against Kistler's secured line of credit and requiring First National Bank to return \$1,022,486.12 to Kistler's line of credit. The Bank contends that if it is forced to comply with the court's order, Kistler will pay off the amount he otherwise owes on the line of credit and close the line of credit. The Bank argues that if Kistler takes that action, its appeal will become moot.

Court of Appeals Rule 40 (b), Emergencies, authorizes this court, "[i]n the exercise of its inherent power" to "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." See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV ("Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments. . ."). In accordance with Rule 40 (b), this power is "exercised sparingly."

The Bank's premise is incorrect. The issue in its appeal is not whether it should return the money to Kistler's line of credit and jurisdiction over the Bank's appeal is not dependent upon the existence of Kistler's line of credit. As the Bank correctly points out in its Notice of Appeal from the trial court's order, the injunction in this case is ancillary to the trial court's ruling that it was not authorized to set-off against

the line of credit. Therefore, regardless of whether Kistler closes his line of credit, this court can review the trial court's decision on whether the set-off was authorized, and if it is determined that it was authorized, order appropriate relief.

Accordingly, First National Bank's motion is DENIED.



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

MAY 21 2010

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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.*

Wili E. Mat:R , Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-10-025

DATE: 5/18/2010 REC #: 9999 PAID BY: Rept Council

CHARGE: Custody

STYLE: In the Interest of C. J. F.

ATTY. NT: Cynthia A. Hain, LLC
Law Offices of Cynthia A. Hain
180 Camden Hill Rd, Ste C.
Lawrenceville, GA 30046

ATTY. EE: Lytia G. Brown
Special Asst. Atty General
Fulton County
P.O. Box 4281
Lithia Springs, GA 30122

Mr. J. Henry Norman
Fulton Office of Child Advocate
Fulton Co. Juvenile Crthouse
395 Pryor St, SW
Atlanta, GA 30312

LOWER CT. JUDGE: Assoc. Judge Bradley Boyd
LOWER CT. CASE # 07DPO7089
COUNTY: Fulton

BRIEFS FILED: EE 5/20/2010

JUDGEMENT DATE: 5/21/2010 JUDGMENT: Denied

M.F.R. FILED: _____
REPOSSES: 5/20/2010

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAY 21 2010

The Court of Appeals hereby passes the following order:

MD-10-25. IN THE INTEREST OF: C. J. F., a child.

The mother of C. J. F., a minor child who is the subject of proceedings in the juvenile court, has moved for an order from this court under Court of Appeals Rule 40 (b) seeking the return of the child to her custody pending her appeal of the juvenile court's order removing the child from the mother's custody.

Court of Appeals Rule 40 (b), Emergencies, authorizes this court, “[i]n the exercise of its inherent power” to “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.*” (Emphasis supplied.) See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV (“Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments. . . .”). In accordance with Rule 40 (b), this power is “exercised sparingly.”

The mother does not seek relief which would preserve jurisdiction over her appeal or which would prevent any issue in her appeal from becoming moot. Instead, she seeks an order returning the child to her custody. The relief she seeks is not the proper subject of a motion under Court of Appeals Rule 40 (b). Although this court can, in limited circumstances, grant emergency motions to preserve our jurisdiction or to prevent issues from becoming moot, we lack original jurisdiction and cannot address substantive issues other than for purposes of reviewing a lower court's ruling.

Wilshin v. State, 289 Ga. App. 683, 685 (3) (658 SE2d 224) (2008). Accordingly, the mother's motion must be DENIED.



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

MAY 21 2010

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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 E. Mat:R , Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-10-026

DATE: 5/20/2010 REC #: 99761 PAID BY: Roberts law

CHARGE: Supersedeas

STYLE: Kimsha Community Development v Ridgestone Bank

ATTY. NT: Grady Roberts
191 Peachtree St, NE, Suite 3300
Atlanta, GA 30303

ATTY. EE: Marcia Ernst
Smith, Gambrell + Russell, LLP
1230 Peachtree St, NE
Suite 3100, Promenade II
Atlanta

LOWER CT. JUDGE: Judge Louis Hevenson
LOWER CT. CASE # 09DD003587H
COUNTY: Magistrate Court Fulton Co.

BRIEFS FILED: 5/21/2010 EE response

JUDGEMENT DATE: 5/26/10 JUDGMENT: Denied

M.F.R. FILED: 6/15/2010
REPOSSES: ~~5/21/2010~~ 6/18/2010 Denied 6/18/2010

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAY 26 2010

The Court of Appeals hereby passes the following order:

**MD-10-0026. KIAMSHA COMMUNITY DEVELOPMENT CORPORATION,
INC. v. RIDGESTONE BANK.**

Kiamsha Community Development Corporation, Inc., has moved for an order from this court under Court of Appeals Rule 40 (a) and (b) granting supersedeas.

Court of Appeals Rule 40 (b), Emergencies, authorizes this court, “[i]n the exercise of its inherent power” to “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.*” (Emphasis supplied.) See Ga. Const. of 1983, Art. VI, Sec. I, Par. IV (“Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments. . . .”). In accordance with Rule 40 (b), this power is “exercised sparingly.”

Kiamsha Community Development Corporation’s motion suggests that it is appealing to this Court, but the Notice of Appeal attached to its motion states that Kiamsha House Ministries, Inc., apparently a different legal entity, is appealing from a writ of possession granted by the Magistrate Court of Fulton County on January 7, 2010, to the Superior Court of Fulton County. Further, the orders attached to the motion concern actions taken by the Magistrate Court of Fulton County in March and May of 2010 involving both entities. The motion does not show that any appeal has been taken to this Court by either of the Kiamsha entities.

In these circumstance Kiamsha Community Development Corporation, Inc., has

failed to show that action by this Court is necessary to preserve jurisdiction over an appeal or to prevent a contested issue from becoming moot. Therefore the motion is DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 26 2010**

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

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

Willi E. Mat:R , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN 18 2010

The Court of Appeals hereby passes the following order:

**MD-10-0026. KIAMSHA COMMUNITY DEVELOPMENT CORPORATION,
INC. v. RIDGESTONE BANK**

Pursuant to Court of Appeals Rule 37 (b), this court will only consider motions for reconsideration that are “filed within 10 days from the rendition of the judgment or dismissal.”

The Court passed the order denying Kiamsha’s motion for a writ supersedeas on May 26, 2010, and its motion for reconsideration was not filed until June 15, 2010.

Thus, as Kiamsha’s motion for reconsideration was not timely filed, the motion is DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 18 2010

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

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

Will E. Mat: [Signature] , Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD10-027

DATE: 6-7-10 REC #: 9999 PAID BY: Dumper

CHARGE: Custody / Contempt / Recusal

STYLE: Christopher M. Hunt v. Carolyn M. Hunt

ATTY. NT: Christopher M. Hunt
5456 Peachtree Industrial Blvd. Ste 410
Atlanta GA 30341-2235

ATTY. EE: ~~Chris~~ Robert Hunter, Esq.
400 North Park Tower Center Ste 1115
1000 Abernathy Rd. NE
Atlanta, GA 30341-2235

LOWER CT. JUDGE: Mark Anthony Scott
LOWER CT. CASE # 08-CV-8855-9; 06CV7174-9; 08CR2891; 08CV8721-9
COUNTY: DeKalb

BRIEFS FILED: NT

JUDGEMENT DATE: 6/19/10 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 9 2010

The Court of Appeals hereby passes the following order:

MD 10-027. HUNT v. HUNT.

Christopher M. Hunt has filed two emergency motions in this Court pursuant to Court of Appeals Rule 40 (b) in which he appears to request that this Court vacate the trial court's order temporarily modifying the parties' visitation arrangement with their children; enjoin the trial court from reducing a subsequent verbal visitation ruling to writing; and reverse the trial court's order denying Hunt's motion for recusal of the trial judge. Court of Appeals Rule 40 (b) provides:

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

No appeals from the trial court's orders are docketed in this Court at this time, and the relief Hunt seeks is not within the narrow scope of Rule 40 (b). Thus, Hunt's motions are denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 9 2010



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

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

W. E. Mat:R

, Clerk.

MOTIONS DOCKET

JUDGE # _____ MOTION DOCKET NUMBER MD10-028

DATE: 6/11/10 REC #: 99932 PAID BY: McGahren Gaskill + York

CHARGE: Injunction

STYLE: Floyd Trotman III et al v. Velocityteach
Project Management, LLC

ATTY. NT: Matthew F. McGahren
Eric J. Marlett
6171 Crooked Creek Rd. Ste A
peachtree corners GA 30092

ATTY. EE: Matthew Nasrallah
Robertson, Bodoh + Nasrallah, LLP
990 Cobb Parkway North Ste 205A
Marietta GA 30062

LOWER CT. JUDGE: S. Lark Ingram
LOWER CT. CASE # 0712280
COUNTY: Cobb Superior

BRIEFS FILED: _____

JUDGEMENT DATE: 6/14/2010 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 14 2010

The Court of Appeals hereby passes the following order:

MD 10-028. TROTMAN et al. v. VELOCITEACH PROJECT MANAGEMENT, LLC.

Floyd Trotman, III and Certifi Project Management Certification Training, LLC (“Certifi”) (collectively, “Movants”) have filed a motion for emergency relief pursuant to Court of Appeals Rule 40 (b) requesting that this Court stay the portion of the trial court’s permanent injunction order which requires Trotman to disclose to Velociteach Project Management, LLC (“Velociteach”) “the name, address and employer of all persons or entities to whom he has displayed or provided copies of the enjoined materials.” The “enjoined materials” include certain teaching materials Trotman used to conduct classes on project management certification training. The Movants maintain that the identity of Trotman’s private clients constitutes confidential commercial information.

In an action Velociteach commenced against the Movants below, a jury returned a verdict against Trotman on Velociteach’s claims of conversion, violation of the Uniform Deceptive Trade Practices Act, tortious interference with business relations, and breach of contract. The jury also returned a verdict against Certifi on Velociteach’s claims of conversion, tortious interference with business relations, and unjust enrichment. The jury awarded Velociteach \$13,750.00 in damages against Trotman and \$134,000.00 in damages against Certifi. The trial court subsequently issued an order *inter alia* granting Velociteach’s motion for a permanent injunction.

and denied the Movants' motion to suspend or modify the permanent injunction pending appeal. While the Movants have filed notices of appeal from *inter alia* the judgments entered on the jury verdict, the trial court's permanent injunction order, and its order denying their motion to suspend or modify the injunction, the appeals have not yet been docketed in this Court. The Movants represent that transmittal of the appellate record is delayed pending resolution of their motion for inclusion of substitute transcripts and that they have filed their Rule 40 (b) motion in advance of a hearing scheduled for June 14, 2010 on Velocitech's motion to hold them in contempt for failure to comply with the trial court's permanent injunction order.

While we do not have the benefit of the entire record on appeal, it appears that a stay is appropriate to prevent issues relating to the propriety of the permanent injunction from becoming moot. Court of Appeals Rule 40 (b); OCGA § 9-11-62 (e); *Jackson v. Bibb County School Dist.*, 271 Ga. 18, 19 (515 SE2d 151) (1999). Accordingly, we hereby stay during the pendency of the Movants' appeals the trial court's permanent injunction order to the extent it directs Trotman to provide Velocitech with "the name, address and employer of all persons or entities to whom he has displayed or provided copies of the enjoined materials."



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 14 2010

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

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

Willi E. Mat:R , Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD 10-029

DATE: 6/22/2010 REC #: 0012 PAID BY: Savage, Turner

CHARGE: _____

STYLE: Jonathan Smith ^{et al} v. State of Georgia

ATTY. NT: C. Dorian Britt
Savage, Turner, Krautter, Pinkney
Britt & Madison
304 East Bay Street
Savannah, GA 31412-10600

ATTY. EE: Stephen D. Kelley, DA
Jackie K. Johnson, ADA
Brunswick Judicial Circuit
P.O. Box 369
Woodbine, GA 31569

LOWER CT. JUDGE: Robert Falligant, Jr., Sitting by Designation
LOWER CT. CASE # 08V302552
COUNTY: Superior Court of Camden Co.

BRIEFS FILED: _____

JUDGEMENT DATE: 6/30/10 JUDGMENT: denied

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

N.O.I. FILED: _____

~~This E. Motion is related to A 10 A 1778 so I have given it to
the assigned judge, 93.~~

Court of Appeals of the State of Georgia

ATLANTA, JUN 30 2010

The Court of Appeals hereby passes the following order:

MD-10-029. SMITH v. CISCO et al.

Intervening plaintiffs Jonathan Smith, Streamline Logistics, LLC, Betty Padgett, B&L Express, Inc., John Darnell, Linda Fifield, and Henry Edwards, individually and on behalf of a certified class of claimants (“Intervenors”), have filed an Emergency Petition for Supersedeas to stay the proceedings below brought by the State of Georgia, *ex rel.*, Stephen E. Kelley, District Attorney for the Brunswick Judicial Circuit (the “State”). The Intervenors are a group of individuals and trucking companies who purchased gasoline or diesel fuel at three Cisco stations at which certain of the fuel pumps had been miscalibrated to dispense approximately 5% less fuel than indicated, in effect, overcharging consumers.

The Intervenors contend that their right to seek compensation from funds forfeited to the State pursuant to a consent motion between and among the State, Cisco Travel Plaza, Inc., Cisco Travel Plaza II, Inc., Cisco Express, Inc., Cisco Enterprises, Inc., Aletha Cisco Moore a/k/a Aletha Cisco Shave, and Tammy Cisco Walker will be prejudiced absent this Court’s stay of the underlying action. The record shows, however, that on June 8, 2010, approximately two weeks after entering its Order of Partial Disposition which, among other things, forfeited \$2,725,000 to the State pursuant to the above-referenced motion, the trial court entered an order setting a hearing on June 21, 2010 for the purpose of determining the procedure to be implemented for the adjudication of individual claims against the funds so forfeited. The June 8 order specified that such procedure be inclusive of a means of

- (a) establishing the identity of those persons who will be entitled to assert claims to the forfeited funds;
- (b) the procedure for advertising the

availability of forfeited funds to potential claimants; (c) the nature of the evidence that will be required to substantiate a claim; (d) the time within which claims shall be submitted; (e) the process for the adjudication of claims; and (f) related matters.

The Intervenors' Emergency Petition for Supersedeas was received in this Court on June 22, 2010 and filed as of the date it was mailed, June 21, 2010. It appearing that the June 21 hearing of the trial court duly afforded the Intervenors an opportunity to be heard in furtherance of their right to compensation herein, and, in any event, there appearing to be no need to give the trial court direction to "preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot (Court of Appeals Rule 40 (b)), NOW THEREFORE, the said Emergency Petition for Supersedeas is hereby DENIED as moot.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 30 2010

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

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

Willi Z. Mat:R

....., Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD-10-030

DATE: 6-30-10 REC #: 0082 PAID BY: Jackie Patterson

CHARGE: _____

STYLE: Markham v. Judge Ott, Mun. Court of Peachtree City

ATTY. NT: Jackie Patterson
2970 Peachtree Rd. Ste 830
Atlanta, GA 30305
404-841-4081

ATTY. EE: 204-841-4082 - Fax
Judge Stephen D. Ott.
380 W. Stonewall Av.
Fayetteville, GA 30214
770-692-2600

Fax 719-2512

LOWER CT. JUDGE: Judge Stephen D. Ott

LOWER CT. CASE # 7155136

COUNTY: Muni Ct Peachtree City

BRIEFS FILED: _____

JUDGEMENT DATE: 6/30/2010 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 30 2010

The Court of Appeals hereby passes the following order:

MD10-030. MARKHAM v. JUDGE OTT, MUNICIPAL COURT OF PEACHTREE CITY.

Michael Markham has filed a Motion for Emergency Ruling Under Court of Appeals Rule 40 (b). The said motion, however, has been filed without a copy of the order being appealed as required by Subsection (2) of the said rule. Further, the instant motion fails to show that the intervention of this Court is necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot. NOW THEREFORE, the instant motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 30 2010

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

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

Willi L. Mat:R , Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-10-031

DATE: 7/16/2010 REC #: 100202- PAID BY: Groth & Makarenko
100222-200
\$80

CHARGE: Extension of Time For Filing Notice of Appeal

STYLE: Robert O'Hara et al v. Theresa F. Gilmore

ATTY. NT: Nikolai Makarenko, Jr. & Laura Danielle Johnson
Groth & Makarenko, LLC 770-904-3590
4485 Tench Road

Building 1500, Ste. 1510
Suwanee, GA 30024

ATTY. EE: John G. Walrath
4568 Highway 29 Northwest
Suite 122
Hilburn, GA 30047

LOWER CT. JUDGE: ~~Phillip C. Smith~~ Phillip C. Smith

LOWER CT. CASE # 08-SC-1926

COUNTY: Forsyth Co. State Court

BRIEFS FILED: _____

JUDGEMENT DATE: 7/19/10 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUL 19 2010

The Court of Appeals hereby passes the following order:

MD-10-031. O'HARA et al. v. GILMORE.

Robert and Sherrie O'Hara have petitioned this Court pursuant to Court of Appeals Rule 40 (b) for an extension of the 10-day period of time to file a notice of appeal from the July 1, 2010 order of this Court granting their application for an interlocutory appeal in Case No. A10I0248. As the request for an extension was not made prior to the expiration of the 10-day period, we lack the authority to grant it. OCGA § 5-6-39 (d). Therefore, the motion is hereby DENIED.

However, as it is apparent from the affidavits and exhibits accompanying this petition that the Court's order granting the interlocutory appeal was mailed to an incorrect address and was, consequently, untimely received, we exercise our inherent authority to correct a clerical error of this Court. An order to this affect will be issued in Case No. A10I0248 forthwith.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 19 2010

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

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

Will Z. Mat: [Signature], Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD 10-032

DATE: 7/30/10 REC #: 9999 PAID BY: _____

CHARGE: Supersedeas

STYLE: Kimberly Greene v. Sandy Larson

ATTY. NT: Grady A. Roberts
191 Peachtree St. NE Ste 3300
Atlanta, GA 30303

404-794-7000

Fax 404-794-7001

ATTY. EE: F. Robert Slotkin, Esq.
Slotkin Law Firm, P.C.
111 N. McDonough St.
Decatur, GA 30030

LOWER CT. JUDGE: Glen Galbaugh
LOWER CT. CASE # 10 D 45382
COUNTY: DeKalb

BRIEFS FILED: NT

JUDGEMENT DATE: 7/30/10 JUDGMENT: Denied

M.F.R. FILED: 8/4/10
REPOSSES: _____ Denied 8/6/2010

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUL 30 2010

The Court of Appeals hereby passes the following order:

MD-10-032. GREENE v. LARSON.

Appellant Kimberly Greene 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 DeKalb County. In the order, the court ruled that Sandy Larson was entitled to a writ of possession of the premises currently occupied by Greene. The court ordered Greene, in the event she filed a notice of appeal, to pay \$1000 per month into the registry of the court in order to remain in possession of the premises. In her emergency motion, Greene admits that she failed to pay \$1000 as due on July 5, 2010.

Greene argues that, despite her failure to make the July payment as ordered, her notice of appeal divested the trial court of jurisdiction to enforce its judgment. Under OCGA § 44-7-56, however,

If the judgment of the trial court [in a dispossessory proceeding] 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. The tenant shall also be required to pay all future rent as it becomes due into the registry of the trial court pursuant to [OCGA § 44-7-54 (a) (1)] until the issue has been finally determined on appeal.

Pursuant to this statutory authority, the supersedeas arising from Greene's notice of

appeal was conditioned on her compliance with the trial court's order. *Mitchell v. Excelsior Sales & Imports, Inc.*, 243 Ga. 813, 815 (2) (256 SE2d 785) (1979). Because she failed to comply, she is not entitled to remain in possession of the premises pending appeal, and this Court must DENY her emergency motion.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUL 30 2010**

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

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

Willi L. Mart [Signature], Clerk.

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

ATLANTA, AUG - 6 2010

The Court of Appeals hereby passes the following order:

MD-10-032. GREENE v. LARSON

Now before the Court is Kimberly Greene's motion for reconsideration of this Court's order issued July 30, 2010, that denied her motion pursuant to OCGA § 5-6-46 (e) and Court of Appeals Rule 40 (b) for a writ of supersedeas. In her motion for reconsideration, Greene reiterates the arguments made in her original motion and fails to state a basis for granting the motion for reconsideration under the standard set out in Rule 37 (e). Thus, the motion for reconsideration is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG - 6 2010

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

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

Hally K. O. Sparrow

, Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-10-033

DATE: 7/30/2010 REC #: 9999 PAID BY: Payee

CHARGE: Injunction? (Supersedeas)

STYLE: Lisa DeSouza v. Federal Home Loan Mortgage Corp.

ATTY. NT: Lisa DeSouza, Pro Se
11744 Moorpark Street
Unit B
Studio City, CA 91604

ATTY. EE: Frank R. Olson, Atty
250 East Ponce De Leon Ave.
Ste. 600
Decatur, GA 30030

LOWER CT. JUDGE: Magistrate

LOWER CT. CASE # 200 RCCV549

COUNTY: Richmond Co. Magistrate Court

BRIEFS FILED: _____

JUDGEMENT DATE: _____ JUDGMENT: _____

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUL 30 2010

The Court of Appeals hereby passes the following order:

MD-10-033. DESOUZA v. FEDERAL HOME LOAN MORTGAGE CORPORATION.

Lisa DeSouza filed this emergency motion asking for this Court to issue an injunction preventing the Federal Home Loan Mortgage Corporation (FHLMC) from evicting her from her home on August 2, 2010. The emergency motion shows that the FHLMC filed a dispossessory action on June 24, 2010, following the foreclosure of DeSouza's property. In the dispossessory action, FHLMC asserted that DeSouza was a tenant at sufferance after having failed to vacate the property following the foreclosure. The trial court issued a writ of possession in favor of FHLMC on July 23, 2010. DeSouza filed a petition for a temporary and permanent restraining order in the trial court on July 27, 2010. The emergency motion does not include a ruling by the trial court on that petition.

In this emergency motion, DeSouza asks this Court to grant an emergency injunction to prevent her from being dispossessed while she challenges the validity of the foreclosure of her home in the trial court. However,

challenges to a foreclosure sale cannot be asserted as a defense in a subsequent dispossessory proceeding. The purchaser at a foreclosure sale under a power of sale in a security deed is the sole owner of the property *until and unless the sale is set aside*. It is not germane to a dispossessory proceeding to allege that a contract under which the plaintiff [(herein, FHLMC)] claims to derive title from the defendant [(DeSouza)] is void and should be canceled. If the sale of the premises under the power of sale in the loan deed was void on account of its improper exercise, or because the loan was not mature, this cannot be set up as a defense to a dispossessory proceeding under OCGA §§ 44-7-50, 44-7-53.

(Citations and punctuation omitted; emphasis in original.) *Vines v. LaSalle Bank Nat. Assoc.*, 302 SE2d 353, 353-354 (691 SE2d 242) (2010). Accordingly, DeSouza has failed to demonstrate a meritorious basis for this Court to grant her emergency motion under Court of Appeals Rule 40 (b).

Furthermore, DeSouza has until the end of business today, July 30, 2010, to file a notice of appeal in the trial court from its July 23, 2010 writ of possession. See OCGA § 44-7-56 (a notice of appeal from a writ of possession “shall be filed within seven days of the date such judgment was entered[.]”).

DeSouza’s emergency motion is, therefore, DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 30 2010

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

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

Willi Z. Mat:R

, Clerk.

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-10-034

DATE: 7/30/2010 REC #: 100353 PAID BY: Holzer & Holzer

CHARGE: Supersedeas (also motion to exceed page limits)

STYLE: Iron Workers of Western Pennsylvania Pension Plan v. Philip M. Pead, et. al.

ATTY. NT: Michael T. Fistel, Jr.
& Marshall P. Dees
Holzer & Holzer, & Fistel, LLC
200 Ashford Center, N, Ste. 300
Atlanta, GA

ATTY. EE: B. Warren Pope, Michael R. Smith,
Justin Jeffries, Chesley McLeod, Bethany Schneider
1180 Peachtree St, NE
Atlanta, GA 30309-3521

LOWER CT. JUDGE: Judge Randy Rich

LOWER CT. CASE # 10A-05765 6

COUNTY: Gwinnett County Superior Court

Order to permit response by Aug 4, 2010

BRIEFS FILED: _____

JUDGEMENT DATE: 8/5/2010 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: 8/4/10

N.O.I. FILED: _____

8/4/10 motion to strike appellants emergency motion Rule 40(B)
motion to enjoin

8/4/10 response in opposition

Court of Appeals of the State of Georgia

ATLANTA, JUL 30 2010

The Court of Appeals hereby passes the following order:

**MD-10-034. IRON WORKERS OF WESTERN PENNSYLVANIA PENSION
PLAN v. PEAD et al.**

Currently before this Court is an emergency motion filed pursuant to Court of Appeals Rule 40 (b) by the plaintiff in Civil Action No. 10A-057656 in the Superior Court of Gwinnett County. In its emergency motion, the plaintiff asks this Court to issue an order enjoining a vote of the shareholders of Eclipsys Corporation scheduled for August 13, 2010, and seeks an expedited appeal of the trial court's order dated July 27, 2010, which granted the defendants' motion to dismiss the plaintiff's complaint. The plaintiff's appeal has not yet been docketed in this Court.

The Court will not act on this emergency motion until after August 4, 2010, and will consider any responsive brief that complies with this Court's rules and is filed on or before that date.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 30 2010

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

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

William Z. Mantz, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, AUG - 5 2010

The Court of Appeals hereby passes the following order:

MD-10-034. IRON WORKERS OF WESTERN PENNSYLVANIA PENSION PLAN v. PEAD et al.

Currently before this Court is an emergency motion filed pursuant to Court of Appeals Rule 40 (b) by the plaintiff in Civil Action No. 10A-057656 in the Superior Court of Gwinnett County. In its emergency motion, the plaintiff asks this Court to issue an order enjoining a vote of the shareholders of Eclipsys Corporation scheduled for August 13, 2010, and seeks an expedited appeal of the trial court's order dated July 27, 2010, which granted the defendant's motion to dismiss the plaintiff's complaint.

After considering the parties' motions and responses thereto, this Court DENIES the plaintiff's emergency motion. We also DENY as moot the defendants' motion to strike the plaintiff's emergency motion.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **AUG - 5 2010**

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

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

Hally H. O. Spawort , Clerk.

**COURT OF APPEALS OF GEORGIA
EMERGENCY MOTIONS**

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MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-11-001

DATE: 8/19/2010 REC # 100524 PAID BY: Ms. ^{Claire} Murphy

CHARGE: _____

STYLE: Savannah Foods and Industries, Inc. et al v. Walter B. Maxwell

ATTY. NT: Claire C. Murray
Weinberg Wheeler, Hudgins &
3214 Peachtree Rd., NE
2400
Atlanta GA 30326
ATTY. EE: Brent Savage, ESQ
304 E. Bay Street
Savannah GA 31401

LOWER CT. JUDGE: _____
LOWER CT. CASE # STCV 0802361-CO
COUNTY: Chatham State Court

BRIEFS FILED: _____

JUDGEMENT DATE: 8/20/2010 JUDGMENT: Granted

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUG 20 2010

The Court of Appeals hereby passes the following order:

MD-11-01. SAVANNAH FOODS AND INDUSTRIES, INC. et al. v. WALTER B. MAXWELL.

Petitioners Savannah Foods and Industries, Inc., Savannah Foods Industrial, Inc., and Imperial Distributing, Inc., have filed an emergency motion for permission to file under seal certain exhibits to their anticipated application for interlocutory appeal.

Petitioners assert that a Consent Confidentiality Order was entered by the trial court, pursuant to which plaintiff/respondent filed in the trial court, under seal, a responsive brief and supporting exhibits. Said brief and supporting exhibits are the documents petitioners seek to file under seal in this Court.

Petitioners' emergency motion is hereby GRANTED. Accordingly, access to those documents, filed under seal by petitioners in this Court, shall be limited to the parties' counsel of record and their designated agents and employees. In order to view the documents, counsel of record, their agents and employees must show proper identification and authority from their respective principals.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 20 2010**

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

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

Holly K. D. Spaw

, Clerk.

Court of Appeals of the State of Georgia

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-11-02

DATE: 8/20/2010 REC #: 100535 PAID BY: Head, Thomas, Webb & Willis, LLC

CHARGE: Supersedeas Bond

STYLE: Patt; Rainey Jacobson v. Eugene Malone Benton

ATTY. NT: William C. Head
750 Hammond Dr, Ste 5-100
Atlanta, GA 30328

ATTY. EE: Clint Malcolm, ADA
1132 Usker St, Rm 313
Covington, GA 30014

Thurbert Baker, AG
40 Capitol Sq, SW
Atlanta, GA 30334

LOWER CT. JUDGE: Judge Eugene Benton

LOWER CT. CASE # 10MGW1881-1 & 10MGW1817-1

COUNTY: Newton County Superior Court

BRIEFS FILED: NT

JUDGEMENT DATE: ~~8/15~~ 8/20/10 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUG 20 2010

The Court of Appeals hereby passes the following order:

**MD-11-02. PATTI RAINEY JACOBSON v. HONORABLE EUGENE
MALONE BENTON.**

Jacobson has filed an emergency motion, seeking to vacate the trial court's order dated August 10, 2010. Said motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 20 2010**

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

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

Hally H. O. Sparrow , Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MO-11-~~11~~03

DATE: 8-25-2010 REC #: 999 PAID BY: Pauper

CHARGE: Stay

STYLE: Jane Campbell v. Paul Hudson et. al.

ATTY. NT: David J. Farnham
1875 Old Alabama Rd, Ste 710
Roswell, GA 30076

ATTY. EE: Mary Margaret Oliver
150 E. Peace Deleon Ave
Decatur, GA 30030

Ms. Dana Ashford
Russell & Herrera, PC
201 Swanton Way
Decatur, GA 30030

LOWER CT. JUDGE: Judge C.J. Becker

LOWER CT. CASE # 07-CV-3750-6

COUNTY: Superior Court of DeKalb County

BRIEFS FILED: _____

JUDGEMENT DATE: 8/26/2010 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUG 26 2010

The Court of Appeals hereby passes the following order:

MD-11-03. CAMPBELL v. HUDSON et al.

Jane Campbell filed in the trial court a notice of appeal from the following: order of eviction, order on plaintiff's motion for contempt, and consent order regarding appointment of receiver and payment of attorney fees. She also filed an affidavit of poverty stating that she was unable to pay filing costs. Campbell filed in this Court a motion for emergency relief pursuant to Court of Appeals Rule 40 (b), wherein she has requested that all proceedings below be stayed pending the appeal.

In all civil cases where the appealing party files an affidavit stating that because of indigence she is unable to pay costs or post a supersedeas bond, the notice of appeal and affidavit of indigence shall act as supersedeas. OCGA § 5-6-47 (a). The general rule is that a supersedeas suspends all further proceedings on the suit in which the judgment superseded is rendered, such as are based upon and relate to the carrying into effect of that judgment; under this rule, the supersedeas, during its pendency, prevents any steps to enforce or carry into effect the judgment. *Simmons v. Harms*, __ Ga. App. __ (3) (a) (695 SE2d 38) (No. S10A0267, decided May 17, 2010), citing

Tanner v. Wilson, 184 Ga. 628, 633-634 (192 SE 425) (1937). Therefore, it is not necessary to grant the emergency relief requested pursuant to Rule 40 (b). Although Campbell also raises issues regarding pending motions for supersedeas bond and payment of rent, such motions (not yet ruled upon by the trial court) are not ripe for appellate review. See generally *Mt. Orthopedics & Sports Med., P.C. v. Williams*, 284 Ga. App. 885, 887 (644 SE2d 868) (2007).

The motion for emergency relief is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **AUG 26 2010**

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

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

Hally H. O. Spawor , Clerk.

MOTIONS DOCKET

JUDGE # 92 MOTION DOCKET NUMBER MD-11-04

DATE: _____ REC #: _____ PAID BY: _____

CHARGE: Parental Notification Act

STYLE: In the Interest of: A.B., an un-emancipated minor

ATTY. NT: Darice M. Good -> Good + Lee, LLC
Suite 18
881 Ponce de Leon Avenue
Atlanta GA 30306

ATTY. EE: _____

LOWER CT. JUDGE: Peagler
LOWER CT. CASE # 10J05455
COUNTY: DeKalb Juvenile

BRIEFS FILED: _____

JUDGEMENT DATE: 9/17/10 JUDGMENT: Ordered Club Juv Ct to
Submit Record

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

N.O.I. FILED: _____

EMERGENCY MOTION SEALED SEE FILE

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD-11-05

DATE: 10/18/2010 REC #: 9999 PAID BY: _____

CHARGE: Stay of Trial Court Proceedings

STYLE: State of Georgia v. Marlon Haynes

ATTY. NT: Jana Whaley
Office of the Public Defender
Northern Judicial Circuit
846 Church St
Royston, GA 30662

ATTY. EE: Jimmy Webb
District Attorney's Office
P.O. Box 843
Danielville, GA 30633

LOWER CT. JUDGE: Jeffery S. Malcom

LOWER CT. CASE # 09-MR-147-M

COUNTY: Madison County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 10/19/2010 JUDGMENT: Grant temporary stay of 30 days

M.F.R. FILED: 11/17/10 11/16/2010 Transcripts filed per order
REPOSSES: Stay Granted

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA,

OCT 19 2010

The Court of Appeals hereby passes the following order:

MD-11-05. Haynes v. The State.

Appellant Marlon Haynes has moved for an emergency stay of trial court proceedings on the ground that he has filed a notice of appeal in the trial court from that court's denial of his plea of double jeopardy.

The denial of a plea in bar on double jeopardy grounds is directly appealable. *Patterson v. State*, 248 Ga. 875 (287 SE2d 7) (1982). And, generally, while such an appeal is pending, the State may not continue to prosecute the defendant. *Griffin v. State*, 266 Ga. 115, 116 (1) (464 SE2d 371) (1995), overruled on separate grounds *Garza v. State*, 284 Ga. 696 (670 SE2d 73) (2008); see also *Chambers v. State*, 262 Ga. 200, 202 (3) (415 SE2d 643) (1992). But "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." (Citations and punctuation omitted.) *Rielli v. Oliver*, 170 Ga. App. 699, 700 (318 SE2d 173) (1984). Under those circumstances, "the filing of a notice of appeal merely deprives the trial court of its power to execute the sentence." (Citation and punctuation omitted.) *Strickland v. State*, 258 Ga. 764, 765 (1) (373 SE2d 736) (1988). See also *DeSouza v. State*, 285 Ga. App. 201, 203 (645 SE2d 684) (2007).

In this case, the trial court's reasons for denying Haynes's motion to dismiss on double jeopardy grounds are not contained in the order but, as stated in the order, "were particularized in Court on [October 8, 2010 and October 14, 2010] and the Court's findings of fact and law are by reference made a part of [the] Order." Thus, despite the representations of counsel for Haynes, we cannot confirm that the trial court did not find that Haynes's motion was frivolous.

This Court therefore grants a temporary stay of trial court proceedings for 30 days in order to provide Haynes with an opportunity to submit to this Court the transcripts from the hearings on October 8, 2010 and October 14, 2010 or a stipulation from both parties or the trial court showing that court's reasons for denying Haynes's motion to dismiss on the grounds of double jeopardy. Absent a submission of this information within the time specified or further order of this Court, Haynes's criminal trial may proceed after the 30 days have run.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 19 2010

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

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

Hally H. O. Spencer , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 17 2010

The Court of Appeals hereby passes the following order:

MD-11-05. Haynes v. The State.

Appellant Marlon Haynes has moved for an emergency stay of trial court proceedings on the ground that he has filed a notice of appeal in the trial court from that court's denial of his plea of double jeopardy. In our order of October 19, 2010, we granted a temporary stay of the trial court proceedings to review transcripts of the hearings below to determine whether the trial court concluded that Hayes' plea of double jeopardy was frivolous. Having received and reviewed those transcripts, this Court so orders:

The denial of a plea in bar on double jeopardy grounds is directly appealable. *Patterson v. State*, 248 Ga. 875 (287 SE2d 7) (1982). And, generally, while such an appeal is pending, the State may not continue to prosecute the defendant. *Griffin v. State*, 266 Ga. 115, 116 (1) (464 SE2d 371) (1995), overruled on separate grounds *Garza v. State*, 284 Ga. 696 (670 SE2d 73) (2008); see also *Chambers v. State*, 262 Ga. 200, 202 (3) (415 SE2d 643) (1992). But "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." (Citations and punctuation omitted.) *Rielli v. Oliver*, 170 Ga. App. 699, 700 (318 SE2d 173) (1984). Under those circumstances, "the filing of a notice of appeal merely deprives the trial court of its power to execute the sentence." (Citation and punctuation omitted.) *Strickland v. State*, 258 Ga. 764, 765 (1) (373 SE2d 736) (1988). See also *DeSouza v. State*, 285 Ga. App. 201, 203 (645 SE2d 684) (2007).

In this case, the trial court's reasons for denying Haynes's motion to dismiss on double jeopardy grounds were not contained in the order but, as stated in the order,

“were particularized in Court on [October 8, 2010 and October 14, 2010] and the Court’s findings of fact and law are by reference made a part of [the] Order.” Upon reviewing those transcripts, we find that the court denied the motion on the merits and made no express finding that Hayes’ motion to dismiss on double jeopardy grounds was frivolous.

This Court therefore GRANTS Hayes’ motion for an emergency stay of the trial court proceedings.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 17 2010

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

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

Hally K. O. Spawort, Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER 10-10-06

DATE: 10/22/2010 REC #: 0999 PAID BY: Muhammad Ali

CHARGE: _____

STYLE: Ali S. Muhammad v. Deutsche Bank Nation

ATTY. NT: Louise T. Hornsby, Esq.
2016 Sandtown Road, S.W.
ATL 30311

ATTY. EE: Denise R. Griffin, Esq.
Audrey Blackshear, Disp Supervisor
Antonio Johnson, Marshal
Sheriff Ted Jackson

LOWER CT. JUDGE: T. Jackson Bedford, Jr, Judge, Fulton Sup Ct

LOWER CT. CASE # 2009 CV 177987

COUNTY: Fulton County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 10/25/2010 JUDGMENT: Denied

M.F.R. FILED: 10/29/2010
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 25 2010

The Court of Appeals hereby passes the following order:

MD-11-06. MUHAMMAD v. DEUTSCHE BANK NATIONAL TRUST COMPANY.

Ali S. Muhammad filed an emergency motion pursuant to Court of Appeals Rule 40 (b) requesting an order to stay enforcement of a Writ of Possession issued by the superior court in favor of Deutsche Bank National Trust Company. He asserts that his filing of a "Motion to Vacate and Set Aside Order entered October 11, 2010 Granting Plaintiff's Motion for Summary Judgment and for a New Trial and/or Hearing" acted as a supersedeas under OCGA § 9-11-62 (b), and thus the trial court erred in issuing the writ without ruling upon the motion. The filing of a motion for new trial acts as a supersedeas unless otherwise ordered by the court under OCGA § 9-11-62 (b), which, by its terms, does not apply to motions to vacate, to set aside or for reconsideration. However, "[a] motion for new trial, by its very nature, would not lie to rectify an erroneous grant of summary judgment." *Blackwell v. Sutton*, 261 Ga. 284, 284, n. 1 (404 SE2d 114) (1991). Accordingly, no issue of supersedeas arose under OCGA § 9-11-62 (b) from the filing of Muhammed's motion, and he has failed to state a ground for emergency relief under Rule 40 (b). Mohammad's motion is therefore DENIED.



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

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

OCT 25 2010

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

Hally K. O. Spawort , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 2 2010

The Court of Appeals hereby passes the following order:

**MD-11-06. MUHAMMAD v. DEUTSCHE BANK NATIONAL TRUST
COMPANY.**

Now before the Court is Ali S. Muhammad's motion for reconsideration of this Court's order issued October 25, 2010, that denied her motion pursuant to OCGA § 9-11-62 (b) to stay the enforcement of the trial court's writ of possession entered October 20, 2010. In the motion for reconsideration, Muhammad fails to state a basis for granting the motion for reconsideration under the standard set out in Court of Appeals Rule 37 (e). Thus, the motion for reconsideration is hereby DENIED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 2 2010*

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

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

Hally K. O. Sparrow, Clerk.

MOTIONS DOCKET

JUDGE # _____ MOTION DOCKET NUMBER MD-11-07

DATE: 12/7/2010 REC #: 101302 PAID BY: McNeill Stokes

CHARGE: To Stay Order of Banishment

STYLE: David Nathan Thompson v. State of Georgia

ATTY. NT: McNeill Stokes
1040 Peachtree Battle Ave
Atlanta, GA 30327

ATTY. EE: Elizabeth A. Baker
Fulton Co. DA's office
130 Pryor St, S.W.
Atlanta, GA 30303

LOWER CT. JUDGE: Walter M. Lovett, Jr (Magistrate sitting in Superior Ct)
LOWER CT. CASE # 04SC16179
COUNTY: Fulton County Superior Court

BRIEFS FILED: EE 12/10/2010

JUDGEMENT DATE: _____ JUDGMENT: _____

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, December 13, 2010

The Court of Appeals hereby passes the following order:

MD-11-07. THOMPSON v. THE STATE.

David Nathan Thompson has filed an “Emergency Motion to Stay Order of Banishment.” 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. This power shall be exercised sparingly.” Having considered the motion, we conclude that the emergency relief sought by Thompson is not warranted. Accordingly, Thompson’s motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, DEC 13 2010

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

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

Hally H. O. Spawor Clerk.

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD-11-08

DATE: 1/4/2010 REC #: 101505 PAID BY: God's Church

CHARGE: Motion for Writ of Supersedeas

STYLE: God's Church International Fellowship Inc. v. Embassy National Bank

ATTY. NT: Grady Alexander Roberts, III
191 Peachtree St NE Suite 3300
Atlanta, GA 30303

ATTY. EE: Jody Charles Campbell
860 Duluth Hwy. Suite 310
Lawrenceville, GA 30043

LOWER CT. JUDGE: Shawn Ellen LaGrva

LOWER CT. CASE # 2010CV191217

COUNTY: Fulton County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 1/5/2010 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

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

ATLANTA, JAN 5 2011

The Court of Appeals hereby passes the following order:

**MD-11-08. GOD'S CHURCH INTERNATIONAL FELLOWSHIP, INC. v.
EMBASSY NATIONAL BANK.**

On January 4, 2011, God's Church International Fellowship filed a motion for emergency relief in this Court. Because the motion fails to satisfy the criteria set forth in Court of Appeals Rule 40 (b), the motion is denied.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, JAN 5 2011

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

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

Hally K. O. Spencer , Clerk.

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD-11-09

DATE: 2/21/2011 REC #: _____ PAID BY: _____

CHARGE: O.C.G.A. § 9-10-150 stay to file NOA on orders
Non-Reunification + Extension/Permanency Order

STYLE: In the Interest of T.H.

ATTY. NT: Mark Hatfield

ATTY. EE: John D. Staggs

LOWER CT. JUDGE: John B. Adams
LOWER CT. CASE # 013-09J-104
COUNTY: Juvenile Court Brantley County

BRIEFS FILED: _____

JUDGEMENT DATE: 2/22/2011 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, February 22, 2011

The Court of Appeals hereby passes the following order:

MD-11-009. In the Interest of T. L., a Minor.

On January 28, 2011, the Juvenile Court of Brantley County entered two orders in the above-captioned case: an “Order on Motion for Non-Reunification (Permanency Planning Hearing Order)” and an “Order on Motion for Extension/ Permanency Order”.

Counsel for the father of T. L. has notified this Court that he intends to invoke the provisions of OCGA § 9-10-150, providing a continuance and stay for a member of the General Assembly, “in order to procure an extension of time for filing a Notice of Appeal and/or an Application for Discretionary Appeal as to each order referenced above in this matter.”

As a preliminary matter, we note that neither of the orders entered in the juvenile court is subject to a discretionary application. The “Permanency Planning Hearing Order” declares the terms of the plans under which DFACS is seeking reunification or non-reunification, and orders that a petition for termination of parental rights be filed within 90 days. That is not one of the enumerated instances in OCGA § 5-6-35 (a) which must be pursued by discretionary application. Nor is it a final judgment from which a direct appeal may be taken under OCGA § 5-6-34 (a), and in the absence of a certificate of immediate review, it cannot be appealed through an interlocutory application under OCGA § 5-6-34 (b).

The second order, however, is subject to direct appeal. *In the Interest of S. A. W.*, 228 Ga. App. 197 (491 S.E.2d 441) (1997). The order here, like the order in *S. A. W.*, expressly places the children in the temporary custody of the Department of Family and Children Services. There, we held that an interlocutory appeal procedure

is not required to appeal such an order even though no final decision has been made, and the order “is a final order from which a direct appeal will lie.” Id. at 199 (1). Counsel therefore may directly appeal the second order, and the first order will be considered at the same time under the provisions of OCGA § 5-6-34 (d).

Therefore, pursuant to OCGA § 9-11-150, the time during which counsel may file a notice of appeal in this matter is CONTINUED AND STAYED “the length of any regular or extraordinary session of the General Assembly and during the first three weeks following any recess or adjournment including an adjournment sine die of any regular or extraordinary session.”



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, FEB 22 2011

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

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

Hally F. O. Spencer....., Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-11-10

DATE: 3/17/2011 REC #: 9999 PAID BY: Pauper's Affidavit

CHARGE: New Trial Motion

STYLE: Kentroya Williams v. The State

ATTY. NT: Kentroya Williams, Pro Se
Decatur County Correctional Institute
1153 Airport Rd.
Bainbridge, GA 39817

ATTY. EE: Brumby Montgerard
District Attorney's Office
P.O. Box 1827
Albany, GA 31702-1827

LOWER CT. JUDGE: Willie E. Lockette

LOWER CT. CASE # 06R124

COUNTY: Dougherty County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: _____ JUDGMENT: _____

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR 22 2011

The Court of Appeals hereby passes the following order:

MD-11-10. WILLIAMS v. THE STATE.

Before this court is appellant's "Motion for Emergencies." The said motion is hereby DENIED. See Court of Appeals Rule 40 (b).



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, MAR 22 2011

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

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

Holly K. O. Spencer Clerk.

MOTIONS DOCKET

JUDGE # 77 MOTION DOCKET NUMBER MD-11-11

DATE: 4/11/2011 REC #: 999 PAID BY: Pauper's Affidavit

CHARGE: Supersedeas Bond

STYLE: Derrick Lashone Dunno v. The State

ATTY. NT: Corinne M. Mull
Office of the Public Defender
408 Callaway Bldg
120 Trinity Place
Decatur, GA 30030

ATTY. EE: Pat Jackson, ADA
DeKalb County Courthouse
556 North McDonough St
Decatur, GA 30030

LOWER CT. JUDGE: Courtney K. Johnson

LOWER CT. CASE # 11CR1746-1

COUNTY: DeKalb Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 4/11/2011 JUDGMENT: Granted

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, APR 11 2011

The Court of Appeals hereby passes the following order:

MD-11-11. IN THE MATTER OF DERRICK LASHONE DUNN.

Pursuant to OCGA § 5-6-13 (a), Derrick Lashone Dunn seeks a writ of supersedeas pending his appeal of the trial court's order, entered on October 4, 2011, finding him in criminal contempt of court and ordering him jailed for an unspecified period of time for appearing late for the call of an arraignment calendar, but before his name was called. On October 5, 2011, Dunn filed his motion for supersedeas bond, which motion the trial court declined to hear. Dunn's notice of appeal followed. See *Martin v. Waters*, 151 Ga. App. 149, 150 (2) (259 SE2d 153) (1979) (due process requires that the accused be given an opportunity to be heard where the alleged act did not occur in the immediate presence of the court).

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



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, APR 11 2011

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

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

Hally H. O. Spaw

, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, April 18, 2011

The Court of Appeals hereby passes the following order:

MD-11-11. IN THE MATTER OF DERRICK LASHONE DUNN.

On April 8, 2011, the trial court entered an order which vacated its April 4, 2011 order finding Derrick Lashone Dunn in criminal contempt of court. This Court on April 11, 2011, granted Dunn's motion for supersedeas bond from the said criminal contempt order unaware that the trial court had earlier vacated the same. Now therefore, this Court's April 11, 2011 order is hereby **VACATED** as moot.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, APR 18 2011

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

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

Hally H. O. Spaw, Clerk.

MOTIONS DOCKET

JUDGE # 21 MOTION DOCKET NUMBER MD-11-11

DATE: 4-18-11 REC #: _____ PAID BY: _____

CHARGE: _____

STYLE: Derrick Lashone Dunn v. The State

ATTY. NT: Corinne M. Mall
Office of the Public Defender
408 Calloway Bldg
120 Trinity Decatur, GA
30030

ATTY. EE: Pat Jackson, ADA
DeKalb County Courthouse
556 N. McDonough St.
Decatur GA 30030

LOWER CT. JUDGE: Courtney W. Johnson, Judge
LOWER CT. CASE # 11CR1746-1
COUNTY: DeKalb Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 4-18-11 JUDGMENT: Vacated as moot

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-11-12

DATE: 06/10/2011 REC #: _____ PAID BY: _____

CHARGE: Extension of Time to file Notice of Appeal

STYLE: Sharon Greenwood-Farmor et al v.
Emory Healthcare

ATTY. NT: LEONARD DANLEY, SR.
6519 Spring Street
Douglasville 30134

ATTY. EE: Eric J. Frisck
P.O. Box 56687
Atlanta 30303

LOWER CT. JUDGE: Judgelee
LOWER CT. CASE # 2011CV196037
COUNTY: Fulton Co Sup Ct

BRIEFS FILED: _____

JUDGEMENT DATE: 6/13/2011 JUDGMENT: Denied

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

N.O.I. FILED: _____

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

ATLANTA, JUN 13 2011

The Court of Appeals hereby passes the following order:

**MD-11-12. GREENWOOD-FARMER et al. v. EMORY HEALTHCARE INC.
et al.**

This Court having reviewed the Motion for Emergency Extension of Time to File Notice of Appeal filed by Sharon Lynn Greenwood-Farmer and Randy C. Farmer in this case, the motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, JUN 13 2011

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

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

Hally H. O. Spencer , Clerk.

MOTIONS DOCKET

JUDGE # 90 MOTION DOCKET NUMBER MD-11-13

DATE: 6/14/2011 REC #: _____ PAID BY: transferred from Supreme Ct with appeal

CHARGE: To Stay & To Expedite

STYLE: Mark Allen Alden v. The State

ATTY. NT: Norman H. Cuadra Gregory E. Vanison, Sr.
242 S. Culver St., Ste. 101
Lawrenceville, GA 30046

ATTY. EE: _____
Gwinnett Co. Solicitor's Office
75 Langley Dr.
Lawrenceville, GA 30046

LOWER CT. JUDGE: Judge Carla Brown

LOWER CT. CASE # _____

COUNTY: State Court Gwinnett County

BRIEFS FILED: _____

JUDGEMENT DATE: 6/14/2011 JUDGMENT: Both Motions Denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 14 2011

The Court of Appeals hereby passes the following order:

MD-11-13. ALDEN v. THE STATE.

Mark Allen Alden has filed an Emergency Motion to Stay Lower Court Hearing (a bond revocation hearing). Said motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 14 2011

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

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

Hally F. O. Spencer, Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-11-14

DATE: 6/29/2011 REC #: 102967 PAID BY: Oliver Maner, LLP

CHARGE: _____

STYLE: Maury Bowen v. Jerome M. Rothschild, Jr.

ATTY. NT: K. Paul Johnson I. Gregory Hodges
319

ATTY. EE: _____

LOWER CT. JUDGE: James F. Bass, Jr
LOWER CT. CASE # DR 10-1274 BA
COUNTY: Chatham Co Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 6/30/2011 JUDGMENT: Denied

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

N.O.I. FILED: _____

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MS 11-014

DATE: 6-29-2011 REC #: _____ PAID BY: Check No. 11711 - \$300.⁰⁰

CHARGE: Custody Rights - vacating amended order (temporary)

STYLE: MAURY BOWEN v. JEROME MAURICE ROTHSCHILD, JR.

ATTY. NT: K. Paul Johnson, Esq.
MCCORKIE & JOHNSON, LLP
319 Tattnall Street
Savannah 31404

ATTY. EE: J. Gregory Hodges, Esq.
OLIVER MANER, LLP
218 W. State Street
P.O. Box 10184
Savannah, 31412

GEORGE T. MAJOR, JR. Esq.
OLIVER MANER, LLP

LOWER CT. JUDGE: Judge James F. Bass, Jr.

LOWER CT. CASE # _____
COUNTY: Chatham County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: _____ JUDGMENT: _____

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JUN 30 2011

The Court of Appeals hereby passes the following order:

MD-11-14. BOWEN v. ROTHSCHILD.

Maury Bowen's Rule 40 (b) Motion in Emergency has been considered and is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, JUN 30 2011

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

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

Hally H. O. Sparrow, Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD-11-015

DATE: 8/12/2011 REC #: 3352 PAID BY: Mary Schroder

CHARGE: Supersedeas

STYLE: Mary Schroder v. Westchester Wiltshire Condominium Assn.

ATTY. NT: Mary Schroder
20 Collier Rd. NW #10
Atlanta, GA 30309
404-352-4024

ATTY. EE: Kanier Coulter
Dorough & Dorough
160 Clairmont Ave. Ste 650
Decatur, GA 30030

LOWER CT. JUDGE: Gail S. Tusan
LOWER CT. CASE # 2011 CV 204205
COUNTY: Fulton Co. Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 8/15/2011 JUDGMENT: Denied

M.F.R. FILED: 8/15/2011
REPOSSES: _____

N.O.I. FILED: _____

NOA Filed Supreme Ct: 8/16/2011
Docketing Notice Supreme Ct 8/16/11 MD11-015 / Mot to W/D 8/18
NOT 8/26/2011 Supreme Ct Permit W/D 8/23

Mot for Permission file 2nd MFR & 2nd MFR 9/6/2011 - Denied 9/6/2011

NOA 9/6/2011 Supreme Ct GRX Denied 1/9/2012

NOT US 8E 1/19/2012

Court of Appeals of the State of Georgia

ATLANTA, AUG 15 2011

The Court of Appeals hereby passes the following order:

MD-11-015. Schroder v. Westchester Wiltshire Condominium Assoc., Inc. (Civil Action File No. 2011CV204205 in the Superior Court of Fulton County).

Mary Schroder has filed an emergency motion for supersedeas pursuant to Rule 40 (b) of the Rules of this Court asking that this Court order a stay of the order of the Superior Court of Cobb County entered on August 11, 2011 pending her appeal in the above-referenced civil action. The superior court found that there was an immediate and real threat of irreparable injury to the appellee condominium association and Schroder's adjoining residents if the appellee was not allowed access to Schroder's condominium unit in order to inspect for the cause of a continuing water leak and to effectuate necessary repairs as authorized by the governing documents of the Westchester Wiltshire Condominium Association and Georgia Law. The order also provides that the appellee will restore Schroder's unit to paint ready condition upon completion of the work as provided in the governing documents and that Schroder be given 24 hours notice of the date and time that appellee will enter to inspect and repair during normal business hours (9:00 a.m. to 5:00 p.m.).

Schroder contends she will endure unnecessary damage to her personal property, such as the appellee failing to repair the walls where the work is performed. She contends she had insufficient time to gather evidence to prove that there is not a leak in her unit and that the leak originated in the roof, which has now been repaired. She contends her downstairs neighbor has stated that his ceiling is no longer leaking. She contends she has let appellee in her home in the past to repair alleged leaks and that no leaks were found.

We conclude that a stay is not proper or necessary to protect Schroder's rights

during the pendency of the appeal. The source of any possible water leak needs to be determined as quickly as possible; the trial court has ordered the appellee to restore Schroder's unit to paint ready condition upon completion of the work as provided in the governing documents of the association; and Schroder may seek other remedies in the event that unforeseen problems occur.

Accordingly, Schroder's emergency motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, AUG 15 2011

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

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

Hally H. O. Spencer, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, AUG 16 2011

The Court of Appeals hereby passes the following order:

MD-11-015. Schroder v. Westchester Wiltshire Condominium Assoc., Inc. (Civil Action File No. 2011CV204205 in the Superior Court of Fulton County).

Appellant Mary Schroder's motion for reconsideration of this Court's order of August 15, 2011 is DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, AUG 16 2011

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

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

Hally H. O. Spaw , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, August 25, 2011

The Court of Appeals hereby passes the following order:

MD-11-015. Schroder v. Westchester Wiltshire Condominium Assoc., Inc. (Civil Action File No. 2011CV204205 in the Superior Court of Fulton County)

It appearing the order of this Court issued August 15, 2011, is incorrect due to a clerical error pertaining to the county name which should have read Superior Court of Fulton County, it is hereby ordered that said attached hereto be SUBSTITUTED therefor.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 25 2011

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

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

Hally K. O. Sparrow

....., Clerk.

Court of Appeals of the State of Georgia

ATLANTA, AUG 25 2011

The Court of Appeals hereby passes the following order:

MD-11-015. Schroder v. Westchester Wiltshire Condominium Assoc., Inc. (Civil Action File No. 2011CV204205 in the Superior Court of Fulton County).

Mary Schroder has filed an emergency motion for supersedeas pursuant to Rule 40 (b) of the Rules of this Court asking that this Court order a stay of the order of the Superior Court of Fulton County entered on August 11, 2011 pending her appeal in the above-referenced civil action. The superior court found that there was an immediate and real threat of irreparable injury to the appellee condominium association and Schroder's adjoining residents if the appellee was not allowed access to Schroder's condominium unit in order to inspect for the cause of a continuing water leak and to effectuate necessary repairs as authorized by the governing documents of the Westchester Wiltshire Condominium Association and Georgia Law. The order also provides that the appellee will restore Schroder's unit to paint ready condition upon completion of the work as provided in the governing documents and that Schroder be given 24 hours notice of the date and time that appellee will enter to inspect and repair during normal business hours (9:00 a.m. to 5:00 p.m.).

Schroder contends she will endure unnecessary damage to her personal property, such as the appellee failing to repair the walls where the work is performed. She contends she had insufficient time to gather evidence to prove that there is not a leak in her unit and that the leak originated in the roof, which has now been repaired. She contends her downstairs neighbor has stated that his ceiling is no longer leaking. She contends she has let appellee in her home in the past to repair alleged leaks and that no leaks were found.

We conclude that a stay is not proper or necessary to protect Schroder's rights

during the pendency of the appeal. The source of any possible water leak needs to be determined as quickly as possible; the trial court has ordered the appellee to restore Schroder's unit to paint ready condition upon completion of the work as provided in the governing documents of the association; and Schroder may seek other remedies in the event that unforeseen problems occur.

Accordingly, Schroder's emergency motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, AUG 25 2011

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

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

Hally K. O. Spawort Clerk.

Court of Appeals of the State of Georgia

ATLANTA, SEP 6 2011

The Court of Appeals hereby passes the following order:

MD-11-015. SCHRODER v. WILTSHIRE.

Following the denial of her emergency motion under Rule 40 (b), Appellant's second motion for reconsideration is DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 6 2011

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

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

Hally K. O. Sparrow Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S11C1906

Atlanta, August 23, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MARY SCHRODER v. WESTCHESTER WILTSHIRE CONDOMINIUM
ASSOCIATION, INC.

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

All the Justices concur.

RECEIVED IN OFFICE
2011 SEP 22 PM 12:35
CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta September 21, 2011

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

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



Sai C. Pittor, Chief Deputy Clerk

**COURT OF APPEALS OF GEORGIA
EMERGENCY MOTIONS**

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MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD-12-001

DATE: 8/26/2011 REC #: 103466 PAID BY: Chris Nicholson

CHARGE: Supersedeas

STYLE: In Re Nicholson

ATTY. NT: Chris G. Nicholson
16 Ninth St
Augusta, GA 30901

ATTY. EE: no certificate of service

LOWER CT. JUDGE: David D. Watkins
LOWER CT. CASE # 10 RC MC 12965
COUNTY: Richmond

BRIEFS FILED: _____

JUDGEMENT DATE: 8/26/2011 JUDGMENT: Granted

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, AUG 26 2011

The Court of Appeals hereby passes the following order:

MD-12-001. In Re Nicholson.

Attorney Chris G. Nicholson has filed an emergency motion with this Court seeking a supersedeas pending appeal of an August 25, 2011 (filed at 9:08 a.m.) order of the State Court of Richmond County.

In that order, the State Court explained that Nicholson had failed to appear and explain at a hearing on a rule nisi that directed him to appear on August 23, 2011, why he should not be held in contempt for unspecified conduct that occurred during an August 2, 2011 bench trial. In the August 25 order, the court held that "Nicholson failed to appear, was not excused by the court, and, consequently, was summarily found to be in direct contempt because of his absence." The court imposed a sentence that included 20 days incarceration to be suspended upon successful completion of supervised, electronic monitoring, which was to begin no later than noon, August 25, 2011. The court also ordered Nicholson to pay a \$500 fine to be suspended upon proof of a charitable donation made no later than August 25, 2011 to one of two humane societies, and it ordered him to write letters of apology to three individuals no later than September 5, 2011.

Nicholson filed a motion for supersedeas in the trial court at 10:55 a.m. on August 25, 2011 together with written notice of intent to appeal the August 25, 2011 order. At 12:13 p.m., that same day, the state court entered an order effectively denying the motion for supersedeas and finding that Nicholson had violated the sentence by failing to initiate electronic monitoring by noon that day and that therefore, he should be immediately taken into custody and remain in confinement for 20 days. The court formally denied the motion for supersedeas on August 26, 2011.

In his motion to this Court, Nicholson contends he will be done irreparable harm unless this Court grant a supersedeas pending his appeal of his adjudication of contempt.

Under the present circumstances, we follow *Binkley v. Flatt*, 256 Ga. App. 263, 265 (568 SE2d 95) (2002), which held,

Under OCGA § 5-6-13, a trial court has no discretion to grant or refuse a supersedeas in cases of contempt where the defendant has submitted an application and written notice indicating her intention to seek an appeal. "The plaintiff having complied with the provisions of OCGA § 5-6-13, the trial court was without authority to delay its ruling until its punishment was complete. The statute calls a mandatory halt as a matter of right." *Calvert Enterprises v. Griffin-Spalding County Hosp. Auth.*, 197 Ga. App. 727, 728-729 (399 SE2d 287) (1990).

In order that the issues raised in Nicholson's appeal not become moot and to preserve the jurisdiction of this Court, see *Garland v. Tanksley*, 99 Ga. App. 201, 207 (107 SE2d 866) (1959), we hereby GRANT the motion for supersedeas and order that Nicholson be released INSTANTER. See also *In re Hatfield*, 290 Ga. App. 134, 136 (658 SE2d 871) (2008) ("the proper procedure for preventing a contempt adjudication from becoming moot is to obtain a supersedeas either from the trial court or, where (as here) the trial court denies the request, from the appellate court.").

This supersedeas shall expire if Nicholson fails to file a proper notice of appeal in the trial court by 3:00 p.m. on Monday August 29, 2011.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, AUG 26 2011

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

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

Holly A. O. Spencer, Clerk.

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD-12-02

DATE: 9-6-2011 REC #: 9999 PAID BY: Pauper

CHARGE: Supersedeas

STYLE: Michelle Robertson, et. al. v. Everbank, et. al

ATTY. NT: Xavier Reddick Hood
P. O. Box 451035
Atlanta, GA 31145
404-213-4738

ATTY. EE: Christopher Riley, Alston & Bird Denise Rainwater Griffin
1201 West Peachtree St Shapiro & Swertfeger, LLP
Atlanta, GA 30309 295 Culver St, Ste B
Lawrenceville, GA 30045

LOWER CT. JUDGE: Judge Todd Markle
LOWER CT. CASE # 2011 CV 201341
COUNTY: Fulton Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 9/6/2011 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, SEP 6 2011

The Court of Appeals hereby passes the following order:

MD-12-02. ROBERTSON et al. v. EVERBANK et al.

Michelle Robertson's emergency motion for an order for supersedeas is DENIED pursuant to Court of Appeals Rule 40 (b).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 6 2011

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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.*

Hally K. O. Sparrow, Clerk.



MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MO-12-03

DATE: 9/26/2011 REC #: 103719 PAID BY: Lawson & Thornton PC

CHARGE: Supersedeas

STYLE: Kristina Jones v. Kared D. Dixon

ATTY. NT: George Lawson, Jr
Lawson & Thornton, PC
3800 Camp Creek Parkway
Bldg. 1200 Ste. 150
Atlanta, GA 30331

Kristina Jones
Lawson & Thornton P.C.

ATTY. EE: Alana C. Nichols
Nichols & Safi Kows, LLC
4470 Dunwoody Rd. Ste. 463
Dunwoody, GA 30338

LOWER CT. JUDGE: Judge Tom Campbell

LOWER CT. CASE # 2011 CV 198285

COUNTY: Superior Court Fulton County

BRIEFS FILED: _____

JUDGEMENT DATE: 9/26/2011 JUDGMENT: Granted

M.F.R. FILED: 9/27/2011 NT mot. to reinstate stay 9/29/2011
REPOSSES: Granted Denied 9/30/2011

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, SEP 30 2011

The Court of Appeals hereby passes the following order:

MD-12-03. JONES v. DIXON.

Petitioner Kristina Jones filed a "Motion to Reinstate Order Granting Supersedeas." Having considered the motion, it is hereby DENIED.



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, SEP 30 2011*

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

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

Holly F. O. [Signature], Clerk.

Court of Appeals of the State of Georgia

ATLANTA, SEP 26 2011

The Court of Appeals hereby passes the following order:

MD-12-03. JONES v. STATE OF GEORGIA.

Petitioner Kristina Jones has filed an emergency motion for supersedeas. Having considered the motion, it is hereby **GRANTED**. Pursuant to OCGA § 5-6-46 (a), the trial court is deprived of jurisdiction to take further proceedings towards enforcement of the judgment superseded.¹



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, SEP 26 2011

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

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

Hally K. O. Spencer , Clerk.

¹ See *Williams v. Natalie Townhouses of Inman Park Condo. Assn., Inc.*, 182 Ga. App. 815, 817 (1) (357 SE2d 156) (1987) (“the law is . . . clear that a trial court has no jurisdiction to undertake contempt proceedings to enforce a judgment *that has been superseded* by the payment of costs and the filing of a notice of appeal) (emphasis in original).

Court of Appeals of the State of Georgia

ATLANTA, SEP 27 2011

The Court of Appeals hereby passes the following order:

MD-12-03. JONES v. DIXON.

On September 26, 2011, this Court granted Kristina Jones's emergency motion for supersedeas. LaReal Dixon subsequently filed a motion for reconsideration of that order.

Jones sought emergency relief under Court of Appeals Rule 40. As stated in subsection (a) of Rule 40, "[t]he notice of appeal as provided in OCGA § 5-6-34 (a) . . . shall serve as supersedeas upon payment of all costs in the trial court by the appellant." However, Court of Appeals Rule 40 (b) provides "[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." Because Jones has not demonstrated that the relief she seeks is "necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot," she is not entitled to emergency relief. Accordingly, upon consideration of the pleadings, we hereby GRANT the motion for reconsideration and vacate the September 26, 2011 order.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, SEP 27 2011

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

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

Hally K. O. Spawr , Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-12-04

DATE: 10-5-2011 REC #: 9999 PAID BY: Pauper

CHARGE: To Stay Eviction & Foreclosure

STYLE: Alfredia Pruitt v. MERS/GMAC

ATTY. NT: Alfredia Pruitt, prose
2360 Hickory Station Circle
Snellville, Georgia 30078

ATTY. EE: A. William Hoeffler
Troutman Sanders, LLP
5200 Bank of America Plaza
600 Peachtree St, NE - Suite 5200
Atlanta 30308

Teah N. Glenn, Esq.
Troutman Sanders, LLP

LOWER CT. JUDGE: Valerie Head (by designation)

LOWER CT. CASE # 11-A-10084-3

COUNTY: Gwinnett Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 10-5-2011 JUDGMENT: denied

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 6 2011

The Court of Appeals hereby passes the following order:

**MD-12-04. PRUITT v. FEDERAL NATIONAL MORTGAGE ASSOCIATION
et al.**

Alfredia Pruitt filed this emergency motion seeking an order that would stay eviction proceedings pending her appeal of a writ of possession. The writ of possession issued against Pruitt by the Superior Court of Gwinnett County required that she pay into the court registry an amount equal to all sums found by the trial court to be due for rent in order to maintain possession of the premises during the pendency of any appeal. OCGA § 44-7-56 provides that where a dispossessory judgment is entered against the tenant, as here, the trial court shall require the tenant to make such payments if he or she pursues an appeal. OCGA § 44-7-56 also provides that any appeal of a dispossessory judgment must be filed within seven days, and Pruitt did not file her appeal of the judgment of the court below, which was reinstated on September 12, 2011, until September 29, 2011. As a result, Pruitt is not entitled to maintain possession of the premises pending appeal, and her emergency motion is DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, OCT 6 2011

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

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

Hally K. O. Spawton, Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MA 12-05

DATE: 10/13/11 REC #: 3855 PAID BY: Kyung Trotter

CHARGE: Child custody

STYLE: Kyung Trotter v. Michael D. Ayres, Jr.

ATTY. NT: prose 508-904-1245
3 Bratwood Lane
Marlborough MA 01752

ATTY. EE: Michael
Debbie Crosby Peterae, P.C.
The Lawyers Building
170 Anderson Street
Marion GA 30060

LOWER CT. JUDGE: C. Latawa Keel
LOWER CT. CASE # 09112594-49
COUNTY: Cobb Superior

BRIEFS FILED: _____

JUDGEMENT DATE: 10/13/11 JUDGMENT: denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 13 2011

The Court of Appeals hereby passes the following order:

MD-12-05. TROTTER v. AYERS et al.

Kyung Trotter filed an emergency motion to stay a hearing that apparently is scheduled to take place this afternoon in the Superior Court of Cobb County. Trotter alleges that the hearing will concern matters ruled upon by the court below in its “Final Order on Custody,” which was entered on August 12, 2011. Trotter filed an application for discretionary appeal of that order, which this Court granted on October 4, 2011. Trotter was allowed ten days to file her notice of appeal with the court below, meaning that her time to file a notice of appeal expires tomorrow, and Trotter claims that she filed her notice of appeal on October 6, 2011.

While we do not know the matters to be considered at the scheduled hearing, Trotter correctly notes that her filing of a notice of appeal would divest the court below of jurisdiction to alter its judgment in the “Final Order on Custody.” *Long v. Long*, 303 Ga. App. 215, 217, n.2 (692 SE2d 811) (2010). We presume the trial court understands that, if Trotter has, in fact, filed her notice of appeal, any modification of the order that is subject of the appeal would be beyond the jurisdiction of the trial court and a nullity. Because we trust that the trial court understands the limits of its jurisdiction and will consider these limits before acting, we decline to stay the hearing, which might well concern other matters as to which the trial court properly may act. The emergency motion is therefore denied.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta,

OCT 13 2011

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

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

Hally K. O. Spawort , Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-12-06

DATE: 10-17-2011 REC #: 3881 PAID BY: L. Reddick Hood, Atty

CHARGE: Supersedeas

STYLE: Ruth Ashley v. JP Morgan Chase Bank Natl Assn et.al

ATTY. NT: Jaxavier Reddick Hood
L.R. Hood & Associates
P.O. Box 451035
Atlanta, GA 31145

ATTY. EE: Stephen Kern
Kitchens Kelly & Gagnies, P.C.
Eleven Piedmont Center - Ste 900
3495 Piedmont Road, NE, Atlanta 30305
Robert Michael Sheffield
McCalla Raymer, LLC
6 Concourse Parkway - Ste 3200, Atlanta 30328

Frank Olson
McCarthy & Caulder, LLC
3525 Piedmont Road - Bldg 6 - Ste 700
Atlanta 30305

LOWER CT. JUDGE: Judge John J. Goger

LOWER CT. CASE # 2011 CV 204263

COUNTY: Fulton County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 10/17/2011 JUDGMENT: Denied

M.F.R. FILED: 10/27/2011 — Denied 10/27/2011
REPOSSES: _____

N.O.I. FILED: 11/9/2011

Court of Appeals of the State of Georgia

ATLANTA, OCT 28 2011

The Court of Appeals hereby passes the following order:

MD-12-06. ASHLEY v. JPMORGAN CHASE BANK, N. A. et al.

On October 17, 2011, we issued an order denying Ruth Ashley's motion to suspend the portion of an order entered by the Fulton County Superior Court requiring her to make monthly payments into the court registry pending the outcome of a lawsuit related to her right of possession over certain residential property. Ashley has now filed a motion asking us to reconsider our earlier order. Ashley has not shown that we overlooked any material fact, statute, or decision or that we misconstrued or misapplied any controlling authority. Accordingly, Ashley's motion for reconsideration is DENIED.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, OCT 28 2011

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

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

Hally K. O. Spaw , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, OCT 17 2011

The Court of Appeals hereby passes the following order:

MD-12-06. ASHLEY v. JPMORGAN CHASE BANK, N. A., et al.

The court below entered a temporary injunction in favor of Ruth Ashley, staying certain dispossessory proceedings against her, but pursuant to OCGA § 9-11-65 (c), the court required Ashley to give security as a condition of the injunction. The security that Ashley is required to give consists in part of an amount certain that she must pay into the registry of the court below on the 15th day of each month. It appears that Ashley has taken an appeal from the injunction, presumably to assert some claim of error with respect to the requirement that she give security. In connection with her appeal, Ashley has filed an emergency motion pursuant to Court of Appeals Rule 40 (b), in which she asks this Court to suspend the requirement that she continue to make monthly payments into the registry of the court below as a condition of the injunction.

This Court may grant such emergency relief only when necessary to preserve our jurisdiction of an appeal or to prevent the issue presented on appeal from being rendered moot. See Rule 40 (b). But in her emergency motion, Ashley does not show that there exists any imminent danger that we will lose jurisdiction of her appeal or that any issue to be presented in her appeal will become moot. In particular, Ashley does not show — or even assert — that she is unable to pay an amount soon due to be paid into the registry of the court below and that her inability to pay that amount presents an imminent risk that her appeal will become moot. Consequently, Ashley has failed to show the existence of an emergency warranting relief under Rule 40 (b).

Equally important, in a case involving injunctive relief, like this one, the notice of appeal does not act as a supersedeas, and the court below generally retains

jurisdiction to reconsider, modify, or stay its own injunction. *Cox v. Altus Healthcare &c., Inc.*, 308 Ga. App. 28, 29 (1) (706 SE2d 660) (2011). It does not appear that Ashley has made application to the court below to stay its requirement that she give security pending appeal or to modify its requirement that she give security in light of any changed circumstances rendering her unable to post the security. The court below is in a better position to assess the facts relevant to any such application, and in the absence of a showing that an application to the court below would be futile or that time does not permit an application to the court below, such an application ought to be presented first to the trial court.

For these reasons, the “Emergency Motion for an Order Granting Plaintiff’s Request for a Supersedeas” is **DENIED**.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, OCT 17 2011

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

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

Hally F. O. [Signature], Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MD-12-07

DATE: 10/19/2011 REC #: 3904 PAID BY: Durant Law, LLC

CHARGE: Supersedeas Bond

STYLE: Suntrust Bank v. Eastville Development Corp & Robert Young

ATTY. NT: Katherine Durant
4426 Hugh Howell Rd.
Ste B 336
Tucker, GA 30084

ATTY. EE: Neal J. Quirk, Esq. Agnes K. Harbaczewski, Esq.
Quirk & Quirk, LLC
300 CENTURY SPRINGS WEST
4000 LAKE FOREST DRIVE, N.W.
Atlanta, Georgia 30328

LOWER CT. JUDGE: Judge John J. Gogel

LOWER CT. CASE # 2009 CV 165907

COUNTY: Fulton County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 10/19/2011 JUDGMENT: Denied

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 19 2011

The Court of Appeals hereby passes the following order:

MD-12-07. EASTVILLE DEV. CORP. et al. v. SUNTRUST BANK.

The appellants appeal from an order entered on July 12, 2011, which awarded summary judgment to the appellee on its claim that the appellants guaranteed repayment to the appellee of certain debts that now are in default. On the motion of the appellee, the court below ordered the appellants to post a supersedeas bond in the amount of \$4,000,000. If the appellants fail to post this bond, the appellee will be able to enforce any presently enforceable provisions of the judgment below, but our jurisdiction of the appeal will be unaffected. See *Hawn v. Chastain*, 246 Ga. 723 (273 SE2d 135) (1980).

The appellants have filed an emergency motion requesting this Court to vacate the order requiring them to post a supersedeas bond. Under Court of Appeals Rule 40 (b), we may issue emergency orders to “preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot.” Our power to issue emergency orders “shall be exercised sparingly.” Court of Appeals Rule 40 (b). Whether to require a supersedeas bond and, if so, in what amount are matters committed primarily to the trial courts. See OCGA § 5-6-46 (a). Because the inability or unwillingness of the appellants to post the required bond will not affect our jurisdiction of their appeal, we see no reason to exercise our limited powers under Rule 40 (b) in this case. The emergency motion is DENIED.



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

OCT 19 2011

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

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

Hally F. O. [Signature] , Clerk.

MOTIONS DOCKET

JUDGE # 98

MOTION DOCKET NUMBER MD-12-08

DATE: 10/25/2011

REC #: 3936

PAID BY: Supreme Court of Georgia

CHARGE: Requesting Remand with Instructions - Supersedeas
STYLE: Motion to Seal Metro Atlanta Task Force for the Homeless v. Ichthus Community Trust

ATTY. NT: Steven G. Hall
Baker, Donelson, Bearman, Caldwell & Berkowitz
Monarch Plaza, Ste 1600
3414 Peachtree Rd, NE
Atlanta, Ga. 30326

ATTY. EE: _____

LOWER CT. JUDGE: Judge Craig Schwallie, Sr.
LOWER CT. CASE # 2010 CV 085971
COUNTY: Fulton County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 10/25/2011 JUDGMENT: Motion to Remand ~~stay~~ Granted To Stay Granted in Part
Motion to Seal Granted in Part

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 25 2011

The Court of Appeals hereby passes the following order:

**MD-12-08. METRO ATLANTA TASK FORCE FOR THE HOMELESS, INC.
v. ICHTHUS COMMUNITY TRUST, et al.**

The Metro Atlanta Task Force for the Homeless, Inc. appeals from an order of the Superior Court of Fulton County, entered on October 17, 2011, in which the superior court issued a writ of possession with respect to property now occupied by the Task Force. The Task Force filed its notice of appeal on October 21, 2011, and on the same day, it appears that the superior court entered an order that purports to vacate its October 17 order of dispossession. The record does not show whether the order dated October 21 was entered prior to the filing of the notice of appeal. If this order was entered after the filing of a notice of appeal, of course, the order would be a nullity because the superior court then was without jurisdiction to modify, amend, or vacate its October 17 order of dispossession.

Also on October 21, and apparently without knowledge that the superior court had entered an order that purports to vacate its October 17 order of dispossession, the Task Force filed two motions with the Supreme Court: an emergency motion to stay the October 17 order of dispossession, which was filed in both redacted and unredacted form; and a motion to seal the unredacted motion and certain exhibits to the motion. After learning of the October 21 order that purports to vacate the October 17 order, the Task Force filed a motion to remand on October 24, 2011. The Supreme Court has determined that these motions are properly within the jurisdiction of this Court, and the Supreme Court has transferred these motions to this Court for disposition.

Because the superior court apparently has determined that its October 17 order

of dispossession should be vacated, because the superior court apparently attempted to vacate its October 17 order by an order dated October 21, because there is some uncertainty about whether the superior court entered its October 21 order before the Task Force filed its notice of appeal, and because it appears that the issues presented in the appeal and in the several motions now pending before this Court would be moot if the October 17 order were, in fact, vacated, we order as follows:

1. The motion to remand is **GRANTED**, and this appeal is remanded to the superior court for the following purposes: (a) to determine whether the October 21 order vacating the October 17 order of dispossession was entered prior to the filing of a notice of appeal and at a time when the superior court still had jurisdiction to modify, amend, or vacate its earlier order, such that the October 17 order of dispossession already has been vacated, and if not, to determine whether the October 17 order of dispossession now should be vacated; (b) to enter such other and further orders as are appropriate; and (c) to conduct such other and further proceedings as are appropriate.

2. Because there is some uncertainty about whether the October 17 order of dispossession has been vacated or is still in effect, the emergency motion to stay the October 17 order is **GRANTED IN PART**, and such order is stayed until such time as the superior court has the opportunity to make the determinations described in Division 1 (a) of this Order and to enter an order setting forth such determinations. If the Task Force is dissatisfied with these determinations, it may appeal from the order setting forth such determinations by filing a notice of appeal within seven days of its entry.

3. The motion to seal the unredacted version of the emergency motion to stay and to seal certain exhibits to such motion is **GRANTED IN PART**. The Clerk shall put under seal the unredacted version of the emergency motion to stay, as well as exhibits 2, 20, 21, and 22 to the motion. Such materials shall be maintained under seal until 4:30 p.m. on Monday, October 31, 2011, at which time they shall be unsealed without further order of this Court. Should any person having an interest in these materials desire that they not be unsealed, such person is directed to make a showing

to this Court why such materials should not be made available to the public, and such person should make such showing by filing a motion to maintain materials under seal no later than 4:30 p.m. on Friday, October 28, 2011. To permit any such person to timely make such a motion, counsel for the Task Force are directed, upon receipt of this Order, to immediately notify any person who might reasonably be expected to have an interest in such materials, including any party that produced the materials in discovery or pursuant to a subpoena or designated them as confidential pursuant to any protective order, or their counsel of this Order.

4. To the extent that the pending motions request any other or further relief, such motions are **DENIED**.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, OCT 25 2011

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

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

Hally H. O. Spawort , Clerk.

MOTIONS DOCKET

JUDGE # 98 MOTION DOCKET NUMBER MS 12-09

DATE: 10/26/2011 REC #: 9999 PAID BY: Pauper

CHARGE: Stay of Execution

STYLE: Alfredia Pruitt v. MERS/GMAC Federal National Mortgage Association, USA Federal Savings Bank

ATTY. NT: Alfredia Pruitt
2360 Hickory Station C,
Snellville, GA 30078

ATTY. EE: A. William Hoeffler
Troutman Sanders
5200 Bank of America Plaza
600 Peachtree St NE, Ste 5200
Atlanta, GA 30308-3218

Teah N. Glenn
Troutman Sanders
(same address as Mr. Hoeffler)

LOWER CT. JUDGE: Judge Dawson Jackson

LOWER CT. CASE # 11-A-10675-3

COUNTY: Gwinnett County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 10/26/2011 JUDGMENT: Denied

M.F.R. FILED: _____

REPOSSESSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, OCT 26 2011

The Court of Appeals hereby passes the following order:

MD-12-09. PRUITT v. MERS/GMAC, et al.

The Superior Court of Gwinnett County issued a writ of possession to dispossess Alfredia Pruitt of certain real property that she apparently now occupies. She appealed directly from the entry of the writ of possession, and in connection with that appeal, she filed an emergency motion with our Court on October 5, 2011, in which she asked us to stay the writ pending appeal. We denied the emergency motion because her appeal was untimely and because she had failed to post the security required under OCGA § 44-7-56. See *Pruitt v. Federal National Mortgage Assoc.*, MD-12-04 (Oct. 5, 2011). It appears that Pruitt then filed a new lawsuit in the Superior Court, in which she sought, among other things, a temporary restraining order to enjoin the execution of the writ of possession. The Superior Court, it appears, denied the application for a temporary restraining order and dismissed the lawsuit. Pruitt now appeals from the dismissal of her new lawsuit, and in connection with that appeal, she again seeks emergency relief from this Court, asking us in a “Motion Stay of Execution Pending Appeal” to stay the writ of possession pending appeal and to enjoin its execution.

The motion is **DENIED**. Considering both the motion and the various papers that are attached to the motion — which include, it appears, some pleadings filed in the court below and orders of the court below, materials obtained from some website, pleadings and deposition transcripts in a case involving other parties in another state, and some unidentifiable handwritten materials — we conclude that Pruitt has failed to show that her appeal has any meaningful likelihood of success on the merits or that

she is entitled to an injunction against her eviction pending appeal. Merely filing an appeal from a judgment denying temporary injunctive relief is not enough to entitle the appellant to that same relief pending appeal, and it is not an appropriate exercise of the limited emergency powers of this Court under Rule 40 (b) to grant such relief in the absence of a showing that the appellant has some real likelihood of prevailing on the merits of her appeal. We also note that the Superior Court concluded that the issues presented in the lawsuit now on appeal were previously raised and decided in the earlier case in which a writ of possession was issued, the case in which Pruitt failed to timely commence an appeal.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, OCT 26 2011

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

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

Hally K. O. Spawort, Clerk.

MOTIONS DOCKET

JUDGE # 99 MOTION DOCKET NUMBER MD-12-10

DATE: 11/4/2011 REC #: 9999 PAID BY: Pauper

CHARGE: Motion to Stay

STYLE: Douglas Burgess v. Liberty County Board of Elections, et. al.

ATTY. NT: _____

ATTY. EE: _____

LOWER CT. JUDGE: Judge David Cavender
LOWER CT. CASE # 2011-V-1760DC
COUNTY: Liberty County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: _____ JUDGMENT: _____

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, NOV 7 2011

The Court of Appeals hereby passes the following order:

MD-12-10. Douglas Burgess v. Liberty County Superior Court et al.

Douglas Burgess filed an emergency motion pursuant to Court of Appeals Rule 40 (b) involving an election scheduled to take place in the City of Hinesville on November 8, 2011. This motion is related to Burgess's application for discretionary appeal from a superior court order affirming a Board of Elections decision to disqualify him from seeking and holding office in the Hinesville City Council. See A12D0117.

Appeals in cases of election contests, however, are within the exclusive appellate jurisdiction of the Supreme Court. Ga. Const. 1983, Art. VI, § VI, ¶ II (2). Accordingly, Application No. A12D0117 has been transferred to the Supreme Court for disposition. This related emergency motion is likewise TRANSFERRED to the Supreme Court.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, NOV 7 2011

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

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

Hally F. O. Spaw , Clerk.

MOTIONS DOCKET

JUDGE # 99 MOTION DOCKET NUMBER MD-12-11

DATE: 11/14/2011 REC #: 4083 PAID BY: Head, Thomas, Webb & Willis, LLC

CHARGE: Stay

STYLE: Dominic Mocerri III v Judge David Sweat

ATTY. NT: Gregory A. Willis
750 Hammond Drive, Bldg. 5
Atlanta, GA 30328

ATTY. EE: Brian Patterson
District Attorney's Office
Clarke County Courthouse
325 E. Washington St., Suite 500
Athens, GA 30601

LOWER CT. JUDGE: Judge David Sweat
LOWER CT. CASE # SU08CR1832 (indictment number)
COUNTY: Superior Ct Clarke County

BRIEFS FILED: _____

JUDGEMENT DATE: 11/14/2011 JUDGMENT: Granted

M.F.R. FILED: 11/15/2011 (Not to stay) Denied
REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, NOV 14 2011

The Court of Appeals hereby passes the following order:

MD-12-11. MOCERI v. THE STATE.

Appellant in the above-referenced case filed a motion for discharge and acquittal on the ground that his constitutional right to a speedy trial has been violated. The trial court denied appellant's motion on November 10, 2011, and appellant filed a notice of appeal of that denial in the Superior Court of Athens Clarke County on the following day. On November 14, 2011, appellant filed an emergency motion in this Court, requesting a stay of his trial, which had been set for the week of November 14, 2011.

It is well settled that "a defendant may directly appeal from the pre-trial denial of either a constitutional or statutory speedy trial claim." *Callaway v. State*, 275 Ga. 332, 333 (567 SE2d 13) (2002). Given that appellant has filed a notice of appeal of the trial court's denial of his motion for discharge and acquittal in this matter, the trial court is divested of jurisdiction. Accordingly, appellant's emergency motion is granted, and all further proceedings are stayed while appeal of the trial court's November 10, 2011 order is pending.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, NOV 14 2011

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

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

Hally H. O. Spawort, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 15 2011

The Court of Appeals hereby passes the following order:

MD-12-11. MOCERI v. THE STATE.

On November 14, 2011, this Court granted appellant's emergency motion to stay his trial in light of the fact that appellant had filed a notice of appeal of the trial court's denial of his motion for discharge and acquittal alleging a violation of his constitutional right to a speedy trial. *See Callaway v. State*, 275 Ga. 332, 333 (567 SE2d 13) (2002) (holding that a defendant may directly appeal from the pre-trial order of a constitutional speedy trial claim). On November 15, 2011, the State filed a motion requesting that this Court dismiss the stay, arguing that because the trial court's summary order found appellant's appeal to be frivolous, the court was not required to allow a direct appeal. *See Proveaux v. State*, 198 Ga. App. 119, 120 (2) (401 SE2d 12) (1990). Having considered the State's motion, it is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, NOV 15 2011

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

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

Hally F. O. Spawor Clerk.

MOTIONS DOCKET

JUDGE # 99 MOTION DOCKET NUMBER 11D-12-12

DATE: 11/14/2011 REC #: 4095 PAID BY: Eric J. Hertz

CHARGE: Stay Hearing

STYLE: In Re Nicholson

ATTY. NT: Chris G. Nicholson
505 Courthouse Lane
Augusta, GA 30901

ATTY. EE: Served Judge Watkins

LOWER CT. JUDGE: Judge David Watkins
LOWER CT. CASE # 2090RCMC12965
COUNTY: Richmond County State Court

BRIEFS FILED: _____

JUDGEMENT DATE: _____ JUDGMENT: _____

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, NOV 15 2011

The Court of Appeals hereby passes the following order:

MD-12-12. IN RE NICHOLSON.

Attorney Christopher G. Nicholson has filed an emergency motion in this Court seeking to stay a hearing scheduled for 2 p.m. on Tuesday, November 15, 2011. The hearing is to show cause why Nicholson's notice of appeal should not be dismissed due to an alleged failure to pay required costs pursuant to OCGA § 5-6-48 (c). Nicholson contends before this Court that he has paid the relevant costs, which relate to a notice of appeal that we instructed Nicholson to file when this Court granted a prior emergency motion (MD-12-001).

The question of whether Nicholson has paid the costs required pursuant to OCGA § 5-6-48 (c) is a question of fact for the trial court. As such, Nicholson seeks relief in this court prematurely. *See* Court of Appeals Rule 40 (b) (i) (emergency motions must explain why an order of this Court is necessary and why the requested action is time sensitive). Should the trial court dismiss Nicholson's appeal, he may directly appeal that decision to this court. *See Smith v. Simpson*, 231 Ga. App. 109 (497 SE2d 663) (1998). Accordingly, Nicholson's emergency motion is **DENIED**.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, NOV 15 2011

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

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

Hally H. O. Spawort, Clerk.

MOTIONS DOCKET

JUDGE # _____ MOTION DOCKET NUMBER MD-12-13

DATE: 11/28/2011 REC #: 4189 PAID BY: Arnall Golden Gregory

CHARGE: leave to file Application Under Seal

STYLE: Debra Byers v. Savannah Foods Industrial, Inc et al.

ATTY. NT: Jeffrey Y. Lewis
Arnall Golden Gregory, LLP
171 17th St, Ste. 2100
Atlanta, GA 30363-1031

David H. Hobson
(← same as Lewis)

ATTY. EE: David A. Dial
Richard H. Hill
Weinberg, Wheeler, Hudsons...
3344 Peachtree Rd Ste 2400
Atlanta, GA 30326

Steven E. Scheer
8 East Liberty St
P.O. Box 11047
Savannah, GA 31412

G. Mason White & Leslie J. Thompson
Brennan, Harris...
P.O. Box 2784, Savannah, GA 31402

Brent Savage
Savage, Turner...
304 East Bay St, Savannah, GA 31412

LOWER CT. JUDGE: Herman Coolidge

LOWER CT. CASE # STCV085269

COUNTY: Chatham County Superior Court
State

BRIEFS FILED: _____

JUDGEMENT DATE: 11/29/11 JUDGMENT: Granted

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

12/27/2011 order concerning unsealing

Court of Appeals of the State of Georgia

ATLANTA, NOV 29 2011

The Court of Appeals hereby passes the following order:

**MD-12-13. DEBRA BYERS et al. v. SAVANNAH FOODS INDUSTRIAL, INC.
et al.**

Zurich Services Corporation (“ZSC”), a defendant in the above-referenced case, was denied summary judgment by the trial court on November 15, 2011. Seeking to invoke the emergency powers of this Court under Rule 40 (b), ZSC now requests leave to file an application for interlocutory appeal under seal today, November 28, 2011. *See* Court of Appeals Rule 30 (e) (“No application for interlocutory appeal shall be filed under seal unless counsel has moved the Court for permission to file under seal and the Court has granted such motion.”).

In its emergency motion, ZSC contends that the documents and exhibits that will accompany a copy of ZSC’s motion for summary judgment have been designated as confidential by orders in related cases, and that the motion for summary judgment and accompanying documents were filed with the trial court under seal. Thus, ZSC argues that it is obligated “to maintain the confidentiality of the documents designated as such and to file such documents under seal.” ZSC’s emergency motion for leave to file its interlocutory appeal under seal is hereby **GRANTED**.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, NOV 29 2011

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

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

Hally F. O. Sparrow , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, DEC 27 2011

The Court of Appeals hereby passes the following order:

A12I0095. ZURICH SERVICES CORP. v. BYERS, et al.
MD-12-13. BYERS v. SAVANNAH FOODS INDUSTRIAL, INC., et al.

Zurich Services Corporation filed an application for interlocutory appeal, in which Zurich sought immediate review of an order denying its motion for summary judgment. Having reviewed and considered the application for interlocutory appeal, we **DENY** it.

On the day Zurich filed its application, it also filed an emergency motion, in which it sought leave of this Court to file the application, as well as the exhibits attached to it,¹ under seal. Zurich explained in its emergency motion that some parts of some of the exhibits — Zurich did not identify which parts or which exhibits — were the subjects of various protective orders, which required that they be filed under seal. Based on our review of the emergency motion, and because time was short for Zurich to file its application, this Court allowed Zurich to file its application and the exhibits under seal, see *Byers v. Savannah Foods Industrial, Inc.*, MD-12-13 (Nov. 29, 2011), but at the time we did so, we had not yet had an opportunity to carefully review the application and exhibits.

We now have reviewed these materials, and we are not convinced that many, if any, of them ought to remain under seal. As our Supreme Court has explained, “[i]n the State of Georgia, the public and the press have traditionally enjoyed a right of

¹ Ten exhibits are attached to the application. One exhibit, however, consists of a motion for summary judgment and 48 additional documents that are attached to the motion, and another exhibit consists of a reply brief and 17 additional documents that are attached.

access to court records. Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly.” *Atlanta Journal & Constitution v. Long*, 258 Ga. 410, 411 (1) (369 SE2d 755) (1988). Consequently, there is a presumption that “the public will have access to all court records.” *Id.* at 413 (3). See also *In re Gwinnett County Grand Jury*, 284 Ga. 510, 511 (668 SE2d 682) (2008). Generally speaking, this presumption can be overcome only by a demonstration that good cause exists to seal court records and that this good cause clearly outweighs the public interest in access to court records. *Long*, 258 Ga. at 414 (3). See also *Savannah College of Art & Design, Inc. v. School of Visual Arts, Inc.*, 270 Ga. 791, 792-793 (515 SE2d 370) (1999). Accordingly, we hereby **VACATE** our earlier order granting the emergency motion for leave to file under seal, see *Byers v. Savannah Foods Industrial, Inc.*, MD-12-13 (Nov. 29, 2011), and we now order as follows:

1. The application for interlocutory appeal and any other materials filed under seal in connection with the application shall be kept under seal by the Clerk until five o'clock on the afternoon of Friday, January 27, 2012, at which time the Clerk shall unseal those records without further order of the Court.

2. Counsel for Zurich shall, upon receipt of this order, promptly notify all interested persons, including any person who is a party to the proceedings below (or his lawyer), any person who produced any of the materials filed with this Court (or his lawyer), and any person who designated any of the materials filed with this Court as confidential (or his lawyer), of this order by telephone or in person. Counsel also promptly shall send a copy of this order by facsimile, electronic mail, and overnight or hand delivery to all such persons. Counsel also shall, upon request, provide any interested person with a description of the materials filed with this Court, one that is detailed enough to permit such person to ascertain whether he might have an interest in maintaining the confidentiality of any such materials.

3. If any interested person desires that this Court keep any of these materials under seal after January 27, 2012, such person shall file a motion to seal with this Court, no later than five o'clock on the afternoon of Friday, January 20, 2012. Any

such motion must identify with specificity the materials sought to be kept under seal, state sufficient grounds for keeping the materials under seal, and be accompanied by an evidentiary showing of such grounds for keeping the materials under seal.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, DEC 27 2011

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

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

Hally H. O. Spencer , Clerk.

MOTIONS DOCKET

JUDGE # 90+96 MOTION DOCKET NUMBER 11A.12.14

DATE: 11/30/11 REC #: 4218 PAID BY: Greenberg Traurig

CHARGE: Motion to stay modification of injunction

STYLE: American Management Services East LLC et al
v. Port Penning Family Communities, LLC et al

ATTY. NT: Michael L. King See attached
Andrew Capozzuto
greenberg Traurig, LLP
The Forum Suite 400
3290 Northside Pkwy Atlanta GA 30321

ATTY. EE: Jerry A. Buchanan Jeffrey L. William
Lois M. Leonardo Donna M. Welch
Buchanan + Land, LLP Kirkland + Ellis, LLP
P.O. Box 2848 300 N. LaSalle
Columbus GA 31902 Chicago IL 60604

LOWER CT. JUDGE: Frank J. Jordan Jr.

LOWER CT. CASE # SU10CV2025

COUNTY: Muscogee Superior

BRIEFS FILED: _____

JUDGEMENT DATE: 12/1/2011 JUDGMENT: Granted Stay conditionally see
12/1/2011 Granted Stay conditionally order

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

12-12-2011 NT+EE Brief filed per order of 12-1-2011
12-16-2011 Permanent Stay Order
12-27-2011 MFR by EE & Exhibits Denied 12-29-11
1-6-2012 NOI 3-13-2012 cert denied
1-18-2012 NOA
1-18-2012 cert filed

Court of Appeals of the State of Georgia

ATLANTA, DEC 1 2011

The Court of Appeals hereby passes the following order:

**MD-12-14. AMERICAN MANAGEMENT SERVICES EAST, LLC et al v.
FORT BENNING FAMILY COMMUNITIES, LLC et al.**

On November 30, 2011, Appellants in the above-referenced civil action filed an emergency motion to stay the October 14, 2011 modification of an injunction pending the appeal of that modification. For the reasons set forth *infra*, we hereby GRANT a temporary stay of that modification.

On August 20, 2010, the trial court in this matter entered an injunction, which provided *inter alia* that “[Appellees] shall not unilaterally remove [Appellants] from the Fort Belvoir Project until such time as the Court has heard and decided the declaratory judgment action in Count Two of Plaintiff’s Complaint or until further order of this Court.” However, on October 14, 2011, the trial court modified its August 10, 2010 order by removing the aforementioned language. Appellants filed a notice of appeal of the October 14, 2011 order and filed this emergency motion after unsuccessfully seeking a stay in the trial court.

In order to protect the appellants’ rights and to maintain the status quo in this matter, *see Jackson v. Bibb County School Dist.*, 271 Ga. 18, 19 (515 SE2d 151) (1999), we hereby GRANT a temporary stay of the trial court’s October 14, 2011 order through December 19, 2011, at which time this Court will determine whether to issue a permanent stay pending appellate review of that order. Given the complexity of this matter, we direct both parties to fully brief whether a permanent stay pending appellate review is warranted. Such briefs must be physically filed in this Court by noon December 12, 2011.



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

DEC 1 2011

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

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

Holly H. O. Sparrow, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, DEC 16 2011

The Court of Appeals hereby passes the following order:

**MD-12-14. AMERICAN MANAGEMENT SERVICES EAST, LLC et al. v.
FORT BENNING FAMILY COMMUNITIES, LLC et al.**

Appellants filed an emergency motion to stay the trial court's modification of an earlier injunction in the underlying declaratory judgment action. On August 20, 2010, the trial court entered an injunction which provided, in pertinent part, that "[Appellees] shall not unilaterally remove [Appellants] from the Fort Belvoir Project until such time as the Court has heard and decided the declaratory judgment action in Count Two of Plaintiffs' Complaint or until further order of this Court." Thereafter, on October 14, 2011, the trial court modified that prior order by removing the aforementioned language prohibiting Appellees' unilateral removal of Appellants from the project. After unsuccessfully seeking a stay of that order in the trial court, Appellants filed this emergency motion.

On December 1, 2011, we granted a temporary stay of the trial court's October 14, 2011 order, and directed the parties to fully brief the issue of whether a permanent stay pending appellate review of that order should be issued. Having considered the parties' briefs, we conclude that, in order to maintain the status quo and to ensure that the contested issues in the underlying action do not become moot, Appellees' emergency motion for a stay of the October 14, 2011 order should be, and hereby is, GRANTED. See Court of Appeals Rule 40 (b).



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, DEC 16 2011

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

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

Hally K. O. Spawor , Clerk.

Court of Appeals of the State of Georgia

ATLANTA, DEC 29 2011

The Court of Appeals hereby passes the following order:

**MD-12-14. AMERICAN MANAGEMENT SERVICES EAST, LLC et al. v.
FORT BENNING FAMILY COMMUNITIES, LLC et al.**

Appellees' Motion for Reconsideration of December 16, 2011 Order Permanently Staying the Trial Court's October 14, 2011 Order Pending Appellate Review is hereby DENIED.



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, DEC 29 2011*

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

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

Hally K. O. Spawort, Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S12C0812

Atlanta, February 27, 2012

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**FORT BENNING FAMILY COMMUNITIES, LLC et al. v. AMERICAN
MANAGEMENT SERVICES EAST, LLC et al.**

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

All the Justices concur.

RECEIVED IN OFFICE
2012 MAR 14 PM 1:04
CLERK OF COURT ADMINISTRATOR
COURT OF APPEALS OF GA

MD 12-14

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 13, 2012



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

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

Lois C. Pittman, Chief Deputy Clerk

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD-12-15

DATE: 1/9/2012 REC #: 9999 PAID BY: Pauper Affidavit

CHARGE: Contempt - Custody

STYLE: Alex Higdon v. Jane Higdon

ATTY. NT: Alex Higdon, pro se
6030 China Rose Lane
Johns Creek, GA 30091

ATTY. EE: Erin S. Stone
Schulten, Ward & Turner, LLP
260 Peachtree St, Suite 2700
Atlanta, GA 30303

LOWER CT. JUDGE: Gail S. Tusan

LOWER CT. CASE # 2010CV184629

COUNTY: Fulton County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: _____ JUDGMENT: _____

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JAN 11 2012

The Court of Appeals hereby passes the following order:

MD-12-15. HIGDON v. HIGDON.

Alex Higdon, pro se, filed an emergency motion requesting an order for supersedeas providing that while his appeal of the trial court's order on motions for contempt involving the legal and physical custody of the children is pending, the temporary order's custody provisions should be reinstated. Higdon argues that if the final order remains in effect during appeal, numerous contested custody issues will "remain moot."

First, OCGA § 5-6-35 (k) provides: "Where an appeal is taken pursuant to this Code section for a judgment or order granting nonmonetary relief in a child custody case, such judgment or order shall stand until reversed or modified by the reviewing court unless the trial court states otherwise in its judgment or order." Accordingly, the final order will remain in effect during the pendency of the appeal.

In addition, Higdon has failed to show any emergency regarding the healthcare for his children that would meet the requirements for a Rule 40 (b) emergency motion. Accordingly, that motion is DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, JAN 11 2012

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

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

Hally K. O. Spawr, Clerk.

MOTIONS DOCKET

JUDGE # 95 MOTION DOCKET NUMBER MD-12-16

DATE: 1/11/2012 REC #: 4508 PAID BY: Puglise Law Firm, PC

CHARGE: Motion to Stay

STYLE: In The Interest of J.R.L.

ATTY. NT: Michael Puglise, Atty
1387 Scenic Highway
Snellville, GA 30078

ATTY. EE: Joe Hendricks
District Attorney, Fannin County
400 W. Main St. #200
Blue Ridge, GA 30513

LOWER CT. JUDGE: Judge Franklin D. Fulford

LOWER CT. CASE # 2016-J-16M

COUNTY: Fannin County Juvenile Court

BRIEFS FILED: _____

JUDGEMENT DATE: _____ JUDGMENT: _____

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, JAN 12 2012

The Court of Appeals hereby passes the following order:

MD-12-16. In the Interest of Jacob Robert Lee, a child.

On December 29, 2011, the Fannin County juvenile court transferred this case arising from a July 2011 motor vehicle accident to Fannin County Superior Court on the ground that Lee, who was sixteen years old at the time of the accident, should be tried as an adult for crimes including first-degree vehicular homicide, driving under the influence, and reckless driving.

On January 9, 2012, Lee filed his notice of appeal from the juvenile court's order to transfer. On January 12, Lee filed this emergency motion to stay proceedings, including any presentment of the case to a grand jury.

Lee has not shown to the satisfaction of this Court that any action is necessary. See Rule 40 (b). Accordingly, Lee's emergency motion is DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, JAN 12 2012

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

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

Hally K. O. Spawor, Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-12-17

DATE: 2-10-2012 REC #: 9999 PAID BY: Pauper

CHARGE: Writ of Mandamus

STYLE: Danny Hawk v. Fulton Co. Superior Court

ATTY. NT: Danny Hawk, pro se

ATTY. EE: _____

LOWER CT. JUDGE: Jerry W. Baxter

LOWER CT. CASE # 2011 CV 202990

COUNTY: Fulton County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 2-13-2012 JUDGMENT: Deniod

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, FEB 13 2012

The Court of Appeals hereby passes the following order:

MD-12-17. HAWK v. BAXTER et al.

Proceeding pro se, Danny Hawk has filed in this court an “Emergency Petition for Writ of Mandamus” against Judge Jerry W. Baxter of the Superior Court of Fulton County and against the Clerk of the Superior Court of Fulton County. Hawk’s motion fails to meet the standard for emergency relief set forth in Court of Appeals Rule 40 and is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, FEB 13 2012

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

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

Hally K. O. Sparrow, Clerk.

MOTIONS DOCKET

JUDGE # 93 MOTION DOCKET NUMBER MD-12-18

DATE: 2/10/2012 REC #: 4784 PAID BY: Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

CHARGE: Supersedeas (To Stay)

STYLE: ~~93-12-18-18~~ Metro Atlanta Task Force for the Homeless, Inc.
v. Ichthus Community Trust

ATTY. NT: Steven G. Hall, Baker, Donelson
Suite 1600, Monarch Plaza
3414 Peachtree Rd, NE
Atlanta, GA 30326

ATTY. EE: Matthew G. Moffett
Wayne S. Melnick
Gray, Rust, St. Amant, Moffett & Breske, LLP
1700 Atlanta Plaza
950 East Paces Ferry Rd
Atlanta, GA 30326

Eric Shapiro
400 Perimeter Center Terrace, NE
The North Terraces
Suite 900
Atlanta, GA 30346

LOWER CT. JUDGE: Judge Craig Schwall

LOWER CT. CASE # 2010 CV 185971 and 2010 CV 187740

COUNTY: Fulton County Superior Court

BRIEFS FILED: _____

JUDGEMENT DATE: 2-13-2012 JUDGMENT: Granted

M.F.R. FILED: 4-3-2012

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, FEB 13 2012

The Court of Appeals hereby passes the following order:

**MD-12-18. METRO ATLANTA TASK FORCE FOR THE HOMELESS, INC.
v. ICHTHUS COMMUNITY TRUST, et al.**

Before this Court is the “Second Emergency Motion for Supersedeas and Stay” filed by the Metro Atlanta Task Force for the Homeless, Inc. (the “Task Force”) on February 10, 2012. For the reasons discussed below, the motion is hereby GRANTED.

On February 9, 2012, the superior court issued a writ of possession with respect to the facility now occupied by the Task Force. Among other things, the superior court ordered that: (1) the Task Force, including its officers and directors, shall vacate the facility by no later than 12:00 p.m. on February 15, 2012; (2) the homeless men and resident managers residing at the facility shall be entitled to remain there subject to the transition plans of United Way of Metropolitan Atlanta (“United Way”); (3) all furniture, fixtures and equipment shall remain in the facility through and including August 31, 2012, for the benefit of the homeless men and resident managers; (4) Defendant Premium Funding Solutions, LLC (“Premium Funding”) shall make arrangements with United Way or its designees to manage and operate the facility as a homeless shelter consistent with the terms of the order through no later than August 31, 2012; and (5) the Reverend Dr. Darrell Elligan shall serve as the court-appointed monitor to report on the progress of the case. The superior court reserved ruling on any claims by Premium Funding for rent, utilities, or other expenses.

Additionally, in its February 9, 2012 order, the superior court stated that it believed that its order was not directly appealable to this Court as a final order under OCGA § 5-6-34 (a) (1), but rather was interlocutory in nature. The superior court

then proceeded to grant the Task Force a certificate of immediate review under OCGA § 5-6-34 (b) “only as to the issues of United Way presently operating the facility and as to the closing of the facility by August 31, 2012.” The superior court stated that it was not granting a certificate of immediate review “as to the requirement that [the Task Force and its officers and directors] vacate the facility by 12:00 p.m. on February 15, 2012.” Lastly, the superior court stayed enforcement of its order until any appeal had been resolved, except for the requirement that the Task Force and its officers and directors vacate the facility by the aforementioned deadline.

On February 10, 2012, the Task Force filed a notice of appeal in the superior court seeking to appeal directly from the February 9, 2012 order. In its notice of appeal, the Task Force asserted that the superior court’s language in the February 9, 2012 order denying a certificate of immediate review and stay with respect to the dispossessory aspects of its ruling was ineffective. The Task Force further asserted that the superior court’s order was directly appealable as a final order on all rights of possession to the subject property; as a decision refusing (by dissolution) an interlocutory injunction; or pursuant to the previous emergency order entered by this Court on October 25, 2011.

Also, on February 10, 2012, the Task Force filed a motion with this Court, pursuant to Court of Appeals Rule 40 (b), seeking an emergency grant of supersedeas and stay of the superior court’s February 9, 2012 order dispossessing the Task Force and its officers and directors from the facility. It is that emergency motion which is currently pending before this Court for review.

Under Rule 40 (b), “[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.” To maintain the status quo and to ensure that the contested issues in the underlying action do not become moot, we conclude that the Task Force’s emergency motion should be, and hereby is, GRANTED. Accordingly, the superior court’s February 9, 2012 order dispossessing the Task Force and its officers and directors from the facility shall be stayed, until such time as this Court resolves the appeal filed by the

Task Force, either on the merits or on procedural grounds. Nothing in this order shall be construed as a ruling on the issue of whether the superior court's February 9, 2012 order is subject to direct appeal as asserted by the Task Force in its notice of appeal.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, FEB 13 2012

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

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

Hally H. O. Spawort, Clerk.

Court of Appeals of the State of Georgia

ATLANTA, APR 5 2012

The Court of Appeals hereby passes the following order:

**MD-12-18. METRO ATLANTA TASK FORCE FOR THE HOMELESS, INC.
v. ICHTHUS COMMUNITY TRUST, et al.**

On February 13, 2012, this Court granted the “Second Emergency Motion for Supersedeas and Stay” filed by the Metro Atlanta Task Force for the Homeless, Inc. (“the Task Force.”) The purpose of this Court’s emergency order was to preserve the status quo until such time as this Court resolved the appeal filed by the Task Force concerning a dispossessory action. This Court granted the Task Force’s application for interlocutory appeal on March 8, 2012. And, thereafter, the Task Force filed its notice of appeal with the trial court.

On February 14, 2012, one of the appellees, Premium Funding Solutions, LLC, (“Premium Funding”) filed a motion with the trial court requesting that the court direct the Task Force to pay reasonable rent and utilities into the registry of the court pursuant to OCGA § 44-7-56. The trial court has yet to schedule a hearing on the motion. Assuming that the “superior court may be operating under the belief that it is prevented from acting” on the motion because of this Court’s emergency order, Premium Funding filed an emergency motion with this Court seeking a “clarification” of whether our emergency order prohibited the trial court from considering Premium Funding’s pending motion for rent.

This Court’s Rule 40 (b) emergency powers are extremely limited. Rule 40 (b) provides, in relevant part, that 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.” Whether the trial court may order the Task Force to pay reasonable rent pursuant to OCGA § 44-7-56 pending the appeal is a

matter that the trial court must determine by applying the applicable law of supersedeas to the facts of this case. Since the trial court has issued no ruling on the pending motion, Premium Funding has not shown us that exercising our inherent power on this matter would preserve a contested issue in a matter that is ripe for appellate review in this Court. Further, this Court is not authorized to issue advisory opinions. See *Huff v. Harpagon Co.*, 286 Ga. 809, 811 (2) (692 SE2d 336) (2010). Consequently, Premium Funding's motion for a clarification of our previous emergency order is hereby DENIED.



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, APR 5 2012*

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

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

Hally K. O. Spawr Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD-12-19

DATE: 3/13/2012 REC #: 5041 PAID BY: Greenburg, Traurig

CHARGE: To Stay Injunction

STYLE: City of Atlanta v. Victor Bennett et al

ATTY. NT: Michael J. King, Esq.
Mark G. Trigg, Esq. and Ernest L. Greer, Esq.

GREENBERG TRAURIG, LLP
The Forum, Ste 400
3290 Northside Pkwy, Atl 30327

ATTY. EE: A. Lee Parks, Esq., Larry Chesin, Esq.
Parks, Chesin & Walbert, P.C.
75 Fourteenth Street - 26th Flr
Atl 30309

LOWER CT. JUDGE: Kelly Amanda Lee, Judge, Fulton Co Sup Ct

LOWER CT. CASE # 2010 CV 189001

COUNTY: Fulton County Superior Court

BRIEFS FILED: Response 3/14/2012

JUDGEMENT DATE: 3/14/2012 JUDGMENT: Granted

M.F.R. FILED: 3/26/2012

REPOSSES: 4/3/2012

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR 14 2012

The Court of Appeals hereby passes the following order:

MD-12-19. CITY OF ATLANTA v. VICTOR BENNETT, et al.

On March 9, 2012, the Superior Court of Fulton County entered a Permanent Injunction and Judgment against the City of Atlanta (“the City”) in the underlying lawsuit involving allegations that cheating occurred in the City’s 2010 examination of firefighters for promotion to the rank of Lieutenant. On March 13, 2012, the City filed a Notice of Appeal, seeking appellate review of the trial court’s decision. The City has also filed the instant emergency motion for supersedeas to stay the permanent injunction during pendency of the appeal.

The trial court’s permanent injunction mandates that “[a]ll candidates who scored 90 or higher on the 2010 written examination shall be removed from provisional Lieutenant status effective March 15, 2012[,]” and that those candidates shall be replaced by certain listed candidates who scored between 60 and 62 on the 2010 written examination. The City argues that if the permanent injunction is allowed to take effect on March 15, 2012, five firefighters will lose their jobs, and seven others will receive a judicially mandated promotion out of turn and ahead of others qualified for merit based promotion. The City thus contends that a stay from the permanent injunction is necessary to preserve the status quo and prevent irreparable injury to the City pending appellate review. We agree.

Under OCGA § 9-11-62 (a), an injunction is not automatically stayed until an appeal is taken or during the pendency of an appeal. “The burden rests upon the appellant to obtain such order as will protect [its] rights and preserve the status quo

during the pendency of the appeal.” (Citations and punctuation omitted.) *Clarke v. Atlanta*, 231 Ga. 84, 84-85 (200 SE2d 264) (1973). When the action that is the subject of the injunction in fact takes place, the grant or denial of the injunction becomes moot. See *Jackson v. Bibb County School Dist.*, 271 Ga. 18, 19 (515 SE2d 151) (1999). To prevent an appeal from becoming moot, a supersedeas must be obtained from the trial court, or from an appellate court in the event the trial court refuses to grant a supersedeas.¹ See *id.*; *Padgett v. Cowart*, 232 Ga. 633, 634 (208 SE2d 455) (1974). OCGA § 9-11-62 (e) authorizes this Court “to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve that status quo[.]” Moreover, Court of Appeals Rule 40 (b) allows this Court to “issue such orders . . . as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot.”

It appears that a supersedeas is necessary to preserve the status quo during the pendency of the appeal in this case. Therefore, the City’s emergency motion to stay the trial court’s Permanent Injunction and Judgment entered on March 9, 2012, is GRANTED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 14 2012

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

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

Hally K. O. Sparrow Clerk.

¹ The City sought a supersedeas from the trial court, but the trial court denied the City’s motion. The City thereafter filed the instant emergency motion seeking supersedeas relief from this Court.

Court of Appeals of the State of Georgia

ATLANTA, APR 4 2012

The Court of Appeals hereby passes the following order:

MD-12-19. CITY OF ATLANTA v. VICTOR BENNETT, et al.

The City of Atlanta (“the City”) has filed a notice of appeal seeking this Court’s appellate review of the trial court’s entry of a Permanent Injunction and Judgment in this case involving allegations that cheating occurred in the City’s 2010 examination of firefighters for promotion to the rank of Lieutenant. On March 14, 2012, this Court granted the City’s emergency motion to stay the trial court’s injunction and judgment pending the appeal. On March 26, 2012, appellees filed a motion for reconsideration, requesting that the stay be lifted or modified to allow the employee re-testing process to proceed as ordered in the trial court’s injunction and judgment. Appellees’ arguments for lifting or modifying the stay are based upon contested issues that are subject to challenge and resolution in the appeal. Upon review and consideration of appellee’s motion for reconsideration, we remain convinced that the stay is necessary to preserve the status quo pending this Court’s appellate review in this case. Accordingly, appellees’ motion for reconsideration is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 4 2012

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

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

Hally K. O. Sparrow , Clerk.

MOTIONS DOCKET

JUDGE # 71 MOTION DOCKET NUMBER MD-12-20

DATE: 3/14/2012 REC #: 5053 PAID BY: Buckley & Klein

CHARGE: Motion to Stay Injunction

STYLE: City of Atlanta v. Victor Bennett et. al

ATTY. NT: Edward Buckley
Buckley & Klein, LLP
Promenade II, Suite 900
1230 Peachtree St., NE
Atlanta, GA 30309

Cheryl B. Legare
Steven E. Wolfe
Brian J. Sutherland

ATTY. EE: Ernest L. Greer
Michael King & Mark G. Trigg
Greenberg Taurig, LLP
3290 Northside Parkway
Atlanta, GA 30327

A. Lee Parks & Harry Chasin
Parks, Chasin & Walbert, P.C.
75 Fourteenth St
26 Floor,
Atlanta, GA 30309

LOWER CT. JUDGE: Kelley Amanda Lee

LOWER CT. CASE # 2010CV189001

COUNTY: Superior Court Fulton County

BRIEFS FILED: _____

JUDGEMENT DATE: 3/15/2012 JUDGMENT: Denied as Moot

M.F.R. FILED: _____

REPOSSES: _____

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR 15 2012

The Court of Appeals hereby passes the following order:

MD-12-20. CITY OF ATLANTA v. VICTOR BENNETT, et al.

On March 13, 2012, the City of Atlanta (“the City”) filed a notice of appeal, along with an emergency motion for supersedeas to stay a permanent injunction entered by the Superior Court of Fulton County on March 9, 2012, in the case involving allegations that cheating occurred in the City’s 2010 examination of firefighters for promotion to the rank of Lieutenant. On March 14, 2012, this Court granted the City’s emergency motion for supersedeas.

Subsequent to the issuance of this Court’s order on the City’s emergency motion, Lieutenants Carlos Barham, Detric Cummings, Derrick Dabney, William Edwards, and Royce Turner of the City of Atlanta Fire Rescue Department (designated as “Aggrieved Parties”)¹ filed the instant emergency motion, seeking to

¹ The Aggrieved Parties were not named as parties in the underlying lawsuit. They nevertheless claim the right to appear in the City’s appeal pursuant to OCGA § 5-6-1, providing that

[w]hen a case is set for a hearing before the Supreme Court or the Court of Appeals and there are parties besides the plaintiffs and defendants, whether shown by the record or not, who have a direct interest in its result, upon the interest being made to appear the court shall allow the other parties to appear by counsel on equal terms with the parties directly before the court.

join in the City's request for supersedeas relief. Since the City's emergency motion has been granted and a stay of the injunction is in effect, the Aggrieved Parties' emergency motion is DENIED AS MOOT.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 15 2012

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

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

Hally K. O. Sparrow Clerk.

(Punctuation omitted.)

MOTIONS DOCKET

JUDGE # 73 MOTION DOCKET NUMBER ML-12-21

DATE: 16 MAR 12 REC #: 5076 PAID BY: EASTSIDE COMMERCIAL BANK

CHARGE: Motion for Courtesy Appearance Stay Sanctions

STYLE: Sillard Winecott, LLC v. Interbank/Brener Brokerage Services, Inc

ATTY. NT: Michael McCray Esq.
6307 Ridgewood Dr (P.O. Box 7412)
Suite 3 (Pine Bluff, AR 71611)
Pine Bluff, AR 71603

ATTY. EE: InterBank Funding Companies
c/o Simon Kershon President
700 New Hampshire, N.W # 306
Washington, DC. 20037

Eric Barton Esq.
Seyfarth Shaw, LLP
1075 Peachtree Street, N.E Suite 2500
Atlanta, GA 30309

LOWER CT. JUDGE: Judge Ural Glanville
LOWER CT. CASE # 1999-CV-13562, 2005-CV-110321, 2007-CV-128104, 2007-CV-128105
COUNTY: Fulton

BRIEFS FILED: _____

JUDGEMENT DATE: 16 MAR 12 JUDGMENT: DENIED

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

N.O.I. FILED: _____

Court of Appeals of the State of Georgia

ATLANTA, MAR 16 2012

The Court of Appeals hereby passes the following order:

**MD-12-21. DILLARD-WINECOFF, LLC. v. INTERBANK/BRENER
BROKERAGE SERVICES INC., et al.**

On March 8, 2012, the Superior Court of Fulton County entered a Notice scheduling a March 19, 2012, hearing concerning sanctions against Dillard-Winecoff, Inc. (“Dillard”). On March 16, 2012, out-of-state counsel for Dillard filed the instant emergency motion, requesting that this Court issue an “emergency appeal” prior to the Superior Court’s sanctions hearing. Since Dillard’s counsel is not licensed to practice in Georgia, Dillard simultaneously filed a motion for courtesy appearance.

As an initial matter, the Clerk of this Court has indicated that Dillard’s motion for courtesy appearance was not accompanied by the requisite \$30 filing fee. See Court of Appeals Rule 9 (c). Nevertheless, having reviewed the merits of Dillard’s emergency motion, we conclude that it fails to meet the requirements Court of Appeals Rule 40 (b). Dillard contends that an emergency appeal is necessary to prove its defense at the March 19, 2012 sanctions hearing. However, such is not a valid ground upon which this Court is authorized to exercise its power under Rule 40 (b), which allows this Court to “issue such orders . . . as may be necessary to preserve jurisdiction of an appeal or to prevent the contested issue from becoming moot.” Therefore, Dillard’s motion for an emergency appeal is DENIED.

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

MAR 16 2012

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

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

Hally K. O. Sparrow....., Clerk.

1999-CV-13562
2005-CV-110321
2007-CV-128104
2007-CV-128105

MOTIONS DOCKET

JUDGE # 91 MOTION DOCKET NUMBER MD-12-22

DATE 4-5-2012 REC # 9999 PAID BY: Pauper

CHARGE: Stay Order to Pay Rent

STYLE: Laurence Richard v. Perennial Properties Mgmt., Inc.

ATTY NT:
Laurence Richard, Pro Se
2000 Monroe Place, NE #3202
Atlanta, GA 30324

ATTY EE:
Russell Mays
P.O. Box 13489
Atlanta, GA 30324

LOWER COURT JUDGE: Judge Lewis Robinson

LOWER COURT CASE #: 12 DD 04220

COUNTY: Fulton County State Court (MARK HARPER)

JUDGMENT DATE 4/6/2012 JUDGMENT: Denied

MFR FILED _____

RESPONSES _____

NOI FILED _____

Court of Appeals of the State of Georgia

ATLANTA, APR - 6 2012

The Court of Appeals hereby passes the following order:

MD-12-22. RICHARD et al. v. PERENNIAL PROPERTIES MANAGEMENT, INC.

Appellant Laurance Richard 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 his appeal of an order of the State Court of Fulton County. In the order, the court ordered Richard to pay \$3,335.50 (representing one half of \$6,671 in past due rent, court costs, and other fees) into the registry of the court by 12:00 noon on April 5, 2012, and stated that, if Richard failed to timely pay that amount, the court would issue a Writ of Possession *instanter* upon application of the appellee, Perennial Properties Management, Inc. When Richard failed to pay the amount due by noon on April 5, the Fulton County Magistrate Court issued a Writ of Possession granting the appellee immediate possession of the premises.

In his emergency motion, Richard asks this Court to stay the trial court's orders pending his appeal so that he 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." Pursuant to this statutory authority, the supersedeas arising from Richard's notice of appeal was conditioned on his compliance with the trial court's order to pay past due rent into the court's registry. See *Mitchell v. Excelsior Sales & Imports*, 243 Ga. 813, 815-816 (2) (256 SE2d 785) (1979). Because he failed to comply, he is not entitled to remain in possession of the premises pending appeal, and this Court must DENY his emergency motion.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, APR - 6 2012

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

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

Hally K. O. Spawort , Clerk.

MOTIONS DOCKET

JUDGE # 70 MOTION DOCKET NUMBER MD-12-23

DATE 5-9-2012 REC # 5516 PAID BY: h. Reddick Hood

CHARGE: Stay of Writ of Possession

STYLE: John Eshun et. al v. Federal Home Loan Mortgage Corp.

ATTY NT: XAVIER Reddick Hood, Esq.
P.O. Box 451035
ATL 31145

ATTY EE: A. Drew Powers, Esq.
McCalla Raymer LLC
1544 Old Alabama Road
Roswell 30076

LOWER COURT JUDGE: Hon. David B. Irwin, Judge, Rockdale Co Superior Court

LOWER COURT CASE #: 2011-CV-2084-I

COUNTY: Rockdale

JUDGMENT DATE 5-9-2012 JUDGMENT: Denied

MFR FILED 5/18/12 denied 5/22/2012

RESPONSES _____

NOI FILED _____

Court of Appeals of the State of Georgia

ATLANTA, MAY 9 2012

The Court of Appeals hereby passes the following order:

MD-12-23. ESHUN et al. v. FEDERAL HOME LOAN MORTGAGE CORPORATION.

The Superior Court of Rockdale County granted Federal Home Loan Mortgage Corporation's motion for a writ of possession. John Eshun, Toi Eshun and others (hereinafter "the Eshuns") have filed a motion, pursuant to Court of Appeals Rule 40 (b), asking this Court to stay that judgment pending an appeal. Because the Eshuns have failed to show that they are entitled to relief pursuant to Rule 40 (b), their motion is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta,

MAY 9 2012

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

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

Holly K. O. Spawc....., Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

MAY 22 2012

The Court of Appeals hereby passes the following order:

MD-12-23. ESHUN et al. v. FEDERAL HOME LOAN MORTGAGE CORPORATION.

John Eshun, Toi Eshun and others (hereinafter "the Eshuns") have filed a motion for reconsideration of this Court's order issued May 9, 2012. The Eshuns' motion for reconsideration is hereby DENIED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, **MAY 22 2012**

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

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

Hally K. O. Spawo , Clerk.

MOTIONS DOCKET

JUDGE # 94 MOTION DOCKET NUMBER MD-12-24

DATE 13 July 2012 REC # _____ PAID BY: _____

CHARGE: Motion to Stay

STYLE: KENDRICK DEMONE JACKSON v. The State

ATTY IN: William M. Olson, Esq.
The Olson Law Office
220 College Avenue
Suite 521
Athens, Georgia 30601

ATTY EE: Robert Lavender
District Attorney
P. O. Box 247
Elberton, Georgia 30635

LOWER COURT JUDGE: Hon. Jeffrey S. Malcom, Judge

LOWER COURT CASE #: 08-DR-47M

COUNTY: Oglethorpe

JUDGMENT DATE 16 July 2012 JUDGMENT: Denied

MFR FILED _____

RESPONSES _____

NOI FILED _____

Court of Appeals of the State of Georgia

ATLANTA, July 16, 2012

The Court of Appeals hereby passes the following order:

MD-12-24. KENDRICK DEMONE JACKSON v. THE STATE.

Pursuant to Court of Appeals Rule 40 (b), Kendrick Demone Jackson has filed an emergency motion to stay the trial of his case, which has been specially set to commence on July 16, 2012. On July 3, 2012, Jackson filed a plea in bar and motion to dismiss based, inter alia, on an alleged violation of his constitutional right to a speedy trial, and the trial court held a hearing on his motion on July 12, 2012, at which time the motion was denied in an oral ruling from the bench. Jackson filed a notice of appeal, and the next day the trial court issued a written order denying the motion, specifically finding that the motion was frivolous and for the purpose of delaying the trial in this case. Accordingly, the trial court ordered Jackson's trial to begin on July 16, 2012 at 9:30 a. m., further noting that if Jackson is convicted, sentencing would be postponed pending the appeal of the denial of his plea in bar.

It is well established that if, as in this case, the trial court finds the plea in bar based on constitutional speedy trial grounds or a plea based on double jeopardy to be frivolous, the trial court is not divested of complete jurisdiction in the case during the appeal of the denial of the plea, but only the jurisdiction to execute any sentence resulting from the trial. E.g., *Strickland v. State*, 258 Ga. 764 (373 SE2d 736) (1988); *DeSouza v. State*, 285 Ga. App. 201 (645 SE2d 684) (2007); *Rielli v. Oliver*, 170 Ga. App. 699, 700 (318 SE2d 173) (1984). Jackson argues, however, that this well established law does not apply here because the trial court did not announce in its initial oral ruling that the plea was frivolous and did not make this finding until after the notice of appeal had been filed and it had been divested of jurisdiction. However, this argument is unavailing. "[A] trial court may amend its order denying a plea of former jeopardy, nunc pro tunc, to find the plea dilatory and frivolous, even though the notice of appeal has been filed. Filing a notice of appeal may deprive a court of its power to execute the sentence but it does not supersede every other activity of the court." *Strickland*, 258 Ga. at 765.

Based on the foregoing, Jackson's emergency motion is DENIED.



Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, JUL 16 2012

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

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

Hally K. O. Spencer Clerk.

JUDGE # 94 MOTION DOCKET NUMBER MS-12-25

DATE 17 Jul 2012 REC # 9999 PAID BY: _____

CHARGE: _____

STYLE: IN THE INTEREST OF: ASW, A CHILD

ATTY NT: LARA Victoria Thomas CARSWELL
Asst Public Defender
88 Madison Street
NEWNAN 30263

ATTY EE: Carol Deleck, Esq.
5 East Broad Street
NEWNAN 30263

LOWER COURT JUDGE: Honorable Joseph J. MacNabb

LOWER COURT CASE #: 1200755 (12549)

COUNTY: Coweta

order on record 7/17/2012

JUDGMENT DATE _____ JUDGMENT: _____

MFR FILED _____

RESPONSES _____

NOI FILED _____

Court of Appeals of the State of Georgia

ATLANTA, JUL 17 2012

The Court of Appeals hereby passes the following order:

MD-12-25. IN THE INTEREST OF A. S. W., a child.

This Court having received a notice of expedited appeal on July 17, 2012, together with a certified copy of an order denying waiver of notice under the Parental Notification Act, OCGA § 15-11-110 et seq., the juvenile court IS HEREBY DIRECTED that the record and transcript of the hearing be transmitted to and received by this Court within 5 days from the date of filing the notice of appeal with this Court. Given that the fifth day falls on a Sunday, in accordance with the Rule 45 (b) of this Court, the time is extended to the next business day, i.e., Monday July 23, 2012. It is FURTHER ORDERED that the record of the juvenile court shall be certified by the clerk of the juvenile court and transmitted to this Court under seal. See Rule 45 (d).

We also remind the appellant that an enumeration of errors shall be filed within the time period for the filing of the record. If a brief is desired, it shall also be filed within the time period for the filing of the record. No filing fee is required. See Rule 45 (c).



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, JUL 17 2012

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

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

Hally H. O. Spawor, Clerk.

MOTIONS DOCKET

JUDGE # 97 MOTION DOCKET NUMBER MD-12-26

DATE 8-15-2012 REC # 106277 PAID BY: Jackie Johnson

CHARGE: To Stay

STYLE: Jackie Johnson et al. v. Barbara Haley, et al

ATTY NT:
Jackie & Adlisa Johnson prose
1685 Willis Mill Road, SW
Atlanta, GA 30311-3815

ATTY EE:
Leon Van Gelderan, Attorney
400 Colony Sq., Ste 1100
1201 Peachtree St, NE
Atlanta, GA 30361

LOWER COURT JUDGE: Kimberly Esmond Adams

LOWER COURT CASE #: 2004CV83939

COUNTY: Superior Court of Fulton County

JUDGMENT DATE 8/16/2012 JUDGMENT: denied

MFR FILED _____

RESPONSES _____

NOI FILED _____

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

ATLANTA, AUG 16 2012

The Court of Appeals hereby passes the following order:

MD-12-26. JOHNSON et al. v. HALEY et al.

Jackie and Adlisa Johnson have filed an "Emergency Motion to Stay" pursuant to Court of Appeals Rule 40 (b), which provides this Court with 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. This power shall be exercised sparingly." The relief sought in the instant case is not warranted. Accordingly, this motion is hereby **DENIED**.

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

AUG 16 2012

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

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

Hally K. O. Sparrow

....., Clerk.