

March 28, 2003

Mr. John N. Jenkins  
EF439152                      Annex 3  
Hancock State Prison  
Post Office Box 339  
Sparta, Georgia 31087-0339

RE:    A03A1009.    John Nathan Jenkins v. The State

Dear Mr. Jenkins:

I am in receipt of a copy of your letter directed to the Administrative Office of the Courts and that agency's response to you dated February 27, 2003. I understand the main thrust of your complaint is that you feel the matter was decided by the clerk of this Court, William L. Martin, III, and not by the judges of this Court.

Please be assured that the matter was reviewed by three judges of the Court of Appeals of Georgia.

In nearly every case, when the Court dismisses an appeal by an order, the order goes out over the stamped signature of the clerk. The judges of the Court of Appeals sign opinions, but orders from the Court go out over the stamped signature of the clerk.

The order dated January 29, 2003, a copy of which I have enclosed, was not a letter, but an order of the Court of Appeals of Georgia with the clerk's signature certifying that it is a true extract from the minutes and records of the Court of Appeals of Georgia.

The Court's order is self-explanatory, but when the Court issues an order dismissing an appeal, it means the Court never reached the merits of the appeal because of some procedural defect. As explained in the Court's order, the method by which the case came to the Court of Appeals of Georgia deprived the Court of jurisdiction to review the issues raised in your appeal.

I hope that this letter has answered your questions and concerns. However, I can reiterate that the order of the Court was carefully considered by the three judges of the Court of Appeals, and was not the unilateral action of the clerk.

Sincerely,

J.D. Smith  
Chief Judge  
Court of Appeals of Georgia

Enclosure



# Court of Appeals

## Memorandum

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To: Presiding Judge J. D. Smith  
From: *W.L. Martin*  
William L. Martin, III  
Subject: Swearing-In  
Date: January 2, 2001

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Enclosed in the attached envelope is your Oath of Office and your Loyalty Oath. These documents should be filled out prior to your swearing-in in the Governor's Office at 8:15 a.m. on Thursday, January 4<sup>th</sup>. Please have your administrative assistant fill them out as you would like them. If you have any questions about how to fill them out, please contact me.

I have enclosed a photostatic copy of the oaths in case you want to fill out a dummy set for your files.

After the swearing-in has occurred and the Governor has signed the oaths, it is my understanding that he will send the originals to the Secretary of State's office for filing in perpetuity and return to each of you a copy.

Thank you.

/ld  
Attachments



**COPY**

# Court of Appeals

## Memorandum

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To: Judge J.D. Smith  
From: *WLM*  
William L. Martin, III  
Subject: Opinions from Judge Miller's Office  
Date: February 11, 2000

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Attached please find a list of all the opinions authored by Judge Miller's office. Of that list, only three cases had dissents or special concurrences.

A99A2086 and A99A2087 were cases which went out without your dissent. Case A99A2110 is the case in which you concurred specially, but the special concurrence went out with your draft.

None of the other cases on the list had a special concurrence or dissent. Therefore, it is only these three cases and two opinions that have caused us concern. Shirley Hood of Judge Miller's office is correcting this problem with the opinions and the Reporter's Office. Orders will go out stating that the corrections are due to clerical error. I have also included copies of the opinions for the above cases.

If you would like to discuss this matter with me next week when Chief Judge Johnson returns, please let me know.

Thank you.

/ld

cc: Chief Judge Edward H. Johnson

CASE#:	A99A0815	JUDGE#	16071	STATUS:	R	CITE REF:	239GA723	DATE:	083099
CASE#:	A99A0970	JUDGE#	16071	STATUS:	R	CITE REF:	239GA564	DATE:	081099
CASE#:	A99A0975	JUDGE#	16071	STATUS:	R	CITE REF:	239GA543	DATE:	080999
CASE#:	A99A1013	JUDGE#	16071	STATUS:	R	CITE REF:	240GA055	DATE:	083099
CASE#:	A99A1028	JUDGE#	16071	STATUS:	C	CITE REF:	240GA432	DATE:	092099
CASE#:	A99A1041	JUDGE#	16071	STATUS:	C	CITE REF:	240GA871	DATE:	111799
CASE#:	A99A1087	JUDGE#	16071	STATUS:	R	CITE REF:	240GA368	DATE:	101599
CASE#:	A99A1124	JUDGE#	16071	STATUS:	R	CITE REF:	239GA662	DATE:	081899
CASE#:	A99A1139	JUDGE#	16071	STATUS:	R	CITE REF:	239GA899	DATE:	091099
CASE#:	A99A1141	JUDGE#	16071	STATUS:	C	CITE REF:	240GA255	DATE:	091099
CASE#:	A99A1144	JUDGE#	16071	STATUS:	R	CITE REF:	240GA709	DATE:	110599
CASE#:	A99A1163	JUDGE#	16071	STATUS:	R	CITE REF:	240GA384	DATE:	091699
CASE#:	A99A1173	JUDGE#	16071	STATUS:	R	CITE REF:	240GA100	DATE:	092099
CASE#:	A99A1174	JUDGE#	16071	STATUS:	C	CITE REF:	239GA808	DATE:	080599
CASE#:	A99A1177	JUDGE#	16071	STATUS:	R	CITE REF:	240GA303	DATE:	100799
CASE#:	A99A1181	JUDGE#	16071	STATUS:	C	CITE REF:	240GA681	DATE:	101899
CASE#:	A99A1182	JUDGE#	16071	STATUS:	C	CITE REF:	240GA363	DATE:	091699
CASE#:	A99A1189	JUDGE#	16071	STATUS:	R	CITE REF:	240GA131	DATE:	092299
CASE#:	A99A1199	JUDGE#	16071	STATUS:	R	CITE REF:	239GA731	DATE:	083099
CASE#:	A99A1205	JUDGE#	16071	STATUS:	C	CITE REF:	240GA816	DATE:	111699
CASE#:	A99A1207	JUDGE#	16071	STATUS:	R	CITE REF:	240GA132	DATE:	092299
CASE#:	A99A1214	JUDGE#	16071	STATUS:	R	CITE REF:	239GA733	DATE:	083099
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CASE#:	A99A1221	JUDGE#	16071	STATUS:	R	CITE REF:	240GA819	DATE:	111699
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CASE#:	A99A1248	JUDGE#	16071	STATUS:	R	CITE REF:	240GA897	DATE:	111899
CASE#:	A99A1265	JUDGE#	16071	STATUS:	R	CITE REF:	239GA664	DATE:	081899
CASE#:	A99A1266	JUDGE#	16071	STATUS:	R	CITE REF:	239GA794	DATE:	090299

CASE#:	A99A1268	JUDGE#	16071	STATUS:	C	CITE REF:	240GA512	DATE:	092499
CASE#:	A99A1270	JUDGE#	16071	STATUS:	R	CITE REF:	240GA448	DATE:	102099
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CASE#:	A99A1299	JUDGE#	16071	STATUS:	R	CITE REF:		DATE:	110899
CASE#:	A99A1303	JUDGE#	16071	STATUS:	C	CITE REF:		DATE:	120399
CASE#:	A99A1306	JUDGE#	16071	STATUS:	R	CITE REF:	240GA304	DATE:	100799
CASE#:	A99A1311	JUDGE#	16071	STATUS:	R	CITE REF:	240GA228	DATE:	100499
CASE#:	A99A1314	JUDGE#	16071	STATUS:	R	CITE REF:	240GA586	DATE:	110199
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CASE#:	A99A1363	JUDGE#	16071	STATUS:	C	CITE REF:	240GA725	DATE:	110899
CASE#:	A99A1371	JUDGE#	16071	STATUS:	R	CITE REF:	240GA324	DATE:	100899
CASE#:	A99A1372	JUDGE#	16071	STATUS:	R	CITE REF:		DATE:	120299
CASE#:	A99A1377	JUDGE#	16071	STATUS:	R	CITE REF:	240GA682	DATE:	101899
CASE#:	A99A1378	JUDGE#	16071	STATUS:	R	CITE REF:		DATE:	112499
CASE#:	A99A1379	JUDGE#	16071	STATUS:	R	CITE REF:		DATE:	112499
CASE#:	A99A1401	JUDGE#	16071	STATUS:	R	CITE REF:	239GA795	DATE:	090299
CASE#:	A99A1402	JUDGE#	16071	STATUS:	R	CITE REF:	239GA900	DATE:	091099
CASE#:	A99A1422	JUDGE#	16071	STATUS:	R	CITE REF:	239GA796	DATE:	090299
CASE#:	A99A1438	JUDGE#	16071	STATUS:	R	CITE REF:	240GA377	DATE:	101599
CASE#:	A99A1484	JUDGE#	16071	STATUS:	R	CITE REF:	240GA307	DATE:	100799
CASE#:	A99A1486	JUDGE#	16071	STATUS:	R	CITE REF:	240GA304	DATE:	100799
CASE#:	A99A1492	JUDGE#	16071	STATUS:	R	CITE REF:	240GA730	DATE:	110899
CASE#:	A99A1523	JUDGE#	16071	STATUS:	R	CITE REF:	239GA798	DATE:	090299
CASE#:	A99A1544	JUDGE#	16071	STATUS:	R	CITE REF:	240GA827	DATE:	092099
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CASE#:	A99A1579	JUDGE#	16071	STATUS:	R	CITE REF:	240GA220	DATE:	100199
CASE#:	A99A1598	JUDGE#	16071	STATUS:	R	CITE REF:	240GA354	DATE:	101499
CASE#:	A99A1612	JUDGE#	16071	STATUS:	R	CITE REF:	241GA013	DATE:	111899

CASE#:	A99A1637	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	020200
CASE#:	A99A1654	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	020900
CASE#:	A99A1656	JUDGE#	16071	STATUS:	R	CITE REF:	239GA803	DATE:	090299
CASE#:	A99A1680	JUDGE#	16071	STATUS:	M	CITE REF:		DATE:	012500
CASE#:	A99A1710	JUDGE#	16071	STATUS:	R	CITE REF:		DATE:	121099
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CASE#:	A99A1943	JUDGE#	16071	STATUS:	C	CITE REF:	241GA140	DATE:	111299
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CASE#:	A99A2086	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	020400
CASE#:	A99A2087	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	020400
CASE#:	A99A2110	JUDGE#	16071	STATUS:	C	CITE REF:		DATE:	012500
CASE#:	A99A2134	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	011100
CASE#:	A99A2135	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	011100
CASE#:	A99A2201	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	011100
CASE#:	A99A2216	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	011100
CASE#:	A99A2275	JUDGE#	16071	STATUS:	M	CITE REF:		DATE:	012700
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CASE#:	A99A2379	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	012500
CASE#:	A99A2440	JUDGE#	16071	STATUS:	R	CITE REF:		DATE:	011100
CASE#:	A99A2441	JUDGE#	16071	STATUS:	M	CITE REF:		DATE:	011100
CASE#:	A99A2477	JUDGE#	16071	STATUS:	J	CITE REF:		DATE:	011100
CASE#:	A99A2518	JUDGE#	16071	STATUS:	R	CITE REF:		DATE:	011200

COURT OF APPEALS

OPINION DISPOSITION SUMMARY JUDGE MILLER

DIRECT APPEALS COUNT : 0097

2086 - 95 - Dis.  
90 - D

CC-2087

2110 - 90 - CS

**SECOND DIVISION  
POPE, P. J.,  
SMITH and MILLER, JJ.**

NOTICE: MOTIONS FOR RECONSIDERATION MUST  
BE RECEIVED IN OUR CLERK'S OFFICE WITHIN  
TEN DAYS OF THE DATE OF DECISION to be  
deemed timely filed. (Court of Appeals  
Rules 4 and 37, December 23, 1999)

**January 25, 2000**

In the Court of Appeals of Georgia.

A99A2110. WOODSON v. STATE.

MI-098C

MILLER, Judge.

A jury found Willie Woodson guilty of burglary, battery, kidnapping, aggravated assault with the intent to rape, and aggravated assault with a deadly weapon. After considering Woodson's five prior out-of-state felony convictions, the court imposed maximum consecutive sentences for the current felony convictions and 12 more months for the battery conviction.

Woodson appeals, contending that the trial court erred by failing to grant his motion for directed verdict of acquittal, failing to define fully the rape charge by omitting the portion dealing with consent, failing to merge his aggravated-assault-with-a-deadly-weapon conviction into his aggravated-assault-with-the-intent-to-rape conviction, and failing to determine whether the underlying facts and circumstances of the out-of-state convictions would have constituted felonies under Georgia law. We affirm the

convictions, vacate the felony sentences, and remand this case for re-sentencing.

1. Woodson challenges the trial court's denial of his motion for a directed verdict of acquittal. The standard for reviewing a denial of a motion for a directed verdict of acquittal is whether, under the rule of Jackson v. Virginia,<sup>1</sup> the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the defendant was guilty of the charged offenses.<sup>2</sup> On appeal from a criminal conviction, the evidence must be viewed in the light most favorable to the verdict, and the defendant no longer enjoys the presumption of innocence.<sup>3</sup> As long as there is some competent evidence, even though contradicted, to support each fact necessary to make out the State's case, the jury's verdict will be upheld.<sup>4</sup>

Construed to uphold the jury's verdict, the evidence reveals that on the evening of March 17, 1998, Woodson approached the victim as she sat on her porch. She noticed Woodson's scar under his right eye and his black suede shoes. Woodson wrote a note to the victim, who was hearing impaired, requesting cigarettes and permission to perform oral sex upon her. The victim responded no, and Woodson left. But that evening at approximately 9:00 p.m.

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<sup>1</sup>443 U. S. 307 (99 SC 2781, 61 LE2d 560) (1979).

<sup>2</sup>Redd v. State, 232 Ga. App. 666 (1) (502 SE2d 467) (1998).

<sup>3</sup>Patterson v. State, 225 Ga. App. 515 (484 SE2d 317) (1997).

<sup>4</sup>Id.

Woodson returned to the victim's residence and knocked heavily on a door that had no peephole. The victim felt the vibrations from Woodson's pounding and opened the door. Woodson was wearing a black stocking-type mask that covered all his face except his eyes. The victim again noticed Woodson's scar and the same black shoes.

Woodson pointed a knife at the victim, forced himself inside, and locked the door. He pursued the victim through the kitchen, the living room, the bathroom, then into a bedroom, where he slapped the left side of her face and shoved and pulled her to the floor. Woodson placed the knife nearby on the floor as he used one hand to hold the victim to the floor against her will and his other hand to remove the victim's shorts. When the victim attempted to gain control of the knife, Woodson forced her to release it by biting her right hand. Picking up the knife, he forced sexual intercourse upon her over her objections. Immediately afterwards, Woodson fled the scene, and the victim ran next door for help.

Responding police officers and detectives found the victim crying, hysterical, and trembling with fright. The emergency medical technician testified that the victim, who had accelerated respirations and heartbeats, also suffered from traumatic injuries, including pain and swelling on the left side of her face and bleeding bite marks on her right hand. While the technician was treating the victim in the back of the ambulance parked outside the victim's residence, Woodson walked by. The victim immediately recognized Woodson from his facial scar, his build, and his shoes.

She began frantically pointing at Woodson while repeatedly mouthing "that's him . . . that's him!" Police officers apprehended Woodson.

The investigator collected a sticky thick fluid from the bedroom floor where the sexual intercourse occurred. He also recovered from the victim's parking area a black stocking-type mask and removed hair samples from it. The State's hair and fiber analysis expert examined the hair samples and concluded that they matched hair samples combed from Woodson's head. At trial, the victim again identified Woodson as the perpetrator.

An appellate court does not weigh the evidence or determine witness credibility but only determines whether the evidence is sufficient under the standard of Jackson v. Virginia.<sup>5</sup> The evidence was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Woodson was guilty of burglary, battery, aggravated assault with intent to rape, and aggravated assault with a deadly weapon. Because Woodson shoved and pulled the victim to the ground and struggled with her, the evidence also supported the kidnapping conviction.<sup>6</sup>

2. Woodson's argument that the court erroneously refused to fully define the rape charge by omitting the portion dealing with

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<sup>5</sup>supra; Patterson, supra, 225 Ga. App. at 515.

<sup>6</sup>See Harshaw v. State, 222 Ga. App. 385, 386 (1) (474 SE2d 226) (1996); Love v. State, 190 Ga. App. 264, 264-265 (1) (378 SE2d 893) (1989).

consent is without merit. A trial judge does not err in refusing to give a requested charge that, among other things, is not adequately adjusted to the case or authorized by the evidence.<sup>7</sup> After reviewing the proposed jury charge, the trial court concluded that the charge was not adjusted to the evidence and declined to give it. The victim denied consenting to the sexual intercourse, and Woodson points to no evidence to the contrary. Moreover, Woodson was acquitted of rape. The trial court did not err.

3. Woodson contends that the trial court erred by imposing separate sentences for aggravated assault with a deadly weapon and aggravated assault with the intent to rape since the two offenses merge as a matter of fact. We disagree. There was evidence of assaults as Woodson wielded the knife that were gratuitous and unconnected with the assault with the intent to rape the victim.<sup>8</sup> Therefore, it was not error to sentence Woodson separately on the jury's findings of guilt for the aggravated assaults.

4. During the sentencing hearing, the State introduced certified copies of Woodson's five prior Alabama felony convictions, consisting of (1) a 1982 burglary conviction, (2) a

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<sup>7</sup>Hill v. State, 259 Ga. 557, 558 (3) (b) (385 SE2d 404) (1989) (a request to charge the jury must be legal, apt and precisely adjusted to some principle involved in the case and be authorized by the evidence).

<sup>8</sup>See Taylor v. State, 202 Ga. App. 671, 672 (415 SE2d 483) (1992); Sylvester v. State, 168 Ga. App. 718 (2) (310 SE2d 284) (1983); Coaxum v. State, 146 Ga. App. 370, 371 (3) (246 SE2d 403) (1978).

1984 burglary conviction, (3) a 1984 escape conviction, (4) a 1984 receiving-stolen-property conviction, and (5) a 1992 burglary conviction. Under the recidivist statute,<sup>9</sup> the trial court imposed maximum sentences for Woodson's felony convictions. Woodson urges that the statute required the trial court to determine whether the underlying facts and circumstances of the Alabama convictions would have constituted felonies in the State of Georgia. We agree.

The statute imposes maximum sentences for any person convicted of a felony who was previously "convicted under the laws of any other state . . . of a crime which if committed within this state would be a felony. . . ." <sup>10</sup> Where the person has been convicted of three such felonies, the statute mandates that he must serve those sentences without possibility of parole.<sup>11</sup> The State bears the burden of showing that the foreign convictions were "for conduct which would be considered felonious under the laws of this state. . . ." <sup>12</sup> Failure to properly prove the prior convictions requires remand and re-sentencing.<sup>13</sup> Because the trial court considered the Alabama convictions without evidence that the convictions were for

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<sup>9</sup>OCGA § 17-10-7 (c).

<sup>10</sup>OCGA § 17-10-7 (a).

<sup>11</sup>OCGA § 17-10-7 (c).

<sup>12</sup>Wallace v. State, 175 Ga. App. 685, 687 (6) (333 SE2d 874) (1985).

<sup>13</sup>Williams v. State, 235 Ga. App. 876, 877 (510 SE2d 848) (1999); see Wallace, supra, 175 Ga. App. at 687 (6); Miller v. State, 231 Ga. App. 869, 871 (2) (501 SE2d 42) (1998).

conduct that would have constituted felonies in the State of Georgia, Woodson's felony sentences must be vacated and the case remanded to the trial court for re-sentencing.

Judgment of conviction affirmed; misdemeanor sentence affirmed; felony sentences vacated and case remanded for re-sentencing. Pope, P. J. concurs. Smith, J., concurs specially.

In the Court of Appeals of Georgia

A99A2110. WOODSON v. THE STATE.

MI-098C

SMITH, Judge, concurring specially.

I concur in the result reached by the majority, and I agree that the conviction must be affirmed and that the case must be remanded for resentencing. I write specially to add my thoughts on the reasons for the remand. As the majority points out, the State bears the burden of showing that foreign convictions used for purposes of recidivist sentencing were the result of conduct that would be a felony in Georgia. Georgia does not have degrees of burglary; every burglary in Georgia is a felony. But all unlawful entries upon the property of another do not necessarily constitute burglaries in this state. The facts and circumstances of an entry could result in the offender being charged with a misdemeanor, such as criminal trespass, which requires only an unlawful purpose rather than the intent to commit a felony. Because theft by receiving and escape could both be misdemeanors in Georgia, and two of the three Alabama burglaries were not for first degree burglary,

but for third degree burglary, the State did not carry its burden of proving felonious conduct, and I agree with the majority that a remand is necessary in this case.

# WHOLE COURT

NOTICE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED IN OUR CLERK'S OFFICE WITHIN TEN DAYS OF THE DATE OF DECISION to be deemed timely filed. (Court of Appeals Rules 4 and 37, December 23, 1999)

February 4, 2000

In the Court of Appeals of Georgia

A99A2086, A99A2087. IN THE INTEREST OF T. B., a child. MI-104  
MI-105

MILLER, Judge.

This is a tale of two parents: a 16-year-old mother whose parental rights the court terminated because she dropped out of high school, and a 21-year-old father whose parental rights the court terminated because he was late in meeting some of the goals of his reunification plan. While it is important to receive an education, failure to complete school cannot be the primary reason to terminate parental rights, and thus we reverse the termination of the mother's rights (Case No. A99A2086). Nor are delays in meeting some goals of a court-ordered reunification plan alone sufficient, and thus we also reverse the termination of the father's rights (Case No. A99A2087).

Thirteen-year-old Samantha Elder and nineteen-year-old Michael Blassingame conceived a boy, T. B. Because of Samantha's truancy from school, the Department of Family and Children Services took custody of Samantha prior to T. B.'s birth. DFACS also took

custody of T. B. upon his birth and placed both T. B. and now fourteen-year-old Samantha in the same foster home, so she could help care for him.

DFACS developed a case plan to reunify Samantha and T. B., which Samantha generally followed until DFACS about a year later took T. B. from Samantha's care and placed him in a distant foster home. Distraught about the absence of her child, Samantha nevertheless followed the case plan with the exception that she married a man and dropped out of high school to get a job in an effort to establish a stable residence for the hoped-for return of her child. In response, DFACS petitioned to have her parental rights terminated for her failure to meet the case plan goal of attending school.

Meanwhile, despite repeated demands from DFACS, Michael delayed petitioning to legitimate T. B. for about a year until T. B. was placed in the distant foster home. Once this petition was filed, DFACS developed a case plan (to run for six months) to reunify Michael with T. B., the goals of which Michael for the most part met, although with some delay. He was delinquent in paying child support but then caught it up, he procured somewhat stable employment, he worked on creating a stable home, and he completed parenting classes late in the six-month period.

Following a hearing, the juvenile court terminated the rights of both parents. Both appealed, citing premature filing and insufficiency of the evidence.

1. Arguing that DFACS had prematurely filed the petition to terminate, both Samantha and Michael contend that T. B. had not yet been in foster care for the fifteen months specified in OCGA § 15-11-41 (n). But OCGA § 15-11-41 (n) does not require that fifteen months of foster care transpire before DFACS may file a petition; rather, it simply provides that after fifteen months of foster care (of the most recent 22 months), DFACS shall file a petition to terminate, with certain exceptions. Regardless of whether T. B. met the fifteen month definition, the statute did not preclude an earlier filing; it simply directed a filing if the definition was met. This enumeration is without merit.

2. We recently reiterated that "[a]s there is no judicial determination that has more drastic significance than the permanent severance of a natural parent-child relationship, the severance of that relationship must be exercised cautiously and scrutinized deliberately. [Cit.]"<sup>1</sup> Moreover, in In the Interest of C. G.<sup>2</sup> we emphasized that "[b]ecause the termination of parental rights has a final, ultimate, and significant result, that judgment must conclusively show compliance with the statutory criteria prescribed as a condition precedent." Thus, no court can terminate a parent's right to his or her child unless there is clear and convincing

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<sup>1</sup>In the Interest of K. M., - Ga. App. -, slip op. at 7 (Case No. A99A1156; decided October 19, 1999).

<sup>2</sup>235 Ga. App. 23, 24 (508 SE2d 246) (1998) (citation and punctuation omitted).

evidence of present parental unfitness and of the termination being in the best interest of the child.<sup>3</sup>

OCGA § 15-11-81 (b) (4) (A) prescribes that a court can find parental unfitness only if it finds all four of the following facts by clear and convincing evidence: (i) the child is deprived, (ii) lack of parental care caused the deprivation, (iii) such is likely to continue, and (iv) continued deprivation is likely to cause serious harm to the child.<sup>4</sup> In reviewing the evidence, we construe it in favor of the juvenile court's findings.<sup>5</sup>

3. We review these factors first relative to Samantha.

(a) Deprivation. The juvenile court had previously determined that T. B. was and continued to be deprived, and entered deprivation and extension orders to that effect. Because Samantha did not appeal any of these orders, for purposes of the termination hearing she was bound by this finding of deprivation.<sup>6</sup>

(b) Lack of Proper Parental Care and Control. To determine whether the child is without proper parental care and control, the court considers, among other things, the physical, mental, or emotional deficiencies of the parent; excessive use of alcohol or drugs; felony convictions and imprisonment; egregious conduct

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<sup>3</sup>K. M., supra, slip op. at 1-2; see OCGA § 15-11-81 (a).

<sup>4</sup>See In the Interest of K. D. S., 237 Ga. App. 865 (1) (517 SE2d 102) (1999).

<sup>5</sup>Id.

<sup>6</sup>Id. at 865 (1) (a).

toward the child or other children; neglect of the child; and abuse of siblings.<sup>7</sup> DFACS does not allege that any of these factors were present here.

Where the child is not in the custody of the parent, the court also considers, among other things, whether the parent, for a period of one year or longer, failed significantly (i) to maintain a meaningful parental bond with the child, (ii) to pay required child support, or (iii) to comply with the reunification plan.<sup>8</sup> DFACS does not contest Samantha's compliance with the first two, but rather places all its eggs in one basket: non-compliance with the reunification plan. As stated in its appellate brief, "[t]he Department simply decided to proceed with termination in the case at bar for one simple reason - Appellant failed to comply with her court-ordered reunification case plan which had been in effect for over one year."

That reunification plan had five goals for Samantha: (i) obtain parenting skills; (ii) learn to manage her behavior; (iii) maintain meaningful contact with T. B.; (iv) cooperate with DFACS; and (v) stay in school and make progress toward a high school diploma. As the following demonstrates, and as conceded by the DFACS representative at trial, the only goal she did not achieve was the educational goal.

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<sup>7</sup>OCGA § 15-11-81 (b) (4) (B) (i)-(vi).

<sup>8</sup>OCGA § 15-11-81 (b) (4) (C) (i)-(iii).

(1) Obtaining parenting skills. The DFACS caseworker admitted that Samantha attended three sets of parenting classes at the maternity home, at school, and at summer camp. She did very well in the school class - receiving grades of 93 and 100- (although she eventually stopped the class when she dropped out of school), exhibited a working knowledge of parenting techniques, and did so well at the summer camp that she was recommended to the advisory board. The caseworker conceded that through these classes Samantha had acquired and applied parenting skills, although she was not consistent in her applications. Regarding examples of inconsistency, Samantha once threw a toy at the child to get him to stop doing something and either she or her sister once "kind of" hit him on the head with a pot as a playing technique. She was also "verbally aggressive" with some children in a sample class. These isolated vague instances do not support clear and convincing evidence of parental unfitness.

(2) Learning to manage behavior. Samantha successfully completed an eight-week anger management course and received and cooperated in professional counseling about her behavior. The caseworker testified that although unsettled early on, since her marriage Samantha had made improvements in managing her behavior. The anger counselor testified that she stood out as one of the positive leaders of the anger management group. Although she still needed some counseling, she had progressed and had become a

nurturing mother in need simply of continued direction and guidance.

(3) Maintaining meaningful contact with T. B. The caseworker readily admitted that Samantha had maintained meaningful contact with T. B. and had not missed a visit. In fact, during the first year of T. B.'s life, even though he was in the custody of DFACS, Samantha had lived with and cared for the child. Only after the decision to place T. B. in a distant foster home did that care end, which severely traumatized fifteen-year-old Samantha. She pleaded for more visitation than the DFACS-supervised one hour a week, but to no avail.

4. Cooperating with DFACS. The caseworker conceded that Samantha cooperated with DFACS. As a rule she followed through on DFACS requests. She consistently came in when asked, attended all reviews, and took requested drug screens.

5. Attending school. The only goal not achieved by Samantha was attending school. Although during the first year she made progress in school attendance (except for absences due to gall bladder surgery and doctor appointments), during the second year Samantha began missing more and more school. This absenteeism also violated the terms of her probation for truancy and unruly behavior. After T. B. was placed in a distant foster home, her attendance plummeted, she was suspended for fighting, she spoke aggressively to a teacher (and was required to wait for security to escort her away), and she began failing three of her four courses.

She eventually dropped out of school to marry and get a job in the hopes of establishing a home for T. B.

Because the caseworker felt attending school was "essential" to being a good parent and was the "biggest requirement" of the case plan, DFACS sought to terminate her parental rights on this ground.<sup>9</sup> Significantly, her problems with keeping terms of probation (staying out past curfew and contacting child's father) dissipated once she married, and she completed the terms of her probation with the exception of school attendance. Her probation was closed the month of the hearing.

Where the primary allegation of parental misconduct is failure to comply with a case reunification plan, and where the evidence is undisputed that the parent has complied with four of the plan's five goals, and where the only unmet goal is completing high school, and where the parent quit high school to marry and get a job to provide a home for the child, there is by no means clear and convincing evidence of parental misconduct under OCGA § 15-11-81. The other bases enumerated in the court order, which are not defended by DFACS on appeal, also do not withstand scrutiny. The facts that she had known her husband only four to five months before marriage, that he had lost a child to DFACS because he could not afford the child, and that he had held employment only for

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<sup>9</sup> Cf. C. G., supra, 235 Ga. App. at 24 (the crux of the DFACS case was the mother's mental condition, which no evidence showed was likely to continue).

weeks prior to the hearing, are hardly relevant to her parenting skills. Similarly irrelevant is her decision to stop taking depression medication once she felt better and her inability to work until she quit school.

We need not address the other factors of OCGA § 15-11-81 (b) (4) (A) (iii), (iv) other than to say that they cannot be proven absent a showing of parental misconduct.<sup>10</sup> "While we are reluctant to reverse the juvenile court's determination, no judicial determination is more drastic than the permanent severing of the parent-child relationship."<sup>11</sup> In light of the undisputed evidence, we reverse the judgment terminating Samantha's parental rights and remand the case for the establishment of a new reunification plan, subject to whatever disposition is warranted by future events and those occurring since the termination hearing.<sup>12</sup>

4. The father Michael has a similar story. True, he delayed a year, despite repeated requests from DFACS, before petitioning to legitimate T. B. But once he received a case plan, the evidence is undisputed that during the six months of the plan he substantially met or worked toward the plan's goals. Because his failure to meet these goals timely was the primary basis for terminating his

---

<sup>10</sup>Moreover, regarding the child's best interest, we note the uncontradicted testimony that T. B. responded well to Samantha and was upset when removed from her presence.

<sup>11</sup>K. M., supra, slip op. at 10.

<sup>12</sup>Id.

rights, we reverse. We discuss the criteria of OCGA § 15-11-81 (b) (4) (A) seriatim.

(a) Deprivation. Like Samantha, Michael failed to appeal the orders finding deprivation, and is therefore bound by same.<sup>13</sup>

(b) Lack of Proper Parental Care and Control. As with Samantha, DFACS pointed to none of the factors of OCGA § 15-11-81 (b) (4) (B) as a basis for termination. His single arrest for marijuana possession and the positive test of marijuana in his urine do not constitute clear and convincing evidence of an excessive use or history of chronic unrehabilitated abuse of narcotics under OCGA § 15-11-81 (b) (4) (B) (ii), particularly where DFACS presented no evidence that such rendered him incapable of providing adequately for the needs of T. B. The caseworker conceded that Michael regularly visited T. B. and that he had caught up on his child support, so the only factor under OCGA § 15-11-81 (b) (4) (C) to justify termination was his alleged failure to comply with his reunification plan.

His plan had six goals to be achieved within six months: (i) address mental health and anger issues by completing a parenting assessment and parenting classes, (ii) create a stable living environment, (iii) keep a job for six months, (iv) pay child support, (v) have regular visits with T. B., and (vi) cooperate with DFACS. The undisputed evidence shows that he achieved or was

---

<sup>13</sup>K. D. S., supra, 237 Ga. App. at 865 (1) (a).

well on his way to achieving most of these goals, although he was late in doing so.

(i) Addressing mental health issues. Michael completed the parenting assessment as requested. He also attended counseling as requested. He attended and completed an entire sequence of parenting classes and received a certificate during the latter part of the six-month period.

(ii) Create a stable living environment. Michael established a home for T. B., which DFACS found to be "fairly neat and clean." The grandfather also lived there and had a drinking problem, which Michael felt was undesirable. DFACS presented no evidence that the home was only temporary or was unsafe. Nor did DFACS feel that a home separate from the grandfather was required.

(iii) Keep a job for six months. Halfway through the six months of the case plan, Michael obtained employment that he held for the three-and-one-half months preceding the termination hearing. DFACS presented no evidence that he was soon to be fired from this job. Thus, Michael was complying with this goal of the case plan at the time of the hearing.

(iv) Pay child support. Michael fell behind in child support, which he caught up after the panel review of his case. This was still within the six-month period of the plan. He was current at the time of the hearing.

(v) Have regular visits with T. B. As with Samantha, the caseworker readily admitted that Michael had regular visits with T.

B. Michael continuously asked for more visits, which led to friction between him and DFACS.

(vi) Cooperate with DFACS. As requested, Michael attended all panel reviews regarding T. B. After initially refusing, he submitted to a urine drug screen, which tested positive for marijuana. His primary confrontation with DFACS was his demand for more visits with T. B.

Michael is far from being a model citizen, but the above does not establish by clear and convincing evidence that he engaged in misconduct that caused T. B. to be deprived, or that such misconduct was likely to continue. Case plans are significant factors, but delayed compliance with a minority of a plan's goals cannot alone serve as the sole basis for terminating parental rights. We reverse the judgment terminating Michael's parental rights and remand the case for the establishment of a new reunification plan, subject to whatever disposition is warranted by future events and those occurring since the last termination hearing.<sup>14</sup>

Judgments reversed in both Case No. A99A2086 and Case No. A99A2087. Pope, P. J. concurs. Blackburn, P. J., Ruffin, J., and Ellington, J. concur in the judgment only. Andrews, P. J., and Smith, J., dissent.

---

<sup>14</sup>See K. M., supra, slip op. at 10.

LOYALTY OATH

COPY

STATE OF GEORGIA

COUNTY OF FULTON

I, J. D. SMITH (name)

a citizen of HALL COUNTY, GEORGIA

and being an employee of THE COURT OF APPEALS OF GEORGIA

and the recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of Georgia.

SO HELP ME GOD!

Sworn to and subscribed before me, this the )

4<sup>TH</sup> day of JANUARY, 2001 )

[Signature] )

J. D. Smith )

Signature

(O.C.G.A. 45-3-11)  
(O.C.G.A. 45-3-12)  
(O.C.G.A. 45-3-13)

DIRECTIONS

This oath, when taken, must be attached to the oath of office and filed therewith as required by law.

The loyalty oath required by Code Sections 45-3-11 through 45-3-15 shall apply to all elected officers of this state, including the Governor, constitutional officers, elected officials of any political subdivision of the government of Georgia, and local school board officials. (O.C.G.A. 45-3-12)

COPY

OATH OF JUDGE OF THE COURT OF APPEALS OF GEORGIA

STATE OF GEORGIA )

COUNTY OF FULTON )

I, J. D. SMITH, a citizen of HALL COUNTY, GA and being an employee of THE COURT OF APPEALS OF GEORGIA and the recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of Georgia.

I do further swear that I will discharge all the duties lawfully required of me as Judge of the Court of Appeals of Georgia, according to the best of my ability and understanding.

I do further swear and affirm that I am not the holder of any unaccounted for public money due this State, or any political subdivision or authority thereof; that I am not the holder of any office of trust under the government of the United States, nor of either of the several states, nor of any foreign state; and that I am otherwise qualified to hold said office according to the Constitution and Laws of Georgia; and that I will support the Constitutions of the United States and of this State.

I do further swear that I will administer justice without respect to person, and do equal rights to the poor and the rich, and that I will faithfully and impartially discharge and perform all of the duties incumbent on me as Judge of the Court of Appeals of Georgia, according to the best of my ability and understanding and agreeably to the Laws and the Constitution of this State and the Constitution of the United States.

SO HELP ME GOD!

J. D. SMITH

Signature.

Sworn to and subscribed before me, this the )

4<sup>th</sup> day of JANUARY, 2001 )

Ray E. Bann

GOVERNOR

(O.C.G.A 15-3-5)
(O.C.G.A 45-3-1)
(O.C.G.A 45-3-12)

COURT OF APPEALS OF GEORGIA

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(404) 656-3450

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G. ALAN BLACKBURN, PRESIDING JUDGE  
EDWARD H. JOHNSON, PRESIDING JUDGE  
JOHN H. RUFFIN, JR., PRESIDING JUDGE  
FRANK M. ELDRIDGE, JUDGE  
ANNE ELIZABETH BARNES, JUDGE  
M. YVETTE MILLER, JUDGE  
JOHN J. ELLINGTON, JUDGE  
HERBERT E. PHIPPS, JUDGE  
CHARLES B. MIKELL, JUDGE  
A. HARRIS ADAMS, JUDGE

WILLIAM L. MARTIN, III  
CLERK AND COURT ADMINISTRATOR

HOLLY K.O. SPARROW  
DEPUTY ADMINISTRATOR

SHELIA COLLINS  
DEPUTY CLERK

November 15, 2004

Honorable Sonny Perdue  
203 State Capitol Building  
Atlanta, Georgia 30334

RE: Possible relocation of Court of Appeals

Dear Governor Perdue:

The purpose of this letter is to inform you of the desperate situation facing our court with respect to its space needs and to alert you that one of the solutions being considered is to relocate the court away from Capitol Hill. Specifically, the court is strongly considering the possibility of moving to the new headquarters of the State Bar of Georgia on Marietta Street. As you probably know, the bar now occupies the building formally used by the Federal Reserve Bank.

This would be a drastic action for our court to take, but it now appears to be the best solution to our longstanding and severe space problems.

Our court consists of twelve judge, plus staff members in the individual judge's offices, our clerk's office, and other support offices. The total number of personnel currently working for the court is 89, including the judges.

For over five years now, two of our judges and their staffs have not been located in the Judicial Building. They have been in "temporary" office space in the Health Building, located behind the Judicial Building. Earlier this year, we moved our fiscal office to the Health Building.

As bad as this situation has been, we received news from the Georgia Building Authority earlier this fall, that makes it far worse. The GBA has advised us that during 2005 we will be required to vacate all the space we currently occupy in the Health Building. The GBA can offer us only some new temporary space in the basement of the Legislative Office Building that is even less suitable than the space we now occupy.

Our court for many years has been one of the busiest appellate courts in the country. By every applicable measure, our court is overdue for expansion if it is to continue to decide cases expeditiously and with due attention to the merits of each and every case. The court was expanded from nine to twelve judges in two stages in the late 1990's. Because of the budget crisis facing

Honorable Sonny Perdue  
November 15, 2004  
Page Two

Georgia state government, we have not sought additional judges since then. Even when funding may be available,, though, further expansion will not be feasible until our chronic problems with lack of space can be addressed. The bar headquarters building offers us a long term solution. We currently occupy about 38,000 square feet, but the bar headquarters building has some 60,000 square feet available for us.

Moving to that building and leaving Capitol Hill would be a drastic step, but it would solve our current space problems and provide the potential for future expansion. At this time, the move seems to be our court's best option. In fact, it may well be our only realistic course of action.

My reason for imposing upon you by sending you this letter is to make you aware of our possible plans because this would be such a drastic step. The other judges of our court and I have another purpose in advising you of our contemplated plans. If there is a viable solution available short of making this move, we hope sending this letter will start the process necessary for finding that solution. To that end, I have sent identical letters to both Lt. Governor Taylor and Representative Richardson, as the presumptive new Speaker.

Of course, I welcome the opportunity to answer any questions you may have and to discuss our space problems with you, if you wish, at any time convenient to you.

Thank you for your kind attention to this matter.

Very truly yours,

J.D. Smith

For further information, contact:  
William L. Martin, III  
Clerk and Court Administrator  
Georgia Court of Appeals  
404-656-3450

FOR IMMEDIATE RELEASE  
January 3, 2003

J.D. Smith, Hall County native and former Chief Judge of the Superior Courts of the Northeastern Judicial Circuit, will be sworn in as the 21st Chief Judge of the Court of Appeals of Georgia. The ceremony will take place in the Court of Appeals courtroom, 6th Floor State Judicial Building, Capitol Square, Atlanta, on Tuesday, January 7, 2003 at 1:30 p.m. Chief Justice Fletcher of the Supreme Court of Georgia will administer the oath.

Judge Smith practiced law in Gainesville for twelve years before becoming a judge. He is past president of the Gainesville-Northeastern Circuit Bar Association and is also a member of the Atlanta Bar Association, the State Bar of Georgia, and the American Bar Association.

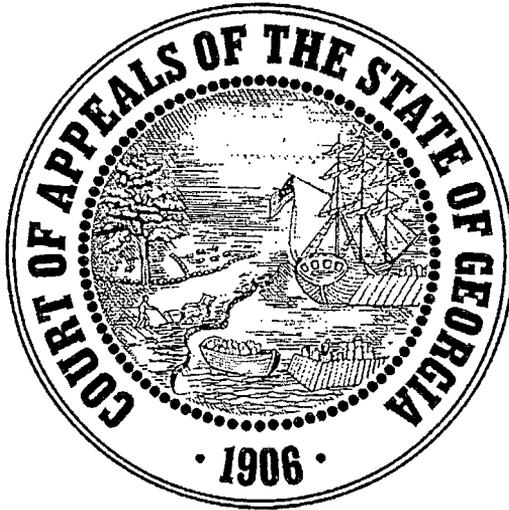
He received his undergraduate degree from the University of Florida, a Juris Doctor degree from the University of Georgia School of Law and a Master of Laws from Emory University School of Law. He earned an LL.M degree in Judicial Process from the University of Virginia School of Law and is a graduate of the New York University School of Law Appellate Judges Seminar.

He and his wife, Flo, and two children, Brian and Joanna, reside in Gainesville and are members of the First United Methodist Church.

###

*Investiture of*  
**The Honorable**  
**J.D. Smith**

*as Chief Judge of the Court of Appeals of  
Georgia*



*Tuesday, January 7, 2003*

*1:30 p.m.*

*Court of Appeals of Georgia Courtroom  
Atlanta, Georgia*

# Judges of the Court of Appeals of Georgia

Gary Blaylock Andrews

Edward H. Johnson

G. Alan Blackburn

J.D. Smith

John H. Ruffin, Jr.

Frank M. Eldridge

Anne Elizabeth Barnes

M. Yvette Miller

John J. Ellington

Herbert E. Phipps

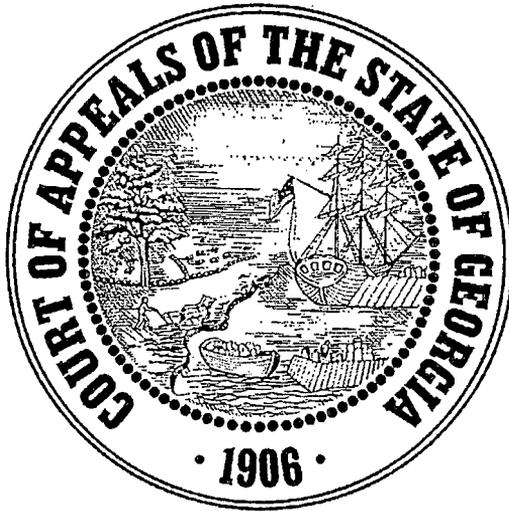
Charles B. Mikell, Jr.

A. Harris Adams

*UPON THE INTEGRITY, WISDOM AND INDEPENDENCE  
OF THE JUDICIARY DEPEND THE SACRED RIGHTS OF  
FREE MEN AND WOMEN*

*Investiture of*  
**The Honorable**  
**J.D. Smith**

*as Chief Judge of the Court of Appeals of  
Georgia*



*Tuesday, January 7, 2003*

*1:30 p.m.*

*Court of Appeals of Georgia Courtroom  
Atlanta, Georgia*

# Judges of the Court of Appeals of Georgia

Gary Blaylock Andrews

Edward H. Johnson

G. Alan Blackburn

J.D. Smith

John H. Ruffin, Jr.

Frank M. Eldridge

Anne Elizabeth Barnes

M. Yvette Miller

John J. Ellington

Herbert E. Phipps

Charles B. Mikell, Jr.

A. Harris Adams

*UPON THE INTEGRITY, WISDOM AND INDEPENDENCE  
OF THE JUDICIARY DEPEND THE SACRED RIGHTS OF  
FREE MEN AND WOMEN*

A handwritten signature in black ink, appearing to be 'M. Yvette Miller', written in a cursive style.

I, **J.D. SMITH**, do solemnly swear that I shall well and truly perform and faithfully execute and discharge all of the duties incumbent upon me as a chief judge of the Court of Appeals of Georgia to the best of my ability, and I do further swear and affirm that I will support the Constitution of the United States and the Constitution of the State of Georgia, so help me God.



**J.D. SMITH**

Chief Judge

Court of Appeals of Georgia

Sworn to and subscribed before me  
this the seventh day of January, 2003.



**NORMAN S. FLETCHER**

Chief Justice

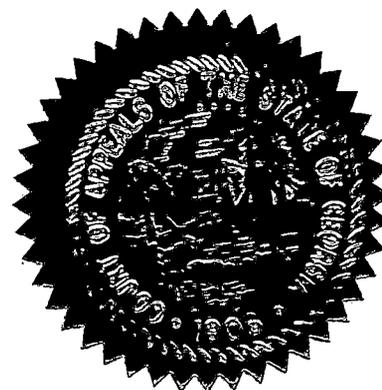
Supreme Court of Georgia

Attest:



**WILLIAM L. MARTIN, III**

Clerk, Court of Appeals of Georgia



SEAL

of the

Court of Appeals of Georgia



# Court of Appeals

## Memorandum

To: All Judges

From: J.D. Smith 

Subject: January 27, 2003 newspaper article

Date: January 28, 2003

Most if not all of you probably have read the attached article which appeared yesterday in the AJC's "Political Insider" column. Although we certainly should not do or say anything in response, I thought some of you might be interested in knowing what case or cases the column describes. Bill Martin has been able to determine that the column refers to a series of termination of parental rights cases from Cobb County. In each of the three opinions, our court reversed the Cobb County Juvenile Court, which had terminated the mother's parental rights. Each of the three opinions is styled *In the Interest of C.C.*, and they're found at 249 Ga. App. 101, decided April 11, 2001; 252 Ga. App. 98, decided October 19, 2001; and 257 Ga. App. 543, decided September 23, 2002. An application for cert. is pending in that last case. For what it's worth, the opinion in that third appeal before this court was authored by

Judge Pope and closed with this paragraph:

This is a close case. If the standard of proof was the preponderance of the evidence, we would affirm. But the standard in a termination case is clear and convincing evidence. It could well be that clear and convincing evidence was available, but in our opinion it was not presented to the court.

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[ The Atlanta Journal-Constitution: 1/27/03 ]

### POLITICAL INSIDER

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Monday: 1.27.03

## A daughter comes to Perdue, begging not to be sent home

By TOM BAXTER and JIM GALLOWAY  
The Atlanta Journal-Constitution

This week, the governor's office could find itself in wholly new territory, jumping into a child custody battle that's already stretched to the state Court of Appeals.

UPDATED EACH WEEKDAY!

About the columnists:  
• Tom Baxter  
• Jim Galloway

Gov. Sonny Perdue let the matter slip at the annual meeting of the Christian Coalition of Georgia this weekend.

Have a news tip? E-mail Tom Baxter or call him at 404-526-5943. Galloway can be e-mailed or reached at 404-526-5520.

Perdue said the young girl -- no name, no age given -- had recently come to his office, begging the governor to get involved.

The situation? The biological mother has "psychological and mental disorders and substance abuse problems," Perdue said.

Related:  
• Recent Political Insider columns.

For 2 1/2 years, the young girl has been with foster parents -- a model set, said the governor's spokeswoman, Erin O'Brien. It was the only smidgen of extra information O'Brien would offer.

The mother has sued to get her daughter back. The daughter wants to stay where she is. The foster parents want her to stay.

But the Court of Appeals has ruled in favor of the mother. Perdue, who himself has been a foster parent, said he intends to file an amicus brief on behalf of the young girl and the foster parents -- and help drive the case to the state Supreme Court.

"That's important to me and it ought to be important to Georgia," Perdue said.

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- Poisoned





# Court of Appeals

## Memorandum

---

**To:** Chief Judge J.D. Smith  
*WLM*  
**From:** William L. Martin, III  
**Subject:** Oral Argument Rule  
**Date:** November 12, 2004

---

In cleaning out my office in order for GBA to install carpet in the clerk's office, I came upon the attached calendar. This is the oral argument calendar for September 1994. You may want to save this in case any judges ever think it is a good idea to go back to the rule of automatic oral argument.

There are not that many judges on the Court to remember what oral argument was like prior to the institution of the rule of requesting oral argument and the Court granting when appropriate.

Thank you.

/ld

Attachment

# Court of Appeals of Georgia

Room 617 State Judicial Building

MARION T. POPE, JR.

CHIEF JUDGE

ATLANTA, SEPTEMBER, 1994

Attention of all counsel is directed to Rule 8 of the Court of Appeals of Georgia.

The following cases have been placed on the calendar for argument pursuant to request in accordance with Rule 8(a). Generally, the cases will be called in the order listed and on the days named, beginning at 10 o'clock a.m. As an accommodation to the bar and pro se parties, the Court will call cases out of turn in which counsel or pro se parties respectively inform the Clerk that time of argument will be limited to 5 minutes per side or 10 minutes per side, pursuant to Rule 8(f).

TUESDAY, SEPTEMBER 06, 1994

FIRST DIVISION-MARION T. POPE, JR., CHIEF JUDGE

WILLIAM LeROY McMURRAY, JR., PRESIDING JUDGE, J. D. SMITH, JUDGE

A94A2298 JOHNNY LEE STEELE V. THE STATE  
A94A2299 ROBERT LEE BURKE V. THE STATE *✓ Okay*  
A94A2300 WORTH TALMADGE MATTHEWS V. THE STATE  
A94A2301 MICHAEL BERNARD STANFORD V. THE STATE  
A94A0947 CARING HANDS, INC. V. GEORGIA DEPARTMENT  
OF HUMAN RESOURCES  
A94A1431 CARING HANDS, INC. V. GEORGIA DEPARTMENT  
OF HUMAN RESOURCES  
A94A1893 WALTER GATES V. THE STATE  
A94A1898 LEA R. FULLER V. CHARTER SOUTH, INC.  
A94A1902 NELLIE M. NOBLES V. DEBRA D. SHUMAN ET AL  
A94A1915 WALTER H. BLACKWELL, JR. V. THE STATE  
A94A1919 BARBARA SMITH V. REPUBLIC REALTY SERVICE,  
INC. D/B/A CENTRA VILLA APARTMENTS  
A94A1930 MICHAEL D. LITTLE V. GENERAL MOTORS  
CORPORATION ET AL  
A94A1938 MICHAEL E. ESKEW V. TRANSWORLD SYSTEMS, INC.  
A94A1949 KAREN M. LUKE ET AL V. H. M. SUBER, M.D.  
A94A1957 BENTON EXPRESS, INC. V. ROYAL INSURANCE  
COMPANY OF AMERICA ET AL  
A94A1964 THE STATE V. TIMOTHY L. HULSEY  
A94A1975 IN THE INTEREST OF: B. W. 5., A CHILD

A94A1981 MARY Y. GIBSON V. PREFERRED RISK MUTUAL  
INSURANCE COMPANY  
A94A1988 MICHAEL MAPP V. SYLVIA THOMAS MAPP GILBERT  
A94A1990 PIGGLY WIGGLY SOUTHERN, INC. D/B/A FOOD MAX  
V. WILLIAM F. WEATHERS  
A94A1998 LAWRENCE KAMINSKY ET AL V. FIRST UNION  
NATIONAL BANK OF GEORGIA  
A94A2004 AMWEST SURETY INSURANCE COMPANY V. RA-LIN  
& ASSOCIATES, INC. ET AL  
A94A2007 NATIONWIDE MORTGAGE RESOURCES, INC. V.  
BARBARA B. STALZER TRUSTEE IN BANKRUPTCY  
FOR LOUIS L. KITCHIN ET AL  
A94A2008 DOVER FINANCIAL CORPORATION V. BARBARA  
STALZER TRUSTEE IN BANKRUPTCY FOR LOUIS L.  
KITCHIN ET AL  
A94A2009 VININGS BANK & TRUST, N.A. V. BARBARA  
STALZER TRUSTEE IN BANKRUPTCY FOR LOUIS L.  
KITCHIN ET AL  
A94A2015 LILLIAN LEWIS V. JONAH CHUMLEY B/N/F CHERYL  
BIRD  
A94A2018 RICHARD CHEN V. THE PROFIT SHARING PLAN OF  
DONALD H. BOHNE ET AL

WEDNESDAY, SEPTEMBER 07, 1994

FIRST DIVISION-MARION T. POPE, JR., CHIEF JUDGE

WILLIAM LeROY McMURRAY, JR., PRESIDING JUDGE, J. D. SMITH, JUDGE

A94A2021 JIM ANDERSON & COMPANY V. PARTRAINING  
CORPORATION  
A94A2023 RICHARD BATES V. THE STATE  
A94A2027 DAN E. SEWELL ET AL V. PAUL BORING, JR.  
A94A2038 CHARLES A. ARMSTRONG ET AL V. DIANA H.  
WILLIAMS  
A94A2046 DEVIN C. CULBERSON V. WILLIAM C. LANIER ET AL  
A94A2051 LUCILLE MOORE V. LOUIS SMITH MEMORIAL  
HOSPITAL, INC. D/B/A LAKELAND VILLA  
CONVALESCENT CENTER  
A94A2055 CONNIE STOKES ET AL V. CANDLER HOSPITAL, INC.  
A94A2057 MARVIN P. NODVIN V. GEORGIA PACIFIC  
CORPORATION  
A94A2075 SANDRA J. RICHARDSON V. DENNIS, CORRY,  
PORTER AND THORNTON ET AL

A94A2078 DEPARTMENT OF TRANSPORTATION V. APAC-  
GEORGIA, INC.  
A94A2085 MUSCOGEE IRON WORKS ET AL V. GLEN E. WARD  
A94A2093 ISAAC FRANK NEWMAN, JR. V. THE STATE  
A94A2096 LAWRENCE STATHAM, JR. V. RALPH ANTHONY  
MAINES  
A94A2105 HARRIET BRYANT V. EMPLOYEES RETIREMENT  
SYSTEM OF GEORGIA ET AL  
A94A2115 ERIC KEITH JEFFERSON V. THE STATE  
A94A2124 SIDNEY A. FUNK ET AL V. FULTON COUNTY ET AL  
A94A2129 THE STATE V. JERRY LYNN GENTRY  
A94A2135 STEVEN A. WHITE, D.V.M. V. VICKIE ROBERTS ET AL  
A94A2165 PETER MANCHESTER V. GWINNETT COUNTY  
A94A2166 CEDRIC COLE V. THE STATE

THURSDAY, SEPTEMBER 08, 1994

FIRST DIVISION-MARION T. POPE, JR., CHIEF JUDGE

WILLIAM LeROY McMURRAY, JR., PRESIDING JUDGE, J. D. SMITH, JUDGE

A94A1679 LORON E. WILLIAMS, JR. V. SOUTH CENTRAL  
FARM CREDIT ACA ET AL  
A94A1903 GEORGIA DEPARTMENT OF TRANSPORTATION V.  
RAYMOND TAUNTON  
A94A2103 RICHARD HARMON V. BMW OF NORTH AMERICA,  
INC. ET AL  
A94A2170 ROBERT COX V. THE STATE  
A94A2172 CHARLOTTE BACON ET AL V. SAINT JOSEPH'S  
HOSPITAL, INC.  
A94A2173 SAINT JOSEPH'S HOSPITAL, INC. V. CHARLOTTE  
BACON ET AL  
A94A2179 EQUICOR, INC. V. CHARLES E. STAMEY  
A94A2190 DEPARTMENT OF HUMAN RESOURCES V. GLORIA  
THOMAS  
A94A2199 MICHAEL R. WILLIS V. ARATEX SERVICES, INC.  
A94A2200 ARATEX SERVICES, INC. V. MICHAEL R. WILLIS  
A94A2210 DURACELL INTERNATIONAL V. JUGOLINIJA LINES  
A94A2211 TALMADGE RENTZ EXECUTOR OF THE ESTATE OF  
AVERILLE DARSEY RENTZ V. DOROTHY BLANTON

A94A2213 DEBORAH HAEZEBROUCK ET AL V. STATE FARM  
MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL  
A94A2214 STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY ET AL V. DEBORAH HAEZEBROUCK ET AL  
A94A2219 FIRST UNION NATIONAL BANK V. JOHN BOYKIN ET AL  
A94A2231 CORNETT BRIDGE, INC. V. HALL COUNTY ET AL  
A94A2233 STEPHEN RAY KILLEBREW V. SUN TRUST BANKS,  
INC. D/B/A TRUST COMPANY BANK  
A94A2239 ARTAGUS HALL V. THE STATE  
A94A2264 NELLE B. FORD ET AL V. AUGUSTA MALL, INC.  
A94A2265 EDWARD JOHN TUTTLE, SR. V. THE STATE  
A94A2282 DOROTHY ELLIOTT V. SAVANNAH AIRPORT  
COMMISSION  
A94A2288 LOUIS WIELAND V. LINDA WIELAND  
A94A2289 LOUIS WIELAND V. LINDA WIELAND  
A94A2293 CHARLES SPARKS V. OX BODIES, INC.  
A94A2297 GEORGIA FARM BUREAU MUTUAL INSURANCE  
COMPANY V. LINDA RICHARDSON A/K/A LINDA  
MORGAN

**MONDAY, SEPTEMBER 12, 1994**  
**SECOND DIVISION-A. W. BIRDSONG, JR., PRESIDING JUDGE**  
**G. ALAN BLACKBURN, JOHN H. RUFFIN, JR., JUDGES**

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|----------|--|----------|---|
| A94A1542 | JERRY WAYNE DALTON V. THE STATE  | A94A1989 | THE HOUSING AUTHORITY OF COLUMBUS, GEORGIA V. SHIRLENA JACKSON    |
| A94A1889 | BARBARA DAVIS URREA ET AL V. STARKEY FLYTHE, JR.                           | A94A1992 | BARNES & TUCKER COMPANY V. WESTINGHOUSE ELECTRIC CORPORATION      |
| A94A1895 | ALLIANZ INSURANCE COMPANY V. STATE FARM FIRE AND CASUALTY COMPANY          | A94A2002 | COLUMNS PROPERTIES, INC. V. CATHERINE COLEMAN ET AL               |
| A94A1904 | W. R. GRACE & CO.-CONN. ET AL V. TACO TICO ACQUISITION CORPORATION ET AL   | A94A2020 | PONDEROSA COLLECTIONS, INC. V. WANDA R. FRADY ET AL               |
| A94A1920 | THE SAVANNAH COLLEGE OF ART AND DESIGN, INC. V. ROBERT NULPH               | A94A2036 | CENTEX-RODGERS CONSTRUCTION COMPANY V. THE CITY OF ROSWELL        |
| A94A1950 | V.I.P. HOMES, INC. ET AL V. GENE E. WEEDEE ET AL                           | A94A2037 | CENTEX-RODGERS CONSTRUCTION COMPANY V. MCCANN STEEL COMPANY, INC. |
| A94A1973 | MNM 5 INC., D/B/A MATTRESS & MORE V. ANDERSON/6438 NORTHEAST PARTNERS, LTD | A94A2040 | ALI KABIRI D/B/A BLIMPIE V. OWEN ARONOV ET AL                     |
| A94A1974 | WILLIAM SALLIE V. THE STATE  |          |   |

**TUESDAY, SEPTEMBER 13, 1994**  
**SECOND DIVISION-A. W. BIRDSONG, JR., PRESIDING JUDGE**  
**G. ALAN BLACKBURN, JOHN H. RUFFIN, JR., JUDGES**

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|----------|---|----------|--|
| A94A2052 | ACREE OIL COMPANY V. DEPARTMENT OF TRANSPORTATION       | A94A2086 | MORELAND AUTO STOP, INC. ET AL V. TSC LEASING CORPORATION  |
| A94A2056 | ANNE MAE WARNKE V. PACE MEMBERSHIP WAREHOUSE, INC.      | A94A2087 | ALMA SHIRLEY BROWN V. JOHN OLIVER BROWN  |
| A94A2068 | JOHNNIE RUTH MOORE V. WINN-DIXIE STORES, INC.           | A94A2102 | RESTAURA, INC. F/K/A GREYHOUND FOOD MANAGEMENT, INC. ET AL V. SALLY L. SINGLETON   |
| A94A2072 | S.J.T., INC. D/B/A T J SMILES V. RICHMOND COUNTY        | A94A2106 | RESOLUTION TRUST CORPORATION AS CONSERVATOR FOR SECURITY FEDERAL SAVINGS & LOAN ASSOCIATION V. MORROW AUTO CENTER, METROPOLITAN PROPERTY AND CASUALTY INSURANCE COMPANY V. JERI REGINA WHITE |
| A94A2077 | JEREL HERSCHEL BARTLETT V. LARRY M. MELNICK ET AL       | A94A2122 | MATTHEW J. LEWIS V. THE STATE  |
| A94A2079 | THE KROGER COMPANY V. BILLIE BRITAIN ET AL              | A94A2123 | JAMES SACHA V. COFFEE BUTLER SERVICE, INC. ET AL   |
| A94A2082 | AMWAY CORPORATION V. HOBGOOD CONSTRUCTION COMPANY, INC. |          |  |

*A94A2028 Ppy Tyler v. Gregory Bennett*

**WEDNESDAY, SEPTEMBER 14, 1994**  
**SECOND DIVISION-A. W. BIRDSONG, JR., PRESIDING JUDGE**  
**G. ALAN BLACKBURN, JOHN H. RUFFIN, JR., JUDGES**

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|--------------------------------|---|--------------------------------|--|
| A94A2127                       | DONNA OWENS V. ALLSTATE INSURANCE COMPANY   | <sup>CC 2220</sup><br>A94A2221 | GEORGIA ASSOCIATED GENERAL CONTRACTORS SELF INSURERS TRUST FUND V. WILLIAM A. DUTTON ET AL |
| A94A2130                       | THE STATE V. MICHAEL SCOTT NALLEY   | A94A2222                       | IN THE INTEREST OF: D. 5., V. B., AND C. B., CHILDREN                                      |
| A94A2148                       | GRAYDON LEE BALLARD, III V. SUSAN JENNIFER STEELE WARREN  | A94A2225                       | GEORGIA RECOVERY, INC. V. GEORGIE H. DANLEY ET AL  |
| A94A2149                       | SUSAN JENNIFER STEELE WARREN V. GRAYDON LEE BALLARD, III ET AL                                  | A94A2251                       | JACQUELYN GLEATON V. HAZELWOOD FARMS, INC. ET AL   |
| A94A2152                       | BRIAN WATSON ET AL V. HOWARD JOHNSON FRANCHISE SYSTEMS, INC.                                    | A94A2259                       | GEORGIA DEPARTMENT OF CORRECTIONS V. WAYNE SHAW  |
| A94A2180                       | TRIWOOD CORPORATION OF GEORGIA, INC. V. W. G. KRAUSE  | A94A2260                       | GEORGIA DEPARTMENT OF CORRECTIONS V. BRUCE CHAMBERS  |
| A94A2191                       | DENISE ANN INGRAM V. STAR TOUCH COMMUNICATIONS, INC.  | A94A2274                       | SOUTHERN MEDICAL CORPORATION V. LIBERTY MUTUAL INSURANCE COMPANY                           |
| A94A2192                       | JOSEPH T. PECORA ET AL V. FIRST BANK OF GEORGIA   | A94A2275                       | LIBERTY MUTUAL INSURANCE COMPANY V. SOUTHERN MEDICAL CORPORATION                           |
| A94A2193                       | JESSE T. HENDRIX ET AL V. FIRST BANK OF GEORGIA   | A94A2290                       | PRIMERICA FINANCIAL SERVICES, INC. ET AL V. EDWARD H. WISE ET AL                           |
| A94A2220<br><sup>CC 2221</sup> | WILLIAM A. DUTTON, SR. ET AL V. GEORGIA ASSOCIATED GENERAL CONTRACTORS SELF INSURERS TRUST FUND | A94A2291                       | EDWARD H. WISE ET AL V. PRIMERICA FINANCIAL SERVICES, INC. ET AL                           |

**TUESDAY, SEPTEMBER 20, 1994**  
**THIRD DIVISION-DOROTHY TOTH BEASLEY, PRESIDING JUDGE**  
**GARY B. ANDREWS, EDWARD H. JOHNSON, JUDGES**

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|----------|---|----------|--|
| A94A0435 | M. DAVID HARRISON EXECUTOR OF THE ESTATE OF EDWARD FRANCIS MULVEY V. DEBORAH SPECTOR VICTOR | A94A1946 | GERALDINE JENKINS V. LEWIS J. PATTERSON  |
| A94A1789 | RONALD S.LEVENTHAL V. WILLIAM A. SEITER ET AL   | A94A1961 | DOLLIE BOHANNON V. WAL-MART STORES, INC., ET AL                                    |
| A94A1890 | RONALD ALLEN HALL V. JOHN C. ETHRIDGE EXECUTOR OF THE ESTATE OF KATHLEEN HALL MCWILLIAM     | A94A1967 | SANDRA P. SACKER V. PERRY REALTY SERVICES, INC, ET AL                              |
| A94A1897 | WILTON V. MILLER V. THE STATE   | A94A1983 | KENNETH R. HILYER V. CAROLYN BYRD HILYER   |
| A94A1900 | GLENN PLUMLEE V. VIRGIL BEDDINGFIELD ET AL  | A94A1987 | ROY W. SMITH ET AL V. J. T. MCCLUNG  |
| A94A1905 | TRAVIS M. COX V. PANDA MOTORS CORPORATION, INC. ET AL                                       | A94A1991 | NORTH GEORGIA ELECTRIC MEMBERSHIP CORPORATION V. CITY OF DALTON, GEORGIA ET AL     |
| A94A1906 | PANDA MOTORS CORPORATION, INC. V. TRAVIS M. COX   | A94A2003 | BLUE RIDGE MOUNTAIN FISHERIES, INC. ET AL V. DEPARTMENT OF NATURAL RESOURCES ET AL |
| A94A1926 | RICKY GILREATH V. ROGER HORNSBY ET AL   | A94A2006 | CAREY ZANE GREY V. FARMERS STATE BANK SUCCESSOR TO RICHLAND BANKING COMPANY        |
| A94A1929 | WAYNE W. SISK V. P. T. PATEL, M.D.  | A94A2012 | HELEN H. PLUNKETT V. PEGGY SINKOE GINSBURG   |
| A94A1937 | MARVIN SPENCER V. T. GORDON LAMB ET AL  | A94A2017 | ENVIRONMENTAL SAFETY CONTROL, INC. V. JOE D. TANNER, COMMISSIONER ET AL            |

WEDNESDAY, SEPTEMBER 21, 1994  
THIRD DIVISION-DOROTHY TOTH BEASLEY, PRESIDING JUDGE  
GARY B. ANDREWS, EDWARD H. JOHNSON, JUDGES

A94A2026	ANTHONY CRANE RENTAL OF GEORGIA, INC. V. J. O. REID, JR.	A94A2074	SANDRA J. PRITCHETT ET AL V. CITY OF DALTON ET AL
A94A2029	INTERNATIONAL INDEMNITY COMPANY V. SAIA MOTOR FREIGHT LINE, INC. ET AL	A94A2080	CLINE W. BROCK V. SHELBY GRIFFIS
A94A2030	GORDY CONSTRUCTION COMPANY V. REBECCA DARLENE STEWART	A94A2081	JAMES R. BULLARD ET AL V. BICKLEY LOGGING COMPANY ET AL
A94A2031	GORDY CONSTRUCTION COMPANY V. LOIS BEATRICE TALLEY	A94A2084	WILLIAM E. WATTS V. DEBBIE A. JAFFS ET AL
A94A2039	GROVER C. SPILLERS ET AL V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL	A94A2097	THE COCA-COLA COMPANY V. SONYA NICKS
A94A2044	MARY P. SMITH ET AL V. MYRTLE ANNE GEIGER ET AL	A94A2107	HENRY BLAKE BALLARD V. SOUTHERN REGIONAL MEDICAL CENTER, INC.
A94A2048	AUTO CASH, INC. V. MICHAEL HUNT D/B/A AUTO CASH	A94A2111	BARANCO, INC. D/B/A BARANCO ACURA SOUTHLAKE V. LITA YVONDA BRADSHAW
A94A2049	MICHAEL HUNT D/B/A AUTO CASH V. AUTO CASH, INC.	A94A2112	LITA YVONDA BRADSHAW V. BARANCO, INC. D/B/A BARANCO ACURA SOUTHLAKE
A94A2062	UNION CAMP CORPORATION V. RANDY DUKES	A94A2114	GARY LARSON MCDANIEL V. THE STATE
A94A2069	STATE LINE METALS, INC. V. ALUMINUM COMPANY OF AMERICA	A94A2117	SHARON A. WHITLEY V. ANN TAYLOR, INC. ET AL
		A94A2120	BRIAN COOPER V. DONNA L. TAYLOR
		A94A2128	THE STATE V. JEFFREY JAMES HASSETT
		A94A2131	ROBERT GENE THOMASON V. THE STATE
		A94A2132	MICHAEL J. PAINO V. ALAN W. CONNELL
		A94A2263	MICHAEL J. PAINO V. ALAN W. CONNELL ET AL

THURSDAY, SEPTEMBER 22, 1994  
THIRD DIVISION-DOROTHY TOTH BEASLEY, PRESIDING JUDGE  
GARY B. ANDREWS, EDWARD H. JOHNSON, JUDGES

A94A2157	JERMAINE MELTON V. THE STATE	A94A2223	HERB GILMORE V. CHARLES PORTERFIELD ET AL
A94A2168	TODD ALAN DRAKE V. LARUE CONSTRUCTION COMPANY ET AL	A94A2226	SUPER DISCOUNT MARKETS, INC. D/B/A CUB FOODS V. NINA FIEGE
A94A2183	CRAIG BULLOCK V. THE STATE	A94A2255	ELIZABETH WEBSTER V. JACQUES DOMINIQUE WILKINS ET AL
A94A2186	R. G. HEARD V. DECATUR COUNTY, GEORGIA	A94A2256	HAYDEN GARGES YOW V. FEDERAL PAPER BOARD COMPANY, INC.
A94A2187	IN RE: HERBERT SHAFER	A94A2258	IN THE INTEREST OF: J. W., A CHILD
A94A2194	ROBERT DAVID V. CAROL DONNA LENZ	A94A2262	JOHN CULPEPPER V. RTM, INC. ET AL
A94A2197	RITZ CARLTON HOTEL COMPANY V. CAROLYN REVEL ET AL	A94A2267	GRANVILLE E. SAUNDERS ET AL V. THORN WOOD PARTNERSHIP, L. P. ET AL
A94A2198	DAVID SHAWN LAGRANGE V. THE STATE	A94A2276	EDGAR W. HOWARD V. DR. RUIZ ET AL
A94A2212	WHEELER/KOLB MANAGEMENT COMPANY F/K/A HUDGENS MANAGEMENT COMPANY ET AL V. CURTIS I. PORETSKY ET AL	A94A2287	ARTHUR S. ROSS V. WHITE GMC TRUCKS, INC. D/B/A WHITE GMC TRUCKS OF ATLANTA
A94A2216	MADELEINE JACOBSEN V. GLENVILLE HALDI, P.C. ET AL	A94A2294	GEORGIA NEUROSURGICAL CLINIC, P.C. PROFIT SHARING PLAN ET AL V. ROCKDALE COUNTY, GEORGIA
A94A2217	THOMAS E. MADDOX, JR., P.C. V. MADELEINE JACOBSEN		

SPECIAL NOTICE

8(a)(2) Argument is limited to thirty minutes in each case, fifteen minutes on each side, unless by special leave an extension of time is granted; and none will be granted except on application made in writing at least five days before the date set for the call of the case. On the granting of a request, the appeal will be placed at the end of the calendar. A companion case or cross appeal may, in the discretion of the Court, be treated as a separate case for oral argument if counsel so request prior to commencing argument. Where there are third parties, or additional parties with divergent interests, time may be requested and granted on the terms as above set out. See Rule 8(b).

8(d)(1) Counsel appearing for oral argument, after Court has convened, shall notify the Court as to the length of argument pursuant to Rules 8(a)(2) or 8(f) by completing a form provided by the Clerk. Conversation with the Clerk during oral argument is strictly prohibited. Counsel appearing for oral argument shall be properly attired.

In accordance with Rule 8(d)(2) please refrain from talking, reading newspapers, audibly studying briefs and arranging papers in the Courtroom.  
8(e) Oral argument is waived if counsel is not actually inside the Courtroom when the case is formally called in its order for argument.

WILLIAM L. MARTIN III, Clerk, Court of Appeals of Georgia  
334 State Judicial Building  
Atlanta, Georgia 30334, Tel. (404) 656-3450

COURT OF APPEALS OF GEORGIA

334 STATE JUDICIAL BUILDING

ATLANTA, GEORGIA 30334

MARION T. POPE, JR., CHIEF JUDGE  
WILLIAM LEROY McMURRAY, JR., PRESIDING JUDGE  
A. W. BIRDSONG, JR., PRESIDING JUDGE  
DOROTHY TOTH BEASLEY, PRESIDING JUDGE  
CLARENCE COOPER, JUDGE  
GARY B. ANDREWS, JUDGE  
EDWARD H. JOHNSON, JUDGE  
G. ALAN BLACKBURN, JUDGE  
J.D. SMITH, JUDGE

(404) 656-3450

WILLIAM L. MARTIN, III  
CLERK AND COURT ADMINISTRATOR

January 14, 1994

NOTICE TO COUNSEL AND PRO SE PARTIES

All Counsel and Pro Se Parties who wish oral argument must check in with the Clerk at 9:30 AM in the Court of Appeals Court Room on the 6th Floor of the Judicial Building on the day oral argument is scheduled.

Counsel and Pro Se Parties should announce their names to the Clerk and indicate whether they wish 5, 10 or 15 minute oral argument. If Counsel and Pro Se Parties do not agree on length of oral argument, the longer time shall control.

Your cooperation and timely reporting to the Clerk will greatly assist the Court in its effort to begin promptly at 10:00 AM.

Thank you for your anticipated cooperation.

Sincerely,



William L. Martin, III  
Clerk and Court Administrator  
Court of Appeals of Georgia

WLM, III/sc

Email to Whole Court

Presiding Judge Smith has asked me to let everyone know about the arrangements for his mother's funeral.

The family will receive visitors at Little Davenport Funeral Home on Friday, February 20, 2009 from 6:00 p.m. until 8:00 p.m. Little Davenport Funeral Home is located at 355 Dawson Highway in Gainesville, Georgia 30501. From Atlanta the directions are: I-85 to I-985 and then the Gainesville Exit 20. Take a left at the light and stay on that road for 3.2 miles. This is called the Queen City Parkway although it is not marked as such and turns into Highway 53. The road may be a little curvy but there are no turns you need to make. The Funeral Home is located 3.2 miles from the initial traffic signal *on the left side of the road.*

*Interment.*

The funeral will be at 2:00 p.m. on Saturday at the Little Davenport Funeral Home. ~~In turn~~ it will be at the Alta Vista Cemetery which is approximately one mile from the Funeral Home. When you leave the Funeral Home to go back towards Gainesville and I-985 the cemetery will be approximately one mile on your right from the Funeral Home.

Thank you.

/ld

770-534-5201

Address:

355 Dawson Hwy

Dainesville 30501

Dainesville Exit 20

Left at light -

then Gainesville

ON left

Bar

Minor Paper Flowers

Small Little Daisies per 1/2 doz

6-8 pm Friday

Set 2 pm Thursday

After 11:30 pm

Can pay

(13)

Cemetery on left -

Traditional -

Jacksons Flower hands

770-534-3626

# Court of Appeals of the State of Georgia

ATLANTA, August 2, 2006

*The Court of Appeals hereby passes the following order:*

**A06A1185. BROCKMAN v. THE STATE.**

Appellant has filed a so-called "Motion To Suspend Appeal." This motion betrays appellant's lack of understanding of the constitutional mandate that requires this court to decide all appeals within two terms. Such a motion cannot be granted because this court has no authority to suspend or stay appeals.

Appellant's motion therefore is DENIED, and this appeal is hereby REMANDED to the trial court for further proceedings. Appellant shall have the right to file a new notice of appeal within thirty days of entry of an order by the trial court at the completion of such further proceedings.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta*      **AUG -2 2006**

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

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

*Will Z. Mat: [Signature]*, Clerk.

# Court of Appeals of the State of Georgia

ATLANTA, September 12, 2006

*The Court of Appeals hereby passes the following order:*

**A06A0866. IN RE: DONALD et al.**

James E. Donald, Commissioner of the Georgia Department of Corrections, and Karen Rice, Detention Center Administrator, Georgia Department of Corrections have appealed from the trial court's order holding them in contempt. The order holds Donald and Rice in contempt because they failed to comply with one portion of a sentence imposed by the trial court in a particular probation revocation case. The probationer was given a term of confinement in a probation detention center. The trial court ordered that in calculating the actual number of days the probationer spends in the detention center, the probationer should be given "credit" for time served in jail awaiting pickup and transfer to the detention center.

It is clear that all parties understand that Donald and Rice were acting in good faith and did not intentionally seek to disrespect the trial court. The order itself holds Donald and Rice "in contempt, albeit not willful contempt." We note that to constitute contempt, the alleged contemnors must have violated the order willfully. *Thomas v. Dept. of Human Resources*, 228 Ga. App. 518, 519 (492 SE2d 288) (1997). Further, Donald and Rice did not comply with the order initially because they believed that it contravened OCGA § 42-8-35.4 (a). Since then, however, they have in fact, complied with the order. This controversy is therefore moot and no reviewable ruling exists. This court will not render an advisory opinion. Therefore, the case is hereby REMANDED to the trial court with direction that the trial court vacate its order holding Donald and Rice in contempt.

*Court of Appeals of the State of Georgia*

*Clerk's Office, Atlanta* SEP 12 2006

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

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

*Will Z. Mat. Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, March 28, 2006

*The Court of Appeals hereby passes the following order:*

**A06A0901. ROBERTS ET AL. v. WAL-MART STORES, INC.**

Appellants filed a motion seeking “relief guidance from this Court” regarding the supplementation of the record on appeal with certain depositions. While we declined to offer guidance to a litigant, we granted the motion to the extent that it sought to make the depositions part of the record. Appellee then filed a motion for reconsideration, asserting that the supplementation requested by appellants was incomplete and that other documents should also be included. But appellants also filed a reply brief in which they asserted that the depositions were not properly part of the record on appeal.

It appears from the record available to us that this litigation was removed to U.S. District Court and then returned to the state trial court. Those records generated during the litigation’s pendency in the federal system ordinarily would be part of the record on appeal, and according to appellee its motion for summary judgment was originally filed in federal court. See *Davis v. Standifer*, 275 Ga. App. 769, 776 (2) (621 SE2d 852) (2005). But given the countervailing and in some cases contradictory

assertions of the parties, it is not possible for us to determine the documents which properly form part of the record on appeal or those documents upon which the trial court relied in reaching its decision. While it appears from the motion for reconsideration that the trial judge originally assigned to this case has passed away, which may make a determination more difficult, the trial court is nevertheless better situated than this court to make such a determination.

Accordingly, the motion for reconsideration is GRANTED and this case is REMANDED to the Superior Court of Tift County so that the trial court may enter its findings with respect to the supplementation of the record, including its reasons for including or excluding the material complained of.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* MAR 28 2006

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

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

*Will Z. Mat... Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, June 29, 2006

*The Court of Appeals hereby passes the following order:*

**A06A1798. MAPLES v. THE STATE.**

Appellant Donald G. Maples having moved this Court for an order remanding this appeal to the trial court for an evidentiary hearing, and the State having consented to the motion, it is hereby

ORDERED, that appellant's motion is hereby GRANTED and this case is REMANDED to the Superior Court of Dade County so that the trial court may conduct an evidentiary hearing on the issues set forth in Maples's brief on appeal: the circumstances of Maples's guilty plea and alleged ineffective assistance of trial counsel. Maples shall have 30 days to file a notice of appeal from any order entered by the trial court on remand.

*Court of Appeals of the State of Georgia*  
*Clerk's Office, Atlanta* JUN 29 2006

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

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

*William Z. Mat... Clerk.*

# Court of Appeals of the State of Georgia

ATLANTA, June 29, 2006

*The Court of Appeals hereby passes the following order:*

**A06A1930. KEATON v. THE STATE.**

Counsel for appellant has moved to remand this case to the trial court for a hearing on appellant's claim of counsel's conflict of interest and to determine whether new counsel should be appointed or whether appellant should be allowed to represent himself.

It is hereby ORDERED that the motion is GRANTED, and this case is REMANDED to the Superior Court of Ware County so that the trial court may conduct a hearing on those issues set forth in appellant's motion. Upon the trial court's decision on this matter, appellant shall have thirty (30) days from the entry of the trial court's order to refile his notice of appeal.

*Court of Appeals of the State of Georgia  
Clerk's Office, Atlanta JUN 29 2006*

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

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

*Will Z. Matlock* Clerk.