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*1 Ga. App. 122, *; 58 S.E. 64, **;*
*1907 Ga. App. LEXIS 163, ****

FEWS v. THE STATE.

181, 182, 183.

COURT OF APPEALS OF GEORGIA

1 Ga. App. 122; 58 S.E. 64; 1907 Ga. App. LEXIS 163

January 29, 1907, Argued
January 31, 1907, Decided

PRIOR HISTORY: **[***1]** Indictment for assault with intent to murder, from Bibb superior court--Judge Felton. December 4, 31, 1906.

DISPOSITION: Judgment affirmed.

CORE TERMS: assault, convicted, certify, shot, former jeopardy, shooting, pistol, question of construction, constitutional amendment, intent to murder, indictment, fired

SYLLABUS: Although a claim or a defense may be asserted or resisted under a clause of the constitution, unless a construction of such clause of the constitution is involved this court is not required to certify the question to the Supreme Court. Where the meaning of the language used in the constitutional provision is unambiguous and undisputed, or where the recognized construction which has been given such a provision is unchallenged, no question of construction is involved. No such question is presented in the mere determination of whether a given state of facts establishes or disestablishes a claim or a defense, asserted or resisted under an unquestioned construction of a constitutional provision. If the particular question of construction sought to be raised has been passed upon directly by the Supreme Court, such question will not be certified to the Supreme Court for repetition of its former decision.

The finding of the trial court against the plea of former conviction was not unauthorized, it appearing that, while both indictments were for assault with **[***2]** intent to murder, the assaults were separate, were upon two different individuals, and were not in response to a joint attack of the persons assaulted, although one of the assaults immediately followed the other.

The charges complained of were not erroneous. The law against shooting at another was not involved in the case, nor was the law as to simple assaults; hence the court did not err in refusing to charge on these subjects. Each verdict was fully warranted by the evidence.

COUNSEL: John R. Cooper, for plaintiff in error.

William Brunson, solicitor-general, contra.

JUDGES: Powell, J.

OPINIONBY: POWELL

OPINION: [*123] [65]** POWELL, J. The defendant was tried and convicted of the offense of assault with intent to murder, in each of two cases. In case No. 183 the felonious assault is alleged to have been committed upon W. G. Solomon Jr., and, in No. 181, upon Charlie Adams Jr. The defendant was first tried and convicted upon the charge relating to Solomon (case No. 183). Upon being arraigned upon the indictment relating to the assault upon Adams, he filed a plea of former jeopardy, alleging that the indictment in this case charged him with the same transaction for which he had been **[***3]** convicted in the case relating to the assault upon Solomon. By consent this plea was heard by the trial judge, who, upon hearing the evidence, found against the plea. Exception to this finding of the court was taken, and this forms the basis of case No. 182 in this court. The evidence against the accused in each case made out a malicious, wanton, and unprovoked case of assault with intent to murder, the State's testimony showing that Solomon, Adams, and certain other young men were quietly walking along, upon the "circle" or "midway," at the State Fair in Macon, when, without provocation or warning, the defendant, who was unknown to them, first fired two shots, one of which struck Solomon, and then turned his pistol upon Adams, who, seeing that he was about to be shot, ran towards defendant and grabbed hold of him; and while Adams was struggling with the defendant, the defendant managed to get his pistol in such position that he fired it, striking Adams in the abdomen. The defendant's statement, which, however, was abundantly contradicted by other proof in the case, was that some one **[*124]** had assaulted him, knocked him down, and was on him, beating him and kicking him, when **[***4]** he shot his pistol in the air, thus inflicting the wounds upon Solomon and Adams. In each of the separate motions for new trials, in cases No. 181 and 183, the defendant complains of a charge of the court upon the effect of the evidence of good character, introduced by the defendant, and as to the manner in which the contentions of the State are set forth. Since these charges appear to us to be so manifestly without error, and since a decision upon them would not be to announce any new principle of law, we deem it unnecessary to set them out further. In case No. 183 (the Solomon case), exception is also taken to the fact that the court refused to charge the jury upon the law of shooting at another, and upon the law of assault.

In case No. 182, relating to the finding of the court upon the plea of former jeopardy, counsel for the defendant asks us to certify the question therein to the Supreme Court for instruction on the grounds that it involves a construction of the clause of the constitution of this State, which provides that "No person shall be put in jeopardy of life, or liberty, more than once for the same offense, save on his or her own motion for a new trial after conviction, **[***5]** or in case of mistrial" (Civil Code, § 5705). The constitutional amendment creating this court provides, that "Where, in a case pending in the Court of Appeals, a question is raised as to the construction of a provision of the constitution of this State or of the United States, or as to the constitutionality of an act of the General Assembly of this State, and a decision of the question is necessary to the determination of the case, the Court of Appeals shall so certify to the Supreme Court, and thereupon a transcript of the record shall be transmitted to the Supreme Court, which, after having afforded to the parties an opportunity to be heard thereon, shall instruct the Court of Appeals on the question so certified, and the Court of Appeals shall be bound by the instruction so given." Acts 1906, p. 26. It will be seen from the above, that, since the question presented in this case does not involve the constitutionality of an act of the General Assembly, it must appear that it raises a question as to the *construction* of a provision of the constitution, before this court is required to certify it to the Supreme Court. A case that involves merely the applicability of a concededly **[***6]** unambiguous clause of the constitution to a given **[*125]** state of facts raises no question of construction. Likewise, where a clause in the constitution has been construed by the Supreme Court as having a certain meaning and intendment, and such fixed judicial construction is unchallenged, **[**66]** there is still no question raised as to the construction of a clause of the constitution. The excerpt from the constitutional amendment creating this court, quoted above, is also to be construed in pari materia with another provision in the

same law, that, "The decisions of the Supreme Court shall bind the Court of Appeals as precedents." Therefore, if the identical question of construction has been before the Supreme Court, and that court has judicially given a construction to the clause in question, it is unnecessary to certify and to continue to certify such a question to the Supreme Court every time a party may seek to raise it. In this case the able and earnest counsel for the defendant raises no question as to the construction of the clause of the constitution under which he attempted to assert his defense; he merely contends that, under the well known, well recognized, and unquestioned **[***7]** construction of that fundamental law, his defense was good. In his argument in this court he contended that under the recognized construction of that provision of the constitution the "same-transaction test" should be applied to his plea of former jeopardy; and counsel for the State agreed with him. The trial court heard evidence for the express purpose of determining whether the transaction for which the defendant had been convicted already was the same transaction for which he was about to be put on trial in the second case. The finding of the court, that the transactions were not the same, in no sense involved any construction of the constitutional provision; and by determining, as we now do, that the trial court committed no error in that finding, we have not decided any constitutional question.

The defendant shot two separate and distinct men; the assault upon each of them was separate; they had made no joint attack upon him; the intent to kill was directed against them individually; the fact that the interval between the two shootings was slight does not make the transactions identical; therefore there was no lawful reason why he should not be tried and convicted in both cases. **[***8]** *Crocker* v. *State,* 47 Ga. 568.

The only other assignment of error not already disposed of is that the court erred in not charging the jury, in the case relating **[*126]** to the assault upon Solomon, the law of shooting at another, and the law of simple assault. Under the evidence in the case these offenses were not involved.

Judgment affirmed on each bill of exceptions.

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ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA 1979

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA 1979

1979 Vol. 1 -- Page: 619

Sequential Number: 089

Short Title: PRACTICE AND PROCEDURE -- APPELLATE AND OTHER POSTTRIAL PROCEDURE.
Intent: Code Section 114-710 Amended.
Law Number: No. 438
Origin: (Senate Bill No. 59).
Type: AN ACT

Full Title: To amend an Act comprehensively revising appellate and other posttrial procedure, approved February 19, 1965 (Ga. Laws 1965, p. 18), as amended, so as to provide for appeals upon petition to the supreme court or court of appeals in certain specified cases; to prescribe the procedure for such appeals; to amend Code Section 114-710, relating to appeals to the superior courts, so as to change certain provisions relating to appeals to the court of appeals; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act comprehensively revising appellate and other posttrial procedure, approved February 19, 1965 (Ga. Laws 1965, p. 18), as amended, is hereby amended by adding to the end of paragraph (1) of Section 1(a) the following:

Page: 620

", except as provided in Section 1.1 of this Act",

so that when so amended, paragraph (1) of Section 1(a) shall read as follows:

"(1) Where the judgment is final -- that is to say -- where the cause is no longer pending in the court below, except as provided in Section 1.1 of this Act;".

Section 2. Said Act is further amended by deleting from paragraph (3) of Section 1(a) the following:

"applications for alimony, either temporary or permanent,",

so that when so amended, paragraph (3) of Section 1(a) shall read as follows:

"(3) From all judgments involving applications for discharge in bail trover and contempt cases; from all judgments or orders directing that an accounting be had; from all judgments or orders granting or refusing application for receivers, or for interlocutory or final injunction; from all judgments or orders rendered after hearing, continuing in effect, modifying, vacating, or refusing to continue, modify or vacate a temporary restraining order; from all judgments or orders granting or refusing applications for attachment against fraudulent debtors; from all judgments or orders granting or refusing to grant mandamus or other extraordinary remedy; from all judgments or orders refusing applications for dissolution of corporations created by the superior courts; and from all judgments or orders sustaining a motion to dismiss a caveat to the probate of a will."

Section 3. Said Act is further amended by inserting following Section 1 a new Section 1.1 to read as follows:

"Section 1.1. (a) Appeals in the following types of cases shall be as provided in this Section:

- (1) Appeals from decisions of the superior courts reviewing decisions of the Worker's Compensation Board, Auditors, State and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, this provision shall

not apply to decisions of the Public Service Commission and probate courts, and cases involving ad valorem taxes and condemnations.

- (2) Appeals from judgments or orders granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody, or holding or declining to hold persons in contempt of such alimony or child custody judgment or orders.

(b) All appeals taken in cases specified in subsection (a) above shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the order or judgment being appealed, and if such order or judgment is interlocutory the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

(c) The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed, and should include a copy of the petition or motion which led directly to

the order or judgment being appealed and a copy of any responses to such petition or motion. An applicant may include copies of such other parts of the record or transcript as he deems appropriate. No certification of such copies by the clerk of the trial court shall be necessary in conjunction with the application.

(d) Such application shall be filed with the clerk of the supreme court or court of appeals within thirty (30) days of the entry or order, decision or judgment complained of and a copy of such application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties as provided by law, except that such service shall be perfected at or before the filing of the application, but when a motion for new trial, or a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the application shall be filed within thirty (30) days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.

(e) The opposing party or parties shall have ten (10) days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the

same manner as is allowed with the application. The response may point out that the decision of the trial court was not error, or that the enumeration of error cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

(f) The supreme court or court of appeals shall issue an order granting or denying such an appeal within fifteen (15) days of the date on which the response of the opposing party or parties is filed with such court or within twenty-five (25) days of the date on which the application was filed in the event that no response is filed.

(g) Within ten (10) days after an order is issued granting such appeal, the applicant, to secure a review of the issues, shall file a notice of appeal as provided by law. The procedure thereafter shall be the same as in other appeals.

(h) The filing of an application for appeal shall act as a supersedeas to the extent that a notice of appeal acts as supersedeas."

Section 4. Code Section 114-710, relating to appeals to the superior courts, is hereby amended by striking from the last paragraph of said Code Section the following:

"for fast bills of exceptions from other orders, judgments and decrees of the superior court".

Section 5. The provisions of this Act shall become effective on July 1, 1979, and shall apply to all orders or judgments rendered by a trial judge on or after said date.

Section 6. The provisions of this Act shall not affect the provisions of paragraph (11) of Code Section 50-127, relating to practice as to appeals in certain habeas corpus cases, and said paragraph shall remain in effect.

Section 7. All laws and parts of laws in conflict with this Act are hereby repealed except as provided in Section 6 of this Act.

Approval Date: Approved April 12, 1979.

Previous

O.C.G.A. § 5-6-35

*** CURRENT THROUGH THE 2004 REGULAR AND EXTRAORDINARY SESSION ******
ANNOTATIONS CURRENT THROUGH JANUARY 16, 2004 ***

TITLE 5. APPEAL AND ERROR
CHAPTER 6. CERTIORARI AND APPEALS TO APPELLATE COURTS GENERALLY
ARTICLE 2. APPELLATE PRACTICE

✦ **GO TO OFFICIAL CODE OF GEORGIA ANNOTATED ARCHIVE DIRECTORY**

O.C.G.A. § 5-6-35 (2004)

§ 5-6-35. Cases requiring application for appeal; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas; jurisdiction of appeal

(a) Appeals in the following cases shall be taken as provided in this Code section:

(1) Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision shall not apply to decisions of the Public Service Commission and probate courts and to cases involving ad valorem taxes and condemnations;

(2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody, or holding or declining to hold persons in contempt of such alimony or child custody judgment or orders;

(3) Appeals from cases involving distress or dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is $2,500.00 or less;

(4) Appeals from cases involving garnishment or attachment, except as provided in paragraph (5) of subsection (a) of Code Section 5-6-34;

(5) Appeals from orders revoking probation;

(6) Appeals in all actions for damages in which the judgment is $10,000.00 or less;

(7) Appeals, when separate from an original appeal, from the denial of an extraordinary motion for new trial;

(8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying relief upon a complaint in equity to set aside a judgment;

(9) Appeals from orders granting or denying temporary restraining orders;

(10) Appeals from awards of attorney's fees or expenses of litigation under Code Section 9-

15-14; and

(11) Appeals from decisions of the state courts reviewing decisions of the magistrate courts by de novo proceedings so long as the subject matter is not otherwise subject to a right of direct appeal.

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the order or judgment being appealed and, if the order or judgment is interlocutory, the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

(c) The applicant shall include as exhibits to the petition a copy of the order or judgment being appealed and should include a copy of the petition or motion which led directly to the order or judgment being appealed and a copy of any responses to the petition or motion. An applicant may include copies of such other parts of the record or transcript as he deems appropriate. No certification of such copies by the clerk of the trial court shall be necessary in conjunction with the application.

(d) The application shall be filed with the clerk of the Supreme Court or the Court of Appeals within 30 days of the entry of the order, decision, or judgment complained of and a copy of the application, together with a list of those parts of the record included with the application, shall be served upon the opposing party or parties as provided by law, except that the service shall be perfected at or before the filing of the application. When a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the application shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.

(e) The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The response may be accompanied by copies of the record in the same manner as is allowed with the application. The response may point out that the decision of the trial court was not error, or that the enumeration of error cannot be considered on appeal for lack of a transcript of evidence or for other reasons.

(f) The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed.

(g) Within ten days after an order is issued granting the appeal, the applicant, to secure a review of the issues, shall file a notice of appeal as provided by law. The procedure thereafter shall be the same as in other appeals.

(h) The filing of an application for appeal shall act as a supersedeas to the extent that a notice of appeal acts as supersedeas.

(i) This Code section shall not affect Code Section 9-14-52, relating to practice as to appeals in certain habeas corpus cases.

(j) When an appeal in a case enumerated in subsection (a) of Code Section 5-6-34, but not in subsection (a) of this Code section, is initiated by filing an otherwise timely application for permission to appeal pursuant to subsection (b) of this Code section without also filing a timely notice of appeal, the appellate court shall have jurisdiction to decide the case and shall grant the application. Thereafter the appeal shall proceed as provided in subsection (g) of this Code section.

HISTORY: Ga. L. 1979, p. 619, §§ 3, 6; Ga. L. 1982, p. 3, § 5; Ga. L. 1984, p. 22, § 5; Ga.

L. 1984, p. 599, § 2; Ga. L. 1986, p. 1591, § 2; Ga. L. 1988, p. 1357, § 1; Ga. L. 1991, p. 412, § 1; Ga. L. 1994, p. 347, § 2; Ga. L. 1997, p. 543, § 1.

NOTES:
THE 1994 AMENDMENT, effective July 1, 1994, in subsection (f), substituted "30 days" for "15 days" and deleted "response of the opposing party or parties is filed with the court or, in the event that no response is filed, within 25 days of the date on which the" preceding "application was filed".

THE 1997 AMENDMENT, effective April 14, 1997, added subsection (j).

CROSS REFERENCES. --Petitions for alimony or child support when no divorce is pending, §§ 19-6-10, 19-6-11. Filings in clerk's office, Rules of the Supreme Court of the State of Georgia, Rule 1. Application for leave to appeal final judgment, Rules of the Supreme Court of the State of Georgia, Rule 25. Leave to appeal interlocutory order, Rules of the Court of Appeals of the State of Georgia, Rule 29.

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 1997, "(a) of this Code section" was substituted for "(a) of this Code Section" in the first sentence of subsection (j).

EDITOR'S NOTES. --Ga. L. 1986, p. 1591, § 3, not codified by the General Assembly, provided that that Act applies to actions filed or presented for filing on or after July 1, 1986, and to any action pending on July 1, 1986, with respect to any claim, defense, or other position which is first raised in the action on or after July 1, 1986.

LAW REVIEWS. --For article surveying appellate practice and procedure, see 34 Mercer L. Rev. 3 (1982). For survey article on domestic relations, see 34 Mercer L. Rev. 113 (1982). For annual survey of domestic relations law, see 35 Mercer L. Rev. 127 (1983). For article surveying recent developments in administrative law, see 37 Mercer L. Rev. 503 (1985). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For annual survey of appellate practice and procedure, see 38 Mercer L. Rev. 47 (1986). For annual survey of criminal law, see 38 Mercer L. Rev. 129 (1986). For annual survey of law of domestic relations, see 38 Mercer L. Rev. 179 (1986). For article, "Battling the Many-Headed Hydra: Abusive Litigation Law in Georgia," see 25 Ga. St. B.J. 65 (1988). For article, "Intangible Tax Appeals After Blank v. Collins; The Uncertainty Continues," see 27 Ga. St. B.J. 78 (1990). For annual survey on law of domestic relations, see 42 Mercer L. Rev. 201 (1990). For article, "Let's Revise Appellate Procedure in Georgia," see 27 Ga. St. B.J. 135 (1991). For article, "Getting Certiorari Granted", 28 Ga. St. B.J. 90 (1991). For annual survey of appellate practice and procedure, see 43 Mercer L. Rev. 73 (1991). For annual survey of domestic relations, see 43 Mercer L. Rev. 243 (1991). For article, "Appeals, Interlocutory and Discretionary Applications, and Post-Judgment Motions in the Georgia Courts: The Current Practice and the Need for Reform Legislation," see 44 Mercer L. Rev. 17 (1992).
For note, "Restrictions on the Right to Direct Appeal under Georgia's Appellate Practice Act," see 21 Ga. St. B.J. 43 (1984).

JUDICIAL DECISIONS

ANALYSIS

- General Consideration
- Application
- 1. In General
- 2. Judgments Concerning Child Custody

3. Divorce

4. Garnishment

5. Revocation of Probation

6. Damages Where Judgment Is $10,000.00 or Less

7. Appeals Under § 9-11-60

8. Attorney's Fees or Expenses

9. Zoning Cases

GENERAL CONSIDERATION

PURPOSE OF SECTION. --The clear purpose of this section is to permit the appellate courts to review expeditiously decisions of the superior courts reviewing decisions of administrative agencies without issuing an opinion in every such case. Tri-State Bldg. & Supply, Inc. v. Reid, 251 Ga. 38, 302 S.E.2d 566 (1983).

This Code section was enacted to ameliorate the appellate courts' massive case loads. Scruggs v. Georgia Dep't of Human Resources, 261 Ga. 587, 408 S.E.2d 103 (1991).

APPLICABILITY. --Section applies to all appeals specified in subsection (a) whether judgment be final, interlocutory, or summary. Citizens & S. Nat'l Bank v. Rayle, 246 Ga. 727, 273 S.E.2d 139 (1980).

An award of attorney fees need not be appealed through the discretionary application process when a direct appeal from the underlying judgment is pending. Cagle v. Davis, 236 Ga. App. 657, 513 S.E.2d 16 (1999).

CLEAR INTENT OF PARAGRAPH (A)(1) is to give appellate courts (particularly Court of Appeals which has jurisdiction of workers' compensation cases not involving constitutionality of a law) discretion not to entertain an appeal where superior court has reviewed a decision of certain specified lower tribunals (i.e., two tribunals had already adjudicated the case). Citizens & S. Nat'l Bank v. Rayle, 246 Ga. 727, 273 S.E.2d 139 (1980).

CLEAR INTENT OF PARAGRAPH (A)(2) is to give appellate courts (Supreme Court in divorce and alimony cases and Court of Appeals in child custody cases) discretion not to entertain appeal where superior or juvenile court has made a decision as to divorce, alimony, child custody, or contempt, the latter three of which are in large part discretionary and yet frequently appealed by the losing spouse. Citizens & S. Nat'l Bank v. Rayle, 246 Ga. 727, 273 S.E.2d 139 (1980).

LEGISLATIVE INTENT. --The legislature required the discretionary appeals procedures for appeals from orders or judgments denying relief in cases seeking to set aside judgments. Manley v. Jones, 203 Ga. App. 173, 416 S.E.2d 744, cert. denied, 203 Ga. App. 907, 416 S.E.2d 744 (1992).

CONSTITUTIONALITY OF PARAGRAPH (A)(8) CLASSIFICATION. --The classification created by paragraph (a)(8) is reasonable and does not deny equal protection on the ground that while a party desiring to appeal an order denying a complaint in equity must file an application to appeal, a party desiring to appeal from an order granting a complaint in equity is entitled to a direct appeal. Schiesser v. Ross, 256 Ga. 414, 349 S.E.2d 745 (1986).

CONSTRUED WITH § 5-6-34(B). --This Code section does not allow a party to ignore the interlocutory-application provision of § 5-6-34(b), when attempting to obtain appellate review. Scruggs v. Georgia Dep't of Human Resources, 261 Ga. 587, 408 S.E.2d 103 (1991); Collier v. Evans, 205 Ga. App. 764, 423 S.E.2d 704 (1992).

A party seeking appellate review from an interlocutory order must follow the interlocutory-application subsection, § 5-6-34(b), seek a certificate of immediate review from the trial court, and comply with the time limitations therein. Scruggs v. Georgia Dep't of Human Resources, 261 Ga. 587, 408 S.E.2d 103 (1991); Collier v. Evans, 205 Ga. App. 764, 423 S.E.2d 704 (1992).

CONSTRUED WITH § 5-6-34(D). --The phrase "following cases" in the introductory language of subsection (a) is construed to exclude those cases in which § 5-6-34(d) is applicable; thus, since appellants filed a motion styled as both a motion for a new trial and a motion to set aside the judgment, but it was clearly only a motion for new trial since it raised issues relating to the verdict but none relating to a motion to set aside under § 9-11-60(d), the Court of Appeals erred in dismissing the appeal. Martin v. Williams, 263 Ga. 707, 438 S.E.2d 353 (1994).

The underlying subject matter generally controls over the relief sought in determining the proper procedure to follow to appeal; thus, where a trial court issues a judgment listed in the direct appeal statute in a case whose subject matter is covered under the discretionary appeal statute, the discretionary application procedure must be followed when the party is appealing a judgment or order that is procedurally subject to a direct appeal. Rebich v. Miles, 264 Ga. 467, 448 S.E.2d 192 (1994).

In plaintiff's appeal of the denial of her request for a declaratory judgment, she could add issues relating to other rulings which might affect the proceedings below without regard to whether they were appealable standing alone. Smith v. Department of Human Resources, 214 Ga. App. 508, 448 S.E.2d 372 (1984).

While a judgment or an order denying an application for injunctive relief, mandamus or other extraordinary relief is a judgment or order subject to direct appellate review under § 5-6-34, it is subject to discretionary application procedure if the underlying subject matter of the appeal is one contained in this section. Prison Health Servs., Inc. v. Georgia Dep't of Admin. Servs., 265 Ga. 810, 462 S.E.2d 601 (1995).

EFFECT OF 1986 AMENDMENT OF § 40-13-28. --The 1986 amendment to § 40-13-28 that changed the scope of review in the superior court from a de novo investigation to a review of the record was not also intended to change the method of appeal from the superior court in such cases from discretionary appeals under paragraph (a)(1) of this section to direct appeals under § 5-6-34(a). Brown v. City of Marietta, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

TWO-STEP APPELLATE REVIEW PROCESS: (1) initial appellate review of a record which will include copies of such parts of the trial court record or transcript as the appellant or appellee deem appropriate; (2) if the initial appellate review reveals that the appellant's enumerations of error are clearly without merit then the application for appeal is dismissed; if however the initial appellate review reveals that the appellant's enumerations of error are not clearly without merit, then the application for appeal is granted and a final appellate review ensues. Harris v. Harris, 245 Ga. 75, 263 S.E.2d 113 (1980).

REQUIRED CONTENTS OF APPLICATION. --This Code section requires a party to state if the order or judgment is interlocutory, and if it is interlocutory, the party must state "the need for interlocutory appellate review." Scruggs v. Georgia Dep't of Human Resources, 261 Ga. 587, 408 S.E.2d 103 (1991).

A DISCRETIONARY APPLICATION is generally required from the denial of a motion to set aside. Beals v. Beals, 203 Ga. App. 81, 416 S.E.2d 301, cert. denied, 203 Ga. App. 905, 416 S.E.2d 301 (1992).

PETITION FOR DISCRETIONARY APPEAL MUST ADEQUATELY DEMONSTRATE REVERSIBLE ERROR. --Although paragraph (c) does not require an applicant for discretionary appeal to include relevant portions of the record or transcript as exhibits to the petition, a prudent applicant should support the assertions of error with relevant parts of the record or transcript so as to adequately demonstrate reversible error, unless the alleged errors are otherwise established as, for instance, by the agreement of the parties on appeal or by a quote or paraphrase from the record or transcript. Harper v. Harper, 259 Ga. 246, 378 S.E.2d 673 (1989).

EFFECT OF GRANT OF DISCRETIONARY APPEAL. --When the court of appeals granted a discretionary appeal under this section, the trial court was without authority to find such appeal to be frivolous and the denial of supersedeas bond on that ground was an abuse of discretion as a matter of law and fact. Farmer v. State, 216 Ga. App. 515, 455 S.E.2d 297 (1995).

The filing of an application for discretionary review acts as a supersedeas and has the effect of depriving the trial court of jurisdiction to modify or alter its judgment. Department of Human Resources v. Holland, 236 Ga. App. 273, 511 S.E.2d 628 (1999).

AMOUNT IN CONTROVERSY. --No application for discretionary review by the Court of Appeals need be made pursuant to paragraph (a)(6) where the amount placed in controversy exceeds $2,500 (now $10,000.00). Todd v. City of Brunswick, 175 Ga. App. 562, 334 S.E.2d 1 (1985), aff'd, 255 Ga. 448, 339 S.E.2d 589 (1986).

For establishing jurisdiction pursuant to paragraph (a)(6), a judgment is comprised of principal, plus costs, plus interest at the legal rate accrued from the date of the filing of the judgment until the date of the filing of the notice of appeal. Castleberry's Food Co. v. Smith, 205 Ga. App. 859, 424 S.E.2d 33 (1992).

STANDING. --The full board of the state board of workers' compensation neither granted the plaintiff's petition for a change of benefits nor authorized action which is adverse to the defendant; therefore, since the defendant was not aggrieved by the full board's award, he has no standing to appeal to the superior court from the full board's award. Southwire Co. v. Hull, 212 Ga. App. 131, 441 S.E.2d 293 (1994).

"CONDEMNATION" CONSTRUED. --The word "condemnations," as it appears in the exceptions to the rule of paragraph (a)(1), was intended by the legislature to except "inverse" as well as classic condemnation cases therefrom. Brownlow v. City of Calhoun, 198 Ga. App. 710, 402 S.E.2d 788 (1991).

TIMELY FILING OF THE NOTICE OF APPEAL IS AN ABSOLUTE PREREQUISITE in order to confer jurisdiction on the appellate court. White v. White, 188 Ga. App. 556, 373 S.E.2d 824 (1988); Barnes v. Justis, 223 Ga. App. 671, 478 S.E.2d 402 (1996).

Where an application for discretionary review was not filed, and a subsequent notice of direct appeal was filed untimely, there was no jurisdiction conferred on the court to hear the appeal. Boney v. State, 236 Ga. App. 179, 510 S.E.2d 892 (1999).

FILING BEFORE GRANTING OF APPLICATION IS TIMELY. --While a failure to file a notice of appeal within ten days after the grant of an application will subject an appellant to dismissal, the filing of a notice of appeal after the judgment complained of is entered but before the granting of the application to appeal does not constitute a failure to timely file. Wannamaker v. Carr, 257 Ga. 634, 362 S.E.2d 53 (1987).

Where the plaintiff had filed its initial application for discretionary review nearly four months before the trial court's order denying plaintiff's motion for a new trial, the order was void and a nullity, and provided no jurisdictional basis for an appeal. Department of Human Resources v. Holland, 236 Ga. App. 273, 511 S.E.2d 628 (1999).

DATE OF JUDGMENT GOVERNS APPLICABILITY OF REVISED DISCRETIONARY APPEAL PROCEDURES. --Discretionary appeal procedures were applicable to an action for damages not exceeding $2,500.00 (now $10,000.00) which was instituted prior to enactment of paragraph (a)(6) but in which judgment was entered after the effective date of that enactment. Crimminger v. Habif, 174 Ga. App. 440, 330 S.E.2d 164 (1985).

WHERE APPELLANT FAILS TO FOLLOW APPEAL PROCEDURES REQUIRED IN THIS SECTION, APPEAL MUST BE DISMISSED. Walker v. City of Macon, 166 Ga. App. 228, 303 S.E.2d 776 (1983); In re J.E.P., 168 Ga. App. 30, 308 S.E.2d 712 (1983), aff'd, 252 Ga. 520, 315 S.E.2d 416 (1984).

Where the appellant fails to follow the proper procedures required by law when appealing from a decision of a superior court to which a writ of certiorari has been taken from a decision of a lower court, his appeal must be dismissed. Crawford v. Goza, 168 Ga. App. 565, 310 S.E.2d 1 (1983).

In appealing from a decision of the superior court reviewing a decision of a state administrative agency, where the appellant fails to obtain an order of the appellate court permitting the filing of the appeal, the appeal must be dismissed. Risner v. Georgia Dep't of Labor, 168 Ga. App. 242, 308 S.E.2d 582 (1983).

Where the appellants fail to obtain an order of court permitting the filing of an appeal in a garnishment proceeding, the appeal must be dismissed. Mason v. Osburn Hdwe. & Supply Co., 174 Ga. App. 865, 331 S.E.2d 888 (1985).

WHERE APPLICABLE, REQUIREMENTS OF THIS SECTION ARE JURISDICTIONAL and the appellate court has no authority to accept an appeal in the absence of compliance with these statutory provisions. Hogan v. Taylor County Bd. of Educ., 157 Ga. App. 680, 278 S.E.2d 106 (1981); Crews v. State, 175 Ga. App. 300, 333 S.E.2d 176 (1985); Boyle v. State, 190 Ga. App. 734, 380 S.E.2d 57 (1989); Serpentfoot v. Salmon, 225 Ga. App. 478, 483 S.E.2d 927 (1997); Brown v. E.I. du Pont de Nemours & Co., 240 Ga. App. 893, 525 S.E.2d 731 (1999).

The appellant's failure to comply with the discretionary appeals procedure of this Code section deprives the appellate court of jurisdiction, just as if he failed to file a timely notice of appeal. Fabe v. Floyd, 199 Ga. App. 322, 405 S.E.2d 265 (on motion for rehearing), cert. denied, 199 Ga. App. 906, 405 S.E.2d 265 (1991).

Appellate court did not have jurisdiction to consider the county's direct appeal of the trial court's affirmance of the administrative agency's decision against the county, as the county was required to file an application for discretionary review of a trial court's affirmance of an administrative agency's decision, and since the county did not do so, the county's appeal had to be dismissed. Coweta County v. Jackson, 264 Ga. App. 17, 589 S.E.2d 839 (2003).

ABSENT APPLICATION PURSUANT TO SECTION, APPEAL IS A NULLITY. --Where appellant appealed directly to the Supreme Court from the trial court's directed verdict without having made application pursuant to this section, the attempted appeal was a nullity, and could not supersede the judgment appealed from. Reno v. Reno, 247 Ga. 560, 277 S.E.2d 511 (1981).

EFFECT OF FILING APPLICATION. --By filing applications for discretionary appeal, the parties divested the trial court of jurisdiction to enter orders on the parties' motions for reconsideration. Nest Inv., Inc. v. Tzavaras, 221 Ga. App. 282, 471 S.E.2d 223 (1996).

APPEAL FROM AN AWARD OF ATTORNEY'S FEES IN A DOMESTIC RELATIONS CASE is subject to the appeal procedures of this section. Sprague v. Sprague, 253 Ga. 485, 321 S.E.2d 742 (1984).

A TEMPORARY PROTECTIVE CUSTODY ORDER was subject to appeal by discretionary action under this section. Williams v. Stepler, 221 Ga. App. 338, 471 S.E.2d 284 (1996).

SUPERIOR COURT DISMISSAL WITHOUT REVIEW ON MERITS. --This section is not inapplicable to appeal from a superior court decision because the superior court dismissed

the decision of a local tribunal without reviewing it on the merits. Brewer v. Board of Zoning Adjustment, 170 Ga. App. 351, 317 S.E.2d 327 (1984).

DE NOVO APPEAL FROM MAGISTRATE COURT. --Regardless of whether the litigation was subsequently erroneously expanded in state court to include matters beyond the parameters of a de novo investigation, where the litigation reached the state court by means of a de novo appeal from magistrate court, in order to obtain appellate review of the state court judgment in the Court of Appeals, an application for appeal must be sought as required by paragraph (a)(11). Handler v. Hulsey, 199 Ga. App. 751, 406 S.E.2d 225, cert. denied, 199 Ga. App. 906, 406 S.E.2d 225 (1991); Strachan v. Meritor Mtg. Corp. E., 216 Ga. App. 82, 453 S.E.2d 119 (1995); Southtowne Hyundai-Isuzu-Suzuki v. Hooper, 216 Ga. App. 214, 453 S.E.2d 756 (1995).

SECTION NOT LIMITED TO JUDGMENTS FOR PLAINTIFFS. --This section applies to all judgments for $2,500.00 (now $10,000.00) or less that arise from an action for damages, and its application is not limited to judgments for plaintiffs. Gardner v. Villa Monte Homes, Inc., 173 Ga. App. 896, 328 S.E.2d 565 (1985).

Paragraph (a)(6) requires that an application for discretionary review be filed when the amount placed in controversy by the claimant (plaintiff, counterclaimant or cross-claimant) is $2,500 (now $10,000.00) or less. Brown v. Associates Fin. Servs. Corp., 175 Ga. App. 553, 333 S.E.2d 888 (1985), aff'd, 255 Ga. 457, 339 S.E.2d 590 (1986).

ACTIONS IN WHICH ONLY A FEW HUNDRED DOLLARS WAS SUED FOR AND NOTHING AT ALL WAS RECOVERED may be directly appealed. Malloy v. Sexton, 179 Ga. App. 769, 347 S.E.2d 648 (1986).

APPEALS FROM THE DENIAL OF A MOTION to set aside the judgment under § 9-11-60(d) are subject to the discretionary appeals procedure even when coupled with motions for a new trial or j.n.o.v. Willard v. Wilburn, 203 Ga. App. 393, 416 S.E.2d 798, cert. denied, 203 Ga. App. 908, 416 S.E.2d 798 (1992).

THE DENIAL OF A "DISCRETIONARY" MOTION TO SET ASIDE is never appealable in its own right, nor does the filing of such a motion extend the time for filing an appeal. Stone v. Dawkins, 192 Ga. App. 126, 384 S.E.2d 225 (1989).

ORDER DENYING DISCOVERY is premature in the absence of a certificate of immediate review; therefore, the interlocutory appeal procedure set forth in Code § 5-6-34(b) is mandated. Rogers v. Department of Human Resources, 195 Ga. App. 118, 392 S.E.2d 713 (1990).

All appeals from decisions of the superior court reviewing decisions of the commissioners of the department of revenue, with the exception of cases involving ad valorem taxes, are by discretionary appeal. Bankers Trust Co. v. Jackson, 236 Ga. App. 490, 512 S.E.2d 378 (1999).

APPEAL FROM REVIEW OF AUDITOR'S REPORT. --Where the auditor did not submit a final report containing separate findings of fact and conclusions of law for the superior court's review, the judgment of the court was directly appealable. McCaughey v. Murphy, 267 Ga. 64, 473 S.E.2d 762 (1996).

CITED in Jackson v. Stuldivant, 151 Ga. App. 784, 262 S.E.2d 642 (1979); Cale v. Cale, 244 Ga. 796, 264 S.E.2d 21 (1979); Brown v. Brown, 245 Ga. 44, 263 S.E.2d 438 (1980); Hathcock v. Hathcock, 245 Ga. 141, 263 S.E.2d 440 (1980); Godbold v. Godbold, 245 Ga. 121, 263 S.E.2d 440 (1980); Sullins v. Bishop, 245 Ga. 130, 263 S.E.2d 442 (1980); Wilson v. Crosby, 245 Ga. 140, 263 S.E.2d 442 (1980); Cale v. Cale, 245 Ga. 62, 264 S.E.2d 22 (1980); Ritchie v. Ritchie, 245 Ga. 199, 264 S.E.2d 230 (1980); Martinez v. Martinez, 245 Ga. 211, 264 S.E.2d 231 (1980); Seymour v. Seymour, 245 Ga. 211, 264 S.E.2d 232

(1980); Horne v. Horne, 245 Ga. 300, 265 S.E.2d 3 (1980); McDonald v. McDonald, 245 Ga. 355, 265 S.E.2d 57 (1980); Austin v. Austin, 245 Ga. 487, 265 S.E.2d 788 (1980); Hilsman v. Hilsman, 245 Ga. 555, 266 S.E.2d 173 (1980); Mabry v. Mabry, 245 Ga. 512, 266 S.E.2d 799 (1980); Moore v. Employers Ins., 153 Ga. App. 589, 266 S.E.2d 811 (1980); Reno v. Reno, 245 Ga. 792, 267 S.E.2d 221 (1980); Copeland v. Copeland, 245 Ga. 656, 267 S.E.2d 253 (1980); Cobb v. Cobb, 245 Ga. 646, 267 S.E.2d 623 (1980); Russell v. Hughes, 154 Ga. App. 398, 268 S.E.2d 440 (1980); Hendley v. Auto Owners Ins. Co., 154 Ga. App. 316, 268 S.E.2d 722 (1980); Kiser v. Kiser, 246 Ga. 153, 269 S.E.2d 860 (1980); Tennis v. Hinch, 246 Ga. 188, 269 S.E.2d 861 (1980); Morgan v. Morgan, 154 Ga. App. 595, 270 S.E.2d 94 (1980); Myers v. Netherland, 155 Ga. App. 153, 270 S.E.2d 407 (1980); Brown v. Brown, 246 Ga. 330, 272 S.E.2d 75 (1980); Zusmann v. Zusmann, 246 Ga. 341, 272 S.E.2d 75 (1980); Yawn v. Yawn, 246 Ga. 817, 272 S.E.2d 717 (1980); Biggs v. Biggs, 246 Ga. 520, 273 S.E.2d 403 (1980); Waters v. Waters, 246 Ga. 547, 273 S.E.2d 404 (1980); Bradfield v. Jackson, 156 Ga. App. 81, 274 S.E.2d 164 (1980); Porter v. Marcus, 156 Ga. App. 368, 274 S.E.2d 168 (1980); Walker v. City of Atlanta, 156 Ga. App. 223, 274 S.E.2d 668 (1980); Shepherd v. Shepherd, 247 Ga. 273, 275 S.E.2d 317 (1981); Hanes v. Hanes, 247 Ga. 305, 276 S.E.2d 4 (1981); Chesser v. Chesser, 247 Ga. 168, 276 S.E.2d 45 (1981); Hanes v. Hanes, 247 Ga. 305, 276 S.E.2d 4 (1981); Tison v. Tison, 247 Ga. 246, 276 S.E.2d 247 (1981); Keeter v. State ex rel. Keeter, 247 Ga. 256, 276 S.E.2d 247 (1981); Fields v. Fields, 247 Ga. 437, 276 S.E.2d 614 (1981); Larson v. Gambrell, 157 Ga. App. 193, 276 S.E.2d 686 (1981); Camp v. Camp, 247 Ga. 533, 277 S.E.2d 55 (1981); Dunn v. Dunn, 247 Ga. 327, 277 S.E.2d 241 (1981); Shepherd v. Epps, 247 Ga. 545, 277 S.E.2d 686 (1981); Alday v. Alday, 247 Ga. 663, 277 S.E.2d 914 (1981); Levison v. Levison, 247 Ga. 667, 278 S.E.2d 409 (1981); Neal v. Washington, 158 Ga. App. 39, 279 S.E.2d 294 (1981); Robertson v. Robertson, 247 Ga. 810, 280 S.E.2d 335 (1981); Field Developers, Inc. v. City of Atlanta, 158 Ga. App. 388, 280 S.E.2d 364 (1981); McCrary v. City of Atlanta, 158 Ga. App. 406, 280 S.E.2d 906 (1981); Woodall v. Woodall, 248 Ga. 172, 281 S.E.2d 619 (1981); Foy v. Lewis, 248 Ga. 234, 282 S.E.2d 295 (1981); Robbins v. Robbins, 248 Ga. 273, 282 S.E.2d 340 (1981); Bedingfield v. Bedingfield, 248 Ga. 147, 282 S.E.2d 641 (1981); Hunnicutt v. Hunnicutt, 248 Ga. 516, 283 S.E.2d 891 (1981); Yarbrough v. Yarbrough, 248 Ga. 282, 283 S.E.2d 898 (1981); Walsh Constr. Co. v. Frawley, 248 Ga. 151, 284 S.E.2d 434 (1981); Keller v. Berger, 248 Ga. 552, 285 S.E.2d 188 (1981); Mills v. Pepsi-Cola Bottlers, 160 Ga. App. 349, 287 S.E.2d 41 (1981); Southwire Co. v. Sweet, 160 Ga. App. 625, 287 S.E.2d 635 (1981); Tallman v. Tallman, 161 Ga. App. 447, 287 S.E.2d 703 (1982); Farmer v. Union County Dep't of Family & Children Servs., 162 Ga. App. 66, 290 S.E.2d 163 (1982); Zamora v. Coffee Gen. Hosp., 162 Ga. App. 82, 290 S.E.2d 192 (1982); DeLoach v. DeLoach, 162 Ga. App. 185, 290 S.E.2d 292 (1982); Gordin v. Gordin, 249 Ga. 371, 290 S.E.2d 921 (1982); Prentice v. Prentice, 249 Ga. 27, 291 S.E.2d 553 (1982); Wigley v. Nance, 163 Ga. App. 185, 293 S.E.2d 369 (1982); Moon v. Habersham County Dep't of Family & Children Servs., 162 Ga. App. 694, 293 S.E.2d 402 (1982); Sutton v. Burousas, 164 Ga. App. 553, 293 S.E.2d 566 (1982); Fender v. Fender, 249 Ga. 773, 294 S.E.2d 474 (1982); Chattooga County v. Bruce, 163 Ga. App. 478, 294 S.E.2d 712 (1982); Young v. Hinton, 163 Ga. App. 692, 295 S.E.2d 150 (1982); Webster v. Webster, 250 Ga. 57, 295 S.E.2d 828 (1982); McCannon v. City of Atlanta, 163 Ga. App. 844, 296 S.E.2d 363 (1982); Steele v. Steele, 250 Ga. 101, 296 S.E.2d 570 (1982); Geron v. Calibre Cos., 250 Ga. 213, 296 S.E.2d 602 (1982); Wiggins v. City of Millen, 165 Ga. App. 18, 299 S.E.2d 191 (1983); Johnson v. Smith, 164 Ga. App. 611, 299 S.E.2d 387 (1982); Johnson v. Smith, 251 Ga. 1, 302 S.E.2d 542 (1983); Buckholts v. Buckholts, 251 Ga. 58, 302 S.E.2d 676 (1983); Wren v. Harrison, 165 Ga. App. 847, 303 S.E.2d 67 (1983); In re M.K.C., 166 Ga. App. 261, 304 S.E.2d 430 (1983); In re M.R., 166 Ga. App. 360, 304 S.E.2d 736 (1983); In re M.G., 167 Ga. App. 38, 306 S.E.2d 40 (1983); Fowler v. City of East Point, 166 Ga. App. 872, 306 S.E.2d 431 (1983); Beckman v. Black, 170 Ga. App. 193, 316 S.E.2d 784 (1984); Stanley v. Stanley, 172 Ga. App. 85, 322 S.E.2d 97 (1984); American Druggists' Ins. Co. v. Harris, 253 Ga. 535, 322 S.E.2d 496 (1984); In re J.M.B., 172 Ga. App. 371, 324 S.E.2d 213 (1984); Holbrook v. State, 173 Ga. App. 251, 326 S.E.2d 240 (1985); Voight v. Orr, 173 Ga. App. 248, 326 S.E.2d 480 (1985); Williamson v. Department of Pub. Safety, 173 Ga. App. 249, 326 S.E.2d

480 (1985); Hall v. Jenkins, 173 Ga. App. 710, 327 S.E.2d 831 (1985); Farlar v. State, 173 Ga. App. 622, 328 S.E.2d 436 (1985); Kingery Block & Concrete Co. v. Luttrell, 174 Ga. App. 481, 330 S.E.2d 181 (1985); Feagin v. Feagin, 174 Ga. App. 474, 330 S.E.2d 410 (1985); McCrary v. State, 174 Ga. App. 492, 330 S.E.2d 429 (1985); Bright v. DeKalb County, 174 Ga. App. 662, 331 S.E.2d 58 (1985); Law Offices of Johnson & Robinson v. Fortson, 175 Ga. App. 706, 334 S.E.2d 33 (1985); Bennett v. Barrett, 175 Ga. App. 695, 334 S.E.2d 44 (1985); Simpkins v. Minks, 175 Ga. App. 729, 334 S.E.2d 340 (1985); In re W.S.G., 175 Ga. App. 883, 334 S.E.2d 739 (1985); Jaraysi v. Southern Bell Tel. & Tel. Co., 176 Ga. App. 105, 335 S.E.2d 463 (1985); Nixon v. A.F.M., Inc., 176 Ga. App. 546, 336 S.E.2d 382 (1985); Baety v. Eisenstein, 176 Ga. App. 612, 336 S.E.2d 849 (1985); Sloan v. Brooks, 176 Ga. App. 872, 338 S.E.2d 299 (1985); Pritchett v. Anding, 177 Ga. App. 34, 338 S.E.2d 503 (1985); Henderson v. Smith, 177 Ga. App. 89, 338 S.E.2d 520 (1985); Milner v. Milner, 177 Ga. App. 164, 338 S.E.2d 757 (1985); Noggle v. Arnold, 177 Ga. App. 119, 338 S.E.2d 763 (1985); Harper v. Evans, 177 Ga. App. 303, 339 S.E.2d 265 (1985); Murdock v. Bank of Am. Nat'l Trust & Sav. Ass'n, 177 Ga. App. 409, 339 S.E.2d 392 (1985); Walker v. Georgia Power Co., 177 Ga. App. 493, 339 S.E.2d 728 (1986); Folks, Inc. v. Agan, 177 Ga. App. 480, 340 S.E.2d 26 (1986); Elmore v. Elmore, 177 Ga. App. 682, 340 S.E.2d 651 (1986); Dogwood Square Nursing Ctr., Inc. v. State Health Planning Agency, 255 Ga. 694, 341 S.E.2d 432 (1986); Parham v. Lanier Collection Agency & Serv., Inc., 178 Ga. App. 84, 341 S.E.2d 889 (1986); Colwell v. Voyager Cas. Ins. Co., 178 Ga. App. 42, 342 S.E.2d 7 (1986); Nazerian v. City of McCaysville, 178 Ga. App. 27, 342 S.E.2d 11 (1986); Klobe v. Montgomery Ward & Co., 178 Ga. App. 164, 342 S.E.2d 496 (1986); Mitchell v. Purser, 178 Ga. App. 267, 342 S.E.2d 753 (1986); Gazaway v. State, 178 Ga. App. 318, 343 S.E.2d 135 (1986); New v. Wilkins, 178 Ga. App. 337, 343 S.E.2d 136 (1986); Sidwell v. Wheeler, 178 Ga. App. 732, 344 S.E.2d 527 (1986); Vikowsky v. Savannah Appliance Serv. Corp., 179 Ga. App. 135, 345 S.E.2d 621 (1986); Jones Roofing & Constr. Co. v. Roberts, 179 Ga. App. 169, 345 S.E.2d 683 (1986); Doby v. State, 179 Ga. App. 285, 346 S.E.2d 89 (1986); Walker v. State, 179 Ga. App. 690, 347 S.E.2d 307 (1986); Howell v. Howell, 179 Ga. App. 612, 347 S.E.2d 361 (1986); In re R.L.Y., 180 Ga. App. 559, 349 S.E.2d 800 (1986); Rich v. McDonald Car & Truck Leasing, Inc., 180 Ga. App. 613, 349 S.E.2d 832 (1986); Carrigan v. City of Atlanta, 180 Ga. App. 741, 350 S.E.2d 482 (1986); Castor v. DeKalb County, 180 Ga. App. 772, 350 S.E.2d 487 (1986); McDonald v. State, 180 Ga. App. 713, 350 S.E.2d 581 (1986); Cullen v. Bragg, 180 Ga. App. 866, 350 S.E.2d 798 (1986); Jones v. Jones, 181 Ga. App. 276, 351 S.E.2d 691 (1986); Preferred Risk Mut. Ins. Co. v. Laube, 181 Ga. App. 579, 353 S.E.2d 203 (1987); AAA Van Servs., Inc. v. Willis, 182 Ga. App. 46, 354 S.E.2d 631 (1987); Hamrick v. Bonner, 182 Ga. App. 76, 354 S.E.2d 687 (1987); Roach v. Roach, 182 Ga. App. 122, 354 S.E.2d 877 (1987); Bonner v. State, 182 Ga. App. 133, 355 S.E.2d 91 (1987); Lewis v. Sun Mgt., Inc., 182 Ga. App. 560, 356 S.E.2d 526 (1987); Williams v. Aetna Cas. & Sur. Co., 182 Ga. App. 684, 356 S.E.2d 690 (1987); Davis v. State, 182 Ga. App. 736, 356 S.E.2d 762 (1987); Goodwin v. Richmond, 182 Ga. App. 745, 356 S.E.2d 888 (1987); Ganjizadeh v. Brown, 182 Ga. App. 807, 357 S.E.2d 154 (1987); Henderson v. Mrs. Smith's Frozen Foods, 182 Ga. App. 829, 357 S.E.2d 271 (1987); Honester v. Tinsley, 183 Ga. App. 146, 358 S.E.2d 295 (1987); Denney v. Shield Ins. Co., 183 Ga. App. 280, 358 S.E.2d 628 (1987); Williams v. Kaminsky, 183 Ga. App. 283, 358 S.E.2d 667 (1987); Byrd v. Byrd, 183 Ga. App. 302, 359 S.E.2d 2 (1987); Leonard v. Easley, 183 Ga. App. 579, 359 S.E.2d 443 (1987); Georgia Am. Ins. Co. v. Mills, 183 Ga. App. 707, 359 S.E.2d 697 (1987); Vaughn v. Cable E. Point, Inc., 185 Ga. App. 203, 363 S.E.2d 639 (1987); Nova Group, Inc. v. M.B. Davis Elec. Co., 258 Ga. 7, 364 S.E.2d 833 (1988); Crolley v. Johnson, 185 Ga. App. 671, 365 S.E.2d 277 (1988); Tanner v. Davis, 185 Ga. App. 711, 365 S.E.2d 871 (1988); Shelton v. Ervin, 185 Ga. App. 712, 365 S.E.2d 873 (1988); Graves v. Graves, 186 Ga. App. 140, 366 S.E.2d 809 (1988); Jones v. Padgett, 186 Ga. App. 362, 367 S.E.2d 88 (1988); State v. Baldwin, 187 Ga. App. 611, 371 S.E.2d 135 (1988); State Farm Mut. Auto. Ins. Co. v. Yancey, 188 Ga. App. 8, 371 S.E.2d 883 (1988); Self v. City of Atlanta, 188 Ga. App. 81, 372 S.E.2d 283 (1988); Lloyd v. State, 258 Ga. 645, 373 S.E.2d 1 (1988); Bishop v. Typo-Repro Servs., Inc., 188 Ga. App. 581, 373 S.E.2d 762 (1988); Patrick v. Glass, 188 Ga. App. 737, 374 S.E.2d 229 (1988); Fellman v. State, 189 Ga. App. 203, 375 S.E.2d 476 (1988); McCrary v.

Department of Human Resources, 191 Ga. App. 299, 381 S.E.2d 438 (1989); Ponder v. State, 191 Ga. App. 503, 382 S.E.2d 204 (1989); Scott v. McLaughlin, 192 Ga. App. 230, 384 S.E.2d 212 (1989); McCracken v. City of College Park, 259 Ga. 490, 384 S.E.2d 648 (1989); McClure v. Gower, 259 Ga. 678, 385 S.E.2d 271 (1989); Mobley v. State, 192 Ga. App. 719, 386 S.E.2d 384 (1989); Parker v. Bellamy-Lunda-Dawson, 192 Ga. App. 764, 386 S.E.2d 527 (1989); Hardwick v. Barnes, 193 Ga. App. 127, 386 S.E.2d 927 (1989); Smathers v. City of Lawrenceville Hous. Auth., 193 Ga. App. 94, 387 S.E.2d 6 (1989); Georgia Water Resources, Inc. v. Commissioner of Labor, 193 Ga. App. 252, 387 S.E.2d 374 (1989); Wiley v. Tanner, 193 Ga. App. 477, 388 S.E.2d 70 (1989); Jarallah v. Pickett Suite Hotel, 193 Ga. App. 325, 388 S.E.2d 333 (1989); Anderson v. State, 193 Ga. App. 540, 388 S.E.2d 351 (1989); North Ga. Home Constr. Co. v. Lackey, 193 Ga. App. 346, 388 S.E.2d 766 (1989); Mack v. Third Bedford-Pines Apt., Ltd., 193 Ga. App. 838, 389 S.E.2d 405 (1989); McSmith v. Marshall, 194 Ga. App. 331, 390 S.E.2d 126 (1990); Saben Appliances v. Waller, 194 Ga. App. 286, 390 S.E.2d 431 (1990); Human v. State, 194 Ga. App. 355, 390 S.E.2d 446 (1990); Oran v. Canada Life Assurance Co., 194 Ga. App. 518, 390 S.E.2d 879 (1990); Barton v. Anthony, 194 Ga. App. 500, 391 S.E.2d 25 (1990); Griffin v. State, 194 Ga. App. 624, 391 S.E.2d 675 (1990); Ko v. Habersham Fed. Sav. Bank, 194 Ga. App. 769, 391 S.E.2d 723 (1990); Alstrom v. Allstate Enters., Inc., 195 Ga. App. 458, 394 S.E.2d 801 (1990); Lee v. Britt, 196 Ga. App. 152, 395 S.E.2d 347 (1990); Ogeechee Steel, Inc. v. City of Atlanta, 196 Ga. App. 84, 396 S.E.2d 609 (1990); Jim Walter Homes, Inc. v. Roberts, 196 Ga. App. 618, 396 S.E.2d 787 (1990); Weaver v. Jones, 260 Ga. 493, 396 S.E.2d 890 (1990); Service Truck Brokers v. Kellco Transp., Inc., 196 Ga. App. 702, 397 S.E.2d 53 (1990); In re N.A.B., 196 Ga. App. 819, 397 S.E.2d 301 (1990); Joyner v. Joyner, 197 Ga. App. 304, 398 S.E.2d 294 (1990); Marshall v. Gatison, 197 Ga. App. 370, 398 S.E.2d 429 (1990); Jones v. McCoy, 197 Ga. App. 430, 398 S.E.2d 786 (1990); Akins v. Life Investors Ins. Co. of Am., 197 Ga. App. 574, 399 S.E.2d 584 (1990); Crymes v. Smith, 260 Ga. 730, 401 S.E.2d 11 (1990); Faircloth v. Greiner, 260 Ga. 682, 401 S.E.2d 11 (1990); Lane v. Taylor, 199 Ga. App. 470, 405 S.E.2d 324 (1991); Farmer v. State, 199 Ga. App. 576, 405 S.E.2d 569 (1991); Miller v. Merck & Co., 199 Ga. App. 722, 405 S.E.2d 761 (1991); Citation Bonding Co. v. State, 199 Ga. App. 868, 406 S.E.2d 289 (1991); Offutt v. Earp, 200 Ga. App. 74, 406 S.E.2d 571 (1991); Scott v. State, 200 Ga. App. 481, 408 S.E.2d 495 (1991); Robenolt v. Chrysler Fin. Servs. Corp., 201 Ga. App. 168, 410 S.E.2d 365 (1991); Sartin v. State, 201 Ga. App. 612, 411 S.E.2d 582 (1991); Wieland v. Wieland, 202 Ga. App. 222, 414 S.E.2d 247 (1991); Olin Corp. v. Collins, 261 Ga. 849, 413 S.E.2d 193 (1992); Heuer Indus., Inc. v. Crum, 202 Ga. App. 675, 415 S.E.2d 307 (1992); Moultrie Ins. Agency, Inc. v. Goodbar, 203 Ga. App. 677, 417 S.E.2d 658 (1992); Walls v. State, 204 Ga. App. 348, 419 S.E.2d 344 (1992); Snow's Farming Enters., Inc. v. Carver State Bank, 206 Ga. App. 661, 426 S.E.2d 158 (1992); Denton v. Hogge, 208 Ga. App. 734, 431 S.E.2d 728 (1993); C.W. Matthews Contracting Co. v. Collins, 210 Ga. App. 1, 435 S.E.2d 221 (1993); Brownlee v. City of Atlanta, 212 Ga. App. 174, 441 S.E.2d 492 (1994); Kleber v. Cobb County, 212 Ga. App. 441, 442 S.E.2d 296 (1994); Crowder v. Citizens Trust Bank, 213 Ga. App. 477, 444 S.E.2d 853 (1994); Madan v. Damiano, 213 Ga. App. 736, 445 S.E.2d 831 (1994); Castro v. Hidden Village Apts., 216 Ga. App. 248, 453 S.E.2d 815 (1995); Weiland v. Weiland, 216 Ga. App. 417, 454 S.E.2d 613 (1995); Hill v. Rose Elec. Co., 220 Ga. App. 603, 469 S.E.2d 844 (1996); Thibadeau v. Hendon, 221 Ga. App. 258, 471 S.E.2d 52 (1996); Adivari v. Sears, Roebuck & Co., 221 Ga. App. 279, 471 S.E.2d 59 (1996); Smoak v. Department of Human Resources, 221 Ga. App. 257, 471 S.E.2d 60 (1996); In re J.C.H., 224 Ga. App. 708, 482 S.E.2d 707 (1997); Kappelmeier v. Homer, 226 Ga. App. 379, 486 S.E.2d 612 (1997); Clark v. Davis, 242 Ga. App. 425, 530 S.E.2d 49 (2000); NF Invs., Inc. v. Whitfield, 245 Ga. App. 72, 537 S.E.2d 207 (2000); Consolidated Gov't v. Barwick, 274 Ga. 176, 549 S.E.2d 73 (2001); McCormick v. Harris, 253 Ga. App. 417, 559 S.E.2d 158 (2002); Amaechi v. Lib Props., Ltd., 254 Ga. App. 74, 561 S.E.2d 137 (2002); City of Warner Robins v. Baker, 255 Ga. App. 601, 565 S.E.2d 919 (2002); McKenna v. Dupree, 285 Bankr. 759 (Bankr. M.D. Ga. 2002); State v. Huckeba, 258 Ga. App. 627, 574 S.E.2d 856 (2002); Gulledge v. State, 276 Ga. 740, 583 S.E.2d 862 (2003); Giles v. Vastakis, 262 Ga. App. 483, 585 S.E.2d 905 (2003).

APPLICATION

1. IN GENERAL

AN APPEAL FROM THE DENIAL of an extraordinary motion for new trial is separate from any original appeal, and must be made by application. Turner v. Binswanger, 203 Ga. App. 319, 417 S.E.2d 221 (1992).

APPEALS FROM THE DENIAL OF EXTRAORDINARY MOTIONS FOR NEW TRIAL, when separate from an original direct appeal, are subject to the discretionary appeal procedure of this section. Hooks v. State, 210 Ga. App. 171, 435 S.E.2d 617 (1993).

The procedure for discretionary appeals applied to an appeal from the denial of an extraordinary motion for a new trial. Balkcom v. State, 227 Ga. App. 327, 489 S.E.2d 129 (1997), overruling Walls v. State, 204 Ga. App. 348, 419 S.E.2d 344 (1992).

APPEAL FROM POST-JUDGMENT AWARD. --A party aggrieved by a post-judgment § 9-15-14 award is required to comply with the discretionary appeal procedure of paragraph (a)(10) only in those instances where no direct appeal has been otherwise taken from the underlying judgment. However, in those instances where a direct appeal has been taken from the underlying judgment, a party may also appeal directly from the § 9-15-14 post-judgment award without regard to the discretionary appeal procedures of paragraph (a)(10). Rolleston v. Huie, 198 Ga. App. 49, 400 S.E.2d 349 (1990), cert. denied, 198 Ga. App. 898, 400 S.E.2d 349 (1991).

ACTIONS FILED BY PRISONERS. --A non-prisoner defendant is required to follow the discretionary application procedures when appealing an action filed by a prisoner. Ray v. Barber, 273 Ga. 856, 548 S.E.2d 283 (2001).

FAILURE TO COMPLY WITH PROCEDURES. --The Court of Appeals was deprived of jurisdiction over appeal from a prisoner's civil action concerning medical treatment he received where he failed to comply with discretionary procedures as required by § 42-12-8. Botts v. Givens, 223 Ga. App. 139, 476 S.E.2d 816 (1996).

PRISONER'S FAILURE TO COMPLY WITH DISCRETIONARY APPEAL PROCEDURES in appealing from the trial court's denial of his pro se petition for mandamus required dismissal of the action. Jones v. Townsend, 267 Ga. 489, 480 S.E.2d 24 (1997).

AGENCY DECISION DENYING REQUEST TO EXPUNGE CRIMINAL RECORDS. --Appeal of a superior court decision reviewing a decision of an agency denying a request to expunge criminal records requires the discretionary appeal procedures of this section. Strohecker v. Gwinnett County Police Dep't, 182 Ga. App. 853, 357 S.E.2d 305 (1987).

APPEALS FROM DECISIONS OF SUPERIOR COURTS REVIEWING DECISION OF STATE AND LOCAL ADMINISTRATIVE AGENCIES must be by application pursuant to this section; the words "by certiorari or de novo proceedings" in paragraph (a)(1) relate only to the category "lower courts" and not to the category "state and local administrative agencies"; since no application for appeal was made from the superior court's order affirming the decision of the administrative law judge of the Department of Natural Resources, the appellate court was without jurisdiction to entertain it. St. Simons Island Save the Beach Ass'n. v. Glynn County Bd. of Comm'rs., 205 Ga. App. 428, 422 S.E.2d 258 (1992).

Where the underlying subject matter was the decision of a trial court reviewing the decision of a state administrative agency, appellate review was required to be secured by the grant of an application for discretionary appeal. Prison Health Servs., Inc. v. Georgia Dep't of Admin.

Servs., 265 Ga. 810, 462 S.E.2d 601 (1995).

The decision of the local school board in this case to appeal the State Board's decision to the superior court constituted a decision of a local administrative agency within the meaning of this section. As such, a direct appeal to the appellate court from the superior court's final disposition was not authorized. Gurley v. Gordon County Bd. of Educ., 231 Ga. App. 481, 498 S.E.2d 64 (1998).

The Georgia Supreme Court could only review the decision of a superior court involving the review of a local zoning board decision by granting an application to appeal to the party seeking to have such superior court decision reviewed; it did not have jurisdiction to review a direct appeal. Powell v. City of Snellville, 275 Ga. 207, 563 S.E.2d 860 (2002).

APPEAL FROM A DECISION OF THE SUPERIOR COURT REVIEWING A DECISION OF A MAGISTRATE COURT by a de novo proceeding was subject to the discretionary appeal procedures of this section. Dean's Catering v. Sturm & Assocs., 231 Ga. App. 202, 498 S.E.2d 786 (1998).

A REVENUE DEPARTMENT ASSESSMENT IS A DECISION OF A STATE ADMINISTRATIVE AGENCY within the meaning of paragraph (a)(1), and an application must be filed. Miles v. Collins, 259 Ga. 536, 384 S.E.2d 630 (1989).

APPEAL FROM A RULING ON A DECLARATORY JUDGMENT ACTION that was essentially an appeal from an administrative decision to suspend a driver's license was dismissed since the driver was required to proceed by application for discretionary appeal. Miller v. Georgia Dep't of Pub. Safety, 265 Ga. 62, 453 S.E.2d 725 (1995); Greenburg v. Griffith, 226 Ga. App. 818, 487 S.E.2d 411 (1997).

APPEALS FROM TEMPORARY RESTRAINING ORDERS. --Although paragraph (a)(9) makes appeals from temporary restraining orders subject to the procedural requirements of this section, such an order may be directly appealable if it is entered following a lengthy adversary hearing and effectively grants plaintiff all of the relief he or she seeks. Dolinger v. Driver, 269 Ga. 141, 498 S.E.2d 252 (1998).

APPEAL FROM PROBATE COURT TO SUPERIOR COURT. --Under the plain language of this Code section, no application for appeal is required for decisions of superior courts reviewing judgments of the probate courts. The statute mandates that a direct appeal is available from the superior court affirmance of a probate court case. Phillips v. State, 261 Ga. 190, 402 S.E.2d 737 (1991).

APPEAL FROM BOARD OF COMMISSIONERS. --An appeal in a case involving the board of county commissioners' removal from office of a person appointed to that office by the board required compliance with discretionary appeal procedure; overruling Parsons v. Chatham County Bd. of Comm'rs, 204 Ga. App. 139(1), 418 S.E.2d 459 (1992); Geron v. Calibre Cos., 250 Ga. 213(1), 296 S.E.2d 602 (1982). Swafford v. Dade County Bd. of Comm'rs, 266 Ga. 646, 469 S.E.2d 666 (1996).

PARAGRAPH (A)(7) APPLICABLE TO CRIMINAL CASES. --The 1984 amendment requiring applications to appeal orders denying extraordinary motions for new trial applies to criminal cases as well as civil cases. Pitts v. State, 254 Ga. 298, 328 S.E.2d 732 (1985).

TRIAL COURT HAS NO AUTHORITY TO GRANT AN EXTENSION OF TIME for filing an application for discretionary appeal. Rosenstein v. Jenkins, 166 Ga. App. 385, 304 S.E.2d 740 (1983).

APPEAL DISMISSED WHERE NO APPLICATION. --Appeal from judgment for costs entered in an action for damages in the amount of $1,951.00 must be dismissed where the discretion of the Court of Appeals is not invoked by application. Gardner v. Villa Monte Homes, Inc., 173

Ga. App. 896, 328 S.E.2d 565 (1985).

Failure to file an application for a discretionary appeal pursuant to paragraph (a)(7) of this section leaves the appellate court without jurisdiction over a direct appeal. Ibietatorremendia v. State, 174 Ga. App. 786, 332 S.E.2d 20 (1985).

Where a father's petition for legitimation was denied, the appellate court did not have jurisdiction to review the order because the father had failed to follow the discretionary procedures to appeal pursuant to O.C.G.A. § 5-6-35(a)(2), nor did he file his application for such review within the time period allowed by § 5-6-35(d); his appeal from an order terminating his parental rights and allowing adoption of the minor by the stepfather, pursuant to O.C.G.A. § 19-8-1 et seq., was also denied where the issues that the father raised related to the lack of a hearing on his legitimation proceeding, which was already determined to be not reviewable. In re C.M.L., 260 Ga. App. 502, 580 S.E.2d 276 (2003).

Defendant's direct appeal from a trial court's grant of partial summary judgment in favor of plaintiff was dismissed for lack of jurisdiction because an application to appeal under O.C.G.A. § 5-6-35(a) was required but not submitted. Bullock v. Sand, 260 Ga. App. 874, 581 S.E.2d 333 (2003).

AN APPLICATION IS REQUIRED TO APPEAL A DOMESTIC RELATIONS CASE in which a "judgment" or an "order" has been entered. Any party who seeks to appeal a "judgment" or an "order" entered in a domestic relations case must follow the procedure set out in subsection (a)(2) of this Code section. Horton v. Kitchens, 259 Ga. 446, 383 S.E.2d 871 (1989).

FAILURE TO FILE APPLICATION TO APPEAL RESULTS IN DISMISSAL OF APPEAL in domestic relations cases. Bedford v. Bedford, 246 Ga. 780, 273 S.E.2d 167 (1980).

CHILD SUPPORT. --In an action for repayment of child support expended by the Department of Human Resources, the failure to file an application for appeal required under paragraph (a)(2) did not result in dismissal of the appeal. An action for repayment under § 19-11-5 is one for collection of a debt and requires discretionary appeal procedures only where the judgment is $2,500 (now $10,000.00) or less, pursuant to paragraph (a)(6). Department of Human Resources v. Johnson, 175 Ga. App. 610, 333 S.E.2d 845 (1985).

Appeals from orders awarding support for minor children are domestic relations cases which require compliance with the discretionary appeal procedure of subsection (a)(2). Jackson v. Roach, 199 Ga. App. 653, 405 S.E.2d 712, cert. denied, 199 Ga. App. 906, 405 S.E.2d 712 (1991); Davis v. Welch, 205 Ga. App. 462, 422 S.E.2d 323 (1992).

Father's appeal from superior court's order under § 19-11-12, modifying the amount of his child support obligation, should have been brought as a discretionary appeal. Fitzgerald v. Department of Human Resources, 231 Ga. App. 129, 497 S.E.2d 659 (1998).

SUFFICIENT FILING UNDER SUBSECTION (D). --Although a notice of appeal must be filed in the court "wherein the case was determined" putting that court on notice that its jurisdiction is affected according to § 5-6-37, there is no such requirement regarding an application, since subsection (d) only requires it to be filed with the clerk of the appellate court. In re A.R.B., 209 Ga. App. 324, 433 S.E.2d 411 (1993).

WHEN AN APPLICATION IS TRANSFERRED FROM ONE APPELLATE COURT TO THE OTHER, the 30-day time period is to be computed from the date of the filing in the court to which said application has been transferred. Marr v. Georgia Dep't of Educ., 264 Ga. 841, 452 S.E.2d 112 (1995).

EFFECT OF FAILURE TO FILE TIMELY APPLICATION. --In a case governed by the appeal procedures of this section, the trial court has the authority to dismiss the appeal where the appellant fails to file timely an application to appeal. Tobitt v. Tobitt, 249 Ga. 245, 290 S.E.2d 49 (1982).

Where no application for review was filed with Court of Appeals within 30 days of lower

court's judgment denying claim for unemployment compensation, an attempted direct appeal was a nullity requiring dismissal. Depass v. Board of Review, 172 Ga. App. 561, 324 S.E.2d 505 (1984).

DENIAL OF EXTRAORDINARY MOTION FOR NEW TRIAL. --Subsection (a)(7) of this section does not purport to confer direct appellate jurisdiction to consider the merits of issues that could and should have been raised in a timely motion for new trial, an extraordinary motion for new trial is properly denied and will be affirmed on appeal if the motion raises only issues that could and should have been raised in a timely motion for new trial. Bohannon v. State, 203 Ga. App. 783, 417 S.E.2d 679 (1992).

APPEAL OF DENIAL OF MOTION TO SET ASIDE arising out of divorce case will be dismissed for failure to comply with this section. Steele v. Niggelie, 163 Ga. App. 98, 293 S.E.2d 368 (1982).

This section cannot be construed to expand the jurisdiction of the Court of Appeals over direct orders of lower courts granting or denying motions whose substance and function are to obtain the set-aside of a judgment, including one based upon equitable grounds. Cain v. Moore, 207 Ga. App. 726, 429 S.E.2d 135 (1993).

APPEAL FROM SUMMARY JUDGMENT GRANT IMPROPERLY DENIED. --See Brown v. Rutledge, 263 Ga. 474, 435 S.E.2d 187 (1993).

APPEAL FROM LEGITIMATION PROCEEDING is required to be made by application to the appropriate appellate court, rather than by direct appeal. Brown v. Williams, 174 Ga. App. 604, 332 S.E.2d 48 (1985).

A legitimation proceeding is a type of domestic relations case, and an application for permission to appeal must be made in accordance with paragraph (a)(2). Hill v. Adams, 182 Ga. App. 848, 357 S.E.2d 300 (1987).

Direct appeal of an order terminating putative father's parental rights was proper, even where the relief he sought was expressed in terms of overturning the denial of his petition to legitimate. In re D.S.P., 233 Ga. App. 346, 504 S.E.2d 211 (1998).

ACTION FOR EQUITABLE PARTITION TO ENFORCE SEPARATION AGREEMENT. --Although it had its roots in the parties' divorce action, an action for an equitable partition to enforce the separation agreement which was part of the divorce decree is a new action and not merely a continuation of the divorce action. For this reason, this section does not apply to this situation, and husband's direct appeal from the partition order is proper. Larimer v. Larimer, 249 Ga. 500, 292 S.E.2d 71 (1982).

FAILURE TO FILE NOTICE OF APPEAL WITHIN TIME REQUIRED BY SUBSECTION (G). --Notice of appeal is subject to dismissal if appellant fails to file said notice within ten days after an order is issued granting an application for such appeal. Caldwell v. Elbert County School Dist., 247 Ga. 359, 276 S.E.2d 43 (1981).

Subsection (g), read in conjunction with § 5-6-48(b)(1), requires that notice of appeal from judgment in contempt of alimony judgment shall be dismissed if appellant fails to file said notice within ten days after order is issued granting application for such appeal. Harris v. Harris, 245 Ga. 75, 263 S.E.2d 113 (1980).

TRANSCRIPT PRODUCTION APPEAL WAS UNTIMELY. --Defendant's appeal of the denial of his post-conviction motion requesting production of a trial transcript at government expense was dismissed as untimely. Coles v. State, 223 Ga. App. 491, 477 S.E.2d 897 (1996).

APPLICABILITY OF SECTION TO JUDGMENT ON AUDITOR'S REPORT IN EQUITY CASE. -- Where an auditor is appointed in an equity case and renders a report which contains findings of fact and conclusions of law which are approved by the trial court, judgment entered on such report or summary judgment entered in case where there are no genuine issues as to

material facts set forth in the report is subject to the application requirement of this section. Citizens & S. Nat'l Bank v. Rayle, 246 Ga. 727, 273 S.E.2d 139 (1980).

Where an auditor is appointed in an equity case and renders a report which contains findings of fact and conclusions of law which are approved by the trial court, a judgment rendered on such report is subject to the application requirement of this section. Ravan v. Stephens, 248 Ga. 289, 282 S.E.2d 312 (1981).

NOTICE OF APPEAL FROM JUDGMENT OF CONTEMPT MUST MEET TIME REQUIREMENT OF SUBSECTION (G). --Notice of appeal from judgment of contempt regarding a domestic relations decree is subject to dismissal if appellant fails to file said notice within ten days after order is issued granting application for such appeal. Walters v. Walters, 245 Ga. 695, 266 S.E.2d 507 (1980).

ACTION SEEKING TO VACATE JUDGMENT FOR CONTEMPT. --Where court entered an order adjudicating former spouse in contempt, and after time for appealing the contempt order had expired, former spouse brought action seeking to vacate and set aside the judgment for contempt on ground that judgment in the divorce case was void, for legal purposes this was the same as an appeal from the order holding appellant in contempt. Failure to file an application to appeal pursuant to subsection (b) made dismissal proper. Chandler v. Cochran, 247 Ga. 171, 275 S.E.2d 657 (1981).

DENIAL OF APPLICATION TO APPEAL NONFINAL ORDER IS NOT RES JUDICATA. --Denial of application to appeal nonfinal order is perhaps persuasive but is not res judicata in appellate court when later reviewing final order in same case. Citizens & S. Nat'l Bank v. Rayle, 246 Ga. 727, 273 S.E.2d 139 (1980).

APPEAL FROM DECISION TO TERMINATE CITY EMPLOYEE. --The Court of Appeals is without jurisdiction to entertain a direct appeal from a decision of a city manager approving the termination of a city employee. Salter v. City of Thomaston, 200 Ga. App. 536, 409 S.E.2d 88 (1991).

DISMISSAL FOR APPEALING REVIEW OF ADMINISTRATIVE DECISION UNDER GENERAL APPEALS STATUTE. --Where taxpayer did not file application for discretionary appeal from decision of superior court reviewing decision of Department of Revenue, but chose to appeal directly to Supreme Court pursuant to § 5-6-34(a), such appeal was dismissed for failure to comply with procedure for appeal from decisions of administrative agencies required by this section. Plantation Pipe Line Co. v. Strickland, 249 Ga. 829, 294 S.E.2d 471 (1982).

APPEAL FROM SMALL CLAIMS COURT NOT BROUGHT UNDER PARAGRAPH (A)(1). --Where plaintiff commenced a dispossessory proceeding against defendant in the Small Claims Court of Putnam County and received a dispossessory warrant against defendant, who appealed to the Superior Court of Putnam County where a jury found for defendant, and plaintiff appealed to the Court of Appeals and defendant cross-appealed, where the appeal was not brought under paragraph (a)(1) of this section, the appeal and cross-appeal will be dismissed. Manley v. Williams, 166 Ga. App. 298, 304 S.E.2d 468 (1983).

WHERE APPEAL DEALS WITH DISMISSAL OF GARNISHMENT PROCEEDING for delinquent payments under divorce decree directing payment on installment notes and the divorce is only incidental thereto, a motion to dismiss the appeal for failure to file an application for appeal will be denied. Kile v. Kile, 165 Ga. App. 321, 301 S.E.2d 289 (1983).

APPEAL ARISING OUT OF SUPERIOR COURT'S DISMISSAL OF APPEAL FROM JUDGMENT BY RECORDER'S COURT should be brought under the provision pertaining to discretionary appeals and the failure to do so subjects it to dismissal. Wimbish v. State, 166 Ga. App. 223, 303 S.E.2d 766 (1983).

APPEAL FROM SUPERIOR COURT'S REVIEW of use and enforcement of investigative powers of the board of medical examiners required discretionary appeal procedures. Rankin v. Composite State Bd. of Medical Exmrs., 220 Ga. App. 421, 469 S.E.2d 500 (1996).

NO DIRECT APPEAL FROM RECORDER'S COURT TO SUPREME COURT. --A direct appeal from the recorder's court to the Supreme Court was not available in a case challenging the constitutionality of an ordinance. Instead, the proper method of review was by certiorari to the superior court. Russell v. City of E. Point, 261 Ga. 213, 403 S.E.2d 50 (1991), cert. denied, 502 U.S. 971, 112 S. Ct. 448, 116 L. Ed. 2d 466 (1991).

DISMISSAL OF APPEAL OF FINAL JUDGMENT IS RES JUDICATA. --Dismissal by Supreme Court of direct appeal for lack of application as required by this section invokes doctrine of res judicata when judgment appealed was final and on merits. Byrd v. Byrd, 248 Ga. 163, 281 S.E.2d 617 (1981).

Denial of discretionary appeal under this section by Supreme Court invokes doctrine of res judicata when judgment appealed was final and on the merits. Steele v. Niggelie, 163 Ga. App. 98, 293 S.E.2d 368 (1982).

APPEAL FROM DECISION AS TO STATE BOARD OF EDUCATION'S ADMINISTRATIVE DECISION. --Where the affirmance of the local board of education by the State Board of Education is a decision of a state administrative agency acting in a quasi-judicial capacity and the order of the superior court is itself an appellate decision, reviewing the decision of the state board, the appeal is from a decision of a superior court reviewing a decision of a state administrative agency, within the meaning of this section. Accordingly, failure to obtain an order of the Court of Appeals permitting the filing of such an appeal must result in its dismissal. Hogan v. Taylor County Bd. of Educ., 157 Ga. App. 680, 278 S.E.2d 106 (1981).

APPEAL OF LOWER COURT'S REVIEW OF AGENCY DECISION. --The requirements of this section must be followed as a necessary prerequisite to secure discretionary appellate review of decisions of superior courts reviewing decisions of state administrative agencies. Heiny v. Department of Pub. Safety, 169 Ga. App. 37, 311 S.E.2d 848 (1983).

APPEALS FROM DECISIONS OF SUPERIOR COURTS REVIEWING DECISIONS OF STATE AND LOCAL ADMINISTRATIVE AGENCIES shall be by application in nature of a petition, enumerating errors to be urged on appeal and stating why appellate court has jurisdiction. Wheeler v. Strickland, 248 Ga. 85, 281 S.E.2d 556 (1981); City of Atlanta Bd. of Zoning Adjustment v. Midtown N., Ltd., 257 Ga. 496, 360 S.E.2d 569 (1987).

SUPERIOR COURTS HAVE AUTHORITY AND RESPONSIBILITY IN WORKERS' COMPENSATION CASES. --Under this section, the superior courts have all of the authority and all of the responsibilities which the appellate courts formerly had in workers' compensation cases. Southeastern Aluminum Recycling, Inc. v. Rayburn, 251 Ga. 365, 306 S.E.2d 240 (1983).

CROSS-APPEAL TO APPEALABLE ORDER. --An appeal which, standing alone, would be subject to discretionary appeal procedures, is appealable as a matter of right if it is classifiable as a cross-appeal to an appealable order. Buschel v. Kysor/Warren, 213 Ga. App. 91, 444 S.E.2d 105 (1994).

CROSS APPEAL IN WORKERS' COMPENSATION CASE. --In a workers' compensation case, even though no application was made by the employer as required by this section, since claimant had taken direct appeal, the employer's cross appeal could be filed also. Linder v. Alterman Foods, Inc., 162 Ga. App. 786, 292 S.E.2d 900 (1982).

ADMINISTRATIVE AGENCY DECISION. --To conclude that, following review by the superior court, a decision of the administrator of the Office of Consumer Affairs to issue an investigative demand is appealable as a matter of right, but the administrator's decision on

the merits is appealable only by application would be contrary to the clear purpose of this section. The agency's decision to issue an investigative demand is a "decision" of an administrative agency within the meaning of subsection (a) of this section and an appeal from a grant of summary judgment by the superior court to the administrator should be dismissed for failure to comply with the requirements of this section. Tri-State Bldg. & Supply, Inc. v. Reid, 251 Ga. 38, 302 S.E.2d 566 (1983).

ATLANTA BUREAU OF ZONING ADJUSTMENT IS "LOCAL ADMINISTRATIVE AGENCY" within meaning of paragraph (a)(1), thereby requiring discretionary-appeal applications from decisions of the superior court reviewing decisions of the Bureau of Zoning Adjustment. Rybert & Co. v. City of Atlanta, 258 Ga. 347, 368 S.E.2d 739 (1988), overruled on other grounds, Southern States Landfill, Inc. v. City of Atlanta Bd. of Zoning Adjustments, 261 Ga. 759, 410 S.E.2d 721 (1991).

APPEAL OF COURT ORDER AFFIRMING DENIAL OF UNEMPLOYMENT COMPENSATION CLAIM. --Where the appellant files a direct appeal from a superior court order affirming the Department of Labor's denial of her claim for unemployment compensation without first obtaining an order from the appellate court granting permission for such an appeal pursuant to paragraph (a)(1) of this section, the appeal will be dismissed. Cook v. Caldwell, 166 Ga. App. 452, 305 S.E.2d 187 (1983).

APPEAL FROM STATE PERSONNEL BOARD AS TO TERMINATION OF STATE EMPLOYEE. --A direct appeal from an order affirming a decision of the State Personnel Board which reversed the termination of appellee's employment as a correctional officer which was not brought under the discretionary appeal provisions of this section must be dismissed for lack of jurisdiction. Department of Offender Rehabilitation v. Meeks, 165 Ga. App. 269, 299 S.E.2d 757 (1983).

An appeal from an order of a superior court affirming a decision of the State Personnel Board which denies an appeal from the sustaining of a dismissal from employment as a correctional officer by a hearing officer must be brought under the discretionary provisions of this section. Where that procedure is not followed, the Court of Appeals has no jurisdiction over the appeal and, accordingly, it must be dismissed. Summerset v. Department of Offender Rehabilitation, 167 Ga. App. 730, 307 S.E.2d 678 (1983).

Appeals of an action, labeled "tort-negligence," which a state prisoner, brought against officials of a correctional institute, were not dismissed under subdivision (a)(1) of this section because defendant filed separate tort actions seeking damages for official actions which could have been the subject of administrative grievances. McBride v. Zant, 204 Ga. App. 183, 418 S.E.2d 781 (1992).

APPEAL FROM ORDER AWARDING SANCTION. --An order imposing a monetary sanction for wilfully failing to attend a scheduled post-judgment deposition was in the nature of an award for frivolous litigation and required an application for discretionary appeal. Bonnell v. Amtex, Inc., 217 Ga. App. 378, 457 S.E.2d 590 (1995).

An order imposing a sanction for unnecessarily expanding a proceeding was in the nature of an award for frivolous litigation within the purview of § 9-15-14(b) and, as such, was not directly appealable, but required an application for discretionary appeal. Hill v. Doe, 239 Ga. App. 869, 522 S.E.2d 471 (1999).

APPEAL OF FINDING OF CONTEMPT. --A finding of wilful contempt of a court order entering judgment on a jury verdict not dealing with alimony or child custody is directly appealable notwithstanding the denial of a simultaneously filed application for discretionary appeal. Stephens v. Stephens, 184 Ga. App. 538, 362 S.E.2d 118 (1987).

DENIAL OF MOTIONS TO STAY OR DISCHARGE CONTEMPT CONFINEMENT. --Since a contempt order itself cannot be appealed directly, neither the denial of a motion to stay incarceration for contempt nor the denial of a motion for discharge from confinement can be

appealed directly. The procedure for taking such appeals, if allowable at all, is governed by this section. Strickland v. Strickland, 252 Ga. 218, 312 S.E.2d 606 (1984).

REVIEW OF ORDER REGARDING TERMINATION OF LIQUOR-WHOLESALING RELATIONSHIP. --The matter before the state revenue commissioner (the proposed termination by a liquor producer of four of its designated wholesalers) was a "contested case" within the meaning of the Administrative Procedure Act, not involving the suspension or cancellation of licenses, and the trial court was thus correct in treating the review of the commissioner's order denying the proposal as a petition for judicial review pursuant to the APA; there having been no application to appeal the decision of the superior court affirming the commissioner's order, as required by § 5-6-35, the motion to dismiss the appeal was granted. Schieffelin & Co. v. Strickland, 253 Ga. 385, 320 S.E.2d 358 (1984).

APPEAL FROM DENIAL OF LIQUOR LICENSE. --Although the nightclub had a right pursuant to O.C.G.A. § 5-6-35 to seek a discretionary review of the trial court's judgment affirming an administrative agency's decision to deny its application for renewal of its liquor license, the nightclub did not have a right to directly appeal that judgment after the state supreme court reviewed and rejected the nightclub's discretionary appeal, as the denial of the discretionary appeal was a ruling on the merits; thus, the nightclub was not entitled to have the state supreme court review those same claims again. Northwest Soc. & Civic Club, Inc. v. Franklin, 276 Ga. 859, 583 S.E.2d 858 (2003).

APPEALS OF AWARDS OF ATTORNEY'S FEES OR EXPENSES OF LITIGATION. --Effective July 1, 1986, applications to appeal awards of attorney's fees or expenses of litigation under § 9-15-14 are required, and a direct appeal will be dismissed for failure to comply with this statute. Martin v. Outz, 257 Ga. 211, 357 S.E.2d 91 (1987).

Where the appellee city sought to dismiss the appellant's appeal from the award of attorney fees because the appellant did not file an application as required by subsection (a)(10) of this Code section for an appeal from an award of attorney fees pursuant to § 9-15-14, an application was not necessary to appeal the award of attorney fees, since this was appealed along with other matters directly appealable. Stancil v. Gwinnett County, 259 Ga. 507, 384 S.E.2d 666 (1989).

APPEAL THAT IS CREATED BY CODE SECTION 40-13-28 (TRAFFIC OFFENSES) IS "DE NOVO PROCEEDING," whereby the superior court reviews the certified record below and makes a new determination as to guilt or innocence. An appeal to the Court of Appeals must comply with the discretionary appeal provisions of this section. Anderson v. City of Alpharetta, 187 Ga. App. 148, 369 S.E.2d 521 (1988).

APPEAL FROM AN ORDER DENYING A MOTION TO RECUSE requires an application for interlocutory review. In re Booker, 186 Ga. App. 614, 367 S.E.2d 850 (1988).

MOTION TO AMEND MOTION FOR NEW TRIAL. --Where the original motion for a new trial, as amended, had been denied and was no longer before the trial court, the motion to amend the motion for a new trial was in reality an extraordinary motion for new trial and appeal from the denial of such a motion must be by application when separate from the original appeal. Martin v. State, 185 Ga. App. 145, 363 S.E.2d 765 (1987).

TRAFFIC APPEALS. --Construing paragraph (a)(1) and § 40-13-28 according to their real intent and meaning and not so strictly as to defeat the legislative purpose, the General Assembly did not intend to remove traffic appeals under § 40-13-28 from the discretionary appeals procedures. Brown v. City of Marietta, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

All appeals from judgments of superior courts in traffic cases under § 40-13-28 must follow the procedures in subsection (a) of this section. Accordingly, 30 days after the date this decision is published in the official advance sheets any direct appeals in these cases filed under § 5-6-34(a) will be dismissed. Brown v. City of Marietta, 214 Ga. App. 840, 449 S.E.2d

540 (1994).

Any appeal from a superior court review under § 40-13-28 of any lower court, except the probate court, shall be under subsection (a); however, an appeal from the superior court review under § 40-13-28 of a traffic case from the probate court shall be by direct appeal under § 5-6-34(a)(1). Power v. State, 231 Ga. App. 335, 499 S.E.2d 357 (1998).

MANDAMUS. --Even though appellant doctor sought review of a decision by appellee board of medical examiners by filing a mandamus action, and even though a judgment in a mandamus action was subject to direct appeal under O.C.G.A. § 5-6-34, the doctor was required to file an application to appeal pursuant to O.C.G.A. § 5-6-35 because the underlying subject matter of the doctor's appeal was covered by O.C.G.A. § 5-6-35. Ferguson v. Composite State Bd. of Med. Exam'rs, 275 Ga. 255, 564 S.E.2d 715 (2002).

If a request for mandamus relief attacks or defends the validity of an administrative ruling and seeks to prevent or promote the enforcement thereof, the trial court must necessarily "review" the administrative decision within the meaning of O.C.G.A. § 5-6-35(a)(1) before ruling on the request for mandamus relief. Ferguson v. Composite State Bd. of Med. Exam'rs, 275 Ga. 255, 564 S.E.2d 715 (2002).

2. JUDGMENTS CONCERNING CHILD CUSTODY

ORDERS DEALING WITH CHILD CUSTODY ARE SUBJECT TO DISCRETIONARY APPEAL PROCEDURES. In re L.W., 216 Ga. App. 222, 453 S.E.2d 808 (1995).

CHILD CUSTODY ORDERS INCLUDE those entered as part of divorce case or pursuant to Art. 3, Ch. 9, T. 19 (Uniform Child Custody Jurisdiction Act) or Art. 2, Ch. 9, T. 19 (Georgia Child Custody Intrastate Jurisdiction Act). Bryant v. Wigley, 246 Ga. 155, 269 S.E.2d 418 (1980), overruled on other grounds, 247 Ga. 487, 277 S.E.2d 247 (1981).

CASES INVOLVING TERMINATION OF PARENTAL RIGHTS MUST BE MADE BY DIRECT APPEAL as they are not within the purview of paragraph (a)(2) requiring certain appeals to be made by discretionary application. In re S.N.S., 182 Ga. App. 803, 357 S.E.2d 127 (1987).

Appeal from an adoption proceeding was not an appeal from a child custody proceeding, which would require the discretionary appeal procedure. Moore v. Butler, 192 Ga. App. 882, 386 S.E.2d 678 (1989).

ORDERS TERMINATING PARENTAL RIGHTS ARE DIRECTLY APPEALABLE. In re L.W., 216 Ga. App. 222, 453 S.E.2d 808 (1995).

FAILURE TO FILE PURSUANT TO SECTION. --Appeals from orders dealing with child custody which are not filed pursuant to this section must be dismissed for lack of jurisdiction. Hamilton v. Deutscher, 201 Ga. App. 883, 412 S.E.2d 875 (1991); In re A.M.D., 212 Ga. App. 291, 444 S.E.2d 166 (1994).

HABEAS CORPUS ORDER RETURNING CHILD TO LAWFUL CUSTODIAN IS NOT AN ORDER "AWARDING CHILD CUSTODY" within meaning of section. Bryant v. Wigley, 246 Ga. 155, 269 S.E.2d 418 (1980), overruled on other grounds, 247 Ga. 487, 277 S.E.2d 247 (1981).

NOTICE OF APPEAL FROM JUDGMENT GRANTING CHILD CUSTODY MUST MEET TIME REQUIREMENT OF SUBSECTION (G). --Subsection (g) of this section read in conjunction with § 5-6-48(b)(1), provides that notice of appeal from judgment granting child custody is subject to dismissal if appellant fails to file said notice within ten days after order is issued granting application for such appeal. Evans v. Davey, 154 Ga. App. 269, 267 S.E.2d 875 (1980).

SUPREME COURT JURISDICTION OVER APPEALS INVOLVING CHILD CUSTODY REQUIRES

UNDERLYING JUDGMENT FOR DIVORCE. --Supreme Court does not have jurisdictional basis for entertaining appeals involving child custody questions unless appeal also involved judgment for divorce; all other child custody cases are, accordingly, within jurisdiction of Court of Appeals. Evans v. Davey, 154 Ga. App. 269, 267 S.E.2d 875 (1980).

INAPPLICABLE TO CHILD CUSTODY HABEAS CORPUS ACTIONS. --The General Assembly did not intend to include child custody habeas corpus actions brought by the custodial parent within the classes of cases enumerated in this section. Wright v. Hanson, 248 Ga. 523, 283 S.E.2d 882 (1981), decided prior to 1984 amendment.

An application for appeal in accordance with the procedures set forth in this section is not necessary in child custody habeas corpus proceedings brought by the custodial parent, whether the custodial parent prevails or loses in the trial court. Wright v. Hanson, 248 Ga. 523, 283 S.E.2d 882 (1981), decided prior to 1984 amendment.

APPLICABLE TO CHILD CUSTODY HABEAS CORPUS ACTIONS. --The addition (by Ga. L. 1984, p. 599, § 2) of the term "child custody, and other domestic relations cases including, but not limited to" in paragraph (2) of subsection (a) was intended to add child custody habeas corpus actions to the purview of this section. Leonard v. Benjamin, 253 Ga. 718, 324 S.E.2d 185 (1985).

FAILURE TO FILE NOTICE OF APPEAL PURSUANT TO § 5-6-38. --When the custodial parent in a child custody habeas corpus proceeding unnecessarily files an application for appeal in accordance with this section, and the Supreme Court grants the application, and a notice of appeal then is timely filed, the Supreme Court has jurisdiction of the appeal even though no notice of appeal was filed in accordance with § 5-6-38 within 30 days from entry of judgment in the trial court. Wright v. Hanson, 248 Ga. 523, 283 S.E.2d 882 (1981).

APPEAL INVOLVING CHANGE OF CUSTODY FALLS WITHIN PROVISIONS of paragraph (a)(2) and subsection (d) of this section, which require an application to be filed directly with the Court of Appeals within 30 days of the filing of the order changing visitation rights. On failing to follow these requirements, this section precludes vesting of jurisdictional powers either in the trial court based on an appeal to a final judgment or in the Court of Appeals as a discretionary appeal. Jones v. Warrenfells, 166 Ga. App. 519, 305 S.E.2d 147 (1983); Dudai v. Spisak, 170 Ga. App. 744, 318 S.E.2d 501 (1984); Brandenburg v. Brandenburg, 175 Ga. App. 18, 332 S.E.2d 665 (1985).

An order modifying custody, issued following a "temporary" hearing under USCR 24.5 was final. In a post-decree custody modification action authorized by a prior version of 19-9-3(b), the trial court was without authority to enter a "temporary" custody award. Hightower v. Martin, 198 Ga. App. 855, 403 S.E.2d 862 (1991), but see Massey v. Massey, 227 Ga. App. 906, 490 S.E.2d 205 (1997).

THERE IS NOTHING IN THIS SECTION WHICH EXCLUDES CUSTODY CASES INVOLVING THE STATE. In re J.E.P., 252 Ga. 520, 315 S.E.2d 416 (1984).

MOTION FOR MODIFICATION OF A JUVENILE COURT ORDER TERMINATING PARENTAL RIGHTS is similar to a motion to set aside under § 9-11-60(d), which is appealable but does not sustain an appeal from the underlying judgment. In re H.A.M., 201 Ga. App. 49, 410 S.E.2d 319 (1991).

DENIAL OF STEPFATHER'S PETITION TO ADOPT HIS TEN-YEAR OLD STEPDAUGHTER was directly appealable, as all petitions for adoption, whether granted or denied, whether terminating parental rights, or not, do not come within paragraph (2) of subsection (a). In re J.S.J., 180 Ga. App. 873, 350 S.E.2d 843 (1986).

CONTEMPT OF VISITATION ORDER. --A judgment holding mother in contempt of an order which granted visitation rights to father was not directly appealable since the order

constituted a child custody order for purposes of paragraph (a)(2) of this Code section. Burnett v. Coleman, 170 Ga. App. 394, 317 S.E.2d 546 (1984).

The denial of a petition to hold the mother in contempt of the final judgment and decree of divorce which granted the father visitation rights to the parties' child can be reviewed only by application for discretionary appeal, because visitation privileges are a part of custody. Hosch v. Hosch, 184 Ga. App. 370, 361 S.E.2d 686 (1987), cert. denied, 484 U.S. 1067, 108 S. Ct. 1030, 98 L. Ed. 2d 994 (1988).

CHILD SUPPORT DELINQUENCY PROCEEDINGS. --An appeal from a judgment on the pleadings in an action to set aside a judgment awarding delinquent child support payments is not an appeal concerning those issues as enumerated in paragraph (a)(2). Karsman v. Portman, 170 Ga. App. 194, 316 S.E.2d 819 (1984).

APPEAL OF DENIAL OF FOSTER CHILD CUSTODY CHANGE PETITION. --Where the appellants failed to file an application for appellate review following the denial of their petition by the juvenile court which sought to have legal custody of a foster child changed from the county department of family and children services to themselves, the appeal was dismissed. In re C.P.H., 169 Ga. App. 122, 311 S.E.2d 850 (1983).

GRANDPARENTS SEEKING APPELLATE REVIEW OF AN UNFAVORABLE RULING REGARDING VISITATION privileges are, like parents, required to follow the procedure necessary to secure a discretionary appeal. Tuttle v. Stauffer, 177 Ga. App. 112, 338 S.E.2d 544 (1985).

INAPPLICABLE TO DEPRIVATION CASES. --Because deprivation cases are neither child custody nor domestic relations cases within the purview of this section, a right of direct appeal lies from such orders. Balkcom v. State, 227 Ga. App. 327, 489 S.E.2d 129 (1997); In re J.P., 267 Ga. 492, 480 S.E.2d 8 (1997), overruling In re D.S., 212 Ga. App. 203, 441 S.E.2d 412 (1994); In re M.D.S., 211 Ga. App. 706, 440 S.E.2d 95 (1994); In re N.A.B., 196 Ga. App. 819, 397 S.E.2d 301 (1990); In re M.A.V., 206 Ga. App. 299, 425 S.E.2d 377 (1992).

APPEAL FROM JUVENILE COURT DECISION IN DEPRIVATION PROCEEDING. --The Court of Appeals had jurisdiction to consider a father's appeal from the juvenile court's judgment in a deprivation proceeding. In re A.L.L., 211 Ga. App. 767, 440 S.E.2d 517 (1994).

Appeals from a deprivation proceeding do not involve child custody and therefore do not require an application to appeal. In re J.P., 220 Ga. App. 895, 470 S.E.2d 706 (1996), aff'd, 267 Ga. 492, 480 S.E.2d 8 (1997).

ADOPTION CASES. --Appeal from a declaratory judgment action brought by an adoption agency to determine the validity of the surrender of parental rights and the adoption procedure was not subject to the discretionary appeal procedures of this section. Families First v. Gooden, 211 Ga. App. 272, 439 S.E.2d 34 (1993).

3. DIVORCE

WHERE THE "UNDERLYING SUBJECT MATTER" OF THE CASE IS DIVORCE, the General Assembly intends the case to be brought to the Supreme Court by application pursuant to this section rather than by direct appeal. Rolleston v. Rolleston, 249 Ga. 208, 289 S.E.2d 518 (1982).

Where the issue sought to be appealed clearly arises from divorce proceedings, the appeal procedures of this section control. Tobitt v. Tobitt, 249 Ga. 245, 290 S.E.2d 49 (1982).

Appeal from denial of superior court petition seeking separate maintenance and equitable division of property and to enjoin matters pending in juvenile court was dismissed for failure to comply with paragraph (a)(2) of this section. Floyd v. Floyd, 250 Ga. 208, 296 S.E.2d 607 (1982).

Where the underlying subject matter was divorce, appellant was required to file an application for appeal as provided in this section; he could not avoid the discretionary review procedure by challenging the trial court's rulings via writ of prohibition. Self v. Bayneum, 265 Ga. 14, 453 S.E.2d 27 (1995).

A CASE INVOLVING A "DOMESTIC RELATIONS" ISSUE wherein appellant sought domestication and "correction" of a foreign divorce decree, normally within the jurisdiction of the Court of Appeals, also involved claims based upon an unincorporated settlement agreement which raised no "domestic relations" issue and, therefore, the Supreme Court had jurisdiction over the direct appeal from the grant of summary judgment in favor of the former husband as to the former wife's claims for specific performance of the settlement agreement and jurisdiction over the rulings on all the former wife's claims, including the "domestic relations" claim. Eickhoff v. Eickhoff, 263 Ga. 498, 435 S.E.2d 914 (1993).

APPEAL OF PETITION FOR REFORMATION OF SEPARATION AGREEMENT. --Where an agreement purporting to resolve all matters arising out of marriage is incorporated into a final decree of divorce, the rights of the parties are based on the final decree and not the underlying agreement and appeal is within this section. Paul v. Paul, 250 Ga. 54, 296 S.E.2d 48 (1982).

APPEAL FROM TEMPORARY ALIMONY ORDER. --A party seeking appellate review of an order awarding temporary alimony must comply with the interlocutory appeal procedure of § 5-6-34. Bailey v. Bailey, 266 Ga. 832, 471 S.E.2d 213 (1996).

APPEALS ARISING OUT OF PATERNITY PETITIONS are domestic relations cases which require compliance with the discretionary appeal procedure of this section. Brown v. Department of Human Resources, 204 Ga. App. 27, 418 S.E.2d 404 (1992).

DIRECT APPEAL IN ACTION FOR BREACH OF CONTRACT CONTEMPORANEOUS WITH DIVORCE SETTLEMENT. --In a direct appeal by appellant, the former wife of the appellee, upon an action for breach of a contract entered into by the parties contemporaneous with the divorce settlement and judgment, where appellee argued that the suit (enforcement of divorce or domestic relations settlement or agreement) was subject only to discretionary appeal under subsection (a)(2) of this Code section, and that the direct appeal should be dismissed, the court found that a former husband and wife may enter into contractual agreements separate from any decreed by the court upon a divorce and that the action was for a breach of contract, and directly appealable. Scott v. Mohr, 191 Ga. App. 825, 383 S.E.2d 190 (1989).

APPEAL OF CONTEMPT ORDER. --Where the jury specifically designates a property transfer as alimony in a divorce case, the Court of Appeals does not have jurisdiction of an appeal of a contempt order entered therein, which by law is subject to application for discretionary appeal to the Supreme Court. Cale v. Byrdwell, 166 Ga. App. 901, 305 S.E.2d 468 (1983).

A notice of appeal from a judgment of contempt regarding a domestic relations decree (finding violations by harassment, abuse, threats, assaults, annoyances, and willful refusal to make house payments as ordered), which judgment imposed a 20-day unconditional imprisonment, was dismissed for failure to file an application for appeal pursuant to paragraph (a)(2). Russo v. Manning, 252 Ga. 155, 312 S.E.2d 319 (1984).

SEEKING FEDERAL RELIEF WHERE FRAUDULENT OBTAINING OF DIVORCE ALLEGED. --A federal district court could not enjoin enforcement of a state court judgment in a divorce proceeding that had been allegedly obtained by fraud and which, therefore, allegedly deprived the plaintiff of property without due process of law, in that the plaintiff failed to state a claim under the federal civil rights statute, because the existence of adequate review procedures under Georgia law accorded the plaintiff sufficient due process. Collins v. Collins, 597 F. Supp. 33 (N.D. Ga. 1984).

ENFORCEMENT OF DIVORCE JUDGMENT. --An action by a former wife against the state retirement system, seeking an order compelling the system to pay, directly to her, her share of her former husband's retirement benefits under a divorce judgment, was not a divorce case and an application to appeal was not required. Bryant v. Employees Retirement Sys., 264 Ga. 125, 441 S.E.2d 757 (1994).

SUIT BROUGHT AGAINST FORMER SPOUSE SEEKING TO DOMESTICATE OUT-OF-STATE JUDGMENT IN DIVORCE PROCEEDING and to have spouse attached for contempt and ordered to pay arrearages was a suit on a foreign judgment, not a divorce or alimony case within the meaning of Georgia's Constitution, and jurisdiction of appeal was in the Court of Appeals. Lewis v. Robinson, 254 Ga. 378, 329 S.E.2d 498 (1985).

Suit to domesticate Ohio divorce judgment and have husband held in contempt was a "contempt" or "other domestic relations case" under paragraph (a)(2) for direct versus discretionary appeal purposes. Lewis v. Robinson, 176 Ga. App. 374, 336 S.E.2d 280 (1985).

4. GARNISHMENT

NONE DUE TO TIME LIMITATION EXPIRATION. --Where an owner of a brokerage service account that was garnished failed to timely appeal the garnishment judgment within 30 days, pursuant to the time limitations contained in O.C.G.A. § 5-6-35(a)(4), the assignee of the owner's rights had no right to appeal that judgment after such time had expired; the assignee had the same rights as the owner, and the owner's time had ran on such an appeal. Lamb v. First Union Brokerage Servs., 263 Ga. App. 733, 589 S.E.2d 300 (2003).

FAILURE TO OBTAIN ORDER PERMITTING FILING OF APPEAL. --Where appellant files a direct appeal from an order granting defendant-garnishee's motion to open a default judgment but appellant has failed to obtain an order of the appellate court permitting the filing of an appeal pursuant to paragraph (4) of subsection (a), the appeal must be dismissed. Wallace v. Saks Fifth Ave., Atlanta, Inc., 180 Ga. App. 679, 350 S.E.2d 308 (1986); Easley, McCaleb & Stallings, Ltd. v. Gateway Mgt., 191 Ga. App. 588, 382 S.E.2d 373 (1989); Maloy v. Ewing, 226 Ga. App. 490, 486 S.E.2d 708 (1997).

5. REVOCATION OF PROBATION

PURSUANT TO SUBSECTIONS (A)(5) AND (D), appeals from orders revoking probation are discretionary and require that an application be filed with the clerk of the appropriate court within 30 days of the date of the revocation order. Todd v. State, 236 Ga. App. 757, 513 S.E.2d 287 (1999).

APPEAL FROM ORDER REVOKING PROBATION INCLUDED. --An appeal from an order revoking probation is one of the type of cases which must follow the procedure set forth in this statute. Yellock v. State, 179 Ga. App. 250, 345 S.E.2d 897 (1986).

Appeals from orders revoking probation must be made by application filed directly with the appropriate court within 30 days of the date of the revocation order. Scriven v. State, 179 Ga. App. 513, 346 S.E.2d 906 (1986).

ADJUDICATION OF GUILT WHICH REVOKES PROBATIONARY STATUS. --The proper method of appeal from an order of adjudication of guilt and sentence which serves to revoke the probationary status granted under the First Offender Act is by discretionary appeal, as provided in paragraph (a)(5), rather than direct appeal. Dean v. State, 177 Ga. App. 123, 338 S.E.2d 711 (1985); Anderson v. State, 177 Ga. App. 130, 338 S.E.2d 716 (1985); Merciers v. State, 212 Ga. App. 424, 444 S.E.2d 416 (1994); Zamora v. State, 226 Ga. App. 105, 485 S.E.2d 214 (1997); Freeman v. State, 245 Ga. App. 333, 537 S.E.2d 763 (2000).

AVAILABILITY OF MOTION TO SET ASIDE OR FOR NEW TRIAL. --Although the discretionary appeal procedures apply to an order revoking probation and all appeals from such orders must be by application, a discretionary appeal is not the exclusive method of seeking reconsideration or review of orders and judgments enumerated in subsection (a), thus barring any motion to set aside or for new trial. Wells v. State, 236 Ga. App. 607, 512 S.E.2d 711 (1999).

APPEAL DISMISSED FOR LACK OF JURISDICTION. --Where following the revocation of his probation, the appellant filed a "Petition for Appeal" with the trial court, which the trial court dismissed, following which the appellant filed an "Out-of-Date Appeal" to court of appeals, as no application was filed directly in time, the appeal must be dismissed for lack of jurisdiction. Scriven v. State, 179 Ga. App. 513, 346 S.E.2d 906 (1986).

Appeal by the state from the grant of probationer's motion to suppress was dismissed since a revocation of probation hearing is not a criminal proceeding for purposes of a direct appeal; jurisdiction would lie upon application only. State v. Wilbanks, 215 Ga. App. 223, 450 S.E.2d 293 (1994).

Defendant's filing of an application for discretionary appeal from a revocation of probation acted as a supersedeas to the same extent as a notice of appeal and deprived the trial court of jurisdiction to enter an amended revocation order. Bryson v. State, 228 Ga. App. 84, 491 S.E.2d 184 (1997).

The statute applied where the appellant challenged the sentence imposed upon the revocation of his probation, but did not challenge the revocation itself, since the underlying subject matter of the appeal was still the revocation of probation and, therefore, the appellant was required to apply for a discretionary appeal. White v. State, 233 Ga. App. 873, 505 S.E.2d 228 (1998).

6. DAMAGES WHERE JUDGMENT IS $10,000.00 OR LESS

EDITOR'S NOTES. --Many of the cases cited below were decided prior to the 1991 amendment, which increased the amount from $2,500.00 to $10,000.00.

APPLICABLE TO SUMMARY JUDGMENTS. --The discretionary appeal provisions of paragraph (a)(6) apply to judgments in the amount of $2,500.00 or less (now $10,000.00 or less) obtained by verdict following a bench or jury trial as well as by summary judgment, so that the court of appeals would be unable to exercise jurisdiction to review the merits on a direct appeal of a summary judgment in a suit on an account for the principal sum of $546.19 plus $43.70 interest and court costs in the amount of $28.00. Perryman v. Georgia Power Co., 180 Ga. App. 259, 348 S.E.2d 762 (1986), overruled on other grounds, MMT Enters., Inc. v. Cullars, 218 Ga. App. 559, 462 S.E.2d 771 (1995).

Paragraph (a)(6) is applicable to judgments in the amount of $2,500 or less (now $10,000.00 or less) obtained by a verdict following a bench or jury trial, as well as by summary judgment. Covrig v. Campbell, 187 Ga. App. 39, 369 S.E.2d 293, cert. denied, 187 Ga. App. 907, 369 S.E.2d 762 (1988).

The defendant's direct appeal from summary judgment entered against her in the amount of $1,451.13 principal, plus $87.07 interest was dismissed since the judgment was for $2,500 or less, and the discretionary appeal procedures of this Code section were required. Batchelor v. ISFA Corp., 191 Ga. App. 238, 382 S.E.2d 434 (1989).

PARAGRAPH (A)(6) DOES NOT APPLY TO APPEAL FROM JUDGMENT IN FAVOR OF A DEFENDANT. Motor Fin. Co. v. Davis, 188 Ga. App. 291, 372 S.E.2d 674 (1988).

INAPPLICABLE WHERE NO RECOVERY OBTAINED. --Paragraph (a)(6) is applicable only where the appellant is seeking to appeal a money judgment for an amount ranging from 1 cent(s) through $2,500.00 (now $10,000.00), and not where the appellant has sought a money

judgment but has obtained no recovery whatever. Whatley v. Bank S., 185 Ga. App. 896, 366 S.E.2d 182, cert. denied, 185 Ga. App. 911, 366 S.E.2d 182 (1988); Department of Human Resources v. Prince, 198 Ga. App. 329, 401 S.E.2d 342 (1991).

PARAGRAPH (A)(6) DOES NOT APPLY WHERE ACTION AND JUDGMENT ARE FOR WRIT OF POSSESSION. Brown v. Associates Fin. Servs. Corp., 255 Ga. 457, 339 S.E.2d 590 (1986).

"JUDGMENT" RELATES TO THE FINAL RESULT OF AN ACTION FOR DAMAGES. City of Brunswick v. Todd, 255 Ga. 448, 339 S.E.2d 589 (1986).

AMOUNT OF JUDGMENT IS DETERMINATIVE. --Under paragraph (6) of subsection (a), it is the amount of the underlying final judgment from which an appeal is taken, not the enumerations of error, which determines the direct or discretionary appealability of any given case. Ostrom v. Kapetanakos, 185 Ga. App. 728, 365 S.E.2d 849 (1988).

Direct appeal should have been filed by application from the state court's judgment awarding plaintiff $5,000 following defendant's appeal to the state court from the magistrate court's judgment entered in plaintiff's favor. Salaam v. Nasheed, 220 Ga. App. 43, 469 S.E.2d 245 (1996).

A direct appeal was not authorized from an order denying plaintiff's motion for new trial, motion to set aside the judgment, and motion to reopen default where the underlying judgment awarded to defendant on his counterclaim was less than $10,000. Khan v. Sanders, 223 Ga. App. 576, 478 S.E.2d 615 (1996).

Where the plaintiff failed to follow the procedure for discretionary appeal in a case where she was awarded $1,500 in damages, her direct appeal was dismissed. Jennings v. Moss, 235 Ga. App. 357, 509 S.E.2d 655 (1998).

DIRECT APPEAL ON ZERO AWARD. --Plaintiff was authorized to file direct, rather than discretionary, appeal as to "zero" award on main claim, and portion of judgment pertaining to counterclaim on which less than $10,000 was awarded would also be reviewable on direct appeal. Robinwood, Inc. v. Baker, 206 Ga. App. 202, 425 S.E.2d 353 (1992).

AMOUNT OF DAMAGE JUDGMENT APPLICABLE, WHETHER ISSUES DECIDED BY COURT OR JURY. --An application to appeal is required when a party seeking a money judgment prevails, that is, a judgment for some sum is obtained but the award is $2,500.00 or some lesser sum. The use of the amount of the judgment would apply whether the issues are decided by the court or by a jury. Brown v. Associates Fin. Servs. Corp., 255 Ga. 457, 339 S.E.2d 590 (1986).

Paragraph (a)(6) applies to judgments in the amount of $2,500.00 or less (now $10,000.00 or less) obtained by verdict following a bench or jury trial as well as by summary judgment. Jarrett v. Ford Motor Credit Co., 178 Ga. App. 600, 344 S.E.2d 440 (1986).

AWARDS FOR BAD FAITH are within the category of "damages" as contemplated by paragraph (a)(6), requiring an application to appeal in all actions in which the judgment is $2,500.00 or less. MTW Inv. Co. v. Vanguard Properties Fin. Corp., 179 Ga. App. 403, 346 S.E.2d 575, aff'd, 256 Ga. 318, 349 S.E.2d 749 (1986); Landor Condominium Consultants, Inc. v. Colony Place Condominium Ass'n, 195 Ga. App. 840, 395 S.E.2d 25 (1990).

WHERE THE JUDGMENT WAS A DETERMINATION OF NONLIABILITY on the part of defendant, as such it is a matter of direct appeal and not controlled by the requirements for discretionary appeal in paragraph (a)(6). Consequently, appellee's motion to dismiss for failure to comply with subsection (a)(6) must be denied. Turner v. Taylor, 179 Ga. App. 574, 346 S.E.2d 920 (1986).

WHERE TRIAL COURT ENTERED JUDGMENT FOR $800.00, AFTER JURY RETURNED VERDICT OF $5,800.00, but the parties had stipulated that any jury verdict would be reduced by $5,000.00, as that amount had already been received by plaintiff under his insurance

coverage, plaintiff was required to follow the discretionary appeal procedure of paragraph (6) of subsection (a) of this section. Barikos v. Vanderslice, 177 Ga. App. 884, 341 S.E.2d 513 (1986), overruled on other grounds, Bales v. Shelton, 260 Ga. 335, 391 S.E.2d 394 (1990).

TOTAL DAMAGES BASIS FOR JURISDICTION. --In a case on an insurance contract, the total damages at stake in the case, not the damages remaining after set-offs, determined jurisdiction under this section; where total damages before set-offs were over $10,000, this section did not apply and direct appeal was proper. Eberhardt v. Georgia Farm Bureau Mut. Ins. Co., 223 Ga. App. 478, 477 S.E.2d 907 (1996).

AMOUNT OF JUDGMENT REDUCED BY PAYMENTS FROM COLLATERAL SOURCE. --In a tort action, set-offs to the judgment that arise from some collateral source -- such as prior payments, or pre-existing debts -- should not be considered when deciding whether an application for appeal is necessary under subsection (a)(6). Bales v. Shelton, 260 Ga. 335, 391 S.E.2d 394 (1990).

The prospective application of Bales v. Shelton, 260 Ga. 335, 391 S.E.2d 394 (1990) applies only to those pending appeals in which the appellant had relied on the prior holdings in City of Brunswick v. Todd, 255 Ga. 448, 339 S.E.2d 589 (1986) and Barikos v. Vanderslice, 177 Ga. App. 884, 341 S.E.2d 513 (1986). It was not intended in Bales to require the dismissal of an appeal of a judgment that exceeds $2,500 (now $10,000), prior to set-offs from a collateral source, on the ground that, at the time the notice of appeal was filed, an appeal application was required under Barikos. Lee v. Britt, 260 Ga. 757, 400 S.E.2d 5 (1991).

JUDGMENT ENTITLING LANDLORD TO RETAIN A $2,500 EARNEST MONEY DEPOSIT as liquidated damages, and requiring tenants to pay $1,200 as increased rent, exceeded $2,500, and, accordingly, was subject to direct appeal. Alexander v. Steining, 197 Ga. App. 328, 398 S.E.2d 390 (1990).

DISPOSSESSORY ACTIONS. --This Code section is applicable only to dispossessory actions in which the only issue to be resolved is rent due of $2,500 or less. Housing Auth. v. Bigsby, 200 Ga. App. 878, 410 S.E.2d 44 (1991).

EFFECT OF CO-PLAINTIFF'S JUDGMENT. --Although the judgment for one plaintiff was less than $10,000, the judgment was appealable without application, since no application was required for appeal of a zero award judgment to his co-plaintiff. Smith v. Curtis, 226 Ga. App. 470, 486 S.E.2d 699 (1997).

7. APPEALS UNDER § 9-11-60

DENIAL OF APPLICATION FOR DISCRETIONARY REVIEW. --A denial of the application for discretionary review could have been based merely on a determination that the application was rendered redundant and unnecessary by the pendency of a present appeal and did not constitute a prior adjudication of the merits of the present appeal. Berger & Washburne Ins. Agency, Inc. v. Commercial Ins. Brokers, Inc., 204 Ga. App. 146, 418 S.E.2d 640 (1992).

DENIAL OF MOTION TO SET ASIDE JUDGMENT. --While the denial of a motion to set aside may be considered appealable in its own right where the motion is filed pursuant to Code Section 9-11-60(d), the right of appeal is conditioned, under such circumstances, upon compliance with the application procedures set forth in this Code section. North Carolina Constr. Co. v. Action Mobilplatform, Inc., 187 Ga. App. 507, 370 S.E.2d 800 (1988).

Appeals from the denial of a motion to set aside the judgment under § 9-11-60(d) are subject to the discretionary appeals procedure even when coupled with motions for a new trial or judgment n.o.v. Fabe v. Floyd, 199 Ga. App. 322, 405 S.E.2d 265, cert. denied, 199 Ga. App. 906, 405 S.E.2d 265 (1991).

Unless tied to a directly appealable order, an appeal from the denial of a motion to set aside a judgment under this subsection requires a timely application to the appellate court for permission to pursue a discretionary appeal. Thierman v. Thierman, 234 Ga. App. 716, 507 S.E.2d 489 (1998).

An appeal from an order denying a motion to set aside filed pursuant to § 9-11-60(d) is subject to the application procedures set forth in subsection (b). Agency Mgt. Servs. v. Escape Travel/Tour Servs., 199 Ga. App. 882, 406 S.E.2d 285 (1991).

Since, regardless of how appellant's motion was denominated, the basis of the motion was that the consent judgment was entered in violation of the settlement agreement, the proper vehicle through which to take exception to the judgment was a motion to set aside and not a motion for new trial. Accordingly, appellant failed to follow the discretionary appeal procedures of § 5-6-35(b). Magnum Communications, Ltd. v. IBM, 206 Ga. App. 131, 424 S.E.2d 379 (1992).

An order which simultaneously denies both a motion for new trial and a motion to vacate or set aside a judgment is not directly appealable. Gooding v. Boatright, 211 Ga. App. 221, 438 S.E.2d 685 (1993).

Denial of defendant's motion to set aside the judgment required an application for discretionary appeal. Bonnell v. Amtex, Inc., 217 Ga. App. 378, 457 S.E.2d 590 (1995).

Plaintiffs' notice of direct appeal did not confer appellate jurisdiction on the court to consider the trial court's denial of their motion to set aside a judgment which incorporated an arbitration award in the absence of a proper and timely order granting permission to pursue a discretionary appeal. Anderson v. GGS Hotel Holdings, Ga., Inc., 234 Ga. App. 284, 505 S.E.2d 572 (1998).

The court lacked jurisdiction to hear the caveator's appeal of the probate court's order denying the caveator's motion to set aside the court's previous orders granting letters of dismission to the executrix, where the caveator's direct appeal was untimely and the caveator's application to the appellate court for a discretionary appeal also was untimely. Thierman v. Thierman, 234 Ga. App. 716, 507 S.E.2d 489 (1998).

DENIAL OF MOTION TO SET ASIDE DEFAULT JUDGMENT. --The Court of Appeals lacks jurisdiction to consider a direct appeal from a trial court's order denying a motion to set aside a default judgment where the court previously held that a discretionary appeal was the only appellate remedy available and the application for a discretionary appeal was denied. Lewis v. Sun Mgt., Inc., 187 Ga. App. 591, 370 S.E.2d 840 (1988).

Although the Court of Appeals had jurisdiction to consider the grant of appellee's § 9-11-60(g) motion to correct a clerical mistake in a default judgment, the court had no jurisdiction to address the denial of appellants' § 9-11-60(d) motion to set aside the default judgment, because an application must be filed to appeal from an order denying a motion to set aside a judgment. Brooks v. Federal Land Bank, 193 Ga. App. 591, 388 S.E.2d 704 (1989); TMS Ins. Agency, Inc. v. Galloway, 205 Ga. App. 896, 424 S.E.2d 71 (1992).

APPEAL FROM DENIAL OF MOTION FOR RELIEF FROM FOREIGN JUDGMENT based on the foreign state's lack of personal jurisdiction was subject to this section. Okekpke v. Commerce Funding Corp., 218 Ga. App. 705, 463 S.E.2d 23 (1995).

CORRECTION OF CLERICAL MISTAKES. --Although, basically, the import and result of motions to set aside and to correct judgments are in most instances identical, and logically the Legislature probably did not contemplate allowing direct appeals from orders under § 9-11-60(g) (correcting clerical mistakes) while mandating a discretionary approach for those under § 9-11-60(d) (motion to set aside judgment), the clear language of the statute prevents an interpretation which would render both motions subject to subsection (b) of this section, and, therefore, § 9-11-60(g) motions do not require applications to appeal. Crawford v. Kroger Co., 183 Ga. App. 836, 360 S.E.2d 274, cert. denied, 183 Ga. App. 905, 360 S.E.2d 274 (1987).

MOTION FOR LIMITED REMAND. --Where consideration of an issue raised in a motion for

limited remand is not necessary to the disposition of an appeal, it is appropriate that the normal procedure for motions under § 9-11-60(d)(2) be followed, including procedures for appellate review if necessary. Fabe v. Floyd, 199 Ga. App. 322, 405 S.E.2d 265, cert. denied, 199 Ga. App. 906, 405 S.E.2d 265 (1991).

8. ATTORNEY'S FEES OR EXPENSES

WHEN APPLICATION NOT REQUIRED. --A judgment awarding attorney's fees and costs of litigation pursuant to § 9-15-14 may be reviewed on direct appeal, when it is appealed as part of a judgment that is directly appealable. The application required by this section need not be filed on the separate costs and fees issue. Haggard v. Board of Regents, 257 Ga. 524, 360 S.E.2d 566 (1987); Mitcham v. Blalock, 268 Ga. 644, 491 S.E.2d 782 (1997). But see Felix v. State, 271 Ga. 534, 523 S.E.2d 1 (1999).

AN APPEAL FROM AN AWARD OF EXPENSES OF LITIGATION under § 9-15-14 is discretionary when not appealed as part of a judgment that is directly appealable. Cheeley-Towns v. Rapid Group, Inc., 212 Ga. App. 183, 441 S.E.2d 452 (1994).

DIRECT APPEAL FROM AN AWARD OF ATTORNEY FEES UNDER § 9-15-14 was not properly before the Court of Appeals after the directly appealable judgment was dismissed. Roberts v. Pearce, 232 Ga. App. 417, 501 S.E.2d 555 (1998). See Burns v. Howard, 239 Ga. App. 315, 520 S.E.2d 491 (1999).

FAILURE TO FOLLOW REQUISITE DISCRETIONARY APPEALS PROCEDURES. --Employer's failure to follow the requisite discretionary appeals procedures of O.C.G.A. § 5-6-35 deprived the appellate court of jurisdiction to consider the claim that the trial court erred in granting the employee attorney fees on the employee's claim against the employer for past wages. Capricorn Sys. v. Godavarthy, 253 Ga. App. 840, 560 S.E.2d 730 (2002).

LACKING APPLICATION, APPEAL DISMISSED. --Appeals from awards of attorney fees or expenses of litigation under Code Section 9-15-14 require application for appellate review. Lacking such an application, the appellate court is without jurisdiction to entertain the appeal and it must be dismissed. Loveless v. Pickering, 187 Ga. App. 49, 369 S.E.2d 281, cert. denied, 187 Ga. App. 908, 369 S.E.2d 281 (1988); Morris v. Morris, 226 Ga. App. 799, 487 S.E.2d 528 (1997).

CHALLENGE TO AWARD OF ATTORNEY'S FEES DENIED. --Defendant's challenge of award of attorney's fees to plaintiff based on the frivolous nature of defendant's adverse possession defense to an ejectment action was not properly before the Court of Appeals since defendant's appeal was from the dismissal of his prior appeal rather than from the underlying claim. Boveland v. YWCA, 227 Ga. App. 241, 489 S.E.2d 35 (1997).

CONSTRUED WITH 5-6-34(A). --Even though the amount of attorney fees awarded by a trial court was less than $10,000, a petition for inspection and copying of records was not an action for damages necessitating a discretionary appeal under 5-6-35(a)(6). Motor Whse., Inc. v. Richard, 235 Ga. App. 835, 510 S.E.2d 600 (1998).

9. ZONING CASES

PARAGRAPH (A)(1) APPLICABLE TO APPEALS IN ZONING CASES. --All zoning cases appealed either to the Court of Appeals or the Supreme Court of Georgia must come by application, since in neither case is the appeal direct because it is an appeal from the decision of a court reviewing a decision of an administrative agency within the meaning of this section. Trend Dev. Corp. v. Douglas County, 259 Ga. 425, 383 S.E.2d 123 (1989).

APPLICATION TO COURT OF APPEALS REQUIRED. --Appeals from decisions in zoning cases require an application to the Court of Appeals for permission to pursue a discretionary appeal, pursuant to paragraph (a)(1) of this section. City of Byron v. Betancourt, 242 Ga. App. 71, 528 S.E.2d 841 (2000).

DISMISSAL OF APPEAL REVIEWING ZONING TRIBUNAL DECISION. --Paragraph (a)(1) is applicable to appeals from a decision of a superior court reviewing a decision of a local zoning tribunal where the superior court dismissed the appeal based on the appellants' failure to serve the appellee with a copy of the petition in a timely manner. Ross v. Mullis Tree Serv., Inc., 183 Ga. App. 627, 360 S.E.2d 288 (1987).

THE COURT WAS WITHOUT JURISDICTION to hear the appeal of a zoning case since appellants failed to file an application as required by Trend Dev. Corp. v. Douglas County, 259 Ga. 425, 383 S.E.2d 123 (1989). Pruitt v. Fulton County, 210 Ga. App. 873, 437 S.E.2d 861 (1993); OS Adv. Co. v. Rubin, 267 Ga. 723, 482 S.E.2d 295 (1997).

DENIAL OF INJUNCTIVE RELIEF. --Appeal from denial of injunction filed to enforce a zoning ordinance was not a superior court review of an administrative decision; it was therefore directly appealable under § 5-6-34(a)(4), and did not fall under the purview of paragraph (a)(1) of this section so as to require the grant of an application for discretionary appeal. Harrell v. Little Pup Dev. & Constr., Inc., 269 Ga. 143, 498 S.E.2d 251 (1998).

DIRECT APPEAL WAS PROPER where zoning case did not involve superior court review of an administrative decision. White v. Board of Comm'rs, 252 Ga. App. 120, 555 S.E.2d 45 (2001).