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# THE FAMILY LAWYER

Official publication of the  
Atlanta Bar Association's  
Family Law Section

April 2006  
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### Quote of the Month

"There is no greater joy nor greater reward than to make a fundamental difference in someone's life."

- Sister Mary Rose McGeady

## DR. NANCY A. MCGARRAH SPEAKS AT BREAKFAST

By Alice Limehouse Mason, The McNaull Law Firm

On March 9, 2006, Dr. Nancy A. McGarrah addressed the Family Law Section members at our monthly breakfast meeting. Dr. McGarrah and Dr. Barrie Alexander together form Cliff Valley Psychologists, P.A. With Shiel Edlin, Dr. McGarrah is program co-chair of the Family Law Institute, which this year is a joint program with the Georgia Psychological Association.

Dr. McGarrah is thrilled about the upcoming Institute. She said that most psychologists think of working with lawyers and going to court as they do of walking over hot coals. She enjoys forensic psychology and is excited about other psychologists

having exposure to the family law bar. There is a huge advantage for children when psychologists and lawyers work together during the divorce process to achieve the best custody arrangement for the children that takes into consideration the children's developmental needs. Dr. McGarrah touched on the following topics during the breakfast:

1. Prior Contact With Child: Dr. McGarrah believes that prior contact between a parent and child is not terribly significant when considered alone. The evaluation process is a big puzzle and prior contact

is just one piece. With which parent the child has become attached is, however, a major consideration.

2. Eighteen Months to Three Years: The first three years determine much about what a child will be like later in life. All sorts of things, including serial killing, can be traced back to the child's early attachments. It is important to make sure that whatever plan is implemented, that it not mess up the child's attachment.

An eighteen-month to three-year-old child needs consistent contact with his or her attachment object(s). It may be helpful to use a Psy-

chologist in your custody cases if possible, to determine to whom the child is attached and craft the custody schedule accordingly. It is important to protect this attachment, not necessarily make the parents happy. It is not about being fair, but about the child's long-term stability.

Kids this age are neurologically affected by exposure to conflict between their parents. CAT scans have shown that neural pathways actually change in otherwise healthy children who are exposed to conflict or violence between their parents. These changes **SEE MCGARRAH, page 2**

## RECENT DECISIONS

By Melody Z. Richardson, Pachman Richardson, LLC

The question of whether money received from parents during a marriage is a gift or a loan was considered again by the Supreme Court of Georgia in *Baker v. Baker*, \_\_\_ Ga. \_\_\_ (2/27/06)(2006 WL 452838). The jury found that a \$170,000 check from the Wife's parents' partnership, payable to the Wife and placed by the Husband into a stock trading account which thereafter lost most of its value, was a gift and not a loan. The Court relied upon O.C.G.A. § 44-5-84, which provides that "the delivery of personal property by a parent into the exclusive possession of a child living separate from the parent creates the presumption of a gift to the child." The Court held the presumption is applicable even though the check was drawn on the partnership's account, because, although a partnership is treated as a legal entity for certain purposes, it has no actual legal identity aside from that of its partners. As there was no written contract evidencing a loan to rebut the presumption

of a gift, despite the fact that the distribution was referred to as a loan on the partnership records, and despite the fact that interest payments were made to the partnership, there was sufficient evidence for the jury to resolve the factual dispute to find the \$170,000 was a gift rather than a loan. The Court wrote that "regardless of how much counter evidence the opponent has presented to rebut the presumed fact, the presumption remains alive through jury instructions and can only disappear if the jury decides to discount it."

In *Searcy v. Searcy*, \_\_\_ Ga. \_\_\_ (3/13/06), the Supreme Court upheld the trial court's ruling that a portion of the Husband's undivided interest in the estates of his late parents may be awarded as alimony. However, the matter was before the court for interlocutory review of several issues, including the

**SEE DECISIONS, page 3**

**MCGARRAH, continued from page 1**

do not repair easily. Parents often say that the children are not aware of the violence between them, but a study has shown in 80% of the cases, this is not true.

Both parents can establish bonds with their children. In cases where a parent has not established a bond with a child, gradual visitation will be recommended to avoid disrupting attachment.

3. Toddlers: A toddler's main job in life is to explore their environment. The caregiver of a toddler must create a safe environment to explore and it must be permissible for the child to explore. Parents that are so caught up in their own identity often prevent exploration and thus prevent the child from individuating from the parent. Toddlers begin to blame themselves for the conflict between their parents and see the world in terms of good and bad. Often toddlers need a lot of explanation to help them transition through the divorce process.

4. Time: Adults adjust to new situations by understanding time sequences. Children under the age of seven do not understand time very well. Children under the age of three do not understand the concept of "tomorrow." It is important to be aware of children's concept of time and to come up with ways to make the children feel secure.

5. Overnight Visitation With Infants and Toddlers: This is a very hotly contested topic right now. The bottom line is to consider the attachments and attachment history of the child and be very careful about preserving attachments during the first three years.

6. Elementary School Age Children:

Distance: Travel is the number one complaint among elementary school age kids. As kids get older, their desire to be with their parents goes down because they have their own activities and social lives. Longer distances (interstate especially) are even worse.

Kids Want Their Parents Back Together: Elementary age kids have fantasies about their parents reuniting. It does not matter if both parents have remarried and have babies. Children believe that if they are bad enough, sick enough, or mean enough to a step-parent or step-sibling that their parents will have to get back together.

Caretaking: As a manifestation of worry about the divorce, children become caretakers of their parents. Loyalty binds come into play here. Kids this age love both parents, often regardless of how a parent has treated them in the past. When parents put kids in loyalty binds, the kids can develop depression or become aggressive at school.

Anger: Older elementary kids can be very angry about the divorce, especially if they have to change schools. Changing schools disrupts the child's friendship base, which becomes increasingly important as a child gets older. Older elementary children are more likely to judge their parents and identify one or the other as being at fault. Pre-adolescent children are sure of answers and can be very moralistic.

7. Parental Alienation: Parental alienation is not a syndrome, although it is often referred to as such. Syndromes, like battered child syndrome, have medical backgrounds. Parental alienation is real, but does not have a medical background.

Parental alienation occurs in families on a continuum from somewhat disengaged to severely alienated. Everyone plays a part in where the family falls in the continuum, including mom, dad, the children, the therapist, and the lawyers. By misinterpreting what is said by a parent or the child, situations can be exacerbated without need.

**The Following Attorneys have taken  
Pro Bono Cases this past month:**

**GAL:**

Mindy Planer  
Haley Schwartz  
Tamera Woodard  
Maile Gilmore  
Sara Maurer  
Mike Brooks  
Charla Strawser  
Bridget Bobick  
Noelle Lagueux Alvarez  
Ryan E. Harden  
Jessica McKinney  
Susan Moss  
Sara Galloway  
Collen Beard

**Divorce:**

Blake Halberg  
John Killeen  
Randie Siegel  
Teresa Lazzaroni

**THANK YOU!!!**

Please contact Dan Bloom at AVL  
if you can help next month.

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**DECISIONS, continued from page 1**

review of the trial court's decision to allow the Wife to join the Husbands parents' estates and the co-executors of the estates as third parties in the divorce action. The Supreme Court held that there was no basis to join the co-executors in the divorce action, as there was no evidence that any marital property was in either estate or that the Husband had co-mingled marital assets with property of the estates.

In *Corbett v. Corbett*, \_\_\_ Ga. \_\_\_ (3/27/06)(2006 WL 756072), the Supreme Court held that the trial court's ruling to deny the Husband's motion for partial summary judgment in which he sought to enforce an antenuptial agreement was not error. The agreement was signed three days before the parties' marriage, but the evidence was uncontroverted that Wife had not read the agreement prior to signing it, she did not have an attorney review or explain the agreement, she did not provide Husband a list of her personal property and assets or their estimated value, and she had no knowledge, independent or otherwise, as to the amount of Husband's income. After 15 years of marriage, the Wife filed for divorce. The Supreme Court held that the antenuptial agreement failed to meet the factors enumerated in *Scherer*, and, therefore, was unenforceable. The Court distinguished its recent decision in *Mallen v. Mallen*, on the grounds that the wife in that case was deemed to be aware of husband's significant income from the high standard of living enjoyed before the marriage.

The venue provisions of the UCCJEA were upheld over a constitutional challenge in *Devito v. Devito*, \_\_\_ Ga. \_\_\_ (3/27/06)(2006 WL 756055). The parties were divorced in Taylor County in 1997 and the mother, who was awarded sole custody of the parties' child, moved to Louisiana in 2002. The father continued to reside in Taylor County, and brought a motion to modify visitation and custody. The mother was served under the Georgia Long Arm Statute, and filed a motion to dismiss for lack of personal and subject matter jurisdiction challenging the constitutionality of the jurisdiction provisions of the UCCJEA. The Supreme Court held that Art. VI, Sec. II, Par. VI, which requires that civil cases not addressed by other constitutional provisions be tried in the county where the defendant resides, does not apply to out of state defendants "for the obvious reason that they do not reside in any county in this State. Thus, there was no merit to the argument that the UCCJEA improperly varies Georgia's constitutional venue provisions.

**WHAT'S COMING UP...**

April 13 - Family Law Section Breakfast - Representative Stephanie Stuckey Benfield, Esq. will discuss "Hot Topics in the Legislature"

May 11 - Family Law Section Breakfast - Justice Harold D. Melton, the newest member of the Georgia Supreme Court

**Kessler & Schwarz, P.C.** has become **Kessler Schwarz & Solomiany, P.C.** Congratulations to **Marvin Solomiany**. **Kessler Schwarz & Solomiany, P.C.** is also pleased to announce that **Jon Hedgepeth** has become a partner.

**SB 382 PASSES**

By **Andrea Knight and Shelley Senterfitt, Senterfitt & Knight, LLC**

March 30<sup>th</sup> marked the 40<sup>th</sup> day of the 40-day General Assembly session and the final passage of SB 382, setting forth Georgia's new child support guidelines. The final House vote was postponed because of an impasse on the parenting time adjustment, which had been amended in House Judiciary to provide for changes in child support for every single day of visitation between 90 and 182 days. While there were certainly differing opinions within the section as to the desirability of the parenting time adjustment, We think we speak for all of us when we say we are grateful that the final amendments spared us from the headache of accounting for little Billy and Susie's whereabouts every single day of the year as we hammer out agreements in mediation.

Here is a general summary of the final amendments on Day 40 that garnered sufficient support for SB 382 to pass the House of Representatives and be signed by the Governor. The full text of SB 382 as passed can be found at: [http://www.legis.state.ga.us/legis/2005\\_06/fulltext/sb382.htm](http://www.legis.state.ga.us/legis/2005_06/fulltext/sb382.htm)

**Willard Amendment** (sponsored by Rep. Wendell Willard)

- Charges the Child Support Commission with studying the issues of discretionary appeals in domestic relations cases, programs to reduce litigation in child support and custody cases, and the impact of the parenting time adjustment.
- Amends the theoretical support order section to provide that theoretical support orders may only be considered if the court finds that such consideration is in the best interests of the child or children that are the subject of support order.

**Jones Amendment** (sponsored by Rep. Jan Jones)

- Amends the standard for modification to retain the two year bar on modification. Modification may be made in less than two years where a parent has suffered an involuntary loss of income, as defined by statute. SB 382 as passed retains references to modification within the two years based on deviation in visitation schedules, grounds presumably rendered moot by the Lindsey Amendment.
- Alters the phase-in so that where the change between orders is 15% or more, the court may phase in the new amount over one year, and where the changes is 30% or more, may phase in the new amount over two years.
- Delays the effective date of all portions of SB 382 to January 1, 2007, with the exceptions of the provisions related to the Child Support Commission.

**Lindsey Amendment** (sponsored by Rep. Ed Lindsey)

- Deletes the Parenting Time Adjustment formula entirely.
- Allows the court to deviate from the presumptive award in the case of extended parenting time.

Special thanks to the Governor's office, Jan Jones, Wendell Willard, and Ed Lindsey for their leadership in finalizing SB 382 on Day 40. It is worth noting that the concepts behind all three amendments had already been proposed by Rep. Mary Margaret Oliver in Judiciary Committee but were rejected by advocates for SB 382 as introduced.

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**Family Law Section Breakfast**  
**Speaker: Rep. Stephanie Stuckey Benfield**  
***“Hot Topics in the Legislature”***

Thursday, April 13, 2006 at 7:30am  
*The Buckhead Club, 3343 Peachtree Road*  
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