



# FAMILY LAWYER

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

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### Quote of the Month

"But all endings are also beginnings. We just don't know it at the time."

Mitch Albom

## JUSTICE BENHAM IS KEYNOTE SPEAKER FOR ANNUAL FAMILY LAW LUNCHEON

By Jon W. Hedgepeth, Hedgepeth & Heredia, LLC

Georgia Supreme Court Justice Robert Benham addressed the Family Law Section at its annual Family Law Luncheon on November 9th at the Georgia Railroad Depot. Justice Benham, who was appointed to the Court of Appeals in 1984, became a Georgia Supreme Court Justice in December, 1989 by appointment by Governor Joe Frank Harris. He later won the statewide election to a full term on the Supreme Court on July 17, 1990. He has served continually ever since.

Justice Benham reflected fondly of his 37 year career, both in private practice and on the bench. The Justice reminisced with the audience and shared a number of stories relevant to the practice of law and his philosophy. "Your practice gives me one of the real joys I have on the bench," he said. Justice Benham went on to say, "In each controversy there is a winner and a loser. Often times you create a friend and an

enemy, sometimes you create two enemies. Very seldom do you create two friends." Justice keeps in his desk drawer, pictures of children whose adoptions he has handled which he looks at from time to time to remind himself of something good and right he has done.

Justice Benham says that the generation he represents is known as the romantic generation and that they see the good in everything that happens. By way of

example, he said, "If someone tries to stab us in the back, we see that as a failed attempt to pat us on the back. If someone tried to hold us down, we see that as a feeble attempt to lend a helping hand."

When Justice Benham first ran for office shortly after being appointed by the Governor for the Court of Appeals, his campaign staff asked him to go to the MARTA station at 5:00 a.m. to shake

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## MESSAGE FROM THE CHAIR

By Lauren G. Alexander

Dear All:

Once again it's that time of year, preparing for the holidays, wondering why business is slow, making sure the corporation has no excess funds in it, hoping for snow, finagling invitations to the holiday parties with the best food, wondering why you didn't get that gift basket you got last year and waking up at 3:00 am December 31 thinking you forgot to finalize a client's year end divorce.

Ah, the holiday season.

It is hard to believe that I am half way through the year as Chair of this section and I am sure the newsletter editor is breathing a sigh of relief that next year's Chair will be timely in submitting remarks for the newsletter.

The section has done quite a bit in the first half of the year. We have assisted in building a Habitat house, planted flowers with Park Pride and 2 people even turned out to plant trees with Trees Atlanta. We have provided volunteers for the Fulton County Family Law Information Center (FLIC), guardians ad litem and pro bono lawyers for victims of domestic violence.

We hosted a very successful luncheon honoring

the judiciary and heard wonderful remarks from Justice Benham.

Now we can look forward to our holiday party on December 14 at Smith's Old Bar, a section tradition, low key as it is. For those who have never attended, please join us. There is nothing fancy about it, just good fried food, and drinks and camaraderie with fellow family law attorneys, judges, and staff attorneys, sharing anecdotal stories and trying to figure out what January 2 will bring. We are all beginning a journey together, one that will impact most of the children in this state, not to mention their parent's pocketbooks. I have yet to hear an attorney comment that we will make less money as we grapple with the challenges of preparing documents with the new child support calculators, so we all have the prospect of doing better next year to look forward to!

Please bring some of the items requested on the list we have previously printed for the Partnership Against Domestic Violence or at the very least, bring an unwrapped toy or two to the party.

Have a very happy holiday and a happy new year.

Lauren

**BENHAM, continued from page 1**

hands with constituents. He resisted this. Several minutes later, the Governor called and said, "I went to a great extent to appoint you to the Court, and I would hate to see you lose an election two months after you were appointed". He then promptly went to the MARTA station, taking two of his campaign workers with him. He reached to shake the hand of the second woman off the train, introduced himself, telling her he was running for the Court of Appeals. "I had a brisk practice, and I have been cursed out before," he recalled, "but I heard some language from this woman that I was not that familiar with." He looked for help from his committee people who just waived and smiled. Then he realized that no one else realized he was being cursed out but him, so he continued to pump her hand and smile until she left. His campaign manager later said, "I was going to come over and give her some brochures, but it was apparent that she was already one of your most fervent supporters." Justice Benham replied, "She sure was." This taught him a lesson: "In life, if you just keep your patience, even the worse things have a tendency of going away, and if you don't magnify them, then other people won't know that they were as bad as they really were."

The Justice talked about the notion of collegiality, and that the practice of law should be a cooperative effort and should be centered on solving community problems. "We are members of one of the three original professions: the law, the clergy, and medicine," the

Justice said, adding, "the clergy is involved in healing the soul, medicine is about healing the body, and the law is about healing the community." The practice of law is about solving the problems of the community. Justice Benham said that we must be clear as to the roles we serve as lawyers, as being one of problem solving.

In October, we apparently celebrated Customer Service Week. In foreign countries, according to Justice Benham, there are week-long magnificent celebrations of customer service and customer appreciation showing. "We need to pay more attention as lawyers. We [the Supreme Court] discipline a lot of lawyers, and most of that discipline is not about stealing money or tax evasion, but about poor customer relations and customer service," the Judge suggested, "this morphs into ethical violations, which morphs into failures to respond, morphing into attempts to cover up, which and ultimately morphs into disbarment. But it has its genesis in something as simple as customer service." "If you see your role as a healer of the community, the Justice said, "then you can easily embrace the notions of customer service, civility, courtesy, and all of the simple things that make the difference." "Listen to your client," the Justice urged. "Do not let them use your law degree to practice law, but do not use your law degree to aggravate what is not a bad situation. That is what the law is about, healing, not disrupting your community."

## FAMILY'S FIRST AWARD

By Melody Z. Richardson, Pachman Richardson, LLC and  
Jon W. Hedgepeth, Hedgepeth & Heredia, LLC

The Family's First award was presented at the annual Judicial Luncheon on November 9, 2006 at the Georgia Railroad Depot. Our section conceived of this award six years ago to recognize and honor members of the community who have gone above and beyond to promote the well-being of families simply because it is the right thing to do. As family law attorneys, we have a special obligation to the children of our state, to do all we can to help them become happy productive members of our society, regardless of the poor choices their parents may make.

This year's Family First Award was awarded to Lila Newberry Bradley, Esq. Ms. Bradley runs the Atlanta Volunteer Lawyer Foundation's One Child, One Lawyer Program which recruits and trains volunteer attorneys who each agree to represent the interests of and advocate for the rights of a single child throughout often lengthy court proceedings. Ms. Bradley has taken on the daunting task of protecting the 2000 child victims of abuse and neglect that are in the custody of the Georgia Department of Family and Children Services on any given day in DeKalb and Fulton Counties. So many children are in need of the assistance of an advocate to ensure that the child's position is heard and the child's interests are represented in legal proceedings that ensue in juvenile court after a child is taken into DFACS custody.

Lila has worked tirelessly to make the One Child, One Lawyer Program successful. Lila is married to Alan Bradley, a practicing attorney, and they have three children of their own. Lila took some time off from the profession when her children were younger to rear her children, but the One Child, One Lawyer Program was certainly lucky that she wanted to return to the practice of law with a focus on children. We are honored to have presented Lila with this year's Families First Award.

### WHAT'S COMING UP...

#### December 14, 2006

Family Law Breakfast, Judge Mark Anthony Scott, Superior Court of DeKalb County

#### December 14, 2006

Annual Holiday Party at Smith's Old Bar

#### January 11, 2007

Family Law Breakfast with Paula Frederick, General Counsel of the State Bar of Georgia, 1 Ethics hour available

### COLLABORATIVE PRACTICE TRAINING

#### Basic Interdisciplinary Collaborative Practice Training

February 2-3, 2007 or September 28-29, 2007

Cost \$650.00

Location: Atlanta, GA

Contact: Betsy Geisler @ 770-441-2323 or [bng@bngiesler.com](mailto:bng@bngiesler.com)

### PRO BONO OPPORTUNITIES

Volunteers are needed for 30 minute consults with a pro se client, should Atlanta Legal Aid conflict out. With the upcoming child support changes, there may be many more conflicts.

**When:** Anytime you have 30 minutes to give for a consult

**Time:** 30 minutes

**Where:** At your office or the Family Law Information Center

**Who to contact:** Please email Michelle Jordan at [MHJordan@AtlantaLegalAid.org](mailto:MHJordan@AtlantaLegalAid.org) to volunteer.

## RECENT DECISIONS

By Anita H. Lynn, Esq.

In the case of *Hammack v. Hammack* (S06A0762, 10/02/2006) Wife appealed from the trial court's denial of her motion to set aside a Final Judgment and Decree of Divorce. The Wife had acknowledged service on March 17, 2005 but did not return the executed Acknowledgment to Husband's attorney until late April. The Husband's attorney filed the Acknowledgment of Service with the clerk on April 29, 2005. Thereafter, Wife served Husband with her Answer and Counterclaim on June 13, 2005. In the interim, the Husband had taken an uncontested final on June 6, 2005. The trial court denied the Wife's motion, because the Final Judgment was entered more than 46 days after service of the Complaint. Wife claimed that the Final Judgment was entered prematurely under Uniform Superior Court Rule 24.6. The Supreme Court held that the Uniform Superior Court Rules are to be read in conjunction with substantive law and when there is a conflict, substantive law governs. The Georgia Civil Practice Act applies to divorce, alimony and child custody cases. Accordingly, the trial court was authorized to grant the divorce on June 6, 2005, since it was more than 30 days after the time an Answer would have been due. Even though the trial court had based its results on the Uniform Superior Court Rules rather than on statutory law, the trial court's decision was affirmed since it was correct. (Caveat: This opinion does not reflect that when the uncontested divorce was granted, the parties had been in the midst of negotiations and had exchanged offers of settlement. Without providing notice of the hearing to the Defendant or counsel acting on her behalf, the Plaintiff obtained an uncontested divorce. Although the ethical considerations for such behavior were addressed in the appeal, they were apparently not considered by the Supreme Court in its decision. This case should, therefore, serve as a continued warning to Defendants who choose not to file an Answer under these circumstances.)

In the case *Howington v. Howington*, S06F1408 (11/06/06), the Wife filed a Complaint for Divorce and served the Husband's son who lived in Fulton County, although at the time the action was filed the Husband resided in North Carolina. Husband did not answer the Complaint and did not appear at the scheduled hearing. The trial court issued a Final Judgment and Decree granting a divorce and awarding Wife one-half of Husband's civil service pension for life. Approximately seven years later, the Husband filed a motion to set aside, claiming that he was not properly served. Wife argued that Husband's motion was barred by laches. The trial court granted the motion, finding that Husband was not properly served and did not waive service of process. Thereafter, Wife continued to receive one-half of the Husband's pension benefits. In the second divorce proceeding, a new decree was entered in which Wife was ordered to reimburse Husband in an amount equal to the pension benefits she received after the entry of the 2004 order setting aside the first Decree of divorce. The Supreme Court held that the trial court correctly rejected the Wife's defense of laches, because she failed to demonstrate that she was harmed or prejudiced by the Husband's delay. Wife also appealed the trial court's decision to grant Husband relief not sought in his pleadings, i.e., the reimbursed pension benefits. However, Wife allowed this issue to be litigated without objection. When issues not raised by the pleadings are tried by express or implied consent, they are to be treated as if they had been raised; the claim is litigated with the "implied consent of the parties."

In the case of *Cason v. Cason* (S06A1442, 11/20/2006), the parties were divorced in 1995. Through 2004, the Husband was a chicken farmer and a shareholder/member of the Gold Kist Cooperative. As part of his membership, he received a portion of the Cooperative's earnings for each year of his membership. Pursuant to the parties' divorce Agreement, the Wife was to receive all of the Gold Kist Patron Dividend payments from 1987 through 1993; these "equity credits" were paid in cash and the payments were made approximately 15 to 25 years in the future. For example, the 1987 patronage equity would be paid by Gold Kist in 2007. The parties had attached an exhibit to their Agreement setting forth the

Husband's expected distributions for the years 1987 through 1993, which amounted to approximately \$150,000.00. In 2004, Gold Kist converted from a cooperative to a for-profit corporation and the Husband's equity position was converted to cash and common stock. Wife then requested that Husband transfer to her the cash and common stock attributable to the years 1987 through 1993 in lieu of her interest in the patron equity account for those years. Husband refused to do so. Wife then filed a petition for contempt. The trial court did not find the Husband in willful contempt but did order him to transfer to Wife the cash and Gold Kist stock. The trial court also awarded Wife attorneys fees, finding the Husband to be stubbornly litigious. The Husband appealed the trial court's decision to award Wife stock and cash, arguing that the trial court improperly modified the Final Decree. The Supreme Court held that a trial court always has the right to interpret and clarify its own orders. The test to determine whether or not an order has been clarified or modified is whether the clarification is reasonable or whether it is so contrary to the apparent intent of the original order as to amount to a modification. A trial court has the authority to insure compliance with the spirit and intent of its decree and no party shall be permitted to take advantage of the letter of the decree to the detriment of the other party. *Kaufmann v. Kaufmann*, 246 Ga. 266 (271 S.E.2d 175) (1980); *Smith v. Smith* (Case No. S06A0897); *Kirkendall v. Decker*, 271 Ga. 189 (516 S.E.2d 73) (1999); and *Perry v. Perry*, 265 Ga. 186 (454 S.E.2d 122) (1995). The Supreme Court further stated that the trial court is to look at the nature of the asset awarded to the Wife and whether the substituted asset is equivalent to the asset the parties bargained for. If it is in essence the same asset, the trial court did not improperly modify the terms of the Agreement. In the case at bar, the Supreme Court held that the trial court's determination was a reasonable clarification and was consistent with the intent and spirit of the final decree. The Husband then argued that even if the trial court's interpretation was correct, its calculation of damages was in error. The Supreme Court held that Wife's contempt petition was essentially a trover action in which she had alleged constructive conversion; therefore, the trial court had correctly applied O.C.G.A. § 44-12-152 to determine the value of personalty recoverable by Wife. Husband also alleged that the trial court erred in its award of attorneys fees. Since the trial court failed to consider the financial circumstances of both parties in assessing such an award pursuant to O.C.G.A. § 19-6-2(a)(1) and further failed to include findings of conduct that would authorize the award under O.C.G.A. § 9-15-14(b), the issue of attorneys fees was remanded for an explanation of the statutory basis for the award and any necessary findings.

### THE FOLLOWING ATTORNEYS HAVE TAKEN PRO BONO CASES IN OCTOBER AND NOVEMBER:

Divorces: **Please contact Dawn R. Smith at  
AVLF if you can help next month**  
Randie Siegel  
Allyson Pitts  
Denise Holmes  
Robert G. Wellon  
Stephen M. Gibbs

GAL:  
Angela Riccetti  
Bobby Burnett  
Patricia Charlton  
Jackie Payne  
Ray Carpenter  
Tamera Woodard  
Alyson Lembeck  
Susan Chiapetta  
Charles Gabriel  
Brooke Baryllick  
Jessie Altman  
Charla Strawser  
Denise VanLanduyt  
Collen Beard  
Denise Kaufman  
Allen Harris  
Brian Watt  
Dana Azar  
Jennifer Lambert  
Julie M.T. Walker  
Ping Yeung  
Laura Mendelson  
Debby Ebel  
Kay Fox  
Melissa Lu

Atlanta Bar Association  
The Family Lawyer 752-06-006  
400 International Tower  
229 Peachtree Street NE  
Atlanta, GA 30303-1601

**Family Law Section Breakfast**

**Speaker: Judge Mark Anthony Scott,  
Superior Court of DeKalb County  
1 Hour of CLE Available  
Thursday, December 14, 2006 at 7:30am  
The Buckhead Club, 3343 Peachtree Road  
\$15 pre-registered; \$18 at door**

Name \_\_\_\_\_

Yes, I would like \_\_\_\_\_ reservation(s)  
at \$15 each (\$18 at door).

Add \$5 for 1 CLE Hour

Check Enclosed

Please charge AMEX/VISA/MC

# \_\_\_\_\_

Exp. \_\_\_\_\_

Return this form to Atlanta Bar Association:  
400 International Tower; 229 Peachtree Street NE; Atlanta, GA 30303-1601; FAX: 404-522-0269