



THE FAMILY LAWYER

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

July/August 2007
Editor: Eileen Thomas
eileen@ethomaslaw.com

Family Law Section Board of Directors 2007-2008

Chair

John L. Collar, Jr.
jcollar@lawbck.com

Vice Chair/Chair-Elect

Melody Z. Richardson
melody@prfamilylaw.com

Secretary

Jon W. Hedgepeth
jhedgepeth@hhfamilylaw.com

Treasurer

Marvin Solomiany
msolomiany@kssfamilylaw.com

Immediate Past Chair

Lauren G. Alexander
lauren@collaborativelawoffice.com

Members-at-Large

Daniel A. Bloom
dan@prfamilylaw.com

David N. Marple
dmarple@dmqlaw.com

Eileen Thomas
eileen@ethomaslaw.com

Gary P. Graham
gary@stern-edlin.com

Atlanta Bar Association President

W. Ray Persons

Quote of the Month

"Oh, what a tangled
web do parents weave/
When they think that
their children are naive."

Ogden Nash

LAURIE DYKE ADDRESSES FAMILY LAW SECTION BREAKFAST

By Jon W. Hedgepeth, Hedgepeth & Heredia, LLC

Laurie Dyke with the Investigative Accounting Group, gave a very informative Power Point presentation to the well-attended July monthly breakfast group on the newest release of the Child Support Calculator. Laurie, for those who don't know her, is a Certified Public Accountant, Certified Fraud Examiner, and Certified Forensic Consultant with over 25 years experience as a financial investigator. She has been qualified as an expert

witness, assisted in numerous mediations, testified at depositions and trials.

Laurie is former Chairman of the Board of Visions Anew Institute, participates in the HalleBarryGroup of mostly retired FBI agents, and is a member of the American Institute of CPA's, the Georgia Society of CPA's, the Association of Certified Fraud Examiners, the American College of Forensic Examiners In-

ternational and the Collaborative Law Institute of Georgia. She graduated from the University of California at Berkeley with a B.S. in Business Administration.

Most importantly, for the purposes of her speech in July, Laurie is a member of the Worksheet committee for the Child Support Commission. She was very instrumental in developing forms and business rules for the electronic calculators we have come to know

and love. She further serves as a member of the Training Committee for the Child Support Commission which provides training for attorneys, judges and staff on the new child support calculator.

One of the new features of Release "C" of the web-based Child Support Worksheet, released in early July, is a "frequency calculator," meaning that if income is received weekly, for example, it converts to

SEE DYKE, page 2

RECENT DECISIONS

By Anita H. Lynn, Anita H. Lynn, PC

During the pendency of the divorce action in the case of *Chatfield v. Adkins-Chatfield*, S07F0197 (06/04/07), Husband was ordered to provide Wife with suitable transportation, which he failed to do. An order on contempt was issued, requiring Husband's immediate incarceration. In a series of subsequent orders, Husband was directed to provide Wife with a 1999 Ford Expedition, titled in her name, free and clear of all liens. He delivered the automobile to Wife but failed to provide the title. In a subsequent contempt action, the parties reached an agreement, which was incorporated into a court order, requiring Husband to provide Wife with the title to the Ford Expedition within eight days. Approximately five months later, Husband had failed to provide Wife with proof of ownership of the automobile, preventing her from obtaining a license tag or her own insurance. During this five month period, the car was involved in a collision and declared a total loss. Since Husband refused to provide Wife with the title, he filed a claim for the loss and received the insurance proceeds in the amount of \$14,593.00. The Court subsequently entered an oral order finding that Husband owed Wife

the \$14,593.00 insurance proceeds and directing him to pay it to her within five days. When he failed to comply with the order, a show cause hearing was held, and Husband was again found in contempt. In the court's oral pronouncement, the court ordered that in addition to the \$14,593.00, Husband was also to pay the additional sum of \$1,500.00 for each day that passed until this amount was paid in full, plus Wife's attorney's fees of \$1,500.00. Four days later, the court issued a written order, *nunc pro tunc*, memorializing this oral directive. In Husband's first enumeration of error, he contended that the evidence failed to show that he willfully and intentionally violated a lawful court order since the money came due prior to the entry of the written order; he contended that since the order had only been entered orally at that time, it was ineffective as a matter of law. The Supreme Court held that the finding of contempt was authorized, taking into consideration that in an earlier written Consent Order, Husband had been obligated to provide Wife with the title to

SEE DECISIONS, page 3

DYKE, continued from page 1

monthly. Also there is a new feature that excludes children from the calculation. For instance, in the event a child is nearing emancipation, it can calculate support after that event. Also, the main child support Worksheet now contains lines 9A and 9B, to show the presumptive support amount with and without the parenting time deviation. There is now the ability to copy children's expenses when you add a second child. One of the nicest features of the web-based calculator is that judges now have the ability to release the Worksheet back to the preparer, as opposed to the previous versions which caused the worksheet to disappear from the user's view once they were submitted to the judge. On Schedule A line 22 one now has the ability to explain imputed income. A user's guide is also available.

Ms. Dyke explained that there were not significant changes in the July release of the Excel calculator from the previous version except that, most notably, the Schedule "E" font size is much bigger than in previous versions.

The Web based version of April's calculator (Release "B") changed the order of data entry from the original version issued in January. Now the first screen is the parents' screen, then the children's, and then the child support work sheet. Navigation is much easier as well. This new release allows the user to jump around the document. Also in April, the Guided version of the web-based calculator was released. This is an interview driven calculator and is designed for users who have little or no understanding of the actual child support law or the worksheets, such as *pro se* litigants.

Release "B" in Excel added line numbers for the entry of children's names and fixed a text wrapping problem. On both versions (web-based and Excel), Schedule "E" changed. Lines 2 through 10 in the High Income and Other deviations section of Schedule E were originally informational only. Now, one is supposed to enter the amount of the deviation for the line item and it totals up on line 11. There are also two new columns for judges to use in Schedule "E", allowing them either to accept or reject proposed deviations without changing the amount originally submitted.

Ms. Dyke then identified a number of frequently asked questions that she receives from attorneys working with the calculator, which are as follows:

- 1) Q: The parties have agreed on a child support amount. Does the amount on the worksheet have to match the amount that they have agreed on and, if so, how do I make it match?

A: *Yes, the Worksheet must match the final child support award and the way to do that is to enter a non-specific deviation on Line 10 of Schedule E. Do not try to manipulate the other numbers to come up with the correct amount. Don't forget to enter findings of fact on Line 14 of Schedule E.*

- 2) Q: When I print the forms from the web-based calculator, they cut off on the right hand side

A: *You are printing the web pages themselves, not the forms. Go to Review on your green navigation bar, then click View Printer Friendly and print the actual forms*

- 3) Q: When I print the forms from the web-based calculator, all of the schedules print, even if I don't use them all

A: *Correct. No way to fix this at the current time. It will probably be fixed in a future release.*

- 4) Q: When I go to the Review page on the web-based calculator, it tells me that I need to answer the questions on Schedule E, but I don't have anything on Schedule E.

A: *Correct. You are required to enter something in the findings of fact boxes on Schedule E even if you are not using Schedule E. Just put "N/A" or something similar.*

- 5) Q: I have just started a new Worksheet in the web-based calculator. When I get to the Children's page, it has a button that says "Save for Later" but when I click it, I get an error message.

A: *This is a situation that was created when the order of entry was changed in April. You must enter the case and applicant information before you save but in the current flow you don't get to that page until after you have entered the children's information. You have two choices. You can enter the children's information without saving and then save for later after you have entered the case information on the main Worksheet. Or you can go to the Worksheet using the green navigation bar, enter the case and applicant information and then go back to the Children's page. This last is my preferred method because I am not comfortable entering a lot of data for the children without saving, in case there are internet problems.*

- 6) Q: I am working in the Excel calculator and I have #NAME in some of the cells. I think I have entered the names correctly.

A: *This error has nothing to do with anything you have entered. Even though the new version is not supposed to require the Analysis Toolpak, the only way I know to fix the #NAME error is to activate the Analysis Toolpak (Tools, Add-ins, check Analysis Toolpak)*

- 7) Q: When I get the question to Disable or Enable Macros when I open the Excel calculator, what do I do?

A: *Always Enable Macros. Set your Macro Security level to Medium (Tools, Macro, Security, Medium) and then enable macros when the file opens. Or, set your security level to low and you will not get the message when you open the file (not recommended).*

- 8) Q: In the Excel calculator, what is the checkbox for next to children's names and why do I need to mark it?

A: *It is to indicate whether or not you want the child to be included in the calculation or not, to allow you to calculate future child support. You must check the box to "activate" a child and then uncheck it to remove the child from the calculation.*

- 9) Q: A new version of the Excel calculator has just been released. How do I update my previous calculations to the new version?

SEE DYKE, page 4

WHAT'S COMING UP...

September 13, 2007...Family Law Breakfast, T.J. Ward

October 11, 2007...Family Law Breakfast, TBD

November 8, 2007 - Family Law Luncheon honoring the Judges of the Fulton County Superior Court

December 13, 2007 - Family Law Breakfast, TBD

DECISIONS, continued from page 1

the automobile, and he continuously failed to do so. He was well aware that the payment of the insurance proceeds, which represented the value of the vehicle he was to transfer to his Wife, was at issue. In Husband's second enumeration of error, he claimed that the imposition of a fine in the amount \$1,500.00 per day exceeded the power of the trial court, since there was no lawful order in place requiring him to pay the \$14,593.00. He also claimed that a \$1,500.00 per day fine is contrary to O.C.G.A. § 15-6-8(5); however, this code section addresses the imposition of a monetary fine for a criminal contempt citation and is not applicable to sanctions imposed for civil contempt. In the case at bar, this was a situation of civil contempt since the sanction imposed by the trial court was remedial in nature. Husband further argued that the imposition of a \$1,500.00 per day fine was excessive under the circumstances and an abuse of discretion. The Supreme Court disagreed, noting that the trial court had little other option but to make it potentially costly for the Husband, who refused to pay Wife the insurance proceeds, since he had a history of misconduct; the previous punishment by imprisonment had not worked to make him comply with the court's orders. The trial court had noted that the Husband had the ability to pay these funds yet refused to do so. Wife had been left with no transportation and no monetary means to replace the wrecked automobile. Consequently, the Supreme Court also disagreed with Husband's allegation that the fine resulted in "an inappropriate windfall" for Wife. He could have avoided the daily fine altogether by merely complying with his obligation to pay Wife the proceeds that he had wrongfully received. Husband also contended that the trial court violated his constitutional right to due process, since he had no notice that the issue of contempt for failure to pay the \$14,593.00 would be before the court during the trial of the divorce; O.C.G.A. § 9-11-60 provides that he be afforded reasonable notice. However, even though Husband's failure to pay was not before the court by motion of Wife, the trial court had the right to raise this issue *sua sponte*. Husband next asserted that the trial court erred by refusing to inform the jury prior to deliberation that it would award \$14,593.00 to the Wife. However, the record reflected that Husband had testified before the jury that he had received this amount of money from the insurance proceeds; the trial court had also instructed the jury that it would resolve this issue involving the automobile and the insurance proceeds. Therefore, the jury knew that the award of this money to Wife was possible. Husband also contended that the initial order requiring him to provide Wife with an automobile, free of all liens and good title, was an equitable division of property that should not have occurred at a temporary hearing. Nonetheless, Husband consented to provide this vehicle to resolve a contempt proceeding. In Husband's last enumeration of error, he claimed that the trial court abused its discretion in granting physical custody of the minor

children to the Wife. The Supreme Court found that there was ample evidence to support the custody award; a trial court's exercise of discretion will not be interfered with absence a clear abuse of discretion, which did not exist in the case at bar.

In the case of *Padilla v. Padilla*, S07F0463 (06/04/07), the parties had filed two previous divorce actions, before the instant action was filed in Cherokee County in April 2006. One of the previous cases had been filed in Gwinnett County and dismissed for lack of jurisdiction. The parties resolved the custody and visitation issues by agreement but submitted to the court the remaining issues of child support, property division, and attorney fees. The trial court subsequently awarded \$8,500.00 in attorney fees to the appellee and her counsel plus an additional \$7,200.00 to cover the cost of Wife's attorney in the Gwinnett County proceeding and a separate attorney who represented her in a proceeding before the IRS. The trial court's final order failed to set forth a statutory basis for its fee award. Wife contended that this award was proper under O.C.G.A. § 19-6-2; however, this code section does not support Wife's contention that the trial court may award fees incurred in prior proceedings, independent of the underlying divorce action. Consequently, that portion of the trial court's final order that awarded Wife \$7,200.00 in fees for services of prior attorneys was reversed. In Husband's next enumeration of error, he contended that there was insufficient evidence to support the trial court's award of \$2,500.00 to his Wife, as compensation for an automobile she purchased with her non-marital funds, which he sold without her consent after the separation. Husband had sold this car to a wholesaler for \$1,000.00. However, Wife had paid \$7,000.00 for the car five years earlier. The value of personal property for which recovery is sought may be supported by evidence of its purchase price coupled with evidence of the item's condition at the time of purchase and the time its value is at issue. With an automobile, the fact finder may draw from its own experience in forming estimates of market value, and the fact finder may legitimately exercise its own knowledge and ideas based upon the evidence. In the case at bar, the evidence was sufficient to support a finding that the value of the car was in excess of the \$1,000.00 wholesale value. In Husband's final enumeration of error, he claimed that the trial court erred by including as part of his gross income for purposes of child support calculations certain sums he received from his employer as reimbursement for job related moving expenses. The Supreme Court held that the trial court erred by including moving expenses in its calculation of his gross income, since reimbursed moving expenses do not improve his financial position. The Court noted that in a previous case, they had held that gross income did not include such benefits as employer contributions to the obligor's life and health insurance premiums and retirement plan; these benefits do not cover daily personal living expenses. This holding is consistent with the current child support guidelines that provide for the inclusion of in-kind benefits "if they significantly reduce personal living expenses."

In the case of *Bloomfield v. Bloomfield*, S07F0096 (06/04/07), the Supreme Court first noted the appropriate standard of review applicable to a bench trial, stating that the trial court's factual findings would not be set aside unless they are clearly erroneous. An appellate court properly gives due deference to the opportunity of the trial court to judge the credibility of the witnesses. In

SEE DECISIONS, page 4

DECISIONS, continued from page 3

Husband's first enumeration of error, he contended that the trial court erred in its division of several property interests. The first piece of property at issue is a home in Ponte Vedra, Florida. This property was originally purchased by the Wife's father and placed into a family limited partnership as the partnership's sole asset. Wife's father then gifted limited partnership interests to the Wife, her siblings, and to trusts for the benefit of the parties' children. Thereafter, the Wife's father gifted his one percent controlling interest as general partner to Husband. In 1998, the Husband and Wife bought out the limited partnership interest of the Wife's siblings but not the interest of their children's trusts. In 2001, the Husband, as a general partner, deeded the property from the partnership to himself and to Wife as joint tenants, without providing any compensation to the children's trusts. Because the interest of the children's trusts had never been satisfied, the trial court ruled that the children's trusts maintained a current ownership interest in the real property and that upon the future sale of the property, the trusts would be compensated in an amount equal to their original percentage ownership. Since the Husband explicitly admitted at trial that the children's trusts should be compensated for their partnership interest, he could not now contend that the trusts should receive no compensation. The issue then becomes the nature of this compensation. The Supreme Court held that pursuant to statutory law and the partnership agreement, the children were not entitled to an ownership interest in the property which the limited partnership no longer owned; however, they are entitled to cash compensation, including interest, for the value of their limited partnership interest in the property, which should have been distributed at the time Husband deeded the property away from the partnership. In regard to the second property interest at issue, the trial court awarded the Wife a security bank account, finding that this account was Wife's separate property and not subject to equitable division. The account had originally been established by the Wife's grandfather and father for the benefit of Wife prior to the marriage of the parties. Husband claimed to have managed the property, but he did not increase the value of the account. In fact, he had removed \$50,000.00 from the account, thereby diminishing its value. The trial court found that the property remained Wife's separate property, even though Husband claimed to have managed it, since he did not increase its value. The applicable standard of review is the "any evidence" rule, that is, a finding by the trial court supported by any evidence must be upheld. In this case, considering the evidence and the applicable standard of review, the Supreme Court could not find that the trial court erred in its determination that the account belonged to Wife. Husband then argued that the trial court erroneously determined that a gift of \$10,000.00 Wife received from her father was her separate property, since this sum was placed into a joint account. At the time Wife received this gift, Husband would not allow her to hold an individual account and she, therefore, had no other account in which to deposit the funds. Given this finding of fact, the Supreme Court did not find that the trial court abused its discretion. In regard to the fourth piece of property at issue, Husband contended that the trial court erroneously divided a certificate of deposit titled in his name. This certificate of deposit was identified by Husband in his response to interrogatories, but no evidence was taken during trial regarding this asset. After the bench trial but prior to the entry of a final

SEE DECISIONS, page 5

Parenting Plans Skills Workshop

August 24, 2007

Time: 9:00 am – 1:00 pm
IS CLOSED OUT!!!

Details about a replay of this workshop
will be available shortly.

Contact: Betsy Geisler @ 770-441-2323 or
bng@bngiesler.com

Basic Interdisciplinary Collaborative Practice Training

September 28-29, 2007

Cost \$650

Location: Atlanta, GA

Contact: Betsy Geisler @ 770-441-2323 or
bng@bngiesler.com

DYKE, continued from page 2

A: It is probably not necessary to do this. Your previous worksheets are still accurate. You probably just need to start using the new version for future calculations. If you want to update previous calculations to the new version, you have to re-enter the data.

10) Q: I want to request a deviation for... Where do I put it?
A: *The all powerful Line 10 – Schedule E., non-specific deviation is the place to request any deviation that is not otherwise indicated in the calculator. Be sure to enter your findings of fact on Line 14.*

11) Q: I understand that the BCSO table is based on costs for an intact family. Some "experts" are saying that we should request a parenting time deviation for even one day of visitation. Is this correct?
A: *There is no guidance in the statute as to how to calculate a parenting time deviation. All deviations are subject to judicial discretion. You can always ask, but that doesn't mean that the deviation will be allowed.*

In her capacity as a volunteer for the Child Support Commission, Ms. Dyke is available to answer questions from attorneys, mediators and judges about using all versions of the child support calculator, and she does not charge for this service. She is not an attorney and does not give legal advice. She may be contacted at 770-565-3098 or laurie@iag-law.com.

DECISIONS, continued from page 4

written order, Wife filed a motion requesting that this certificate of deposit be equitably divided. The Husband failed to respond to this motion and did not request a hearing on the issue. The trial court has broad discretion to reopen evidence at any stage of trial, and it could not be found that the trial court abused its discretion in this instance. In Husband's next enumeration of error, he argued that the trial court was biased against him and unfairly divided the marital property. However, equitable division of marital property does not necessarily mean an equal division. Even though Husband argued that the trial court unfairly focused on his extramarital affair, the court had the right to consider his behavior, including adultery, as a factor in its decision. An appellate court must give deference to the trial court's factual findings as well as its determination of credibility. The record did not reflect that the trial court's conclusions, as reflected in its distribution of marital property, were clearly erroneous. In Husband's next enumeration of error, he contended that the court's awards of child support and spousal support were erroneous. The evidence showed that the Husband made an average of \$1,000,000.00 per year during the marriage and had the earning potential of at least \$1,000,000.00 per year after the divorce. The trial court found that the statutory guidelines as set forth in O.C.G.A. § 19-6-15 could not be applied and a variation from these guidelines was warranted pursuant to O.C.G.A. § 19-6-15(c). This section grants the fact finder wide latitude in fixing the amount of alimony and child support; to this end, they are to use their experience as enlightened persons to judge the amount necessary for support under the evidence as disclosed by the record and all the facts and circumstances of the case. The trial court had reviewed the circumstances as required, taking into account the income and earning potential of both parties as well as the historical needs of the children. Husband contended that the trial court failed to give appropriate weight to his testimony that his earning potential was less than the trial court found it to be; however, an appellate court cannot reweigh the evidence, and no abuse of discretion was found. In regard to the spousal support, Husband contended that the trial court failed to properly consider his ability to pay and Wife's needs. In essence, he was once again taking issue with the validity of Wife's testimony and the evidence, arguing that the trial court failed to give credit to his testimony and evidence. An appellate court cannot act as the trier of fact. Some evidence supported the trial court's decision; therefore, the trial court did not err in its determination of the amount of spousal support. In several miscellaneous arguments, Husband maintained that rulings of the trial court were erroneous, because they evidenced a bias against him. He contended that the trial court unduly punished him for having an extramarital affair. However, the trial court was authorized to consider his conduct. In Husband's final enumeration of error, he argued that several post judgment orders were erroneous. However, because the orders were entered after he filed his notice of appeal, he could not enumerate these subsequent rulings as errors. In a direct appeal of the final judgment, a party may enumerate as error prior or contemporaneous rulings.

In the case of *Messaadi v. Messaadi*, S07F0611 (06/04/07), after a bench trial, the trial court entered a final divorce decree awarding custody of the parties' children to Wife and resolving several other issues including child support, visitation, and a division of property. Husband contended that the trial court abused its discretion in

dividing the property by failing to award any portion of the marital residence to him and, also, by failing to make any ruling regarding a division of either a 1.5 acre tract of unimproved land adjoining the residence or \$70,000.00 cash received by Wife prior to the parties' separation. Title to property not described in a verdict or judgment is unaffected by the decree and remains titled in the name of the owners as before the decree was entered. A decree must specifically describe and dispose of property in which both parties have an interest or the decree will not divest either party of their interest in the property. Wife claimed that the 1.5 acre tract of unimproved land adjoining the residence was part and parcel of the residence, even though it had a different address. The divorce decree specifically awarded the marital residence located at 368 Chastain Drive in Dallas, Georgia to the Wife as a property division. Additionally, title to the unimproved property was placed in both parties' names. Since this property was not specifically described in the divorce decree, the title to the property is unaffected by the decree and remains titled in the names of both parties. The omission from the Judgment of an explicit award of an interest in the property to Husband is not reversible error. Husband also argued that Wife received the majority of the marital property; however, an equitable division of marital property does not necessarily mean an equal division. Husband also attacked Wife's credibility. However, an appellate court must give due deference to the trial court's opportunity to judge the credibility of the witnesses. Husband also complained of the absence of findings of fact by the trial court. A Superior Court judge is not required to make findings of fact in a non-jury trial unless requested to do so by one of the parties prior to the entry of the written Judgment. In this case, neither party asked the trial court to make findings of fact. Therefore, the Supreme Court was unable to conclude that the trial court's equitable division of marital property was improper as a matter of law or as a matter of fact. Husband also contended that the trial court erred by failing to make a ruling regarding \$70,000.00 in cash received by Wife prior to the parties' separation. However, there was conflicting testimony as to who retained the cash; without findings of fact, the trial court may have found that Husband took the money and, as Wife requested, may have used this finding as one equitable consideration in awarding the entire marital residence to Wife. The Supreme Court could not conclude that the trial court made an erroneous finding or improperly applied the law to its finding. The record did not reflect that the trial court's distribution of marital property was clearly erroneous. In Husband's second enumeration of error, he claimed that the trial court abused its discretion in setting child support at 30% of his earnings, without an explanation for setting it higher than the middle of the applicable statutory percentage in the child support guidelines, and in also requiring him to provide health insurance. This case was tried prior to the entry of the new guidelines, which became effective January 1, 2007. Under the former guidelines, the applicable percentage for three children was 25%-32%. The trial court, therefore, applied a correct percentage and was not required to reduce the amount of child support due to health insurance premiums. A review of the record did not reflect an abuse of discretion in the award of child support. In Husband's third enumeration of error, he argued that the trial court erroneously failed to rule on his request to modify a previously entered Protective Order. An appellate court is impaneled to review rulings by lower courts and cannot address issues that have not been ruled upon below.

DECISIONS, continued from page 6

In the case of *Grissom v. Grissom*, S07F0132 (06/04/07), the parties entered into a prenuptial agreement prior to the marriage. Each party attached as an exhibit a list of their respective separate property; various provisions of the agreement addressed the disposition of this property in the event of a divorce. At issue in this appeal are two items listed as Husband's separate property, a home located at Fiddlers Ridge in Fairburn, Georgia and a Merrill Lynch brokerage account valued at \$4,000,000.00. The trial court found that, pursuant to the terms of the prenuptial agreement, the Wife had waived any interest in the Fiddlers Ridge property and the American Express brokerage account into which the funds from the Merrill Lynch account had been transferred during the marriage. Wife appealed this ruling, and in turn, Husband argued that Wife had waived her right to appeal by accepting the benefits of the Final Judgment and Decree, that is, a payment of \$150,000.00 in lieu of alimony or equitable division of property, a 50% interest in four pieces of real property, 50% of an income tax refund, and a monthly child support payment. The Supreme Court held that to the extent case law could be read to hold that the acceptance of any benefit under a Final Judgment and Decree of Divorce was also an automatic waiver of the right to appeal any aspect of that Judgment, these cases are hereby overruled. The Court reasoned that public policy requires that divorce cases be treated differently because of the unique and important issues involved. Dating back to 1907, appellate courts have found an exception to the estoppel rule in situations where the acceptance of child support is at issue, since the benefit belongs to the child rather than to the spouse. Other states have carved out exceptions to the estoppel rule in recognition of the realities of divorce. Wife's acceptance of the child support payments is subject to the exception to the estoppel rule. Neither party challenged the trial court's finding that the prenuptial agreement is enforceable. This agreement provided that Husband retained sole and exclusive ownership of all of his separate property, including any substitutions, transmutations, and replacements of any such assets, free and clear of the other party. Wife waived all right, title, and interest in and to any and all of Husband's separate property. Wife contends that the Fiddlers Ridge property was refinanced and conveyed to the parties as joint tenants with right of survivorship during their marriage. Additionally, when the American Express account was opened, she was listed as a "co-account holder." Wife claimed that she had an ownership interest in these properties, relying on a provision in the agreement providing that the ownership of any real or personal property acquired by the parties in the future would be determined in reference to the legal title to said property. However, this provision only applied to property acquired "in the future," that is, during the marriage and both the Fiddlers Ridge property and the predecessor to the American Express brokerage account were acquired prior to the marriage. Accordingly, the Supreme Court agreed with the trial court's decision that this language did not afford Wife an ownership interest in these assets. A separate provision of the agreement provided that each party had the right to transfer, give or convey to the other party any property or interest therein and that any property so transferred would become the separate property of the recipient. Wife relied upon this paragraph in support of her argument that the Husband's conveyance to himself and Wife jointly of the Fiddlers Ridge property and the American Express account changed them from separate property to marital property. Husband contended that the changes in ownership of the Fiddlers Ridge property and the brokerage account occurred

without his knowledge and that he did not intend to convey any interest to the Wife. The Final Judgment and Decree entered in this case revealed that the trial court expressly declined to reach Husband's claims of accident, mistake and fraud before rendering its ruling. The plain language of the prenuptial agreement is clear; the legitimate conveyance of the property from Husband to Husband and Wife jointly would change the treatment of these assets for purposes of distribution. Without findings of fact regarding the circumstances surrounding the changes at issue, it is not clear that the conveyances were legitimate. The case was reversed and remanded for the trial court to make such findings. The dissent argued that it is a well settled rule that one who accepts benefits under a divorce decree is estopped from seeking to set aside that decree without first returning the benefit. As recently as 2006, the unanimous Court held that a person who accepted benefits under a divorce decree is estopped from seeking to set aside that decree without first returning the benefits. There is no rationale presented by the majority to support its assertion that foreign authority was more persuasive than Georgia's established rule. The dissent further argued that this change in Georgia law could actually have a deleterious effect on the appellate process. There will be no reason not to seek appellate review, because an ex-spouse can now retain benefits and also file an application for discretionary appeal instead of weighing the likelihood of success on appeal against a right to immediately receive the benefits conferred by the award. The effects of the majority's decision will delay the final resolution of divorce proceedings, as argued by the dissent.

AVLF Divorce Mentors

One of the reasons that many attorneys volunteer with AVLF is to gain experience in a new area of law. While we promote this and want our volunteers to gain from their volunteer experience; we also want to make sure that our clients are receiving the best representation possible. Therefore we developed the divorce mentor program.

Who can be a mentor?

We encourage any experienced family law attorney to become a mentor. When an attorney who feels she needs a mentor expresses interest in a case, we will contact you to make sure you are available. Your role as a mentor is to guide the new volunteer through her first case and help her with any problems she encounter along the way. This is a great way to be involved with our program if you do not have the time to take a case right now.

How do I become a mentor?

To become a mentor call Christina Weeks at (404-521-0790) or email cweeks@avlf.org

Client's husband is currently in the DeKalb County Jail on charges of child molestation.

TR - Client's husband is currently in the DeKalb County Jail on charges of child molestation. When he finishes serving his time there he will mostly likely be transferred to Fulton to face similar charges, so he should be pretty easy to serve. Client has a total of 5 children; her current husband is the father of the youngest 4. They have been married for 15 years, the husband has never had a steady job throughout the marriage, she has supported him and anticipates having to fight paying him spousal support. Additionally the husband has been unfaithful to the wife and has had the same girlfriend off and on for the past 20 years. Client lives in Fulton County, but case should be filed in DeKalb since her husband is in DeKalb County jail.

MESSAGE FROM THE CHAIR

Dear Members,

As I write this article, Summer is here and upon us. Nothing like a few days of temperatures in the 90's to make you wish for the Fall and a little cooler weather. When I started handling family law issues exclusively in the Summer of 1992, Summer was a time during the practice cycle when things slowed down a bit. There were not as many trial or hearings, Judges and opposing counsel (even the clients) were off on vacation or at seminars, even the traffic was better. It was a time when you could catch up on those tasks that had been accumulating dust in your in-box. More importantly, it was a time to spend with your family and to re-energize yourself for the remainder of the year.

What has happened? Is it me or is Summer now no different from the remainder of the year? We seem to constantly battle trial calendars, client pressure to complete their cases and the pressure of being too accessible to clients because we all have cellphones, Blackberrys, Treos and laptop computers so we can work from anywhere. The convenience of these devices can easily interfere in our lives if we are not careful. We should all strive to have balance in work, play and family. We all recognize when our world gets out of balance, when work outweighs and dominates the other aspects of our life to the detriment of our own families. It is time to do something about it.

That being said, here are some good rules to follow this summer:

1. First, schedule a real vacation away from the office.
2. No calls! You are not allowed to call in or receive calls from your office during your vacation.
3. You may not receive and respond to emails or create designated times of the day during your vacation to work for a couple of hours. No working early or late.
4. You may not take your Blackberry's, Treos' or laptops so you can "WiFi" your way to the office.
5. Make sure you file a leave of absence with the Court that is long enough so you can come back to the office and catch up on client matters, phone calls and emails before any court appearances. This rule will allow you to enjoy your entire vacation and avoid the anxiety we all feel the last two days of the vacation because of what is waiting on you back in the office.
6. Give your clients adequate notice you are going on vacation so they can prepare for your absence. Also, make sure you have someone who can field the calls while you are gone.
7. Last (and admittedly nothing to do with summer vacation but an important reminder), be considerate of informal requests for flexibility from your opposing counsel. They are struggling with the same issue of balance in life. It is the right thing to do and we will all benefit from the same consideration at some point in our practice.

I'm sure my staff will laugh at these rules and will unanimously tell me to "practice what you preach". Nevertheless, as I prepare for a jury trial and bench trial this week, I'm going to figure out how to get a little more balance and control in my life. You should do the same.

John L. Collar, Jr.

The Following Attorneys have taken on Pro Bono Cases the past month:

GAL

Tiffany Rowe
Eileen Thomas
Crawford Long
Lynita Mitchell-Blackwell
Karen Brown Williams
Kelly Schiffer
Carmen Rafter
Bob Cullen
Deb Lubin
Charles Medlin
Renata Turner
Dara Berger
Hallie Meushaw
Mary Beth Hebert

Divorce

Karen Inness
Kevin Elwell
Jon Hedgpath (2)
Jennifer Watts (2)
Blake Halberg
Brenda Godfrey
Janet Newburg
Denise Holmes

Currently serving as mentors

Gary Alembik
Hannibal Heredia
Deborah Lubin
Payal Kapoor

Please contact Dawn Smith (GAL) or
Christina Weeks (Divorce or Mentor)
at AVLf if you can help next month.