



THE FAMILY LAWYER

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

September 2006
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Quote of the Month

"Trust, but look for
the exits."

Mason Cooley

PRO BONO SYMPOSIUM AT FAMILY LAW BREAKFAST

By Jon W. Hedgepeth, Hedgepeth & Heredia, LLC

Mr. Daniel Bloom, former head of Atlanta Volunteer Law Foundation, and Rachel Spears, formerly of King and Spalding, now with the Pro Bono Partnership of Atlanta, addressed the Family Law Section at the August breakfast. The topic was pro bono matters and organizations that could use our help as lawyers.

The discussion was led

off by an audience participation exercise. Cards indicating "no" and "yes" were distributed among the audience, and Mr. Bloom and Ms. Spears posed hypothetical scenarios to test the collective knowledge as to what hypothetical case does and does not constitute pro bono cases. There were a lot of close calls;

however, there were no unanimous votes among the crowd.

Mr. Bloom and Ms. Spears then handed out Rule 6.1 of the Georgia Rules of Professional Responsibility, which specifies what is and what is not pro bono.

Further, the rule also distinguishes between different types of pro bono. Part "a" is the "pri-

ority pro bono" which every lawyer should provide, and part "b", which describes other work that qualifies as pro bono, such as taking on cases for individuals at a reduced rate, bar service (which Mr. Bloom immediately clarified as *legal* bar service), and delivering service to organizations that are community

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RECENT DECISIONS

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

In the case of *Cook v. Cook*, S06F1169 (07/13/06), the trial court awarded custody of the couple's minor son to the wife, and the husband appealed. The Supreme Court held that it would not interfere with the decision of a trial court, unless the court abused its discretion. As long as there is any evidence to support the trial court's decision, it is not an abuse of discretion. Joint custody must be considered between two fit and equally capable parents; however, the trial court is not required to award joint custody. The husband also claimed that the trial court failed to rule on his application for contempt; however, an appellate court reviews "rulings" entered by lower courts, and if there are no such rulings, then there is no issue for an appellate court to address. Husband also argued that the trial court erred in considering the Guardian ad Litem's report, since it was never introduced into evidence. However, the parties had discussed this report at a pretrial conference and during arguments; husband failed to make a timely objection.

The case of *McGahee v. Rogers*, S06A0885 (07/13/06) addressed Mr. McGahee's discharge in bankruptcy of the legal obligations he assumed under the terms of the parties' Settlement Agreement, which included responsibility for an IRS debt and his car

loan. The bankruptcy action was filed subsequent to the granting of the divorce, and both debts were discharged as to him. Thereafter, the IRS and the holder of the car loan sought payment from Ms. Rogers. She then filed a criminal contempt action against Mr. McGahee. The trial court held that, although Mr. McGahee was in violation of the divorce decree, it did not have the authority to hold him in criminal contempt because of the discharge of debt in bankruptcy; in a 2004 appeal, the Supreme Court reversed this decision and held that since Mr. McGahee received a general discharge in bankruptcy, the trial court had jurisdiction to determine whether certain debts were exempt from discharge. There was no evidence that the bankruptcy court made specific determinations that the debt to the IRS and the car loan as well as the "hold harmless" agreements were or were not exempt from dischargeability under § 523(a)(5). Accordingly, the trial court was to exercise concurrent jurisdiction and make a decision on each of the three debts at issue. On remand, the trial court conducted a hearing and found that the debts and the hold harmless clause were in the nature of support and, therefore, nondischargeable in bankruptcy. Mr. McGahee was found in contempt for failing to pay

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oriented. Ms. Spears and Mr. Bloom went through the hypothetical scenarios again, which resulted in a lot more unanimous choices.

AVLF gets over 17,000 calls per year for pro bono cases. They cannot accept every request, because of residency requirements, because it may be a criminal matter, because it may not qualify as a pro bono matter; however, the vast majority of the calls are from people in need of some sort of legal counseling. These calls, according to Mr. Bloom, are the ones that feed the soul and that want to make you practice law. These people really have no place to turn, and this should remind us of why we went to law school.

For those lawyers who are not as motivated or inclined to take these smaller cases, Ms. Spears discussed opportunities to take on business cases, which give professional development opportunities and networking opportunities to younger lawyers. "Organizations like their lawyers recognized and that, in turn, gives lawyers a better reputation in the community."

Mr. Bloom described the programs under AVLF, including the divorce program, the Guardian ad litem program, the one child-one lawyer program, programs for people with terminal illnesses, a Saturday lawyer program for consumer issues, and for emergency services personnel. There are numerous new programs, such as one that deals with missing children, either from custody matters gone awry, or children missing since Hurricane Katrina last year. AVLF has partnered with Kilpatrick Stockton and the National Center for Missing and Exploited Children in these matters. So anything you're interested in, AVLF has the kind of case you can handle.

Mr. Bloom also described other organizations, such as Georgia Volunteer Lawyers for the Arts. Mr. Bloom explained that "some may not be comfortable working with the kind of cases AVLF has to offer, which is a perfectly legitimate concern, but low income artists may be someone you may be a little more comfortable working with." "One can represent someone trying to get into the music business and may be taken advantage of by the contract they are being issued, or if they have their art consigned at an art gallery and discovered that their art has been sold and were never told of it." Mr. Bloom stated that there is a prominent Atlanta gallery that

has done this, and the artists involved usually do not know what to do when they are taken advantage of.

There is the Atlanta Legal Aid Society, which has many programs. One is their breast cancer initiative. As Mr. Bloom said, "Just because you have breast cancer doesn't mean that medical bills are your only issue. You probably want a will taken care of. You may have missed work and not have been treated properly by your office. You may have some children you need taken care of." You can volunteer for that program and help someone who otherwise would not have any legal assistance.

Ms. Spears talked about the Pro Bono Partnership of Atlanta, which is out to get lawyers who normally do not do pro bono work to start doing it. They target transactional lawyers and particularly in house attorneys and try to find matters that they are comfortable with and similar to the work they already do. They match the lawyers with non-profits that serve low income individuals. These non-profits have the same needs as "for profit" organizations do. A lot of matters deal in corporate governance, revising by-laws, employment work, contract drafting and reviewing, and a leases, real estate work, where they have organizations that are in leases that the landlord is not living up to his or her obligations. There are intellectual property issues, such as registering trademarks and copyrights for non-profits, tax related work, technology, and a myriad of other issues. "I am out there to take away people's excuses for not doing pro bono work," Ms. Spears declared.

Mr. Bloom and Ms. Spears discussed other worthy causes, too many to mention in one article, that we as lawyers can volunteer their time and expertise and do things you would not ordinarily do.

The Following Attorneys have taken on Pro Bono Cases

May	June	July
DIVORCE	DIVORCE	DIVORCE
John McCaffery	Robert Wellon	Peter Hasbrouch
Alice Limehouse	Jonathan Friedman	Paula Arzu
Mason	GAL	Tara McNaull
GAL	Reed Horsley	GAL
Mauricia Allen	Frank Derrickson	Kimberly Haynes
James Zito	Susie Derrickson	Jessie Altman
Eileen Thomas	Andrea Jones	Rebecca Olson
Mindy Planer	Frank Slover	Gupta
Tara Kinney	Erinn Kelly	Nora Kalb Bushfield
Joanne Deering	Robinson	
Susan Chiapetta	Paula Frederick	Please contact
	Jenny Mittelman	Connie White at
	Cynthia Parks	AVLF if you
	Tawanda Harris	can help next month
	Lord	
	Janis Dickman	
	Jessica McKinney	
	Laurel Henderson	
	Alan Horsely	

The Following Attorneys volunteered for the FLIC Project

Elyse Aussenberg	Marnie Halloway	Please contact
Brooke Baryllick	Deborah Lubin	Michelle H. Jordan
Richard Campbell	Melody Richardson	at Legal Aid if you
Adam Gleklen	Eileen Thomas	can help:
Monica Hanrahan	Jed Silver	mhjordan@
Hannibal Heredia	Steve Worrell	atlantalegalaid.org

COMMUNITY CORNER

By: Gary Graham, Stern & Edlin, LLC

I am excited about the upcoming community service opportunities for our members to volunteer their time and energy. These opportunities will be rewarding and memorable experiences for those of you who volunteer. The opportunities currently scheduled are as follows:

September 30, 2006 from 8:00 A.M. to 4:00 P.M.: Habitat for Humanity house: We will be volunteering to assist in the first stage of construction. Lunch will be provided.

October 27, 2006 from 9:00 A.M. to 1:00 P.M.: Park Pride: We will be building two raised planting beds to highlight a newly placed children's mural in Grove Park on Donald Lee Hollowell (formerly Bankhead Hwy).

December 2, 2006 from 9 A.M. to 12 P.M.: Planting Trees with Trees Atlanta in a Sylvan Hills neighborhood, a single family neighborhood, for their arboretum.

For those of you interested in volunteering, please contact Gary Graham at 404-256-0010 or at gary@stern-edlin.com. I look forward to seeing you out at these opportunities.

WHAT'S COMING UP...

September 14, 2006 - Family Law Breakfast -
Justice Carol W. Hunstein, Supreme Court of Georgia

September 30, 2006 - Habitat for Humanity House

October 12, 2006 - Family Law Breakfast
Melissa McMorries on Life Insurance Trust Issues
1 CLE Hour will be available

October 27, 2006 - Park Pride

December 2, 2006 - Planting Trees with Tree Atlanta

December 14, 2006 - Annual Holiday Party

COMMUNITY SERVICE OPPORTUNITIES

The Atlanta Bar Association Family Law Section is excited to be working once again with Habitat for Humanity. We will be volunteering from 8 A.M. to 4 P.M. (come for all or part of the day) to assist in the first stage of constructing the house. Lunch is provided. Email Gary Graham at gary@stern-edlin.com to volunteer.

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. Volunteer at your office or the Family Law Information Center. Email Michelle Jordan at mhjordan@atlantalegalaid.org to volunteer.

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the debts and for failing to indemnify Ms. Rogers. Additionally, the trial court awarded Ms. Rogers \$12,000.00 in attorney's fees. Mr. McGahee appealed the trial court's decision. The Supreme Court held that the burden of proving that the debts assumed by Mr. McGahee were actually in the nature of alimony, maintenance or support falls on Ms. Rogers, as the non-debtor spouse. The trial court had based its decision on Ms. Rogers' credit rating having been damaged by her ex-husband's failure to pay these debts. However, it is the parties' original intent that is the controlling factor; the trial court must consider whether the parties intended the obligation to function as support. Ms. Rogers' inability to pay the obligations at the time of the hearing was not a factor to be considered nor was the underlying nature of the debts, i.e., the reason the debts were originally incurred. Previous case law has established a list of relevant factors for the trial court to consider when determining whether or not an obligation is in the nature of alimony, maintenance or support. In the case at bar, the factors considered by the trial court were not relevant to this issue. The Supreme Court noted that in the parties' divorce decree, neither party was awarded alimony, yet the Agreement did allocate responsibility for marital debts between the two parties. This allocation appeared to be in the nature of a property settlement, also considering that it was a short term marriage and there were no children of this marriage. Ms. Rogers also testified that at the time she reached the settlement, she was not in need of support and was capable of supporting herself. The Supreme Court found that the "undisputed evidence" demanded a finding that the parties did not intend for the husband's assumption of debts to be in the nature of alimony, maintenance or support; it was a division of marital property. In regard to the award of attorney's fees, O.C.G.A. § 19-6-2 authorizes an award of attorney's fees based on the parties' financial circumstances, not their conduct. The trial court awarded attorney's fees to Ms. Rogers not predicated on the economics of the case but based upon Mr. McGahee's "stubborn stance." That was not a basis for an award of attorney's fees pursuant to O.C.G.A. § 19-6-2; the trial court's finding indicated a possible award under O.C.G.A. § 9-15-14. However, based on the requirements of O.C.G.A. § 9-15-14, the trial court also erred in awarding attorney's fees under this code section. Furthermore, an award of attorney's fees under O.C.G.A. § 19-6-2 requires a finding of contempt; since there was no authority to find Mr. McGahee in contempt for violating the divorce decree, an award of attorney's fees was unauthorized.

MESSAGE FROM THE CHAIR

I did not have the opportunity to write a message last month as I had to deal with personal losses. My mother died on July 23, 2006, a mere 16 ½ months after my father.

Thinking about the profound impact my parents' deaths have had on me and the short period of time between their deaths raises two points to note. One is the sharp realization that, although we may be successful in our practices or to the outside world because of our money, our children's cars, or our second homes, what we really leave behind as our legacy is what we have accomplished and the memories people have of us.

In my first message, I challenged you to become more involved. Already, I can see that the legacy the Atlanta Bar Family Law Section will leave from 2006-2007 is one of public service. Nothing is more important. On September 30th when the new Habitat house begins, more than 20 of our section's members will be on hand.

A dozen members have already volunteered for the new Family Law Information Center Conflicts project and more are needed.

More opportunities are here, from planting flowers for Park Pride on October 27 or planting trees with Trees Atlanta on December 2, 2006 to drinking at Smith's Old Bar at our holiday party just so you have an excuse to donate toy(s) to kids in a shelter.

That is the mark you want to leave at the end of your career as a family lawyer. You will want to be remembered for what you did, rather than for the money you made or the cases you won.

The other point that came home to me was how inextricably linked my parents were. They had their ups and downs, just as all couples did who married in the 40s and actually stayed together for the duration. Family lawyers are in the unique position of having a profound effect on people who thought they were inextricably linked for life as my parents were. They are going through the worst time they can imagine and we can have a profound impact on them and their children. For that reason alone, we need to tread lightly. As their lawyers, we influence the most important decisions they make for their family's future. It is never as simple as winning and losing. It is about what they are creating for their family's future, the legacy they are carving for their children, and if we can assist them in a positive way to do that, we too have made a lasting mark on them, one to be proud of.

Thanks to all of you for the thoughts you have sent my way.
Lauren G. Alexander, Section Chair

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Family Law Section Breakfast
Speaker: Presiding Justice, Carol W. Hunstein
Supreme Court of Georgia

Thursday, September 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).

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

BASIC INTERDISCIPLINARY COLLABORATIVE PRACTICE TRAINING

September 29-30, 2006

Cost \$650.00

Location: Atlanta, GA

Contact: Betsy Geisler at 770.441.2323 OR bng@bngiesler.com