

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0062

JANICE L. BARNES V. LOCKHEED MARTIN CORPORATION AND BANKERS STANDARD
INSURANCE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90007

217-66-8601

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 16 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin 

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0063

THOMAS JOSEPH KEMPTON V. FRANCES JANELLE RICHARDS F/K/A FRANCES JANELLE
KEMPTON

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97007

56333

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 16 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0064

KERI MCKEEN V. PAUL MCKEEN, SR. AND SHIRLEY MCKEEN

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92008

93CV000105

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 16 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

 Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0065

DAVID L. HUNT V. JILL M. HUNT

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

93008

999999999999

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 22 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0066
LAKIETHIUS C. JOHNSON V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

94008

94R803

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 22 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. McIntire Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 14, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0066 LAKEITHIUS C. JOHNSON V. THE STATE

Upon consideration of the motion for reconsideration, it is ordered that it be hereby dismissed as untimely filed.

94008

94R803

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 14 1997

*I certify that the above is a true extract from
minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Mont... Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 20 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0067

METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY V. JAMES SOUTHERS

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

98008

E59941 259-92-1422

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 20 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 28 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0068
JOHN M. CONTI V. VICKIE LYNN SMITH

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96008
9744592

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

OCT 28 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0069
WILLIAM ROSS MCCONNELL ET AL V. DON MOORE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91008

95CV356W

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 22 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0070

STONE CONTAINER CORPORATION ET AL V. DANNY RAY BROWN THE DECEASED,
ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99008

CV970936FR

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 16 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0071

DOUGHERTY COUNTY BOARD OF EDUCATION V. MILDRED R. WIMBERLY

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90008

97CV13952 252-86-4316

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 22 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 27 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0072
NIKEMA STOVALL V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

97008

SU97CR0742

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 27 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 23 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0073
RONALD K. PIERCE V. DEBORAH PIERCE ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92009

97V0760

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 23 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0074
H.J. FARRIS V. MARGARET HARDIN

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93009

97DD0002929

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 22 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 23 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0075
JOYCE BLOODWORTH V. RUSSELL R. TILLEY

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

94009

96A17333

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 23 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCT 30 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0076. OMKAR ENTERPRISES, INC. v. CANAID, S.R.L.

Omkar Enterprises, Inc. filed this application seeking discretionary review of the trial court's order granting Canaid's motion for reconsideration. The order appealed reinstated the case below by vacating the trial court's previous order dismissing Canaid's complaint.

The order appealed is an interlocutory order that may only be appealed if a certificate of immediate review is obtained timely from the trial court. E.g. Mayor & Alderman of Savannah v. Norman J. Bass Construction Company, 264 Ga. 16 (441 SE2d 63) (1994). The applicant did not obtain a certificate of immediate review as required by OCGA § 5-6-34 (b). Because the applicant has not complied with the interlocutory appeal procedure, this Court lacks jurisdiction. Wieland v. Wieland, 216 Ga. App. 417 (454 SE2d 613) (1995). Accordingly, this application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 30 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 28 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0077

CALVIN THOMAS, INDIVIDUALLY, D/B/A THOMAS CONSTRUCTION V. WILLIE
WARE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96009

97V882 260-27-2502

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 28 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Willie R. McRae Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 04 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0078
SHARON DANIEL V. RUSSELL DANIEL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97009

95CV118988

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV - 4 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A98D0079. JANET TEDFORD D/B/A EAST POINT BEAUTY COLLEGE v. GEORGIA
STATE BOARD OF COSMETOLOGY**

Tedford filed an application for discretionary appeal pursuant to OCGA § 5-6-35 (a) (1) from the superior court's order dismissing her petition for judicial review of the State Board of Cosmetology's Final Order, which adopted the initial decision of the hearing officer in this case. For the reasons stated in the superior court's September 18, 1997 order, which are not legally erroneous, the application is hereby DENIED. Tedford has not shown any possibility of reversible error.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV - 0 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, OCT 30 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0080. EARNEST BENTLEY, INC. v. WILLIAMS.

This application for discretionary appeal is from the superior court's grant of a motion to correct a clerical error in a judgment entered five months earlier that reversed in part a decision of the State Board of Workers' Compensation.

Generally, an order granting a motion to correct a clerical error under OCGA § 9-11-60 (g) is directly appealable. Leventhal v. Moseley, 264 Ga. 891 (453 SE2d 455) (1995). But even though an order is procedurally subject to a direct appeal under OCGA § 5-6-34 (a), where the underlying subject matter of the case is covered under OCGA § 5-6-35 (a), the discretionary appeal procedures are required. Rebich v. Miles, 264 Ga. 467, 468 (448 SE2d 192) (1994).

Although this matter arose from the superior court's earlier review of the State Board's decision, appeal of the subject order granting the motion to correct involves the application of OCGA § 9-11-60 (g) and case law applying that statute. The propriety of the superior court's review of the State Board's decision is not at issue. This case is properly categorized as an appeal from an

order granting a motion to correct a clerical error under OCGA § 9-11-60 (g), for which a direct appeal lies.

OCGA § 5-6-35 (j) provides that when an appeal of an order directly appealable under OCGA § 5-6-34 (a) is initiated by filing an application for discretionary appeal without also filing a timely notice of appeal, the appellate court shall have jurisdiction to decide the case and shall grant the application. But OCGA § 5-6-35 (j) has no application here because Bentley did file a timely notice of appeal.

As the superior court's order granting the motion to correct a clerical error under OCGA § 9-11-60 (g) was directly appealable, this discretionary application is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 30 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, OCT 28 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0081. Oasis Goodtime Emporium I, Inc. v. Cambridge Capital Group, Inc.

Oasis Goodtime Emporium I, Inc., Guy R. Holcomb and Harold R. Oden filed this discretionary appeal from the trial court's final order in a contract dispute case. The judgment awarded was greater than \$10,000.00; therefore, the discretionary appeal procedures do not apply. The judgment for which appeal is sought is directly appealable, and a notice of appeal was timely filed with the trial court. Accordingly, the application for discretionary appeal is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 28 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals
of the State of Georgia

ATLANTA, NOVEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0082

FRANK D. MINK ET AL V. FAIRFIELD PLANTATION PROPERTY OWNERS
ASSOCIATION, INC.

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92010

95V0082

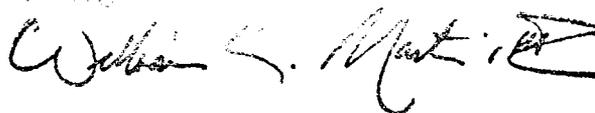
Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



The Court of Appeals
Office of the Clerk
334 State Judicial Building
Atlanta, Georgia 30334

WILLIAM L. MARTIN, III
CLERK AND COURT ADMINISTRATOR

(404) 656-3450

July 15, 1998

Mr. Frank D. Mink
427 Stewart Street
Carrollton, Georgia 30117

RE: A98D0082. Frank D. Mink, et al v. Fairfield
Plantation Property Owners Association, Inc.

Dear Mr. Mink:

I am in receipt of your letter and enclosures of postmark date July 13, 1998 regarding the above referenced application and prior Court of Appeals case A94A1683. Fairfield Plantation Action Committee, Inc. v. Plantation Equity Group, Inc., et al. Please be advised that in A94A1683, the Court of Appeals reversed the judgment of the trial court by this Court's opinion of November 29, 1994, a copy of which you included in your mailing. The remittitur went out from this Court on January 6, 1995, and as such, this Court no longer has jurisdiction over that matter. The application A98D0082 was denied by this Court's order of November 18, 1997. No Motion for Reconsideration was filed within the ten day period required for Motions for Reconsideration, nor was there a Notice of Intent filed to apply for certiorari with the Supreme Court within the ten day period required. As such, this Court does not have jurisdiction over the application.

I am returning your documents to you in case you wish to use them for any future purposes.

Sincerely,

William L. Martin, III

William L. Martin, III
Administrator/Clerk
Court of Appeals of Georgia

WLM, III/lld
Enclosures

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0083

STEPHEN C. BOWLES V. GWINNETT COUNTY MERIT SYSTEM BOARD ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

93010

978A38492

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV - 6 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0084. ROBERTA NURSING HOME ET AL. v. LOCKHART.

In this workers' compensation case, the employer seeks review of an award reinstating temporary total benefits based upon the employee having experienced a change in condition for the worse.

Emma Lockhart was employed as a nursing assistant for seven years at the Roberta Nursing Home until she sustained two back injuries in 1994 that eventually forced her to leave work on November 14, 1994, in order to undergo back surgery. The employer began paying temporary total benefits at that time but suspended benefits in May 1995 based upon her treating physician releasing her to return to work without restrictions. However, Lockhart was still paid permanent partial disability benefits in the amount of 10 percent to her body as a whole.

Lockhart continued to have complaints of back pain and began seeing other physicians. On August 6, 1996, she underwent an independent medical examination (IME) at the employer's request, and that IME concluded that Lockhart was only capable of light duty work.

The ALJ found that the employer was authorized to suspend benefits in May 1995 based on the treating physician's release of Lockhart to return to work without restriction. However, the ALJ also found that Lockhart had shown a change in condition for the worse as of the date of the IME in August 1996 and was entitled to the reinstatement of temporary total benefits until the employer offered her suitable light duty work. The appellate division upheld that determination, and the superior court affirmed based on the any evidence rule.

In this application, the employer contends that by requiring it to offer Lockhart suitable employment after the suspension, which was based on a release to work without restrictions, the State Board misapplied OCGA § 34-9-240 (b) and in effect improperly assigned it the burden of proof in the matter. However, at the beginning of the hearing, the ALJ directed that the employer would have the initial burden of showing the propriety of the May 1995 suspension of benefits, and that Lockhart would then have the burden of showing a change in condition for the worse in order to have benefits reinstated.

As the ALJ found that the employer properly suspended benefits in May 1995, Lockhart had the burden of showing (1) a change in condition for the worse, (2) an inability to work because of that change, (3) a loss of income because of the inability to work, and (4) that the inability to work was related to the injury. Seaboard Fire & Marine Ins. Co. v. Andrews, 145 Ga. App. 877 (245 SE2d 72) (1978). The ALJ made a fact finding that Lockhart met that burden of proof, primarily based upon Lockhart's testimony.

Upon Lockhart's having thus re-established her entitlement to temporary total disability benefits, and in light of the IME having released her for light duty, OCGA § 34-9-240 (b) became applicable and, as found by the ALJ, required the employer to offer suitable light duty employment before benefits could be suspended again.

In view of the above, the State Board did not improperly shift the burden of proof to the employer. Accordingly, this application is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV - 4 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Mant ^{Clerk} 

✓

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: December 15, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0502**

GAIL MOORE v. CHERRY HILL PARTNERSHIP, d/b/a CHERRY HILL APARTMENTS
et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0085

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

RECEIVED IN OFFICE
1997 DEC 16 AM 11:54

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 25, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0085

GAIL MOORE V. CHERRY HILL PARTNERSHIP d/b/a CHERRY HILL APARTMENTS AND
TARATOOT MANAGEMENT COMPANY

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

98-010
96A201172

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 25 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 10 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0085

GAIL MOORE V. CHERRY HILL PARTNERSHIP d/b/a CHERRY HILL APARTMENTS AND
TARATOOT MANAGEMENT COMPANY

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98010

96A201172

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 10 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 13 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0086
CHERYL H. WATTS V. JAMES MATTHEW DENTON

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96010

97CV726

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 13 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 18 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0087. 556 SERVICE STORE, INC. ET AL. v. WALLACE.

The issue in this workers' compensation case is whether the State Board erred in awarding benefits based on the "death presumption" as stated in Zamora v. Coffee General Hospital, 162 Ga. App. 82 (290 SE2d 192) (1982).

The decedent, Albert E. Wallace, worked for his brother, Dickie Wallace, at the latter's liquor store and check cashing center. On February 14, 1994, the two brothers argued and a gun battle ensued. (Another employee heard the brothers arguing but did not hear what they were arguing about.) The decedent shot at Dickie Wallace with a shotgun, and Dickie Wallace returned fire with a handgun. Albert Wallace was shot four times and died from the wounds. Dickie Wallace was charged with the homicide but the indictment was dead-docketed in July 1996.

Immediately after the shooting, Dickie Wallace remarked to an individual who worked next door: "I shot him. I told that son-of-a-b**** to quit f***** with me." Later in the morning, Wallace told the investigating police office that his brother initiated the fight and that he shot him in self defense. Wallace also gave that explanation to the evening shift manager of the business about one month after the shooting. By the time of the workers' compensation hearing, however, Dickie Wallace refused to testify about the incident.

The ALJ found Dickie Wallace's statements to the investigating officer and the night manager to be inadmissible hearsay and did not consider that evidence. Absent that evidence, the ALJ concluded that there was no evidence showing the precipitating cause of Albert Wallace's death, and that unexplained death at the work site gave rise to the "death presumption." The appellate division upheld the award and the superior court affirmed.

The employer contends that the State Board erred in applying the "death presumption" in this case and in excluding Dickie Wallace's statements to the investigating officer and the night shift manager.

1. The employer argues that Dickie Wallace's statements were admissible under the necessity exception to the hearsay rule. However, that exception requires that the out-of-court declaration was made under circumstances that demonstrate "particularized guarantees of trustworthiness." Roper v. State, 263 Ga. 201, 202 (429 SE2d 668) (1993). The ALJ did not err in finding those requisite indicia of trustworthiness absent where the out-of-court declarations were made while in police custody or were self-serving. Barksdale v. State, 265 Ga. 9, 13 (453 SE2d 2) (1995); Fenimore v. State, 218 Ga. App. 735, 737 (463 SE2d 55) (1995).

The charges against Dickie Wallace were dead-docketed following a confidential meeting between Wallace and his attorney and the prosecutor, who agreed not to disclose any statement Wallace made during the meeting. The ALJ also properly excluded any testimony of the prosecutor recounting Wallace's statement given in that meeting, due to questions of trustworthiness and because allowing such disclosure would in effect compel Wallace to testify against himself.

2. When an employee is found dead at his or her place of work and the precipitating cause of death is unknown, it is presumed that the death arose out of the employment. Zamora v. Coffee General Hospital, supra. In order to overcome that presumption, evidence must be presented showing that the death did not arise out of the employment. Id.

As in Zamora, whether Dickie Wallace's shooting of his brother was personal, in which event compensation should be denied, or was connected with the deceased's employment, in which event compensation would be authorized, was a matter of conjecture because no persuasive, competent evidence was adduced at the hearing to substantiate either situation. Id. at 87. Under such circumstances, the death presumption was not rebutted.

Accordingly, this application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 08, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0087

556 SERVICE STORE, INC. ET AL V. ALEXIS WALLACE, widow of
ALBERT E. WALKER, JR.

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

91-010
E61350

256-52-6998

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC -8 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: December 29, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0565**

TRAVELERS INSURANCE COMPANY et al. v. ALEXIS WALLACE

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D00⁰~~67~~

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0088
ROBIN JOHNSON V. WEYERHAEUSER COMPANY

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99010

97V254 257-13-7204

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 12 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0089

MED PARTNERS d/b/a SOUTHERN SURGICAL CENTER, ET AL V. SANDRA MITCHELL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

90010

E61477

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 12 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 13 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0090
SID MILES V. WILLIAM L EMMONS

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97010

9701297

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 13 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Mont...

Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S98C0357

Atlanta, December 10, 1997

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

WILLIAM L. EMMONS v. SID MILES

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ is dismissed.

All the Justices concur.

A98D0090 9701297
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta January 13, 1998

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Patricia J. Middleton Clerk.

Case No. A98D0090
Court of Appeals of Georgia

Filed in office
on:

JAN 13 1998

Remittitur from the Supreme Court.

Clerk, Court of Appeals of Georgia.

RECEIVED IN OFFICE
1998 JAN 13 PM 4:07

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0091
ANTWAN T. LOCKHART V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92011

96R16

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 12 1997
NOV 12 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0092
LITTLE CLARK BREEDLOVE V. THE STATE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93011

88R191 90R80

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 12 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 19 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0093
WAYCROSS MOLDED PRODUCTS, INC. V. RAYMOND MCKELVIN

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91
~~94011~~

97V0781 259-88-9131

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 19 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Mont... Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0094. HUTCHINS v. GEORGIA DEPARTMENT OF CORRECTIONS

Ricky Hutchins, a prison inmate, filed this application for discretionary appeal on October 23, 1997, seeking review of the superior court's May 14, 1997 order denying his filing of a civil complaint. An application for discretionary appeal must be filed within 30 days of the entry of the order appealed. OCGA § 5-6-35 (d). This application was due on or before Friday, June 13, 1997. Because this application is untimely, this Court lacks jurisdiction to consider it. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991). Accordingly, it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 10 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Mast... Clerk.

✓

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: November 19, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0356**

RICKY HUTCHINS v. GEORGIA DEPARTMENT OF CORRECTIONS, et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0094

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

RECEIVED IN OFFICE

1997 NOV 21 PM 12:18

CLERK OF THE COURT OF APPEALS OF GEORGIA

Clerk, Court of Appeals of Georgia

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

98-011

May 4, 1998

Clerk
Court of Appeals of Georgia
433 State Judicial Building
Atlanta, GA 30334

File

Re: Ricky Hutchins
v. Georgia Department of Corrections, et al.
No. 97-8152
(Your No. A98D0094)

Dear Clerk:

The Court today entered the following order in the above
entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
William K. Suter
William K. Suter, Clerk

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 10 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0095
ROBERT HOVART, ET AL V. EDWARD F . BUTTON

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96011

97C39012

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 10 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 14 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0096. NEWLIFE AUTO CENTER et al. v. DOWELL.

This application for discretionary appeal in a workers' compensation case seeks review of an assessment of an add-on penalty and attorney's fees for the late payment of an earlier award of a penalty and attorney's fees. The application materials show that on April 27, 1995, an award was entered ordering the employer to pay an add-on penalty of \$204.15 for failure to comply with OCGA § 34-9-221 (f) and \$920 for the claimant's attorney's fees. That award was upheld by the appellate division on December 4, 1995, and the employer did not appeal it.

Because the employer failed to pay that penalty and attorney's fees within the time allowed, the claimant then filed a request for penalties and attorney's fees for that late payment. Pursuant to OCGA § 34-9-221 (f), the ALJ awarded an add-on penalty of \$224.83 and assessed attorney's fees of \$690, which was upheld by the appellate division and affirmed by the superior court. In this application, the employer contends that the second award of an add-on penalty and attorney's fees were unauthorized under OCGA § 34-9-221 (f), as that Code section provides for such penalties for late

payment of "income benefits," and the earlier add-on penalty and assessment of attorney's fees did not constitute "income benefits."

However, "a penalty imposed for violation of OCGA § 34-9-221 is properly characterized as part and parcel of the compensation awarded. It is an increase in compensation awarded rather than a separate and distinct benefit." Hardee's v. Bailey, 180 Ga. App. 332, 333 (349 SE2d 211) (1986). As the initial add-on penalty and assessment of attorney's fees were part of the compensation awarded in this case, the State Board did not err in penalizing the employer for not paying that penalty/compensation timely.

Accordingly, this application is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 14 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 12 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0097

EVERY D. OLIVER d/b/a OLIVER BACKHOE SERVICE V. ROY SAVAGE ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

99011

97CV0624

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 12 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 10 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0098

DENNIS G. MOCK V. BARBARA H. SMITH f/k/a BARBARA H. MOCK

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90011

97V434

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 10 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0099
MARTA G. ORTEGA V. STANLEY P. SMITH

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

97011

9627075

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 25 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Marti Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0100
JAMES MCREE ET AL V. ROY L. RUTTER ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92012

96CV26

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William S. Martin

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: December 5, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0461**

JAMES MCREE et al. v. ROY L. RUTTER et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0100

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

DEC - 9 1997

RECEIVED IN OFFICE
1997 DEC 9 AM 8:56

RECEIVED IN OFFICE
1997 DEC 9 AM 8:56

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0101

VIRGINIA AGES V. PIGGLY WIGGLY SOUTHERN, INC. ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

93012

97V544 254-70-4890

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 20 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0102
JEFFERSON-SMURFIT CORPORATION, ET AL V. ALICE L. HAYES, ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

94012

97CV111372 254-60-0060

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 20 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 09, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0102

JEFFERSON-SMURFIT CORPORATION, ET AL V. ALICE L. HAYES, ET AL

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

94-012
97CV111372 254-60-0060

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC - 9 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOV 14 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0103. LEE R. K. SMITH v. JUDY SMITH

Lee R. K. Smith filed this petition for discretionary appeal pursuant to OCGA § 5-6-35 (a) (2). Although the primary dispute between the parties involves child custody, the order appealed from is the parties' Final Judgment and Decree of Divorce, and as such, jurisdiction lies in the Supreme Court. Ga. Const. Art. VI, Sec. VI, Par. III (6); Ashburn v. Baker, 256 Ga. 507, 508 (350 SE2d 437) (1986). Accordingly, this appeal is hereby TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 14 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. McIntire Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA,

NOV 14 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0104. TRAINER v. THE STATE

Steven Trainer filed this application for discretionary appeal on Tuesday, October 28, 1997. He seeks an appeal of the September 26, 1997 order of the superior court which denied his extraordinary motion for new trial. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). This application was filed more than 30 days after entry of the order appealed and is, therefore, untimely. This Court lacks jurisdiction to entertain an untimely application. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991). For this reason, the application is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 14 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 22, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0104

STEVEN TRAINER V. THE STATE

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

96-012
94CR2618

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 22 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOV 17 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0105. McINTOSH v. McINTOSH

Denise McIntosh filed this application for discretionary appeal from the order of the superior court denying her motion to set aside her 1993 judgment and decree of divorce on the basis of an alleged non-amendable defect on the face of that judgment and decree. Since the Supreme Court has jurisdiction over divorce cases, this application is hereby TRANSFERRED to the Supreme Court for disposition. Ga. Const. Art. VI, Sec. VI, Par. III (6); Eickhoff v. Eickhoff, 263 Ga. 498, 499 (1) (435 SE2d 914) (1993). See also Murphy v. Murphy, 263 Ga. 280 (430 SE2d 749) (1993).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 17 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Will. Z. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, DEC -1 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0106. POWER v. THE STATE.

Stephen Wes Power was convicted in probate court for driving without headlights and driving under the influence. He appealed to the superior court pursuant to OCGA § 40-13-28, contesting only the DUI conviction. The superior court affirmed. The case is presently before this court on application for discretionary appeal, apparently in keeping with this court's holding in Brown v. City of Marietta, 214 Ga. App. 840 (449 SE2d 540) (1994), to the effect that traffic cases appealed to superior court under OCGA § 40-13-28 may be appealed to this court only by application for discretionary appeal. See OCGA § 5-6-35 (a) (1).

Although in Brown we state that "all appeals from judgments of superior courts in such cases must follow the procedures in OCGA § 5-6-35 (a)" and that "any direct appeals in these cases filed under OCGA § 5-6-34 (a) will be dismissed," 214 Ga. App. at 842 (1), there is a necessary exception to this rule that this court is bound to follow. Specifically, Brown relies on OCGA § 5-6-35 (a) (1) as the basis of its decision, and OCGA § 5-6-35 (a) (1) unambiguously excludes appeals to superior court from probate

courts from its scope. The Supreme Court addressed this particular matter in a case procedurally indistinguishable from the judgment now before this court.

OCGA § 5-6-35 describes the discretionary appeal procedure. The types of cases requiring an application for appeal are listed, in part, as follows:

Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision shall not apply to decisions of the Public Service Commission, and probate courts and to cases involving ad valorem taxes and condemnations. OCGA § 5-6-35 (a) (1) (emphasis supplied).

Under the plain language of the statute, no application for appeal is required for decisions of superior courts reviewing judgments of the probate courts. The statute mandates a conclusion that a direct appeal is available from the superior court affirmance of a probate court case.

Phillips v. State, 261 Ga. 190-191 (402 SE2d 737) (1991) (defendant originally convicted in probate court of speeding and driving under the influence). Accordingly, Brown notwithstanding, we find that Phillips states the proper jurisdictional analysis to be applied in this particular case.

Since we find the judgment at issue to be directly appealable, Power's application for discretionary appeal is hereby GRANTED pursuant to OCGA § 5-6-35 (j). Power shall have ten days from the date of this order to file his notice of appeal in the superior court. OCGA § 5-6-35 (g). The clerk of superior court is directed

to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC - 1 1997

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin, Jr. Clerk.

PREPARATION SHEET FOR APPLICATIONS

10-31-97

APPLICATIONS NUMBER: A98D0106 ----- JUDGE'S NO. 99-012

CLASSIFICATION CODE: 01 505 DUI

COSTS PAID/PAUPER 11-4-97 Virgil L. Brown #5687
Stephen Wes Power v. The State

CIVIL ACTION NO: 97CR0475

SUPREME COURT NO: _____

LOWER COURT JUDGE NO: 18189 John M. Ott

LOWER COURT COUNTY: 08 147 Walton

LOWER COURT NAME: 07 001

CLERK OF LOWER COURT 14147

STAMPED ORDER 10 / 9 / 97

STAMPED COPY OF CERT. OF IMMEDIATE REVIEW _____

APPELLANT ATTORNEY/S

NAME Eric D. Hearn BAR NO. 342250
PHONE _____

NAME Bentley Adams III BAR NO. 002550
PHONE _____

NAME _____ BAR NO. _____
PHONE _____

Virgil L. Brown &
Assoc.
P.O. Box 388
Zebulon, Ga. 30295

APPELLEE ATTORNEY/S

NAME Jay Marvin Jackson BAR NO. 387039
PHONE Asst. D.A.

NAME 116 S. Broad St. P.O. Box 822 Monroe, 30655
PHONE _____ BAR NO. _____

NAME _____ BAR NO. _____
PHONE _____

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 04, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0107

**EUGENE WASHINGTON V. GEORGIA DEPARTMENT OF HUMAN RESOURCES ex rel.
STATE OF GEORGIA FOR FATIMAH JEWEL ALI, ET AL**

The discretionary application received in the above docketed matter does not contain a stamped "filed" copy of the order which is being appealed as required by Rule 32 (b) of the Court of Appeals.

Applicant is hereby ordered to supplement the application with a stamped "filed" copy of the order instanter. If applicant does not cause a copy of said order to be physically filed with the Court within 10 days of the date of this order, the application will be dismissed. Applicant's submission in response to this order will be deemed filed only on the date it is physically received in the Clerk's office.

The Court is required to issue an order granting or denying the application within 30 days of the filing of the application. See OCGA 5-6-35 (f).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV - 4 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0107

EUGENE WASHINGTON V. GEORGIA DEPARTMENT OF HUMAN RESOURCES ex rel.
STATE OF GEORGIA FOR FATIMAH JEWEL ALI, ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90012

CV970803FR CV970872FR CV970878FR CV970879FR

CV970880FR

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: December 4, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0446**

EUGENE WASHINGTON v. GEORGIA DEPARTMENT OF HUMAN RESOURCES, ex rel. STATE OF GEORGIA et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A97D0107

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

DEC -8 1997

RECEIVED IN OFFICE
1997 DEC -8 AM 11:14

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0108

O S ADVERTISING COMPANY OF GEORGIA, ET AL V. RICHARD RUBIN, ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

97012

D93176

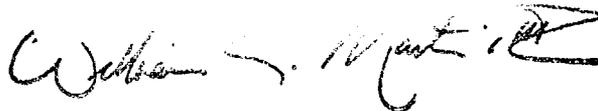
Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0109

WILLIAM E. HAILEY V. BELTRAN & ASSOCIATES f/k/a BELTRAN & COFFEE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92013

94VS0083982C

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 25 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martini Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 20 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0110

TONY WILLIAMS V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

93013

97297

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 20 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0111
KENNETH ALLEN V. CITY OF ATLANTA, ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94013
E56163

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta NOV 24 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 09, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0112

DENNIS R. HOOPER V. SHERIFF BRUCE HARRIS, ET AL

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

98-013
97CV1510

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN - 9 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 14 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0112. HOOPER v. HARRIS

Dennis R. Hooper, a prison inmate, filed this application for discretionary appeal on November 7, 1997, seeking review of the superior court's October 1, 1997 order dismissing his civil complaint. An application for discretionary appeal must be filed within 30 days of the entry of the order appealed. OCGA § 5-6-35 (d). This application was due on or before Friday, October 31, 1997. Because this application is untimely, this Court lacks jurisdiction to consider it. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991). Accordingly, it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 14 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin
Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 25 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0113

JOHN D. MOTES V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

96013

979064318

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 25 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, NOV 25 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0114. NORTON v. NATIONSBANK

This application for discretionary appeal seeks review of the denial of a workers' compensation claim for a psychological injury.

Kelley Norton was employed as an assistant manager of a NationsBank branch where an armed robbery occurred. The robber pointed a gun at Norton during the incident but he never touched her. Norton thereafter developed a stress disorder which prevented her from continuing to work in a bank environment, and she filed a claim for workers' compensation benefits based on that purely psychological injury.

In Southwire Co. v. George, 266 Ga. 739, 741-42 (470 SE2d 865) (1996), the Supreme Court stated the rule in Georgia regarding compensability of psychological injury: "[A] claimant is entitled to benefits under the Workers' Compensation Act for mental disability and psychic treatment which, while not necessarily precipitated by a physical injury, arose out of an accident in which a compensable physical injury was sustained, and that injury contributes to the continuation of the psychic trauma. The physical injury need not be the precipitating cause of the psychic

trauma; it is compensable if the physical injury contributes to the continuation of the psychic trauma."

As a physical injury remains a prerequisite for a workers' compensation claim for a psychological injury, the State Board correctly denied Norton's claim and the superior court properly affirmed that denial. Accordingly, this application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

NOV 25 1997

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William L. Martini Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: December 30, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0556**

KELLY NORTON v. NATIONSBANK, Formerly BANKSOUTH

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0114

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

Court of Appeals
of the State of Georgia

ATLANTA, NOVEMBER 18 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0115

BRUCE H. ELLISON V. BELLSOUTH CELLULAR CORPORATION, ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

99013

E40831

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William E. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 11, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0116
RUSSELL T. STOLL V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

90013
97V513

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

DEC 11 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0117

SHAWN T. DENT V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

97013

92CR173

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV 24 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 18, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0118

WADE G. LORD V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92014

97V518

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 09, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0118

WADE G. LORD V. THE STATE

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

92-014
97V518

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: January 27, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0699**

WADE GRADY LORD v. THE STATE

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0118

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office JAN 29 1998

Clerk, Court of Appeals of Georgia

RECEIVED IN OFFICE
JAN 29 1998

1998 JAN 29 PM 12:27

RECEIVED IN OFFICE

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 03, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0119

CITY OF ATLANTA POLICE DEPARTMENT V. RICHARD L. HOLDER

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93014

E61476 254-84-5574

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC -3 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 03, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0120
JOHN H. CONNELL V. KELLY J. WOODWARD

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94014
96A60465

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC -3 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 05, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0121

CHARLES M. HAMBY, ET AL V. FULTON COUNTY, GEORGIA, ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

98014

E41534

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC -5 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 05, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0122
JIMMY D. MATTHEWS V. TERESA J. WASDEN

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96014

96V812

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC -5 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, DEC -8 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0123. HARRIS v. SOUTHLAND NURSING HOME et al.

In this workers' compensation case, the ALJ denied the employee's claim on the grounds that she failed to prove a compensable injury that arose out of and in the course of her employment. On appeal to the appellate division, the employee contended that the employer's notice to controvert was untimely and therefore invalid under Cartersville Ready Mix Co. v. Hamby, 224 Ga. App. 116 (479 SE2d 767) (1996), but the appellate division found the issue had been waived by the failure to raise it before the ALJ. The superior court affirmed and this application followed.

The employee contends that she did raise the issue before the ALJ, and, in any event, the issue could be properly raised for the first time before the appellate division. The application materials show that at the hearing, counsel for the employee asked the ALJ to take judicial notice of the date of the employer's notice to controvert but raised no issue about its timeliness or any other problem. Under these circumstances, the appellate

division properly concluded that the employee had not sufficiently raised the issue before the ALJ.

Before the 1994 amendment of OCGA § 34-9-103 (a), the issue could have properly been raised initially before the appellate division, as it conducted a de novo review. But the 1994 amendment eliminated that de novo review and instead requires the appellate division to accept the findings of fact of the ALJ where such findings are supported by a preponderance of competent and credible evidence. As the employee correctly points out, even under the amended scope of review, the appellate division may still make different findings of fact where that standard is not met. Bankhead Enterprises v. Beavers, 267 Ga. 506 (480 SE2d 840) (1997). But that power has no bearing in this case because the ALJ was never presented with the opportunity to address the issue.

For the above reasons, the application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC - 8 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: December 18, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0509**

ANN HARRIS v. SOUTHLAND NURSING HOME et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0123

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

DEC 18 1997

FILED IN OFFICE

DEC 18 1997

CLERK COURT OF APPEALS OF GA.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S98C0509

Atlanta, February 27, 1998

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ANN HARRIS v. SOUTHLAND NURSING HOME et al.

Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied.

All the Justices concur.

A98D0123
Bill of Costs, \$80.00



SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta March 23, 1998

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Nathaniel J. Middleton Clerk.

Case No. A98D0123
Court of Appeals of Georgia

FILED IN OFFICE

Filed in office
on: MAR 23 1998

Remittitur from the Supreme Court.
Clerk, Court of Appeals of Georgia.

CLERK COURT OF APPEALS OF GA.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 09, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0124

ROBERT L. CARTER V. JONES CONSTRUCTION AND WELDING, INC., ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99014

E61491 242-23-8614

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC - 9 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 19, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0125

KATHLEEN SUE MASLEN FENDEL V. WILLIAM CHARLES MASLEN

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

90014

97V1561

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 19 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 13, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0125

KATHLEEN SUE MASLEN FENDEL V. WILLIAM CHARLES MASLEN

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

90-014
97V1561

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 13 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

ORIGINAL

IN THE COURT OF APPEALS STATE OF GEORGIA

KATHLEEN SUE FULTON MASLEN
FENDEL

Appellant/Applicant

v.

WILLIAM CHARLES MASLEN

Appellee/Respondent

*
*
*
*
*
*
*
*
*
*
*

Appeal File No.

A98D0125

FILED BY CERTIFIED MAIL

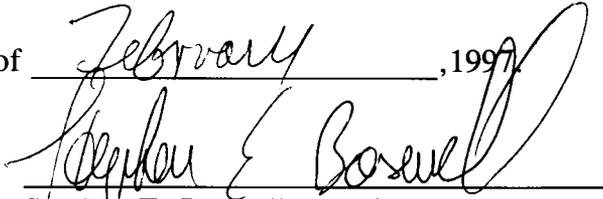
FEB 23 1998

CLERK COURT OF APPEALS OF GA

NOTICE OF INTENTION TO APPLY FOR CERTIORARI

COMES NOW, Kathleen Sue Fulton Maslen Fendel, Appellant in the above styled case, by and through her attorney, Stephen E. Boswell, and notifies this Honorable Court, pursuant to Court of Appeals Rule 38, of its intention to apply to the Supreme Court of Georgia for Certiorari.

Respectfully submitted this 23 day of February, 1997


Stephen E. Boswell, Esquire
Georgia Bar No. 069850

Boswell & Teske, L.L.P.
Attorneys at Law
166 South Main Street
Post Office Box 1507
Jonesboro, Georgia 30237
(770) 473-7799
(770) 603-2601 - FAX

IN THE COURT OF APPEALS
STATE OF GEORGIA

KATHLEEN SUE FULTON MASLEN
FENDEL

Appellant/Applicant

v.

WILLIAM CHARLES MASLEN

Appellee/Respondent

*
*
*
*
*
*
*
*
*
*

Appeal File No.

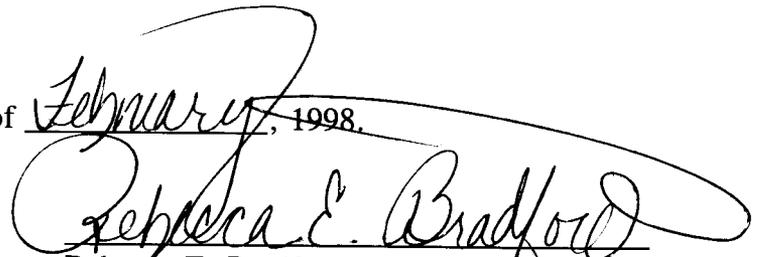
A98D0125

CERTIFICATE OF SERVICE

I hereby certify that I have this date provided a true and correct copy of the above and foregoing Notice of Intention to Apply for Certiorari by depositing a copy of the same in the United States Mail with sufficient postage thereon to:

Harold A. Sturdivant, Esquire
Mullins, Whalen & Sullivan
101 South Hill Street
Post Office Box 133
Griffin, Georgia 30224-0133

Respectfully submitted this 23 day of February, 1998.


Rebecca E. Bradford, Paralegal for
Attorney Stephen E. Boswell

Boswell & Teske, L.L.P.
Attorneys at Law
166 South Main Street
Post Office Box 1507
Jonesboro, Georgia 30237
(770) 473-7799
(770) 603-2601 - FAX

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 04, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0126

GEORGIA DEPARTMENT OF HUMAN RESOURCES ex. rel. JOHNECIA J. WOODRUFF
V. JOHNNY B. WOODRUFF, JR.

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97014

9784228

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC - 4 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 12, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0127
CHRISTOPHER G. JOHNSON V. TINA L. STEEN

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92015

SU97DM23115

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 12 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, November 26, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0128. THE GATEFIELD CORPORATION v. GWINNETT COUNTY, GEORGIA.

Condemnee The Gatefield Corporation filed an application for interlocutory appeal in the Supreme Court seeking review of the order of the superior court granting condemnor's motion to set aside judgment under OCGA § 9-11-60 (d) (2) and to dismiss the condemnor's petition. The Supreme Court transferred the application to this court for disposition.

While it is generally true that an order granting a motion to set aside a judgment will "require further court proceedings on the part of the party opposing the motion," Scheisser v. Ross, 256 Ga. 414 (349 SE2d 745) (1986), the order at issue here leaves nothing pending in the court below. Accordingly, since the application refers to a final judgment, the certificate of immediate review is superfluous and the application is treated as one for discretionary appeal taken under OCGA § 5-6-35 (b).

However, the discretionary appeal is likewise inapplicable to a final order granting a motion to set aside in a condemnation action. We note that OCGA § 5-6-35 (a) (1), dealing generally with appeals to superior court, specifically excludes condemnation

actions from its scope. Moreover, while OCGA § 5-6-35 (a) (8) renders appeals from the denial of a motion to set aside subject to the discretionary appeal procedure, the provision has no application to an order granting such a motion. Accord Schiesser v. Ross, supra.

Since we conclude that the order at issue is a final judgment subject to direct appeal under OCGA § 5-6-34 (a) (1), The Gatefield Corporation's application for appeal is hereby GRANTED pursuant to OCGA § 5-6-35 (j). Applicant shall have ten days from the date of this order to file its notice of appeal. The clerk of court shall include a copy of this order in the record transmitted to this court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC - 3 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 16, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0129
JOHN W. GLOVER V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

94015

899155324

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta DEC 16 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0130

TODD WILLINGHAM V. QUALITY PAINTING, ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98015

CV971678 254-31-7522

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 10 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 30, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0130

TODD WILLINGHAM V. QUALITY PAINTING, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

98-015
CV971678 254-31-7522

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 30 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martini ^{Clerk.}

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: January 15, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0655**

TODD WILLINGHAM v. QUALITY PAINTING et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0130

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 10, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0131
INTERNATIONAL PAPER, ET AL V. JAMES R. MILLS

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96015

97RCCV810 256-92-7492

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 10 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 15, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0132
GAYLE STEVENSON V. CHRISTOPHER MARINE

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

91015

E52232

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 15 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Mont...

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 09, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0132

GAYLE STEVENSON V. CHRISTOPHER MARINE

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

91-015
E52232

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin, Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0133. RENEE A. DENMAN, a minor, acting by and through her legal custodian, ANNA MARIE DENMAN v. ANTONIO A. PARKS

Renee Denman, through her guardian, seeks a discretionary appeal from the trial court's order granting the petition for legitimation filed by her child's biological father. In her application materials, Denman maintains that the court entered a Final Order of Legitimacy on October 29, 1997. However, the copy of the order included in the application materials was not stamped "filed" by the superior court clerk as required by OCGA § 5-6-35 (c) and Rule 32 (b) of the Court of Appeals and furthermore was not signed by the judge. On December 2, 1997, this court issued an order to Denman directing her to supplement the application within ten days with a file stamped copy of the order appealed from and stressed that the application would be dismissed if the document was not timely filed with this court. Denman had until December 12, 1997 to file the "filed" copy of the order with this court but failed to do so. Because Denman has failed to comply with the clear mandate of OCGA § 5-6-35 (c) and Rule 32 (b), her application is fatally deficient and is hereby DISMISSED. See Court of Appeals Rule 7.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 18 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 06, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0133

**RENEE A. DENMAN, a minor, acting by and through her legal custodian
ANNA MARIE DENMAN V. ANTONIO A PARKS**

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

99-015
97A23624

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 19, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0134

LOUISIANA - PACIFIC CORPORATION V. LESLIE D. KENNEDY

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

90015

M97CV0771 264-90-0665

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 19 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William S. Mantz Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 11, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0135

BARRY R. WADE V. LAKES CONSTRUCTION, ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

97015

97CV99461 256-86-1093

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 11 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 23, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0136

WILBUR EDWARD HENDRICKS V. HOLLY YVETTE JONES, ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

92016

9701176

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 23 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr.

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 19, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0137

TRACI ARLENE WARNER V. RONALD L. WARNER, JR.

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93016

97V0163

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 19 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 23, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0138
JAMES BRIGHTMAN V.GREGORY CUMBO, ET AL.

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

94016

SU97CV1022S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 23 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JAN = 5 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0139. MAYANK D. DESAI v. O.K. OIL, INC.

Mayank D. Desai filed this discretionary appeal from the trial court's order on his petition for declaratory judgment whereby the court found he had notice of an encumbrance upon land he purchased. Desai purchased two tracts of land from a realty company and an individual in 1996. In 1985, O.K. Oil had entered into an agreement with the then-owner of the land which provided that only O.K. petroleum products could be sold from that land for a period of 30 years. Notice of this "collateral agreement" was filed of record. The trial court determined that Desai had notice of this encumbrance and was accordingly bound by it. This appeal, however, is not one of those listed in OCGA § 5-6-35 (a) requiring a discretionary application.

Accordingly, the application for discretionary appeal is GRANTED because, pursuant to OCGA § 5-6-35 (j), the judgment for which appeal is sought is directly appealable. OCGA § 5-6-34 (a) (1). Desai shall have 10 days from the date of this order to file a Notice of Appeal.

The clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Marti, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 19, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0140
AT&T WILRELESS PCS, INC. ET AL V. LEAFMORE FOREST CONDOMINIUM
ASSOCIATION OF OWNERS, ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96016

9770681

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 19 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 30, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0141
ANTHONY JONES V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91016

96B22605

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

DEC 30 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 06, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0142

PATRICIA TAYLOR, ET AL V. DENNIS TURNER, JR., M.D.

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90019

E38144

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, DECEMBER 19, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0143

TAYLOR COUNTY HEALTH CARE, ET AL V. GLADYS M. FOSTER

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90016

97CV193 254-64-2639

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 19 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 05, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0144

ATHENS - CLARKE COUNTY, STATE OF GEORGIA V. JOSEPH DUNAWAY

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

97016

SU97CV1768S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, December 12, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0145. JUNE D. PARKER v. CINDY WILBURN.

June D. Parker filed this discretionary appeal from the trial court's order denying her motion for new trial after a jury verdict for the defendant Cindy Wilburn. OCGA § 5-6-35 (a) (6) does not apply where no recovery is obtained. DHR v. Prince, 198 Ga. App. 329 (1) (401 SE2d 342) (1991). Because there was no award of damages in this case, the case is directly appealable.

Accordingly, the application for discretionary appeal is GRANTED because, pursuant to OCGA § 5-6-35 (j), the judgment for which appeal is sought is directly appealable. OCGA § 5-6-34 (a) (1). Parker shall have 10 days from the date of this order to file a Notice of Appeal.

The clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 12 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 08, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0146

BILL BEASLEY HOMES, INC., ET AL V. ROBIN COOK WATKINS

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93017

CV97576 247-43-6185

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 8 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 05, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0147

CHILDREN'S HOSPITAL OF PITTSBURGH V. GEORGIA DEPARTMENT OF MEDICAL
ASSISTANCE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94017

E59547

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN -5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 05, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0148

SID MILES, COMMISSIONER OF DEPARTMENT OF PUBLIC SAFETY V. RENE D.
KEMP, JR.

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98017

E55951

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN -5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 06, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0149

CHAMBERS OF GEORGIA, INC. V. DEPARTMENT OF NATURAL RESOURCES OF THE
STATE OF GEORGIA, ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96017

9780318

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, JAN -5 1996

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0150. MARIAN BACON v. GEORGIA SPINE & SPORTS PHYSICIANS, P.C.

Marian Bacon seeks discretionary review of the trial court's order granting Georgia Spine & Sports Physicians' motion for summary judgment in the amount of \$5,292.57 on its claim for an outstanding balance due for medical services rendered to Bacon.¹ The trial court's order does not contain any recital of undisputed facts. In support of her application, Bacon attached her affidavit dated February 9, 1996, in which she conceded that she was treated by doctors at Georgia Spine & Sports.

The gravamen of Bacon's dispute with Georgia Spine & Sports is that the fees charged for the medical treatment (which were initially billed directly to her insurance carrier) were not explained to her in advance and were in excess of the "reasonable and customary charges" which her health plan covered. Nothing in the application creates a question of fact as to whether Bacon incurred the fees by being treated at the clinic and that the

¹The trial court's order also granted Georgia Spine & Sports' motion for summary judgment on Bacon's counterclaim for statutory and other damages flowing from Georgia Spine & Sports' alleged violation of the federal Truth in Lending Act. However, Bacon did not seek to appeal that portion of the court's order.

balance had not been paid. Accordingly, the trial court's conclusion that there remained no genuine issues of material fact was correct, and summary judgment on Georgia Spine & Sports' claim was appropriate. Lau's Corp. v. Haskins, 261 Ga. 491 (405 SE2d 474) (1991).

Accordingly, the application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 07, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0151

SUSAN CHRISTINE MCHUGH v. JEFFERY ROBERT DAVIS

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99017

9700493

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN -7 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JAN - 6 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0152. ERIC NORTON v. THE STATE.

Eric Norton seeks a discretionary appeal from the trial court's order denying his motion to dismiss in this probation revocation matter. In his application materials, Norton maintains that the court entered the order in open court on November 14, 1997. Accordingly, there is no stamped "filed" copy of this order included in the application materials, as required by OCGA § 5-6-35 (c) and Rule 32 (b) of the Court of Appeals. On December 16, 1997, this court issued an order to Norton directing him to supplement the application within ten days with a file stamped copy of the order appealed from and stressed that the application would be dismissed if the document was not timely filed with this court. Norton sent to us a file stamped copy of an order relating to his case, but it was not "the order appealed from." Furthermore, it was received on December 30, 1997. Norton had until December 29, 1997 to file the "filed" copy of the order appealed from with this court, but failed to do so. Because he has failed to comply with the clear mandate of OCGA § 5-6-35 (c) and Rule 32 (b), his application is fatally deficient and is hereby DISMISSED. See Court of Appeals Rule 7.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereby affixed this day and year last above written.*

William R. Mark

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 08, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0153
LARRY WALKER V. LOCKWOOD MARINE, INC.

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

97017

93V245

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 8 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 06, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0154
SUAD, INC. ET AL V. ALI SADEGHI

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92018

E62022

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 06, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0155
ALLEN WEBB V. TIFTON ALUMINUM COMPANY

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93018

97CV709 259-02-9617

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN - 6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. McIntire Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JAN - 8 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0156. DENNIS R. HOOPER v. TINA STRINGFELLOW, et al.

Dennis R. Hooper, a prison inmate, filed this application for discretionary appeal on December 12, 1997, seeking review of the superior court's November 7, 1997 order denying his motion to set aside judgment in favor of defendants on his personal injury claim. An application for discretionary appeal must be filed within 30 days of the entry of the order appealed. OCGA § 5-6-35 (d). This application was due on or before Monday, December 8, 1997. (Although the court received an application from Hooper on December 1, the original was returned to Hooper for correction, without docketing, for failure to comply with Rule 6 and Rule 32 (a).) Because this application is untimely, this Court lacks jurisdiction to consider it. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991). Accordingly, it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia
JAN - 8 1998

Clerk's Office, Atlanta JAN - 6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JAN 27 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0156. DENNIS R. HOOPER v. TINA STRINGFELLOW, et al

Dennis R. Hooper filed a motion for reconsideration of this Court's order entered January 8, 1998, dismissing his application for discretionary appeal. Hooper's motion for reconsideration is dated January 12, 1998; however, it was not received and filed in this Court until January 22, 1998. Court of Appeals Rule 4 provides, "Motions for reconsideration are deemed filed only on the date they are physically received in the Clerk's Office." Court of Appeals Rule 37 (b) requires motions for reconsideration to be filed within ten days from the date of the order of dismissal. Hooper's motion was filed three days later than permitted. Accordingly, the motion for reconsideration is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 09, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0157
PLANETARIAN, INC. V. THE CITY OF ATLANTA, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98018

E59254

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN - 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martini

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JAN -6 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0158. WILLIAM L. BARBER v. THE STATE

William L. Barber seeks a discretionary appeal from the trial court's order denying his motion to withdraw plea alleging judgment is void. The order was filed in the Irwin County clerk's office on October 29, 1997, but Barber's application for appeal was not filed in this office until December 18, 1997. OCGA § 5-6-35 (d) requires the application to be filed with the clerk of this court within 30 days of the entry of the order appealed from. Failure to comply with this procedural requirement deprives this court of jurisdiction to entertain this appeal. Fabe v. Floyd, 199 Ga. App. 322, 332 (405 SE2d 265) (1991). Accordingly, the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



Court of Appeals of the State of Georgia

ATLANTA, JAN -6 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0159. WILLIAM L. BARBER v. THE STATE

William L. Barber seeks a discretionary appeal from the trial court's order denying his motion to withdraw plea for void judgment. Although he included a copy of the order appealed from in the application materials, it is not a stamped "filed" copy, as required by OCGA § 5-6-35 (c) and Rule 32 (b) of the Court of Appeals. On December 18, 1997, this court issued an order to Barber directing him to supplement the application within ten days with a file stamped copy of the order appealed from and stressed that the application would be dismissed if the document was not timely filed with this court. Barber had until December 29, 1997 to file the "filed" copy of the order with this court but failed to do so. Because Barber has failed to comply with the clear mandate of OCGA § 5-6-35 (c) and Rule 32 (b), his application is fatally deficient and is hereby DISMISSED. See Court of Appeals Rule 7.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, JAN -5 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0160. PAUL L. MASSELLI, ET AL. v. TEMP MASTER MECHANICAL, INC.

Paul Masselli, proceeding pro se, seeks an appeal from the order of the superior court entered November 14, 1997, granting Temp Master's motion for summary judgment on its complaint to enforce its materialman's lien of \$6,600.00 against the real property of Masselli and his wife. See OCGA § 5-6-35 (a) (6).

Masselli's application failed to include a copy of Temp Master's motion for summary judgment and his own response as required by OCGA § 5-6-35 (c). Nor did Masselli include a recitation of the facts adduced at the hearing on the motion for summary judgment, a transcript of that hearing, or any other factual support for his conclusion that the evidence was insufficient to support the trial court's order. When an application fails to include sufficient argument and supporting exhibits to demonstrate that reversible error has occurred, this court is afforded no basis to consider granting an appeal. See Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989).

For the foregoing reasons, Masselli's application is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN -5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

 Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 06, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0161
MARC EDWARD STACY V. FT. HOWARD PAPER COMPANY

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99018

252-396-10

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

JAN -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: January 23, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0691**

MARC EDWARD STACY v. FT. HOWARD PAPER COMPANY

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0161

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

JAN 27 1998

RECEIVED IN OFFICE
1998 JAN 27 PM 4:03

Court of Appeals of the State of Georgia

ATLANTA,

JAN 13 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0162. GATEWAY FREIGHT SERVICES v. GEORGIA DEPARTMENT OF LABOR.

Gateway Freight Services seeks an appeal from an order by the superior court denying reconsideration of a decision entered on October 7, 1997 which affirmed a decision of the Department of Labor's board of review. However, because applicant's petition for appeal was not received until December 19, it must be dismissed as untimely. The entry of a subsequent order denying applicant's motion for reconsideration on December 12 is not itself appealable, nor does it extend the time allowed for filing an application for discretionary appeal. OCGA § 5-6-35 (d); see also In the Interest of A. R. B., 209 Ga. App. 324-325 (1) (433 SE2d 411) (1993) (physical precedent only).

For the foregoing reasons, the above styled application is hereby DISMISSED for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 13 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

 Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JAN -6 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0163. OCILLA GIN, INC. et al. v. BUSBIN.

In this workers' compensation case, the ALJ denied the employee's claim after hearing only the employee's evidence. The appellate division reversed that denial and remanded the matter so that the ALJ could take the employer's evidence. The employer appealed that decision to the superior court, which affirmed, and then filed this application. The employee's claim thus remains pending before the State Board.

The application is hereby granted for the purpose of considering the superior court's jurisdiction to review such an interlocutory ruling of the State Board. See Conwood Corp. v. Guinn, 190 Ga. App. 595 (379 SE2d 621) (1989); Fasher Painting & Decorating Co. v. Bordelon, 204 Ga. App. 196 (419 SE2d 82) (1992). The appellant may file a notice of appeal within 10 days of this order, and the Clerk of Superior Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

The parties are directed to address the jurisdictional issue identified in the cited cases, supra, when the appeal is docketed with this Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 12, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0164

FORT VALLEY STATE COLLEGE ET AL V. SAUVEUR MAHOTIERE, JR. ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92019

97V764 086446540

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 16, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0165

LAWANDA HOWARD V. THE KROGER COMPANY ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93019

CV971906 418-54-4787

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William S. Martin, Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 16, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0166

GEORGIA DEPARTMENT OF HUMAN RESOURCES V. LARRY MICHAEL HOLLAND ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94019

97CV0095

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

Will. L. Martin, Jr.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 22, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0167
SHEILA HOUSTON V. STEVEN EARL HOUSTON

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98019

SU95DM8552

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 22 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 13, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0168
ROMONE W. JAMES V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91019

SU96CR1197

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 13 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Mont... Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 21, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0169
CHRISTOPHER WILKERSON V. THE STATE

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

99018

SU972221

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 21 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 27, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0170

SMITHY E. DUNBAR V. DAVID POYTHRESS, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

99019

E61886

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 12, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0170

SMITHY E. DUNBAR V. DAVID POYTHRESS, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-019
E61886

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 12 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0171. Biggs v. The State

Applicant Jeremy William Biggs seeks discretionary review of the trial court's denial of his extraordinary motion for new trial. Biggs was convicted of two counts of child molestation, one count of aggravated child molestation and one count of aggravated sexual battery. Following his conviction, and after his motion for new trial was denied, Biggs claims he received newly discovered evidence in the form of a statement by the alleged victim of two of the four counts against him, Christian Biggs, that Christian had recanted his prior testimony concerning the child molestation against him. Because of this newly discovered evidence, Biggs claims he is entitled to a new trial.

The trial court properly denied Biggs' motion. As the trial court found, a post-trial declaration by a victim that his prior testimony was false is not grounds for a new trial. Brown v. State, 209 Ga. App. 314, 316 (433 SE2d 321) (1993); Ahmed Al-Beti v. State, 210 Ga. App. 312, 314 (6) (436 SE2d 50) (1993). This is especially so in child sexual abuse cases because recantation is a behavioral characteristic common among sexually abused children.

Allison v. State, 256 Ga. 851, 852 (2) (353 SE2d 805) (1987).

Further, there was independent medical evidence to support Christian's trial testimony. Therefore, the trial court did not abuse its discretion in denying Biggs' extraordinary motion for new trial. Accordingly, the application for discretionary appeal is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 16, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0777**

JEREMY WILLIAM BIGGS v. THE STATE

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0171

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

FEB 17 1998

Clerk, Court of Appeals of Georgia

RECEIVED IN OFFICE
1998 FEB 17 PM 12:19
CLERK OF THE COURT OF APPEALS OF GEORGIA

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 22, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0172
SHIRLEY STIDMON V. DAVID POYTHRESS, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

97019

68498J

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 22 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Marti Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 11, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0751**

SHIRLEY STIDMON v. DAVID POYTHRESS, Comr., et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0172

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

CLERK OF THE COURT OF APPEALS OF GEORGIA
SHERIE M. WELCH

1998 FEB 11 PM 3:16

RECEIVED IN OFFICE

FEB 11 1998

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 29, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0173
JOSEPH C. SUN V. MARITES E. SUN

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

92020

9712911 97A013922D

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 29 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martineau

Clerk.

SUPREME COURT OF GEORGIA

Remittitur, Case No. S98C0791

Atlanta, May 14, 1998

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JOSEPH SUN v. MARITES E. SUN

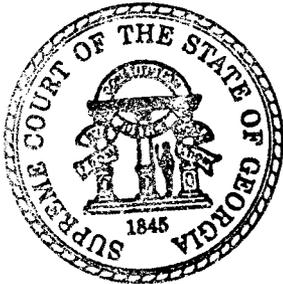
Upon consideration of the petition for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied.

All the Justices concur.

A98D0173 972911 97A01392
Bill of Costs, \$80.00

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta June 5, 1998



I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Lyman M. Stinchcomb
Chief Deputy, Clerk.

Case No. A98D0173
Court of Appeals of Georgia

Filed in office
on:

Remittitur from the Supreme Court.

Clerk, Court of Appeals of Georgia.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 28, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0174
GREGORY F. COLEMAN V. JANET L. HAYMORE

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93020

97NCV452B

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 28 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Marti Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

JAN 14 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0175. EMORY UNIVERSITY v. MEE.

This application for discretionary appeal, which seeks review of a superior court's affirmance of a workers' compensation award, is untimely. Under OCGA §5-6-35 (d), an application for discretionary appeal must be filed within 30 days after entry of the appealable judgment. In this case, the superior court entered its order affirming the State Board on December 5, 1997, but the application was not filed until January 6, 1998, one day late.

The failure to comply with the requisite discretionary procedures deprives this court of the jurisdiction to consider this case. Hogan v. Taylor County Bd. of Education, 157 Ga. App. 680 (278 SE2d 106) (1981). Accordingly, the application is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 14 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 16, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0176
CAROL VASKO SIMPSON V. DONALD SIMPSON

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98020

971055035

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 16 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William S. Martin, Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 23, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0807**

CAROL VASKO SIMPSON v. DONALD SIMPSON

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0176

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

FILED IN OFFICE

MAR - 4 1998

CLERK COURT OF APPEALS OF GA.

RECEIVED IN OFFICE
MAR - 4 1998 3:08 PM

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 02, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0176

CAROL VASKO SIMPSON V. DONALD SIMPSON

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

98-020
971055035

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB -2 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 22, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0177
WCC INTEREST, INC. V. ANIBAL LOPEZ ROMAN

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

99020

E62207 616-23-5634

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 22 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 27, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0178

BRENDA HARRISON V. DIGITAL EQUIPMENT CORPORATION, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

97020

E62066 193-50-7626

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 10, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0178

BRENDA HARRISON V. DIGITAL EQUIPMENT CORPORATION, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

97-020
E62066

193-50-7626

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 10 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 20, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0800**

BRENDA HARRISON v. DIGITAL EQUIPMENT CORPORATION et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0178

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

RECEIVED IN OFFICE
1998 FEB 20 PM 3:57
CLERK'S OFFICE
SUPREME COURT OF GEORGIA
244 WASHINGTON STREET, ROOM 572
ATLANTA, GEORGIA 30334

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: February 27, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0858**

CALVIN T. MCGEE v. THE STATE

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0179

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

FILED IN OFFICE

MAR - 6 1998

CLERK COURT OF APPEALS OF GA.

CLERK'S OFFICE
COURT OF APPEALS OF GEORGIA
1998 MAR - 6 12:21 PM

RECEIVED IN OFFICE
1998 MAR - 6 12:21 PM

Court of Appeals of the State of Georgia

ATLANTA, JAN 29 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0179. MCGEE v. THE STATE.

Pro se applicant Calvin T. McGee, who is incarcerated, has filed an "out-of-time application for appeal" to this court seeking an appeal from an order entered on March 3, 1997, "for violation of first offender probation." McGee failed to include a copy of the order appealed from as required under OCGA § 5-6-35 (c) and likewise failed to comply with the order of this court directing that he do so. However, even if McGee's application contained the exhibits required for meaningful review, it is well-settled that timely filing of an application for appeal within 30 days of the judgment complained of is an absolute requirement and that an untimely filed application cannot be considered by this court. OCGA § 5-6-35 (d); Hill v. State, 204 Ga. App. 582 (420 SE2d 393) (1992); Rothenstein v. Jenkins, 166 Ga. App. 385 (304 SE2d 740) (1983). McGee's application is therefore dismissed for lack of jurisdiction.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 29 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 04, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0180
RICHARD GREEN MIDDLETON V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92021

SU97CV1151G

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB - 4 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0181

BARTRAM ENVIROMENTAL, INC. V. HAROLD F. REHEIS, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93021

E61490

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 30, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0182
NANCY BAER ET AL V. FULTON COUNTY ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

94021

E49793

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 30 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Marti Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 20, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0183
GEORGE H. WALDROUP V. INSITE, INC. ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98021

E61315 253-70-8948

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JAN 20 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martini

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0184 —
RALPH HARRISON BENNING V. J. WAYNE GARNER, COMMISSIONER

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

96020

E65058

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

Court of Appeals
of the State of Georgia

ATLANTA, FEBRUARY 27, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0184

RALPH HARRISON BENNING V. J. WAYNE GARNER, COMMISSIONER

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

96-020
E65058

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0185
HOYT PATTON V. J. B. HUNT TRANSPORT, INC.

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

96021

97CV039802 237-56-3884

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, FEB 4 1988

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0186. Ron Bass, et al. v. William O. Miller, Sr., et al.

Ron and Debra Bass seek discretionary review of an order of the superior court granting the Millers' motion to dismiss the Basses' appeal. The Basses filed a notice of appeal to the superior court in the municipal court from that court's decision ordering them to abate a private nuisance. The municipal court found that the Basses' maintenance of 15 dogs on their property was in violation of certain ordinances of the city of Cuthbert and constituted a nuisance. The superior court dismissed the Basses' appeal on the ground that they were required to seek review by petition for writ of certiorari rather than by notice of appeal. Specifically, the court found that the notice of appeal was insufficient to meet the requirements for certiorari. In their application, the Basses contend that they are entitled to seek review by notice of appeal.

OCGA § 5-4-1 (a) provides that "the writ of certiorari shall lie for the correction of errors committed by any inferior judicatory or any person exercising judicial powers. . . ." See Cochran v. City of Rockmart, 242 Ga. 732 (251 SE2d 259) (1978). In

this case, the Basses failed to follow the procedures for filing a petition for writ of certiorari, and therefore, the superior court correctly dismissed the Basses' appeal. For these reasons, the application for discretionary appeal is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB - 4 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William L. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0187. WILLIAM FRANK JACKSON v. THE STATE.

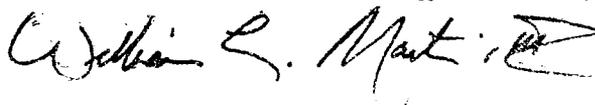
William Frank Jackson, proceeding pro se, seeks a discretionary appeal from the trial court's order denying his extraordinary motion for new trial under OCGA § 5-6-35 (a) (7). In his application, docketed January 20, 1998, Jackson maintains that the court denied his motion on December 15, 1997. However, the copy of the order included in the application materials was not stamped "filed" by the superior court clerk as required by OCGA § 5-6-35 (c) and Rule 32 (b) of the Court of Appeals, although it was signed by the judge and dated December 15, 1997. On January 20, 1998, this court issued an order to Jackson directing him to supplement the application within ten days with a file stamped copy of the order appealed from and stressed that the application would be dismissed if the document was not timely filed with this court. Jackson supplemented his application within the time allowed, and filed an original Request to Proceed In Forma Pauperis, but failed to file the "filed" copy of the order denying his extraordinary motion for new trial. Because Jackson has failed to comply with the clear mandate of OCGA § 5-6-35 (c) and Rule 32 (b), his application is fatally deficient and is hereby DISMISSED. See Court of Appeals Rule 7.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB -5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

 Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JANUARY 20, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0187

WILLIAM FRANK JACKSON V. THE STATE

The discretionary application received in the above docketed matter does not contain a stamped "filed" copy of the order which is being appealed as required by Rule 32 (b) of the Court of Appeals.

Applicant is hereby ordered to supplement the application with a stamped "filed" copy of the order instanter. If applicant does not cause a copy of said order to be physically filed with the Court within 10 days of the date of this order, the application will be dismissed. Applicant's submission in response to this order will be deemed filed only on the date it is physically received in the Clerk's office.

The Court is required to issue an order granting or denying the application within 30 days of the filing of the application. See OCGA 5-6-35 (f).

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JAN 20 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals
of the State of Georgia

ATLANTA, FEBRUARY 25, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0187

WILLIAM FRANK JACKSON V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-021
CR951120MI

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 25 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 11, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0188

RONALD DERISE V. THE STATE

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

90021

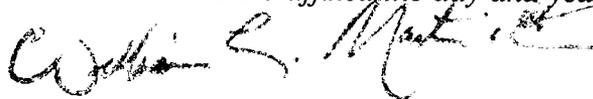
91B21395

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed, the day and year last above written.*



Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 06, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0189
LAURA S. CLEMENTS V. MICHAEL R. PHILLIPS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97021

94DR17016

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB -6 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0190
MELODY CAMERON V. JIMMY KERR COX

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92022

97A54014 97A54264

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 17, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0191

STEPHENO ALSTON V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93022

93CR1863011

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 17 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 04, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0193
PROGRESSIVE BUILDERS, INC. V. BRUCE KENDRICK

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98022

97CI149

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB - 4 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAR -6 1998

The Court of Appeals hereby passes the following order:

A98D0194. REX P. CORNELISON, III v. JOSEPH H. KING, JR., ET AL.

Upon consideration of Rex. P. Cornelison's motion to supplement his petition for discretionary appeal filed in the above-styled case, which application was denied by this court on February 12, 1998, it is hereby ordered that said motion is DENIED as moot.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0194

REX P. CORNELISON, III V. JOSEPH H. KING, JR., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96022

E47434

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, FEB 13 1998

The Court of Appeals hereby passes the following order:

A98D0195. GRUBY v. CITY OF SENOIA, GEORGIA.

Plaintiff Gary L. Gruby seeks an appeal from the order of the superior court granting summary judgment to the City of Senoia in a zoning case. Gruby owns property on Seavy Street across the street from property owned by Ernest Clara Thorne Ivanovic. The Ivanovic property fronts both Senoia Street and Johnson Street, which runs parallel to Senoia Street. The property in question was originally zoned for general commercial use but the City rezoned the property for residential use upon the request of a community group. Ms. Ivanovic, dissatisfied with the rezoning, proposed to the City an alternative resolution whereby the property would be subdivided; the Johnson Street portion of the property would be rezoned for professional/office use while the Senoia Street portion of the property would remain zoned residential.

The City approved Ms. Ivanovic's proposal at a public hearing and adopted the amendment to the zoning map on June 2, 1997. On July 2 Gruby filed the present action, contending that the zoning decision constituted spot zoning, that as an adjoining property owner he should have been provided written notice of the proposed

rezoning, and that a sign announcing the proposed rezoning should have been placed on Seavy Street in addition to Johnson Street.

Having reviewed Gruby's application, the city's response, and the detailed order of the court below, there appears to be no possibility of reversible error in the superior court's decision. Specifically, it would appear that Gruby's standing to pursue this action is dependent on whether the subdivision of the property in question should be disregarded. Gruby presents no compelling reason to disregard the subdivision of the Ivanovic property as a mere "imaginary line" without legal significance. Application at page 5. Gruby's application for discretionary appeal is therefore DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 13 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEB 11 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0196. HIRAM RUSSELL RAINEY, JR. v. THE STATE

Rainey seeks discretionary review of the trial court's September 8, 1997 order revoking two years of his probation. However, Rainey's application for discretionary appeal was filed in this Court on January 23, 1998. Timely filing of an application for appeal within 30 days of the judgment complained of is an absolute requirement to confer jurisdiction on this Court, and an untimely filed application cannot be considered. OCGA § 5-6-35 (d); Hill v. State, 204 Ga. App. 582 (420 SE2d 393) (1992); Rothenstein v. Jenkins, 166 Ga. App. 385 (304 SE2d 740) (1983). Accordingly, Rainey's application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 05, 1998

The Court of Appeals hereby passes the following order:

Case No. A98D0197_

DONALD SCREWS, SR. V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR - 5

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 05, 1998

The Court of Appeals hereby passes the following order:

Case No. A98D0197

DONALD SCREWS, SR. V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR - 5 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, FEB 11 1998

The Court of Appeals hereby passes the following order:

A98D0198. JANET L. BERG, D.V.M. v. DONALD W. CLARK, JR.

Janet L. Berg, proceeding pro se, seeks an appeal from the order of the superior court entered December 29, 1997, denying her petition for change of custody of her two minor children. Berg stated that the hearing on her petition was not transcribed by a court reporter, and she failed to supplement the record with a transcript prepared from recollection pursuant to OCGA § 5-6-41 (g). The "Statement of Facts" submitted by Berg cannot be considered as evidence by this court because it was approved neither by opposing counsel nor by the trial court. Parker v. State, 154 Ga. App. 668 (269 SE2d 518) (1980). Because Berg failed to meet her burden of affirmatively showing error by the record, the judgment of the trial court will not be disturbed on appeal. Welch v. Mercer, 165 Ga. App. 776 (302 SE2d 629) (1983). When an application fails to include sufficient argument and supporting exhibits to demonstrate that reversible error has occurred, this court is afforded no basis to consider granting an appeal. See Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989).

For the foregoing reasons, Berg's application is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 17, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0199
PATRICIA R. BROWN V. H. EARL BROWN

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

92023

95V127

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

FEB 17 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, March 11, 1998

The Honorable Court of Appeals hereby passes the following order:

A98D0200 ERNEST WELCH SMITH, ET AL V. DEERE CREDIT, INC. f/k/a
JOHN DEERE COMPANY, INC., ET AL

Upon consideration of the motion for reconsideration in the above styled case, said motion is hereby DENIED. It is further ordered that the motion for reconsideration of the motion to correct the style of the discretionary application in the above styled case is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEB 25 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A98D0200. ERNEST WELCH SMITH, ET AL v. DEERE CREDIT, INC. F/K/A
JOHN DEERE COMPANY, INC., ET AL**

Ernest Welch and Donna Marie Smith, pro se, have filed this discretionary appeal. However, they failed to designate which order they are appealing, as required by OCGA § 5-6-35 (b). Accordingly, respondent's motion to dismiss the application is hereby GRANTED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 25 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEB 24 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A98D0200. ERNEST WELCH SMITH, ET AL v. DEERE CREDIT, INC. F/K/A
JOHN DEERE COMPANY, INC., ET AL**

Applicants' motion entitled "notice of refusal for fraud of
respondent Thompson's motion to dismiss appeal" is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 10, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0201

DAVID LEE VAN HOY V. WILLIAM E. BREWER, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

94023

97J7476

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 10, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0202

SOD AND TURF LANDSCAPE SUPPLY, ET AL V. ANDREW CONTRERAS

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98023

E62290 485-19-0145

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*



Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 20, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0203
DAN VADEN CHEVROLET V. JOHNNY C. MANN

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96023
9702005 257-90-7187

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 20 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, FEB 19 1998

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0204. PAUL EDWARD GANN v. MELISSA BLAIR FERRIS

Paul Edward Gann seeks discretionary review of the trial court's order awarding custody of his child to Ferris' parents. Gann and Ferris were never married, but are the natural parents of a minor child. Gann brought a paternity suit in 1988, whereby he was acknowledged as the child's father, awarded visitation and ordered to pay support of \$250 per month. The child was in Ferris' custody pursuant to this order; however, the child lived with her grandparents most of her life. Ferris lived with her parents and the child intermittently. In March 1997, Gann filed a petition to change custody, to which Ferris answered and counterclaimed. The maternal grandparents of the child moved to intervene and petitioned for custody and child support. Pursuant to OCGA § 19-7-1 (b.1), the trial court granted the motion to intervene and awarded custody to the grandparents and visitation rights to Gann and Ferris. He also ordered Gann and Ferris to pay child support to her parents. Gann was ordered to pay \$800 per month, which represents 23% of his gross income.

Ferris was ordered to pay \$144 per month, which represents 17% of her gross income.

Only Gann appeals from the order. He alleges the court erred in granting the motion to intervene and awarding custody to the grandparents under OCGA § 19-7-1 (b.1) without making a finding that Gann was unfit. OCGA § 19-7-1 (b.1), enacted in 1996, creates a rebuttable presumption that custody should be awarded to a child's parents, but permits the court to award custody to certain relatives of the child if, under all the circumstances, it is in the best interest of the child. The statute specifically provides that the court may only consider the best interest of the child in making its determination. The court here noted that the statute changed prior law which would have required a finding of unfitness. The court did as the statute directs and considered the mother's and father's behavior and circumstances, and that the only stability that the child had known was with her grandparents, who provided for her every need.

Gann originally filed this application in the Supreme Court, who transferred it to this Court. He argues that under the rationale of Brooks v. Parkerson, 265 Ga. 189 (454 SE2d 769) (1995), OCGA § 19-7-1 (b.1) is unconstitutional. We are without jurisdiction to consider this issue. Ga. Const. Art. 6, Sec. 6, Par. II (1). Accordingly, because the trial court properly applied OCGA § 19-7-1 (b.1) in determining only what would be in the best interest of this child, it committed no error in this regard.

Gann also argues the court erred in awarding the grandparents child support of 23% from the father and 17% from the mother without finding special circumstances. OCGA § 19-6-15 provides guidelines for determining the amount of an award. OCGA § 19-6-15 (b) (5) provides that the amount of a child support obligation is determined by multiplying the obligor's gross income by a percentage based on the number of children for whom child support is being determined. The court is to vary this amount if it finds certain special circumstances, including any factor the court "deems to be required by the ends of justice." OCGA § 19-6-15 (c) (18). For one child, the applicable percentages of gross income to be considered is 17 to 23 per cent. Gann essentially argues that his and Ferris' contributions constitute 100% support of the child, since they are both being required to make these contributions. He argues it is an anomaly that the grandparents were awarded custody but apparently have no support obligation. Although it may be rare for a court to order both parents to pay child support, that factor is not addressed by the statute. The court here followed the statutory guidelines to the letter. OCGA § 19-6-15 also provides that "[t]hese guidelines are intended by the General Assembly to be guidelines only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of trial." To the extent the court might have decreased the parties' child support obligations in light of the grandparents being awarded custody, it was not obligated to do so under the

statute. It was only obligated to make the determination based on the evidence. Furthermore, OCGA § 19-7-2 declares that it is the joint and several duty of each parent to provide for the maintenance, protection, and education of his or her child, except to the extent the duty of the parents is otherwise defined by court order. Here, the court has charged the grandparents with the physical custody and care of this child, but has ordered the parents to provide the financial support for the child. The court has thus "otherwise defined" the duty of these parents. Accordingly, it does not appear the court erred in ordering the parents to pay these amounts of child support to the grandparents. For the foregoing reasons, the application is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 19 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William L. Martin Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: March 10, 1998

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0872**

PAUL EDWARD GANN v. MELISSA BLAIR FERRIS et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0204

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

FILED IN OFFICE

MAR 10 1998

CLERK COURT OF APPEALS OF GA.

RECEIVED IN OFFICE
MAR 10 1998

1998 MAR 10 PM 3:34

RECEIVED IN OFFICE

91-023

A98D0204

FILED IN OFFICE

JAN 30 1998

CLERK COURT OF APPEALS OF GA.



SUPREME COURT OF GEORGIA

Case No. S98D0658.

Atlanta January 30, 1998

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

PAUL EDWARD GANN v. MELISSA BLAIR FERRIS et al.

From the Superior Court of Gwinnett County.

This is an appeal from a final custody order not arising out of a divorce decree, and it does not come within the jurisdiction of this Court. Monday v. Monday, 243 Ga. 863 (1979). It is therefore transferred to the Court of Appeals

SUPREME COURT OF THE STATE OF GEORGIA,

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.



FILED IN OFFICE
JAN 30 1998

CLERK COURT OF APPEALS OF GA.

Lynn M. Stinson, Chief Deputy Clerk

Court of Appeals of the State of Georgia

ATLANTA, FEB 11 1998

The Court of Appeals hereby passes the following order:

A98D0205. Cheryl Rose, Rogers v. Mercedes-Benz Credit Corporation

Cheryl Rose, Rogers filed this discretionary appeal with the Supreme Court on January 20, 1998. The Supreme Court transferred the appeal to this Court on January 30, 1998. Rogers seeks to appeal an order of the trial court entered on August 27, 1997. Applications for discretionary appeal must be filed within 30 days of the entry of the order, decision, or judgment complained of. OCGA § 5-6-35 (d). Rogers filed this application considerably more than 30 days after entry of the order she seeks to appeal. Thus, Rogers application is untimely and this Court lacks jurisdiction to rule on this application. Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 24, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0206
HERNAN VILLA SANCHEZ V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90023

97SR2229

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

FEB 27 1998

ATLANTA,

The Court of Appeals hereby passes the following order:

A98D0207. HYNES v. HYNES.

Priscilla Bagby Hynes seeks an appeal from the denial of her petition to hold her former husband Frank Louis Hynes "in contempt of a Final Judgment and Decree of Divorce" entered by the superior court in 1991. Petition at 1. The alleged violations involved provisions of the parties' settlement agreement incorporated into the final decree. The respondent asserts that jurisdiction over the order complained of lies within the divorce and alimony jurisdiction of the Supreme Court. Ga. Const. 1983, Art. VI, § VI, ¶ III (6). We agree. For the reasons stated in respondent's brief, Hynes' application is hereby TRANSFERRED to the Supreme Court for disposition. See also Griffin v. Griffin, 243 Ga. 149 (253 SE2d 80) (1979).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0208

REBECCA A. GRAVELEY V. AUGUSTA-RICHMOND COUNTY

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

92024

226-27-2671 97RCCV1030

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

FEB 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0209

JIMMY LEE IRVIN V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93024

35320

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -3 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 19, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0210
BILLIE BROWN V. W. SAMUEL ADAMS, JR.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94024

97A73092

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 19 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 17, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0211
EAVES FOODS, INC. ET AL V. BRENDA THOMAS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98024

254-29-1112

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 17 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUL - 8 1998

The Court of Appeals hereby passes the following order:

A98D0212. LIL' CHAMP FOOD STORES et al. v. TROGDON.

This court denied the application for discretionary appeal in this workers' compensation case on February 20, 1998. However, the Supreme Court granted certiorari and on June 5, 1998, issued an order instructing this court to reverse the judgment of the superior court with direction to remand the matter to the State Board of Workers' Compensation for the purpose of effectuating a settlement reached by the parties after the application was denied.

Accordingly, the order denying the application on February 20, 1998, is hereby vacated, and the application is granted. The applicant shall have ten days from the date of this order in which to file a notice of appeal with the superior court. The Clerk of the Superior Court shall include a copy of this order in the appeal record forwarded to this court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 8 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.



SUPREME COURT OF GEORGIA

Case No. S98C0992

Atlanta June 5, 1998

The Honorable Supreme Court met pursuant to adjournment.

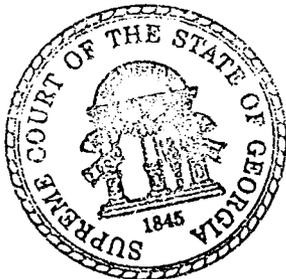
The following order was passed:

LIL' CHAMP FOOD STORES, INC. v. EDITH M. TROGDON

The parties having agreed upon a compromise of the pending cause, and to carry it out, it being necessary to have the judgment of the superior court affirming the award of the State Board of Workers' Compensation reversed and the case remanded to the State Board of Workers' Compensation for the purpose of effecting the settlement agreed on, and both parties having consented to this act, this Court, without looking into the record, grants the petition for writ of certiorari and remands this case to the Court of Appeals with the direction that that court reverse the judgment of the superior court and direct the superior court to remand this case to the State Board of Workers' Compensation for the purpose of perfecting the settlement. Rakestraw v. Arkansas Best, 171 Ga. App. 364 (1984); North Brothers Ins. Co. v. Barron, 169 Ga. App. 657 (1984); Norton v. Liberty Mut. Ins. Co., 125 Ga. App. 278 (1972); Continental Cas. Co. v. McKinney, 111 Ga. App. 549 (1965).

Court of Appeals No. A98D0212

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta



I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto affixed the day and year last above written.


, Chief Deputy Clerk

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 05, 1998

The Court of Appeals hereby passes the following order:

Case No. A98D0212

LIL' CHAMP FOOD STORES, ET AL V. EDITH M. TROGDON

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -5 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, March 12, 1998

The Honorable Court of Appeals hereby passes the following order:

A98D0212 LIL' CHAMP FOOD STORES V. EDITH TROGDON

Upon consideration of Appellant's and Appellee's joint motion for reversal and remand filed in the above-styled case, it is hereby ordered that said motion is DENIED as moot.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta

MAR 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Clerk

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 16, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0213
WAL-MART STORES, INC., ET AL V. BRENDA HARRIS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91024

97A92056 254-92-9328

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 09, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0214

KENYA E. JOINER, ET AL V. JAMES JOINER, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99024

123767

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR -9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, March 6, 1998

The Honorable Court of Appeals hereby passes the following order:

A98D0215 MARTIN A. HAMILTON V. KCM ASSOCIATES, INC.

Upon consideration of Martin Hamilton's motion to amend and correct notice of appeal filed in the above-styled case, which application was denied by this court on March 4, 1998, it is hereby ordered that said motion is DENIED as moot.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

MAR -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals
of the State of Georgia

ATLANTA, JUNE 16, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0215

MARTIN A. HAMILTON V. KCM ASSOCIATES, INC. ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

90-024
96A204394

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 16 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 04, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0215
MARTIN A. HAMILTON V. KCM ASSOCIATES, INC. ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90024

96A204394

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR - 4 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 25, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0216
WENDELL LEWIS SATTERWHITE V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97024

92CR385

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 25 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia



ATLANTA, February 17, 1998

The Court of Appeals hereby passes the following order:

A98D0217. GRANT v. GEORGIA DEPARTMENT OF HUMAN RESOURCES.

The Georgia Department of Human Resources brought a petition for recovery of child support against Ivey Grant. The superior court entered an order requiring Grant, the child's mother and the child to submit to paternity testing. Grant filed a motion to set aside that order pursuant to OCGA § 9-11-60 (d) (3) which the trial court denied. This application for discretionary review followed.

A petition for recovery of child support is a domestic relations case within the meaning of OCGA § 5-6-35 (a) (2), and appeals from orders in such cases, whether final or interlocutory, must be brought by application. OCGA § 5-6-35 (b). Because the order appealed from is not the final judgment disposing of the case, Grant was also required to seek a certificate of immediate review, and if granted, to petition this court for an interlocutory appeal within the shorter time allowed for applications for interlocutory review. OCGA § 5-6-34 (b). Since Grant has failed to follow the interlocutory appeal procedures, this court is without jurisdiction to consider this appeal, and it therefore must be dismissed. Scruggs v. Dept. Of Human Resources, 261 Ga. 587 (1) (408 SE2d 103) (1991). Furthermore, a motion to set aside an interlocutory order does not extend the time for seeking a certificate of immediate review or for filing an application for

interlocutory and discretionary appeal because it is not one of the motions specifically enumerated in OCGA § 5-6-38 (a). MMT Enterprises, Inc. v. Cullars, 218 Ga. App. 559 (2) (462 SE2d 771) (1995).

Therefore, this application is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta FEB 17 1998 FEB 17 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 25, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0218
GOLD CITY HEALTH CARE V. LORA CANTRELL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93025

254-11-7584 97CV584DB

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 25 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, FEBRUARY 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0220
HUTTIG SASH & DOOR CO., ET AL V. LINTON CURRY

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

94025

97CV18115 259-92-4143

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta FEB 27 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0221

ITT RAYONIER, INC. ET AL V. STEVE R. NETTLES

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98025

260-82-1635 97CV1024

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -5 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William R. Martini

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 10, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0222

MARY WHITE DAVIS V. BOBBY M. DONALDSON d/b/a/ QUALITY PAINT COMPANY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96025

131040D

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William S. Martine Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. --A98D0223
DANIEL M. SHEPERD V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99025

93CR3990

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, FEB 27 1998

The Court of Appeals hereby passes the following order:

A98D0224. DEKALB RESTAURANTS, INC., et al. v. JOHN BOYER.

Plaintiffs below, DeKalb Restaurants, Inc. and Damon Hale, have filed what purports to be a "Petition and Application for Interlocutory Appellate Review" but have done so under the discretionary appeal procedures set out in OCGA § 5-6-35 (a) (10). As plaintiffs themselves recognize in their petition, the order appealed from is clearly interlocutory in nature. Review under the discretionary appeal procedures is therefore unavailable. Further, plaintiffs have failed to follow the interlocutory appeal procedures of OCGA § 5-6-34 (b), in that they did not obtain a certificate of immediate review from the trial court. Since plaintiffs failed to follow the interlocutory appeal procedures, this court is without jurisdiction to consider this appeal. Scruggs v. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991).

Plaintiffs' application is therefore DISMISSED.

Defendant has filed a motion to expedite consideration of plaintiffs' application for appeal. In light of the dismissal of plaintiffs' application, defendant's motion to expedite is moot and therefore is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

FEB 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the ~~day~~ and year last above written.*

William R. Martin
Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 10, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0225
FRANK W. WAYNE V. ANNETTE B. JACKSON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97025

97CV322F

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 10 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0226

DION YVETTE BROWN V. VINCENT RAYNARD MANLEY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92026

94123239

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0227

STATE PERSONNEL BOARD, ET AL V. CARLOS D. GLISSON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93026

97V306

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 13, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0228

VAN GOGH'S RESTAURANT, INC., ET AL V. CITY OF ROSWELL, GEORGIA, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94026

E59590

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 13 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0229

MAITLAND EARL SMITH V. ARROW RENTALS, INC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98026

970857KA 510-42-2687

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

MAR 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0230

MARK THE MOVER, ET AL V. ROLAND M. LANCASTER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96026

E65579 417-62-2154

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -3 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 24, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0231

CHRISTOPHER GRAY V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

91026

95CR43418

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0232
SHELIA MAE TURMAN V. ORVILLE JOSEPH BOLEMAN

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99026
97FCV594B

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 12 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 23, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0233

DENNIS R. HOOPER V. BRUCE HARRIS, SHERIFF, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90026

94CR457 97CV1510

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 23 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 08, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0234

ANGELO BERNARD BANKS V. ALAN CARTER, ET AL

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

97-026
97CA22142

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 8 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 24 1998

The Court of Appeals hereby passes the following order:

A98D0234. BANKS v. CARTER, et al.

Angelo Bernard Banks seeks an appeal from the dismissal of a civil action he initiated due to his failure to comply with the requirements of the Georgia Tort Claims Act. The dismissal order was entered on January 6, 1998, and Banks' application for discretionary appeal was received in this court on February 23, 1998. However, OCGA § 5-6-35 (d) requires that such an application be filed within 30 days of the date the order complained of was entered. Since Banks failed to file his application in a timely fashion as required under OCGA § 5-6-35 (d), it is hereby DISMISSED for lack of jurisdiction. Hill v. State, 204 Ga. App. 582-583 (420 SE2d 393) (1992).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0235

GARY LEE RANSOM V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92027

96DR1475

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 25, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0236

GREGORIO SANCHEZ CONDE V. DEPUTY DAVID HOWARD GODWIN, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93027

97CV669

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAR 25 1998**

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Marti Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 25 1998

The Court of Appeals hereby passes the following order:

A98D0237. SAPP v. GEM LINE, INC.

Anne Sapp seeks this Court's discretionary review of a December 9, 1994 order denying her motion to set aside a judgment entered on October 29, 1991, which found Sapp liable on a note. Sapp claims the trial court erroneously denied her motion to set aside because it 1) relied on evidence not made a part of the record and did not give Sapp an opportunity to view and comment on that evidence; 2) refused to consider Sapp's allegation that she had no liability for the underlying obligation; 3) refused to consider Sapp's claim that the judgment resulted from "fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of [Sapp]," as provided in OCGA § 9-11-60 (d) (2); and 4) otherwise failed to consider Sapp's claims that she received no notice of the trial and that her attorney withdrew without her knowledge or approval.

OCGA § 9-11-60 provides, among other things, that a judgment may be set aside for "(2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or (3) A nonamendable defect which appears upon the fact of the record or pleadings." In refusing to set aside the judgment,

the trial court found as a matter of fact that Sapp had received notice of the docket call and of the trial but had failed to appear for trial, facts reflected in the original judgment. Because Sapp failed to appear for trial, the court hearing the underlying dispute had stricken Sapp's answer and entered default judgment against her. The application materials before us provide no evidence that the court erred in finding that Sapp received notice of the trial and failed to appear. As she did not carry her burden of proving lack of notice, the court did not err in finding that no amendable defect appeared on the face of the pleadings. See Murer v. Howard, 165 Ga. App. 230-231 (299 SE2d 151) (1983).

The application materials also reveal no fraud, accident, or mistake, much less one unmixed with Sapp's own negligence in failing to appear for her trial. See Shilliday v. Dunaway, 220 Ga. App. 406, 407-408 (1) (469 SE2d 485) (1996). As no transcript of the underlying trial exists, we must presume the regularity of those proceedings. Barton v. Barton, 216 Ga. App. 292, 293 (3) (454 SE2d 155) (1995). The complaint in the case alleges that "Ann Sapp" (sic) was liable to the plaintiff on a note, and we must presume the evidence showed that debt and its amount. Similarly, Sapp has provided us with no transcript of the hearing on the motion to set aside. We are unable to determine what evidence the court considered in ruling on her motion. Although Sapp contends the court considered evidence outside the record, she does not specify the evidence to which she refers, and we are unable to determine what evidence the court considered. See *id.*

As the application materials reveal no issue requiring appellate review, Sapp's application for discretionary appeal is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 25 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 24, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0238

DARRELL LIVINGSTON V. LEE KATHRYN LIVINGSTON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98027

981041899

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. McIntire Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 13, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0239

REGINA BRYANT V. LOCKHEED-MARTIN AERONAUTICAL SYSTEMS, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96027

971791733 210-40-1556

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 13 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAR -3 1998

The Court of Appeals hereby passes the following order:

A98D0240. Rathbun v. Symonds

On February 27, 1998, Lawrence A. Rathbun, Jr., M.D., individually and in his capacity as a shareholder of and on behalf of Easy Sling, Inc. filed this application for discretionary review of the trial court's denial of his traverse to the answer of garnishee, Corsling, Inc. The order Rathbun seeks to appeal was filed on January 27, 1997.

Applications for discretionary appeal must be filed within 30 days of the entry of the order, decision, or judgment complained of. OCGA § 5-6-35 (d). Rathbun filed this application 31 days after entry of the order he seeks to appeal. Thus, Rathbun's application is untimely and this Court lacks jurisdiction to rule on this application.

Accordingly, this application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR -3 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAR 18 1998

The Court of Appeals hereby passes the following order:

A98D0241. ARLANDA SMITH v. THE STATE

Arlanda Smith, proceeding pro se, seeks a discretionary appeal from the judgment of the Traffic Court of the City of Atlanta on the misdemeanor charge of driving while license is suspended (OCGA § 40-5-121). However, the copy of the order included in the application materials was not stamped "filed" by the court clerk as required by OCGA § 5-6-35 (c) and Rule 32 (b) of the Court of Appeals. On March 2, 1998, this court issued an order to Smith directing him to supplement the application within ten days with a file stamped copy of the order appealed from and stressed that the application would be dismissed if the document was not timely filed with this court. Smith has failed to comply with the court's order and the clear mandate of OCGA § 5-6-35 (c) and Rule 32 (b); therefore, his application is fatally deficient and is hereby DISMISSED. See Court of Appeals Rule 7. The court notes that a judgment of the Traffic Court on a misdemeanor charge may be appealed directly under OCGA §§ 5-6-33, 5-6-34 (a). Swinney v. City of Atlanta, 176 Ga. App. 823 (338 SE2d 52) (1) (1985).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 18 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, SEP 30 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0241

ARLANDA SMITH V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-027
1132216

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 30 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

Will L. Martin, III

Court of Appeals of the State of Georgia

ATLANTA, MAR 24 1998

The Court of Appeals hereby passes the following order:

A98D0242. CONEY v. THE STATE.

Sidney T. Coney, who is incarcerated, seeks an appeal from an order entered on December 12, 1997, denying his extraordinary motion for new trial. Under OCGA § 5-6-35 (d), Coney was required to file his application in this court on or before Monday, January 12, 1998. This court did not receive Coney's submission until March 2, 1998. We note that the materials contained in Coney's application show that the application did not leave his possession before January 14, 1998. Since Coney failed to file his application within the time required under OCGA § 5-6-35 (d), the application is DISMISSED for lack of jurisdiction. Hill v. State, 204 Ga. App. 582-583 (420 SE2d 393) (1992).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 12, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0243

RENA M SEARS V. PCC AIRFOILS, INC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97027

97S11055 256-66-6259

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 12 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 19, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0244

CHARLES UNDERWOOD V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

92-028
97CV221 94CV290

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 19 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 09, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0245

LARRY CORNELIUS V. DEPARTMENT OF TRANSPORTATION, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

93-028
97CV18191 258-96-7000

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR - 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 24, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0245

LARRY CORNELIUS V. DEPARTMENT OF TRANSPORTATION, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93028

97CV18191 258-96-7000

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 24 1998

The Court of Appeals hereby passes the following order:

A98D0246. MICHAEL BLACKBURN v. DEPARTMENT OF HUMAN RESOURCES

In this application for discretionary review pursuant to OCGA § 5-6-35 (a) (2), Michael Blackburn seeks to appeal the trial court's order denying his motion for new trial, or alternatively for reconsideration, with regard to the court's earlier child support income deduction order. In the income deduction order, entered May 7, 1996, Blackburn's monthly child support obligation for one of his four children was \$235.00. In the order denying the motion for new trial, entered February 4, 1998, the trial court made a specific finding that Blackburn was suppressing his income and has the ability to earn at least \$2,000.00 per month, a significantly higher amount than that reflected by his tax returns for the past several years. Basing its calculation on this figure as Blackburn's income, the court deviated *downward* from the guidelines set out in OCGA § 19-6-15, because of Blackburn's obligation to support three other children, and continued the award at \$235.00 per month (less than 17% of his minimum potential monthly income).

In his application for discretionary review, Blackburn argued that the trial court in effect established a minimum child support award irrespective of an obligor parent's actual income and further argued that such a minimum is contrary to Georgia law. Although OCGA § 19-6-1, which provides for awards of alimony, is couched in terms of the ability of the obligated party to pay, under OCGA § 19-6-15 awards of child support are to be computed based on gross income. Deviations from the guideline amount may be made only upon a written finding of special circumstances which may include any "factor which the trier of facts deems to be required by the ends of justice." OCGA § 9-6-15 (c). The Georgia Supreme Court has held that nonexclusive list of factors set forth in § 9-6-15 authorizes deviations from the guideline awards on a finding that the obligor parent is suppressing his or her income and that such finding may be based on circumstantial evidence. Duncan v. Duncan, 262 Ga. 872 (426 SE2d 857) (1) (1993). The Duncan court emphasized that a party's past income is some evidence, but not conclusive evidence, of a party's earning capacity. *Id.* Accordingly, the trial court in this case was authorized to consider Blackburn's earning capacity, as well as his actual income, in determining the amount of child support.

The transcript of the hearing on Blackburn's motion for new trial was not included in the application materials, and he did not supplement the record with a stipulation of the evidence pursuant to OCGA 5-6-41 (g). In the absence of that transcript, this court must assume that the evidence adduced at the hearing supported the trial court's denial of the motion for new trial. Jones v. State,

213 Ga. App. 11, 13 (444 SE2d 89) (1994). After a careful review of Blackburn's application, the court concludes that he failed to carry his burden under Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989), of affirmatively showing that reversible error appears to exist in the trial court's decision, providing this court no basis to consider granting an appeal.

For the foregoing reasons, Blackburn's application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0247
WILLIAM D. BRADBURY V. SUSAN M. SHAPIRO

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98028

DR972001M

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 10, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0247

WILLIAM D. BRADBURY V. SUSAN M. SHAPIRO

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

98-028
DR972001M

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 10 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APR - 1 1998

The Court of Appeals hereby passes the following order:

A98D0248. J. A. MILLER, INC. v. ROBBEN LYNRICH ENTERPRISES, INC.

J. A. Miller, Inc. ("Miller") filed this discretionary appeal from an order granting Robben Lynrich Enterprises' ("Lynrich") motion to set aside and vacate consent judgment. In the application and response, both Miller and Lynrich treat the February 3, 1998, order as a final judgment, ordering that Miller pay a certain sum and that a writ of possession issue. The order, however, merely grants the motion to set aside and reopens the case. The remaining language of the order is unclear and does not in fact constitute a final, appealable judgment. Thus, the case remains pending below, and in order to appeal, Miller was required to follow the interlocutory appeals procedures of OCGA § 5-6-34 (b). Because Miller failed to follow the proper procedures, this Court is without jurisdiction to entertain this appeal, and the application for discretionary review is accordingly DISMISSED. When the trial court enters a final order in this case, any aggrieved party may appeal from that judgment using the appropriate appellate procedures.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 1 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereby affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 24, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0249
THOMAS R. ATWOOD, JR., ET AL V. SOUTHEAST BEDDING COMPANY, INC. d/b/a
LOVING CARE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91028

9424878

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 24 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 19, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0250
VEHICLE RECYCLING SOLUTIONS, INC. d/b/a U-WRENCH-IT AUTO PARTS V.
CITY OF ATLANTA, GEORGIA

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

99028

E62018

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 19 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

[Handwritten Signature] Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 02, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0251
EMMANUEL OSAKO ADAKO, SR. V. NANCY COTTLE ADAKO

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90028

97CV12874

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR -2 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 18 1998

The Court of Appeals hereby passes the following order:

A98D0252. BOYERTOWN MANUFACTURING, INC. v. HOBBS.

In this application for discretionary appeal, Boyertown Manufacturing, Inc. seeks review of a superior court order affirming of a workers' compensation award in favor of an employee. The superior court entered its order affirming the State Board's determination on December 30, 1997. On January 8, 1998, the superior court issued an enforcement order pursuant to OCGA § 34-9-106, directing that a fi. fa. for \$25,287.25 in accrued benefits be issued. The superior court subsequently entered another order on February 9, 1998, to correct a clerical error in the enforcement order. Boyertown Manufacturing filed this application on March 9, 1998.

Under OCGA § 5-6-35 (d), an application for discretionary appeal must be filed within 30 days after entry of the judgment in question. As the superior court entered its order affirming the State Board's award on December 30, 1997, the deadline for seeking discretionary appeal was January 29, 1998. The time requirement set forth in OCGA § 5-6-35 (d) is jurisdictional and the failure to comply with it deprives this court of the jurisdiction to consider

this application. Hogan v. Taylor County Bd. of Educ., 157 Ga. App. 680 (278 SE2d 106) (1981).

If Boyertown Manufacturing sought to appeal the superior court's enforcement order, such was directly appealable as it involved the enforcement power of a trial court. See Kingery Block & Concrete Co. v. Luttrell, 174 Ga. App. 481, 482 (330 SE2d 181) (1985). Under OCGA § 5-6-35 (j), where a party timely files a discretionary application from a judgment that is directly appealable, this court must grant the application; but this application is not timely. The February 9, 1998, order, merely corrected a clerical error that did not pertain to Boyertown Manufacturing, and the appealable enforcement order was the one entered on January 8, 1998. Any appeal of that judgment had to be filed within 30 days of its entry. OCGA § 5-6-38 (a); OCGA § 5-6-35 (d).

For the above reasons, this application is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 18 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 10, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0253
TROY LEON BRACY V. MARY C. BRACY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92029

E66075

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

APR 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

Court of Appeals of the State of Georgia

ATLANTA, JUN 23 1998

The Court of Appeals hereby passes the following order:

A98D0254. Jacobs v. Ware County Board of Education

Sherry Jacobs seeks reconsideration of this Court's order dated March 27, 1998 which dismissed her discretionary application on the ground that it was untimely. Jacobs' motion for reconsideration, however, was not filed with this Court until April 29, 1998. Court of Appeals Rule 37 (b) requires that motions for reconsideration be filed within ten days of the judgment or dismissal. Jacobs' motion, which was filed more than ten days after this Court's order dismissing her application, is untimely, and it is hereby ordered DISMISSED. Further, Jacobs' arguments in her motion concerning tolling of a statute of limitations would have no application to statutory filing requirements.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 23 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, APR 10, 1998

The Court of Appeals hereby passes the following order:

A98D0255. BLAND, et al., v. RESSEAU, et al.

In Resseau v. Bland, 268 Ga. 634 (491 SE2d 809) (1997), the Supreme Court affirmed the judgment for the plaintiffs in an action to quiet title to real property in Putnam County. The trial court thereafter denied plaintiffs' motion for attorney's fees under OCGA § 9-15-14. Plaintiffs now seek an appeal to this court from that decision. However, the Supreme Court has appellate jurisdiction to hear appeals that arise directly from particular "classes of cases," including "[c]ases involving title to land." Ga. Const. of 1983, Art. VI, § VI, ¶ III (1). While it is sometimes unclear whether a given case may be properly classified as one within the appellate jurisdiction of the Supreme Court, no such difficulty exists in this case. Accord Resseau v. Bland, supra; compare Kluge v. Renn, 226 Ga. App. 898 (487 SE2d 391) (1997) (abusive litigation action brought subsequent to underlying divorce case deemed a new action not within the divorce and alimony jurisdiction of the Supreme Court). Since the case from which this appeal is taken is one involving title to land, the application is hereby TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 10, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0256
RAYMOND MOSS V. K.C. BOWEN COMPANY

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98029

96A12716

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 10 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 01, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0257

CHARLES DAVID ANDERSON V. JACQUELINE WHEELING, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96029

97CV159

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 1 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAR 31 1998

The Court of Appeals hereby passes the following order:

A98D0258. LITTLE et al. v. CROCKETT et al.

This application for discretionary appeal in a workers' compensation case seeks review of a superior court order affirming a State Board decision that awarded benefits to several employees who were injured in a motor vehicle accident on the way to work.

The injured employees worked for Wilbert Little, d/b/a Little Masonry, which had subcontracted with Johnson Masonry to perform masonry work on a construction project. Pursuant to that agreement, Johnson paid workers' compensation insurance premiums on behalf of Little's employees, because Little had not procured any workers' compensation coverage.

Little provided transportation for his employees to the project site that was 80 miles away. Some of those employees were injured while en route to the job site on February 28, 1996, when the van in which they were riding left the roadway and overturned.

In defending the various workers' compensation claims that followed, Johnson's workers' compensation carrier, Home Builders Association of Georgia (HBAG), conceded that coverage existed for the injured employees by virtue of Johnson having paid workers' compensation insurance premiums on their behalf. See OCGA § 34-9-124 (b). But HBAG argued that the injuries were not compensable for two reasons: (1) the injuries did not arise out of and in the course of the employment; and (2) Johnson constituted a statutory employer and the injuries did not occur "on, in, or about the premises" on which Johnson undertook to execute work. OCGA § 34-9-8 (d).

1. In contending that the injuries did not arise out of and in the course of employment, HBAG relies upon the general rule that injuries sustained while going to and from the place of work are not compensable. However, there is an exception to that general rule that allows compensation, i.e., where the employer furnishes transportation to the employee as an incident of the employment for the mutual benefit of the employer and employee to facilitate the

progress of the work. Jose Andrade Painting v. Jaimes, 207 Ga. App. 596 (428 SE2d 640) (1993). The State Board found that under the facts of this case, that exception applied.

HBAG contends that the evidence did not authorize that finding. But HBAG did not submit any portion of the transcript, and in the absence of such this court must presume that the State Board's findings were supported by the evidence. See, generally, Green Room v. Confederation Life Ins. Co., 215 Ga. App. 221 (450 SE2d 290) (1994).

2. Although HBAG concedes that OCGA § 34-9-124 (b) is applicable and estops it from denying that coverage was available for the injured employees, it also argues that the statutory employer statute, OCGA § 34-9-8, likewise was applicable, and the injuries were not compensable because they did not occur on the premises controlled by the statutory employer, as required by that statute.

However, as noted by the appellate division in its decision, the two Code sections provide workers' compensation coverage to injured employees in two totally different situations. OCGA § 34-9-124 ensures coverage for employees whose employer paid workers' compensation premiums through another employer, whereas OCGA § 34-9-8 was enacted to provide coverage for workers whose immediate employers did not have workers' compensation coverage. Travelers Ins. Co. v. Southern Electric, 209 Ga. App. 718, 719 (434 SE2d 507) (1993). The statutory employer statute was inapplicable here, where the injured employees' immediate employer had workers' compensation coverage by virtue of Johnson procuring such on Little's behalf.

For the above reasons, the superior court did not err in affirming the State Board's decision, and this application is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 31 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 15, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0258

WILBERT LITTLE, ET AL V. ROGER CROCKETT, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

91-029
1B97CV307M 1B97CV318M 1B97CV317M 1B97CV319M
1B97CV323M 1B97CV322M 1B97CV322M

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 15 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0259
TRAVIS LONG, b/n/f JOHN LONG, ET AL V. HORACE MANN INSURANCE COMPANY,
ET AL.

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

99029

66441B 32900

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAR 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 10, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0259

TRAVIS LONG, b/n/f JOHN LONG, ET AL V. HORACE MANN INSURANCE COMPANY,
ET AL.

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

99-029
66441B 32900

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MARCH 17, 1998

The Court of Appeals hereby passes the following order:

Case No. A98D0259

TRAVIS LONG, b/n/f JOHN LONG, ET AL V. HORACE MANN, ET AL

The discretionary application received in the above docketed matter does not contain a stamped "filed" copy of the order which is being appealed as required by Rule 32 (b) of the Court of Appeals.

Applicant is hereby ordered to supplement the application with a stamped "filed" copy of the order instanter. If applicant does not cause a copy of said order to be physically filed with the Court within 10 days of the date of this order, the application will be dismissed. Applicant's submission in response to this order will be deemed filed only on the date it is physically received in the Clerk's office.

The Court is required to issue an order granting or denying the application within 30 days of the filing of the application. See OCGA 5-6-35 (f).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAR 17 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 10, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0260
WAYNE C. SMITH V. JOHNNIE J. HEYWARD

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90029

95RCCV92

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, APR 14 1998

The Court of Appeals hereby passes the following order:

A98D0261. ASHWIN SHAH v. PURNIMA SHAH

Purnima Shah ("Wife") filed for divorce from her husband, Ashish A. Shah ("Husband"). In the course of discovery, Wife determined that Husband had conveyed a 99% interest in Daven's Market, a business operated by Husband and Wife, to his father, Ashwin Shah, the applicant herein ("Father"). Wife amended the complaint for divorce to add Father as a party, alleging Husband had conspired with Father to make a fraudulent conveyance of the business, without Father paying any consideration, with the intent to deprive Wife of her equitable interest in marital property and assets. She prayed for the court to set aside the alleged fraudulent conveyance and to subject the business to equitable property division.

At trial, the jury found for Wife on the fraudulent conveyance issue, and the court issued a final judgment and decree of divorce setting aside the conveyance and subjecting the interest to equitable property division. Father filed this application for discretionary appeal from the final divorce decree.¹ Husband did not appeal.

¹Father has also filed a notice of direct appeal in the trial court.

Jurisdiction of appeals in divorce cases is vested exclusively in the Supreme Court. Ga. Const. Art. 6, Sec. 6, Par. III (6). Even though the Father was not sued by the Wife for divorce, but instead for his part in the alleged fraudulent conveyance, the Father's appeal is from the final divorce decree and accordingly falls within the Supreme Court's original appellate jurisdiction. See Eickhoff v. Eickhoff, 263 Ga. 498, 499 (1) (435 SE2d 914) (1993) (On appeal from judgments and orders in domestic relations cases, Supreme Court has jurisdiction over all divorce and alimony cases); compare Horton v. Kitchens, 259 Ga. 446 (383 SE2d 871) (1989) (Any party, including third-party defendant, who seeks to appeal order entered in domestic relations case must follow procedure set forth in statute governing application for appeal, OCGA § 5-6-35). For the foregoing reason, this appeal is hereby TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 14 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 21, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0262

RONALD S. LEVENTHAL V. ANNE H. MOSELEY, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

92-030
92A7544

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

APR 21 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 23, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0263

T.T.C. ILLINOIS, INC., ET AL V. JAMES GILMORE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

93-030
97CV11023 254-88-4291

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 23 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0263

T.T.C. ILLINOIS, INC., ET AL V. JAMES GILMORE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93030

97CV11023 254-88-4291

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 3 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

APR 10 1998

The Court of Appeals hereby passes the following order:

A98D0264. FRANCINE E. ROBIN v. SHERWIN P. ROBIN

This application seeks review of the trial court's decision changing custody of the parties' minor child from joint legal custody, with the mother, Francine Robin, having physical custody and the father, Sherwin Robin, having visitation, to sole legal and physical custody in the father, with the mother having visitation. The trial court found a substantial change affecting the well-being of the child warranting a change in custody, specifically identifying two factors as the basis for the finding of a substantial change: (1) the child was deteriorating academically; and (2) the child was deteriorating socially. February 24, 1998 Order, p. 1. This application followed.

Applicant Francine Robin asserted four enumerations of error. She first alleged that the trial court erred in determining that substantial change had occurred by evaluating the condition of the child at the time of the original custody order (July 1994) compared to his condition at the time the modification petition was filed (September 1996), rather than comparing his condition at the time of the original order to that at the time of the hearing

(January 1998). Francine Robin asserts that the court "acknowledged that there was not a material deterioration [in the condition of the child] at the time of trial." Application, p. 2. Although the issue is not addressed in the trial court's order, the transcript of the court's ruling at the hearing (which does not include the evidence received by the court) does indicate that the court considered the law to be that the relevant time to evaluate the alleged change in circumstances was that of the filing of the modification petition, rather than the hearing date. January 28, 1998 Hearing Transcript, pp. 2, 8. Neither Francine Robin's application nor the trial court's order cite any authority on this issue, although it appears that the relevant time should be the time of the hearing, as suggested by Francine Robin. See Giugliano v. Giugliano, 260 Ga. 467 (396 SE2d 897) (1990) (for modification of child support award under OCGA § 19-6-19(a), the appropriate comparison for measuring change is between the relevant factors existing at the time of the original judgment and the relevant factors existing at the time of the hearing on the petition for revision). It is not apparent, however, from the trial court's order or from the transcript that the trial court *did* limit itself to considering the condition of the child at the time of the filing of the petition. Both the court's order and the court's remarks at the hearing are framed in terms of the "present" time, i.e., January 1998. Nowhere does the court specifically note that any deterioration in the child's situation had been corrected by the time of trial. Without a transcript of the remainder of the hearing, this court cannot review the trial court's determination

regarding a deterioration in the child's condition. Therefore, Francine Robin has not carried her burden of showing that the application should be granted. Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989).

In her second enumeration of error, Francine Robin argued that the trial court applied an improper standard because this court had established no standard for modifying joint custody to sole custody. This argument is incorrect. This court has affirmed such a modification, and the test is the same as for other custody modifications: whether there has been a change of conditions affecting the welfare of the child. Phillips v. Drake, 215 Ga. App. 210 (449 SE2d 879) (1994).

In her third enumeration, Francine Robin argued that the child's treating professionals testified that it would be detrimental to the child to modify the joint custody order and that it was an abuse of discretion to change custody in light of the "overwhelming weight of the evidence." First, the applicant failed to support her contention as to the weight of the evidence from the record as no transcript of the treating professionals' testimony was provided. Harper, 259 Ga. 246. Secondly, the trial court clearly *did* consider the expert testimony: the transcript reveals that the court discussed the testimony of several of the witnesses but found the expert testimony unhelpful to its decision as to the child's best interest. Transcript, pp. 3-5. Finally, in a child custody determination, the exercise of discretion is granted solely and exclusively to the trial judge. Arp v. Hammonds, 200 Ga. App. 715, 717 (409 SE2d 275) (1991). If there is any reasonable

evidence to support the trial court's decision concerning a change in custody between parents, the decision will be affirmed on appeal. Lifsey v. Lifsey, 256 Ga. 613 (351 SE2d 637) (1987). There appears to be no abuse of discretion in this case.

In her final enumeration of error, Francine Robin argued that the trial court erred by basing its decision on the belief that a boy at twelve years of age needed to spend more time with his father. Although a child's increase in age is not sufficient alone to authorize a modification of custody, McJunkin v. McJunkin, 221 Ga. 625 (146 SE2d 638) (1966), the trial court did not base its finding of a change in circumstances on that factor alone. Furthermore, Francine Robin cited no authority holding that the court could not consider the child's age as one factor in determining which custody arrangement would be in his best interest.

Since the applicant has the burden of demonstrating that the trial court committed a legal error and failed to meet this burden, there is insufficient evidence to show that the trial court abused its discretion. Therefore, the application is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 10 1990

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 01, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0265

THE WAGGONERS TRUCKING, ET AL V. RICHARD RANCK

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98030

9702040 368-44-9494

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR - 1 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 17, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0266

OVEL ENTERPRISES, INC. V. MELVIN SELIGMAN, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

96-030
961556205

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* JUN 17 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

C. William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 22, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0266
OVEL ENTERPRISES, INC. V. MELVIN SELIGMAN, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

96030

961556205

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 22 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martini

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 22, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0267

RONALD S. LEVENTHAL V. MELVIN SELIGMAN, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96031

961556205

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 22 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 17, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0267

RONALD S. LEVENTHAL V. MELVIN SELIGMAN, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

96-031
961556205

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 17 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 08, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0268

CHARLES EDWARD GANN V. DAN POE, individually and d/b/a DAN POE
TRUCKING

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91030

252-23-1123 98V0029

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR - 8 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 09, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0269
TOMAS L. ABARCA V. J. WAYNE GARNER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99030
E62125

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

APR -9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 09, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0270

LAWRENCE SHAPIRO d/b/a KJAM V. PRO-DRIVER SERVICES, INC.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90030

97CV2422

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 10, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0271
KELLEY ANN ROGERS V. BETH BARNETT

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97030
97V072

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta APR 10 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 23, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0272

NORTH AMERICAN SPECIALTY INSURANCE COMPANY V. ANDY BROWN

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

92031

96CV1493N

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 23 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 23, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0273

JOHNNY ISIAH PRATHER V. JOAN G. GRIFFIES, CLERK

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93031

98V165

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 23 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 17, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0274

LEE K. HAMMER, D.C. V. OFFICE OF STATE ADMINISTRATIVE HEARINGS, STATE BOARD OF CHIROPRACTIC EXAMINERS

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94031

E61999

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 17 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 23, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0275
ELSIE CANNON V. CARROLL COUNTY, GEORGIA, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98031

97V01208

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 23 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 15, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0276
SAM HEWITT, ET AL V. BILL WALKER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91031
SU95CV29605

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 15 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 21, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0277
R.L. MCGAHA, ET AL V. FREDA JACKSON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99031
950277

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* APR 21 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 21, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0277

R. L. MCGAHA, ET AL V. FRED A JACKSON

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-031
950277

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 21 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William S. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 29, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0278

COASTAL GERI-CARE, ET AL V. DAVID POYTHRESS, COMMISSIONER OF LABOR,
ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

90031

971449

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 29 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 19, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0278

COASTAL GERI-CARE, ET AL V. DAVID POYTHRESS, COMMISSIONER OF LABOR,
ET AL

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

90-031
971449

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 19 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAY -5 1998

The Court of Appeals hereby passes the following order:

A98D0279. WILLIAM HENRY HOWARD v. THE STATE

William Henry Howard, pro se, seeks discretionary review of the court's order entered on March 4, 1998, denying his petition for writ of error coram nobis. Howard sent his application by regular mail to this Court, but failed to include either filing costs or a notarized pauper's affidavit with the application. Unless sent by certified mail, an application is deemed filed in this Court only when it is physically delivered to, and clocked in by, the Clerk's office, accompanied by the cost of filing or a sufficient pauper's affidavit. See Court of Appeals Rules 4 and 5 (a). This Court was thus not permitted to docket the appeal, and the application was returned to Howard with instructions that he submit either costs or a notarized pauper's affidavit for the appeal to be docketed in this Court. Howard resubmitted the application with a notarized pauper's affidavit, but the documents were not received in this Court until April 6, 1998, 33 days after the order denying his petition was entered. OCGA § 5-6-35 (d) provides that applications for discretionary appeals must be filed within 30 days of entry of the judgment appealed

from. In discretionary appeals, a timely filed application is necessary to confer jurisdiction upon this Court to consider the appeal. See Tobitt v. Tobitt, 249 Ga 245 (290 SE2d 49) (1982). Because we are without jurisdiction in this case, the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY - 5 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 15, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0280

GORDON SCOTT HENDERSON V. REGINA ANN JUSTICE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97031

95CV22542

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 15 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0281
METCAM, INC. V. GEORGIA STATE BANK

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92032

97G1518

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY - 5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 29, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0282
CALVIN A. JACOBSON V. SANDRA MERNICK

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93032

9714191

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 29 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 21, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0282

CALVIN A. JACOBSON V. SANDRA MERNICK

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

93-032
9714149

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 21 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 29, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0283
TAMMY DEE NIXON V. MARTY T. NIXON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98032

981007722

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 29 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

Court of Appeals of the State of Georgia

ATLANTA, APR 13 1998

The Court of Appeals hereby passes the following order:

A98D0284. JOHN ALLEN THORNTON v. DEBORAH LYNN FRENCH

John Allen Thornton filed this application for discretionary review of the trial court's March 16, 1998 order in his action seeking custody of the parties' two minor children. Generally, an order granting or denying a petition for modification of child custody requires the discretionary appeal procedures. OCGA § 5-6-35 (a) (2); Jackson v. Roach, 199 Ga. App. 653 (405 SE2d 712) (1991). In this case, however, the trial court's order was not final. After requiring an evaluation by a certified service provider, family counseling, attendance at a divorcing parents seminar, and affirmation of the children's election (by November 25, 1998), the order provided "once the noted reports and affirmations are received as herein prescribed, a hearing shall be scheduled for final disposition of all issues herein." Inasmuch as the determination of the issue of the custody of the two children remains pending before the trial court, no final judgment has been entered and it appears that the interlocutory appeal procedures instead were required in this case. Scruggs v. Ga. Dept. of Human Resources, 261 Ga. 587, 589 (408 SE2d 103) (1991). Because of

Thornton's failure to comply with the interlocutory appeal procedures set forth in OCGA § 5-6-34 (b), this court lacks jurisdiction to consider this appeal, and Thornton's application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 13 1993

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Will Z. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APR 13 1964

The Court of Appeals hereby passes the following order:

A98D0285. IN RE: LAW SUITS OF ANTHONY J. CARTER.

Anthony J. Carter seeks an appeal from the order of the superior court directing the clerk not to file any lawsuit brought by or on behalf of Carter "unless same is signed by a member in good standing of the State Bar of Georgia who shall certify that the complaint sets out a prima facie case upon which some relief could be granted." Since the order at issue does not appear to be subject to the discretionary appeal procedure, Carter's application is hereby GRANTED. OCGA § 5-6-35 (j). Notwithstanding the superior court's directive regarding lawsuits generally, Carter shall have ten days from the date of this order to file his notice of appeal if he has not already done so and the clerk of superior court is directed to accept Carter's notice of appeal when presented. The clerk of superior court shall include a copy of this order in the record transmitted to this court.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 13 1964

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William Z. Matlock Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0286

WALTER C. ROBERTSON V. KIMBERLY O. ROBERTSON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99032

98CV51738

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY -5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin, Jr.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 29, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0287

R.F. KNOX COMPANY, INC. V. MAURICE COPELAND, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90032

E65748 275-44-5306

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 29 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 14, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0287

R.F. KNOX COMPANY, INC. V. MAURICE COPELAND, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

90-032
E65748

275-44-5306

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 14 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 30, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0288

IN RE: B.M. AND B.M., minor children, and JESSICA FRYE, petitioner

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97032

97CV00698

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 30 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, APRIL 30, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0290

BARRY TAUBER, ET AL V. COMMUNITY CENTERS TWO, L.L.C.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93033

97DD0003098

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **APR 30 1998**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, APR 30 1998

The Court of Appeals hereby passes the following order:

A98D0291. KOCH v. MARTIN.

Janet Marie Koch seeks an appeal to this court from the order of the superior court denying her petition to hold former husband Paul Leslie Martin in contempt of the support provisions of the final divorce decree entered in 1996. However, a contempt action based on the failure to comply with the child support provisions of a final divorce decree is ancillary to the prior divorce action and is therefore within the general appellate jurisdiction of the Supreme Court. Ga. Const. of 1983, Art. VI, § VI, ¶ III (6); Griffin v. Griffin, 243 Ga. 149 (253 SE2d 80) (1979); see also Brown v. King, 266 Ga. 890 (472 SE2d 65) (1996); Smith v. Smith, 254 Ga. 450, 452 (330 SE2d 706) (1985).

Accordingly, Koch's application is hereby TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta APR 30 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin
Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY -5 1998

The Court of Appeals hereby passes the following order:

A98D0292. ROGER ANDES v. JULIAN LECRAW & COMPANY, INC.

Roger Andes seeks discretionary review of the denial of his motion to vacate and set aside writ of possession. The order denying Andes' motion was entered on March 11, 1998, and Andes filed his application for discretionary appeal in this Court on April 10, 1998. While OCGA § 5-6-35 (d) generally provides that an appeal taken by application must be filed within 30 days of the entry of the judgment complained of, OCGA § 44-7-56 provides specifically that a judgment in a dispossessory proceeding is appealable only if "any such appeal shall be filed within ten days of the date such judgment was entered" Andes' failure to file his application within the ten-day period prescribed by OCGA § 44-7-56 deprives this Court of jurisdiction to consider the appeal, and the application is therefore DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY -5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martine Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0293
JEFFREY G. WALKER V. GEORGIA RECEIVABLES, INC.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

96033

97A394804

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY -5 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAY 19 1998

The Court of Appeals hereby passes the following order:

A98D0294. MCNEIL v. JOHNSON CONTROLS, INC. et al.

In denying the application for discretionary appeal filed in this case, this court rejected the notion that prior proceedings had established a causal relationship between the employee's September 1991 work injury and his neuropathy.

On motion for reconsideration, the employee points out that his contention actually was that as the issue of any causal connection between the work injury and the neuropathy could and should have been litigated in the prior proceedings, the doctrine of res judicata barred future determination of the issue. However, notwithstanding this clarification of the employee's argument, the prior decisions in this matter only determined that the issue could not be adjudicated based on the evidence adduced at that time, and until the employer could satisfy its burden of proof by producing sufficient evidence to show a change in condition for the better, the employee remained entitled to benefits.

Under these circumstances, the doctrine of res judicata did not bar the employer's subsequent December 1996 suspension of benefits based on a change in condition and its showing that the

employee's neuropathy was not related to his work injury and that, in any event, the neuropathy did not contribute to any disability. Accordingly, the motion for reconsideration is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 19 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 18, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0295

LARS ELY V. ALICE ANN GIBSON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99033

97CV9064

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 18 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 19, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0296
DELPHI ENERGY & ENGINE MANAGEMENT SYSTEMS OF GENERAL MOTORS V.
DAVID B. POYTHRESS, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

90033

97CV10613

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 19 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAY -5 1998

The Court of Appeals hereby passes the following order:

A98D0297. Gregory Bart Nation v. The State

On April 15, 1998, Gregory Bart Nation filed this application for discretionary appeal seeking review of the trial court's order dismissing his Petition for a Writ of Coram Nobis and denying his Motion for Appointment of Counsel. The order Nation seeks to appeal was entered on February 16, 1998. An application for discretionary appeal, however, must be filed within 30 days after entry of the judgment from which an appeal is sought. OCGA § 5-6-35 (d). Although a trial court has authority under OCGA § 5-6-39 to grant a 30-day extension of time for filing a notice of appeal, no comparable authority exists for granting an extension of time to file an application for discretionary appeal. Rosenstein v. Jenkins, 166 Ga. App. 385 (304 SE2d 740) (1983).

In this case, because Nation filed this application for discretionary appeal beyond the 30-day period following the entry of the order he seeks to appeal, this Court lacks jurisdiction to

consider this case.¹ Accordingly, this application is hereby
DISMISSED.

Court of Appeals of the State of Georgia

MAY - 5 1998

Clerk's Office, Atlanta

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

¹Nation previously sought to directly appeal the trial court's February 16, 1998 order. That direct appeal was dismissed by this Court because Nation failed to follow the discretionary appeal procedures.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUN 22 1998

The Court of Appeals hereby passes the following order:

A98D0297. Gregory Bart Nation v. The State

Gregory Bart Nation seeks reconsideration of this Court's order dated May 5, 1998 which dismissed his discretionary application on the ground that it was untimely. Nation's motion for reconsideration, however, was not filed with this Court until June 1, 1998. Court of Appeals Rule 37 (b) requires that motions for reconsideration be filed within ten days of the judgment or dismissal. Nation's motion, which was filed more than ten days after this Court's order dismissing his application, is therefore untimely, and it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 22 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0298

HEADLEY CONSTRUCTION CORPORATION, ET AL V. HIRAM E. MASSENGALE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92034

98V289 253-54-3428

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0299

JEFFREY SCOTT CHERRY V. SID MILES, in his capacity as Commissioner of
the Georgia Department of Public Safety

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93034

97CV44044

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 11 1998**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAY 26 1998

The Court of Appeals hereby passes the following order:

A98D0300. WALKER v. UNITED FOOD AND COMMERCIAL WORKERS LOCAL 1996.

Applicant-plaintiff Wade Walker seeks a discretionary appeal from an order establishing the defendant's entitlement to an award of attorney's fees. However, although Walker's potential liability to defendant for attorney's fees has been established, no award of attorney's fees has yet been entered. The trial court held that "[a]t this time an award of attorney's fees cannot be made as the Plaintiff is entitled to be heard on the amount, reasonableness, and necessity of the fees and expenses claimed by Defendant. [Cit.] Accordingly, the Defendant shall have ten (10) days from the date of this Order to obtain a Rule Nisi from this Court setting the issue of an attorney's fee award for an evidentiary hearing. The only issue to be presented at the hearing will be the amount, reasonableness, and necessity of legal fees. In the event the Defendant fails to obtain a Rule Nisi within the time allowed, the Motion for An Award Of Attorney's Fees and Expenses shall stand dismissed." (Punctuation omitted.) Order at page 2.

Because the trial court has not made a final disposition awarding attorney's fees to defendant and Walker has otherwise

failed to follow the required procedure for filing an appeal from a non-final order, Walker's application for discretionary appeal is hereby DISMISSED as premature. See generally Scruggs v. Dept. of Human Resources, 261 Ga. 587, 588 (408 SE2d 103) (1991).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 25 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 20, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0301

RONALD S. LEVENTHAL V. ANNE H. MOSELEY, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98034

92A7544

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 20 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0302
SALES SUPPORT, INC. f/k/a T.D. ABBOTT & ASSOCIATES, INC. V.
JENNIFER G. BROWN

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

96034

98CV0013 260-23-4206

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY -5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, MAY 26 1998

The Court of Appeals hereby passes the following order:

A98D0303. Bruce Alan Kling v. Margaret Kling

On April 24, 1998, Bruce Alan Kling filed this application for discretionary appeal seeking review of the trial court's order denying his motion for new trial in this action concerning child support and custody. The application states that the trial court denied Bruce Kling's motion for new trial on February 19, 1997, although presumably the correct year should read "1998." On March 23, 1998, the trial court entered an order granting Bruce Kling an extension of time within which to file his application for discretionary appeal. Following the filing of the application for discretionary appeal, on May 6, 1998, this Court issued an order directing that Bruce Kling file a stamped "filed" copy of the order sought to be appealed within ten days, or by May 18, 1998. This Court's May 6 order further provided that in the event Bruce Kling failed to physically file a copy of the order sought to be appealed within ten days, the application would be dismissed. Because Bruce Kling has failed to file a copy of the order sought to be appealed with this Court within the time required, this application must be dismissed.

In addition, this application must be dismissed because it was not timely filed. An application for discretionary appeal must be filed within 30 days after entry of the judgment from which an appeal is sought. OCGA § 5-6-35 (d). Although a trial court has authority under OCGA § 5-6-39 to grant a 30-day extension of time for filing a notice of appeal, no comparable authority exists for granting an extension of time to file an application for discretionary appeal. Rosenstein v. Jenkins, 166 Ga. App. 385 (304 SE2d 740) (1983). In this case, the trial court was without authority to grant Bruce Kling an extension of time within which to file his application. Accordingly, his application which was filed more than 30 days after entry of the order denying his motion for new trial is untimely, and this Court lacks jurisdiction to consider this case. For these reasons, this application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 26 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 04, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0304

TERRANCE R. JUHAN V. PERRY SMITH COMPANY, ET AL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-034
98CV50S

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN - 4 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 20, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0304

TERRANCE R. JUHAN V. PERRY SMITH COMPANY, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99034

98CV50S

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 20 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 11, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0305
VERONICA GANNY V. AUSTIN GANNY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90034

971295535

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

MAY 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 21, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0306
BETTY BONITA CORBETT V. GARY CORBETT

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97034

97CV142

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 21 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 21, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0307

ROBIN JENNINGS V. CROOM HOLDING CO., INC. d/b/a/ CHEROKEE PROTECTION
SERVICES, ET AL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

92035

98V0250 255-11-8421

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 21 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 21, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0308

THOMAS L. SEWELL, JR. V. MARGARET ANN SEWELL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93035

960069T

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 18, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0309

FRANCIS E. WESTBROOK V. HARRY HUGHES HARRISON, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94035

971289205

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 18 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 26, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0310
ISP ALLIANCE, INC. V. PHYSIOTHERAPY ASSOCIATES

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98035
98VX0033324D

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAY 26 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN -3 1998

The Court of Appeals hereby passes the following order:

A98D0311. CAROLYN FOLDS v. ANDRIA SCHROCK.

Carolyn Folds seeks discretionary review of a juvenile court order in this deprivation case relating to her grandchild. The juvenile court dismissed Folds' petition on March 5, 1998. Folds then filed a timely motion for new trial. The court did not issue an order on this motion, but instead wrote a letter to Folds explaining that there was no provision under OCGA § 15-11-42 to entertain the motion she filed. Folds seeks review of the decision contained in this letter.

Orders in deprivation actions are directly appealable and do not require a discretionary application. In the Interest of J.P., 220 Ga. App. 895 (470 SE2d 706)(1996). This Court will grant an otherwise timely discretionary application pursuant to OCGA § 5-6-35 (j), if the order is subject to direct appeal. But here, the juvenile court has never entered an order disposing of the motion for new trial. (In In the Interest of T.A.W., a child, 265 Ga. 106 (454 SE2d 134)(1995), the Supreme Court held that juvenile courts, as courts of record, are authorized by state constitution to grant new trials.) Accordingly, as the

motion for new trial is still pending before the juvenile court, Folds' attempted appeal must be DISMISSED as premature. Upon entry of the judgment disposing of the motion for new trial, Folds may then pursue a direct appeal by filing a notice of appeal in the juvenile court, as provided in OCGA §§ 5-6-37 and 5-6-38.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN - 3 1998**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin
Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 28 1998

The Court of Appeals hereby passes the following order:

A98D0312. Johnny Johnston v. Wayne A. Coe, as assignee of Moore Educational Publishers, Inc.

Applicant Johnny Johnston seeks discretionary review of the trial court's order granting Wayne A. Coe, as assignee of Moore Educational Publishers, Inc., summary judgment in this action for breach of contract. The trial court denied Coe's motion for attorney fees.

In his application, Johnston asserts that the trial court erred because there was no proof that he executed the contract on which the suit was brought; that the plaintiff's motion for summary judgment was not properly supported; that the assignment of the contract from Moore to Coe is ambiguous; and that there are genuine issues of material fact as to whether there was adequate consideration for the contract. Although Johnston has raised these issues, he has failed to make any showing that they have merit. Accordingly, he has failed to meet his burden of demonstrating that reversible error appears to exist, and therefore, his application for discretionary review is denied. See Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 28 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 10, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0313

KELLY ALIC KINGSLAND V. MICHELLE RENEE KINGSLAND

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-035
961029318 971970918

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* **JUN 10 1998**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 10, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0313

KELLY ALIC KINGSLAND V. MICHELLE RENEE KINGSLAND

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

99-035
961029318 971970918

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA,

MAY 22 1998

The Court of Appeals hereby passes the following order:

A98D0314. BATTLE v. THE STATE.

Terry Lee Battle, who is incarcerated, applied to the Supreme Court for an appeal from an order denying his extraordinary motion for new trial. The Supreme Court transferred Battle's application to this court for disposition. On May 7, 1998, this court issued an order directing Battle to submit a stamped "filed" copy of the order appealed from as required under Court of Appeals Rule 32 (b). That order advised Battle that if he failed to comply within ten days, his application would be dismissed. Battle failed to comply. Instead he forwarded to this court a request directed to the superior court to send up the required document. Since Battle has plainly failed to comply with this court's directive, his application is hereby DISMISSED under Rule 7 of the Rules of the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 22 1998**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 07, 1998

The Court of Appeals hereby passes the following order:

Case No. A98D0314

TERRY LEE BATTLE V. THE STATE

The discretionary application received in the above docketed matter does not contain a stamped "filed" copy of the order which is being appealed as required by Rule 32 (b) of the Court of Appeals.

Applicant is hereby ordered to supplement the application with a stamped "filed" copy of the order instanter. If applicant does not cause a copy of said order to be physically filed with the Court within 10 days of the date of this order, the application will be dismissed. Applicant's submission in response to this order will be deemed filed only on the date it is physically received in the Clerk's office.

The Court is required to issue an order granting or denying the application within 30 days of the filing of the application. See OCGA 5-6-35 (f).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY -7 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 09, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0314

TERRY LEE BATTLE V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

90-035
25748

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN - 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 26, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0315
LEWIS CONSTRUCTION COMPANY V. CORNETT BRIDGE, INC.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97035
94CV2868C

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta* MAY 26 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 21, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0316

GEORGIA BOARD OF DENTISTRY V. JEFFREY R. PRISNELL, D.M.D.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92036

E65122

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 21 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0317

MICHAEL R. SELLEARS V. FORD MOTOR CREDIT COMPANY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93036

92SC0369

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -3 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 29, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0318
JAMES BANKS V. CITY OF LITHONIA

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94036

96CV88345

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 29 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 16, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0318

JAMES BANKS V. CITY OF LITHONIA

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

94-036
96CV88345

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 29 1998

The Court of Appeals hereby passes the following order:

A98D0318. JAMES BANKS v. CITY OF LITHONIA

The City of Lithonia has filed a motion to dismiss this discretionary application on the ground that the applicant, James Banks, failed to obtain a certificate of immediate review from the trial court, as required by OCGA § 5-6-34 (b). It appears, however, nothing remains below for the court to decide. Thus, this appeal is not interlocutory, and Banks was not required to obtain a certificate under OCGA § 5-6-34 (b). The motion is therefore DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **MAY 29 1998**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN - 3 1998

The Court of Appeals hereby passes the following order:

A98D0319. Mark Rice v. Carman Builders, Inc.

Applicant Mark Rice seeks an appeal of the trial court's order entered on April 22, 1998 which denied his motion for rehearing. On January 31, 1997, Rice filed a Statement of Claim in magistrate's court seeking to recover against Carman Builders for unpaid real estate taxes in the amount of \$290.94. Carman counterclaimed for \$800.00. The case was tried in magistrate court, and judgment was entered in favor of Rice. Carman's counterclaim was denied, and Carman appealed to the state court. At the hearing in state court, judgment was entered for Rice in the amount of \$290.94 and for Carman in the amount of \$800.00. Accordingly, on October 15, 1997, the state court entered judgment in favor of Carman and against Rice in the amount of \$509.06.

On March 6, 1998, Rice filed a civil non-jury hearing request form in state court stating that the matter to be heard was a motion for new trial. The trial court entered an order denying Rice's motion for new trial on March 23, 1998. On April 3, 1998, Rice filed a motion for rehearing which was denied by order entered

on April 22, 1998. This application for discretionary appeal was filed on May 12, 1998.

An application for discretionary appeal must be filed within 30 days after entry of the order sought to be appealed. OCGA § 5-6-35 (d). Where a timely motion for new trial has been filed, the time for filing a notice of appeal (or in this case an application) is extended until 30 days after a ruling on the motion for new trial. OCGA § 5-6-38 (a). Pretermitted whether Rice timely filed his motion for new trial, he failed to file his application within 30 days of the order denying his motion for new trial. Rice's motion for rehearing was in effect a motion for reconsideration and does not operate so as to extend the time for filing an appeal. Telephone Advertising Corp. of America v. Aaron Rents, 206 Ga. App. 493 (426 SE2d 54) (1992). Accordingly, Rice's application which was filed more than 30 days after entry of the order he seeks to appeal is untimely, and this Court lacks jurisdiction to consider this application. Fabe v. Floyd, 199 Ga. App. 322 (405 SE2d 265) (1991). For this reason, this application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN -3 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0320
CWM POULTRY, ET AL V. JAMES YOUNG

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96036

98CV404C 258-31-8380

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN - 3 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 09, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0322

GEORGIA DEPARTMENT OF HUMAN RESOURCES V. LARRY MICHAEL HOLLAND, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94041

97CV0095

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, AUGUST 4, 1998

The Court of Appeals hereby passes the following order:

A98D0321. JUDITH BURRITT v. MEDIA MARKETING SERVICES, INC.

The motion for reconsideration filed by Media Marketing Services, Inc., is GRANTED. The Court has now considered the response to the application for discretionary appeal and finds no substantive reason to reverse its premature grant of that application. Consequently, the order of June 16, 1998, granting the application is vacated as premature and reentered hereby. The application is GRANTED. Applicant has ten (10) days from the date hereof to file her notice of appeal.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG - 4 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 28, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0323
ROGER DAY V. KEVIN PITTMAN, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90036

95CV1508

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 28 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr.

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0324
THERESA D. TAYLOR V. ROBERT MILNER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

To: 91
97036
97SV394

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN - 5 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0325
RANDY MANGHAM V. ROBERT MILNER

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

To: 91
97037
97SV394

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN - 5 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 26, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0326

DANNY RAY BROWN, deceased, ET AL V. STONE CONTAINER CORPORATION, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92037

CV980389BA 254-72-1932

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 26 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martine Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 15, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0327

DAN R. HOGAN V. COLONEL SID MILES, COMMISSIONER, GEORGIA DEPARTMENT
OF PUBLIC SAFETY

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93037

9701099

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 15 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 29 1998

The Court of Appeals hereby passes the following order:

A98D0328. ORRIN JACKSON v. THE STATE

Orrin Jackson seeks discretionary review of the trial court's order denying his motion to modify sentence. The order Jackson appeals from was entered on June 23, 1997. Jackson's application for discretionary appeal was docketed in this Court on May 15, 1998. An application for discretionary appeal must be filed within 30 days of the judgment appealed from. OCGA § 5-6-35 (d). Jackson's application was filed considerably past the 30-day period. An applicant's failure to timely file a discretionary application deprives this Court of jurisdiction to consider the appeal. See Tobitt v. Tobitt, 249 Ga 245 (290 SE2d 49) (1982). Accordingly, the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 29 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0329

WASHINGTON CORRECTIONAL INSTITUTE, ET AL V. BOBBIE J. FANN

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98037

98CV98 253-56-7446

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 3 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0330

AMANDA BRADLEY V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96037

SU98CR0131

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN - 3 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN -1 1998

The Court of Appeals hereby passes the following order:

A98D0331. JAMES A. HARVEY v. THE STATE

In this application for discretionary review pursuant to OCGA § 5-6-35 (a) (5), James Harvey seeks to appeal the trial court's order revoking his probation on a habitual violator conviction based on its finding that Harvey committed the offenses of possession of a firearm by a convicted felon and possession of marijuana. At the revocation hearing, the trial court denied Harvey's motion in limine to suppress evidence obtained during a police pat-down search. In his motion to suppress, Harvey averred that the officer who conducted the pat-down search lacked a specific, objective basis for suspecting Harvey was involved in any criminal activity or that he was armed and dangerous. Both the application and the copy of the motion in limine attached to Harvey's application failed to identify any evidence of record supporting his claims.

Although the application shows that Harvey requested the transcript of the hearing on his motion to suppress and probation revocation, the transcript was not included in the application materials. Nor did Harvey supplement the record with a stipulation

of the evidence pursuant to OCGA 5-6-41 (g). In the absence of any factual support for Harvey's position that the search was illegal, this court must assume that the evidence adduced at the hearing supported the trial court's denial of the motion to suppress and the revocation of Harvey's probation. Jones v. State, 213 Ga. App. 11, 13 (444 SE2d 89) (1994). After a careful review of Harvey's application, the court concludes that he failed to carry his burden under Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989), of affirmatively showing that reversible error appears to exist in the trial court's decision, providing this court no basis to consider granting an appeal.

For the foregoing reasons, Harvey's application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 1 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUN 10 1998

The Court of Appeals hereby passes the following order:

A98D0332. MEADE v. EMC CORPORATION.

Because the applicant has failed to submit a copy of the order complained of as directed by order of this court issued May 19, 1998, the application is hereby dismissed. OCGA § 5-6-35 (c); Rule 7 of the Rules of the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 10 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin

Clerk. JUN 10 1998

**Court of Appeals
of the State of Georgia**

ATLANTA, MAY 19, 1998

The Court of Appeals hereby passes the following order:

Case No. A98D0332

SHARMAN M. MEADE V. EMC CORPORATION

The discretionary application received in the above docketed matter does not contain a stamped "filed" copy of the order which is being appealed as required by Rule 32 (b) of the Court of Appeals.

Applicant is hereby ordered to supplement the application with a stamped "filed" copy of the order instanter. If applicant does not cause a copy of said order to be physically filed with the Court within 10 days of the date of this order, the application will be dismissed. Applicant's submission in response to this order will be deemed filed only on the date it is physically received in the Clerk's office.

The Court is required to issue an order granting or denying the application within 30 days of the filing of the application. See OCGA 5-6-35 (f).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta MAY 19 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 16, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0333
CHARLES ROYCE PUCKETT V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90037

93CR21171

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 25, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0334

DAVID ELROD V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

92-038
89R77

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 25 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 25, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0334

DAVID ELROD V. THE STATE

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

92-038
89R77

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 25 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 22, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0335

BAUDER COLLEGE, ET AL V. BEVERLY C. ARNOLD

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

93-038
E67535

253-21-7694

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 22 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 04, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0335

BAUDER COLLEGE, ET AL V. BEVERLY C. ARNOLD

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93038

E67535 253-21-7694

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 4 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 22, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0336

SHERATON INN CAMP, ET AL V. GREGORY A. BATES

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

94-038
E67420

252-98-5536

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 22 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 02, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0336
SHERATON INN CAMP, ET AL V. GREGORY A. BATES

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

94038

E67420 252-98-5536

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -2 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 16, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0337
MARCUS TERRELL FRANKLIN V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98038

96CR017516

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0338

MARTHA A. MORRISON V. CAREONE HOME HEALTH SERVICES, INC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96038

98CI0069

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 3 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA, JUN -9 1998

The Court of Appeals hereby passes the following order:

A98D0339. WENDELL MCFAY v. GEORGIA ELECTRIC COMPANY et al.

In this workers' compensation case, the employee sought reinstatement of benefits based on a change in condition but the claim was denied because the employee failed to show a diligent and unsuccessful search for suitable employment. The issue raised in this application is whether "suitable employment" includes work that is within the physical capacity of the employee but which involves lesser skill than the employee's former work.

Wendell McFay sustained a compensable fracture of his left collar bone on October 20, 1995. The employer suspended benefits effective June 24, 1996, based on McFay having returned to full-time work, and later terminated McFay on November 15, 1996, due to a reduction in force. McFay subsequently sought reinstatement of total disability income benefits under OCGA § 34-9-104 (a), based on a change in wage-earning capacity.

Initially, it is noted that in the context of the Workers' Compensation Act, "disability" means impairment of wage-earning capacity, and impaired wage-earning capacity refers to an "impairment that renders claimant unable to return to his regular

employment or to procure remunerative employment at a different occupation suitable to his impaired capacity." (Emphasis supplied; punctuation omitted.) Hensel Phelps Constr. Co. v. Manigault, 167 Ga. App. 599, 604 (307 SE2d 79) (1983).

"In order to receive workers' compensation benefits based on a change in condition, a claimant must establish by a preponderance of the evidence that he or she suffered a loss of earning power as a result of a compensable work-related injury; continues to suffer physical limitations attributable to that injury; and has made a diligent, but unsuccessful effort to secure suitable employment following termination. Once evidence is offered in support of the foregoing, the board may in its discretion draw reasonable inferences from that evidence that despite the claimant's good faith efforts, his or her inability to obtain suitable employment was proximately caused by the continuing disability." Maloney v. Gordon County Farms, 265 Ga. 825, 828 (462 SE2d 606) (1995).

In this case, McFay showed that he had worked as a skilled millwright for 26 years. After his termination, he applied for light duty work as a millwright with several other employers but was not hired. McFay had other work experience, including carpentry work, but he did not seek such other work because it involved lesser skill levels than his former work. He does not contend that he is physically unable to perform such work.

McFay instead contends that his inability to find millwright work proved a change in his wage-earning capacity for the worse. However, an employee's burden of making a diligent effort to secure suitable employment is not satisfied by limiting the job search to

a solitary vocation, unless that is the only type of work the employee is physically capable of performing. Where an employee chooses not to seek other work that is suitable to his impaired condition and "by which he could reduce or terminate his economic disability," the State Board is authorized to find the employee has not demonstrated a change in condition. Jackson v. Peachtree Housing Division of C.O. Smith Ind., 187 Ga. App. 612, 613-15 (371 SE2d 112) (1988).

In the event an injured employee secures suitable employment but earns less than his or her pre-injury wage, then a claim for partial disability benefits may still be pursued. That is, the employee may be able to show a partial impairment of wage-earning capacity proximately caused by physical limitations attributable to the earlier work injury. OCGA § 34-9-262, generally; Augusta Coca-Cola Bottling Co. v. Carter, 172 Ga. App. 195 (322 SE2d 365) (1984). In this case, however, by limiting his job search to skilled millwright work, McFay failed to prove any partial impairment of wage-earning capacity, as it cannot be assumed that other, less-skilled suitable employment McFay could perform would pay less than the skilled work he preferred.

Relying upon Clark v. Ga. Kraft Co., 178 Ga. App. 884 (345 SE2d 61) (1986), McFay argues that "suitable employment" should not include work, albeit within one's physical capacity, that involves a lower skill level than former work. In Clark, which involved the application of OCGA § 34-9-240 and the effect of an injured employee's refusing an employer's offer of work suitable to the employee's physical capacity, this court found the superior court

erred in disturbing the State Board's decision that the employee justifiably refused the other work because of the lack of challenge or opportunity for advancement it presented. However, in City of Adel v. Wise, 261 Ga. 53, 55 (401 SE2d 522) (1991), the Supreme Court tacitly disapproved of that rationale in Clark and instead emphasized that "the employee's refusal to accept employment must relate, in some manner, to his physical capacity or his ability to perform the job, in order for his refusal to be justified. . . ."

Again, both Clark and City of Adel involve the application of OCGA § 34-9-240 rather than the burden of proof in change-in-condition cases. But to the extent those cases and that Code section provide some analogy for a change-in-condition case where the employee has the burden of showing a diligent effort to secure suitable employment, the analogy is adverse to McFay's position.

In summary, McFay failed to seek work that was suitable to his physical capacity and that could have reduced or terminated his economic disability. Under these circumstances, the State Board was authorized to conclude that he failed to meet his burden of showing a change in condition, and the superior court properly declined to disturb that decision. Accordingly, this application is hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN - 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUN - 2 1998

The Court of Appeals hereby passes the following order:

**A98D0340. ARTHUR A. NORTEN v. MARY ANNE FROLICK & ASSOCIATES,
INC. d/b/a REMAX ACHIEVERS**

Applicant R. Scott Tobin filed this discretionary appeal from the trial court's award of attorney fees pursuant to OCGA § 9-15-14. He also filed a notice of direct appeal in the trial court from this order on May 4, 1998. A direct appeal in the underlying action is pending in this Court in Case No. A98A0921. "[A] judgment awarding attorney fees and costs of litigation pursuant to OCGA § 9-15-14 may be reviewed on direct appeal, when it is appealed as part of a judgment that is directly appealable." Haggard v. Bd. of Regents &c. of Ga., 257 Ga. 524, 526(4) (a) (360 SE2d 566) (1987). Because this Court has jurisdiction of the underlying action, the case was properly brought by direct appeal. The order awarding attorney fees will be reviewed as a companion case to the underlying action. Accordingly, this discretionary application is DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 2 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

 Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 04, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0341

JEFF ESTEP V. COWETA COUNTY, GEORGIA, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90038

98V055

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 4 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 05, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0342

ANTONIO WATSON V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97038

33049

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN -5 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William L. Martin

Court of Appeals of the State of Georgia

ATLANTA, June 03, 1998

The Court of Appeals hereby passes the following order:

A98D0343. THOMAS GARRETT v. DAVID FLORY and BETSY FLORY.

Plaintiffs David Flory and Betsy Flory initiated this dispossessory proceeding in the State Court of DeKalb County, alleging that defendant Thomas Garrett is their tenant who fails to pay rent when due. The trial court ordered defendant to pay back rent of \$2,600 into the registry of the court, and \$600 by the fifth day of the month thereafter, pending adjudication of defendant's counterclaim. Defendant seeks discretionary appeal from that order. But the order complained of is not a final judgment within the meaning of OCGA § 5-6-34 (a) (1). The discretionary-application statute, OCGA § 5-6-35, does not allow a party to ignore the interlocutory-application subsection, OCGA § 5-6-34 (b), when attempting to obtain appellate review. Scruggs v. Georgia Department of Human Resources, 261 Ga. 587 (1), 589 (408 SE2d 103). Consequently, Garrett was required to follow the interlocutory appeal procedures. OCGA § 5-6-34 (b); Wall v. T. J. B. Services, Inc., 141 Ga. App. 437 (233 SE2d 810). Accordingly, defendant Garrett's application for discretionary appeal is hereby DISMISSED as PREMATURE. Garrett's "emergency motion for temporary injunction" is likewise DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JUN - 3 1998**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 04, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0344
EMORY E. COX V. PIC-N-SAVE B.F.L. CORPORATION

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93039

98V0150 260-68-6703

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 4 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUN 16 1998

The Court of Appeals hereby passes the following order:

A98D0345. IN THE INTEREST OF: BABY GIRL BROOME.

Applicant Marsha Broome filed this discretionary appeal from the juvenile court's "Order for Non-Reunification," whereby the court found that Baby Girl Broome was deprived and transferred custody of the child to the Butts County DFACS. An order of a juvenile court judge finding a child to be deprived and placing her in the temporary custody of DFACS is a final order from which a direct appeal will lie. In Interest of S.A.W., 228 Ga. App. 197 (491 SE2d 441) (1997). Accordingly, the application for discretionary appeal is GRANTED because, pursuant to OCGA § 5-6-35 (j), the judgment for which appeal is sought is directly appealable. OCGA § 5-6-34 (a) (1). Broome shall have 10 days from the date of this order to file a Notice of Appeal. The clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 03, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0346
BARBARA SPIRES V. SPECTRUM APPAREL COMPANY, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98039

98S020150 573-66-9212

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN - 3 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JUL - 8 1998

The Court of Appeals hereby passes the following order:

A98D0347. Dunbar v. State Personnel Board, et al.

Smithy E. Dunbar seeks reconsideration of this Court's order dated June 11, 1998 which denied his discretionary application. Dunbar's motion for reconsideration, however, was not filed with this Court until June 24, 1998. Court of Appeals Rule 37 (b) requires that motions for reconsideration be filed within ten days of the judgment. Dunbar's motion, which was filed 13 days after this Court's denial of his application, is untimely, and it is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 8 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, JUN 16 1998

The Court of Appeals hereby passes the following order:

A98D0348. ROBIN HAMM v. CARLOS HAMM

Robin Hamm seeks a discretionary appeal of the trial court's April 30, 1998 order declining to exercise jurisdiction over her Petition for Modification of Custody, dismissing the civil action commenced by her petition and ordering the Sheriff of Appling County to take custody of her two minor children pending transfer of the children to Colorado as per the order of the District Court of Montrose County, Colorado.

Robin Hamm and Carlos Hamm were divorced in Colorado. They were granted joint legal custody of their children and physical custody was to be divided equally. Robin Hamm removed the children from Colorado to Appling County, Georgia in early October 1997. Carlos Hamm promptly commenced contempt proceedings in Colorado, and the Colorado court entered an order on December 2, 1997, modified on December 18, 1997, granting Carlos Hamm temporary custody and requiring that the children be returned to Colorado. Robin Hamm filed a petition for modification of the custody order on December 24, 1997, alleging that Carlos Hamm had sexually abused one of the children. The children had then been living in Appling

County with Robin Hamm less than three months. The Appling County court conducted a hearing on the matter on January 6, 1998, at which Carlos Hamm was represented by counsel. The trial court entered the order finding that it lacked jurisdiction over her petition for modification and ordering the Sheriff of Appling County to take custody of the children on April 30, 1998, and this application followed.

First, Robin Hamm argued that the trial court erred in ruling that it lacked jurisdiction under the Uniform Child Custody Jurisdiction Act ("UCCJA"). OCGA § 19-9-46 (a) provides that a Georgia court shall not exercise jurisdiction under the UCCJA if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with the UCCJA, unless the proceeding is stayed by the court of the other state because Georgia is a more appropriate forum or for other reasons. The record shows that the Colorado court was exercising jurisdiction under the UCCJA and had not stayed its proceedings in favor of Georgia being a more appropriate forum. The Georgia court followed the procedure set out in OCGA § 19-9-46 (c) and conferred with the Colorado judge who had issued the order that Carlos Hamm have full temporary custody and that the children be returned to Colorado to determine the more appropriate forum for resolution of Robin Hamm's petition. The Georgia court further found that Georgia was an inconvenient forum under OCGA § 19-9-47. After carefully reviewing the trial court's order, Robin Hamm's application and supporting excerpts of the record, it does not appear to this court that the

trial court abused its discretion in ruling that it lacked jurisdiction over the Hamms' custody dispute.

Secondly, Robin Hamm argued that the trial court erred in ordering that the children be turned over to the Sheriff of Appling County for return to Colorado and the custody of Carlos Hamm because the trial court had already declined jurisdiction over the matter. OCGA § 19-9-53, however, requires Georgia courts to recognize and enforce custody decrees made by other states exercising jurisdiction under the UCCJA. Similarly, federal law requires enforcement of other states' custody determinations under the Parental Kidnapping Prevention Act (28 USCA § 1738A (a)). Wilson v. Grouse, 263 Ga. 887 (441 SE2d 57) (1994). Thus, as a matter of comity, the Georgia court was permitted and required to enforce the Colorado court's order even though the Georgia court itself lacked jurisdiction to modify the custody decree. Youmans v. Youmans, 247 Ga. 529, 532 (276 SE2d 837) (1981).

Robin Hamm has failed to show that reversible error appears to exist in the trial court's order. Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989). Accordingly, her application for discretionary review is denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 16 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William S. Martine

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 22, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0349

FRED C. SOTO V. COLUMBUS CONSOLIDATED GOVERNMENT, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99039

SU93CV2326

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 22 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 16, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0350
H. LEE HAMLIN V. LAURA RUTH SMITH

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90039

97CV17251

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, JUN - 9 1998

The Court of Appeals hereby passes the following order:

A98D0351. CHRISTOPHER T. HARRIS v. STATE

Christopher T. Harris filed this pro se application for discretionary review of the trial court's April 29, 1998 order denying his motion to dismiss a warrant against him. However, the interlocutory appeal procedures are required to appeal the denial of a motion to dismiss a warrant or accusation as the case remains pending for trial. Boyd v. State, 191 Ga. App. 435 (383 SE2d 906) (1989). The application shows that Harris sought and was denied a certificate of immediate review which is required to request an appeal of an interlocutory order under OCGA § 5-6-34 (b). Because of Harris' failure to satisfy the interlocutory appeal procedures, this court lacks jurisdiction to consider this appeal, and the application is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN - 9 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martine Clerk.

Court of Appeals of the State of Georgia

ATLANTA, June 22, 1998

The Court of Appeals hereby passes the following order:

A98D0352. DAVENPORT v. CHATMAN.

Willie O. Davenport seeks an appeal from a contempt order based on Davenport's failure to comply with the terms of a previous contempt order. Both orders are based on the child support provisions of a separation agreement incorporated into the parties' final divorce decree. Respondent Chatman asserts that Davenport's application is within the appellate jurisdiction of the Supreme Court since the contempt appealed from arises out of the judgment entered in the parties' divorce case. We agree. Ga. Const. of 1983, Art. VI, § VI, ¶ III (6); Griffin v. Griffin, 243 Ga. 149 (253 SE2d 80) (1979); see also Brown v. King, 266 Ga. 890 (472 SE2d 65) (1996); Smith v. Smith, 254 Ga. 450, 452 (2) (330 SE2d 706) (1985); Hines v. Hines, 237 Ga. 755 (1) (229 SE2d 744) (1976); compare Ashburn v. Baker, 256 Ga. 507 (350 SE2d 437) (1986) (jurisdiction over appeal of contempt action involving child custody issues, but not issues relating to divorce and alimony, is within the Court of Appeals, even though such action involves an action for contempt for violation of a divorce decree). Accordingly, Davenport's application is hereby TRANSFERRED to the Supreme Court for disposition.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 22 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 22, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0353

NICK GARONE V. AMERICAN EXPRESS TRAVEL RELATED SERVICES CO., INC.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93040

97VX32716

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUN 22 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 22, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0354
KEVIN T. RUDZ V. MELISSA A. THORNTON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

94040

95A7554

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 22 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

Court of Appeals of the State of Georgia

ATLANTA, JUN 12 1998

The Court of Appeals hereby passes the following order:

A98D0355. DEKALB COUNTY, GEORGIA v. POST APARTMENT HOMES, L.P.

On January 24, 1996, the DeKalb County Board of Commissioners rezoned certain property to a high density, multi-family zoning district, subject to some development conditions. After Post Apartment Homes, L.P., began construction of an apartment complex on the property in September 1997, some adjacent property owners complained to DeKalb County about Post failing to comply with a setback requirement provided in the zoning ordinance. Post then sought declaratory judgment that it in fact was in compliance with the setback condition.

On April 30, 1998, the superior court found that Post's construction plan complied with the zoning conditions. On June 1, 1998, DeKalb County filed a notice of direct appeal as well as this application for discretionary appeal.

Although the discretionary appeal procedures are required to appeal a superior court decision reviewing the decision of a local zoning tribunal, a superior court's judgment in an action to enforce an existing zoning ordinance does not fall within that category. Harrell v. Little Pup Development & Construction, 269

Ga. 143 (SE2d) (1998). In this case, Post sought a judgment that it was in compliance with an existing zoning decision and the action did not involve a superior court review of that decision. As such, the superior court's judgment in this matter was directly appealable.

Under OCGA § 5-6-35 (j), where a party utilizes the discretionary appeal procedure to obtain review of a judgment that is directly appealable, and does not also timely file a notice of appeal, this court shall grant the application and allow the party to proceed with an appeal. However, as DeKalb County has already filed a timely notice of appeal from the superior court's judgment, there is no basis for granting this discretionary application. Accordingly, the application is hereby dismissed.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 12 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 16, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0356
W.C.C. INTERESTS, INC. V. CAIN F. CECENA

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96040

E67492 544-54-8765

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

JUN 23 1990

The Court of Appeals hereby passes the following order:

A98D0357. BONNER v. FULLERTON.

After being terminated from a position as a custodian with the Montgomery County School District, James Leroy Bonner was disqualified by the Georgia Department of Labor from receiving unemployment insurance benefits. That decision was affirmed by an administrative hearing officer. The Board of Review affirmed the hearing officer's decision and the superior court affirmed the decision of the Board. Bonner now seeks an appeal to this court.

The transcript of the proceedings before the hearing officer supports the conclusion that Bonner went forward with his immediate supervisor's instructions to shampoo the carpet in the principal's office despite being reminded by the principal's secretary that, per the principal's previous instructions, such work was not to be done when someone was working there.

Bonner should have understood that the instructions of his immediate supervisor, who testified he did not know the office was being used when instructions were given, could not be relied upon once he was confronted by the principal's secretary. As the hearing officer concluded, when Bonner chose to proceed to clean

the carpets using foul smelling chemicals without first informing his immediate supervisor of the situation confronting him and without seeking new instructions from him, he did so at his peril and was terminated.

Since it appears the superior court applied the proper standard of review and reached the correct conclusion, Bonner's application for appeal is DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 23 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 26, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0358
PATSY ANN MOONEY V. JACKIE LEE MOONEY

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99040

98A02994

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 26 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 25, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0359
REUBEN WELLS V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90040

CR952172MO

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 25 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 23, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0360
RUSSELL FRANK MASSEY V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97040

92ER2082G 93ER2196G 94ER243G

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martineau

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, AUGUST 31, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0361

JAMES CLAYTON DAVIS V. GRACE EVELYN DAVIS

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

92-041
97DR024718

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta AUG 31 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

Will. L. Martin, III

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 22, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0362
GREGORY S. EAVES V. MARSHA G. EAVES

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93041

98CV0137S

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **JUN 22 1998**

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William E. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 16, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0363

ROGER EARL BURNEY V. SID MILES, COMMISSIONER OF GEORGIA DEPARTMENT OF
PUBLIC SAFETY

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98041

97CV119249

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUN 18 1998

The Court of Appeals hereby passes the following order:

A98D0364. DREW v. DREW.

Claude H. Drew seeks an appeal to this court from an order holding him in contempt of the settlement agreement incorporated into the parties' final divorce decree and denying his motion to set aside that final judgment and decree. However, because this court does not have jurisdiction to consider orders entered in divorce and alimony cases, the appeal is hereby TRANSFERRED to the Supreme Court for disposition. Ga. Const. 1983, Art. VI, § VI, ¶ III (6); Griffin v. Griffin, 243 Ga. 149 (253 SE2d 80) (1979); compare Ashburn v. Baker, 256 Ga. 507 (350 SE2d 437) (1986) (where divorce case is no longer pending, jurisdiction over appeal of contempt action involving child custody issues, but not issues relating to divorce and alimony, is within the Court of Appeals, even though such action involves an action for contempt for violation of a divorce decree).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 18 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. McIntire Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 06, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0365

ST. JOSEPH'S HOSPITAL, INC. ET AL V. THUNDERBOLT HEALTHCARE, INC.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91041

96V304T

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta **JL** -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*



Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUL -6 1998

The Court of Appeals hereby passes the following order:

A98D0366. FINNIGAN v. DYNEX CAPITAL.
A98D0367. FINNIGAN v. DYNEX FINANCIAL, INC.
A98D0368. FINNIGAN v. CAPITAL ASSET RESEARCH CORPORATION.

Roger Finnegan seeks appeals under OCGA § 5-6-35 (a) (4) from orders which act to stay related garnishments pending an appeal of the underlying judgment, but which do not also release those garnishments as provided for under OCGA § 18-4-65 (b). Respondents contend Finnegan's applications should be dismissed due to Finnegan's failure to follow the interlocutory appeal procedure. We agree. The trial court has not yet entered orders disposing of these garnishment actions, and therefore Finnegan was required to seek leave from the trial court to file his applications in the manner provided under OCGA § 5-6-34 (b). Since Finnegan failed to follow the proper procedure, his applications are dismissed for lack of jurisdiction. Scruggs v. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991); Rogers v. Dept. of Human Resources, 195 Ga. App. 118 (392 SE2d 713) (1990); Rothenberg v. Invesco Financial Corporation, 152 Ga. App. 474 (263 SE2d 254) (1979).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUL -6 1998

The Court of Appeals hereby passes the following order:

A98D0366. FINNIGAN v. DYNEX CAPITAL.
A98D0367. FINNIGAN v. DYNEX FINANCIAL, INC.
A98D0368. FINNIGAN v. CAPITAL ASSET RESEARCH CORPORATION.

Roger Finnegan seeks appeals under OCGA § 5-6-35 (a) (4) from orders which act to stay related garnishments pending an appeal of the underlying judgment, but which do not also release those garnishments as provided for under OCGA § 18-4-65 (b). Respondents contend Finnegan's applications should be dismissed due to Finnegan's failure to follow the interlocutory appeal procedure. We agree. The trial court has not yet entered orders disposing of these garnishment actions, and therefore Finnegan was required to seek leave from the trial court to file his applications in the manner provided under OCGA § 5-6-34 (b). Since Finnegan failed to follow the proper procedure, his applications are dismissed for lack of jurisdiction. Scruggs v. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991); Rogers v. Dept. of Human Resources, 195 Ga. App. 118 (392 SE2d 713) (1990); Rothenberg v. Invesco Financial Corporation, 152 Ga. App. 474 (263 SE2d 254) (1979).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL -6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 25, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0369
FOCUS GROUP, ET AL V. CAIN F. CECENA

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

96042

E67492 544-54-8765

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 25 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 10, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0370
ROY DEAN SMITH V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

90041
264914

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

JUL 10 1998
*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William R. Martin

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 13, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0371
JERRY ANN ELLIOTT V. JERRY C. MCDANIEL, SR., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

92042

98A28946

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 13 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 08, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0372

GEORGIA DEPARTMENT OF HUMAN RESOURCES V. NIRAJ R. PATEL, through
GEORGE C. JONES, III, as administrator of the estate of NIRAJ R. PATEL

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93042

E59619

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 8 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 30, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0373
JAMES WARREN FLOYD V. THE STATE

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

94042

32582

43420

46521

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUN 30 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 14, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0374

STEVEN SEITZ, ET AL V. CITY OF BERKELEY LAKE, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

98042

97A8613

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 14 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*



Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, AUG 11 1998

The Court of Appeals hereby passes the following order:

A98D0375. SAMI LUDEN v. BONNIE GRIFFIN

Sami Luden filed this discretionary appeal from the Gwinnett County State Court's order dismissing her appeal from the Gwinnett County Magistrate Court. Bonnie Griffin sued Luden for \$5,000.00 for breach of contract in the magistrate court. Luden answered but neither she nor her attorney appeared for the scheduled hearing. The magistrate court entered default judgment pursuant to OCGA § 15-10-43 (e) (1). Luden filed a motion to set aside the default, and the court granted this motion. Again, however, neither Luden nor her attorney appeared for the scheduled hearing, and the court again entered default judgment in favor of Griffin for \$5,000.00. Luden appealed to the state court which properly dismissed the appeal on the basis that Luden's only recourse for review was by application for writ of certiorari. OCGA § 15-10-41 (b) (2) provides that "[n]o appeal shall lie from a default judgment [entered by a magistrate court]. Review shall be by certiorari to the state court of that county or to the superior court of that county." Thus, the state court was without jurisdiction to consider the appeal. Accordingly, Luden's application for discretionary appeal is hereby DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta AUG 11 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 14, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0376

INTERNATIONAL INDEMNITY COMPANY V. BARCO, INC., ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90042

96VS108195

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 14 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 14, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0377
PHUC TONY PHAN V. THE STATE

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

97042

95CR105 95CR106

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 14 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 06, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0378

STATE HEALTH PLANNING AGENCY V. THUNDERBOLT HEALTHCARE, INC.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91043

96V304T

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL - 6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 21, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0379

FIDELITY FINANCIAL SERVICES, INC. V. DIANE BAILEY, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

92043

97C20761

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 21 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 08, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0380
ANN W. WILLS, ET AL V. NATIONAL MORTGAGE COMPANY

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

93043

96V56396M

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL - 8 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JUL 17 1998

The Court of Appeals hereby passes the following order:

A98D0381. CALVIN L. BARRETT v. LINDA HEATH

Calvin L. Barrett filed this discretionary appeal from the Liberty County Superior Court's order on motion to transfer for improper venue. On June 23, 1998, Barrett was ordered by this Court to supplement his application with a stamped "filed" copy of the order within ten days. Barrett has not as yet submitted a stamped "filed" copy as ordered. Accordingly, this discretionary appeal is hereby DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 17 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 16, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0382
WILLIE A. LAWSON V. THE STATE

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

98043

96R148

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 16 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 17, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0383
ERIC REGINALD JOHNSON V. THE STATE

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

96043

95FE127F 95FE139F 95FE299F 95FE300F

95FE301F

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 16, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0384

JEFFREY D. SHANNON V. CITY OF LAKE CITY, GEORGIA

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

99043

98CV7294

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 16 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

 Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 14, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0385

WATKINS ENGINEERS & CONSTRUCTORS, ET AL V. RICHARD W. JOHNSON

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

90043

98CV813 267-77-7084

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 14 1998*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 08, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0386

DENISE M. FIELDS V. MCINTOSH COUNTY BOARD OF EDUCATION, ET AL

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

97043

289-54-5889 98V059

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL - 8 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 28, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0387
JIMMY LEE SOLOMON V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

92044

86R88

91R376

92R376

96R471

94R460

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 28 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Matlock Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0388

CRYSTAL FLOYD V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93044

98R90 94R82

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

JUL 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin, Jr.

MS

**Court of Appeals
of the State of Georgia**

ATLANTA, JUNE 30, 1998

The Court of Appeals hereby passes the following order:

Case No. A98D0389

DERRICK BESS V. THE STATE

The discretionary application received in the above docketed matter does not contain a stamped "filed" copy of the order which is being appealed as required by Rule 32 (b) of the Court of Appeals.

Applicant is hereby ordered to supplement the application with a stamped "filed" copy of the order instanter. If applicant does not cause a copy of said order to be physically filed with the Court within 10 days of the date of this order, the application will be dismissed. Applicant's submission in response to this order will be deemed filed only on the date it is physically received in the Clerk's office.

The Court is required to issue an order granting or denying the application within 30 days of the filing of the application. See OCGA 5-6-35 (f).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUN 30 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0389

DERRICK BESS V. THE STATE

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

93045

98R90

94R82

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 27 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

William L. Martin, Jr.

MS

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 15, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0390

PEACHTREE CITY, ET AL V. PEACHTREE CITY MULTI-FAMILY PARTNERS, LLC

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94044

97V1462E

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 15 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 14, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0391

FRISCH IDEAS, INC. d/b/a VAL-PAK OF ATLANTA V. CHARLES C. TUFANO
d/b/a NUNZIO'S CUCINA

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

98044

97C33833

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JUL 14 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.



**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 27, 1998

The Court of Appeals hereby passes the following order:

A98D0392. CHEVER v. RAINEY.

The Board of Regents of the University System of Georgia has brought an interpleader action arising out of the lethal crash of a State University of West Georgia van on August 10, 1997. DeAndre Bernard Hamilton was among those killed in the crash. Hamilton's parents have both been named in the action. Hamilton's father, Robert L. Chever, seeks a discretionary appeal from an order declaring that Chever shall be entitled to 5% of any wrongful death recovery received, while Hamilton's mother, Zenobia H. Rainey, shall be entitled to 95% of any such recovery.

Chever filed his application pursuant to OCGA § 5-6-35 (a) (2), contending that the applicability of OCGA § 19-7-1 (c) (6) to the resolution of this issue renders it a "domestic relations" case subject to the discretionary appeal procedure. However, regardless of whether the order appealed from may be properly classified as an order in a domestic relations case, the sole means by which Chever may seek an immediate appeal from the non-final order complained of is by following the requirements of the interlocutory appeal procedure, OCGA § 5-6-34 (b). Accord Scruggs v. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991). Since Chever failed to follow the proper procedure here, his application is hereby DISMISSED as premature.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

William L. Martin, Jr.

MS

**Court of Appeals
of the State of Georgia**

ATLANTA, AUGUST 06, 1998

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0392

ROBERT L. CHEVER V. ZENOBIA RAINEY

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

96-044
98V0411

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG - 6 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, AUG 27 1998

The Court of Appeals hereby passes the following order:

A98D0393. GREG FISHNER, et al v. LISA SUDGEN

On motion for reconsideration of the denial of applicants' petition to appeal, they have supplemented the supporting portions of the record in an effort to show the trial court erred as a matter of law. We have reconsidered the application in light of the additions and the further argument.

The dispute of fact about what was owed, if anything, was resolved by the State Court after hearing testimony and presentation of other evidence. That court entered an order on June 30, 1998, setting out its findings of fact and conclusions of law. Applicants have not shown that, as a matter of law, the evidence showed the facts to be otherwise. Nor have applicants shown that the application of the law to the facts so found was in error.

Consequently, the motion for reconsideration is DENIED on the merits, and the denial of the application remains intact.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

AUG 27 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Will. L. Martin, III

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 27, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0394

CHARLES V. SIILIMAN TRUCKING, INC. V. KARI WALDRIP b/n/f/

RODNEY WALDRIP

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

99044

98C10843

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

JUL 27 1998

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

Will: L. Marti

**Court of Appeals
of the State of Georgia**

ATLANTA, JULY 17, 1998

The Court of Appeals hereby passes the following order:

APPLICATION NO. A98D0395
CHARLES CHATMAN V. THE STATE

Upon consideration of the Application for Discretionary
Appeal, it is ordered that it be hereby DENIED.

90044

94CR213893

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta JUL 17 1998

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William E. McIntire Clerk.

Court of Appeals of the State of Georgia

ATLANTA, SEP 23 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0033. Edward Alan Staley v. The State

Edward Alan Staley filed this discretionary appeal from the trial court's order on the State's motion to clarify probation. Although the State filed a Petition for Modification/Revocation of Probation, trial court's order is called a "clarification" of probation. However, the trial court's order is actually a modification of probation because Staley is now required to seek and obtain permission to leave the state as a condition of probation. This order restricts Staley's liberty to a greater degree than the original sentence. As the trial court's order is not an appeal from an order revoking probation, the discretionary appeal procedures do not apply. OCGA § 5-6-35 (a) (5). See Edwards v. State, 216 Ga. App. 740 (456 SE2d 213) (1995).

Accordingly the application for discretionary appeal is GRANTED because, pursuant to OCGA § 5-6-35 (j), the judgment for which appeal is sought is directly appealable. OCGA § 5-6-34 (a) (1). Staley shall have 10 days from the date of this order to file a Notice of Appeal.

The Clerk of the trial court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 23 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martine

Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: October 22, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0209**

C&H ELECTRICAL & PLUMBING et al. v. BILLY PENDELL et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0034

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

RECEIVED IN OFFICE
CLERK OF APPEALS OF GEORGIA
1997 DEC 17 PM 4:06

1997 DEC 17 PM 4:06

RECEIVED IN OFFICE

**Court of Appeals
of the State of Georgia**

ATLANTA, SEPTEMBER 30 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0035

LOLA GILLIS-MINCEY V. VIDALIA CITY BOARD OF EDUCATION

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

90004

96CV803

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 30 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, SEPTEMBER 24 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0036
DAVID FERGUSON V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97004

970126

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 24 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 08 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0037
C. SAMUEL RAEV V. CITIBANK N.A.

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92005

97VS0097253B

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT - 9 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0038
CANDLER CONCRETE PRODUCTS ET AL V. TERRY COCHRAN

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

93005

97CV851C 252-15-5227

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT - 3 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

SEP 24 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A98D0039. Donnie J. Manning v. Chaddick Bernard Manning, as
Administrator and Next of Kin to Donnie J. Manning, Jr.**

Applicant Donnie Jeff Manning filed this application for discretionary review of the trial court's order finding him in contempt for failure to pay child support. The order appealed was entered on August 7, 1997. The application was received for docketing in this Court on September 10, 1997. No proof of the official postmark date for certified mailing was submitted following this Court's order of September 11, 1997 requesting supplementation of the application.

An application for discretionary review must be filed with this Court within 30 days of the entry of the order complained of. OCGA § 5-6-35 (d). Since Manning's application was filed 37 days after entry of the order complained of, the application is untimely and this Court lacks jurisdiction over this application. Accordingly, this application for discretionary appeal is hereby ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 24 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 14, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0039

DONNIE J. MANNING V. CHADDICK BERNARD MANNING, AS ADMINISTRATOR AND
NEXT OF KIN DONNIE J. MANNING, JR. ET AL

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

94-005
97V159

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 14 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

ATLANTA, SEP 15 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

**A98D0040. WILLIAMS v. AMERICAN CASUALTY COMPANY OF READING,
PENNSYLVANIA.**

Alveria Williams seeks a discretionary appeal from the order of the superior court imposing discovery sanctions against her under OCGA § 9-11-37. However, because the order is not the final judgment in the case and Williams did not otherwise follow the procedure required to seek an interlocutory appeal, her application is unauthorized and is therefore DISMISSED. OCGA § 5-6-34 (b); Scruggs v. Ga. Dept. of Human Resources, 261 Ga. 587 (408 SE2d 103) (1991); Cornelius v. Finley, 204 Ga. App. 299 (418 SE2d 815) (1992).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta SEP 15 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*



Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0041
LINDA ANN WILLIAMS V. WELLINGTON/PURITAN MILLS

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96005

97V0845 252-76-2260

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT - 3 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*



Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 14 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0042
EMMANUEL ECHOLS V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91005
Z81235

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 14 1997
OCT 14 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 09 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0043

GEORGIA DEPARTMENT OF HUMAN RESOURCES EX REL JONATHAN CURTIS REWIS
V. ELDRIGDE F. MITCHELL, III (BUD)

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

99005

495S314

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT -9 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCT - 1 1997

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0044. SMITH v. DALTON

On September 17, 1997, Ernest and Marie Smith filed this pro se application seeking discretionary appeal of the August 15, 1997 order of the Cobb County Superior Court which granted summary judgment and attorney fees to Troy Dalton and his co-defendants.

Because the order appealed is a final judgment, it is directly appealable. OCGA § 5-6-34 (a). Thus, the Smiths were not required to follow the discretionary appeal procedure. If the application is "otherwise timely. . .the appellate court shall have jurisdiction to decide the case and shall grant the application." OCGA § 5-6-35 (j). This application, however, is not timely. An application for discretionary appeal must be filed within 30 days of the order appealed. OCGA § 5-6-35 (d). This application was filed 43 days after the order appealed was entered. Because the application is untimely, this Court lacks jurisdiction to consider it.

For these reasons, the application is ordered DISMISSED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT - 1 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: October 17, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0186**

ERNEST WELCH SMITH et al. v. TROY DALTON et al.

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0044

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

OCT 21 1997

William R. Martin

Clerk, Court of Appeals of Georgia

FILED IN OFFICE

OCT 21 1997

CLERK COURT OF APPEALS OF GA.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 21, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0045

WILLIAM G. BARNES V. CHRISTINE S. JUSTIS

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

97-005
9300358

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 21 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: November 7, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0273**

WILLIAM GUTHRIE BARNES V. CHRISTINE S. JUSTIS

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0045

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA.

RECEIVED IN OFFICE
1997 NOV 12 PM 12:29

FILED IN OFFICE

NOV 12 1997

CLERK COURT OF APPEALS OF GA.

Clerk, Court of Appeals of Georgia

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 15 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0046
JACQUELINE A. BAUMANN V. JOHN J. BAUMANN

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

92006

961885428

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT 15 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 03 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0047
CALVIN FLOWERS V. JACQUELYN V. SHIELDS

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby DENIED.

93006

E57070

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta*

OCT - 3 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William S. McTear Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 09 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0048
BRIAN J. TENNEY V. KERRY TENNEY

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

94006

971295535

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT - 0 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0049
MCINTOSH COUNTY V. CURTIS COE ET AL

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98006

96V008

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 16 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

Court of Appeals of the State of Georgia

SEP 30 1997

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0050. AGES v. PIGGLY WIGGLY SOUTHERN, INC.

This application for discretionary appeal in a workers' compensation case is premature because it was filed before the superior court's statutory deadline for deciding the appeal before it.

On June 17, 1997, Virginia Ages filed a notice of appeal from the State Board's denial of her claim, and the appeal was docketed with the superior court on July 10, 1997. On August 21, 1997, the superior court scheduled a hearing for September 5, 1997, and held the hearing as scheduled. Before the superior court issued a decision, however, Ages filed this application on September 17, 1997, out of concern that the State Board's award may have been affirmed by operation of law.

Before July 1, 1997, OCGA § 34-9-105 (b) generally required a superior court to hear a workers' compensation appeal within 60 days from the date the notice of appeal was filed, otherwise the State Board's award was affirmed by operation of law. Where a hearing was originally scheduled within that 60-day period but was continued to a certain date, or where a hearing was held within the 60-day period, the superior court had 20 days from the date of the hearing in which to issue a decision before the State Board's determination was affirmed by operation of law.

Effective July 1, 1997, the statute was amended to give the superior court 60 days from the date the matter is actually docketed in the superior court in which to hear the case. As with the previous version of the statute, the superior court has 20 days from the date of a timely held hearing in which to issue a decision before the matter is affirmed by operation of law.

Statutes generally prescribe for the future and an amendment that changes substantive law may be applied prospectively only. But if the statutory amendment is remedial, it should be applied retroactively absent an expressed contrary intention. Barnes v. City of Atlanta, 219 Ga. App. 139 (464 SE2d 609) (1995). As the

amendment of OCGA § 34-9-105 (b) in question was designed to give superior courts a full 60 days in which to hear workers' compensation appeals, it is remedial in nature and should be applied in this case.

As the superior court timely held a hearing in Ages's case on September 5, 1997, it had until September 25, 1997, in which to issue a decision. Consequently, the State Board's award has not yet been affirmed by operation of law, and this application must be dismissed as premature.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

SEP 30 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

Court of Appeals of the State of Georgia

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A98D0051. Hall v. Hardy

Applicant Stanley E. Hall, Jr. seeks an appeal from that portion of the trial court's order which denied his request for permanent custody of his minor child, Jair. The child's mother died in childbirth. Hall filed a petition for legitimation and custody which was contested by the child's maternal aunt, Imelda Thompson. Pursuant to an emergency hearing, and in agreement of the parties, the trial court awarded temporary custody of the child to Thompson pending resolution of Hall's petition. It is uncontested that Hall is the child's biological father.

Following a hearing concerning both legitimation and custody, the trial court granted Hall's petition for legitimation, but denied his request for permanent custody. Instead, the trial court awarded permanent custody to Thompson. It is from the denial of permanent custody that Hall seeks appellate review. In awarding permanent custody to Thompson, the trial court found that "the evidence presented at the hearing, including the credibility determinations made by the Court, amply rebuts the presumption that it is in Jair's best interest to be in the custody of his father."

Thus, the trial court applied the standard set forth in OCGA § 19-7-1 (b.1).

The trial court's order states that both parties agreed to proceed with both legitimation and custody issues and that these issues were heard. Acknowledging that the custody issue would not be ripe until a determination on the legitimation issue was rendered, (OCGA § 19-7-25), the trial court first found that Hall had presented sufficient evidence that he had exercised his "opportunity interests" with his son and granted the petition for legitimation.

In subsequently awarding custody, the trial court made several findings concerning the welfare and best interest of the child. This included the finding that Mr. Hall's testimony was not credible with respect to his reasons for desiring custody and his commitment to the care needed because of the child's special medical condition. Credibility findings are for the factfinder. The State v. Wilson, 220 Ga. App. 538 (469 SE2d 804) (1996).

The trial court applied the presumption in favor of the child's father, but found the child would be best served by awarding custody to Thompson. Grantham v. Grantham, 224 Ga. 1 (479 SE2d 370) (1996). Whether OCGA § 19-7-1 (b.1) or OCGA § 19-9-2 is applied, the test is "the best interest of the child" with a presumption in favor of the biological parent which is the standard applied by the trial court. The parent's fitness is one of "the circumstances of the case" which is to be considered, but it is not controlling and the trial court's order reflects that the court factored it in. Although Hall claims that insufficient evidence

was submitted concerning custody, without a copy of the transcript, the trial court's findings of evidence concerning the custody issue must be accepted. Harper v. Harper, 259 Ga. 246 (378 SE2d 673) (1989). Hall has not shown that there is a reasonable possibility of reversible error to warrant a full review.

Accordingly, this application is hereby ordered DENIED.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 16 1997

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

William R. Mart, Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 09 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0052
HOOVER HANES ET AL V. MICHAEL HATFIELD

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99006

97381 225-84-6273

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT -9 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 23, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0052

HOOVER HANES ET AL V. MICHAEL HATFIELD

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

99-006
97381

225-84-6273

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 23 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin, Jr. Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 20 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0053
RAYMOND KNOWLES V. SHARON LOUISE KNOWLES

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

90006

90C275

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 20 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 05, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0053

RAYMOND KNOWLES V. SHARON LOUISE KNOWLES

Upon consideration of the motion for reconsideration filed
in this case, it is ordered that it be hereby denied.

90-006
90C275

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV -5 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin, Clerk.

97

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0054
JAMES AUBREY KITCHENS V. THE STATE

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

97006
13317

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT -6 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0055

RONNY WILLIAM SMITH V. BROWN STEEL, GEORGIA ASSOCIATED GENERAL
CONTRACTORS SELF-INSURERS TRUST FUND

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of SUPERIOR COURT is directed to include a copy of this order in the record transmitted to the Court of Appeals.

92007

97V1186 260-74-4449

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta OCT -6 1997*

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Marti

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0056

BOOMERSHINE PONTIAC-GMC TRUCK, INC. V. CLYDE K. SNAPP ET AL

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

93007

95C41893

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 16 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0057
EDDIE JR. MCCOMMONS V. SIDNEY H. WALTER

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

94007

97CV084

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 16 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martini Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, NOVEMBER 04, 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

Case No. A98D0057

EDDIE JR. MCCOMMONS V. SIDNEY H. WALTER

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

94-007
97CV084

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta NOV - 4 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William L. Martin Clerk.

CLERK'S OFFICE
SUPREME COURT of GEORGIA

244 Washington Street, Room 572

Atlanta, Georgia 30334

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Sherie M. Welch, Clerk

(404) 656-3470

Docketing Date: November 24, 1997

To the Clerk of the Court of Appeals of Georgia:

You are hereby notified that there has been filed in this office on this day a petition to the Supreme Court for a writ of certiorari to the Court of Appeals in the case of **S98C0387**

EDDIE JR. MCCOMMONS V. SIDNEY H. WALTER

Clerk, Supreme Court of Georgia

By: _____

Case No. A98D0057

Court of Appeals of Georgia

Notice of Petition for Certiorari

filed in office

Clerk, Court of Appeals of Georgia

RECEIVED IN OFFICE
1997 NOV 26 PM 3:47

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 06 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0058
J. ROBERT HOWARD V. ROBERT J. BOSTON

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

98007

E47913

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT - 6 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin

Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0059
DALE GONZALEZ V. HERBERT OSWALD

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

96007

97V368

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 22 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 22 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0060
RANDY LOWERY ET AL V. ANTONIO DALLIS

Upon consideration of the Application for a Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of State Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

91007

97VX0030252D

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

OCT 22 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Marti Clerk.

**Court of Appeals
of the State of Georgia**

ATLANTA, OCTOBER 16 , 1997

The Honorable Court of Appeals met pursuant to adjournment.

The Following order was passed:

APPLICATION NO. A98D0061
JERRY LEE DARBY V. STATE OF GEORGIA

Upon consideration of the Application for a Discretionary
Appeal, it is ordered that it be hereby DENIED.

99007

929381828

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta OCT 16 1997

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

William R. Martin Clerk.