The Family Law Review

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Savannah Judge Handles First Jury Trial Under New Guidelines

By Paul Johnson
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On April 19, 2007, I interviewed Eastern Judicial Circuit Judge Michael Karpf in his chambers. Also present at the interview was Leslie Keene, Judge Karpf's staff attorney. Judge Karpf had recently completed what is believed to be the first jury trial under Georgia's new child support guidelines. Judge Karpf was kind enough to share his thoughts on that trial, the new guidelines in general and other issues confronting family lawyers and judges.

Judge Michael Karpf and Paul Johnson

Paul: I want to start with a little background. First of all, how long have you been on the Superior Court bench?

Judge Karpf: 13, 14 years.

Paul: And you had served on some other courts before that?

Judge Karpf: State Court and Recorders Court.

Paul: And how long were you on the State Court bench?

Judge Karpf: Four and a half years.

Paul: And the Recorders Court bench for how long?

Judge Karpf: Nine or 10 years.

Paul: How did you come upon the Superior Court bench? Were you appointed?

Judge Karpf: I was appointed by Gov. Miller.

Paul: You had been in private practice before that?

Judge Karpf: Yes.

Paul: What was the concentration of your practice when you were in private practice?

Judge Karpf: It was fairly general back in those days. There was not as much specialization as there is now.

Paul: Were you handling family law cases to some degree?

Judge Karpf: A few but not many.

Paul: Well, you are handling them now.

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Editor's Corner

By Randall M. Kessler
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How time flies! Here we are on the verge of another Institute. The new guidelines have been in effect for almost half a year. The new custody bill, House Bill 369, is scheduled to go into effect on Jan. 1, 2008, but most people have heard nothing about it. (More information inside this issue—see page 14.)

And Shiel Edlin's year as section chair is drawing to an end. Shiel has guided us through one of the most significant and challenging years in family law for our state and helped us and thousands of lawyers and judges start to be able to understand the new statute by coordinating our excellent seminars. We also owe thanks to Jill Radwin for her help and the assistance of so many volunteers, perhaps most notably, Laurie Dyke (but there are many, many others).

Thank you also to those of you who have contributed articles or photos to the FLR. Please keep them coming. Send us photos of family lawyers and articles on family law issues. Your contributions are what makes the FLR a success. Thanks again, I look forward to seeing you all at the Family Law Institute. **FLR**

Inside This Issue

If you would like to contribute to *The Family Law Review*, or have any ideas or suggestions for future issues, please contact Editor Randall M. Kessler at 404-688-8810 or rkessler@kssfamilylaw.com.

Note from the Chair

By Shiel Edlin
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This is my final note as the Chairman of the Section. I have been honored to serve as your leader this year. I am very proud of the accomplishments of the section and its leadership. It is traditional for the section chairs to write a letter reviewing the year to the Board of Governors. The Board of Governors uses this information to choose Section of the Year. As you know, under the leadership of Steve Steele, we were picked as the 2005-06 Section of the Year. I believe we are entitled to receive the reward once again. Accordingly, I am providing you a copy of the letter that I submitted to the Board of Governors. See you all in Amelia.

During the 2006-07 term, the Family Law Section of the State Bar of Georgia continued making great strides, which earned the section the "Section of the Year" award for the prior term. The section meaningfully touched the lives of its members, the divorcing population, the Georgia legislature and the profession at-large. It is uncommon to award a section the "Section of the Year" two years in a row. It is truly the work of the section this year, which makes the section exceptional as a "shining star" among the sections of the Bar, and thus I strongly urge the State Bar of Georgia to, once again, award the "Section of the Year" to the Family Law Section.

I. Service to the Legislature and the public

Beginning Jan. 1, 2007, Georgia entered a new era of child support. We now have a new statute that is extremely complex and difficult to administer. The Bar has worked closely with Jill Radwin, staff attorney for the Georgia Child Support Commission. Section leadership, together with Jill Radwin; have worked tirelessly responding to those questions regarding these new guidelines.

In anticipation of the new guidelines, the section sponsored the first ever statewide seminar on the child support guidelines in October 2006. The seminar was web cast and video broadcast throughout the state. We were informed that more than 1,000 attorneys participated in this first ever program. The section responded to the plaintiff cry of attorneys during the first quarter 2007 regarding the confusion and difficulties in implementing the guidelines. Within six (6) weeks, another seminar was developed and implemented. In April 2007, the second seminar was held for attorney training on the new child support guideline calculators. Over 150 attorneys attending this seminar at the State Bar Headquarters and the seminar was video taped and will be available for purchase by attorneys.

The State Legislature called on the section this year to give guidance for their study of the child custody laws in the state of Georgia. The legislature was conducting a study of a universal revamping of the child custody laws and called upon the section to assist upon the technical portions of this matter. At the request of the legislature, within two weeks, a small group of section members promulgated a comprehensive and intelligent list of factors for the legislature to consider when courts determine issues of child custody. With the assistance of section members and this study group, it is believed that legislature, this past Friday, passed House Bill No. 369 revamping child custody laws in the state of Georgia. Catherine Knight, of Atlanta, our legislative liaison for the section, marshaled the technical aspects of this bill through the legislature.

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Judge Karpf Interview

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Judge Karpf: In a major way, yes.

Paul: I want to focus on family law issues and, of course, the new guidelines are the one issue that seems to be on everyone's mind.

Judge Karpf: Absolutely.

Paul: I know they are on your mind since you have a courtroom of people ready to go on child support this morning and I understand that you have already had a jury trial on the issue of child support.

Judge Karpf: In fact, I think, if what I read was correct and what I was told was correct, we had the first one in the state under the new statute.

Paul: And when was that?

Judge Karpf: That was in early January, the first or second week. I really didn't think it was going to happen, to be candid about it. We had a case where one of the parties was in the military, was leaving the area and was desperate to get the divorce resolved. The individual didn't have a lawyer, as he'd had to discharge his lawyer, I think because of finances. He was desperate to get the case resolved before he left and asked that it be put down. It had been pending for quite a while and the other party had been through several lawyers. I put it down for a jury trial and sent out a scheduling order requiring all of the documentation, and so forth, be complied and the spouse hired a lawyer three or four days before the trial. The lawyer did not know there had been a jury demand. The Friday before the Monday everybody sort of realized that we were going to be in a jury trial the following week. I believed firmly that it was going to get settled and it didn't. So there we were.

Paul: So you ended up trying a jury trial with one pro se litigant and the other with a lawyer who had been on the case for about a week.

Judge Karpf: And who was not prepared, through no fault of her own, because she had been hired late. She tried to get a continuance, which I wouldn't allow under the circumstances. I don't know what she told her client, but I think it was fairly clear to say that she probably told her client, "Look, this is the situation. You hired me at the last minute. I'm going to do the best that I can but you have to understand the limitations" and we went forward. So it was interesting because we were surely feeling our way through all of the different processes, in particular, the pro se party. It's never easy to try a jury trial under the best circumstances but this was perhaps under the worst with the new statute to contend with.

Paul: Was that the only issue that was before the court, the child support?

Judge Karpf: No, there were issues of, I think she wanted alimony. There was an equitable division issue. There was a military pension that had to be divided or that she wanted to be divided.

Leslie Keene: He had a side business. She had a business.

Judge Karpf: I think we had all issues. In the child support areas, there were questions about their incomes. That was one of the big issues in the case. He was in the military so his primary income, to use that term, was not really in dispute because we had his leave and earnings statements and you could see how much he was making. But within that there were these others issues that would be coming up all of the time because after the divorce he was going to lose some of those allowances that they get. So there is a question of what do you include as far as that's concerned. He was some sort of electronics technician and did some work on the weekends installing security systems, car stereos and things like that. Of course, it was primarily a cash business so there were no records of it. There was a dispute about how much he earned. And then on the other side, the wife had several degrees and she was a financial counselor. She had been working for some brokerage company and had then gone out on her own and was like an independent financial advisor affiliated with some major insurance company that offered a wide range of services. So she had her own business that she had been doing for several years and she was not making much money and there was a question of whether she was working up to her potential or not. And so, we had this issue of imputed income and then we had the little self-employment piece to that. Part of the income was self-employment income and part of it was by payroll and part of it was documented and business expenses and it was a whole big issue on how to do that.

Paul: It is a good thing that you got an easy case for your first jury trial.

Judge Karpf: Well, you know, it actually worked out fairly easily as far as that went, because we did have some pattern instructions. I don't know if you are aware, but there are some pattern jury instructions. They are sort of the first draft of them and Leslie and I decided to bifurcate the trial, really we trifurcated the trial. The first issue, I guess, was the gross income of the parties, if I remember, no, no. . . .

Leslie Keene: No, we did the equitable division.

Judge Karpf: That's right, we tried equitable division and alimony first.

Leslie Keene: So then we could see how much they'd have.

Judge Karpf: The reason for that was because there were some assets. Some stock accounts.

Paul: That were earning some income?

Judge Karpf: That had the potential to earn some income. So the thought was well, until we know who gets that asset, the jury can't allocate whatever income they think it will produce to whichever party. So we really had to do it that way first. So we tried the equitable division and the alimony part first and we got a verdict. Then we went back and tried the gross income of the parties and then the last thing we did was we tried the deviations.

Paul: Were there claims for deviations by the parties?

Judge Karpf: There were. There were claims for the private school. He was going to be living out of town, so he had travel expense for visitation, so that had to be tried. There were some activity type deviations, camps and things that the mother, who was the custodial parent, was claiming. We had to do all those things.

And, candidly, along the way, I have to confess that I made some mistakes. For example, on the private school tuition, the child had not been going to private school. The mother wanted the child to go to a private school and had gone through an enrollment process. I put that to the jury, I think wrongly, because I don't think she was entitled to claim it, because there was no history of it. The jury turned it down, so they sort of bailed me out of that mistake. Then I got hung up on some of the activity deviations on that 7 percent rule, because I was calculating the 7 percent against his child support obligation, not against the basic child support obligation. That is where you apply the 7 percent and I got confused and had it against his. It turned out that did not matter either, because the calculator kicked a lot of it out and the jury did not award as much as she wanted. So it turned out not to be a problem. What we did at the beginning, once we got the alimony and equitable division resolved, and that was tried like you would try any other case. Nothing really changed on that. We had a verdict form, they put up the evidence and the jury came back and did whatever they did. For the second part, where we tried their incomes, what we did, and it worked pretty well I thought, we downloaded Schedule A into WordPerfect, and then we were able to make some modifications to that page that we were then able to use as a verdict form.

Paul: Sort of an interrogatory style verdict?

Judge Karpf: Exactly, it was really just that worksheet, but we made a few little changes to it just to clarify. Then the jury was told what they had to find. They were told about imputed income and self-employment income and things like that. So they filled out that page of the worksheet as their verdict. So they said that he had X number of dollars in earned income, salaried income from the government. Then they found that he had X number of dollars from his business, like side income.

They found that she earned X number of dollars in her office, but that she had imputed income of X number of dollars more and the jury, we were lucky to get a really smart jury, because not only did they fill that in, but they also sent us a page that showed how they arrived where they did. They weren't asked to, but they did it anyway. So once we got that verdict, then we took a short break, came back into the office, plugged their figures into the Excel calculator and got the basic child support obligation. Then we went back out to the jury and I explained to them that under the new calculations, this was the basic amount, this is what he would owe, but there were adjustments that got made to these final figures, or these not quite final figures, that were called deviations and there is a whole category of them and they were going to be allowed to consider some of them and the parties would put up the evidence and they would have to decide. And then we did the second part. We actually devised a verdict form for the deviations.

Paul: So you did not send them with schedules D and E.

Judge Karpf: No, we didn't do that. What we also did was before the jury came back to try the deviation, remember, we did not have a pretrial order because it came up sort of last minute. I made the parties declare in the courtroom on the record what deviations they were asking for. I asked them to tell me ahead of time what they were asking for. He primarily wanted travel expenses. He also wanted credit for another child that he was paying child support for. But what he didn't have was a copy of the existing child support order. He did not have a record of payment to prove that he had been making regular payments. He couldn't prove it, so I disallowed it. He was pretty disappointed, but it was one of those things that is fairly clearly in the statute. So luckily for him, the child is about to emancipate in about a year, so it wasn't a crushing blow to him. But I disallowed that so the jury did not even get to hear that. Then the mother's lawyer stood up and

said she wanted the school tuition and she wanted camping and I forgot the other deviation that she asked for. We were able to get that narrowed down. It went to the jury. I had a verdict form that we prepared and they again came back with not only the verdict form but another of their own worksheets that explained it. That enabled me to mold the verdict when it was over to conform to what the statutory requirements were. We got a verdict and because it required some molding as a verdict, I did a draft Judgment and Decree and sent it to the parties to get their comments on it. They didn't comment, by the way. And it eventually got entered.

Paul: How long did the trial take?

Judge Karpf: I think it took a day and a half or two days.

Paul: And how much of that time was jury deliberation?

Judge Karpf: The jury deliberated three times. I think they deliberated maybe longest on the alimony and equitable division part of it.

Paul: So it took longer on the issues we've always had?

Judge Karpf: They didn't deliberate very long at all on the deviations. It did take them a while to figure out the incomes because there were so many different components of income. There was potential interest income on the stock account, there was the self-employment income that they both had. There was imputing income to her because they thought she was underemployed. There was figuring out his leave and earnings statement and trying to determine which of that should be counted. So it did take them a while but they were efficient. We were lucky.

Paul: I understand you sent them a survey to the jury afterwards as well.

Judge Karpf: I did. Along the way during the trial, maybe out of some sense of frustration, but maybe I was feeling sorry for myself for being in this jury trial a week after this statute takes effect, I decided to talk to them about whether they thought it was a good idea for juries to be deciding these kinds of cases in general. I didn't ask them at the time, but I told them that Georgia was one of the few states where juries actually make these decisions. I just wondered what they thought about it, and I told them I was going to send them a little survey, which I did, with my thank-you letter. I asked them if they thought it was a good idea for juries to decide, and most of them said no they did not think it was a good idea. There was one juror who was strongly in favor of it though. I asked them their general attitude about the process. It was generally favorable. I asked them what they thought about the instructions they received from the court. This was the first time these instructions had ever been used and they were confusing to everybody. They were confusing to me. The jurors seemed generally satisfied and, if I'm not mistaken, I must have sent out a written copy of the instructions to them, which always seems to help. We got responses from seven or eight out of the 12 jurors, which is a huge percentage in a survey, and they were generally favorable. I think the point that I would take away from the whole process is that yes, you can try jury trials with the new statute. No, you don't have to send a computer out to the jury room and expect them to learn how to run the calculator. In the same time frame that we were trying our case, they were starting a trial in DeKalb County. They were having these questions about do we send a laptop computer into the jury room with a copy of the Excel spreadsheets and ask them to fill it out. Well, I didn't think that was a good idea. We just gave them the paper pages that they needed, just fill in the numbers, and then we came back after we got the verdict and plugged them into the spreadsheet, which didn't take that long, maybe 15-20 minutes at the most. We had the answers. We had the first page of the worksheet where all the nuts and bolts are, and we went back in and said all right, start all over again and now tell us about the deviations. It was better than I expected.

Paul: One of the dire predictions with the new child support guidelines was that jury trials were going to be a nightmare. The other prediction was the idea that there was going to be a flood of modification cases that were going to come in. What has been your experience on modifications since the enactment?

Judge Karpf: I have only had a few. I had one not that long ago where the man was pro se. He had already filed a modification a few years earlier and had actually gotten some relief. Although he was pro se, he was an educated man, intelligent, he read the statute himself over and over again. He showed me this dog-eared copy of the statute that he had read and marked up. He said, "You know this is complicated but it's not Chinese. I can read and understand just as well as anybody else and I've read through all this thing and I believe I'm entitled to relief." He was wrong as it turned out and it was a bench trial so it wasn't that difficult. But his problem was that he couldn't get over the threshold. He couldn't prove a change of circumstance.

Paul: And you were telling me before we started the interview that you seem to have seen a slow down in the number of uncontested divorces with children before you.

Judge Karpf: Yes, we do uncontested divorces three or four times every four to six weeks, and it's between 10 and 20 cases every time. Since the first of the year, the number of cases that we're seeing with children and child support calculations is a fraction of what it was. I know those cases are out there, but we haven't seen them yet. Even uncontested cases where you would think there wouldn't be any issues, they have slowed to a trickle, I guess, because some of the lawyers who were taking these divorce cases, the uncontested cases, the, I hate to say this, the $99 cases. I think some lawyers have quit doing it because there's a lot more work involved. Others are, I suspect, a little unsure about it, as everybody is. The third thing is that it is hard to get an agreement, because the litigants are unable to understand how it works. Particularly because the calculators have not worked. The online calculator for pro se parties, the menu driven, the TurboTax version has only just come online a day or two ago. I haven't even looked at it. But I think litigants are really unsure about what goes on. The one guy that I had who read the statute over and over again understood it. Most of the people who come have no clue how it works and frankly, in my opinion, never will have a clue about how it works. The old system, right or wrong, fair or unfair, at least it was easy to understand. Everybody could understand a percentage of income; everybody could do 20 percent or 25 percent. That was the advantage of the old system. Without going into the policy reasons for the changes, the new system is more complicated and more difficult for the litigants to understand and for many of them, it will be a once in a lifetime experience. So you know the idea that we are going to set this up just like a simple tax return and we are going to have this menu driven, question driven program that walks you through the process. I agree that as simplified as you can make something. But these are the same people who could do that with their own tax return that they file year in and year out, who instead go pay whatever they pay at H&R Block to do the most simple tax return you can imagine. So these people are never going to learn it. For one, they will hopefully only do it once, and two, people are just intimidated by those things. They don't want to tackle it. They have no idea if it is right or wrong and they are unsure about it. So that is the drawback I see to the system. The lawyers and the judges will learn it. We are all feeling our way through it right now, but we will learn it. I will say that we are not going to start really learning it until we try some cases and we haven't tried many of them yet.

Paul: You've talked about pro se litigants and about pro se litigants coming before the court. What are you seeing with most of the pro se litigants? On the child support docket, how are those being handled?

Judge Karpf: Well, its really kind of the same thing. These Child Support Recovery cases coming this morning and we have only had a very few cases with new petitions to establish child support because, well I don't know why, to be candid. But the Child Support Office has not brought many of them. They are having the same issues that we are. Their lawyers are having to learn it. They have a similar problem in explaining it to the parties that they deal with, so they try and settle cases and they have more flexibility in settling than they used to have. But I think that the other side is having trouble understanding. A couple of cases that I had not long ago, the custodial parent wasn't there. In the old days, the custodial parent often did not need to be there because the primary issue was the income of the non-custodial parent. Even though the old statute required the income for the custodial parent, it didn't count for much. It didn't enter into the calculation. Now I think you need the non-custodial parent and the custodial parent. Number one, you have to prove deviations. You have to prove work-related child care they didn't have to prove before.

Paul: Because there is a lot of new stuff that only the custodial parent can prove.

Judge Karpf: That's right. I had one a few weeks ago where the custodial parent's income was low, and there was a huge work-related child care claim. And it just seemed out of whack to me. That parent was not there, so I told them they had to prove this. The case had to be continued. We may be doing that today for all I know. So there are going to be problems with that, I think. I do think they will eventually get back to a level where they settle most of the cases. But there is a lot of education that needs to be done among the litigants and the people who are paying and receiving child support.

Paul: One of the issues that the lawyers are finding the most difficult to deal with, or the most difficult to predict, is the parenting time adjustment. There is so little guidance in the statute.

Judge Karpf: In the cases we've had that has not been an issue. Up until now, it has not been a contested issue, and it has not even been an issue in the litigated cases with lawyers. It has just not come up.

Paul: How about joint physical custody situations, have those come up?

Judge Karpf: We've had a couple of those. We had one in particular that I can remember, where there was an election by a 14 or 15 year old to go live with the

See Judge Karpf Interview on page 16

Case Law Update:
Recent Georgia Decisions

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Alimony

Rieffel v. Rieffel,
S07F0093 (April 24, 2007)

The parties were married for 28 years and were divorced in June 2006. The parties had six children (only one of whom was a minor at the time of divorce). The parties reached a settlement which resolved all issues of the marriage except for alimony, attorney's fees, and funds that were used to repair the marital residence. The husband agreed to pay monthly child support in the amount of $867 which represented 20 percent of the husband's gross monthly income. The husband also relinquished all rights, title and interest to the marital residence for full payment of the arrearages he owed pursuant to the parties' consent order of separate maintenance. The court awarded the wife monthly alimony of $850 for 12 years, $4,000 in attorney's fees, and $5,000 for repairs for the marital residence. The Supreme Court affirms.

The husband appeals the trial court's ruling with regard to alimony, attorney's fees, and repairs for the marital home. In absence of any mathematical formula, the fact finders are given wide latitude in fixing the amount of alimony. Pursuant to O.C.G.A. §19-6-5(a), the fact finder is required to consider several specific factors and the Supreme Court included that the trial court did not use the discretion in awarding the wife 12 years of alimony.

With regards to attorney's fees, O.C.G.A. §19-6-2(a)(1) authorizes the trial court to exercise discretion and award attorney's fees in a divorce action after taking consideration of the financial circumstances of the parties. The record in the transcript of the final hearing established the trial court properly considered the relevant financial positions of the parties and did not abuse its discretion in awarding attorney's fees to the wife.

On appeal, the husband contends that the separate maintenance consent final order was null and void since the parties' attempt at reconciliation of voluntary cohabitation on several occasions. A reconciliation and cohabitation will annul a prior support agreement as long as it was entered into in good faith and not as a scheme to avoid payment of support. However, an order entered with the consent of counsel, as here, is binding on a client unless there was fraud, accident, mistake or collusion of counsel. Therefore, an absence of any showing of fraud, mistake, or collusion of counsel, the husband cannot complain of an Order entered by consent.

Contempt

Page v. Baylard,
S06A1833 (Feb. 5, 2007)

A final judgment and decree of divorce incorporating a settlement agreement was granted to the parties in 1988. There was one child born as issue of the marriage of whom the wife was awarded custody and the husband was obligated for child support. In 2003, the wife filed a petition for contempt alleging the husband had refused to reimburse her for certain health expenses incurred by the minor child for which the husband was obligated under the final decree. The trial court entered a judgment in wife's favor and ordered the husband to reimburse the wife in the amount of $23,375 representing his share of the cost of treatment for the child in long term residential preparatory school plus $6,040.11 in attorney's fees. The Supreme Court reverses.

The evidence produced at the evidentiary hearing on the contempt establishes that the child, during her adolescence years, became unruly, ran away from home, used drugs and alcohol and was the subject of delinquency proceedings in juvenile court over several months. The wife researched various residential programs, and in 2002, the child was admitted to

Peachford for several days where she received drug detoxification and further evaluation. After the child's release from Peachford, the wife enrolled the child at ABM family preparatory school which was a residential long term treatment center in Westmoreland, Tenn. The wife had been in communication with the director of ABM over the previous several months.

While making a decision as to when to enroll the child, the husband was not consulted prior to the child's admission. The first time the husband learned of the child's whereabouts, was when the child had been attending ABM for 16 months. The tuition for ABM was $2,750 per month for a total cost of $46,750. The pertinent part of the settlement agreement states "as an additional portion of the child support, husband will maintain the child under any dental care and hospitalization program available through his place of employment, and will pay one-half of all reasonable and necessary medical and dental expenses incurred on behalf of the child which are not covered by insurance. In the event that a major expenditure is to be incurred, the husband will be consulted prior to services rendered except in an emergency situation."

The monthly tuition of $2,750 is clearly a major expenditure and although the child's emotional status was urgent, it had been an on-going problem for a period of several months. Therefore, there is no evidence that it was a type of emergency which would relieve the wife of her obligation to consult with the husband. The settlement agreement incorporated into the divorce decree is clear, unambiguous, and capable of only one interpretation as written and therefore, the provision's meaning must be strictly enforced. Here, in the event that a major expenditure is to be incurred, the husband will be consulted prior to services rendered, except in emergency situations. The language creates a condition precedent which must be performed before a contract becomes absolute and obligatory upon the party. Failure of this condition precedent prevents the wife from enforcing any rights of the reimbursement for expenses paid to ABM of the child. Justice Melton dissents with opinion.

Webb v. Watkins, A06A2178 (Feb. 1, 2007)

On July 30, 2003, the mother filed a petition to establish paternity of her natural child born out of wedlock. The father timely responded admitting that he was the child's father and requested a leave of court to legitimate the child. Oct. 1, 2004, the trial court entered a final order on the mother's petition and declared the child to be the father's legitimate child and ordered the amount of child support of $3,000 per month beginning Nov. 1, 2004.

At the time of the final hearing, the husband's monthly income was $21,666.66 and the mother's income was $2,500. Shortly after the final order was entered in October 2004, the father lost his job and fell into arrears. In June 2005, the mother filed her application for contempt alleging the father was in child support arrears of $8,500. A contempt hearing was held on Aug. 26, 2005, holding the father in willful contempt for failure to pay child support in the amount of $15,140 ordering the purge of contempt by paying $7,500 by Oct. 1, 2005, and the remainder and at the rate of $841.11 per month for nine months. In addition, the trial court awarded the mother her attorney's fees in the amount of $2,800 and maintained the child support payments at $3,000 per month. Father appeals and the Court of Appeals affirmed in part, reversed in part.

If there is any evidence in the record to support the trial judge's determination that a party has willfully disobeyed the trial court's order, the decision of the trial court will be affirmed on appeal. The father's failure to make court ordered child support is undisputed in the record. The evidence also showed at the time of the contempt hearing, the father owned a watch valued at over $8,000 and a home in which he had equity of more than $7,000. Additional evidence showed that the father transferred to his girlfriend one-half interest in her $1,000,000 home in which she had quitclaimed to him at the time their cohabitation began.

The father also contends the trial court erred in awarding mother attorney's fees because it fails to state a statutory basis under which the award was made. The Court of Appeals agrees and remands the case to determine the statutory basis under which the award was made.

Contempt/College Expenses

Norris v. Norris, S06A1524 and S06X1525 (Feb. 5, 2007)

The parties were divorced and in the final judgment and decree of divorce, obligated the husband to pay the expenses of a college education of the minor child, including, but not limited to, tuition, room and board, books and other miscellaneous expenditures. The husband's responsibility for the expenses of tuition of the college education shall not exceed the amount of tuition of an in-state college student at the University of Georgia attending the bachelor's program, either as a Bachelor of Arts of Bachelor of Science or other similar type degree. The wife filed a contempt action against her former husband alleging that he failed to pay the college expenses of their son in violation of the final judgment and decree of divorce. The trial court determined that the husband was obligated in the Final Judgment and Decree to pay college expenses, imposed an eleven semester limit, and ordered the husband to pay an additional $36,210.29. The Supreme

Court reverses.

The husband's obligation to pay his son's college expenses was solely from the agreement of the parties as incorporated in the final judgment and decree. The trial court determined that the eleven semester limitation is reasonable and terminated the husband's obligation for any period of time thereafter. Here, the agreement obligated the husband to pay for the expenses of the college education of the parties' minor child. The only limitation placed on the husband's obligation was the agreement that the rate of tuition for which the husband would be responsible was equivalent to an in-state student attending the University of Georgia in a bachelor program. The parties could have placed a time limitation on the husband's contractual obligation to pay college expenses, but they did not and it was error for the trial court to impose such a limitation.

Once the wife's application for appeal was granted, the husband filed a cross appeal raising the issue that the trial court erred by failing to give him credit for monies that the child withdrew from the uniform transfer to minor's account established by the husband's parents in which the child used to pay certain college expenses. However, husband raised the same issues in the application for discretionary review which was dismissed by this Court because it was untimely filed and therefore, the husband's cross appeal is barred under the doctrine of res judicata and is dismissed. Justice Melton concurred specially with opinion and Justice Sears and Thompson dissent with opinion.

Contempt/Contract Construction

Roquemore v. Burgess, S06A2014 (Feb. 5, 2007)

The parties were divorced in September 2002 and incorporated into the divorce decree was an agreement which obligated the husband to pay the wife $15,000 in consideration for her relinquishment of her interest in the marital home and certain businesses. The agreement also provided that the money would be paid to the wife upon the sale of the home or at any time before the sale upon the election of the husband and that the payment will further be secured by life insurance proceeds of a policy the agreement required the husband to maintain. In August 2005, the $15,000 had not been paid and the wife filed a contempt action. In November 2005, the trial court entered an order requiring the parties to have the property appraised by an independent third party and list the property for sale at the appraised value and accept any offer within 5 percent of the appraised value. If the property had not been sold within six months, the wife was to take over the listing of the property. Wife subsequently filed a motion for reconsideration of her contempt motion and the trial court, after hearing, entered an order holding the husband in contempt providing that he could purge himself of contempt by complying with the November 2005 order. The trial court entered an order stating that even though the order did not specify a time for performance, the husband should have sold the property within a reasonable time and that the husband had not made a good faith effort to comply with the decree. The husband appeals and the Supreme Court reverses.

The trial court has discretion to determine whether the decree has been violated and has authority to interpret and clarify the decree. The court does not have the power in a contempt proceeding to modify the terms of the agreement or decree. Here, there was no explicit requirement in the agreement that the husband sells the home and no time is specified for the payment of $15,000 to the wife. There are several parts of the agreement that are at odds with the trial court's assumption that the parties intended the house to be sold. The portion of the agreement giving the husband the right to pay the wife $15,000 before selling the home undermines the notion that the decree requires the sale of the house or that the funds necessary were to come from the proceeds of a sale of the house since payment prior to the sale would certainly alleviate the need to sell. In addition, provisions securing the payment of the $15,000 from proceeds of the life insurance policy the husband was required to maintain, contemplated that he might not pay her the $15,000 while he was alive. Therefore, the Agreement provides three alternative sources for payment, only one of which involved the sale of the home. Since the agreement cannot be read to establish intent of the parties that the husband be required to sell the marital home and to pay the wife from the proceeds, the trial court's order creating such a requirement amounted to a modification of the decree, not an interpretation.

Gross Income

Dyals v. Dyals, S07F0366 (April 24, 2007)

The parties were married and had two minor children and divorced in 2006. At the time of the divorce, the husband owned two landscaping businesses and worked for the Gwinnett County Sheriff's Department. The final judgment and decree of divorce ordered the husband to pay $1,375 per month in child support based upon the jury's determination that the husband's monthly gross income was $5,000 and based on the jury's determination that special circumstances existed that justified an upward modification of child support. The Supreme Court affirms.

The husband challenges that there was insufficient evidence to support the jury's determination that his monthly gross income was $5,000 per month, arguing

that bank statements alone cannot provide significant basis for the jury to reach an accurate conclusion with regard to the income generated by his two landscaping businesses. However, the husband's deposition testimony indicated that the combined income of his two landscaping businesses was between $90,000 and $110,000 in 2004 and his first landscaping business was making $60,000 in 2004 and that his second landscaping business projected to make an additional $60,000 a year at the time he purchased it. The husband's monthly salary with the Sheriff's Department was $3,000 per month. Therefore, the jury could conclude from the deposition testimony and trial testimony that his total monthly income was at least $5,000. Because some evidence of the records supports the jury's findings, the verdict will not be disturbed.

The husband also asserts that it was inappropriate for the landscaping business' bank statements containing occasional circles and highlights made by wife's counsel go out with the jury because the marking constitution a continuing argument of counsel. However, the record shows that wife's counsel removed the objectionable pages from the exhibit and that the husband's counsel approved the remaining pages of the exhibits before allowing them to go out with the jury. Therefore, the husband's counsel induced such error by approving the pages and will not be heard to complain of the results on appeal.

Gross Income/14-year-old Election

Sharpe v. Perkins, A07A0714 (March 20, 2007)

The parties were married in 1980 and had three daughters during the marriage and were divorced in 1993. The parties were granted joint legal custody with the mother having sole physical custody of the three minor daughters. In 2005, the only remaining minor daughter was 14 years old and was residing nearly equally with both parents based on an informal arrangement. Also, the father was primarily deriving his income from purchasing real estate, renovating homes and then renting those homes to tenants. In 2004, the father had approximately $176,000 in capital gains based mostly upon the purchase and resale of unimproved properties. He estimated that his 2005 tax returns would also reflect the same amount of capital gains. In April 2005, the mother filed a petition to modify child support of their one remaining minor daughter requesting the child support obligation to be increased. The father filed an answer and counterclaim filing an election signed by their minor daughter which stated in pertinent part "after giving careful consideration to all of the factors involved, I am requesting that the court award joint legal and physical custody to myself and both of my parents so that I spend an equal amount of time with both parents." The mother also filed a motion for contempt for failure to pay the minor daughter's private school tuition as required by the divorce settlement. The trial was heard whereby both the modification and the contempt matters were addressed. The trial court increased the father's monthly child support obligation and denied his counterclaim to obtain joint physical custody of their minor daughter finding that the daughter's election was invalid. The court did not hold the father in contempt, but did require him to pay the $7,000 in unpaid private school tuitions. The Court of Appeals affirms.

Pursuant to O.C.G.A. §19-9-3(A)(4) provides that "in all custody cases in which a child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live." The statute requires that the child choose one parent with whom he or she desires to live and any language implying that the child's selection can establish joint physical custody is notably absent. By contrast, O.C.G.A. §19-9-3(A)(5) provides that joint custody as defined by Code Section 19-9-6, may be considered as an alternate form of custody by the Court. Therefore, in reading the statute so as to give these two sections sensible and intelligent effect, we hold that the Court retains exclusive authority to grant joint physical custody. Here, the 14-year-old election fails to choose one parent over the other and instead attempts to interfere with the Court's exclusive authority to designate joint custodial status and therefore, the election was invalid.

The father also argues that the trial court erred in characterizing his capital gains from property sales as gross income in his modification order to increase his child support obligation. The father conceded that he received such capital gains, but argues that the court should not have included those gains in the calculation of the gross income because those gains were derived from a one-time event and thus, would be nonrecurring. However, the father cites no authority in support of his claim that the nonrecurring capital gain should not be included in the gross income calculations. The trial court ruled based upon the former O.C.G.A. §19-6-15(B)(2).

The father also contends that the trial court erred in ordering him to pay the private school tuition under the terms of the original divorce settlement agreement because it is barred by the doctrine of laches. The right of a child to child support belongs to the child and cannot be waived by a parent.

Jurisdiction

Padron v. Padron, S06A1965 (Feb. 26, 2007)

Husband filed a complaint for divorce in which he asserted he was a resident of Georgia and had been for more than six months prior to the filing of the petition. Thereafter, the parties' settlement agreement was pre-

sented to the trial court and the court, sua sponte, ruled that it lacked jurisdiction over the case because the Appellate was not a resident as required by O.C.G.A. §19-5-2. The Supreme Court reverses.

As used in O.C.G.A. §19-5-2, resident means domiciliary and jurisdiction, strictly speaking, is founded upon domicile. Domicile is established by actual residence with the intent to remain there for an indefinite period of time. A person's immigration status does not, as a matter of law, preclude that person from establishing residency for the purpose of attaining a dissolution of marriage.

Separate Property/Mobile Home

Johnston v. Johnston, S07A0134 (Feb. 26, 2007)

The parties were divorced in 2004, and in relevant part, the divorce decree provided that the marital home of the parties shall be appraised by a mutual agreeable appraiser, the value established thereby, minus any sums owed for the windows of said home, shall be the equity in said home and each shall be entitled to an equal portion thereof. The husband shall have 90 days from receipt of such appraisal to pay the wife her equity therein.

In 2005, the wife filed a motion for contempt alleging that the husband had willfully failed and refused to pay one-half equity in the marital home. Husband answered stating that he did not owe any sum of money to the wife after the calculation. The appraisal showed a negative equity taking into account the value of the mobile home, less the balance owed for the windows, but did not include the value of the real property which was owned by the husband prior to the marriage. A hearing was conducted and the order initially concluded that the revisions of the divorce decree were unclear and proceeded to find that the husband's separate non-marital property was the real property on which the mobile home sets and the only marital property was the actual mobile home. Supreme Court affirms.

The wife argues that the principal of *res judicata* precludes the re-litigation of her entitlement to the property previously awarded to her by the divorce degree. However, this dispute relates to what is meant by "the marital home" as the term used in a divorce decree. Therefore, there was no re-litigation of the previously resolved issue. Instead, there was only an attempt to determine what had been litigated previously by the provision of the decree awarding the wife one-half of the equity in the marital home. A trial court has no authority to modify the terms of a divorce decree in a contempt proceeding. However, a trial court does have the authority to interpret divorce decrees in deciding contempt issues placed before it. The inquiry is whether the clarification is reasonable or whether it is so contrary to the apparent intention of the original order as to amount to a modification.

The trial court concluded that the marital home was in fact a mobile home and there was no evidence that the mobile home was permanently attached to the real property on which it was situated. Except for mobile homes permanently attached to realty, mobile homes are personal property and not real property. Thus, the marital home consists entirely of personal property. In absence of a transcript, it must be assumed that the trial court's findings are supported by sufficient competent evidence and a judgment is thus affirmed.

Statement of Facts

Mathis v. Mathis, S07F0312 (March 26, 2007)

The parties were married for four years and had no children. There were several non-marital and marital assets co-mingled during the course of the marriage. During a bench trial, the court entered final judgment and equitably divided the marital assets. The final judgment of the court contains no findings of facts revealing the reasons behind the court's conclusion. Supreme Court affirms.

The equitable division of property is an allocation to the parties of the assets acquired during the marriage based on the parties' respective equitable interest. In the instant case, there was conflicting evidence concerning the values of the parties' assets as well as the premarital and marital contributions of each spouse. Therefore, the trial court sitting as trier of fact in a bench trial, was required to determine whether and to what extent an asset is marital or not and then exercise its discretion in dividing the marital property equitably. The final judgment and decree of divorce entered in the case at bar contains the results of the process, but does not contain any findings of facts that clarify the rationality used by the trial court to reach its result.

As stated in prior opinions, findings of fact are an aid to the Appellate Court on review and enable parties to complain on appeal from judgments rendered. However, Superior Court judges are not required to making findings of fact in a non-jury trial unless requested to do so by one of the parties prior to entry of the written judgment. Here, neither party asked the trial court to make findings of fact and therefore, this court is unable to conclude that the trial court's equitable distribution of marital property was improper as a matter of law or as a matter of fact. **FLR**

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Chair's Note

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II. Service to the Profession

The annual Family Law Institute of 2006, held over Memorial Day weekend in Destin was an incredible event. This was the first time that the section met jointly with the annual meeting of the Georgia Psychological Association. Approximately 600 people participated in this event. Lifelong relationships were established between lawyers and psychologists, while together they learned about their respective professions and the inter-disciplinary approach to divorce and custody matters. The 2007 Family Law Institute will be held in Amelia Island, Fla., during Memorial Day weekend. This event will be chaired by Kurt Kegel of Atlanta, and he has gathered the entire Supreme Court of Georgia, who will, for the first time, meet in a mock appellate argument. We are so pleased that our section has gained the respect of the highest jurists in our state by having their unanimous support and attendance at our seminar. Already we have 300 members signed up for the program. In addition, because of the continuing interest in the child support guideline changes, our section has been asked to participate in this year's annual meeting of the State Bar of Georgia. For the first time, a family law section seminar will take place for three hours on June 14, 2007. The seminar will be presented by section members, Elizabeth Green Lindsay, Paul Johnson of Savannah, Tina Shaddix-Roddenbery of Atlanta, and Laurie G. Dyke, CPA of Marietta. This session will highlight the significant changes in the child support guidelines and the impact of the new law on the preparation and presentation of child support cases. This is another in a series of firsts for the section.

In July 2006, Carol Walker, John Lyndon and former section Chair, Steve Steele, spoke at the Superior Court Judges' Conference where they assisted in the training of Superior Court judges on the new child support statute and they demonstrated the forms and calculator use to implement the guideline. I am most pleased to state that I have been asked to participate this coming July in the same Superior Court Judges' Meeting. It is remarkable to observe that until only a few years ago, family law attorneys were never invited to participate in the Superior Court Judges' conferences and now, section members are routinely asked to participate. This is an acknowledgment by the bench of the high level of expertise that members offer to the Court.

As it has become the custom, throughout the year, we have published every two months the well-known *The Family Law Review* that is edited by Randy Kessler of Atlanta. This periodical is relied upon by members and judges to obtain insight regarding cutting edge issues and recent case law development. *The Family Law Review* has even been quoted this year in the *Atlanta Journal-Constitution* editorial page. Randy Kessler has done an incredible job seeing to it that the high level of articles has remained constant while he maintains deadlines for publication. For the first time *The Family Law Review* has been offered to members through the Internet, as well as through the mail. Volunteer attorneys have done all of this work, and I am proud of the high watermark that *The Family Law Review* has achieved throughout the year.

III. Membership, Finances and Internal Structure of the Section

Throughout the year, we solicit contributions from law firms and members to assist us in putting on the Family Law Institute each year. Once again, we have raised more than $20,000 for this mission. These additional funds help us entertain and house all of the judges whom we invite as our guests. Each year we have more than 20 Superior Court judges from around the state who participate as attendants and speakers at our seminar.

The section remains financially sound. The executive committee has done a diligent job in seeing to it that finances are balanced each year, and our section remains one of the strongest economic sections in the state.

The bylaws have been modified this year while notice of meetings by e-mail and more specifically, define the membership of the executive committee and the job descriptions of the officers.

It is important to note that a few years ago, the Young Lawyers Division (YLD) of the Bar started the Family Law Committee. This year the Family Law Committee held a wine tasting in Atlanta along with an auction which was highly successful. Future leadership for our section is being developed by the YLD so that we may maintain successful leadership development.

We have held both in person and telephone conferences with the executive committee throughout the year. The level of participation and commitment of the executive members could not be better.

IV. Conclusion

I have been very fortunate to serve as chair of this section. I am extremely proud of what this section has done for its members, the judiciary and the public at-large. I am honored to call myself a divorce attorney. I am honored to have been the chair of this section this year. The State Bar of Georgia should be equally proud of what this section has done. There is little doubt in my mind that this section once again deserves the "Section of the Year" award. **FLR**

HB 369 Changes Child Custody Statutes, Provides for Limited Direct Appeal

By Andrea Knight
Senterfitt & Knight, LLC

In the final two days of the legislative session, the Senate and House reached consensus on the form of House Bill 369. Unless vetoed by the governor, the new child custody framework and all other components of the bill will become effective on Jan. 1, 2008. Unlike the child support guidelines, the new custody framework will only impact cases filed after the effective date.

The final version of HB 369 is quite similar to the bill as originally introduced. The major shift for practitioners will be implementation of the new mandatory parenting plans. Parenting plans have already entered the vocabulary of family law practitioners as a "best practice" in middle to high conflict cases. However, implementing the requirement for parenting plans in all cases, particularly to meet all the requirements set forth in HB 369, will significantly increase the time involved in the preparation of customized court documents in each case. To ease this burden, it is expected that the Council of Superior Court Judges will adopt a new uniform superior court rule establishing a court-mandated parenting plan form.

For a more extensive summary of the new parenting plans and other parts of the bill, see Andrea Knight, "HB 369 Introduced to Rewrite Child Custody Statutes, Provide for Direct Appeal," *The Family Law Review*, February 2007, page 27.

While the bill passed with limited debate and forums, there were a few changes. Two of the most significant changes impact direct appeal and the 14 year old election. Initially, HB 369 provided the right of direct appeal in all domestic relations cases. HB 369 as passed limits the right to all judgments and orders in child custody cases, which includes awards of custody as well as a refusal to modify custody as well as finding or refusing to find a person in contempt of a child custody order.

HB 369 as introduced provided not only for judicial discretion in 14 year old election cases but also proposed modifying the statute to provide that an election by a child over the age of 14 did not constitute a material change of condition or circumstance. In its final form, HB 369 provides that an election of a child aged 14 or over may constitute a change of condition or circumstance. So while the election may open the door to litigation, the defendant would also have the ability to argue that, in the particular circumstance of the family, the election does not constitute a change. Further, HB 369 limits the ability of the child to elect to only once every two years. The rather mysterious six month trial period in the current statute will be amended by HB 369 to a temporary order applicable only for children between 11 and 14.

One small addition to HB 369 that practitioners need to be aware of is the adoption of a new Domestic Relations Case Filing Information Form. The new form will collect additional information on domestic relations cases, only some of which is directly related to the new custody statute. Another new component is the replacement of the phrase "visitation" with "visitation or parenting time" throughout the bill. This change was suggested by Legislative Counsel to reconcile the custody statute with the language used in the child support statute.

The full text of HB 369 can be located at www.legis.state.ga.us. At the time of writing, the posted bill is not the final version, but instead the bill as amended on the floor of the Senate to provide for a divorce waiting period as well as mandatory counseling. The final version of HB 369 as passed eliminated Sections 7 through 10, and should be available online within the next few weeks. **FLR**

It's Never Too Early to Think of Clients' Futures

By Martin S. Varon
www. armvaluations.com

Negotiating a final settlement in a divorce is usually a very stressful time for all parties: the husband, the wife, the children and both attorneys. Despite the tension and delicacy of the issues, it is important not to lose sight of something very important. It is critical to start thinking of the future for the ex-husband, ex-wife and the children.

Income Taxes

It is very important to start considering the tax consequences to all parties immediately. Tax filing statutes, brackets and exemptions have changed and it is imperative to consider the effect on all taxpayers. The divorced couple has gone from a Married Filing Joint or Separate (MFJ or MFS) status to either a Single or Head of Household status and the applicable tax tables have changed significantly. The payer of alimony is entitled to a new above the adjusted gross income line deduction and this may lead to an adjustment of his/her withholding requirements. Or, if the payer is self employed, the alimony deduction may decrease the size of his/her estimated payments.

The recipient of alimony is now receiving income where there is no tax being withheld. It is probably necessary for that party to start making quarterly estimated tax payments.

Insurance

It is very important to make sure that the parties have the proper type and amount of insurance in place. After the divorce, is your client covered under a health insurance policy? If not is COBRA available, or is it time for your client to be added to coverage at his/her place of employment? If that option is not available, is it time for your client to obtain an individual policy? The types of policies and coverage vary significantly so your client should review this with someone experienced in the insurance industry.

- Is disability insurance needed or warranted?
- Is your client's automobile still insured? Is it time to review this policy?
- Is your client's home and personal belongings properly and adequately covered? It is advisable for your client to meet with both his/her personal and property and casualty insurance advisors.

Wills

After the divorce, your client needs to update his or her will. Not only do changes have to be made regarding the distributions to heirs, it is critical to consider the issue of who should be the guardian of the children should the parties die prematurely.

Beneficiary Designations

It is necessary to update the beneficiary designations under any retirement plans and life insurance policies as soon as possible.

Meetings As Soon As Possible

It would be advisable for your client to meet with the following people:

- Family Attorney
- CPA
- Insurance Broker
- Head of Human Resources at the company where your client works. **FLR**

Martin S. Varon is a CPA, CVA, JD and CEBS. He works with domestic relations attorneys helping their clients attain equitable distributions in their settlements.

Judge Karpf Interview

Continued from page 7

other parent, and the siblings got split up because of the election. I've got to tell you I don't know how you figure that. That has been identified already as a problem. There is no good way to calculate it. Each parent has one child. The calculator programs don't take that into account, so we haven't really figured out what to do about that yet.

Paul: Do you have any tips for members of the bar that are coming before the bench with these new child support cases, things you would like to see more of or see less of with regard to the guidelines?

Judge Karpf: For one thing, I think it helps when we have advance notice of what the contested issues are. Typically up till now, we have not required pretrial orders in bench trials. Everybody sort of knows what's going on, we go in there, and you know, push the start button and we get going. If there is some issue about, as we were talking earlier, some tax credit that can be construed to be income, I need to know about that ahead of time. Don't spring something like that on me in the middle of trial. I need advanced notice. The lawyers need to be familiar with how the calculators work. Around here, most of us are using the Excel, for a couple of reasons. The online calculator didn't seem to work right. There were some glitches in it in the beginning. The whole system seemed to run very slowly and we were all very frustrated with that and so we all went to Excel. Excel has some little issues in it, one of which, by the way, has been corrected with the new release just a few days ago. The one thing that I have already noticed is that on Schedule E, the deviations, there is a column for deviations and now the program totals the column for you. It didn't used to do that. It doesn't mean that that total is the deviation, because you can change it, but it at least does the total, which I always thought was a mistake not to have it done that way. So they have fixed that. There are little usability issues with Excel. Some of the schedules are hard to read, because there is so much information crammed in.

Paul: You need a magnifying glass once you print it.

Judge Karpf: Exactly. The way the screen is set up, you have to slide the pages side to side, and you've got the right side up on the screen, you can't see the question on the left side. It's kind of a pain in the neck. But the advantage is that Excel is instant. When you enter something into the Excel program, you get a result on the other end like that. You don't have to wait for the server in Atlanta to grind out the answer. It is also more portable. Most people have not figured out the "submit" button on the calculator. We haven't figured it out and the lawyers haven't figured it out. I've done some practice worksheets and I've hit the submit button and the worksheet has gone out into the ozone never to be seen or heard from again. It's confusing and most people don't like it. It's much easier to do the Excel on the fly. A lot of times in the court room what I will do is just sort of do a dummy worksheet, and it's very easy. Let's face it. Most of these cases don't have all these issues we've been talking about. In many of them the incomes are known. The child care is known. There are one or two little wrinkles in the evidence that have to be resolved. We've heard this a million time that dad comes in and says well, "I don't get overtime every time, and we've just been told we're not getting overtime this year." You've heard that time and again. You know what to expect. But his worksheet has a different income level than mom's worksheet has for him and you've got to resolve that issue. But you can dummy up a worksheet on Excel very quickly. For our purposes, we don't have to fill out all the information with the case number and names, etc. You just click off the number of children, you enter the income figures on Schedule A and maybe you fill in the child care thing and boom, the answer is there. So Excel is quicker for us. When somebody's disk has been submitted, and of course, both of them are supposed to be submitted, you can pull up one person's version and make some edits and get the same result. So I just think Excel is a little easier. The web-based version might be a little easier to understand, but once you learn Excel, it's not that difficult.

Paul: Not just with the calculators but with the

statute as a whole, are there any other areas that you think might need further clarification or might need further work?

Judge Karpf: I'm sure there are. We have not worked through all these issues. One that I've noticed several times, particularly in the child support recovery calendars, is the low income deviation. We see lots of cases where both parents are low income. But the non-custodial parent doesn't get a low income deviation when the custodial parent is also low income. That's a policy decision. That's not our call. But you could see a non-custodial parent who's low income, imputed at minimum wage for example is like $900 per month. The low income deviation is under $1,950 per month. But if the custodial parent is also low income, there is no deviation for the non-custodial parent they may wind up owing $300 or $400 per month on a $1,000 month income. That's a problem as it doesn't leave enough for someone to live on, but that's something for the legislature to do.

Paul: Well, you would still have the ability under non-specific deviations to fix that.

Judge Karpf: Exactly, that's how you do fix it. But one of the by-products of the legislation is that it seems that, at least at the beginning, we were all sort of taking this mechanical approach. You try the numbers that are in dispute, whatever the deviations are and once you resolve that. Okay, child care is not $500 per month, its $250 per month. You put that in. The kids aren't going to camp can't because people can't afford it. There's not going to be private school or whatever. Then the whole thing becomes mechanical. I think the non-specific deviation part at the beginning has been overlooked. One thing, its hard to come up with justifications that you have to have. You have those three sets of questions and frankly, its seems like its only two sets of questions to me. Its seems a little repetitive. Seems unfair, well why? Well, I don't know, because he is paying too much.

Paul: Because he is.

Judge Karpf: Exactly. I don't think anybody has really gotten into that 100 percent. Particularly the child support recovery team. They really were operating on a mechanical basis.

Paul: Under the old guidelines?

Judge Karpf: Under the old guidelines 17 to 23 percent, that was it. So they are having a hard time with that. I don't think the bar has quite figured it out and I don't think the judges have either. I'm not being critical. We are all in the same boat on this. We are all learning together, until we have some experience with tried cases. That's what we really need to do: try the cases. That's the only way you are really going to learn. It is still really early in the game; too early to talk about making changes, even though we are seeing things that might need to be changed. I don't think there is enough collective experience to really say that this is a problem yet.

Paul: Are the judges keeping track of these? Is there a message board or a list serve?

Judge Karpf: There is, but I don't know if anybody is really doing anything statistical in the way of keeping track of the issues. There has been some talk about the split parenting thing that's been a problem. I seem to remember one or two issues popping up, but I can't remember what they were. I think the folks in Atlanta are a little disappointed that not more people are using the web-based calculator. I think that was going to be their backdoor way of doing statistics, because they were the repository of the information. But since most people I know are using Excel, they don't get copies of those spreadsheets. So be it. There's nothing we can do about that. I don't want to be too critical, and I'm not being critical of the child support folks who were driving the train on this, but it was a mistake to go live with this thing when the calculators weren't ready.

Paul: Because what has happened is that everybody has gone into, Excel because it was the one that was working at the time.

Judge Karpf: There were definitely glitches with the other at first. I think those got fixed and now they have gotten it fixed to submit and to be able to release the spreadsheets. And now we have gotten comfortable with Excel. Maybe the vendor was at fault, I don't know. But it was a sweeping change, and it was difficult to figure out, even in the test versions. We had several training sessions with test versions early on. I remember sitting in several of them and making a lot of suggestions for things that we thought could work better. I think they were overwhelmed with all of the comments and suggestions and they just couldn't assimilate all of that and make all of those changes. So perhaps it could have been handled better, but we have it, so we just have to make it work.

Paul: Try cases.

Judge Karpf: Try cases. That's right. But settled cases are better than tried cases.

Paul: All right judge. I appreciate your time and I'll let you get out there with your child support docket to see how many of those have settled. Thank you. **FLR**

Confessions of a *Guardian ad Litem*

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Last week, as I was sitting through yet another custody trial as *guardian ad litem* (GAL), I thought about my article for this issue of *The Family Law Review*. After stepping down from the witness stand and reflecting upon my testimony, my report and the course of my investigation, it finally struck me what my confession would be. I confess that getting to the crux of a custody dispute and ensuring that the best interests of the children are protected as much as possible can be a daunting task. I further confess that in order to accomplish that task, I have high expectations of the parties that should be met if one hopes to get a favorable recommendation from me.

The list of those expectations is exhaustive, but I have put the most important in the following Parents' 10 Commandments to working with the GAL.

1. Thou shalt honor thy children.

It is probably the most unfortunate consequence of custody disputes that at some point many children find themselves caught up in the middle of their parents' battles. Be conscious of what you say to or about the other parent while in the presence of, or anywhere near, the children. Know that children can be very adept at picking up on innuendos and body language. Don't put your children in the position of feeling that they must protect or defend the other parent. By the same token, don't put your children in the position that they feel they need to take care of you or your feelings. Your children have the right to love and be loved by both of you. Do not interfere with that right.

2. Thou shalt be truthful with thy GAL.

Tell the GAL everything relevant to your custody case, good or bad. It's better that the bad things about you come from you rather than the opposing party because the latter will not hesitate to talk about those bad things and you never know what kind of spin they will put on them. Listen to the GAL's questions and answer them as clearly and concisely as possible. Give specific examples of your complaints rather than broad generalizations. Do not play word games with the GAL as he or she is not stupid. It always amazes me how some people think that their lies and deception cannot be found. What's even more amazing and actually a little scary is when they actually believe their lies. I believe that if there is a fact, it can be discovered. Trying to cover up the truth accomplishes nothing other than to do irreparable damage to your credibility. And don't even begin to think that exaggerating or stretching the truth does not fall under this commandment.

3. Thou shalt NEVER instruct thy children as to what they should or should not say to thy GAL.

Children's acting skills are not quite as honed as their parents' and they are generally much more transparent when they say or do things that do not come naturally to them.

4. Thou shalt be thyself and not pretend to be someone else.

Your own acting skills are probably not as honed as you think they are. The GAL will be involved in your case for a long time. He or she will get to know the real you. It will be almost impossible to keep up a façade for such a long time. Further, the GAL will be talking to other people who can give him or her a truer picture of who you are. Don't think the GAL is so easily fooled.

5. Thou shalt honor thy judge, thy GAL, thy attorney, thy opposing counsel and all other people associated with thy case.

If you show disrespect or other untoward behavior toward the people who to some degree hold your fate in their hands, then it is indicative of how you comport yourself in everyday life.

6. Thou shalt respond timely and provide complete information and documents to thy GAL.

Don't pick and choose what you want to give the GAL. Give him or her anything that is relevant to the custody dispute. If you send some e-mails but not others, the GAL is going to wonder what occurred during the gap. If you provide documents with missing pages, trust me, the GAL will notice. Delaying or refusing to sign releases so that the GAL can obtain information from your medical or mental health providers will only keep the GAL guessing as to what it is you are hiding. Showing up late, or not at all, to random drug or alcohol testing leads to the obvious inference. Don't do anything that would tend to cast a shadow of doubt on your credibility. Without your credibility, you have nothing.

7. Thou shalt remember that thy children's best interests are always paramount.

I know that sounds a little trite, but I cannot tell you how many times I've seen even the best parents place their own interests before those of their children. Unfortunately many parents involved in custody disputes are so filled with anger, hurt, bitterness and frustration that they lose sight of the forest for the trees and, whether intentionally or not, they place their needs and interests over their children's. Be conscious of this pitfall when embroiled in custody disputes and don't allow it to happen to you.

8. Thou shalt comply with all court orders.

Need I say anything further here? Spending time in jail on a contempt charge is not conducive to building a strong relationship with your children or to building a strong custody case.

9. Thou shalt not seek legal advice from thy GAL.

The GAL is not in a position to give legal advice. It would be a conflict of interest for the GAL to provide any legal advice to either of the parties. Furthermore, the GAL is not your therapist or counselor. If you have questions or need any advice, call your lawyer or your therapist.

10. Thou shalt never forget that thy GAL is watching.

Your actions are not slipping under the GAL's radar. If there is something to be found out, the GAL will find it.

The GAL cannot get to the truth of the matter in a vacuum. His or her recommendations will be based upon what he or she learns through the investigation. Cooperation and truthfulness are key. Behaviors speak volumes. By following these 10 commandments one has a much greater chance of obtaining favorable recommendations from the GAL. **FLR**

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