

“For Better or Worse” FAMILY LAW CASE UPDATE

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TRIAL COURT HAS AUTHORITY TO INCORPORATE AN ORAL AGREEMENT INTO FINAL JUDGMENT AND DECREE OF DIVORCE

In the recent case of Sponsler v Sponsler, 287 Ga. 725, 699 S.E.2nd 22, 10 FCDR 2064 (June 28, 2010), the Supreme Court found that the trial court has the authority to approve an oral agreement between the parties and make that oral agreement a part of the Court's Final Judgment and Decree of Divorce.

The Court found that the Husband and Wife announced to the Court that they wished to enter into a Settlement Agreement after negotiations on the day of trial. Negotiations followed opening statements and some presentation of evidence as to the contested issues of alimony, division of property and division of debt. The oral agreement was announced in open court and taken down by the court reporter. A transcript of the oral agreement was prepared. Following the Court entering a Final Judgment and Decree of Divorce, based upon the oral agreement announced in Court, the Husband sought an application of discretionary appeal pursuant to the Georgia Supreme Court Family Law Justice Project, under which the Supreme Court will grant all non-privilege discretionary applications seeking review of a Final Decree of Divorce.

The Supreme Court found that prior to the marriage, the Husband owned certain real property and financial assets including investment accounts. Further, that the parties had purchased a marital residence and a bar known as the Will Henry Tavern, in Lilburn, Georgia. There were no children. The Court found that the parties entered into a Settlement Agreement on the record, after commencement of the trial and that neither party objected when the Judge affirmed that it was her understanding there was a complete and total agreement between the parties. At no time during the Wife's recitation of the agreement did the Husband object or even suggest that he did not understand that there was a binding agreement as to the items listed on the record.

After the Final Judgment and Decree of Divorce was entered, the husband filed his appeal, contending that the Trial Court (the Hon. Debra K. Turner, Gwinnett County Superior Court) erred in making the alleged oral agreement of the parties at trial a part of the Court's Final Order, stating the terms of the agreement was still in dispute. The Supreme Court found that the record "belies this assertion." The Court found that the Husband knew that the agreement reached between the parties during a court recess would constitute a final resolution of the issues upon which the parties agreed, and that both parties stated as such on the record. The Husband also did not object to any other terms of the agreement when those terms were stated on the record. The trial court was authorized to find that an agreement existed between the parties, and was authorized to make that agreement part of the court's final decree. See Little v. Little, 236 Ga. 102, 103 (1), 222 S.E.2nd 384 (1976), "a trial court is authorized to approve the terms of an oral agreement agreed to by the parties and to ... incorporated into the final decree."

The remaining issue was as to the award of attorneys' fees. The court found that it was within the court's discretion as to the award or non-award of attorneys' fees and expenses of litigation to the parties. This case has been cited recently in Sugarloaf Mills Ltd. Partnership of Georgia v. Record Town, Inc. (September 29, 2010), with regard to the attorney fee issues.

**TRIAL COURT HAS AUTHORITY TO FIND VOLUNTARY UNEMPLOYMENT
AND NOT ALLOW CHILD SUPPORT DECREASE TO BE APPLIED
RETROACTIVELY**

In the recent case of Galvin v. Galvin, --- S.E.2nd --- (November 1, 2010); S10A 1104, the Father filed a motion to modify his child support obligation and child custody in Superior Court of Cherokee County. The court entered an order granting the Father a downward modification of the child support obligation and increased his visitation with the child. The downward modification of the Father's child support obligation was not ordered retroactive to the month in which he filed the petition for modification. The Father applied for a discretionary review of the court's order which was granted pursuant to O.C.G.A. §5-6-35, not pursuant to the Pilot Project, because the appellant father had the statutory right to appeal directly an order entered into a child custody modification action filed after January 1, 2008.

The Supreme Court found that the trial court could find that the Father's child support obligation, although decreased by the court did not have to be made retroactive to the month in which he filed the petition for modification. Further, the trial court could impute income to the Father based upon his training and experience.

Citing O.C.G.A. § 19-6-15(j), the Father contended that the trial court erred when it did not make the reduction in his monthly child support obligation retroactive to the date of filing his petition for modification. The statute provides "(1) in the event a parent suffers an involuntary termination of employment, ... then the portion of child support attributable to lost income should not accrue from the date of the service of the petition for modification...." However, the modification of a support obligation pursuant to a judgment is effective "no earlier than the date of the judgment of modification." The statute does not make a downward modification of child support retroactive. "Rather, the statute provides that child support due before the entry of the modification order (and presumably not paid in full due to the obligor spouse's "involuntary adversity") does not accrue, to the extent the child support obligation is based upon the parent's income employment from which the parent has been involuntarily terminated." The trial court found that the father was not entitled to have the downward modification applied retroactively because the father was not trying to find employment and was choosing not to work.

The Supreme Court also found that the trial court's modification order was appropriate with regard to the computation of the mother's income, and as both parties, as found by the court, had similar incomes, the court did not err in failing to adjust the pro-rata division of work related child care and health insurance premiums coverage for the child.