Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, March 7, 2017

10:00 A.M. Session

ALINA GIBSON V. STEWART GIBSON ET AL. (S17F0593)

In this **Fulton County** divorce case, a woman is appealing a judge's ruling, arguing the trial court failed to include more than $3.2 million in assets that she was entitled to share with her ex-husband.*

FACTS: Alina and Stewart Gibson married in 1993 and had one child, a daughter born in 2004 who the husband claims has "numerous learning disabilities." Stewart had a medical oxygen equipment business. According to the wife, after their daughter's birth and two years of "failed marriage counseling," the couple began living in separate areas of the home and quit having "marital relations." In 2008, he established the Gibson Family Trust, an irrevocable trust, and in 2012, he established the SLG Irrevocable Trust. He named his mother, Julia Gibson, as the sole trustee of both. (She resigned as trustee in 2016 and now Dr. Robert Kaufmann is trustee.) According to Stewart's attorneys, he created the trusts for the benefit of his wife and their "special needs daughter." According to Alina's attorneys, between May 2010 and October 2013, Stewart transferred more than $3.2 million into the trusts without Alina's knowledge. She claims that in July 2012, four months after accusing him of adultery, she told him she intended to file for divorce. In 2014, Alina filed for divorce. She claims that during their marriage, the parties acquired assets totaling more than $6.5, yet at the time of the divorce, when it came to

equitably dividing the marital property – or the assets the couple had acquired together as opposed to those each individual had brought into the marriage – the court classified as marital property assets totaling one third of that value: $2.2 million. Specifically, the trial court excluded the money Stewart had gifted to the two trusts. She claims that neither he, nor his mother, ever told her about the creation of the trusts or about his transfer of assets into the trusts. She only learned about the trusts, the accounts he opened, and other assets after she filed for divorce.

During the six-day trial, she challenged the transfers to the trusts as "fraudulent conveyances" under Georgia's Uniform Fraudulent Transfers Act. In response, attorneys for Stewart and the trustee filed a motion asking the court to dismiss the fraudulent conveyance counts. Following arguments, the trial court granted their motion and dismissed the counts. The trial court found that Stewart had not transferred assets into the trust with intent to hinder, delay or defraud Alina. The judge found that Stewart had not funded – or even created – the trusts knowing his wife was contemplating divorce, and that he did not actively conceal the transfers. Following the trial, the judge entered a Final Judgment and Decree of Divorce in May 2016. Alina argues that she received property valued at $1.1 million, which she claims amounts to only 17 percent of the parties' total marital assets. She now appeals to the state Supreme Court, which has agreed to review the case to determine whether the trial court erred in concluding 1) that the assets in the two trusts were not subject to equitable division between the two; 2) that Stewart's conveyances to the two trusts were not fraudulent; and 3) that he properly gifted the assets to the trusts.

ARGUMENTS: Alina's attorneys argue the trial court erred by failing to include more than $3.2 million in assets as marital property which she was entitled to share in an equitable division. The trial court judgment "failed to classify as marital assets more than half of the property accumulated during the marriage," the attorneys argue in briefs. The trial court wrongly concluded that the assets have been validly transferred to the trusts "despite that: a) they were not titled in the name of the trustee; b) they were not controlled by the trustee; and c) the transfers had not been completed as of either the dates this divorce was filed or judgment entered." The trial court also erred in dismissing Alina's fraudulent transfer claims, her attorneys contend. The "underpinning facts did not support a dismissal of Appellant's [i.e. Alina's] fraudulent transfer claims as a matter of law."

Stewart's attorneys argue the trial court properly concluded that the assets in the trust were not subject to equitable division. "Georgia law is well settled that a spouse may transfer his or her property to a third party without the knowledge or consent of the other spouse," they argue. The state Supreme Court has held in previous cases "that a third-party asset is a category of property that does not legally constitute a marital or non-marital asset. Accordingly, whether a particular item of property actually is a marital asset, non-marital asset, or third party asset" is a question of fact for the trial court to decide. In this case, the judge found that the trusts were "separate entities" headed by a Trustee "who importantly, is not the Husband." Stewart had no interests in the trusts, and the judge also found that he properly transferred the assets to the trusts. "Therefore, the assets in the trusts are categorized as third-party property not subject to equitable division because they do not constitute marital or non-marital property as a matter of law." The trial court also properly held that Stewart's conveyances to the trusts were not fraudulent, his attorneys argue. And the trial court properly concluded that he properly gifted the assets into the

trusts, and therefore they are not marital property subject to a fair division between Alina and Stewart.
Attorneys for Appellant (Alina): Barbara Keon, Craig Frankel
Attorneys for Appellee (Stewart): Robert Boyd, Kevin Rubin, Letitia McDonald, Emily Newton

OASIS GOODTIME EMPORIUM I, INC. ET AL. V. CITY OF DORAVILLE (S17A0421)

In its long-time dispute with the City of Doraville, the Oasis Goodtime Emporium I adult entertainment business is appealing a **DeKalb County** pre-trial injunction against it, arguing it is no longer operating as a "sexually oriented business" – or SOB – as it now regularly features "performances of serious artistic value," and the City, therefore, should not deny it a liquor license.

FACTS: For nearly 25 years, the Oasis has operated as a restaurant featuring nude dancing and alcohol service on Peachtree Industrial Boulevard. Beginning in 1991, a number of adult entertainment businesses filed lawsuits against DeKalb County for enacting ordinances that prohibit providing both nudity and alcohol together. Eventually, a number of the establishments entered into an agreement with the County in which they dismissed their pending lawsuits in exchange for the right to continue operations. The establishments agreed to pay the County a graduated licensing fee, which eventually cost Oasis $100,000 a year. In 2012, the Georgia Legislature adopted a bill that expanded the boundaries of the City of Doraville to include Oasis. In 2012, following a presentation on the negative secondary effects of sexually oriented businesses, the Doraville City Council adopted Ordinance No. 2012-18, the "Sexually Oriented Business Code." The ordinance requires sexually oriented businesses to be licensed by the City. Like the Brookhaven ordinance in the Pink Pony case, as well as the DeKalb County code, Doraville's ordinance allows semi-nude dancing (i.e. G-string and pasties) but prohibits full nudity and on-premises alcohol consumption. The Doraville Alcohol Code also contains provisions that prohibit and regulate adult nude entertainment at establishments that allow drinking. When Oasis applied for a Doraville alcohol license, the City denied it the license. In December 2012, Oasis challenged the constitutionality of Doraville's SOB and alcohol codes. The DeKalb Superior Court ruled against Oasis and in June 2015, the Georgia Supreme Court upheld the trial court's ruling, finding that, "The SOB code defines a 'sexually oriented business' to include an 'adult cabaret,' which in turn is defined as 'a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly features live conduct characterized by semi-nudity….Under this definition, Oasis is a sexually oriented business." Oasis now claims that shortly before the Supreme Court issued its 2015 ruling, it changed its entertainment format to comply with Doraville's ordinances. According to Oasis' lawyers, Oasis sought to become "a mainstream performance venue which regularly featured performances with serious literary, scientific, political or artistic value – a class of establishments which Doraville's Code of Ordinances specifically exempts from the ban on alcohol and nudity." Following the high court's 2015 ruling, the City sent an investigator and undercover police officers who said they observed that Oasis was still operating as an adult cabaret and selling alcohol in violation of the City's SOB code and alcohol code.

In December 2015, three years after Oasis had come under Doraville's jurisdiction and six months after the state's high court upheld the City's SOB and alcohol codes, Doraville sued

Oasis, seeking an "interlocutory" or pre-trial injunction against it, as well as a permanent injunction to prohibit Oasis from 1) operating in violation of the SOB code, and 2) selling alcohol without a Doraville alcohol license in violation of the alcohol code. In March 2016, the trial court entered an interlocutory injunction prohibiting Oasis from engaging in the conduct that violates the SOB and alcohol ordinances, finding that "uncontroverted evidence demonstrates that Oasis continues to be an adult cabaret as defined in the SOB code" and continues to sell alcohol without a Doraville alcohol license. Under Georgia Code § 9-5-1, an injunction may be issued if the party seeking it may prove one of four factors, which include: 1) whether there is a threat of irreparable harm if the injunction is not granted; 2) whether that threat outweighs the threatened harm to the other party if it is granted; 3) whether the party seeking the injunction has a substantial likelihood of winning its case in court; and 4) whether the injunction will not be a disservice to the public interest. In this case, the trail court ruled that Oasis' ongoing violation of laws designed to protect the health, safety and welfare of the City was an irreparable harm, and that an injunction was the appropriate and preferable legal remedy for Oasis' illegal acts. The court also ruled that the City had a substantial likelihood of succeeding in court on the merits, and that an interlocutory injunction would serve the public interest. Oasis now appeals to the Georgia Supreme Court.

ARGUMENTS: Attorneys argue that the trial court erred because the purpose of an interlocutory injunction is to preserve the status quo, as well as balance the conveniences of the parties pending a final resolution in the case. Here, the injunction order was entered "without any evidence that the status quo was endangered," the attorneys argue in briefs. The order was entered "without any evidence that it was vitally necessary to prevent irreparable harm to Doraville." With the injunction, "it is Oasis, not Doraville, who will suffer irreparable harm." If forced to cease operations, Oasis will suffer monthly damages of $100,723.92, in addition to permanent damage to their business if the City ultimately prevails, the attorneys argue. "By contrast, Doraville will suffer no irreparable harm whatsoever without an interlocutory injunction, and the Injunction Order does not even attempt to rationalize how Oasis' continued operation during the pendency of this case will actually harm the City of Doraville." Finally, the injunction order is invalid because Doraville failed to show that it had no other adequate legal remedy, attorneys for Oasis argue.

Attorneys for the City of Doraville argue that the decision whether to grant a request for an interlocutory injunction is in the discretion of the trial court, and the Georgia Supreme Court "will not disturb the injunction a trial court has fashioned unless there was a manifest abuse of discretion." Here there was no such abuse, and the "superior court properly exercised its broad discretion in considering and issuing the interlocutory injunction," attorneys for the City argue in briefs. The court adequately balanced the four factors that guide the entry of an interlocutory injunction before reaching its conclusion. "The hub of the interlocutory injunction is the superior court's finding that Oasis was operating as an adult cabaret throughout the second half of 2015, even after this Court [i.e. the Georgia Supreme Court] rejected Oasis' constitutional challenges" of the local ordinances. Oasis does not challenge the trial court's findings that seven times an investigator visited Oasis after the Supreme Court upheld the SOB ordinance and found numerous dancers appearing fully nude and giving patrons lap dances. "Doraville police officers visited Oasis in October, November, and December 2015 and also observed totally nude dancers giving lap dances to patrons….These observations establish that Oasis is an adult cabaret, a type

of sexually oriented business." Not only were there numerous undisputed violations of the SOB code, but the superior court also found that Oasis was violating the alcohol code because it was selling alcohol without a Doraville alcohol license. The interlocutory injunction preserves the status quo by enforcing the parties' rights at the time the suit was filed. This is contrary to Oasis' argument that the injunction does not preserve the status quo, but Oasis is "essentially contending that the 'status quo' *of its illegal acts* should be allowed to continue," the City's attorneys argue. "This absurd argument flies in the face of the injunction statute itself, as well as this Court's recognition that an interlocutory injunction should allow the exercise of rights that a party had when the suit commenced." Under Georgia Code § 9-5-1, a court may issue an injunction to restrain any "act of a private individual or corporation which is illegal…." "The record contains overwhelming, uncontroverted evidence of Oasis violating the SOB code and alcohol code," the attorneys argue. Contrary to Oasis' argument, the superior court appropriately considered the possibility of irreparable harm under the interlocutory injunction balancing test. Finally, Oasis has no other adequate legal remedy but an injunction, the City's attorneys contend.
Attorneys for Appellants (Oasis): Alan Begner, Eric Coffelt, G. Brian Spears, Linda Dunlavy
Attorneys for Appellee (Doraville): Scott Bergthold, Bryan Dykes

2:00 P.M. Session

DOSS WALLACE V. GARY AND PHILLIP WALLACE ET AL. (S17A0528)

The appeal in this **Henry County** case stems from a lawsuit brought by a man against his two younger brothers for paying him only $54,200 for his stock in the family business – its value when he left the company in 1994 – as opposed to more than $2 million – the value of his stock in 2015 when the brothers notified him they would buy it back.

FACTS: Wallace Electric Company is a family owned electrical contracting company headquartered in McDonough, GA. It was started in 1937 by the parties' grandfather, and formally incorporated in 1959 by the parties' father. Dorsey Eugene "Doss" Wallace is the oldest of three brothers; the other two are Gary Edward Wallace and Phillip Howard Wallace. Doss began working for the company in 1967 and left in 1994, after having worked three different periods during the ensuing years. In 1988, the father gave Phil and Gary each 30 shares of Wallace Electric stock; he gave Doss 20 shares and kept 40 shares for himself. When the father died in 2000, his 40 shares went to his wife. Under the Wallace Electric Bylaws, "It is the intention of stockholders that the stock of this corporation shall be owned only by its employees and officers. Therefore, if the employment of any stockholder or officer is terminated, for any reason, the corporation shall have the right and duty to purchase all the stock of said employee or officer and the former officer or employee shall be obligated to sell his stock pursuant to these Bylaws." The Bylaws further state that, "The purchase price…shall be the book value of the stock (as of the time of said notice) as determined according to accepted accounting practices, and shall be binding upon the parties." At the time the father distributed the shares of stocks to his sons, the parties signed a "Buy-Sell Agreement," which stated that "upon the death, total disability or termination of employment of a shareholder, said shareholder or his legal representative, as the case may be, shall sell and the corporation shall buy all stock, not less than all the stock owned by such shareholder for a purchase price equal to the current value."

According to Phil and Gary, they asked their older brother Doss to return his stock several times, beginning in 2003, but he would not do so.

In August 2011, Doss sued his brothers and eventually the company in Henry County, seeking compensatory damages for breach of fiduciary duty and punitive damages, attorneys' fees and an accounting of the income and profits of Wallace Electric. The essence of his complaint was that as a minority shareholder, he was denied his share of the company profits, income and dividends. In November 2012, Doss filed a Motion for a Court Supervised Accounting and Buyout. Doss argued that Georgia law authorized the court to direct a buyout of an oppressed minority shareholder's stock at its current fair value. Gary and Phil argued that Doss's refusal to sell his stock and seek to benefit from their efforts without contributing to Wallace Electric in any way constituted a continuing breach of the Buy-Sell Agreement and unjust enrichment. As a result, they argued they were entitled to repurchase Doss's shares at a valuation date of 1994, the date Doss should have sold his shares back to Wallace Electric. As of 1994 when Doss left the company, the value of his 1/6th ownership interest in Wallace Electric was $54,200. By July 2015, when Wallace Electric notified Doss it was purchasing back his stock, Doss's interest in the company had grown to 25 percent and was by then worth $2.08 million. (This occurred as a result of the younger brothers working out an agreement with their father's wife to redeem her 40 shares of stock.) Following a hearing, the trial judge announced that, "Doss should receive what he would have received [in 1994] had he done what he was supposed to do, which was to return the stock to the company." Accordingly, "I am going to award him the $54,200 for his one-sixth share of the company as valued on July the 30th of 1994." Doss now appeals to the Georgia Supreme Court.

ARGUMENTS: Doss's attorney argues the trial court erred by ignoring the Wallace Electric Bylaws and by giving him an award in 2016 for the value of his Wallace Electric stock in 1994. "The law governing the only legal issue tried, that of a buyout, is established by the Wallace Electric Bylaws, which amount to a contract between the stockholders and the corporation," the attorney argues in briefs. "The Wallace Electric Bylaws do not set a time limit within which the corporation is to purchase a terminated employee's stock." The Bylaws state that "the purchase price…shall be the book value of the stock (at the time of said notice)…." Phil and Gary never notified Doss that Wallace was acquiring his stock, as the Bylaws require. And they never notified him of the book value of his stock. The only notice they gave him was in 2015 when they sent a letter to his lawyer saying they were acquiring the stock for $54,200 – its value in 1994. If they had notified Doss of the book value of his stock, and Doss had then refused to turn over his stock, then Phil and Gary would have "had an adequate and a complete remedy at law by bringing a legal claim to enforce Doss's contractual obligation under the Bylaws." The trial court also erred by depriving Doss of his right to a jury trial on his claims for breach of fiduciary duty, punitive damages and attorneys' fees. Finally, the trial court's decision to reduce the amount of Doss's stock holdings from 20 shares – which he owned in 2016 and which comprised 25 percent of the Wallace Electric Stock – to only 16 and 2/3 percent of the stock – which he owned in 1994 and which had a value of only $54,200 – was "an unconstitutional taking of Doss's property," his attorney argues.

Phil and Gary's attorney argues the trial court exercised sound discretion by fashioning a proper remedy in this case. The shareholders agreement in the bylaws expired and was superseded by the Buy-Sell Agreement, which itself expired in 2008. "By entering the new

shareholders agreement in 1988, the parties manifested a clear intent to replace and supersede the previously existing provisions that had been set forth in Article V of the Bylaws," the attorney argues in briefs. Here, Doss requested a fair sale of his 20 stock certificates in the corporation. "Both the expired and superseded Bylaws of the corporation and the expired Buy-Sell Agreement mandate a sale of Appellant's [i.e. Doss's] stock certificates to the corporation upon his termination from the company," the attorney argues. "The Buy-Sell Agreement was in full force and effect when Appellant ceased employment with the company in 1994 and in 2003, when Appellant rebuffed Appellees' [i.e. Paul's and Gary's] request that he sell his shares back to Wallace Electric." "It would not be equitable to allow Appellant to benefit from his longstanding and knowing breach of the Buy-Sell Agreement, especially since Appellant did not contribute to the increase in the value of the corporation after he stopped working for the corporation." And because the trial court found that Doss should have sold his stock back in 1994, his other claims are moot, the younger brothers' attorney argues. Finally, Doss's private property was not forcibly taken by the government for public use, and therefore the property he claims to have been taken "is not constitutionally protected by the takings clause."
Attorney for Appellant (Doss): James Ford, Sr.
Attorney for Appellees (Gary and Phil): John Webb

MERRILL V. LEE (S17A0630)

A woman whose husband took her to court hoping to get a reduced child support obligation is appealing a **Fulton County** court's denial of her motion that he be required to pay her the nearly $50,000 she had to pay in attorney's fees and legal expenses.*

FACTS: Michelle Merrill and Gary Lee signed a Settlement Agreement in 2005 resolving the issues in their divorce, including child support for their minor child. That agreement was incorporated into their Final Judgment and Divorce Decree. The Settlement Agreement states: "If either party files an action requesting relief against the other in connection with this Settlement Agreement, which relief is later denied to the moving party by the court, the moving party shall pay reasonable attorneys' fees and expenses of litigation of the defending party in connection with defending the action, including all expenses incurred in support of the defense of litigation." The same Agreement states that Gary, through his signature, "specifically waives his statutory right to modify his monthly child support obligation" below the amount included in the agreement.

In November 2015, Gary filed a "Petition for Modification of and Child Support," seeking a lower child support obligation. In response, Michelle filed a motion to dismiss the petition based on the waiver he signed in the Agreement. In April 2016, the trial court ruled in her favor and denied Gary's petition. In May 2016, Michelle filed a motion requesting attorney's fees and legal expenses, based on the parties' Settlement Agreement and two Georgia statutes. She claimed it cost her $49,610.59 to defend her position that Gary's child support obligation could not be modified. In response, Gary's attorney argued that the award would be premature because at the time she filed her motion for attorney's fees, he already had filed an application to appeal the trial court's ruling in the state Supreme Court asking it to review the case. On June 1, 2016, the state Supreme Court denied his application to appeal the trial court's ruling that denied his request to modify his child support obligation. Twelve days later, the trial court entered its order denying Michelle's motion requesting attorney's fees. There was no hearing, and the two-

sentence order provided no explanation for the judge's decision. Michelle now appeals to the Georgia Supreme Court.

ARGUMENTS: Michelle's attorneys argue the trial court erred in refusing to enforce the Settlement Agreement, "which expressly requires an award of attorney's fees and expenses to Ms. Merrill. The trial court's refusal to enforce the parties' contractual provision requiring an award of attorney's fees to Ms. Merrill was reversible error." It is well-established that settlement agreements in divorce cases "are construed in the same manner as all other contractual agreements," the attorneys argue in briefs. Gary's only argument was that somehow she could not recover attorney's fees because he had a pending application before the Supreme Court asking it to hear his appeal. But the Supreme Court unanimously denied his application as well as his motion for reconsideration. "As a result, there can be absolutely no dispute that Ms. Merrill prevailed in the underlying action and that appellee [i.e. Gary] has the contractual obligation to pay for Ms. Merrill's attorney's fees and expenses pursuant" to the Settlement Agreement, the attorneys argue. The trial court also erred in denying Michelle a mandatory award of attorney's fees and expenses under Georgia Code § 9-15-14 (a) and (b). The Georgia Supreme Court "has specifically held that § 9-15-14 (a) requires an award of attorney's fees and expenses where a party, who has no right to seek a child support modification, files a child support modification action." Gary provided no justification for invalidating his waiver. He claimed the child's best interests would be harmed unless he was permitted to pay less child support. "In reality, Appellee sought only to protect and promote his own financial interest," the attorneys argue. And the trial court erred in denying Michelle the award based on Georgia Code § 9-15-14 (b), which states that, "The court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record if…it finds that an attorney or party brought or defended an action…that lacked substantial justification," which the Code defines as "substantially frivolous" or "substantially groundless." Finally, the trial court erred based on Georgia Code § 19-6-15 (k) (5), which states that in proceedings for the modification of child support, "the court may award attorney's fees, costs and expenses of litigation to the prevailing party as the interests of justice may require." The Georgia Supreme Court "should send Appellee a clear message that he cannot avoid his child support obligation," Michelle's attorneys argue.

Gary's attorney argues that the trial court's ruling should be upheld because it did not commit reversible error in denying an award for attorney's fees. Gary brought the action to "right a wrong" created by the terms of the 2005 Settlement Agreement" that over time, "became overwhelming and subjected him to an action for contempt of court and potential incarceration," the attorney argues. The decision to grant attorney's fees is left "wholly in the discretion of the court" which in this case saw the parties behavior and demeanor and, "witnessed the curl of the lips, the motivations behind the motions." Here, Gary became overwhelmed by the financial obligations imposed by the divorce from his first wife in light of his change in circumstances. "His commercial real estate business has suffered sharply since the 2008 economic downturn, he has suffered severe physical infirmity from colon cancer, and he has the continuing obligation to provide for his present family of a wife and three small children." The fact that the court exercised its discretion in Gary's favor was "a tacit acknowledgement of the dilemma he faced." The trial court did not err when it declined to award Michelle attorney's fees under Georgia Code § 9-15-14 (a) or § 9-15-14 (b). None of the conditions described in the statute "apply to Mr.

Lee's action to modify his child support obligation," the attorney argues. He argued that "a previously waived downward modification can, in certain circumstances, be in the best interests of the minor child by preserving the well-being and ongoing presence of that parent." Based on the facts of this case, Gary believes "that the time has come for the law governing alimony to be separated from the law governing child support, with the former permitting waiver of modification but the latter requiring that any waiver of modification of child support be reviewed to determine whether the application of that waiver is unreasonable or against the best interests of the children so affected." Because the trial court held no hearing on the issue of attorney's fees, if the Supreme Court finds that the trial court has erred, Gary requests that the case be remanded to the trial court so he has the opportunity to question the reasonableness of the fees and present evidence relating to his ability to pay the fees.
Attorneys for Appellant (Michelle): Elizabeth Lindsey, John Sugg
Attorney for Appellee (Gary): Jeffrey Bogart

WYNN V. CRAVEN (S17A0580)

In another dispute over child support, a woman is appealing a **Lowndes County** judge's ruling that she waited too long to formally complain that her former husband failed for many years to pay the full amount of child support he was ordered to pay when they divorced.*

FACTS: Helen Wynn and Robert Craven divorced in 2000, following the birth of their son in 1999. Incorporated into their Final Judgment and Decree was a Joint Custody and Separation Agreement in which the father agreed to pay the mother child support in an amount "equal to 20 percent of his weekly gross income but not less than $100 per week." The father's income fluctuated in the ensuing years, ranging from a low of $26,603 in 2002 to a high of $74,267 in 2011. She claims that from 2000 to 2014, the only two years he would have qualified to pay only $100 a week in child support were 2000 and 2001. ($100/week x 52 weeks = $5,200/year and 20% of $26,000 = $5,200.) In all the other years, he earned more than $26,000. She estimated that the total he should have paid from 2000 to 2014 was $141,816.15. He was $72,146.25 short, she claimed. In 2009, she hired an attorney who sent a letter to Craven stating he was in arrears and reminding Craven he was required to "pay not less than $100 per week." Based on the $100 per week, the letter said Craven owed $1,500, which he subsequently paid (he says in full; she says partially). In 2014, the mother went to the Division of Child Support Services for help in obtaining arrears due through 2014. As in 2009, Child Support Services calculated the father's child support arrearage based solely on the $100 per week figure. The Division then issued to the mother the amount owed by the father, which it determined was $3,248 based on the $100 per week requirement. She accepted the payment and did not appeal it to the Division of Child Support Services. According to the father, the Division of Child Support Services then sent him a letter confirming that his arrears were $0.00 and his case was closed.

In 2014, Craven filed a petition to modify custody following the election by the couple's son, who by then was 15 or 16, to live with his father. In response, Wynn filed a counterclaim asking the court to hold Craven in contempt. Following a hearing on the custody issue, Craven was given custody of the son. Following a hearing on the contempt action, in October 2015, the judge entered an Order on Contempt. In the order, the Lowndes County judge found that the Final Decree required the father to "pay child support in the amount of 20 percent of his gross weekly income, but not less than $100 per week," and that the mother had been paid $100 per

week since the entry of the Final Decree. The trial court further found that the mother, Wynn, never tried to get Craven's income records and that she herself had pursued child support arrearage at the rate of $100 per week on two separate occasions. Therefore, considering her "15-year delay and the ample opportunity to act sooner," the court ruled that under the "equitable doctrine of laches," Wynn was prevented from collecting child support at the rate of 20 percent of Craven's income. The doctrine of laches says that if a person fails to move forward within a reasonable time in asserting a claim, the court may deny any relief. Wynn now appeals to the Georgia Supreme Court.

ARGUMENTS: Wynn's attorneys argue that "a child support obligation cannot be retroactively modified, nor can a trial court forgive or reduce the past due amount owed" based the doctrine of laches and her failure to act sooner. "The language contained in the Agreement and Final Decree is clear – the father is to pay child support in an amount equal to 20 percent of his weekly gross income, but not less than $100 per week," the attorneys argue. "The $100 per week figure is not the amount ordered, but is rather a 'floor' that the weekly amount paid cannot go below." Craven knew what his obligation was. Under this Court's previous decisions, even if Craven were mistaken as to the amount of child support owed under the Final Decree, that does not change the amount that was ordered, which was 20 percent of his weekly gross income. "The doctrine of laches is not applicable in this case and has never been applied by our State's appellate courts to extinguish a parent's unpaid, past due child support," her attorneys argue. "The doctrine of laches should not be used to punish the mother, and her child, when it was ultimately the responsibility of the father to pay the child support he agreed, and was ordered, to pay." It was not the mother's obligation to calculate and determine what the father needed to pay. Wynn testified at the 2015 hearing that she sought the least expensive means possible to collect the owed child support in order to save money. "To allow the father the opportunity to rely on the equitable doctrine of laches, when he himself comes to the court with unclean hands, would be inequitable and contravene long-standing principals of Georgia law," Wynn's attorneys argue.

Craven's attorney argues the trial court did not err in determining that Wynn's claim to child support was barred by the doctrine of laches. Asked by the court whether she didn't think she was under any obligation to enforce the terms of the Agreement, she gave no valid reason for a 15-year delay in determining the arrears she was due. Nowhere in the order does it state that Craven is required to pay the greater of the two amounts. In fact, Wynn herself changed the payment method of the order by twice getting representatives for her – one a hired attorney – to demand payment based on the $100 a week payment. "Basic contract law asserts that any contract that is ambiguous is interpreted against the drafter of the document, which would be the Appellant [i.e. Wynn]," his attorney argues. "This is not a case where the court reduced her arrears. The court merely confirmed the amount addressed in the order and that she requested." Her argument that the court cannot use laches for child support "is incorrect," the attorney contends. In its 1996 ruling in *Haddon v. Department of Human Resources,* the Georgia Court of Appeals wrote that, "we hold that Wood was barred by the doctrine of laches from seeking to recover child support." Wynn stated that for a long time, she did not understand the 20 percent provision. But Craven's attorney argues that, "Reviewing the transcript, the mother could not come up with one good reason as to why she delayed enforcing this provision regarding the 20 percent of his income clause until 15 years later when her attorney advised her of what the provision meant." The trial court found there was no evidence that Craven engaged in any

deceitful conduct to obstruct Wynn in her determination of the arrearage amount. Craven "should not be punished because the Appellant wants a third chance to calculate any alleged arrears because she lost custody [of their son] to the Appellee [i.e. Craven]," his attorney argues.
Attorneys for Appellant (Wynn): Michael Bennett, Sr., Jim Bennett, Kari Anne Bowden
Attorney for Appellee (Craven): Jennifer Williams

* Under legislation passed in 2016 by the General Assembly, in the future the Georgia Court of Appeals, rather than the Supreme Court of Georgia, will be handling appeals in divorce-related cases.