Domestic Relations

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Of the domestic relations appellate cases decided during the survey period, seventeen are digested here.[1] While legislative efforts focused on the passage of the Uniform Child Custody Jurisdiction Enforcement Act,[2] the appellate courts tackled a range of issues.

I. DIVORCE: JURISDICTION

The Georgia Supreme Court addressed several issues concerning procedure in divorce cases. In *Midkiff v. Midkiff*,[3] the supreme court set aside a divorce decree, holding that Georgia did not have jurisdiction.[4] The parties married outside of Georgia and lived in Florida before moving to Germany, where the husband was stationed in the military.[5] When the parties left the United States, the husband designated his mother's home in Georgia as his military "home of record."[6] The husband had not resided in Georgia since he was a minor, and the wife had never resided in Georgia. When the parties separated, the wife returned to the United States, but she did not move to Georgia. The

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1. This survey chronicles developments in Georgia domestic relations law from June 1, 2001 to May 31, 2002.
2. O.C.G.A. §§ 19-9-40 to -104 (Supp. 2001) (effective July 1, 2001) (repealing the Uniform Child Custody Jurisdiction Act, O.C.G.A. §§ 19-9-40 to -64 (1999)).
3. 275 Ga. 136, 562 S.E.2d 177 (2002).
4. *Id.* at 138, 562 S.E.2d at 179.
5. *Id.* at 136, 562 S.E.2d at 177.
6. *Id.* at 137, 562 S.E.2d at 178.

husband, still in Germany, filed for divorce in Georgia and served the wife by publication. The Georgia trial court granted the divorce and granted the husband custody of their three children. The trial court entered a later order transferring custody of the children to the paternal grandparents. The wife filed a motion to set aside the judgments, which the trial court denied.[7]

While a Georgia resident may obtain a divorce in Georgia after being a resident for six months,[8] the court determined that the husband had never become a resident of Georgia.[9] The court found that the husband's declaration of Georgia as his "home of record" for military purposes was not sufficient for him to establish residency.[10] To change residency, a person must actually change the residence and express a desired intent to stay.[11] The husband never actually relocated to Georgia.[12] Because the court held that Georgia did not have jurisdiction to hear the divorce case, all awards contained in the divorce and subsequent modification were set aside.[13]

II. DIVORCE: NOTICE

The courts continue to show concern over whether parties receive proper notice. In *Melcher v. Melcher*,[14] each party was represented by counsel and engaged in settlement negotiations through their counsel. The husband, however, did not file an answer in the case. The wife and her counsel scheduled a final hearing, but did not provide notice to the husband or his counsel. In fact, the wife scheduled the hearing on a day when the wife's counsel had requested a leave of absence. The wife obtained a final judgment in the husband's absence. The husband made a motion for new trial, which the trial court granted.[15] While acknowledging that a defendant who fails to file an answer waives the right to receive notice of hearings, including notice of the final trial,[16] the court

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7. *Id.* at 136-37, 562 S.E.2d at 177-78.
8. O.C.G.A. § 19-5-2 (1999).
9. 275 Ga. at 138, 562 S.E.2d at 178.
10. *Id.* at 137, 562 S.E.2d at 178.
11. *Id.*
12. *Id.* The court noted that the husband never visited Georgia during the marriage. *Id.* The husband was not registered to vote in Georgia and had never filed a Georgia tax return. *Id.*
13. *Id.* at 138, 562 S.E.2d at 179.
14. 274 Ga. 711, 559 S.E.2d 468 (2002).
15. *Id.* at 711-12, 559 S.E.2d at 468-69.
16. *Id.* at 712-13, 559 S.E.2d at 469 (citing Lucas v. Lucas, 273 Ga. 240, 539 S.E.2d 807 (2000)). *See also* O.C.G.A. § 9-11-5 (2001).

held that due to the unusual circumstances of this case, the trial court did not abuse its discretion in granting the motion for new trial.[17]

The court, however, did not find such unusual circumstances in *James v. James*.[18] In *James* the court affirmed the denial of the husband's motion to set aside the judgment.[19] The husband was not represented by counsel, and no negotiations had occurred.[20]

III. CHILD CUSTODY: JURISDICTION

The exercise of jurisdiction in custody cases continues to be an issue in litigation despite the passage of uniform custody jurisdiction acts.[21] The most common way a state obtains jurisdiction of a custody case is by being the child's home state for at least six months.[22] The Uniform Child Custody Jurisdiction Act[23] allowed for certain exceptions, including the exercise of jurisdiction in emergency situations.[24] In *In re J.S.J.*,[25] the father, a Mississippi resident, had custody of the parties' child. The mother, a Georgia resident, sought custody in Georgia through a deprivation action, alleging the father had molested the child.[26] The court of appeals previously held that "if the emergency [pleaded] before the court developed in the home state prior to the time the child was brought into Georgia, Georgia courts should decline jurisdiction in favor of the home state, absent compelling reasons for the Georgia court to do otherwise."[27] The court did not find any compelling reasons for Georgia to exercise jurisdiction in this case (other than the

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17. 274 Ga. at 713, 559 S.E.2d at 469.

18. 275 Ga. 165, 562 S.E.2d 506 (2002).

19. *Id.* at 166, 562 S.E.2d at 507-08.

20. *Id.*, 562 S.E.2d at 508.

21. The Uniform Child Custody Jurisdiction Act, O.C.G.A. sections 19-9-40 to -64 (1999), was in effect when this case was filed. This Act has been repealed and replaced with the Uniform Child Custody Jurisdiction and Enforcement Act (effective July 1, 2001). O.C.G.A. §§ 19-9-40 to -104 (Supp. 2001).

22. *See* O.C.G.A. § 19-9-42(5) (1999) (defining "home state").

23. Formerly O.C.G.A. §§ 19-9-40 to -64 (1999).

24. O.C.G.A. § 19-9-43(a)(3) (1999).

25. 253 Ga. App. 174, 558 S.E.2d 763 (2002).

26. *Id.* at 174-75, 558 S.E.2d at 764. The court noted that the evidence of molestation was not very compelling and that prior litigation between the parties revealed that the mother had made unfounded allegations of sexual abuse in three separate jurisdictions. *Id.* at 176-77, 558 S.E.2d at 765.

27. *Id.* at 176, 558 S.E.2d at 765 (quoting Rozier v. Berto, 230 Ga. App. 427, 429, 496 S.E.2d 545, 545 (1998)).

mother's inconvenience).[28] The mother could have filed her action in Mississippi.[29]

IV. CHILD CUSTODY: MODIFICATION

Many states have enacted statutes addressing what happens when a custodial parent decides to move; however, Georgia has not done so. In cases in which the sole custodial parent moved, the appellate courts have held that the move was not sufficient grounds to modify child custody.[30] The same result was reached in cases in which the party designated as the primary physical custodian relocated.[31] In *Lewis v. Lewis*,[32] the court of appeals addressed the effect of one parent's moving when the parents were joint physical custodians and neither party was designated as the primary physical custodian.[33] The three judge panel held that in such a situation, the move would be considered sufficient grounds for modifying custody.[34] The move interfered not only with the parties' visitation rights but with the "prima facie right to custody."[35] That the mother had the children with her for approximately sixty percent of the time and received child support was not enough for the court to recognize her as the "primary physical custodian."[36]

V. CHILD CUSTODY: NONPARENTS

Custody and visitation cases concerning parties other than biological parents continue to be a major source of litigation. In *Burke v. King*,[37] the supreme court applied the test it set forth last year in *Clark v. Wade*[38] in determining whether to award custody to a relative instead of a parent.[39] The relative must show by clear and convincing evidence that the child will be harmed by continuing custody with the parent and that it would be in the child's best interest to transfer custody to the

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28. *Id.*
29. *Id.*
30. *E.g.,* Helm v. Graham, 249 Ga. App. 126, 129, 547 S.E.2d 343, 346 (2001).
31. *E.g.,* Mahan v. McRae, 241 Ga. App. 109, 112, 522 S.E.2d 772, 775 (1999).
32. 252 Ga. App. 539, 557 S.E.2d 40 (2001).
33. *Id.* at 540, 557 S.E.2d at 42.
34. *Id.* at 542, 557 S.E.2d at 43.
35. *Id.* at 541, 557 S.E.2d at 42-43.
36. *Id.* at 540-41, 557 S.E.2d at 42.
37. 254 Ga. App. 351, 562 S.E.2d 271 (2002).
38. 273 Ga. 587, 598, 544 S.E.2d 99, 107 (2001). This case was decided with a companion case, *Driver v. Raines*, and upheld the constitutionality of O.C.G.A. section 19-7-1(b.1) (1999).
39. 254 Ga. App. at 352-53, 562 S.E.2d at 274.

relative.[40] In *Burke* the court of appeals held that the trial court blurred these legal standards and failed to support its conclusions with explicit findings of fact.[41] The court remanded the case for a proper determination under *Clark*.[42]

In *Stalvey v. Bates*[43] and *In re K.R.S.*,[44] the court of appeals considered the proper application of the test set forth in *Clark*.[45] In *Stalvey* the court held that the trial court erred in making a custody award to the maternal grandmother without first requiring clear and convincing evidence showing that the children would be harmed by remaining in the father's custody.[46]

In *K.R.S.* the mother received custody of the child when she and the father divorced. Approximately four years later, the mother died and the father assumed custody. A few days later, the father allowed the child to visit the maternal grandparents, but the grandparents refused to return the child to the father. The grandparents filed a deprivation action and sought custody.[47] The basis for the deprivation claim was the father's failure to provide child support and his failure to visit the child while the mother was alive.[48] The court held that the grandparents' petition was without merit because such a claim must allege that the child is currently being deprived.[49] The court ordered the child to be returned to the father immediately.[50]

VI. VISITATION: NONPARENTS

Both appellate courts have addressed cases concerning the exercise of visitation rights in the presence of nonparties. In *Brandenburg v. Brandenburg*,[51] the supreme court reviewed the propriety of a decree that prevented the father from visiting his children while in the presence of his paramour, even if the father married this woman.[52] The court

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40. *Id.*
41. *Id.* at 353-54, 562 S.E.2d at 274-75.
42. *Id.* at 354, 562 S.E.2d at 275.
43. 251 Ga. App. 895, 555 S.E.2d 477 (2001).
44. 253 Ga. App. 678, 560 S.E.2d 292 (2002).
45. 251 Ga. App. at 895, 555 S.E.2d at 477-78; 253 Ga. App. at 679, 560 S.E.2d at 294.
46. 251 Ga. App. at 895-96, 555 S.E.2d at 478.
47. As close relatives, the grandparents were able to seek custody under O.C.G.A. section 19-7-1(b.1) (1999).
48. *In re* K.R.S., 253 Ga. App. at 678-80, 560 S.E.2d at 293-94.
49. *Id.* at 679, 560 S.E.2d at 294. "Deprived" is defined in O.C.G.A. section 15-11-2(8) (2001).
50. 253 Ga. App. at 678, 560 S.E.2d at 293.
51. 274 Ga. 183, 551 S.E.2d 721 (2001).
52. *Id.* at 183, 551 S.E.2d at 721.

first noted that Georgia's public policy favors visitation;[53] therefore, any unreasonable restriction on visitation would be contrary to public policy.[54] The court held that absent a showing that the children would be adversely affected without the restrictions, the restrictions were unreasonable.[55] In this case, the supreme court found no evidence that the children would be harmed by visiting their father with his paramour present; therefore, the restriction had to be stricken.[56]

In *Burns v. Burns*,[57] the court of appeals was presented with a slightly different scenario, but a very different legal argument. In *Burns* both parties agreed neither parent would exercise visitation when they had an overnight guest to whom they were not married.[58] After the mother and her female companion entered into a "civil union" in Vermont,[59] the mother wanted to exercise visitation with her companion present. The father objected and moved to have the mother held in contempt. The trial court held that the mother was not entitled to visitation with her companion present.[60] The court of appeals also rejected the mother's arguments.[61] The court distinguished Vermont's civil union from marriage.[62] The parties' agreement did not provide an exception for civil unions, only for marriage.[63] The court also noted that even if Vermont allowed same-sex marriages, such a marriage would not be recognized in Georgia.[64] Because the agreement was entered in Georgia between two Georgia residents and made an order of a Georgia court, Georgia law would govern in defining "marriage."[65]

The court rejected the mother's argument that the trial court's order violated her right to privacy, which she argued included her right to define her own family. The mother, the court held, waived that right when she agreed to the consent decree upon which the order was based.[66] The court, however, pointed out that the mother did not argue

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53. *Id.* at 184, 551 S.E.2d at 722 (citing O.C.G.A. § 19-9-3(d) (1999)).
54. *Id.* (citing Katz v. Katz, 264 Ga. 440, 440, 445 S.E.2d 531, 532 (1994)).
55. *Id.*
56. *Id.*
57. 253 Ga. App. 600, 560 S.E.2d 47 (2002).
58. *Id.* at 600, 560 S.E.2d at 48.
59. *Id.* (citing VT. STAT. ANN. tit. 15, § 1201 (2001) (distinguishing "civil union" from marriage)).
60. *Id.* at 600-01, 560 S.E.2d at 48-49.
61. *Id.* at 601, 560 S.E.2d at 48-49.
62. *Id.*
63. *Id.* at 600, 560 S.E.2d at 48.
64. *Id.* at 601-02, 560 S.E.2d at 49 (citing O.C.G.A. § 19-3-3.1 (1999); 28 U.S.C.S. § 1738C (2002)).
65. 253 Ga. App. at 601, 560 S.E.2d at 49.
66. *Id.* at 602, 560 S.E.2d at 49.

that the agreement was void against public policy,[67] an argument that was successful in *Brandenburg*.[68]

VII. CHILD SUPPORT

Appellate decisions concerning child support have typically focused on two areas: child support guidelines[69] and post-majority support.[70] This year was no exception. In *Betty v. Betty*,[71] the supreme court was faced with interpreting one of the special circumstances that may be considered in applying the child support guidelines in Georgia.[72] The child support guidelines expressly allow the trier of fact to deviate from the guidelines based on "a party's . . . obligations to another household."[73] In *Betty* the husband had two children from a prior relationship. In determining child support for the parties' minor child, the trial court considered both that the husband had joint legal custody of a child from a previous relationship and that the husband owed back child support for his oldest child, who had since become an adult.[74] The supreme court held that the lower court erred in considering the husband's status as the joint legal custodian of his child from a prior relationship.[75] While the husband was a joint legal custodian, he was not the physical custodian, and he did not have a court ordered child support obligation for that child.[76] The husband's duties as a joint legal custodian did not affect his financial ability to provide child support for the parties' child.[77] The supreme court then held that the husband's obligation to pay child support arrearage for an adult child did impact the husband's ability to pay and, therefore, was relevant in determining the amount of child support the husband should pay.[78]

The court of appeals considered the issue of college expenses in *Swisshelm v. Department of Human Resources*.[79] The parents entered into a settlement agreement when they divorced. One provision of the agreement required that if the child went to college after graduating

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67. *Id.* at 601, 560 S.E.2d at 48 (citing O.C.G.A. § 13-8-2 (1999)).
68. 274 Ga. at 184, 551 S.E.2d at 722.
69. O.C.G.A. § 19-6-15 (1999).
70. *Id.* § 19-7-2 (1999 & Supp. 2001).
71. 274 Ga. 194, 552 S.E.2d 846 (2001).
72. *Id.* at 194, 552 S.E.2d at 847.
73. O.C.G.A. § 19-6-15(c)(6) (1999 & Supp. 2001).
74. 274 Ga. at 194, 552 S.E.2d at 847.
75. *Id.* at 195, 552 S.E.2d at 847.
76. *Id.* at 194, 552 S.E.2d at 847.
77. *Id.*
78. *Id.* at 195-96, 552 S.E.2d at 848.
79. 253 Ga. App. 816, 560 S.E.2d 722 (2002).

from high school, the father was to pay three hundred dollars per month until the child obtained an undergraduate college degree or reached age twenty-two. After graduating, the parties' son enlisted in the United States Air Force and enrolled in the United States Air Force Academy. The father argued that his obligation to pay post-majority support ended when the child became emancipated by becoming employed by the military.[80] The court of appeals rejected this argument, stating that the parties' agreement only provided for the obligation to terminate by the child's receiving a degree or reaching age twenty-two.[81] Nothing in the parties' agreement indicated the parties intended for the obligation to terminate for any other reason.[82]

In *Brandenburg v. Brandenburg*,[83] the father argued that a jury verdict requiring him to pay two hundred dollars per month into custodial accounts for each of the parties' children was tantamount to the court improperly requiring the father to provide support beyond the children reaching majority.[84] The supreme court noted that previously, in *Coleman v. Coleman*,[85] the court struck down a provision that required a parent to establish a college fund for the child.[86] The court distinguished the jury's verdict in *Brandenberg* from *Coleman*.[87] First, the custodial accounts existed prior to the jury verdict.[88] Second, the accounts were established pursuant to the Georgia Transfers to Minors Act[89] and, therefore, could not be limited to post-majority support.[90] Finally, the jury verdict provided evidence that the jury did not intend for the custodial accounts to be used for college expenses.[91] Because the payments did not extend beyond the children reaching the age of majority and the purpose of the account was not limited to college expenses, the supreme court found that the payments did not violate the law.[92]

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80. *Id.* at 816-17, 560 S.E.2d at 722-23.
81. *Id.* at 817, 560 S.E.2d at 723.
82. *Id.* at 817-18, 560 S.E.2d at 723.
83. 274 Ga. 183, 551 S.E.2d 721 (2001).
84. *Id.* at 184, 551 S.E.2d at 722. *See* Clavin v. Clavin, 238 Ga. 421, 422, 233 S.E.2d 151, 152 (1977) ("A requirement to provide child support beyond the age of majority may not, as a matter of law, be imposed.").
85. 240 Ga. 417, 240 S.E.2d 870 (1977).
86. 274 Ga. at 185, 551 S.E.2d at 722 (citing *Coleman*, 240 Ga. at 423, 240 S.E.2d at 875).
87. *Id.*
88. *Id.*
89. O.C.G.A. §§ 44-5-110 to -125 (1999).
90. 274 Ga. at 185, 551 S.E.2d at 722-23 (citing O.C.G.A. § 44-5-124(a) (1999)).
91. *Id.*
92. *Id.*, 551 S.E.2d at 723.

VIII. EQUITABLE DIVISION

In *Hubby v. Hubby*,[93] the supreme court issued its second opinion of the year concerning the division of the parties' marital residence.[94] On the husband's motion for partial summary judgment, the trial court concluded that the marital residence was the husband's separate property and, therefore, not subject to equitable division. The supreme court vacated the order and remanded the case for a hearing to determine the use of marital assets in the building of equity in the residence. On remand, the trial court held that any contribution of marital funds was offset by a cash-out refinance; therefore, the trial court again held that the residence was the husband's separate property.[95] The supreme court agreed to review the case to determine if the "source of funds" rule[96] was properly applied by the trial court.[97]

The supreme court first determined that the husband's nonmarital investment of $80,500 constituted 94.6% of the payments made towards the purchase of the residence.[98] The balance of $4,568 (or 5.4%) was comprised of mortgage payments that the parties made from marital funds.[99] The court held that the husband was entitled to receive 94.6% of the equity (including the appreciation) in the residence.[100] The remaining 5.4% of the equity was marital property subject to equitable division between the parties.[101] The fact that the house was refinanced in a manner that increased the debt was of no consequence.[102] To the extent the parties converted some of the equity to cash, those proceeds, or the assets obtained with those proceeds, were subject to equitable division as well.[103]

In *Schwartz v. Schwartz*,[104] a divided supreme court allowed the party designated to be solely responsible for any tax liability to be the sole beneficiary when a tax refund issued.[105] In *Schwartz* the parties' settlement agreement provided that the parties agreed to file a joint tax

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93. 274 Ga. 525, 556 S.E.2d 127 (2001).
94. *Id.* at 525, 556 S.E.2d at 128.
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.* at 526, 556 S.E.2d at 128.
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.*, 556 S.E.2d at 129.
103. *Id.*
104. 275 Ga. 107, 561 S.E.2d 96 (2002).
105. *Id.* at 107, 561 S.E.2d at 97.

return. They also agreed that the husband would be liable for all taxes owed. The wife did not have any income from employment. However, the agreement did not address what would occur if the joint tax return yielded a refund. When the husband did receive a refund, he denied that the wife was entitled to any of the proceeds.[106] The trial court, and a slim majority of the supreme court, agreed with the husband.[107] Because the husband overpaid the tax liability from his income and would have been liable for any underpayment, the majority indicated it was only logical for the husband to be awarded the refund check.[108] The dissent, however, would have held that because the parties failed to address the tax refund check in the division of assets, ownership remained "unaffected."[109] Viewing the tax refund check as a jointly owned asset, the dissent would have the trial court consider the facts of the particular case in determining how to divide the tax refund check between the parties.[110]

IX. CONTEMPT

In contempt cases, the supreme court primarily focused on whether the defendant received proper notice of the hearing. In *Randall v. Randall*,[111] the former wife sought to have the former husband held in contempt for nonpayment of certain financial obligations required by their divorce decree. After several court dates had to be continued, counsel for the former wife wrote to the trial court and requested the hearing be scheduled on December 13, 2000. The attorney for the former husband responded with a letter stating that he was unavailable that day. The trial court did not send notices to the parties that the case would be heard on December 13, 2000. The former wife and her counsel appeared on December 13, 2000; however, the former husband and his counsel did not. The trial court had the hearing and held the former husband in contempt. When the trial court denied the former husband's motion to set aside the judgment for lack of notice, the former husband appealed.[112] The court rejected the former wife's contention that the

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106. *Id.* at 107-08, 561 S.E.2d at 97.

107. *Id.* at 109, 561 S.E.2d at 97. The majority included Chief Justice Fletcher and Justices Carley, Thompson, and Sears.

108. *Id.*

109. *Id.* at 112, 561 S.E.2d at 100 (Hunstein, J., dissenting). *See* Newborn v. Clay, 263 Ga. 622, 623, 436 S.E.2d 654, 654-55 (1993) (holding that title to assets remains unaffected if not addressed in the divorce decree).

110. 275 Ga. at 113, 561 S.E.2d at 100 (Hunstein, J., dissenting).

111. 274 Ga. 107, 549 S.E.2d 384 (2001).

112. *Id.* at 107-08, 549 S.E.2d at 385-86. The fact that the notice of the appeal was filed prior to the entry of the actual judgment was not grounds to dismiss the appeal. *See*

letter was sufficient notice to satisfy due process requirements.[113] Rather, the letter was merely a request to have the hearing scheduled.[114] Because the attorneys do not control the trial calendars, it was incumbent upon the trial court to notify the parties, in some fashion,[115] that the case was actually being scheduled.[116] Because the former husband was not notified, the supreme court reversed the judgment.[117]

In *Hedquist v. Hedquist*,[118] the supreme court emphasized that notice needs to be very specific to satisfy the requirements of due process.[119] The trial court sent the parties a document titled "Notice of Motions Hearing," which indicated that all pending motions in the matter would be heard at the pretrial conference scheduled for June 4, 2001. The wife had a contempt motion pending, which she amended on May 16, 2001. In the seven days leading up to the pretrial conference, the wife filed four other motions to hold the husband in contempt, including one filed on the day of the conference. The husband did not appear at the hearing, and the trial court found the husband in contempt. The trial court ordered that the husband be incarcerated for a total of fifty days for the various contempt motions.[120] On appeal, the supreme court held that the trial court's notice that "all pending motions" would be heard was not specific enough to inform the husband that the wife's contempt motions would be heard.[121] The court explained that due process requires that the defendant be afforded notice that must be reasonably calculated to inform the defendant of the charges and the date, time, and place of the hearing where the defendant will be afforded an opportunity to set forth a defense.[122] The court further held that insufficient time had passed between the filing of the wife's later contempt motions and the actual hearing.[123]

Gillen v. Bostick, 234 Ga. 308, 310-11, 215 S.E.2d 676, 678 (1975).

113. 274 Ga. at 109, 549 S.E.2d at 386.

114. *Id.*

115. *Id.* Notice of the hearing does not have to come in the form of a published calendar or rule nisi. Potter v. Wal Computers, 220 Ga. App. 437, 440, 469 S.E.2d 691, 694 (1996). The court may direct one party to notify the other. Redding v. Raines, 239 Ga. 865, 865, 239 S.E.2d 32, 33 (1977).

116. 274 Ga. at 109, 549 S.E.2d at 386. *See also* O.C.G.A. § 9-11-40(c)(2) (2001).

117. 274 Ga. at 110, 549 S.E.2d at 387.

118. 275 Ga. 188, 563 S.E.2d 854 (2002).

119. *Id.* at 188, 563 S.E.2d at 855.

120. *Id.* at 188-89, 563 S.E.2d at 855.

121. *Id.*, 563 S.E.2d at 856.

122. *Id.*, 563 S.E.2d at 855-56.

123. *Id.* at 190, 563 S.E.2d at 856.

Rabon v. Brown[124] is another case in which the supreme court held that a last minute amendment did not afford adequate notice to the defendant.[125] The mother filed for a writ of fieri facias to collect a child support arrearage under the parties' final judgment and decree. At trial, the father showed that he had made the payments required by the decree. The trial court then allowed the mother to amend the writ to seek arrearage under the parties' temporary orders. The trial court found the father had an arrearage under the temporary orders and entered the writ.[126] The supreme court reversed and remanded for a new hearing, holding that while the mother was entitled to amend the writ, the father was entitled to sufficient time to prepare a defense.[127]

124. 275 Ga. 46, 561 S.E.2d 816 (2002).
125. *Id.* at 46, 561 S.E.2d at 817.
126. *Id.* at 48-49, 561 S.E.2d at 817-18.
127. *Id.*, 561 S.E.2d at 818-19. *See* O.C.G.A. § 7-13-5 (1993) (permitting a writ of fieri facias to be amended "so as to conform to the judgment upon which it issued").