



## Supreme Court of Georgia

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## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

**Please note:** *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

**Tuesday, June 2, 2015**

### 10:00 A.M. Session

**METRO ATLANTA TASK FORCE FOR THE HOMELESS, INC. V. ICHTHUS  
COMMUNITY TRUST ET AL. (S15A0121)**  
**CENTRAL ATLANTA PROGRESS ET AL. V. TASK FORCE (S15X1022)**  
**PREMIUM FUNDING SOLUTIONS, LLC V. TASK FORCE (S15X1023)**  
**FIALKOW V. TASK FORCE (S15X1024)**  
**CENTRAL ATLANTA PROGRESS ET AL. V. TASK FORCE (S15A1027)**  
**PREMIUM FUNDING SOLUTIONS, LLC V. TASK FORCE (S15A1028)**  
**FIALKOW V. TASK FORCE (S15A1029)**  
**TASK FORCE V. ICHTHUS (S15X1030)**  
**ICHTHUS V. TASK FORCE (S15X1031)**

These nine appeals stem from rulings by the **Fulton County** Superior Court that could ultimately lead to the shutdown of a homeless shelter in downtown Atlanta. The dispute in this case has been tied up in litigation for nearly five years.

**FACTS:** The Metro Atlanta Task Force for the Homeless, Inc. operates a homeless shelter in downtown Atlanta at the corner of Peachtree and Pine streets across from Emory Crawford Long Hospital. Anita Beaty, an advocate for the homeless, is the Task Force's executive director. The Task Force owned the property free of debt from 1997 to 2001, when it

took out a \$900,000 loan with two entities that are not parties to this litigation. The resulting promissory notes were secured by security deeds on the property. As of January 2010, the Task Force was in default with its lenders, so Ichthus Community Trust purchased the outstanding notes from the lenders. Ichthus used money borrowed from Premium Funding Solutions, LLC, to buy the notes. In May 2010, Ichthus foreclosed on the property and sold it on the courthouse steps. That month, Ichthus sued the Task Force in superior court, seeking a temporary and permanent injunction, essentially to gain access to the Peachtree-Pine property. Ichthus alleged the Task Force was denying it access, and it needed to conduct an inspection. At the same time, Ichthus filed a “dispossessory” action in magistrate court, which is what a landlord does to request that the court return possession of the property to the landlord and award any unpaid rent that is still owed. In response, the Task Force countersued Ichthus, claiming wrongful foreclosure and seeking title to the Peachtree-Pine property. In addition, the Task Force countersued Ichthus for violations of Georgia’s racketeering statute (RICO); interference with business and contractual relations; libel, slander and defamation; bad faith; and punitive damages. In June 2010, the Task Force filed a separate lawsuit against Central Atlanta Progress, Atlanta Downtown Improvement District, Benevolent Community Investing Co., LLC, Premium Funding Solutions, LLC, and Emanuel Fialkow, making the same claims it had made against Ichthus. (Fialkow had offered to buy the property in 2009 for \$2.1 million, after the Task Force placed a listing.) The Task Force alleged that these defendants were in a conspiracy to prevent the Task Force from paying on the notes by limiting its public and private funding. On June 17, 2010, the trial court entered a consent order approved by the parties which permitted the Task Force to continue its occupancy of the property, tabled the issue of possible rent payments, and stayed the dispossessory action previously filed by Ichthus. In 2011, while the various legal actions were pending, Ichthus defaulted on its loan obligation with Premium Funding Solutions and in February 2011, Ichthus executed a warranty deed and transferred the property to Premium Funding Solutions. Premium Funding Solutions subsequently asked the court’s permission to file a dispossessory action to evict the Task Force.

The defendants filed motions asking the trial court to grant them “summary judgment,” which a judge does upon deciding that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on one side or the other. The trial court appointed a “special master” to hear that set of arguments. (A “special master” is a disinterested person – usually a lawyer – appointed to a case to assist the judge in a case by holding hearings and making recommendations.) In January 2014, following a hearing, the special master concluded that the Task Force had some viable claims that a jury should decide, including its claims for wrongful foreclosure, quiet title, intentional interference, bad faith and punitive damages. The parties all filed their objections to the special master’s order, the trial judge conducted another hearing, and on Aug. 8, 2014, the judge adopted the special master’s order, paving the way for a jury trial. In addition, the judge granted Premium Funding Solutions’ request to begin eviction proceedings against the Task Force.

Multiple briefs have been filed by various organizations in this litigation, and many issues are in dispute, including whether the state Supreme Court even has the authority under the Georgia Constitution to review these appeals.

**ARGUMENTS in S15A1021:** Among one of the main issues in dispute is the judge’s decision allowing Premium Funding Solutions to file a separate dispossessory action. Attorneys

for the Task Force argue the trial court erred in allowing Premium Funding to pursue a separate dispossessory action, as the questions of possession and title were already being litigated in the “Main Actions.” In briefs, the attorneys contend that “since late 2006, a group of powerful business entities have conspired to drive the Task Force from the property by systematically destroying its donor and lender relationships, using its weakened position to acquire notes secured by the property, wrongfully foreclosing and evicting the Task Force.” In the briefs, the attorneys refer to different people as conspirators or in the case of the then-president of Emory Healthcare, “a member of the conspiracy.” Despite entering a consent injunction on June 17, 2010, which allowed the Task Force to remain on the property, on Aug. 8, 2014, the judge “lifted the initial injunction and allowed Premium Funding Solutions, LLC, the conspirator holding the foreclosure deed to file a separate dispossessory” action, the attorneys argue. This order was error. To the extent it allows Premium Funding Solutions to pursue possession before a full trial on the merits of the Task Force’s claims in the main actions, “it is error under the unique procedural posture of this case.” The judge has already ruled that the Task Force has viable claims to possession and title that should be heard by a jury. “If the trial court entertains a limited dispossessory proceeding in advance of the trial on the Task Force’s claims, it impermissibly alters the status quo before a full trial on the merits, violates its obligation to do complete justice, creates the possibility that the parties will have duplicate proceedings on the same questions of title and possession, and causes irreparable injury to the Task Force and the people it serves,” the Task Force’s attorneys argue.

The attorney for Premium Funding Solutions argues the Task Force has failed to demonstrate that the Aug. 8, 2014 order by the trial court, allowing Premium Funding to file a dispossessory action against the Task Force, represents a manifest abuse of the trial court’s broad discretion. “The limited order challenged by the Task Force was entered nearly five years into contested litigation presided over by the same trial judge, which judge was well-versed in all aspects of the case,” the attorney argues in briefs. While the judge acceded to an interim injunction in 2010, by early 2014, there had been significant changes in the circumstances surrounding the litigation, including a decision by the Georgia Court of Appeals that the trial judge believed controlled the underlying legal question about the trial court’s power to continue preventing Premium Funding Solutions from filing eviction proceedings. “The Task Force’s entire legal edifice in this case is constructed of fantastical allegations of a vast conspiracy by several unrelated public and private entities to adversely affect the Task Force’s funding and ultimately force it out of the subject property,” the attorney argues. “The problem with this strategy is that the undisputed factual record shows that the Task Force defaulted on its promissory notes relating to the subject property on numerous occasions long before any of the alleged conspirators – including Premium Funding Solutions – and its predecessor in interest (Ichthus) – hatched their supposed plan to oust the Task Force.” Indeed, the record shows that for the four-plus years the dispute has been in litigation, “the Task Force continued to occupy and use the property essentially for free – at least as it related to the holders of the promissory notes on the property – as neither Premium Funding Solutions nor Ichthus received from the Task Force any payment on the notes or any rent payments.” (More arguments and issues can be found in other parties’ briefs.)

**Attorneys for Appellant (Task Force):** Steven Hall, Robert Brazier

**Attorneys for Appellees (Premium):** David Maher (a number of other attorneys represent the additional organizations that are suing or being sued)

**TOLBERT V. THE STATE (S15A1073)**

A man is appealing the conviction and life prison sentence he received in **Richmond County** 18 years ago for his role in a man's murder.

**FACTS:** On Jan. 26, 1996, Dewey Sims shot Shelley Griffin, Jr., who was 22 years old. Leroy Sims, Dewey's brother, and the Sims' nephew, 19-year-old Terry Tolbert, were present. The evidence at trial showed that earlier that day, the Richmond County Narcotics Office had executed a warrant on Griffin's home in Augusta. Griffin confronted Leroy Sims on a street corner and threatened him, loudly accusing him and his brother Dewey of being snitches who had called police to his home. Griffin, who was upset and angry, said he was going to "get" Leroy and threatened he was going home to get his gun. Griffin went to another home and returned with a gun, standing on the street and still complaining about the police search. Tolbert and his uncle, Dewey Sims, arrived and were joined by Leroy Sims. The Sims brothers and Tolbert were all armed with guns and quickly walked up to Griffin. As they approached, Griffin handed his gun to a friend, perhaps indicating he did not want a gun fight. A witness later testified that during the ensuing confrontation, Griffin urged the others not to use guns but to "fight like men." The eyewitness testified that Tolbert told Griffin, "don't move, don't move, or I'm going to bust you." But then Tolbert said, "OK, you know. We ain't going to do nothing like that." According to the witness, Leroy then urged his brother Dewey to "do it," and Dewey shot Griffin in the head, killing him.

All three men were indicted for Griffin's murder. In November 1996, a Richmond County jury convicted Tolbert of murder and possession of a firearm during the commission of a crime. He was sentenced to life plus five years in prison. Tolbert now appeals to the state Supreme Court. (The Sims brothers were also convicted of murder, and in 1997 and 2007, the Georgia Supreme Court upheld their convictions.)

**ARGUMENTS:** Tolbert's attorney argues the trial court erred when it found that Tolbert had received effective assistance of counsel during his trial, even though his trial attorney also represented his co-defendant, Leroy Sims. That was a clear conflict of interest, which adversely affected the lawyer's representation of Tolbert, the attorney argues in briefs. The evidence shows that Tolbert was less culpable than Leroy Sims in Griffin's murder. Tolbert never shot anyone and had no prior difficulties with Griffin, unlike Leroy Sims, who did. Dewey Sims shot the victim because Griffin was threatening his brother Leroy, whom Griffin believed had snitched to police. "Important to the State's case was evidence that Leroy allegedly urged Dewey to shoot Griffin by telling him to 'do it, do it,'" the attorney argues in briefs. On the other hand, the eyewitness testified that Tolbert never pointed his gun at Griffin and said, "OK, you know. We ain't going to do nothing like that." The trial transcript shows "there was no attempt on the part of counsel to differentiate between the levels of culpability of the two defendants based upon the evidence in the record with regard to aiding and/or abetting Dewey who shot Griffin," Tolbert's attorney argues. Tolbert received ineffective assistance of counsel, in violation of his constitutional rights, "because counsel should not have undertaken joint representation of both Leroy Sims and [Tolbert] since to do so based upon the facts of this case represented an actual conflict of interest." Since Leroy Sims was the only one who paid the trial lawyer and met with

Sims outside Tolbert's presence, it can be assumed the attorney "had to refrain from vigorously pointing out the difference between the culpability level of the two defendants because to do otherwise would hurt the defense of Leroy Sims, the paying client." Meanwhile, Tolbert could hardly advocate for himself. He later testified at the hearing on his motion for a new trial that he had about a 5<sup>th</sup> grade education, had been injured at 16 when he was beaten with a bat, and was receiving social security disability at the time of his trial. He has one eye and has been admitted to Georgia Regional Hospital several times. He said he was told he was going to trial to help his Uncle Dewey out. Tolbert testified that he and Leroy together met with their lawyer about four or five times, and he thought he was merely going to be a witness at trial. He never met alone with the attorney. The trial court also erred, Tolbert's attorney argues, in finding that Tolbert received effective assistance of counsel even though Leroy Sims was offered a 10-year plea deal but no plea deal was offered or discussed with Tolbert. "No plea offer was aggressively pursued by counsel on [Tolbert's] behalf although he was the least culpable, and he had no prior bad blood or dealings with the victim," the attorney argues. As a result, Tolbert "did not receive a just and fair trial because his rights under the Sixth Amendment of the United States Constitution and Georgia Constitution to conflict-free, effective assistance of counsel were violated."

The District Attorney and Attorney General argue for the State that a conflict of interest did not render Tolbert's trial attorney ineffective under the Sixth Amendment. The trial court properly ruled that the attorney did not labor under a conflict that adversely affected his representation, that he vigorously represented the interests of both co-defendants, and that vigorously representing one did not have an adverse impact on the other. In its 1980 decision in *Cuyler v. Sullivan*, the U.S. Supreme Court ruled that a single defense counsel representing multiple defendants does not automatically violate the Sixth Amendment. "Rather, a defendant on appeal must demonstrate that an actual conflict of interest adversely affected his lawyer's performance," the State argues in briefs. To determine whether an "actual" conflict of interest deprived a defendant of his right to effective trial counsel, courts look to whether the lawyer was actively serving competing and incompatible interests. Here, the defense attorneys and their clients chose to join together in presenting a united defense. "The record reflects that Attorney [Jack] Boone's loyalties were with both of his clients," including Tolbert, the State contends. The trial transcript reveals that Boone and the attorney representing Dewey Sims attempted to convince the jury that the two brothers and their nephew were either defending themselves or attempting to defend a family member from Griffin, a murderous drug dealer. Boone's representation of Leroy did not prevent him from arguing on behalf of Tolbert. There also is no evidence that the attorney failed to tell Tolbert about the plea offer, according to the State. While Leroy testified twice that Boone only talked to him about the plea deal, he conceded that Tolbert was present when the offer was discussed: "Well, he was there, but, like I say, he can't comprehend too well, you know," Leroy said. Both Leroy and Tolbert rejected the plea deal and opted to take their chances at trial. "Incredulous rejection is the only proper response to [Tolbert's] claim that he was denied the opportunity to become a witness for the prosecution," the State argues. "He chose to go all in with his uncles, both on the day of the murder and at trial. His lawyer carried out a strategy both consistent with [Tolbert's] wishes and consistent with reasonable trial practice."

**Attorney for Appellant (Tolbert):** Tanya Jeffords

**Attorneys for Appellee (State):** Rebecca Wright, District Attorney, Kimberly Easterling, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

**MERMANN V. TILLITSKI (S15A0965)**

A woman is appealing a **Bibb County** court ruling, arguing the judge impermissibly altered the terms of the final divorce decree to which she and her ex-husband had agreed.

**FACTS:** Sanna Michelle Tillitski, whose last name is now Mermann, and Christopher John Tillitski had been married more than 20 years when their divorce was finalized on Feb. 24, 2009. Through mediation, the parties reached a settlement that was incorporated into the Final Divorce Decree. As part of the division of their “marital property,” which is generally the property acquired by either party during the marriage, Mermann and Tillitski agreed: “The wife shall receive 50 percent of the Husband’s SEP IRA as of the date of this agreement and shall have her pro rata share of all investment experience, including earnings and losses.” (A SEP IRA is a “Simplified Employee Pension Individual Retirement Account” and is a retirement plan used by small to medium size companies.) There were actually nine separate retirement accounts that the parties intended to divide, and as part of the decree, the parties agreed that Mermann “shall be responsible for the preparation of a Qualified Domestic Relations Order (QDRO) incorporating the terms of [the division of Tillitski’s IRA’s] to be prepared within 30 days of the signing of this Agreement.” The divorce decree “commanded” the parties “to abide by the terms and provisions of said [settlement] agreement under the penalty of contempt.” Mermann’s attorney failed to submit to the court the Domestic Relations Order, and in 2011, she hired another attorney. After finally obtaining retirement-account information from Tillitski’s lawyer, Mermann’s attorney filed a Qualified Domestic Relations Order in November 2012, which was more than three and a half years late. After her attorneys realized they had neglected to run the order by Tillitski’s lawyer before submitting it to the court and had omitted some key information, they filed a motion asking the court to throw out the order and enter a new one stating that Mermann’s separate interest in Tillitski’s SEP IRAs “shall be 50 percent of the account balance as of Feb. 24, 2009, including earnings and losses.” At a July 2014 hearing on Mermann’s motion, Tillitski argued that Mermann should forfeit her right to receive any investment earnings on his SEP IRAs accruing after the 30-day period within which she was required to submit the Domestic Relations Order. In August 2014, the trial court entered an order in his favor, concluding that Mermann had forfeited her right to receive any investment earnings accruing on her portion of the retirement accounts after March 31, 2009, which was essentially the end of the 30-day period. The court threw out the November 2012 Domestic Relations Order and requested that the parties submit an amended order. Instead of doing that, Mermann filed an application to appeal the case to the State Supreme Court, which granted the application, stating it was most interested in knowing whether the trial court impermissibly modified the parties’ property division provisions of the divorce decree.

**ARGUMENTS:** Quoting various Georgia Supreme Court cases, Mermann’s attorneys argue that under Georgia law, “the division of the parties’ marital property and the identification of the parties’ separate property set forth in a divorce decree is fixed, and the trial court does not have the power to modify those terms of the judgment even if the circumstances of the parties change.” The legal effect of the divorce decree was to divide 50-50 the total balance in the retirement accounts as of Feb. 24, 2009, and to award Mermann all the earnings and losses

allocated to her balance “from Feb. 24, 2009 until the date the funds are ultimately distributed to her.” The trial court erred by concluding that because her lawyer failed to submit the Domestic Relations Order in time, she was instead entitled to receive only the earnings for her portion of the accounts for a mere 35-day period “and must forfeit her right to receive any earnings (or losses) accruing after March 31, 2009.” The trial court has impermissibly modified a property division contained in a final divorce decree, the attorneys contend, as fixed property divisions contained in a divorce decree are not subject to judicial modification. The Georgia Supreme Court has applied the anti-modification rule to prohibit a trial court from reallocating a division of marital assets as a means of enforcing compliance with a term of the divorce decree or as a means of penalizing a party for his or her failure to comply,” the attorneys argue. The trial judge was “plainly motivated by the belief that Mermann should be penalized” for failing to submit the Domestic Relations Order within 30 days, stating: “To me, it just seems out of a sense of fairness, what’s just, what’s right, because you can’t be dilatory and then somehow, you know, get this parachute award because of that.” But such “a forfeiture is impermissible,” the attorneys contend. Apart from violating the anti-modification rule, the trial court “erred at a more rudimentary level when it misapplied settled rules of contract interpretation by failing to give effect to the words the parties actually employed in their settlement agreement, as incorporated into the final divorce decree,” her attorneys argue. While the judge warned that a violation of the divorce decree would be punishable by the “penalty of contempt,” “neither the parties’ settlement agreement nor any portion of the decree itself said anything at all about making Mermann’s forfeiture of the investment experience on the retirement accounts a sanction for failing to timely submit the Qualified Domestic Relations Order.”

Tillitski’s attorney argues that while the final divorce decree states that Mermann would have a pro rata share of gains and losses from the retirement accounts, “it does not state for what period of time she would be entitled to share in gains and losses.” Furthermore, it requires “that the wife prepare the Qualified Domestic Relations Order necessary for the division of the husband’s retirement accounts, and it clearly states that this is to be done within 30 days of the date of the divorce decree.” The primary point of disagreement in this case “was for what period of time would the wife be entitled to participate in the gains and losses on her share of husband’s SEP IRA.” The trial court ruled correctly that the wife would not participate in gains or losses beyond March 31, 2009, the attorney argues. This appeal actually should be dismissed because the matter is not yet final or ready for an appeal. “Since the granting of a motion to set aside or to vacate a previous order leaves the case pending in the court below, it is not a final judgment as contemplated by” Georgia law, the attorney argues. Rather Mermann should have followed the procedures required for an “interlocutory” or interim appeal. However, if the high court declines to dismiss the appeal, “then the husband shows that the trial court did not modify the terms of the final decree but simply interpreted various provisions of the decree to find the true intentions of the parties.” In this case, “the parties’ divorce decree is less than clear as to whether the wife is to participate in gains and losses beyond the 30-day time limit for preparation of the Qualified Domestic Relations Order if she fails to meet such deadline,” the attorney argues. The trial court has “used its broad discretion to interpret ambiguous provisions of the parties’ divorce decree so as to carry out the intent of the parties, as opposed to modifying a clear and unambiguous property award.” “The trial court’s order was in no way intended as a punishment of the wife.” Rather, the trial court, “in interpreting the words of the decree, determined that the intent of the

parties was that the wife was not to participate in future gains and losses if she did not fulfill her obligation to have the Qualified Domestic Relations Order prepared in a timely manner.”

**Attorneys for Appellant (Mermann):** John Edwards, Jenny Stansfield, Stuart Walker  
**Attorney for Appellee (Tillitski):** Carmel Sanders

### **STEPHEN TURNER SCOTT V. AMANDA KAY SCOTT (S15F1079)**

A man who lost his farm is appealing an **Early County** court ruling, arguing that the amount of child support he’s been ordered to pay is based on an inaccurate calculation of his monthly income.

**FACTS:** Amanda Kay Scott and Stephen Turner Scott were married in April 2009. They have a 5-year-old son and a 4-year-old daughter. Amanda filed for divorce in January 2013. Following a hearing, the trial court issued a Final Judgment and Decree in March 2014, requiring Stephen to pay Amanda \$1,004 per month in child support. The amount was based on the trial court’s finding that her gross monthly income was \$2,175 while his was \$5,299.39. The income the court attributed to Stephen consisted of \$2,166.67 in gross monthly income he earned from working on his father’s farm after he lost his own farm, plus additional amounts the trial court concluded were “fringe benefits” that Stephen received through his employment with his employer father. Under Georgia statutory law, in addition to considering a person’s gross income, fringe benefits received in the course of employment “shall be counted as income if the benefits significantly reduce personal living expenses.” The statute goes on to say that, “Such fringe benefits might include, but are not limited to, use of a company car, housing, or room and board.” In Stephen’s case, the court ruled that he received fringe benefits that included monthly payments of \$1,177 for the use of his truck, \$400 for gasoline, \$30.32 for ad valorem tax and registration for the truck, housing valued at \$1,000 per month, \$350 for utilities, and \$75 for a cellular phone. Stephen now appeals to the state Supreme Court.

**ARGUMENTS:** Stephen’s attorneys argue the trial court erred in its conclusion that he received fringe benefits which contributed to his gross monthly income that served as the basis for calculating child support. The trial court failed to follow the child support guidelines and “has worked an injustice in ordering a young man, this father, to pay child support he is unable to pay by miscalculating his income,” the attorneys argue in briefs. Since graduating from college in 2007, Stephen has known only one occupation: farming. He tried owning his own farm, which is now heavily in debt. Today he works on his parents’ farm and earns \$2,166.67 a month. While it is a good wage, Stephen struggles to make ends meet. The trial court erred in finding that assistance from his parents constituted fringe benefits of his employment. There was no evidence that the house Stephen lived in since 2012 was a fringe benefit. “In fact, the evidence was to the contrary,” the attorneys argue. His parents bought the house in the summer of 2012 to be a marital home for Stephen, Amanda and their children. After she filed for divorce, they allowed him to continue living there to maintain their investment. The house was therefore never a fringe benefit of his employment and cannot be counted in his gross income as additional income. Like the house, his utilities “are not a fringe benefit of employment, cannot be imputed as income to him, and do not constitute a gift,” the attorneys argue, nor is the 2011 F-250 truck he purchased to use for farming before he began working for his father, or the monthly gas and repair payments. “Husband’s parents assisted their son with the fees associated with the use of the truck for the farm because he is their son, not because he is an employee,” his attorneys argue. To the

extent that his cell phone is a fringe benefit, it's minimal and does not significantly reduce his living expenses. In the final judgment, the trial court used the concept of fringe benefits erroneously to award Amanda the same child support amount it had awarded her in the earlier temporary order, despite a lack of evidence to support the amount. "While the trial court has great discretion in determining income for child support purposes, one thing a trial court cannot do is decide to award a certain amount of child support and then fashion the numbers on the Child Worksheet to achieve that goal," the attorneys argue. In the Temporary Order, the trial court made clear that the \$4,879.17 in income it attributed to Stephen reflected his monthly "draw" from his farm loan when he was still self-employed and trying to make a go of his own farm. The court included that amount of money as income, even though Stephen's accountant testified that such draws did not constitute income but rather debt. The improperly imposed temporary child support award of \$1,175 should itself be reversed, the attorneys contend. By the time of the final hearing, Stephen had lost his farm and was working for his father. "The trial court's determination to increase Wife's child support regardless of Husband's income or ability to pay was unmistakable," the attorneys contend. Given that the trial court ordered Stephen to pay the healthcare premiums for the children and given that he is already paying for a private school education for the children (with his parents' assistance as an advance against his inheritance from them), based on the parties' incomes, he should be paying \$500 monthly in child support. The case should be remanded with direction that the trial court follow the law and abide by the child support guidelines.

Amanda's attorney argues that each benefit received by Stephen was properly found by the trial court to be a "fringe benefit" as contemplated by Georgia Code §19-6-15(f)(1)(C). The trial court, for instance, correctly found that his employer father's monthly payment of \$350 to cover Stephen's power bill, not the bill for "utilities," was a fringe benefit. While Stephen listed on his Domestic Relations Financial Affidavit a monthly expense of \$350 for electricity, that affidavit was "false as this expense was not an expense actually being incurred by [Stephen]." Also, the trial court's finding that his use of a 2011 truck "is a fringe benefit of his employment was proper, firmly grounded in evidence, and within the trial court's sound discretion." At the final hearing, his own attorney, accountant and Stephen himself revealed that the truck now belonged to his father who would be assuming the debt on the truck. His contention that the truck and the costs associated with its use were provided to him because he is the son and not an employee of his father "is directly contradictory" to the testimony of Stephen, his attorney and his accountant, Amanda's attorney argues. "The trial court acted within its sound discretion in calculating the Father's income for purposes of the child support calculation," the attorney argues. "It cannot be shown that the trial court's decision as to 'fringe benefits' and the Father's gross monthly income were clearly erroneous," and Stephen's contention that the trial court miscalculated his income "is without merit."

**Attorneys for Appellant (Stephen):** Bree Sullivan, H. William Sams, Jr., Jeanney Kutner  
**Attorney for Appellee (Amanda):** B. Wheat Kirbo, III