Georgia State University Law Review

Volume 16
Issue 1 *Fall 1999*

Article 8

9-1-1999

DOMESTIC RELATIONS Alimony and Child Support Generally: Clarify that a Motion to Enforce an Alimony or Child Support Order by Attachment for Contempt is Part of the Underlying Action and Does Not Constitute a New Action; Provide for the Nature of Contempt Proceedings as Part of the Underlying Alimony or Child Support Action; Provide that a New Filing Fee Is Not Required for Such Actions

James M. Spielberger

Follow this and additional works at: http://scholarworks.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation

Spielberger, James M. (1999) "DOMESTIC RELATIONS Alimony and Child Support Generally: Clarify that a Motion to Enforce an Alimony or Child Support Order by Attachment for Contempt is Part of the Underlying Action and Does Not Constitute a New Action; Provide for the Nature of Contempt Proceedings as Part of the Underlying Alimony or Child Support Action; Provide that a New Filing Fee Is Not Required for Such Actions," *Georgia State University Law Review*: Vol. 16: Iss. 1, Article 8.
Available at: http://scholarworks.gsu.edu/gsulr/vol16/iss1/8

This Peach Sheet is brought to you for free and open access by the College of Law Publications at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

DOMESTIC RELATIONS

Alimony and Child Support Generally: Clarify that a Motion to Enforce an Alimony or Child Support Order by Attachment for Contempt is Part of the Underlying Action and Does Not Constitute a New Action; Provide for the Nature of Contempt Proceedings as Part of the Underlying Alimony or Child Support Action; Provide that a New Filing Fee Is Not Required for Such Actions

CODE SECTION:	O.C.G.A. § 19-6-28 (amended)
BILL NUMBER:	HB 53
ACT NUMBER:	337
GEORGIA LAWS:	1999 Ga. Laws 633
SUMMARY:	The Act amends Code section 19-6-28, which relates to the enforcement of orders for alimony or child support. It strikes subsection (a) in its entirety, which granted courts the power to subject respondents to terms and conditions they deem proper to assure compliance with orders, including the power to punish violators to the same extent provided by law for contempt in other actions or proceedings. The Act replaces the former law with a new subsection (a) that provides the same powers, but also includes a provision that any compliance proceeding will be a part of the original action. The new subsection further provides that a motion for such enforcement will not require the filing of a new action or the payment of a new filing fee. The Act applies to previously entered support orders in addition to those entered on or after the effective date.
EFFECTIVE DATE:	April 28, 1999[1]

1. *See* 1999 Ga. Laws 633, §§ 2-3, at 634. The Act took effect upon approval by the Governor. *See id.*

Published by ScholarWorks @ Georgia State University, 1999
HeinOnline -- 16 Ga. St. U. L. Rev. 113 1999-2000

History

Prior to the passage of the Act, someone who wanted to collect delinquent child support or alimony had to file a new action.[2] This Act re-codifies what was the law for many years and eliminates the need for a new filing.[3] Now, a person seeking to collect on an order of alimony or child support need only file a citation of contempt.[4]

Representative and Speaker-of-the-House Tom Murphy of the 18th District introduced this legislation to save such parties the costs of a new lawsuit.[5]

HB 53

Speaker Murphy introduced HB 53 alone and claims that he was not influenced by anyone else in creating it.[6] He did so because a client came to him seeking to collect two years of overdue child support from her husband.[7] After investigating, Speaker Murphy discovered that the law required her to file a new action.[8] He introduced the legislation because he realized that in many instances a single mother would not be able to afford the filing and legal fees associated with a new action.[9] Speaker Murphy believes that the former law was previously changed to require a new lawsuit in order to increase the case count in Georgia circuits.[10] He claims this was done only to help "qualify the circuit for additional judges."[11] He believes that it is ridiculous to make poor, single parents suffer for this purpose and ultimately introduced HB 53, which passed as proposed.[12]

The Act

The Act allows a party seeking collection under an order for child support or alimony to file a citation of contempt instead of filing a new

2. *See* Letter from Rep. Thomas B. Murphy, House District No. 18 (May 12, 1999) [hereinafter Murphy Letter].
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *Id.*
12. *See id.*

HeinOnline -- 16 Ga. St. U. L. Rev. 114 1999-2000

action.[13] The court can file the contempt citation under the original order, which spares the party the costs of a new lawsuit.[14]

The Act revises Code section 19-6-28, which relates to the enforcement of orders for alimony or child support.[15] It affects subsection (a), which previously only granted the court the power to subject respondents to terms and conditions the court deemed proper to assure compliance with orders, including the power to punish violators to the same extent provided by law for contempt in other actions or proceedings.[16]

The revised subsection (a) not only provides the same powers, but also includes a provision that "[a]ny proceeding for compliance pursuant to this authority shall be a part of the underlying action."[17] The revised subsection further provides that "a motion for such enforcement shall not constitute the filing of a new action or require the payment of a new filing fee."[18] The Act applies to previously entered support orders in addition to those entered on or after the effective date.[19] Speaker Murphy does not anticipate any future constitutional opposition to the Act because up until 1987 this had been the law in Georgia.[20] Governor Roy Barnes signed the Act on April 28, 1999, and the Act became effective on that same day.[21] There was no opposition to the bill.[22]

James M. Spielberger

---

13. *See id.*; O.C.G.A. § 19-6-28(a) (1999).
14. *See* O.C.G.A. § 19-6-28(a) (1999); Murphy Letter, *supra* note 2.
15. *Compare* 1987 Ga. Laws 186, § 1, at 187 (formerly found at O.C.G.A. § 19-6-28(a) (Supp. 1998)), *with* O.C.G.A. § 19-6-28(a) (1999).
16. *Compare* 1987 Ga. Laws 186, § 1, at 187 (formerly found at O.C.G.A. § 19-6-28(a) (Supp. 1998)), *with* O.C.G.A. § 19-6-28(a) (1999).
17. O.C.G.A. § 19-6-28(a) (1999).
18. *Id.*
19. *See id.*
20. *See* Murphy Letter, *supra* note 2.
21. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.
22. *See* Murphy Letter, *supra* note 2.

HeinOnline -- 16 Ga. St. U. L. Rev. 115 1999-2000