

INSTALLMENT PAYMENTS FROM A DORMANT JUDGMENT ARE SUBJECT TO REVIVAL:

HOLMES-BRACY v. BRACY.

S17A1682; 808 S.E.2d 669; December 11, 2017

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In this recent case, the Superior Court of Houston County denied the former Wife’s (hereinafter referred to as Wife) motion to hold the former Husband (hereinafter referred to as Husband) in contempt of their 1995 divorce decree. The Wife filed her application for discretionary appeal with the Supreme Court. The Supreme Court, Justice Harold Melton, granted Wife's application, finding that, as “a matter of current law, the Court of Appeals, rather than this Court, has subject matter jurisdiction over “[a]ll divorce and alimony cases” in which a notice of appeal or application to appeal is filed on or after January 1, 2017. Appellate Jurisdiction Reform Act of 2016, Ga. L. 2016, p. 883, §§ 3–1 (codified at [OCGA § 15–3–3.1 (a) (5)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST15-3-3.1&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_8b3b0000958a4)), 6–1 (c); [Merrill v. Lee, 301 Ga. 34, 36 (1) n.1, 799 S.E.2d 169 (2017)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2041455764&pubNum=0000711&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)). Because Wife filed her application to appeal before January 1, 2017, we have jurisdiction over this case.

Having accepted the appeal, the Supreme Court, then looked to issue as to whether or not the trial court erred in finding in favor of the Husband, and concluding that he was not in contempt for failing to make any of the monthly payments of 50% of his military retirement that he was required to make under the terms of the parties' final divorce decree, because the trial court found that the judgment had become dormant.

The Supreme Court found that the Wife and Husband were divorced in 1995. The final decree of divorce incorporated a settlement agreement providing, in relevant part: “At such time as the husband shall no longer be obligated to pay child support, then the husband shall pay unto the wife fifty (50%) percent of his Armed Services retirement pay per month. This money shall be the property of the wife and the husband shall be obligated to pay this sum until her death.”

The Husband's first payment of retirement benefits was due to Wife month his child support ended; however, he never paid the Wife any amount of his retirement benefits. The benefits were not paid directory to the Wife because the Husband was in active service for less than ten years. The Wife had attorneys, however, she waited until February 25, 2016 to file a motion for contempt. The trial court denied Wife's motion, finding that, although the divorce decree clearly entitled Wife to the payments, the trial court could not enforce those payments because the decree, in its entirety, had become dormant pursuant to [OCGA § 9–12–60 (a) (1)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST9-12-60&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)#co_pp_8b3b0000958a4), finding that the judgment had become dormant as more than 7 years had passed. [[1]](#endnote-1)

The trial court held that the first payment of retirement benefits became due on July 1, 2006, and the judgment went dormant on July 1, 2013. The trial court found that the Wife did not file anything that would have revived the judgment if it were dormant, see [OCGA § 9–12–61](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST9-12-61&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)), finding that “although [Husband] has clearly and knowingly failed to uphold his obligations under the decree, this [c]ourt may not hold him in [c]ontempt.”

The Supreme Court found the trial court’s ruling to be incorrect; finding that the trial court did properly find that the dormancy period of the judgment does begin to run from the time when the judgment could first be enforced. However, the Court found the Wife was entitled to installment payments, not a lump sum amount, stating that in previous cases, with regard to installment payments of alimony, the Supreme Court has held that the dormancy period does not begin to run until each installment is due. In other words, each installment payment is treated as a new and separate judgment. (See [Bryant v. Bryant, 232 Ga. 160, 163, 205 S.E.2d 223 (1974)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1974128157&pubNum=0000711&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)).

The Court found that applying the dormancy statute to installment payments has not been limited solely to alimony payments and child support, as the Husband contended, citing [Taylor v. Peachbelt Properties, Inc., 293 Ga. App. 335 (2), 667 S.E.2d 117 (2008)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2016764848&pubNum=0000711&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)), whereby the Court of Appeals applied the dormancy rules set forth in Bryant, supra, to disability installment payments from a workers' compensation award.

As such, the Supreme Court found that installments that are dormant remain subject to revival pursuant to [OCGA § 9–12–61](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST9-12-61&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)), reversing the trial court's ruling that any and all installment payments due to Wife cannot be enforced, and remanded the case to the trial court to properly apply the dormancy statute pursuant to the manner set forth in [Bryant, supra.](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1974128157&pubNum=0000711&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default))

1. The Supreme Court noted: [OCGA § 9–12–60](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST9-12-60&originatingDoc=I3b65d060de8e11e7b393b8b5a0417f3d&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)) was amended in 1997 to explicitly exempt child support and spousal support from the dormancy provisions of subsection (a). The amendment applies prospectively to judgments entered after July 1, 1997. [↑](#endnote-ref-1)