The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Spring 2024

Editor's Corner

By Kem A. Eyo

Welcome to the Spring 2024 Issue of the Family Law Review!

For this edition, we are, as always, provided with knowledge and insight from reputable contributors. The authors herein include practitioners in the fields of mediation, financial advising, military law, and co-parenting coordination. In light of the increase in litigants turning to substances to self-medicate against mental health issues (stress, anxiety, depression, etc.), there is also an articles from a reputable related vendor. Finally, as always, Vic Valmus has contributed case law updates to provide recent developments in topics relevant to the family law practitioner.

You will find that the majority of the articles within this Family Law Review are addressed not to the family law practitioner but to the individual in, or just completing, domestic litigation. Do not let this fact deter you from reading each and every article. You are likely to find the contents to be beneficial to your practice none-the-less. The tips to a litigation may inform your discussions with your clients, provide you with knowledge that may affect how you practice, or provide you with the ability/opportunity to share an article with your client to mitigate a lengthy questions-answer session. Regardless of how or why, I hope that you fine the enclosed to be worthy of a read.

I am delighted to share the enclosed with you. I also implore you to contribute to the Family Law Review content. The best way to read more about legal topics that matter to you is to write it, or to encourage the "authors" that you know to do so on your behalf. While we are all very busy practicing, the information shared in the Family Law Review by our fellow practitioners and professionals has a positive impact on our ability to provide effective representation to our clients. Please add to the body of knowledge by contacting me at kem@rbafamilylaw.com.

Editor's Emeritus

By Randall M. Kessler

"Being together"

It feels like time always flies by so quickly when you are a family law attorney. And here we are already well into 2024. I still can't believe I started practicing in the late 1980s. And so many more have joined our section and this great practice area since. I hope you feel, like me, that we are all in this together. Yes, we disagree at times, and our clients push for extreme results; but at the end of the day, it's always us facing off, negotiating and being together. And those moments, the "being together," at a mediation awaiting all parties' arrival, on breaks at arbitration, waiting for our hearing while the case before us drags on, etc. are the moments I am appreciating more and more as I get older. I encourage all of us to take advantage of that time. Get to know your opposing counsel, their story, their family. How lucky are we to be in a profession where we respect each other and get to travel through life together while handling such important and difficult situations? Without the camaraderie, the friendships, how much harder would our jobs be? So, thank you all for enriching my life and my journey. I look forward to many more years together and continuing, and building, our friendships.

Inside This Issue

Unvested Third Parties in Mediation: Help or Hinderance

*By Christina L. Scott**

When I first began mediating many moons ago, I will never forget the time a very large and intimidating man showed up as a "support person" for a wife in a divorce case. I remember asking him who he was and how he was affiliated with the case. He said, "I am here to make sure he (the husband) knows that we intend to have our interests served." I was a baby mediator at the time, but my gut instinct was to keep him as far away from the mediation as possible. It was clear that the wife brought him there simply to intimidate and agitate the other party. I politely told the man that he would not be allowed in the session. Reluctantly, he proceeded to wait in the lobby where he sat on the edge of his chair with an intimidating posture. After this incident, I asked another seasoned colleague about their practice concerning third parties who show up in such a manner. They exclaimed, "You should never allow any random persons to participate in any mediation." By "random," my colleagues meant, no girlfriends, no boyfriends, no baby mammas, parents, upset brothers or sisters, or any other persons not named on the lawsuit. I took this as good advice especially since I was not aware of any policies or statutes that gave such third parties any explicit rights to participate in mediation. Since my guiding principle is to always follow the rules of confidentiality, the presence of any third party represented a potential breach of my principle.

Consent to Third Party Participation is Required

As the years went by, I found myself allowing certain third parties to appear in my mediations if I believed at the onset that their intentions were pure. I always had them sign the mediation guidelines so that they would also be bound by the same rules as the parties.

In addition to signing the guidelines, my practice was to always secure consent and agreement by the opposing side before allowing any third parties to participate, even if only in caucus. My core belief for doing this is founded in the foundational tenant of mediation which is the participants' agreement to absolutely all aspects of the mediation. If I didn't have consent and agreement from all parties, I would ask the third party to leave. I would also re-affirm with the party to the dispute that if they really wanted a chance to settle the case, they would need to ask their third party to respectfully "kick rocks". In other cases, even if I had consent from the parties and it turned out that the third party was not helpful to the process, I would personally ask them to leave.

Virtual Mediation Requires Additional Safeguards

Then, many years later, along came the COVID-19 pandemic which forced all of us into a paralyzing virtual world. Virtual mediation would now impair my ability to control who was in the room. Being stuck behind a camera, I realized that I had to be vigilant and discerning of the virtual environment. During my opening I always stress that mediation is a private meeting between the parties and not a public one, therefore no other parties should be present, whether they are in person, virtually, or by listening device. unless there is consent by all parties. I quickly learned that mediation participants heard my statements but didn't always comply with what I was conveying. During the 2020 COVID year, I had a virtual divorce case in which a difficult wife had her mother in the room but off-camera, despite my clear statements that third parties were not allowed. While I was speaking to the wife, I could hear someone in the background and even saw their shadow on the camera! I asked the wife if someone else was in the room and she admitted it was her mother. Her attorney quickly spoke up and reiterated that she (the wife) should not have another person in the room that we could not see. The wife asked her mother to leave and announced to us that she was no longer in the room. It then made sense to me why the wife was being so difficult and seemingly unreasonable.

Situations like these can frustrate and potentially derail the mediation, However, in some cases the presence of a third party may be helpful. The question then becomes, should unvested third parties be allowed to attend mediation and if so, how do you determine who is allowed to stay and who is asked to leave.

Third Party Participation is Necessary or Essential in Some Instances

Indeed, situations in which the opposing party is an unrepresented person may be handled differently because Section § 9-17-9 of the GUMA (Georgia Uniform Mediation Act) gives them the opportunity to have a support person accompany them.

Many times, there are cases where other stakeholders are involved, such as stepparents or new spouses. In cases like these, the terms of the parenting plan, for instance, could be crucial to their household and the client might need to discuss the matter with the new wife or husband. In these situations, the third party may be essential, but not always. If you know that the client has re-married, ask them candidly, "Can you settle the case without your new spouse?" If the answer is "no", then it is a good idea to notify the mediator so that there are no surprises. On the other hand, if the new spouse just happens to be the person that the opposing party believes destroyed the marriage, then you may want to have a much deeper conversation with your client about keeping them out of the mediation process.

Of course, there are other instances in which third persons are essential such as in cases of mental incapacity or disability. These parties often need the support of the person with Power of Attorney over their affairs to participate in the mediation. I've had other mediations where one party was a very young new dad or mom, and they needed the help of a trusted parent to guide them through the nuances of a parenting plan. In other cases, I have found that Guardian ad Litems (GALs), financial experts, and accountants are typically essential parties that are necessary to moving cases toward settlement. GALs are typically ordered to attend mediation, but parties may decide to have certain conversations outside of the GAL's presence. Financial experts are often essential to the party that retained them and are privy to caucus discussions, so having them sign the mediation guidelines is a must.

Retained Counsel May Assist in Evaluating Third Party Participation Issues

Now, situations in which represented parties decide to bring random and unvested third persons to the mediation often require a different level of scrutiny. Retained counsel may be helpful to the mediator in avoiding this by having a conversation with clients prior to the mediation day. Counsel may discuss the following factors with their clients:

1. Will the presence of a third party be helpful in moving toward settlement?
2. Is the third party essential to settlement?

The helpfulness of the third party is key. Although it may sometimes feel like it, mediation is not a circus and therefore is not to be treated as a source of amusement or entertainment. As a mediator, I try to keep the unnecessary quibbling to the lowest level possible. Simply put, if the third party stirs up the quibbling or enflames the participant, they are not helpful. Representing attorneys are in the best position to find out from their clients the posture of the third party. Are they coming to instigate or help? Instigators can divert the focus in mediation and lead everyone down the wrong path. My focus as a mediator is to move everyone forward toward resolution, if that is in fact what they want, and not waste the participants' time and resources in managing a disruptive third person. Family law, by nature, is an emotionally charged arena which requires a bit of skill and finesse, and getting parties to settle in this type of environment can be challenging enough. Eliminating unnecessary roadblocks caused by some third parties is paramount to increasing the likelihood of settlement. And as attorneys, understanding the potential presence and intentions of third parties might be the deciding factor between a case settling at mediation or one that is likely to end up in a final trial.

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The ICF Core Competencies Applied to Parenting Coordination

*By Erica McCurdy**

Coaching is a tactical and practical approach to change that encourages co-parents to take ownership of their goals and co-create a detailed roadmap for success that includes accountability, communication, and ownership. The coaching process often uncovers new and innovative solutions that move clients further faster. The International Coach Federation (ICF), the recognized leader in coach accreditation, has an evidenced-based competency model that works particularly well in high-conflict Parent Coordinator (PC) work. The model centers around setting a firm foundation, co-creating the relationship, and communicating effectively.

The competencies create an environment of motivation and trust that quickly reduces friction between co-parents. When used in high-conflict co-parenting situations, co-parents learn to work parallel to each other while still communicating critical information. The result? A significant reduction of conflict and parents who are free to engage with their child/children instead of constantly battling each other.

Establishing Agreement: At the start of a case, the PC works with each parent to understand their perspective and identify their top "magic wand" priorities. Setting the foundation ensures the PC and co-parent are on the same page and clearly understand the overall goals and non-confidential relationship. Clarity helps co-parents feel more comfortable and confident about the process.

Active Listening: Active listening requires the PC to observe verbal and non-verbal context clues to

understand a co-parent's needs, concerns, and desires. The PC then provides appropriate responses and feedback to convey a mutual understanding between the PC and the co-parent. By actively listening to the co-parent, each participant feels heard and understood, boosting openness, confidence, and motivation.

Powerful questioning: Asking powerful questions helps co-parents gain clarity and perspective while identifying new possibilities, options, and insights. Curious and non-judgmental, powerful questions help co-parents question their frame of reference. As the PC leads co-parents through their sessions, each person sees the situation from other perspectives, especially that of their children, opening up new opportunities to gain agreement and reduce conflict.

Direct communication: The PC uses language that will have the greatest positive impact on the co-parent. Direct communication strips away ambiguity, allowing honest and straightforward conversation with the co-parents. Co-parents gain awareness of their blind spots and insight into their behavior and thought patterns.

Creating awareness: By helping co-parents become more aware of their thoughts, feelings, and behaviors, the PC facilitates more profound learning and growth. Understanding happens both inside and outside of sessions. The PC uses metaphors, analogies, and even silence to help co-parents gain new insights.

Designing Actions, Planning, and Goal Setting: Perhaps the most crucial skill in Parenting Coordination work, these competencies help the co-parents create a concrete action plan, free of ambiguity that minimizes any opportunity for conflict. The action plans' specificity helps the PC hold the co-parents accountable for their compliance and clearly track progress. By setting clear and achievable goals, the co-parents can focus their energy and attention on what matters most - their child/children.

Managing Progress and Accountability: The PC ensures that co-parents understand where they are in the process. The PC continually redirects focus towards the best interests of the child/children. Co-parents are accountable for their actions and have tangible evidence of progress and accomplishments, keeping all parties on track toward established goals.

Creating Trust and Intimacy: A coaching approach helps co-parents feel safe and supported in what is often a scary and vulnerable process. PCs are non-confidential, so building trust and intimacy is critical to designing plans that reduce conflict between co-parents.

Facilitating Learning and Results: Ultimately, the ICF core competencies help co-parents learn to parent without conflict. The techniques and protocols established by the PC give each parent a road map to identify and resolve future disputes without needing professional intervention.

The ICF core competency model is extensive, and this article highlights sections from the model that are particularly helpful in PC work. Ultimately, the PC uses these competencies to efficiently guide co-parents toward plans that reduce conflict, redirecting focus to their child/children.

**Erica McCurdy is a credentialed coach and parenting coordinator who has been working with people in transition since 2009. Her company, Atlanta Divorce and Parent (www.AtlDiv.com), leverages an experienced team to provide Parenting Coordination, Divorce Coaching, Teen Support Programs, and Career Transition Guidance to those experiencing high-conflict and family change. Erica holds a BBA and MBA, is an ICF Professional Certified Coach, and has CMC (Master Coach), CBC (Business Coach), and YPF (Youth Parent and Family Coach) certifications. Erica has over 3500 practice hours and has been featured as an expert in over 200 publications including Forbes, US News and World Report, Business News Daily, AARP, Entrepreneur.com and more.*

6 Steps Toward Your Retirement Goals

What should you consider today to help you move forward?

By Trent Doty

You want retirement to be your chance to get out of the rat race and have time for the things you've always wanted to do. That's great, but what exactly does that mean? Travelling? Volunteering? Spending time with family and friends? Starting a business? Simply doing nothing?

You may think your plans are just like everyone else's, but that's unlikely. They're as unique as you are.

Exactly how you want to spend your time will definitely affect what you should be doing now to prepare for it. However, there are steps that everyone should consider taking today regardless of their retirement goals. Here are six of the most important:

1. Have a plan

If you haven't gathered your ideas about retirement together and distilled them into a cohesive investment plan, that's a great place to start. Or if you have a plan stuck in a drawer somewhere, you need to revisit it. Whether you want to start a second career, travel the world, or do nothing will make a big difference when it comes to what you'll need to cover your expenses. The better you can define precisely what your goals are and which are most and least important, the better your plan should be.

An asset allocation — how your investments are spread out across different asset classes (stocks, bonds, cash alternatives, etc.) — should be at the heart of your plan. The allocation that's appropriate for you will vary depending on a variety of factors. Primarily, these are what you want your investments to help you achieve (objectives), how comfortable you are with market volatility (risk tolerance), and how long it will be before you plan to retire (time horizon).

2. Use tax-advantaged accounts

Even if you don't have a retirement plan as such, chances are you have savings in employer-sponsored qualified retirement plans (QRPs), such as 401(k) or 403(b) plans, or a traditional or Roth IRA.

If that's the case, good for you. These tax-advantaged accounts can be great ways to work toward your retirement goals because paying taxes each year on any growth, as you would with taxable accounts, can dramatically reduce the amount you end up with.

If you participate in a QRP and your employer offers a matching contribution, try to contribute at least as much as the match — otherwise, you are leaving free money on the table. If your employer doesn't offer a QRP or you're self-employed, look into opening an IRA.

3. Clean up your accounts

Over the years, you may have accumulated a number of IRAs and QRP accounts with your current and past employers. Along with that, you may own taxable investments in different full-service and online accounts. And your spouse or partner may be in a similar situation.

Having a portfolio in pieces like this may make it more difficult for you to reach your retirement goals. Take time to figure out how many accounts you actually have, and consider the potential benefits of consolidating them, including helping you to:

- Understand how your assets allocated
- Decide when it's time to rebalance
- Know exactly what investments you own
- Save time
- Manage your beneficiary designations

4. Try to stay in the market

When the market takes a big hit, you may be tempted to sell your stocks with the intention of getting back in when the things turn around. This practice, known as market timing, may sound good, the market can be extremely unpredictable, making success with this strategy very difficult. If you get out when the market's down, you could miss out on significant gains if it

suddenly turns around before you get back in. And that can prove costly.

Rather than attempting to time the market, try to stick with your asset allocation when there's market volatility unless something major has happened in your life (a birth, marriage, illness, divorce, etc.) that makes you want to change it.

In addition, consider rebalancing by checking your accounts to see if market activity has shifted your investments away from your desired asset allocation. If it has, you may want to sell some investments and buy others to bring your accounts back into alignment.

5. Prepare for emergencies
Events like a sudden job loss or unanticipated home repair can quickly derail your retirement plans. To help protect you and your family, consider keeping an emergency fund with enough money to cover three to six months of living expenses. These funds should be held in a liquid but stable account, such as a bank savings account, so you can access them when needed and not have to worry about fluctuations in value.

6. Consider an advisory account
If you're not comfortable with or interested in managing your retirement savings, consider using an advisory account.

These accounts are run by professional money managers who choose the investments, make buy and sell decisions, and periodically readjust the holdings in the account to maintain your chosen asset allocation. Instead of paying commissions for trades in an advisory account, you are charged an annual management fee based on the value of the assets in your account.

Investing involves risk, including the possible loss of principal. Asset allocation cannot eliminate the risk of fluctuating prices and uncertain returns. Diversification does not guarantee profit or protect against loss in declining markets. Stocks offer long-term growth potential but may fluctuate more and provide less current income than other investments. An investment in the stock market should be made with an understanding of the risks associated with common stocks, including market fluctuations.

Four Deadly Mistakes: Scott v. Tran

*By Mark E. Sullivan**

Introduction
In the opening scene of "The Music Man," the assembled salesmen all agree that "you've got to know the territory." The same saying is true in the legal world. While knowing the facts is important, knowing the law and having a good lawyer are even higher priorities. The case Scott v. Tran, 2021 U.S. App. Vet. Claims LEXIS 127, shows the importance of teaming up with a good advocate, knowing what you're asking for, and where to request it. Or, to change the metaphor slightly, "If you're knocking on the wrong door, don't be surprised if nobody answers."

The Facts
Sheila Scott, representing herself, filed an appeal to the 2019 decision of the Board of Veterans' Appeals which determined that she was not a surviving spouse of Billy Scott, and thus she was not entitled to VA death pension benefits as a result of his death. Long on patience and kindness, Judge Grant C. Jacquith (a retired Army JAG colonel) gently reminded Ms. Scott of the importance of knowing what you're looking for and where you should go to find it.

Sheila married Billy in 1973. They were divorced in 2010. The only statement regarding Billy's military service was this: "Mr. Scott served on active duty from July 1954 to April 1958. There was nothing about his continued service in the Reserves or in the National Guard. And there was no information about military retired pay.

Their decree of divorce stated that Sheila was entitled to an equitable share of Billy's military and law enforcement pensions, and that it was up to her to have pension division orders prepared to implement the division. In 2012 an order dividing the law enforcement pension was entered in court; it noted that the court retained jurisdiction to enter another order covering the military pension.

Dead Wrong

Two months after their 2010 divorce, Sheila petitioned the Department of Veterans Affairs ("the VA") for half of Billy's "VA pension." It is not clear from the opinion what this was. There is a VA pension program which provides monthly payments to wartime veterans who meet certain age or disability requirements, and whose new worth and net income are below certain limits. With a law enforcement pension, Billy probably would not have had a "VA pension."

There's also a military pension, payable to retirees of the uniformed services under Chapter 71 of Title 10, U.S. Code. This pension generally requires at least 20 years of active duty. These are divisible upon divorce under the Uniformed Services Former Spouses' Protection Act (USFSPA), found at 10 U.S.C. § 1408.

Those who are in the National Guard or in the Reserves have a pension also, pursuant to Chapter 1223 of Title 10, U.S. Code. This requires 20 years of creditable service, which means at least 20 years with a minimum of 50 retirement points in each year. The USFSPA also allows the division of these retirement benefits.

If a servicemember is disabled as a result of his service and found to be unfit to continue serving, then he may qualify for a disability pension under Chapter 61 of Title 10. As a general rule, little or none of the disability pension can be divided upon divorce.

Military pension division is handled by the Defense Finance and Accounting Service (DFAS) for the Army, Navy, Air Force and Marine Corps; the Coast Guard Pay & Personnel Center is in charge of pension division for the Coast Guard and the officers of the Public Health Service and the National Oceanic and Atmospheric Administration. In response to Sheila's pension division request, the VA responded that pensions were not handled through the Department of Veterans Affairs, so she sent her request to DFAS. DFAS responded that Billy was receiving VA disability pay, not retired pay.

Dead on Arrival

In 2012 Sheila wrote to the VA again. This time, she was inquiring about survivor benefits.

Survivor benefits are an important part of a divorce settlement when one is representing the former spouse. The Survivor Benefit Plan, if elected, pays the former spouse 55% of the chosen base amount (which is usually one's full retired pay) for the rest of her life, adjusted for inflation by annual COLAs (cost-of-living adjustments).

Is there a downside? Yes – in fact, there are three:

- First of all, it's not free. Former-spouse SBP coverage costs 6.5% of the base amount in the case of a "regular retirement," that is, one from active duty. With a non-regular retirement (i.e., one from the Reserves or National Guard), the cost is closer to 10% of the base amount.
- Second, the money which a former spouse receives, if she lives longer than the military member, is taxable income.
- And third, the benefit is suspended if the former spouse remarries before reaching age 55. The benefit can be restored, however, if that remarriage ends in the divorce, annulment or death of the new spouse.

It took a year for the VA to respond. This time, the VA answer stated that she was not entitled to VA benefits because she was divorced from the veteran.

Unflagging in her attempts, Sheila later wrote to the VA about VA disability compensation in early 2014, and about apportionment of Billy's compensation in January 2015. Both attempts to collect funds were denied.

Dead in the Water

In March 2015 Billy died. The next month, Sheila filed a claim for "dependency and indemnity compensation (DIC), death pension and accrued benefits." Her claim was denied a month later, and she took an appeal to the Board of Veterans' Appeals. The Board denied the claim because she was divorced from Billy. To be eligible for VA benefits, the claimant must have been married to the veteran at the time of his death.

Unwilling to admit defeat, even though she "does not contest that she and the veteran were divorced prior to his March 2015 death," Sheila pushed on, this time filing an appeal with the U.S. Court of Appeals for Veterans Claims. According to the Court's opinion, "she alleges that she is entitled to some type of payment from VA in accordance with the family court orders related to their divorce. The government responded that the parties

were divorced, she is not a surviving spouse, and she was thus not entitled to any VA benefits as a matter of law, since the benefits which might be involved are only payable to surviving spouses.

DIC payments are made to a veteran's surviving spouse if the veteran died from a service-connected disability. 38 U.S.C. § 1310. The Department of Veterans Affairs can also award a pension to a veteran's surviving spouse when the veteran at the time of his death was getting disability compensation in regard to a service-connected disability.

The Court noted that Sheila had acknowledged in her submissions to the VA that she and Billy were divorced. Thus she failed to meet the basic threshold requirement for receipt of VA benefits, and her claim was denied by the Court. The opinion stated that no divorce court order referred to any benefits administered by the Department of Veterans Affairs, and that the division of a military pension was not within the purview of the VA. The payments to Billy were based on his disability, not longevity of military service. The U.S. Supreme Court in Mansell v. Mansell, 490 U.S. 581 (1989), made it clear that the USFSPA didn't grant state courts the power to treat as divisible property in a divorce proceeding any portion of a military pension which has been waived to receive VA disability compensation.

Dead Reckoning

In addition to the above errors, there was a fourth error that Sheila committed. She failed to obtain the advice and assistance of competent legal counsel. It appears that she had prior counsel, but that the initial attorney and the later attorneys withdrew from her case, with the latter citing differences on how to proceed and the instructions from Sheila that they cease representing her. She pressed on pro se, committing error after error in seeking some sort of VA payment in accord with the divorce court's orders.

"Dead reckoning" is a nautical term referring to voyaging without the help of celestial navigation, an essential component of accurate travel on the high seas. In Sheila's case, it meant plunging onward in the hope of wresting some form of payment from the government without having a legal or factual basis for her claims.

Had the case been handled right in the first place, she would have had a competent attorney in court with her to assert a claim on Billy's military pension (if it existed) and to argue for allocation of the Survivor Benefit Plan. If there was no pension, she would have asked the court – with the help of a good attorney – to consider Billy's wages and his VA disability compensation as sources of money from which she could be paid spousal support. She would have known what to argue and where to locate the resources which could persuade the court.

Lessons Learned

The rules for military pension division can be found in the Department of Defense Financial Management Regulation (DoDFMR), Volume 7b, Chapter 29, "Former Spouse Payments." Informal guidance comes from several sources, including –

- The DFAS website, https://www.dfas.mil at "Retired Military and Annuitant," and
- The Silent Partner series of info letters, located at "Publications" on the website of the North Carolina State Bar's military committee, https://www.nclamp.gov.

Attorneys who want to learn about the Survivor Benefit Plan can find the statutes at 10 U.S.C. § 1447-1455. The rules are in several chapters of Volume 7b of the DoDFMR. There are tabs at https://www.dfas.mil/RetiredMilitary/ for "Provide for Loved Ones" and "Survivors and Beneficiaries" which contain information about the SBP. And there are also Silent Partner info letters at the above URL for the N.C. State Bar which provide tips on what the SBP is, what it costs, how to claim it, and how to defeat a claim.

There are many resources available to counsel. One need not be a certified and experienced expert to help clients with military pension division, SBP allocation, VA benefits such as DIC, and other benefits related to military service, such as SGLI (Servicemembers Group Life Insurance) for those serving on active duty when death occurs, and VGLI (Veterans Group Life Insurance), for those no longer serving but who have converted their SGLI to VGLI.

If local counsel needs special assistance, then it's time to look for a "wingman." Getting an expert to assist the primary attorney can bring a much higher level of knowledge and expertise to the divorce case.

Who can act as the wingman? The expert might be a

former JAG officer, a Guard or Reserve judge advocate, a retired JAG, or a lawyer with prior military experience. If the expert has specialized knowledge in the area of military divorce, then he or she can make the difference between a poor and a good settlement. And a wingman is essential if the case is headed for trial.

Asking around for information on who in the local or state bar has written or spoken on military family law issues will usually reveal one or two attorneys in a given state who could be consultants for the divorce attorney. You don't even have to get a wingman from the city or county where the divorce is taking place. A good consulting expert can be from Texas or Tennessee, North Carolina or North Dakota. The important point is to have someone who knows the statutes for pension division (the Uniformed Services Former Spouses' Protection Act) and the Survivor Benefit Plan, the retired pay center rules, and the specific issues which often arise in the military divorce case.

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Women and Asset Protection

*By Jeff Schultz**

Women are successful professionals, business owners, and knowledgeable investors. At some point in their lives, women may have to manage their own finances due to divorce, widowhood, or remaining single.

Every day, women face a variety of risks to their life, their health, and their property. Although you can't eliminate many of these risks, you can take steps to guard against resulting financial losses. Insurance is the primary way to provide needed protection. It can provide both peace of mind and financial security to you and your loved ones. Many types of insurance are available to help guard against devastating losses.

The cost and availability of life insurance depend on factors such as age, health, and the type and amount of insurance purchased. A complete statement of coverage, including exclusions, exceptions, and limitations, is found only in the long-term care insurance policy. It should be noted that carriers have the discretion to raise their rates and remove their products from the marketplace.

Additionally, a long-term care policy may not cover all of the expenses associated with a person's long-term care needs.

Depending on the policy, disability income insurance benefits may be paid for a specified number of years or until you reach retirement age.

Some policies pay benefits if you cannot work in your current occupation; others might pay only if you cannot work in any type of job. If you pay the premiums yourself, disability benefits are usually free of income tax. The policy will stay in force regardless of your employment situation as long as you pay the premiums. Disability income insurance premiums are based on your age, occupation and the amount of potential lost income you are trying to protect as well as the specifics of the policy and what additional benefits are added. A complete statement of coverage, including exclusions, exceptions, and limitations, is found only in the policy. It should be noted that carriers have the discretion to raise their rates and remove their products from the marketplace.

Life insurance
Life insurance provides funds for your loved ones when you die. If you're a working woman, your income can have a significant impact on the quality of your family's lifestyle, even if you're part of a two-income household. Life insurance helps protect your family by providing proceeds that can be used to replace your lost income if you die prematurely.

Maintaining a household is a full-time job, and you have many important roles and duties. If you die, your surviving spouse may have to pay for services such as child care, transportation for children, and housekeeping. Proceeds from your life insurance can help your spouse pay for these services.

Many women find themselves providing care for both children and elderly family members. Unfortunately, these added financial responsibilities often continue after your death. Life insurance provides a source of funds that can be used to help pay for these expenses as well.

Life insurance is also important for women business owners. If you die while owning your business, life insurance can be used to provide cash for company expenses such as payroll or operating costs while your estate is being settled. Also, life insurance can be a useful tool for women business owners when structuring buy-sell arrangements or providing benefits to key employees.

Health insurance
Health insurance can safeguard your assets from the high costs of health care. You may lack the financial resources needed to pay medical expenses associated with a health crisis, and the costs of physical exams, prescription drugs, hospital stays, pregnancy, and routine medical conditions can add up and cause you to suffer financial hardship if you must pay for them entirely on your own.

Frequently, women obtain their health insurance through their employer or as a dependent in a family health plan. If health insurance isn't available through an employer, you may be able to obtain coverage through an association, club, or other organization or on your own by purchasing a private health insurance policy directly from an insurance company or the Health Insurance Marketplace. Generally, health insurance pays for all or a portion of specified medical costs. The cost and range of protection that your health insurance provides will depend on your insurance company and the particular policy you purchase.

Auto insurance
There are many reasons why you should have automobile insurance. People can be injured and property damaged as a result of an automobile accident. Liability claims against you can put your assets at risk. Loss or damage to your auto can also occur through theft, vandalism, or natural disasters. Auto insurance protects you against these risks.

A personal auto policy is a contract between you and your insurer that specifies each party's rights and obligations. State law and/or your auto lender may require that you purchase at least a minimum amount of coverage. Depending on your circumstances, you may want to buy additional protection. You can compare auto insurance policies in terms of price, coverage, exclusions, and reputation of the insurer.

Homeowners insurance
If you own a home, either with someone else or on your own, it's probably one of your most valuable assets. So it's important that you protect yourself against unexpected financial loss to your home and possessions.

Homeowners insurance provides coverage, up to policy limits, if your home and possessions are damaged or destroyed. It can also provide you with coverage for liability claims, medical expenses, and other expenditures that result from property damage and bodily injury suffered by others. If you have a mortgage on your home, your lender typically will require homeowners insurance. Even if you own your home outright, you should still consider buying homeowners insurance to protect your interests and safeguard your assets. The cost of homeowners insurance depends on several factors, including the amount of your coverage, any endorsements you add to the policy, and policy deductibles. Condominium and co-op insurance, although similar, differ in some respects from standard homeowners insurance. And if you rent your home, you may want to look into insurance for your contents.

For additional protection, consider umbrella insurance. Umbrella liability insurance (ULI) provides additional liability coverage in excess of the liability

coverage provided by other insurance policies, such as homeowners, renters, and auto insurance. By providing liability protection above and beyond these basic coverages, ULI can help protect you against the catastrophic losses that can occur if you are sued.

Disability income insurance
The threat of a major disability poses one of the greatest risks to your income. Disability income insurance is important in helping protect your income, especially if you're not able to work for an extended period of time.

Disability income insurance helps protect your income by paying you a benefit that replaces part of your earned income, up to policy limits, when you can't work as a result of an injury or illness. You may be able to obtain short-term or long-term disability coverage, or both.

In general, disability insurance can be split into three types: private insurance (individual policies bought from an insurance company), group policies typically provided through your employer, and government insurance, such as Social Security disability benefits and social insurance provided through state governments. If you're applying for benefits under a private insurance policy, you'll probably be subject to a waiting period (elimination period) before benefits are paid.

Long-term care insurance
Your chances of needing long-term care increase as you get older. It's particularly important for women to plan for the potential expenses of long-term care since they are more likely to need long-term care than men due to longer life expectancy.

Long-term care insurance pays a selected dollar amount per day (for a set period) for the type of long-term care described in the policy. Depending on the benefits you select, care can be provided in a variety of settings, including your residence, assisted-living facilities, adult day-care centers, hospices, and nursing homes. Most policies pay benefits when the insured experiences certain physical or mental impairments. The cost of insurance is based on the insurer, the age of the insured, the health of the insured, and the benefits selected.

Business insurance
Owning a business often requires you to make a significant investment of your time and finances. You don't know what difficulties may lie ahead for your business, so you need to be protected.

Whether you are just starting a business out of your home or you manage a multimillion-dollar enterprise, no matter how careful you are in running your business, accidents happen. As a business owner, you may be interested in several different types of insurance coverage: property and casualty insurance, liability insurance; and group health, life, and disability insurance coverage for you and your employees. You can buy these types of insurance separately, or you may be able to purchase a package of insurance covering many different potential hazards.

A last word on insurance
The bottom line is if you haven't developed and implemented an asset protection plan, your wealth and assets are vulnerable to potential future creditors, and you could suffer significant financial hardship. Insurance can be a vital asset protection tool in your arsenal against the many different risks that could result in devastating losses.

**Jeff Schultz and his team at Janney have been working with wealth business owners, executives, and divorced/inheritors for over 30 years throughout the Southeast. He can be reached at jschultz@janney.com or www.schultzwm.com.*

A Comprehensive Guide To Social Security After Divorce

*By Heather L. Locus**

Since Social Security benefits can make a big difference in your cash flow and income taxes in retirement, it is worthwhile to understand how this important benefit works. If you are divorced after being married at least 10 years, you can claim social security benefits on your ex-spouse's work record. If you've been married less than 10 years, you cannot claim any social security based on your ex-spouse's work history so it's critical you don't finalize a divorce

after 9 years of marriage without seriously thinking through the consequences.

Before jumping into the nitty gritty, let's cover the key highlights:

1. There are no decisions to make or filing requirements during the divorce. The benefits are determined by the Social Security Administration when you get to age 62+ so this is a rare financial issue you can put off thinking about until well after the divorce is finalized if you are younger than 62.
2. No court order is necessary – all you need is proof you were married for at least 10 years and proof you are now divorced.
3. Your former spouse's benefits are not affected at all by your claim – they don't even have to know you are filing on their work history!
4. Benefits can be received while your ex-spouse is alive as well as after they die.

How do I qualify as an ex-spouse?

To be eligible off your ex-spouse's work history, all the following must apply:

- Your marriage lasted 10 years or longer.
- You are not currently married (unless you were over age 60 when the remarriage occurred).
- You are 62 years or older (unless you're disabled or your ex-spouse is deceased).
- Your ex-spouse's benefit is greater than any you would receive based on your own working record (you can't double dip).
- Your ex-spouse is entitled to Social Security retirement or disability benefits.

Your former spouse doesn't have to be collecting his or her retirement benefits for you to claim your spousal benefit. However, if this is the case, your divorce must have been finalized at least two years prior. The two-year rule does not apply if your ex is already receiving benefits.

The Social Security Administration (SSA) will not notify your ex that you are collecting benefits off their work record. That is likely music to your ears as unlike many things in divorce, there's no need to coordinate or communicate with your former spouse, as your collection of a spousal benefit does not impact their Social Security benefit.

What if I've been married and divorced more than once?

If each marriage lasted 10 years or more and the above qualifications apply to each situation, you can choose which benefit you would like to collect, but you cannot collect on more than one work record.

How much will I receive?

Your maximum spousal benefit is 50% of what your ex-spouse will collect at full retirement age (FRA). So, for example, if your ex-spouse is entitled to the 2021 maximum monthly benefit of $3,113 at FRA, your maximum ex-spousal benefit is $1,556.50 per month at your FRA. While you can start receiving benefits before you reach your FRA, filing earlier will reduce the amount you receive by approximately 6.5%-7.5% for each year you claim early. Full retirement age (FRA) varies based on birth year.

Year of Birth	Full Retirement Age
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

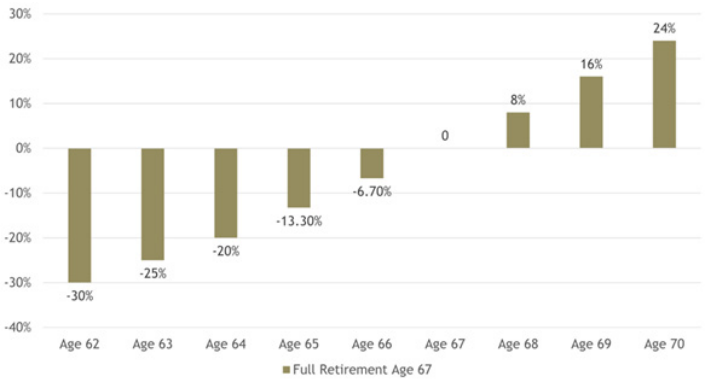
Full Retirement Age (FRA) varies based on year of birth.
BDF LLC, SOCIAL SECURITY ADMINISTRATION

Can I get an estimate of what this would be without going through my ex?

Yes, but it's not as easy as accessing your own record, which you can do at any time by creating an account and logging in to www.ssa.gov. To receive an estimate of your ex-spousal benefits, you need to call or visit a local Social Security office, where you'll need to provide your marriage certificate and divorce decree to receive an estimate of your ex-spousal benefit. You'll also need your ex's social security number, but if you don't have it, then make sure you can provide their date of birth, place of birth, and parents' names.

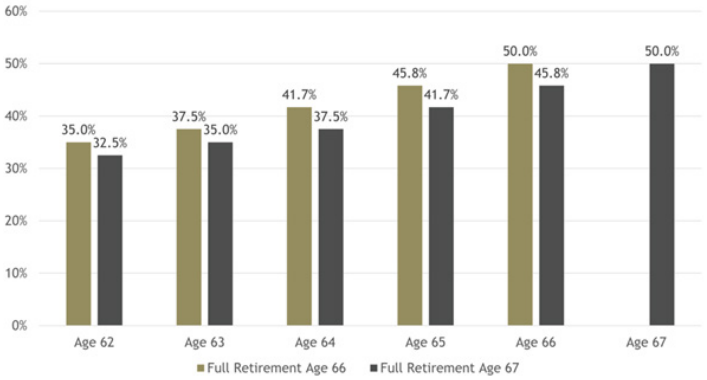
When can I apply for ex-spouse benefits?
Unless your ex is already deceased or you are disabled, the earliest you can file is three months before your 62nd birthday. Remember though, that 62 is considered "early retirement age," so your benefit will be reduced if you claim as soon as you are eligible.

Should I collect benefits based on my work record or my ex's?
All social security recipients have the option to delay taking their own social security past their FRA to increase their monthly social security check. Starting your own benefit after your FRA increases your payment by 8% per year each year beyond FRA until your age 70.



Benefits based on your work record will be reduced permanently before FRA. Delaying post-FRA ... [+]
BDF LLC, SOCIAL SECURITY ADMINISTRATION

If you were born in 1953 or earlier, you have a unique option to file for ex-spousal benefits now and then switch to your own benefit later. However, when you file early both of those benefit amounts will be reduced accordingly and those reductions are permanent. So, crunch the numbers for various longevity scenarios before making this special election. For anyone born in 1954 or after, you must choose one benefit or the other. Unlike filing for benefits based on your own record, **when filing as an ex-spouse, waiting until after your full retirement age will not increase your benefits**, so it is best to file upon your FRA if you haven't already.



Filing for ex-spousal benefits before FRA will result in a permanent reduction of benefits. The ... [+]
BDF LLC, SOCIAL SECURITY ADMINISTRATION

Whenever you decide to file, your benefit is calculated as the greater of either your own benefit or your ex-spousal benefit. In other words, you cannot receive both. The decision on when and whose benefit to take is a permanent one, so it's good to work closely with a financial advisor and the SSA to see what would give you the largest benefit.

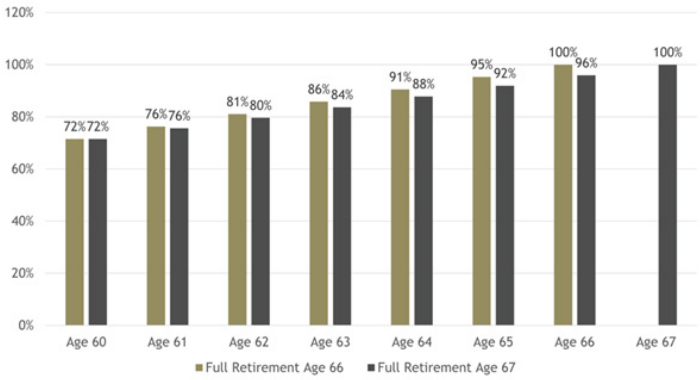
What if my ex-spouse dies?
Many people are surprised to learn that they can receive 100% of their deceased spouse's benefit, even as an ex-spouse. If your ex-spouse passes away, you may be eligible to receive 100% of the amount your ex-spouse was receiving from Social Security when they died. The following would have to apply for you to receive the benefit:

- The marriage lasted at least 10 years.
- You are at least 60 (50 if disabled), or you are caring for a child from the previous marriage who is either under 16 or became disabled before turning 22 (in which there's no age minimum).
- You are single or, if you are remarried, you didn't remarry until after you turned 60 years old (50 if disabled).

As is the case for any survivor benefit, waiting to collect benefits until full retirement age will qualify you to receive 100% of what your deceased ex was receiving when they passed away. If they were not collecting benefits at the time of death, you will receive 100% of what they were entitled to receive.

Not yet full retirement age? You may still collect survivor benefits from your late ex-spouse, however, the amount you receive will be reduced. If your late

ex-spouse filed for social security benefits early (i.e.: before their full retirement age), your benefit amount will be based on that reduced amount.



For ex-survivor benefits, you can apply as early as age 62, however, your benefit will be reduced if… [+]

Again, there's no double dipping with Social Security. If you were collecting your own benefit prior to your ex passing away, you can still apply for survivor benefits. However, you may only collect the higher of the two benefits.

An unusual twist: the benefits you receive on your deceased ex-spouse's record will not affect the benefit for other survivors getting benefits on their record. So, if your ex was remarried at the time of their death, their surviving spouse can also claim a survivor benefit. There is no limit to how many people can collect on one work record!

In most cases, you will not need to notify SSA of the death. That is usually handled by the funeral home. If you already receive benefits as an ex-spouse, your benefit will automatically be changed to the survivors benefits after the SSA receives the report of death.

Unfortunately, a surviving divorced spouse who was not already receiving spousal benefits cannot apply online to initiate survivor benefits. You should contact the Social Security Administration at (800) 772-1213 to request an appointment to start the filing process.

How is my social security taxed?
Unless your total income is less than $25,000 for an individual or $32,000 if you're remarried and file jointly, you will have to pay taxes on a portion of your Social Security benefits. The amount you will be taxed on is as follows:

- If you have income between $25,000 - $34,000 for an individual or $32,000 - $44,000 for a couple, up to 50 percent of your benefit will be taxed.
- If you have income of more than $34,000 (individual) or $44,000 (couple), up to 85 percent of your benefit will be taxed.

Also keep in mind that 12 states collect taxes on Social Security benefits. These states are Colorado, Connecticut, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, Rhode Island, North Dakota, Vermont, and Utah. The actual amount and calculation each of these states uses varies greatly, so it's best to work with your accountant or do some research regarding the taxation of benefits in the state you reside.

Can I work and receive social security?
The short answer is yes, you can work and receive your benefits. However, if you haven't yet reached FRA, there are some things to consider.

For those that haven't yet reached full retirement age and are working, not only will you receive a permanent reduced benefit for taking early benefits, but if you earn over $18,960 (in 2021), your benefits will be temporarily reduced further. Social Security will reduce $1 of every $2 you earn over that threshold. If you work during the year you reach FRA, that deduction is $1 for every $3 you earn over $50,520 until the month you reach full retirement age. However, the benefit that is withheld isn't gone forever as it will be added back to your benefits after you reach full retirement age.

If you have reached your FRA and are working, you can collect your full benefit amount without the temporary reduction.

What is the Government Pension Offset and how does it affect the amount I can collect?
The Government Pension Offset (GPO) is a Social Security rule that affects workers with government pensions who also receive Social Security spousal and survivor (which includes ex-spousal and ex-survivor) benefits. This provision most commonly affects teachers, law enforcement workers, firefighters and other government employees who have not paid into the Social Security system.

If you are receiving a pension based on work you have done for these government organizations, your ex-spousal benefit will be reduced by two thirds of your pension benefit. There are some exceptions to this rule, so make sure to consult with SSA to confirm.

Keep in mind that GPO only affects your benefit if you are drawing a pension off your own government work.

What is the Windfall Elimination Provision on ex-spousal benefits?
If your ex-spouse is receiving a pension from an employer who didn't withhold Social Security taxes and qualifies for Social Security benefits from work in other jobs which did withhold Social Security taxes, his/her Social Security benefits will be recalculated to a reduced amount under the Windfall Elimination Provision (WEP). If you are then collecting ex-spousal benefits off their work record, your benefit will be indirectly reduced because of WEP.

It is important to note that WEP only affects spousal and ex-spousal benefits. However, when your ex-spouse passes away, the reduced WEP formula will no longer apply if you receive benefits as a surviving ex-spouse.

What documentation do I need to bring to collect?
The Social Security Administration will need the following pieces of information to start the process.

- Proof of your US citizenship or legal immigration status
- Your birth certificate or other proof of birth
- Marriage certificate
- Divorce decree
- Ex-spouse's SSN
- US military discharge paper(s) if you had military service before 1968

For more information on the process, go to www.SSA.gov or call (800) 772-1213.

Look into your benefits no matter what
Social Security may be a significant source of income to many divorced individuals in retirement. When planning for your retirement years, it's important to understand the variables involved and what you may expect to receive.

It is also important to analyze the facts and then set a strategy to get the maximum benefit given your individual situation. Even if you think your own benefit will be the higher amount, it is worth it to double check with the SSA especially if you learn that your ex-spouse has passed away, making you eligible for survivor benefits rather than just spousal.

Most people need help navigating all the complexities of social security. Reach out to a knowledgeable professional to understand your options. Starting the conversation with a financial advisor who is experienced in the nuances of divorce is critical to maximize the money you receive from social security. Email TheNextChapter@bdfllc.com for my Social Security After Divorce whitepaper.

**Heather founded the National Divorce Practice Group at CORIENT Private Wealth. Heather helps divorcing men and women find the right fit attorney and educates the team on the tax and long-term financial implications of potential settlements. The CORIENT SettleSmart® analysis gives clients clarity and confidence to end their case based on their attorney's recommendation at the appropriate time. Heather and her team implement the Marital Settlement Agreement and manage client's investments to provide the cash flow and growth they need to fund their future.*

Heather has been named a Best-In-State Wealth Advisor by Forbes, a Five Star Wealth Manager according to Chicago Magazine, and a Top 200 Wealth Advisor Mom by Working Mother.

She has contributed to various publications such as The Wall Street Journal, Crain's Chicago Business, ISBA Family Law Newsletter, Family Lawyer Magazine, and Divorce Magazine on topics ranging from how to protect an estate during a divorce to key financial considerations before signing a divorce settlement or pre-nuptial agreement.

Alcohol Monitoring in Georgia Divorce Cases: Navigating Custody and Sobriety

*By Chris Beck**

Divorce cases in which one of the parties accuses the other of abusing alcohol present unique challenges for Family Law Practitioners and Courts alike. Establishing an appropriate parenting plan and safety plan balancing a parent's right to custody and visitation with concerns about their alcohol consumption requires meticulous consideration of the best interests of the child.

This article explores the utility and value of alcohol testing devices[1] in Georgia divorce cases, including the legal framework, implications for custody determinations, and practical considerations for Family Law Attorneys and Judges.

Historically, Courts have restricted parental access to children to protect them from the risks associated with a parent's alcohol abuse or dependence, now known clinically as Alcohol Use Disorder (AUD)[2]. At the least restrictive end of the spectrum, Courts ordered parents to refrain from drinking alcohol before and during visits with children. Noncompliance would lead to more restrictive visiting conditions.

Where a divorcing parent's alcohol use was more poorly controlled, only supervised visitation was permitted. In divorce cases involving alcohol abuse severe enough to interfere with the person's employment or involve DUI arrests or violence, any consideration of child custody or visitation might be conditional on their successful compliance with an alcohol treatment or rehabilitation program and random alcohol testing.

These tactics were the only ones available to Courts facing the difficult task of maximizing a child's safety and preserving their relationship with an alcohol-dependent parent to the extent that was possible. The effectiveness of each of these measures depended on the accuracy and reliability of reports submitted to the Courts by third parties, counselors, visitation supervisors, or testing laboratories.

However, these methods of obtaining information about a parent's alcohol use were of limited value because they detailed only isolated events. Counselors and visitation supervisors reported what they observed or deduced during parent meetings or visits with the child. Typical laboratory urine tests conducted on a random basis can fail to detect alcohol unless performed within 12 hours to a few days of the person's drinking.

In the past several years, significant advances in alcohol monitoring technology have made new tools available that improve the quality and reliability of information about a person's alcohol use to Courts and Family Law Professionals. These devices provide secure, accurate, tamper-proof data that measures and transmits a record of the subject's alcohol use on a continuing schedule as frequently or infrequently as the Court or the parties decide.

In 2024, alcohol monitoring devices can transmit real-time results to multiple contacts by text and periodic summaries to designated parties on any customized email schedule. The devices are portable and easy to operate. They use facial recognition technology to ensure the integrity of the test and include tamper detection sensors that record any attempt to interfere with the device's integrity.

The technology may seem novel, but it's been in use for well over a decade and is being embraced by more Family Law Practitioners and other professionals every day. There are approximately 300 Georgia professionals already relying on the improved accuracy and convenience portable alcohol testing devices provide. Clients who choose to use the device, or are ordered to do so, favor the technology over the inconvenience of reporting to a lab for testing. They also value their ability to demonstrate their sobriety through fixed testing schedules.

1 Information about alcohol testing devices can be found at https://www.soberlink.com/alcohol-monitoring-technology

2 Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5)

The industry-leading alcohol testing device provider, Soberlink[3], attended 230 state bar conferences throughout the country in 2023, including nine Georgia State Bar-sponsored conferences, showcasing their portable monitoring units' ease, efficiency, and reliability.

The Legal Framework

A. The Best Interest of the Child

Georgia law prioritizes the child's best interest in the Family Court's determination of which party to the divorce will have legal custody and who will have primary physical custody of the child. O.C.G.A. § 19-9-3 outlines factors that Judges must consider when determining custody. While alcohol abuse is itself a statutory factor, it can also influence a Judge's consideration of several other relevant factors:

- The emotional ties between each parent and the child – Alcohol abuse can affect a parent's emotional availability and stability.
- Each parent's ability to provide a stable, nurturing environment – Ongoing alcohol abuse often disrupts a stable home environment.
- Each parent's mental and physical health – Alcohol abuse often has negative consequences for both physical and mental health.
- Each parent's past performance and relative abilities for future performance of parenting responsibilities – Alcohol abuse usually affects a parent's ability to perform their parenting responsibilities adequately.

B. Alcohol Monitoring Orders

To address concerns about alcohol abuse, Courts may issue alcohol monitoring orders. While a Family Court's oversight of a divorcing parent's alcohol abuse and recovery[4] can continue to include traditional orders, like enrollment and compliance with an alcohol treatment program and counseling, random hit-or-miss alcohol-targeted urine test are made obsolete by the new portable, electronic alcohol monitoring units that transmit results in real-time to any designated party.

Whether ordered by the Family Court Judge as a condition of visitation or part of a permanent arrangement agreed between the parties, a parent being

3 Learn more at https://www.soberlink.com/divorce/family-law

4 Learn more at https://www.soberlink.com/addiction-recovery-blog/5-ways-soberlink-will-positively-impact-your-recovery-journey

Past Section Chairs

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Leigh Cummings.....2021-22
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Ivory Brown 2019-20
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Randall Mark Kessler.....2011-12
Kenneth Paul Johnson.....2010-11
Tina Shadix Roddenbery.....2009-10
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Nancy F. Lawler.....1995-96
Richard W. Schiffman.....1994-95
Martha C. Christian.....1993-94
John C. Mayoue.....1992-93

monitored can test daily, 7 days a week, or multiple times per day, during their co-parenting[5] periods. The instant transmission of accurate alcohol-use data provides reassurance to a concerned parent, allows the testing parent to demonstrate sobriety on schedule, and delivers reliable and secure data to the Court and the parties' Family Law Attorneys.

Implications for Custody Determinations

For a parent facing alcohol monitoring, demonstrating sobriety is paramount. Compliance with monitoring orders can signal a commitment to sobriety and responsible parenting.

Family Law Attorneys should advise their clients on the importance of consistent testing. Adherence to testing schedules is crucial, as is proper implementation. Missed tests or positive results can be detrimental.

If ordered, active participation in alcohol treatment programs or counseling is essential. Demonstrating positive behavioral changes and a commitment to personal growth can strengthen a custody case.

Family Law Judges face a delicate balancing act when considering alcohol monitoring results. While sobriety is a critical factor in custody determinations, Courts also consider consistency. Sustained sobriety over time is more persuasive than short-term abstinence.

Choosing the Right Monitoring Technology

Selecting the appropriate alcohol monitoring technology is crucial. Soberlink has established itself as the dominant technology in the field by surpassing other providers' performance in key areas most important to divorce and child custody litigants and Courts.

Accuracy - A study published in 2022 revealed the Soberlink device "uses a professional-grade fuel cell sensor to detect alcohol levels at an accuracy of +/- 0.005 BAC." [6]

Convenience - Both parties should find the monitoring process manageable. Soberlink's compact size and portability enable simple and discreet testing with connectivity to Apple or Android smartphones to send instant test results either by WIFI or cellular signal.

Admissibility - The fuel-cell sensor technology used in remote breathalyzer devices has been admitted into evidence in all 50 states since 2011, including both states applying the Daubert[7] standard and those still using the Frye[8] standard.

The acceptance of remote alcohol monitoring technology has been swift throughout the United States. More than 200 Georgia residents are currently using the Soberlink system monitoring devices - some by agreement of the parties and others by court order as a condition of visitation with a child.

In the past, Family Court Judges granting joint or exclusive custody, or liberal or limited visitation, often needed to rely on imprecise data from third parties to assess a parent's degree of sobriety. Today, those judgments can rest upon an easy-to-read, reliable report that accurately details a continuing series of test results recorded remotely on a designated schedule.

**Chris Beck is the VP of Business Development for Soberlink Healthcare. Chris' primary responsibilities include working with Family Law Judges, Attorneys, and Health Care Professionals across the country to educate them on Soberlink's modern approach to alcohol monitoring for Child Custody Cases. He has led over 25 1-hour educational presentations and continues to find new opportunities to raise awareness around alcohol monitoring and child safety.*

Over the last four years, Chris has been fortunate to share his advocacy for kids through his education initiative with Family Law Professionals across the country. Due to these efforts, Soberlink has seen a significant rise in education over the last two years, helping position the system as an essential tool in every Family Law practice.

Chris holds a BA in Psychology from the University of California Irvine with an emphasis in child psychology.

5 Find 17 co-parenting tips at https://www.soberlink.com/family-law-blog/17-co-parenting-tips

6 Preliminary Effectiveness of a Remotely Monitored Blood Alcohol Concentration Device as Treatment Modality: Protocol for a Randomized Controlled Trial, by Frank D Buono, Colette Gleed, Martin Boldin, Allison Aviles, and Natalie Wheeler (Pub. Jan. 14, 2022) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8800086/#:~:text=The%20Soberlink%20device%20consists%20of,accuracy%20of%20%2B%2F%2D0.005%20BAC.

7 Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)

8 Frye v. United States, 54 App. D.C. 46; 293 F. 1013 (1923)

Case Law Update

*By Vic Valmus**

JUVENILE COURT TRANSFER/CHILD INTERVIEWS/ TRANSCRIPTS

In the Interest of T.D., et al., Children (Mother).;
A24A0371 (February 21, 2024)

The parties were divorced in 2018 with the Mother awarded primary custody of three minor children. Thereafter, the Juvenile Court placed the oldest child (T. D.) in the temporary custody of the Father as part of a delinquency proceeding. In 2022, the Father petitioned the Superior Court to modify custody of all three children, alleging that the delinquency proceedings constituted a material change in circumstances. The Superior Court transferred the Petition to Juvenile Court. The Juvenile Court interviewed each child individually, in the presence of counsel, but these conversations were neither recorded nor transcribed. After the hearing, the Juvenile Court found there had been some physical and emotional abuse of the children by the Mother and two of the children expressed the desire to live with the Father. The Court did not want to separate the children and awarded primary physical custody of all three children to the Father, set visitation for the Mother, and ordered her to pay $866.00 per month in child support and 75% of the uncovered medical expenses. The Mother filed a Motion for New Trial and while the Motion was pending, the Father filed a Motion for Contempt alleging that the Mother had failed to return one of the children after her custodial time. The Father also filed an Emergency Motion to suspend the Mother's visitation with one of the children, alleging the police had been called after the Mother had beat B.D. with a belt and he fled to a neighbor's house. The Trial Court suspended visitation until further order of the Court and appointed a Guardian Ad Litem. The Mother appeals and the Court of Appeals affirms in part and remands in part.

The Mother first argues there was insufficient evidence for material change in circumstances to consider modification. Here, the Juvenile Court custody determination was based, in part, on its unrecorded interviews with the children. However, without a transcript of interviews, we must presume the evidence supported the Trial Court's ruling. The Mother argues that unrecorded in chamber statements with children which are not placed on the record by the Trial Court cannot be used to uphold an award of custody and any statements not made on the record cannot be used to support the Superior Courts ruling. This case, however, was heard in the Juvenile Court and accordingly the rules pertaining to Juvenile Courts apply. Even though the case originated in the Superior Court, the Juvenile Court shall proceed to handle the matter as though it was an action originated under the Juvenile Code. Therefore, a party who acquiesces in this procedure in the Juvenile Court waives the recording of the in chambers interview, and the Juvenile Court may rely on the testimony from the interview in issuing its ruling. Even if the custody ruling had been made in the Superior Court, the Mother had no cause to complain. The Court asked counsel for the Mother if they were requesting the interviews to be recorded and the Mothers attorney stated "I'm okay with not having it recorded." Under these circumstances, the Mother did not simply acquiesce in the procedure, she chose it. A party cannot be heard to complain of an error induced by their own conduct.

The Mother next argues that the Juvenile Court erred by failing to include the Father's supplemental self-employment income in the child support calculation. The Father testified that he had a gross income from his employment of $100,700.71 and he also earned around $7,500.00 for his side jobs. However, in calculating the Father's gross income, the Juvenile Court only considered his income from his primary employment. Therefore, this part of the Order is reversed and remanded to recalculate the child support. The Mother next argues the Juvenile Court erred by ordering her to pay 75% of the children's uncovered medical expenses. Under Georgia Law, the child's uninsured health care expenses shall be the financial responsibility of both parties and shall be divided between the parties pro rata unless otherwise specifically ordered by the Court. At the hearing, the Father expressed skepticism about the necessity of some of the child's medical expenses. In the absence of a transcript of the interviews, there could have been evidence regarding medical issues within the interviews of the children. Therefore, we cannot say requiring the Mother to pay 75% of the uncovered medical expenses was an abuse of discretion.

Finally, the Mother argues that the Trial Court erred by suspending her visitation with the children until further order of the Court. However, at the hearing for the emergency motion to suspend the Mother's visitation, the Mother's lawyer requested a continuance to subpoena her own witnesses. The Court responded that "I will grant your continuance, but during the continuance all three children will remain with the Father and the Mother shall have no visitation." Thus, the Mother invited the suspension of her visitation by seeking a continuance.

LEGITIMATION/HABEAS CORPUS

Davis v. Taylor; **A23A1384** (February 13, 2024)

A child was born to Davis (Mother) in 2009 and Taylor is the biological Father, but the parties were never married. The Father was involved in the child's life since her birth. In September, 2021, with the Mother's knowledge and permission, the child began to live with the Father. In November, 2021, the Mother told the Father to return the child to her, but the Father refused to do so and on December 1, 2021, the Father filed in the Superior Court of Fulton County a Petition to legitimate the child and award him custody and parenting time. Shortly thereafter, the Mother filed in the Superior Court of Gwinnett County a Writ of Habeas Corpus and Emergency Motion for the Child's Return. An Order was issued on December 10, 2021 ordering the child returned instantaneously to the sole custody of the Mother and providing that the Father shall take no action to interfere with the Mother's rights to sole custody of the child until and unless a Court of competent jurisdiction grants an order allowing the Father custody or parenting time with the child. At that point, the child was returned to the Mother. Afterwards, the Mother filed an Answer opposing legitimation, a Counterclaim for Modification of Child Support from the Father, and a Motion to Dismiss the Father's Petition. The Mother argued that the Gwinnett Habeas Order barred the Father's legitimation petition and that the Trial Court should not legitimate the child because the he had abandoned his opportunity interest in developing a relationship with the child. The Trial Court denied the Mother's Motion to Dismiss and a Guardian Ad Litem was appointed.

An Interim Order allowing the Father parenting time with the child was entered for the express purpose of facilitating the Guardian Ad Litem's investigation into the custody award. The Trial Court denied the Mother's request for a certificate of immediate review of the Interim Order. In late November, 2022, the Mother stopped allowing the Father to exercise parenting time with the child. The Mother filed a Motion to Suspend Parenting Time, alleging that the Father had physically attacked the child, but the Court denied the Motion. A final hearing was held on January 31, 2023. At trial, the Guardian Ad Litem opined that the legitimation of the child was in the child's best interest and recommended the Father have primary custody due to concerns that the Mother was alienating the child from the Father. On February 1, 2023 the day after the bench trial, the Court entered an Order to legitimate the child. On February 7, 2023, the Court entered a Final Order and, among other things, designated the Father as the child's primary custodial parent and awarded the Father child support and attorney's fees. The Mother appeals and the Court of Appeals affirms.

The Mother argues, among other things, that the Trial Court erred in awarding primary custody of the child to the Father because the earlier Habeas Order barred the Trial Court from adjudicating the issue of custody and the Father had not satisfied the statutory requirements of a custody modification. The Court finds no merit in the Mother's argument and that, under principals of res judicata or collateral estoppel, the Trial Court was precluded from deciding the issue of custody raised in the legitimation case because another Court had adjudicated custody in the Habeas proceeding. The two Courts adjudicated different issues. The Gwinnett Habeas Order, decided a very narrow question regarding custody – whether the Mother had lost that right. A child's legal custodian may seek a Writ of Habeas Corpus under O.C.G.A. §19-14-2, as the Mother did, to enforce her custodial rights to a child denied by another. Here, the Mother had a prima facie right to custody of the child at the time of Habeas proceeding. So, the Habeas Court considered only whether the Mother had lost her custody rights, not whether a different custodial arrangement would be in the child's best interest. The question of the child's best interest was not an issue in Habeas proceeding, so the ruling in the Habeas case did not bar the Trial Court in this legitimation action from administrating the best interest standard under O.C.G.A. §19-7-22(g).

The Mother also mischaracterized the Habeas Order as an initial determination of custody between her and

the Father that occurred less than 2 years earlier. The Mother argues that the Father was required to, but did not, satisfy the statutory requirement for a custodial modification which requires a material change of condition or circumstance of the party or the child. When there has been no previous adjudication of the custody, the change in condition analysis should not be used. As previously discussed, the Habeas Court only adjudicated the issue of whether the Mother had lost her right to sole custody of the child and not the issue of whether another custodial arrangement was in the child's best interest and therefore, the Mother's characterization of the Habeas Order as a previous adjudication of custody which invoked the statutory requirements of O.C.G.A. §19-9-3(b) does not apply. But even if the material change in condition analysis applies here, this Court cannot imagine a situation in which a legitimation of a child would not constitute a change of material condition or circumstances of either the child or the parent.

RESTRICTIVE SPEECH/THIRD PARTY CONTEMPT

Yntema v. Smith; and Yntema v. Smith; **A23A1562** and **A23A1660** (March 12, 2024)

The parties were divorced in 2010 and the Father was awarded primary custody. In 2016, the Mother had a no contact order and, in 2017, filed for modification. The Father remarried and his wife's name was Kitty. At a temporary hearing, the Mother and Father entered into a Consent Order to resolve the issues. Kitty was present at the hearing and was notified by the Trial Court of the Temporary Order. In pertinent part, the Consent Order provided that the Father and Kitty have no contact or communication with the children for at least 90 days, and contained a nondisparaging clause restricting the Father, Mother and Kitty from speaking negatively about each other in the custody litigation except in a therapeutic setting. The conditions said that neither party nor their spouse shall post, re-post, forward or re-tweet on social media any information about past, present or future litigation, or disparaging information about the other party or their spouse. In October, 2022, the Mother filed a Motion for Contempt against the Father alleging certain violations of the Order by the Father and Kitty. In particular, Kitty was alleged to have communicated negatively about the litigation with a friend.

The following month, Kitty received a witness subpoena directing her to attend a November 18th hearing and bring all the records of any communication about the case including texts, emails and social media posts. Kitty filed a Motion to Strike the paragraphs 28 and 29 of the Consent Order as they applied to her. Kitty did not challenge the other provisions restricting her ability to speak. Following the hearing in February, 2023, the Court denied Kitty's Motion to Strike paragraphs 28 and 29 of the Consent Order. The Trial Court issued a certificate of immediate review. In April, 2023, Kitty filed her Notice of Appeal. After Kitty filed her Notice of Appeal, additional proceedings occurred. Following the hearing in May, 2023, the Trial Court made an oral finding of Contempt against Kitty, but reserved punishment until after the Appeal was resolved. A written Order entered in May, 2023 found that Kitty and the Father acted in concert to violate the Consent Order. It ordered the incarceration of the Father for 90 days, but it did not contain any penalty for Kitty. Kitty appeals and The Court of Appeals affirms in part and reverses in part.

Kitty first argues the Trial Court erred by enforcing the Consent Order against her because she was not a party to the proceedings and lacked sufficient notice that she could be held in contempt for violating the Consent Order. As Kitty correctly points out, the Consent Order was entered in custody proceeding in which she was not a named party and she was not directly involved in negotiating the provisions that applied to her. Although she received the subpoena to appear as a witness at the contempt proceeding against the Father, Kitty herself had not received a Rule Nisi notice informing her of the need to defend herself against her own alleged contempt with respect to the Consent Order. The record is plain as to Kitty's notice of, and ability to challenge, those provisions, and she was represented by counsel at the hearing devoted to the issue in the February, 2023 Order. Therefore, the review is confined to the merits of the Motion to Strike paragraphs 28 and 29.

Kitty argues that paragraphs 28 and 29 of the Consent Temporary Order are constitutionally inadmissible because they cannot sustain the exacting scrutiny applied to prior restraints on speech. Prior restraints on speech, such as this Order here, are not unconstitutional per se, but they bear a heavy presumption on their constitutional validity. The Court thus carries a heavy burden of showing justification for the imposition of

such restraint. Any attempt to affect a prior restraint is subject to exacting scrutiny. Courts have the authority to make prohibitive or mandatory orders with or without notice or bond and upon such terms and conditions as the Court may deem just, which include requiring the parties in a divorce proceedings to refrain from making derogatory remarks about the other before the children; and because contempt powers can extend to non-parties who are nevertheless involved in the litigation, there was no error in the Trial Court's restriction on Kitty's ability to criticize a party or spouse that is involved in litigation or interfere with the children's bond with the Mother. Therefore, to the extent that paragraphs 28 and 29 reach such conduct, they survive Kitty's Motion to Strike.

However, paragraphs 28 and 29 go farther. For example, paragraph 28 forbids Kitty from discussing the litigation with anyone at any time outside of the therapeutic context. This prohibition on its face limits discussion with counsel or other unrelated people regardless of any negative content in the communication. Because this is a facial overbroad restriction that is not calibrated with the danger to flow from the particular utterance, we concluded that the extent that the restriction does not implicate harm to the children or their relationship, the Trial Court erred by denying Kitty's Motion to Strike this kind of restriction. Therefore, to the extent that the Consent Order restricts Kitty's ability to criticize the parties involved in the litigation or otherwise undermine the efficacy of proceedings, we affirm the denial of Kitty's motion. To the extent that the Order reaches speech by Kitty in a context that does not undermine the outcomes or the efficacy of the proceedings in any way and does not impact the children's ability to bond with the Mother, we reverse the denial of Kitty's Motion to Strike. Even though this is a win for Kitty, it is a narrow one and Kitty should be guided by the spirit of the Trial Courts Order if not every letter. The Father appeals from seven orders pertaining to the finding of contempt against him. The Father argues, among other things, that the Trial Court erred by issuing a Contempt Order after Kitty had filed her Notice of Appeal challenging the restriction in her speech. However, the Father never appealed the Temporary Consent Order. Here, the judgment on appeal is Kitty's case and Kitty's case was a denial of her Motion to Strike the unconstitutional portions of the Consent Order as they applied to her. The Father did not move to strike the Consent Order nor did he appeal applicability. The Notice of Appeals supersedes only applies to the judgment appealed. It does not deprive the Trial Court of jurisdiction as to other matters in the same case not affected by the judgment on appeal. Further, it is important to note that the Order at issue was a Temporary Consent Order.

The Father argues, among other things, that the Trial Court erred by entering an Order sealing the record. With respect to sealing the entire record without prior consent of the parties, the Courts must follow the procedure outlined in USCR 21. USCR 21 is a balancing analysis between the harm resulting in the privacy of a person which could outweigh the public's interest. Here, it is undisputed the Trial Court did not engage in this process and therefore, the Order sealing the records not consented to by the parties is remanded for further proceedings in accordance with USCR 21. Next, the Father argues the Trial Court erred when it consulted with an independent expert. At one point in the hearing on the Motion by the Mother seeking visitation reunification, the Trial Court indicated that it had arranged a telephone conversation with Dr. Barry Alexander, an independent psychologist who was under consideration to take over the reunification therapy. However, no objection was made at the time by either of the parties. Therefore, the Father's counsel made no objection to the Court's consultation with Dr. Alexander. Based on this record, including the oral notice to the parties about the telephone conference, the upcoming role of Dr. Alexander in the process and the lack of objection by the Father, we discern no basis for reversal. Nevertheless, we note that such communications are ill-advised and potentially in violation of the code of judicial conduct Rule 2.9.

SOLE CUSTODY/NO VISITATION

Beall v. Beall; **A23A1549** (January 26, 2024)

The parties were married in 2013 and began to adopt a newborn in July, 2019. In November, 2019, the Father began to have an extramarital affair with B. The adoption was finalized on December 18 and on December 28, the Father announced he was moving out of the marital residence and moving in with B. Later, the Father moved back in the marital home to try to reconcile with the Mother, but B threatened to kill herself by taking several antidepressants and grabbing a gun from the Father. A few days later, the Father moved back into B's home. In the Temporary Order, the Mother had primary custody and the Father had visitation for 2 hours each

week, but the minor child was to have no contact with B. At the final trail, the evidence included that the Father was using steroids and human growth hormones, and had undergone a radical personality change since he met B; that the Father attempted to reconcile with the Mother, but it ended when B attempted to take her own life; and that the Father renounced his faith and became completely estranged from his family. The Trial Court further found that on multiple occasions, the Father had disregarded the Consent Temporary Order prohibition of contact between the child and B. In addition, the Father covered the Mother's ring doorbell camera with black tape, even when warned not to do so by the Court. After the Trial Court determined the Father's first priority was with B and not his child, the Trial Court found that the Mother should have sole custody of the child and the Father should not have any visitation with the child, and found that supervised visitation would be inappropriate. Because of the Father's unwillingness or inability to spend time with the child without B, it would only prolong the conflict. The Father appeals and the Court of Appeals reverses.

The Father argues the Trial Court abused its discretion by denying him any parenting time with the child. The Supreme Court has repeatedly stated that a divorced parent has a natural right to access to his child and only under exceptional circumstances should the right or privilege be denied. The Trial Court abuses its discretion if it denies a parent visitation rights without considering whether less extreme arrangements, including supervised visitation, could be instituted to satisfy the Trial Court's concerns. Here, the Trial Court's decision to grant the Father no visitation rather than supervised visitation was based on the Father being unwilling or unable to spend time with the child without involving B. But there is no evidence in the record to support a finding that limiting the Father to supervised visits would be insufficient to prevent contact between the child and B. The Trial Court was authorized to expand restrictions into a permanent ban only if there was evidence that contact with B would be harmful to the child. Nothing in the record suggests that the Father and B engaged in any inappropriate conduct in the presence of the child or that the child was aware of B's purported improper behavior on her social media posts or that mere exposure to B would be harmful to the child. The Trial Court did not find that the Father was an unfit parent to the child and there was no evidence that any of these additional issues had any effect on how the Father interacted with the child and were not exceptional circumstances that would justify denying the Father all access to the child. The primary consideration in determining visitation issues is not the sexual mores or behavior of the parent, but whether the child will somehow be harmed by the conduct of the parent. The focus must be on the needs of the child, not the faults of the parents. Therefore, the Order is vacated relating to custody and remanded for the appropriate award of visitation rights to the Father.

SPOILATION OF EVIDENCE/EXPERT TESTIMONY/QUANTUM MERUIT

Cordial Endeavor Concessions of Atlanta, LLC v. Gebo Law, LLC; **A23A144** (February 8, 2024)

Gebo Law filed a verified complaint against Cordial asserting he provided legal services to Cordial for 5 years without receiving payment and seeking damages in a quantum meruit theory. The Court granted summary judgment to Gebo on the issue of liability, holding that Gebo was entitled to recover reasonable fees for legal services provided to and accepted by Cordial. Thereafter, the case proceeded to a jury trial on issues of damages and the jury returned a verdict in favor of Gebo in the amount of $1.15 million. The Court entered a judgment for Gebo in that amount. Cordial appeals and the Court of Appeals confirms.

Cordial argues that the Trial Court erred in failing to give the jury instruction on spoilation of evidence. The term spoilation is used to refer to destruction or failure to preserve evidence that is relevant to the contemplated or pending litigation. The duty to preserve relevant evidence must be viewed from the prospective of the party in control of the evidence and is triggered not only when litigation is pending, but when litigation is reasonably foreseeable to that party. Here, the evidence at issue in this case consists of notes made by Gebo's sole member, attorney Carl Gebo, detailing the date, length and time of the description of the legal services that had been provided to Cordial. Gebo explained that it was his practice to create detailed invoices based on those notes after which he would discard the notes, and that he believed the payment would be forthcoming from Cordial so he did not contemplate or anticipate any litigation. Gebo eventually filed suit only after the invoices had been provided to Cordial and there had been months of unsuccessful discussions concerning payment. The Trial Court was authorized to conclude

that, when viewed from Gebo's perspective, the duty to preserve the notes was not triggered because no litigation was contemplated at the time the notes were discarded after they had been used to create invoices pursuant to Gebo's normal practice. Even though Cordial claims there is other evidence purportedly showing that Gebo could have reasonably foreseen the litigation, such conflicts in evidence were matters for the Trial Court to resolve.

Therefore, since there was evidence that Gebo did not contemplate litigation when following his practice of discarding notes after memorializing them in invoices, the Trial Court did not abuse its discretion in denying Cordial's spoilation motion. Cordial next argues that the Trial Court erred in precluding his expert from opining about Gebo's purported violation of Georgia Rule of professional conduct 1.5(b), which concerns communication with a client about the basis or rate of fees or expenses. Pursuant to O.C.G.A. §24-7-702, to determine whether expert testimony should to be admitted is a question committed to the sound discretion of the Trial Court. In determining whether expert testimony is relevant, the Trial Court must consider the fit between expert testimony and the issues in dispute. Expert testimony is helpful to the tryer of fact only to the extent that the testimony is relevant to the task at hand and logically advances a material aspect of the case. In this case, Cordial's liability was decided on summary judgment and the ruling has not been challenged on appeal. The Court found that such an opinion regarding an alleged ethical violation of Rule 1.5(b) was not relevant to the sole issue of damages that was before the jury under Gebo's quantum meruit theory. The reasonable value which the provider is entitled to recover in quantum meruit is not the value of the labor, but the value of the benefit resulting from such labor to the recipient. Therefore, we cannot say the Trial Court abused its discretion in concluding that an expert opinion as to whether Gebo had committed an ethical violation of Rule 1.15(b) was irrelevant because it did not fit the sole issue to be determined, i.e. the value of the benefit received by Cordial.

STALKING TPO

Everett v. Parker; **A23A1534** (March 5, 2024)

Everett is Parker's wife's stepfather and he appeals the 12-Month Stalking Protective Order preventing him from coming around or contacting Paul Parker. Parker filed a Petition for Stalking Temporary Protective Order alleging that Everett had surreptitiously installed a tracking device on Parker's vehicle and the Trial Court issued an Ex Parte Stalking Temporary Protective Order on March 10, 2023, for which a hearing was held on March 28, 2023. At some point in 2022, Parker filed for divorce, after which his Wife obtained a Protective Order against him. Parker had supervised visitation of the couple's daughter and during one such visit at the roller-skating rink, Parker left his cell phone recording in his vehicle. When he viewed the recording after the visit, Parker noticed Everett driving through the skating rink parking lot, parking at an adjacent business, and returning to the skating rink on foot. The recording then shows Everett approaching Parker's vehicle, disappearing from view for approximately 40 seconds and then reappearing and leaving the scene. Thereafter, Parker found a tracking device on his vehicle and reported it to the police. Parker indicated that he had never had any issues with Everett, but that Everett is entangled in Parker's divorce from his Wife and that Everett had attended every court date associated with the case. Everett denied placing a tracking device on Parker's vehicle, but admitted taking photographs of Parker's tag to demonstrate that the plate was actually registered to another vehicle for possible use in his daughter's divorce from Parker. Thereafter, the Court issued a 12-Month Stalking Protective Order. Everett appeals and the Court of Appeals reverses.

To obtain a Stalking Protective Order against Everett, Parker had to prove by preponderance of the evidence that Everett's action caused emotional stress by placing Parker in reasonable fear for his safety or the safety of a member of his immediate family. Here, the record is devoid of any such evidence. Not only did Parker fail to offer any testimony remotely concerning the effect of Everett's alleged allegations, both parties independently testified there had been no issues prior to the encounter at the skating rink lot. Therefore, the record shows no evidence of Everett engaging in a pattern of intimidating and harassing behavior and placing Parker in reasonable fear for his safety. Therefore, the Trial Court abused its discretion in granting the Stalking Protective Order.

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