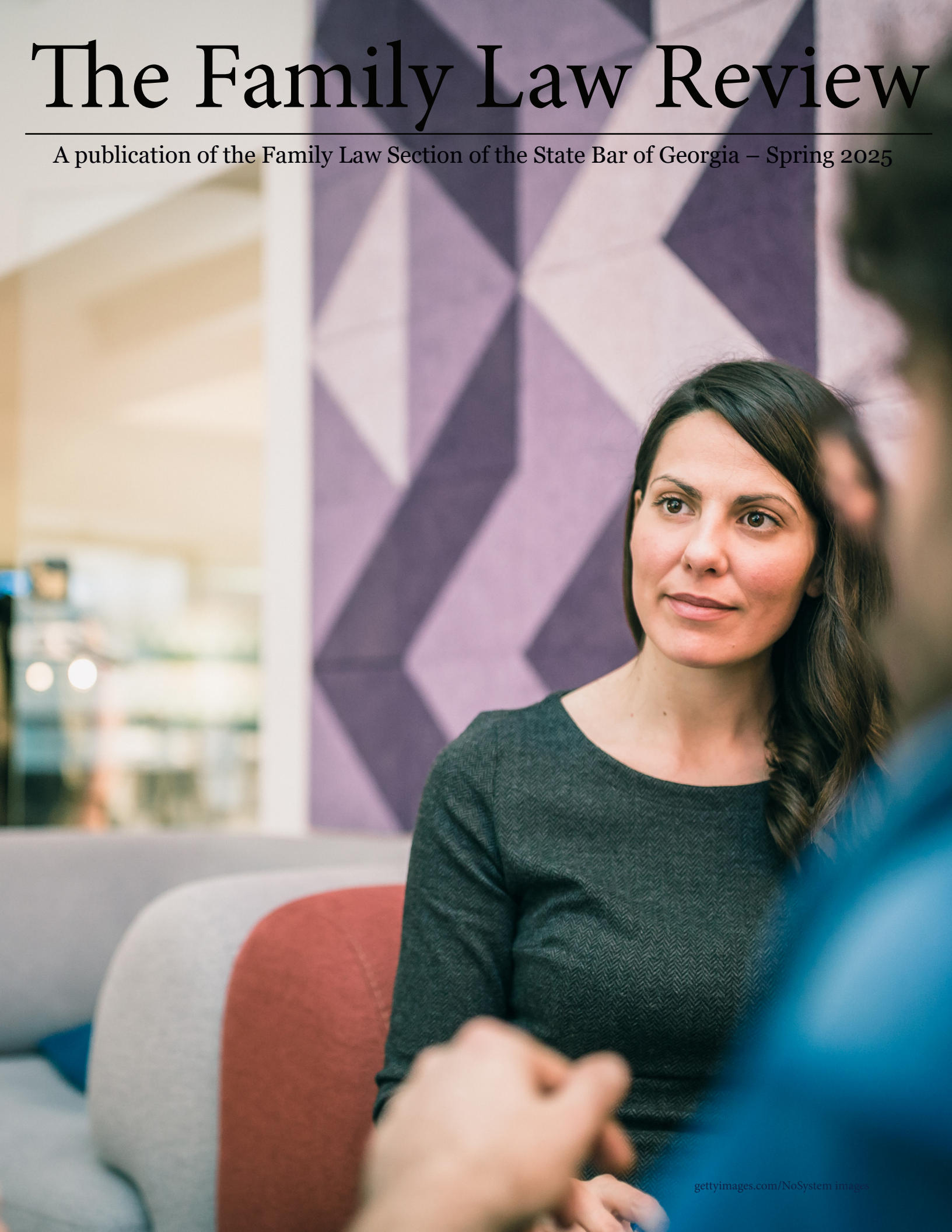
The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Spring 2025



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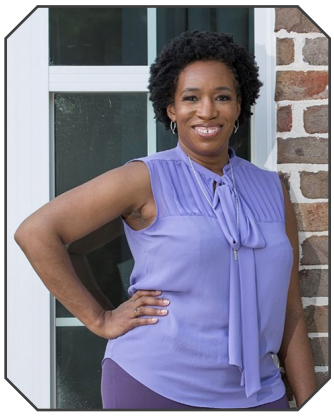
Editor's Corner

By Kem A. Eyo



The Family Law Section of the State Bar of Georgia is proud to provide another issue of the Family Law Review!

The Section is preparing for the 2025 Family Law Institute with great anticipation. This year's FLI is likely to be a highly informative event and enjoyable opportunity to reconnect with your fellow colleagues. Please watch out for communication regarding registering and reserving your rooms as we hope to see as many of you as possible in attendance.

As for the Family Law Review, the content strives to inform practitioners regarding legal issues and provide tools to assist practitioners in educating the family law litigant. Herein, you will find information addressed directly to litigants (information regarding managing investments) as well as information that should prove useful to attorneys (information regarding premarital agreements, separate versus marital claims, guiding clients post-divorce). There are also articles that could be of assistance for mediators and for those dealing with custody evaluations.

I am delighted to share the enclosed with you. I would also like to express gratitude for all of you that have contributed content for the Family Law Review. Please keep material coming. 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. (Even if your submission does not appear in the next immediate FLR, you could be published in a later publication.) You can add to the body of knowledge by contacting me at kem@rbafamilylaw.com.

Editor's Emeritus

By Randall M. Kessler

A quarter of a century into 2025 already? How can that be? I still feel like a kid, or at least like a youngster trying to take it all in. Every day, especially in our world, something new happens. Each case is new, and each new statute and judge makes it imperative that we keep learning and studying. Thanks go to Gary Graham and many others for their work on the new Grandparents' parenting time bill (look for his article in an upcoming edition of the FLR). And a huge shout out to our leaders on the executive committee who keep us moving forward (Jonathan Dunn, Jeremy Abernathy, Jamie Perez, Karine Burney, Erik Chambers, Kem Eyo, Katie Connell, William Alexander, Nilufar Abdi-Tabari, Alex Cutlet, Roslyn Grant Holcomb, Ashely O'Neil, Kevin Rubin, Drew Wilkes and Megan Wyss). The section is thriving and it is wonderful to see. Seminars this year have been great and we have maintained our position as the Family Law leaders in the state. Thank you all again for all you do and for continuing to let me be a part of it.

Inside This Issue

From the Chair

By Jonathan Dunn

As we approach this year's Family Law Institute, I would like to acknowledge the sponsors and efforts of the section members, staff, and volunteers who are working to provide us another slate of stellar programming. I am especially indebted to our Vice Chair, Jeremy Abernathy, Secretary, Jamie Perez, and Sponsorship Subcommittee Chair, Megan Wyss.

Thank you to the sponsors who have already contributed to ensuring a successful 2025 Institute: Rubin Family Law, LLC, Johnson, Kraeuter & Sanders, LLC, Duncan Spratt, P.A., Soberlink,IAG Forensics & Valuation, Oliver Maner LLP, Harrison LLP, Levine Smith Coburn & Koslin, LLC, Frazier & Deeter, Hoelting & McCormack, LLC, Stern Edlin Graham Family Law, P.C. Connell Cummings, LLC, Matthew Lundy Law-QDRO Law, Warner Bates McGinnis & Anthony, The Schachter Law Firm, LLC, Howard Barker Lane, O.C.,The Zagoria Law Firm, Evolve Family Law, LLC, Caldwell, Carlson, Elliot & DeLoach, LLP, Thomson Reuters, MDD Forensics Accounts, 1=3 Consulting, LLC, OurFamilyWizard, Atlanta Divorce and Parent, Bovis, Kyle, Burch & Medlin, Southern First Bank, Gaslowitz Franel LLC, Law Office of Tuggle Law, Bloom Lines, The Gleklen Law Firm, Kaye, Lembeck, Hitt & French Family Law, LLC, J.L. Williamson Law Group, LLC, Hall & Navarro, Neighborhood Mortgage, Inc., Chambers Select, Dupree & Kimbrough, LLP, De Klerk Law & Mediation, Lake Mediation, Portnoy, Ganer & Nail, LLC, Jamie Perez Family Law, LLC, Moore Ingram Johnson & Steele, Synergy Law , Mediation, LLC, and Abernathy, Ditzel, Hendrick LLC.

There is still time for you to join as a sponsor for the 41st Family Law Institute! For more information on how to sponsor, the sponsorship levels and their benefits, please reach out to the Sponsorship Chair, Megan Pownall Wyss, at megan@bcntrlaw.com.

Premartial Agreements and the Young Couple

By Linda J. Ravdin

Not long ago, the typical person considering a marital agreement was older, had been widowed or divorced, and had children. If the prenup were for a young adult, they were invariably the beneficiary of tremendous affluence built by their parents or grandparents. Sometimes, that wealth was in the form of a family business in which the child was - or was expected to become - active. Often, parents wishing to keep their wealth in the family encouraged or even stipulated that their adult child must have a premarital agreement.

As these agreements have gained favor, younger couples entering into first marriages are seeking them with increasing frequency. There are no reliable statis tics to document this trend - or the reasons behind it - but my experience, combined with an informal survey of colleagues, verifies the trend. Why?

- Many of today's young adults had a front-row seat at their parents' divorce and are seeking an alternative to the sometimes bitter fighting that sapped energy and resources from the family. Some have witnessed the tensions over property after the death of a parent or grandparent who was married several times.
- Modern couples are delaying marriage until their early 30s. Some of these more mature young people have established a career, built up assets, acquired a home and retirement benefits, or have become affluent entrepreneurs. A prenup is one way to protect premarital assets.
- These agreements have gained wider acceptance generally. The notion that a prenup signals a lack of faith in the future of the marriage has begun to fade. More and more, people getting married are able to contemplate a premarital agreement while holding on to their belief in romantic love

Validity: Process and Fairness

Whether the parties are young or old, the lawyer for the proponent should seek to meet the highest standards for validity: adequate time for the recipient to consider the terms and hire a lawyer; opportunity to negotiate; meaningful financial disclosure; substantive terms that will not leave a weaker party impoverished at death or divorce.

Some factors that enter into a negotiation when the couple is young include:

- The lawyer may need to take account of the wishes of the client's parents in formulating the terms; sometimes, the true decision-maker is a parent.
- The lawyer for the client's parents may play an outsize role in formulating the terms.
- The client may be naïve about the default rules that apply at death or dissolution. The lawyer may need to take additional time to explain.
- Similarly, the client, or the other party, may be naïve about a premarital agreement as a binding contract and may not take the terms or the process seriously; e.g., may not bother to read it, or may refuse to hire counsel.

4 Special Concerns

There are several key factors the lawyer should take into account when negotiating a young couple's premarital agreement. Here are the most critical.

1. **The couple may have children**. Children change everything. Even if both parents intend to work fulltime, their plans may change. A child may

be disabled or need an unusual level of parental attention. The couple may discover that having a parent at home suits them.

2. **The younger the couple, the longer the timeline**. Thirtyyear-olds getting married today may still be together in 50 years. The agreement must take account of both the divorce and death scenarios after a long marriage.

3. **A provision that fixes the rights of the economically disadvantaged party** at a predetermined level may prove to be grossly unfair to that party if the marriage ends after 20 or 30 years. A spouse may develop health problems and be unable to work. Inflation may erode the value of a fixed cash payment. There are also risks for the wealthier party in fixing an obligation at a predetermined level. If that party loses his or her wealth due to business reverses or bad investments, that will not alter the contractual obligation.

4. **A sharing type agreement, often the most appealing to young couples**, does not always serve the weaker party well. Many young couples like the idea of a premarital agreement that allows each to retain inherited and gifted assets but to share equally in the fruits of their labor. But consider a couple where one is already wealthy and the other will only build a meaningful nest egg through working in a demanding job: An agreement under which they equally divide that nest egg, and where there is no room for a judge to consider the other party's nonmarital wealth, may not be a good outcome.

8 Terms to Consider

1. **Each party, or only the economically weaker party, retains the right to seek alimony at divorce**. Or the agreement provides for a limited duration support waiver: for example, a waiver ends upon the birth of a child or the fifth wedding anniversary.

2. **Each party retains his/her premarital, gifted, and inherited assets and parties share the fruits of their labor**. For parties whose primary objective is to protect nonmarital assets, especially when each has or will have substantial nonmarital property, this can be appealing as it may comport with their ideas about marriage as an economic partnership.

3. **The agreement could single out a specific asset for special treatment,** such as a business, and preclude a spousal claim to share in appreciation - and the costly litigation that goes along with it - while retaining an equal interest in assets acquired from the owner spouse's compensation.

4. **Where there is a big wealth disparity, the agreement could carve out specific rights for the less wealthy spouse during the marriage**, for example, the transfer of a home into joint names, gifts of cash or securities, to enable him/her to build up a nest egg.

5. **The agreement could provide for additional property transfers upon divorce**, or it could provide for exclusive rights to a marital home, with the wealthy party paying the costs that go along with it for a period of time after divorce.

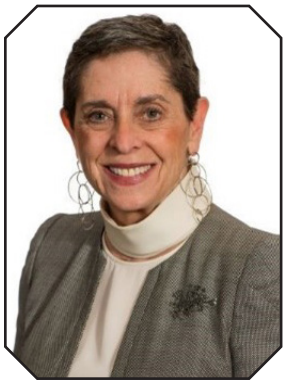
6. **A surviving spouse could retain the right to a pension plan annuity or death benefit** under a 401(k).

7. **The wealthier spouse could agree to create a trust funded at a specified level**, such as 50% of his/her gross estate, and for the survivor to have the

income of the trust during his/her life.

8. **Parties could consider an obligation for life insurance, although this can be tricky**. An adequate amount today may be insufficient in 20 years. If the insured spouse opts for a 20-year term policy, inexpensive for a young spouse, the cost of replacing it in 20 years may be too high. For some couples, life insurance that builds cash value may be a better option.

It's important too that you - as the lawyer for a young party who will enter into a premarital agreement and a first marriage - be mindful of what makes their situation different from that of an older couple and take these special circumstances into account when negotiating and formulating the terms of the agreement.



Linda J. Ravdin retired at the beginning of 2025 after over 50 years of practice, the last 23 of which were with Pasternak & Fidis in Bethesda, Maryland. She focused her practice in divorce and family law for families of all kinds. Linda is the co-author of Domestic Relations Manual for the District of Columbia, the only comprehensive manual on divorce and family law of the District of Columbia. Linda is a nationally known authority on the law of premarital and postmarital agreements and has taught other lawyers all over the United States. She is the author of several books on premarital agreements, including Premarital Agreements: Drafting and Negotiation for the American Bar Association, as well as numerous articles. A lover of theatre, Linda also enjoys skiing, traveling, reading, museums, music, and baking. She is a member of the Board of Trustees of Round House Theatre, the firm's neighbor in Bethesda, and she tries to attend every opening night.

Who Bears the Burden of Proof in Seperate v. Marital Property claims in Georgia?

By Austin Buerlein

We all know the importance of pursuing a client's Separate Property claim in a divorce case. While sometimes a separate property claim can be simple and relatively easy to prove, other times it can be difficult if not impossible to prove.

Take for example, you have a client ("John"), who is getting divorced from his wife ("Jane") after 20 long years of marriage. John currently owns an IRA with a current balance of $200,000. He tells you he owned part of this IRA before he and Jane got married, and it was worth approximately $40,000 on date of marriage. Unfortunately though, John did not save his statements from 20 years ago; and the financial institution that manages the account only retains statements going back five years. Although Jane lacks any articulable evidence to disprove John's claims, she generally disputes that John had a $40k retirement account (or any claims by her husband, for that matter) when they got married, and disputes that John should be entitled to retain $40k (plus accumulated market growth thereon over the past 20 years) as his separate property.
So, what do you do in this situation? What do you say when Jane's lawyer quips, "***PROVE*** that John owned that premarital amount!".

First off, in any event, John would certainly at least have <u>some</u> evidence to support his separate property claims: *his own sworn testimony*. After all, a party's simple testimony is of course a form of *evidence*, which can in-and-of itself establish a fact in dispute. Per O.C.G.A. §24-14-8, "The testimony of a single witness is generally sufficient to establish a fact." The Courts have also repeatedly held/illustrated that a party's testimony alone can be sufficient to support various financial

claims in a domestic relations cases, without any sort of additional documentary or other evidence supporting the testimony[1]. Indeed, testimony alone can even be considered enough evidence to sustain a criminal conviction "*beyond a reasonable doubt*" in a criminal case[2]. Accordingly, John may potentially prevail on his Separate Property claims based solely on his sworn testimony about his pre-marital claim.

Furthermore, as proffered below, contrary to a large majority of other jurisdictions --- and contrary to what most practitioners and judges may assume/believe --- it appears that under Georgia law the party seeking to claim an item of property is marital property bears the burden of proof in a divorce case. That is, in the above hypothetical, JANE bears the burden to DISPROVE John's separate property claims to his IRA (versus the other way around).
Authority on Burden:

Under Georgia law, "Only property acquired as a direct result of the labor and investments of the parties during the marriage is subject to equitable division." Payson v. Payson, 274 Ga. 231 (2001). While it appears that jurisdictions vary on which spouse bears the applicable burden with respect to claims of separate versus marital property, Georgia

1 See generally, Smith v. Carter, 305 Ga. App. 479 (2010) (Holding mother's testimony that she paid for certain expenses for the child was enough to prove those costs, without needing supporting documents); Taylor v. Taylor, 293 Ga. 615 (2013) (testimony by a party she incurred an expense is sufficient evidence in of itself, without supporting documents); Strunk v. Strunk, 294 Ga. 280 (2013) (holding presenting a Financial Affidavit stating new child along with supporting testimony could be enough); Curran v. Scharpf, 290 Ga. 780 (2012); etc. Additionally, even Courts in other jurisdictions that impose the burden on the party claiming property is his separate property can establish separate property claims through testimony alone (E.g., see Florida case of Neiditch v. Neiditch, 187 S.o. 3d 374 (Fla 5th DCA 2016) (holding although there were no documents presented to support Wife's claims as to premarital balance of her TSP account, she testified based on her personal knowledge, which the Court found to be substantial competent evidence sufficient to meet her burden that such purported value was separate property).

2 Henderson v. State, 891 S.E.2d. 883 (2023) ("The testimony of a single witness is generally sufficient to establish a fact.").

follows the minority view on this particular issue, and holds that the party claiming the right to an equitable division of property bears the burden of proof to establish that right. I.e., ***the party contending property is marital property must carry the burden of proving that such property sought was, in fact, [directly acquired as a result of marital labors or investments]***. To illustrate, see:

- Barber v. Barber, 257 Ga. 488 (2001) (Holding, "We hold the court correctly charged that **the party claiming a right, including property division, has the burden of proof to establish that right.** To hold that burden rests equally on each party as to an issue runs the risk of neither party prevailing on that issue and the ultimate dilemma of an unresolved dispute.")
- Also, see Dasher v. Dasher, 283 Ga. 426 (2008) (Where the Supreme Court of Georgia upheld the trial court's award of four specific parcels of property to Wife as separate property, holding, "Only property acquired as a direct result of the labor and investments of the parties during the marriage is subject to equitable division. Whether a particular item of property actually constitutes a marital or non-marital asset may be a question of fact for the trier of fact to determine from the evidence. **Husband had the burden of proving that the four tracts were marital assets**." Id., citing other Georgia cases therein, including Barber).
- Also, see Horton v. Horton, 299 Ga. 46 (2016) (Where the Supreme Court affirmed the trial court's *Directed Verdict* that all of husband's interests in the parties' marital residence was his separate property *as a matter of law*, based on the fact that the wife failed to overcome her burden of presenting sufficient evidence to demonstrate the specific value of her purported marital contributions in relation to the non-marital portion of the home (and even awarded husband attorney fees under 9-15-14 for having to defend against such claims by wife)).
- Also, see Halpern v. Halpern, 256 Ga. 639 (1987) (Affirming trial court's holding on *Summary Judgment* that all appreciated value in Husband's business was his Separate property *as a matter of law*, due to wife's failure to demonstrate with sufficient evidence her claims that any appreciation was directly caused by her husband's active individual efforts or marital funds).
- Also, see Sullivan v. Sullivan, 295 Ga. 24 (2014) (Holding, "*The party seeking the equitable division of the appreciation has the burden to establish the interest's true market value at the time of marriage and at the time of divorce....In Halpern, as in the present case, there was no evidence that either party contributed to appreciation of the shares during their marriage. Thus, the shares of corporate stock and any appreciation in their value were not marital assets subject to equitable division.*").
- Also, see Southerland v. Southerland, 278 Ga. 188 (2004) (Affirming trial court's finding that appreciated value of certain items of property acquired by wife through gifted funds from family members and properties derived from those gifts were her Separate property, based on Husband's failure to demonstrate the specific value of certain marital efforts and investments made by him during the marriage; and holding in support, ***"The party claiming a right, including property division, has the burden of proof to establish that right."***).
- Also, see Jones-Shaw v. Shaw, 291 Ga. 252 (Affirming trial court's ruling that husband's interests or growth in a closely held business for which he worked during the marriage was entirely his separate property, on the grounds wife failed to demonstrate what if any appreciation in value was attributed to active marital

efforts or funds).

• Also, see Arthur v. Holcombe, 288 Ga. 50 (2010) (Holding trial court erred by not granting appellant's motion for directed verdict, where Wife failed to carry her burden of proving the former marital home was fraudulently conveyed by Husband to his mother immediately prior to filing divorce; and thereby trial court erred by awarding Wife any interest in such property).

• Also, see Brett R. Turner, Equitable Distribution of Property, 3rd edition at § 5:4, page 256, footnote 5 (Explaining that the State of Georgia follows a minority rule that the burden of proof is on the non-owning spouse claiming a marital interest in property, citing *Sutherland* supra).

• The Supreme Court of Georgia has also expressly held that where *neither* party is able to overcome their respective burdens relating to a claim of marital versus separate property, then the trial court should find such property remains the owning spouse's separate property (see Barber *supra* at 489); also, see Cale v. Cale, 242 Ga. 600 (1978).

The Court has notably repeated this principle in two 2023 cases: Boomer v. Boomer, 367 Ga.App. 280 (2023) (Holding, "***The party seeking a division of contested property has the burden of proving it is a marital asset.*** *Property does not become a marital asset simply because one of the spouses obtains it during the court of the marriage*." Id., citing other cases above), and Velazquez v. Perez, 367 Ga.App. 555 (2023) (Affirming trial court's finding that husband's marital business did not own any assets/value to be divided, holding in support, "***The party claiming a right, including property division, has the burden of proof to establish that right.***").

The above said, of course a practitioner will also consider additional creative ways to try to find some sort of tangible evidence to further indirectly support premarital claims. While this would be a topic for a different article, examples would include: perhaps John can at least dig up an older statement going back at least *some date closer to date of marriage*, from which you can help make logical deductions;[3] or, perhaps he has older *Tax Returns* that could contain helpful information;[4] or maybe an *older financing statements* he submitted for a loan around date of marriage; or, perhaps simply proving John's historical income figures (like through his Social Security Earnings statement) may help demonstrate whether or not it simply makes *common sense* that John would, or would not, have owned a pre-marital retirement account on date of marriage.

Additionally, a good practitioner will also consider whether there may be any *potential witnesses* who could somehow support John's testimony/claims in any way. While these items may not be the "smoking gun" that you are hoping for, they would only further bolster John's testimony, and

3 Notably, for at least Traditional IRAs, the IRS has limited the maximum amount a person can contribute each year, which, has ranged from $3,000 to $7,000 per year over the past 40 years (see amounts at: https://dqydj.com/historical-ira-contribution-limit/). So, you may be able to circumstantially prove the existence of at least some pre-marital value in an IRA through simple math. (E.g., If John has a statement from 5 years after date of marriage, proving his IRA account was worth substantially more than the maximum amount a person was allowed to contribute to an IRA during those first 5 years of marriage, this would obviously bolster John's claims that his IRA had at least some value on date of marriage). Additionally, a financial advisor/expert may be able to make reasonable "professional" opinions in support of pre-marital claims to certain retirement accounts, based on general market data and existing statements.

4 Contributions to certain types of retirement plans are tax-deductible, and may be specifically listed in the party's Tax Returns for those years made. Additionally, sometimes funds from a retirement plan may be "rolled over" into a new plan (such as whenever a spouse changes employment); while such a rollover may be a non-taxable event, this transaction is sometimes reflected within the return the year of the rollover, and may provide helpful data from which you or an expert could use in support of your claim. (REMINDER: if the client does not have handy older Tax Returns, he can at least order Tax Transcripts from the IRS from the past 10 years, for free, at https://www.irs.gov/individuals/get-transcript; these transcripts may include relevant data from the returns, such as any adjustments for IRA contributions made during the taxable year).

his favorable evidentiary presumption with respect to his separate property claims.

Conclusion:
In conclusion, turning back to the original hypothetical, John's lawyer should not shy away from confidently arguing at trial --- and negotiating at mediation --- his client's pre-marital claims to the IRA, relying on what would be John's sworn testimony; as well as Jane's failure to overcome HER required burden to present evidence to DISPROVE John's separate property claims. And, in response Jane's counsel quip "Can you *prove* your client had $40k in his IRA on date of marriage?", John's lawyer should respond in kind, "Can you prove he did *NOT* have the $40k?".

Austin is a partner at Fierer & Buerlein, LLC, who has focused in the field of Family Law since 2008, both at the trial court and appellate level. Austin has prepared a Trial Brief/Legal Memorandum that he submits at trials outlining the above authority (i.e., with legal authority explaining that the opposing party bears the burden of proof with respect to property claims) which he will happily share upon request. He can be reached at 404-662-2266 or Austin@fbfamilylawfirm.com.

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Harnessing Artifical Intelligence in Family Law Mediation: Oppoortunities and Challenges

By Andy Flink

We mediators have traditionally relied on our expertise, intuition, and deep understanding of human behavior to help parties reach mutually acceptable resolutions. However, the advent of artificial intelligence (AI) is beginning to transform this field, offering new tools that promise to enhance efficiency, fairness, and accessibility.

AI encompasses a wide range of technologies, including machine learning, natural language processing, and advanced data analytics. In the legal sector, AI has already made significant inroads—from predictive case outcomes to streamlined document review.

This allows us to:

1. Analyze vast datasets of past cases.
2. Identify patterns in dispute resolutions.
3. Provide data-driven insights to mediators and clients.

For instance, some AI systems can help parties forecast the likely outcomes of various settlement scenarios by comparing case details with historical data. These tools are not designed to replace human judgment; rather, they serve as a decision-support mechanism, offering objective information to supplement a mediator's expertise.

As with each new tool we use in the process, there are both advantages and disadvantages of AI in family law mediation. The advantages are defined below. The disadvantages are deeply rooted in what we do not yet know, an easy example of which is social media when it first began.

1. Streamlined Documentation and Agreement Drafting

One of the most exciting applications of AI in mediation is its ability to facilitate real-time documentation. As mediators conduct sessions, AI can:

✓ Take detailed notes
✓ Track agreements between parties
✓ Generate drafts of the mediated agreement in real time.

By automatically converting discussions into structured documents, AI helps:

✓ Reduce drafting time
✓ Minimize errors
✓ Ensure accuracy of agreed-upon terms.

Think of it as a do-it-yourself LEGO model—but in words.

2. Data-Driven Decision Support

AI can analyze large volumes of historical data to help predict potential mediation outcomes. By identifying trends in similar cases, AI tools can assist mediators in suggesting settlement options that are both:

✓ Fair
✓ Perhaps more likely to be accepted by both parties.

For example, if Mom and Dad cannot agree on who should have final decision-making authority over extracurricular activities, AI could suggest common solutions that have worked in similar cases, helping mediators guide discussions effectively. Not the best example ever, but you get the idea.

3. Reduction of Implicit Bias

AI has the potential to mitigate human biases that can inadvertently affect mediation outcomes. By relying on objective data rather than subjective judgment, AI can help ensure that recommendations are rooted in empirical evidence. However, this benefit is contingent on:

✓ The quality of the data
✓ The fairness of the algorithm
✓ The user's interpretation of AI-generated insights.

4. Helping AI help you

Of course, it is every practitioner's job to assure your client is prepared for mediation. But it is just as simple for your client to input questions *they* may have into AI on their own. This is never a substitute for legal advice or advocacy, but it helps them understand the process better.

By relying on objective data rather than subjective judgment, AI can help ensure 💬 *"How can I best prepare for my divorce mediation next week?"* … and receive customized, AI-driven guidance.
However, do not let AI replace what we humas possess. It cannot replace….

✓ Empathy
✓ Intuition
✓ Nuanced understanding

…that human mediators bring to the table. Family law disputes are deeply personal and emotionally charged. The role of the mediator—to facilitate dialogue, manage conflict, and provide emotional support—remains irreplaceable.

You need to view it as a complementary tool that enhances (rather than replaces) the human touch in mediation.

For practitioners in Georgia and beyond, it is crucial to adhere to emerging guidelines on the ethical use of technology. The State Bar of Georgia and other legal associations are actively engaged in discussions about best practices for AI integration. Although in its' infancy, much is "yet to come" in this emerging technology. Ongoing legal education will be essential. Mediators must be well-versed not only in traditional family law principles but also in the technological tools reshaping the field.

Looking Ahead: The Future of AI in Mediation

The future of AI in family law mediation is, of course, promising; yet it must be approached with caution. Continued innovation will likely yield more sophisticated tools, providing deeper insights into dispute resolution.

However, integration must be thoughtful, with a steadfast commitment to:

✓ Ethical standards
✓ Mediator oversight
✓ The preservation of the human element in mediation.

Final Thoughts: AI in Family Law Mediation—Friend, Not Replacement

In conclusion, AI is poised to become an invaluable tool in family law mediation, offering benefits ranging from:

✓ Improved efficiency
✓ Enhanced decision support.

However, successful integration hinges on addressing concerns related to:

✓ Privacy
✓ Bias
✓ Accountability.

AI will not replace mediators—but with thoughtful regulation and ongoing education, it will help them navigate the complexities of modern family law more effectively.

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Guiding Clients to Their Happily Ever After: Five Key Steps to Help Clients Start Fresh After Divorce

By Abbey Flaum

As a family law attorney, you change lives. Whether your clients seek a divorce or not, if it is happening, it likely needed to, and in some way, it is ultimately best for both parties. Whether your role involves drafting a straightforward agreement or spending countless hours litigating before a jury, you likely feel a sense of accomplishment once the judgment for dissolution is signed; but, before you uncork the celebratory bottle of champagne, remember that your work is not entirely done. Now that you have helped your client transition into a new chapter of life, it is important to set them up for long-term stability. Consider these five crucial steps to help clients navigate their financial, emotional, and personal lives post-divorce:

1. Finding the Right Financial Advisor

Financial security after divorce is paramount, and many clients will need expert guidance to navigate their new financial reality. Encourage them to seek a financial advisor who specializes in working with newly divorced individuals. The right advisor may assist with budgeting, investment strategies, tax implications, and long-term financial planning tailored to their new circumstances.

A knowledgeable advisor will help clients:

- Understand cash flow and adjust to a single-income household.
- Manage alimony, child support, and investment accounts.
- Plan for future goals, including home purchases, retirement, and education funds.
- Review their estate plans and evaluate necessary updates.

Not all advisors are equal. Suggest that your clients seek advisors who are true conflict-free fiduciaries with a transparent fee structure. Ideally, a good financial advisor should have considerable experience working with divorced individuals and be part of an independent wealth management firm that offers both investment management and a deep bench of financial planning services.

2. Updating Estate Plans

Many states, including Georgia, have laws that automatically revoke provisions in wills for ex-spouses upon divorce. This means former spouses will be treated as if they predeceased your client and will not inherit or serve in trusted estate administrative roles, like executor. However, the fact that this exclusion is not universal coupled with the importance of reviewing titling and beneficiary designations make updating estate plans essential for clients.

As their attorney, advise clients to work with an estate planning specialist to:

- Remove their former spouses from

decision-making roles and beneficiary lists, if desired. If they wish to retain their ex-spouses in their estate plan, most states require a post-divorce reaffirmation of the same in their wills and trusts.

- Establish trusts to eliminate probate, plan for incapacity, and maintain privacy in estate management and administration.
- Update healthcare directives and financial powers of attorney to ensure the right, trusted individuals can make critical decisions if your client becomes incapacitated.
- Change beneficiary designations on retirement accounts, life insurance policies, transfer-on-death accounts, and other financial instruments. These designations typically supersede a will, and failing to update them could lead to unintended enrichment of former spouses.

3. Reviewing Insurance Coverage

Clients should reassess their insurance needs post-divorce, including:

- **Health Insurance:** If your client was covered under their spouse's plan, they may need to secure new coverage.
- **Life Insurance:** Adjusting beneficiaries and ensuring sufficient coverage, especially if they are receiving or paying child support or if their settlement agreement mandates life insurance.
- **Disability Insurance:** Protecting their income in case of unexpected health issues.
- **Long Term Care Insurance**: Ensuring that they will have sufficient care and assistance with the activities of daily living in the event they become unable to care for themselves.

4. Establishing a Strong Credit and Banking Foundation

A fresh start often means creating financial independence. Encourage clients to:

- Open new bank accounts in their names only.
- Establish or rebuild credit by obtaining credit cards and making timely payments.
- Monitor their credit reports to ensure there are no lingering joint obligations.

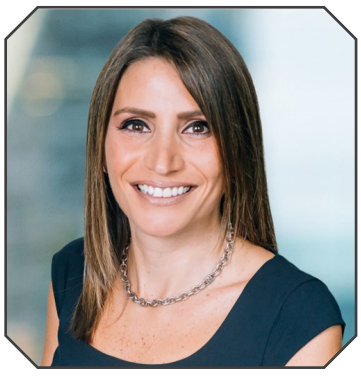
5. Prioritizing Emotional and Professional Support

While finances and legal matters are crucial, emotional well-being is also critical. Suggest that clients consider:

- Working with a therapist or divorce coach to navigate emotional challenges.
- Joining a support group for divorced individuals.
- Seeking professional development or career coaching if they need to re-enter the workforce or change careers.

Final Thoughts

As a trusted advisor, you play a pivotal role in ensuring that your clients do not just survive their divorce but thrive afterward. By emphasizing the importance of finding the right financial advisor, updating estate plans, securing appropriate insurance, establishing financial independence, and seeking emotional support, you equip them with the tools they need for a successful post-divorce life. Encouraging these steps and helping to make the right, new, professional connections for your clients will not only strengthen your relationships with clients but will also enhance your reputation as a holistic, forward-thinking advocate for their future.



Abbey Flaum joined Homrich Berg Wealth Management after more than sixteen years of law practice devoted to estate, gift, and charitable planning, probate, trust and estate administration, pre and post-marital planning and business succession planning. As a principal in HB's family office and the firm's Family Wealth Strategist, Abbey applies the company's holistic approach to her work with clients in providing them ongoing, personalized guidance in her fields of specialty, while collaborating with their outside legal counsel.

Why a Therapist Should Not Opine About Parenting Plan Issuess in Child Custoday Cases

By Howard Drutman, Ph.D

One of the most common questions attorneys ask forensic psychologists in family law cases is why a litigant's mental health therapist should not be allowed to opine about issues such as parenting time, parenting plans, and final decision-making. This article will explain the principal reasons why therapists should never give opinions about custody related matters in family law cases.

Psychotherapy and forensic evaluations require two very different mindsets, relying on different data sets that enable each specialist to reach the conclusions that drive their recommendations. The psychotherapist typically obtains information only from their patient and has limited to no corroboration of the veracity of what they have been told. The psychotherapist enters the patient's subjective experience and works from the internal reality of the patient and not what may be objectively true. Over long periods, the psychotherapist may help shift the client's view to see that reality is actually quite different than the client's initial understanding. Most treating psychotherapists make assumptions that the patient is telling the truth as they want relief from their emotional suffering. This may be true in general non-forensic settings, but in litigated cases people often seek out a psychotherapist, not always to be honest and reduce their suffering, but to manipulate the therapist to report that they are mentally healthy. On the other hand, the forensic psychologist evaluator uses multiple sources to obtain information in an attempt to discern the truth as it relates to an individual or a family. Although the forensic evaluator tries to understand the subjective world of the client, it is much more important at times to challenge the client with objective evidence obtained through collateral sources. The forensic evaluator is skeptical of everything they hear from everyone involved in a legal case, including what they hear from attorneys. The forensic evaluator tries to minimize bias by following specific protocols for obtaining information, interpreting behavior, and psychological testing. The evaluator uses collateral witnesses and documentation to piece together what is really going on for a particular person or family. Although therapists do not want to be biased for or against a patient, there is little in their protocols of treatment that minimizes bias. Unfortunately, this often leads to therapists who become positive advocates for their patients, losing neutral objectivity. These therapists often end up making large inferences from little data. It is not uncommon to hear these therapists make pronouncements about the spouse of a patient without ever having met or evaluated that spouse.

The **American Psychological Association** has developed ***Ethical Principles of Psychologists and Code of Conduct.*** Two important ethical codes directly relate to therapists not making custody recommendations. Code 2.01 addresses **Boundaries of Competence.** That code provision states in 2.01 (a): "Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience." Code 9.01: **Basis for Assessment** states in part, "Psychologists base the opinions contained in their recommendations, **including forensic testimony on information and techniques sufficient to substantiate their finding** (my emphasis)." Without conducting a child custody evaluation, the therapist has not conducted a standardized evaluation sufficient to substantiate their findings. It also brings up Daubert issues since the treating therapist is not basing their findings and recommendations on the reliable and valid procedures needed to substantiate a finding.
In addition to the APA Ethical Code, there are a number of Guidelines and Practices Standards for various areas of practice. According to the ***APA, Specialty Guidelines for Forensic Psychology in Guideline*** 2.05: **Knowledge of the Scientific**

Foundation and Testimony, states "Forensic practitioners seek to provide opinions and testimony that are sufficiently based upon adequate scientific foundation, and reliable and valid principles and methods that have been applied appropriately to the facts of the case." A therapist never obtains sufficient and reliable information to make such important findings and recommendations. How can one who meets only one party give opinions about the other party, the children, and ultimately what is in the children's best interest? They can't. Guideline 4.02.01: **Therapeutic-Forensic Role Conflicts** states, "Providing forensic and therapeutic psychological services to the same individual or closely related individuals involves multiple relationships that may impair objectivity and/or cause exploitation or other harm. Therefore, when requested or ordered to provide either concurrent or sequential forensic and therapeutic services, forensic practitioners are encouraged to disclose the potential risk and make reasonable efforts to refer the request to another qualified provider." Guideline 9.03: **Opinions regarding persons not examined**. "Forensic practitioners recognize their obligation to only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form adequate foundation for their opinions or to substantiate their findings." Too often therapists report to custody evaluators or Guardians their opinions of the mental fitness of the spouse of a patient they have never evaluated. They are basing their opinion on the hearsay of their own client and couching it as if it is a clinical opinion. Guideline 10.02 **Selection and Use of Assessment Procedures** states, "Forensic practitioners use assessment instruments whose validity and reliability have been established for use with members of the population assessed." Too often therapists use questionnaires or tests to justify their opinions that would not meet Daubert standards since they lack validity and do not meet other Daubert requirements. Therapists will wrongly report that drawings or play therapy behaviors are diagnostic of family dynamics when they are not.

The **American Counseling Association** (ACA), a professional association for master's level therapists has a Code of Ethics. In C.2.a of their Code **Boundaries of Competence** it states, "Counselors only practice within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience." Cod C.7.a **Scientific Basis for Treatment states**, "When providing services, counselors use techniques/procedures/ modalities that are grounded in theory and/or have an empirical or scientific foundation." Under the section regarding forensic evaluations code E.13.c **Client Evaluation Prohibited** states, "**Counselors do not evaluate current or former clients, clients' romantic partners, or clients' family members for forensic purposes** (my emphasis)**.** Counselors do not counsel individuals they are evaluating."

The **Association of Family and Conciliation Courts** (AFCC), the world's largest multidisciplinary association of professionals involved in family law cases has guidelines for Court-involved therapy as well as for parenting plan evaluations (formerly known as child custody evaluations). In the parenting plan guideline 3.1 **Multiple Relationships and Role conflicts**, it states on 3.1.b "Multiple roles refer to performing multiple different professional functions in the same case." In 3.1.d it states, "Role conflicts refer to the same professional performing incompatible roles in the same case, such as moving from providing therapy for a family member, or the entire family, to serving as an evaluator." The AFCC Guidelines for Court-Involved Therapy specifically address appropriate roles and boundaries for therapists who may be involved in family law cases. In guideline 2.1.b it states, "Court involved therapists should resist pressure from anyone to provide services beyond or antithetical to the therapeutic role, as defined by recognized professional and ethical standards and guidelines." Guideline 2.4.b states, "When children are involved in treatment, a court involved therapist has an enhanced obligation to consider multiple hypotheses, seek information and involvement from both parents and avoid the

biasing effects of one-sided or limited information." Guideline 8.4 states, "The court involved therapist should understand that the information provided by the client during the course of the treatment is based upon the client's experience and perspective, which may sometimes be distorted or lacking balance and comprehensiveness." **Lastly and perhaps most importantly, in guideline 10.5.e it states, "When the court involved therapist is designated as an Expert Witness by the court, he or she may offer relevant clinical opinions within the role of the treating expert. (1) The court involved therapist may offer opinions on issues such as diagnosis, changes or behaviors observed in treatment, treatment plan, prognosis, coping and developmental abilities, conditions necessary for effective treatment, etc. (2) The court involved therapist should not render opinions on psycho-legal issues (e.g., parenting capacity, child custody, validity of an abuse allegation, joint or sole custody), as these are beyond the score of the treatment role and properly the province of other professionals and the Court."** Forensic evaluations are conducted in a systematic manner to minimize bias and increase the probability that the findings are valid and reliable for use by the legal system. Therapists have an important role in helping individuals and families function better, but their therapeutic services should never be confused with a forensic approach to understanding a family or an individual for legal purposes.

In summary, the therapist who makes recommendations about custody related matters is overstepping their professional boundaries and offering their unsubstantiated opinions as fact. This is particularly true when they opine about people they have not evaluated.

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Managing Your Investments During Difficult Times

By Trent Doty, CFP, CDFA

Economic difficulties, political unrest, and natural disasters can all present challenges. Investors may wonder what effect these types of events, and others, could have on their investments.

That's why it's helpful to focus on three fundamental actions that could help investors work toward their goals — know yourself, build a plan, and keep an eye on the long term.

Know yourself

When stocks drop by 20% or more, some investors might ignore the drop, others might feel the urge to sell, while still others might see it as a good time to buy. This range of reactions illustrates different levels of risk tolerance, or how sensitive investors are to market volatility. Risk tolerance varies from one investor to another, and no level of tolerance is considered the "right" level — there's only the right risk tolerance for each investor. Talking with financial advisors or completing online questionnaires can help investors determine their risk tolerance.

While understanding risk tolerance is essential, it should not be considered in isolation. Risk tolerance, goals, and time horizon all play a role in setting an investment plan.

Investing more aggressively may yield more rewards, but the length of time available for investing also plays a part. A longer time horizon could give investors the potential for compound growth. And setting specific goals can help to determine how much an investor should accumulate to support their goals.

Build a plan

Dwight D. Eisenhower may have said it best — "Plans are worthless, but planning is everything." Even though a plan may need to be modified to adapt to changes, the very process of setting a plan can help investors to discover and focus on their most important investment goals.

For a plan to be useful, it's important for investors to clearly detail which goals they are trying to achieve. Some of an investor's goals will be shorter term, such as building a rainy-day fund. Intermediate-term goals might include buying a house or paying for a child's education. Longer-term goals might include planning for retirement and potentially leaving a legacy for charities or family. Investor assets can then be matched to those various goals.

For example, investors might own short-term bonds to meet a near-term expense, and a mixture of stocks and longer-term bonds to meet needs that are further in the future. The investor's risk tolerance will help determine the mix of historically more volatile assets — such as stocks — to less volatile assets, such as bonds.

Keep an eye on the long term

Once a plan is in place, it's important to keep an eye on it over the long term. This includes considering rebalancing the portfolio if allocations move too far away from targets, a task that can be automated. It also includes revisiting plans as an investor's goals or situation change. A plan is meant to be a living document.

While market drops can be troublesome, unpredictable economic events have presented challenges in the past. With resilience and creativity, America's businesses and households have managed to overcome them. While there are no guarantees that past performance will repeat itself, history has shown that sticking to investment plans and taking a long-term view of the markets can help investors work toward their goals.

Case Law Update

By Vic Valmus

CHANGE OF CUSTODY/ WITHHOLDING VISITATION

Granados v. Newsome, **A24A1411** (December 17, 2024)

The parties were married and had one minor son that was born in 2015. The parties were divorced in 2019. Newsome (mother) had primary custody and Granados (father) had visitation. In November 2022, the mother filed a Petition for Modification of Custody alleging that the child had been witness to multiple incidents of domestic violence. The father moved to dismiss the Petition alleging that the mother had withheld visitation from him since October 2022. Here, the Court granted the father's Motion to Dismiss. In February 2023, the mother filed a Petition for Emergency Change of Custody. The mother again alleged that their son had been witness to multiple incidents of domestic violence and that their son had been diagnosed with PTSD as a result of witnessing the domestic violence. The father filed an Answer and Counterclaim for Contempt and a Motion to Dismiss, again alleging that the mother has denied him visitation since October 28, 2022. The Trial Court entered an Interim Order granting the father temporary visitation on Saturdays at Chick-fil-A. A hearing was held in April 2023 and the Trial Court denied the father's Motion to Dismiss. A subsequent Order allowed the father to resume his normal unsupervised visitation schedule. In February 2024, the emergency custody modification action came before the Trial Court. After the hearing, the mother's counsel informed the Trial Court there was new evidence and the Trial Court scheduled an emergency hearing. The father appeared at the emergency hearing via Zoom from the Morgan County Jail where he was arrested for cruelty to children in the first degree against his fiancé's son, who had a black eye, cuts and scrapes on his neck. After the hearing, the Court entered another Interim Order granting the mother temporary physical and legal custody of the party's son and for the father to have no contact with the son until further order of the Court. The father appeals and the Court of Appeals affirms.

The father appeals stating that the Trial Court erred by not dismissing the mother's emergency petition pursuant to O.C.G.A. §19-9-24 which provides, in pertinent part, that the legal custodian shall not be allowed to maintain any action for change of custody or change of visitation rights so long as visitation rights are withheld in violation of a custody order. The Trial Court heard argument on the father's Motion to Dismiss during the April 23rd hearing and denied the Motion to Dismiss. At the time the Trial Court was considering the father's Motion to Dismiss, the Trial Courts Interim Order granting the father visitation on Saturdays at Chick-fil-A was in effect. The mother's counsel argued that there was an Interim Order that gave the father the ability to see the child every weekend since they were last in court, and that there were six scheduled visits and he made three of them. The father points to no evidence in the record that the mother was not in compliance with the Courts Order at the time the Trial Court was deciding on how to proceed on the modification petition. *Dallow v. Dallow* stated that the language of O.C.G.A. §19-9-24(b) indicates the Trial Court is not required to dismiss a modification petition, even where the Plaintiff has previously violated a custody order, provided the Plaintiff is in compliance with all court orders at the time the Trial Court is deciding on how to proceed on the modification petition. Therefore, in applying *Dallow,* the Court did not err by denying the father's Motion to Dismiss.

The father next argues the Trial Court abuses it discretion in that it suspended all his visitation and contact with his son without considering less extreme arrangements, including limited and supervised visitation, to address the Court's concerns. At the conclusion of the emergency hearing, the Trial Court explained that it was going to modify its Interim Order that it entered to remove all the father's visitation until they can get back for a full hearing and fully assess what restrictions are being put on by bond conditions, DCFS, and potentially whether or not the minor

child at issue in this case is also a witness. The Trial Court specifically addressed whether it could address its concerns with less extreme measures, stating there were too many factors going on to try to put any type of visitation restriction in at this time until counsel for the father and the mother are able to provide the Court with more detailed information about what facts and circumstances are and what restrictions are being placed by other agencies. Therefore, the Trial Court did consider less extreme arrangements.

CHILD SUPPORT/HIGH INCOME DEVIATION/LUMP SUM CHILD SUPPORT

Gibson v. Gibson, **A24A1774** (November 25, 2024)

The parties were married on February 14, 2017 and had one daughter born in 2018. In September, 2020 the wife petitioned for divorce. Prior to the marriage, the parties executed a prenuptial agreement. The agreement addressed various issues including responsibility of debts, liabilities, income division, and limitations on spousal support. It also included an attorney's fees provision requiring the husband to pay legal fees and expenses occurred by the wife during an uncontested divorce.The issues regarding child custody and child support were excluded. The agreement also contained an arbitration clause. In the wife's divorce petition, she alleges the prenuptial agreement resolved all issues of equitable division of property and liabilities, alimony, and attorney's fees. She sought primary physical and joint legal custody of the child and requested the husband to contribute to the care and maintenance of the minor child on a temporary and permanent basis; and also requested attorney's fees and litigation expenses. The wife asked the Trial Court to appoint an arbitrator to resolve any disputes and the motion was granted. After the arbitration, the arbitrator concluded the husband was responsible for all reasonable legal fees, costs and expenses occurred by the wife as well as all reasonable fees and costs of the arbitration. The Trial Court affirmed the award. The Trial Court had a final hearing to address, among other things, child support. The parties agreed that, given the husband's high income, an upward deviation from the child support guidelines was appropriate, but they disputed the proper amount of the deviation. The husband's adjusted monthly gross income was $264,310.00 and the wife's was $7,880.00. At the final hearing, the Court denied the wife's claim for spousal support, but awarded child support and incorporated a high-income deviation. At another hearing, the Trial Court granted the wife's request for attorney's fees and expenses. The husband appeals and the Court of Appeals affirms.

The husband argues the Trial Court erred in awarding the wife $10,690.00 in monthly child support pursuant to a high-income deviation and argues the total monthly child support should be capped at $3,500.00. Pursuant to O.C.G.A. §19-6-15, the highest combined adjusted income reflected on the schedule is $30,000.00 per month for which the presumptive amount would be $2,236.00 for one child. Here, the husband makes nine times the maximum monthly income of $30,000.00 and earns more than 33 times the wife's monthly income. The Trial Court deviated upward by the amount of $8,520.00 for a total of $10,690.00. The Court found that a deviation would be in the child's best interest by permitting her to share in her father's high income and maintain, to some extent, her pre-divorce standard of living; help the wife purchase a home for herself and the child, allowing the wife to spend more time with the child by not having to work so many hours; and enable the wife to pay her portion (50%) of any private school fees. The husband challenges the high-income deviation as excessive and based upon the needs and desires of the wife rather than the needs and best interests of the child. The monthly award of $10,690.00 is only 4% of the husband's adjusted monthly gross income of $264,310.00. The maximum presumptive amount of child support for one child at a combined adjusted monthly income of $30,000.00 is $2,236.00 which is 7.45% of adjusted income. Despite the husband's claim to the contrary, the Trial Courts written Order specifically explains the reasons for the deviation. In addition, the husband asserts the Trial Court improperly awarded upward deviation in order to achieve a specific result. The

amount of $10,690.00 is the same amount the husband is paying for an older child in California. However, the husband has not shown that any such manipulation occurred. The award is not excessive, the evidence supports the Trial Courts findings, and the husband has not shown any abuse of discretion.

The husband also challenged the Trial Courts lump sum award of $163,093.00 in back child support. The husband argues the award deprived him of due process because he had no notice before trial that the wife was requesting the retroactive child support payment and that the Trial Court erroneously did not base the amount on the party's income, but rather improperly based it on the lump sum award on the parties' incomes rather than the child's actual expenses during the relevant period. However, the husband did not object on due process grounds or argue he received no notice of the claim, therefore, he has not preserved this argument for review. Here, after the divorce petition was filed, the husband voluntarily began paying temporary child support in the amount of $2,236.00, which is top level of the presumptive child support. The Wife acknowledged these payments, but asserting they have failed to include a high-income deviation or account for daycare expenses that the wife had fully paid, the wife sought to catch up child support retroactive to the filing of the petition.

Where a divorce action is pending and a spouse subsequently seeks temporary support for a minor child, the Trial Court may consider and award such support covering a period from the time the divorce is filed until a temporary order or a final hearing is held. Here, the Trial Court noted that although the wife had requested a temporary hearing to establish temporary support for the child, a hearing was never held. The Court then found the wife was entitled to a lump sum of child support in the amount of $209,093.00 which incorporated over a 23-month period. This amount is the monthly difference between $10,690.00 (support ordered by the Trial Court in the final decree) and $2,236.00 (the amount voluntarily paid by the husband once the divorce petition was filed) plus 50% of the daycare costs. After offsetting the amount by $46,000.00 to account for the expenditures the husband made for the wife's vehicle, the Trial Court ordered the husband to pay the wife a lump sum amount of $163,093.00. The husband continues to argue that any award of back child support was limited to the actual expenses incurred by the wife for the child during the period of issue. Here, the husband offered no basis for restricting the Trial Court's discretion to actual expenses in this case. Also, the husband did not raise his expense argument at the trial or object on any grounds other than that the lump sum requested by the wife was not warranted. Therefore, the husband has not demonstrated the Trial Court abused its discretion in ordering him to pay $163,093.00 in a lump sum child support.

CONTEMPT/FIRST FILED RULE/ ATTORNE'S FEES

Iyer v. Prism HSH Properties, LLC, **A24A1758** (November 15, 2024

The record shows Madhu (wife) and Ganesan (husband) divorced in February 2017. The Settlement Agreement incorporated in the divorce decree awarded the wife 50% interest in Prism HSH, a real estate investment limited liability corporation owned by the husband, and part of the agreement provided that each party shall receive 50% of the net proceeds received from all dividend sales and other income received from Prism HSH from the date of the agreement forward. In 2020, the wife filed for contempt and the husband was found in contempt of the divorce decree for withholding distributions. The 2020 contempt finding, however, did not resolve the ongoing dispute over the corporate proceeds. In September 2021, the wife filed the instant action against the Appellees (the "business action") asserting that the husband had continuously mismanaged the corporation and failed to distribute corporate proceeds she was entitled to and several other demands. A few days later, the wife filed a new contempt action in connection with the divorce decree (the "2021 contempt action") alleging the husband had willfully failed or refused to distribute Prism HSH proceeds to her and requested the husband

be held in contempt and ordered to relinquish 50% of the distribution payments. A bench trial in the business action commenced on February 8, 2024. The business moved to dismiss the wife's claims arguing that all issues should be resolved through the still pending divorce-related 2021 contempt action and that her efforts to dissolve Prism HSH constituted improper collateral attack on a final divorce judgment, and requested attorney's fees. After the presentation of arguments, the Trial Court granted the business motion and dismissed the business action in the entirety. The Court found that 1) the wife's claims were subject to dismissal pursuant to the first filed rule codified at O.C.G.A. §9-2-5 because substantial similar allegations remain pending in the 2021 contempt action; 2) the claims improperly sought to collaterally attack and modify a Final Judgment and Decree of Divorce; and 3) the wife had not stated a sufficient conversion claim; and all other counts were dismissed. The Trial Court awarded the business $55,000.00 attorney's fees and litigation costs under O.C.G.A. §9-15-14(b). The wife appeals and the Court of Appeals reverses. The wife argues the Trial Court erred in dismissing the business action in favor of the 2021 contempt action pursuant to the first filed rule. Under that rule, no Plaintiff may prosecute 2 actions in a court at the same time for the same cause of action and against the same parties and the later filed suit must be dismissed. However, a prior action does not bar a subsequent action where the claims in the second action were not brought and could not have been brought in the earlier suit. Although the wife filed the contempt petition after the business suit, the business argues the Trial Court found that it relates back to the early divorce proceeding. Regardless of which proceeding was filed first, O.C.G.A. §9-2-5 does not bar the business action. Contempt is part of the judiciaries inherent power to enforce an order as a motion and not a complaint. The business action, on the other hand, alleges claims to recover damages for conversion and sought equitable relief intended, among other things, to prevent future harm to the wife's 50% interest in Prism HSH. An application for contempt may not, standing alone, serve to commence a civil action for damages as it is not a complaint. Although related and to some extent overlapping, the issues raised in the 2021 contempt action and business action are not the same. Therefore, the Trial Court erred in dismissing the business action.

The wife also argues the Trial Court erred in characterizing the business action as an improper collateral attack on the divorce decree. Once the Settlement Agreement is incorporated into a Final Divorce Decree, a party may not attack that judgment by seeking to change the Settlement Agreement. Instead, the party must challenge the judgment itself through one of the acceptable means outlined in O.C.G.A. §9-11-60. These principles, however, do not apply in this case because the business action is not an attack on the divorce decree. The wife is not trying to modify or set aside the divorce decree, she merely seeks to protect the corporate interest awarded to her in the divorce. The Divorce Decree and Settlement Agreement do not preclude the wife's lawsuit, limit her ability to protect her corporate rights, or prevent equitable relief relating to Prism HSH. Therefore, the Trial Court erred in finding that the lawsuit was a collateral attack on the Divorce Judgment and Settlement Agreement. The wife challenges, among other things, the Trial Courts Order awarding attorney's fees and litigation expenses pursuant to O.C.G.A. §9-15-4(b). Since the Appellate Court is reversing the Trial Court's Dismissal Order/Entry of Judgment in its entirety, the fee award based on that erroneous ruling must be vacated.

CONTEMPT/IMPERMISSABLE MODIFICATION

Aftuck v. Aftuck, **A24A1752** (January 15, 2025)

The parties entered into a Consent Final Judgement Decree and, pursuant to the incorporated Settlement Agreement, required various financial transactions to take place on certain dates. The first transaction was regarding the husband's IRA. The husband shall transfer $375,000.00 from the Merrill Lynch Edge IRA within 30 days of the Final Judgment and Decree of Divorce. The funds to be transferred to the wife shall consist of a pro rata share of the stocks, bonds and other non-cash assets within

the account in a tax neutral basis. The parties signed the Decree on January 24, 2023. However, the IRA did not transfer until June 11, 2023. At the contempt hearing, the wife testified that she first set up an account in which the husband could transfer the assets on March 29, 2023. The husband made several unsuccessful attempts at transferring the assets to this account. The wife set up an account into which the husband ultimately was able to transfer the assets in early June, 2023. By the time the husband executed the $375,000.00 transfer, the equities have gone up in value and the actual amount that was debited was $381,116.00. However, on June 28, 2023, the wife only received $372,731.00. The second transaction was that the husband shall pay a $150,000.00 lump sum payment in two installments with $25,000.00 no later than February 10, 2023 and $125,000.00 no later than July 1, 2023. The wife received the first $25,000.00 cash transfer and on June 30, 2023 the husband wrote a check for $143,600.00 in the memo line stating $150,000.00 minus $6,400.00 for a total of $143,600.00. The husband had forgotten that he made the first $25,000.00 payment and deducted the $6,400.00 based upon the extra transfer from the Merrill Lynch account of $381,116.00 versus $375,000.00. In view of the over payment, the husband asked the wife to write him a check for $25,000.00 and she agreed. Both parties filed cross motions for contempt. The Trial Court did not find either party in willful contempt. The Court also found that from February 23rd, which was the last date the husband was to make the transfer pursuant to the divorce decree, and June 28, 2023, the husband benefited from the delay and transferred to the wife less shares of stock than he would have had he timely transferred the shares, and the Court ordered the husband to transfer to the wife an additional 289 shares of Apple stock. The Court also found that the husband shorted the wife on his payment by $6,400.00 and ordered him to pay $6,400.00 in cash. The husband appeals and the Court of Appeals affirms in part and reverses in part.

With regards to IRA transfer, the wife points to no evidence nor does the Court find any showing the husband benefited from any transfer delay. The record shows he ultimately was debited for more than $381,000.00 rather than $375,000.00 and the wife argues that because these holdings within the account had changed by the time she received the transfer, she did not receive the same pro rata allocation of shares she should have received had the husband timely paid her in accordance to the decree. The wife believes she received shares that were less valuable. Although the wife argues that she should have received more shares of Apple stock based upon what was in the account a month prior to the signing of the divorce decree, the parties point to nothing in the record where the asset allocations in the account changed and this Court takes no position on the issue. In addition, nothing in the decree restricted the husband from buying or selling assets within the account at any time prior to when he initiated the required transfer to the wife. The relevant portion of the decree provides only that the assets to be transferred to the wife shall consist of a pro-rata share of stocks, bonds and other non-cash assets within the account. The Court notes that although the Trial Courts Order found the husband benefited because he did not timely transfer the shares by the February 2023 deadline, it's undisputed the wife did not set up any accounts to receive the shares until March 2023 and set up an actual account that could receive the shares until June 2023. Therefore, nothing in the divorce decree prevented him from buying, selling or changing share allocations within the account prior to the date of transfer. The Trial Court effectively modified the decree to add prohibition on stock trading that is nowhere present in the plain language of the final decree. This part of the Order is reversed. With regards to the cash transfer, the husband argues that the Trial Court impermissibly modified the decree by ordering him to pay $6,400.00 in cash. Here, the total amount of net was $381,116.00 minus $375,000.00 equals $6,116.00 not $6,400.00. However, the mathematical errors leading to the husband's complaint on appeal are of his own making. The husband chose to deduct from his cash payment to the wife in an attempt to reimburse himself from the market fluctuations caused by his IRA being

debited more than $375,000.00. In addition, the husband has presented no real argument and cites no legal authority whatsoever in support of this enumeration. Therefore, the Trial Court's order to make the husband pay to the wife $6,400.00 cash is affirmed.

EMBRYOS

Wohlers v. Wohlers, **A24A0841** (October 30, 2024)

The parties began the IVF process together in 2019. The wife signed the embryo cryopreservation consent form in January and the parties married 2 days later. The husband then signed the agreements in February. Both parties assisted in the procedures and the wife underwent daily hormone injections. After the eggs were retrieved from the wife and fertilized with the husband's sperm, the wife resumed hormone therapies to prepare for implantation. About this time, the husband notified the fertility clinic that he wanted the embryos destroyed. In June 2020, the wife filed for divorce. In October, a final hearing was held. The Court awarded the embryos to the wife, finding the agreements did not provide for disposition of the embryos in the event of a divorce. The husband appeals and the Court of Appeals affirms.

There are three leading approaches that other jurisdictions have used to resolve custody of frozen embryos are, 1) the contemporaneous mutual consent approach; 2) the contractual approach; and 3) the balancing approach. The contemporaneous mutual consent approach proposes that no embryo should be used by either party, donated to another patient, used in research or destroyed without the contemporaneous mutual consent of the couple that created the embryo. Here, the Trial Court did not use the contemporaneous mutual consent approach. Under the contractual approach, Courts shall enforce contracts governing the disposition of pre-embryos so long as it does not violate public policy. Both parties agreed that the Court did not use this contractual approach because the agreements did not provide any guidance. Finally, under the balancing approach, the Court resolve the dispute by balancing the parties' interests. Most Courts follow the balancing approach as the Trial Court did here. The husband argues that the agreements unambiguously allows either party to withdraw consent to the IVF process at any time and the Trial Court erred in awarding embryos to the wife. However, the husband failed to preserve this argument for appeal. At the final hearing, the husband's attorney argued that the Trial Court could not employ the contractual approach to resolve the custody of the embryos because the contract doesn't give any guidance. At no point did the husband argue that the agreements allowed him to unilaterally withdraw his consent for fertility clinic to maintain embryos. Therefore, the husband's first claim of error fails.

The husband's second enumerated error focuses on his constitutional right not to procreate. However, the record does not reveal that the husband clearly raised the constitutional argument to the Trial Court. The constitutional issue cannot be considered when asserted for the first time on appeal. It must be clearly raised in the Trial Court and distinctly ruled upon. At the final hearing, the husband did not argue that he had the right not to procreate. Therefore, the husband's enumeration of error fails.

The husband argues the Trial Court abused its discretion by failing to articulate the method it used to arrive at its decision and failing to identify the precise factors it considered. Here, the Trial Court heard testimony from both parties including the wife's testimony about her desire to have children and about the physical, emotional and financial toll that the IVF process placed on her. The husband testified that he was on board when the wife said that she wanted to have children because he wanted to have a child and testified that he later did not want to produce a child with this woman and decided he wanted a divorce.

The husband also complains that on appeal, the wife presented no expert medical testimony that this was her last best hope to become a mother, but the husband has not presented support for his

assertion that the expert testimony was required. In addition, he has not pointed to anything in the record suggesting that the Trial Court consider an inappropriate factor before awarding the embryos to the wife. Given the absence of evidence suggesting the Trial Court considered any inappropriate factors, the husband has failed to show the Trial Court abused its discretion in awarding the embryos to the wife.

MATERIAL CHANGE OF CIRCUMSTANCES

Kimbro v. Warren, **A24A1389** (January 9, 2025)

The parties were married, had four children and divorced in July, 2021. The parties had joint physical custody and neither party paid child support. One year later, Warren (the father) petitioned for a change of custody alleging that Kimbro (the mother) intended to move the children out-of-state and that she was intentionally impairing his relationship with the children. After a temporary hearing, the Court awarded primary custody to the father and established visitation with the mother and required her to pay child support. Approximately 10 months later, a final hearing on the father's petition was held before a different Superior Court Judge. After the hearing, the Judge entered a Final Order awarding primary physical custody of the children to the father and stated, after receiving and reviewing the report of the Guardian Ad Litem, the Court finds the custody shall remain unchanged. The Final Order also established a visitation schedule for the mother and required her to pay child support to the father. The mother appeals and the Court of Appeals reverses and remands.

The mother asserts the Trial Court erred by modifying the decree awarding joint physical custody of the children without first finding that there had been material change in circumstance. The Trial Court must make a threshold finding that there has been a material change in circumstances before it considers what is in the best interest of the children. Here, the Court did not mention a material change of circumstances or find there had been such a change either at the final hearing or in its Final Order. The parties also made no argument at Court about a threshold issue of material change of circumstances. However, the father argues that the Trial Court implicitly found such a change because it referenced the Guardian Ad Litem's report in its Final Order. But that report, which discusses the party's allegations and the Guardian's concerns, included no findings that there had been a material change of circumstances. The Trial Court's mere statement in its Order that the Court had reviewed the report did not amount to a finding of a material change of circumstances.

In addition, the Judge in the Temporary Order did not find there had been a material change of circumstances before modifying the divorce decree. The Temporary Order, like the Final Order, made no mention of a material change in circumstances standard and included no findings of such a change. When a Trial Court fails to make a finding that there has been a material change of circumstances, the Court must vacate the Trial Courts Order and remand. Judgment vacated and remanded with direction.

STATUTE OF LIMITATION/LATCHES/ SUMMARY JUDGMENT

Graham v. Martin, **A24A1457** (November 22, 2024)

The parties were divorced in August 2013. The Settlement Agreement was approved and incorporated in the Final Judgment and Decree of Divorce. Graham (husband) was required to pay Butcher (wife) $83,811.00 on December 1, 2013, pay wife 50% of the after-tax amount of his original Morgan Stanley signing bonus he received over the next 7 years, maintain a life insurance policy in the amount of $475,000.00 payable to the wife as the sole beneficiary, and execute a Quitclaim Deed for the marital property. The husband passed away on October 14, 2020. On December 17, 2021, the wife filed a Petition to Revive the Final Judgment and Decree of Divorce. Superior Court entered an Order reviving the dormant August 2013 judgment. On August 17, 2022, the

wife sued David, individually and in his capacity as the executor of Grahams's estate. The wife amended her complaint several times. David filed Motion for Summary Judgment stating that the wife was trying to circumvent the expired breach of contract claim that should have been brought within the statute of limitations, which was before 2019 when her ex-husband was still alive. The wife filed a third amended complaint including 1) Enforcement of the Final Decree; 2) Contempt; 3) Declaratory Judgment; 4) Specific Performance; and 5) Attorney's Fees. At the hearing, the Trial Court granted David's Motion for Summary Judgment to all claims except count 2 (Contempt). The Court found that that the declaratory judgment agreement obligations were improper and that counts 1 and 4 were barred by the 6-year statute of limitation for written contracts under O.C.G.A. §9-3-24 as well as a Doctrine of Latches. The Court dismissed count 5 for attorney's fees, finding the count was derivative of the other counts that had been dismissed. The wife appeals and the Court of Appeals affirms in part and reverses and remands in part.

The wife contends the Trial Court erred by applying the improper statute of limitations. Here, the Trial Court construed the agreement as a written contract and concluded the wife was initially seeking to enforce the terms of a contract and applied the 6-year statute of limitations. However, the agreement was incorporated into the Trial Courts Final Judgment and Decree of Divorce. Once the Settlement Agreement is incorporated into a judgment of divorce, the party's rights are founded upon the judgment itself rather than merely upon the underlying agreement. Claims to enforce a judgment are subject to a 10-year statute of limitations pursuant to O.C.G.A. §9-12-60(a)(1) which mandates that a judgment shall become dormant 7 years after the judgment is docketed, but O.C.G.A.§9-12-61 permits a dormant judgment to be revived within 3 years from the time it comes dormant. Here, the Final Judgment incorporating the agreement was in August 2013 and on December 13, 2021 the wife filed her Petition to Revive the Final Judgment and Decree and therefore, it was timely filed within the 10-year statute of limitations. Therefore, as to counts 1 and 4 of the wife's third amended complaint, the Trial Court erred by applying the 6-year statute of limitations for written contracts.

The wife also asserts the Trial Court erred by ruling the Doctrine of Latches barred her action. The equitable Doctrine of Latches is not applicable to actions of law. Even if the Doctrine of Latches could be invoked in such actions, it could not be invoked during the period during which the statute of limitations would be applicable. Therefore, the Trial Court erred in applying Latches.

The wife also claimed that the Trial Court erred in ruling on issues not raised in David's Motion for Summary Judgment. However, the Trail Court did not grant Summary Judgment on the wife's new contempt claim. Therefore, the Court has not ruled on the contempt count. The wife presents no arguments that the Trial Court otherwise erred in granting summary judgment on the declaratory judgment claim in her third amended complaint (count 3). Therefore, the Court does not address the merits of the Trial Court's ruling on that count. The Court also finds the Trial Court erred in granting summary judgment to David on the wife's derivative claim on attorney's fees and therefore reverses and remands.

JUVENILE PLACEMENT/ADOPTION

In Re: M.J.E.B., **A24A1420** (February 26, 2025)

M.J.E.B. (child) was born January 2020 and her parents' parental rights were terminated due to unrehabilitated drug use. The child was placed with the maternal Great Aunt Carol in late 2021. In September 2022, DFCS was informed that Carol had passed away and her daughter, Sara had been taking over the responsibilities. However, Sara tested positive for several drugs and the child was removed from Sara's home. There were two relatives who were interviewed for placement of the child which included April (paternal Aunt) who lives in Texas and Nancy (maternal Great Aunt) who lives in Alabama. Both were potential adoptive

homes for the child. However, due to Nancy's potential to continue to expose the children to the unrehabilitated drug use of her parents, who also lived in Alabama and Georgia, DFCS determined to recommend April as a better placement option. In March 2023, Nancy filed a Petition for Permanent Placement for Adoption and April and her husband did the same. After the hearing, the Trial Court denied permanent custody to April or Nancy to allow DFCS to ensure continuing monitoring. Therefore, DFCSs intentions were to immediately place the child with April and her husband in Texas while they pursued the adoption process. Nancy appeals and the Court of Appeals affirms.

As a threshold matter, Nancy and April both petitioned for permanent placement and the Juvenile Court did not place the child with either of them. Instead, it explicitly stated placement would stay with DFCS to ensure continued monitoring. Therefore, the actual effect of the Order was not to award placement to April; rather, it was to maintain placement with DFCS with the understanding that DFCS would view April and her husband as preferred immediate placement for the eventual adoption. Therefore, Nancy's argument that the Juvenile Court placed the child with April is unavailing. With regards to the placement with DFCS and its preference to April, it's undisputed that DFCS and the Juvenile Court viewed both April and Nancy as appropriate placement options and therefore, it boiled down to choosing between two viable alternatives. The factors reviewed by DFCS was that the child would be better in Texas and less likely to be exposed to any harm stemming from the unrehabilitated drug use of her birth parents who lived in Georgia and Alabama. The Court also expressed concern with placing a 3-year-old child with Nancy, who testified that she is 73, compared to April who is 45. In addition, the Guardian Ad Litem and the attorney child advocate agreed with DFCS's decision to place the child with April and her family. Therefore, the DFCS placement with April was not abuse of discretion.

Nancy also contends that the Juvenile Court erred because it did not enter a written finding of fact reflecting its consideration of the least disruptive placement of the child pursuant to O.C.G.A. §15-11-321(a). Here, the Juvenile Court's Order did make findings pertinent to these findings, which the Order explicitly found that permanent placement in either home would be appropriate, and it did not find any reason not to accept the placement with April. Likewise, this addressed the reasonableness of efforts towards moving the child to a permanency placement. In addition, reviewing the hearing transcript, the Juvenile Court did consider the potential disruption by moving to Texas with April, noting in part that children are pretty resilient and that moves across state lines occur in traditional family settings as well. Ultimately, the Juvenile Court found that the disruption was not a sufficient reason to part from the DFCS stated preference.

EQUITABLE CAREGIVER

Dias v. Boone, **S24A0887** (February 18, 2025)

MD (child) was born in October 2010. The Appellant Michelle Diaz's cousin gave birth to the child. Diaz and her romantic partner, Appellee Abby Boone, began caring for the child when he was 6 weeks old. Diaz adopted the child in March 2011, but Boone was not a party to the adoption. Several years later, the couple broke off the romantic relationship. Boone continued to be involved in the child's life after the breakup until 2018 when Diaz stopped further contact with Boone and the child. Boone filed an action for equitable caregiver in August 2019. Boone sought joint physical and legal custody. Diaz filed a Motion to Dismiss and a later Motion for Declaratory Judgment arguing that the equitable caregiver statute was unconstitutional. Even though not identified as facial or as applied, the Court appeared to treat Dias' claim as both. The Trial Court denied the motions and proceeded to a 4-day trial in March 2023. The case included a number of stipulations. One stated that the parties had fostered and supported a relationship between the child and Boone until January 2018. In August 2023, the Trial Court entered a lengthy Order granting Boone's request for standing as an equitable caregiver. The Trial Court found that the child would suffer long term emotional harm and

that a continued relationship with the child and Boone was in the child's best interest. The Court found that Boone had acted in the role of a parent from the time the child was just 6 weeks old. The Court ordered therapy for the child, with a therapist chosen by the Guardian Ad Litem, to assist with the reunification. Diaz filed a Notice of Appeal that was dismissed because the Order was a non-final Order and Diaz failed to follow the interlocutory application procedures. On remand in January 2024, the Trial Court issued a new Order ordering the parties to follow an incorporated parenting plan that provided for joint legal custody with Diaz as the primary custodial parent. The parenting plan provided for a graduated parenting time schedule and gave increasing amounts of visitation to Boone over time. Diaz appealed and the Supreme Court reverses.

With regards to the jurisdictional issue, The Court of Appeals in *Hartman v. DeCaro* dismissed the equitable caregiver appeal because *Hartman* did not pursue through the discretionary application process under O.C.G.A. §5-6-35(a)(2). However, the Court of Appeals's decision to dismiss the appeal of *Hartman* was incorrect. In constructing O.C.G.A. §5-6-35(a)(2), the Court concludes that the phrase "other domestic relations cases" that is used in the provision does not refer to family law cases generally, as opposed to custody orders in divorce cases which is ancillary to the primary issues in the case. Because the Order issued does not fall within O.C.G.A. §5-6-35(a)(2), Diaz was not required to file a discretionary application. The Court does not reach a definitive conclusion on the constitutionality of the equitable caregiver statute because it does not apply to Diaz's conduct that forms the basis for Boone's petition. Even though Diaz's arguments raise serious questions about the constitutionality of the equitable care giver statute, the Court need not resolve the question here because the statutory construction of the statute does not apply to this case. In addition, the Court has more concerns that the equitable caregiver statute does not explicitly require the Trial Court to give deference to a parent's judgment as to the best interest of the child regarding visitation with a third party. It also contains no presumption that is in the best interest of a child to be in the custody of her legal parent. Even more troubling, the equitable caregiver statute, on its face, does not require that relief rewarded to an equitable caregiver be narrowly tailored to the harm or threatened harm that has been shown. In addition, the language in the caregiver statute does not specify what circumstances must be the source of the harm, under what scenario the child will suffer the harm for the criteria to be satisfied.

Boone argues that Diaz has waived her constitutional right through her conduct, and it is possible that even fundamental constitutional rights can be waived. The Court has recognized the voluntary relinquishment of parental rights by contract under statutory provision currently found at O.C.G.A. §19-7-1(b)(1) or by voluntary contract releasing rights to a third party. Here, Diaz stipulated that she fostered and supported Boone's bonded and dependent relationship with the child and held Boone out as a parent of the child on various school and medical records. But even if that sort of conduct could amount to a waiver of a parent's fundamental constitutional rights, we have serious concerns with concluding that Diaz has waived that right here. In most contexts, a waiver of constitutional rights must be knowingly, voluntarily, and intelligently in order to be effective. At the time of Diaz's conduct at issue, she could not have known the possible consequences of that conduct would have any effect on her parental rights. Boone testified about Diaz withholding the child from her beginning in January 2018, but the equitable caregiver statute did not come effective until July 1, 2019. Prior to the acts' effective date, Georgia Law did not provide that merely fostering or supporting a particular relationship with another could result in yielding any portion of parental rights to that person. Therefore, Diaz could not have known the possible consequences of the act prior to the enforcement of the act and therefore, a waiver could not be knowingly, voluntarily, and intelligently done.

Generally speaking, the Court will not reach a

novel constitutional question when a case can be resolved without reaching such issue. Here, an issue of statutory construction presents a threshold issue of constitutional avoidance because if the equitable caregiver statute does not apply to a parent's conduct prior to its effective date, this Court will have no occasion to reach the merits of Diaz's constitutional claim. Boone argues that the equitable caregiver statute retroactively applies, or the text is to be retroactively applied. It's only when such a clear indication is present that the Court will consider whether retroactive application is unconstitutional. Here, there is absolutely no indication in the text of O.C.G.A. §19-7-3.1 or it's enacting legislation that the statute is to be applied retroactively. The reason that applying the equitable caregiver statute arguably constitutes an unconstitutional retroactive application of the statue is that this would "ascribe to" Diaz's conduct "essentially different effects" than it would have had "in view of the law at the time of their occurrence." Therefore, the equitable caregiver statute contains no clear indication that it is to apply to actions by a parent fostering or supporting a relationship between the Petitioner and the child prior to the effective date of the statute and the Court holds that it does not do so. There is no dispute that Boone's petition for adjudication as an equitable caregiver was based on Diaz's actions undertakin solely prior to the effective date of the statute. The Trial Court's January 2024 Order granting Boone's equitable caregiver status and associated custody is reversed.

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