



Kids Matter

Child Protection and Advocacy Law Section

Winter 2024

From the Chair

By Laurie M. Thomas Williams



Welcome to the Winter 2024 issue of Kids Matter.

Our last newsletter was issued in Summer 2023, and since then we have been a very busy Section. Thank you to the Newsletter Committee and editors, Tonya Boga and Amber Walden for this edition of the Newsletter.

Membership

Since our last issue we have grown from 517 members to 540 members as of January 19, 2024. We are excited for this growth! However, we know that not all child protection and advocacy practitioners in our state are members of this Section. Therefore, we are sending out an all call to “BRING A FRIEND” to CPAS. Simply ask those practicing around you if they have joined and if not, please remind them to do so and of the great benefits of being a member. Our goal is to have 600 members this next fiscal year.

Membership requirements: Pay \$20 annual fees. Be a member of the State Bar of Georgia in good standing.

Membership benefits: Section sponsored or reduced cost CLEs, scholarships to CLE, fellowship with other practitioners, access to this wonderful newsletter, access to joint section CLE’s and information that is child protection and advocacy related, as well as supporting community programs like Dropout Prevention, Youth and Law Summits, Roadmap to Law School, back to school, and Christmas drives.

Who can be a member? Everyone with an interest in child protection and advocacy law or practicing or working in a child protection and advocacy related field. That means you...juvenile prosecutors, public defenders, parent attorneys, guardian ad litem, judges, and legal counsel for state agencies that handle child welfare connected issues, child advocates, solo practitioners, and others working in child protection and advocacy related legal areas.

So, join today and bring a friend.

Activities and Updates:

On January 25th, 2024, we held our annual section meeting and CLE. This year we were in-person! We had a wonderful turnout with over

86 attendees. We recorded the CLE and it will be posted to the State Bar of Georgia’s Child Protection and Advocacy Section website soon. Please note CLE credit will not automatically be granted for the rewatch, but you may apply for Distance Learning CLE credit after watching.

During the 2024 annual meeting of the Section, the members elected a slate of officers to serve on the Executive Committee for the 2024-2025 Bar Year, which is July 2024 to June 30, 2025. I would like to introduce you to newly elected officers of the Child Protection and Advocacy Section (CPAS) for 2024: Laurie M. Thomas, Chair; Tonya Boga, Vice-Chair; Randee Waldman, Treasurer; Jill Roth, Secretary; and JP Berlon, Immediate Past Chair.

We also announced the second winner of the Willie Lovett Award, which we present at our annual meeting, Ms. Amy L. Bell. Congratulations Attorney Bell, this award is well deserved. Please read the article on Attorney Bell in this newsletter.

On December 6, 2023, CPAS supported and shared the Privacy and Technology Section’s event, titled “Privacy & Technology for Small/Solo Practitioners,” which can be replayed at <https://www.youtube.com/watch?v=sNFo-MEBqno>. We felt it important to help our solo/small practitioners stay safe when using technology and be aware of privacy issues. As we become aware of additional pertinent Continuing Legal Education (CLE) sessions or programming from other sections, we will persist in offering our support and sharing this information with you.

District Socials:

Judicial District One held an event at the Strand Bistro and Chophouse in Jesup, GA and another in Statesboro, GA. Judicial District Six jointly held a sponsored social with GABWA at Jakes Sports Bar and Grill. Be on the lookout for other district events and socials.

New Members to the Executive Committee:

In October, we welcomed Amber Walden to the Executive Committee. Amber Walden is a parent attorney working primarily in Douglas/Paulding/DeKalb. We will officially introduce Amber Walden in an upcoming newsletter.

In September we welcomed Ira Sudman, General Counsel for DECAL, to the Executive Committee. See his introduction in this newsletter.

CPAS Community Sponsored or Supported Events:
In November we sponsored Fulton County Juvenile Court’s National Adoption Day by providing gift cards to the participating families. Congratulations to those children and families on becoming forever families!

In the past this Section has supported Executive Committee member, Ira Foster’s “Roadmap to Law School” initiative, whose purpose is to introduce college students to lawyers in the community and connect them with the process to become a lawyer. The last one was held at Fort Valley State University and supported by our Section.

CPAS also supported and shared the School Dropout Prevention workshops in Augusta and Valdosta. The workshops were organized by Alpha Phi Alpha Fraternity Inc., Eta. Lambda Chapter, The Alpha Georgia Education Foundation, and the Georgia Legal Services Program.

Upcoming Events:
CPAS sponsored and participating event: Youth and the Law Summit, April 13, 2024, from 8:30 a.m. to 2:00 p.m. Located at the State Bar Conference Center, 104 Marietta St, NW, Atlanta, GA 30303
We are joining the Privacy and Technology Section to host a Keeping Kids Safe Online session for parents during the Summit.

Willie Lovett Award nominations.

Opportunities to Serve:
Executive Committee or subcommittee: If you are interested in serving on the Executive Committee (EC) or a subcommittee (Legislative, CLE, Budget, Willie Lovett Award, Newsletter) please reach out to me. We are always looking for people willing to serve and to have representation from people working in an array of child protection and advocacy roles and with agencies not currently represented on our Executive Committee.

Newsletter:
Looking for articles that might be able to cross-published in our newsletter and State Bar of Georgia magazine.

Thank you for the work you do!

Laurie M. Thomas Williams
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If you are interested in publishing an article, please reach out to info@floteservices.com

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Voices for Georgia's Children GA-CALL Panel

By Jill Roth

On January 29, 2024, Voices for Georgia's Children hosted its annual GA-CALL Panel. VOICES Advocacy Director Polly McKinney moderated a panel consisting of Commissioner Russel Carlson from the Georgia Department of Community Health (the agency that administers Medicaid – currently serving approximately 1.4 million of Georgia's children), Commissioner Kevin Tanner from the Georgia Department of Behavioral Health and Developmental Disabilities, Director of the Office of the Child Advocate Jerry Bruce, Troup County Juvenile Court Judge Michael Key, Director of the Multi-Agency Alliance for Children Heather Rowles (MAAC - a nonprofit agency that provides care coordination and supports to approximately 2,000 youth experiencing foster care and/or transitioning into adulthood from foster care monthly), Youth Coordinator for Georgia Empowerment/MAAC Anthony Stover, State Senator Kay Kirkpatrick (District 32) who serves as Chair of the recently formed Senate Committee on Children and Families, and State Representative Mary Margaret Oliver (District 82).

The panelists spoke about what they saw as the most promising and challenging things facing Georgia's children and families. Common themes included improving representation for children and parents in dependency matters, improving access to affordable housing for youth aging out of foster care, improving data collection across multiple child-serving systems and agencies, addressing staffing shortages across multiple child-serving systems and agencies, and the importance of listening to the voices of youth with lived experience in child-serving systems.

MAAC Executive Director Heather Rowles spoke about the success of MAAC's ongoing pilot program providing voluntary high fidelity wraparound services to families. She would like to see more work be done on affordable housing for children aging out of care. Ms. Rowles wishes for see removal limited to cases of abuse and for more services to prevent removal to be provided to families in cases of neglect. She would also like to see children in foster care receive the services and supports that they need, like extracurricular activities and an array of mental health services, rather than non-individualized services. Children experiencing foster care want to engage in the typical activities that youth their age experience and experience normalcy to the greatest extent they can. Ms. Rowles pointed out that children in foster care who engage in extracurricular activities have more placement stability and better educational outcomes.

She called for our community to continue to listen to youth voices and to consider innovative practices, particularly in placement and treatment decisions.

Anthony Stover from MAAC spoke about his excitement regarding MAAC's ability engage a youth advisory board comprised of youth with lived foster care experiences. Efforts by these youth have resulted in progress regarding policies surrounding postsecondary education for children who are experiencing or who have experienced foster care. Mr. Stover would like to see more efforts to provide services that can assist youth aging out of foster care with life skills, access to affordable housing, and access to a more diverse array of mental health care services, particularly culturally appropriate mental health care. He would also like to see more services be provided to families to prevent removal of children to foster care, including affordable afterschool and childcare programs and emergency financial supports. Judge Key and Jerry Bruce both spoke about the need for improved child and parent representation in dependency matters and for the need for legal practitioners and judges to adhere to the law. Mr. Bruce encouraged audience members to attend dependency hearings at their local juvenile courts to view the quality of representation that parents and children receive and to become familiar with their local courts and judges. Both Judge Key and Mr. Bruce also spoke about the need for improved data collection and reporting practices by juvenile courts; Senator Kirkpatrick also spoke about the need to assist juvenile courts with data collection and reporting. When asked if he could wave a magic wand and fix one thing about our child-serving systems, Mr. Bruce wished that he could change the perception people hold of the population our courts serve - while we occasionally see cruel, evil, and selfish people, most of the families we encounter are facing issues that we all face but without the supports that we have had in our own lives (supportive friends/families/coworkers, savings, education, etc.). Mr. Bruce reminded us that, with some twists of fate, we could easily be in the same position as these families.

Both Senator Kirkpatrick and Representative Margaret-Oliver spoke about the staffing issues that continue to be a challenge within the agencies and programs that support youth with severe behavioral and/or mental health needs. Both also spoke to the desire to support programs aimed at pre-K and younger children, as this window is so important in child development and providing supports during this time provides the best window for preventative efforts to succeed.

Regina Quick, General Counsel for the Department of Human Services, which oversees the Department of Family

and Children Services, as well as the Departments of Child Support and Aging Services, spoke about the Department's success in reducing the number of foster children being housed in hotels. DHS is hoping to see legislation passed that would expand the number of facilities available to place youth.

Commissioner Carlson spoke about the Department of Community Health's current initiative regarding the procurement of managed Medicaid, which provides managed healthcare services to populations in Georgia Families (Medicaid and PeachCare for Kids) and Georgia Families 360° (healthcare services for youth in foster care, adoption assistance, and children in the custody of the Department of Juvenile Justice who are covered by Medicaid). DCH has sent out a request for proposals to care management organizations and hopes to make improvements related to continuity of care, accountability mechanisms for providers, closed-loop referral systems, and data collection.

Towards the end of the program, Judge Key expressed his wish for more focus to be put on all the good work and promising practices happening throughout Georgia. If you know of good work being done or promising practices that you feel should be highlighted, please write an article about them for the next Kids Matter newsletter. Thank you for all you do to support Georgia's children!

Executive Committee - Member Highlight: Jill Roth



Jill Roth currently serves as a Senior Judicial Staff Attorney at Cobb County Juvenile Court. Previously, she served as Judicial Staff Attorney for the Honorable Judge Renata D. Turner at Fulton County Juvenile Court. In this role, Jill played a key part in organizing events like the annual Youth and the Law Summit and School Pathways Project. Jill continues to volunteer with the Youth and the Law Summit.

Jill graduated summa cum laude from Georgia State University with a B.A. in history and earned her J.D. with distinction from the University of Georgia School of Law. During law school, she engaged in the Public Interest Practicum and Juvenile Justice Projects. She began her legal career as a law clerk to the Honorable G.R. Smith with the U.S. District Court for the Southern District of Georgia in Savannah. Subsequently, she served as an

Assistant Public Defender, initially handling appeals before the Court of Appeals of the State of Georgia and pre-trial hearings in various municipal courts. Her interest in youth advocacy led her to transition to juvenile court, where she represented numerous children in delinquency and CHINS matters.

From 2015 to 2020, Jill worked as an Assistant Public Defender for the Office of the Public Defender in DeKalb County after relocating to Marietta, Georgia. During this time, she contributed as faculty for the Georgia Public Defender Council's Transition into Law Practice Program and volunteered as a contributing author for the Georgia Association of Criminal Defense Attorneys' publication, What's the Decision. She also served on the Advisory Committee for Georgia Appleseed's Embracing Common Wisdom: The New Juvenile Code in Georgia An Assessment.

Since 2019, Jill has been an Executive Committee Member with the State Bar of Georgia's Child Protection and Advocacy Section, taking on roles such as Interim Secretary and Secretary. She is a Registered Neutral with the Georgia Office of Dispute Resolution and holds certification as a Child Welfare Legal Specialist.

Jill resides in Marietta, Georgia, with her husband, children, and pets. In her free time, she enjoys being a Dare to Dream Mentor with Atlanta Angels, swimming, listening to Taylor Swift, and watching her daughter horseback ride.

Executive Committee - Member Highlight: Ira Sudman



Currently serving as the General Counsel for the Georgia Department of Early Care and Learning (DECAL), Ira Sudman oversees all legal matters pertaining to the agency and manages a legal division consisting of 27 staff members. Joining DECAL in September 2007 as a legal services officer, Ira represented the department in various legal proceedings, including license revocations, suspensions, and criminal record check hearings before the Office of State Administrative Hearings. He was appointed Chief Legal Officer in March 2012.

After passing the California Bar in December 2001, Ira briefly practiced family law in California before moving to Georgia. He became a member of the Georgia Bar Association in December 2002 and served as an assistant solicitor for Fulton County. Ira has also worked at the Fulton Solicitor's Office and held the position of senior assistant district attorney in Clayton County.

Ira played a pivotal role in establishing a policy for a national fingerprint background check for all individuals working with children in childcare facilities in the State of Georgia. Over the years he has been actively involved in both the agency and the community, he participates in programs such as Georgia Farm to School and the Early Care Education Summit. Additionally, he demonstrates his commitment by participating in challenges to raise money for the State Charitable Contributions Program. He joined the CPAS executive committee in October 2023.

Note: Bright from the Start: Georgia Department of Early Care and Learning (DECAL) is tasked with meeting the childcare and early education needs of Georgia's children and their families. DECAL administers the nationally recognized Georgia's Pre-K Program, licenses childcare centers and home-based childcare, oversees Georgia's Childcare and Parent Services (CAPS) program, federal nutrition programs, and manages Quality Rated, Georgia's community-powered childcare rating system.

Executive Committee - Member Highlight: Judge Kareem West



Presently serving as Cobb County Juvenile Court Judge since 2018, Kareem West, alongside his fellow Judges, prioritizes community engagement to empower Cobb's youth in reaching their full potential. His rulings carefully consider both short and long-term impacts on each child and family, skillfully balancing community safety.

Beyond the bench, Judge West's dedication to children's rights is evident in various instances, such as inspiring non-court involved youth to pursue positive paths. His commitment to community service and advocacy for families in times of difficulty is commendable. Actively involved in initiatives like dismantling the school-to-prison pipeline and addressing the Commercial Sexual

Exploitation of Children (CSEC), he works to reduce the stigma related to mental health.

He holds a Bachelor of Science Degree in Education from Southern University and earned his Law Degree from John Marshall Law School. His public service began as a Mississippi Parole Board member from 2000 to 2007, appointed by Governor Ronnie Musgrove and later re-appointed by Governor Haley Barbour.

In his legal career, Kareem served as an Assistant Solicitor General in the Richmond County, Georgia Solicitor General's Office (2007-2008) and as an Assistant District Attorney in Cobb County, GA (2008-2013). In 2013, he established West Law Services, specializing in Criminal Law, Juvenile Law, Real Estate Law, and Premises Liability Law.

Throughout his professional endeavors, Judge West remains devoted to his wife, daughter, fraternity, and faith community.

Executive Committee - Member Highlight: Anissa Patton



Anissa Patton, a Supervising Attorney and Child Welfare Law Specialist at the Fulton County Office of the Child Attorney since 2006, brings over 20 years of experience in providing effective legal representation for children and families. She holds the distinction of being among the initial Child Welfare Law Specialists in Georgia. Her

career spans various roles, including Assistant Prosecuting Attorney, state agency attorney, Public Defender, legal studies college professor, and zealous advocate for children. Anissa earned her J.D. from Cleveland-Marshall College of Law in 2001.

Her exceptional service has garnered recognition, including the Hon. Willie J. Lovett, Jr. Award in 2018 and the Chief Justice P. Harris Hines Child Advocacy Award in 2019. Notably, the American Bar Association acknowledged her as the Fearless Children's Lawyer of the Month in October 2020 for her advocacy for LGBTQ+ youth in foster care. In 2021, she received the John W. Kuykendall Award for Community Service from Davidson College. Also, Anissa's commitment to equity and justice led to her appointment as the Georgia Indian Child Welfare Act expert in January 2022.

Outside her professional commitments, she actively contributes to civic organizations and bar associations, including the Alumni Board of Davidson College, the Advisory Board of Directors for the Howard Warner-Newnan Coweta Boys and Girls Club, and the National Coalition of 100 Black Women, MECCA Chapter. Anissa also serves as the Child Protection and Advocacy Section 6th Judicial District Representative for the State Bar of Georgia.

Case Law & Statute Updates

By Amber Walden

***Interest of R.E.Z.B.*, 2023 A23A1775 (December 12, 2023)—Don't worry Juvenile Court, only the federal government can make immigration determinations.**

Juvenile court found child dependent and awarded temporary custody to uncle. Juvenile court found reunification with one or both parents was not viable due to abuse, neglect, abandonment, or similar basis found under state law, but declined to make a finding with regard to whether or not it would be in the child's best interest to be returned to the child's or parent's previous country of nationality or last habitual residence despite counsel's request. COA noted that when a juvenile court makes preliminary findings of dependency, the juvenile court is not rendering an immigration determination—that determination “rests squarely with the federal government.” Thus, the COA held that although a juvenile court has discretion to determine whether the child presents clear and convincing credible evidence to support the SIJS factors, the court “had a duty to consider the SIJS factors and make findings.” (quoting *In the Interest of J.J.X.C.*, 318 Ga. App. 420 (2012)).

***In re J.V.*, A22A1239 (Mother), A22A1240 (Father) (2023)—Juvenile Court Course-Corrected**

The parents' challenges to the juvenile court's ruling in the initial dependency review hearing of: (1) juvenile court erred by allowing DFCS to develop the family's case plan without Appellants' input as required by OCGA § 15-11-201(b); (2) juvenile court erred in determining that DFCS complied with OCGA § 15-11-200(d)(2) by emailing the case plan to appellants' attorneys instead of to the parents directly.

- Appellants' Notices of Appeal were filed after the juvenile court issued an oral ruling at the initial review hearing but prior to the court issuing its written order. Although “i[t] is well settled that a judgment must be entered before an appeal is taken,” *In the Interest of S.W.*, 363 Ga. App. 666, 672 (3) (872 S.E.2d 316) (2022), the premature notices of appeal ripened once the written order was subsequently entered. See *Wilson v. S. Railway*, 208 Ga. App. 598, 599-600 (1) (431 S.E.2d 383)



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(1993).

- The appeals were dismissed because the Juvenile Court wound up “reversing” itself after the parents filed their Notices of Appeal by specifically ordering DFCS to revise the family’s case plan with appellants’ input, to circulate the revised case plan to the parties, and to translate the case plan and any future proposed case plan into Spanish for J.V.’s father, who does not speak English.

Anderson v. Cribbs, 367 Ga. App. 355 (February 14, 2023)—Legitimately On the Wagon

- Mother appeals the trial court’s ruling to grant Father’s legitimation, arguing that the trial court failed to consider the Father’s known history of substance abuse and positive drug screens, and failed to require Father to submit to a drug test at the final legitimation hearing. (Child support and visitation were also at issue.)
- During the final hearing, Mother’s counsel “ask[ed]” that Father take a drug test in view of his history of drug use. When the trial court asked Father if he still smoked marijuana, he replied he did not and agreed to take a drug test. The trial court indicated that it was “not ordering [Father] to take [a drug test]” but simply “giving [Father] an option to take it.” On cross-examination, Father again denied smoking marijuana and agreed to take a drug test. The record demonstrates that, prior to the trial court’s November 20, 2019 temporary hearing, Father had two “positive” drug screens for THC on November 6 and November 19. After the temporary hearing, however, the record shows four “negative” drug screens.
- Father’s testimony was consistent with the “negative” drug screen results following the temporary hearing, and nothing suggested any ongoing substance abuse or a need for additional drug screens, nor did Mother allege that Father’s substance abuse continued unabated or that his alleged drug use had a detrimental effect on the child.

ITIO M.J.H., A22A1385; 366 Ga. App. 872 (February 23, 2023)—Facts Not in Evidence that the gangs in the U.S. are just as bad as the gangs in Guatemala

- At the SIJS adjudication hearing on the private petition for dependency, the child testified that when he lived in Guatemala, he lived with his mother and his grandparents. He attended school until he was nine or ten years old, then he stopped

going to school so he could earn money for his family. He came to the United States when he was twelve years old because, although he was working very hard, it was not sufficient to support his family and because he wanted to continue his education. The uncle filed a private petition for dependency and custody, that included attachments supporting crime and gang activity in Guatemala.

- The juvenile court found that the child was a dependent minor child and appointed the uncle as the child’s custodian. However, the juvenile court also found that reunification with the child’s mother was viable and that it was in the child’s best interest to return to Guatemala. In support of these conclusions, the juvenile court noted that the child remains in contact with his family in Guatemala and specifically found that, although the child’s uncle has more financial resources, his family in Guatemala can nonetheless provide proper and adequate care for him. The court further concluded, in its written order: **“While the child has expressed concerns regarding the presence of gangs in his community, it is the unfortunate reality that gangs are present in this county where he now resides.”**

- COA’s Ruling: The juvenile court’s order clearly reflects that the court relied on facts outside the record to arrive at its conclusions that it was in the child’s best interest to return to Guatemala and that reunification with his mother is viable. The juvenile court observed that there are gangs in the child’s community in the United States, but there is nothing in the record to support the court’s observation. Importantly, there is no evidence in the record establishing that gangs or crime in the child’s community in the United States has had any effect on him or his family, nor that gangs are as widespread in this community as they are in Guatemala. Thus, because the presence of crime and gangs was a central issue in this case, this error was not harmless.

ITIO N.E.K., 367 Ga. App. 50 (2023)—Incarcerated parents are not “simply faces on a television screen” (TPR)

Abandonment

- Abandonment requires evidence “of an actual desertion, accompanied by an intention to sever entirely, so far as possible to do so, the parental relation, throw off all obligations growing out of the same, and forego all parental duties and claims.”

(Citation and punctuation omitted.) *In the Interest of H.L.W.*, 249 Ga. App. 600, 600 (1) (547 S.E.2d 799) (2001 “To constitute abandonment, the [parent’s] conduct must actually show an intent to abandon in light of the rest of the record.” (Citation and punctuation omitted.) *In the Interest of H.A.S.*, 358 Ga. App. 54, 58-59 (2) (853 S.E.2d 371) (2020).

- The mother attempted to participate in the required assessments but was unable to due to the limitations imposed by the federal prison. The evidence showed that the mother had communicated with the child since she was placed with the maternal grandparents and that she had not missed any of her weekly video visits with the child except when the child was on vacation. The mother’s release date is in 2025, but could be released as early as April 2023.
- The father did not pay child support to DFCS, but he did arrange to have payments sent to the child’s maternal grandmother and gifts sent to the child. In addition, the father had weekly video visits with the child.
- The COA found that under the circumstances, the required intent to abandon had not been shown for either parent.

Unremedied Dependency

- The COA noted that because the mother remained incarcerated, the applicable inquiry was whether continuation of the parent-child relationship will cause or is likely to cause serious physical, mental, moral, or emotional harm to the child.
- The Conclusions of Law merely recited the statutory language. The COA stated that in the juvenile court’s order, the juvenile court found harm based on Georgia’s public policy to move quickly toward permanency for children in foster care, a child’s need for permanence, the case manager’s testimony describing the harm associated with moving the child from a stable home, and the lack of a relationship between the parents and the child. The COA found that generalized findings that a child will suffer harm—absent the stability and permanency of an adoptive home—are not sufficient.
- The record shows that the child is thriving in the home of her mat GPs, and no evidence that maintaining the mother’s relationship with the child will itself cause the child harm. In fact, the maternal grandmother testified that the child enjoys the time she spends talking to her mother. The juvenile court opined that the child had no significant

attachment to either parent as they “are simply faces on a television screen and will be for the next several years.”

- Because the juvenile court’s order does not set forth any facts that support its conclusion that the continuation of the existing relationship between the child and her mother or the father will cause or is likely to cause serious physical, mental, moral, or emotional harm to the child, the COA stated it must reverse the juvenile court’s rulings.
- Because no clear and convincing evidence of abandonment and no evidence of harm/unremedied dependency, the COA did not address child’s best interest prong of the TPR analysis.

***ITIO B.L.*, A23A0008; 367 Ga. App. 715 (May 24, 2023)—I got it all on tape! Legitimation; Superior Court transfer to Juvenile Court**

- Prior consistent statement by the father: At the final hearing, the father attempted to introduce evidence of what a preschool administrator told the father about E.L. (B.L.’s sibling) making an outcry at school as proof that E.L. had been sexually abused. The father had testified to this same statement at the emergency hearing on this same matter. The declarants in this situation are the preschool administrator and E.L.—not the father—and neither the administrator nor E.L. testified at the final hearing. Consequently, this does not fall within the prior consistent statement exclusion to the hearsay rule.

Ø This evidence also would not be admissible under the Child Hearsay Statute because, by its terms, that provision only applies when the child “testifies at the trial, unless the adverse party forfeits or waives such child’s testimony[.]” See O.C.G.A. § 24-8-820(a).

Ø To the extent the father may have sought to introduce statements for which he could be considered the declarant, they would not constitute prior consistent statements because that doctrine only applies to statements a witness made before his motive to fabricate came into existence. The parties were engaged in an acrimonious custody dispute before the father testified at the emergency hearing. So, this argument didn’t fly as an exception to the hearsay rule either.

- Foundation: The father attempted to play “a recording on [his] phone from [his] child.” The trial court told the father that he could introduce the recording only if he could “verify” it. See O.C.G.A. § 24-9-901(a): Authentication is a condition precedent to the admission of evidence; proponent must establish that an item is what he claims it to be.

***ITIO B.R.*, A23A0194, A23A0356—Insufficiency of the Orders: Continuances; Findings of Fact; No Permanency Plan Reports in the Record; (Orders Vacated) Special Opinion on Drug Screens**

- EOE: “(1) failing to issue an order with all requisite written findings of fact, including a specific basis for its finding of continued dependency; (2) failing to enforce the requirement that a permanency plan report be submitted five days before; “a scheduled hearing or properly incorporating it into its order and the record; (3) granting a continuance in the absence of good cause; and (4) finding that clear and convincing evidence established continued dependency.”
- “The juvenile court’s orders failed to include a finding with regard to parental unfitness, and for this reason alone, we must vacate its orders and remand for the juvenile court to make appropriate findings, after which, the mother may file another appeal if necessary.” *In re B. R.* (Ga. App. 2023)
- Other omitted findings should also be remedied upon the return of the case to juvenile court. Specifically, “[t]he date by which it is likely that a child adjudicated as a dependent child will be returned to his or her home, placed for adoption, or placed with a permanent guardian or in some other alternative permanent placement.” OCGA § 15-11-232 (a) (6).
- COA noted: “the permanency plans prepared by DFCS and referenced in the juvenile court’s orders as having been adopted by the juvenile court do not appear in the record...”
- Continuance Order: Vacated the continuance order and instructed the juvenile court to specify on remand what matters were continued following the hearing.
- Mother objected based on lack of reliability of hearsay evidence (lack of foundation, caseworker’s lack of personal knowledge, and chain of custody). Mother did not object to relevance or necessity of testimony. McFadden noted trial court not required to articulate findings about

relevance, reliability, and necessity of hearsay testimony where mother objected to hearsay testimony on ground of reliability; trial court ruled that she would allow caseworker testimony about drug test to extent caseworker could identify basis of her knowledge and mother’s objections would go to weight of the testimony.

***ITIO B.A.*, 367 Ga. App. 727 (2023)—Stop Burden Shifting! And, Plus, Also—Reverse!!**

- DFCS did not show clear and convincing evidence of present dependency at the hearing, so the court’s order was reversed.
- In Jan. 2022, DFCS filed a complaint for dependency and removal, claiming that mother has a history of substance use and prenatal exposure as she has tested positive for cocaine at birth with her other children. DFCS filed a petition for dependency with the same allegations as the complaint, and added that the child had been diagnosed with drug withdrawal syndrome.
- At the hearing, the CM “conceded that there was no evidence that the mother was still abusing drugs; that, contrary to the allegation in the dependency petition, B.A. in fact had shown no signs of withdrawal; and that there were ‘no physical . . . or mental concerns’ about B. A.” DFCS offered no evidence at the hearing that B.A. is presently dependent, and the juvenile court cited no such evidence in its order. Rather, the court highlighted the mother’s failure to offer documentary proof, beyond her own testimony, that she is presently able to care for B.A.
- DFCS urged the COA to vacate the dependency order and remand for the juvenile court to ‘conduct further proceedings in accordance with the requirements of the Juvenile Code.’ The COA stated that they generally vacate an order when a juvenile court’s order “does not contain the necessary findings of fact and conclusions of law to support the disposition, however, the deficiency in the juvenile court’s order is not simply an absence of adequate factual findings and legal conclusions; the deficiency is that the court’s disposition is not supported by clear and convincing evidence in the record. Accordingly, we must reverse the juvenile court’s dependency order.” See *In the Interest of K.D.*, 344 Ga. App. 423, 427-428 (1) (810 S.E.2d 193) (2018) (reversing juvenile court’s judgment of dependency because there was insufficient evidence to support it).

ITIO K.R., 367 Ga. App. 668 (2023): “Parental unfitness” is a condition precedent to removal not to dependency.

The juvenile court’s conclusions of law were supported by detailed factual findings regarding the mother’s abuse and neglect of K.R.: (1) Mother spanked K. R. with a “big wooden spoon” on a regular basis, and the other children heard K. R. “crying and yelling”; (2) K. R. was the only child in the home who Mother spanked; (3) on one occasion, Mother hit K. R. with the spoon so hard she fell out of her bed and the other children heard her “screaming”; (4) two of the children in the home witnessed Mother pulling K. R.’s hair; (5) Mother would often tell K. R. “she was ugly, her clothes were nasty, . . . she stunk[,]” and her hair was “nappy”; (6) Mother yelled, screamed, and became erratic during “therapy sessions; and in one session, she flew into a ‘rage’ with K. R. sitting next to her; (7) Mother was criminally charged with child-abuse offenses based on the investigation into her physical abuse of K. R. in this case.

The COA ruled that a finding of “parental unfitness” is a condition precedent to removal not to *dependency finding*. Thus, the juvenile court may find a child dependent without making a finding of parental unfitness if juvenile court does not remove custody of the child from parent. The juvenile court found clear and convincing evidence of physical abuse, so it did not need to make a finding regarding emotional abuse (e.g. physical or emotional abuse = abuse; only need to find abuse or neglect, not abuse and neglect).

ITIO K.B., 368 Ga. App. 485 (2023): Evidence of dependency is doppelgänger of evidence of “contrary to the welfare”

- Sufficiency of the evidence:

Ø The juvenile court found by clear and convincing evidence that: Father refused to engage with the Department since the children came into the Department’s care in 2019; continued to refuse to cooperate with the Department even after he legitimated the children in 2021; failed to comply with the court-ordered case plan designed to reunify the family, including assessments and services for substance abuse, domestic violence, and parental fitness; and that despite his claims of employment, he has failed to provide tax forms or bank statements showing such employment.

- Welfare of the child:

Ø “[t]he same circumstances that authorized the juvenile court to determine . . . that the children were [dependent] due to lack of

proper parental care and control . . . further provided clear and convincing evidentiary support for the conclusion that [returning custody to father was contrary to the welfare of] the children.” *In the Interest of T.W.O.*, 283 Ga. App. 771, 777 (1) (a) (iv) (643 S.E.2d 255) (2007).

ITIO C.B., A23A0726 (2023)—Out of town; then unhoused; then, yes living there.

Deputy attempted to serve father at paternal grandmother’s address with the summons and complaint for mother’s petition for termination of parental rights against the father. GM said father was out of town, she gave the deputy father’s phone number, the deputy called father and spoke with him. Father told him he was out of town and told him to leave documents with GM. Father argued later that juvenile court lacked jurisdiction due to defective service. COA affirmed juvenile court, stating that the issue of proper service is a question of fact to be resolved by the trial judge and the father had the burden of showing improper service, and further that a process server’s return of service can only be set aside upon evidence that is not only clear and convincing, but the strongest evidence of which the nature of the case will admit.

Gelin v. Welch, A23A0339, 368 Ga. App. 375 (2023)

Custody and child support case, transferred to juvenile court. Pursuant to “O.C.G.A. § 19-9-3(a)(8), Appellant mother properly requested that the juvenile court state the specific findings of fact and conclusions of law that led to its ruling in the parties’ competing claims in the modification of custody. O.C.G.A. § 9-11-52(a) states that “in all nonjury trials in courts of record, the court shall upon request of any party made prior to such ruling, find the facts specially and shall state separately its conclusions of law.” *VanVlerah v. VanVlerah*, 359 Ga. App. 577, 579(1)(a) (859 S.E.2d 546) (2021) (“O.C.G.A. § 9-11-52(a) applies to contested family law cases....”). “Findings of fact and conclusions of law enable the parties to specify the errors the trial court purportedly made, and enable the appellate court to review the judgment adequately and promptly.” *Grantham v. Grantham*, 269 Ga. 413, 414 (1) (499 S.E.2d 67) (1998).

“The findings of fact are not intended to amount to a brief of the evidence and a mere recitation of the events that took place at the trial does not satisfy the requirements of O.C.G.A. § 9-11-52(a).” (Citations and punctuation omitted.) *In the Interest of B.G.*, 345 Ga. App. 167, 168 (1) (812 S.E.2d 552) (2018) (applying O.C.G.A. § 9-11-52(a) in a dependency proceeding).

The COA found that the juvenile court's order was "fatally flawed" because it failed to identify the material change in condition warranting a change in custody or to find that such material change in condition affected the welfare of the child, thus it vacated and remanded the order.

***Namdar-Yeganeh v. Namdar Yeganeh*, A23A0999 & A23A1000, 369 Ga. App. 700 (2023)—Grandparents finding more than one way to peel an orange.**

Following death of father, New Mexico court awarded visitation to paternal grandparents. After mother moved to Georgia, grandparents filed petition to modify visitation. The COA agreed with the mother's motion to dismiss and arguments pursuant to O.C.G.A. § 19-7-3, stating that the trial court erred by "supplementing" the provisions of O.C.G.A. § 19-7-3 (f/k/a "Grandparents Visitation Statute") with the provisions of O.C.G.A. § 19-9-3 when making its ruling, because O.C.G.A. § 19-9-3(d) applies to custody between parents and *encourages* contact with grandparents, and O.C.G.A. § 19-7-3 provides a *mechanism* for a grant of visitation rights to grandparents in a custody action between parents when necessary to ensure and preserve this contact. The COA was very clear, "Grandparent visitation in this state is governed by statute, and nothing in O.C.G.A. § 19-7-3 or O.C.G.A. § 19-9-3 authorizes grandparents who have been granted visitation rights to then initiate modification of an existing order in the absence of some other properly pending action."

***Schatte v. McGee*, A23A0831, 368 Ga. App. 868 (2023)—The Young and the Restless**

Petitioner biological father had an extramarital relationship with the mother of the child, and the relationship ended badly while the mother was still pregnant. Nevertheless, father paid medical bills up to and including the birth, following birth the mother sought child support, father sought a paternity test and legitimation, the mother objected to the legitimation and filed a counterclaim for child support. Mother alternatively asked the court to deny the father's request for custody and still order him to pay child support. Mother complains that the trial court's order did not clearly state its findings of fact and that her due process right to notice was violated because the court's notice was that the hearing was a temporary custody hearing but the trial court judge announced at the beginning of the hearing that it was going to be a permanent custody hearing.

The COA agreed with the mother that the trial court's legitimation order was silent as to its reasoning in granting the legitimation petition, however, since the mother did

not file a timely request for findings of fact and conclusions of law, she waived the right to complain of the lack of such findings of fact and conclusions of law on appeal. The COA disagreed with the mother that her due process right was violated based on lack of adequate notice. Because the mother did not raise this issue at the time of the hearing, but instead testified herself and called witnesses to testify, the COA found that "a party who acquiesces to the trial of an issue cannot subsequently complain of inadequate notice" upon appeal.

***ITIO K.A.V.*, A23A0968 & A23A1040, 368 Ga. App. 878 (2023)**

"Six days before K.A.V.'s 18th birthday, her guardian ad litem filed a 'motion for no reasonable efforts' alleging that DFACS failed to make reasonable efforts to achieve the goals in K.A.V.'s case plan in her dependency case. The juvenile court held a hearing on the day before K.A.V.'s 18th birthday. On January 12, 2023, fifteen days after K.A.V. turned 18, the juvenile court issued an order holding that it was precluded from ordering DFACS to provide extended foster care to K.A.V. because she was not a qualified immigrant. The juvenile court further found that DFACS made no reasonable efforts to effectuate K.A.V.'s permanency plan and, as a sanction, ordered DFACS to pay rent to K.A.V.'s foster mother to care for K.A.V. for the next six months following the date of the order."

"When a child adjudicated as a dependent child reaches 18 years of age, all orders in connection with dependency proceedings affecting him or her then in force terminate and he or she shall be discharged from further obligation or control.'...". The COA vacated the order and remanded.

Statute updates for 2023:

- HB 460: Grants right to counsel to child in legitimation; Grants right to counsel for guardians and respondents in dependency proceedings.
- SB 131: Updates notification requirements for permanent guardianship proceedings to align with notice requirements for termination of parental rights (TPR).
- SB 134: Deems a child witness competent to testify in all proceedings involving termination of parental rights. The bill also allows any medical report in narrative form

2023 - 2024 Executive Committee Judicial District Representatives

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	10	Toombs, Augusta

Accessing Child Welfare and Juvenile Justice Policy

Child Welfare: The public can access all Department of Human Services' policies, (including the Division of Family and Children Services (DFCS)), by navigating to: <https://odis.dhs.ga.gov/General>. Once you have accessed this web page, click on "MAN3000 – Child Welfare," and a PDF document can be downloaded, which includes hyperlinks to up-to-date DFCS policies.

Another very helpful tip: If you are interested in receiving updates on DHS' policies and manuals, on the ODIS website, click on the bottom for the Division or Office you are interested in, look to the button right and click the "Subscribe" button.

Juvenile Justice: The public can access the Department of Juvenile Justice's (DJJ) policies by navigating to: <http://public.powerdms.com/GADJJ/tree>.

If an attorney needs additional policies or related attachments, they may also reach out to any Executive Committee Member, or Cindy Wang, General Counsel for DJJ's Office of Legal Services, at cindy.wang@djj.state.ga.us.

Willie Lovett Award Recipient: Amy Bell



CPAS is proud to have awarded the Annual Willie Lovett Award to another great attorney, Amy Bell.

Amy sends the following message to our section,

“Thank you so much. This award means the world to me. I was really surprised and

deeply honored to receive it, ... so please know this has touched my heart a great deal.... all of CPAS- ... I am deeply honored by this recognition; am deeply grateful for the opportunities and encouragement CPAS provides its members; and, I will keep trying to get better in my practice and to encourage fellow child advocates in our journey to help look for continually better ways to work with our child clients. “

Thank you again,
Amy L. Bell,
Assistant Public Defender
Macon Judicial Circuit

Comments about Amy in the nomination process:

“I have had the pleasure of working with Amy at the Macon Circuit Public Defender’s Office for more than 18 years. I first met Amy when she worked as a law clerk in juvenile court for the Macon Circuit DA’s Office. In our dueling roles, I came to appreciate her strong advocacy and dedication to justice. More importantly, I was impressed by her obvious care and concern for the children we served. In late 2004, when I was recruited to head up the newly forming Macon Circuit PD’s Juvenile Division, I was asked if I knew of anyone who might be a good fit for the division. I recommended Amy without reservation and I can tell you I count that as one of the best decisions I have ever made as an attorney.

Beginning on January 1, 2005, Amy has helped to build our division into one dedicated to zealous representation and focused on making sure the state and the court see the whole child and the role their environment and family life play in their present circumstances. I served as her supervisor until 2007 when our boss recognized her growth and talent and offered her the chance to head up our office’s Property Division. She headed that division until 2012 when she decided that her heart was still with our kids and she came back to the Juvenile Division where she has been ever since.

Section Executive Committee

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kareemwest@cobbcounty.org

From 2012 through today she has worked tirelessly to improve our system and the outcome of the kids we represent. Amy's dedication to the protection and advocacy of children can be seen in her professional work where she:

- Helped to establish our circuit's RISE (Restoring Inspiration by Success in Education) pre-trial diversion program in partnership with our DA's Office,
- Was instrumental in the creation of our circuit's School Justice Partnership which served to provide kids charged with misdemeanors an alternative to the School Prison pipeline,

The way we talk to our children becomes their inner voice – Peggy O'Mara

- Serves on the Southern Juvenile Defender Center's Advisory Committee for Georgia,
- Served on the State Bar's Child Protection & Advocacy Section as an Executive Committee member, and
- Serves as a Co-Chair of the Macon Bar Association's Inaugural Subcommittee on Race, Diversity & Inclusion.

As important as all that work has been in shaping our system and improving its impact on our kids, Amy's most impactful actions have taken place behind closed doors in one-on-one representation of her clients and then in court as a zealous advocate. As her supervisor, I know for a fact that she is reaching our clients in their most trying times and transforming their lives for the better. I have watched as clients and their parents thank her for her dedication and caring. I can't even tell you how often I am asked by a child or their parent to please make sure Amy represents them in their new case. I have had more parents than I can count tell me directly how grateful they were that she was their attorney.

As an example, just recently Amy represented a child in what appeared to be an unwinnable case where he was charged with a Class B Designated Felony for a second possession of a pistol and the DA was pushing for 18 months of restrictive custody. We discussed his case off and on for weeks as she strategized his defense and fought back against the DA. After getting the DA's offer down significantly, Amy decided that she still wasn't satisfied and pushed the court in a bind plea to allow her child one last chance so that he could enroll in Job Corps. I watched in court as Amy presented testimony from his mom and pled his case to the judge until that unwinnable case was won and the client was allowed to go off to Job Corps instead of 18 months at

a YDC! A month later, the kid's mom was back in court to give an update on his progress. She positively beamed with excitement and pride as she told the court how well he had been doing and thanked the judge and Amy for believing in him and giving him another chance. Mom told the court he had gotten off weed, was working towards certification as an electrician, gotten his CDL to drive a forklift, was working to get his regular driver's license, had won some awards and that he was due to complete the Job Corps program early (September as opposed to next year)! There was so much good news that Mom said she knew she was forgetting some stuff! That's the kind of impact Amy has on our clients and their families week after week and it's why I can think of no better example of an attorney who has demonstrated a professional career and/or outstanding service and dedication to the protection and advocacy of children than Amy L. Bell."

2023 Feature member of the year: Beth Morris



CPAS recognizes Beth Morris as the 2023 Feature member of the year.

Congratulations Beth and thank you for your service.

Beth Morris has been a faithful and consistent member of the Executive Committee having served with our first Chair and Vice-Chair, Nicki and Karlise, Chair Nicki and Tonay, Chair JP and Vice-Chair Tonya, and current Chair Laurie and Vice-Chair Tonya. She serves as needed and has worn many hats to include serving on the Annual Willie Lovett Award committee for years.

As an advocate for children, Beth Morris has represented school districts in Georgia since 2005. She focuses her practice on issues involving children with disabilities, regularly advising clients on the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. She represents school districts in due process hearing requests as well as Department of Education and Office for Civil Rights complaints. She often conducts statewide trainings on these issues.

Beth's practice also includes board governance, state and federal litigation, Title IX, personnel and transactional matters, and administrative complaints involving the Equal Employment Opportunity Commission.

Beth works closely with the Georgia Council of Administrators of Special Education and serves as a member of the Executive Board of the Child Protection and Advocacy Committee of the State Bar of Georgia.

Before joining Parker Poe, Beth served as a partner for a Georgia firm focusing on education-related legal matters.

From your Newsletter Editor, Changes to your Kids matter Newsletter.

Dear CPAS members,

Happy 2024 to one and all!

Thank you for the opportunity to have served as your newsletter editor for Kids Matter since we began the section.

As I have said many times over the years, we are a Team, a wonderful state-wide membership working as advocates for our children.

Many of you have submitted articles, sent kind remarks pointing out what you like about our newsletter and how helpful it has been to you as you serve our children.

You will have a new address to send your proposed submissions, Kudos information, photos showing what you are doing in your local community, Op-Ed pieces etc., info@floteservices.com.

We have been recognized by the State Bar for our newsletter over the years and that is because we have all worked together to produce an excellent product. I encourage you to continue to reach out to share your thoughts and submissions.

KUDOS- accomplishments, awards, etc. by all members continue to be welcomed. Tell us so that we can share with all.

Op-Ed- what is on your mind, share as others may be experiencing something similar or otherwise benefit from hearing your opinion.

Spotlight: If you or someone in your circle wants to be considered as a Spot light member send us your information.

Suggestions: Tell us what you want to read about, topics of interest to you.

I conclude with a heartfelt Thank you. Thank you all for taking this wonderful journey with me, it has been awesome! I will still be around working with the Newsletter committee as I transition out of the role as your newsletter editor. For the first time we are developing a Newsletter committee. As always you are invited to join the committee, simply email us to let us know that you want to join the team. Our awesome team at the State Bar will continue to work with us to produce the newsletter.

Wishing everyone all the best as we continue to advocate for our children, be sure to take time to stay healthy, mind, body and soul. Keep GA the best place to live, work and play!

Respectfully yours,
Tonya Boga

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Child Protection and Advocacy Section

Scholarship Application

The Child Protection and Advocacy Section of the State Bar of Georgia will offer three (3) scholarships in the amount of up to \$500 per scholarship each year. These funds may be used for either registration fees or travel expenses for an out-of-town conference or seminar.

The scholarships will be awarded to members of the Section who demonstrate both a need for financial assistance and a demonstration of the relevance of the content area of the conference or seminar to the work conducted by the attorney.

Commitment to Share Information:

Scholarship recipients agree that they will write an article for the Section newsletter, Kids Matter, regarding a topic covered at the conference or seminar.

Application Process:

Application Periods: There will be three application periods each year, with one scholarship awarded during each application period. The application periods are as follows:

January 1 – April 30 (scholarship awarded by May 31)

May 1 – August 31 (scholarship awarded by September 30)

September 1 – December 31 (scholarship awarded by January 31)

Application: The attached application form, including a statement of need and copy of the agenda, must be completed and returned to the scholarship committee by the appropriate application period close date. Applications should be returned to maryjos@gabar.org.

State Bar of Georgia
Child Protection and Advocacy Section
Scholarship Application

Name: _____

Affiliation: _____

Address: _____

Phone: _____ Fax: _____

EMAIL: _____

Description of Program You Wish to Attend: (Please attach a copy of the program agenda, if available.)

Program Title: _____

Program Location: _____

Program Dates: _____

Program Costs: _____

Statement of Need: (Include any financial contributions provided by your organization, relevance of the seminar to your work, etc. You may attach a separate letter, on your organization's letterhead, with your statement of need.)
