

FAMILY LAW COCKTAIL HOUR:

Recent Family Law Cases and Statutory Changes for the Non-Domestic Attorney

Presented by:

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Acknowledgements:

This material draws heavily from a CLE that Helen Yu, Esq. and I previously gave titled “Recent Updates in Family Law”, presented in October at the Augusta Bar Association’s 14th Annual Family Bar CLE. Many thanks to my friend and colleague for allowing me to draw on her work today.

I. ADOPTION

Johnson v. Hauck, 344 Ga. App. 848 (2018)

A grandmother petitioned to terminate her daughter’s parental rights to her granddaughter, and to adopt her granddaughter under O.C.G.A. § 19-8-10.

TAKE AWAYS:

1. The requirements for adoptions are set out in the specific statute – and you must allege those fact requirements in your Petition.
 2. TPRs are so drastic that they are attended to by the most stringent of procedural safeguards
 3. TPR in Superior Court does not include right to counsel, unlike legislatively provided for in TPRs in Juvenile Court.
 4. In Adoptions under O.C.G.A. § 19-8-10, Court cannot waive background requirements, in contrast to adoptions under O.C.G.A. § 19-8-7 (parents voluntarily surrender rights to a relative).
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II. ALIMONY

Provezano v. Jones, 302 Ga. 139 (2017)

Trial Court properly modified alimony under Georgia’s “live-in lover” law, O.C.G.A. § 19-6-19 (b).

TAKE AWAYS:

1. The fact ex-wife living alone at time filed modification does not matter. O.C.G.A. § 19-6-19(b) applies to any voluntary cohabitation after a final judgement of divorce awarding periodic alimony.
2. Dwelling together “continuously and openly” includes either sexual intercourse or sharing of living expenses.
3. The fact that you are hiding your new relationship from your ex-spouse does not mean you aren’t living openly with your live-in lover.

Sedehi v. Chamberlain, 344 Ga. App. 512 (2018)

Trial court’s award of lump-sum alimony reversed, because Wife never asserted a claim for alimony in her pleadings, husband had no notice alimony would be an issue at trial, and Husband objected to litigating the issue when raised at trial. Further, no grounds for alimony. Wife never pleaded a request for alimony, parties separated after 22 days and Wife asked for annulment and \$400,000.00 in actual damages and \$1,000,000.00 in punitive damages under a fraud theory.

TAKE AWAYS:

1. In order to get alimony, you have to ask for it.
 2. The factors for alimony are enumerated in O.C.G.A. § 19-6-5(a) and at least one of them has to be met. They are:
 - (1) **The standard of living established during the marriage;**
 - (2) **The duration of the marriage;**
 - (3) **The age and the physical and emotional condition of both parties;**
 - (4) **The financial resources of each party;**
 - (5) **Where applicable, the time necessary for either party to acquire sufficient education or training to enable him to find appropriate employment;**
 - (6) **The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party;**
 - (7) **The condition of the parties, including the separate estate, earning capacity, and fixed liabilities of the parties; and**
 - (8) **Such other relevant factors as the court deems equitable and proper.**
 3. When a Judge suggests that you might want to amend your pleadings to add something, do so.
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III. ATTORNEY'S FEES

TAKE AWAY:

YOU HAVE TO IDENTIFY THE STATUTORY BASIS FOR AN AWARD OF ATTORNEY'S FEES IN YOUR PLEADINGS!

Borotkanics v. Humphrey, 2018 Ga. App. 875 (2018)

Attorney's fee award vacated and remanded because neither the motion nor the trial court's order identified the statutory basis for the award.

Moore V. Hullander, 345 Ga. App. 568 (2018)

The Court of appeals vacated the award and remanded. The Court did not cite which statutory factor it was awarding attorney's fees under its "unreasonably delayed" ruling, nor how its award was apportioned to include only fees and expenses related to Father's contempt.

Belcher v. Belcher, 346 Ga. App. 141 (2018)

The Court of Appeals vacated and remanded award of lump sum attorney fees. The Trial Court must “articulate why the award was [\$2,500.00] as opposed to any other amount” and identify the sanctionable conduct.

IV. CHILD SUPPORT

TAKE AWAYS:

1. **There is an online child support calculator that anyone can use.**
2. **Statutory changes have emphasized that a parent’s ability to pay is to be taken into account – even for those incarcerated.**
3. **Bonuses are included in income for purposes of child support.**

CHANGES TO CHILD SUPPORT STATUTE:

- **§ 9-6-15(b)(12)** – No longer required to attached different worksheets for child support to change as each child ages out. May attach separate worksheets if a child is to age out within 2 years.
- **§ 9-6-15(d)** – added that the court’s final determination of child support is to take into account the obligor’s earnings, income, and other evidence of ability to pay. The court should also consider the basic subsistence needs of the parents and the child.
- **§ 9-6-14(f)(4)(A):**
 - changed imputation from 40 hours per week at minimum wage to based on “specific factors of the parent to the extent” then known” and sets out things to consider.
 - if a parent is incarcerated, the court shall not assume an earning capacity based on pre-incarceration wages, but income may be imputed based upon actual income and assets available to the incarcerated parent.
- **§ 9-6-14(f)(4)(D)** – Added that court can’t make a determination of willful or voluntary unemployment or underemployment if parent’s incarceration prevents employment
- **§ 9-6-14(i)** – Grounds for Deviation - made numerous small changes to make clear that parents’ ability to pay and basic subsistence needs are to be taken into account when considering low income deviation.
 - ***Note: Very relevant where daycare expenses inflate child support figures.***

Lutz v. Lutz, 302 Ga. 500 (2017)

Trial court could properly count bonus in a party’s income for determining child support, and equitably divide that bonus as part of a lump sum payment to wife.

“As between the parent and the child, the ... asset subject to property division is not being counted twice.”

V. CONTEMPT

Borotkanics v. Humphrey, 2018 Ga. App. 875 (2018)

The parties divorce decree required Husband to refinance the marital residence. The trial court held Husband in willful contempt and ordered Husband to sell the house.

TAKE AWAYS:

1. **Trial Court cannot modify original award of equitable division in a contempt proceeding.**
2. **Be careful what you wish for! The sanctions available to the Trial Court may be more draconian than the forced sale.**

Huff v. Vallejo, A18A1002, 2018 Ga. App. LEXIS 469, 2018 WL 3616332 (July 30, 2018)

Father filed contempt action after Mother refused to allow him supervised visitation after release from ICE custody. Trial Court held Mother in contempt and modified Father’s visitation from supervised to unsupervised due to Mother’s continued attempts to alienate Father. On Mother’s appeal, there was no transcript, thus Court required to “assume the court was authorized to find that it is to the best interest of [the] minor child[ren to have unsupervised visitation with their father].”

VI. CUSTODY

Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

TAKE AWAYS: Under 19-9-61 (a)(1) Georgia has jurisdiction to make an initial child custody determination if:

1. **Georgia is the home state of the child on the date of the commencement of the proceeding OR was the home state of the child within 6 months before the start of the case and the child is absent but a parent continues to live in Georgia.**
2. **A Court of another state does not have jurisdiction, declined to exercise it, or Georgia is the more appropriate forum because Jurisdiction wrongfully obtained.**

Gorelik v. Gorelik, A18A0707, 815 S.E.2nd. 330 (Ga. Ct. App. 2018)

Georgia court erred in asserting jurisdiction under UCCJEA in a child custody dispute.

- The mother and child, age 3, had lived in GA for 22 days before traveling to Turkey, and a Turkish court had awarded mother custody in a Turkish divorce proceeding.
- Neither GA nor Turkey was the home state because the child did not live in either place for at least six months prior to the filing of a custody petition.
- Since the Turkish case commenced prior to the Georgia action, Turkey's custody decision was enforceable so long as it was made under factual circumstances in substantial conformity with the standards of the UCCJEA.

Bowman v. Bowman, 345 Ga. App. 380 (2018)

Trial court improperly exercised jurisdiction under UCCJEA where substantial evidence about children or significant connections of the children to Georgia did not exist at the time that jurisdiction was considered.

- Parties married in Georgia and the oldest child was born in Georgia, but they left Georgia approximately four years before the modification action was filed (filing based upon the mother and children being in Georgia for about one month).
- Wisconsin seemingly was the state most qualified as the "home state" for the children under UCCJEA, but Mom filed for custody in Georgia, and Dad filed for divorce in Michigan (where mom and children had only lived for about one month, but where the entire family lived for about a year back in 2013)

14 Year Old Affidavit of Election:

TAKE AWAY:

- **Under § 19-9-3(a)(5) a child 14 year or older has the right to select the parent with whom they live. Their choice is presumptive unless the court finds that it is not in the best interests of the child. The child can only make the selection once every two years. A child's selection IS a material change of circumstances.**
- **Under §19-9-3(a)(6), the court shall consider the desires and educational needs of a child between 11 and 13, but the judge shall have complete discretion in making the determination. A child's selection is NOT a material change of circumstance.**

Moore v. Moore, 346 Ga. App. 58 (2018)

- In a modification petition, mother was granted sole legal and physical custody after her 14 year old daughter signed an affidavit of election.

- The parties consented to the daughter exercising visitation at her own discretion, but the trial court failed to incorporate a parenting plan in the final order pursuant to O.C.G.A. § 19-9-1 (a).
- Since the father's rights were not terminated, the court still needed to enter a parenting plan that covered details beyond custody and visitation. even though father's visitation was subjected to the election of the child (father's rights were not terminated).

OTHER CUSTODY DECISIONS:

Wilson v. Perkins, 344 Ga. App. 869 (2018)

No finding of material change of circumstances that support a child custody modification where the trial court appeared to have relied upon events pre-dating the last consent order and/or plea of nolo contendere (the latter could not be used against the father in any court for any purpose).

Woodson v. Lino, 345 Ga. App. 745 (2018)

Trial court was affirmed in a custody decision even though it did not apply laws articulated by the Supreme Court of GA in Bodne v. Bodne, 277 Ga. 445 (2003). Court of Appeals noted trial court did consider 14 of the 17 non-exclusive factors in O.C.G.A. § 19-9-3 as part of determining the best interest of the child. There is neither a presumption that a relocating parent will lose custody nor a presumption in favor of relocation.

Child support order portion was vacated as the trial court specifically stated that "no deviation", yet the court order relocation fees to be paid by father to mother (security deposits, first three month's housing, cost of airfare and hotel for three nights and four days to view housing options).

Sigafoose v. Cobb, 345 Ga. App. 783 (2018)

Reaffirms that after a Father legitimates a child, there is no prima facie right to custody between a mother and father, and the child's best interest standard governs.

Father awarded custody due to mother's alienation of Father, his parents, and her own parents. Father facilitated visitation with all parties.

VII. EQUITABLE DIVISION

Flesch v. Flesch, 301 Ga. 779 (2017)

- Trial Court erred in finding that Wife's retirement account was a non-marital asset, when she put money into the account during the marriage.

- Trial Court's finding that townhome purchased during the marriage by Husband for his paramour (and her then husband) was marital property was not improper as a matter of law or fact.

Sampson v. Cureton, 343 Ga. App. 466 (2017)

Wife sold Husband's non-marital car to a third party, who was added as a third-party defendant in the divorce case and ordered not to sell the car. The trial court improperly held the third party in contempt after he sold the car and did not pay fair value to Husband.

- A third party can be joined to a divorce action only for the limited purpose of determining the third party's right in the property that a party claims was fraudulently conveyed.
- The Husband must assert his claim for money damages in a separate civil action against the third-party.

Cahill v. United States, 303 Ga. 148 (2018)

Under settlement agreement, Wife was permitted to remain in home until age 66, and both parties names were to remain on title until sold. The settlement agreement was ambiguous as to whether joint tenancy with right of survivorship was to be continued or severed.

- Court held that where agreement in effect created a new deed for a number of years, and if parties intended to retain joint tenancy with right of survivorship, they would have included such language.
- In addition, settlement agreement as whole intended to divide their property and live apart and free from interference. Thus, the joint tenancy was severed.

VIII. GRANDPARENT VISITATION

TAKE AWAYS:

1. Grandparent visitation is now much harder to obtain.
2. Must show by clear and convincing evidence that lack of a schedule of visitation with Grandparents will cause actual or threatened harm to the child.

Pate v. Sadlock, 345 Ga. Ap. 591 (2018)

North Carolina gave joint custody to both parents, and one week of summer visitation rights to paternal grandparents. Parents moved to Georgia and parents consented to the domestication here. Mother then moved to suspend Father's and Grandparent's visitation rights due to

father's alleged sexual battery. Father alleged alienation. Court ordered reunification therapy for Father and Grandparents with children. The Father was to be reintroduced in a "therapeutically appropriate manner" and visitation be revisited at a further hearing in six weeks.

- Court reversed trial court's award of additional grandparent visitation because Court didn't make a "clear and convincing evidence" finding of harm or make "specific findings of fact in support of its rulings."
- Trial court allowing reunification therapist to set times and days father reintroduced to children was not an invalid self-executing modification of visitation.
 - The trial court retained the decision of whether Father's visitation should be modified after therapy.

Patten v. Ardis, S18A0412, 2018 Ga. LEXIS 455, 2018 WL 3193970 (June 29, 2018)

Court overturned O.C.G.A. § 19-7-3(d) in that the statute permitted grandparent visitation where one parent is deceased, incarcerated, or incapacitated "without any showing whatsoever (much less a showing by clear and evidence) that the visitation is required to keep the child from actual or threatened harm."

IX. JUVENILE COURT

In the Interest of H.G.D., 342 Ga. App. 651 (2017)

Grandparents motion to intervene denied. "Legal custodians" do not have an unconditional right to intervene under O.C.G.A. § 9-11-24(a)(1).

TAKE AWAYS:

1. Standing is often your biggest issue in Juvenile Court.
2. Stay Tuned! Supreme Court Granted cert on May 17, 2018 on issue of whether trial court erred in determining that temporary legal custodians are not included in term "legal custodian" as it is used in O.C.G.A. § 15-11-181