The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Spring Issue 2022

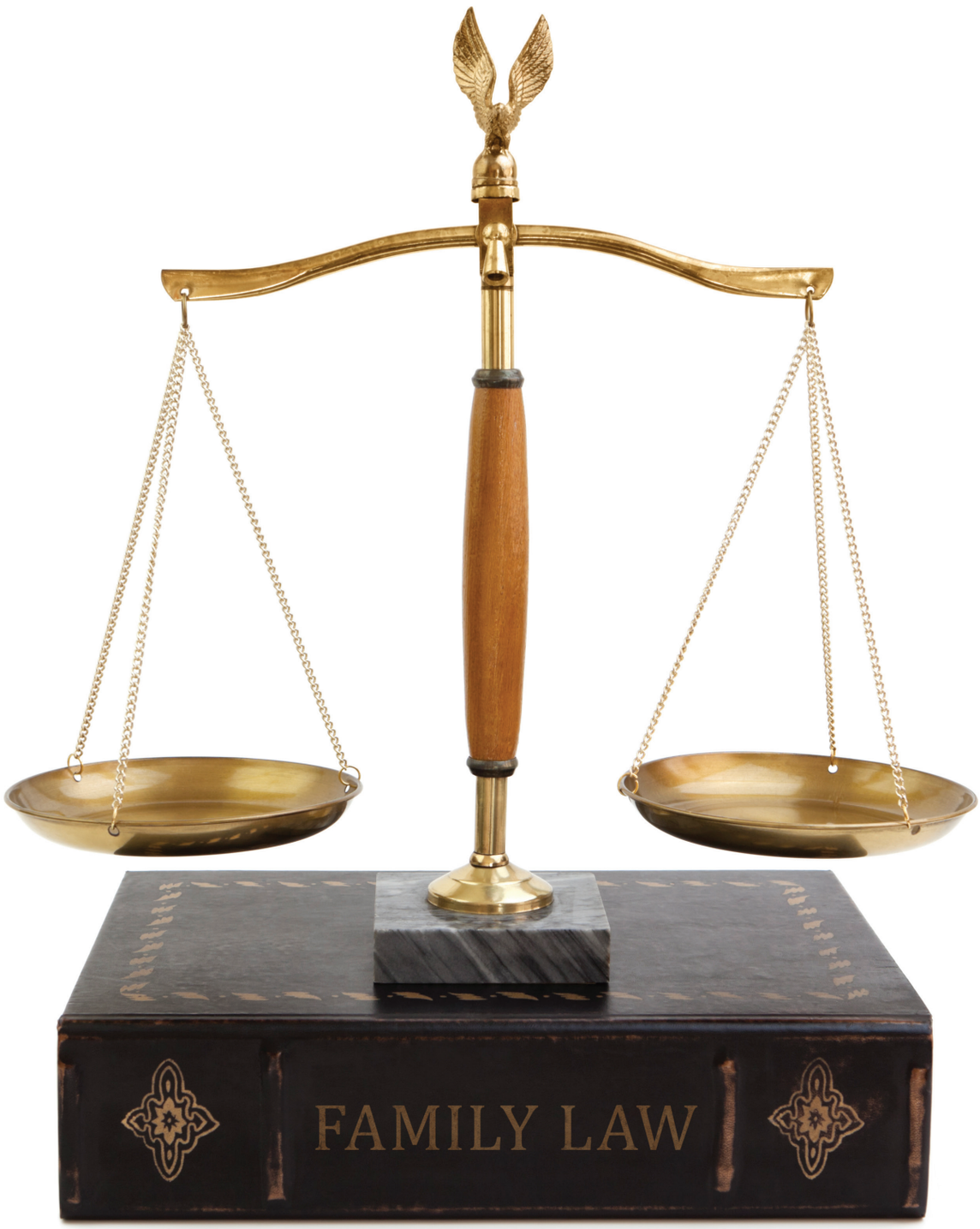


Photo by gettyimages.com/Creativeye99

Editors' Corner

By Jonathan Dunn

Welcome to the Spring 2022 Issue of the Family Law Review!

Thank you for affording me the privilege to serve as your editor. We are once again blessed to benefit from the insight of our thoughtful contributors. I trust that you will find this edition to include a healthy sampling of current considerations for family law practitioners, such as Nancy Ingram Jordan's article on the impact of virtual trial records on appeal, and Judge Morris and Tracy Johnson's exposition of new rules for meditation in domestic violence cases. We are honored to share the first installment of Mark Sullivan's Magic Words series on military divorce and Trent Doty's thoughtful piece on choosing the best retirement plan for your business. I am also pleased to recommend Barry Goldstein's take on harmful impacts on custody cases in which there is often an overlay of domestic violence, and I encourage you to keep yourself up to speed on recent developments in family law with Vic Valmus' case law updates.

I am privileged to share these articles with you, and I welcome your thoughts on topics or articles for the next edition of the Family Law Review.

Editor Emeritus

By Randy Kessler

It is so good to see how our section has survived and flourished throughout the pandemic. Here we are in year 3, and we have moved the family law matters along perhaps better than any other area of the law. Our lawyers and judges (and mediators and court reporters and paralegals, etc.) have adapted perhaps better than those in any other area of law. And our section leadership has been at the forefront, keeping us informed and keeping our seminars and this publication coming. And until we are all back in person, we still have each other. Being able to pick up the phone and have a discussion about a case is now more important than ever. It moves matters along and helps us stay connected to each other. Soon we will return to seeing each other in courtroom hallways and seminars. I never knew

Inside This Issue

how much I would miss that and each of you. Here's to hopefully putting COVID in the rear view mirror and appreciating each other even more now than ever. Professionalism and mutual respect has gotten us through this as a profession, and the courtesies we have shown each other, respecting different views (in-person vs. zoom, masking, etc.) is a testament to the manner in which we have handled our clients and ourselves. I for one will never forget this period of extreme professionalism and I appreciate it and each of you.

A Word from Our Chair

By Leigh Cummings

Spring has sprung (or has almost sprung depending on the day). An abundant layer of pollen covers everything outside or even in remote proximity to outside. We are beginning to dream of what the quickly approaching summer may hold in store for us. But, perhaps the greatest sign of the season is that The Family Law Institute is upon us once again in a matter of just a few weeks.

This much-anticipated gathering of family lawyers and friends of the Family Law Section was put on hold in 2020 and again in 2021 due to a little-known virus called Covid-19. Once again, we will be together in person (!) to acquire knowledge from judges, experts in family law and experts in other areas of the law, to reunite and socialize with long-lost colleagues, and to relax and enjoy a respite from courtrooms and our offices.

The upcoming 38th Annual Family Law Institute entitled, "The More You Know- When Complex Family Law Issues Collide with Other Practice Areas" will take place at the Westin Hilton Head Resort and Spa from May 19-21, 2022. Kyla Lines and I are proud to serve as Co- chairs of this year's Family Law Institute. The agenda is full of engaging topics that are sure to benefit our respective practices. We would like to extend a tremendous thank you to the sponsors of the Family Law Institute. Quite simply, without the generous financial support of the sponsors, there would be no Family Law Institute. Thank you, sponsors! Similarly, without the willingness of the individuals who have agreed to donate their valuable time and energy in preparing materials and presentations, there would be no Family Law Institute. Thank you, speakers!

We anticipate a fantastic turnout due to the pent-up demand for the long-awaited return of this esteemed event (and perhaps a dire need for some CLE hours)! We cannot wait to see you at the beach!

Letter to Family Law Practitioners (with Postscript to Judges):

Don't Transform Georgia Into a Community Property State

By James E. Holmes

In 1978 when I started practicing law in the divorce arena Georgia was a "Title State"; this generally meant in whichever spouse's name the property was titled was presumed to be THE owner and entitled to that property upon a divorce. To skirt this doctrine such concepts as fraud, gift, and implied trust (resulting and constructive) were argued.

Then in December of 1980 the Georgia Supreme Court in the case of **Stokes v. Stokes**, 246 Ga. 765, 273 S.E.2d 169 (1980), officially adopted the concept of **"equitable division"** of the marital estate in a divorce. In doing so, the Court cited in this opinion multiple prior opinions for the proposition that this equitable division concept was already being applied in cases in Georgia. And, Mr. Justice Hill in his 'Concurring Opinion' presented the initial detailing of factors that could be considered by the Court in making this determination of **"equitable division"**.

Since the entry of the **Stokes** opinion Lexis identifies 65 cases in the Supreme Court of Georgia, the Georgia Court of Appeals, the US 11th Circuit, the US Bankruptcy Court, the Tax Court, and even in the Louisiana Court of Appeals that have cited that opinion. I reviewed all of these opinions prior to preparing this letter. None of these opinions – I SAY AGAIN, **NONE OF THESE OPINIONS** – HOLD OR EVEN STATE that "equitable" means "equal". In fact, in the case of **Brown v. Little**, 227 Ga. App. 484, 489 S.E.2d 596 (1997), the Court stated: "… Georgia has never subscribed to a community property theory regarding assets acquired during marriage…[I]nstead, this state has developed extensive case law on treating assets as either separate or marital, but such analysis applies only for the purpose of the equitable division of property upon the dissolution of the marriage…". (**Brown** at page 486).

Georgia law is that the marital estate, once determined, is to be divided **equitably** by the finder of fact or by the parties. As stated in many cases: **"… [A]n equitable division of marital property does not necessarily mean an equal division** (case cite omitted). The Purpose behind the doctrine of equitable division of marital property is to assure that property accumulated during the marriage be fairly distributed between the parties. Each spouse is entitled to an allocation based on his or her equitable interest…". [See generally, **Wright v. Wright**, 277 Ga 133 at 134, 587 S.E. 2d 600 at 601 (2003); Payson v Payson, 274 Ga, 231, 232, 552 S.E.2d 839 (2001); and **Wier v. Wier**, 287 Ga. 443 @ 444, 696 S.E. 2d 658 (2010)].

However, more and more in my mediation practice I am having not only parties but attorneys state such things as: The division HAS TO BE 50-50; or, Georgia law says it HAS TO BE EQUAL; or, clients disavowing any knowledge that it could be other than 50-50. I even often have attorneys say that Judges say at the seminars that it's going to be / it has to be 50-50.

That certainly is not what I've heard them say.

Judges has have often stated that **the starting point** is 50-50, with the possibility of dividing the marital estate otherwise depending on the facts and evidence presented. There is no presumption of 50-50 (or if one calls it a presumption, certainly a rebuttable one), and there is **no legal requirement of a 50-50 equitable division**.

I visit this concept of "equitable division" not because I believe 50-50 is not a good starting point; in fact, an equal division may well be the "equitable end point" in even a large majority of the cases. However, I am concerned that "equitable" means "equal" is becoming far too much the "automatic answer"

without consideration of the detailed factors and even without informing the client of the factors that can be considered.

The opinion in **Stokes** and many other cases and now the Pattern Jury Instructions clearly detail those multiple factors that can possibly be considered in determining whether the" equitable division" should be 50-50 or should be otherwise. "Equitable" does **not** mean, does **not** imply, does **not** require 50-50, and practitioners, advocating that it does and clients expecting that it does puts Georgia on a dangerous slippery slope to "de facto community property" in my opinion.

Lawyers, please (1) disavow yourself of any belief that Georgia Law requires a 50- 50 division of the marital estate; (2) reread the **Stokes** opinion; (3) refresh your memory of the factors to be considered in determining what is EQUITABLE; and, (4) strive to ensure that your clients understand and appreciate the very significant difference between "equal" and equitable" and the factors to be considered.

P.S. Judges, if any of you consider 50-50 to be more than just the starting point and assign to dividing the marital estate 50-50 undue weight, please review that position. Also, please require Counsel who appear in your Court and place equitable division of the marital estate at issue to address the existence or non-existence of any factor(s) that arguably calls for a different unequal but equitable division.

Jim Holmes has been practicing in the Family Law Arena since 1978. He has been mediating those cases since 1997, and arbitrating them since 2006. He is currently 'Of Counsel' at Shewmaker & Shewmaker, LLC.

Past Section Chairs

Kyla Lines.....2020-21
Ivory Brown.....2019-20
Scott Kraeuter.....2018-19
Gary Patrick Graham.....2017-18
Marvin Solomiany.....2016-17
Regina M. Quick.....2015-16
Rebecca Crumrine Rieder.....2014-15
Jonathan J. Tuggle.....2013-14
Kelly Anne Miles.....2012-13
Randall Mark Kessler.....2011-12
Kenneth Paul Johnson.....2010-11
Tina Shadix Roddenbery.....2009-10
Edward Coleman.....2008-09
Kurt Kegel.....2007-08
Shiel Edlin.....2006-07
Stephen C. Steele.....2005-06
Richard M. Nolen.....2004-05
Thomas F. Allgood Jr.....2003-04
Emily S. Bair..... 2002-03
Elizabeth Green Lindsey 2001-02
Robert D. Boyd.....2000-01
H. William Sams..... 1999-00
Anne Jarrett..... 1998-99
Carl S. Pedigo..... 1997-98
Joseph T. Tuggle.....1996-97
Nancy F. Lawler.....1995-96
Richard W. Schiffman Jr.....1994-95
Hon. Martha C. Christian.....1993-94
John C. Mayoue.....1992-93
H. Martin Huddleston..... 1991-92
Christopher D. Olmstead.....1990-91
Hon. Elizabeth Glazebrook.....1989-90
Barry McGough.....1988-89
Edward E. Bates Jr..... 1987-88
Carl Westmoreland..... 1986-87
Lawrence B. Custer..... 1985-86
Hon. John E. Girardeau..... 1984-85
C. Wilbur Warner Jr..... 1983-84
M.T. Simmons Jr..... 1982-83
Kice H. Stone..... 1981-82
Paul V. Kilpatrick Jr.....1980-81
Hon. G. Conley Ingram..... 1979-80
Bob Reinhardt..... 1978-79
Jack P. Turner..... 1977-78

A Snapshot of the Possible Impact of Virtual/Video Trial Records on Appeals[1]

By Nancy Ingram Jordan**

Introduction:

"As every appellate advocate is aware, regardless of the standard of review on appeal, an accurate and complete trial record is paramount to both advocates and appellate courts in performing their roles."[2]

General Issues in Preserving Virtual/Video Trial Records via "Cold" Transcripts:

1. Exhibits and Signed Exhibit Worksheets: When the parties and counsel are not physically in the courtroom, a trial court could decide to no longer use a signed exhibit worksheet to accurately reflect the disposition of exhibits at trial. Instead, the trial court may rely only upon verbal confirmation by the parties.

Problem: Confusion or misunderstandings as to which exhibit is which and the parties' electronic versions of their exhibits may not match the numbering of exhibits assigned by the trial court. This may result in an inaccurate appellate record of the trial proceedings.

Possible Solution: Have a master electronic database of exhibits that the trial court can access and mark; and that the parties can also use during their virtual presentations. Also, trial counsel may have to rely on transcripts of virtual proceedings to correctly identify the exhibits.

2. Accuracy: Transcripts may not accurately reveal what occurred during virtual trial proceedings.

Problem: Internet problems can cause delayed audio, sometimes without anyone realizing that it has occurred during a virtual proceeding. There certainly can be transcription errors of delayed audio affecting parties, counsel or the court. However, what if the court reporter has problems with delayed audio because of his or her internet problems and unintentionally omits material testimony, objections or arguments?

Solution: You should have more than one party record the virtual proceedings, including the video of all participants. (Question: Will our appellate courts rely on these recordings of a virtual/video trial, instead of or in lieu of a transcript or rely on both?).

Certain Jurisdictions Currently Allowing Video Trial Records on Appeal[3]

"Video records, traditionally videotaped proceedings, have generated more comprehensive electronic records because they include picture and sound; indeed, electronic recording inherently supplies information to an appellate court that is not available through a traditional transcript alone. However, except for Kentucky, states have generally not accepted video records as direct court transcripts. Accordingly, when a party wishes to appeal, the video record must be transcribed, as is also the case with an analog or digital audio record."[4] "In recent years, the combination of inexpensive electronic recording and the decreasing number of stenographic court reporter students has accelerated the development of electronic recording court record solutions. Some jurisdictions, such as the armed forces, have even made electronic recordings the official court record."[5]

Kentucky: Civil Procedure Rules CR 76.12(4)(c)(ii) and (iii); CR 98(4)(a)") (2020) and *Miller v. Armstrong*, 622 S.W.3d 661, 662 (Ky. Ct. App. 2021) ("The Kentucky Rules governing appellate records mandate that briefs specifically refer to the video record by noting the exact time on the video of the referenced matter.").

Tennessee: Supreme Court Rule 26, *Official Electronic Recordings of Court Proceedings*, allows video recordings to be considered as the appellate record and Rule 28 Tennessee Rules of Appellate Procedure, allowing the optional filing of an appendix to a party's appellate brief. Thus, in any case in which the trial court proceedings was electronically recorded pursuant to Rule 26, a party may include in an appendix, a transcription of the evidence, or any portion thereof."[6]

Michigan: Videotaped trials are required to provide a full written record with every videotape. MICH. ADMIN.ORDER 1987-7, 429 Mich. xciv (1987).[7]

United States: Manual For Courts-Martial, United States, R.C.M. 1112 (a) (2019) ("Court-martial

proceedings may be recorded by videotape, audiotape, or other technology from which sound images may be reproduced to accurately depict the court-martial").

However, "the Kentucky court system, a pioneer of the videotape-only trial record model, is beginning to sway in the wake of complaints from attorneys practicing in its jurisdiction. States entering the video courtroom era, like New Jersey, have instead favored the Michigan model, which requires that both the video and a written transcript accompany each appeal. Other jurisdictions considering whether to adopt a video courtroom experiment should recognize that the best of both the videotaped and written record would provide the most complete picture of what actually occurred at trial. Mandating that both a written and videotaped record comprise the trial record would give attorneys and judges the flexibility to review the video at their leisure, if necessary, but read the text of the trial to familiarize themselves with the case in a timely, cost-efficient, manner. Without a provision for a written transcript, any savings gained from the installation of a videotape system at the trial level would be wasted in unnecessary time expenditures at the appellate level."[8]

How Appellate Standards of Review Could Be Impacted by Virtual/Video Trial Records[9]

"Appellate standards of review are the lenses through which an appellate court reviews a trial court's decisions. Based on a paradigm that recognizes the institutional advantages of trial courts and appellate courts, they define how much deference an appellate court must pay to a trial court's ruling. The institutional advantage most often cited as the basis for appellate deference is the "superior vantage point" of the trial court; meaning the trial court has a better perspective because it personally observed the parties, argument, and presentation of evidence. . . . This paradigm has endured, in part, because the judicial branch is entrusted with great responsibility and, as a result, proceeds with an abundance of caution before it implements change. The record, too, has been prepared in the same way, by written transcript. Therefore, the trial court's superior vantage point persists because the appellate court's review is limited to cold transcripts."[10]

Positive Impact:

• A video record could supply a litigant a meaningful opportunity for appellate review where a trial court does not automatically supply a court reporter to the parties or that parties discover a court reporter is not available until just before the call of the case for trial.

• In an Illinois family law case, *In re Marriage of Donovan*, 361 Ill. App. 2d 1059, 838 N.E.2d 310 (2005), "[t]he case did not settle, and a hearing was scheduled. Both parties entered the hearing believing that a state-provided court reporter would be present. They then learned for the first time that this belief was mistaken. The unexpected absence of the court reporter posed a difficult practical problem. After the hearing, the trial court rendered a decision which was adverse to the husband. The spousal support award was higher than the husband would have liked, and the trial court did not conduct much analysis of the statutory factors. The trial court valued different assets as of different dates, some not overly close to the date of the hearing. The husband also believed that various assets were wrongly classified. These were clearly appealable issues-but the husband was unable to present a transcript, because no court reporter was present."[11]

• An appellant may not need to pay for the preparation of a written transcript.

• "Videotapes would also be cheaper if cameras and their operators cost less than the court reporters and their recording equipment."[12]

• The appellate court will have more exposure to testimony, as the court can observe "the witness's demeanor and body language as well as the bare words used."[13]

• "If the appellate judges or their clerks are actually watching portions of the tapes- . . .videotapes might lead to better appellate review of factual questions."[14]

• " '[A]ppellate judges (indeed all judges) usually are happy to hand off responsibility for deciding to another adjudicator even though they are '[n]o longer ... technologically constrained to do so.' Now, with the implementation of such drastic changes, detractors of the current standards may gain more traction. Deliberate adherence to a paradigm that limits an appellate court's ability to review the proceedings could be antithetical to the administration of justice; particularly when the impediment can be easily removed."[15]

Negative Impact:

• Video appellate records may allow appellate courts to review previously unreviewable events that are perhaps better off left unreviewable.

• "The written record of the 'cold' transcript is impartial, which allows the appellate bench to review the proceeding without the additional verbal and non-verbal messages that emanate from a transcript of moving pictures."[16]

• "The video record may 'speak for itself,' but it does not and cannot speak for the visual input a judge observes and interprets that falls outside the scope of the camera, nor does it filter events and behavior through his or her experience and expertise."[17]

• *Anderson v. City of Bessemer City, N.C.*, supra., the United States Supreme Court held that the appellate courts' deference to a trial court's findings of fact could be marginalized if there is appellate review of credibility determinations via video records. "The rationale for deference to the original finder of fact is not limited to the superiority of the trial judge's position to make determinations of credibility. The trial judge's major role is the determination of fact, and with experience in fulfilling that role comes expertise. Duplication of the trial judge's efforts in the court of appeals would very likely contribute only negligibly to the accuracy of fact determination at a huge cost in diversion of judicial resources. In addition, the parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one; requiring them to persuade three more judges at the appellate level is requiring too much."

• "It would be impractical to have appellate courts retry cases, but many appellate cases rest on only a small part of the evidence. To what extent should appellate courts have the ability and responsibility to reevaluate a trial fact- finder's verdict, given the ability to see and hear what occurred below at trial? Assuming arguendo that a high-quality audio-video recording (with or without virtual reality) is adequately similar to in-person observation of testimony, one would assume that the accuracy of appellate proceedings would be vastly improved by better knowledge of the proceedings below."[18]

Conclusion

The increased tension between the traditional role of appellate courts and the nature of the future trial court record draws strong opinions.[19] Advocates of the virtual/video record cite accuracy, a better appellate review of factual questions, fairness and a reduction in transcript costs. Moreover, assuming video trial records are included, "it is conceivable that the judiciary will be called upon to consider whether standards of review should be revised to identify and correct harmful error through its new lens, or perhaps, whether the new lens lends itself to the adoption of a different review process altogether."[20]

Opponents complain about the erosion of appellate deference, the inefficiency in having attorneys and appellate courts spending too much time reviewing video records and an increase in costs. Perhaps a hybrid model of a video court record with an accompanying trial transcript is the winning compromise.

• Stay tuned.

Endnotes

1. The following observations/questions are based upon jurisdictions outside of Georgia currently using this virtual process, as well as articles written by legal scholars who have skillfully examined this issue in depth.
2. David A. Timchak, *Preserving an Accurate Record for Appeal in the Time of COVID-19 Virtual Proceedings*, (January 13, 2021) APPELLATE ISSUES, ABA, https://www.americanbar.org/groups/judicial/publications/appellate_issues/2021/winter/pr eserving-an-accurate-record-for-appeal-in-the-time-of-covid19-virtual-proceedings/
3. See e.g., Magnuson, Eric J. and Thumma, Samuel A., *Prospects and Problems Associated with Technological Change in Appellate Courts: Envisioning the Appeal of the Future*, 15 J. App. Prac. & Process 111 (2014); Mary E. Adkins, *The Unblinking Eye Turns to Appellate Law: Cameras in Trial Courtrooms and Their Effect on Appellate Law*, 15 J. Tech. L & Pol'y 65 (2010); Mary Bernadette Donovan, *Deference in a Digital Age: The Video Record and Appellate Review*, 96 Va. L. Rev. 643 (2010); Ann Heverly, *Conference: Celebrating the 40th Anniversary of the Federal Judicial Center-Introduction*, 13 Lewis & Clark L. Rev. 433 (2009); George Nicholson, *A Vision of the Future of Appellate Practice and Process*, 2 J. App. Prac. & Process 229 (2000); Lederer, Fredric I., *The Effect of Courtroom | Technologies on and in Appellate Proceedings and Courtroom*, 2 J. Prac. & Process 251 (2000); Henry H. Perritt, Jr., *Video Depositions, Transcripts and Trials*, 43 Emory L.J. 1071, 1088 (1994); Georgi-Ann Oshagan, *Videotaped Trial Transcripts and Appellate Review: Are Some Courts Favoring Form Over Substance*, 38 Wayne L. Rev. 1639 (1992).
4. Fredric I. Lederer, *The Road to the Virtual Courtroom? A Consideration of Today's-and Tomorrow's-High-Technology Courtrooms*, 50 S.C. L. Rev. 799, 809–10 (1999).
5. Fredric I. Lederer, *The Evolving Technology-Augmented Courtroom Before, During, and After the Pandemic*, 23 Vand. J. Ent. & Tech. L. 301, 311–12 (2021).
6. "A Tennessee court applied similar reasoning in *Mitchell v. Archibald*, 971 S.W.2d 25, 26 (Tenn.Ct.App. 1998), one of

the few appellate cases to deal with the question of whether to review a witness credibility determination. The *Mitchell* court declined to review testimony despite the existence of an audio record, citing the Supreme Court's reasoning in *Anderson v. City of Bessemer City. 470 U.S. 564, 574–75, 105 S. Ct. 1504, 1512, 84 L. Ed. 2d 518 (1985)*. The *Mitchell* court further noted the policy rationale asserted in the 1985 advisory committee note to Federal Rule of Civil Procedure 52(a), which "lists three important policy concerns behind the rule: (1) upholding the legitimacy of the trial courts to litigants; (2) preventing an avalanche of appeals by discouraging appellate retrial of factual issues[;] and (3) maintaining the allocation of judicial authority. The *Mitchell* court also determined that the videotapes, affording only a limited view of the courtroom, were too restricted in scope to provide for a reweighing of witness testimony." See FN 5 and Bernadette Mary Donovan, *Deference in a Digital Age: The Video Record and Appellate Review*, 96 Va. L. Rev. 643, 662 (2010).

7. Bernadette Mary Donovan, *Deference in a Digital Age: The Video Record and Appellate Review*, 96 Va. L. Rev. 643, 649 (2010).
8. Georgi-Ann Oshagan, *Videotaped Trial Transcripts and Appellate Review: Are Some Courts Favoring Form over Substance?*, 38 Wayne L. Rev. 1639, 1657 (1992).
9. No Georgia cases have examined this issue. However, one author notes how a video appellate record could have been useful with respect to an ineffectiveness claim, which was rejected in a death penalty case. "[W]hen the state of Georgia tried James Messer for capital murder, his court- appointed attorney made no opening statement, presented no case-in-chief, objected to none of the fifty-three items of evidence offered by the State, failed to cross examine fourteen of the state's twenty-three witnesses and conducted only cursory cross-examination of the other nine. The Eleventh Circuit Court of Appeals, addressing Messer's conviction on federal habeas, concluded that these "statistical observations" did not establish deficient performance, much less the prejudice required by *Strickland*. Even on a cold record, at least two United States Supreme Court justices found Messer's representation "egregiously unprofessional" and "piteously deficient," but Georgia executed Messer in July 1988. Of course, the fact that the appellate court found only "statistics" on which to base its decision is a situation not entirely within Messer's control. Without the benefit of a videotaped record, appellate courts admittedly have difficulty evaluating qualitative claims of error. As one court noted in denying one ineffective assistance claim, partially because counsel had died since trial and so was unable to testify about the representation, "[r]eviewing courts are left only with the cold record and [appellant's] assertions." Robert C. Owen and Melissa Mather, *Thawing Out The "Cold Record": Some Thoughts on How Videotaped Records May Affect Traditional Standards of Deference on Direct and Collateral Review*, 2 J. App. Prac. & Process 411, 432 (2000).
10. Rachel A. Canfield, *Zooming in on the Impact Florida's Remote Civil Jury Trials May Have on Appellate Standards of Review,* 95-FEB Fla. B.J. 30, 30 (2021).
11. Brett R. Turner, *Court Reporters, Transcripts, And Videotape: A Dilemma In Family Law Practice*, 18 No. 2 Divorce Litig. 31 (2006).
12. *Id.*
13. *Id.*
14. *Id.*
15. Rachel A. Canfield, *Zooming in on the Impact Florida's Remote Civil Jury Trials May Have on Appellate Standards of Review*, 95-FEB Fla. B.J. 30, 30 (2021).
16. Georgi-Ann Oshagan, *Videotaped Trial Transcripts and Appellate Review: Are Some Courts Favoring Form over Substance?* 38 Wayne L. Rev. 1639, 1645 (1992).
17. Bernadette Mary Donovan, *Deference in A Digital Age: The Video Record and Appellate Review*, 96 Va. L. Rev. 643, 675–76 (2010).
18. Fredric I. Lederer, *The Evolving Technology-Augmented Courtroom Before, During, and After the Pandemic*, 23 Vand. J. Ent. & Tech. L. 301, 315 (2021).
19. "The appellate courts' reaction to this technological change raises important questions about the traditional standards of appellate deference to trial court decision making. Given the advances in video technology, studying and assessing the demeanor of witnesses, lawyers, and jurors are no longer the exclusive province of the trial court. Yet the appellate standard of deference has never been (solely) the regrettable, but necessary, consequence of technological constraints. Instead, deference represents a deliberate political/institutional choice—a preference for finality and economy, even at the possible expense of accuracy. Nothing demonstrates this point more clearly than the appellate courts' uncomfortable reaction to videotaped records and evidence. Even when the presumed factual barriers to substantive oversight are removed, reviewing courts continue to emphasize the importance of deferring to discretionary decisions rendered below." Robert C. Owen and Melissa Mather, *Thawing Out The "Cold Record": Some Thoughts on How Videotaped Records May Affect Traditional Standards of Deference on Direct and Collateral Review*, 2 J. App. Prac. & Process 411, 432 (2000).
20. Rachel A. Canfield, *Zooming in on the Impact Florida's Remote Civil Jury Trials May Have on Appellate Standards of Review*, 95-FEB Fla. B.J. 30, 32 (2021).

**Mrs. Jordan is a Family Law Appellate Attorney at Kessler & Solomiany, LLC (KSFamilyLaw). She currently practices exclusively in family law appeals, and has specialized in appellate law for over thirty years. Mrs. Jordan has consistently been recognized as a Super Lawyer in Appeals.

Rules for Mediation in Cases Involving Domestic Violence (new DV Rules)

By Tracy B. Johnson and Hon. M. Cindy Morris

On January 1, 2021, the Supreme Court of Georgia's Commission on Dispute Resolution (GCDR) implemented new *Rules for Mediation in Cases Involving Issues of Domestic Violence (new DV Rules)*. These rules replaced the long-standing set of *guidelines*, which were in effect for nearly three decades. Like the previous guidelines, the new DV Rules set forth requirements and procedures for screening all domestic relations cases for the presence of intimate partner violence and abuse (IPV/A), also known as domestic violence (DV). The purpose of the rules is not to determine the validity of any allegations, but rather to assess the parties' ability to mediate safely and free of coercion.

In the early 90's, the DV community was divided on the benefits of mediation for victims of domestic violence (now referred to as "at-risk parties"). The GCDR ultimately decided that denying an at-risk party could be interpreted as further victimization, and providing a safe environment, with a specially trained mediator, may increase the at-risk party's ability to negotiate for them self. As such, in 1995, the GCDR promulgated the *Guidelines for Mediation in Cases Involving Issues of Domestic Violence* (the guidelines), under which mediators and courts have been operating until 2021.

With advancements in research and practice since 1995, the GCDR decided to revisit the guidelines and update the processes used in Georgia for mediation with issues of domestic violence. For this project, the GCDR formed a collaborative joint working group with the Georgia Commission on Family Violence, utilizing its members and community stakeholders with expertise in IPV/A and mediation.

After a two-year concentrated effort, the working group presented GCDR with a set of recommendations that would: update the guidelines to rules, expand the screening responsibility, and provide updated training to all mediators registered in the categories of Domestic Relations and Specialized Domestic Violence. These recommendations reflected the working group's focus of: maximizing safety for all participants; providing at-risk parties with a meaningful opportunity for self- determination; utilizing best practices for conducting mediation and training of mediators; and practically implementing the rules so that all stakeholders would be able to fully comply. GCDR adopted the group's recommendations in 2018, in the form of the *Supreme Court of Georgia ADR Rules, Appendix D: Rules for Mediation in Cases Involving Issues of Domestic Violence*, with an effective date of January 1, 2021.

Along with the development of rules, the GCDR is tasked with overseeing a statewide ADR program in Georgia. This Supreme Court mandate charges the GCDR with maintaining quality and standards for not only neutrals (mediators, arbitrators, and evaluators) but also for local court ADR programs. For courts to operate a local court ADR program, they must have rules approved by the GCDR and remain in good standing by adhering to the Supreme Court ADR Rules and policies, as set forth by the GCDR, including effectively implementing the new DV Rules. Since 1995, court ADR Programs were required to have processes in place to screen every domestic relations case for domestic violence. For those cases with identifiable issues of DV, the session was assigned to a mediator registered in the category of Specialized Domestic Violence and precautions were taken for the safety of all parties; precautions included holding the mediation session entirely in caucus, staggering arrival, and departure times, and having security personnel on site when available. In addition, safety protocols must be in place, including holding the session in a secure facility.

While these screening protocols under the guidelines were effective at identifying cases with issues of domestic violence, there were many cases wherein court program staff were unable to connect with the parties to screen the case or otherwise complete the screening process. For this reason, the GCDR expanded the screening protocols to include a requirement for the mediators to screen parties, if the court program was unable to do so prior to the mediation. Since the lack of DV screening does not indicate the absence of domestic violence issues, the new DV Rules require that cases without prior screening must be treated as though there are issues of

domestic violence. As such, only mediators registered in the Specialized Domestic Violence category may be assigned to mediate such cases.

The presence of domestic violence, even with an active protective order, should not automatically exclude parties from participating in mediation. The screening process is designed to help staff and mediators assess whether a case is *appropriate* for mediation. As part of that process, in cases with identified issues of domestic violence, the at-risk party is given the choice whether to proceed with the mediation session. Since self-determination is a foundational element to a meaningful mediation, at-risk parties must be able to advocate for their desired outcome. Other considerations when determining if a case is appropriate are whether the at-risk party is represented by an attorney or the availability of a DV advocate to accompany the party to the session. If it is determined that the mediation cannot be done safely or the at-risk party cannot effectively advocate for themselves, then the case is sent back to the court notating *only* that it is inappropriate for mediation. The screening process, whether conducted by ADR program staff or the mediator, is confidential and not subject to discovery. None of the screening responses are relayed to or filed with the court.

The screening process is structured into two tiers. For Tier I, a party answers a series of questions with a yes/no or multiple response, providing an opportunity to relay any additional concerns for safety in a free-form text box at the end of the survey. If there are any responses on Tier I that would indicate the possible presence of domestic violence, then the program staff or mediator would conduct Tier II questions, which are mostly open-ended questions designed to elicit information that is more detailed. This additional information aids staff or the mediator to determine if and how to proceed with the mediation session. If there are no DV indicators in Tier I, then no further screening is needed.

Effective screening of cases is dependent greatly on the cooperation of parties *and* their attorneys. For Tier I screening, attorneys may elect to complete the questionnaire on behalf of their clients. If any of the responses indicate a need for further screening, the court program staff will want to reach out to the client directly. It is helpful if attorneys explain this process to their client, emphasizing not only the purpose of the screening but also the confidentiality of the process.

To aid programs and mediators in conducting the first tier of the screening process, the Georgia Office of Dispute Resolution (GODR, the administrative arm of the GCDR), with the assistance of the Judicial Council/Administrative Office of the Courts IT Team, developed an online screening tool. This tool allows for parties, attorneys, or mediators to complete the Tier I screening through an online form, with the answers routed directly to the local court ADR program servicing the county of filing selected by the party. Like the mediation procedures, this tool has also been programmed with safety protocols. For example, if a party completing the survey is interrupted and needs to exit quickly, the party can use the "safe exit" feature, automatically advancing the current screen to The Weather Channel website. An added benefit of the online screening tool is the ability for GODR to collect statewide statistical data regarding the presence of domestic violence.[1] From November 6, 2019, through September 8, 2021, there were a total of 6,440 responses received via the online screening tool.[2] Of those responses, 2,707 were plaintiffs; 2,519 were defendants; 492 were plaintiff attorneys; 464 were defendant attorneys; 174 were mediators; and the remaining 53 were in an "other" category, which has now been removed. Of the total responses, 3,370 or 66 percent of all responses indicated some issues of domestic violence and would require Tier II screening. There were 961 (87 percent) individuals who indicated they had applied or had been granted a protective order, restraining order, or stalking order against the other party. It is important to note that the new DV Rules carry over the guidelines' prohibition of negotiating protective orders or criminal charges related to criminal cases of domestic violence. This restriction helps to balance the power in a mediation session by eliminating any demand by one side to modify or remove the protections provided by the court. For instance, there may be pressure from one party for the at-risk party to drop the TPO in exchange for more child support or other incentive. The mediator may discuss how issues related the children may look once the TPO has expired or otherwise no longer in effect but should never write an agreement that includes modifications or the elimination of a protective order or criminal charges. For some of the other questions, 1,201 (16 percent) said they were afraid of the other party; 2,144 (25 percent) said they had concerns for their safety if the other party did not get his/her/their way; 863 (13 percent) said they were afraid the other party would harm them; and 225 (3 percent) said they were concerned about the child's

safety; 117 (15 percent) said they would not feel safe returning to their home.

The statistics provided fall in line with those reported nationally and at the state level. On average, nearly 20 people per minute are physically abused by an intimate partner in the United States. For one year, this equates to more than 10 million women and men.[3] In Georgia, 37.4 percent of women and 30.4 percent of men experience intimate partner physical violence, sexual violence, and/or stalking in their lifetime.[4] It is also estimated that women are 70 times more likely to be killed during the first several weeks after leaving an abusive situation than any other time. This makes the separation time in domestic relations cases extremely dangerous for an at-risk party. Unfortunately, Georgia ranks 22nd in the nation for its rate of men killing women.[5]

The Georgia Commission on Family Violence has committed to the continued collaboration with the GCDR, and as such, the GCDR established a standing committee – the DV Rules Committee – and charged them with monitoring and participating in the execution and ongoing evaluation of the DV Rules. This committee, represented by members of the dispute resolution and domestic violence communities (including members of both Commissions, dispute resolution trainers, ADR Program Directors, and JC/AOC IT and legal staff), continues to meet regularly to receive feedback, evaluate data, and provide any recommendations to the GCDR for improvement.

A link to the online screening tool is located on GODR's homepage (www.GODR.org) on the top right menu or directly by clicking on the following link: https://godr.org/adr-screening/. For any questions, concerns, or additional information, please reach out the Georgia Office of Dispute Resolution at gaodr@georgiacourts.gov.

Endnotes

1. GODR does not receive any identifiable case or party information.
2. This number does not account for responses received by programs or mediators in alternate formats (e.g., paper surveys, phone interviews, etc.).
3. https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf
4. Smith, S.G., Chen, J., Basile, K.C., Gilbert, L.K., Merrick, M.T., Patel, N., Walling, M., & Jain, A. (2017). The national intimate partner and sexual violence survey (NISVS): 2010-2012 state report. Atlanta: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. Retrieved from https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf
5. Violence Policy Center (2020). http://vpc.org/studies/wmmw2020.pdf

"Magic Words" in the Military

By Mark E. Sullivan*

In "Jack and the Beanstalk", it is the "magic beans" that start the story. In "My Cousin Vinny," the best line in cross-examination features "magic grits." In military divorce cases, "magic words" are sometimes the answer.

There are several military pension division areas in which "magic words" or specific language can make the difference between success and defeat, between a happy client and a grievance (or worse!). One of the most important places to focus on language is in the paragraph in the pension division order, which deals with the Survivor Benefit Plan. Attorneys who represent the non-military spouse or former spouse know that providing for this survivor annuity is an essential part of a property settlement.

The Survivor Benefit Plan

Whether the pension-division text is found in the divorce decree, an incorporated settlement, or a separate consent order (often called a Military Pension Division Order, or MPDO), the attorney representing the spouse or the former spouse (FS) must be sure that specific requirements are set out clearly in order to secure SBP coverage. Without terms that anchor the SBP in the settlement, the retired pay center will deny the FS this substantial benefit, since the pension-share payments end when the service member or retiree dies. [Note: The retired pay center is DFAS, the Defense Finance and Accounting Service, for Army, Navy, Air Force and Reserve retirees; for those retiring from the Coast Guard or the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration, it is the Coast Guard Pay & Personnel Center.]

SBP is an income-continuation program, not strictly speaking a part of the pension. It allows the FS to continue receiving payments after the member's death. The amount paid is 55 percent of the selected base amount. Payments constitute taxable income, and they increase annually with inflation through cost-of-living adjustments, or COLAs.

Language to Use

The basic language to be use - the "magic words," if you wish - can be written quite simply into the instrument that divides the pension: "John Doe will immediately elect his wife, Jane Doe, for former-spouse Survivor Benefit Plan coverage." It's that simple!

Those who want to put a bit of *frosting on the cake* can use some additional language.

Here are several add-ons to insert after the above sentence regarding SBP election:

- "He will elect SBP for her using his full retired pay as the base amount." [Note: The base can be anything from full retired pay down to $300 a month; failure to specify the base results in a base amount of one's full retired pay.]

- "He will make the election on DD Form 2656-1, will send a copy promptly to the retired pay center along with the divorce decree and any other order requiring former-spouse SBP coverage, and he will transmit a copy of these documents promptly to Jane Doe's lawyer." [Note: For members of the Reserves and National Guard, as well as their spouses, the forms need to be sent to that agency, not to the retired pay center; thus, the Army Reserve office would be Human Resources Command at Ft. Knox, and the Air National Guard would be at Buckley AFB, Colorado.]

- "Jane Doe may submit a deemed election to secure her SBP coverage, using DD form 2656-10." The addresses to use are on the forms. The deadlines for submission of the necessary documents are one year from the divorce (for the member/retiree) and one year from the order requiring SBP coverage (for the former spouse.).

The addresses to use are on the forms. The deadlines for submission of the necessary documents are one year from the divorce (for the member/retiree) and one year from the order requiring SBP coverage (for the

former spouse.).

All of this (and more) can be found at "SBP - Choose It or Lose It" in Chapter 8 of THE MILITARY DIVORCE HANDBOOK (Am Bar Assn., 3rd Ed. 2019)

*Mr. Sullivan is a retired Army Reserve JAG colonel. He practices family law in Raleigh, North Carolina, and is the author of THE MILITARY DIVORCE HANDBOOK (Am. Bar Assn. 3rd Ed. 2019). He works with attorneys nationwide as a consultant in military divorce cases and in drafting military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com.

Which Retirement Plan Is Right for Your Business?

By Trent Doty

If you own a small business, there are many retirement plan alternatives available to help you and your eligible employees save for retirement. For most closely held business owners, a Simplified Employee Pension Individual Retirement Account (SEP IRA) was once the most cost-effective choice. Then the Savings Incentive Match Plan for Employees (SIMPLE IRA) became a viable alternative. Today you may find that a defined benefit or 401(k) plan best suits your needs. To make an informed decision on which plan is right for your business, review the differences carefully before you choose.

Simplified Employee Pension Individual Retirement Account (SEP IRA)

This plan is flexible, easy to set up, and has low administrative costs. An employer signs a plan adoption agreement, and SEP IRAs are set up for each eligible employee. When choosing this plan, keep in mind that it does not allow employees to save through payroll deductions, and contributions are immediately 100 percent vested.

The maximum an employer can contribute each year is 25 percent of an employee's eligible compensation, up to a maximum of $290,000 for 2021. However, the contribution for any individual cannot exceed $58,000 in 2021. Employer contributions are typically discretionary and may vary from year to year. With this plan, the same formula must be used to calculate the contribution amount for all eligible employees, including any owners. Eligible employees include those who are age 21 and older and those employed (both part time and full time) for three of the last five years.

Savings Incentive Match Plan for Employees (SIMPLE)

If you want a plan that encourages employees to save for retirement, a SIMPLE IRA might be appropriate for you. In order to select this plan, you must have 100 or fewer eligible employees who earned $5,000 or more in compensation in the preceding year and have no other employer-sponsored retirement plans to which contributions were made or accrued during that calendar year. There are no annual IRS filings or complex paperwork, and employer contributions are tax deductible for your business. The plan encourages employees to save for retirement through payroll deductions; contributions are immediately 100 percent vested.

The maximum salary deferral limit to a SIMPLE IRA plan cannot exceed $13,500 for 2021. If an employee is age 50 or older before December 31, then an additional catch-up contribution of $3,000 is permitted. Each year the employer must decide to do either a *matching contribution* (the lesser of the employee's salary deferral or 3 percent of the employee's compensation) or *non-matching contribution* of 2 percent of an employee's compensation (limited to $290,000 for 2021). All participants in the plan must be notified of the employer's decision each year no later than November 2nd for the upcoming year.

Defined benefit pension plan

This type of a plan may be a good solution for a profitable company with stable cash flow with intentions of benefitting employees over the age of 40. This type of plan can also help build savings quickly. It generally produces a much larger tax- deductible contribution for your business than a defined contribution plan; however, annual employer contributions are mandatory since each participant is promised a monthly benefit at retirement age. Since this plan is more complex to administer, the services of an enrolled actuary are required. All plan assets must be held in a pooled account, and your employees cannot direct their investments.

Certain factors affect an employer's contribution for a plan, such as current value of the plan assets, the ages of employees, date of hire, and compensation. A participating employee with a large projected benefit and only a few years until normal retirement age

generates a large contribution because there is little time to accumulate the necessary value to produce the stated benefit at retirement. The maximum annual benefit at retirement is the lesser of 100 percent of the employee's compensation or $230,000 per year in 2021 (indexed for inflation). This plan design should only be considered with the intention of significant, annual funding for a minimum of 5 years.

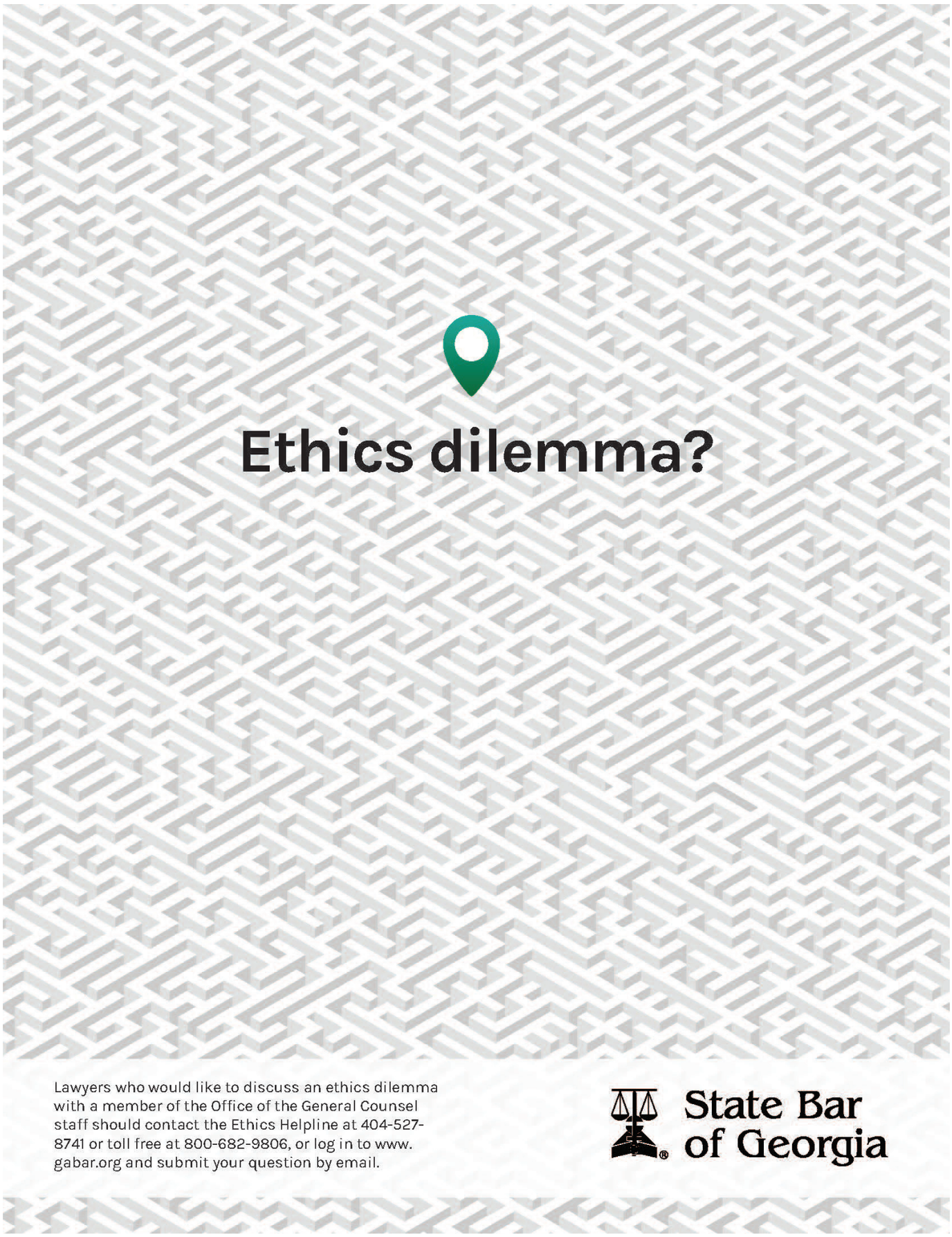
401 (k) plans

This plan may be right for your company if you want to motivate your employees to save towards retirement and give them a way to share in the firm's profitability. 401(k) plans are best suited for companies seeking flexible contribution methods.

When choosing this plan type, keep in mind that the employee and employer have the ability to make contributions. The maximum salary deferral limit for a 401(k) plan is $19,500 for 2021. If an employee is age 50 or older before December 31, then an additional catch-up contribution of $6,500 is permitted. The maximum amount you, as the employer, can contribute is 25 percent of the eligible employee's total compensation (capped at $290,000 for 2021). Individual allocations for each employee cannot exceed the lesser of 100 percent of compensation or $58,000 in 2021 ($64,500 if age 50 or older). The allocation of employer profit-sharing contributions can be skewed to favor older employees, if using age-weighted and new comparability features. Generally, IRS Forms 5500 and 5500-EZ (along with applicable schedules) must be filed each year.

Once you have reviewed your business's goals and objectives, you should check with your Financial Advisor to evaluate the best retirement plan option for your financial situation.

This article was written by a third party and provided to you by Trent Doty, CFP®, CDFA®, Financial Advisor at Wells Fargo Advisors in Statesboro, GA at 912-764-5080.



Case Law Update

By Vic Valmus

ADOPTION/LEGAL FATHER

Poe et al v. Cantrell, **A21A1142** (October 6, 2021)

Cantrell (Father) and the Mother are the parents of the daughter at issue and were living together at the time of the daughter's conception. The Father acknowledged paternity and appeared on the child's birth certificate. The daughter was born in August 2017. The couple married in February 2018 and a son was born in September, 2018. The Father and the Mother had a history of illegal drug use and domestic violence. In March 2019, both children were taken into DFCS custody and were eventually placed with the Poe's (Foster Parents). The Father appeared at all his appointments and completed counseling on the parenting, anger management and addiction and domestic violence and paid all court ordered child support. After being released from jail, the Mother surrendered her rights to both children. In April 2020, the foster parents petitioned to adopt the son and daughter. The Mother testified because of her drug habits, she did not know who the biological father of the daughter was, but it was not Cantrell. Foster parents petitioned to include evidence of DNA testing from the Father. The Court entered an Order for DNA testing, but soon rescinded that order and entered a new order finding that Cantrell was the daughter's legal father and had achieved that status because he had not surrendered or had his rights terminated and had married the legal mother after the child was born and recognized the child as his own and his paternity had not be disproven by a final order of the court of competent jurisdiction. Therefore, the foster parents lacked standing to contest the Father's status as the daughter's legal father and as a result denied the request for the Father to submit DNA testing. During the action, DFCS dismissed his dependency petition and both children were returned to the Father's custody. But after an emergency hearing, the Trial Court returned the children to the foster parents giving the Father unsupervised overnight visitation. A hearing on the adoptions was held, evidence was heard regarding the adoptions and the Trial Court denied both the adoptions. The foster parents appealed and the Court of Appeals affirms. Poe also separately petitioned to adopt the son, but did not appeal the denial because the Poe's recognized Cantrell as the biological and legal father.

The foster parents assert the Trial Court erred when it determined the Father was the daughter's legal father and when it refused to reconsider its order denying their request that the Father submit to DNA testing. Pursuant to O.C.G.A. §19-8-5 a child may be adopted by third party who is neither a step-parent or a relative of that child only if each living parent of such child has voluntarily and in writing surrendered all of his or her rights to the child to that third party. No such surrender occurred here. In addition, O.C.G.A.§19-8-10 states that a surrender or termination of parental rights shall not be required if the child has been abandoned by the parent, or a parent without justifiable cause has failed to exercise proper parental care or control due to misconduct or inability and the Court determines independent adoption is in the best interest of the child. Trial Court properly considered the Father had not abandoned his daughter or failed to exercise proper parental care and control.

The Court was also correct in finding that the Father is the legal father and the foster parents have no standing. Cantrell became the legal father of this child by operation of law when he married the Mother after the child was born and recognized her as his own and his marriage to the Mother rendered the child legitimate. Therefore, Cantrell was not required to submit to DNA testing. In addition, foster parents, such as the Poes are not included in the categories of persons or organizations authorized to bring a paternity petition and thus have no standing to contest the Trial Court's determination. The Trial Court has no discretion to make a custody award to a nonrelative unless the parent has lost parental rights.

CHOICE OF LAW/MARRIAGE REQUIREMENTS

Chen v. Chen; **A21A1674** (November 29, 2021)

In the summer of 2007, the Husband and Wife were unmarried. When the Wife became pregnant, the parties decided to marry. On October 7, 2007, they held a ceremony with the family and friends at a restaurant in New York. A video recording of the celebration was made where the Husband wore a tuxedo, the Wife wore a white dress, they exchanged rings, wedding vows,

marched to music and vowed to each other afterwards as a traditional Chinese ceremony. There are several photographs taken that day and the Husband had groomsmen and the Wife had bridesmaids. In October, 2016, the Wife found out that she needed a marriage license to be married legally in the United States and the parties had a marriage ceremony on October 7, 2016 at the Gwinnett County courthouse an obtained a marriage license. Since 2007, the parties had 3 children together. In 2020, the Husband filed for divorce stating the parties were married as of October, 2016. The Wife filed an Answer and Counterclaim stating that the parties were married on October 7, 2007. The Husband testified that the 2007 celebration was a dinner feast and did not recall exchanged rings or vows and parties did not merge finances or file joint returns until 2016 and continued to date other people. The Husband testified he was married to another woman from 2009 to 2014, but admitted he lived with his Wife during this time and had another child with the Wife in 2012. The Wife testified that she knew about this marriage and understood it would be a false marriage. The Trial Court ruled that the parties were married as of October 7, 2007. The Husband sought an interlocutory appeal and the Court of Appeals affirmed.

Before moving forward with reviewing the appeal, this Court must determine the applicable law. Here, neither party argued New York applies in determining the date of the marriage. Neither party gave notice that New York law might apply pursuant to O.C.G.A.§19-11-43, which in pertinent part provides that a party who intends to raise an issue concerning the law of another state or foreign country shall give notice in his pleadings or other reasonable written notice. In absence of adequate notice, the Georgia Courts applied Georgia law. Therefore, this Court will apply Georgia law.

The Husband contends the Trial Court erred in concluding the parties entered into a valid marriage in 2007. As set forth in O.C.G.A.§19-93-1, to constitute a valid marriage in Georgia there must be: 1) Parties able to contract, 2) An actual contract and 3) Consummation according to the law, which applies to both common law and ceremonial weddings. Here, neither party disputes the ability to contract in 2007. With regards to the second element, the parties must consent voluntarily without any fraud practiced upon the other. Here, the evidence supported the Trial Court's finding that the 2007 ceremony was intended by both the Husband and Wife to be a lawful marriage and that the Husband and Wife exchanged vows. Any conflict of the evidence was resolved by the Trial Court in favor of the Wife.

With regards to the third element, consummation, the Trial Court did rely on an erroneous definition of consummation. Nonetheless, the Trial Court found that the evidence supports the Trial Court's conclusion that the marriage was consummated. The Husband and Wife agreed that they lived together after 2007 ceremony, and it is undisputed that the Husband and Wife had 3 children together after the 2007 ceremony. The Husband also contends that it was not a valid marriage until the parties obtained a marriage license in 2016. However, the Court has found no binding authority establishing that a failure to procure a marriage license renders a ceremonial marriage void.

CONTEMPT/ESTATE

Estate of Raymond A. Suddeth v. Jennifer Suddeth, Williams as Executor of the Estate of Carolyn C. Suddeth; **A21A0864** (October 14, 2021)

The parties were divorced in 1996. The husband died in April 2017. Afterwards the wife filed for contempt suit against the husband's estate and not the husband individually or the estate's administrator. By the time the Trial Court ruled granting the wife's Motion for Contempt, the wife had also passed away in May 2020. The husband's estate appeals and the Court of Appeals reverses and remands.

The husband's estate argues, among other things, that because the underlying action for contempt has been pursued only against the Husband's estate not the Husband individually or the administrator of the estate, the action is a legal nullity. The wife never took any action to change the main defendant. The husband's estate filed a Motion to Dismiss and Amended Motion to Dismiss which were both denied prior to the hearing. In the denial order, the Court made no explanation for its ruling. The Husband's estate filed a Renewal Motion to Dismiss and following the hearing, the court summarily denied the Renewal Motion to Dismiss and adopted the previous order and found the husband in contempt of the divorce decree and ordered the administrator of the Husband's estate to pay the wife's estate the sum of $42,525.00 and interest in two parcels of real estate and ordered the administrator to pay the wife's estate the sum of $32,360.17 as past due alimony for the period of December, 2015 through December, 2017. The Court also granted the Wife's estate's request for attorney's fees under 9-15-14 and 19-6-2 in the amount of $5,300.00. Husband's estate appeals and the Court of Appeals reverses and remands.

As a general rule, an action by or against an estate must be brought or defended by the legal representative of the estate. A suit against the designated estate is not a suit with a real defendant. The estate of a dead man is a mere inanimate property and is not a mere technicality. The party who improperly brings a suit against an estate may seek to amend the party's pleading to name a proper party in interest. However, the wife's estate has not availed herself of this remedy to amend the pleadings to reflect the real party in interest. However, there could be an exception, so, the Court has to determine if the wife's representative might currently qualify for an exception to the rule that the action cannot be maintained against an estate. To qualify, 1) the person representing the estate must have, in fact, been fully involved in the litigation; and 2) the pleading defect has been waived. Here, there has been no waiver of the pleading defect. To the contrary, the failure to name the real party in interest has been raised in multiple motions to dismiss. Therefore, it does not appear that either the remedy or the exception has been triggered, but it also does not appear that the Trial Court has fully considered these procedural issues. So, since the Trial Court made no fact findings regarding either the remedy or the exception, and gave no reasons for its actions in denying the estate's Motion to Dismiss, the judgment is vacated and remanded with direction.

DECLARATORY JUGDMENT

Brown v. Brown; **857 S.E. 2nd 505** (April 13, 2021)

The parties divorce in 2015 incorporated a Settlement Agreement, which discussed summer vacation weeks where each parent shall be entitled to consecutive weeks of uninterrupted parenting time with the minor children. The father would have the first choice in odd years and the mother the first choice in even years. The parties deviated from the agreement by taking nonconsecutive summer time in 2015-2018. However, in early 2018, the mother attempted to take a trip to Africa and requested that he select his 2 weeks pursuant to the parenting plan. The parties could not resolve the issue and the mother filed a Petition for Modification of Child Custody and Visitation and a Motion for Declaratory Judgment. With regards to Motion for Declaratory Judgment the mother asserted that when the father previously selected a summer vacation week of the Parenting Plan, he selected 6 nonconsecutive days throughout the summer which was inconsistent with the Parenting Plan directive, and the mother asked that the Court direct the father to pick "weeks" and not "days," consistent with the Parenting Plan. The father filed an Answer and Counterclaim that the parties never exercised 2 consecutive weeks and asked for attorney's fees. The mother filed a Motion for Emergency Relief allowing her to take her vacation to Africa with the children, but the Court denied the Motion. In April 2020, the Court had a final hearing on the mother's request for Declaratory Judgment. Previously, the father was not disputing the language of the Parenting Plan, but his actions showed otherwise and she still needed the Trial Court to rule on her Declaratory Judgment action and clarify the summer visitation weeks of the Parenting Plan. The father asserted at the hearing that they did not contest the Parenting Plan language, yet the mother still pursued her action. The evidence showed that the father selected 6 separate days throughout the summer and stated that he would select his remaining 8 days after the mother selected her days. The mother insisted that the summer vacation weeks provision of the Parenting Plan to select 2 weeks of consecutive time with the children and requested the father to "please pick your weeks." There were a lot of communications between counsel regarding the status of the visitation and claims and counterclaims. After the final hearing, the Court issued an Order denying the mother's Request for Declaratory Judgment and awarded the father attorney's fees pursuant to 9-15-14(b) and 9-3-3(g). The Trial Court in denying the mothers Declaratory Judgment stated the Parenting Plan permits each party up to 2 consecutive weeks of parenting time with the children during the summer, but there is no requirement that each party exercise 2 full consecutive and uninterrupted weeks of summer parenting time and there is no requirement that either party must select his or her summer parenting time in weeks rather than days. The mother requested that each party is required to select his or her summer weeks in 2 weeks consecutive and uninterrupted blocks which is not required in the Parenting Plan and thus not something the Court can therefore order as a Declaratory Judgment. The mother appeals and the Court of Appeals reverses.

The mother contends that the Trial Court erred by denying her Motion for Declaratory Judgment and that the Trial Court interpreted the Parenting Plan summer visitation weeks improperly. The Declaratory Judgment Act gives the Court the power to declare rights and other legal relations of interested parties in cases of actual controversy under O.C.G.A.§9-4-2(a) and in any civil case in which it appears to the Court that the ends of justice require the declaration should be made. Here,

the mother sought the Declaratory Judgment ruling that summer visitation weeks of the Parenting Plan required the father to select consecutive weeks not daily increments. The father argues the Declaratory Judgment was not proper remedy in this case because the no actual controversy existed and that the language of the Parenting Plan was not in dispute. The father proposed that the Parenting Plan provision did not require him to select his summer visitation in consecutive 2-week blocks, but rather is permitted to select up to 14 random days during the summer. In light of the father's actions demonstrating that he did not agree with the mother's interpretation with the summer weeks' vacation language in the Parenting Plan, an actual controversy existed and the mother was entitled to seek Declaratory Judgment. In addition, the Trial Court's ultimate conclusion that the summer vacation weeks provision required something completely different than what the mother asserted (and the father claimed not to contest) is evidence that the mother's action presented a justiciable controversy. The Trial Court's conclusion that the Parenting Plan allows 2 consecutive weeks of parenting time with no obligation for the parents to select weeks rather than days was erroneous. The Parenting Plan was unambiguous language. The summer visitation weeks was unambiguous language with no ambiguity in the language. In addition, if the Court was to read the summer visitation week language in the Parenting Plan as a father as the Trial Court suggested, it would render the phrase 2 consecutive weeks and the word uninterrupted meaningless.

The mother also asserts the Trial Court abused its discretion by awarding attorney's fees to the father both under 9-15-14(b) and 19-9-3(g). The Trial Court awarded $9,024.50 pursuant to 9-15-14(b) based on the finding that the mother's pursuit for the Declaratory Judgment was substantially frivolous and/or lacking substantial justification. This Court's reversal of Trial Court's interpretation of the summer visitation weeks shows that the mother's pursuit of the Declaratory Judgment was legitimate, therefore, this award is reversed. The Trial Court also awarded the father $19,260.00 in attorney's fees under 19-9-3(g) finding these fees are reasonable and necessary incurred by the father in defending against the mother's child custody and parenting time claims, primarily in defense of the Emergency Hearing in Declaratory Judgment. The mother argues that 19-9-3(g) attorney fees are not authorized in Declaratory Judgment actions and the father does not dispute this, he merely argues that the mother has waived this argument because she induced such error when her counsel drafted the Order. The Order issued indicated that it was prepared and presented by father's trial counsel. While the mothers counsel may have redlined, reviewed or even suggested language for a Proposed Order, that does not transform and adverse ruling into a consent judgment. Where a Final Order is approved by counsel by both parties in writing, it is not approval of the substance of the Order. If it were, the right of appeal would be waived. Because the Trial Court's Order does not limit its award under 19-9-3(g) attorney's fees to the fees incurred by the father related to the sanctionable conduct by the mother with respect to the child custody action is hereby vacated and remanded. For the Trial Court to determine the amount of attorney's fees, if any, that should be awarded to the father based solely on any sanctionable conduct by the mother by pursuing her child custody claims.

FINDINGS OF FACTS/ATTORNEY'S FEES

Cockerham v. Cockerham; **359 Ga.App. 891** (June 18, 2021)

The father petitioned to modify parental time in the previous divorce to equal parenting time. The mother answered and counterclaimed for increase in child support, and payment of her attorney's and guardian ad litem fees. The parties entered a consent order to modify child support and, following a final hearing, the Court modified increasing the father's parenting time from Thursday after school until Monday morning rather than the requested equal time. The Trial Court awarded the mother attorney's fees of $5,706.00 as the prevailing party on the counterclaim for child support pursuant to O.C.G.A.§19-6-15(k) and attorney's fees of $25,000.00 pursuant to 19-9-3(g) for defense of the father's Petition to Modify Parenting Time. The father appeals and the Court of Appeals affirms in part and vacates and remands in part.

The father argues that the Trial Court erred by failing to make a requested findings of facts pursuant to O.C.G.A.§911-52 and 19-9-3(a)(8). The father requested such findings of facts and conclusion during the hearing and the Court affirmed it would make findings of facts. The Trial Court's 2-page Final Order contained 7 paragraphs. The father argues the Trial Court's only factual findings was observations about his use of expletives in an email. According to the mother, the Trial Court substantive findings as to the father's use of expletives was sufficient and points to the evidence

at trial including the written communications containing expletives which the mother asserts the father's lack of self-control and use of profanity in the child's presence and was a relevant factor the Trial Court could consider in modifying parenting time. If requested by a party on or before the close of evidence in a contested hearing, the Court shall set forth specific findings of facts as to the basis of the Judge's decision in making an award of custody including any relevant fact relied upon by the Judge. It is clear that the father requested factual findings and this Court cannot say the Trial Court's factual observations about the father's use of expletives in an email and adverse inference that he communicated "worse things orally" satisfied the requirements. Therefore, it is unclear from the order why the Trial Court modified the parenting time, but declined to give the father equal parenting time or the relevance of the factual finding regarding the emails to its determination. Therefore, the custody award is vacated and remanded for the Court to enter the father's request of findings of facts and conclusions of law.

Next, the father appeals, among other things, the Trial Court erred in the award of attorney's fees to the mother because the Trial Court failed to set forth factual findings. The Trial Court awarded the attorney's fees of $5,706.00 as a prevailing party for counterclaim under 19-6-15(k) and attorney's fees of $25,000 pursuant to 19-9-3(g) for her defense of the Petition to Modify Parenting Time. Trial Court has wide discretion to award attorney's fees and the father has provided no authority nor is the Court aware of any that mandates that upon the determination of the statutory basis of an award for attorney's fees pursuant to 19-9-3, the Trial Court must set forth factual findings. The father does not challenge the evidence or the reasonableness of the award or that the Trial Court abuses discretion in awarding such fees. This was not a case where the statutory basis nor findings were not included. The Trial Court's order specifically provided a statutory basis for the award. The record also reflects that at the hearing on the petition, the mother's attorney provided detailed billing records of the cost associated with both attorney's fees claims.

IMPUTED INCOME

Lockhart v. Lockhart; **A21A0760** (September 27, 2021)

The parties were married in 2003 and had 6 children. At the time of the divorce, there were 4 minor children. From the years 2015 to 2018, the Husband worked in the towing industry earning between $59,000-$61,000 per year. In 2018, he moved and relocated to Las Vegas where he was earning approximately $13 per hour but was terminated after he was arrested for child abandonment filed by the Wife. Afterwards, the Husband was working odd jobs making approximately $15 per hour. At the Final Hearing, the Court awarded the Wife primary physical custody, sole legal custody, imputed income of the Husband at $4,000 per month establishing child support at $2,076 as well as the Wife's work-related child-care expenses, awarded $20,000 in a lump sum alimony payable at $800 per month and awarded $1,500 in attorney's fees. The Husband appeals and the Court of Appeals reversed, vacates and remands with direction.

The Husband contends the Trial Court erred when it imputed $4,000 per month of income. The Trial Court based its information of the Husband's imputed income primarily on his earnings for 3 years from 2015 through 2017 as he worked as a tow truck driver. There is no evidence that the Husband had any significant assets nor that he suppressed his income, but had left over debt from buying the Wife's jewelry for their anniversary in 2017 and investing in a Florida time share for which he has defaulted on the loan. A party's past income is some evidence of earning capacity, but alone it is not conclusive. It must be considered along with other relevant circumstances. There must be evidence that the parent has the ability to earn an amount sufficient to pay the award of support. The Trial Court awarded child support based upon nearly double the amount the Husband testified that he earned from 2018 up to the 2020 hearing. Therefore, $27,000 of the Husband's imputed income was not supported by the evidence and did not have present ability to earn $48,000 per year.

Husband also appeals that the Trial Court erred by not including the Wife's income from support she received from her mother in the form of housing. The testimony was that the Wife's mother began paying the rent of $1,445 for the Wife and children after they moved out of the marital residence. The Wife did not receive the support from the mother before the Husband left and it was a stop-gap measure. The Wife testified that the payments were not permanent support and therefore, the Trial Court was correct in not considering the income for purpose of calculating child support.

The Husband also challenged the award of $20,000 in lump sum alimony to be paid at the rate of $800 per month. In determining whether to grant alimony, the Court shall consider several factors including evidence

of the conduct of each party toward the other. The Trial Court did not make explicit findings regarding the alimony award and in light of the Husband's improper imputed income and ability to pay, the alimony was also vacated and remanded.

IMPUTED INCOME/FRAUDULANT TRANSFER

Franco v. Eagle; **A21A0875** (October 20, 2021)

The parties were married in 2001, separated in 2017 and Franco (husband) filed for divorce in 2019. The parties reached an agreement, but were unable to settle the husband's income, child support and division of real property. The Trial Court imputed income to the husband at $10,000.00 and divided real properties partially owned by the husband as well as a piece of property deeded to the husband's brother and the husband to pay $8,100.00 in attorney's fees. Husband appeals. Court of Appeals affirms in part and reverses in part.

Husband argues the Trial Court improperly imputed income at $10,000.00 in gross monthly income. Pursuant to O.C.G.A.§19-6-15, the Court can impute income if a parent fails to produce reliable evidence of income or potential income. The wife served the husband with discovery requests and the husband failed to respond in a timely manner. The Court noted that the husband comingled his business and personal accounts and after the Trial Court considered all the evidence presented, found the husband's income to be $10,000.00 per month. The husband continues to argue that he produced reliable evidence of income in a tax return and 1099 statements for 2015, 2016, 2017 and 1099's and bank statement for 2018. There are two condition precedents for imputing income: 1) a parent's failure to produce reliable evidence of income; and 2) the absence of any other reliable evidence such as parent's income or income potential. Nothing in the code section suggests the production of the type of evidence mentioned as examples of reliable evidence of income forecloses the Court from imputing income. More particularly, it states that in general, income and expenses from self-employment or income of an operation of a business should be carefully reviewed by the Court to determine an appropriate level of income available to the parent. Generally, this amount will differ from determination of a business income for tax purposes. Therefore, the statue contemplates that some cases concerning self-employment income tax returns alone might not be sufficient to determine gross income. The husband was self-employed as a carpenter and remodeled homes. He established an LLC and produced his tax returns for 2015, 2016, 2017. The Court found the husband only produced a portion of the financial information requested by the wife, his testimony conflicted with some of the documents and he comingled his business and personal accounts. Therefore, it was for the Trial Court to determine whether the party's own representations were credible.

The husband also argues that the income should be reversed because subsection (f)(4)(a) requires the Court to take into account several factors, and although the Trial Court did not specifically mention these considerations in its order, neither party requested the Trail Court to make specific findings of fact and nothing required in the code section required the Trial Court to do so.

The Husband also argues that a piece of property located in Decatur was not part of the marital estate. The wife's name was never on the deed to the property and the property was deeded to the husband's brother in 2012, long before the divorce action was filed. Therefore, property that has been conveyed to a third party is not subject to equitable division absent of showing a fraudulent transfer. The record shows the wife did not make any effort either before or during the divorce litigation to have the conveyance to the husband's brother set aside as fraudulent and the Trial Court did not make a finding that the property had been fraudulently transferred. Therefore, the Trial Court erred in dividing this property.

JUDICIAL ESTOPPEL

Greenlee v. Tideback; **A21A0622** (April 1, 2021)

The parties married in July 2013 and separated in August, 2017. There were two minor children born of the marriage. Julianne Greenlee filed a Complaint for Divorce against Molly Jo Greenlee who filed an Answer and Counterclaim for Divorce. Parties agreed to a Parenting Plan giving them joint legal custody and designated Julianne as the primary custodial parent and Molly Jo as the secondary. A Settlement Agreement was incorporated in the Final Decree of Divorce. Two years after, Mary Jo, now Tideback, filed a Motion for Contempt and Modification of Visitation. Julianne answered and filed a Motion to Set Aside claiming that Molly Joe was not the biological or adoptive parent of the children. After the hearing, the Court denied the

Motion to Set Aside, finding judicial estoppel precluded Julianne from claiming contrary to her earlier successful claims to the Court in the divorce proceedings. Julianne appeals and the Court of Appeals affirms.

Julianne contends that Trial Court erred in applying judicial estoppel to deny the Motion to Set Aside. Judicial Estoppel is an equitable doctrine that can be invoked by a Court at its discretion. Since 1994, Georgia courts have adopted the federal doctrine of Judicial Estoppel which there are 3 elements: 1) the parties' later position must be clear, but inconsistent with the earlier position; 2) party must have succeeded in persuading a Court to accept that party's earlier position; and 3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on opposing party. Here, the Trial Court properly considered the factors in deciding to exercise its discretion. The Trial Court applied the doctrine of Judicial Estoppel to protect the integrity of the judicial process by prohibiting Julianne from deliberately changing position from one judicial proceeding to the next simply because her interests may have changed.

LOTTERY

Messick v. Messick; **858 S.E. Sd 758** (May 18, 2021)

On March 5, 2021, the wife filed an action for divorce for and a Settlement Agreement was filed asking the Court to incorporate it into the Final Decree of Divorce. Afterwards, the wife won a substantial amount of money in the lottery. The husband answered and counterclaimed that the Trial Court should set aside the Settlement Agreement because it did not address the wife's lottery winnings. The wife then filed a motion that asked the Trial Court to enforce the Settlement Agreement. After the hearing, the Trial Court denied the wife's Motion to Enforce the agreement finding that the lottery proceeds are marital property subject to division by the Court and the Settlement Agreement did not contemplate the acquisition of such property nor provide for how such property should be divided. The wife appeals and the Court of Appeals affirms.

A marital asset is subject to equitable division if it is acquired as a direct result and labor of the parties during the marriage. Because the Trial Court has not yet entered a Divorce Decree in the case, the marriage has not yet been terminated. So, the wife acquired lottery proceeds during the marriage. In addition, there is no transcript in the appellate record so it must be presumed the Trial Court was correct that the lottery winnings were acquired as a direct result of her labor or investment. The Settlement Agreement does not include a term providing for division of the lottery proceeds. The wife relies heavily in her brief that the parties acknowledge that they have previously made a division of their household furniture, furnishing, household goods, equipment, and other such personally and neither party shall claim any of the property in possession of the other as the date of the signing of this agreement unless stated below. By plain language, the terms of the Settlement Agreement do not pertain to division of marital property acquired by a party after the signing of the agreement, and it is undisputed that the wife acquired the lotter proceeds after the agreement was signed. Because the plain language of the Settlement Agreement does not address the equitable division of a significant marital asset, the lottery proceeds, any decree incorporating that agreement will not dispose of all the marital assets.

MOTION TO SET ASIDE

Threatt v. Threatt; **360 Ga.App. 223** (June 25, 2021)

In 2018, the husband filed a Petition for Divorce. The wife answered and counterclaimed. After unsuccessful mediation, the wife's attorney withdrew, and the wife proceeded pro se. Prior to the scheduling a final hearing, the Court required a consolidated pretrial order for which the wife did not participate. On December 3, 2019, the Court scheduled a status hearing for which the wife did not appear. As a result, the Trial Court dismissed the wife's answer and counterclaim and proceeded to a final trial. On January 9, 2020, the wife submitted a letter to the Court apologizing for missing the hearing stating she thought the hearing was on December 30, 2019. On March 3, 2020, the wife's counsel filed a Motion to Set Aside the judgment under 9-11-60(d) and for new trial. The wife argued she did not receive Notice of a Final Hearing. The Court denied the wife's motion and entered a Final Decree of Divorce on February 10, 2020. The wife appeals and the Court of Appeals reverses.

A party's failure to receive notice of a hearing is a non-amendable defect that appears on the face of the record under O.C.G.A.§9-11-60(d). Even though the wife received notice of the status hearing, this was insufficient notice that the case would be proceeding to a final trial. By contrast, when a party is properly

informed of a final hearing and does not appear, the Court may proceed to trial. When a status conference was properly noticed under the principles of due process, a Court must still provide sufficient notice if it decides to proceed to a final trial.

NEGLIGENT SUPERVISION/MALPRACTICE/ INVASION OF PRIVACY/JUDGEMENTAL IMMUNITY

Rimert v. Meriwether & Tharp, LLC et al., Meriwether & Tharp, LLC v. Rimert, Meriwether & Tharp, LLC v. Valade **A21A1010, A21A1011, A21A1012** (October 25, 2021)

Jennifer Valade (Wife) filed for divorce against the Husband in July, 2013. The Husband hired Meriwether & Tharp (MT) to represent him in the divorce. Doak, the attorney that represented the Husband graduated law school in 2010 and worked for MT for 3 years. In the initial meeting with the attorneys, MT advised the Husband to place a nanny cam in the Wife's bedroom and that it was legal to do so and directly related to issues in the divorce. At the time, the Court had a Standing Order in divorce actions that prohibited a party for placing under surveillance for the purpose of harassing and intimidating the other party. The Husband then installed a nanny cam in the Wife's bedroom which he had received from a private investigator. The recording captured the Wife and Rimert having sexual relations in the bedroom. The Husband showed the recordings to his attorney and a private investigator. MT then sent a letter to the Wife's counsel stating that they had recently become aware that the Wife was having sex with Rimert in the marital home. The letter demanded the behavior must stop or otherwise the Husband would seek emergency hearing which would force him to present evidence of the Wife's adulterous, lesbian relationship and making it public record. The attorneys subsequently filed a motion with the Trial Court seeking an emergency hearing. At the hearing, evidence revealed that the Husband had placed a camera in the home and recorded the Wife having sex relations with Rimert. Later, a hearing was held and a TPO was issued regarding the Wife's allegations of physical violence. A couple days later, the Husband was arrested for burglary, aggravated stalking, invasion of privacy, family violence battery. All the charges were ultimately dismissed. Both parties moved for summary judgment. Trial Court granted summary judgment on Rimert's claim of negligent training and supervision and on the claim of liability per se for violation of the wiretapping statute. Denied the attorney's summary judgment motion on the Husband's claims of legal malpractice and invasion of privacy claims against the attorneys. Both parties appeal and the Court of Appeals affirms in part and reverses in part.

Rimert argues, among other things, the Trial Court erred in granting MT summary judgment to negligent supervision. The employer may be held liable for negligent supervision only where there is sufficient evidence to establish that the employer knew or should have known of an employee's tendencies to engage in certain behavior relevant to the injuries. In this case, Rimert claims the attorney was inexperienced in legal matters. There was no evidence that the attorney was somehow unsuited for the representation.

Rimert also argues the Trial Court erred in granting the attorney's summary judgment regarding the per se liable under the wiretapping statute and that a fact finder should determine whether the purpose of the recordings fell under the crime detection exception or the recordings were made for some other impermissible purpose. Here, the evidence was undisputed that the Husband and the attorney set out to record Rimert and the Wife committing adultery within the curtilage of the Husband's home. Although Rimert cites to other varying reasons given by the attorney, crime detection may not be the sole intent of the parties in order to satisfy the exception.

Even though the attorneys cannot be held liable under invasion of privacy under O.C.G.A.§11-6-62, they could still be held liable under the theories of common law invasion of privacy even though their behavior was permitted under the statute.

The attorneys argue they cannot be held liable under O.C.G.A.§16-11-62(6) for distributing the recordings to counsel (sex recording) of the Wife because this would violate the attorney discovery duties. A person violates the section if they sell, give or distribute "without legal authority" to any person or entity any photograph, video or record or copies thereof of activities of another which occur in a private place and out of public view without the consent of all parties observed. The key phrase is "without legal authority". Therefore, a party disclosing a recording for discovery purposed does not violate the subsection.

The attorneys also argued judgmental immunity barred the Husband's malpractice claim against them because the surveillance and letter to the Wife's attorney was

permissible. The Trial Court found, putting aside any potential violations of 16-11-62, a question of fact existed whether the attorney's conduct violated the divorce court's standing order preventing surveillance for the purpose of harassing and intimidating and the conduct led to the Husband's arrest for aggravated stalking. The Husband argued that the attorney's malpractice caused him to violate the divorce court standing order which directly led to his arrest. A court in a divorce action may issue a standing order which enjoins and restrains each party from doing or attempting to do or threatening to do any act which injures, maltreats, vilifies, molest or harass the other party. However, there were no cases in which an aggravated stalking conviction was based on the violation of a divorce courts standing order. Therefore, the law on whether the Husband could be arrested for aggravated stalking based on the divorce court standing order is not well settled, clear or widely recognized and must be reversed.

PENSION

Gilreath v. Connor; **A21A0816** (September 21, 2021)

The parties divorced in 2014 and Connor (wife) would receive 27.4 percent of Gilreath's (husband) pension. The calculation shall be from February 1, 1983 to July 3, 2014. This date shall be used as the valuation date for the QDRO. The Court shall retain jurisdiction over the revisions in order to implement the QDRO and any amendments thereto. When the husband's date approached, the wife sent him a letter stating she had been informed by the husband's employer they do not accept QDRO's regarding pension plan payments and asked the husband to pay the wife the portion of his retirement benefits specified in the agreement which was 27.4 percent directly to the wife. The husband did not respond or make any payments. Then, the wife filed a Motion for Clarification and a Motion for Contempt. Trial Court held a hearing on the motions and ruled that the husband was not in willful contempt, but he did owe the wife 27.4 percent of his monthly pension payments from January 1, 2019 forward. The husband appeals and the Court of Appeals reverses and remands with direction.

The husband argues the Trial Court erred by calculating a lifetime monthly award based upon years accrued between the entry of the divorce and his retirement as opposed to using the date range included in the agreement. The Trial Court in a contempt case has wide discretion to determine whether its orders have been violated and also in distinguishing permissible interpretations and clarifications, but has no power to modify the terms of the divorce decree. The last date for acquiring marital assets is the date of the Final Decree of Divorce. The plain language of the agreement established a specific date range to be used for the valuation of the husband's pension plan and for the purpose of dividing the benefit. However, the Trial Court awarded the wife 27.4 percent of the husband's monthly pension benefits less taxes did not utilize explicit valuation period referenced in the agreement. Therefore, the Court erred by modifying the terms of the agreement. The case is remanded to the Trial Court to utilize a valuation period included in the agreement.

RECUSAL

Hill v. Hill; **859 S.E.2d 906** (June 29, 2021)

On July 7, 2020, the wife filed a Complaint for Contempt in Superior Court of Camden County alleging the husband failed to pay child support and the arrearage as ordered in the Final Decree of Divorce. The complaint was signed by Jacqueline Fortier who also represented the wife in the divorce proceedings 2 years earlier. The husband filed a Motion to Recuse the assigned Judge Scarlet and the entire Brunswick Judicial Circuit based on bias. The Chief Magistrate Judge Lewis chose Fortier and others as part-time Magistrates. Fortier's appointment was approved by all the Superior Court Judges. Judge Scarlett denied the Husband's Motion to Recuse fining no merit and to recuse all the Brunswick Judges based upon Fortier status as a part-time Magistrate. The Husband filed a Motion for Immediate Review which was granted and the Appeals Court affirms.

The only issue on appeal was whether Judge Scarlett and the Brunswick Judicial Circuit should have recused from the hearing on the contempt action against the Husband on the basis of the Fortier status as a part-time Magistrate. All of the Husband's assertions and his motion were addressed in a prior Motion to Recuse and were denied and the Appellate Court will not review any of the enumerated errors that were related to the previous contentions.

The Husband's argument that Fortier is a party to the proceedings is without merit. The Husband filing a previous Mandamus against her on a Federal Habeas Corpus Petition concerning the underlying divorce and

custody determinations, does not transform Fortier into a party in the proceeding requiring recusal of Judge Scarlett or other members of the Brunswick Judicial Circuit.

In addition, the Husband claims that the Trial Court erred in denying the Motion to Recuse based upon the Fortier status as a part-time Magistrate in a county within the greater judicial circuit. This Court has held that recusal is required when judges appear as parties in cases in their own circuits and that judges should recuse if they represent a party in a case before their own Court. Here, neither situation exists and this Court declines to construe the Superior Court Circuit in which Fortier works as a Magistrate Court as "her Court". Part-time Magistrate Judges are given special treatment under the law and a Magistrate who is an attorney may practice in other Courts, but may not practice in her Magistrate or appear in any other matters to which the Magistrate Court has exercise any jurisdiction. There is nothing to indicate that Fortier has exercised jurisdiction in her role as a Magistrate over the contempt action or that there is any specific special relationship between Fortier and Judge Scarlett that would require his recusal much less the recusal of the entire Superior Court Bench. Therefore, the Husband has failed to establish, as a matter of law, that Fortier practice before the Brunswick Judicial Circuits and also serving as a part-time Magistrate Judge in Camden County creates a situation in reasonable minds a perception that the Brunswick Judicial Circuit Judges ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

SUBSTANTIAL CHANGE OF CONDITION

Brazil v. Williams; **A21A0037** (May 19, 2021)

The parties divorced in 2017 and primary custody was awarded to the father, with the mother having visitation rights. Six months after the divorce, the mother petitioned for modification of child custody and child support seeking primary legal and physical custody. In addition, she claimed there had been a material change in circumstances; among other things, that the father had moved from Georgia to Michigan. The Trial Court heard her testimony from the Guardian Ad Litem and both parents. After the mother and guardian testified, the Trial Court granted the father's Motion for Directed Verdict, determining that the father's relocation was not a material change in circumstances. The Court reasoned that the parties lived 2 hours away from each other before the move and they now located less than 2 hours away from each other by plane. The mother appeals and the Court of Appeals affirms.

The mother argues the Trial Court erred by ruling the fathers move to Michigan did not constitute a material in circumstances, warranting an inquiry whether a change of custody was in the child's best interest. She argues that in relocation cases, it is mandatory for the Trial Court to make findings whether change in custody is in the child's best interest. There is a two-part test that the Trial Court must employ before instituting a change of custody: 1) the Trial Court must determine whether there has been a substantial change in condition; and 2) the best interest of the child will be served by a change in custody. The mother cited *Bodne v. Bodne (2003)* as authority. The Supreme Court's holding in *Bodne* merely functioned as a rejection of the presumption that the custodial parent has prima facie right to maintain custody of a child in relocation cases. Per Bodine, a parent's out-of-state relocation does not automatically constitute a material change in circumstances that warrants the best interest inquiry. The Trial Court determined that the father's relocation was not a material change because: 1) at the time of the divorce the parties lived 2 hours away from each other which was contemplated in the Final Decree; and 2) given the father's move to Michigan, the parties were located less than 2 hours away from each by plane. Because the Trial Court's ruling finds some evidentiary support in the record (even if it were to characterize the evidence as slight), we cannot say the Trial Court abused its discretion and found the father's relocation did not constitute the material change in circumstances.

TEMPORARY ORDER

Firth v. Harvey, **A21A0892** (October 6, 2021)

In February of 2012, the parties entered into a Consent Order of Legitimation where Harvey (Mother) was awarded primary custody and the Father (Firth) was obligated to pay $1,150.00 per month in child support. In 2013, the Father filed a Petition to Modify Custody and in February of 2014, a Temporary Order was entered awarding temporary primary custody of the children to the Father and terminated child support obligation effective February 28, 2014. The Order did not contain any expiration or termination date or any other contingencies. The custody modification action was ultimately dismissed for want of prosecution by an Order entered April 24, 2018. On September 25,

2018, the Mother petitioned to have the Father held in contempt for failing to pay child support and sought collection of child support from July 2014, after the children resumed living with the Mother. In March 2020, the Court issued an Order which made no findings of contempt, but concluded that the temporary relief obtained by the Father in the modification action did not survive the dismissal on January 24, 2018, and the Court observed the temporary abatement in a dismissed action does not act as a defense to a contempt proceeding filed against the party who sought, but later abandoned such abatement. Therefore, the Father was obligated to pay $1,150.00 per month for child support from February 2014. The Father files an interlocutory appeal and the Court of Appeals reverses.

The Father argues the Trial Court erred in finding his child support obligation under the February 2012 consent order was ended by the February 2014 Temporary Order. An Order temporarily suspending or terminating the alimony or child support remains in effect until it is altered by further Court Order or the litigation terminates. Consequently, the February 2014 Temporary Order terminating the Father's child support obligation remained in effect until April 24, 2018, when the 2013 litigation was dismissed.

UCCJEA/GRANDPARENTS CUSTODY

Richello v. Wilkinson et al, **A21A0679** (November 1, 2021)

The mother and father resided in Connecticut with 3 children. In August 2017, a divorce action was commenced where a temporary agreement was reached where the mother would have sole custody and she and the children would relocate to Georgia to live. In November 2018, an order of the Connecticut Court found that it had jurisdiction under the UCCJEA. This case was scheduled for a Final Hearing on August 9 and 12, 2019. However, on July 27, 2019, the mother died of natural causes. The father flew to Georgia to retrieve the children and, while the father was waiting at the White County Sheriff's Office, the grandparents obtained and Ex Parte Emergency Temporary Order awarding them custody based upon allegations of the father's abuse. The grandparents filed several amended petitions and never served the father with the Ex Parte petition or any of the amendments. Even though not being served, the father, on August 5th, filed a Motion to Vacate because the Superior Court lacked jurisdiction under the UCCJEA.

On July 29th, the father had filed an application for emergency Ex Parte Order in Connecticut, but the Connecticut Court stated it would exercise no jurisdiction over the issue of custody of the children and that all litigation would have to take place in Georgia. In addition, the grandparents scheduled a deposition of the father at which he did not appear. The Superior Court entered an order on February 18, 2020, granting the grandparents motion and entered sanctions against the father for willful and wanton refusal and failure to attend a deposition and found the facts claimed by the grandparents shall be taken to be established for the purpose of action and the father is prohibited from opposing the grandparents claims for immediate temporary and permanent legal and physical custody of the minor children and the father is prohibited from introducing matters and evidence in opposition to the grandparents claim for custody. The father is further prohibited from introducing any evidence or matters in evidence in supporting any of his claims in the case. A final hearing was held in October 2020, where both grandparents and the aunt were the only witnesses. Because of the Superior Court's sanction order, the father was not allowed to present evidence or defend against the grandparents' allegations. After the hearing, the Superior Court entered a final order awarding the grandparents permanent legal and physical custody. The Court also prohibited the father from having any contact or visitation with the children, ordered the father to pay $5,000 per month in child support and set up a college savings account in the amount of $20,000 per child. Father appeals and the Court of Appeals reverses.

The father argues, among other things, that he was never served. However, the defense of lack of jurisdiction over the person, improper venue insufficiency of process or insufficiency of service of process is waived if neither is made by motion under O.C.G.A.§9-11-12 or are not included in a responsive pleading. Here, the father's motion to vacate on August 5, 2019, did not raise the lack of service in the motion to vacate, therefore, it's waived.

The father also challenges that Georgia, under UCCJEA, had jurisdiction. Here, by agreement of the father, the children began living in Georgia in September 2017. While the Connecticut Court originally determined it had jurisdiction in 2018, this order became moot when the Connecticut Court dismissed the divorce petition after the mother's death. In addition, the Connecticut Court issued an order finding that Georgia, not Connecticut had exclusive jurisdiction over the custody of the children.

The father also appeals on the sufficiency of evidence. Here, the Trial Court abused this discretion and erred by preventing the father from opposing the grandparent's custody claims and from introducing the evidence in opposition to them or in support of his own as a sanction for his failure to appear at deposition. However, the grandparents failed to meet their burden of proof at the final hearing and therefore the case will not be remanded for further proceedings. The Trial Court had insufficient evidence to support the final order granting the grandparents custody over the father's objection. The grandparents had to show by clear and convincing evidence that the children would suffer physical or emotion harm if custody was returned to the father. None of the witnesses stated or testified that the children would have physical or emotion harm if custody was returned to the father. Therefore, the case is remanded to the Trial Court to enter an order granting custody to the father.

Preventing Harmful Outcomes in Family Court

By Barry Goldstein

The National Council of Juvenile and Family Court Judges seeks to teach other judges about the ACE (Adverse Childhood Experiences) Research[1] and the Saunders Study.[2] This research goes to the essence of the best interests of the child and makes it easier for courts to recognize and respond to domestic violence and child abuse. ACE and Saunders demonstrate that many court practices that have been used for years or decades work poorly for children. Why would court professionals attempt to respond to domestic violence custody cases without ACE and Saunders?

ACE is exciting research that is often compared to the 1964 Surgeon General's Report linking smoking to cancer. Society responded by changing laws, taxes, education and entertainment to discourage smoking. This has saved millions of lives and trillions of dollars.

The present level of cancer, heart disease, diabetes, mental illness, substance abuse, suicide and many other health and social problems is based on the long tolerance of behavior we would now define as domestic violence and child abuse. This means that using best practices to prevent abuse will increase life expectancy and save trillions of dollars. Dr. Vincent Felitti, lead author of the first ACE Study says prevention is the best use for his research particularly in our family courts.

Children exposed to domestic violence, child abuse and other traumas will live shorter lives and face a lifetime of health and social problems. Most of the harm comes not from any immediate physical injuries that court professionals tend to focus on, but from the fear and stress abusers cause. Contested custody is often the last chance to save children from the awful consequences. Unfortunately, many common family court practices take away this last chance from children the courts want to protect.

The Office on Violence against Women (OVW) and other experts in the US Justice Department encouraged the National Institute of Justice to commission a study about the knowledge court professionals have about domestic violence. OVW had received many complaints, confirmed in roundtable discussions, that family courts were having a particularly hard time responding to DV custody cases. The Saunders Study reviewed the domestic violence knowledge of judges, lawyers and especially evaluators because law professionals often receive their information and too often misinformation from evaluators. Saunders found that court professionals need more than generalized training about domestic violence. They need training in specific topics that include screening for DV, risk assessment, post-separation violence and the impact of DV on children. Professionals without this knowledge tend to focus on the myth that mothers frequently make false reports and unscientific alienation theories. This leads to recommendations and decisions that harm children. When professionals focus on false reports and alienation, it usually says more about their lack of needed training than the circumstances in the case.

Saunders found that courts need to use a multi-disciplinary approach. Mental health professionals are experts in mental illness and psychology, but a couple of workshops do not provide the expertise they need for domestic violence or child abuse. They do not know the research nor DV dynamics. As a result, either they disbelieve true reports of abuse or they cannot determine the abuse issue so focus on less important issues they are more comfortable dealing with. Present practices are the equivalent of using a general practitioner when the patient has cancer or heart disease. Courts are routinely making life-altering decisions without the needed expertise in domestic violence or child abuse.

A small majority of evaluators participating in the Saunders Study claimed to screen for DV. When asked how they do the screening, however, most claimed to use psychological tests that tell us nothing about domestic violence. This means in most DV custody cases there is no effective screening for DV. The problem was confirmed by the frequent mistaken answers by evaluators to the vignettes used in the Saunders Study.

The Saunders Study also found that courts do not limit alleged abusers to supervised visits as often as needed. Shared parenting does not work well for children in cases involving reports of domestic violence. Abusers use decision-making to block anything the mother wants and particularly seek to prevent therapy where the child might reveal his abuse.

Fundamentally, without ACE, courts routinely minimize the harm from domestic violence and child abuse and without Saunders, courts often disbelieve true reports of abuse. The absence of ACE and Saunders is not neutral in the sense that the practices are used for both mothers and fathers. All of the errors caused by failing to consider the research help abusive fathers and hurt children.

Harmful Outcome Cases

Family Courts' failure to learn from scientific research in domestic violence custody cases is illustrated by the Saunders Study discussion of harmful outcome cases. These are extreme decisions in which an alleged abuser wins custody and a safe, protective mother, who is the primary attachment figure for the child is limited to supervised or no visitation. Saunders found in 2012 that harmful outcome cases are always wrong and based on the use of flawed practices. Nevertheless, courts continue to create these damaging mistakes.

In an individual case, it is possible the allegations of abuse are false or unproven, but more often, the myth that mothers often make false reports and unscientific alienation theories lead courts to disbelieve true reports of abuse. This mistake often leads to punishment and retaliation against protective mothers for trying to protect their children. Court professionals often fail to consider that punishing the mothers is also punishing the children.

The reason harmful outcome cases are always wrong is that the harm of denying children a normal relationship with their primary attachment figure is greater than any benefit the court thought it was providing. This harm includes increased risk of depression, low self-esteem and suicide. In virtually any other type of litigation, courts would routinely weigh the known harm from separating children from their primary attachment figure with whatever benefit the court seeks to accomplish. This might lead to decisions that find less harmful approaches.

Part of the problem that contributes to harmful outcome mistakes is gender bias. In our still sexist society, mothers continue to provide most of the childcare and courts minimize the importance of primary attachment in an effort to treat mothers and fathers equally. Of course, mothers or fathers could be the primary parent in an individual case. Primary attachment should be a benefit to the parent providing most of the childcare because it benefits the children. The primary attachment figure has spent more time with the child; knows the child's strengths and weaknesses better; the child seeks out the primary parent for their needs; the primary parent is more familiar with the providers and is usually the better parent because they spent more time parenting. Many court professionals know primary attachment benefits children but do not know the specific benefits and risks. As a result, primary attachment is routinely minimized and this benefits abusive fathers.

Common Court Practices Proved Wrong by Scientific Research

Here are twelve court practices that continue to be used and harm children because courts are unaware the research proves they are wrong.

1. **High Conflict Approaches:** High conflict assumes you have two good and loving parents who are angry with each other and sometimes act out in ways that hurt children. Courts immediately start promoting co-parenting and cooperation. The research demonstrates that 75-90% of contested cases are really domestic violence cases involving the worst abusers. This doesn't mean they committed the most severe physical assaults that court professionals look for, but rather they believe she had no right to leave and so they are entitled to do whatever is necessary to regain what they believe is their entitlement to control their victim and make the major decisions. Unfortunately, abusers have learned the best way to hurt a mother is to hurt her children. Saunders found that shared parenting is harmful in DV custody cases. This is because of the unequal power. Victims are forced to decide whether to accept a less beneficial decision or accept the abuser's punishment for not agreeing. Saunders found abusers use decision-making to block anything the mother wants and especially to block therapy where the child might reveal the father's abuse. The healing responses ACE says are needed to save children from the consequences of exposure to multiple ACEs are blocked by shared parenting. The courts are creating a false equivalency between an abusive father and a safe mother who is the primary attachment figure. Judges like share parenting because it promotes (temporary) settlement to alleviate crowded calendars and other professionals support co- parenting because they

make more money by forcing victims and abusers to cooperate. Courts say children need both parents equally, but the research says they need their primary attachment figure more than the other parent and the safe parent more than the abuser. In many cases, mothers' attempts to protect their children are viewed as being uncooperative and leads to children losing their best parent.

2. **"Get Over It":** Judges have the power to force children and adult victims to interact with their abusers, but they cannot remove the fear and stress abusers cause. When courts tell victims to just get over it, the fear and stress is pushed deeper inside the child where it will inevitably come out later in a much more harmful form.
3. **Only Physical Abuse Matters:** Fundamental to ACE is that it is the fear and stress abusers cause rather than an immediate physical injury that causes most of the harm. Most DV is neither physical nor illegal. Once an abuser has hit the mother once or twice, he doesn't need to keep hitting her because she knows what he is capable of. His other abusive tactics serve as a reminder of what could happen if she doesn't obey. It is important to understand DV dynamics that the purpose of DV tactics is not to inflict pain but to coerce and pressure the victim to do what the abuser tells the victim to do. Significantly, by not limiting evidence to physical assaults there is much more evidence available to recognize domestic violence.
4. **Older Abuse Does Not Matter:** Courts sometimes limit the time period they will consider evidence of abuse. This is a shortcut to save time. Courts are alr eady having difficulty recognizing domestic violence and child abuse. Limiting the available evidence makes it harder to understand the abuse and recognize the motive for seeking custody. ACE tells us that older abuse continues to contribute to the fear and stress. Other types of domestic violence serve as a reminder of what happens if the abuser is not obeyed. The passage of time does not reduce an abuser's domestic violence. This is another example of a practice that only benefits abusers and harms adult and child victims.
5. **Minimize Abuse:** Georgia has a list of factors to consider in determining custody and visitation. Courts have complete discretion in deciding which factors to emphasize. ACE tells us that exposure to domestic violence and child abuse will result in shorter lives and a lifetime of health and social problems. None of the other factors are anywhere near as consequential but courts routinely emphasize less important factors.
6. **Significance of Fear:** The fundamental purpose of domestic violence tactics is to coerce and pressure the partner to accept what the abuser wants. Accordingly, this tactic creates fear in the victim, particularly when there is a pattern of abusive tactics. Fear causes stress and this creates most of the harm discussed in the ACE Research. Children inevitably feel their mother's fear no matter how hard she tries to shield them. Abusers sometimes pretend to be afraid, and may be afraid of consequences, but considering the context usually makes it easy to determine which parent is afraid of the other. This is important evidence for recognizing domestic violence.
7. **Reliance Only on Mental Health Professionals:** The evaluators and other mental health professionals are experts in psychology and mental illness and this is often helpful when those are important issues in a case. The original mistake for handling DV custody cases occurred before we had specialized research and the (false) assumption was the domestic violence was caused by mental illness or substance abuse. This led to reliance on professionals that Saunders confirmed do not have the knowledge needed for DV cases. This is extremely problematic because legal professionals have spent their entire careers listening to information and misinformation about DV so that it is now deeply ingrained. Courts now need to take a fresh look at their approach to abuse cases and follow Saunders' findings about the need for a multi-disciplinary approach that includes experts in DV and child abuse. A few workshops do not provide the level of expertise needed.
8. **Lack of Risk Assessment:** I have never seen an evaluation that includes: "the mother says the father hit her while she was pregnant and if this is true it means he presents a higher risk of lethality." There are behaviors associated with increased risk of lethality and courts need this information if they are going to protect children. The dangerous behaviors include assaulting a woman while pregnant; strangulation; hurting animals; threatening suicide, kidnapping or murder; presence of guns; abusers deliberately violating court orders and the belief she has no right to leave. When these risks are present, courts need to know it.

9. **Lack of Domestic Violence Expertise:** Attorneys for abusers routinely present evidence from family, friends and colleagues that he is calm, peaceful and has many good traits. The testimony is often true because most abusers act very differently in public than private. Court professionals don't even know something basic like this and so evaluators and others often base decisions on such non-probative information. Other important DV information is more subtle and less well-known. This is why courts need someone with genuine DV expertise in any custody cases where there are reports or evidence of domestic violence.
10. **Ignoring Post-Separation Violence:** In many if not most DV custody cases, the father has told the mother if you leave me, I will take the child and bankrupt you. This is carried out with litigation abuse and economic abuse. Courts need to start considering these tactics to understand an alleged abuser's motives. This is a continuation of his abuse contrary to assumptions that the end of the relationship ends the abuse. The other issue that is missed is that nothing the victim did or said caused his abuse. We told the men in the batterer classes I taught that no woman can force a man to abuse her. This means that abusers are likely to abuse future partners and this means the children cannot heal if abusers get custody or unprotected visitation. They will probably treat new partners well during litigation so she can testify for him, but will resume their abuse afterwards. Today, courts rarely consider these risks.
11. **Very Young Children Cannot be Harmed by Witnessing DV:** Many court professionals assume very young children cannot be harmed by witnessing domestic violence because they don't understand what is going on. Actually, it is worse because infants can have their brains rewired in a way that harms them for the rest of their lives. And they are very sensitive to the mother's fear because they depend so much on her for their needs.
12. **Assume Children Benefit from Abusers in their Lives:** Many court professionals have repeatedly heard that children do better with both parents in their lives. This is usually true, but not when an abuser is causing more harm than good. The only response that benefits children is to require the abuser to change their behavior if they want a relationship. This is a win-win arrangement. Otherwise, courts are causing children to live shorter lives and face a lifetime of health and social problems.

Conclusion

Every year, 58,000 children in the United States are sent for custody or unprotected visitation with dangerous abusers. In the last 13 years, over 800 of these children have been murdered, mostly by abusive fathers. The Bartlow Study asked judges and court administrators in the communities where these tragedies occurred what reforms have you created in response to the murder to better protect children. The shocking response was nothing because the judges assumed the local tragedy was an exception.

The courts tend to use the same small group of experts and this has promoted an insular atmosphere that discourages new ideas and research. ACE was published in 1998 and Saunders in 2012 and still most courts fail to use this vital knowledge. The DV custody cases represent a small percentage of the court docket, but these are the cases where adult and child victims lose their lives. More often they survive, at least until suicide or drug overdoses kill them in their teens or twenties or cancer or heart disease get them sooner than if they were never exposed to ACEs. The tragedy is that we have the research and the experts to avoid these mistakes if family courts can be open to change for the sake of the children.

38th Annual Family Law Institute Sponsors

EVENT - $7,500

Stearns-Montgomery & Proctor – Thursday Night Cocktail Reception
IAG Forensics & Valuation – Thursday Night After-Party
Brown Dutton & Crider Law Firm LLC – Friday Night Cocktail Reception

FIVE STAR - $7,500

Blooms Lines Alexander LLC
Connell Cummings, LLC
Hawk Professional Investigations, Inc.
Soberlink

DOUBLE DIAMOND - $5,000

Johnson Kraeuter, LLC
The Law Office of Caroline C Kresky LLC
The Manely Firm, P.C.
Smith & Files LLC
Stern Edlin Family Law

DIAMOND - $2,500

Abernathy Ditzel Hendrick Bryce
Boyd Collar Nolen Tuggle & Roddenbery
Burney & Reese LLC
Davis, Matthews & Quigley, P.C.
Flink Family Law Mediation/Arbitration
Frazier & Deeter, LLC
Eittreim Martin Cutler LLC
Hoelting & McCormack LLC
Jonathan V. Dunn, P.C.
Law Offices of John F. Lyndon
Levine Smith Snider & Wilson, LLC
Reese-Beisbier & Associates, P.C.

Smith, Gilliam, Williams & Miles, PA

DOUBLE PLATINUM - $1,500

ALPS Lawyers Malpractice Insurance

Ancillary Legal Corporation

Benton Law, LLC

Bird Dog Investigations

Callaway & Company, LLC

Divorce Marketing Group/Family Law Magazine

Elizabeth Gallo Court Reporting

Galvanize: Small Firm Administration

Gibbon Financial Consulting

The Gleklen Law Firm

The Holder Group, LLC

Matthew Lundy Law – QDRO Law

MDD Forensic Accountants

OurFamilyWizard

Shewmaker & Shewmaker

Thomson Reuters

Warner Bates

PLATINUM - $1,000

Browning & Smith, LLC

Christina L. Scott – Covenant Mediation Services

Claiborne|Fox|Bradley|Goldman

Dupree, Kimbrough, Carl & Reilly, LLP

E.N. Banks-Ware Law Firm, LLC

Fox, Chandler, Homans, Hicks & McKinnon, LLP

Gaslowitz Frankel LLC

Hall Booth Smith, P.C.

Hedgepeth Heredia

ivory t. brown, p.c.

Kessler & Solomiany, LLC

Oliver Maner LLP

The Schachter Law Firm, LLC

Swilling Family Law Firm, LLC

GOLD - $500

Candace M. Williams, P.C.

DE KLERK LAW & MEDIATION

Homrich Berg

Lake Mediation

The Law Office of Tanya Mitchell Graham, P.C.

Marple Family Law, LLC

Megan Miller Legal, LLC

Moore Ingram Johnson & Steele, LLP

Robert G. Wellon, Attorney & Counselor at Law

Rubin Family Law, LLC

Sofer Advisors, LLC

Tesser Mediation

Watson Spence, LLP

White Elm Group – Forensic Accounting, Valuation, and eDiscovery

Whitney D. Mauk, P.C.

SILVER - $250

Bell & Washington LLP

Allison B. Hill, JD, PhD, LLC

Drs. Aynsley Corbett, Nancy McGarrah, & Barrie Alexander

Heredia & Lennon Family Law, LLC

Kaplan Family Law

Kaye Lembeck Hitt & French Family Law, LLC

Law Office of Debra Hale

Lauren Smith Legal Services

Limehouse Family Mediation

Miriam Arnold-Johnson, PC

Signature FD

Stephanie Wilson Family Law

Child Support Worksheet Helpline

A Call for Volunteers

a service provided by the Family Law Section of the State Bar of Georgia and the Georgia Legal Services Program

Flex your child support worksheet prowess to assist income eligible, pro se Georgians with the completion and filing of child support worksheets!

- Convenient and easy way to serve the community
- One-time legal assistance - not an ongoing legal relationship with the pro se litigant
- Contact caller(s) from the comfort of your office or home on your schedule
- Flexible commitment
- You may volunteer for as many cases as you would like to take
- Simple registration e-mail form below to Samantha Lennon at samantha@hlfamilylaw.com or Megan Wyss at megan@bcntrlaw.com.

Child Support Worksheet Helpline Volunteers

Alicia Adamson
Lori Anderson
Steven Ashby
Gracy Barksdale
Alice Benton
Audrey Bergeson
Mara Block
Connie Bluffington
Ivory Brown
Teri Brown
Obreziah Bullard
Erik Chambers
Carole Collier
Katie Connell
Leigh Cummings
Courtney Dixon
Ted Eittreim
Jessica Reece Fagan
Samantha Fassett Carroll
Tamar Faulhaber
Kathryn Franklin
Brooke French
Jennifer Gill
Gary Graham
Michell Graham
John Haldi
Hannibal Heredia
Michelle Jordan
Scot Kraeuter
Sheri Lake
Samantha Lennon
Kyla Lines
Jennifer McLeod
Amy Saul Mollengarden
Marcy Millard
Jorgia Northrup
Sabrina Parker
Jamie Perez
Sabrina Perez
Tera Reese-Beisbier
Laurie Rashidi-Yazd
Jonathan Rotenberg
Christine Scartz
Laura Sclafani
Hayley Settles
Dawn Smith
Savannah Steele
Erin Stone
N. Jason Thompson
Robert Wellon
Megan Wyss

I am interested in being a Volunteer for the Child Support Helpline*

Name: _____

Bar Number: _____

Office Address: _____

Phone: _____

Email: _____

I would like to assist with no more than ____ callers per month.

l understand that by signing up for this volunteer position, I am certifying that I have a working knowledge of Child Support Worksheets in the State of Georgia and how to complete them based on information provided to me by a pro se litigant. I also certify that I am a member in good standing with the State Bar of Georgia.

_____

***Please email this form to Samantha Lennon at samantha@hlfamilylaw.com or Megan Wyss at megan@bcntrlaw.com.**

GEORGIA LAWYERS HELPING LAWYERS

- Georgia Lawyers Helping Lawyers (LHL) is a confidential peer-to-peer program that provides colleagues who are suffering from stress, depression, addiction or other personal issues in their lives, with a fellow Bar member to be there, listen and help.

- The program is seeking not only peer volunteers who have experienced particular mental health or substance use issues, but also those who have experience helping others or just have an interest in extending a helping hand.

For more information, visit:

www.GeorgiaLHL.org

Family Law Section
State Bar of Georgia
Jonathan Dunn, Editor
104 Marietta St., NW, Suite 100
Atlanta, GA 30303

Presorted
Standard Mail
U.S. Postage Paid
Atlanta, GA
Permit No. 1447

2021-22 Family Law Section Executive Committee

Leigh Faulk Cummings, *Chair*
cummings@connellcummings.com

Ted S. Eittreim, *Vice-Chair*
teittreim@emcfamilylaw.com

Karine P. Burney, *Secretary*
karine@burneyandreese.com

Jeremy Abernathy, *Legislative Liaison*
jeremy@adhbfamilymatters.com

Kyla Lines, *Immediate Past Chair*
kyla@rblfamilylaw.com

Jonathan Dunn, *Editor/Member-at-Large*
jonathan@jvdattorney.com

Samantha Fassett, *Member-at-Large*
samantha@johnsonkraeuter.com

Kristin Files, *Member-at-Large*
kfiles@smithfileslaw.com

Hannibal Heredia, *Member-at-Large*
hheredia@hhfamilylaw.com

Donna S. Hix, *Member-at-Large*
dhix@hallboothsmith.com

Jamie Perez, *Member-at-Large*
jperez@avlf.org

Kem Eyo, *Member-at-Large*
kem@rbafamilylaw.com

Roslyn Grant Holcomb, *Member-at-Large*
thegrantgrouplaw@gmail.com

William Alexander, *Member-at-Large*
william@rblfamilylaw.com

Samantha Lennon, *YLD Representative*
samantha@hlfamilylaw.com