

## **Family Law - Case Law Update**

[\*Patten v. Ardis \(S18A0412; Supreme Court – June 29, 2018\)\*](#) – O.C.G.A. § 19-7-3(d) [the portion of the “grandparent visitation” statute providing that reasonable visitation may be granted to a grandparent in the best interest of the child if a parent dies, is incapacitated or incarcerated] is held to be unconstitutional, as it violates parents’ rights to the care, custody and control of their children.

- HN1 – Supreme Court reversed visitation granted to grandmother, based on the unconstitutionality of O.C.G.A. § 19-7-3, holding that the Trial Court failed to properly explain or justify how the statute was constitutional, in light of Mother’s challenge of same.
  - HN2 – SC held that the right of a parent to the care, custody and control of their children is a constitutional right, which dates back to common English law and is protected by the United States Constitution. Severing a parent’s natural right to rear their child should only be infringed upon under the most compelling circumstances, including a finding of harm to the child by the parental influence or gross misconducting of the parent.
  - HN3 – SC held that state interference in the parental control to allow visitation to a third-party, including a grandparent, is only permissible where the health or welfare of a child is threatened, which must be proven by clear and convincing evidence. SC held subsection (d) unconstitutional because such a finding is not required before overriding a fit parent’s decision not to allow the requested visitation.
  - HN4 – SC reverses this matter to the Trial Court for adjudication under subsection (c) of O.C.G.A. § 19-7-3 to determine if grandmother is entitled to visitation by a clear and convincing showing that the absence of such visitation would cause harm to the child.
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[\*Moore v. Moore \(A18A0137; Court of Appeals – June 1, 2018\)\*](#) – Sole legal custody was awarded to Mother with all visitation and communication with Father at the sole discretion of the child (age 14). Father agreed to child’s discretion in visitation/communication, but alleged that sufficient notice was not provided that legal custody was being adjudicated and that the Court failed to enter a Parenting Plan. Father further disputed that the Court had the ability to modify his child support obligation without a finding of substantial change in circumstance and that the Court failed to incorporate a Child Support Worksheet, as required. Lastly, Father alleged that the Court erred in ordering Father to remit a percentage of his bonuses as child support.

- HN1 – COA affirmed that a request for “primary legal and primary physical custody” was appropriate notice for sole legal custody to be granted and provided the opposing party with opportunity to assert defenses.
- HN2 – COA vacated the judgment in part and remanded to the Trial Court for failure to enter a Parenting Plan as required by O.C.G.A. § 19-9-1(a).
- HN3 – COA held that Father’s counsel consented to Mother’s request for modification and certified to the Trial Court that the only dispute remaining was the amount to be paid, which waived his objection to whether the threshold requirements for the modification of child support were met.
- HN4 – COA vacated the judgment in part and remanded for failure to attach the Child Support Worksheets to the Final Order, as required by O.C.G.A. § 19-6-15(m)(1).
- HN5 – COA held that it was premature to address the claim of error with regard to Father being ordered to remit a percentage of his bonuses in child support without the Child Support Worksheets addressed in HN4. The Court cited [\*Stowell v. Huguenard\*](#), 288 Ga. 628, 632 (706 SE2d 419) (2011), which in relevant portion provides, “*If a trial court*

*believes that [a provision providing for payment of a percentage of nonrecurring income] is necessary to arrive at a fair child support amount, then it must treat it as a deviation, enter it on the Child Support Schedule E – Deviations section of the child support worksheet, and support it with the required findings of fact and application of the best interest of the child standard. O.C.G.A. § 19-6-15(b)(8).”* Without the required Worksheet, COA could not address whether the appropriate deviations and findings were included.

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[\*Weiss v. Grant \(A18A0002; Court of Appeals – June 12, 2018\)\*](#) – The parties were previously divorced in GA with custody adjudicated in South Carolina, as SC was the home state of the children (and Mother) at the time of the divorce. Father kidnapped the children during the divorce and Mother was granted sole custody. The divorce, custody, kidnapping and return of the children to Mother occurred in 2011-2012. In 2015, Father sought to modify legal custody and requested visitation with the children. Father was psychologically evaluated and eventually granted joint legal custody with a graduated visitation plan. The Court also found Father in contempt for child support arrears. Mother appealed, claiming that GA was without jurisdiction to modify, that the self-executing visitation schedule was inappropriate and that the arrearages should be paid more quickly than the Trial Court ordered.

- HN1 – COA held that the Trial Court had proper authority to modify the SC Order since GA was the home state of the children at the time of filing and neither party, nor the children, remained residents of SC.
- HN2 – COA held that the issue of legal custody was properly before the Court and that Mother’s allegation that the Court dismissed Father’s request for adjudication of legal custody was without merit and not factually supported. COA further held that the Trial Court did not abuse its discretion in modifying custody, despite Father previously kidnapping the children, as the TC reasonably assessed the changes in circumstance affecting the children’s welfare since the last custody award.
- HN3 – COA held that the graduated visitation plan ordered by the Trial Court did not qualify as a “self-executing visitation plan” as the plan provided for automatic changes without any additional judicial or third-party involvement and the graduated visitation was reasonably limited in time. Moreover, TC’s focus with the graduated plan was the children’s best interest, as evidenced by the extensive findings in the Final Order.
- HN4 – COA held that numerous safeguards were put in place to protect the children from the possibility of future kidnapping, including supervised visitation, tracking devices and Mother’s right to call or video call the children during the visits.
- HN5 – COA reversed the portion of the Trial Court’s Order with respect to Father’s repayment of child support arrearages (\$27,270 owed to be paid at \$100 per month until paid in full), as the payment plan ordered provided for much of the arrearages to be paid after the children reached the age of majority.

**\*\*PHYSICAL PRECEDENT ONLY\*\***

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[\*Chalk v. Poletto \(A18A0563; Court of Appeals – June 21, 2018\)\*](#) – The parties had two (2) small sons (born 2011 and 2012) and lived together at the time of birth of each until October 2015, at which point Mother evicted Father from her apartment and Father filed to legitimize the children. The children remained with Mother and Father consented to a protective order (6 months, then 12 months), providing for no contact with Mother or the children. While Father testified to providing some financial support, the Court found Father not to be a credible witness and found that all

evidence showed that Mother provided the only financial support for the children during the entirety of their lives, even while Father lived with her and the children. The Court denied Father's request for legitimation and awarded Mother more than \$30,000 in attorney's fees. Father appealed

- HN1 – COA held that sufficient evidence was presented for the Trial Court to find that Father had abandoned his opportunity interest, even given that Father lived with the children for the first several years and failed to legitimate as soon as his relationship with Mother deteriorated. Father failed to provide financial support, was not a credible witness and consented to being removed from his children's lives for 18 months, all of which supported the TC's findings.
- HN2 – COA held that although Father's request for legitimation (and thus custody) was denied, the issue of custody was still litigated, thereby authorizing the Trial Court to award fees pursuant to O.C.G.A. § 19-9-3(g).

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[Gorelik v. Gorelik \(A18A0707; Court of Appeals – June 26, 2018\)](#) – The parties were married in Turkey in 2009, where Wife was raised. Their son was born in Turkey in February 2013. They moved often for Husband's employment, including Moscow (before the child was born), Austria, New York and Georgia. After residing in GA for 22 days, Wife travelled with the child to Turkey to visit and failed to return. Wife filed for divorce in Turkey and obtained temporary custody in Turkey. Husband filed for emergency custody under the UCCJEA in GA. The GA Trial Court found that there was no home state and that the child had no significant connections to either Turkey or Georgia. The GA Trial Court further found that the parties intended GA to be their home and provided Husband with emergency custody over the Turkey temporary custody ruling. Mother appealed.

- HN1 – Jurisdiction is heavily dependent on the child's home state. Husband argued that the "vacation time" in Turkey should count toward Georgia becoming the home state because Wife claimed she intended to return; however, COA held that the GA TC correctly found that a home state did not exist. While alternative procedures of the UCCJEA allow a state to exercise jurisdiction when a home state does not exist, such is not allowed when an action has been commenced in another state having substantially the same jurisdiction, which the COA held Turkey properly exercised. The COA held the child had substantial ties to Turkey and the Turkey custody order preceded the Georgia ruling, thus providing Turkey with appropriate jurisdiction under UCCJEA. *This matter is distinguished from Bellew v. Larese, 288 Ga. 495 (2011) in that the COA held that the foreign order need not articulate a substantial conformity to UCCJEA, but rather that the record contains sufficient facts to support jurisdiction to the foreign court.*
- HN2 – The issue of a convenient forum need not be addressed given the holding in HN1.
- Dissenting Opinion – The dissent is based on Turkey's failure to articulate and analyze whether it had proper jurisdiction in substantial conformity with the jurisdictional standard of UCCJEA.

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*Note: These opinions are subject to the parties' motion for reconsideration, the Court's reconsideration, and editorial changes made by the Reporter of Decisions.*

***Further, the above case law summaries in no way convey any legal advice and are only the opinion of the author.***