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Wills, Trusts, Guardianships, and Fiduciary Administration

Mary F. Radford

Wills, Trusts, Guardianships, and Fiduciary Administration

by Mary F. Radford*

This Article describes selected cases and significant legislation from the period of June 1, 2015 through May 31, 2016 that pertain to Georgia fiduciary law and estate planning.[1]

I. GEORGIA CASES

A. Virtual Adoption

Virtual adoption is a declaration a court issues after a decedent has died that allows a child whom the decedent agreed to adopt to be treated, for inheritance purposes, as if the child had been legally adopted.[2] The case of *Johnson v. Rogers*[3] illustrates the interaction between the virtual adoption doctrine and Official Code of Georgia Annotated (O.C.G.A.) section 53-4-48,[4] which allows a child who is adopted after his or her parent's will has been executed to take a share of the parent's estate equal to the share the child would have inherited had the parent died intestate. In this case, the wife of a couple who had raised their

* Marjorie Fine Knowles Professor of Law, Georgia State University College of Law. Newcomb College of Tulane University (B.A., 1974); Emory University School of Law (J.D., 1981). Reporter, Probate Code Revision Committee, Guardianship Code Revision Committee, and Trust Code Revision Committee of the Fiduciary Section of the State Bar of Georgia. Past President, American College of Trust and Estate Counsel (ACTEC). Author, GEORGIA GUARDIANSHIPS AND CONSERVATORSHIPS (West 2016-17 ed.); REDFEARN: WILLS AND ADMINISTRATION IN GEORGIA (West 2016-17 ed.); GEORGIA TRUSTS & TRUSTEES (West 2016-17 ed.). The Author is grateful to Georgia State University College of Law graduate Rachelle Carmel for her research assistance.

1. For an analysis of Georgia Wills and Trusts during the prior survey period, see Mary F. Radford, *Wills, Trusts, Guardianships, and Fiduciary Administration*, 67 MERCER. L. REV. 273 (2015).

2. For an in-depth discussion of virtual adoption, see MARY F. RADFORD, REDFEARN: WILLS AND ADMINISTRATION IN GEORGIA § 9:4 (2016-17 ed.).

3. 297 Ga. 413, 774 S.E.2d 647 (2015).

4. O.C.G.A. § 53-3-48 (2011).

grandniece wrote a will devising some property to the grandniece and the bulk of her estate to her husband.[5] When the wife died, the grandniece tried to claim an intestate share of the estate under the theory that she was virtually adopted by the couple after the wife's will was executed, and thus was entitled to share the estate with the surviving husband.[6] Although the Georgia Supreme Court discussed in detail the circumstances under which it would recognize a virtual adoption,[7] it concluded the doctrine would not apply in this case because the doctrine is applied only when a decedent has died intestate.[8] In this case, the decedent died with a will, rather than intestate, so the court refused to expand the doctrine to cover this case.[9] The court noted that "only a clear legislative direction could abrogate the rule that virtual adoption requires intestacy."[10]

B. Breach of Fiduciary Duty

In *Wells Fargo National Bank, N.A. v. Cook*,[11] the Georgia Court of Appeals examined whether a bank trustee of a charitable remainder annuity trust (CRAT) had breached its fiduciary duty and contractual obligations in the management of the trust. The CRAT was set up by a couple who planned to use the annuity stream from the CRAT to fund their retirement.[12] With a CRAT,

> donors can transfer assets into a trust and then provide for, among other options, an annual distribution to one or more beneficiaries for their lifetime, with the remainder of the trust paid to a qualified charity upon the beneficiaries' death [citing 26 U.S.C. § 664(d)(1)]. The annuity amount paid to beneficiaries must be in a predetermined fixed sum (calculated on the date that the CRAT is funded), and it must be no less than 5 percent and no greater than 50 percent of the initial fair market value of the trust [citing 26 U.S.C. § 664(d)(1)(A)].[13]

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5. *Johnson*, 297 Ga. at 413, 774 S.E.2d at 648.

6. Under O.C.G.A. § 53-2-1(c)(1), if a wife dies intestate survived by her spouse and a child, the spouse and child share the decedent's estate equally. O.C.G.A. § 53-2-1(c)(1) (2011).

7. *Johnson*, 297 Ga. at 414-15, 774 S.E.2d at 649-50.

8. *Id.* at 415, 774 S.E.2d at 650.

9. *Id.* at 413, 774 S.E.2d at 648-49.

10. *Id.* at 416, 774 S.E.2d at 650.

11. 332 Ga. App. 834, 775 S.E.2d 199 (2015).

12. *Id.* at 835, 775 S.E.2d at 201.

13. *Id.*

As their annuity amount, the couple chose an amount equal to 7.5% of the initial fair market value of the trust.[14] Over time, the bank paid the annuity amount and sent reports to the couple. The couple became concerned when the reports showed the annuity distributions were depleting the trust funds at a high rate, and they claimed that the bank had guaranteed an annual distribution from the trust to the couple for the remainder of their lifetimes.[15] When the trust funds had been completely depleted, the couple sued the bank, alleging the bank had breached its fiduciary duty by mismanaging the funds and its contractual promise to provide an annuity stream to the couple for the rest of their lives.[16] The court of appeals began by stating that the bank deserved summary judgment in its favor for any claims accruing before April 2010 because those claims were barred by the applicable statute of limitations.[17] As to the claims not barred by the statute of limitations, the court of appeals held these claims failed as a matter of law because the couple did not provide any expert testimony demonstrating mismanagement of trust funds resulting in the depletion of the trust assets.[18] As to the breach of contract claim, the court agreed with the bank that the trust document itself clearly contemplated that the annuity distributions could be made from the trust principal if the income earned by the trust was not sufficient to pay the designated amount.[19] Furthermore, the court found nothing in the trust document to suggest the trustee would continue to make payments to the couple after the trust funds were depleted.[20]

C. Guardianship of Minors

Generally speaking, Georgia probate courts are responsible for overseeing the guardianships of minors.[21] The probate court has the power to appoint a "permanent guardian" for a minor who has no other

14. *Id.* at 836, 775 S.E.2d at 202.

15. *Id.* at 837, 775 S.E.2d at 202.

16. *Id.* at 837-38, 775 S.E.2d at 203.

17. O.C.G.A. § 53-12-307(a) (2011) bars claims brought for actions that occurred more than two years after the claimant receives a report from the trustee sufficient to reveal to the claimant the existence of a claim against the trustee. The court of appeals found the detailed trust reports the bank had sent to the couple were adequate to disclose the existence of any claim against the bank. *Wells Fargo Nat'l Bank, N.A.*, 332 Ga. App. at 838-39, 775 S.E.2d at 203-04.

18. *Wells Fargo Nat'l Bank, N.A.*, 332 Ga. App. at 843, 775 S.E.2d at 206.

19. *Id.* at 843, 775 S.E.2d at 207.

20. *Id.* at 844, 775 S.E.2d at 207.

21. O.C.G.A. §§ 15-9-30(5), (6) (2015).

parent or guardian.[22] This means, in the case of a child who has a living biological or adoptive father and mother, a "permanent guardian" can only be appointed by the probate court for the minor child if the biological or adoptive father's and mother's parental rights have been terminated or voluntarily relinquished.[23] The Georgia Juvenile Code,[24] which in some situations allows a juvenile court to appoint a "permanent guardian," does not take the same approach.[25] The juvenile court may place a "dependent child"[26] in a "permanent placement," which may include placement of the child with a "permanent guardian."[27] However, placement by the juvenile court of a child with a "permanent guardian" does not contemplate that the parents' parental rights have been terminated or relinquished; in fact, placement with a "permanent guardianship" is an alternative to the termination of the parents' parental rights. In a petition for the appointment of a permanent guardian filed in the juvenile court, the petitioner must state that termination of parental rights is not in the best interests of the minor.[28] In addition, a permanent guardianship order issued by a juvenile court must include "a reasonable visitation schedule which allows the child . . . to maintain meaningful contact with his or her parents. . . ."[29] Thus, unlike a permanent guardianship ordered by a probate court—which is typically contemplated to continue until the minor reaches the age of

22. O.C.G.A. § 29-2-14 (2007). This section refers to a minor who has "no natural guardian, testamentary guardian, or permanent guardian." O.C.G.A. § 29-2-3(b) (2007) states that "each parent shall be the natural guardian of any minor child of the parent. . . ." A "parent" is defined in O.C.G.A. § 29-1-1(13) (2007) as "a biological or adoptive father or mother whose parental rights have not been surrendered or terminated. . . ."

23. *See* MARY F. RADFORD, GEORGIA GUARDIANSHIP AND CONSERVATORSHIP §§ 2:6, 2:11 (2015-16 ed.).

24. The Georgia Juvenile Code appears in Chapter 11 of Title 15 of the O.C.G.A. The Juvenile Code was substantially revised by the Georgia legislature in 2013. Ga. H.R. Bill 242 § 1-1, Reg. Sess., 2013 Ga. Laws 295. The case that is discussed in this subsection was initiated under the former Juvenile Code. However, the 2013 revisions to the Juvenile Code were not germane to the issues discussed in this case.

25. For an in-depth discussion of the appointment of a permanent guardian under the Juvenile Code, see RADFORD, GEORGIA GUARDIANSHIP AND CONSERVATORSHIP, *supra* note 23, at § 2:12.

26. A "dependent child" is "a child who: (A) Has been abused or neglected and is in need of the protection of the [juvenile] court: (B) Has been placed for care or adoption in violation of law; or (C) Is without his or her parent, guardian, or legal custodian." O.C.G.A. § 15-11-2(22) (2015).

27. O.C.G.A. §§ 15-11-2(54), -10 (2015).

28. O.C.G.A. § 15-11-241(4)(B) (2015).

29. O.C.G.A. § 15-11-242(a)(3) (2015).

majority or sooner dies[30]—a permanent guardianship established by a juvenile court may terminate, and the child may be returned to his or her parents while the child is still a minor.[31]

In *In the Interest of M.F.*,[32] the juvenile court placed the minor into a permanent guardianship due to the substance abuse of her parents.[33] The father later sought to terminate the permanent guardianship when he had resolved his addiction problems. O.C.G.A. § 15-11-244(c)[34] allows the juvenile court to modify, vacate, or revoke a permanent guardianship,

> upon a finding, by clear and convincing evidence, that there has been a material change in the circumstances of the child who was adjudicated as a dependent child or the guardian and that such modification, vacation, or revocation of the guardianship order and the appointment of a new guardian is in the best interests of the child.[35]

The juvenile court in this case refused to vacate the guardianship because it did not find a change in the circumstances of the father that fell within the types of changes contemplated by the statute.[36] The Georgia Supreme Court disagreed with the juvenile court.[37] First, the supreme court pointed out that a permanent guardianship is granted by a juvenile court only after it determines that a termination of parental rights is not warranted.[38] Thus, the father's parental rights remained intact. Second, the supreme court stated a permanent guardianship granted by a juvenile court is "presumptively permanent, in the sense that the permanent guardians are vested with parental power indefinitely, and a heavy burden is put upon those who would seek to change or undo the guardianship. . . ."[39] The court also noted that the law recognizes a presumption that a child ordinarily belongs in the custody and care of her parents.[40] Thus, the court determined the change in the father's circumstances clearly fell within the type of change contemplated by the statute.[41] Finally, the court discussed the fact that any other

30. O.C.G.A. § 29-2-30(a) (2007).

31. O.C.G.A. § 15-11-244(c) (2015).

32. 298 Ga. 138, 780 S.E.2d 291 (2015).

33. *Id.* at 138-39, 780 S.E.2d at 293.

34. O.C.G.A. § 15-11-244(c) (2015).

35. *In the Interest of M.F.*, 298 Ga. at 141-42, 780 S.E.2d at 295 (quoting O.C.G.A. § 15-11-244(c)).

36. *Id* at 140-42, 780 S.E.2d at 293-95.

37. *Id.* at 141, 780 S.E.2d at 295.

38. *Id.* at 142, 780 S.E.2d at 295.

39. *Id.* at 142, 780 S.E.2d at 296.

40. *Id.* at 144, 780 S.E.2d at 296.

41. *Id.* at 144, 780 S.E.2d at 296-97.

reading of the statute would call into question its constitutionality. The court pointed out the presumption in favor of parental custody is not just "a presumption of the statutory and common law, but it has roots in the fundamental constitutional rights of parents" to direct the upbringing of their children.[42] Thus, to the degree there was any ambiguity in the statute, the court chose to invoke "the doctrine of constitutional doubt and construe the statute so as to avoid the serious constitutional concerns" another construction might raise.[43]

II. GEORGIA LEGISLATION

A. Uniform Guardianship and Conservatorship Proceedings Jurisdiction Act

In 2016, the Georgia legislature added a new chapter to Title 29 of the Georgia Code.[44] Title 29 contains the statutes dealing with the guardianship and conservatorship of minors and incapacitated adults.[45] The new chapter, Chapter 11, is entitled the "Uniform Adult Guardianship and Conservatorship Proceedings Jurisdiction Act" (the Act).[46] The Act addresses issues that arise when an adult who is the subject of guardianship or conservatorship proceedings (the respondent)[47] has contacts with two or more states, thus raising the question of which state should exercise jurisdiction over the proceedings.[48] Under the new Act, the court that has exclusive jurisdiction over the guardianship or conservatorship proceeding is the appropriate court in the "home state" of the respondent.[49] The respondent's "home state" is,

> the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months

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42. *Id.* at 144-45, 780 S.E.2d at 297.

43. *Id.* at 145, 780 S.E.2d at 298.

44. Ga. H.R. Bill 954, Reg. Sess. (2016) (amending O.C.G.A. tit. 29 ch. 11 (2007 & Supp. 2016)). The new chapter applies to guardianship and conservatorship proceedings commenced on or after the effective date. O.C.G.A. § 29-11-42 (2007 & Supp. 2016).

45. For an in-depth analysis of Title 29, see RADFORD, GEORGIA GUARDIANSHIP AND CONSERVATORSHIP, *supra* note 23.

46. O.C.G.A. § 29-11-1 (2007 & Supp. 2016). The Act is modeled after the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) that was drafted by the National Conference of Commissioners on Uniform State Laws, © 2007.

47. O.C.G.A. § 29-11-2(12) (2007 & Supp. 2016).

48. In 2013, the Georgia legislature made an initial attempt to address this issue, as was discussed in Mary F. Radford, *Wills, Trusts, Guardianships, and Fiduciary Administration*, 65 MERCER L. REV. 295, 307-09 (2013).

49. O.C.G.A. §§ 29-11-11 to -12 (2007 & Supp. 2016).

> immediately before the filing of a petition for a conservatorship order or the appointment of a guardian or, if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.[50]

If the respondent does not have a home state, if that state declines to exercise jurisdiction, or if a petition has not been filed in the home state, then jurisdiction lies in a "significant-connection state."[51] A "significant-connection state" is a state, "other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available."[52] A Georgia court that is neither the home state court nor a significant-connection state court will only have jurisdiction if the courts of those states have declined to exercise jurisdiction because the Georgia court is the more appropriate forum, and the exercise of jurisdiction is consistent with the Georgia and federal constitutions.[53] Alternatively, a Georgia court may exercise "special jurisdiction" to (1) appoint an emergency guardian for up to 90 days for an adult who is physically present in Georgia; (2) appoint a conservator to handle Georgia real or tangible personal property; or (3) appoint a guardian or conservator for an individual when a guardianship or conservatorship from another state is in the process of being transferred to Georgia.[54] The new chapter of Title 29 also contains provisions that (1) encourage communication and cooperation among courts of different states when a guardianship or conservatorship touches more than one state;[55] (2) govern the transfer of guardianships and conservatorships between states;[56] and (3) allow for

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50. O.C.G.A. § 29-11-2(6) (2007 & Supp. 2016).

51. O.C.G.A. § 29-11-12(2) (2007 & Supp. 2016).

52. O.C.G.A. § 29-11-2(13) (2007 & Supp. 2016). Factors that must be used by a court to determine whether the respondent has a significant connection with the state include:

> "(1) The location of the respondent's family and other persons required to be notified of the guardianship proceeding or conservatorship proceeding; (2) The length of time the respondent at any time was physically present in the state and the duration of any absence; (3) The location of the respondent's property; (4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services; and (5) The extent to which the respondent considers or, in the absence of an impairment of mental faculties, would consider himself or herself to have a significant connection with the state."

O.C.G.A. § 29-11-10 (2007 & Supp. 2016).

53. O.C.G.A. § 29-11-12(3) (2007 & Supp. 2016).

54. O.C.G.A. §§ 29-11-13, -20 (2007 & Supp. 2016).

55. O.C.G.A. §§ 29-11-3 to -6 (2007 & Supp. 2016).

56. O.C.G.A. §§ 29-11-20 to -21 (2007 & Supp. 2016).

the registration in Georgia of guardianship and conservatorship orders issued by a court of another state.[57]

B. Voluntary Legitimation

The Georgia Probate Code enumerates a number of circumstances under which a child born out of wedlock is considered an heir of the child's father for intestacy purposes.[58] For example, a child may inherit from the father when an order of legitimation has been entered pursuant to "[O.C.G.A.] § 19-7-22 or such other authority as may be provided by law."[59] O.C.G.A. § 19-7-22(c)[60] allows a father to petition the superior court to have the relationship with his non-marital child rendered legitimate.[61] Inherent in this process is a finding by the court that the legitimation is in the best interests of the child.[62] In 2005, the Georgia legislature amended O.C.G.A. § 19-7-22 to add an additional method for legitimating a child other than the court proceeding contemplated by O.C.G.A. § 19-7-22(c). Under O.C.G.A. § 19-7-22(g)(2),[63] as amended, the mother and father of a child born out of wedlock could render the father-child relationship legitimate merely by signing a voluntary acknowledgment of paternity that also included an acknowledgment of legitimation.[64] No court intervention or order was necessary in such a case.[65] It remained unclear whether such a voluntary legitimation could result in the child gaining inheritance rights from the father.[66]

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57. O.C.G.A. §§ 29-11-30 to -32 (2007 & Supp. 2016).

58. *See* RADFORD, REDFEARN, *supra* note 2, at § 9:5 for a discussion of the inheritance rights of children born out of wedlock and their parents.

59. O.C.G.A. § 53-2-3(2)(A)(i) (2011).

60. O.C.G.A. § 19-7-22(c) (2015 & Supp. 2016).

61. *Id.*

62. *See In re* Estate of Hawkins, 328 Ga. App. 436, 442, 762 S.E.2d 149, 154 (2014).

63. O.C.G.A. § 19-7-22(g)(2) (2015).

64. Ga. S. Bill 53, Reg. Sess., 2005 Ga. Laws 1491.

65. In 2008, the Georgia legislature added O.C.G.A. § 19-7-21.1, which describes the method of accomplishing this "acknowledgment of legitimation" in detail. Ga. S. Bill 88, 2008 Ga. Laws 667.

66. Under O.C.G.A. § 19-7-22(d)(1) (2015 & Supp. 2016) (formerly O.C.G.A. § 19-7-22(c)), which relates to a legitimation order rendered by the superior court, the court's order would result in the father and child being able to inherit from each other in the same manner as if the child had been born in wedlock. O.C.G.A. § 19-7-22(g) (now repealed) was silent as to whether a voluntary acknowledgement of legitimation signed by the mother and the father would have the same result.

In 2014, in *In re Estate of Hawkins*,[67] a man who knew he was not the biological father of a child nevertheless joined with the child's mother in signing a voluntary acknowledgment of legitimation.[68] When the man died intestate, the mother sought to have the child declared as the father's sole heir.[69] The court of appeals affirmed the probate court's refusal to recognize the child as the father's heir.[70] In a special concurrence, Judge Michael Boggs harshly criticized the statutes that allowed the voluntary legitimation of a child without the "objective scrutiny" provided by a judicial legitimation.[71] Judge Boggs called upon the Georgia legislature to remedy the problems inherent in this "seemingly well intentioned but flawed process."[72] The Georgia legislature responded to Judge Boggs' plea in 2016 with the enactment of S.B. 64,[73] which repealed the process by which two individuals could voluntarily legitimate a child without court supervision.[74] The Georgia General Assembly repealed O.C.G.A. § 19-7-21.1[75] in its entirety.[76] In addition, the legislature repealed O.C.G.A. § 19-7-22(g) (the section that allowed a voluntary acknowledgment of legitimation) and amended O.C.G.A. § 19-7-22 to clarify that only the biological father of a child born out of wedlock could petition the superior court to render his relationship with the child legitimate.[77] The Act also clarified that the court could issue an order legitimating the child only if the order is in the best interests of the child.[78]

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67. 328 Ga. App. 436, 762 S.E.2d 149 (2014). This case is discussed in Radford, *Wills*, *supra* note 1, at 273-75.

68. *In re Estate of Hawkins*, 328 Ga. App. at 436-37, 762 S.E.2d at 150-51.

69. *Id.*

70. *Id.* at 436, 762 S.E.2d at 150.

71. *Id.* at 442, 762 S.E.2d at 154.

72. *Id.* at 446, 762 S.E.2d at 157.

73. Ga. S. Bill 64, Reg. Sess. (2016).

74. *Id.*

75. O.C.G.A. § 19-7-21.1 (2015).

76. Ga. S. Bill 64 § 2, Reg. Sess. (2016).

77. *Id.* § 3. The Act directed the court to ensure the petitioner is in fact the biological father of the child and allows the court to order the petitioner, the child's mother, and the child to undergo genetic testing to provide such proof. *Id.* (amending O.C.G.A. § 19-7-22(g)(1), renumbered as subsection (h)).

78. *Id.* § 3 (amending O.C.G.A. § 19-7-22(c), renumbered as subsection (d)). The bill also repealed in its entirety an act that had been signed by the Governor earlier the same day. *See id.* This other act would have allowed parents or legal guardians of children, through the use of a power of attorney, to delegate the care and custody of a child to a relative for the period of up to one year. No court supervision would have been required for such a power of attorney to be effective. Ga. S. Bill 3, Reg. Sess. (2016).

C. Year's Support

In Georgia, the surviving spouse and minor children of an individual who dies, with or without a will, are entitled to request the probate court for an award of property from the decedent's estate in the form of "year's support."[79] When certain real property is awarded as year's support, the property taxes accrued on that property for the years prior to the decedent's death and the year of death are divested.[80] Prior to 2016, this property tax divestment applied to any real property owned by the decedent that was a part of the year's support award.[81] Beginning in 2016, under amended O.C.G.A. § 53-3-4,[82] the property to which this divestment applies is restricted to the decedent's "homestead."[83] A decedent's "homestead" is defined as,

> the real property owned by and in possession of the applicant on January 1 of the taxable year and upon which the applicant resides including, but not limited to, the land immediately surrounding the residence to which the applicant has a right of possession under a bona fide claim of ownership.[84]

If there is no homestead, then the divestment of taxes will apply to other real property that is set apart.[85]

D. Appellate Jurisdiction Reform Act of 2016

Under Article VI, Section Six, Paragraph Three of the Georgia Constitution, "[u]nless otherwise provided by law," the Supreme Court of Georgia has direct appellate jurisdiction over, among other cases, "[a]ll equity cases" and "[a]ll cases involving wills."[86] Until 2016, there was no law that provided otherwise, so the appeal of a trust case ("equity")[87] or

79. O.C.G.A. § 53-3-1 (2011 & Supp. 2016). "[Y]ear's support" is defined as "property for their support and maintenance for the period of 12 months from the date of the decedent's death." O.C.G.A. § 53-3-1(c). "[Y]ear's support" is discussed in depth in MARY F. RADFORD, WILLS AND ADMINISTRATION IN GEORGIA ch. 10 (West 2016-17 ed.).

80. O.C.G.A. § 53-3-4 (2011 & Supp. 2016).

81. O.C.G.A. § 53-3-1 (2011).

82. O.C.G.A. § 53-3-4 (Supp. 2016).

83. O.C.G.A. § 53-3-4(b)(1) (amended by Ga. H.R. Bill 547 § 1, Reg. Sess. (2016)).

84. This definition appears in O.C.G.A. § 48-5-40 (2011 & Supp. 2016), which is cross-referenced in O.C.G.A. § 53-3-4(a).

85. O.C.G.A. § 53-3-4(b)(2).

86. GA. CONST. art. VI, § 6, para. 3(2)-(3).

87. However, as discussed in *Durham v. Durham*, 291 Ga. 231, 231, 728 S.E.2d 627, 628-29 (2012) and *Warren v. Board of Regents of the University System of Georgia*, 272 Ga. 142, 144, 527 S.E.2d 523 (2000), the mere fact that a case involved the administration of a

a case involving a will would usually be made directly to the Georgia Supreme Court rather than to the Georgia Court of Appeals. In 2016, the Georgia General Assembly enacted O.C.G.A. § 15-3-3.1,[88] which provides that the court of appeals rather than the supreme court shall have appellate jurisdiction over equity cases[89] and cases involving wills.[90] Even if a case involving a trust or will is appealed directly to the Georgia Court of Appeals, the Georgia Supreme Court "may review by certiorari cases in the Court of Appeals which are of gravity or great public importance."[91]

trust did not automatically make it the type of "equity" case over which the supreme court had appellate jurisdiction.

88. O.C.G.A. § 15-3-3.1 (Supp. 2016) (enacted by Ga. H.R. Bill 927 § 3-1, Reg. Sess. (2016)) (eff. July 1, 2017). Other portions of this Act were effective on May 3, 2016. *Id.*

89. O.C.G.A. § 15-3-3.1(a)(2) excludes from the category of equity cases "those cases concerning proceedings in which a sentence of death was imposed or could be imposed and those cases concerning the execution of a sentence of death."

90. O.C.G.A. § 15-3-3.1(a).

91. GA. CONST. art. VI, § 6, para. 5. *See also* O.C.G.A. § 5-6-15 (2013).