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Domestic Relations

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This Article addresses significant case law and legislative updates to Georgia domestic relations law that arose during the Survey period from June 1, 2020 through May 31, 2021.[1] Notably, this period includes the state of emergency declared by the Governor[2] and statewide judicial emergency declared by Chief Justice Harold D. Melton[3] on March 14, 2020, in response to the outbreak of the novel coronavirus (COVID-19) in the state of Georgia during the first quarter of 2020. The majority of litigation deadlines were reinstated effective July 13, 2020, as part of the Fourth Order Extending Statewide Judicial Emergency issued by the Supreme Court of Georgia on July 10, 2020.[4] The statewide judicial emergency remained in effect at the end of the Survey period, but it is

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1. For an analysis of Georgia domestic relations law updates during the prior Survey period, see Andrew B. McClintock, Allison C. Kessler, Barry B. McGough, & Elinor H. Hitt, *Domestic Relations*, *Annual Survey of Georgia Law*, 72 MERCER L. REV. 97 (2020).

2. Ga. Exec. Order 03.14.20.01: Declaration of Public Health State of Emergency (March 14, 2020), available online at https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders; Renewed with revisions on April 8, 2020; April 30, 2020; and May 28, 2020.

3. Order Declaring Statewide Judicial Emergency, S. Ct. of Ga. (March 14, 2020), available online at https://www.gasupreme.us/wp-content/uploads/2020/03/CJ-Melton-amended-Statewide-Jud-Emergency-order.pdf; Extended with revisions on April 6, 2020 and May 11, 2020.

4. Fourth Order Extending Declaration of Statewide Judicial Emergency, S. Ct. of Ga. (July 10, 2020), available online at https://www.gasupreme.us/wp-content/uploads/2020/07/4th-SJEO-FINAL.pdf.

anticipated that it the statewide judicial emergency will expire on June 30, 2021.[5]

I. ALIMONY

In *Angst v. Augustine*,[6] the Georgia Court of Appeals reversed the Dekalb County Superior Court's order dismissing the former husband's petition to modify his alimony obligation.[7] The pertinent section of the parties' settlement agreement provided that the husband would pay the wife $5,652.33 in alimony per month for a period of ten years and would cease after the 120th month. The settlement agreement also contained a provision stating that the parties agreed not to waive their rights to seek a statutory modification of alimony. When the former husband lost his job, he filed a petition to modify alimony based upon the change in his income.[8]

The trial court granted the wife's motion to dismiss the petition for modification of alimony on the grounds that the settlement agreement established a lump sum alimony obligation.[9] An alimony obligation which "states the exact number and amount of payments without other limitations, conditions, or statements of intent"[10] is considered "lump sum" alimony, whereas an alimony obligation that is "contingent and [where the total sum] cannot be determined at present" is considered "periodic" alimony.[11] "[O]nly periodic alimony is subject to modification."[12] The trial court determined that because there was no limitation or condition upon the alimony obligation, and the total sum to be paid over a definite period was determinable, the obligation for lump sum alimony was not subject to modification. This was error.

Applying principles of contract construction and interpretation, the court of appeals determined that the parties' express retention of the right to seek modification was sufficient to render the alimony obligation uncertain (and thus periodic, rather than lump sum), because it might be

5. Fifteenth Order Extending Declaration of Statewide Judicial Emergency, S. Ct. of Ga. (June 7, 2021), available online at https://www.gasupreme.us/wp-content/uploads/2021/06/15th-SJEO_as-issued.pdf.

6. 356 Ga. App. 402, 847 S.E.2d 392 (2020).

7. *Id.* at 402, 847 S.E.2d at 392.

8. *Id.* at 403, 847 S.E.2d at 393.

9. *Id.*

10. *Id.* (quoting Dillard v. Dillard, 265 Ga. 478, 479, 458 S.E.2d 102, 103 (1995)).

11. *Id.*

12. *Id.* (citing O.C.G.A. § 19-6-21 (2021); Rivera v. Rivera, 283 Ga. 547, 549, 661 S.E.2d 541, 543 (2008)).

modified or terminated upon statutory grounds.[13] To hold otherwise would render the reservation of the right to seek modification void, which would be contrary to principles of construction favoring upholding agreements in their entirety.[14]

II. EQUITABLE DIVISION OF PROPERTY

In *Calloway-Spencer v. Spencer*,[15] the wife purchased a townhome shortly before the parties began dating.[16] The parties later resided at the townhome and contributed significant marital funds towards the mortgage and repairs, but the townhome remained titled in the wife's name. The Fulton County Superior Court classified the townhome as a gift to the marriage, which the Georgia Court of Appeals found to be error.[17] Because the wife did not manifest intent to convert the separate asset into a joint asset through an action such as "transferring [ ] full, partial, or joint ownership" in the townhome to the husband, the trial court should have applied the "source of funds rule" to determine what percentage of the equity in the house was attributable to marital efforts and what percentage remained the wife's separate property.[18]

The wife in *Daniel v. Daniel*[19] appealed the portion of the Monroe County Superior Court's decision awarding the former marital residence to the husband and wife as tenants-in-common.[20] The wife was granted exclusive use and possession of the residence until the youngest child turned eighteen. Further, the trial court's decision obligated the parties to split the taxes, mortgage, and insurance. The Georgia Court of Appeals affirmed this portion of the trial court's decision, finding that it properly considered the evidence presented regarding ownership of the former marital residence.[21] Tenancy-in-common may be created through a divorce decree under Georgia law. "[T]he trial court has broad discretion to fashion a remedy suitable to the parties involved," as long as it has properly considered the evidence.[22]

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13. *Id.* at 404, 847 S.E.2d at 394 (citing Shepherd v. Collins, 283 Ga. 124, 125, 657 S.E.2d 197, 199 (2008)).

14. *Id.* at 404, 847 S.E.2d at 393 (citing O.C.G.A §§ 19-6-19, 19-6-21, 13-2-2 (2021)).

15. 355 Ga. App. 743, 845 S.E.2d 715 (2020).

16. *Id.* at 743, 845 S.E.2d at 717.

17. *Id.* at 744–45, 845 S.E.2d at 718–19.

18. *Id.* at 745, 845 S.E.2d at 718–19.

19. 358 Ga. App. 880, 856 S.E.2d 452 (2021).

20. *Id.* at 880, 856 S.E.2d at 456.

21. *Id.* at 881, 856 S.E.2d at 457.

22. *Id.* at 890, 856 S.E.2d at 462.

Jurisdiction and choice of law were explored by the Georgia Court of Appeals in *Mbatha v. Cutting*.[23] Cutting resided in New York when she traveled to South Africa and met Mbatha. The parties had a brief relationship, resulting in Cutting becoming pregnant. They married in a civil ceremony in New York in January 2018, then traveled on a month-long honeymoon, during which the relationship crumbled. The parties separated, and Cutting moved to Georgia to live with her parents until the child was born in September 2018 while Mbatha remained in South Africa.[24]

A disagreement arose between the parties, due to their various residences, as to which jurisdiction's law would govern the division of marital property.[25] The Forsyth County Superior Court initially applied the rule of *lex loci contractus*, which Georgia courts traditionally apply to questions of law in contract disputes.[26] This doctrine looks to the law of the place where the contract was made, unless it is specified in the contract that the law of another state should apply. The trial court determined, under that rule, that New York choice-of-law rules should apply because the parties married in New York.[27] This was error. Instead, "a Georgia court should apply Georgia's approach in a conflict-of-law analysis."[28] As the court of appeals explained, Georgia follows the rule of *lex loci contractus* in contract disputes and the rule of *lex loci delictis* in tort cases—under which the law of the place where the tort occurred governs the choice of law.[29] However, the court of appeals determined that Georgia should follow the traditional approach to choice-of-law with respect to property division: "the parties' interests in any real property should be determined under the law of the jurisdiction where it is located while interests in personal property should be determined under the law of the owner's domicile at the time the property was acquired."[30]

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23. 356 Ga. App. 743, 848 S.E.2d 920 (2020).

24. *Id.*

25. *Id.* at 744, 856 S.E.2d at 922.

26. *Id.* at 749, 856 S.E.2d at 925.

27. *Id.* (citing Matter of Liquidation of Midland Ins. Co., 16 N.Y.3d 536, 543 (2011)).

28. *Id.* at 750, 856 S.E.2d at 925 (quoting S. Guar. Ins. Co. v. Cent. Mut. Ins. Co., 214 Ga. App. 662, 662, 449 S.E.2d 3 (1994)).

29. *Id.* at 750, 856 S.E.2d at 926 (citing Farm Credit of Nw. Fla. v. Easom Peanut Co., 312 Ga. App. 374, 381, 718 S.E.2d 590, 600 (2011); Intl. Bus. Machs. Corp. v. Kemp, 244 Ga. App. 638, 641, 536 S.E.2d 303, 307 (2000)).

30. *Id.* at 750–51, 856 S.E.2d at 926–27 (citing Dowis v. Mudslingers, Inc., 279 Ga. 808, 816, 621 S.E.2d 413, 419 (2005); Convergys Corp. v. Keener, 276 Ga. 808, 812, 582 S.E.2d 84, 87 (2003); Gen. Tel. Co. of Se. v. Trimm, 252 Ga. 95, 96, 311 S.E.2d 460, 462 (1984)); *see* O.C.G.A. § 19-2-1 (2021).

The parties in *Messick v. Messick*[31] separated, settled all issues between them, and executed a settlement agreement. After the divorce petition was filed, but before the final judgment and decree of divorce were entered, Ms. Messick won a significant amount of money in a lottery. Ms. Messick moved to enforce the settlement agreement entered prior to the win; Mr. Messick moved to set the agreement aside, arguing that the winnings were subject to equitable division because the winnings were obtained during the marriage. The Ben Hill County Superior Court denied Ms. Messick's request to enforce the settlement agreement and set it aside due to its failure to address the lottery proceeds. The agreement did not contemplate division of lottery proceeds received before the decree was entered; therefore, the agreement did not dispose of all marital property, and thus could not be incorporated into the final judgment and decree. The Georgia Court of Appeals affirmed the trial court's ruling.[32]

III. PATERNITY AND LEGITIMATION

Three noteworthy cases during the Survey period examined the standards for a biological father's abandonment of opportunity interest in forming a relationship with his child.

First, in *Westbrook v. Eidys*,[33] the parties were unwed parents with one shared child. Eidys sought to legitimate when the child in question was approximately ten-years-old. The evidence showed that Westbrook had consistently impeded Eidys' efforts to spend time with the child, including, but not limited to, informing Eidys' mother of her address but forbidding the mother from communicating the same to Eidys; moving to Mexico for two years without informing Eidys; requiring supervised visitation; and moving to Washington state after the filing of the legitimation petition. The Camden County Superior Court granted the petition for legitimation, citing that Eidys was current on all child support and that Westbrook had prevented Eidys from communicating with the child. Eidys was awarded joint legal custody and specified visitation. Westbrook appealed.[34]

The Georgia Court of Appeals held that the trial court had made the decision to legitimate the child based on some evidence, and therefore it did not err.[35] However, the trial court failed to consider whether the legitimation and subsequent custody arrangement was in the best

31. 359 Ga. App. 481, 858 S.E.2d 758 (2021).
32. *Id.*
33. 356 Ga. App. 619, 848 S.E.2d 660 (2020).
34. *Id.* at 621, 848 S.E.2d at 663.
35. *Id.* at 621–22, 848 S.E.2d at 663.

interests of the child.[36] Thus, the case was remanded with direction to consider the best interests of the child.[37]

The Georgia Court of Appeals issued an opinion in *Brumbelow v. Mathenia*[38] after the Supreme Court of Georgia reversed its decision in *Mathenia v. Brumbelow*,[39] released during the last Survey period.[40] The Georgia Supreme Court granted certiorari on two elements of the case: whether the Habersham Superior Court's decision that Brumbelow abandoned his opportunity interest was correct, and whether the court of appeals used the proper standard—parental fitness, rather than the best interests of the child—for evaluating a legitimation petition.[41] The supreme court held that the superior court did not abuse its discretion in dismissing Brumbelow's original petition, as it was supported by evidence.[42] Additionally, it held that portions of the court of appeals decisions must be viewed as dicta only.[43]

The Georgia Supreme Court explained that the court of appeals erred by considering evidence that the superior court had not mentioned in its final order.[44] The evidence, as considered by the superior court, is as follows: Mathenia and Brumbelow had a one-time sexual encounter while Mathenia was married to another man. Mathenia informed Brumbelow that Mathenia was pregnant, and Brumbelow attended a doctor's appointment with her. Brumbelow then offered Mathenia money for an abortion, which Mathenia refused. Mathenia gave the child up for adoption and surrendered her parental rights, and the child remained with the adoptive parents throughout the pendency of the case. A few weeks after the child was born, Brumbelow's mother contacted Mathenia, and a meeting was scheduled at an attorney's office. Brumbelow first requested visitation at the attorney's office.[45]

The factors considered by the superior court when dismissing Brumbelow's legitimation petition, and highlighted by the supreme court, include the following: (1) Brumbelow did not offer Mathenia any

36. *Id.* at 623, 848 S.E.2d at 664.

37. *Id.* at 624, 848 S.E.2d at 665.

38. 358 Ga. App. 404, 855 S.E.2d 425 (2021).

39. 308 Ga. 714, 843 S.E.2d 582 (2020).

40. *Id.* The first appeal of this case, Brumbelow v. Mathenia, 347 Ga. App. 861, 819 S.E.2d 535 (2018) was discussed in the article titled: *Domestic Relations, Annual Survey of Georgia Law* of the Period from June 1, 2018, through May 31, 2019.

41. 308 Ga. at 714–15, 843 S.E.2d at 584.

42. *Id.* at 715, 843 S.E.2d at 584.

43. *Id.*

44. *Id.* at 715, 843 S.E.2d at 585.

45. *Id.* at 717–18, 843 S.E.2d at 586.

financial support during the pregnancy or first few weeks of the child's life, other than to offer to pay for an abortion; (2) Brumbelow did nothing else to support Mathenia during the pregnancy, despite having the ability to contact her; and (3) Brumbelow's mother made contact with Mathenia after the child's birth and set up the meeting, rather than Brumbelow himself.[46] The supreme court determined that "Brumbelow showed no interest in 'becoming a father in a true relational sense.'"[47] Therefore, the superior court's decision to deny his petition for legitimation was supported by evidence.[48] "The Court of Appeals erred in concluding otherwise."[49]

The Georgia Supreme Court briefly discussed the "potential tension" between *In re Baby Girl Eason*[50] and O.C.G.A. § 19-7-22(d)(1)[51]. The court's decision in *Eason* stands for the proposition that, "if an unwed biological father has *not* abandoned his opportunity interest, he has a constitutional right to obtain custody of his child over individuals who are strangers to the child and who seek to adopt unless the biological father is deemed unfit."[52] However, O.C.G.A. § 19-7-22(d)(1) was amended in 2016 to require the "best interests of the child" test to be considered in each legitimation case.[53] Accordingly, there is "significant doubt" regarding the constitutionality of O.C.G.A § 19-7-22(d)(1) in cases where the "fit parent" standard must be applied in accordance with an unwed father's constitutional rights.[54] Although this lingering question was discussed by the supreme court, the opinion states that it will wait until the issue is properly presented to fully address same.[55]

In the court of appeals' 2021 decision subsequent to the supreme court's decision, Presiding Judge Dillard concurred *dubitante*. Judge Dillard asserted his belief that the court of appeals' decision in *Brumbelow v. Mathenia*[56] was correct, and the supreme court has "significantly diminished the constitutional rights of unwed biological

46. *Id.* at 721–22, 843 S.E.2d at 588–89.

47. *Id.* at 722, 843 S.E.2d at 589 (quoting *In re* Baby Girl Eason, 257 Ga. 292, 296, 358 S.E.2d 439, 462 (1987)).

48. *Id.* at 723, 843 S.E.2d at 589.

49. *Id.* at 723, 843 S.E.2d at 590.

50. 257 Ga. 292, 358 S.E.2d 439 (1987).

51. O.C.G.A. § 19-7-22(d)(1) (2021); *Mathenia,* 308 Ga. at 725, 843 S.E.2d at 591.

52. *Mathenia,* 308 Ga. at 724, 843 S.E.2d at 590 (citing *Eason*, 257 Ga. at 297, 358 S.E.2d at 463).

53. *Id.*

54. *Id.* at 724, 843 S.E.2d at 591.

55. *Id.* at 725, 843 S.E.2d at 591 (citing State v. Hudson, 303 Ga. 348, 350, 812 S.E.2d 270, 272 (2018)).

56. 347 Ga. App. 861, 819 S.E.2d 535 (2018).

fathers in Georgia and made it far more difficult for many of them to preserve their opportunity interest in a natural parent-child relationship."[57]

In *Belliveau v. Floyd*,[58] Evelyn and Daniel Belliveau were married. While the parties were separated, but still married, Evelyn had a relationship with Floyd, resulting in a child being born.[59] Floyd was present at the birth and listed on the birth certificate. Further, Evelyn and Floyd executed a notarized paternity acknowledgement. Evelyn and Floyd lived together for a period of roughly six months after the child was born, but the Belliveaus ultimately reconciled and the child began living with them full time.[60]

Daniel Belliveau was declared the legal father of the child due to the fact that the birth occurred during the Belliveau's marriage.[61] Floyd filed a petition for legitimation when the child was roughly one-year-old. Genetic testing was completed after the filing, confirming that Floyd was the child's biological father. On appeal, the Georgia Court of Appeals held the Chatham County Superior Court did not err by ordering genetic testing without first determining it was in the best interests of the child.[62] O.C.G.A. § 19-7-22(h) grants express statutory authority to do so as part of considering whether legitimation is in the best interests of the child.[63]

During the pendency of the case, the trial court scheduled an evidentiary hearing, but ultimately did not conduct the hearing.[64] Based on its review of affidavits, briefs, and the guardian *ad litem* report, the trial court granted Floyd's petition for legitimation, then terminated Daniel Belliveau's parental rights to the child. The court of appeals reversed this portion of the decision.[65] O.C.G.A. § 19-7-22(d)(1) provides that, "after a hearing for which notice was provided to all interested parties," a court may find a biological father to be the legitimate father of a child, "provided that such order is in the best interests of the child[.]"[66] Accordingly, the trial erred by not conducting a hearing on the

57. *Brumbelow*, 358 Ga. App. at 405, 855 S.E.2d at 425.

58. 359 Ga. App. 475, 858 S.E.2d 763 (2021).

59. *Id.* at 475, 858 S.E.2d at 764.

60. *Id.*

61. *Id.* at 475, 858 S.E.2d at 764 (citing Baker v. Baker, 276 Ga. 778, 779, 582 S.E.2d 102, 103 (2003)).

62. *Id.* at 476, 858 S.E.2d at 765.

63. *Id.* (citing O.C.G.A § 19-7-22(h) (2021)).

64. *Id.* at 478, 858 S.E.2d at 766.

65. *Id.* at 478, 858 S.E.2d at 766.

66. *Id.* at 477, 858 S.E.2d at 765 (citing O.C.G.A § 19-7-22(d)(1) (2021)).

matter and relying on affidavits, briefs, and the guardian *ad litem* report.[67]

The trial court also did not directly consider whether the biological father had abandoned his opportunity interest in forming a relationship with the child. The trial court stated that the issue was not in front of it at the time, but that if it were, Floyd had not abandoned his opportunity interest.[68] However, the lack of evidentiary hearing prohibited the trial court from hearing the proper evidence to make such a determination. Lastly, while the court of appeals did not rule on the Belliveau's argument that the trial court must determine whether delegitimizing a legal father is in the child's best interest before analyzing whether legitimizing the biological father is in the child's best interests, the court of appeals did note that "the Supreme Court of Georgia has held that '[t]o grant [a] legitimation petition require[s] the superior court to first terminate the parental rights of the legal father.'"[69]

IV. CHILD SUPPORT

In *Cousin v. Tubbs* (*Cousin II*),[70] the Georgia Court of Appeals heard a second appeal following the remand of its 2020 decision in *Cousin v. Tubbs* (*Cousin I*)[71] to the Paulding County Superior Court. In the first appearance of the case before the court of appeals, the court vacated and remanded the child support provisions of the parties' final judgment and decree of divorce based upon the trial court's improper application of a "high income" child support deviation.[72] The trial court initially entered a high-income deviation requiring the husband to pay to the wife approximately 18% of his gross monthly income. The court of appeals analyzed the statutory child support guidelines and the "regressive sliding scale"[73] mechanic employed by the legislature, which caps presumptive support obligations at 7.5% of the parties' monthly income for the maximum statutory income bracket of $30,000, and determined that the magnitude of the 18% obligation imposed was so inconsistent with the statutory cap of 7.5% that it appeared punitive and rose to the level of reversible error.[74] The court of appeals directed the trial court, on

67. *Id.*
68. *Id.* at 479, 858 S.E.2d at 767.
69. *Id.* at 480, 858 S.E.2d at 767.
70. 358 Ga. App. 722, 856 S.E.2d 56 (2021).
71. 353 Ga. App. 873, 840 S.E.2d 85 (2020).
72. *Id.* at 873, 840 S.E.2d at 89.
73. *Id.* at 889, 840 S.E.2d at 100 (citing O.C.G.A. § 19-6-15(o) (2021)).
74. *Id.* at 889–91, 840 S.E.2d at 100–01.

remand, to recalculate the deviation consistent with the legislature's guidelines.[75]

In *Cousin II*, the husband appealed the trial court's refusal to order reimbursement for child support payments he made during the pendency of *Cousin I*.[76] He argued that, in light of the court of appeals' decision to vacate the initial child support award, the payments he had been required to make thereunder were void and contrary to law. However, the parties entered into a consent order during the pendency of the first appeal which provided that the husband would continue to pay the sums due under the initial order.[77] Thus, in the absence of fraud or mistake in the procurement of the consent order, it was proper for the trial court to require the husband to abide by its terms and the trial court was within its discretion in denying the requested reimbursement.[78] The court of appeals emphasized that, while it did not intend to discourage litigants from utilizing consent judgments to resolve disputes, it is incumbent upon the parties to ensure that such agreements are "drafted with care to protect [their] interests."[79]

In *Day v. Mason*,[80] the father challenged an order awarding to the mother, among other things, back child support and a *pro rata* share of future extracurricular expenses for the minor child after the establishment of paternity, and a subsequent order awarding her attorney's fees to litigate the appeal.[81] The Cobb County Superior Court ultimately ordered the father to pay half of the back childcare expenses incurred by the mother before the establishment of paternity and attorney's fees under O.C.G.A. § 9-11-37[82] and O.C.G.A. § 19-9-3(g).[83] The father appealed, and during the pendency of that appeal, the mother applied to the trial court for an award of additional attorney's fees to enable her to litigate the appeal.[84] The trial court awarded the mother additional fees under O.C.G.A. § 19-9-3(g) "in anticipation of defending the pending appeal." The father appealed that order as well.[85] On review,

75. *Id.* at 891, 840 S.E. 2d at 101.

76. 358 Ga. App. at 722, 856 S.E.2d at 57.

77. *Id.* at 724, 856 S.E.2d at 58.

78. *Id.* at 725–26, 856 S.E.2d at 59 (citing Hurt v. Norwest Mortgage, 260 Ga. App. 651, 656–57, 580 S.E.2d 580, 584 (2003)).

79. *Id.* at 726, 856 S.E.2d at 59, n.5.

80. 357 Ga. App. 836, 851 S.E.2d 825 (2020).

81. *Id.* at 836–37, 851 S.E.2d at 827.

82. O.C.G.A. § 9-11-37 (2021).

83. *Day*, 357 Ga. App. at 839, 851 S.E.2d at 828; O.C.G.A. § 19-9-3(g) (2021).

84. *Day*, 357 Ga. App. at 839, 851 S.E.2d at 828.

85. *Id.*

the court of appeals vacated the awards of back child support and attorney's fees under O.C.G.A. § 9-11-37 and reversed the awards of future extracurricular expenses and appellate attorney's fees under O.C.G.A. § 19-9-3(g).[86]

First, while a mother may recover as back child support the reasonable and necessary expenses incurred in raising a child prior to an order establishing a child support obligation, the trial court's order requiring the father to pay half of all such costs failed to comply with the statutory Child Support Guidelines.[87] The court of appeals was required to vacate and remand it.[88] In doing so, however, the court of appeals rejected the father's argument that his voluntary payments of partial support before the establishment of paternity precluded the trial court from awarding back support.[89] Instead, the trial court is vested with discretion to determine, based upon the facts and the evidence, whether an award of back support is appropriate.[90] Noncompliance with the Child Support Guidelines also required that the award of future extracurricular activity expenses be reversed.[91] The trial court may only enter a deviation for additional extracurricular expenses if the trial court is shown that the actual extracurricular expenses for the child exceed 7% of the presumptive obligation—in which case the court may enter a "special expenses deviation" to cover the full amount of the extracurricular activities.[92] The trial court's order requiring the father to pay 50% of all extracurricular expenses did not contain the required findings and thus did not comply with the statutory requirements, requiring reversal.[93]

Finally, the court of appeals held as an apparent issue of first impression that O.C.G.A. § 19-9-3(g) does not authorize an award of attorney's fees during the pendency of an appeal in a child custody case.[94] Because attorney's fees are generally not authorized except as permitted by agreement or by statute, "whether a statute that authorizes an award of attorney fees also includes an award of appellate fees depends on the

86. *Id.* at 837, 851 S.E.2d at 827.

87. *Id.* at 839, 851 S.E.2d at 828 (citing Weaver v. Chester, 195 Ga. App. 471, 393 S.E.2d 715 (1990); Smith v. Carter, 305 Ga. App. 479, 482, 699 S.E.2d 796, 798 (2010)).

88. *Id.* (citing Medley v. Mosley, 334 Ga. App. 589, 594(3), 780 S.E.2d 31 (2015)).

89. *Id.* at 840, 851 S.E.2d 829 (citing Bridger v. Franze, 348 Ga. App. 227, 280 S.E.2d 223 (2018)).

90. *Id.* (citing *Bridger*, 348 Ga. App. at 233, 820 S.E.2d at 230).

91. *Id.* at 841, 851 S.E.2d at 829–30 (citing O.C.G.A § 19-6-15(c)(6) (2021); Holloway v. Holloway, 288 Ga. 147, 150(1), 702 S.E.2d 132 (2010)).

92. *Id.* at 840–41, 851 S.E.2d at 829. (citing O.C.G.A. §§ 19-6-15 (i) (1)(b), (i)(2)(J)(ii)).

93. *Id.* at 841, 851 S.E.2d at 829–30 (citing § 19-6-15(c)(6)).

94. *Id.* at 847, 851 S.E.2d at 833 (citing O.C.G.A. § 19-9-3(g) (2021)).

language of the statute."[95] In contrast to O.C.G.A. § 19-6-2,[96] which authorizes an award of fees in a divorce or alimony case "at any time during the pendency of the litigation,"[97] the plain language of O.C.G.A. § 19-9-3(g) authorizes an award to be made at a temporary or final hearing, and authorizes the inclusion of pre-trial expenses but is silent as to post-trial costs.[98] As such, an award of post-trial litigation expenses to fund the defense of the appeal was unauthorized.[99]

V. CUSTODY

A. Modification

Two cases issued during the Survey period addressed a parent's intended or actual relocation as evidence of a material change of circumstance affecting the welfare of the child so as to authorize a modification of custody.

In *Burnham v. Burnham* (*Burnham II*),[100] the father sought to modify custody based on the mother's planned relocation from Coweta County to Cobb County.[101] The evidence at trial showed that the mother was moving to Marietta to live with her fiancé and his son, and that her job was the primary reason for the move. The mother and father had co-parented well for the first year after their divorce, and the mother had allowed the father more than his allotted visitation time with the children, but she had begun to insist on strict compliance with the visitation schedule set forth in the parenting plan. The children had lived in Coweta for their whole lives, and the father had contracted to purchase a new house in Coweta so that the children would not have to change school districts after the mother's move. One of the children had also experienced behavioral changes as a result of the parties' divorce and was concerned about seeing his father less after the relocation.[102]

The Coweta County Superior Court found that modification was in the best interests of the children and awarded primary physical custody to the father.[103] The mother appealed, and the Georgia Court of Appeals

95. *Id.* (citing Viskup v. Viskup, 291 Ga. 103, 106, 727 S.E.2d 97, 100 (2012); Kautter v. Kautter, 286 Ga. 16, 20, 685 S.E.2d 266, 270 (2009)).

96. O.C.G.A. § 19-6-2 (2021).

97. O.C.G.A. § 19-6-2(a).

98. *Day*, 357 Ga. App. at 847, 851 S.E.2d at 834 (citing O.C.G.A. § 19-9-3(g)).

99. *Id.* at 848, 851 S.E.2d at 834.

100. 357 Ga. App. 580, 851 S.E.2d 202 (2020).

101. *Id.* at 581, 851 S.E.2d at 204.

102. *Id.* at 582, 851 S.E.2d at 205.

103. *Id.*

vacated and remanded the first order because the trial court failed to address the threshold question of whether a material change of circumstances had occurred.[104] On remand, the trial court made an express finding of four factors which together constituted a material change: the reduction in father's visitation; the mother's relocation; the father's decision to purchase a home in Coweta; and the child's enrollment in counseling because of his behavioral changes since the divorce. The mother appealed, and this time, the court of appeals affirmed the trial court's ruling.[105] While a parent's relocation is not in and of itself sufficient to constitute a material change, the trial court properly considered a variety of factors and concluded that, together, they warranted a modification of custody.[106]

In a factual contrast to *Burnham II*, the Georgia Court of Appeals in *Brazil v. Williams*[107] affirmed the Fulton County Superior Court's order finding that the father's relocation from Georgia to Michigan did *not* rise to the level of a material change in circumstances authorizing a modification of custody.[108] The parties in *Brazil* were divorced in Georgia, and the father was awarded primary physical custody. At the time of the divorce, the parties lived approximately two hours from each other. The evidence in the modification action showed that, despite the father's move to Michigan, the flight time and travel time for the child to visit with the mother remained approximately the same as when both parents lived in Georgia. The trial court concluded, based on these facts, that there had not been a material change—despite the mother's arguments, which were supported by some evidence presented by the guardian *ad litem*, that the relocation had caused missed visits and behavioral changes for the child.[109]

The court of appeals affirmed the trial court's finding of no material change in circumstances because, under the applicable standard of review, the conclusion was supported by some evidence in the record—even if that evidence could be characterized as "slight."[110] The court of appeals also took the opportunity to clarify the meaning and application

104. *Id.* (citing Burnham v. Burnham, 350 Ga. App. 348, 351, 829 S.E.2d 425, 428 (2019)).

105. *Id.* at 583–86, ,851 S.E.2d at 205–08.

106. *Id.* at 584, 851 S.E.2d at 206 (citing Bodne v. Bodne, 277 Ga. 445, 446, 588 S.E.2d 728, 729 (2003); Mahan v. McRae, 241 Ga. App. 109, 112, 522 S.E.2d 772, 775 (1999)).

107. 359 Ga. App. 487, 859 S.E.2d 490 (2021).

108. *Id.* at 487, 859 S.E.2d 492.

109. *Id.* at 487–88, 859 S.E.2d at 492.

110. *Id.* at 491, 859 S.E.2d at 494 (citing Moore v. Wiggins, 230 Ga. 51, 55, 195 S.E.2d 404, 406 (1974)).

of the Georgia Supreme Court's ruling in *Bodne v. Bodne*.[111] Contrary to the mother's argument, *Bodne* does not automatically require an inquiry into the child's best interests in a relocation case; instead, it "merely functioned as a rejection of the presumption that the custodial parent has a *prima facie* right to retain custody of the child in relocation cases."[112]

1. Parenting Plans

In *Brown v. Brown*,[113] the Georgia Court of Appeals reversed the trial court's denial of the mother's request for declaratory judgment in a dispute over the application of the parties' parenting plan.[114] The plan provided, in pertinent part, that each parent would be entitled to "two consecutive weeks of uninterrupted parenting time" with the children during their summer vacation.[115] The parties had historically deviated from this requirement and selected nonconsecutive dates by agreement, but when the parties were unable to agree on dates in 2019, the mother insisted that they follow the strict language of the plan. When the father refused to do so, the mother sought a declaratory judgment stating the father must select his summer vacation dates as one two-week block of consecutive days.[116]

The father maintained throughout the litigation that, while he did not dispute the language of the parenting plan, he disagreed with the requirement that he choose his days consecutively because the parties had historically deviated from that requirement.[117] At the final hearing, the father's counsel stated that they did not contest the declaratory judgment but disagreed, based upon the parties' historical practice, that he was required to select consecutive days. The trial court denied the declaratory judgment following the hearing, reasoning that the parenting plan allowed the parties "up to" two consecutive weeks but did not require them to actually exercise two consecutive weeks and did not require them to select their summer vacation time in weeks instead of days. Additionally, the trial court assessed attorney's fees against the

111. 277 Ga. 445, 588 S.E.2d 728 (2003).

112. 359 Ga. App. at 489, 859 S.E.2d at 493 (citing *Bodne*, 277 Ga. at 447, 588 S.E.2d at 729).

113. 359 Ga. App. 511, 857 S.E.2d 505 (2021).

114. *Id.* at 511, 857 S.E.2d at 507. The mother also sought temporary and permanent modification of custody; temporary modification was denied after a hearing, and the mother abandoned the request for permanent modification of the parenting plan.

115. *Id.*

116. *Id.* at 511–12, 857 S.E.2d at 508.

117. *Id.* at 513, 857 S.E.2d at 509.

mother under O.C.G.A. § 9-15-14(b)[118] based upon her pursuit of the declaratory judgment and under O.C.G.A. § 19-9-3(g). The mother appealed.[119]

The court of appeals reversed the trial court's denial of declaratory judgment and award of attorney's fees under O.C.G.A. § 9-15-14(b), and vacated and remanded the fee award under O.C.G.A. § 19-9-3(g).[120] The court of appeals held that despite the father's continued insistence that he did not dispute or contest the language of the parenting plan, the father's continued refusal to comply with its requirements evidenced a legitimate dispute as to its meaning such that declaratory judgment was proper.[121] Additionally, the trial court's conclusion that the parties were entitled to take up to two consecutive weeks but were not required to select their dates in week-long blocks reflected an interpretation of the parenting plan different than that urged by the mother.[122] Thus, the declaratory judgment presented a justiciable controversy, and the motion should have been granted.[123] Based upon this ruling, the court of appeals also reversed the award of attorney's fees under O.C.G.A. § 9-15-14(b).[124] Since the declaratory judgment action was proper, it was neither substantially vexatious or lacking substantial justification.[125] The court of appeals vacated and remanded the award of attorney's fees under O.C.G.A. § 19-9-3(g) to ensure that the award did not include fees incurred in connection with the declaratory judgment, which are not contemplated as recoverable under that code section.[126]

The court of appeals' opinion in *Pryce v. Pryce*[127] highlighted the importance of compliance with the statutory requirements of parenting plans. There, the decree awarded joint legal and primary physical custody of the minor children to the husband and directed the parties to consult regarding major decisions, with the husband's decision controlling if they were unable to agree. It provided that the party with physical custody would be in charge of day-to-day decisions. The wife was granted reasonable visitation as the parties could agree and set forth a visitation schedule if they could not agree. Finally, the decree granted

118. O.C.G.A. § 9-15-14(b) (2021).
119. *Brown*, 359 Ga. App. at 516, 857 S.E.2d at 510.
120. *Id.* at 520–23, 857 S.E.2d at 513–14.
121. *Id.* at 517–20, 857 S.E.2d at 511–13.
122. *Id.* at 519, 857 S.E.2d at 512.
123. *Id.* at 520, 857 S.E.2d at 513.
124. *Id.*
125. *Id.* at 521, 857 S.E.2d at 513 (citing O.C.G.A. § 9-15-14(b) (2021)).
126. *Id.* at 523, 857 S.E.2d at 514–15.
127. 359 Ga. App. 590, 859 S.E.2d 554 (2021).

each parent access to the children's medical and educational records and directed the children's schools to release the children into the custody of either parent. It did not include or incorporate a parenting plan and did not include additional guidance regarding custody and visitation. Among other enumerations of error, the husband argued that the Cobb County Superior Court erred in failing to incorporate a full parenting plan. The court of appeals agreed.[128] Unless otherwise ordered by the court, the plan must include:

> (A) A recognition that a close and continuing parent-child relationship and continuity in the child's life will be in the child's best interest; (B) A recognition that the child's needs will change and grow as the child matures and demonstrate that the parents will make an effort to parent that takes this issue into account so that future modifications to the parenting plan are minimized; (C) A recognition that a parent with physical custody will make day-to-day decisions and emergency decisions while the child is residing with such parent; and (D) That both parents will have access to all of the child's records and information, including, but not limited to, education, health, health insurance, extracurricular activities, and religious communications.[129]

Additionally,

> [U]nless otherwise ordered by the court or agreed upon by the parties, the parenting plan "shall include, but not be limited to" the following: when a child will be in each parent's physical care, how holidays and school breaks will be spent with each parent, transportation arrangements, whether supervision will be needed for parenting time, an allocation of decision-making authority and what, if any, limitations exist while one parent has physical custody in terms of the other parent contacting the child.[130]

The court's failure to include these elements required the court of appeals to vacate and remand the judgment.[131] Similarly, in *VanVlerah v. VanVlerah*,[132] the trial court awarded joint legal custody to both parents and primary physical custody to the mother, with the father having supervised visitation.[133] The divorce decree did not include or reference a parenting plan and contained none of the elements discussed

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128. *Id.*
129. *Id.* at 591–92, 859 S.E.2d at 556–57 (quoting O.C.G.A. § 19-9-1(b)(1) (2021)).
130. *Id.* (quoting O.C.G.A § 19-9-1(b)(2)).
131. *Id.* at 593, 859 S.E.2d at 557.
132. 359 Ga. App. 577, 859 S.E.2d 546 (2021)).
133. *Id.* at 578, 859 S.E.2d at 549.

above. The Georgia Court of Appeals determined that the Jefferson County Superior Court's total failure to include any elements required by the statute required that the award be vacated.[134] It is imperative that litigants and advocates be mindful of the statutory requirements for parenting plans if they hope to avoid the risk of custody awards being vacated and remanded on appeal.

2. Contempt and Visitation

Perhaps the more significant ruling in *VanVlerah* concerned the father's allegations of contempt against the mother for failure to follow the visitation schedule during the early months of the COVID-19 pandemic.[135] A temporary order provided that the father would have supervised visitation with the children in Michigan, where the children lived with the mother. The father exercised this visitation in December 2019 and January and February of 2020, but the only supervised visitation center in the county that satisfied the requirements of the order temporarily shut down in March 2020 due to the pandemic. When it reopened, the mother declined to schedule a supervised visit out of concern for the health and safety of the children between April and July 2020. She agreed to resume scheduling in August 2020, but the father filed an action for contempt before any August visitation had occurred.[136]

The trial court found that the mother had violated the visitation order, but the violation was not willful so as to authorize a finding of contempt "due to the state of the pandemic, and fear that has gripped a large portion of the Nation," and her concerns were "realistic and fueled by the media and guidelines in the State of Michigan."[137] The court of appeals affirmed the trial court's ruling because some evidence supported the conclusion that the mother's violation was not willful.[138] As the court of appeals acknowledged, there is some existing authority excusing violation of court orders for custody and visitation based upon fear for the safety of the children.[139] This represents the first such appellate decision applying that rule in the context of the national public health crisis caused by COVID-19.

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134. *Id.* at 578–80, 859 S.E.2d at 549–50 (citing O.C.G.A. § 19-9-1(b); Mashburn v. Mashburn, 353 Ga. App. 31, 48, 836 S.E.2d 131, 146 (2019)).

135. *Id.* at 581–82, 859 S.E.2d at 551.

136. *Id.* at 582–83, 859 S.E.2d at 551–52.

137. *Id.* at 583, 859 S.E.2d at 552.

138. *Id.* at 583–84, 859 S.E.2d at 552–53 (citing *Cousin I*, 353 Ga. App. at 875, 840 S.E.2d at 90).

139. *Id.* at 584–85, 859 S.E.2d at 553. *See, e.g,* Beckham v. O'Brien, 176 Ga. App. 518, 522, 336 S.E.2d 375, 377 (1985).

3. Third-Party Custody

Two third-party custody disputes before the Georgia Court of Appeals during the Survey period raised questions about the potential application of Georgia's recent "equitable caregiver" statute, although neither actually applied nor interpreted it.[140]

In *Steedley v. Gilbreth* (*Steedley III*),[141] the Georgia Court of Appeals reversed the Clinch County Superior Court's award of joint custody between the child's mother and maternal grandmother.[142] In a prior appeal, *Steedley II*,[143] the Georgia Court of Appeals vacated the trial court's award of temporary custody to the grandmother.[144] Following remand, the trial court awarded primary physical custody to the mother, but granted visitation to the grandmother and required the mother and grandmother to work together for the best interests of the child and to cooperate on weekends and holidays. While the court did not use the phrase "joint custody," the court of appeals construed the award as granting joint custody.[145] The court of appeals reversed this award.[146] While Georgia law permits *sole* legal custody to be awarded to a third party, no statutory authority permits an award of joint legal custody between a fit parent and a third party.[147] The authors of this article respectfully posit that Georgia's "equitable caregiver statute" actually could be read to permit a joint award: O.C.G.A. § 19-7-3.1(g) provides that, once a third-party has established standing to be adjudicated as an equitable caregiver, "[t]he court may enter an order as appropriate to establish parental rights and responsibilities for such individual, including, but not limited to, custody or visitation."[148] Whether such an outcome would be consistent with the well-established constitutional rights of parents, the settled legal authority of this state, and the intentions of the legislature is another question altogether.

Wallace v. Chandler[149] involved a custody dispute between the incarcerated mother of a minor child and the child's non-relative foster

140. O.C.G.A. § 19-7-3.1 (2021).

141. 359 Ga. App. 551, 859 S.E.2d 520 (2021).

142. *Id.* at 552, 859 S.E.2d at 522.

143. 352 Ga. App. 179, 834 S.E.2d 301 (2019).

144. *Steedly III*, 359 Ga. App. 551, 859 S.E.2d 520. *See Steedly II,* 352 Ga. App. at 179, 834 S.E.2d at 302).

145. *Id.*

146. *Id.*

147. *Id.* (citing O.C.G.A. § 19-9-3).

148. O.C.G.A. § 19-7-3.1(g).

149. 360 Ga. App. 541, 859 S.E.2d 100 (2021).

parents.[150] The child was placed in the care of the foster parents on a temporary basis, and the foster parents filed a petition for sole custody while the child's mother was incarcerated. The mother did not respond to the petition, and following a hearing at which only the foster parents and their attorney appeared, the Catoosa County Superior Court entered an order granting sole custody to the foster parents as the child's "fictive kin." The mother filed a motion to set aside the judgment, alleging *inter alia* that the foster parents did not have standing, as non-relatives, to seek sole custody under O.C.G.A. § 19-7-1.[151] The trial court denied the motion to set aside, and the court of appeals reversed that denial.[152] Because O.C.G.A. § 19-7-1(b)(1) specifically limits standing to seek custody to certain specific classes of relatives, the foster parents did not have statutory standing.[153] However, the court of appeals noted that the foster parents "were not without redress," and specifically suggested that the equitable caregiver statute (which was not in effect at the time of the initial filing of the custody petition) could have offered them an avenue by which to obtain standing to seek custody.[154]

VI. POST JUDGMENT RELIEF

Greenlee v. Tideback[155] examined the equitable doctrine of judicial estoppel. The parties were a same sex couple who divorced in 2017.[156] The parties' settlement agreement provided, in relevant part, that the parties would share joint legal custody of their two minor children and Greenlee would be the primary physical custodian. The trial court granted the parties a divorce incorporating the settlement agreement and parenting plan.[157]

Tideback filed a modification two years after the divorce was finalized.[158] Greenlee answered and moved to set aside all provisions in the parties' final judgment and decree which awarded custody rights of the two children to Tideback on the grounds that Tideback "was not a biological or adoptive parent of the children."[159] The Henry County

150. *Id.* at 541, 859 S.E2d at 101.

151. *Id.* at 542, 859 S.E2d at 102 (citing O.C.G.A § 19-7-1 (2021)).

152. *Id.*

153. *Id.* at 543, 859 S.E2d at 103 (citing O.C.G.A. § 19-7-1(b)(1) (2021); Clarke v. Wade, 273 Ga. 587, 597, 544 S.E.2d 99, 107 (2001)).

154. *Id.* at 103–04 (citing § 19-7-3.1(b)(1) (2021)).

155. 359 Ga. App. 295, 857 S.E.2d 276 (2021).

156. *Id.* at 295–96, 857 S.E.2d at 276.

157. *Id.*

158. *Id.* at 296, 857 S.E.2d at 277.

159. *Id.*

Superior Court denied the motion, reasoning that judicial estoppel prevented Greenlee from now claiming that no children were born of the marriage.[160]

"The federal doctrine of judicial estoppel precludes a party from asserting a position in one judicial proceeding after having successfully asserted a contrary position in a prior proceeding[.]"[161] The Supreme Court of the United States analyzes three relevant factors when deciding whether to apply judicial estoppel to a case, which Georgia has followed:

> (1) [T]he party's position must be clearly inconsistent with its earlier position;
>
> (2) [T]he party must have succeeded in persuading a court to accept the party's earlier position; absent success in a prior proceeding, a party's later inconsistent position introduced no risk of inconsistent court determinations, and thus poses little threat to judicial integrity; and
>
> (3) [W]hether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.[162]

The court of appeals held that the trial court properly applied the doctrine of judicial estoppel to preclude Greenlee from taking a position contrary to that she had asserted two years prior.[163]

The parties in *Paul v. Paul*[164] were divorced on November 5, 2015. On November 2, 2018, the wife filed a motion to vacate the final decree alleging that the husband had failed to reveal assets during the divorce, and she would not have entered the settlement agreement knowing of said assets.[165] The husband filed a motion to dismiss, alleging that the wife's motion should have been filed as a new action, and that service was not proper on his divorce attorney. The trial court granted the husband's motion and dismissed the case; the wife appealed.[166]

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160. *Id.*

161. *Id.* at 297, 857 S.E.2d at 277 (quoting D'Antignac v. Deere & Co., 342 Ga. App. 771, 773–74, 804 S.E.2d 688, 690 (2017)).

162. *Id.* (quoting *D'Antignac,* 342 Ga. App. at 774, 804 S.E.2d at 691).

163. *Id.*

164. 355 Ga. App. 828, 846 S.E.2d 138 (2020).

165. *Id.* at 828, 846 S.E.2d at 140 (citing O.C.G.A. § 9-11-60(d)(2) (2021)).

166. *Id.* at 829, 846 S.E.2d at 140–41.

The Georgia Court of Appeals held that under O.C.G.A. § 9-11-60,[167] a judgment must be directly attacked by motion in the rendering court.[168] Therefore, the wife properly filed her motion to vacate or set aside the decree. Further, the wife properly served her motion on the husband's attorney. The attorney was still actively representing the husband in his family law litigation, and there was no question that the attorney received the motion. There was no merit to the husband's argument that personal service was required since the motion was filed in a later term of court that the decree was entered. In order to close a civil case, the petitioner in the case must file a civil case disposition form pursuant to O.C.G.A. § 9-11-58(b).[169] The husband had failed to file the civil case disposition form, leaving the judgment open to a motion to set aside. Family law practitioners representing petitioners must remember to file civil case disposition forms or risk leaving the judgment open to attack.

Chief Judge McFadden concurred fully in part and specially in part, stating that service under O.C.G.A. § 9-11-60(f) was the correct standard in this case.[170] He did not agree that the case was still open due to the lack of the civil case disposition form.[171] O.C.G.A. § 9-11-60(f) simply requires that reasonable notice shall be given upon the filing of the motion, a standard that the wife met.

VII. LEGISLATIVE UPDATES

House Bill 154, Act 140 (May 3, 2021), revises, clarifies, and expands the procedural and substantive protections available to foster and adopted children in certain court proceedings. This bill, effective July 1, 2021, amends O.C.G.A. §§ 19-8-2, 19-8-3, 19-8-5, 19-8-9, 19-8-10, 19-8-11, 19-8-12, 19-8-13, 19-8-14, 19-8-16, 19-8-18, 19-8-24, 19-8-26, and 29-4-10.[172]

House Bill 231, Act 273 (May 10, 2021), enacts Chapter 19–13A of the Official Code of Georgia Annotated and significantly expands the protections available to victims of stalking and dating violence in this state.[173] O.C.G.A. § 19-13A-1[174] defines "dating relationship" and "dating

167. O.C.G.A. § 9-11-60 (2021).

168. *Id.* at 830, 846 S.E.2d at 141 (citing Zepp v. Toporek, 211 Ga. App. 169, 171, 438 S.E.2d 636, 639 (1993)).

169. *See* O.C.G.A. § 9-11-58(b) (2021).

170. *Id.* at 832–33, 846 S.E.2d at 143 (citing O.C.G.A § 9-11-5 (2021)) (McFadden, C.J., concurring fully and specially).

171. *Id.* at 833, 846 S.E.2d at 143 (McFadden, C.J., concurring fully and specially).

172. Ga. H.R. Bill 154, Reg. Sess. (2021).

173. Ga. H.R. Bill 231, Reg. Sess. (2021).

174. O.C.G.A. § 19-13A-1 (2021).

violence," and subsequent code sections provide for the issuance of a protective order consistent with the existing framework for domestic violence and stalking protective orders to victims of dating violence as defined in the new statutes. O.C.G.A. § 16-5-94[175] was also amended to include the newly enacted statues within the provisions governing the issuance of a protective order.

On May 10, 2021, the State Legislature passed Senate Bill 234, Act 268, establishing the Georgia Uniform Mediation Act effective July 1, 2021.[176] This act enacts Chapter 9–17 of the Official Code of Georgia Annotated, and sets forth certain uniform definitions, requirements, restrictions, and privileges, including with respect to confidentiality, waiver, and disclosure, applicable to mediations conducted in this State.[177] In light of the growing trend towards alternative dispute resolution in domestic relations actions across the state, including many courts which require mediation before they will set a hearing in non-emergency situations, it is incumbent upon family law practitioners (and neutrals) to familiarize themselves with the provisions of this new uniform law.

175. O.C.G.A. § 16-5-94 (2021).

176. Ga. S. Bill 234, Reg. Sess. (2021).

177. O.C.G.A. §§ 9-17-1 to 9-17-14.