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Domestic Relations

Charles V. Crowe*

I. INTRODUCTION

This Article addresses noteworthy appellate decisions and legislative updates relevant to Georgia domestic relations law during the Survey period from June 1, 2021 through May 31, 2022.[1]

II. ALIMONY

In *Williams v. Williams*,[2] the Georgia Court of Appeals examined factors trial courts are to consider in making an award of alimony.[3] Jason Williams (Husband) sought review of a divorce decree entered in Jackson County Superior Court. Husband argued, among other things, that the decree awarded an excessive amount of alimony to his former wife, Stephanie Williams (Wife). Prior to their divorce in December 2020, the parties were married for seventeen years and had four children together. Wife was a stay-at-home mother for the greater portion of the marriage. At the time of the divorce, Husband was employed as a corporate director, earning a base yearly salary of $200,000 and an annual bonus in excess of $2,000,000. Following a bench trial, the trial court entered a final decree requiring Husband to pay Wife $3,825 in monthly child support and $4,000 in monthly alimony for ten years or until the youngest child was no longer eligible to receive child support, whichever occurred first. Additionally, Husband was ordered to pay Wife a lump sum alimony

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1. For an analysis of domestic relations during the prior survey period, *see* Andrew B. McClintock & Allison C. Ellison, *Domestic Relations*, *Annual Survey of Georgia Law*, 73 MERCER L. REV. 89 (2021) https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=2698&context=jour_mlr [https://perma.cc/VDR2-XKU7]. *See also* James J. McGinnis et al., *The Door Opens Wider: The Rights of Non-Biological Parents to Claim Custody Just Expanded*, *Articles Edition*, 73 MERCER L. REV. 983 (2022), https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=2742&context=jour_mlr [https://perma.cc/SKQ3-YHL9].

2. 362 Ga. App. 839, 870 S.E.2d 462 (2022).

3. *Id.* at 843–46, 870 S.E.2d at 468–70.

award of 10% of the net amount of Husband's annual bonus for ten years.[4]

On appeal, Husband argued that the trial court's alimony award was excessive and punitive.[5] In its ruling, the court of appeals discussed the definition of alimony and standards for awarding alimony under Georgia law.[6] Alimony is defined as "an allowance out of one party's estate, made for the support of the other party when living separately."[7] Further, "alimony is authorized, but [is] not required, to be awarded to either party in accordance with the needs of the party and the ability of the other party to pay."[8] "[F]actors to be considered in determining the appropriate amount of alimony" include "the parties' standard of living, the duration of the marriage, the age and condition of the parties," the parties' "financial resources, the time and training necessary for either party to acquire employment skills, and the contributions of each party to the marriage."[9]

Examining the trial court's evidentiary findings, the court of appeals noted that the parties had been married for seventeen years, Wife had been a stay-at-home mother since the birth of the parties' first child in 2005, and the parties' youngest child was born in 2012.[10] Additionally, the trial court found that, in addition to his base salary, Husband received an annual bonus in excess of $2,000,000 in 2019, was expected to receive an even larger bonus in 2020, and was expected to continue receiving bonuses as long as he maintained his present employment. The trial court also found that Wife held a 33% interest in a company owned by her family and a potential interest in several parcels of real property owned by her family. Lastly, in making its alimony award, the trial court indicated that it specifically considered Wife's needs and Husband's income and ability to pay.[11]

In regard to the monthly award, the court found Husband's argument "specious" as $4,000 per month is precisely what Husband proposed to pay in his opening statement before the trial court.[12] The court noted that "[i]t is well established that one cannot complain of a judgment, order, or

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4. *Id.* at 839–40, 870 S.E.2d at 465.
5. *Id.* at 843, 870 S.E.2d at 468.
6. *Id.* at 843–44, 870 S.E.2d at 468.
7. *Id.* at 843, 870 S.E.2d at 468 (citing O.C.G.A. § 19-6-1(a) (2022)).
8. *Williams*, 362 Ga. App. at 843, 870 S.E.2d at 468 (citing O.C.G.A. § 19-6-1(c)(1) (2022)).
9. *Williams*, 362 Ga. App. at 843–44, 870 S.E.2d at 468 (citing O.C.G.A. § 19-6-5(a) (2022)).
10. *Williams*, 362 Ga. App. at 844, 870 S.E.2d at 468.
11. *Id.*
12. *Id.*

ruling that his own procedure or conduct procured or aided in causing."[13] Furthermore, although Husband contended the trial court inaccurately valued Wife's potential interest in her family's company and real estate holdings to determine her needs, Husband showed no evidence Wife was presently receiving income from the assets.[14]

Concerning the yearly percentage of the annual bonus awarded to Wife, the court held, "the trial court had wide latitude to calculate the alimony award, and, in light of its considerations [outlined in its order], we cannot say it abused its discretion."[15] Further, nothing in the final judgment suggested that the trial court intended the alimony award to punish Husband for any misconduct.[16] Accordingly, the court of appeals held that the trial court did not err in its award of periodic and lump sum alimony to Wife.[17]

III. EQUITABLE DIVISION OF PROPERTY

In *Franco v. Eagle*,[18] Husband appealed the trial court's divorce decree arguing the Gwinnett County Superior Court erred by equitably dividing the value of certain real property.[19] Although the parties' testimony was in dispute concerning whether loan funds from a marital property were used to purchase the property, the evidence was undisputed that Wife's name was never on the deed to the property and it was likewise undisputed that the property was deeded to Husband's brother in 2012, long before the divorce action was filed.[20] In its analysis, the Georgia Court of Appeals looked to *Armour v. Holcombe*,[21] in which the Supreme Court of Georgia held, "[t]he law of contracts and titles is respected in divorce cases."[22] The court further cited *Gibson v. Gibson*,[23] which held, "property that has been conveyed to a third party is not subject to equitable division absent a showing of fraudulent transfer."[24] Concluding that "[t]he record showed [Wife made no efforts], either before or during

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13. *Id.* (citing Saravia v. Mendoza, 303 Ga. App. 758, 762, 695 S.E.2d 47 (2010)).
14. *Williams*, 362 Ga. App. at 844, 870 S.E.2d at 468.
15. *Id.* (quoting Pryce v. Pryce, 359 Ga. App. 590, 595, 859 S.E.2d 554, 558 (2021)).
16. *Williams*, 362 Ga. App. at 845, 870 S.E.2d at 468.
17. *Id.* at 845, 870 S.E.2d at 469.
18. 361 Ga. App. 506, 864 S.E.2d 675 (2021).
19. *Id.* at 506, 864 S.E.2d at 677.
20. *Id.* at 511, 864 S.E.2d at 679.
21. 288 Ga. 50, 701 S.E.2d 169 (2010).
22. *Franco*, 361 Ga. App. at 511, 864 S.E.2d at 679 (quoting *Armour*, 288 Ga. at 52, 701 S.E.2d at 171).
23. 301 Ga. 622, 801 S.E.2d 40 (2017).
24. *Franco*, 361 Ga. App. at 511, 864 S.E.2d at 679 (quoting *Gibson*, 301 Ga. at 625, 801 S.E.2d at 44).

the divorce litigation, to have the conveyance to [Husband's] brother set aside as fraudulent, and that the trial court did not make a finding that the property had been fraudulently transferred," the court of appeals held that the trial court erred in equitably dividing the value of the property between the parties and reversed that portion of the final judgment.[25]

IV. Paternity and Legitimation

In *Shultz v. Walker*,[26] Billy Wayne Shultz III appealed an order from the Pike County Superior Court denying his motion to set aside an order denying his petition to legitimate his minor child.[27] The undisputed facts showed that Shultz was the father of a minor child, B.W.S., born in November 2015. Shultz and the child's mother were never married but were in a relationship at the time of the child's birth. Shultz and the child's mother executed an acknowledgment of paternity and administrative legitimation of B.W.S. a few days after the child's birth. Shultz's relationship with the child's mother ended after he began to exhibit symptoms of mental illness. The two maintained a co-parenting relationship until 2017, when the child's mother cut off contact between Shultz and the child. In February 2019, Shultz filed a petition to legitimate the child. During the proceedings, neither party informed the court about the previous administrative legitimation. After a hearing, the trial court denied Shultz's petition, finding that he had abandoned his opportunity interest to develop his relationship with the child.[28]

In October 2020, Shultz filed a motion to set aside the judgment arguing that a non-amendable defect appeared on the face of the record as no legitimation was necessary due to his previous administrative legitimation of the child.[29] Shultz amended his motion to set aside to also argue that fraud, accident, or mistake rendered the judgment void. The court subsequently denied Shultz's motion on the grounds that there was no legal basis to set aside the judgment.[30]

The Georgia Court of Appeals analyzed the trial court's ruling under the "abuse of discretion" standard.[31] Citing applicable law, the court noted that a trial court may set aside its judgment under limited circumstances, of which Shultz raised as follows:

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25. *Franco*, 361 Ga. App. at 511, 864 S.E.2d at 680.
26. 361 Ga. App. 819, 865 S.E.2d 637 (2021).
27. *Id.* at 819, 865 S.E.2d at 638.
28. *Id.* at 819–20, 865 S.E.2d at 638–39.
29. *Id.* at 820, 865 S.E.2d at 639.
30. *Id.*
31. *Id.* at 820–21, 865 S.E.2d at 639.

> Fraud, accident, or mistake of the acts of the adverse party unmixed with the negligence or fault of the movant; [and] [a] nonamendable defect which appears upon the face of the record or pleadings. Under this paragraph, it is not sufficient that the complaint or other pleading fails to state a claim upon which relief can be granted, but the pleadings must affirmatively show no claim in fact existed.[32]

The court held that "because Shultz failed to raise the issues of the existence, validity, and effect of the underlying administrative legitimation" of the child for the trial court to consider before denying his petition to legitimate his minor child, the mistake of fact on which the father attempted to rely was "not unmixed with his own negligence or fault in failing to inform the superior court of the previous administrative legitimation"; the trial court did not abuse its discretion in denying the father's motion to set aside the judgment on that ground.[33] However, the court determined that the trial court failed to address Shultz's claim that the administrative legitimation constituted a non-amendable defect upon the face of the record or pleadings; therefore, the case was remanded to the trial court for consideration of this claim.[34]

In *Jefferson v. O'Neal*,[35] Alvin Jefferson appealed "from the [Monroe County Superior Court's] grant of a legitimation petition filed by Cyprus O'Neal."[36] Jefferson was the legal father of a minor child, K.J., who was born in 2011 during Jefferson's marriage to the child's mother. In April 2020, O'Neal filed a petition to legitimate K.J., alleging, among other things, that O'Neal was the child's biological father, that K.J. was living with O'Neal, and that it was in K.J.'s best interests that the legitimation be granted.[37] "After the hearing, the trial court issued an order granting the legitimation. The court found that a DNA test had confirmed that O'Neal was K.J.'s biological father" and that "O'Neal did not abandon his opportunity interest in the child as he was unaware that K.J. could be his biological child before 2019."[38] The court stated that it considered the child's best interests, "which is the standard to apply when deciding whether to permit the legal father's status to be challenged by a rebuttal of the presumption of legitimacy."[39] The court went on to find that "this case [was] not prohibited by public policy because O'Neal did not abandon

32. *Id.* at 821, 865 S.E.2d at 639.
33. *Id.* at 822, 865 S.E.2d at 640.
34. *Id.* at 822–23, 865 S.E.2d at 640.
35. 364 Ga. App. 23, 873 S.E.2d 481 (2022).
36. *Id.* at 23, 873 S.E.2d at 483.
37. *Id.*
38. *Id.*
39. *Id.* at 24, 873 S.E.2d at 483.

his opportunity interest in K.J., and because it was in K.J.'s best interest to grant the petition for legitimation. Therefore, the court declared O'Neal to be K.J.'s legal father."[40] "The court also noted that it was in K.J.'s best interest to not 'cut off any reasonable ties with' Jefferson," including basketball (which Jefferson coached) and visiting with Jefferson.[41]

On appeal, Jefferson argued that the order granting O'Neal's legitimation petition under Official Code of Georgia Annotated section 19-7-22(d)(1)[42] should be vacated because the order failed to terminate Jefferson's parental rights before granting O'Neal's legitimation petition.[43] Jefferson further argued that the trial court's order was unclear as to what it found was in the child's best interest.[44]

The court noted that a "biological father's petition to legitimate a child who was born in wedlock is in essence a petition to terminate the parental rights of the legal father."[45] As such, the trial court could not have granted O'Neal's petition without first terminating Jefferson's parental rights.[46] Because the threshold for terminating a party's parental rights is high, legitimation cases in which the child has an existing legal father consequently are held to a higher standard as the party seeking legitimation must make the showings required for both the legitimation and termination of the parental rights of the legal father.[47]

While the trial court found that O'Neal had not abandoned his opportunity interest in the child and that it was in K.J.'s best interests to grant O'Neal's petition for legitimation, the trial court did not explicitly terminate Jefferson's parental rights before granting the legitimation.[48] Further, the trial court's order was unclear as to whether it believed terminating Jefferson's rights was in the child's best interests as the court also found that it was in K.J.'s best interest to maintain "reasonable ties" with Jefferson.[49] Accordingly, the court of appeals vacated the trial court's order and remanded the case directing the trial court "to make explicit whether it finds it to be in K.J.'s best interest to

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40. *Id.*
41. *Id.*
42. O.C.G.A. § 19-7-22(d)(1) (2022).
43. *Jefferson*, 364 Ga. App. at 24, 873 S.E.2d at 484.
44. *Id.* at 25, 873 S.E.2d at 484.
45. *Id.* at 24, 873 S.E.2d at 484 (quoting Brine v. Shipp, 291 Ga. 376, 379, 729 S.E.2d 393, 396 (2012)).
46. *Jefferson*, 364 Ga. App. at 24, 873 S.E.2d at 484.
47. *Id.* at 25, 873 S.E.2d at 484.
48. *Id.*
49. *Id.*

terminate Jefferson's rights, and upon what evidence it makes such a finding."[50]

V. CHILD SUPPORT

In *Lockhart v. Lockhart*,[51] Markiyas Lockhart (Husband) appealed a divorce decree that awarded child support to his former wife, Sharaye Lockhart (Wife).[52] Husband argued that the Rockdale County Superior Court erred by imputing $4,000 in monthly income to him and incorrectly calculating the wife's cost of work-related childcare. The trial court based its determination of Husband's imputed income primarily on his earnings from 2015 through 2017 when he was employed as a tow truck driver and his gross income ranged from approximately $58,000 to $61,000. However, following the parties' separation and Husband's relocation to Las Vegas, Husband had difficulty finding work. Husband tendered paystubs for various jobs he held in 2018 and 2019, explaining that his ability to hold a steady job had been hampered by an arrest (based on an abandonment claim) and by the COVID-19 pandemic.[53] "At the time of the final hearing in 2020, . . . Husband was working temporarily as a day laborer."[54]

The Georgia Court of Appeals reviewed the factors trial courts are to consider when calculating a party's imputed income, including:

> [A]ssets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case.[55]

The court noted that "while a party's past income is some evidence of earning capacity, it is not, in itself, conclusive, but must be considered along with other relevant circumstances."[56]

The court concluded that the trial court erred in imputing Husband's income based on earnings from 2015 through 2017, while Husband was

50. *Id.*
51. 361 Ga. App. 499, 863 S.E.2d174 (2021).
52. *Id.* at 499, 863 S.E.2d at 175.
53. *Id.* at 500–01, 863 S.E.2d at 176–77.
54. *Id.* at 501, 863 S.E.2d at 177.
55. *Id.* at 501, 863 S.E.2d at 176 (citing O.C.G.A. § 19-6-15(f)(4)(A) (2020)).
56. *Lockhart*, 361 Ga. App. at 501, 863 S.E.2d at 177.

still employed, and not during 2018 and 2019, when his income was less consistent.[57] The trial court

> awarded child support amounting to more than $24,000 per year based on imputed income of $48,000, which income was nearly double the amount the Husband testified he earned from 2018 up through the 2020 hearing ($13 per hour as a laborer or bus driver, i.e., approximately $27,000 per year).[58]

The court vacated the portion of the order imputing income to Husband and remanded the case for the trial court to enter an award supported by all of the evidence.[59]

In *Franco*, Husband appealed a divorce decree which included a child support award based on income imputed to Husband.[60] Husband argued that the trial court erred in imputing $10,000 per month in income to him, which he claimed resulted in an improper calculation of child support.[61]

The court of appeals reviewed applicable statutes and noted that O.C.G.A. § 19-6-15 establishes two requisite conditions for imputing income, namely, (1) a party's "failure to produce 'reliable evidence of income' and (2) the absence of any other 'reliable evidence of such parent's income' or income potential."[62] Husband argued that he produced reliable evidence of his self-employment income "in the form of tax returns and 1099 statements for tax years 2015, 2016 and 2017, and 1099s and bank records for 2018."[63] The trial court found (1) that Husband "had only produced a portion of the financial information requested by [Wife];" (2) "that his testimony conflicted with at least some of the documents he produced;" (3) "that he provided inadequate evidence as to his income and transactions involving property in his possession and control;" and (4) "that he commingled his business and personal accounts."[64] The court of appeals noted that, per the statute,

> income and expenses from self-employment or operation of a business should be carefully reviewed by the court or the jury to determine an appropriate level of gross income available to the parent to satisfy a

57. *Id.* at 501–02, 863 S.E.2d at 176–77.
58. *Id.* at 502, 863 S.E.2d at 177.
59. *Id.* at 504, 863 S.E.2d at 179.
60. *Franco*, 361 Ga. App. at 506, 864 S.E.2d at 677.
61. *Id.* at 507, 864 S.E.2d at 677.
62. *Id.* at 508–09, 864 S.E.2d at 678 (citing O.C.G.A. § 19-6-15(f)(4)(B) (2022)).
63. *Franco*, 361 Ga. App. at 508, 864 S.E.2d at 678.
64. *Id.* at 509, 864 S.E.2d at 678–79.

> child support obligation. Generally, this amount will differ from a determination of business income for tax purposes.[65]

The court of appeals further held that it was for the trial court to determine "whether a party's own representations regarding . . . income were credible, and we will not disturb the trial court's factual findings in this regard if there is any evidence to support them."[66]

In *Williams*, Husband appealed a divorce decree that awarded, among other things, child support to his ex-wife.[67] Husband earned more than $2 million per year as a corporate director and was ordered to pay $3,825 in monthly child support. Without attaching a child support worksheet to its order, the trial court ordered Husband to pay as additional child support: the children's private school tuition; annual contributions to the children's college savings accounts; 80% of the children's extracurricular costs; 100% of the children's uncovered medical costs; 80% of the children's uncovered medical expenses; and an outstanding charitable pledge to the school for 2020.[68]

On appeal, Husband argued that the trial court's child support award deviated from statutory guidelines without making the necessary findings of fact or attaching child support worksheets to the order.[69] The court of appeals reviewed the trial court's child support award, agreed with Husband that the child support award did not comply with the statute, and determined that that the trial court failed to attach the child support worksheet and schedules as required by O.C.G.A. § 19-6-15(m)(1).[70]

Additionally, the trial court made no findings regarding the deviations for extracurricular activities, medical insurance, and uncovered medical expenses in accordance with O.C.G.A. § 19-6-15(i)(1)(B).[71] The court held that the trial court failed to include sufficient findings in regard to the deviations for tuition, the charitable pledge, and college savings plan.[72] While the trial court indicated the deviations were appropriate "as they reflect the disparity of income between the parties, are consistent with the intent expressed by both parties during their divorce trial and

65. *Id.* at 509, 864 S.E.2d at 678 (citing O.C.G.A. § 19-6-15(f)(1)(B) (2022)).

66. *Franco*, 361 Ga. App. at 510, 864 S.E.2d at 679 (quoting Daniel v. Daniel, 358 Ga. App. 880, 886, 856 S.E.2d 452, 460 (2021)).

67. *Williams*, 362 Ga. App. at 839, 870 S.E.2d at 465.

68. *Id.* at 839–40, 870 S.E.2d at 465.

69. *Id.* at 840, 870 S.E.2d at 466.

70. *Id.* at 840–41, 870 S.E.2d at 466 (citing O.C.G.A § 19-6-15(m)(1) (2022)).

71. *Williams*, 362 Ga. App. at 841, 870 S.E.2d at 466 (citing O.C.G.A § 19-6-15(i)(1)(B) (2022)).

72. *Williams*, 362 Ga. App. at 842, 870 S.E.2d at 466.

Husband can afford the same, given his high income," the trial court failed to include whether these deviations served the best interests of the children.[73] The court of appeals reversed the child support award and remanded the case for the trial court to make necessary findings.[74]

VI. CHILD CUSTODY

A. Modification

The case of *Pascal v. Pino*[75] serves as a reminder to all practitioners to be diligent in ensuring pleadings adhere to statute.[76] In *Pascal*, Diana Pascal appealed an order giving primary physical custody of her children to her former husband, Jose Pino. In the parties' 2018 divorce settlement, they agreed to joint legal and physical custody of their two minor children. In 2019, Pascal petitioned to modify custody and visitation. In response, Pino filed an emergency petition for custody. After a temporary hearing, Pino was awarded temporary sole legal and physical custody of the children. Pino did not request a modification of custody in his counterclaim to Pascal's petition. At the final hearing in August 2020, Pino's counsel indicated, for the first time, that Pino was seeking permanent physical custody of the children. At the conclusion of the hearing, the Gwinnett County Superior Court gave the parties joint legal custody, with Pino having primary physical custody. Pascal appealed the final order.[77]

Pascal argued that the trial court abused its discretion in granting Pino relief that he did not seek in his counterclaim.[78] Specifically, Pascal argued that the

> trial court had no authority to award the father primary physical custody of the children because the father did not request a change in custody in his counterclaim and, in fact, specifically requested that the provisions of the original parenting plan—in which the parties had joint legal and physical custody—remain unchanged.[79]

73. *Id.* at 842, 870 S.E.2d at 466–67.
74. *Id.* at 839, 870 S.E.2d at 465.
75. 361 Ga. App. 212, 863 S.E.2d 694 (2021).
76. *Id.* at 215–16, 863 S.E.2d at 697.
77. *Id.* at 213–14, 863 S.E.2d at 695–96.
78. *Id.*
79. *Id.* at 214, 863 S.E.2d at 696.

The Georgia Court of Appeals agreed with Pascal.[80] O.C.G.A. § 19-9-23[81] provides that a party can request modification of a custody order by initiating a complaint seeking a modification or by bringing a counterclaim in response to a complaint.[82] Because Pino failed to properly seek a change of legal or physical custody as provided by the statute, the trial court lacked authority to grant such an award.[83]

Pino argued that the trial court had discretion to order what it determined to be in the best interests of the children, even if it runs counter to the relief sought by the parties in their pleadings.[84] The court rejected that argument noting that it ran contrary to the statute and the court "must presume that 'the legislature meant something by the passage of [a statute] and [we are] charged with the duty to construe a statute so as not to render it meaningless.'"[85] The court further noted that it has "never recognized unfettered discretion in the trial court's ability to craft a remedy in the best interests of the children regardless of the requested relief before the court."[86] Because Pino did not comply with statutory mandates which require him to seek a custody modification via a petition or counterclaim, the trial court lacked authority to issue an order modifying the parties' custody arrangements.[87] The trial court's order was vacated, and the matter was remanded for further proceedings.[88]

B. No Material Change

In *Stanley v. Edwards*,[89] Tiffany Stanley appealed an order granting Quinton Edwards's motion for modification of a child custody order.[90] In 2018, Edwards filed a complaint for modification of child custody and support, arguing that Stanley had "not taken action for the furtherance of the children's well-being"; failed to support the needs of the children; allowed the children to be around immoral behavior such as partying and

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80. *Id.*
81. O.C.G.A. § 19-9-23 (2022).
82. *Pascal*, 361 Ga. App. at 214, 863 S.E.2d at 696 (citing O.C.G.A. § 19-9-23).
83. *Pascal*, 361 Ga. App. at 215, 863 S.E.2d at 697.
84. *Id.*
85. *Id.* at 216, 863 S.E.2d at 697 (citing Powell v. Studstill, 264 Ga. 109, 113, 441 S.E.2d 52, 55 (1994)).
86. *Pascal*, 361 Ga. App. at 216, 863 S.E.2d at 698.
87. *Id.* at 212, 863 S.E.2d at 695.
88. *Id.*
89. 363 Ga. App. 331, 870 S.E.2d 911 (2022).
90. *Id.* at 331, 870 S.E.2d at 912.

drugs; and allowed numerous live-in boyfriends to be around the children.[91]

At the final hearing, one of the children's seventh grade teachers testified that the child was making adequate progress in school and had no behavioral issues.[92] The stepmother, who was precluded from having contact with Stanley per the terms of the original parenting plan, testified as to the children's behavioral problems when they were at Edwards's home. Both parties testified as to their work schedules. Several social media posts were introduced showing Stanley in short dresses or tight clothing, smoking tobacco and marijuana, partying, and using foul language. One child testified that he had witnessed individuals smoking and drinking at both parents' houses. At the conclusion of the hearing, the Laurens County Superior Court entered an order granting Edwards primary physical custody of the children.[93]

On appeal, Stanley argued that the trial court abused its discretion by modifying custody absent reasonable evidence that there was a material change in circumstances that had an adverse effect on the children.[94] The court of appeals summarized the two-part test that a trial court must apply before instituting a change in custody.[95] The trial court first "determine[s] whether there has been a material change in circumstances affecting the welfare of the child since the last custody award."[96] If so, the trial then "determines whether the child's best interests will be served by a change in custody."[97] The court reviewed the evidence that Stanley had alienated Edwards, that one child was not making progress at school, and that Stanley exhibited questionable moral judgment.[98] The court emphasized that divorced parents need not be perfect in every respect and that trial courts are to "look not to the faults of the parents, but to the needs of the child."[99] Determining that the evidence Edwards presented constituted a continuation of long patterns that was in existence from before the parties' divorce, the court abused its discretion in granting Edwards's petition for modification of custody and reversed.[100]

91. *Id.* at 332, 870 S.E.2d at 912.
92. *Id.* at 332–33, 870 S.E.2d at 912–13.
93. *Id.* at 334–36, 870 S.E.2d at 914–15.
94. *Id.* at 336, 870 S.E.2d at 915.
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.* at 337–40, 870 S.E.2d at 915–17.
99. *Id.* at 340, 870 S.E.2d at 917.
100. *Id.* at 340–41, 870 S.E.2d at 918.

In *Beckman v. Beckman*,[101] the court of appeals affirmed a long line of rulings prohibiting trial courts from placing undue burdens on the ability of parents to exercise their parenting time.[102] John Beckman (Father) appealed a final order that prohibited any contact between a minor child and his new wife.[103]

Beckman and his former wife, Keely Beckman (Mother), were married in 2011 and had a son in 2018.[104] Their marriage ended when it was discovered that Father had an affair with his sister-in-law, Lauren Bethune, who was married to Mother's brother. A settlement agreement between the parties gave Mother primary custody of the parties' son, with Father having visitation rights. The settlement agreement contained a restrictive prohibition that precluded Bethune from ever being alone with the parties' son. Subsequent to the divorce, Bethune became pregnant with Father's child, divorced her husband, and planned to marry Father. Mother then filed a petition to expand the visitation restriction to prohibit all contact between Bethune and the parties' son. Father and Bethune married shortly before the trial court held a hearing on Mother's modification action.[105] Following a hearing, the Columbia County Superior Court entered an order prohibiting all contact between Bethune and the parties' son stating that Father and Bethune's conduct demonstrated "deep character flaws" and "a lack of insight and judgment" and that any contact with Bethune would not be in the child's best interest.[106] Father appealed the order.[107]

Father argued on appeal that the trial court abused its discretion by extending the visitation restriction to prohibit all contact between Bethune and the child because there was no evidence that it would harm the child.[108] The court of appeals noted that a trial court does not have unlimited discretion to determine what is in a child's best interest.[109] Citing relevant statutory law, the court discussed that it is the express policy of Georgia for parents to share in the rights and responsibilities of raising their children after their relationship has dissolved.[110] As such, the "Supreme Court has held that 'a trial court abuses its discretion when

101. 362 Ga. App. 748, 870 S.E.2d 66 (2022).
102. *Id.* at 748, 870 S.E.2d at 67.
103. *Id.*
104. *Id.*
105. *Id.* at 750, 870 S.E.2d at 69.
106. *Id.*
107. *Id.* at 751, 870 S.E.2d at 69.
108. *Id.*
109. *Id.*
110. *Id.*

it places an unnecessarily burdensome limitation on the exercise of a parent's right of visitation.'"[111]

A trial court can prohibit visitation with a non-custodial parent if evidence shows that the children have been exposed to inappropriate conduct or that exposure to the non-custodial parent would adversely affect the children.[112] Here, no evidence was presented that Father and Bethune engaged in inappropriate conduct in the presence of the child. Rather, the trial court based its decision on Father and Bethune's affair and other factors not related to the child. As it emphasized in *Stanley*, the court stated that trial courts should not look to the faults of the parents, but to the need of the child.[113] The trial court also included improper speculation regarding the potential instability and chaos of Father and Bethune's relationship.[114] The court held that the trial court abused its discretion by prohibiting all contact between Bethune and the parties' son, which prohibition placed an unnecessary burden on Father's ability to exercise his visitation rights.[115] Mother argued that the trial court had referenced the original prohibition in the parties' divorce decree to justify its order, but that restriction was consented to by all parties, and there was no evidence that Father would have agreed to expand that prohibition in the modified order.[116] Accordingly, the court vacated the trial court's order and remanded the case with direction to deny Mother's request to modify the prohibition.[117]

C. Third Party Custody

Blackwelder v. Shugard[118] centered around a custody dispute between a father and his children's grandmother.[119] Ronald Blackwelder (Father) appealed from a Final Order and Decree of Legitimation which awarded sole custody of three minor children to Debbie Dye (Grandmother), the children's maternal grandmother. Father initiated the proceedings in 2015 when he sought legitimation and custody of two children, M.B. and A.B. A third child, M.S., was born shortly thereafter.[120] In 2017, Father

111. *Id.* at 751, 870 S.E.2d at 69–70 (quoting Brandenburg v. Brandenburg, 274 Ga. 183, 184, 551 S.E.2d 721, 721–22 (2001)).

112. *Beckman*, 362 Ga. App. at 752, 870 S.E.2d at 70.

113. *Id.* at 752, 870 S.E.2d at 70.

114. *Id.* at 753, 870 S.E.2d at 70.

115. *Id.*

116. *Id.* at 754, 870 S.E.2d at 71.

117. *Id.*

118. 360 Ga. App. 306, 861 S.E.2d 141 (2021).

119. *Id.* at 306, 861 S.E.2d at 142.

120. *Id.* at 307, 309, 861 S.E.2d at 142–43.

filed a motion for an emergency hearing, arguing that the children's mother, Krista Shugard (Mother), "had allowed the children to excessively miss school; that she appeared to be highly intoxicated, delusional, and incoherent when [Father] would retrieve the children for visitation from her; and that her home was 'filthy' and appeared to be unsanitary and unsafe for the children."[121] The Burke County Superior Court found that Mother had failed a drug test for methamphetamine, and the Division of Family and Children Services had intervened and placed the children with Father temporarily.[122]

At the conclusion of the emergency hearing, the court awarded primary physical custody to Father on a temporary basis.[123] At the hearing, Grandmother sought grandparent visitation and custodial rights. The trial court found that it would be harmful to the children to prevent them from regular association with Grandmother and awarded Grandmother visitation with the children. In 2018, Grandmother filed a petition claiming Father had shown himself to be an unfit parent. After Mother raised additional allegations against Father, and Father failed a court-ordered drug test, the trial court awarded temporary custody of the children to Grandmother.[124]

In its final order, the trial court stated that Father had another child with whom he had no cognizable relationship, that he had a history of domestic violence, and that his youngest child almost drowned while under his watch.[125] The court made additional findings regarding Mother's "unmanaged significant mental health issues and her tumultuous episodes with her new husband."[126] The court found that the children had "spent significant periods of time in the home of [Grandmother, who had] provided for their health and dental needs, as well as their subsistence, education and nurturing."[127]

The trial court concluded:

> The procedural history of the case is reflective of the dynamics of the lives of [Father] and [Mother] which dynamics have directly injured the children in controversy, presenting a real and present danger of physical, emotional, psychological harm to the children if either of said parties should be entrusted with unsupervised physical custody of

121. *Id.* at 307, 861 S.E.2d at 142.
122. *Id.*
123. *Id.*
124. *Id.* at 307–08, 861 S.E.2d at 142–43.
125. *Id.* at 308, 861 S.E.2d at 143.
126. *Id.*
127. *Id.*

> them. [Grandmother] is the only party who has shown that she offers the children a continuously safe and healthful home environment.[128]

Finding that the children "(have and) will suffer physical or emotional harm if custody were awarded to either biological parent," the trial court "found that it was in the children's best interests to be placed in the sole custody of" Grandmother.[129]

On appeal, Father argued there was no evidence that any of his children had been harmed while in his custody and that the potential drowning was an isolated incident.[130] He also argued that the trial court failed to make a finding that his delay in notifying Mother about the near-drowning had harmed the children.[131]

The court of appeals discussed O.C.G.A. § 19-7-1(b.1),[132] which provides a parent may lose custody to a grandparent only if the court determines by clear and convincing evidence "that an award of custody to such third party is for the best interest of the . . . [child] and will best promote their welfare and happiness."[133]

The "best-interest-of-the-child" standard of O.C.G.A. § 19-7-1(b.1) "requir[es] the third party to show that parental custody would harm the child to rebut the statutory presumption in favor of the parent."[134] Once the presumption in favor of parental custody is overcome, the third party "must show that an award of custody to him or her will best promote the child's health, welfare, and happiness."[135] "Harm in this context means 'either physical harm or significant, long-term emotional harm.'"[136]

The court concluded that the trial court's order explicitly addressed the relevant statutory factors and agreed, given the evidence presented at trial, including father's history of domestic violence and the near-drowning of M.S., along with the trial court's finding that the clear and convincing evidence showed the children would suffer physical or emotional harm if custody were awarded to either biological parent.[137]

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128. *Id.* at 308–09, 861 S.E.2d at 143.
129. *Id.* at 309, 861 S.E.2d at 143.
130. *Id.* at 309, 861 S.E.2d at 144.
131. *Id.*
132. O.C.G.A. § 19-7-1(b.1) (2022).
133. *Blackwelder* 360 Ga. App. at 309, 861 S.E.2d at 144 (citing O.C.G.A. § 19-7-1(b.1)).
134. *Blackwelder*, 360 Ga. App. at 309–10, 861 S.E.2d at 144 (citing O.C.G.A. § 19-7-1(b.1)).
135. *Blackwelder*, 360 Ga. App. at 310, 861 S.E.2d at 144.
136. *Id.*
137. *Id.* at 311, 861 S.E.2d at 145.

Accordingly, the court affirmed the trial court's final order that granted custody of the children to Grandmother.[138]

D. Equitable Caregiver Act

In the case of *Skinner v. Miles*,[139] the court of appeals examined the application of the relatively new Equitable Caregiver Act[140] passed in 2019.[141] Sarah Skinner appealed an order in favor of Robin Miles under the Equitable Caregiver Act (the Act), which granted Miles standing as an equitable caregiver.[142] Miles and Skinner met in 1997 while working as teachers at the same school. After dating for a period of time, the two bought a home together. The couple also wore rings on their left ring fingers as symbols of their commitment to each other and discussed having children. In 2009, they adopted a child in Texas. Skinner was listed as the sole adopting parent because Texas law did not allow same-sex couples to adopt. Skinner later became pregnant via artificial insemination and gave birth to another child in January 2010. The couple used Miles's surname as a middle name for both children to recognize her role in their lives.[143] "Although the parties had separate bank accounts, Miles provided Skinner money, which Skinner used to help pay the necessary home and child expenses, although the frequency and amounts of these payments varied."[144] Both parties assisted in "caring for the children, including bathing, feeding, and changing them, in addition to taking them to extracurricular activities."[145] The parties also took the kids on vacations, celebrated holidays together, and sent Christmas cards to family and friends featuring pictures of themselves and the kids.[146] The children viewed both parties as their parents and referred to Miles as "Momma" or "Mombo" and Skinner as "Mommy."[147]

The couple separated in 2015, and Skinner married Kelly Walter in 2018.[148] After Skinner imposed a parenting schedule that limited Miles's visitation time with the children, Miles filed a petition to determine

138. *Id.*
139. 361 Ga. App. 764, 863 S.E.2d 578 (2021).
140. Equitable Caregiver Act, O.C.G.A. § 19-7-3.1 (2022).
141. *Skinner*, 361 Ga. App. at 764, 863 S.E.2d at 578.
142. *Id.*
143. *Id.* at 764–65, 863 S.E.2d at 580.
144. *Id.*
145. *Id.* at 765, 863 S.E.2d at 580.
146. *Id.* at 765, 863 S.E.2d at 580–81.
147. *Id.* at 765, 863 S.E.2d at 580.
148. *Id.* at 765, 863 S.E.2d at 581.

parenting time. Following a mediation, the parties agreed to a visitation arrangement and Miles voluntarily dismissed her petition.[149]

After the Equitable Caregiver Act, O.C.G.A. § 19-7-3.1,[150] "became effective in July 2019, Miles filed an action seeking designation as an equitable caregiver and a determination of visitation and custody rights."[151] The DeKalb County Superior Court held a four-day bench trial at which the parties presented testimony regarding, inter alia, "the previous relationship between Miles and Skinner, Miles's relationship with the children, Miles's role in their lives, and any potential harm that might result if Miles was not granted equitable caregiver status."[152] The trial court ruled in Miles's favor, finding that Miles had "established a strong bond with both minor children and that [she] had an ongoing relationship with both children since [S.M.S.'s] adoption and [K.M.S.'s] birth."[153] The court also found that the children would suffer long-term emotional harm if Miles was not granted equitable caregiver status.[154]

On appeal, Skinner argued that "the trial court erred in granting Miles standing as an equitable caregiver under O.C.G.A. § 19-7-3.1" as "Miles failed to satisfy the required statutory elements by clear and convincing evidence."[155]

The court of appeals discussed the two-part analysis a trial court must conduct prior to designating a party as an equitable caregiver.[156] First, the trial court must "determine on the basis of the pleadings and affidavits" whether a petitioner has presented prima facie evidence of the requirements set forth in O.C.G.A. § 19-7-3.1(d).[157] Second, if the trial court finds that the petitioner has presented sufficient prima facie evidence to satisfy these elements, the trial court must find by clear and convincing evidence that that the individual has:

> (1) Fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life;
> (2) Engaged in consistent caretaking of the child;
> (3) Established a bonded and dependent relationship with the child, which relationship was fostered or supported by a parent of the child, and such individual and the parent have understood, acknowledged,

149. *Id.* at 765, 863 S.E.2d at 581.
150. *See* O.C.G.A. § 19-7-3.1.
151. *Skinner*, 361 Ga. App. at 765, 863 S.E.2d at 581.
152. *Id.* at 766, 863 S.E.2d at 581.
153. *Id.*
154. *Id.*
155. *Id.* at 766, 863 S.E.2d at 581 (citing O.C.G.A. § 19-7-3.1).
156. *Skinner*, 361 Ga. App. at 766, 863 S.E.2d at 581.
157. *Id.* at 766, 863 S.E.2d at 581 (citing O.C.G.A. § 19-7-3.1(b)(2)–(3) (2022)).

> or accepted that or behaved as though such individual is a parent of the child;
> (4) Accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and
> (5) Demonstrated that the child will suffer physical harm or long-term emotional harm and that continuing the relationship between such individual and the child is in the best interest of the child.[158]

The Equitable Caregiver Act further provides that:

> in determining the existence of harm, the court shall consider factors related to the child's needs, including, but not limited to,
> (1) Who are the past and present caretakers of the child;
> (2) With whom has the child formed psychological bonds and the strength of those bonds;
> (3) Whether competing parties evidenced an interest in, and contact with, the child over time; and
> (4) Whether the child has unique medical or psychological needs that one party is better able to meet.[159]

Based on the facts Miles presented at trial, the court agreed that Miles had established a "permanent, unequivocal, committed, and responsible parental role."[160] Miles engaged in consistent caretaking and established a bonded and dependent relationship with the children. Further, Miles accepted full and permanent parental responsibilities without expectation of financial compensation. Last, Miles demonstrated that the children would suffer physical or emotional harm without her involvement and that a continuing relationship with her was in their best interest. In response to Skinner's competing evidence, the court gave deference to the trial court in regard to judging the credibility of the witnesses. The court affirmed the trial court's order, concluding that the trial court did not err in designating Miles an equitable caregiver pursuant to O.C.G.A. § 19-7-3.1 or in issuing an order regarding custody and visitation.[161]

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158. *Skinner*, 361 Ga. App. at 767, 863 S.E.2d at 582 (citing O.C.G.A. § 19-7-3.1(d)(1)–(5) (2022)).
159. *Skinner*, 361 Ga. App. at 767, 863 S.E.2d at 582 (citing O.C.G.A. § 19-7-3.1(e)(1)–(4)).
160. *Skinner*, 361 Ga. App. at 768, 863 S.E.2d at 582.
161. *Id.* at 768–70, 863 S.E.2d at 582–84.

VII. LEGISLATIVE UPDATES

Senate Bill 576 amends O.C.G.A. § 19-7-3[162] by revising subpart (d) regarding the establishment of visitation for grandparents and other specific family members.[163] The revisions define a clear and convincing evidentiary burden a petitioner must meet and provide a list of specific factors that would establish that harm may result if visitation is not granted.[164]

House Bill 1452 expands the definition of "dating violence" in O.C.G.A. § 19-13A-1(2)[165] to include acts of stalking or violence between persons who have been in a dating relationship within the last twelve months, as opposed to the last six months.[166]

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162. O.C.G.A. § 19-7-3 (2022).
163. Ga. S. Bill 576, Reg. Sess., 2022 Ga. Laws 749.
164. *Id.*
165. O.C.G.A. § 19-13A-1(2) (2022).
166. Ga. H.R. Bill 1452, Reg. Sess., 2022 Ga. Laws 367.