

# WHAT'S NEW IN CHILD WELFARE CASE LAW?

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**CWLS MEETING  
March 6, 2020**



# 2018 CASE LAW FELT LIKE



# 2019 CASE LAW FELT LIKE



# NOT SURE ABOUT 2020...



# RELEVANT CASES

- **JUVENILE COURT**

- **DEPENDENCY**
- **GUARDIANSHIP**
- **TERMINATION OF PARENTAL RIGHTS**

- **JUVENILE COURT ADJACENT**

- **LEGITIMATION**
- **ADOPTION**
- **GRANDPARENT VISITATION**
- **GRANDPARENT CUSTODY**





# DEPENDENCY

- **Grounds for dismissal**
- **Bad orders**
- **Sufficiency of evidence**
- **Limits of statutory authority**





# CLEAR AND CONVINCING EVIDENCE OF PRESENT DEPENDENCY REQUIRED

- **In the Interest of M.S., 352 Ga. App. 249 (Oct 11). Whitfield County.**
  - Trial court cannot speculate on future dependency of child
- **In the Interest of A.B., 350 Ga. App. 575 (June 19). Cobb County.**
  - Evidence sufficient
  - Due process challenge – dissent by Judge McFadden
- **In the Interest of E.S., 348 Ga. App. 546 (Feb 7). Douglas County.**
  - It is a well-settled appellate rule that one cannot complain of errors or rulings which his or her conduct procured or aided in causing.
- **In the Interest of V.G., 352 Ga. App. 404 (Oct 22). Fulton County.**
  - Insufficient evidence
  - Special concurrence by Judge Dillard



# DEPENDENCY REVERSED

- **In the Interest of L.K., A19A2328 (Feb 25, 2020). Hall County.**
  - DFCS carries burden of proof
  - No evidence children were harmed by father's actions
  - Court lacked clear and convincing evidence that children were presently dependent as to father

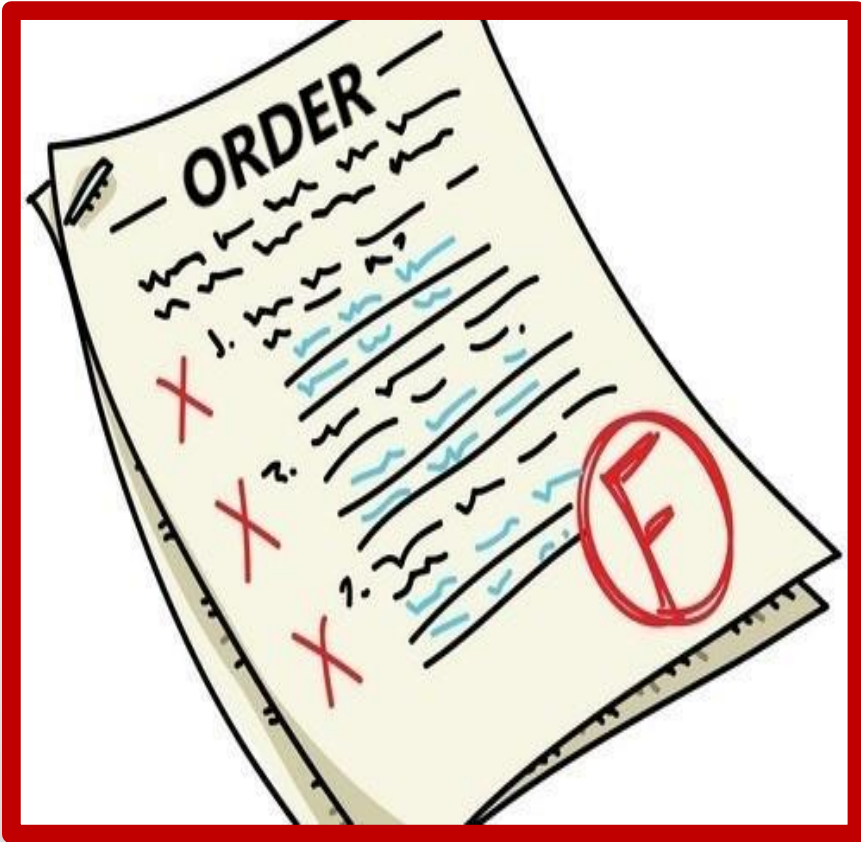


# COURT MUST APPLY PROPER LEGAL STANDARDS TO DISMISSALS



- **In the Interest of A.L.S., 350 Ga. App. 636 (June 20). Habersham County.**
  - Juvenile court erred in sua sponte dismissing dependency case
  - Juvenile court failed to take evidence regarding dismissal
  - Juvenile court failed to determine best interests of child
- **In the Interest of A.L., 351 Ga. App. 824 (Sept 12). Henry County.**
  - Dismissal is improper response to inconvenient forum – O.C.G.A. § 19-9-67(c)

# STOP WRITING BAD ORDERS!



- **In the Interest of J.G., 350 Ga. App. 588 (June 19). Richmond County.**
  - Order did not contain findings of fact that supported dependency or 3<sup>rd</sup> party custody
- **In the Interest of T.Y., 350 Ga. App. 553 (June 18). Emanuel County.**
  - Order intermingles findings of fact with conclusions of law
- **In the Interest of G.G., 351 Ga. App. 895 (Sept 20). Whitfield County.**
  - Findings of fact  $\neq$  recitation of witness testimony
  - Findings of fact must be separate from conclusions of law

# COURT EXCEEDS STATUTORY AUTHORITY WHEN IT ORDERS DFCS TO PROVIDE SERVICES NOT CONNECTED WITH REUNIFICATION

- In the Interest of A.M., 350 Ga. App. 333 (June 4).  
**Newton County.**
  - Placement or a change of custody outside DFCS shall relieve DFCS of further responsibility for such child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate. – O.C.G.A. § 15-11-212(d)



# GUARDIANSHIP

- Sufficiency of evidence
- Notice & hearing requirements





# GUARDIANS BEAR BURDEN OF PROOF WHEN OPPOSING TERMINATION OF TEMPORARY GUARDIANSHIP

- **In the Interest of J.L., 352 Ga. App. 125 (Oct 4). Chatham County.**
  - Guardians met burden set forth on Boddie v. Daniel
  - Child with guardians for ~3.5yrs since he was 10 months old
  - Mother visited sporadically
  - Mother provided minimal support
  - Mother admitted employment, mental health, and past drug issues
  - Mother had physically and financially neglected child





# NOTICE & HEARING REQUIREMENTS OF THE JUVENILE CODE ARE MANDATORY

- **In the Interest of J.C., 250 Ga. App. 34 (April 30). Richmond County.**
  - Dependent children placed with relatives out-of-state
  - At status review, Court *sua sponte* gave relatives permanent guardianship
  - Children's mother did not consent
  - No petition for guardianship – O.C.G.A. § 15-11-243
  - No notice to parent – O.C.G.A. § 15-11-243(a)
  - No notifications – O.C.G.A. § 15-11-241(7)
  - No best interest findings – O.C.G.A. § 15-11-240(a)(1)

# LEGITIMATION

- **Opportunity interest**
- **Fitness standard vs. best interest standard**



# THE WORLD TURNED UPSIDE DOWN



- Brumbelow v. Mathenia, 347 Ga. App. 861 (October 4, 2018).
- Certiorari GRANTED – Case No. S19C0426 (Aug 19).
- Oral Argument – January 15, 2020
  1. Did the COA err in reversing the trial court's finding that the Respondent had abandoned his opportunity interest?
  2. If not, did the Court of Appeals err in concluding that Respondent's legitimation petition must be assessed on remand under the parental fitness standard rather than the best interest standard?

# TERMINATION OF PARENTAL RIGHTS IN JUVENILE COURT

- **Post-termination placement**
- **Sufficiency of evidence**
- **Service**



# POST-TPR PLACEMENT MUST BE SUPPORTED BY FINDINGS UNDER O.C.G.A. § 15-11-321



- **In the Interest of A.H., 348 Ga. App. 817 (Feb 26).  
Douglas County.**
  - In determining which placement is in a child's best interests, the court *shall* enter findings of fact reflecting its consideration of factors in O.C.G.A. § 15-11-321



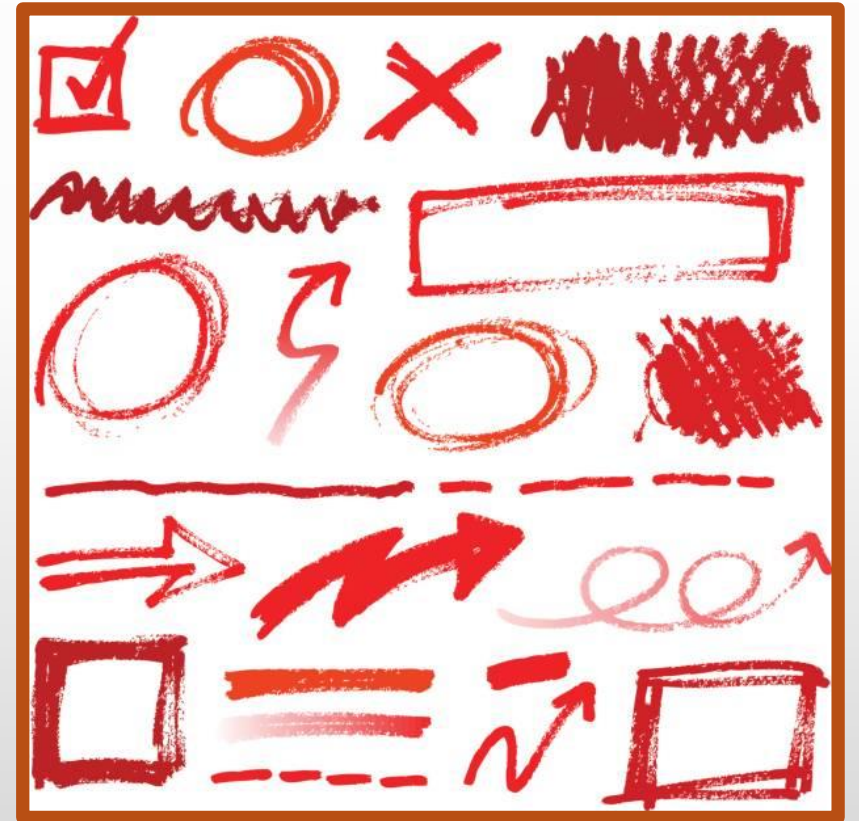
# **TERMINATION DECISION MUST BE SUPPORTED BY SUFFICIENT EVIDENCE**

- **In the Interest of C.A.B., 351 Ga. App. 666 (Aug 20). Whitfield County.**
  - Prior case vacated and remanded in unpublished opinion A18A0950
  - Evidence sufficient to support TPR



# FINDINGS OF FACT MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE

- **In the Interest of M.R.B., 350 Ga. App. 267 (June 19). Whitfield County.**
  - Order was riddled with material errors that warranted reversal
- **In the Interest of T.S., 351 Ga. App. 297 (July 1). Murray County.**
  - Improper for Court to rely on dependency order that had been set aside for lack of service
  - Factual findings in TPR order not supported by evidence
  - Court's entry of an amended TPR order extends time for filing discretionary application





# TPR AFFIRMED

- **In the Interest of C.L., A19A2239 (Feb 12, 2020).** Houston County.
  - Methamphetamine relapse
  - Mother skipped drug treatment appointment
  - Dismissed from rehab
  - Multiple positive screens
  - Children had adoptive resource
  - Evidence of harm if returned to mother
  - Finding of harm from continued dependency based on likely to continue (See In the Interest of J.E., 309 Ga. App. 51(2011)) and general need for permanency and emotional stability
  - Physical precedent only

# TERMINATION OF PARENTAL RIGHTS IN SUPERIOR COURT

- **Bad petition**
- **Bad order**
- **Justifiable cause**
- **Priority jurisdiction**



# **LEGAL CUSTODY INCLUDES RIGHT TO DETERMINE WHERE CHILD LIVES & PRIORITY JURISDICTION ISSUE SOLVED BY NEW ADOPTION CODE**



- **Dep't of Human Services v. Wytttenbach, 348 Ga. App. 810 (Feb 26). Cobb County.**
  - Non-party has standing to appeal order that enjoins its actions
  - Doctrine of priority jurisdiction does not apply because superior court has exclusive jurisdiction to terminate parental rights in adoption case
  - Splitting legal and physical custody infringes on DFCS's authority to determine the physical placement of children within its custody. – Long v. Long, 303 Ga. App. 215 (2010).



# TPR MUST BE SUPPORTED BY SUFFICIENT EVIDENCE



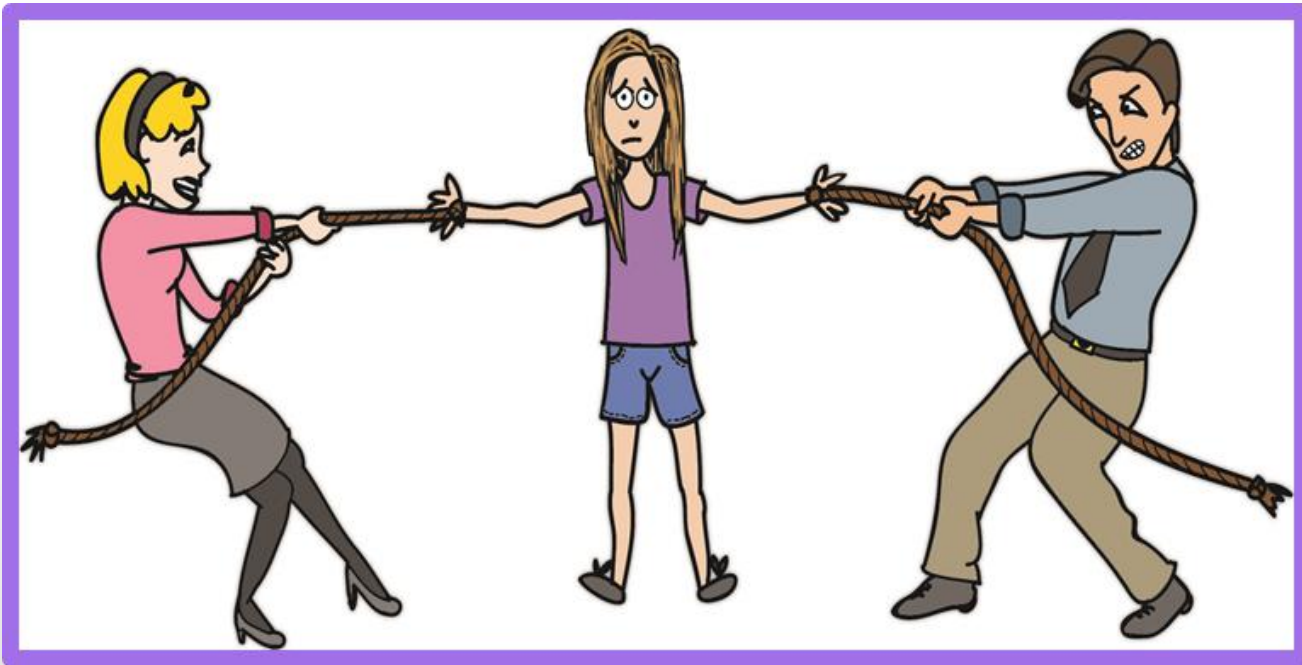
- **Hewlett v. Hewlett, 349 Ga. App. 267 (Mar 7). Bryan County.**
  - Evidence insufficient to support harm given child's stable placement with grandparents
  - Special concurrence by Judge Dillard
- **Price v. Grehowsky, 349 Ga. App. 214 (Mar 7). Glynn County.**
  - Failure to show lack of justifiable cause for mother's failure to communicate with child, to provide support

# TPR PETITION MUST GIVE NOTICE OF TPR



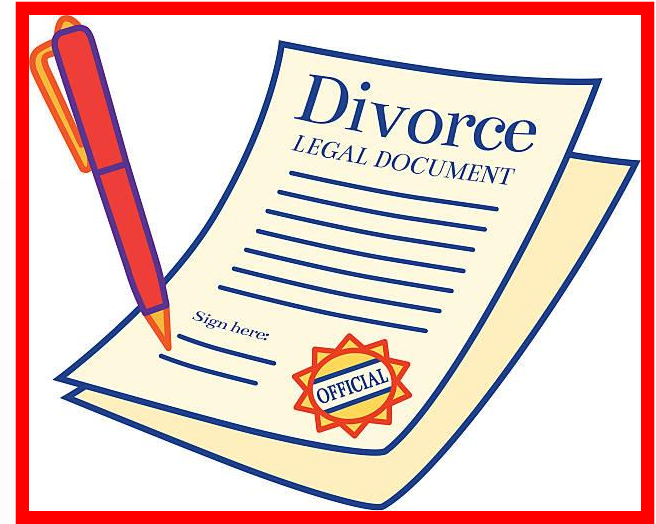
- **Woodall v. Johnson, 348 Ga. App. 820 (Feb 7). Henry County.**
  - Petition did not notify father of need to show cause why his rights should not be terminated
  - Petition did not cite Code section under which TPR and adoption were pled
  - Order did not cite Code section under which TPR and adoption were granted
  - Evidence did not support abandonment

# SUPERIOR COURT CUSTODY



- **Res judicata**

# FINDINGS IN PRIOR DIVORCE SETTLEMENT BINDING ON BOTH PARTIES



- **Brooks v. Lopez, 350 Ga. App. 390 (June 11). Cobb County.**
  - Divorce settlement found that parties were parent of the minor child
  - That order is binding on the parties as res judicata
  - Mother estopped from challenging father's paternity in later custody case
  - Superior court erred by granting mother's motion for paternity testing

# GRANDPARENT CUSTODY & VISITATION



- **Biology vs. legitimacy**
- **Sufficiency of evidence**
- **GAL fees**





# PARENTS OF UNLEGITIMATED FATHERS ARE GRANDPARENTS



- **Hannah v. Hatcher, 352 Ga. App. 186 (Oct 9). Haralson County.**
  - Unlegitimated grandparents have standing to petition for custody under O.C.G.A. § 19-7-1(b)(1)
  - O.C.G.A. § 9-7-3(a)(2) – Grandparent is defined as the parent of a parent of a minor child, the parent of a minor child's parent who has died, and the parent of a minor child's parent whose parental rights have been terminated

# AWARD OF VISITATION/ CUSTODY MUST BE SUPPORTED BY EVIDENCE

- **Fyffe v. Cain, 353 Ga. App. 130 (Oct 30). Henry County.**
  - Grandparent custody order affirmed
  - Order for supervised visitation not supported by evidence
- **Steedley v. Gilbreath, 352 Ga. App. 179 (Oct 9). Clinch County.**
  - Unclear from the trial court's order whether the court properly applied the analysis and considered the factors required by Clark v. Wade, 273 Ga. 587 (2001).
- **Mashburn v. Mashburn, 353 Ga. App. 31 (Oct 31). Whitfield County.**
  - 2 cases: father, grandparents
  - O.C.G.A. § 19-9-1(a) requires parenting plan
  - Self executing provisions not allowed
- **Elmore v. Clay, 348 Ga. App. 625 (Feb 13). Polk County.**
  - Failure to exercise discretion under O.C.G.A. § 19-7-3(c)(1)



# PETITIONING GRANDPARENTS ARE RESPONSIBLE FOR GAL FEES



- **Reid v. Lindsey, 348 Ga. App. 425 (Jan 22). Cherokee County.**
  - Visitation order affirmed
  - O.C.G.A. § 19-7-3(e)(1) – If a GAL is appointed in a family member visitation case, the GAL fees are the sole responsibility of the petitioning family member

# SOVEREIGN CITIZENS

<p><b>"WITHOUT PREJUDICE"</b> <b>UCC 1-308</b></p>	 <p><i>Posse Comitatus</i></p>
   <p><small>The British National Flag</small></p> <p><small>The British American National Flag</small></p>	<p>I am an <b>AMERICAN NATIONAL</b> Title 8 U.S.C. §1101(a)(22)(B)</p>
<p><i>Take Back the USA</i> ABOLISH THE FEDERAL RESERVE!</p>	 <p><i>Not Subject to Corporate Federal or Corporate State Jurisdiction.</i></p> <p><i>Sovereign Citizens</i></p>

# THAT'S NOT A THING

- **Deason v. State, 348 Ga. App. 514 (Feb 5). Bibb County.**
  - Sovereign citizen defense, which alleges that the government is illegitimate, “has no conceivable validity in American law.” *Brown v. State* 346 Ga. App. 245 (2018).



# CHILD ABUSE REGISTRY GOT A MAKEOVER



**BEFORE**

**AFTER**



# HB 478

- Revisions to O.C.G.A. 49-5-180, 182, 183, 184
- Took effect January 1, 2020
- Adds some due process protections to CAR appeals
- Increased opportunities for expungement
- No children on registry



Thank you for your time!