

2008 Family Law Case Law Updates

Nuts and Bolts of Family Law Seminar

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Wade v. Corinthian (May 19th 2008)

Supreme Court of Georgia.

283 Ga. 514, 661 S.E.2d 532

- *Determination of custody of a child over 18*
- *Determination of child support for a child over 18*

Facts:

Constance Wade f/k/a Corinthian ("Wade") and Trevor Corinthian ("Corinthian") divorced in 1994 in the Superior Court of Dekalb County. The parties entered into a settlement agreement which was incorporated into their Final Judgment and Decree of Divorce. The settlement agreement awarded custody of the parties' three minor children to Corinthian. In 2000, the minor children chose to reside with Wade however; no modification of custody action was pursued legally within the court system.

Legal History:

Some six years later, Wade sought to make the change of custody legally recognized through a modification action and on November 14th, 2006, Wade filed a petition for change of custody in the Superior Court of Dekalb County which also sought child support. Supporting the petition was an affidavit filed by the son in which he elected to reside with his mother and indicated that he had been

residing with her previously for a number of years. This action centered on the parties' youngest son who was, at the time of filing the petition, 17 years old.

On July 24th, 2007, the trial court conducted a hearing regarding Wade's petition. At the time of the hearing the minor child had reached the age of 18 but was still enrolled in and completing high school. The trial court dismissed Wade's petition indicating that it did not have jurisdiction to enter an order changing custody of a child who reached the age of majority.

Questions raised on Appeal:

Wade appealed the trial court's dismissal of her petition and the Supreme Court was faced with three questions:

1. Whether a trial court is authorized to enter an order changing custody of a child when the child is under 18 at the time the petition is filed, but over 18 at the time the trial court's ruling is made
2. Whether a trial court may award child support where the request for such support is filed before the child turns 18 but is ruled on after the child turns 18
3. Whether a trial court may award child support in a modification action for a child over 18 pursuant to OCGA §19-6-15(e).

Supreme Court's Ruling:

Yes, Yes and Yes

The Court held the trial court had the authority and did not lose the authority to enter an order regarding custody just because the order would be entered after the child reached the age of 18. In addition, a parent can seek an award of child support from the time of the filing of a petition until the remaining period of the child's minority. Furthermore, OCGA §19-6-15(e) expressly provides for an award of child support in a modification action after the child has reached the age of 18, provided the child is enrolled in an attending secondary school.

Disposition:

The judgment of the trial court dismissing the petition on the basis of lack of jurisdiction is reversed and the case remanded to the trial court for consideration.

Hadden v. Hadden (April 2008)
Supreme Court of Georgia.
283 Ga. 424, 659 S.E.2d 353
March 28, 2008.
Reconsideration Denied April 11, 2008.

- *Findings of Fact*
- *Best interest of children*
- *Allegation of inadequate award of alimony*
- *Have your hearing taken down! Part 1*

Legal History:

On September 30th, 2005, Mr. Hadden filed a Complaint for Divorce in the Superior Court of Glascock County. The parties were the parents of two minor children. During the divorce action, a temporary order was issued regarding custody and visitation. The temporary order was subsequently amended three times by the trial court. Ms. Hadden was also awarded temporary alimony. On February 3rd, 2007, after a bench trial, the court issued a Final Judgment and Decree of Divorce. The court awarded joint legal and physical custody of the minor children with Mr. Hadden having primary physical custody; no child support was awarded to either party, and Ms. Hadden received an alimony award of \$1000.00 per month for three years. Ms. Hadden sought a discretionary appeal of the Final Judgment and Decree and it was granted by the Supreme Court.

Questions Raised on Appeal:

Ms. Hadden asserts error as the trial court's Final Judgment and Decree does not contain separate findings of fact.

Ms. Hadden states the trial court erred in awarding custody of the minor children to the Husband. She believed that the trial court did not treat the parties equally regarding their custody determination and did not rule in the best interests of the children.

Finally Ms. Hadden argues her alimony award of \$1000.00 per month is inadequate as she was receiving \$2130.00 per month pursuant to the temporary order.

Rulings:

1. Trial court was not required to make separate findings of fact in its final order;
This was a non-jury trial and neither Mr. Hadden nor Ms. Hadden requested that the trial court make separate findings of fact. This bench trial was not recorded and no transcript exists of the final hearing. In the absence of the transcript, the Court assumes the evidence introduced during the hearing was sufficient to support the trial court's findings. The trial court was not required to make separate findings of fact in this final order.
2. Trial court acted within its discretion in awarding husband primary physical custody of children;
The Court found that the trial court's custody ruling was based on the standard of what is in the best interest of the children

3. Trial court acted within its discretion in awarding wife physical custody of children for five nights during a regular two-week schedule; and the trial court did not abuse its discretion by awarding Ms. Hadden physical custody of the children for five nights during a two-week schedule. There were at least 5 hearings, 4 of which were not recorded. Although the record discloses some evidence that was placed before the trial court, in the absence of transcripts that would detail what was presented in the hearings, this Court assumes that the evidence adduced therein was sufficient to support the trial court's findings.
4. Trial court acted within its discretion in awarding wife alimony of \$1,000 per month for three years. The trial court found that Ms. Hadden holds a doctoral degree in education and had not made much effort to support herself during the divorce action, and should be self-supporting in her real-estate business in three to four years.

Disposition: The record supported the trial court's findings.

Dasher v. Dasher
Supreme Court of Georgia
March 10th, 2008.
Reconsideration Denied April 11, 2008.
283 Ga. 436, 658 S.E.2d 571

- ***Proving Marital Property***
- ***Findings of fact***
- ***Have your hearing taken down! Part 2***

Procedural History:

Stella Dasher filed a complaint for divorce against Ernest Dasher in the Superior Court of Effingham County. The trial court conducted a bench trial; however the Final Judgment and Decree did not address the division of any marital property. The court found that eight parcels of land were "owned and exclusively titled in Ms. Dasher's name" and provided for her to retain ownership and possession of the land. Furthermore, both parties were ordered to pay their individual attorney's fees. Mr. Dasher filed a motion for new trial and the trial court denied the motion. His application for discretionary appeal was granted.

Questions Raised on appeal:

Mr. Dasher contends the trial court abused its discretion by failing to award any marital property to him. He argues that four tracts of land were acquired during the marriage and were marital assets subject to division. Mr. Dasher has the burden of proving the tracts of land were marital because simply acquiring the property during the marriage does not make the property a marital asset.

Mr. Dasher also argues the trial court erred in failing to order Ms. Dasher to pay his attorney's fees.

Rulings:

1. Court of Appeals was unable to conclude that trial court's failure to make equitable distribution of marital property to husband was improper absent trial transcript
As the final hearing was a bench trial, the trial court sat as the finder of fact and had the responsibility of determining whether an item was marital or non-marital asset. The Final Judgment and Decree indicates that the court found the property to be non-marital asset and awarded the tracts of land to Ms. Dasher. However, the decree does not contain findings of fact regarding the court's determinations. The trial court was not required to make findings of fact in a nonjury trial unless the parties requested so prior to the entry of the Final Judgment and Decree. Neither Mr. Dasher nor Ms. Dasher requested the trial court make findings of fact. Therefore, the Court is unable to conclude that the trial court's failure to equitable divide the land as marital property was improper.
2. Refusal to award husband attorney fee award was presumably correct absent trial transcript. The transcript reveals the trial court considered the parties' financial circumstances and as an award of attorney's fees in discretionary, the Court found the trial court did not abuse its discretion regarding the issue of payment of attorney's fees.

Disposition: Judgment affirmed.

Williams v. Jones
The Court of Appeals
May 2nd, 2008
662 S.E.2d 195

- ***Mutual Temporary Protective Orders - File a counterclaim if you want one***

Facts:

Quatarsha Williams and Curtis Jones were unmarried but lived together with their infant child. Ms. Williams alleged that Mr. Jones had held her down, beat her, and poured bleach in her nose, mouth and eyes. After this act occurred, Ms. Williams' petition indicates that she broke the windows to Mr. Jones' car which resulted in her arrest.

Procedural History:

Ms. Williams filed a petition for a Family Violence Protective Order alleging acts of family violence. Mr. Jones did not file any response to Ms. Williams' petition. He appeared at the hearing and represented himself. The court found that Mr. Jones had committed acts of family violence, however the order enjoined and restrained both Ms. Williams and Mr. Jones from doing any act of injury, harassing or abusing the other party. The order required both parties not to go within 100 yards of each other and to both attend a batterer's intervention program and alcohol/drug abuse evaluation. Essentially, the Court issued a mutual protective order and Williams filed an application for discretionary review.

Question Raised on Appeal:

Was the entry of a mutual protective order proper?

The Court of Appeals found the Court had issued a mutual protective order. This was in spite of the fact that Mr. Jones did not file a verified counter petition alleging Ms. Williams had committed family violence against him as required by statute in order for the court to consider a mutual protective order. The trial court had no legal authority to issue a mutual protective order because the requirements of OCGA §19-13-4 (a)¹ had not been met. The issuance of a mutual protective order further violated Ms. Williams's due process rights as she did not have proper notice or an opportunity to prepare a defense prior to appearing at the hearing concerning her petition.

Disposition:

The Court of Appeals reversed the order where is contained provisions for a mutual protective order and remanded for entry of a new order.

Simmons v. Williams
Court of Appeals of Georgia.
March 27th, 2008.
290 Ga. App.644, 660 S.E. 2d 435

- ***Fundamental right to question Guardian ad Litem***
- ***Award of child support without hearing of evidence regarding income***

Facts:

Tyranius Simons and Shauda Lester Williams are the parents of a minor child born March 4th, 1999. The child had been in the care of his paternal grandmother, Paula Benton, since he was 10 months old. Approximately 7 years later, in 2006, and after an argument, Ms. Williams removed the child from the grandmother's care.

Procedural History:

On March 9th, 2006, the father and grandmother filed an Emergency Petition for Legitimation and Immediate Custody. The trial court entered a temporary order whereby the child was legitimated and the grandmother was awarded custody. On March 29th, 2006, the parties were able to reach an agreement where by grandmother would retain custody of the child and the mother would exercise

¹ §19-13-4 (a)*The court shall not have the authority to issue or approve mutual protective orders ... unless the respondent has filed a verified petition as a counter petition pursuant to Code §19-13-3 no later than three days, not including Saturdays, Sundays, and legal holidays, prior to the hearing and the provisions of Code §19-13-3 have been satisfied.*

extended visitation. As this was only a temporary agreement, the trial court appointed a guardian ad litem to represent the child.

On December 20th, 2006, a bench trial was held regarding the issue of custody. The grandmother and father attempted to call the guardian ad litem as a witness, but the court would not allow this nor did the court allow the grandmother and father to question the guardian at any time regarding his investigation. The trial court awarded custody of the child to the mother and ruled the father and grandmother had not established the child would be harmed if returned to the mother's care as required by OCGA § 19-7-1. The court then issued an order requiring the Father to pay child support in an amount determined by the US Army without hearing any testimony or receiving any evidence regarding income.

Questions Raised on Appeal:

1. The father and grandmother argued the trial court erred by not allowing them to question the guardian ad litem and further erred by failing to include written findings in its award of child support.
2. The father and grandmother argue that the trial court erred in failing to include written findings in its award of child support, ordering instead only that child support "be paid by military allotment within the statutory guidelines as provided in [OCGA §] 19-6-15 et. seq." We agree with appellants.

Rulings:

Guardian ad Litem:

Every party shall have the right to thoroughly cross-examine all witnesses called against them. OCGA § 24-9-64. The Court of Appeals found that although a guardian ad litem cannot be considered a witness against a party, the Uniform Superior Court rules provide that a guardian ad litem "shall be subject to examination by the parties and the court." USCR 24.9(7). While the father and grandmother had the burden to prove that the child would be harmed if the mother was given custody, the trial court in not allowing the parties to cross examine the guardian prevented the father and grandmother to establish their case that the child should remain in the grandmother's care.

Depriving the father and grandmother of the ability to question the guardian ad litem resulted in the denial of a substantial right and therefore a rehearing on the issue of custody is granted.

Child Support:

The trial court's order failed to specify the amount of child support to be paid and further failed to "include a written finding of the gross income of the father and the mother and the presence or absence of special circumstances in accordance with subsection (c) of [OCGA § 19-6-15]." The trial court's failure to include these requisite findings constitutes reversible error. On remand, the trial court is instructed to award child support in a manner consistent with the dictates of OCGA § 19-6-15.

Disposition: Judgment reversed and case remanded.

Hamlin v. Ramey
Court of Appeals of Georgia.
April 4th, 2008.
661 S.E.2d 593

- ***Deviation of child support based on parenting time – not required***
- ***Gather evidence of increased expenses***

Procedural History:

order legitimating the minor child of Kristen Ramey and Damian Hamlin was entered by the Superior Court of Gwinnett County. Custody, visitation and additional matters were also included in a consent order. The court, in a subsequent order, determined the amount of child support Mr. Hamlin was to pay Ms. Ramey on a monthly basis.

Questions Raised on appeal:

Mr. Hamlin appeals the trial court's child support award arguing error because the trial court did not grant him a deviation from the presumptive amount based upon this increased parenting time.

The trial court determined that Mr. Hamlin's annual percentage of parenting time was 35.8%. Hamlin argues that because his percentage of parenting time is more than the "normal" amount of parenting time on which the guidelines are based, he should be entitled to a downward deviation from the presumptive amount of child support.

Ruling:

While the presumptive amount of child support pursuant to the guidelines is rebuttable and a deviation of child support can include a parenting time adjustment, the court must primarily consider the child's best interest in making a decision to deviate from the presumptive amount.

The child support guidelines are based on the rebuttable presumption that both parents should contribute financially to the support of their children in the same proportion as the parent's income relates to the total sum of the parent's income without considering the amount of time each parent spends with the child. A deviation from the presumptive amount is allowed, but only when the child resides with both parents equally or when special circumstances exist **and** the deviation would serve the best interest of the child.

The trial court found the Mr. Hamlin did not prove that his parenting time constituted a special circumstance which made his presumptive amount of child support excessive, nor did he prove that the child's best interest would be served in deviating from the presumptive amount of child support. Mr. Hamlin made the argument that he will incur additional expenses related to the child as a result of his increased parenting time. However, the trial court found that Mr. Hamlin did not specify what the actual expenses would be.

The Court further held that the trial court did not abuse its discretion when it ordered the presumptive amount of child support and did not deviate based upon parenting time. The trial court was further not required to set for any criteria or reasoning concerning why they did not grant the parenting time deviation. While a child support order must contain written findings as to why

deviations are applicable the plain language of the child support statute does not require the trial court to explain why a deviation is not applicable.

Disposition: Judgment affirmed.

Garcia v. Garcia
Supreme Court of Georgia.
July 7th, 2008.
2008 WL2626843

- ***Promissory Estoppel – child support***
- ***Paying child support for a child not yours – it can happen!***

Facts:

Mr. and Ms. Garcia were parties to a divorce. Ms. Garcia had a child who was not the biological child of Mr. Garcia. The identity of the child's biological father was known to the parties, as where his whereabouts. Mr. Garcia did not execute a written contract to support the child. However, four months after he married the child's mother and knowing he was not the child's biological or adoptive father, Mr. Garcia signed an application to amend the child's birth certificate so as to list himself as her father and gave the child his last name.

Procedural Background:

In the parties' Final Judgment and Decree of Divorce, the trial court applied the doctrine of promissory estoppel and required Mr. Garcia to pay weekly child support for his wife's daughter, despite the fact that the minor child was not his biological or adoptive child. The trial court found that Mr. Garcia not only acted a parent but he also formed a parent/child bond with the child and applied to be listed as the father on the child's birth certificate despite having no biological or adoptive relationship with the child. Therefore, the trial court found that Mr. Garcia was estopped from denying an obligation to support the child. Mr. Garcia appealed the trial court's order.

Questions raised on appeal:

Has the doctrine of promissory estoppel been met?

The doctrine of promissory estoppel is a two prong doctrine. Not only must the father promise to provide financial support to the child and hold himself as the child's father, but the mother and her child must rely of the father's promises to their detriment. In the present case, the mother knew who the child's biological father was and even acknowledged the child was aware of his identity. She stated the reason why she never sought for him to support the child was that he indicated he wanted nothing

to do with the child. The evidence does not establish that the mother relied to her detriment on Mr. Garcia's promise to financially support the child. Therefore the Court found the doctrine of promissory estoppel was not fulfilled and it was error for the trial court to apply the doctrine.

Disposition:

Judgment reversed.

Rivera v. Rivera (May 2008)
Supreme Court of Georgia.
May 19th, 2008.
No. S08A0775

- ***Lump sum v. periodic alimony payments (labels irrelevant)***
- ***Craft your alimony sections carefully***

Facts:

Luis and Martha Rivera were divorced in 2006. The jury awarded Ms. Rivera alimony in the amount of \$500.00 per month as alimony for 60 months and a total payment of \$30,000.00." This provision was based upon a jury verdict which left blank that portion of the verdict form dealing with lump sum and in-kind alimony.

Procedural History:

In 2007, Mr. Rivera filed a motion to modify the alimony. The trial court dismissed his motion, stating the previous alimony award in his divorce action was lump sum alimony and was not modifiable.

Questions raised on appeal:

Mr. Rivera appeals, indicating that the jury referred to the alimony award as periodic and it is subject to modification.

Ruling of the Court:

It is held that a court will review divorce awards as a matter of law and on their substantive basis - not the label the award is given. In determining how to classify an award of alimony, an award is considered lump sum alimony if it states the exact number and amounts of the payments and does not place limitations or conditions on the alimony award. An award is also considered lump sum alimony **if it states that periodic payments will be made until a certain amount is paid in full**. The Court found that in using either rule, the jury's award of alimony to Ms. Rivera constituted lump sum alimony and the verdict form which refers to the alimony award as periodic was only a label. The Court held the trial court did not err in holding the alimony award was lump sum settlement not subject to modification.

Disposition: Judgment affirmed.

Ruth v. Herrmann
May 2nd, 2008
Court of Appeals of Georgia.
291Ga. App.399

- *Attorney's Lien on Property*
- *Res Judicata / collateral estoppels*

Facts:

Tammy Ruth filed for divorce in Clayton County against Robin Ruth. Robin Ruth was initially represented in the divorce action by attorney Scott Herrmann. Mr. Herrmann filed a notice to withdraw during the divorce action, accompanied by an affidavit that Mr. Ruth had failed to pay his attorney's fees. Mr. Herrmann filed an attorney's lien against marital property owned by both Tammy and Robin Ruth and served notice of the filing of the lien on both parties on March 17th, 2006.

On April 3rd, 2006, the trial court signed an order granting Herrmann's request to withdraw as counsel for Robin Ruth in the divorce action.

Procedural History:

On June 23rd, 2006, Ms. Ruth filed an emergency motion to remove the lien, noting therein that the marital residence had been awarded to her in the final divorce decree. After a hearing on the motion, the trial court entered an order on August 1st, 2006, in which it denied the motion, finding that the lien was properly filed and that Ruth received notice of the lien. Ms. Ruth did not appeal this ruling.

In September of 2006, Ruth filed an action seeking to have an order issued which removed Mr. Herrmann's attorney's lien from her property. Herrmann filed an answer and counterclaim for attorney fees and moved for summary judgment arguing that Ruth's claim to remove the lien was precluded by the doctrines of res judicata and collateral estoppel. Ruth filed a cross motion for summary judgment. The trial court granted Herrmann's motion for summary judgment holding that "this Court's prior Order, dated August 1st, 2006, is a final judgment of this Court which cannot be relitigated by the Plaintiff under the legal principal of res judicata/collateral estoppel.

Questions on appeal:

Did the doctrine of collateral estoppel apply, preventing Ms. Ruth from pursuing her motion to remove the lien?

Ruling:

Collateral estoppel precludes an issue from being relitigated if the issue was previously litigated and decided in another action between the same parties. Herrmann's lien was litigated and decided in the divorce action. The Court held the trial court correctly concluded that the doctrine of collateral estoppel applies and precludes Tammy Ruth from relitigating the issue in the present action.

Ruth also argued that the trial court erroneously ruled by implication that Herrmann's rule lien was valid. The Court found that pursuant to O.C.G.A. §15-19-14(b) the attorney's lien was valid.

Disposition: Judgment affirmed.

Cawley v. Bennett
July 16th, 2008.
Court of Appeals of Georgia.
2008 WL 2746969

- ***Agreements not incorporated into Final Settlement of divorce – why it is a really bad idea***
- ***Review of summary judgment motion after case ends.***

Facts:

Kim and Buddy Cawley divorced in 1993. The parties executed and signed a settlement agreement at Mr. Cawley's attorney's office. The agreement was incorporated into their Final Judgment and Decree of Divorce. In addition to the settlement agreement, Mr. Cawley signed a document which indicated that he agreed to pay Kim Cawley \$30,000.00 on or before their daughter's 10th birthday. Their daughter's tenth birthday passed without Ms. Cawley receiving the payment of the \$30,000.00. Instead of pursuing the action, she assigned the note to her father, Charles Bennett.

Procedural History:

After Mr. Bennett received assignation of the note, he demanded payment from Mr. Cawley. When Cawley did not respond to Bennett's demands to pay, Bennett sued Cawley for breach of the promissory note. Cawley moved for summary judgment arguing that neither the settlement agreement nor the final decree of divorce incorporated the note and Kim Cawley was therefore barred from enforcing the note against Cawley.

Bennett claimed the note was "a legally enforceable contract separate from the settlement agreement" of the divorcing parties. Cawley's motion for summary judgment was denied by the trial court. Cawley did not appeal the denial of the summary judgment motion and did not move for a directed verdict at trial. The trial resulted in a jury verdict's in Bennett's favor and Cawley filed a motion for new trial which was denied. Cawley appealed.

Questions raised on appeal:

Cawley argued that the denial of his motion for summary judgment was error.

Bennett argues that the promissory note was a result of a dispute between the parties concerning child support. Kim Cawley testified that she refused to sign the settlement agreement which required Buddy Cawley to pay only \$250.00 per month in child support because it was inadequate and that Kim Cawley signed the settlement agreement only because Buddy Cawley promised to pay her an additional \$30,000.00 by their daughter's tenth birthday.

Ruling:

It is not an appellate court's responsibility to review the denial of a summary judgment motion after a case is tried. The appellate court reviews the sufficiency of the evidence in the light most favorable to the jury's verdict.

Neither the settlement agreement nor the Final Judgment and Decree mentioned the obligations for Cawley to pay \$30,000.00 to Kim Cawley. The Settlement agreement also provided that it was a “full and complete settlement of all claims which either party may have against the other.”

There was no evidence that the note was enforceable by Kim Cawley. A modification action would be the exclusive remedy in regards to supplementing the final judgment and decree regarding child support. An agreement concerning modification of child support is enforceable only when made into a court order.

Cawley did not move for a directed verdict at the end of this trial, therefore he is not entitled to a judgment as a matter of law on appellate review. However, Cawley is not barred from contending he is entitled to a new trial.

Disposition: Cawley is entitled to a new trial. Judgment remanded and reversed.

Johnson v. Taylor (June 2008)
Court of Appeals of Georgia.
June 27th, 2008.
2008 WL 2553001

- **Step-Parent Adoption**
- **Termination of parental rights**

Facts:

R.C.J. was born in 1997 and his parents divorced in 2000. The Settlement Agreement that was incorporated into the Final Judgment and Decree of Divorce provided that Mr. Johnson would have joint legal custody of the child, would have supervised weekly visitation and would pay \$500.00 per month in child support. Mr. Johnson’s visitation would increase if he passed six months of drug screens.

In 2001, Ms. Johnson married Kurtis Taylor. The evidence presented established that Taylor was very active in the child’s life and was the only father he ever knew. Johnson was never actively involved with the child. He didn’t exercise any of his legal custody rights and did not take the drug tests required to increase his visitation. Furthermore, he never fully met his child support obligation. At times his girlfriend and mother would make payments to the minor child’s mother on Johnson’s behalf but no one made the full child support payment. During the final hearing, it was established that he didn’t write the child, call the child or make any efforts to communicate with the child. Johnson only visited with a child a few times. Although Johnson was incarcerated for five years beginning in 2002, he made no efforts from prison to communicate with the child. Johnson owed \$36,000.00 in past due child support.

Procedural History:

Kurtis Taylor petitioned the court to adopt his step-son R.C. J. and to terminate the rights of the child’s biological father, Frederick Johnson, in accordance with OCGA §19-8-6 and §19-8-10. Johnson objected to the termination of his rights and the adoption. The trial court granted Taylor’s petition and entered a decree of adoption. Johnson appealed.

Questions raised on appeal:

Was the termination of the father's rights proper?

Ruling:

Yes.

A step-parent adoption is normally granted with the biological parent's consent; however, the consent is not necessary if the biological parent for a period of one year or longer fails to communicate to make a bona fide attempt to communicate with the child in a meaningful and supportive manner or to provide care and support of the child as required by law or decree. Finally, the adoption must be in the best interest of the child.

Trial court found that Johnson failed to communicate with the child, he significantly failed to support the child financially and Taylor's adoption of the child would be in the child's best interest.

The Court held the trial court's finding that Johnson failed to communicate with the child for a period of over one year was supported by the evidence and was therefore affirmed. Superior Courts have broad discretion regarding issues of adoption and this trial court's finding that the adoption was in the child's best interest was affirmed.

Disposition: Judgment affirmed.

Binns v. Fairnot
June 27th, 2008.
Court of Appeals of Georgia.
No. A08A0207

- **Denial of Legitimation**
 - ****First impression case

Facts:

Binns and Fairnot were engaged in a three-year relationship during which Fairnot became pregnant. A daughter was born in July 2003. Initially, Binns was involved in the infant's life. He purchased items for the child's use, including a rocking chair, a stroller, and a car seat. He visited the child on weekends, and Binns' mother came to Georgia to watch the child in September and October 2003 when Fairnot returned to work. Binns also took the child for overnight stays during which he would change the child's diaper and prepare formula. At one point, Binns apparently questioned his paternity and refused to sign the birth certificate until his paternity was established. From that point forward, Binns has paid child support.

According to Fairnot, the situation changed in August 2004, when Binns unilaterally stopped visiting the child. She speculated that it stemmed from her refusal to allow Binns to take the child to Jamaica to visit. Binns testified that Fairnot began using the child against him when it became apparent that he did not want to continue the relationship. Although Binns claimed that Fairnot changed her

phone number and address, she testified otherwise, and the trial court found Binns' testimony to be incredible. In September 2004, Fairnot began a relationship with Kendrick Culver, and the two were married in January 2005.

In January 2005, Fairnot-who serves in the military-was deployed to Iraq for one year. During this time, her child resided with her mother in a suburb of Miami, Florida. Fairnot did not tell Binns that his child was relocating to Miami. When Fairnot returned from duty, she and her husband obtained a new residence in Georgia. Again, Fairnot did not notify Binns of the child's return to Georgia nor provide an address or phone number.

Procedural History:

In January 2007, Binns filed a legitimation petition. He stated his delay in filing the petition stemmed from his inability to afford an attorney. Following a hearing, the trial court denied the petition, finding that Binns' lack of contact with the child from August 2004 constituted abandonment. This appeal ensued.

Question Raised on appeal: - Issue of first impression

Can a father who has fully paid child support and demonstrated at least some interest in developing a relationship with his child deemed to have legally abandoned the child?

Ruling:

No.

The trial court focused on the fact that Binns did not have a relationship with the child from August 2004 to the filing of his Petition for Legitimation. The father was faulted for not doing more to find the minor child and maintain a relationship with her. However, the evidence presented did not constitute abandonment and the trial court abused its discretion. Binns' constant payment of child support and his interest in establishing a relationship with the child negated the allegations of abandonment. The trial court also did not determine whether the legitimation was in the child's best interest.

Disposition: Reversed and remanded.