

**Child Support
Case Law Summaries
October 2017 - 2018**

FINDINGS OF FACT

Sadler v. Rigsby, A17A1300 (10/20/2017)

This is a second appeal of the dismissal of a petition for change of custody. The first time, the case was remanded for written findings of fact and conclusions of law on the custody aspect of the petition, which had been requested by Appellant Sadler. After remand, the trial court did include findings of fact and conclusions of law in its order, which still dismissed the case.

The second appeal contained many claims of errors by the trial court on the custody issue which the Court of Appeals held to be meritless. Sadler also claimed that the trial court erred in refusing to modify child support. A child support modification was not requested in the pleadings, there was no amendment seeking a modification of support, and Sadler had not requested a downward deviation in his child support during the hearing. There was some testimony about the parties' financials which arose out of testimony about the child's need for extensive dental work and whether Sadler's financial circumstances had changed to preclude his ability to pay for the work. The trial court found that there was no substantial change in condition that would warrant a change in child support. The final order stated that "there is no substantial change in income of financial status for either party for the period September 21, 2012 to October 1, 2013." (Rigsby had sought and received an upward modification of support dated 9/21/12, and Sadler's petition was filed on 10/1/13). Sadler requested factual findings and conclusions of law, but the trial court denied the request.

The Court of Appeals again remanded, directing that the trial court "make findings of fact and conclusions of law" regarding not only custody but child support. "'Findings of fact' are insufficient when they merely state the court's answers to the material issues in the case, and when they contain no facts based on the evidence supporting those answers."

REPAYMENT OF ARREARAGE

Weiss v. Grant, A18A0002 (June 12, 2018)

This case has many custody issues, including UCCJEA and self-executing changes of custody, visitation safeguards, etc.

As to child support, there was an adjudicated arrearage of \$27,270, which the court ordered repaid at the rate of \$100 per month. At that rate, it would take 18 years to repay. The children were ten and seven years old, so the bulk of the repayment would take place after they reached the age of 18. Children are entitled to financial support during their minority. By ordering repayment at \$100/month, the court limited the custodial parent's remedies. This portion of the order was reversed.

MODIFICATION; FINDINGS OF FACT

Moore v. Moore, A18A0137 (June 1, 2018)

This appeal is based on a modification of custody and child support. Appellant contends that the trial court erred in modifying his child support obligation without making a finding that there had been a substantial change in the financial circumstances of the parties or a change in the needs of the child.

In the original child support order, which incorporated a settlement agreement, the Appellee had agreed to \$400/month notwithstanding that the worksheets showed that the noncustodial parent should pay \$746/month. In the modification pleadings, Appellee requested that Appellant be ordered to pay monthly child support consistent with the statutory guidelines. This in and of itself required a modification as Appellant was not paying in accordance with the guidelines. "Appellant's counsel said "we are consenting to what [Appellee] requested and her prayers in her petition." Thus, Appellant was deemed to have consented to the modification, even though he disputed the amount.

Appellant also claimed that the trial court erred in not attaching the child support worksheets to the final order. The Court of Appeals agreed. The order references two worksheets as Exhibit A and Exhibit B, but there were no worksheets attached. There is no language in the order pertaining to deviations. Appellant challenged the child support award as an improper deviation from the presumptive amount of support. The child support award was vacated and case remanded due to a lack of necessary findings being actually included in the final order.

The trial court also ordered child support, plus "35% of any and all bonuses received during each calendar year above the amount of \$3,500 received in any bonus." Appellant contends that this is an improper modification of support. The Court of Appeals could not address this issue because it did not have worksheets or findings of fact.

DEVIATIONS

Woodson v. Lino, A18A0221 (May 15, 2018)

Child born out of wedlock in 2008. Mother advised biological father she was moving to NY with the child. Father filed petition to legitimate and for custody. At an ex parte hearing on August 4, 2016, Mother was ordered to return the child to Georgia. Mother moved to set aside that order on the basis that she did not receive notice of the hearing. Father countered with a motion for contempt because Mother did not return the child to GA.

Hearing on August 17, 2016; the parties agreed to vacate the August 4 order. Child declared legitimate and that mother had the legal right to move with the child because the father had not previously legitimated. The court awarded the parties joint legal custody and made temporary physical decisions pending a final hearing. A GAL was appointed.

Final hearing in March, 2017. In the final order, the court gave the parties joint legal custody with mother having primary physical. The court ordered the mother to move back to Georgia and ordered father to pay relocation costs, including a security deposit and three months' housing costs, plus cost of airfare and lodging for the mother to travel to Atlanta to secure housing. The court ordered the mother

to find employment and begin paying for her own housing by the fourth month. Based on a finding that the father earned over \$10,000/month and mom earned \$1,250/month, the court ordered father to pay child support. The order stated that no deviations applied to the child support order. Father appeals. Mother did not appeal order requiring her to move back to GA.

Father claimed that the trial court erred in its custody award, but the Court of Appeals found no merit in those arguments. Father complained about the requirement that he pay costs of relocation. The court held that while the guidelines do allow payment of such expenses and travel costs, they should be listed as deviations in the worksheet, and the court should make findings of fact about such deviations and apply the best interest of the child standard. The travel deviation is listed, and the relocation expense should have been listed as "special expenses."

Court of appeals vacated the portion of the trial court's order that assessed relocation costs on father and remanded for consideration.

FRINGE BENEFITS; DEVIATIONS

Noble v. Noble, A18A0617 (May 18, 2018)

Mother filed against Father seeking to have him held in contempt for violating provisions of the parties' 2013 divorce decree. She also sought an increase in child support. The case was transferred to juvenile court for resolution. In March 2017, the court modified custody making mother, who lived in NH, primary physical custodian of the parties' oldest child and father, who lived in GA, primary physical custodian of the parties' four younger children. Child support issue was reserved until next hearing to give the parties a chance to resolve it themselves.

In July 2017, the juvenile court ordered mother to pay father \$754/month in support, and ordered father to pay mother nothing. This constituted a deviation from the presumptive amount of child support. Mother appealed, claiming the juvenile court erred: 1) in including in her income as a fringe benefit of employment free tuition that she received; 2) in giving father a deviation of \$1,377 from the presumptive amount of child support based on an increase in his living expenses due to mother's relocation to NH; 3) in refusing to award her a deviation for visitation and travel-related expenses; and 4) in adjusting father's presumptive amount of support for the health insurance he pays for the four children in his custody, while failing to provide her an adjustment for the health insurance premium she pays for the child in her custody.

Court of Appeals reversed as to the tuition benefit and the deviation of \$1,377. As to the tuition benefit, fringe benefits shall be counted as income if the benefits significantly reduce personal living expenses. "Fringe benefits shall not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, including, but not limited to, employer paid portions of health insurance premiums or employer contributions to a retirement or pension plan." OCGA 19-6-15(f)(1)(C).

Finding no precedent to this issue, the court states that common sense suggests that "personal living expenses" denotes expenses that are necessary to maintaining daily life, such as food, shelter, transportation to and from work, etc. Because the tuition reimbursement benefit did not significantly

reduce mother's personal living expenses, the trial court erred in considering those payments as a fringe benefit to be included in her gross income.

As to the nonspecific deviation of \$1,377, the Court of Appeals reminds us that findings of fact must be in writing and shall state: (i) the reasons for the deviation; (ii) the amount of child support that would have been required if the presumptive amount of support had not been rebutted; and (iii) how (I) application of the presumptive amount of child support would be unjust or inappropriate; and (ii) the best interest of the child for whom support is being determined will be served by deviation from the presumptive amount of child support. See OCGA 19-6-15(i)(1)(B).

The presumptive amount of child support to be paid by father was \$1,122.33, after adjusting for health insurance expenses. Father's counsel requested a nonspecific deviation of \$1,377 per month. He argued that mother's move to NH forced him to lease a second, larger residence because his house was too small for him and the children. He did not want to sell his house, so mother's move forced him to maintain two households. The deviation exceeded the presumptive amount of support, so reduced father's obligation to zero.

The Court of Appeals held that the juvenile court did not support its award with statutorily required findings of fact. The order does not contain a finding of how application of the presumptive amount of support would be unjust or inappropriate or how the best interest of the children for whom support was being determined would be served by the deviation. Final order reversed and case remanded.