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DOMESTIC RELATIONS

Child Custody Proceedings: Parental Agreements

CODE SECTION: O.C.G.A. § 19-9-5 (new)
BILL NUMBER: HB 377
ACT NUMBER: 1667
SUMMARY: The Act requires courts to ratify a parental agreement concerning child custody unless the court finds it not to be in the child's best interest.

History

Beginning with the 1899 case of *Lowery v. Lowery*,¹ Georgia courts have refused to be bound by parental agreements in child custody cases and have accorded them only the status of a settlement reached by the parties. In *Lowery*, the court held that "ordinarily the judge should enforce a bona fide settlement . . . provided . . . the interests of the minors do not require any different disposition of their custody from that had under the settlement."² This remained the law in Georgia,³ though the "interests of the minors" evolved into the statutory "best interest of the child" test of O.C.G.A. § 19-9-3.

A reform movement in child custody proceedings was begun in the 1985 legislature and carried over to the 1986 session.⁴ HB 424, a more comprehensive bill than HB 377, was proposed in 1985 but failed to gain substantial support.⁵ In addition to the subject matter of HB 377, HB 424 included: 1) an expansive definition of custody which extended beyond mere physical custody to include other aspects of a child's environment; 2) a definition of shared parental responsibility which provided for full and undivided joint custody; 3) a provision authorizing the court to order on its own initiative a family and children's services agency investigation; and 4) a grant of extensive powers to the agency to investigate the child's records without securing parental consent.⁶ When HB 424 bogged down,

1. 108 Ga. 767, 33 S.E. 420 (1899).

2. *Id.* at 767, 33 S.E. at 420.

3. See *Weaver v. Weaver*, 238 Ga. 101, 103, 230 S.E.2d 886, 888 (1976); *Stanton v. Stanton*, 213 Ga. 545, 549, 100 S.E.2d 289, 292 (1957).

4. Telephone interview with Representative Peggy Childs, House District No. 53 (Mar. 18, 1986) [hereinafter cited as Childs Interview].

5. HB 424, 1985 Ga. Gen. Assem.

6. *Id.*

the sponsors went forward with more limited provisions in the form of HB 377.⁷

HB 377

O.C.G.A. § 19-9-5 allows the parents of a minor child to reach an agreement on issues concerning child custody. Unless the court finds that the agreement is not in the best interests of the child, the agreement is binding on the court in custody proceedings.

Initially, HB 377 made the parental agreement binding upon the court unless the court made a specific factual finding that the agreement would cause the child to be deprived as defined in O.C.G.A. § 15-11-2(8).⁸ The Senate substituted the "best interests of the child" for a "deprived child" test and added subparagraph (c) which allows the court to supplement the agreement on issues not covered by the agreement. This final version was agreed to by the House. Thus, the original binding effect of the agreement was preserved, although the threshold bars to court involvement were lowered.⁹

Georgia law has no provision specifically authorizing joint custody awards. O.C.G.A. § 19-9-5 permits parents to participate in the custody award when both parents have agreed to share custodial responsibility, thereby avoiding arbitrary division of family responsibilities by the court. Courts still determine child custody when the parents fail to agree.¹⁰

7. Childs Interview, *supra* note 4.

8. HB 377, 1986 Ga. Gen. Assem. § 1.

9. O.C.G.A. § 19-9-5 (Supp. 1986).

10. *Id.*