

Case Law and Domestic Violence in Georgia

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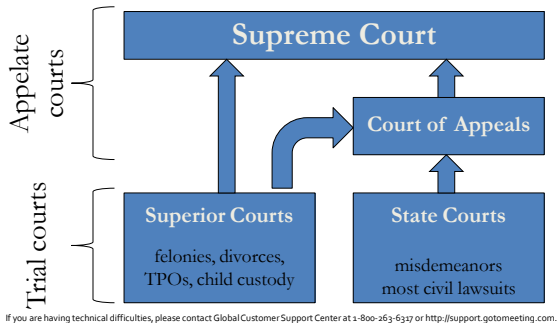
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What is case law?

- Puts “meat on the bones of the law”
- Case law arises when appellate courts issue rulings that provide either new interpretations or clarifications of existing statutory laws.
- Case law sets precedent that can be used in similar cases in the future.

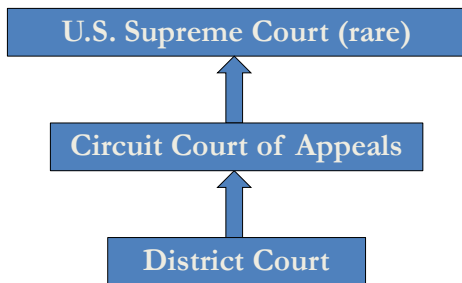
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How is case law made? (Georgia)



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How is case law made? (U.S.)



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**RECENT GEORGIA CASE
LAW**

**Recent Georgia case law
regarding
Family Violence
Temporary Protective
Orders
*Timing Issues***

Lewis v. Lewis (2012)

- No requirement that any past act of family violence alleged in the petition be "reasonably recent."
 - Judges were routinely requiring applicants to show "recent" violence, such as within the last 30 days
 - In Lewis, violence stopped because Husband moved out of state, and Client feared it would start again once he moved back.

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Lewis v. Lewis (2012)

- Recency Is Not A Requirement

“There simply is no requirement that any past act of family violence alleged in the petition be ‘reasonably recent.’ The recency of past violence may, of course, bear upon the likelihood of future violence, but a ‘reasonably recent’ act of violence is not absolutely required. After all, there might be a good reason in some cases to believe that past violence, although fairly remote, is now likely to recur...”

Lewis v. Lewis, 316 Ga. App. 67, 69-70 (2012)

- Must show past act and likelihood of future act

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White v. Raines (2015)

Just came out last month

- A trial court *must* assess the merits of a TPO within **30 days** after the petition is filed.
 - The 30 day limit is pretty much non-negotiable unless the parties BOTH specifically CONSENT
- Court lays out what must be contained in the hearing
 - Sworn testimony
 - Opportunity for cross examination

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Peebles v. Claxton (2014)

Stalking Case

30 day rule applies even if the court orders the ex parte continued



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Practical Applications

1. Plaintiff asks for a continuance to get an attorney. Defendant objects. Court grants continuance over objection. Continued to 45th day.
2. Defendant asks for a continuance to get an attorney. Plaintiff objects. Court grants continuance over objection. Continued to 45th day.
3. Plaintiff's attorney files a proper conflict notice, and court gets continued to 35th day.
4. Attorneys for both sides ask the court to give them time to work out a settlement. Court continues to 60th day.

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Recent Georgia case law regarding Family Violence Permanent Protective Orders

Mandt v. Lovell (2013)

- The details of a permanent family violence protective order may be modified based on changing conditions and circumstances.
 - “upon the motion of a petitioner and notice to the respondent and after a hearing, the court in its discretion may convert a temporary order granted under this Code section to an order effective for not more than **three years** or to a **permanent order**.”
[O.C.G.A. § 19-13-4](#)

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Mandt v. Lovell (2013)

- The Court set forth the considerations a court should contemplate when considering the termination or modification of a PPO.
 - The judgment was subject to modification by its own terms or by applicable law, and events have occurred subsequent to the judgment that warrant modification of the contemplated kind; OR
 - There has been such a substantial change in the circumstances that giving continued effect to the judgment is unjust.

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Chatman v. Palmer (2014)

- The court cannot make a permanent change in child custody through the modification of a permanent protective order.

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**Recent Georgia case law
regarding
Stalking Protective Order,
Aggravated Stalking, and
criminal charges**

Elgin v. Swann (2012)

Sets out how to consider Stalking cases

Stalking "is defined as "follow[ing], plac[ing] under surveillance, or contact[ing] another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person." *OCGA § 16-5-90 (a) (1)*



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Tanks v. State (2008)

- An individual cannot be tried more than once on the same offense (Double Jeopardy clause of the 5th Amendment to U.S. Constitution)
- Defendant faced indictment on aggravated stalking charge based on the same incident for which he was facing charges of contempt on a TPO.

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Single Incident Not Enough

- A single contact in violation of a TPO does not meet the statutory definition of "a pattern of harassing and intimidating conduct," and by itself does not constitute aggravated stalking. *State v. Burke (2010)*
- A single contact does constitute aggravated stalking if that contact is determined to be part of a pattern of harassing and intimidating conduct. *Louisyr v. State (2010), Herbert v. State (2011), Hervey v. State (2011)*

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Practical Applications

1. Your client tells you her batterer violated the TPO. You tell her to immediately file contempt.
2. Your client tells you her batterer has been seen outside her home every day for a week watching through binoculars. You tell her to call the police.
3. Your client receives roses every week from her batterer. Is this stalking?

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Recent Georgia case law regarding Child deprivation actions

In the interest of H.B. et. al., children (2013)

- The court of appeals held that the one incident of domestic violence was insufficient to hold the mother as unfit and remove her children, **BECAUSE**
 - She involved the police
 - Initially had the boyfriend removed from the home
 - After letting him back in the home, did not leave him alone with the children
 - Obtained counseling for the children

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**Recent Georgia case law
regarding
Unemployment benefit
claims**

Scott v. Butler (2014)

- An employee is not disqualified from receiving unemployment benefits as a matter of law when she quits her job due to the reasonable probability that, if she continued the employment, she, and possibly others, would become the victim of violence committed by a third party who had no employment or business relationship with her employer.
- GCADV filed amicus brief on the case
- Expert testimony from DV advocate
- House Bill 117 (2015) will essentially codify the ruling
 - 33 other states

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**Implications of *Scott v. Butler* and
HB 117**

- **Victims forced to leave their employment due to domestic violence should file for unemployment benefits.**
- Under HB 117, applicants provide “reasonable documentation demonstrating that:
 - Leaving the employer was a condition of receiving services from a family violence shelter;
 - Leaving the employer was a condition of receiving shelter as a resident of a family violence shelter; **or**
 - Such family violence caused the individual to reasonably believe that the claimant's continued employment would jeopardize the safety of the claimant or the safety of any member of the claimant's immediate family.”

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RECENT FEDERAL CASE LAW

Recent federal case law regarding Firearms prohibitions against domestic violence misdemeanor defendants

U.S. v. Hayes (2009)

- **Domestic violence misdemeanors need not be charged specifically under a state's domestic violence statutes in order to be subject to the federal firearms prohibition** [i.e. 18 U.S.C. § 922(g)(9)]
- Only requirements:
 - The use or attempted use of physical force, or the threatened use of a deadly weapon.
 - Committed by a person who has a specified domestic relationship with the victim.
- **Implications for Georgia:** Conviction does not have to be made under Georgia's Family Violence Act in order for the firearms prohibition to apply.

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U.S. v. Castleman (2014)

- **Domestic violence misdemeanors need not involve the use of physical force in order to be subject to the federal firearms prohibition** [i.e. 18 U.S.C. § 922(g)(9)]
- **Implications for Georgia**
 - Criminal complaints, indictments, or other charging instruments should specify the precise act a defendant is charged with committing, as well as a description of the relationship, in order to facilitate identification of convictions that will trigger the prohibition

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Recent federal case law regarding VAWA immigration relief

Hawke v. U.S. Dept. of Homeland Security (2008)

- T-Visas, U-Visas, VAWA self-petitions by victims of domestic violence, sexual assault, and human trafficking and any information related to them are protected by VAWA's broad confidentiality provisions.
- Federal authorities are prohibited from permitting the use by or disclosure of any information related to confidential VAWA applications to any third party.
- **Implications:** Abusers and their attorneys cannot be given access to these petitions in any civil or criminal case against them.

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**Recent federal case law
regarding
Internet stalking and
threats**

Elonis v. U.S. (2015) (pending)

- QUESTION: Does the conviction of threatening another person require proof of the defendant's subjective intent to threaten, or is it enough to show that a "reasonable person" would regard the statement as threatening?
- First Amendment issues
- Subjective intent vs. objective intent
- Implications: Could raise the bar in proving intent on criminal stalking and harassment charges.

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Question and Answer



THANK YOU!

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