COURT OF APPEALS OF GEORGIA

RETURN NOTICE

April 6, 2015

To: Mr. Michael Bishop, GDC001022761, Cobb County Adult Detention Center, Post Office Box 100110, Marietta, Georgia 30061

Case Number: _____ Lower Court: County Superior Court

Court of Appeals Case Number and Style: _____

Your document(s) is (are) being returned for the following reason(s).

☑ **There is no case pending in the Court of Appeals of Georgia under your name.**

☐ **A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37.** Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.

☐ **The Notice of Appeal must include a proper Certificate of Service.** A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.

☐ **An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained.** An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.

☐ **An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate.** An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.

☐ **Your appeal was disposed by opinion (order) on** _____. The Court of Appeals _____. The remittitur issued on _____ divesting this Court of jurisdiction. The case decision is therefore final.

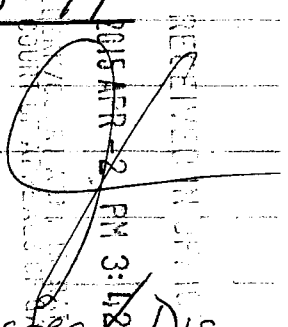
☐ **Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia.** The address of the Clerk of the is:

☐ **If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court.** As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.

☐ **A request for an out-of-time appeal should be made to the trial court from which you are appealing.** If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.

STATE of GEORGIA, Cobb County
Court of APPEAL

Michael Bishop Petitioner APPILLNT V. NADINE BELLINGER Respondent APPEALee	CIVIL NO. 14-1-1615-99



Petition to Transfer / Dismiss, Per IMproper VENUE, Lack of Jurisdiction and Lack of Subject Matter and Personel Jurisdiction over out-of-State resident, from Illegal ajudication, by Removed from bench, Former Judge F. Cox.

I Michael Bishop, Prayfully Request this COURT to review prior ERROR's and MIS-APPLICATION's to Law with the ISSUANCE of a TPO to petioner (Bellinger) and resident of Cobb County SINCE 2012 UNder the FVA §19-13-1 for an INCident/CRIme that alledgably OCCURED IN the Families Home-State for the respondent and for the minor children (County of Phila, State of PENNA.) Phila. County Court order's, for Petition for TPO ON 2/6/14, and VACATED Court order ON 2/7/14 by (Bellinger) which WAS submitted to Cobb County, GA Courts as Evidence to a prior ajudication of INCident and TPO that Judge Cox has allowed, the Cobb County Courts to Circimvent Jurisdiction over (Illegally) an allready COURT action IN progress IN County and State With courts of Proper VENUE, JURISDICTION, CASE Knowledge And County, Home-State of Respondent (Bishop)

Has adjudicated over.
I was not allowed Due Process of service to initial Illegal TPO Hearing held on 3-28-14 (I was Served Notice on 3-25-14) (10 day notice by law) denied Right to be heard or defend by Cox and current Judge Taylor. (Allthough Submitted Evidence that Bellinger's Accusation's made against me, are Perjured) Evidence of this ignored by trial court despite Evidence of Perjury is within transcripts, and Submitted Contridictory Statement of facts given to Phila Courts of same incident. (which impeaches Credibility of witness) Despite Attempt by Bellinger to circumvent the Goals of the (UCCJEA) by petitioning Custody dispute as other action (FVA) in other that court/State where Action Belongs, is called Forum Shopping by Judges F Cox + Taylor Choosing, to Not follow Law's, Rules to UCCJEA, or all motions to Clerk Regarding Issues to UCCJEA, PKPA, Venue, Jurisdiction or Exclusive Jurisdiction from Initial Custody Determination or Expodited requested Jurisdiction hearings.

Cobb County, inappropiatly assumed Jurisdiction Denied Due Process, Violated Federal UCCJEA + FVA Law's and Issued Judgements and orders That by Lack of Jurisdiction, Venue, Presumed Jurisdiction over Self, (Cobb Orders are VOID) Cobb Should

have declined Jurisdiction Per Binding Precidents and Laws
§ OCGA 19-9-48(B), 43(A)(3), §15-11-2(8), 19-9-42(3)
Anderson V. Deas 273 GA. App 770 (2005)
and Cobb Misleading of 19-13-2(b) when Testomonies from Bellinger Proves I am not a resident, of Cobb, Conducts NO Business IN Cobb Nor committed NO action's within State of Georgia.

Judge Cox avoidance to follow. what was to prevent ONE parent from abducting Child from Custodial Parent and attempt to Change Custody within County without Jurisdiction to do so Is Violation to UCCJEA.

I Pray Court of Appeal to Dismiss, Transfer, Reverse Cobb Counties FVA, TPO from 14-1-1615-99.

Michael Bishop
3-30-15

CASE ID. 0C0300659 ORDER DATE: 23RD APRIL 2010

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FAMILY COURT DIVISION

MICHAEL D. BISHOP
PETITIONER

VS.

NADINE J. BELLINGER
RESPONDENT

CASE ID. 0C0300659

ORDER

AND NOW, THIS 23RD DAY OF APRIL , 2010, IT IS HEREBY ORDERED AS FOLLOWS:

MOTHER NADINE J. BELLINGER AND FATHER MICHAEL D. BISHOP SHALL HAVE SHARED PHYSICAL AND SHARED LEGAL CUSTODY OF THE TWO CHILDREN, MALIK D. BISHOP BORN 4/27/98 AND IYANNAH D. BISHOP BORN 12/18/99 AS FOLLOWS:

MOTHER AND FATHER SHALL ROTATE PHYSICAL CUSTODY OF THE TWO CHILDREN EVERY FOUR DAYS, COMMENCING SATURDAY 4/24/10 WITH MOTHER.
PARTIES AGREE TO BE FLEXIBLE WITH THE CUSTODY SCHEDULE.

WHEN SCHOOL IS IN SESSION, PICK UP AND DROP OFF SHALL TAKE PLACE AT THE SCHOOL. WHEN SCHOOL IS NOT IN SESSION, PICK UP AND DROP OFF SHALL BE ARRANGED AND AGREED ON BY THE PARTIES.

PATERNAL GRANDFATHER CHARLES BISHOP SHALL HAVE PARTIAL PHYSICAL CUSTODY OF THE TWO CHILDREN AS THE PARTIES MAY AGREE.

THIS IS A FINAL ORDER OF THE COURT.

BY THE COURT:

HONORABLE ANGELES ROCA J.

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)
APR 23 2010
FIRST JUDICIAL DIST. OF PA
USER I.D.:

OR622 \\ REV 9/05
RM178953

CASE ID 1402V7089

TEMPORARY PROTECTION FROM ABUSE ORDER [ ] Amended Order [ ] Continued Order	IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA NO. 1402V7089

Civil Case #
14-1-1615

PLAINTIFF

NADINE	J	BELLINGER	NOVEMBER 03, 1975
First	Middle	Last	Plaintiff's DOB

Name(s) of all protected persons, including minor child/ren and DOB: NADINE J. BELLINGER
~~MALIK D. BISHOP, DOB: APRIL 27, 1998; JYANNAH D. BISHOP, DOB: DECEMBER 18, 1999~~

V.

DEFENDANT

MICHAEL	D	BISHOP	
First	Middle	Last	Suffix

Defendant's Address:
~~1122 N 20TH ST~~
PHILADELPHIA, PA 19121

CAUTION:
[X] Weapon Involved
[X] Weapon Present on the Property
[ ] Weapon Ordered Relinquished

DEFENDANT IDENTIFIERS			
DOB	SEPTEMBER 03, 1964	HEIGHT	5 feet 8 inches
SEX	Male	WEIGHT	160
RACE	African American	EYES	Brown
HAIR	Black		
SSN	185-58-2783		
DRIVERS LICENSE #	20683444		
EXP DATE	N/A	STATE	PA

The Court Hereby Finds: That it has jurisdiction over the parties and subject matter, and the Defendant will be provided with reasonable notice and opportunity to be heard.

The Court Hereby Orders:
[✓] Defendant shall not abuse, harass, stalk or threaten any of the above persons in any place where they might be found.
[✓] ~~Except for such contact with the minor child/ren as may be permitted under paragraph 5 of this order,~~ Defendant shall not contact Plaintiff, or any other person protected under this order, by telephone or by any other means, including through third persons.
[✓] Additional findings of this order are set forth below.

Order Effective Date
FEBRUARY 06, 2014

Order Expiration Date
Effective until modified or terminated by the court

NOTICE TO THE DEFENDANT

Defendant is hereby notified that violation of the order my result in arrest for indirect criminal contempt, which is punishable by a fine of up to $1,000 and/or up to six months in jail. 23 Pa.C.S.A. §6114. Consent of Plaintiff to Defendant's return to the residence shall not invalidate this order, which can only be changed or modified though the filing of appropriate court papers for that purpose. 23 Pa.C.S.A. §6108(g). If Defendant is required to relinquish any firearms, other weapons or ammunition or any firearm license, those items must be relinquished to the sheriff within 24 hours of the service of this order. As an alternative, Defendant may relinquish any firearm, other weapon or ammunition listed herein to a third party provided Defendant and the third party first comply with all requirements to obtain a safekeeping permit. If, due to their current location, firearms, other weapons or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide an affidavit to the sheriff listing the firearms, other weapons or ammunition and their current location no later than 24 hours after the service of this order. Defendant is further notified that violation of this order may subject him/her to state charges and penalties under the Pennsylvania Crimes Code and to federal charges and penalties under the Violence Against Women Act, 18 U.S.C. §§2261-2262.

Note: Statement of event of night of incident, account are totally Contridictory to Statement made to GA Courts

NADINE J. BELLINGER

Plaintiff

V.

MICHAEL D. BISHOP

Defendant

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

FAMILY DIVISION

No. 1402V7089

ORDER TO VACATE

AND NOW, on this 7TH Day of February, 2014 , the TEMPORARY ORDER in the above captioned matter is hereby VACATED and the action is DISMISSED without prejudice for plaintiff's failure to prosecute.

BY THE COURT:

Judge EDWARD R. SUMMERS

February 7, 2014

Date

How does Cobb Police Investigate action in Phila

THE SUPERIOR COURT FOR THE COUNTY OF COBB

STATE OF GEORGIA

Court Rule: www.cobbsuperiorcourtclerk.com
Rebecca Keaton
Clerk of Superior Court Cobb County

NADINE BELLINGER
Petitioner,

v.

MICHAEL BISHOP
Respondent.

Civil Action File No. 14-1-1615-99

PETITION FOR TEMPORARY PROTECTIVE ORDER

The Petitioner, pursuant to the Family Violence Act at O.C.G.A. §§ 19-13-1 et seq., files this Petition for a Family Violence Protective Order and in support shows the Court the following:

1. The Petitioner is a resident of Cobb County, Georgia, and is 18 years of age or older or is an emancipated minor. Petitioner's date of birth is November 3, 1975, sex female.

2. Respondent is a resident of the State of Pennsylvania. Under O.C.G.A. § 19-13-2(b) jurisdiction and venue are proper with this Court because the Petitioner lives in Cobb County. Respondent is subject to the jurisdiction of this Court and may be served at **1422 North 29th Street, Philadelphia, Philadelphia County, Pennsylvania 19121.**

3. Petitioner and Respondent are:

X	1.	Present or past spouses
	2.	Parents of the same children
	3.	Parent and children
	4.	Persons who used to live in the same household
	5.	Persons currently living in the same household
	6.	Foster parent and foster child
	7.	Stepparent and stepchild

4. On February 4, 2014, the Respondent committed the following acts of family violence against the ~~Petitioner and/or~~ minor children: Respondent has hurt me; Respondent has threatened ~~me;~~ On March 10, 2014, the Respondent committed the following acts of family violence against the Petitioner and/or minor children: Respondent has stalked me. Specifically, the petitioner and respondent were

FILED IN COURT
THIS 10 DAY OF March 2014
REBECCA KEATON
CLERK SUPERIOR COURT
COBB COUNTY, GEORGIA

This incident
1/28/15 7:30 Is from Phila.,
Been adjudicated over.

married for twelve years with a history of crack cocaine abuse and domestic violence on the part of the respondent until the pair divorced in 2010. The parties share joint custody of their two minor children. On 2/4/14 the petitioner traveled to Pennsylvania, to the residence of the respondent's mother, in an effort to visit with the pair's minor children. When the petitioner arrived, she found the residence in disarray and the respondent appeared as though he was under the influence of an unknown substance. The respondent transiently asked to use the petitioner's cellular phone and the petitioner conceded. A short while later, the respondent asked the petitioner to "take a ride" with the respondent. When the petitioner refused, the respondent struck the petitioner and a tussle ensued. The petitioner was able to break loose from the respondent's grasp at which time the respondent grabbed the petitioner by her hair and slammed the petitioner's face into the floor repeatedly. The respondent motioned to towards the petitioner in an effort to strangle the petitioner. The respondent then grabbed a machete and threatened both the petitioner as well as the petitioner's sister. This occurred in the presence of the pair's minor children. The petitioner contacted law enforcement however no arrest was made as the respondent had fled the scene. As a result of this altercation, the petitioner collected the pair's minor children and returned to Georgia. Shortly thereafter, the respondent began placing an influx of unwanted telephone calls and emails to the petitioner that were threatening in nature through 3/8/14. The respondent has asserted that he in on his way to Georgia to address the petitioner. The respondent has contacted law enforcement repeatedly in an effort to make false reports regarding the petitioner's parenting and household safety. The respondent has contacted the petitioner's employer. The respondent has also contacted the petitioner's relatives to assert that he will kill the petitioner the next time he sees her. Petitioner has the following additional reasons to fear Respondent: Respondent has hurt me before, Respondent has threatened me or other family members, Respondent has alcohol or drug problems, Respondent has dangerous weapons, Respondent has a criminal record, Respondent has been violent to other people, Respondent has been violent in the presence of children, Respondent has threatened to kill me, Respondent has threatened to kill himself/herself, Respondent has taken my children and Respondent has threatened to take my children.

Petitioner is in reasonable fear for Petitioner's own safety and the safety of the minor children.

5. At other times the Respondent has committed other such acts, including but not limited to (approximate dates and what happened):

2008 Respondent threatened me and Respondent held a gun to my head.

6. There is a substantial likelihood that the Respondent will commit such acts of violence against the Petitioner and minor children in the immediate future if relief is not granted as provided pursuant to O.C.G.A. § 19-13-4.

#34

CASE ID 0C0300659

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

MICHAEL D. BISHOP
PETITIONER

VS.

NAOMI SMALLS
RESPONDENT

FAMILY COURT DIVISION
CIVIL ACTION
CUSTODY

No. 0C0300659

Petition to Modify
CUSTODY

1. The petitioner is MICHAEL D. BISHOP
Residing at **CONFIDENTIAL**

2. The Respondent is NAOMI SMALLS
Residing at 1753 NORTH 29TH STREET
PHILADELPHIA, PA 19121

FILED
AUG 13 2014
Domestic Relations Branch
Family Division

3. On APRIL 23, 2010, The Honorable ANGELES ROCA entered the following order:
MOTHER NADINE J. BELLINGER AND FATHER MICHAEL D. BISHOP SHALL HAVE SHARED PHYSICAL AND SHARED LEGAL CUSTODY OF THE TWO CHILDREN, MALIK D. BISHOP BORN 4/27/98 AND IYANNAH D. BISHOP BORN 12/18/99 AS FOLLOWS:

MOTHER AND FATHER SHALL ROTATE PHYSICAL CUSTODY OF THE TWO CHILDREN EVERY FOUR DAYS, COMMENCING SATURDAY 4/24/10 WITH MOTHER.
PARTIES AGREE TO BE FLEXIBL

4. Since the entry of said order, there has been a significant change in the circumstances in that:
FATHER STATES MOTHER IS INCARCERATED AND MOTHERS SISTER NOW HAS THE CHILDREN AND IS NOT IN THE CHILDRENS BEST INTEREST.

5. The best interest of the child(ren) will be served by the Court in modifying said Order.

WHEREFORE, Petitioner prays this Court to grant the modification of the Order as follows:
FATHER MICHAEL BISHOP REQ SOLE PHYSICAL AND SOLE LEGAL CUSTODY OF CHILDREN MALIK 4/27/98 AND IYANAH 12/18/99.

ID# 2014-01191183-CV
Page 6

Date: 08/13/2014

PRAYS ~~that~~ with this MOTION ALL CHARGES will be DISMISSED AGAINST him within the ~~State of~~ GEORGIA, ~~Cobb COUNTY~~

I MICHAEL D. BISHOP would LIKE to THANK the CLERK OF COURT AND the HONORABLE Judge with his/her time with the filing of my MOTION.

THANK YOU

Pro Se
w/stby
COUNSEL

MICHAEL D. BISHOP

Michael Bishop

DATE: 10-13-14

x Treasure Blackmon
October 13 2014

TREASURE BLACKMON NOTARY PUBLIC GEORGIA FULTON COUNTY EXPIRES JAN. 23, 2018

Error interpitation of Rule By COBB A p190 point

Aidding in abduction of my kid's!

Georgia Divorce, Alimony, and Child Custody
Database updated November 2014
Dan E. McConaughey [a0]
Part III. Custody
Chapter 32. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

§ 32:1. Nature, purpose, and scope

Effective July 1, 2001, the Uniform Child Custody Jurisdiction Act (UCCJA) [1] was repealed in its entirety and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) [2] was enacted in its place.

Since the function of the UCCJEA is the same as the former UCCJA, i.e., to resolve interstate child custody disputes, the purposes contained in the former Act [3] are presumably still applicable:

The general purposes of this law are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on children's well-being.

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in the state which can best decide the case in the interest of the child.

(3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and to also assure that the courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid unnecessary relitigation of custody decisions of other states in this state.

(7) Facilitate the enforcement of custody decrees of other states.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(9) Make uniform the law of those states which enact the Uniform Child Custody Jurisdiction and Enforcement Act. [4]

Cases decided under the former Act held that this statute was to be construed liberally to the end of avoiding jurisdictional competition and its harmful effect upon the child, as stated in the general purposes of the Act, and assure that the custody proceedings would take place in the state with which the child and his family had the closest connection. [5]

A "child custody proceeding" [6] under the UCCJEA is a proceeding in which legal custody, physical custody, or visitation, with respect to a child under 18, [7] is in issue; the term includes a proceeding for divorce, [8] separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from family violence but does not include proceedings involving juvenile delinquency, contractual emancipation, enforcement, [9] Indian children, [10] adoption, [11] or authorization of a child's emergency medical care. [12]

The term "State" has broad application and includes all 50 states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory subject to United States jurisdiction; [13] and a foreign country which will be treated as if it were a state, [14] but not if it violates human rights. [15]

The UCCJEA has numerous advantages over prior law. The new Act provides clear criteria and priorities as to which state should have jurisdiction to resolve an initial child custody dispute, [16] a subsequent modification action, [17] or a temporary emergency jurisdiction. [18] Furthermore, personal jurisdiction is not required over a nonresident defendant. [19] Also, there

USE PKPA - Supercedes TPO + UCCJEA Order's of Coustody - Home State Priority

are excellent procedures for providing interstate enforcement of child custody orders. [20] Hopefully, the former problem of two states claiming concurrent jurisdiction and having simultaneous proceedings has been resolved. [21] In addition, any conflicting provisions of the former law with the Parental Kidnapping Prevention Act (PKPA) [22] should be reconciled by giving priority to the home state. [23]

The UCCJEA is not to be applied retroactively so the UCCJA would apply to a motion or other request for relief in a child custody proceeding or to enforce a child custody determination which was commenced before July 1, 2001. [24]

The provisions of the UCCJEA will prevail over any conflicting provisions of the Georgia Child Custody Intrastate Jurisdiction Act of 1978. [25]

When the UCCJEA is applicable, it supersedes Georgia case law rendered prior to the UCCJEA's enactment. [26]

Whenever there is a conflict between the UCCJEA and the PKPA, the latter takes precedence because of the Supremacy Clause. [27]

The UCCJEA does not expressly repeal any particular provisions of the Georgia CPA, nor the existing statutory provisions covering divorce, custody, alimony and child support procedures. [28]

The provisions of the UCCJEA will not be interpreted to repeal, amend, or impair the provisions relating to the disclosure of the location of a family violence center. [29]

Applying and construing the provisions of the UCCJEA a Georgia court must consider "the need to promote uniformity of the law with respect to its subject matter among states that enact it." [30]

Footnotes

a0 The Falls, Atlanta Georgia.

1 Ga. Laws 1978, p. 258; former O.C.G.A. §§ 19-9-40 to 19-9-64. For forms see §§ 35:98 et seq., infra.
For an adoption case filed prior to the new law and subject to the prior law, see In the Interest of B. A. S., 254 Ga.App. 430(7), 563 S.E.2d 141 (2002).

2 Ga. Laws 2001, p. 129; O.C.G.A. §§ 19-9-40 to 19-9-51, §§ 19-9-61 to 19-9-70, §§ 19-9-81 to 19-9-97, §§ 19-9-101 to 19-9-104.

3 Former O.C.G.A. § 19-9-41.
The former UCCJA sought to assure that custody proceedings would take place in the state with which the child and his or her family had the closest connection. Gordon v. Gordon, 185 Ga.App. 100, 103, 363 S.E.2d 353 (1987); Williams v. Goss, 211 Ga.App. 195, 197, 438 S.E.2d 670 (1993); Mezquita v. Campbell, 238 Ga.App. 396, 400, 519 S.E.2d 27 (1999).
The Georgia legislature responded to the concerns of the Georgia Supreme Court expressed in Matthews v. Matthews, 238 Ga. 201, 232 S.E.2d 76 (1977), about the practice of filing suit to change custody in the county (or state) of the noncustodial parent after that parent abducts the child.
This act was intended to prevent forum shopping concerning children issues. In the Interest of J. S. J., 253 Ga.App. 174, 178(1), 558 S.E.2d 763 (2002). Also, it was intended that litigation take place where there is the closest connection to the child and the most evidence. Id. at 175(1). Also see Taylor v. Curl, 298 Ga. App. 45, 679 S.E.2d 80 (2009).

4 O.C.G.A. § 19-9-101.
Also see Croft v. Croft, 298 Ga. App. 303, 680 S.E.2d 150 (2009); Bellew v. Larese, 288 Ga. 495, 496, 706 S.E.2d 78 (2011).

5 Graham v. Hajosy, 159 Ga.App. 466, 283 S.E.2d 683 (1981); Dyer v. Surratt, 216 Ga.App. 876, 456 S.E.2d 510 (1995), rev'd in part, 266 Ga. 220, 466 S.E.2d 584 (1996). Also see Mezquita v. Campbell, 238 Ga.App. 396, 399, 519 S.E.2d 27 (1999). Also see In the Interest of B. A. S., 254 Ga.App. 430(7), 563 S.E.2d 141 (2002), for an adoption case filed prior to the new law and subject to the prior law.

6 O.C.G.A. § 19-9-41(4).

7 O.C.G.A. § 19-9-41(2).
Purposes of the present Act are stated in Delgado v. Combs, 314 Ga. App. 419 (n. 2), 724 S.E.2d 436 (2012).

8 See Collins v. Davis, 318 Ga. App. 265 (n. 15), 733 S.E.2d 798 (2012).

9 See § 32:6, infra.

10 O.C.G.A. §§ 19-9-41(16), 19-9-43.

authority of the superior court, after hearing the evidence of [a party's] conduct, to enjoin [him] from approaching or harassing [the victim]. See generally OCGA § 15-6-9.

Id. at 126(5), 518 S.E.2d 148. In the case sub judice, the substance and function of the six-month protective order issued by Judge **379 Pressley were to protect Hill and to enjoin Giles from having contact with her. Additionally, the order expressly provided that "any violation of this Order will be considered a violation of OCGA § 16-5-90 and will subject the Respondent to prosecution of Aggravated Stalking, a violation of OCGA § 16-5-91, a felony." Accordingly, the trial court did not err in denying Giles' motion to vacate his conviction on this ground.

[4] 3. Giles has filed a motion asking this Court to order the superior court to return him to the Fulton County Jail during the pendency of his appeal. The record shows that on June 21, 2000, Judge Daniel ordered that Giles remain at the Fulton County Jail until he exhausted his appeal or until further order of the court. In his motion, Giles refers to a subsequent order by Judge Constance Russell that he be transferred to the Georgia Department of Corrections. This order has not been included in the voluminous record.

In *Helmeci v. State*, 230 Ga.App. 866, 870-871(5), 498 S.E.2d 326 (1998), we recognized that, in certain circumstances, a defendant has a right to remain in the county jail pending the disposition of all appeals in his case. In that case, we cited OCGA § 42-5-50(c), which provides:

> In the event that the attorney for the convicted person shall file a written request with the court setting forth that the presence of the convicted person is required within the county of the conviction, or incarceration, in order to prepare and prosecute properly the appeal of the conviction, the convicted person shall not be transferred to the correctional institution as provided in subsection (b) of this Code section. In such event the convicted person shall remain in the custody of the local jail or lockup until all appeals of the conviction shall be disposed of or until the attorney of record for the convicted person shall file with the trial court an affidavit setting forth that the presence of the convicted person is no longer required within the county in which the conviction occurred, or in which the convicted person is incarcerated, whichever event shall first occur.

The record in the case sub judice does not contain a written request setting forth that Giles' presence is required in Fulton County in order to pursue the appeal, as required by the statute. Accordingly, the motion to order the trial court to return Giles to the Fulton County Jail is hereby denied.

Judgment affirmed.

ANDREWS, P.J., and PHIPPS, J., concur.

Parallel Citations

570 S.E.2d 375, 02 FCDR 2460

End of Document

KeyCite Yellow Flag - Negative Treatment
Certiorari Granted, Cause Remanded November 7, 2005

273 Ga.App. 770
Court of Appeals of Georgia.

ANDERSON
v.
DEAS.

No. A05A1013. | June 20, 2005. |
Certiorari Granted, Cause Remanded Nov. 7, 2005.

Synopsis

Background: Mother filed petition charging nonresident father with acts of family violence. The Superior Court, DeKalb County, Roach, J., determined it had no jurisdiction over father and dismissed petition. Mother filed application for discretionary appeal.

Holdings: The Court of Appeals, Phipps, J., held that:

[1] exercise of temporary emergency jurisdiction under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was not warranted, and

[2] trial court did not have personal jurisdiction over nonresident father who made telephone threats from another state.

Affirmed.

West Headnotes (2)

[1] Child Custody
Emergency jurisdiction
Infants
Proceedings and jurisdiction

Trial court did not have temporary emergency jurisdiction under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to protect child who had received telephone threats from nonresident father, where child remained in mother's custody and was in no immediate danger. West's Ga.Code Ann. § 19-9-64(a).

2 Cases that cite this headnote

[2] Protection of Endangered Persons
Inter-Jurisdictional Issues

Trial court did not have personal jurisdiction over nonresident father who made telephone threats to mother and child, and thus court was without jurisdiction to rule on mother's petition charging father under Family Violence Act; although the injurious consequences were felt in Georgia, father committed the alleged tortious act in another state. West's Ga.Code Ann. §§ 9-10-91, 19-13-1 et seq.

3 Cases that cite this headnote

Attorneys and Law Firms

**859 Kindel C. Johnson, Atlanta, for appellant.

Tamar O. Faulhaber, Kenneth H. Schatten, Kresses, Benda, Lenner & Schatten, Atlanta, for appellee.

Opinion

PHIPPS, Judge.

*770 Jonita Anderson and Raymond Deas had a child together in Maryland. After moving with the child to Georgia, Anderson filed a petition in the Superior Court of DeKalb County charging Deas with acts of family violence. She alleged that he had committed the criminal offenses of terroristic threats and stalking through statements he made to her and the child in telephone calls from another state. The court entered an ex parte temporary protective order enjoining Deas from harassing, intimidating, or contacting Anderson or the child.

**860 After Deas moved to dismiss, the court conducted a hearing on whether any of the alleged acts of family violence would have occurred within the State of Georgia so as to give the court jurisdiction under the Family Violence Act (FVA).[1] The court later entered an order finding that no acts of family violence in Georgia had been alleged; concluding, therefore, that it lacked jurisdiction over nonresident Deas;

and dismissing the protective order. We granted Anderson's application for discretionary appeal. Upon consideration, we affirm.

[1] OCGA § 19–13–1 et seq.

At the hearing, Anderson testified: Deas telephoned her from another state, their daughter answered the telephone, Deas immediately began screaming at her and accusing her of having lied to him, and he told her that when he next saw her he was going to beat her like he had never done before. The child became upset, dropped the phone, and started crying. She was afraid that Deas was going to come to her and Anderson's house and beat her, because she thought he knew where they lived. Anderson took the phone, and Deas repeated some of the things he had said to their daughter. As a result, Anderson called the police, who advised her to seek the protective court order.

Anderson further testified that before the call, Deas had been threatening to kill her and hurt the child and that, when they all lived in another state, she had been forced to make 911 calls because of his physical abuse of the child. According to Anderson, Deas telephoned again after entry of the protective order; she informed him of its existence; and he began yelling profanity and hung up the phone, but then called back and expressed regret for not having killed her.

1. Anderson contends that the superior court erred in not ruling that it has jurisdiction of the case under either the Uniform Child *771 Custody Jurisdiction and Enforcement Act (UCCJEA),[2] the federal Parental Kidnapping Prevention Act (PKPA),[3] or the FVA.[4]

2 OCGA § 19–9–40 et seq.

3 28 USC § 1738A.

4 Supra.

(a) Anderson argues that the court was presented with an emergency requiring the exercise of UCCJEA jurisdiction under OCGA § 19–9–64(a). We cannot agree.

Deas initially instituted a custody proceeding concerning the child in a Maryland court in August 2002. Later that year, Anderson initiated a custody proceeding in the Superior Court of Fulton County. The Fulton County proceeding was dismissed in view of the Maryland proceeding, which is still pending. In fact, a hearing in the Maryland proceeding was scheduled for December 2004, but it was continued because Anderson failed to appear. Shortly before the scheduled hearing date, Anderson instituted another custody proceeding in the Superior Court of DeKalb County. And she filed another petition for a family violence protective order in the Superior Court of Fulton County. Both the Fulton County Superior Court in the family violence proceeding and the DeKalb County Superior Court in the other custody proceeding found continuing child custody jurisdiction in Maryland and declined to exercise jurisdiction in Georgia.

[1] OCGA § 19–9–64(a), relied on by Anderson, provides that "[a] court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse." Here, the DeKalb County Superior Court was fully authorized to decline to exercise emergency jurisdiction, on the ground that the child is in no immediate danger because she continues to be in Anderson's custody and that "there was no true emergency which required the Georgia court to exercise jurisdiction for the protection of the child."[5]

5 *Rozier v. Berto*, 230 Ga.App. 427, 429, 496 S.E.2d 544 (1998).

(b) It follows that the court also lacks jurisdiction under the PKPA, as it contains **861 the same jurisdictional standards set forth in the UCCJEA.[6]

6 See *Wilson v. Grouse*, 263 Ga. 887, 889(1), 441 S.E.2d 57 (1994).

[2] (c) As used in the FVA, the term "family violence" means the commission of "[a]ny felony"[7] (such as terroristic threats)[8] or various *772 other specified offenses which include stalking.[9] A person commits the offense of stalking by, among other things, contacting another person at a place without consent for the purpose of harassing and intimidating.[10] Contact by telephone is deemed to occur at the place where the communication is received.[11] But for proceedings under the FVA involving a nonresident respondent, the superior court where the petitioner resides or the superior court where an act involving family violence allegedly occurred has jurisdiction only "where the act involving family violence meets the elements for personal jurisdiction provided under paragraph (2) or (3) of Code Section 9–10–91."[12] OCGA § 9–10–91 is Georgia's Long Arm Statute. In pertinent part, it provides:

7 OCGA § 19–13–1(1).

8 OCGA § 16–11–37. As recognized in cases such as *Todd v. State*, 230 Ga.App. 849, 850(1), 498 S.E.2d 142 (1998), any threat to commit a crime of physical violence upon another person that is communicated by telephone may be considered a terroristic threat.

9 OCGA § 19–13–1(2).

10 OCGA § 16–5–90(a)(1).

11 Id.

12 OCGA § 19–13–2(b).

> A court of this state may exercise personal jurisdiction over any nonresident ... as to a cause of action arising from any of [certain] acts [or] omissions ... in the same manner as if he were a resident of the state, if ... he: ... (2) Commits a tortious act or omission within this state ...; (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state.

Even though Deas may have committed a tortious injury in this state, Georgia courts clearly do not have jurisdiction over him under paragraph (3) of the Long Arm Statute, because he has not met any of the other requirements set forth in paragraph (3). If jurisdiction exists at all, it must therefore exist under paragraph (2) of the Long Arm Statute on the ground that Deas committed a tortious act within this state. Linguistically, one would think that a tortious act was committed in the place where the act occurred. Some courts, however, have taken the position that a tortious act is a composite of both the act and damage, so that the tort may also be said to occur in the place of the resulting injury.[13] What is known as the "Illinois Rule" "rejects the argument that the term 'tortious act' refers only to act or conduct, separate and apart from the consequences thereof."[14] In contrast, under the rule referred to as the "New York Rule," "our Long Arm *773 Statute does not confer jurisdiction in a situation where a non-resident party commits [an act] outside the state with only the injurious consequences occurring within the state."[15]

13 See *Coe & Payne Co. v. Wood–Mosaic Corp.*, 230 Ga. 58, 59–60, 195 S.E.2d 399 (1973).

14 Id. at 60, 195 S.E.2d 399.

15 Id.

In the well-known case of *Coe & Payne Co. v. Wood–Mosaic Corp.*,[16] our Supreme Court adopted the Illinois Rule. Later, however, the Court decided *Gust v. Flint*.[17] The allegation in *Gust* was that the defendants had committed an isolated tortious act outside the State of Georgia causing injury in the state. This court found the existence of long arm jurisdiction under paragraph (2) of OCGA § 9–10–91, though not under paragraph (3).[18] The Supreme Court reversed, holding that **862 unrebutted evidence showed that the defendants had done none of the acts set forth in OCGA § 9–10–91 which must be done in order to subject them to personal jurisdiction of a Georgia court. We need not discuss the relative merits of a "New York rule" or an "Illinois rule." The rule that controls is our statute, which requires that an out-of-state defendant must do certain acts within the State of Georgia before he can be subjected to personal jurisdiction. Where, as here, it is shown that no such acts were committed, there is no jurisdiction.[19]

16 Supra.

17 257 Ga. 129, 356 S.E.2d 513 (1987).

18 *Flint v. Gust*, 180 Ga.App. 904, 906(2), 351 S.E.2d 95 (1986).

19 *Gust v. Flint*, supra at 130, 356 S.E.2d 513.

Here, Deas allegedly placed the telephone calls from another state. Although the injurious consequences would have been felt in Georgia, it is undisputed that Deas never came to Georgia so as to commit an act here. Therefore, applying the Long Arm Statute as interpreted in *Gust* to the FVA, in accordance with the express terms of the FVA, we agree with the trial court that Anderson has alleged no acts by Deas giving the Georgia courts personal jurisdiction over him under the FVA.

2. Remaining issues raised by Anderson are moot.

Judgment affirmed.

CRIMINAL WARRANT

MAGISTRATE COURT OF COBB COUNTY
GEORGIA, COBB COUNTY

Warrant No. 14-W-4032
Police Case No. 14037064

Personally came J M Byrum who makes oath before a Magistrate of this Court that Michael Dane Bishop (hereinafter called the accused) AKA: did, between 3/24/2014 at 11:00 AM and 5/4/2014 at 07:06 PM at 1049 Powers Ferry Road #1705,Marietta in the County of Cobb,Georgia, commit the offense of STALKING AGGRAVATED(F) violating O.C.G.A, Section 16-5-91,for that said accused did repeatedly call and send text messages to the victim and their children after she moved from Philadelphia to Cobb County; the accused did then repeatedly call the police to check on his children in an attempt to harass the victim, often times with false allegations of criminal activity; this behavior led the victim to apply for and obtain Temporary Protective Order 14-1-1615-99; the Twelve Month Family Violence Order was served to the accused on March 24, 2014 by Deputy S. Robinson (219) of the Commonwealth of Pennsylvania: SS: County of Philadelphia; since the time of that service, the accused has continued to call and send text messages to the victim and her juvenile son; on April 27, 2014, the accused did leave a voicemail on the victim's phone stating that he would send the police to her house since she would not let him talk to his son on his son's birthday; on 5/2/2014, the accused did send a text message to the juvenile son that included harsh inappropriate language in reference to the juvenile son refusing to speak to him; on 5/3/2014, the accused contacted the Cobb County Emergency Communications Center and requested that officers respond to the victim's residence to check on his children; on 5/4/2014, the accused did call the Cobb County Emergency Communications Center again requesting that the police respond to the victim's residence to check on his juvenile son and stated that his son called because his mother "pulled a gun on him"; the accused attempted to use the name Eric Bellinger and portray himself as the victim's father in order to coerce the police into responding; both calls to 911 were from the same voice and the same telephone number;between 3/24/2014 at 11:00 AM and 5/4/2014 at 07:06 PM at 1049 Powers Ferry Road #1705,Marietta in the County of Cobb,Georgia, commit the offense of FALSE REPORT CRIME(M) violating O.C.G.A, Section 16-10-26,for that said accused did willfully and knowingly give or cause a false report to be given to a law enforcement officer or agency of the state, to wit: the accused did call the Cobb County Emergency Communications Center at 1906 hours on 05/04/2014 and report, on a recorded line, that he recieved a call from his juvenile son stating that his mother "pulled a gun on him"; the accused stated that he could hear screaming and yelling in the background; the juvenile stated that he never called the accused and that his mother never pulled a gun and that he has never seen his mother with a gun; the accused used a false name while calling 911 since he was under an active Protective Order (14-1-1615-99) at the time;
and affiant makes this affidavit that a warrant may issue for the arrest of the accused.

Affiant: J M Byrum
Badge No. cc1180

Sworn to and subscribed before me, this 5th day of May, 2014.

****** DOMESTIC VIOLENCE *******

As the issuing judge/affiant,
I do hereby verify that this document is an original criminal warrant with electronically generated signatures. Judge

On October 30, 1999, Davis-Redding drove to Redding's brother's residence to give the children their Halloween costumes. When she arrived, the children came out and gave her a hug. She claims that when Redding saw them do this, he came outside, grabbed the children by their arms and took them toward the front door. He let go of them and told them to go to the door. According to Davis-Redding, Redding then turned around and grabbed her by the arms. She wrestled herself away from him and ran for her car. As she started driving away, Redding punched her car window and ripped the side mirror off the car.

On November 1, 1999, Davis-Redding filed a petition for a temporary protective order in Clayton County Superior Court. Without holding a formal hearing or serving Redding, the court found that Redding was a resident of Henry County and dismissed the petition.

Davis-Redding then went to the Henry County courthouse to file *793 a petition for a protective order. According to Davis-Redding, the judge there refused to consider the petition because Redding had not indicated an intent to remain in Henry County and so was still a resident of Clayton County.

On November 17, Davis-Redding was served with a verified complaint for divorce. In it, Redding swore that he was a resident of Clayton County. On December 1, based on this new evidence showing Redding as a Clayton County resident and her inability to get relief in Henry County, Davis-Redding moved the Clayton County court to reconsider the November 1 order or to grant a new trial. The motion was denied on December 7, 1999. We granted Davis-Redding's application for discretionary review of the November 1 and December 7 orders denying her initial petition for a protective order and motion for reconsideration.

[1] 1. Davis-Redding contends the trial court misapplied OCGA § 19-13-2, arguing that venue was proper in both Clayton and Henry Counties. We agree that venue was proper in either county.

The venue provision of the Family Violence Act[1] provides, in pertinent part, that "the superior court of the county where the respondent resides shall have jurisdiction over all proceedings under this article." The Act does not define the term "resides." Nor have we found any cases defining "resides" in a family violence context. However, issues involving a defendant's legal residency for purposes of filing suit have arisen in other contexts.

1 OCGA § 19-13-2(a).

In general, one's legal residence for the purpose of being sued in Georgia is the same county as his or her domicile.[2] Under OCGA § 19-2-1:

2 *Sorrells v. Sorrells*, 247 Ga. 9, 11(3), 274 S.E.2d 314 (1981); see *In the Interest of B.G.*, 238 Ga.App. 227, 228, 518 S.E.2d 451 (1999).

> (a) The domicile of every person who is of full age and is laboring under no disability is the place where the family of the person permanently resides, if in this state. If a person has no family or if his family does not reside in this state, the place where the person generally lodges shall be considered his domicile.
>
> (b) The domicile of a person sui juris may be changed by an actual change of residence with the avowed intention of remaining at the new residence. Declaration of an intention to change one's domicile is ineffectual for that purpose until some act is done in execution of the intention.

Thus, under OCGA § 19-2-1, the court could have found that *794 Redding is a resident of either county. Under subsection (a), since **199 Redding's family permanently resides in Clayton County, that county could be considered his place of domicile. At the same time, if Redding's separation from his family requires that he be treated as though he has no family, his domicile is in Henry County, since that is where he generally lodges.

Under subsection (b), Redding changed his domicile to Henry County if he actually moved and made known his intention to remain at the new location. While the record shows he moved, it does not indicate whether Redding made known any intention to remain in his brother's Henry County home. Thus, it does not show that he changed his domicile.

This is a case where the respondent's place of residence for venue purposes is not exactly clear. In such a case, it is particularly important to consider the purpose of the Family Violence Act. The Act seeks to bring about an end to acts of family violence.[3] In order to achieve this purpose, the Act gives the trial court authority to order temporary relief as it deems necessary to protect a person from violence, even if

that means giving the respondent no notice and no opportunity to be heard before the order is issued.[4]

3 See OCGA § 19-13-4(a); *Duggan v. Duggan-Schlitz*, 246 Ga.App. 127, 539 S.E.2d 840 (2000).

4 OCGA § 19-13-3(b); *Duggan*, supra.

[2] Considering the Act's important purpose, as well as the language of OCGA §§ 19-2-1 and 19-2-2, we hold that, in a family violence case in which the respondent has left the family home but has not avowed an intention to remain in his new location, venue is proper both in the county of the family's residence and in the county to which the respondent has relocated. We agree with the rationale behind this Court's opinion in *Corbett v. Corbett*:[5] "divorce cases are different from other cases, requiring some flexibility in the application of our jurisdictional and venue rules."[6] We realize this is a family violence case rather than a divorce case; however, even more flexibility may be required in cases filed to bring about an end to family violence.

5 (Punctuation omitted.) 236 Ga.App. 299, 301, 511 S.E.2d 633 (1999).

6 Id.

Although the trial court would also have been authorized to find that venue was in Henry County, the trial court erred in holding that venue did not lie in Clayton County. Accordingly, the trial court's judgment dismissing the petition must be reversed.

[3] [4] 2. Davis-Redding correctly argues that the trial court erred in dismissing the petition based on improper venue on its own motion. A defense of improper venue may be waived,[7] and Redding did not raise the issue himself. The trial court was not authorized to dismiss the petition on its own due to improper venue.[8]

7 See *Williams v. Fuller*, 244 Ga. 846, 850(5), 262 S.E.2d 135 (1979); *Harbin Enterprises v. Sysco Corp.*, 195 Ga.App. 694, 695(1), 394 S.E.2d 618 (1990).

8 See *Brown v. Rock*, 184 Ga.App. 699, 701(2), 362 S.E.2d 480 (1987); *Hubbert v. Williams*, 175 Ga.App. 393, 396(3), 333 S.E.2d 425 (1985).

3. Based on the foregoing, we need not consider Davis-Redding's remaining arguments.

Judgment reversed.

SMITH, P.J., and PHIPPS, J., concur.

Parallel Citations

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3. Based on the foregoing, we need not consider Davis-Redding's remaining arguments.

Judgment reversed.

SMITH, P.J., and PHIPPS, J., concur.

Parallel Citations

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Jurisdiction over FV Petition

Phila Ruled + Police VACATED WARRANT

> a parent to a child in the form of corporal punishment, restraint, or detention.

OCGA § 19–13–1.

A petitioner may seek a family violence protective order for himself or herself or, as occurred here, on behalf of a minor child. OCGA § 19–13–3(a). In the petition, the petitioner must allege "specifics facts that probable cause exists to establish that family violence has occurred in the past and may occur in the future." OCGA § 19–13–3(b). Upon the filing of a petition, the court may order temporary ex parte relief. Id. Then, within 30 days after the filing of the petition, a hearing must be held at which the petitioner "must prove the allegations of the petition by a preponderance of the evidence." OCGA § 19–13–3(c). "If a hearing is not held within 30 days, the petition shall stand dismissed unless the parties otherwise agree." Id.

In this case, a hearing occurred within 30 days but occurred in the Paulding Superior County Court—rather than the Cobb County Superior Court, which had venue over the petition. See OCGA § 19–13–2(a) (superior court of county where respondent resides shall have jurisdiction over family violence protective order proceedings). Given that the parties agreed for the Paulding County Superior Court to conduct the hearing, we will assume arguendo that venue was proper in the Paulding County Superior Court pursuant to the Cobb County Superior Court's October 26 order. We note that if the Paulding County Superior Court lacked venue over the family violence order proceedings, then the father's petition would stand dismissed for failure to meet OCGA § 19–13–3(c)'s requirement that a hearing be held within 30 days.

The record in this case does not contain the family violence petitions that the father filed in Cobb County Superior Court. Thus, it does not show the specific allegations of family violence made in those petitions. At the hearing—which, as noted above, was suspended and not reconvened—the father attempted to demonstrate that the mother had yelled at and frightened the two girls, that she had hit S.P., causing bruises on the girl's legs, and that she had hit and chased J.P. The evidence was as follows.

The girls spent a weekend visit with the father beginning on Friday, September 24, 2010. The father testified that he noticed multiple bruises, some apparently older than others, on S.P.'s legs that evening. He testified that S.P. told him that "Mommie had done it" and that "Mommie hit me." The father did not take S.P. to a *735 medical provider, but instead contacted the police and the Department of Family and Children Services. On Sunday, September 26, the father met with a Cobb County officer, told him "what was going on," and showed him S.P.'s bruises. The officer testified that S.P. first told him that she got the bruises when she fell from her bicycle. But after prompting from the father, S.P. said "my Mommie grabbed me." J.P. told the officer that the mother had hit her five times, that she had seen the mother grab and hit S.P. twice, and that she once had tried to intervene and the mother had told her to leave. The officer turned the case over to a crimes against children detective, but no criminal charges **564 were brought. The father returned the girls to the mother at the end of the weekend.

Two days later, the mother notified the father of her intent to move to Texas with the girls. The father responded, "Don't count on it!"

The next day, the father picked up the girls for a short evening visit. S.P., he testified, began crying and said the mother was hitting and beating her again. He testified that both girls said that they did not want to return to the mother and described the mother screaming, running around the apartment, and hitting them. The father called 911 and met with Paulding County law enforcement officers. A Paulding County officer testified that J.P. told him that she did not want to return to the mother because the mother "hits." S.P. would not speak to the officer. The father announced that he was not going to return the girls to the mother. The officer contacted the mother and told her that he could not make the father return the girls to her at that time.

The father also testified that J.P. had told him several times that the mother was hitting S.P., that the mother had threatened to hit J.P. if she "didn't mind her business," and that on one occasion J.P. had run and hid from the mother because the mother was loud and frightening. He said that the girls cried a lot during visits with him, looked panicked, and would tell him that they were afraid and did not want to return to the mother. The father took the girls to a child psychologist on October 16, 2010; the psychologist testified that he spoke with them for 19 minutes, during which they stated that the mother was mean, that she yelled at and spanked them, and that they did not want to move to Texas.

The father admitted at the hearing that in 1994 he accused a former wife (not the mother in this case) of abusing their daughter and that that case was dismissed. He also admitted

Phila. County, State of PENNA.

that he previously accused the mother in this case of abusing the girls and that those allegations were determined to be unfounded.

*736 The father argues that the trial court was required to grant a family violence protective order based on this evidence, because the mother did not present evidence to refute the testimony that the bruises occurred when she hit S.P. or to demonstrate that her actions were part of reasonable discipline.

We are not persuaded. In the first place, the father's argument ignores the fact that the mother was unable to present any evidence at the hearing due to the illness of the father's counsel. (The record suggests, however, that the mother would have been able to present some refuting evidence at the hearing had she been given the opportunity.)

More fundamentally, whether or not it was rebutted, the trial court was under no obligation to believe the father's evidence. As petitioner, he bore the burden of showing by a preponderance of the evidence that an act of family violence occurred. It was the father's burden to show that any actions by the mother were *not* part of reasonable discipline.

Most of the father's evidence consisted of reports of statements made by the girls, who did not testify. We note that the admissibility of that evidence is questionable. See *Allen v. Clerk*, 273 Ga.App. 896, 898(1), 616 S.E.2d 213 (2005) (temporary protective order cannot rest on hearsay evidence). But we assume—without deciding—that the statements were competent evidence under the Child Hearsay Statute, OCGA § 24–3–16, or under some other exception to the hearsay rule.

Former Perjured Statement

The credibility of the evidence was for the trial court, as finder of fact. See *White v. State*, 287 Ga. 713, 716(1)(b), 699 S.E.2d 291 (2010). Much of the evidence of what the girls said about the mother came from the testimony of the father, who had a history of making unfounded allegations of child abuse against former wives, including the mother in this case. Notably, the only person other than the father whose testimony expressly connected the bruises on S.P.'s legs to actions of the mother was one of the police officers, who testified that S.P. first told him that the bruises were caused by a fall from her bicycle and only blamed the mother after prompting from the father. The trial court could have accepted this testimony as evidence that the mother caused S.P.'s bruises, but he was not required to do so. See id.

In any event, the evidence presented by the father offered no context for the alleged **565 incidences of the mother hitting, yelling, chasing and being "mean." The trial court could have found from the evidence that the father had not shown by a preponderance of the evidence that the incidences fell outside the bounds of permissible, reasonable discipline. See *737 *Buchheit v. Stinson*, 260 Ga.App. 450, 455–456, 579 S.E.2d 853 (2003) (physical precedent only). See also *Maddox v. Boutwell*, 176 Ga.App. 492, 493–494, 336 S.E.2d 599 (1985) (finding, as a matter of law, that school-administered corporal punishment of striking student four times with wooden paddle, which had been painful to student and had resulted in "severe bruises" to his buttocks and thigh, was neither excessive nor unduly severe; "it is to be anticipated that corporal punishment will produce pain and the potential for bruising"). Under these circumstances, we discern no abuse of discretion in the trial court's denial of the petition for family violence protective orders. See *Anderson*, 283 Ga.App. at 548(1), 642 S.E.2d 105.

3. *The trial court did not err in excluding photographic evidence.*

[4] The father argues that the trial court erred in refusing to admit into evidence photographs showing S.P.'s bruises. We find no error. The trial court held that the father had not yet met the "foundational requirement" for the photographs' admission, a determination that fell within that court's discretion. See *Whitaker v. State*, 287 Ga.App. 465, 467(2), 652 S.E.2d 568 (2007). And although the record shows that the court suggested it would reconsider the photographs' admission, the father's counsel made no further attempt to lay a foundation for them. The decision in *Dick v. State*, 246 Ga. 697, 704(13), 273 S.E.2d 124 (1980), cited by the father, is inapposite; it concerned the failure of an appellant to perfect for appellate review an objection to a document that the trial court admitted into evidence.

4. *This Court lacks jurisdiction over the father's untimely appeal from the dismissal of his change-in-custody petition.*

[5] The father challenges the court's dismissal of his petition for change in custody. As detailed below, we lack jurisdiction to review this decision because it was a final judgment issued in a separate case from that involving the family violence petitions and the father failed to file his application for discretionary review of the judgment within the time period required to confer appellate jurisdiction.