

O.C.G.A. § 15-11-215

Current through Acts 2023, No. 23-20 of the 2023 Session, but not including corrections and changes made to the 2023 session laws by the Code Commissioner.

Official Code of Georgia Annotated > TITLE 15 Courts (Chs. 1 — 25) > CHAPTER 11 Juvenile Code (Arts. 1 — 11) > Article 3 Dependency Proceedings (Pts. 1 — 13) > PART 11 Disposition (§§ 15-11-210 — 15-11-220)

15-11-215. Notice of change in placement hearings; use of hearsay evidence; presumptions.

(a) Not less than five days in advance of any placement change, DFCS shall, in writing, notify the court; a child who is 14 years of age or older; the child's parent, guardian, or legal custodian; the person or agency with physical custody of the child; the child's attorney; the child's guardian ad litem, if any; and any other attorney of record of such change in the location of the child's placement while the child is in DFCS custody. The notice required by this subsection may include notice via email if the caregiver or other party who will receive the notification has agreed to receive notice via email.

(b) If a child's health or welfare may be endangered by any delay in changing his or her placement, the court and all attorneys of record shall be notified of such placement change within 24 hours of such change.

(c) A child adjudicated as a dependent child who is 14 years of age or older, his or her parent, guardian, or legal custodian; the person or agency with physical custody of the child; such child's attorney; such child's guardian ad litem, if any; and any attorney of record may request a hearing pertaining to such child's case plan or the permanency plan in order for the court to consider the change in the location of such child's placement and any changes to the case plan or permanency plan resulting from such child's change in placement location. The hearing shall be held within five days of receiving notice of a change in the location of such child's placement and prior to any such placement change, unless such child's health or welfare may be endangered by any delay in changing such child's placement.

(d) The Council of Juvenile Court Judges shall by rule provide for methods by which persons entitled to notice, including those not represented by counsel, may electronically file an objection to the placement change. Such rule shall provide for the use of a standard form that the objector may file electronically with the clerk of court and which upon filing shall be distributed electronically to all parties and others entitled to notice.

(e) At the hearing to consider the case plan and permanency plan of a child adjudicated as a dependent, the court shall consider the case plan and permanency plan recommendations made by DFCS, including a recommendation as to the location of the placement of such child, and shall make findings of fact upon which the court relied in determining to reject or accept the case plan or permanency plan and the recommendations made by DFCS, including the location of such child's placement. The court shall specifically consider any objections filed to the change of placement and shall consider evidence pertaining to such objections, including, but not limited to, evidence from the child and the foster parent, relative, or caregiver.

(f) The court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a dependent child and the most appropriate case plan and permanency plan.

(g) If the court rejects DFCS recommendations, the court shall demonstrate that DFCS recommendations were considered and explain why it did not follow such recommendations. If the court rejects the DFCS case plan and permanency plan recommendations, including the change in the location of the placement of

a child adjudicated as a dependent child, the court may order DFCS to devise a new case plan and permanency plan recommendation, including a new recommendation as to the location of such child within the resources of the department, or make any other order relative to placement or custody outside the department as the court finds to be in the best interests of such child and consistent with the policy that children in DFCS custody should have stable placements.

(h) If the court finds that the child has been living in a stable home environment with his or her current caregivers for the past 12 months and that removal of the child from such caregivers would be detrimental to the child's emotional well-being, the court may presume that continuation of the child's placement with his or her current caregivers is in the child's best interests and shall enter a finding that a change of placement is a failure by DFCS to make reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing; provided, however, that such presumption shall not apply to prevent the return of the child to his or her parent, guardian, or legal custodian.

(i) Placement or a change of legal custody by the court outside DFCS shall relieve DFCS of further responsibility for a child adjudicated as a dependent child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate.

(j) A placement change shall not include a temporary absence from the child's identified and ongoing foster care placement, including, but not limited to, visitation with a friend, sibling, relative, or other caretaker, including a preplacement visit to a possible foster or adoptive placement; hospitalization for medical, acute psychiatric episodes or diagnosis; respite care when the child is expected to return to his or her foster care placement; day or overnight camp; temporary travel with the foster family or child care institution personnel, church, school, or other persons or groups approved by DFCS; trial home visits with the court's permission, if required by subsection (b) of [Code Section 15-11-212](#); and runaway episodes.

History

Code 1981, § 15-11-215, enacted by [Ga. L. 2013, p. 294, § 1-1/HB 242](#); [Ga. L. 2015, p. 552, § 15/SB 138](#); [Ga. L. 2019, p. 456, § 3/SB 167](#); [Ga. L. 2020, p. 241, § 2/SB 439](#); [Ga. L. 2021, p. 134, § 7/SB 28](#).

Annotations

Notes

The 2019 amendment, effective July 1, 2019, added present subsection (f) and redesignated former subsections (f) and (g) as present subsections (g) and (h), respectively.

The 2020 amendment, effective January 1, 2021, in subsection (a), inserted “, in writing,” in the first sentence and added the second sentence; added subsection (d); redesignated former subsections (d) through (h) as present subsections (e) through (i), respectively; added the second sentence to subsection (e); and substituted “preplacement” for “pre-placement” in the middle of subsection (i).

The 2021 amendment, effective January 1, 2022, revised punctuation in subsections (a) and (c); substituted “consider the case plan and permanency plan of a child adjudicated as a dependent, the” for “consider a child adjudicated as a dependent child’s case plan and permanency plan, the” in the first sentence of subsection (e); added subsection (f); redesignated former subsections (f) through (i) as present subsections (g) through (j), respectively; and added the proviso in subsection (h).

JUDICIAL DECISIONS

Editor's notes.

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2301, pre-2000 [Code Section 15-11-34](#), and pre-2014 [Code Section 15-11-55](#), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction between courts. —

Trial court erred when the court prohibited the Department of Human Resources from placing children with their mother or allowing the children to visit with the mother unsupervised and by staying any decision of a juvenile court that would be contrary to the court's order because, although the trial court and the juvenile court had concurrent jurisdiction over the temporary custody of the children, the juvenile court in the contemporaneous deprivation proceeding had the authority to order the disposition best suited to the needs of the children, including the transfer of temporary legal custody, and the juvenile court had already exercised the court's jurisdiction over the temporary custody of the children in light of the deprivation action; although the trial court expressed the court's concern about the department's decision to recommend that the children be physically placed with the mother, the juvenile court was competent to oversee the department, and there was no good reason for the trial court to conclude that the trial court was in a better position to address the department's placement decisions than the juvenile court. [Long v. Long, 303 Ga. App. 215, 692 S.E.2d 811, 2010 Ga. App. LEXIS 327 \(2010\)](#) (decided under former O.C.G.A. § 15-11-55).

No equal protection violation. —

Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or [Ga. Const. 1983, Art. I, Sec. I, Para. II](#), as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. *In the Interest of A.N.*, 281 Ga. 58, 636 S.E.2d 496, 2006 Ga. LEXIS 655 (2006) (decided under former O.C.G.A. § 15-11-55).

In a deprivation proceeding, the department of family and child services did not violate equal protection by requiring the parents to pay part of the costs for services mandated under their case plan. The department was not drawing a distinction between similarly situated parties in that a parent who could afford to contribute financially was not similarly situated to one who could not afford to do so; moreover, even if the parents were similarly situated to others who were not required to pay for a portion of services, the goals served by the contribution requirement of requiring parents to take responsibility for conduct that harmed their children and of increasing the likelihood of success for family reunification represented legitimate governmental purposes. *In the Interest of P.N.*, 291 Ga. App. 512, 662 S.E.2d 287, 2008 Ga. App. LEXIS 546 (2008) (decided under former O.C.G.A. § 15-11-55).

Determination that deprivation proceeding was not custody dispute. —

Because the pleadings established that a deprivation petition was properly filed and factually supported, and due to the presence of unchallenged, valid allegations of deprivation, the deprivation proceeding was not a disguised custody matter; accordingly, the juvenile court properly exercised the court's jurisdiction over the proceeding. *In the Interest of K.L.H.*, 281 Ga. App. 394, 636 S.E.2d 117, 2006 Ga. App. LEXIS 1116 (2006) (decided under former O.C.G.A. § 15-11-55).

Purpose of division of juvenile trials into two phases. —

In dividing juvenile trials into two phases, lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of

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evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. [*D.C.A. v. State*, 135 Ga. App. 234, 217 S.E.2d 470, 1975 Ga. App. LEXIS 1629 \(1975\)](#) (decided under former Code 1933, § 24A-2301).

Jurisdiction of adoption while deprivation proceeding pending. —

Superior court has exclusive jurisdiction in adoption matters and had jurisdiction to entertain an adoption petition notwithstanding the pendency of deprivation proceedings in the juvenile court involving the same child. [*Edgar v. Shave*, 205 Ga. App. 337, 422 S.E.2d 234, 1992 Ga. App. LEXIS 1137 \(1992\)](#) (decided under former O.C.G.A. § 15-11-34).

Authority of juvenile courts to transfer legal custody. —

Juvenile court had exclusive original jurisdiction over deprivation proceedings, and the juvenile court had the authority to order the disposition best suited to the needs of the children including the transfer of temporary legal custody. [*In re A.L.L.*, 211 Ga. App. 767, 440 S.E.2d 517, 1994 Ga. App. LEXIS 72 \(1994\)](#) (decided under former O.C.G.A. § 15-11-34).

Juvenile court erred in awarding custody of a child to the father even after finding that the child was not deprived because according to a plain reading of former O.C.G.A. § 15-11-55(a)(2) (see now [O.C.G.A. §§ 15-11-211](#) and [15-11-212](#)), the juvenile court was without authority to transfer custody of the child to the father and paternal grandmother; while under former O.C.G.A. § 15-11-28(c)(1) (see now [O.C.G.A. § 15-11-11](#)) the juvenile court had concurrent jurisdiction to hear and determine the issue of custody and support when the issue was transferred by proper order of the superior court, no such order existed in the record, and instead, the juvenile court specifically found that the child was not deprived. [*In re T.S.*, 310 Ga. App. 100, 712 S.E.2d 121, 2011 Ga. App. LEXIS 503 \(2011\)](#) (decided under former O.C.G.A. § 15-11-55).

No need to repeat evidence already presented during adjudicatory portion. —

There is no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. [*D.C.A. v. State*, 135 Ga. App. 234, 217 S.E.2d 470, 1975 Ga. App. LEXIS 1629 \(1975\)](#) (decided under former Code 1933, § 24A-2301).

Notice of change in placement sufficient given previous discussions. —

As the adoption of a permanency plan and placement of a child with the paternal grandparents had already been discussed at a hearing held at the child advocate's request, the advocate was not prejudiced by the department of family and children services' failure to provide the advocate with five days' notice of a change in the child's placement as required by former O.C.G.A. § 15-11-55(d) (see now [O.C.G.A. § 15-11-215](#)). [*In the Interest of N. W.*, 309 Ga. App. 617, 710 S.E.2d 832, 2011 Ga. App. LEXIS 412 \(2011\)](#) (decided under former O.C.G.A. § 15-11-55).

Standard of proof for finding deprivation. —

If deprivation forms the predicate upon which a third party seeks a temporary transfer of the child's legal custody, in order to support such a disposition the child must first be adjudicated to be a deprived child. By statute, that finding of deprivation must be made by "clear and convincing evidence." [*In re J.C.P.*, 167 Ga. App. 572, 307 S.E.2d 1, 1983 Ga. App. LEXIS 3090 \(1983\)](#), but see [*In re A.W.*, 240 Ga. App. 259, 523 S.E.2d 88, 1999 Ga. App. LEXIS 1313 \(1999\)](#) (decided under former O.C.G.A. § 15-11-34).

No habeas corpus if court enters orders. —

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Habeas corpus will not lie if the juvenile court, after notice and hearing, enters an order pursuant to former provisions an disposition of deprived children. [Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360, 1979 Ga. LEXIS 977 \(1979\)](#) (decided under former Code 1933, § 24A-2301).

Consideration of parent's behavior at hearing. —

Consideration by a juvenile court of a noncustodial parent's behavior in a hearing to determine the need for continuing the temporary suspension of custody does not deprive a noncustodial parent of due process. [In re A.S., 185 Ga. App. 11, 363 S.E.2d 325, 1987 Ga. App. LEXIS 2421 \(1987\)](#) (decided under former O.C.G.A. § 15-11-34).

Recommendations by juvenile court. —

Juvenile court does not exceed the court's authority in a hearing to determine the need for continuing the temporary suspension of custody by making recommendations as to the placement, care, and supervision of a child. [In re A.S., 185 Ga. App. 11, 363 S.E.2d 325, 1987 Ga. App. LEXIS 2421 \(1987\)](#) (decided under former O.C.G.A. § 15-11-34).

If a juvenile court's finding as to custody is in the nature of a recommendation to the superior court, the custody issue remains pending below and is not before the appellate court on appeal. [In the Interest of M.E., 265 Ga. App. 412, 593 S.E.2d 924, 2004 Ga. App. LEXIS 131 \(2004\)](#) (decided under former O.C.G.A. § 15-11-55).

Research References & Practice Aids

Cross references.

Hearsay evidence, T. 24, C. 8.

RESEARCH REFERENCES**Am. Jur. 2d.**

42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 50 et seq., 56 et seq., 110.

C.J.S.

43 C.J.S., Infants, § 226 et seq. 67A C.J.S., Parent and Child, §§ 63 et seq., 378 et seq.

U.L.A.

Uniform Juvenile Court Act (U.L.A.) § 30.

ALR.

Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 A.L.R.3d 1141.

Hierarchy Notes:

[O.C.G.A. Title 15](#)

[O.C.G.A. Title 15, Ch. 11](#)

[O.C.G.A. Title 15, Ch. 11, Art. 3, Pt. 11](#)

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