

**IN THE COURT OF APPEALS  
FOR THE STATE OF GEORGIA**

CHELSEA BISHOP,

Appellant,

v.

ELIZABETH ARROYO and  
ELIZABETH FIGUEROA,

Appellees.

Appeal No. A26A0016

Superior Court of Cobb County

Civil Action File No.  
21-1-07315

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**BRIEF OF APPELLEES**

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## **I. INTRODUCTION**

Appellant Chelsea Bishop is the biological mother of the child, L.B. Appellees are Elizabeth Arroyo, the paternal grandmother of L.B. (hereinafter “Appellee Grandmother”) and Elizabeth Figueroa, the paternal aunt of L.B. (hereinafter “Appellee Aunt”). (V2-6, ¶ 3).<sup>1</sup> L.B.’s biological father, Eduardo Figueroa, was legitimated in 2021, and granted visitation rights, but he was tragically killed upon arrival for his first scheduled visit by Ms. Bishop’s husband, Nicholas Mimms. (V2-6-7, ¶¶ 7-14).

Currently, L.B. is residing with his father’s killer (as Mr. Mimms was released on bond pending trial for the murder) and his mother, Chelsea Bishop (whose involvement in the death of L.B.’s father is still undetermined). (V2-1591, ¶ q). Ms. Bishop suffers from significant untreated mental health issues which heavily impact L.B. (V2-1765). Further, Ms. Bishop has debilitating physical health issues, including Ehlers-Danlos and postural orthostatic tachycardia syndrome (POTS) which prevents her from driving. (V2-414, ¶ 15). As a result, she relies on Mr. Mimms and her ex-stepfather to transport her children. (V2-841). Mr. Mimms and Ms. Bishop are both currently unemployed; their only source of income is Social Security. Ms. Bishop receives Social Security Disability, and Mr. Mimms and Ms.

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<sup>1</sup> All citations to Volume 2 of the record are to Volume 2 of Record 1.

Bishop also live on the Social Security income provided for L.B. for Mr. Figueroa's death. (V2-1356, ¶ b).

Appellees jointly petitioned for visitation and Appellee Grandmother petitioned for custody of L.B. on September 28, 2021. These claims are still pending, due in large part to Ms. Bishop's dilatory tactics. Appellee Aunt and Appellee Grandmother were awarded temporary visitation in November 2022, while the matter was pending, and the terms of the visitation were extended on November 11, 2024, which is the subject of this appeal. (V2-5-15; V2-1356, ¶ c).

## II. SUMMARY OF THE CASE AND PROCEDURAL HISTORY.

On September 28, 2021, after Mr. Mimms shot and killed Mr. Figueroa, Appellees jointly petitioned for visitation under O.C.G.A. §19-7-3, and Appellee Grandmother petitioned for custody under O.C.G.A. §19-7-1(b.1). (V2-5-15). In the *Petition for Custody and/or Visitation, Request to Transfer to Juvenile Court, and Request for Expedited Hearing*, Appellees asserted that Appellee Grandmother should be awarded custody of L.B. and/or she and Appellee Aunt should be awarded visitation, due to Appellant's physical and mental health issues, her involvement in the killing of Mr. Figueroa, and the physical and emotional danger of L.B. residing in the home with his father's killer. (V2-5-15).

Appellant Bishop filed an answer (V2-258-261), as well as a *Motion for Summary Judgment and Frivolous Litigation Sanctions*, and a *Memorandum of Law*

*Opposing Petitioners' Request to Transfer to Juvenile Court and Request for Expediated Hearing.* (V2-263-280). In response, on November 23, 2021, Appellees filed *Plaintiffs' Response to Defendant's Motion for Summary Judgment and Frivolous Litigation Sanctions.* (V2-594-603). L.B.'s grandmother and aunt asserted that L.B. will suffer long-term emotional harm from remaining in Appellant's custody with his father's killer and being denied a relationship with Appellees. (V2-597). Additionally, Appellees noted that Ms. Bishop is unable to properly care for L.B. due to her physical disability and her untreated mental health issues. (V2-600). Moreover, Ms. Bishop has continued to lie to L.B. and coach him to repeat her own lies to DFCS, even going so far as to subject L.B. to unnecessary medical evaluations to substantiate her lies. (V2-600).

The court denied Appellant Bishop's *Motion for Summary Judgment and Frivolous Litigation Sanctions*, highlighting that, under O.C.G.A. §19-7-3(c)(1), in an action for visitation by a child's grandparent, courts must consider if "[a]ny other circumstance exists in indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted." (V2-804).

Appellees Arroyo and Figueroa filed a *Motion for Temporary Visitation* on June 1, 2022, stating that they are willing and able to travel to Georgia from Texas for visitation with L.B. and that they are committed to meeting L.B.'s considerable physical health needs and helping him receive the best care possible. (V2-845).

Additionally, they showed that L.B. would suffer emotional harm from having no relationship with his paternal family, which was supported by the Guardian ad Litem, who found that it was in L.B.'s best interest to have visitation with Appellees Arroyo and Figueroa. (V2-845-846).

Ms. Bishop filed a *Motion to Dismiss and Motion for Attorney's Fees; or in the Alternative, for Temporary Attorney's Fees*. (V2-1123-1129). Appellees Arroyo and Figueroa then filed a response, noting again that the broad language of O.C.G.A. § 19-7-3(c)(1)(D) authorizes a court to grant third-party visitation where "any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted." (V2-1139). On August 9, 2022, the court denied Appellant's motion "on the grounds that it seeks for this Court to repeat its prior hearing on Defendant's *Motion for Summary Judgment*." (V2-1183). Additionally, the court ordered a custody evaluation to be performed by Dr. Kim Oppenheimer, but Dr. Oppenheimer subsequently requested to be relieved due to Ms. Bishop's lack of cooperation. (V2-1183-1184).

On September 22, 2022, Appellees Arroyo and Figueroa filed *Plaintiffs' Motion for Visitation with Minor Child and Order Seeking Compliance of Defendant with the Previously Ordered Custody Evaluation*, seeking approval for them to take L.B. to medical evaluations and treatment and an Order compelling Appellant Bishop to comply with the requests of Dr. Oppenheimer. (V2-1210-1211).

In November 2022, the court held a hearing and found that under O.C.G.A. § 19-7-3, there was clear and convincing evidence that failure to grant grandparent visitation to Appellees would harm the child. (V2-1361, ¶¶ s, t). Accordingly, the Court awarded Appellees Arroyo and Figueroa visitation with L.B. (V2-1362).

After Ms. Arroyo and Ms. Figueroa had only two visits with L.B., which took place at the courthouse, Appellant Bishop filed a *Motion for a Modification of the Temporary Order of Visitation and for an Expediated Hearing*. (V2-1370-1374). In this motion, Ms. Bishop claimed that L.B. was adversely affected by the first two visits. (V2-1374). On February 15, 2025, the trial court denied this motion after finding that Ms. Bishop's claims were unsubstantiated and lacked credibility. (V2-1407). Ms. Bishop then filed a second motion and affidavit seeking to suspend visitation on March 6, 2023. (V2-1412-1417). The Guardian ad Litem recommended that visitation continue unsupervised, and the court denied Appellant Bishop's *Motions to Sever Plaintiffs' Custody and Visitation Claims and for Expediated Hearing and Judgment on Visitation and/or Modification of the Temporary Order of Visitation Pending a Final Hearing*. (V2-1524-1525).

On May 10, 2024, following Ms. Bishop's false allegations to DFCS regarding genital injuries to L.B., Appellees Arroyo and Figueroa filed a *Motion for Modification of Temporary Order to Change Custody to Paternal Grandparent and for Expediated Hearing*. (V2-1578-1583). On June 13, they filed a *Motion for*

*Citation of Contempt for Blatantly Refusing to Allow Court Ordered Visitations*, after Appellant Bishop abruptly cancelled their scheduled visit on the morning of the scheduled visit, despite the GAL and attorneys notifying her that Appellees had a right to have unsupervised visits with L.B., per the court’s order. (V2-1660, ¶ 13). On November 14, 2024, the trial court entered its *Order on Plaintiffs’ Motion for Modification of Temporary Order to Change Custody to Paternal Grandparent and on Plaintiffs’ Motion for Citation for Contempt*, which is the subject of this appeal. (V2-1752-1776).

In that order, the trial court found that “the health or welfare of the child would be harmed unless visitation is granted to Appellees Arroyo and Figueroa , emphasizing that Ms. Arroyo and Ms. Figueroa have formed a significant relationship with the child over time, despite the fact that “the mother has attempted to alienate them through withholding visitation and making outrageous accusations against them.” (V2-1771). Further, the court noted that the mother has withheld visitation on numerous occasions and “has engaged in emotional manipulation of the child and made repeated false claims that the child is being abused by [Appellees],” which she tried to substantiate by subjecting L.B. to multiple unnecessary medical evaluations. (V2-1772).

Additionally, the trial court found Appellant Bishop in willful contempt of the prior temporary order entered on November 21, 2022, because Appellant Bishop

abruptly cancelled Appellees Arroyo and Figueroa's scheduled visitation on June 8, 2024, causing them to suffer financial losses including airfare, hotel reservations, and other expenses associated with their trip to visit L.B. (V2-1774). Appellant Bishop demanded a visitation supervisor, willfully disobeying the court's November 2022 visitation order; consequently, the court ordered her to reimburse Appellees Arroyo and Figueroa for their financial losses for the missed visitation and attorney's fees incurred under O.C.G.A. §19-15-14(b). (V2-1774).

The trial court also temporarily awarded Ms. Arroyo and Ms. Figueroa expanded visitation as follows:

Plaintiff Elizabeth Arroyo shall have one weekend of visitation, from Friday at 3 p.m. until Sunday at 3 p.m., with the child per month. In December, Plaintiff Arroyo shall have at least five consecutive days of visitation. In June, Plaintiff Arroyo shall have at least one week (7 consecutive days) of visitation when the child is not in school. The extended December and June visits shall be in lieu of weekend visitation those months. Plaintiff Arroyo will be responsible for transportation costs. The child does not have to remain in the state of Georgia and the visits do not need to be supervised. The parties shall confer and agree on dates that meet these visitation parameters. Ms. Bishop shall provide Ms. Arroyo with suggested dates no less than 30 days prior to each visitation. (V2-1774).

Further, the trial court ordered Appellant Bishop to supervise L.B. at all times when he is in the presence of Mr. Mimms, who lives in the same home with Ms. Bishop while he is on bond for his pending murder charge. (V2-1775). Mr. Mimms was ordered to remain 500 yards away from any residence, vehicle, workplace or other whereabouts of Appellees Arroyo and Figueroa, John Kojak, their extended

family, Guardian ad Litem Amy Kaye, Custody Evaluator Kim Oppenheimer, and any attorney or current employee of Bovis, Kyle, Burch & Medlin, LLC. (V2-1775).

The court also ordered Appellant Bishop to seek a psychological evaluation by a licensed psychologist at her own expense and follow recommendations for treatment, due to the court's concerns regarding Ms. Bishop's significant untreated mental health issues and her emotional manipulation of L.B. (V2-1775-1776).

### **III. STANDARD OF REVIEW.**

In child custody matters, the trial court has very broad discretion in determining the best interest of the child. *LaFont v. Rouviere*, 283 Ga. 60, 62 (2008). When the trial judge has exercised discretion, the proper standard of review on appeal is an abuse of discretion standard: the “appellate court will not interfere with [the] decision unless there is evidence the trial court clearly abused its discretion. If there is any evidence to support the trial court’s decision, it cannot be said there was an abuse of discretion.” *Anderson v. Anderson*, 278 Ga, 713, 713 (2004).

### **IV. ARGUMENT AND CITATION OF AUTHORITY.**

O.C.G.A. § 19-7-3(b)(1)(A) provides that any grandparent shall have the right to file an original action for visitation rights to a minor child. O.C.G.A. § 19-7-3(b)(1)(B) provides that any family member shall have the right to intervene in and seek to obtain visitation rights in any action in which any court in this state shall have before it any question concerning the custody of a minor child. In an action

brought by a grandparent or family member, O.C.G.A. § 19-7-3(c)(1) provides in part:

[T]he court may grant any family member of the child reasonable visitation rights if the court finds by clear and convincing evidence that the health or welfare of the child would be harmed unless such visitation is granted and if the best interests of the child would be served by such visitation.... In considering whether the health or welfare of the child would be harmed without such visitation, the court shall consider and may find that harm to the child is reasonably likely to result when, prior to the original action or intervention:

(A) The minor child resided with the family member for six months or more;

(B) The family member provided financial support for the basic needs of the child for at least one year;

(C) There was an established pattern of regular visitation or child care by the family member with the child; or

(D) Any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.

Further, under O.C.G.A. § 19-7-3(c)(3), “While a parent's decision regarding family member visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide family member contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her family member or who is not provided some minimal opportunity for contact with his or her family member when there is a pre-existing relationship between the child and such family member may suffer emotional injury

that is harmful to such child's health. Such presumption shall be a rebuttable presumption.”

In *Pinkerton v. Nichols*, 375 Ga. App. 245 (2025), the Court considered whether the evidence was sufficient to support the superior court’s award of grandparent visitation under O.C.G.A. § 19-7-3. The Court highlighted that on appeal from an order granting grandparent visitation, the Court will “view the evidence in the light most favorable to the trial court’s judgment to determine whether any rational trier of fact could have found by clear and convincing evidence that the mandated visitation was authorized.” *Id.* at 246 (citation and punctuation omitted). The Court does not “weigh the evidence or determine witness credibility, but defer[s] to the trial court’s factfinding and affirm[s] unless the evidence fails to satisfy the appellate standard of review.” *Id.* (citation and punctuation omitted).

**A. The trial court did not err in denying the motion to dismiss Appellees’ visitation claims.**

As the trial court noted numerous times in its order, the broad language of O.C.G.A. § 19-7-3(c)(1)(D) authorizes a court to grant third-party visitation where “any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.”

Appellant Bishop argues that Appellees Arroyo and Figueroa did not have a pre-existing relationship satisfying O.C.G.A. § 19-7-3(c)(1), however, a pre-existing relationship is only a requirement for prongs (A) through (C). A pre-existing

relationship with the child is *not* mentioned in O.C.G.A. § 19-7-3(c)(1)(D), which gives the trial court broad discretion to grant third-party visitation when any circumstances exist where emotional or physical harm would result in the absence of third-party visitation. The trial court explicitly stated that “the Court finds, by clear and convincing evidence, that the health or welfare of the child would be harmed unless visitation is granted to the Plaintiffs in this case. Additionally, the Court finds visitation with the Plaintiffs is in the best interests of the child.” (V2-1771). The Court then highlighted numerous circumstances that exist in the present case to support this ruling, including the fact that the mother resides with the man who killed L.B.’s father, as well as the mother’s significant untreated mental health issues and emotional manipulation of the child. (V2-1755, 1768).

Further, the court recognized that the child did not have a substantial relationship prior to the court granting visitation rights, solely due to Appellant Bishop’s actions, as she continuously alienated the child from his father and paternal family, withheld visitation, and made outrageous accusations against them. (V2-1772). The court also found that, despite this, Appellees Arroyo and Figueroa have sought a relationship with the child since L.B.’s birth, are willing and able to travel to Georgia from Texas for visitation with L.B., and are committed to meeting L.B.’s considerable physical health needs and helping him receive the best care possible. (V2-1765).

The trial court's findings satisfy O.C.G.A. § 19-7-3(c)(1)(D); therefore, the trial court did not err in denying the motion to dismiss Appellees' visitation claims.

**B. The trial court did not abuse its discretion by incorporating findings related to Appellant Bishop's concerning behaviors, as other circumstances indicating harm under factor (D).**

Appellant Bishop cites *Bell v. Hargrove*, 313 Ga. 30 (2021), claiming that it precludes the Court from considering factors such as creditability, suggestive language, and physical or mental health when making a determination under O.C.G.A. § 19-7-3(c)(1)(D). This assertion is completely inaccurate. *Bell v. Hargrove* does not concern child custody matters or O.C.G.A. § 19-7-3 at all; rather, the case held that a probate judge could not deny a weapons carry license application based on uncertainty about whether an arrest resulted in a disqualifying conviction. The case does not mention O.C.G.A. § 19-7-3 or child custody at all.

The broad language of O.C.G.A. § 19-7-3(c)(1)(D) authorizes a court to grant third-party visitation where “any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.” The circumstances that a court may consider are not defined or limited, as Appellant claims; rather, the court may consider any circumstance indicating that emotional or physical harm would be reasonably likely to result if visitation is not granted. As discussed above, the court highlighted numerous circumstances that

exist in the present case to support this ruling, and the trial court's findings are sufficient to satisfy O.C.G.A. § 19-7-3(c)(1)(D).

**C. The trial court did not err in denying severance of the custody claims from the visitation claims.**

Appellant Bishop asserts that she is prejudiced by the trial court's denial of severance of the custody claims from the visitation claims, arguing that if the claims were severed, when considering Appellees' visitation claim, the court would be precluded from considering Appellant's ability to provide care and necessities for L.B., as it would for the custody claim, and rather the court could only consider the relationship and bond between L.B. and Appellees Arroyo and Figueroa. However, as discussed above, this is incorrect. The broad language of O.C.G.A. § 19-7-3(c)(1)(D) authorizes a court to grant third-party visitation where "any other circumstance exists indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted." The circumstances that a court may consider are not defined or limited. Rather, the court may consider any circumstance indicating that emotional or physical harm would be reasonably likely to result if visitation is not granted.

When granting visitation to Appellees Arroyo and Figueroa, the trial court did consider circumstances that are also relevant to the Appellant Bishop's ability to provide care and necessities for the child, such as the fact that she resides with the man who killed L.B.'s father, as well as her significant untreated mental health issues

and emotional manipulation of the child. However, these circumstances are also extremely relevant to the visitation claims, as the court may consider any circumstances indicating that emotional or physical harm would result if such visitation is not granted.

Further, O.C.G.A. § 9-11-42(b) gives the trial judge the discretion to sever multiple claims and order separate trials. The trial judge's decision that the custody and visitation claims shall be heard together to avoid unnecessary costs and delays was certainly not an abuse of discretion, especially considering that Appellant Bishop is responsible for the delays in this matter, as she has failed and refused to cooperate with the custody evaluation.

**D. The trial court was authorized to prohibit unsupervised contact between L.B. and Mr. Mimms.**

Appellant Bishop claims that the trial court was not authorized to mandate that she not permit unsupervised contact between L.B. and his step-father; however, she cites no authority to support this assertion.

To the contrary, in *Mongerson v. Mongerson*, 285 Ga. 554, 555 (2009), the Georgia Supreme Court stated that “a trial court has discretion to prohibit the exercise of visitation rights by a non-custodial parent in the presence of certain people if the evidence demonstrates the children have been exposed to inappropriate conduct involving the specified persons or that exposure to the prohibited persons would adversely affect the children.”

In its order, the trial court noted that “[s]ince the father’s death, the mother has presented Nicholas Mimms to the child as his father and has attempted to alienate the child’s paternal relatives through withholding visitation, making outrageous accusations against them, and failing to recognize them as paternal relatives in conversations with the child. The mother’s alienation of the child’s paternal relatives is causing the child confusion and emotional turmoil and will continue to cause more and more emotional harm to the child as he grows up.” (V2-1772). It is inappropriate for Appellant Bishop to continue to present Mr. Mimms as the child’s father, and it was not an abuse of discretion for the court to conclude that the resulting confusion would adversely affect L.B.

Further, Mr. Mimms has been indicted for felony murder, malice murder, and other felonies relating to the killing of L.B.’s father. There are significant safety concerns with L.B. residing in the home with Mr. Mimms, and it was not an abuse of discretion for the court to require Ms. Bishop to supervise any contact between L.B. and Mr. Mimms to ensure L.B.’s safety and wellbeing.

**E. It was not an abuse of discretion for the trial court to award fees under O.C.G.A. § 9-15-14(b).**

O.C.G.A. § 9-15-14(b) provides:

The court may assess reasonable and necessary attorney’s fees and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was

interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct.

Appellant Bishop claims that the trial court's order was vague and conclusory and asserts that the court did not identify how Appellant's conduct lacked substantial justification, was intended for harassment or delay, or unnecessarily expanded the proceedings. However, the trial court clearly explained the basis for the award of fees. The court highlighted the incident where Appellant Bishop denied visitation to Appellees, claiming that *supervised* visitation was required, despite the prior court order granting visitation to Appellees, which clearly did not require supervision. The court stated that "[Appellant Bishop] was aware that neither the Court nor the Guardian ad Litem required supervision of the visits, yet she cancelled the June visit at the last minute because no supervisor would be present." (V2-1773). As a result of this abrupt cancellation in direct violation of the court Order, Appellees Arroyo and Figueroa suffered financial losses for their travel and attorney's fees. The court also highlighted that this was not the only instance where Appellant Bishop willfully disobeyed the court's orders, as she has "repeatedly attempted to frustrate this Court's orders." (V2-1774). Therefore, it was not an abuse of discretion for the court to award fees under O.C.G.A. § 9-15-14(b).

V. CONCLUSION.

For all the foregoing reasons, Appellees Arroyo and Figueroa ask the Court to affirm the trial court in all respects and continue to give the child a hope for a normal future through his paternal family and their selfless continued efforts.

This submission does not exceed the word count imposed by Rule 24.

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**CERTIFICATE OF SERVICE**

I certify that the foregoing *Brief of Appellee* was this day served on the following attorney, by sending a PDF copy via email to the following email

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I further certify that there is a prior agreement with Martha Fineman-Sowers to allow documents in a PDF format sent via email to suffice for service.

This 24<sup>th</sup> day of September, 2025.

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