

*Modification of Existing Grandparent Visitation Rights*

*NAMDAR-YEGANEH v. NAMDAR-YEGANEH*, 369 Ga. App. 700 (2023)<sup>1</sup>

Decided by the COURT OF APPEALS OF GEORGIA on OCTOBER 23, 2023.<sup>2</sup>

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**Before Judges** Hon. PIPKIN and Hon. DILLARD, and Hon. RICKMAN, **Court of Appeals Judges.**<sup>5</sup> Opinion authored by Hon. PIPKIN.<sup>6</sup>

KEY ISSUE PRESENTED

Is a grandparent authorized by Georgia's Grandparent Visitation Act<sup>7</sup> or any other provision of Georgia law to file a petition seeking to modify an existing grandparent visitation order?<sup>8</sup>

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<sup>1</sup> *Namdar-Yeganeh v. Namdar-Yeganeh*, 369 Ga. App. 700, 894 S.E.2d 466 (2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Namdar-Yeganeh*, 369 Ga. App. 700.

<sup>7</sup> O.C.G.A. § 19-7-3.

<sup>8</sup> *Namdar-Yeganeh*, 369 Ga. App. at 702.

## PROCEDURAL HISTORY &amp; POSTURE

In September 2016, paternal grandparents (“Appellees”) filed an original action in a New Mexico court seeking visitation with the party’s two grandchildren.<sup>9</sup> In May 2017, the New Mexico court entered a “Stipulated Order” awarding Appellees visitation with the children.<sup>10</sup> After a hearing, the New Mexico court modified the Stipulated Order and noted that under the Uniform Child Jurisdiction and Enforcement Act, the court lacked exclusive, continuing jurisdiction because the children no longer had any parent living in New Mexico.<sup>11</sup>

In February 2019, Appellees filed a petition in the Superior Court of Cobb County seeking to register the 2018 New Mexico judgment, modify the 2018 New Mexico judgment, and find the Mother in contempt of the New Mexico judgment.<sup>12</sup> Specific to the modification, Appellees sought unsupervised and expanded visitation, court-ordered family therapy, and the appointment of a guardian ad litem.<sup>13</sup> Appellees subsequently amended the modification petition and requested that the Mother be required to transport the children to and from visitation, as well as to allow for all paternal family members to participate in visitation and Skype calls with the children.<sup>14</sup> In response, Mother filed a motion to dismiss the modification portion of the Appellant’s petition, yet, following a hearing, the trial court denied Mother’s motion, reasoning that the Appellee’s petition to modify visitation was authorized by O.C.G.A. § 19-9-3 and Georgia case law.<sup>15</sup> After a hearing on the modification petition in August 2022, the trial court expanded Appellee’s visitation rights with the Grandson but did not require the Granddaughter to participate in visits.<sup>16</sup> Additionally, the trial court refused to mandate family therapy and declined to hold the Mother in contempt.<sup>17</sup>

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<sup>9</sup> *Id.* at 700.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 700–701.

<sup>12</sup> *Id.* at 701.

<sup>13</sup> *Id.*

<sup>14</sup> *Namdar-Yeganeh*, 369 Ga. App. at 701.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

The Mother appeals from the order denying the motion to dismiss the modification petition as well as the portion of the Final Order expanding the Appellee's visitation with the Grandson.<sup>18</sup> Appellees cross-appeal, challenging the trial court's factual findings regarding reunification, and argue that the trial court abused its discretion by refusing to mandate visitation with the Granddaughter.<sup>19</sup>

In October 2023, the Court of Appeals of Georgia held that the Grandparent Visitation Act does not authorize a grandparent to initiate an action to modify an existing grandparent visitation order, thus finding that the trial court erred in denying the Mother's motion to dismiss on the basis that Appellees had no authority to initiate a petition to modify visitation.<sup>20</sup>

Appellees filed a Petition for Writ of Certiorari in the Georgia Supreme Court in November 2023; however, the court denied certiorari.<sup>21</sup>

#### SUBSTANTIVE FACTS

"The minor children in this case are a girl born in 2008 (the "Granddaughter") and a boy born in 2010 (the "Grandson")."<sup>22</sup> The children's Father died in 2016, and at the time of his death, the parents, children, and Cyndi and Ghodrat Namdar-Yeganeh (the paternal grandparents and the "Appellees") all lived in New Mexico.<sup>23</sup> Approximately five months after the Father's death, Appellees filed their petition with the New Mexico court, yet before the entry of the Stipulated Order, Shelley Namdar-Yeganeh (the "Mother") and her two children moved to Georgia.<sup>24</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Namdar-Yeganeh*, 369 Ga. App. at 701.

<sup>20</sup> *Id.*

<sup>21</sup> *Namdar-Yeganeh v. Namdar-Yeganeh*, 369 Ga. App. 700, cert. denied, No. S24C0356 (Apr 16, 2024).

<sup>22</sup> *Namdar-Yeganeh*, 369 Ga. App. 700.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

## LEGAL ANALYSIS LEADING TO THE COURT'S DISPOSITION

The Court of Appeals of Georgia considered the United States and Georgia Constitutions, tenants of statutory construction as applied to O.C.G.A. § 19-7-3, legislative intent, the Supreme Court of Georgia's articulation of the relationship between O.C.G.A. § 19-7-3 and O.C.G.A. § 19-9-3, as well as Georgia case law to conclude that the Grandparent Visitation Statute, nor any other provision of Georgia law, does not authorize a grandparent to file a petition for modification of an existing grandparent visitation order.<sup>25</sup>

*A. Prior Relevant Law***The United States and Georgia Constitutions**

The Court of Appeals of Georgia frames visitation issues between children of a fit parent and the grandparents or other family members through the lens of Constitutional importance.<sup>26</sup> “Parents have a constitutional right under the United States and Georgia Constitutions to the care and custody of their children.” *Clark v. Wade*, 273 Ga. 587, 596 (IV), 544 S.E.2d 99 (2001).<sup>27</sup> Further, “there is a presumption that fit parents act in the best interests of their children.” *Troxel v. Granville*, 530 U. S. 57, 68, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).<sup>28</sup> Therefore, “so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.” (Emphasis omitted.) *Id.* at 69-69, 120 S.Ct. 2054.<sup>29</sup> Nevertheless, the Supreme Court of Georgia held<sup>30</sup> that statutes allowing a

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 701.

<sup>27</sup> *Namdar-Yeganeh*, 369 Ga. App. at 702.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> In a subsequent case, the Appellant challenged the constitutionality of Georgia's Grandparent Visitation Statute; however, the Supreme Court of Georgia held that the challenge was moot in the case and therefore, the Court “h[as] no province to determine whether or not [the] statute, in the abstract, is valid.” *Crary v. Clautice*, 318 Ga. 573, 576 (2024) (citing *Knox v. State of Ga.*, 316 Ga. 426, 427-428 (2023)). Further, the Court found

court to grant grandparent visitation rights over the objection of a fit parent require a showing by clear and convincing evidence that the health or welfare of the child would be harmed unless such visitation is granted and that such visitation serves the child's best interests. See *Patten v. Ardis*, 304 Ga. at 144 (3), 816 S.E.2d 633; *Brooks v. Parkerson*, 265 Ga. 189, 192 (2) (a), 454 S.E.2d 769 (1995); O.C.G.A. § 19-7-3 (c), (d).<sup>31</sup>

### O.C.G.A. § 19-7-3: The Grandparent Visitation Statute

Building upon the Constitutional importance of grandparent visitation issues, the court analyzes the meaning of relevant provisions of Georgia's Grandparent Visitation Act by utilizing the tenets of statutory construction.<sup>32</sup> While the trial court found that this case did not involve an original action, the plain language of O.C.G.A. § 19-7-3 (b) (1) (A) permits grandparents to file an original action to establish visitation with grandchildren, provided, under O.C.G.A. § 19-7-3 (b) (2), the parents are separated and the grandchild is living with only one parent.<sup>33</sup> Moreover, grandparents can intervene in certain existing proceedings. See *Barnhill v. Alford*, 315 Ga. 304, 308-310 (2), 882 S.E.2d 245 (2022); *Pate v. Sadlock*, 345 Ga. App. 591, 594 (1) (b) (i), 814 S.E.2d 760 (2018).<sup>34</sup> Notably, O.C.G.A. § 19-7-3 (c) (2) limits which persons may petition to modify grandparent visitation once granted: "the legal custodian, guardian of the person, or parent of the child."<sup>35</sup> Because grandparents are explicitly named as persons who may initiate an action to visit with their grandchildren but are not included among those persons who may seek to modify an existing grandparent visitation order, the Court of Appeals of Georgia concludes that the Grandparent Visitation Act does not authorize a grandparent to *initiate* an action to modify an existing grandparent visitation order.<sup>36</sup>

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that the challenge was not a controversy capable of repetition yet evading appellate review because a similarly situated litigant may raise the same challenge. *Id.* at 577.

<sup>31</sup> *Namdar-Yeganeh*, 369 Ga. App. at 702.

<sup>32</sup> *Id.* at 702–703.

<sup>33</sup> *Namdar-Yeganeh*, 369 Ga. App. 700 at 704; O.C.G.A. § 19-7-3.

<sup>34</sup> *Id.* at 704.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

### Distinguishing O.C.G.A. § 19-7-3 and O.C.G.A. § 19-9-3

According to the trial court, Appellees have a basis for modification of the existing visitation order in O.C.G.A. § 19-9-3 (d) because the trial court determined the statute supplemented and complemented O.C.G.A. § 19-7-3.<sup>37</sup> However, the Court of Appeals of Georgia disagrees, highlighting the Supreme Court of Georgia's description of the relationship between the two statutes: O.C.G.A. § 19-9-3 encourages the continuation of established contact with grandparents in the context of a custody dispute between parents<sup>38</sup> whereas O.C.G.A. § 19-7-3 provides a mechanism for a grant of visitation rights to grandparents when necessary to ensure and preserve this contact. *Stone v. Stone*, 297 Ga. 451, 455, 774 S.E.2d 681 (2015).<sup>39</sup> Thus, the trial court erred by "supplementing" the provisions of O.C.G.A. § 19-7-3 with O.C.G.A. § 19-9-3, ultimately leading to an outcome not expressly authorized by the Georgia legislature.<sup>40</sup>

### Georgia Case Law

The Court of Appeals of Georgia found *George v. Sizemore*, 238 Ga. 525, 233 S.E.2d 799 (1977), *Van Leuvan v. Carlisle*, 322 Ga. App. 576, 745 S.E.2d 824 (2013), *Pate v. Sadlock*, 345 Ga. App. 591, 814 S.E.2d 760 (2018), and *Steedley v. Gilbreth*, 359 Ga. App. 551, 553, 859 S.E.2d 520 (2021) provided an insufficient basis to address the narrow issue in *Namdar-Yeganeh*.<sup>41</sup> *George v. Sizemore* concerned the modification of a *custody* order in a habeas corpus case, not the modification of a grandparent visitation order."<sup>42</sup> *Van Leuvan v. Carlisle* addressed the issue of the trial court's authority to issue a *temporary* grandparent visitation order, while in *Namdar-Yeganeh*, there is no such dispute as the Appellees previously filed an original action under O.C.G.A. §19-7-3.<sup>43</sup> *Pate v. Sadlock* analyzed whether a grandparent was permitted to file a *counterclaim* in response to a parent's

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<sup>37</sup> *Id.*

<sup>38</sup> O.C.G.A. § 19-9-3 (d).

<sup>39</sup> *Namdar-Yeganeh*, 369 Ga. App. at 705.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

properly filed modification action under O.C.G.A. § 19-7-3 (c) (2) and “did not hold that a grandparent has the statutory right *to initiate* an action to modify an existing visitation order.”<sup>44</sup> The *Pate* court also declined to address the applicability of O.C.G.A. § 19-9-3. 345 Ga. App. at 594 (1) (b) (i), 814 S.E.2d 760.<sup>45</sup> Lastly, the court disagrees with Mother’s reliance on *Steedley v. Gilbreth*, 359 Ga. App. 551, 553, 859 S.E.2d 520 (2021) as the exclusive mechanism and authority for establishing or modifying grandparent visitation.<sup>46</sup> As the Court notes, *Steedley* did not directly concern grandparent visitation or O.C.G.A. § 19-7-3,<sup>47</sup> the *Steedley* Court did not use the word “exclusive,” and the case did not answer the question before this court.<sup>48</sup>

*B. Changes, Modifications, Clarifications, & Extensions to Georgia Law Made in Namdar-Yeganeh v. Namdar-Yeganeh*

*Namdar-Yeganeh* clarifies the narrow issue of the requirements for a modification of grandparent visitation over the objection of a fit parent.<sup>49</sup> The Court held that “grandparent visitation in [Georgia] is governed by statute, and under *Namdar-Yeganeh*, nothing in O.C.G.A. § 19-7-3 or O.C.G.A. § 19-9-3 authorizes grandparents who have been granted visitation rights to then initiate modification of an existing order in the absence of another properly pending action.”<sup>50</sup> Under the statute, the right to initiate such a modification is limited to a child’s parent, legal custodian, or guardian.<sup>51</sup> Accordingly, *Namdar-Yeganeh* reaffirms the court’s commitment to balancing parents’ constitutional rights, grandparent access, and the best interests of the child.<sup>52</sup>

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<sup>44</sup> *Namdar-Yeganeh*, 369 Ga. App. at 705–06.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 705.

<sup>48</sup> *Id.*

<sup>49</sup> *Namdar-Yeganeh*, 369 Ga. App. 700.

<sup>50</sup> *Id.* at 706.

<sup>51</sup> *Id.* at 704.

<sup>52</sup> *Id.*

## IMPACT UPON GEORGIA DOMESTIC RELATIONS PRACTICES

*Namdar-Yeganeh* illuminates the importance of a long-term, strategic approach to grandparent visitation. Indeed, the best scenario is for a grandparent to build a healthy, constructive relationship with their grandchild's parent, legal custodian, or guardian and to establish continuing contact in the best interests of the child. However, where the parties disagree on grandparent visitation, grandparents seeking to establish visitation rights have fewer limitations than those seeking to modify an existing visitation order.

**Families Impacted by *Namdar-Yeganeh***

Notably, *Namdar-Yeganeh* is relevant for families domiciled in Georgia and those who shall register a foreign judgment in the state, similar to the Appellee's circumstances. According to 2021-2022 U.S. Census data, the largest influx of new Georgia residents came from Florida (51,380 people), California (25,960), Texas (23,745), North Carolina (23,175), and Alabama (21,031).<sup>53</sup> Compared to other states, Georgia offers below-average housing costs, low taxes, and a lower cost of living,<sup>54</sup> which is a significant draw for families. Additionally, numerous industries have a presence in Georgia, such as advanced manufacturing, automotive, aerospace, and food processing, which account for 75 percent of new jobs and 84 percent of investments.<sup>55</sup> Life sciences and film are two industries with "rapidly growing footprints in Georgia."<sup>56</sup> Other prominent industries in Georgia include agribusiness, corporate innovation, energy, logistics, technology, and

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<sup>53</sup> Raymond, Jonathan and Gabrielle Nunez, *Here's Where People are Moving to Georgia From*, 11 ALIVE (December 7, 2023), <https://www.11alive.com/article/news/state/georgia-where-people-are-moving-from-migration-patterns2022/85-d81b78ac-3feb-4ee4-b812-1bb206239022>.

<sup>54</sup> *Living in Georgia*, GA. DEPT. OF ECONOMIC DEVELOPMENT (last visited Apr. 18, 2024), <https://www.georgia.org/competitive-advantages/life-georgia>.

<sup>55</sup> See Press Release, Office of the Governor, Gov. Kemp: Key Industries Sustain Momentum for State's Economic Development (Jan. 19, 2023), <https://gov.georgia.gov/press-releases/2023-01-19/gov-kemp-key-industries-sustain-momentum-states-economic-development>.

<sup>56</sup> *Id.*

tourism.<sup>57</sup> Moreover, Georgia is home to 19 Fortune® 500 and 35 Fortune® 1000 companies.<sup>58</sup> However, even if the child’s parent, guardian, or custodian does not work for a Georgia-based employer, the COVID-19 pandemic expanded remote work options for many employees, thus making it possible for Georgia-based families to work remotely for out-of-state companies.

### **Establishing Grandparent Visitation**

Grandparents may benefit by contractually establishing grandparent visitation rights. Before proposing a visitation plan or seeking a grandparent visitation order, grandparents shall consider factors such as the ages and health of the parties involved, the distance between the residences of the child and the parties involved, and future changes in circumstances that could impact visitation. The proposed agreement shall strive to account for such changes through relevant provisions,<sup>59</sup> such as those pertaining to transportation, travel expenses, changes in residency, communication, technology, and alternative dispute resolution. Further, the agreement must comply with Georgia law regarding self-executing modifications of visitation.<sup>60</sup> Specifically, such provisions should be narrowly drafted to ensure that they will not adversely impact any child's best interests.”<sup>61</sup>

Transportation is critical in facilitating visitation; therefore, parties should consider and plan how residency changes would affect transportation requirements and expenses. For example, depending on the child’s age, another adult may need to travel with the child. Further, parties shall consider which party bears the burden of transportation costs. Logistical considerations are also important. For example, if, as in *Namdar-Yeganeh*, travel across multiple states and time zones would be required, parties shall consider what visitation schedule best serves the child’s interests, accounting

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<sup>57</sup> *Georgia Industries*, GA. DEPT. OF ECONOMIC DEVELOPMENT (last visited Mar. 28, 2024), <https://www.georgia.org/industries>.

<sup>58</sup> *Fortune 500 List*, GA. POWER (last visited Apr. 18, 2024), <https://www.selectgeorgia.com/discover-georgia/industries/fortune-500-list/>.

<sup>59</sup> Team Six, *Case Summaries*, Weltner Family Law Inn of Court Presentation (Feb. 13, 2024).

<sup>60</sup> *Dellinger v. Dellinger*, 278 Ga. 732, 733–34 (2004).

<sup>61</sup> *Id.*

for potential layovers, jet lag, and other realities of travel. Child development and adult health must also be considered when developing a visitation plan, particularly concerning changing needs and abilities.

The Appellees in *Namdar-Yeganeh* sought to include additional family members in Skype calls with the grandchildren. Similarly, grandparents shall consider what forms of technology are best suited, which additional family members may participate, and how those communications may evolve.

Additionally, parents, legal custodians, and guardians shall be mindful of retaining their constitutional protections and preserving the best interests of the child when drafting agreements that provide grandparent visitation rights.

### **Modifying Grandparent Visitation**

As addressed in *Namdar-Yeganeh*, there are greater limitations for grandparents seeking to modify an existing grandparent visitation order than for grandparents seeking to establish visitation rights. Grandparents with established visitation should be aware of opportunities to intervene in an existing action involving the child, such as a divorce, termination of parental rights, or adoption, as they may intervene in these proceedings.<sup>62</sup> Alternative dispute resolution may prove valuable outside such scenarios, particularly where collaborative efforts are ineffective. While grandparents are limited by the scope of O.C.G.A. § 19-7-3 in court, “the limits of an arbitrator's authority are defined by the parties’ arbitration agreement.” *Henderson v. Millner Developments*, 259 Ga. App. 709, 711 (1), 578 S.E.2d 289 (2003).<sup>63</sup> Further, an arbitrator has inherent power to fashion a remedy and does not act with manifest disregard for the law as a statutory ground for vacating an arbitration award, so long as the award draws its essence from the contract or statute. O.C.G.A. § 9-9-13(b) (5).<sup>64</sup> Importantly, merely because the relief granted in the arbitration award could not or would not be granted by a court

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<sup>62</sup> O.C.G.A. § 19-7-3.

<sup>63</sup> *Nix v. Scarbrough*, 369 Ga. App. 850, 854 (2023).

<sup>64</sup> *Id.*

of law or equity is not grounds for vacating or refusing to confirm an award on the statutory ground that the award evinced the arbitrator's manifest disregard of the law. O.C.G.A. § 9-9-13(b) (5).<sup>65</sup> Thus, if the parties agree to arbitration, an arbitrator may provide relief that is preferable to that available through the court.

### **Key Takeaways**

Before grandparents seek to legally establish visitation rights with their grandchildren, whether contractually or through an original visitation action, it is imperative to consider the legal and non-legal implications of *Namdar-Yeganeh*. While change may be a constant,<sup>66</sup> as Georgia law currently stands, grandparents are challenged to consider what factors may impact visitation with their grandchildren over time and, therefore, develop a visitation plan to minimize the need for any modification, as they cannot bring a modification action on their own in Georgia.

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<sup>65</sup> *Id.*

<sup>66</sup> Georgia Senate Bill 245 of the 2025-2026 Regular Session seeks to amend O.C.G.A. § 19-7-3 to include grandparents within the category of persons who may seek to revoke or amend an existing grandparent visitation order. The Georgia Senate approved S.B. 245 on March 3, 2025 by a 56-0 vote. *See* <https://www.legis.ga.gov/legislation/70720> (last visited Mar. 26, 2025).