***Beall v Beall* Child Custody and Visitation- EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am still Tain Kell.*

Tain, sometimes we come up with episode ideas from things we see and do in court. Sometimes, our loyal listeners will e-mail us with good episode ideas at goodjugepod@gmail.com.

*True. And sometimes we get ideas from…believe it or not…we actually read an appellate case.*

And sometimes we read appellate cases because our colleagues react to appellate cases – and they share their thoughts with us – both positive and negative

*That’s very true. I am kind of guessing that today’s podcast episode stems from one of those reactions, huh?*

Yep. In late January 2024, the Court of Appeals decided the case of *Beall v. Beall*. The case is too new for a reporter citation – we have the citation in the episode notes that you can find at goodjudgepod.com

 *Beall v. Beall*, A23A1549, 2024WL297992 (1/26/2024)

*While this case has a lot of facts that we will not delve into too deeply, it stands for a proposition that we thought would be an important reminder for lawyers and judges alike. So with all of that preamble, let’s jump in.*

This is a child custody case

As you all know, the appellate courts in Georgia have repeatedly noted that deciding child custody is a “Solomonic task”

*Smith v. Curtis,* 316 Ga. App. 890 (2012); *Burnham v. Burnham*, 350 Ga. App. 348 (2019) (there are dozens of other cases which include the same reference)

That reference is to the Biblical stories of King Solomon that can be found in 1 Kings 3:16–28. Two women claimed that a single baby was their baby. Solomon ordered that a sword be brought forth and that the baby be cut into two halves so that each mother could leave with ½ of the child. One of the purported mothers begged for the King to not have the child killed and, instead, give the baby to the other woman. Solomon decreed that the real mother of the child was that woman as proven by the fact that she would rather see the child grow up in the other household than be killed.

Because these custody cases can very often be very specific, the appellate courts have often noted that the decisions of trial courts receive a great deal of deference on appeal –

But one of the paramount things that trial courts must do in deciding custody is rely upon O.C.G.A. § 19-9-3

While the statute has 17 factors – but the list begins with the language, “the judge may consider any relevant factor including, but not limited to:” and then it lists 17 specific factors

And there are even more if the case involves allegations of domestic violence

When § 19-9-3 was amended, people misunderstood that it was a score sheet – if one party was favored on 10 factors but the other party was favored on 7, the first party won custody

But the cases have made it clear that is simply not the case – they are factors that must be considered by the trial judge but it is not a scorecard – the trial judge is afforded great discretion

But while the judge has discretion, he/she must acknowledge the 17 factors in § 19-9-3.

But the case we are looking at today, *Beall v. Beall*, really is not about pure custody – it is more about visitation

 Now, to be clear, “Visitation is a part of custody.” *Wrightson v. Wrightson*, 266 Ga. 493, 496 (1996).

Again, the decision begins with a citation that notes that when deciding visitation, trial judge decisions are afforded great deference

As the Court of Appeals’ decision noted:

“In deciding visitation, the trial court has very broad discretion, looking always to the best interest of the child. When the trial court has exercised that discretion, [the reviewing] court will not interfere unless the evidence shows a clear abuse of discretion, and where there is any evidence to support the trial court's finding, [the appellate] court will not find there was an abuse of discretion.”

Citing *Williams v. Williams*, 301 Ga. 218, 220 (1), 800 S.E.2d 282 (2017).

While the trial judge has “very broad discretion,” the order on visitation that comes from the trial court must point to facts in the record that justify the visitation decision – particularly if the trial court elected to give the party no visitation with the child

The *Beall* decision was filled with facts that we both have, unfortunately, seen all too often

* father had an affair
* father lived with the paramour
* father became estranged from his extended family
* social media posts by father were at least arguably offensive
* the temporary order had ordered no contact between child and paramour but it came out that contact had occurred, despite the order

And there were other acts of misconduct – including evidence that father may have lied during the final hearing

After hearing the evidence, the trial judge awarded sole custody to Mom and ordered that Dad would have no visitation at all.

And this is where your bells should be ringing – or whatever it is that you do when you hit a legal trip wire

As the Court of Appeals noted, unless the non-custodial parent is shown to be unfit – a rather high standard under our law – a trial court abuses that “very broad discretion” we referenced above – the trial judge should not completely deny the non-custodial parent access to the child except under exceptional circumstances

The court can consider limited access, supervised access, and other remedies but allowing for absolutely no visitation requires some rather unique facts

I have known judges who have allowed only telephone/video call visitation, visitation once a month while supervised, and any number of other remedies short of an absolute ban on visitation

I have known of a case where the father had been convicted to child molestation – that may well be one of those “exceptional circumstances” that would support a “no visitation” order – but even that situation requires some close attention to the order by the trial judge

The case law is pretty clear that the trial judge cannot forbid a person from being exposed to the child during visitation unless there is evidence in the record to support a finding that the person poses some form of risk to the child

See *Arnold v. Arnold*, 275 Ga. 354 (2002) (“In the absence of any evidence that exposure to a third party will have an adverse effect on the best interests of the children, a trial court abuses its discretion by prohibiting a parent from exercising his or her custodial rights in that person's presence.”)

The Court in *Beall* found that there was no evidence to support a finding that supervised visitation between Dad and child would have been inappropriate – and there was no evidence that the paramour had posed any risk of harm to the child

 The Court quoted the following in the decision:

[T]he primary consideration in determining visitation issues is not the sexual mores or behavior of the parent, but whether the child will somehow be harmed by the conduct of the parent. The focus must be on the needs of the child, not the faults of the parents. In some instances a parent's “immoral conduct” might warrant limitations on the contact between parent and child; but only if it is shown that the child is exposed to the parent's undesirable conduct in such a way that it has or would likely adversely affect the child. And any alleged deleterious effect on the child must be beyond that normally associated with divorce and remarriage.

 *Beckman v. Beckman*, 362 Ga. App. 748, 752-753 (2022) (trial court abused its discretion by prohibiting contact between the child and the father's new wife because there was no evidence that mere exposure to the father's new wife would harm the child). See also *Norman v. Norman*, 329 Ga.App. 502 (2014) (case dealing with a prohibition against “meretricious relationships” in child’s presence – cannot be done unless a) parties agree or b) evidence of risk of harm by the third party)

Judge Land concurred specially in the decision, noting that the record, while presenting a close case, did not support a finding that completely eliminated Dad from having access to the child.

Judge Land went on to note that if the circumstances changed, a modification could be sought

And in what appears to be a response to Dad’s failure to follow the terms of the temporary order in the case, he noted that court orders must be followed, even if the party does not like the order.\

Our friends and colleagues were initially angry that a party could lie in court and still have visitation

And that mindset is why we thought it would be good to talk about this case on the podcast

Nowhere in this decision does the Court of Appeals suggest that a party can lie under oath and be rewarded

 If he/she needs to be prosecuted for perjury, so be it…

If a party misbehaves during the litigation, there may be ramifications for such misconduct – but the penalty cannot usually be a complete denial of visitation

There may be contempt sanctions, attorney fees, etc. for misconduct during litigation – but losing any access to your child is not usually one of the available sanctions

If the judge believes that he/she has one of those “extreme cases,” the record must show that supervised visitation or extremely curtailed visitation cannot cure the problem

And your order needs to cite the record with facts that support your conclusion that no precautions would be sufficient to prevent the problem

One of the things we attempt to dwell on at NJO with our new judges is the fact that you have discretion as a judge

* failure to exercise discretion is an abuse of discretion
* if you believe an extreme situation exists, make sure the record supports your conclusion and that your order cites the record

This decision should not be read to be critical of the trial judge – judges make decisions daily that represent their honest and best effort to respond to the case before him/her

 And sometimes the appellate court disagrees

The take away from this decision is that a complete denial of visitation is a difficult thing to support within an order – and it is better to look closely at less severe options such as supervised visitation, curtailed visitation, etc. that can be set in such a way as to address the issue without completely denying a parent the right to have some form of access with his/her child.

So that’s all for today’s discussion of the *Beall* case and visitation/custody in general

*We have summarized the discussion already – but know that if you want this outline, it is available on goodjudgepod.com.*

As always, we want to discuss topics that are relevant to you, our listener(s). Shoot us your thoughts at our e-mail address, goodjudgepod@gmail.com

We come now to the often discussed but rarely duplicated section of our show – the “Tain talks music” section of the show. Tain, take it away.

 *Today’s music trivia excursion continues our theme of One Hit Wonders. But this time, we are talking about One Hit Wonders in country music. Some of the folks who show up on lists of country one hit wonders actually had some other songs on the country charts so don’t send us angry e-mails about the other hits these artists had – it’s just that they had one monster hit on the country charts. So with that disclaimer, let’s go country!*

*Most of you recall – maybe fondly and maybe not – the mega hit by Miley Cyrus’ dad, Billy Ray Cyrus. “Áchy Breaky Heart” was actually a #1 hit for Billy Ray. Do you want to guess which year this ear worm spent 5 weeks as the #1 hit on the country charts? [Answer – May-June 1992]*

 *Very soon, I will have the privilege of watching my child get married to a wonderful person. But my son is the groom and we will not be looking for the perfect song for the daddy/daughter dance. But this next song has been played at more weddings than I can count – usually during that daddy/daughter dance. The song is entitled, “I Loved Her First.” Your challenge is naming the band. This is hard so I will give you a few multiple choice options. Was the band a) Heartland; b) Brooks and Dunn; or c) Confederate Railroad? [Answer- “a” Heartland]*

 *There are a lot of country songs that either include references to Georgia or have Georgia in the title. One of the most famous was “The Devil Went Down to Georgia” sung by the Charlie Daniels Band. Everybody knows that song. But the question is what year that song became the #1 hit on the country charts? The exact year may be too hard – see the Billy Ray Cyrus question above – so was it in the 1970’s or the 1980’s? [Answer-1979]*

 *One last one -the song, “Leave the Pieces” was a country banger. “You’re gonna’ break my heart anyway- so just leave the pieces when you go…” Two beautiful, guitar playing women made up this band. Can you remember the name of the band? [The Wreckers]*

*Have a great day everyone and thanks for listening.*