

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

LAKIEVIA JOHNSON)	
)	
Appellant,)	Appeal Case Number: A24A1241
)	
)	
v.)	
)	
)	
ELAINE SMART et al.)	
)	
Appellees.)	

**BRIEF IN SUPPORT OF APPELLANT’S MOTION FOR
RECONSIDERATION**

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Comes now, Lakievia Johnson, Appellant, pursuant to Georgia Court of Appeals Rule 37(b), and submits this Brief in Support of her Motion for Reconsideration within ten (10) days of this Court's January 6, 2025 Opinion rendered in this case partially affirming the decision of the trial court.

ARGUMENT

The mother and Appellant, Lakievia Johnson, sought to modify an existing custody order that placed her child, Lauryn Grace, in the custody of the paternal grandmother and Appellee, Elaine Smart. The court affirmed the trial court's decision to limit Ms. Johnson's contact to supervised 30-minute weekly phone calls if Lauryn agrees, with Elaine Smart having the authority to terminate the call. The court also upheld the trial court's findings regarding the limited communication plan, finding it reasonable to protect the child's best interests based on (OCGA §§ 19-9-1 (a) and 19-9-3 (a) (5)). However, the court vacated the order and remanded the case back to the trial court due to the lack of a permanent parenting plan, as required by law. See *Jewell v. McGinnis*, 346 Ga. App. 733, 816 S.E.2d 683 (Ga. Ct. App. 2018).

Rule 37 requires this Court to grant a motion to reconsider “when it appears that the Court overlooked a material fact in the record, a statute, or a decision

which is controlling as authority and which would require a different judgment from that rendered” Rule 37 - Motions for Reconsideration, Ga. Ct. App. R. 37. Ms. Johnson respectfully submits that this Court, in rendering its opinion partially affirming the decision of the trial court, (1) has erroneously construed or misapplied a provision of law or controlling authority including (a) OCGA §§ 19-9-6 (5), 19-9-1 (a), and 19-9-3; and (2) has overlooked the following material facts in the record including (a) Ms. Johnson’s objection to the trial court’s initial claim that there wasn’t a material change prompting the change in visitation, (b) the mother’s appearance in court as evidence of a bond with her children, (c) the relevant evidence supporting Ms. Johnson’s allegations of habitual abuse from both of the Appellees, Jeremy Curd and Elaine Smart, and (d) the amount of time allowed for phone calls; and (3) this Court did not make a decision which is controlling as authority concerning Ms. Johnson’s request for reimbursement of court fees and expenses which should be awarded to Ms. Johnson pursuant to OCGA §§ 9-15-14 and 19-9-3 (g).

I. THIS COURT HAS ERRONEOUSLY CONSTRUED OR MISAPPLIED A PROVISION OF LAW OR CONTROLLING AUTHORITY.

This court reversed the trial court’s decision based on OCGA § 19-9-1 (a) and affirmed the trial court’s decision based on OCGA § 19-9-3 (a) which are both

statutes concerning parents who maintain parental rights or physical custody or legal custody of their children. The minimal visitation with her daughter, via supervised phone calls, granted to Ms. Johnson by the trial court and affirmed by this court was affirmed based on OCGA § 19-9-3 (a), indicating Ms. Johnson's parental rights are still intact. Thus, this court must fully reverse the trial court's decision because visitation is a form of custody¹ and Georgia statutory law only prohibits joint legal custody arrangements between parents. "See *Stone v. Stone*, 297 Ga. 451, 454-455, 774 S.E.2d 681 (2015) (holding that Georgia statutory law only permits joint legal custody arrangements between parents)." *Geiger v. Allmond*, 902 S.E.2d 226, 233 n.10 (Ga. Ct. App. 2024). Appellee, Elaine Smart, is not Lauryn's parent and as a matter of law has yet to successfully prove Ms. Johnson is an unfit parent, nor did Ms. Johnson ever consent to Ms. Smart having Lauryn.² Thus, Ms. Johnson still maintains parental power pursuant to OCGA § 19-7-1 (b) and can legally demand the return of her child to her.

II. THIS COURT HAS OVERLOOKED MATERIAL FACTS.

This court has overlooked several material facts. First, on page four of the opinion, this court stated, "the mother has not asserted that the trial court

¹ See OCGA § 19-9-22.

² OCGA § 19-7-1 (b).

erred in finding no material change in circumstances...”³ Ms. Johnson preserved her right to address this issue during the trial court proceeding by objecting to the trial court’s statement that there was no material change. It was Ms. Johnson’s assertion to the fact that there were material changes that supported Ms. Johnson’s modification of visitation in which she regained privilege to call her daughter.⁴ Second, Ms. Johnson’s appearance in court in response to outreach from her daughters is evidence of the bond Ms. Johnson still has with both of her daughters and of the bond, no matter how strained, her daughters still have with her.⁵ Thus, in the best interest of Lauryn, Ms. Johnson has chosen to rebuild the relationship with her by, first, modeling good behavior and doing things legally, which should be commended, not criminalized⁶. Third, pursuant to Ga. Codes §§§§§ 24-1-104, 24-1-103, 24-2-201, 24-4-401, and 24-4-402, despite the trial court’s claims, “that the mother’s allegations of neglect and abuse by the grandmother were ‘entirely unsubstantiated,’ ”⁷ Ms. Johnson provided relevant documentation⁸ during the 2024 trial court proceedings to support her allegations of the Appellees’

³ See A24A1241 Order 1/6/2025 pg. 4, footnote #4.

⁴ See A24A1241-Transcript Volume 3 pg. 14, lines 11-19.

⁵ See A24A1241-Transcript Volume 3 pg. 8, lines 1-10.

⁶ See A24A1241-Transcript Volume 3 pg. 20, lines 1-7.

⁷ See A24A1241 Order 1/6/2025 page 4, para 1.

⁸ See A24A1241-Record Volume 2 pgs. 37-41, A24A1241-Transcript Volume 3 pg. 19, lines 4-18, A24A1241-Record Volume 2 pg. 91, Item #9; A24A1241-Record Volume 2 pg. 110, A24A1241-Record Volume 2 pg. 60, Item #12.

habitual abuse, substantiating her account of ongoing neglect and abuse.⁹ This court is within its jurisdiction to consider all evidence included with the 2024 trial court proceedings as set out in OCGA § 5-6-34 (a). Finally, this court incorrectly cited the phone visitation agreement stating, “The trial court also adjusted the conditions of the mother’s telephone visitation – specifically, that in light of the remaining 16-year-old’s ‘willingness to consider engaging in communications’ with her, the mother ‘shall have’ phone visitation with the child for one half-hour a week...”¹⁰ On the contrary, the trial court’s final order says, “IT IS FURTHER ORDERED that Petitioner shall have supervised phone visitation with the minor child on the first Sunday of each month between 2:00 p.m. and 2:30 p.m. beginning March 1, 2024.”¹¹ That is, Ms. Johnson was granted the privilege of calling her daughter within a 30 minute window of time once a month: Not weekly.

III. THIS COURT DID NOT MAKE A DECISION WHICH IS CONTROLLING AS AUTHORITY.

This Court did not make a decision which is controlling as authority concerning Ms. Johnson’s request for reimbursement of court fees and expenses which should be awarded to Ms. Johnson pursuant to OCGA §§ 9-15-14 and 19-9-3 (g).

⁹ See OCGA § 24-4-406.

¹⁰ See A24A1241 Order 1/6/2025 pg. 3, para 2.

¹¹ See A24A1241-Record Volume 2 pg. 67, para 3

CONCLUSION

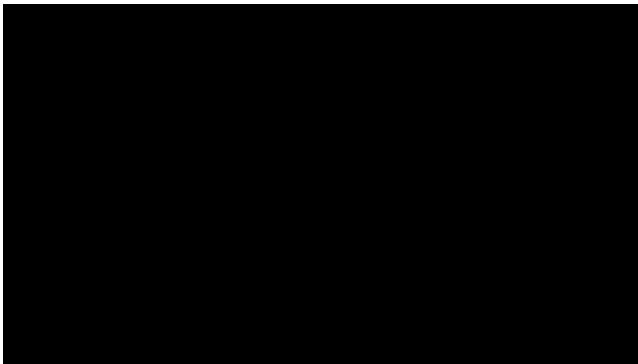
For the foregoing reasons, Appellant, Lakievia Johnson, respectfully requests that this Court grant her Motion for Reconsideration. This Court erred in its application of relevant statutes, overlooked material facts presented during the trial proceedings, and failed to address Ms. Johnson's request for reimbursement of court fees and expenses. The current visitation order, limited to supervised 30-minute monthly phone calls, is not in the best interest of the child and violates Ms. Johnson's parental and constitutional rights. Ms. Johnson respectfully requests that this Court vacate the affirmed portion of the trial court's order and remand the case for further proceedings consistent with this Motion.

Respectfully submitted this the 16th day of January, 2025.

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

A handwritten signature in cursive script, appearing to read "Lakievia Johnson", is written over a horizontal line.

Lakievia Johnson, Appellant



CERTIFICATE OF SERVICE

I certify that I have this day served Jeremy Curd with a copy of this Brief in Support of Appellant's Motion for Reconsideration through the U.S. mail with first class postage paid addressed to:

Jeremy Curd

[REDACTED]

[REDACTED]

Served by me on this the 16 Day of January, 2025.



Lakievia Johnson

[REDACTED]

CERTIFICATE OF SERVICE

I certify that I have this day served Barbara Elaine Smart with a copy of this Brief in Support of Appellant's Motion for Reconsideration through the U.S. mail with first class postage paid addressed to:

Barbara Elaine Smart

[REDACTED]

[REDACTED]

Served by me on this the 16 Day of January, 2025.

_____

Lakievia Johnson

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