SECOND DIVISION
MARKLE, J.,
LAND and DAVIS, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
https://www.gaappeals.us/rules

January 06, 2025

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A24A1241. JOHNSON v. SMART et al.

LAND, Judge.

Lakievia Johnson, the mother of the child at issue, brings this pro se appeal from the trial court's denial of her petition for modification of custody and visitation.[1] Johnson asserts errors including that the trial court failed to attach a permanent parenting plan to its order and that the new visitation arrangement amounts to a self-executing change. We vacate the trial court's order and remand for attachment of the permanent parenting plan required by OCGA § 19-9-1 (a), but we affirm in all other respects.

[1] The appellees, father Jeremy Curd and paternal grandmother Elaine Smart, have not filed a brief.

> When considering a dispute regarding the custody of a child, a trial court has very broad discretion, looking always to the best interest of the child. This 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, we will not find there was an abuse of discretion.

(Citations and punctuation omitted.) *Williams v. Williams*, 295 Ga. 113, 113 (1) (757 SE2d 859) (2014). "We are mindful that the Solomonic task of making custody decisions lies squarely upon the shoulders of the judge who can see and hear the parties and their witnesses, observe their demeanor and attitudes, and assess their credibility." (Citations and punctuation omitted.) *Bankston v. Warbington*, 332 Ga. App. 29, 29-30 (771 SE2d 726) (2015).

Thus viewed in favor of the judgment, the record shows that the parents' divorce decree was entered in 2012, with the father having sole physical custody and the mother having supervised visitation once a week. The mother filed her first petition for modification in 2014, after which the juvenile court granted her 12-hour weekend visitation with a one-hour phone call as well.[2] In March 2018, the mother filed a second petition for modification in the juvenile court, after which she was

[2] As here, a superior court may transfer a custody matter to a juvenile court for disposition. See OCGA § 15-11-11 (3).

ordered to undergo a mental evaluation. In December 2018, the children's paternal grandmother, Elaine Smart, successfully moved the juvenile court to intervene and for custody. In April 2019, and acting on a guardian ad litem's recommendation following police involvement during the mother's visitation, the juvenile court granted the grandmother full legal and physical custody, with the children free to initiate phone visitation, but with no mandated visitation or contact with the mother. The record does not show that any appeals were taken from these orders.

In January 2024, and against this backdrop, the mother brought the instant petition for modification concerning the younger child in superior court.[3] After a hearing at which the mother appeared pro se, the trial court first found that no material change in circumstances had occurred sufficient to warrant modification of the juvenile court's 2019 order. 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 month, if the child chooses to accept the call, subject to supervision by the grandmother, who is authorized "to

[3] The older daughter has reached the age of 18 and is no longer subject to supervision.

terminate the phone call if she finds the conversation to be inappropriate." (Emphasis supplied.) The mother was barred from making any other attempts to contact the child. The trial court later denied the mother's motion for reconsideration, noting that the child "has not once initiated communications with" the mother since the entry of the 2024 order, that the mother had provided no evidence of a bond with the child, and that the mother's allegations of neglect and abuse by the grandmother were "entirely unsubstantiated."

1. On appeal from these orders, the mother asserts that nine errors have occurred, most of which concern the 2012 divorce decree, the 2018 suspension of visitation and grant of the motion to intervene, and the 2019 modification.[4] The mother did not previously appeal these directly appealable orders in different cases, however, and has thus waived any arguments concerning them. See *In the Interest of S. W.*, 363 Ga. App. 666, 668-669 (1) (872 SE2d 316) (2022) (custody orders entered by juvenile courts are directly appealable); *Bankston v. Lachman*, 328 Ga. App. 284,

[4] The mother has not asserted that the trial court erred in finding no material change in circumstances but modifying the conditions of the telephone visitation nonetheless. See, e.g., *Maxwell v. Johnson*, 365 Ga. App. 547, 549 (1) (879 SE2d 642) (2022) (change in custody may be granted only if "a new and material change in circumstances affects the child") (punctuation and footnote omitted).

285-286 (1) (761 SE2d 830) (2014) (appellate court had no jurisdiction over a previous final judgment in a proceeding with a different case number from a directly appealable visitation order).

2. As to the 2024 order appealed from, the mother argues that trial court erred when it (a) accepted the grandmother's claim that the child had been living with her since 2010, (b) failed to attach a parenting plan to its order, and (c) ordered a "self-executing communication plan which empowered [the grandmother] to continue alienating" the mother from her daughter.

(a) The first issue, as to the grandmother's assertions and credibility, was a matter of fact for the court to resolve, and the mother herself stated (in a passage she now claims was incorrectly transcribed) that the child had been living with the grandmother since 2010. See *Warbington*, 332 Ga. App. at 29 (appellate court defers to the trial court in a custody dispute "in all matters of fact").

(b) As to the parenting plan, neither the 2019 order attached to the mother's petition nor the 2024 order attaches the plan required by OCGA § 19-9-1 (a). Although the mother failed to comply with the pretrial order's provision that she supply such a plan, that failure "does not create an exception" to the statutory

requirement. See *Williams v. Williams*, 301 Ga. 218, 222-224 (3) (800 SE2d 282) (2017). "Because the trial court failed to incorporate a permanent parenting plan in the final judgment[,] we vacate the judgment in part and remand this case for compliance with the requirements of OCGA § 19-9-1." Id. at 224 (3).

(c) Finally, a child 14 or older can elect not to visit with a non-custodial parent, with the trial court having supervisory power over the election and the conditions of the communication, guided by the child's best interest. See *Worley v. Whiddon*, 261 Ga. 218, 218 (403 SE2d 799) (1991) (OCGA §§ 19-9-1 (a) and 19-9-3 (a) "preserve the authority of the trial court to set visitation rights based upon the best interests of the child," including a consideration of the wishes of a child over 14 "together with other factors as the basis for its decision"). The provisions of this order were reasonably calculated to insure that the communications were not extended in contradiction of the child's longstanding wish not to be subjected to her mother's disturbing behavior, and we will not assume in advance that the arrangement will fail. See *Williams*, 301 Ga. at 221 (1) (a decree that provided for minimum visitation at a specified location and by cooperation, subject to the discretion of a supervising church, was not

erroneous; wife had made no showing that she had actually been denied visitation under this arrangement).

Judgment affirmed in part and vacated in part, and case remanded with direction. Markle and Davis, JJ., concur.