Hello Folks and welcome back to the Good Judge-Ment podcast. I am Wade Padgett.

*And I am Tain Kell. We really appreciate you listening to the Good Judge-Ment Podcast.*

Tain, today we are going to discuss a topic that has seemed to explode in frequency during the pandemic. Family Violence and Stalking Protective Order actions.

*We are blessed in Cobb County to have senior judges who hear most if not all of our Protective Order cases so I may well be asking as many questions as answering them during this episode.*

That’s great. I think it is great when one of us deals with the subject of our episodes because it allows the other co-host to ask questions that the listeners may also have. Let’s get started.

In Augusta, we treat protective orders as “domestic relations cases” even though they are not actually considered domestic relations cases.

I need to apologize early and often because I will refer to these cases as “TPO” actions when they really should be referenced as Protective Orders. Just a bad habit and I will bet all that I have that I will use that acronym while we talk.

§ 19-13-3. Petition; hearing

(a) A person who is not a minor may seek relief under this article by filing a petition with the superior court alleging one or more acts of family violence. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

(b) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that family violence has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from violence. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner and such order shall remain in effect until the court issues an order dismissing such order or a hearing as set forth in subsection (c) of this Code section occurs, whichever occurs first.

(c) Within ten days of the filing of the petition under this article or as soon as practical thereafter, but not later than 30 days after the filing of the petition, a hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases. In the event a hearing cannot be scheduled within the county where the case is pending within the 30 day period the same shall be scheduled and heard within any other county of that circuit. If a hearing is not held within 30 days of the filing of the petition, the petition shall stand dismissed unless the parties otherwise agree.

(d) Family violence shelter or social service agency staff members designated by the court may explain to all victims not represented by counsel the procedures for filling out and filing all forms and pleadings necessary for the presentation of their petition to the court. The clerk of the court may provide forms for petitions and pleadings to victims of family violence and to any other person designated by the superior court pursuant to this Code section as authorized to advise victims on filling out and filing such petitions and pleadings. The clerk shall not be required to provide assistance to persons in completing such forms or in presenting their case to the court. Any assistance provided pursuant to this Code section shall be performed without cost to the petitioners. The performance of such assistance shall not constitute the practice of law as defined in Code Section 15-19-51.

(e) If the court finds a party is avoiding service to delay a hearing, the court may delay dismissal of the petition for an additional 30 days.

We need to stress a few features concerning FV Protective Orders:

1. The petitioner has to qualify as “family” and that person must allege “violence”
	1. §19-3-1 defines “family” as:
		1. past or present spouses,
		2. persons who are parents of the same child,
		3. parents and children,
		4. stepparents and stepchildren,
		5. foster parents and foster children, or
		6. other persons living or formerly living in the same household
	2. §19-3-1 defines “violence” as:
		1. any felony; or
		2. Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.
2. Venue in these cases lies in the superior court where the respondent resides unless the defendant is a nonresident of Georgia (§19-3-2)
	1. If an nonresident of Georgia, the venue lies where the petitioner resides ***or*** where an act involving family violence occurred (with reference to the long arm statute)

*(Tain-jump in here – these are civil cases and venue can always be waived by failing to timely object. Do not dismiss sua sponte if it appears there is a venue issue. Davis-Redding v. Redding*, 246 Ga. App. 792 (2000). *Also, preponderance is the relevant standard.* )

* 1. Where the act of family violence was “felt” in Georgia but actually occurred outside of Georgia, there is no Georgia jurisdiction. *Anderson v. Deas*, 273 Ga. App. 770 (2005). (i.e. threatening texts, calls, e-mail)
1. Because the statute allows for ex parte relief, there is a misconception that the alleged act of family violence must be “relatively recent.” The cases say that the burden of proof is that the petitioner must show that the respondent engaged in family violence at some unspecified time in the past and that the respondent may engage in such violence again at unspecified time in the future. *Lewis v. Lewis*, 316 Ga. App. 67 (2012) (“the recency of past violence may, of course, bear upon the likelihood of future violence, but a “reasonably recent” act of violence is not absolutely required.”)

The petition must be verified and the statute authorizes ex parte relief. But there is a very important provision that I was confronted with recently and which bears some discussion.

§19-13-3(c) Within ten days of the filing of the petition under this article or as soon as practical thereafter, ***but not later than 30 days after the filing of the petition***, a hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases. In the event a hearing cannot be scheduled within the county where the case is pending within the 30 day period the same shall be scheduled and heard within any other county of that circuit. ***If a hearing is not held within 30 days of the filing of the petition, the petition shall stand dismissed unless the parties otherwise agree.***

The forms for Protective Order actions can be found on the website of the Clerk’s Authority (www.gsccca.org). One of those forms is an order for continuance.

While the court could clearly grant a continuance, the hearing must be conducted within 30 days of the petition being filed. In Augusta, we regularly schedule the hearing within the 30 day time limit but if the hearing has to be continued, any hearing ***MUST*** occur within 30 days of the date the ex parte order was entered. The cases all say that the 30 day window is an “absolute bar” to going forward. *Smith v. Smith*, 350 Ga. App. 647 (2019). *Herbert v. Jordan*, 348 Ga. App. 538 (2019); *White v. Raines*, 331 Ga. App. 853 (2015).

Stated another way, if the hearing is not conducted within the 30 day deadline, the action is dismissed “as a matter of law.” I have not seen any cases which have dealt with situations where the respondent was not timely served, the case was dismissed and then was refiled. I am assuming that the required dismissal would be “without prejudice” as it would not be a result of a hearing on the merits. The statute does not suggest anything to the contrary.

At the hearing, the standard is preponderance as Tain noted above – and if the judge finds the burden was met, the statutes provide that the order will remain in effect for one year. Only if the petitioner requests a three year order or a permanent order can one of the later orders be entered. §19-13-4(c).

Any violation of a protective order can be punished by way of a contempt action or it can be the predicate for a charge of aggravated stalking. §19-13-6.

One of the collateral penalties associated with the granting of a Protective Order is that the respondent cannot possess a firearm (or purchase a firearm) ***forever.*** That means that the respondent cannot receive a Weapon Carry License (“WCL”).

 If a party is in the military, that is likely the end of that career

*(Not making apologies or introducing something the judge needs to consider if there are clear acts of family violence – just a consideration that the judge needs to be aware of)*

There have been occasions when it is clear to me that the petitioner cannot meet the evidentiary burden but it is equally clear that the parties need to discontinue contact with one another. If the petitioner consents (and only if the petitioner consents) an application of a FV protective order can be “converted” to what I refer to as a “civil restraining order” under *Birchby v. Carboy*, 311 Ga. App. 538 (2011) and §9-11-65. The petitioner must consent – frankly, both parties should consent. Without that consent, the judge should rule on the evidence presented.

**STALKING PROTECTIVE ORDERS**

§ 16-5-94. Restraining orders, protective orders, and approval of consent orders to prevent recurrence of stalking

(a) A person who is not a minor who alleges stalking by another person may seek a restraining order by filing a petition alleging conduct constituting stalking as defined in Code Section 16-5-90. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

(b) Jurisdiction for such a petition shall be the same as for family violence petitions as set out in Code Section 19-13-2.

(c) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that stalking by the respondent has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from stalking. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner.

(d) The court may grant a protective order or approve a consent agreement to bring about a cessation of conduct constituting stalking. Orders or agreements may:

(1) Direct a party to refrain from such conduct;

(2) Order a party to refrain from harassing or interfering with the other;

(3) Award costs and attorney's fees to either party; and

(4) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking.

(e) The provisions of subsections (c) and (d) of Code Section 19-13-3, subsections (b), (c), and (d) of Code Section 19-13-4, and Code Section 19-13-5, relating to family violence petitions, shall apply to petitions filed pursuant to this Code section, except that the clerk of court may provide forms for petitions and pleadings to persons alleging conduct constituting stalking and to any other person designated by the superior court pursuant to this Code section as authorized to advise persons alleging conduct constituting stalking on filling out and filing such petitions and pleadings.

The definition of stalking under O.C.G.A. § 16-5-90 is essentially defined by the first sentence of the statute: “A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.” A single act may prove insufficient to constitute stalking *Norman v. Doby*, 321 Ga. App. 126 (2013).

Stalking protective orders are very similar to FV protective orders – only that the underlying acts are different and there is no requirement of a “family” relationship. Please note that the statute specifically incorporates the provisions of §19-13-3(c) so the hearing must be conducted within 30 days or it stands dismissed.

*(Tain-important to note that the FV Protective Order statute specifically allows for protective order to be entered for acts of stalking so if the parties are “family,” the petitioner could utilize either form/statute)*

I think it bears discussion as to why we have seen a huge increase in the number of protective orders that have recently been filed.

We have learned that some of our LE officers have been encouraging complaining parties to seek a Protective Order when they do not have sufficient evidence of a “crime.”

There are times when such advise is absolutely appropriate. However, we have seen a number of occasions when parties seek protective orders instead of seeking criminal arrest warrants under the “warrant application hearing” statute. §17-4-40(b)(1).

The pandemic has affected all sorts of people in different ways – and, unfortunately, some individuals have sought protective orders because their families, friends, or friends of friends were acting like jerks. There is an important point to be gleaned from all of this – the statutes allow for issuance of these ex parte orders only where certain actions have been taken by the respondent – not merely being a jerk.

In the FV context, the respondent must qualify as “family” and there must be one of the specific acts committed that we previously discussed (clearly set forth in the statute). With stalking, there has to be a pattern of behavior. Granting an ex parte order when it is clear the statute has not been met is simply wrong.

But this is one of the issues that keeps judges awake at night. You never want to refuse a protective order request and be proven to have made an incorrect judgment only after something bad has happened.

Thank you for listening to the Good Judge-Ment Podcast. There are all sorts of other details relating to protective orders we could discuss and we might well discuss them more in future episodes.

*The message on these orders is clear. The statutory requirements have to be met before even the ex parte order is entered. Please take a moment and review these statutes to ensure you are making the correct decision.*

We thought it was time for us to find room in our recording schedule to discuss protective orders. Please continue to help us help you by providing input and suggestions for episode topics at goodjudgepod@gmail.com. You can visit our website, goodjudgepod.com for the episode notes from this and all other episodes.

*Again, thanks for listening to the Good Judge-Ment Podcast. And remember…*