

# GEORGIA DEPRIVATION APPELLATE DECISION SUMMARIES\*

MAY 2010

**Overview of May Decisions:**

- *In re I.W.*, -- Ga. App. --, 2010 WL 2106039 (2010) (A10A1141) – Page 1  
 Court of Appeals affirms Juvenile Court on award of long-term custody to maternal aunt, finding the following to not be error: failure to give further notice of deprivation hearing to father, application of custody standard, and application of clear and convincing evidence standard in depriving father of his parental rights.

**Cite** *In re I.W.*, -- Ga. App. --, 2010 WL 2106039 (2010) (A10A1141)

**Issue Date & Court Comp.**

- May 27, 2010
- Opinion by: Judge Johnson, affirming the Juvenile Court
- Concurring (w/out opinion): Chief Judge Miller, Presiding Judge Phipps

**Factual and Procedural History**

The child went to live with her (the CoA refers to I.W. as a boy, as well) maternal aunt in December 2008 when the child’s mother passed away. In June 2009, the aunt sought the assistance of Clayton DFCS in obtaining custody of the child. DFCS filed a complaint and deprivation petition in August 2009 alleging that the child’s mother had died and that her father was unwilling to care for the child. In September 2009, the father filed a motion to intervene and a motion to dismiss the deprivation proceedings. He legitimated in October 2009. The motion to dismiss asserted that the hearing was not necessary and that the father would not attend unless further notice was given. The Juvenile Court did not rule on the father’s motion to dismiss and the father failed to attend the hearing. The evidence presented at the hearing – which included the child expressing a strong desire to live with her aunt – pointed in favor of the aunt as custodian. The Juvenile Court found the child to be deprived and awarded long-term custody to the maternal aunt. The father appealed.

**Issue(s) and Decision**

- I. Did the Juvenile Court have an obligation to further notify father of deprivation hearing after father filed motion to dismiss stating that he would not attend unless given further notice? No.**
  - a. *Law/ Court’s Reasoning*
    - i. The father filed a motion to dismiss the deprivation petition – which the Juvenile Court did not rule on – asserting that the hearing "was no longer necessary" and that he would not attend unless given further notice. The father’s assertion and refusal to attend the hearing does not place a burden on the Juvenile Court to supply additional notice. The father provided no authority to support this proposition and the CoA noted that none exists. *See Cormier v. Cormier*, 280 Ga. 693, 694 (2006) (a party who has been notified of a hearing and chooses not to attend has not been deprived of his or her due process rights).
- II. Did the Juvenile Court apply the wrong standard in awarding custody of I.W. to her Aunt? No.**
  - a. *Law/ Court’s Reasoning*
    - i. The father specifically argued that the Juvenile Court based its decision solely on his lack of substantial contribution to the child.
      1. However, as the CoA noted, the Juvenile Court's decision was based on numerous other factors, including the father's failure to appear at the hearing, father's complete lack of support for I.W. throughout her life and during her coping with her mother's death, and the child's desire to live with her maternal aunt. The CoA noted that placement with a parent is a rebuttable presumption, *Jones v. Burks*, 267 Ga. App. 390 (2004), and that parental power can be lost through a failure to provide

for the child. O.C.G.A. § 19-7-1(b)(3).

**III. Did the Juvenile Court fail to use the clear and convincing evidence standard in depriving the father of his parental rights? No.**

a. *Law/ Court's Reasoning*

- i. Though the words "clear and convincing" did not appear in the Juvenile Court's order, the trial judge is presumed to know the law and the CoA will not find error where it does not affirmatively appear. *In re A.L.L.*, 211 Ga. App. 767 (1994).