EDLER v HEDDEN
The 2 year rule applies to child custody modification

344 Ga. App. 628, 811 S.E.2d 434 (Feb. 2018)

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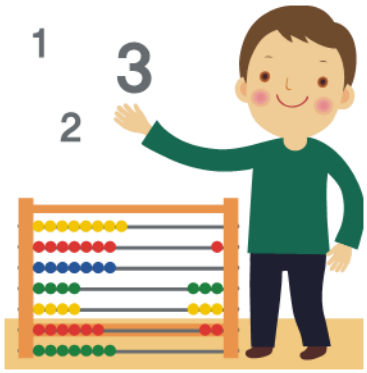

In this case, which was really not about the money, the Court of Appeals held that the two year rule for modification applies to child custody where a child has filed an election in less than two years from a previous Order of modification. OCGA § 19-9-3 (a)(5).

Judge Bethel authored the Opinion for the Court. The parties in this matter, Robert Edler (Father) and Lisa Hedden (Mother), were divorced in 2012. The Mother was awarded primary physical custody of their children. In December 2015, their daughter, E.E., elected to reside with her Father. The Court modified the divorce decree to allow her to live with Father.

In March 2016, the Mother petitioned for a change of custody, indicating that E.E. had signed an affidavit electing to return to the physical custody and residence with her Mother. The trial court again granted the request, finding that E.E. had made her second election "within two years of the prior election", and that her request was therefore valid under OCGA §19-9-3(a)(5).

The Father appealed, and contended that the trial court erred in its interpretation of OCGA § 19–9–3 (a) (5) by permitting his daughter to make a second election of the parent with whom she preferred to live, within the two years since her first election.

The Court of Appeals agreed with the Father and reversed. The Court found that although OCGA § 19–9–3(a)(5) provides that a child who has reached the age of 14 has "the right to select the parent with whom he or she desires to live. The child's selection for purposes of custody shall be presumptive unless the parent so selected is determined not to be in the best interests of the child," that the statute further provides that the child's "selection may only be made once within a period of two years from the date of the previous selection and the best interests of the child standard shall apply." OCGA § 19–9–3(a)(5).

The Court opined that the issue in this case was the proper interpretation of OCGA § 19–9–3(a)(5), and "specifically, the provision of that statutory section that provides that a child's "selection may only be made once within a period of two years from the date of the previous selection[.]"

The Mother contended that the Court should find that the statute would allow a child to make a different selection once within the two years following the date of the child's

original selection. The Court stated: "And at first glance, this argument seems meritorious. However, such an interpretation would effectively render the statute meaningless because it would result in an unlimited selection cycle. More specifically, each selection by the child would become the "previous selection" as soon as the child changed his or her mind, thus restarting the running of the two year period that would now be without effect or meaning under this reading of the statute."

The Court held, that the **"most logical interpretation of OCGA § 19–9–3(a)(5) is that the legislature intended for the child's selection to be effective for two years from the date of his or her previous selection".** Therefore, the child, E.E., could not change her mind for two years following that date of her first election. The Mother's petition, filed in March 2016, was therefore, "premature." The Court went on to state in a footnote that a judge is not restricted from changing the custody arrangement for a child where there is a change in material conditions or circumstances of the parties or child. *See* OCGA § 19–9–3 (b).