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Mandt v. Lovell***Georgia Supreme Court Rules That Family Violence Permanent Protective Orders Can Be Modified***

In *Mandt v. Lovell*, S12G2003 (October 21, 2013), the Supreme Court of Georgia held that family violence permanent protective orders under O.C.G.A. § 19-13-4 may be modified based on changing conditions and circumstances. In this case, the trial court terminated a family violence permanent protective order (hereinafter PPO) issued against William Roderick Lovell and in favor of Linda Mandt. The Court of Appeals affirmed the trial court's termination of the PPO. The Court of Appeals opined: "As a rule, a trial court lacks jurisdiction to make material changes in a final order after the expiration of the term of court in which it was entered, general principles with regard to the finality of judgments support the trial court's power to modify or terminate a protective order. Unlike a judgment for damages, for example, which is designed to close a matter, judgments that govern continuing or recurring courses of conduct *may be subject to modification even though the power of doing so is not expressly provided*. The protective order provides continuing relief to Mandt through regulation of Lovell's conduct, and the trial court apparently found that the fact that the parties were no longer together and neither party had custody of the child negated the need for a protective order."

The Supreme Court of Georgia granted certiorari to determine under what circumstances, if any, a trial court may terminate a permanent protective order pursuant to O.C.G.A. § 19-13-4. Thus, the sole issue was whether a superior court can modify a family violence protective order once it has been made permanent. The Georgia Supreme Court opined: "That a family violence order is a continuing judgment. Because the order directly impacts upon the interaction of members of a domestic unit, conceivably in perpetuity, a family violence protective order should remain subject to a potential future burden and benefit analysis. The burden of prohibiting an individual from interacting with his or her family or domestic unit must be balanced with the benefit of prospectively stopping family violence. This balance between these extremely important factors does not become immutable at the moment a PPO is entered. For that reason, a PPO should not be impervious to future modification if the underlying balance has substantially changed." Thus, the Court determined that PPO's are subject to modification.

The Supreme Court having determined that a family violence permanent protective order can be modified, they outlined the procedure which must be followed, and specific considerations which should be contemplated by the superior court. The procedure requires that a restrained party who seeks termination or modification of a PPO must prove by a preponderance of the evidence that a material change in circumstances has occurred, such that the resumption of family violence is not likely and justice would be served by termination of the order. The superior court must look at the totality of the circumstances when considering these cases. In addition, the Georgia Supreme Court set forth certain circumstances which the superior court should consider. The circumstances include: the present nature of the parties' relationship, including proximity of shared residences and any shared parental responsibilities; the restrained party's history of compliance with the protective order and history of violence generally both before and after its issuance; the restrained party's efforts to undergo family violence therapy or similar counseling and rehabilitation; the age and health of the restrained party; any undue hardships suffered as a result of the order; and the existence and nature of any objections the victim has to termination of the protective order. Therefore, the judgment of the Court of Appeals was affirmed.