

**THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.**

**NOTICE: Motions for reconsideration must be received no later than 4:30 pm on the 10th day after the decision was issued to be deemed timely filed.
<https://www.gaappeals.gov/rules>**

October 22, 2026

In the Court of Appeals of Georgia

A26A1086. IN RE: T. F. T. et al., CHILDREN (FATHER).

PIPKIN, Judge.

On March 24, 2025, the trial court held an evidentiary hearing and entered a final order granting Christopher Robert Carroll’s petition to adopt his two stepchildren and terminating biological father Jason Michael Tabb’s parental rights to the children. Tabb, who is incarcerated, now appeals pro se, arguing, in addition to his substantive attack on the final order, that the trial court lacked personal jurisdiction over him due to defects in the summons and service of the petition and erred in ignoring his request to attend the final hearing either by video or in person on the sole ground that Tabb “did not submit a proposed production order to the court to produce himself in anticipation of the final hearing.” While Tabb waived his

defense of lack of personal jurisdiction, he is correct that the trial court erred in ignoring his request to attend the final hearing solely because Tabb did not submit a proposed production order, which the trial court never instructed him to file. Accordingly, we vacate the trial court's final order and remand the case for further proceedings.

1. Tabb contends that the trial court lacked personal jurisdiction over him. However, Tabb waived any defense of lack of personal jurisdiction, so this contention provides no basis for reversal.

On January 2, 2025, Carroll filed a petition to adopt his two stepchildren and to terminate Tabb's parental rights pursuant to OCGA § 19-8-6 and OCGA § 19-8-10. On February 25, 2025, Tabb filed his answer along with an affidavit describing his involvement in the children's lives, his attempts to maintain contact with and support them while in prison, and actions allegedly taken by the children's mother and Carroll to prevent him from communicating with and providing support for his children while incarcerated. Tabb did not file a motion to dismiss under OCGA § 9-11-12(b)(2) (lack of jurisdiction over the person) before or at the time that he filed his answer, and he did not assert in his answer a defense of lack of personal jurisdiction. Thus, he waived

any defense of lack of personal jurisdiction. See OCGA § 9-11-12(h)(1) (“A defense of lack of jurisdiction over the person ... is waived: (A) If omitted from a motion [to dismiss]; or (B) If it is neither made by motion under this Code section nor included in a responsive pleading, as originally filed.”). Accordingly, the trial court has personal jurisdiction over Tabb.

2. Tabb also contends that the trial court erred in ignoring his request to attend the final hearing either by video or in person — whichever the court preferred — on the ground that he did not submit a proposed production order to the trial court. We agree.

(a) On January 6, 2025, the trial court entered an order setting a final hearing on Carroll’s petition for adoption and termination of parental rights for March 24, 2025. In his answer, which he filed on February 25, 2025, Tabb specifically requested that “a Production Order be entered by this Honorable Court ordering the attendance of the Defendant, appearing Pro Se, to any hearing on this matter, either by video court or in person, whichever may please the Court.”

At the March 24, 2025 final hearing, Carroll’s attorney acknowledged that “[i]n his answer, Your Honor, he [i.e., Tabb] did, I guess, ask about a CPO [i.e., a court

production order] or being able to attend via video conference.” She stated that, “to the best of my knowledge, Your Honor, he has not submitted any type of order to the Court,” and she argued that

because [Tabb] is pro se, Your Honor, I would submit to the Court that it’s his responsibility and his responsibility alone, representing himself, to submit an order in order to be a part of this hearing. If that is what he wanted to do. He didn’t do that. And I would be asking the Court to move forward with the hearing today

Carroll’s attorney cited no authority for the proposition that an incarcerated pro se parent who has requested in writing that the trial court issue a production order to allow him to attend a final hearing on a petition to terminate his parental rights is required to file a proposed production order in order to participate in the final hearing.

The trial court moved on with the final hearing, and Carroll and the children’s mother testified. The court made a finding on the record that Tabb was properly served through personal service. The court also made a finding that Tabb “failed to respond appropriately and to present any evidence. And therefore, the evidence that has been presented today is unrefuted.” The court then signed and filed the final order granting Carroll’s petition for adoption and terminating Tabb’s parental rights. In the final order, the court observed in passing that “Tabb, who ... is currently

incarcerated[,] ... did not submit a proposed production order to the court to produce himself in anticipation of the final hearing, and [he] did not appear for the hearing.” The court cited no authority for the proposition that Tabb was required to file a proposed production order to participate in the final hearing on the termination of his parental rights.

(b) Tabb argues that neither the statute governing the production of prisoners for judicial proceedings in state courts of record, see OCGA § 24-13-60, nor any other Georgia legal authority requires an incarcerated pro se litigant to file a proposed production order as a condition of participating in a civil trial. In response to Tabb’s argument, Carroll points to no Georgia legal authority imposing such a requirement, and we are not aware of any such authority. Cf. Uniform Superior Court Rules 7.2, 21.6, 44.11 (requiring litigants to file proposed orders in just three narrowly circumscribed instances). And while the trial court certainly could have ordered Tabb to file a proposed production order and proceeded with the final hearing without him if he failed to comply, the record on appeal is devoid of any order from the trial court requiring Tabb to file a proposed production order. See *Treadaway v. State*, 308 Ga.

882, 887(2) (843 SE2d 784) (2020) (“It is well established in Georgia that a trial court may request ... a proposed order from either party.”).

Tabb had both constitutional and statutory rights to participate in the final hearing on the termination of his parental rights. See Ga. Const. of 1983, Art. I, Sec. I, Par. XII (“No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person’s own cause in any of the courts of this state.”); *Kesterson v. Jarrett*, 291 Ga. 380, 380, 392(2)(f) (728 SE2d 557) (2012) (holding that “[u]nder the longstanding law of Georgia, the parties to a lawsuit have a fundamental right to be present in court during the trial of their case,” and that this rule extends to any real party in interest). See also OCGA §§ 19-8-10(c)(1), 19-8-

18(a)(1).¹ The trial court therefore erred in essentially denying Tabb's request to participate in the final hearing on the sole ground given. Accordingly, we vacate the final order and remand the case for further proceedings.

Judgment vacated and case remanded. Dillard, P. J., and Gobeil, J., concur.

¹ OCGA § 19-8-10(c)(1) says:

Whenever it is alleged by any petitioner that surrender or termination of rights of a living parent is not a prerequisite to the granting of a petition for adoption of a child of such parent ... , such parent shall be personally served with a conformed copy of the adoption petition A parent who receives notification pursuant to this paragraph shall not be a party to the adoption ... but shall have the right to appear in the pending adoption proceeding and show cause why such parent's rights to the child who is the subject of the proceeding should not be terminated by that adoption.

OCGA § 19-8-18(a)(1) says:

Upon the date appointed by the court for a hearing of the petition for adoption ... , the court shall proceed to a full hearing on such petition and the examination of the parties at interest in chambers, under oath [T]he court may in its discretion allow ... any witness to appear via electronic means in lieu of requiring his or her physical presence before the court.