

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

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**October 8, 2026**

## In the Court of Appeals of Georgia

A26A0865. IN THE INTEREST OF A. D. C., A CHILD  
(MOTHER).

DILLARD, Presiding Judge.

When a juvenile court terminates a parent’s rights, the consequences are life altering. It is the governmental extinguishment of “the parent and child’s constitutional right to familial relations,”<sup>1</sup> and few judicial determinations have a “more drastic significance than that of permanently severing a natural parent-child

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<sup>1</sup> *In the Interest of D. M.*, 339 Ga. App. 46, 51 (793 SE2d 422) (2016). Accord *In re S.O.C.*, 332 Ga. App. 738, 743 (774 SE2d 785) (2015). Unlike a custody proceeding, the termination of a natural parent’s right to familial relations with his or her child “leaves the parent with no right to visit or communicate with the child, to participate in, or even to know about, any important decision affecting the child’s religious, educational, emotional, or physical development.” *Lassiter v. Dep’t of Soc. Servs. of Durham County, N.C.*, 452 U.S. 18, 39 (I)(A) (101 SCt 2153, 68 LEd2d 640) (1981) (Blackburn, J., dissenting).

relationship.”<sup>2</sup> As a result, parents who face termination of their parental rights in Georgia have the right to counsel at *all stages* of the proceedings.<sup>3</sup> Alisha Leanne Holloway was denied this right (and stripped of her parental rights in the process), so we vacate and remand for proceedings consistent with this opinion.

The record shows that the Lamar County Division of Family and Children Services (“DFCS”) took custody of A. D. C. in March 2023, after a dependency finding based on her parents’ substance abuse and lack of housing. What happened after this finding is irrelevant to our consideration of this appeal. What matters is that in April 2025, after holding a hearing, the juvenile court terminated both Holloway

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<sup>2</sup> *In the Interest of D. M.*, 339 Ga. App. at 51. See *In the Interest of A. C.*, 285 Ga. 829, 833(2) (686 SE2d 635) (2009) (“One who is subject to the termination of parental rights cannot be equated to an individual who faces an interruption of custody; termination is a much more severe measure.”); *Nix v. Dep’t of Human Res.*, 236 Ga. 794, 795 (225 SE2d 306) (1976) (“There can scarcely be imagined a more fundamental and fiercely guarded right than the right of a natural parent to its offspring. To terminate that right is to sever that right for the future as effectively in law as if it never had existed. It is a tearing of the flesh and it can be done by the court only under the most carefully controlled and regulated circumstances for the sake of the child.”).

<sup>3</sup> See OCGA § 15-11-262(a) (“A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article.”); *In the Interest of M. G. W.*, 341 Ga. App. 475, 479 (801 SE2d 102) (2017) (“With the passage of the new Juvenile Code, the Georgia legislature again has made clear as a matter of statutory law that an indigent parent in a termination proceeding has a right to counsel at all stages of the proceeding.” (footnote omitted)).

and the putative father’s parental rights. Holloway then filed a motion for new trial, which the court denied. Her application for discretionary appeal followed, which we granted. Now, Holloway argues the court erred by, among other things, failing to inform her of the right to counsel or obtain a knowing waiver of that important right.

While we generally review a juvenile court’s decision to terminate parental rights deferentially,<sup>4</sup> that standard is rightly tempered by the “fact that there is no judicial determination which has more drastic significance than that of permanently severing a natural parent-child relationship.”<sup>5</sup> Indeed, the decision to terminate parental rights “must be scrutinized deliberately and exercised most cautiously.”<sup>6</sup> With these guiding principles in mind, we turn now to Holloway’s enumerated errors.

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<sup>4</sup> See, e.g., *In the Interest of E. G. L. B.*, 342 Ga. App. 839, 839-40 (805 SE2d 285) (2017) (noting that “we view the evidence in the light most favorable to the juvenile court’s disposition to determine whether any rational trier of fact could have found by clear and convincing evidence that the father’s parental rights should have been terminated”).

<sup>5</sup> *Id.* at 840 (punctuation omitted). Accord *In the Interest of S. O. C.*, 332 Ga. App. at 743-744; *In the Interest of L. J. L.*, 247 Ga. App. 477, 479 (543 SE2d 818) (2001).

<sup>6</sup> *In the Interest of E. G. L. B.*, 342 Ga. App. at 840 (punctuation omitted). Accord *In the Interest of S. O. C.*, 332 Ga. App. at 747.

1. First, Holloway contends that she was denied her right to counsel and did not waive that right. We agree, and so we vacate and remand this case for proceedings consistent with this opinion.

At the beginning of the termination hearing, counsel for DFCS stated: “Ms. Holloway is pro se as far as I know.” The juvenile court did not make any other inquiry about Holloway’s legal representation and the transcript contains no other discussion of the topic. Similarly, the transcript has no discussion of Holloway waiving her right to counsel. Finally, while the court’s order suggests that Holloway was unrepresented, it does not mention any waiver of the right to counsel.

Under OCGA § 15-11-262(a), Holloway was entitled to counsel for the termination proceeding and should have been allowed to obtain court-appointed counsel if the juvenile court determined that she was indigent. Indeed, OCGA § 15-11-262(j) provides as follows:

A party other than a child shall be informed of his or her right to an attorney prior to the adjudication hearing and prior to any other hearing at which a party could be subjected to the loss of residual parental rights.

A party other than a child shall be given an opportunity to:

(1) Obtain and employ an attorney of the party’s own choice;

(2) To obtain a court appointed attorney if the court determines that the party is an indigent person; or

(3) Waive the right to an attorney.

And we have repeatedly emphasized the importance of the right to counsel in this life-altering context because

[w]resting a child away from the care and custody of its parents is of serious consequence and is so drastic that it should be attended only by the most stringent procedural safeguards. In order to defend this stringently protected right, Georgia law provides that the court shall appoint an attorney for any indigent parent who desires counsel in any proceeding involving the termination of his or her parental rights. And to waive a right as fundamental as effective counsel, the trial court must, on the record, determine that the waiver is knowing, intelligent and voluntary.<sup>7</sup>

Significantly, the waiver of the right to counsel in termination proceedings *must* be reflected in the record. For example, in *In the Interest of S. H.*,<sup>8</sup> we vacated and remanded when the juvenile court failed to make a determination on the record that

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<sup>7</sup> *In the Interest of J. M. B.*, 296 Ga. App. 786, 789 (676 SE2d 9) (2009) (citations, punctuation, and footnote omitted).

<sup>8</sup> 361 Ga. App. 788 (865 SE2d 614) (2021).

the father knowingly waived his right to counsel in the termination proceeding.<sup>9</sup> Indeed, in that case, the juvenile court told the father it was his responsibility to either retain counsel or qualify for appointed counsel, but the record contained no colloquy in which the father expressly waived that right.<sup>10</sup> As a result, we concluded that the father was denied his right to counsel at the termination proceeding.<sup>11</sup> Needless to say, given the stakes involved, such a waiver “will not be lightly presumed, and a trial judge must indulge every reasonable presumption against waiver.”<sup>12</sup> So, even when a non-indigent parent appears in termination proceedings without retained counsel, the trial judge has “a duty to delay the proceedings long enough to ascertain whether the [parent] has acted with reasonable diligence in obtaining an attorney’s services and

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<sup>9</sup> Id. at 789–92(2).

<sup>10</sup> Id. at 789(1).

<sup>11</sup> Id. at 791(2). See also *In the Interest of J. B.*, 354 Ga. App. 704, 705 (841 SE2d 425) (2020) (reversing the trial court’s judgment when the record did not show that mother waived her right to counsel during dependency hearing ).

<sup>12</sup> *In the Interest of S. H.*, 361 Ga. App. at 791(2) (punctuation omitted). Accord *In the Interest of A. M. A.*, 270 Ga. App. 769, 776(3) (607 SE2d 916) (2004).

whether the absence of an attorney is attributable to reasons beyond the [parent's] control.”<sup>13</sup> This duty is sacrosanct and cannot be compromised or neglected.<sup>14</sup>

Here, the transcript reveals *nothing* about Holloway's status as to legal representation beyond an initial statement by DFCS that she was *apparently* proceeding pro se. Similarly, the record does not show that Holloway knowingly and voluntarily waived her right to counsel. There is no discussion of the issue. And even without this crucial inquiry, the hearing proceeded until the juvenile court announced its intent to terminate Holloway's parental rights. The court erred in doing so.

Again, the right to raise one's children is “a fiercely guarded right in our society and law, and a right that should be infringed upon only under the most compelling circumstances.”<sup>15</sup> Yet here, the juvenile court failed to honor the statutory and precedential—and arguably constitutional<sup>16</sup>—requirements entitling Holloway to

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<sup>13</sup> *In the Interest of A. M.A.*, 270 Ga. App. at 776(3). Accord *In the Interest of P. D. W.*, 296 Ga. App. 189, 198(2) (674 SE2d 338) (2009).

<sup>14</sup> See *supra* notes 2–3 & accompanying text.

<sup>15</sup> *In the Interest of E. G. L. B.*, 342 Ga. App. at 840. Accord *In re S.O.C.*, 332 Ga. App. at 743, 774 S.E.2d 785, 790 (2015).

<sup>16</sup> Some judges of this Court are of the opinion that the United States Constitution encompasses a right of parents to counsel in termination proceedings, and that the Supreme Court of the United States should revisit its holding in *Lassiter*, 452 U.S. at 30-34. See

counsel before taking the drastic step of terminating her parental rights.<sup>17</sup> Indeed, at no time did the court make findings on the record to support a determination that

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Cyrus W. Jarrett, Jr., *A Return to History and Tradition: Revisiting Lassiter and Grounding Civil Gideon in the Due Process Clause of the Fourteenth Amendment*, 24 U. Md. L.J. Race, Religion, Gender & Class 30, 30 (2024) (“Though *Lassiter* has now stood for more than forty years, the time is right for the Court to revisit and overturn its holding. First, the notion of a broad right to counsel for indigent civil litigants is deeply rooted in the history and tradition of the United States—the touchstone for determining whether an unenumerated right is contained within the Due Process Clause. Additionally, a proper application of the balancing test utilized by the *Lassiter* Court likewise reveals that due process requires that indigent civil litigants be appointed counsel under many circumstances. Ultimately, the weight of *Lassiter*’s tenuous reasoning, unworkable rule, lack of reliance, and egregious error indicate that stare decisis should not be honored, and that *Lassiter* should be revisited and overruled.”). See also Salihah R. Denman, *Safeguarding Children from State Intervention*, 39 Notre Dame J. L. Ethics & Pub. Pol’y Online Supp. 631, 645–47(I)(3)(B) (2025) (noting that “[d]espite acknowledging the importance of legal representation, the [Supreme Court of the United States] has not recognized impoverished parents’ constitutional right to legal counsel in every termination of parental rights proceeding,” and that instead, the Supreme Court of the United States held that “parents do not have a constitutional right to counsel in termination of parental rights proceedings even though it is a settled informed opinion that indigent parents should be entitled to legal counsel in all proceedings where their access to their child is at risk of being intruded upon by the government” (citation modified)). The Supreme Court of Georgia could also conclude that such a right exists under the Georgia Constitution should that issue be squarely presented to it. See, e.g., Ga. Const. Art. 1, Sec. 1, Para. 1; Ga. Const. Art. 1, Sec. 1, Para. 7; Ga. Const. Art. 1, Sec. 1, Para. 28.

<sup>17</sup> See *supra* notes 7–13 & accompanying text.

Holloway waived this important right. And because of this failure, we vacate the court's order and remand for further proceedings consistent with this opinion.<sup>18</sup>

On remand, the juvenile court must determine—on the record—whether Holloway was indigent such that counsel should have been appointed.<sup>19</sup> If the court finds she was indigent, it must then appoint her counsel and order a new hearing on the termination petition.<sup>20</sup> And if the court finds Holloway was not indigent, it must determine—again, on the record—whether she waived the right by failing to use reasonable diligence to retain private counsel.<sup>21</sup> In doing so, the court must keep in

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<sup>18</sup> See, e.g., *In the Interest of M. G. W.*, 341 Ga. App. at 481 (vacating and remanding when trial court failed to determine whether the mother made a knowing and voluntary waiver of her right to counsel).

<sup>19</sup> See *In the Interest of P. D. W.*, 296 Ga. App. at 200(2) (“On remand, the trial court must determine, on the record, whether appellant was indigent such that counsel should have been appointed to her.”).

<sup>20</sup> See *Interest of S. H.*, 361 Ga. App. at 792(2) (“If ... the juvenile court finds that the father had a right to counsel which he did not waive, the juvenile court must appoint counsel to represent the father and order a new hearing on the termination petition.” (punctuation omitted)); *In the Interest of P. D. W.*, 296 Ga. App. at 200(2) (“If the court finds that she was indigent, the court should order a new hearing on the termination petition.”).

<sup>21</sup> See *In the Interest of P. D. W.*, 296 Ga. App. at 200(2) (“If the court finds she was nonindigent, the court must determine, on the record, whether she waived the right to counsel by failing to use reasonable diligence to obtain the services of private counsel.”).

mind that—in the context of terminating parental rights—“waiver of the right to counsel will not be lightly presumed, and a [juvenile court] judge must indulge every reasonable presumption against waiver.”<sup>22</sup> And if the court finds Holloway did not waive the right to counsel, it must then order a new hearing on the termination petition.<sup>23</sup> But if the court concludes Holloway waived her right to counsel by failing to use reasonable diligence to retain private counsel, it may then re-enter its original judgment, in which case Holloway may again seek review via discretionary appeal.<sup>24</sup>

2. Because we vacate and remand based on Holloway’s first enumerated error, we need not address her remaining contentions.

*Judgment vacated and case remanded with direction. Gobeil and Pipkin, JJ., concur.*

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<sup>22</sup> *In the Interest of J. M. B.*, 296 Ga. App. at 789 (punctuation omitted).

<sup>23</sup> See *In the Interest of P. D. W.*, 296 Ga. App. at 200(2) (“If the court finds that she did not waive the right to counsel, the trial court must order a new hearing on the termination petition.”).

<sup>24</sup> See *Interest of S. H.*, 361 Ga. App. at 792(2) (“[I]f the juvenile court determines that the father either waived his right to appointed counsel or had no such right because he was not indigent and failed to act with reasonable diligence in attempting to retain counsel, it may reenter its original judgment.” (punctuation omitted)); *In the Interest of P. D. W.*, 296 Ga. App. at 200(2) (“If, on the other hand, the trial court determines that appellant waived her right to counsel, it may re-enter its original judgment.”).