

**FIFTH DIVISION
MCFADDEN, P. J.,
RICKMAN, P. J., and MERCIER, J.**

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February 24, 2026

In the Court of Appeals of Georgia

A24A0323. HARTMAN v. DE CARO.

MERCIER, Judge.

While they were in a romantic relationship, John De Caro and Nathan Hartman had two children via a surrogate in 2012. Hartman was named as the sole parent of the children. In 2015, Hartman and De Caro separated, and, later that year, Hartman cut off communication between the children and De Caro.

In 2016, De Caro filed a petition to establish custody of the children, but as De Caro had no statutory rights to custody, the trial court denied De Caro's petition.¹ On July 1, 2019, the Equitable Caregiver Statute, codified as OCGA § 19-7-3.1, became effective, and De Caro filed a complaint for equitable caregiver status on the same day.

¹ We affirmed the trial court in an unpublished opinion, pursuant to Court of Appeals Rule 36. *De Caro v. Hartman*, A17A0550 (June 5, 2017) (unpublished).

The statute allows a non-legal parent to petition for rights including custody and visitation if they can establish that they have met certain requirements, including undertaking a parental role in the child's life and demonstrating that the continuation of the relationship is in the best interest of the child. OCGA § 19-7-3.1.

Following a bench trial, the trial court issued a temporary order declaring De Caro as an equitable caregiver for the children and ordering joint legal and physical custody between De Caro and Hartman. Hartman filed a direct appeal, arguing, inter alia, that the trial court erred by finding that De Caro had standing to file an equitable caregiver petition, in interpreting the Equitable Caregiver Statute, and by awarding joint custody to De Caro.

This Court dismissed Hartman's appeal due to Hartman's failure to file an application for discretionary appeal. See *Hartman v. De Caro*, 371 Ga. App. 578 (901 SE2d 204) (2024) ("*Hartman I*"). Hartman filed a writ of certiorari, which the Supreme Court of Georgia granted in light of its recent decision in *Dias v. Boone*, 320 Ga. 785 (912 SE2d 547) (2025). *Hartman v. DeCaro* (Case No. S24C1257, March 18, 2025). In *Dias*, the Supreme Court held that the dismissal of the appeal in *Hartman I* was incorrect as Hartman was entitled to a direct appeal of the equitable caregiver

order. *Dias*, 320 Ga. at 789-94(2). In its order granting Hartman’s writ of certiorari, the Supreme Court vacated *Hartman I* and remanded the appeal to this Court to reconsider Hartman’s appeal in light of *Dias*. S24C1257.

In our review of a trial court’s equitable caregiver custody order, we shall not set aside the court’s factual findings unless they are clearly erroneous. *Frazier v. Frazier*, 375 Ga. App. 833, 834 (917 SE2d 818) (2025). “Rather, due deference must be given to the trial court, acknowledging that it has the opportunity to judge the credibility of the witnesses. However, we review de novo the legal conclusions that the trial court draws from the facts.” *Id.*

So viewed, the trial court made the following factual findings, which are supported by the record. Hartman and De Caro began dating in 1999 and moved in together later that year. In 2004, Hartman and De Caro had a religious commitment ceremony, and they referred to themselves as a married couple.² Hartman and De Caro wanted to have children together, and they found an egg donor and a surrogate. Both Hartman and De Caro contributed sperm for fertilization, but due to Hartman’s

² Same sex marriage was not legal until June 26, 2015 through *Obergefell v. Hodges*, 576 U. S. 644 (135 SCt 2584, 192 LE2d 609) (2015).

father's declining health, the couple determined that Hartman's sperm would be used for the initial surrogate pregnancy. The surrogate was impregnated with two embryos.

Before the babies were born, Hartman, a lawyer, filed a petition for a pre-birth order to be declared the sole parent for the children. De Caro expressed frustration at not being named in the pre-birth order, but Hartman informed De Caro that De Caro would be added as a parent through a second parent adoption at a later time, when the process was less expensive.

The twins were born in 2012. The twins' birth certificate listed Hartman as the only parent, and the children were given "Hartman" as their legal last name. However, Hartman and De Caro referred to the twins with the hyphenated last name "Hartman-De Caro," including on the twins' baptism certificate.

The trial court found that "[t]he [c]hildren grew up having two dads and referring to [De Caro] as "Papa"[,]" and the record supports this finding. The record also supports the trial court's finding that "[u]ntil the parties' separation in 2015, the parties jointly cared for the children and shared equal responsibility for the children."

In April of 2015, De Caro and Hartman ended their relationship, but they continued to co-parent the children. De Caro repeatedly asked to be added as a legal

parent for the twins, and, in December of 2015, De Caro's attorney sent a letter to Hartman requesting that Hartman cooperate in an adoption proceeding and to develop a parenting plan. In response, Hartman sent De Caro an email informing him to cease communicating with the children, and he cut off all contact between De Caro and the children. Hartman also filed an ex parte petition for a temporary protective order, with the intention that the order would "sever[]" ties between De Caro and the children. After January 2016, De Caro only saw the children twice in passing.

As discussed above, in 2016, De Caro filed a petition to establish custody of the children, but the trial court denied De Caro's petition because he had no statutory rights to custody. On the day the Equitable Caregiver Statute became effective, De Caro filed the underlying petition. Following a multi-day bench trial, the trial court issued a temporary order declaring De Caro as an equitable caregiver for the children and ordering joint legal and physical custody between De Caro and Hartman.

In *Dias*, the Supreme Court determined that the Equitable Caregiver Statute "does not apply to parental conduct occurring before [the statute's] effective date." *Dias*, 320 Ga. at 805(3)(c). The statute became effective on July 1, 2019. *Id.* at 801(3)(c). De Caro's equitable caregiver petition is based on actions undertaken prior

to the effective date of the statute. As such, *Dias* requires us to reverse the trial court's order granting De Caro status as an equitable caregiver and its associated custody and visitation rulings.³ *Id.* at 806(3)(c). Accordingly, we reverse.

Judgment reversed. McFadden, P. J., and Rickman, P. J., concur.

³ “[T]his Court has no authority to overrule or modify a decision made by the Georgia Supreme Court, as the decisions of the Supreme Court shall bind all other courts as precedents. . . . [W]e are constrained to follow the holdings of our Supreme Court and apply its construction of the applicable statute[] to the case at hand.” *Chin Pak v. Ga. Dept’t of Behavioral Health & Dev. Disabilities*, 317 Ga. App. 486, 488-489 (731 SE2d 384) (2012) (citations and punctuation omitted).