SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.

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November 2, 2026

In the Court of Appeals of Georgia

A26A1515. GILLEN et al v. KEELER et al.

A26A1692. GILLEN et al v. KEELER et al.

WHITAKER, Judge.

In these related appeals, Appellants Suzanne and Paul Gillen challenge the trial court's denial of their motion to intervene in the underlying child custody and grandparents visitation action.[1] In both appeals, the Gillens contend that the trial court erroneously denied intervention; misinterpreted the mandatory provisions of OCGA

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[1] The Gillens initiated the appeal in Case No. A26A1515 in December 2025, prior to the trial court's entry of a final order in the custody action. The Gillens later filed the appeal in Case No. A26A1692 in March 2026, after the final custody order was entered. Because the final custody order has been entered and the case is no longer pending below, we have jurisdiction to review the Gillens' claims in the direct appeal under Case No. A26A1692. See OCGA § 5-6-34(a)(1), (11) and (d). We lack jurisdiction to review the Gillens' claims in Case No. A26A1515, and regardless, our decision in Case No. A26A1692 moots that appeal.

§ 19-7-3(b)(1)(B) governing family member intervention; and improperly analyzed the best interests of the children in its ruling.[2] In Case No. A26A1692, the Gillens also contend that the trial court lacked jurisdiction to enter the consent final custody order while the prior appeal in Case No. A26A1515 remained pending. For the reasons that follow, in Case No. A26A1692, we vacate the trial court's order denying the motion to intervene and remand the case for further proceedings consistent with this opinion. In Case No. A26A1515, we dismiss the appeal.

"[W]here, as here, an appeal involves a question of law, we owe no deference to the trial court and our review is de novo." *McDowell v. Bowers*, 342 Ga. App. 811, 812 (805 SE2d 136) (2017) (citing *Suarez v. Halbert*, 246 Ga. App. 822, 824 (1) (543 SE2d 733) (2000)).

The record shows that in June 2025, Bonnie Jean and William Clarence Keeler ("Grandparents") filed a verified "Petition for Modification of Grandparent/Relative Custody and Visitation," seeking sole legal and sole physical custody of their paternal grandchildren, B. K. (then age 9) and P. K. (then age 8). The Grandparents' son,

[2] Appellees have not filed appellate briefs in these appeals.

Joseph Keeler ("Defendant-Father"), is the children's biological father.[3] Pursuant to a prior consent custody order entered in 2019, the Grandparents and the Defendant-Father were granted joint legal and physical custody of the children.

The Grandparents alleged that modification of child custody was needed because the Defendant-Father had a history of drug abuse and had recently relapsed. The Grandparents also alleged that the Defendant-Father had engaged in incidents of domestic violence with his live-in girlfriend in the children's presence; had been neglecting the children's needs "on all levels;" and had refused to allow them access to the children in violation of the prior joint custody order. The Department of Family and Children Services ("DFACS") had become involved, which led the Grandparents to seek the custody modification for the children's protection and well-being.

In July 2025, the Gillens, the children's paternal aunt and uncle, filed a "Motion to Intervene and Petition for Family Member Visitation" in the Grandparents' custody action, seeking the opportunity to pursue visitation with the children. The Gillens alleged that they "ha[d] developed a substantial relationship

[3] Brandiwyne Keeler ("Defendant-Mother"), the children's biological mother, was served by publication after attempts at personal service were unsuccessful. The Defendant-Mother did not participate in the instant custody action.

with the minor children" and "ha[d] maintained a positive, strong, loving, emotional, and supportive bond with the children throughout their lives[.]" They also alleged that during the Defendant-Father's prior incarceration, B. K. had resided with them in Maryland for approximately 20 months until May 2017, when he returned to live in Georgia; they had continued to be actively involved in both children's lives thereafter; the children had spent between 40-60 days of in-person time with them each year during summers, school breaks, and holidays from 2018 until 2024; they provided financially for the children during their frequent visits; they treated the children as if they were their own biological children; they have maintained bedrooms for each child at their residence; and they used to communicate with the children regularly. According to the Gillens, in 2024, the Defendant-Father began limiting their contact with the children, which allegedly caused the children emotional harm. The Gillens further asserted that the best interests of the children would be served by permitting the requested visitation.

Following a hearing, the trial court entered an order denying the Gillens' motion, concluding that the motion to intervene had "unduly delayed this matter," and "such intervention would substantially prejudice the adjudication of the rights of

the original parties." The trial court further found that "the best interests of the minor children [were] paramount."

The Gillens filed a notice of appeal, seeking to challenge the trial court's denial of their motion to intervene. While the appeal remained pending, the custody action proceeded. The Grandparents and the Defendant-Father reached a settlement agreement resolving the custody modification petition and issues. The trial court entered a consent final custody order incorporating the terms of the settlement agreement, which provided that the Grandparents and the Defendant-Father retained joint legal custody of the children. The Defendant-Father was awarded primary physical custody of the children, and the Grandparents were awarded secondary physical custody. The consent final custody order further provided that the parties would not permit any contact between the children and the Gillens. Following entry of the consent final custody order, the Gillens filed another appeal to obtain review of the order denying intervention.

Case No. A26A1692

1. The Gillens contend that the trial court erred by denying their motion to intervene based upon its misinterpretation of the mandatory provisions of OCGA § 19-7-3(b)(1)(B). We agree.

OCGA § 9-11-24(a)(1) provides that "[u]pon timely application anyone shall be permitted to intervene in an action ... [w]hen a statute confers an unconditional right to intervene[.]" The Gillens filed their motion seeking family member intervention under OCGA § 19-7-3(b)(1)(B),[4] which provides, in pertinent part:

> Any family member *shall* have the right to intervene in and seek to obtain visitation rights in any action in which any court in this state shall have before it any question concerning the custody of a minor child … or visitation rights concerning such minor child[.]

(Emphasis added.) According to the mandatory language of the statute, qualifying family members have an unconditional right to intervene in custody actions under

[4] It is undisputed that the Gillens met the definition of a family member under OCGA § 19-7-3(a)(1),(4). Under the statute, a "[f]amily member" includes a sibling, and "[s]ibling" means "the brother or sister of a parent of a minor child[.]" The Gillens are the paternal aunt and uncle of the minor children.

OCGA § 19-7-3(b)(1)(B).[5] In reaching this conclusion, we are mindful that "[s]tatutes should be read according to the natural and most obvious import of the language, without resorting to subtle and forced constructions, for the purpose of either limiting or extending their operation." *Jones v. Douglas County*, 262 Ga. 317, 321(1)(b) (418 SE2d 19) (1992). And in construing statutes, "[t]he general rule is that [the term] 'shall' is recognized as a command, and is mandatory."*Baylis v. Daryani*, 294 Ga. App. 729, 730(1) (669 SE2d 674) (2008). See also *Jones*, 262 Ga. at 323(1)(d). "[I]n its ordinary signification, 'shall' is a word of command, and the context ought to be very strongly persuasive before that word is softened into a mere permission." *TermNet Merchant Servs. v. Phillips*, 277 Ga. 342, 344(1) (588 SE2d 745) (2003)

[5] At the motion hearing, counsel for the Defendant-Father incorrectly relied upon this Court's decision in *In the Interest of L. R. M.*, 333 Ga. App. 1, 4(2) (775 SE2d 254) (2015), in support of his argument that "judges have discretion to decline interventions even if it appears from the statute that there is an intervention as a matter of right." Notably, that case did not decide whether OCGA § 19-7-3(b)(1) provides an unconditional right to intervene. Instead, we explicitly pretermitted that issue, addressing and affirming the trial court's decision denying a grandmother's request for visitation and custody on the merits since "the juvenile court held a hearing in which the grandmother was allowed to present evidence in support of her request for visitation and custody, ... it fully considered the merits of her claims before denying her motion[, and] ... [she] ... failed to show that the trial court erred in denying her request for visitation and custody." *In the Interest of L. R. M.*, 333 Ga. App. at 4-6(2) (citation modified).

(punctuation omitted). And there is nothing in the text of OCGA § 19-7-3(b)(1)(B) that suggests the use of the word "shall" denotes a permissive rather than a mandatory meaning.

After acknowledging that the Gillens sought intervention pursuant to OCGA § 19-7-3(b)(l)(B), the trial court's order referred to that provision as a "conditional right to intervene" and applied the provisions of OCGA § 9-11-24(b) governing permissive intervention.[6] But because OCGA § 19-7-3(b)(1)(B) confers an unconditional right to intervene, the provisions of OCGA § 9-11-24(a)(1) applied instead. The trial court's application of the permissive intervention provisions of OCGA § 9-11-24(b) was erroneous.

Moreover, even under the applicable intervention of right standard of OCGA §§ 9-11-24(a)(1), there is no evidence that the motion to intervene was untimely. The motion was timely filed one month after the custody petition was filed and on the same

[6] Under the permissive intervention provisions of OCGA § 9-11-24(b), the trial court has discretion to deny intervention based upon its consideration as to "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." By contrast, the intervention of right provisions of OCGA §§ 9-11-24(a)(1) and 19-7-3(b)(1)(B) are non-discretionary and did not authorize the trial court's consideration and findings of undue delay and prejudice at that stage of the proceedings.

day the Defendant-Father filed his response to the custody petition. Although the Grandparents complained that the trial court had not scheduled an expedited temporary hearing pursuant to their request,[7] there is no evidence to suggest that the scheduling delay was attributable to the Gillens. Because the Gillens timely sought intervention as a matter of right pursuant to OCGA § 19-7-3(b)(1)(B) prior to entry of the final order, the trial court abused its discretion in denying intervention. See *Kroger v. Taylor*, 320 Ga. App. 298, 298 (739 SE2d 767) (2013) (holding that trial court abused its discretion in denying appellants' timely motion to intervene as a matter of right under of OCGA § 9-11-24(a)(1)); *Baker v. Lankford*, 306 Ga. App. 327, 330(1) (702 SE2d 666) (2010) (holding that where intervention appeared before final judgment, and appellant had a right to intervene under OCGA § 9-11-24(a)(2), the trial court abused its discretion in denying the timely filed motion to intervene).

And to the extent that the trial court's ruling might be understood to include a finding regarding the best interests of the children, such a finding was premature.

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[7] On June 25, 2025, the Grandparents filed a motion for an expedited hearing. They complained that as of the November 19, 2025 hearing on the motion to intervene, the trial court had not scheduled the requested expedited hearing. The trial judge noted that part of the alleged delay was caused by "judge bouncing," i.e., the transfers of the case between different judges.

According to the procedural dictates of OCGA § 19-7-3, consideration of the best interests of the children and the other factors set forth in subsection (c)(1) of the statute occurs "upon intervention." In other words, those factors are to be considered following intervention when the trial court is considering whether to grant a family member visitation rights. See OCGA § 19-7-3(b), (c)(1). Because the trial court applied an incorrect legal standard in rendering its decision, we must vacate the order denying intervention and remand this case for further proceedings consistent with this opinion. See, e.g., *Floyd v. Gibson*, 337 Ga. App. 474, 476-79(1) (788 SE2d 84) (2016) (vacating child custody order and remanding case for further proceedings when trial court applied incorrect legal standard in its decision).

2. The Gillens also contend that the trial court erred in entering the consent final custody order while its appeal in Case No. A26A1515 remained pending. Their contentions in this regard fail to provide a basis to vacate the custody order.

Generally, filing a notice of appeal triggers an automatic supersedeas of that order. See OCGA § 5-6-46; *Rollins v. Rollins*, 300 Ga. 485, 486(1) (796 SE2d 721) (2017).[8] But "the notice of appeal supersedes only the judgment appealed; it does not

[8] "[E]ven if an appeal is jurisdictionally defective from the outset, the notice of appeal ordinarily acts as a supersedeas until the appeal is dismissed." *Rollins*, 300 Ga.

deprive the trial court of jurisdiction as to other matters in the same case not affecting the judgment on appeal." *Cohran v. Carlin*, 249 Ga. 510, 512 (291 SE2d 538) (1982). The supersedeas

> deprives the trial court of the power to affect the judgment appealed, so that subsequent proceedings purporting to supplement, amend, alter or modify the judgment, whether pursuant to statutory or inherent power, are without effect. ... The trial court retains jurisdiction to handle matters which are independent of and distinct from the judgment on appeal. ... Essentially, the supersedeas ... deprives the trial court of jurisdiction to take action in the case that would affect the judgment on appeal, but it does not deprive the trial court of entering an order that might be affected by the outcome of the appeal of the underlying judgment, subject to the peril that any decision reached which conflicts with the decision of the appellate court when rendered will thereby be made nugatory.

Avren v. Garten, 289 Ga. 186, 190-91(6) (710 SE2d 130) (2011) (citation modified). Moreover, a trial court has broad authority to except child custody rulings from the automatic supersedeas effect, particularly given the trial court's mandate to protect the best interest and welfare of the children pending appeal. *Blackmore v. Blackmore*, 311 Ga. App. 885, 888(1) (717 SE2d 504) (2011).

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at 487(1).

Here, the Gillens' motion to intervene sought only visitation rights, not custody. The Gillens have not shown that the adjudication of its request for visitation would have affected the determination of custody between the Grandparents and the Defendant-Father. The supersedeas therefore did not preclude the trial court from entering the final custody order in this case.[9]

Case No. A26A1515

3. The Gillens filed this appeal from the order denying their motion to intervene while the custody action remained pending below and before entry of the final order. The Grandparents have filed a motion to dismiss the appeal due to the Gillens' failure to follow the interlocutory appeal procedures required by OCGA § 5-6-34(b). The Grandparents' motion is hereby granted, and this appeal is dismissed.

> The denial of a motion to intervene is not a final judgment and thus, is reviewable under the interlocutory appeal procedure. Since the order appealed from is not a final judgment, and the interlocutory appeal

[9] We nevertheless note that the final custody order included provisions setting custodial times and a visitation schedule, and mandating that neither custodial parent would allow the Gillens to visit the children. Depending upon the trial court's ruling upon the Gillens' petition for visitation following remand, those provisions of the final custody order may require modification.

> procedure specified by OCGA § 5-6-34(b) has not been followed, the appeal must be dismissed.

In the Interest of H. E. M., 283 Ga. App. 354, 355 (641 SE2d 597) (2007) (citation modified).

The Gillens misplace reliance upon OCGA § 5-6-34(a)(11) in their argument that a direct appeal was authorized. That statute provides that a direct appeal is allowed from "[a]ll judgments or orders in child custody cases awarding, refusing to change, or modifying child custody[.]" OCGA § 5-6-34(a)(11). In *In the Interest of L. R. M.*, 333 Ga. App. 1, 3-4(1) (775 SE2d 254) (2015), we held that the denial of the grandmother's motion for intervention was directly appealable under OCGA § 5-6-34(a)(11) since the trial court had also denied her petition for custody and visitation. See id. at 4(1). But here, unlike in *In the Interest of L. R. M.*, the Gillens did not petition for custody, and the trial court's order on the motion to intervene did not include a custody ruling. As a result, OCGA § 5-6-34(a)(11) is inapplicable, and the Gillens' failure to follow the interlocutory appeal procedures requires dismissal of this appeal for lack of jurisdiction. See *In the Interest of H. E. M.*, 283 Ga. App. at 355 (dismissing great-grandmother's direct appeal of order denying her motion to

intervene in a deprivation proceeding as to her great-grandchildren based on her failure to follow interlocutory appeal procedures).[10]

Judgment vacated in part and case remanded in Case No. A26A1692. Appeal dismissed in Case No. A26A1515. Doyle, P. J., and Davis, J., concur.

[10] Because the claims of error presented in this appeal are duplicative of those addressed in Division 1 above, our decision in Case No. A26A1692 would otherwise render this appeal moot.