

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

**NOTICE: Motions for reconsideration must be
received no later than 4:30 pm on the 10th day after
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October 22, 2026

In the Court of Appeals of Georgia

**A26A1532. IN RE: ESTATE OF MICHAEL TODD MADLEM,
DECEASED.**

WHITAKER, Judge.

Michael Todd Madlem (“Decedent”) died intestate, leaving behind one adult and two minor children. Serena Burkard, as mother and guardian of one of Decedent’s minor children, filed a petition for year’s support in the amount of \$100,000, which she later amended to \$250,000. The probate court awarded Burkard the lesser amount of \$100,000, and she argues on appeal that the court erred by failing to award her the full amount of year’s support requested. For the reasons that follow, we vacate the probate court’s award and remand this case with direction.

Although the procedural history of this case is extensive, the facts pertinent to this appeal are few. In brief sum, Decedent passed away without a will on September

12, 2019. On February 17, 2020, Burkard filed a petition for year's support on behalf of their child, requesting in Exhibit "A" to the petition a cash payment in the amount of \$100,000 ("the Petition").

For context, year's support is a function of Georgia law that allows a "transitional allowance" for the surviving spouse and minor children of an intestate decedent in order "to protect the family survivors from a reduction in their standard of living while the estate is being settled[.]" *In re Estate of Blake*, 378 Ga. App. 64, 65(1) (923 SE2d 684) (2025) (punctuation omitted). See OCGA § 53-3-1(c). Thus, our law entitles a surviving spouse and minor children "to year's support in the form of property for their support and maintenance for the period of 12 months from the date of the decedent's death." OCGA § 53-3-1(c).

Once a petition for year's support has been filed, "the probate court shall issue a citation and publish a notice in the official newspaper of the county in which the petition is made once a week for four weeks, citing all interested persons^[1] to show cause by a date certain why the petition for year's support should not be granted."

¹ "Interested persons" in the context of a petition for year's support include, "the decedent's children, spouse, other heirs, beneficiaries, and creditors and any others having a property right in or claim against the estate of the decedent that may be affected by the year's support proceedings." OCGA § 53-3-6(a).

OCGA § 53-3-6(b). Additionally, the probate court must cause a copy of the citation to be served on the estate's administrator, if one has been appointed, or on each "interested person" if one has not. OCGA § 53-3-6(c)(1), (2). Service must be made at least 30 days before the stated deadline for filing an objection. *Id.* Additionally, the probate court must cause to be served a copy of the petition on the county tax commissioner within five days of its filing. OCGA § 53-3-6(d).

In this case, the probate court issued a citation and published the statutorily required notice of the Petition to all interested persons and gave them a date certain by which to object in accordance with the requirements outlined in OCGA § 53-3-6(b). The probate court also caused a copy of the citation to be served on the estate's temporary, and later, permanent administrator and each of the interested persons. Because it was discovered that the estate owed back taxes that far exceeded the value of the estate itself, this included notice to the Internal Revenue Service.² Finally, the probate court caused notice to be served on the county tax commissioner as required by OCGA § 53-3-6(d). No objections to the Petition were filed.

² Year's support has the highest priority of claims against the estate of a decedent. OCGA § 53-7-40(1).

Two months later, on April 14, 2020, Burkard filed an amendment to the petition, striking her request for \$100,000 as stated in Exhibit “A” and replacing it with a request for \$250,000 (“the Amendment”).³ The probate court did not issue a citation or publish notice of the Amendment, nor did the court cause the Amendment to be served on the estate’s administrator, any interested person, or the county tax commissioner. Nevertheless, Burkard’s counsel averred that the Amendment was filed with the consent of, and was otherwise served on, the administrator and all of the interested persons, except for the IRS.

In October 2020, the probate court issued an order granting Burkard’s petition (the “Year’s Support Order”). The Year’s Support Order stated that the child was to receive “the property shown on the schedule of property attached hereto as Exhibit ‘A’ and made a part hereof.” However, no Exhibit “A” was attached to the order as filed.

³The increase requested was purportedly intended to rectify Decedent’s failure to maintain a life insurance policy on behalf of the minor child in accordance with the terms of a child support agreement.

In June 2024, the estate administrator filed a motion for clarification.⁴ She indicated that she was prepared to distribute the year's support funds, but due to the order's absence of Exhibit "A," she was unable to determine whether the probate court intended to allot Burkard's child \$100,000 or \$250,000. In February 2025, the probate court issued an order clarifying that Exhibit "A" referenced the exhibit from the original Petition, which requested \$100,000 (the "Clarification Order").

Burkard filed a motion to reconsider the Clarification Order or, in the alternative, to set aside the Year's Support Order and reissue it with the Amendment attached.⁵ Burkard noted, in part, that she filed the Amendment in 2020 — nearly five years before the Clarification Order — and at no point, either before or after the administrator's motion for clarification, had anyone raised an objection to her request.

⁴ The administration of the estate was complex and was otherwise slowed by disruptions in the government, specifically the IRS, due to the outbreak of COVID-19. Additionally, the originally-appointed administrator passed away before the estate was fully settled, necessitating the appointment of a successor administrator to complete the process.

⁵ Prior to filing that motion, Burkard attempted to appeal the Clarification Order to this Court. Her appeal was dismissed as untimely, however, because she had not received proper service of the Clarification Order; consequently, her notice of appeal was not filed within 30 days of the issuance of that order.

The probate court denied Burkard's motion.⁶ In so doing, the court noted that neither the IRS nor the county tax commissioner were provided notice of the Amendment or given a date by which to object. Consequently, the court reasoned, it could not allocate more than \$100,000 in year's support to Burkard's child. This appeal followed.

As set forth above, the duty was on the probate court to publish notice of the Amendment and to serve a copy of the notice in accordance with the dictates of OCGA § 53-3-6. See also *In re Estate of Blake*, 378 Ga. App. at 65–66(1). Compare *In re Estate of Reece*, 243 Ga. App. 173, 174-76 (532 SE2d 726) (2000) (affirming dismissal of petition for year's support because, despite being informed by the probate court that the petition was deficient, petitioner waited for two years and the statute of limitation to run before filing an amendment). And the law provides that in the absence of an objection, “the probate court *shall* enter an order setting apart as year's

⁶ Although the probate court declined to set aside the Year's Support Order, it did set aside and reissue the Clarification Order because it had not been properly served on the parties, rendering this appeal timely. See *Wipfel v. State*, 320 Ga. 84, 85, n.1 (907 SE2d 639) (2024) (noting that the appeal from a trial court's order setting aside and re-entering an order that had not been properly served on the parties was timely, despite the fact that the appeal of the original order had already been dismissed by the Supreme Court as untimely).

support the property applied for in the petition.” OCGA § 53-3-7(a) (emphasis added). See *In re Estate of Blake*, 378 Ga. App. at 68(1) (noting that once it had been determined that a valid and timely objection was not made, the probate court “lacked the authority to consider the amount sufficient for year’s support or to shift this burden upon [p]etitioner to prove the amount to be awarded” (punctuation omitted)); *In re Estate of Sanders*, 375 Ga. App. 164, 166 (914 SE2d 829) (2025) (“Based on the clear language in OCGA § 53-3-7(a), the probate court was required to award [petitioner] the [p]roperty applied for in her petition for year’s support.”).

We therefore vacate the probate court’s Clarification Order and remand this case so that the court may comply with the requirements set forth in OCGA § 53-3-6(b),(c) and (d), as well as provide a deadline for the filing of objections to the Amendment. If an objection is not filed, the probate court shall enter an order setting apart as year’s support \$250,000 as requested in the Petition and its Amendment. In the event of an objection, the probate shall follow the procedures set forth in OCGA § 53-3-7.

Judgment vacated and case remanded. Doyle, P. J., and Davis, J., concur.