

Survey of Family Law Cases 2004-2013

2006 Family Law Survey

THIRD PARTY VISITATION

In *In the Interest of C.R.C., a Child and Concerning Sydney Coleman and Michael Coleman*, Mother appeals from permanent orders allocating parental responsibilities between her and Child's Great-Uncle, despite a Special Advocate's recommendation that Mother have sole allocation of parental responsibilities because there was evidence that Father and Great-Uncle conspired to remove Child from Mother, relatives felt Child was not safe with Great-Uncle, and Great-Uncle used several aliases to allude Mother from finding Child.

Mother worked, while Father and Grandmother cared for two-year-old Child. In January 2003, Father signed power of attorney making Great-Uncle his representative with respect to Child after Father was sentenced to a twenty-year prison term. Great-Uncle did not contact Mother or Grandmother prior to taking Child from Texas to Colorado. In February 2003, Great-Uncle filed for guardianship of Child, but was denied because Mother would not consent. Mother found the Child in March 2003, and twice, unsuccessfully, attempted to remove Child with police assistance. In April 2005, Great-Uncle filed a parental rights termination case in Colorado.

The Court of Appeals held that standing requirements for nonparents seeking allocation of parental responsibilities must be construed narrowly to safeguard the superior rights of parents. To determine whether a nonparent has standing, courts should consider "the manner in which a child came into the possession of a nonparent," and a nonparent "has the burden of proving that the natural parent voluntarily permitted the nonparent to share in or assume the parent's responsibility to provide physical care to the child." Great-Uncle did not have standing because Mother did not consent to Child's removal by Great-Uncle.

C.R.S. §14-10-123(1) provides standing in allocation of parental responsibilities cases (a) by a parent; (b) by a person other than a parent...but only if the child is not in the physical care of one of the child's parents; (c) by a person other than a parent who has had physical care of the child for a period of six months or more, if such action is commenced within six months of the termination of physical care; or (d) by a parent or person other than a parent who has been granted custody of the child...through a juvenile court order.

Thus, C.R.S. §14-10-123(1)(b) and (1)(c) both require volition on the part of the biological parents; if a child is removed from the care of his or her parents without the consent of both parents, the lack of consent is enough to bar the non-parent's claim of standing.

Mother filed a paternity action that included allocation of parental responsibilities and child support, Father acknowledged paternity, and the court adopted the parties' temporary orders in *In the Interest of K.L.OV and Concerning K.A.V. and M.F.O.* Grandmother's motion to intervene was denied for lack of an unconditional right to intervene and her petition for grandparent visitation was denied for lack of standing.

The Grandparent Visitation Statute, permits a grandparent to seek visitation with a grandchild “when there is or has been a child custody case.” Further, visitation may be sought when there has been (a) judicial intervention into the marriage of the child’s parents; (b) judicial placement of the child outside the parents’ home; or (c) the death of the grandparent’s child.

Grandmother argues that C.R.C.P. 24 permits her intervention. First, C.R.C.P. 24(a)(1) permits intervention “when a statute confers an unconditional right to intervene.” But, neither the Uniform Parentage Act (UPA), nor the Grandparent Visitation Statute provides an unconditional right to intervene in paternity actions to seek grandparent visitation; rather, the presumption that a parent’s decision regarding visitation is in the child’s best interest must be rebutted and the grandparent must establish by clear and convincing proof that grandparent visitation is in the child’s best interest. Second, C.R.C.P. 24(a)(2) permits intervention if the intervener can show that her interest will be impaired or impeded by disposition of the action, and that her interest is either not represented, or inadequately represented by the parties. Grandmother’s interest is not impaired or impeded by disposition of the paternity action because she may seek visitation under the Grandparent Visitation Statute. Third, C.R.C.P. 24(b)(2) permits intervention “when an applicant’s claim or defense and the main action have a question of law or fact in common.” Here, different proof is required for allocation of parenting responsibilities and grandparent visitation. Alternatively, Courts are not prohibited from granting permissive intervention in paternity actions for the purpose of visitation, but if granted, courts may defer the visitation issue until issues between the parents are resolved.

Therefore, though paternity actions are not specifically mentioned in the Grandparent Visitation Statute, “the statute has been construed to include paternity actions within its definition of a child custody case.” Thus, grandmother does have standing to seek visitation in a paternity action.