

Survey of Family Law Cases 2004-2013

2007 Family Law Survey

ALLOCATION OF PARENTAL RESPONSIBILITIES

Mother appeals from an order awarding all parenting time and decision making to Father, and denying her contact with the children without written permission from Father in In re the Marriage of Hatton, 160 P.3d 326 (Colo. App. 2007).

After the parties had shared parenting time, Father was awarded sole decision-making and most of the parenting time; Mother received supervised parenting time. Three years later, the existing parenting time was deemed detrimental to the children, thus the court allocated sole decision-making and parenting time to Father, and ordered Mother not to have any contact with the children unless she had signed written permission from Father.

Mother argues that she was denied due process when the court did not permit her to call 40 witnesses that she identified two days before trial. The court balanced Mother's due process rights with the need to manage the case, and held that C.R.S. §14-10-127(c) does not permit a party to call a parental evaluator, or anyone whom the evaluator spoke to, without giving notice to the other party.

Pursuant to C.R.S. §14-10-129(2)(d) and (1)(b)(I), the court may not modify a prior parenting time order such that there is a substantial change in parenting time and a change with whom the child resides the majority of the time, unless it finds the present environment and parenting time endangers the child's physical health or significantly impairs the child's emotional development. But, in accordance with C.R.S. §14-10-129(1)(a)(I), the court may alter parenting time if modification is in the best interests of the child. The trial court erred when it failed to expressly consider the least detrimental alternative to eliminating Mother's parenting time. The court may not delegate decisions regarding the exercise of parenting time to a third party, in this case, Father's receipt of a written request from Mother.

In sum, when restricting parenting time rights, the best interests of the child standard, including a determination of whether there is a less detrimental alternative to eliminating parenting time, and the endangerment standard under C.R.S. §14-10-129(1)(b)(I) and (2)(d), must be considered. See In re the Marriage of Martin, 42 P.3d 75 (Colo. App. 2002). The court must also consider the public policy of encouraging frequent and continuing contact between each parent and child.

Husband appeals from orders relating to parental responsibilities, child support and division of marital property in In re the Marriage of Rodrick, No. 06CA0306, 2007 WL 1839803 (Colo. App. 2007). In 1999, Husband and Wife accepted an offer to raise a friend's child. In 2001, when the Power of Attorney signed by biological parents to Husband and Wife expired, Husband and Wife filed a "Verified Petition for Parental Responsibility for a Child." The court ordered that Husband and Wife be awarded permanent parental responsibility, and biological parents have a duty to support Child, though an amount was not set. In 2003 Husband and Wife received documents to effect an adoption of Child, but never filed them, as they separated shortly after. Though Husband stated that he and Wife had legal guardianship of Child, that he financially supported Child, and that he wanted parenting time with Child, Husband argued that Child was neither adopted nor his biological child, thus C.R.S. §14-10-115 did not require him to pay child support.

The Court of Appeals determined that Husband and Wife had a statutory duty, not merely a contractual duty, to support Child; and the court's grant of parental responsibility was a prelude to Child's adoption, not merely creation of a guardianship relationship. The parties satisfied three different standing requirements to request parental responsibilities under C.R.S. §14-10-123(1) (b)-(d). In sum, the court's parental responsibility order established a child support obligation, pursuant to C.R. S. §14-10-115, by imposing duties on the parties to provide for the child's necessities of life.

With regard to decision-making, the court must determine the best interests of the child by considering the factors in C.R.S. §14-10-124(1.5) (a) and (b). Here, the Court affirmed the trial court's order that both parties should contribute to decision-making, but Mother should have sole decision-making if the parties' disagree, due to Husband's history of alcohol abuse.

With respect to interest accruing on a promissory note executed by Husband to Wife, post judgment interest begins to accrue on the date the judgment is entered. C.R.S. §5-12-102(4). Property valuation, not post judgment interest, is calculated on the date the hearing concludes, or the date the decree of dissolution was entered, whichever is earlier. C.R.S. §14-10-113(5).

If the Court does not receive information to classify or value assets, then the court cannot err in omitting this property from division. Here the Court did not receive information to support Wife's claim to Husband's separately inherited property, thus the Court did not err when it relied on information provided solely by Husband.

In In re the Marriage of DePalma, Mother appeals from a post-decree order permitting Father to exercise parenting time despite his Air Force Reservist deployment by designating his current wife to care for the children during his absence. DePalma, No. 06CA1478, 2007 WL 2128198 (Colo. 2007).

During previous deployment, Father's current wife, Stepmother, had cared for the children. In January 2006, despite imminent deployment, Father filed to modify parenting time to provide equal time to both parents. Father argued it was in the best interests of the children to have a normal schedule, and to maintain their bonds with Stepmother and Stepbrother.

Mother argued there is a presumption in favor of a natural parent over a nonparent Stepmother. The court determined there is a presumption that a biological parent has a first and prior right to custody of her children over a nonparent. But this case is a dispute between two fit biological parents, not a parent and a stepparent. A fit parent is presumed to act in the best interests of their children. This presumption applies to Mother and Father. Though the court did not make specific findings regarding the best interests, neither party contended that Stepmother inadequately cared for the children, and both parties agreed the children had a good relationship with Stepmother. Thus, the court presumed that Father was acting in the best interests of the children when allowing Stepmother to care for them in his absence.

Mother also argued that this order violated her constitutional right to the care, custody, and control of her children. The court disagreed, stating that the order did not grant any parental rights to parenting time or decision-making to Stepmother. Stepmother's parenting time is limited to time she accepts from Father in his absence.

Finally, Mother argued the right of first refusal contained within the parenting plan was defeated by this order. The court determined that the right of first refusal should be applied only to the parties and that "Father's decision to have Stepmother care for the children during his absence did not require that the

children be offered first to mother.” To the extent the court modified parenting time, it was within the court’s discretion to modify the right of first refusal.

The Court of Appeals reversed and withdrew its prior opinion of February 8, 2007, denying Mother and Father’s motion to terminate parenting time awarded to Stepfather with C.T.G., in In the Interest of C.T.G., No. 05CA0783, 2007 WL 2285416 (Colo. App. 2007).

While Mother and Stepfather were married, Mother became pregnant by Father, and C.T.G. was born in 1998. In 1999, Father was told he was the child’s biological father; Stepfather was told in 2001, when Father filed a paternity action. In 2002 a Minnesota court held that Father was C.T.G.’s biological father and provided Stepfather visitation “on an interim basis ... pending further agreement or court orders.” Mother and Stepfather divorced in 2003; Mother and Father moved to Colorado with child, and later married. Stepfather traveled from Minnesota to Colorado one weekend per month for visitation. In February 2005, Parents filed an emergency motion to suspend Stepfather’s visitation. The trial court found Stepfather to be a psychological parent and reinstated his visitation. Parents then filed a motion to terminate Stepfather’s visitation rights, which was denied by the trial court on February 8, 2007. The court now withdraws that opinion.

First, the Court of Appeals held that Stepfather did not have standing to request visitation. Though Colorado has statutes conferring rights on grandparents to seek visitation, Colorado has not enacted statutes to specifically permit Stepparents to seek visitation. Pursuant to C.R.S. §14-10-123(1), an allocation of parental responsibilities action may be pursued (b) by a non-parent if the child is not in the physical care of a parent, or (c) by a non-parent who has had physical care of the child for at least six months, so long as the action is filed within six months of termination of this physical care. Part (c) provides the provision for psychological parents. The statute is meant to protect against undue interference with the fundamental rights of parents to the care, custody, and control of their children. The Court clarified that the issue of standing depends on whether the person had physical care of the child, not the type of bond that may have been formed between the person and the child. The Court found that regardless of whether Stepfather was a psychological parent, Stepfather’s physical care of the child ended in 2002 when Mother, Father and child moved to Colorado. Stepfather’s filing occurred three years later, in 2005.

Second, the Court of Appeals held that even if Stepfather had standing, he did not overcome the presumption that C.T.G.’s parents were acting in the child’s best interests by terminating Stepfather’s visitation, and did not offer evidence of special circumstances so as to continue visitation against the parent’s wishes. These are both requirements under In re the Adoption of C.A., 137 P.3d 318 (Colo. 2006). The case was remanded with directions to grant the Parents’ motion to terminate Stepfather’s visitation.