Survey of Family Law Cases 2004-2013

2008 Family Law Survey

GUARDIANS, SPECIAL ADVOCATES, AND CHILD REPRESENTATIVES

Mother appeals from post-decree orders regarding: (1) allocation of parental responsibilities, (2) appointment of a parenting coordinator, and (3) denial of Mother's motion for destruction of a letter written by the former special advocate and an injunction against further use of that letter in In re the Marriage of Rozzi, 190 P.3d 815 (Colo. App. 2008).

The parties had agreed to utilize a special advocate with arbitration authority under C.R.S. §14-10-128.5 to assist the parties in resolving disputes concerning parenting time. Upon motion by Mother, the court terminated the Special Advocate's services in April 2006. In December 2006, the subsequently-appointed CFI recommended the appointment of a parenting coordinator with arbitration power to resolve the frequent conflict between the parties. The Court's revised Order stated that recommendations of the parenting coordinator were not binding without a court hearing unless the parties agreed in writing that decisions would be binding.

First, Mother appeals the appointment of a parenting coordinator with special master powers. Mother alleged that, pursuant to C.R.S. §13-22-313(1), the court does not have authority to refer parties to alternative dispute resolution when a party (Mother in this case) has been the victim physical or psychological abuse from the other party. The Court disagreed, holding that C.R.S. §13-22-313(1) and C.R.S. §14-10-128.1(1) are in conflict. Section 14-10-128.1(1), C.R.S., is the appropriate statute to apply when appointing a parenting coordinator because it specifically applies to appointment of individuals to resolve disputes concerning parental responsibilities, as opposed to the more general judicial referral to any type of alternative dispute resolution found in C.R.S. §13-22-313. Further, domestic violence alone does not deprive the court of authority to appoint a parenting coordinator.

Second, Mother contended that the court failed to make specific findings required by C.R.S. §14-10-128.1(2)(a) before appointing a parenting coordinator. C.R.S. §14-10-128.1(2)(a), requires the Court to find: (I) that the parties have failed to adequately implement the parenting plan; (II) mediation has been determined to be inappropriate, or was attempted but was unsuccessful; (III) that appointment of a parenting coordinator is in the best interests of the child. Here the majority of the panel ruled that these elements had been satisfied: (1) the trial court found that Mother testified to repeated disagreements about parenting time, which was sufficient to find the parenting plan was not implemented, (2) Mother testified that she was unwilling to rely on a third party to resolve their disputes and that she adamantly disagreed with any mediation or arbitration, thus the court could find that mediation was inappropriate in this case, and (3) the CFI's recommendation for a parenting coordinator supported the court's finding that appointment was in the best interests of the child. In this case, the majority found there was record support to find that these three requirements were met, even though the Court did not enunciate specific findings.

Judge Taubman dissented because the trial court did not actually make the three findings required by C.R.S. §14-10-128.1(2)(a). Taubman contends that the term "findings" is ambiguous, as it could mean findings of fact or conclusions of law. Judge Taubman's asserts that the trial court should be required to make specific findings of fact with respect to each criterion of C.R.S. §14-10-128.1(2)(a) before

appointment of a parenting coordinator, and based upon those factual findings, then determine as a matter of law, whether a parenting coordinator should be appointed.

Since, pursuant to C.R.S. §14-10-128.1(3), a parenting coordinator "shall assist the parties in implementing the terms of the parenting plan," the court did not err by assigning the parenting coordinator the duty to make recommendations. The trial court did err when it originally gave the parenting coordinator a decision-making role under C.R.C.P. 53.

When initially allocating decision-making, the court must consider "the ability of parties to cooperate and to make decisions jointly." C.R.S. §14-10-124(1.5)(b)(I). When modifying decision-making, the court must determine if a change of the circumstances of the child, the child's custodian, or a party with decision-making authority, has occurred, and whether a modification would be in the best interests of the child. Since the court did not make specific findings, this issue was remanded.

The parties agreed, on appeal, that the trial court had exceeded its authority in other areas, and the case was remanded to modify the term of the parenting coordinator to two years, pursuant to C.R.S. §14-10-128.1(5), and to limit the overbreadth of its order prohibiting relocating of either party that exceeded the scope of C.R.S. §14-10-129.