

## Survey of Family Law Cases 2004-2013

### 2010 Family Law Survey

## ATTORNEY'S FEES

Mother appealed from the trial court's order denying her request for **attorney fees**, which she incurred when defending against an unsuccessful **petition for grandparent visitation** in In re the Marriage of Gallegos and Baca-Gallegos, 2010 WL 3584283 (Colo. App. Sept. 16, 2010). Whether attorney fees are recoverable against grandparents under C.R.S. §14-10-119 or C.R.S. §19-1-117(3) in grandparent visitation cases is a question of first impression in Colorado.

Grandparents may seek reasonable grandparent visitation, upon a finding that it would be in the best interests of the child, by initiating a new action or intervening in an existing dissolution case. C.R.S. §19-1-117. Only C.R.S. §19-1-117(3) addresses attorney fees:

“No grandparent may file an affidavit seeking an order granting grandchild visitation rights more than once every two years absent a showing of good cause. If the court finds there is good cause to file more than one such affidavit, it shall allow such additional affidavits to be filed and shall consider it. *The court may order reasonable attorney fees to the prevailing party....*

The Court of Appeals found that this provision limits attorney fees to requests made after the initial visitation determination. Had the legislature intended this provision to apply to initial and subsequent requests for grandparent visitation, it would have expressly stated this. Inclusion of the attorney fees provision in this section was meant to protect parents and children from repetitive litigation.

Awards of attorney fees under C.R.S. §14-10-119 are used to apportion fees equitably between spouses based upon their financial positions. This statute does apply in non-parent allocation of parental responsibility cases, and child support proceedings.

### Court of Appeals in Denver

The Court of Appeals held that the grandparent's statutory basis for their visitation request was made under C.R.S. §19-1-117 and they did not contemplate an award of parental responsibilities. Therefore Mother did not incur attorney fees under an article 10 of title 14 case and could not be awarded fees under C.R.S. §14-10-119, despite the fact grandparents intervened in a dissolution of marriage case.