

## Survey of Family Law Cases 2004-2013

### 2010 Family Law Survey

## PATERNITY

Mother appeals from a judgment declaring Petitioner Nicholas Rueda to be the presumed natural father of her child, A.D., and awarding him joint decision-making and parenting time in In re the Parental Responsibilities of A.D. and Concerning Rueda, 240 P.3d 488 (Colo. App. 2010); *cert. granted* Aug. 30, 2010. Mother and Petitioner ended their relationship in 1999, and A.D. was born on August 18, 2001. Mother and Petitioner reconciled when A.D. was eleven months old, and resided together as a family until January 2007. For the next year, Petitioner spent several overnights a week with A.D. until Mother discontinued contact in February 2008. In April 2008, Petitioner filed an allocation of parental responsibilities case and amended it to include a claim to **establish paternity** under the Uniform Parentage Act (UPA), C.R.S. 19-4-101 to -130. At the hearing, Petitioner conceded that he was not the biological or adoptive father of A.D. Mother identified the possible biological father, who received notice of the proceedings but failed to appear. Mother conceded that Petitioner received A.D. into his home and held her out to be his natural child. The trial court established Petitioner as a presumed natural father of A.D. under C.R.S. 19-4-105(1)(d), found that Petitioner had standing as a psychological parent to pursue an allocation of parental responsibilities pursuant to C.R.S. 14-10-123(1)(c), ordered joint decision-making and parenting time to Petitioner and ordered Petitioner to pay monthly child support.

Mother contends that the court erred when it failed to notify the alleged biological father of the proceedings as a parent and interested party under C.R.S. 14-10-123(2) and did not join him as an indispensable party under C.R.C.P. 19. The Court of Appeals found that since these issues affect the alleged biological father's rights only, Mother would not have standing to contest these points. Moreover, under C.R.S. 19-4-110, the alleged father could not have been made a party to the action, as he was a California resident and the Colorado court did not have jurisdiction over him, and the alleged father was given notice but chose not to participate.

Mother contends that the court erred by not making A.D. a party to the action and appointing a guardian ad litem. As the court determined for the alleged father, these rights belong to the child, and mother lacks standing to contest them. Additionally, C.R.S. 19-4-110 only provides that a child *may* be made a party and *may* be appointed a guardian ad litem.

Next Mother argues that C.R.S.19-4-102 defines a parent-child relationship as "the legal relationship existing between a child and his natural or adoptive parent incident to which the law confers or imposes rights, privileges, duties and obligations." She contends that since Petitioner is neither the natural or adoptive parent of A.D., no legal parent-child relationship can be established. Pursuant to C.R.S. 19-4-105(1)(d), a man is presumed a natural father "if he received the child, while a minor, into his home and openly held the child out as his natural child." This presumption may be rebutted by clear and convincing evidence, or is rebutted by a court decree establishing paternity (there is no decree in this case). The Court finds that Mother's argument would negate the presumptions identified in C.R.S. 19-4-105(1). The Court finds that the definition cited by Mother in C.R.S. 19-4-102 applies to a parent and child relationship once it is declared.

The Court clarified that the trial court's finding that Petitioner was also a psychological parent pertained to its determination of standing under C.R.S. 14-10-123(1)(c).

Though the Supreme Court denied certiorari, Justice Coats and Justice Eid would have granted certiorari as to the following issues:

1. Whether the Court of Appeals erred in holding that a parent-child relationship can be established under the Uniform Parentage Act when the party attempting to establish paternity stipulates that he is not the biological father of the child.
2. Whether the Court of Appeals erred in holding that the presumption of paternity contained in section 19-4-105(1)(d), C.R.S. (2009), was not rebutted in the present case.
3. Whether the Court of Appeals erred in concluding that, since Respondent was the “declared” parent of A.D., the biological mother’s constitutional protections as a natural parent against claims for custody by a non-parent were nullified.