

## Survey of Family Law Cases 2004-2013

### 2011 Family Law Survey

# ALLOCATION OF PARENTAL RESPONSIBILITIES 2011

The Court of Appeals addressed the **standing of a nonparent** in In re the Parental Responsibilities of E.S., No. 09CA2088, 2011 WL 1797188 (Colo. App. 2011). Father appealed from the order allocating primary parenting time to nonparent Silvernail in this post-dissolution matter.

The parents' marriage was dissolved in 2006. Mother was allocated majority parenting time with E.S. In 2008, Mother moved to relocate out of state, and Father objected. Silvernail, who is the adoptive parent of two of the parties' other children, moved to intervene, contending that E.S. spent substantial time with her and with E.S.'s siblings, and that she was concerned that the proposed relocation would prevent E.S. from doing so. The trial court denied Mother's request to relocate, and permitted Silvernail to intervene and exercise parenting time with E.S. E.S. then moved into Silvernail's home full time under a temporary guardianship agreement between Father and Silvernail.

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Father claims that as a non-parent, Silvernail lacks standing to request allocation of parental responsibilities. C.R.S. §14-10-123(1)(b) provides that a nonparent has standing when the child is not in the physical care of either parent and the nonparent is in physical care of the child. When determining whether a parent or nonparent has "physical care" of a child, a court considers the nature, frequency, and duration of contacts between the child and the parent and between the child and the nonparent as well as the manner by which the child came to be under the physical care of the nonparent. The nonparent must show that the parent voluntarily permitted the nonparent to assume the responsibility of physically caring for the child.

Father not only voluntarily turned over physical care of E.S. to Silvernail, with whom E.S. lived full time, but he also made Silvernail the child's temporary guardian, with no limitations on her authority. Because Silvernail had full physical care of E.S. as the child's guardian, she has standing under section 14-10-123(1)(b) as a nonparent to petition for allocation of parental responsibilities.

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The Court found that the trial court did err by allocating primary parental responsibilities to Silvernail, over Father's objections, without recognizing Father's constitutional preference as the child's parent and without finding by clear and convincing evidence that doing so was in the child's best interests. A parent does not relinquish parental rights by voluntarily placing a child under the care of a third party (See, under the next heading of this chapter, *In the Matter of Minor Child D.I.S.*, and *Sidman v. Sidman*, 249 P.3d 775 (Colo. Mar. 21, 2011)).