

## Survey of Family Law Cases 2004-2013

### 2011 Family Law Survey

## ATTORNEY'S FEES

In the post-decree matter of In re the Marriage of Webb and Christiansen, No. 10CA2333 (Colo. App. 2011), Mother appealed the finding of contempt and award of attorney fees in favor of Father. The court's 2007 order provided for shared decision-making on all major health decisions including non-routine health issues. It also required the parties to notify and consult each other, if possible, in medical emergencies.

Father moved to hold Mother in contempt, and sought remedial and punitive sanctions, including attorney's fees, alleging that Mother made a unilateral decision to have the child seen at the emergency room and be given a CAT scan without contacting Father in advance. The parties disputed whether the child's condition constituted a medical emergency.

The trial court found that the child's condition "was not an emergency situation," that Father "was not advised about the CAT scan until after it happened," and that Mother's consultation with him was inadequate. The court therefore held Mother in contempt and required her to pay Father's attorney fees. The court was unable to find punitive contempt.

To find a party in contempt the fact finder must find that the contemnor did not comply with a lawful order of the court. Because the record supports the trial court's findings of no emergency and inadequate contact, the Court of Appeals refused to disturb the trial court's findings of fact and held that the trial court did not err in holding Mother in contempt.

Under Rule 107(d)(2), **attorney fees may be awarded only as a component of remedial sanctions**. A remedial sanction must include a purge clause. Such a sanction is "imposed to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform." Thus, when the court imposes a remedial contempt sanction, it must do so in writing or on the record describing the means by which the person may purge the contempt.

Where the contemnor commits a one-time violation, incapable of being purged, attorney fees may not be assessed as a remedial sanction. Thus, a punitive sanction, such as a fine or imprisonment, is the only avenue for punishment.

Here, no remedial sanction was imposed, nor could one have been. The CAT scan contempt constituted a one-time violation of the 2007 order committed over a year before father even raised the issue with the court. By that time, mother could not undo what she had done. Hence, an attorney fees award was not appropriate.