

## Adoption Cases

In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

The issue in this case is whether the court gave “special weight” to parental wishes when granting the grandparents visitation rights.

Section 19-1-117, C.R.S. (2005) provides for grandparent visitation orders when there is a child custody case or a case concerning the allocation of parental responsibilities relating to the child. Here, C.A.’s parents both passed away and her maternal aunt and uncle became her sole guardian and adoptive parents. This situation thus falls under the statute where the grandparents may be granted visitation rights. However, Colorado must implement the U.S. Supreme Court’s “special weight” and special factors” requirements for visitation statutes announced in Troxel v. Granville, 530 U.S. 57 (2000).

The appropriate standard for issuance of an order or grandparent visitation under section 19-1-117 requires: (1) a presumption in favor of the parental visitation determination; (2) to rebut this presumption, a showing by grandparents through clear and convincing evidence that the parental visitation determination is not in the child’s best interests; and (3) placement of the ultimate burden on grandparents to establish by clear and convincing evidence that the visitation schedule they seek is in the best interest of the child. If the court orders grandparent visitation, it must make findings of fact and conclusions of law identifying those “special factors” on which it relies.

We construe Colorado’s statute to contain a rebuttable presumption that parental determinations about grandparent visitation are in the child’s best interests. This presumption is rebutted when a grandparent articulates facts in the petition and goes forward with clear and convincing evidence at a hearing that the parent is unfit to make the grandparent visitation decision, or that the visitation determination the parent made is not in the best interests of the child. If the grandparent meets this evidentiary burden, the burden then shifts to the parent to adduce evidence in support of the parental determination.

Here, the court made no specific findings of fact or conclusions of law in support of its order granting grandparent visitation. On remand the court will identify those “special factors” on which it relies and shall make findings of facts and conclusions of law consistent with the parental presumption and grandparent burden of proof requirements.

In re Adoption of K.L.L. ex rel. V.M.D., 160 P.3d 383 (Colo. App. 2007).

The first issue is whether the trial court lacked jurisdiction to rule on the adoption under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The UCCJEA does not apply to adoption proceedings. Furthermore, under the Colorado Children’s Code, “any child under eighteen years of age present in the state at the time the petition for adoption is filed...may be adopted.” Section 19-5-201, C.R.S. 2006.

Here, the child had been living in the state for the preceding twenty-three months and the child was placed here with the parents' permission. The trial court did have jurisdiction.

The second issue in this case is whether the petitioners to adopt have standing to bring the petition when the petitioners were not technically the child's legal guardian at the time.

Under Section 19-5-203(1)(k), C.R.S. 2006, to satisfy the threshold issue of standing, the person seeking adoption must establish that he or she is either the legal custodian or legal guardian of the child. Section 15-14-204(4) provides that notice of a guardianship proceeding must be given to the parents. Failure to notify the parties constitutes a violation of due process sufficient to deprive the court of jurisdiction, rendering any orders void.

Here, the petitioners were awarded temporary guardianship. The court later extended the guardianship, however, the order was void because no notice was given to the parents. Therefore, the petitioners did not have legal guardianship of the child and did not have standing to petition the court for adoption.

In re Petition of Taylor for Adoption of M.R.D., 134 P.3d 579 (Colo. App. 2006).

A father appeals termination of his parental rights and adoption of his two children by their stepfather. The issue is whether notice and service of process were adequate to vest the court of personal jurisdiction when no summons was issued pursuant to C.R.C.P. 3.

Notice was issued and served on the father pursuant to Section 19-5-203(1)(d)(II), C.R.S. 2005, which requires that, upon the filing of a petition for a stepparent adoption, a notice shall be issued by the court directed to the other parent, which states the nature of the relief sought, the names of the stepparent and the child, and the time and place set for hearing on the petition. The requirement of a summons as set forth in C.R.C.P. 3 is superseded by the specific and complete procedure for stepparent adoptions outlined in Section 19-5-203(1)(d)(II).

There, the notices issued by the court clerk complied with the statutory requirements and were sufficient to commence the adoption proceeding. The returns of service reflect that father received the petitions and notices by personal service. There was no error in the notice or service of process.

J.C.T. v. Three Affiliated Tribes, 155 P.3d 452 (Colo. App. 2006).

C.A.H., once appointed legal guardian of J.C.T. appeals the probate court's order denying her permanent guardianship of the child. The issue in this case is whether the probate court exceeded its subject matter jurisdiction during proceedings involving J.C.T.'s guardianship by conducting what amounted to a de facto adoption proceeding.

The probate court has original and exclusive jurisdiction of the granting of letters of guardianship and the administration of guardianship of minors. However, the probate court has

no jurisdiction to terminate parental rights. Such jurisdiction is within the exclusive jurisdiction of the juvenile court. When parents are unable to unwilling to take proper care of a child, the county department of social services is authorized to investigate and to file a petition in dependency or neglect concerning the child. Sections 19-3-304, 19-3-307, C.R.S. 2005.

Here, the probate court's focus was on adoption as it was directing the GAL to find placement for the child that would lead to adoption. Further, the court terminated C.A.H.'s guardianship of J.C.T., leaving him in legal limbo, and then appointed the GAL as "guardian designee."

"Guardian" means an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

The GAL is charged with the responsibility of advocating for the child's best interests, not acting as a guardian who seeks to retain custody of a child.

Because the child has no permanent home and is not in an adoptive placement, the probate court shall refer the matter to the juvenile court, which has the authority to assume jurisdiction and to determine whether he is a neglected or dependent child.