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OCR NEWSLETTER

OCR updates serve to inform OCR attorneys and other interested professionals of recent court decisions, studies, and current events relating to child advocacy, OCR activities, GAL activities, and resources and events that may be beneficial to you or your clients. Please feel free to email the OCR with any feedback or information that you wish to have posted in the next update.

Inside this issue:

Court Opinions

The summaries below highlight aspects of cases relevant to child representation, but they are neither official nor complete court opinions. Decisions may be subject to multiple interpretations, and attorneys should consult with the original decision prior to citing it. The full text of many of the following decisions can be accessed on the Colorado Court of Appeals website, http://www.courts.state.co.us/coa/coaindex.htm, or the Colorado Supreme Court website, http://www.courts.state.co.us/supct/supctcaseannctsindex.htm. If you are not able to access a decision online, please feel free to contact the OCR's Staff Attorney, Sarah Ehrlich, (303-860-1517, ext. 106), for assistance. Special thanks to Meghan Scott, OCR summer law clerk, for writing the case summaries in this newsletter.

United States Supreme Court Cases

Juvenile Life Sentence without Parole for Non-Homicide: Eighth Amendment Violation -*Graham v. Florida*, 176 L. Ed. 2d 825 (U.S. May 17, 2010). Petitioner Graham challenged his sentence under the Eighth Amendment Cruel and Unusual Punishment Clause. The issue was whether the Constitution allowed a juvenile offender to be sentenced to life in prison without parole for a non-homicide crime. At 16, Graham committed armed burglary with assault and was charged as an adult. Graham pleaded guilty to both charges under a plea agreement. His plea was accepted and he was sentenced to probation. Graham violated his probation within a year while he participated in a home invasion robbery. He was found guilty of the earlier armed burglary and attempted armed robbery charge and he was sentenced to the maximum for each charge (life +15 years). Since Florida does not have a parole system, Graham had no possibility for release unless he was granted executive clemency.

Graham filed a motion challenging his sentence under the Eighth amendment. The motion was denied and the Florida Supreme Court denied review. The United States Supreme Court granted Certiorari.

The Eighth Amendment states, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflated." The Court used the categorical rules approach as used in *Atkins v. Virginia*, 536 U.S. 304; *Roper v. Simmons*, 543 U.S. 551; and *Kennedy v. Louisiana*, 554 U.S. 128, 2660 to define Eighth Amendment standards. Guided by precedents and interpretation of the Eighth amendment, the court determined whether the punishment violated the Constitution. The Court analyzed sentencing practices around the country and found 129 juvenile non-homicide offenders serving life without parole sentences; 77 of the cases were in Florida. The court noted the national consensus has moved away from sentencing juveniles to life without parole for non-homicide offenses.

The Court also considered whether the sentencing practice serves legislative penological goals. "Juveniles have a lack of maturity and under developed sense of responsibility." *Roper* v. *Simmons* at 543 U.S. 551, 569. The court specifically noted the brain differences between adults and minors and that life without parole is especially harsh for juvenile offenders. The Court concluded the penological theory was not adequate to justify life without parole. The Court concluded that this sentencing practice is considered cruel and unusual. The Court holds that for a juvenile that did not commit homicide the Eighth amendment forbids the sentence of life without parole.

This study contains a decade of information on national indicators of child well-being http:// www.childstats.gov/ americaschildren/ index.asp

International Child Abduction- *ne exeat* right to consent

Abbott v. Abbott, No. 08-645 (U.S. May 17, 2010)-The Abbotts were married and had a child A.J.A. They moved to Chile and later separated. The Chilean courts granted the respondent (wife) primary custody of A.J.A and awarded petitioner (husband) visitation rights. Respondent brought A.J.A to Texas without the consent of the petitioner or the Chilean Courts. The petitioner filed suit in Federal District Court, seeking an order to return his son to Chile under the Hague Convention on the Civil Aspects of International Child Abduction (Convention) and the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601.

Article 1 under the Convention provisions seeks "to secure the prompt return of children wrongfully removed or retaining in any Contracting State" where "removal or retention ...is to be considered wrongful where it is in breach of rights of custody attributed to that person...under the law of the State in which the child was [therefore] habitually a resident."

The District Court held that the petitioner's *ne exeat* right did not constitute a "right of custody" under the Convention. The Fifth Circuit affirmed. On writ of Certiorari, the United States Supreme Court reversed and remanded holding that a parent has a right of custody under the Convention by reason of that parent's *ne exeat* right. Since A.J.A was under 16; he was a habitual resident of Chile; and both Chile and the U.S. were contracting states, the Court held that the Convention applied.

In accordance with U.S. State Dept. views, state courts decisions, and the Convention the Court determined A.J.A. was wrongfully removed from Chile in violation of a "right of custody." While Chilean law determines the petitioners "right" in relation to A.J.A., the Convention determines whether that "right" is a "right of custody" under the convention. "Once the court has decreed that one parent has visitation rights, that parent's authorization shall generally be required before the child may be taken out of the country." Minors Law 16, 618 art. 49. Since petitioner had visitation rights to A.J.A., the Court held that petitioner had a *ne exeat* right under article 49.

The petitioner's *ne exeat* right qualified as a "joint right of custody" under Chilean law even though it does not fit into the common perception of custody. Regardless, the Convention's definition controls. Accordingly, "rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence" are empowered. Art. 5 *(a)*. Therefore, petitioner's consent was required to remove the child from the state and to determine the child's place of residence.

Lastly, if a parent possess a *ne exeat* right of custody, and therefore may seek a return remedy, a return will not be automatically ordered if the abducting parent can establish the applicability of a Convention exception, such as "a grave risk that...return would expose the child to harm or an otherwise...intolerable situation." Art. 1 (b), S. Treaty Doc. No. 99-11, at 10. The Court left interpretation of the possible exceptions for remand.

Fee in Civil Rights Action

Perdue v. Kenny A., No. 08-970, 130 S. Ct. 1662 (U.S. April 21, 2010).

Plaintiffs filed suit in the Superior Court of Fulton County, Georgia, against state officials seeking reform of the foster care program. After mediation, counsel for the children filed an award of attorney's fees and costs under 42 U.S.C.S. § 1988, and for an interim award. The court granted the fees and costs after modification but denied the interim award. The state officials appealed and the Eleventh Circuit Court of Appeals affirmed the district court's $6 million lodestar award as well as its $4.5 million enhanced fee award to counsel. The Supreme Court granted certiorari to determine whether the calculation of an attorney's fee, under federal fee-shifting statutes, based on the lodestar could have been increased due to superior performance and results. The Court reversed and remanded for further proceedings.

Title 42 U.S.C.S. § 1988 authorizes courts to award a "reasonable" attorney's fee for prevailing parties in civil rights actions. The children's counsel, based their fees on the lodestar (number of hours multiplied by hourly rate) and a fee enhancement for superior work. The fee enhancement was to compensate the attorneys because no other attorney of the same skill and experience would have produced the same result for just the lodestar fee alone.

The Supreme Court held that the lodestar may be increased due to superior performance only in extraordinary circumstances. *Perdue v. Kenny A.*, 130 S. Ct. 1662, 1673 (U.S. April 21, 2010). The lodestar approach is domi-

nant in federal courts as a means of determining attorney fees similar to that of a paying client.. *Gisbrecht v. Barnhart*, 535 U.S. 789, 801 (2002); *Burlington v. Dague*, 505 U.S. 557, 566 (1992).

The Court based their reasoning on six rules. First, "a "reasonable" fee is one that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). Second, "there is a strong presumption that the lodestar method yields a sufficient fee." *Id*. at 546. Third, although the Court has said that the lodestar may be enhanced in "exceptional" circumstances, the Court has never allowed an enhancement. *Id.* at 565. Fourth, "the lodestar includes most, if not all, of the relevant factors constituting a "reasonable" attorneys fee." *Id*. at 566. Fifth, the burden of proving that an enhancement is necessary must be borne by the fee applicant. *Blum v. Stenson*, 465 U.S. 886, 901 (1984). Sixth, an applicant seeking an enhancement must produce "specific evidence" supporting the award. *Id.* at 899.

Although the trial judge had sound discretion to determine "a reasonable attorney's fee" it is not unlimited. Accordingly, the judge must provide specific explanations for all aspects of fee determination, including enhancement. *Perdue*, 130 S. Ct. at 1677. Since the trial court did not provide justification for a 75% fee enhancement; or calculate the amount of enhancement attributable to extraordinary outlays for expenses which could be linked to the delay; or employ a methodology that permitted meaningful appellate review, the Court reversed and remanded for further proceedings.

United States Court of Appeals: Tenth Circuit Case

§1983 Civil Suit: Parental Rights to Direct Medical Care; Right to Familial Association

P.J., a minor by and through Jensen v. Wagner and Cunningham, No. 08-4197, 08-4206, 603 F.3d 1182 (10th Cir. May 5, 2010). This was a 42 U.S.C. § 1983 case initiated by P.J. a minor child, and his parents the Jensens. The defendants were five state actors involved in a legal dispute in a Utah juvenile court over P.J.'s custody and medical care. On May 21, 2003, Dr. Wagner diagnosed P.J. with Ewing's sarcoma, a rare form of cancer after removing a malignant growth from P.J.'s mouth. Dr. Wagner advised the Jensens the condition was life threatening; no other tests could be performed to confirm the diagnosis; and P.J. needed to start chemotherapy immediately. The Jensens refused to consent to chemotherapy. On June 16, 2003, Dr. Wagner formally referred P.J.'s case to the Utah Division of Child and Family Services (DCFS). Ms. Cunningham, the social worker, (herein SW) was assigned to the case and believed that P.J.'s case presented a medical emergency. SW filed a verified petition to transfer custody and guardianship to the Utah juvenile court without performing any investigation and relying solely on the information received from the doctors. On June 20, 2003, the Jensens appeared in juvenile court and the case was continued awaiting the results of an independent test which the Jensens had initiated. On July 19, 2003, a stipulation was reached wherein the Jensens agreed to have P.J. examined by the Children's Hospital of L.A. (CHLA) and that they would abide by the hospital's treatment recommendations.

The CHLA recommended chemotherapy and in violation of the stipulation, the Jensens never returned to CHLA. The juvenile court ordered that P.J. begin receiving chemotherapy by August 8, 2003. In violation of the court's order, the Jensens removed P.J. from Utah and stayed with a friend in Idaho. The court ordered custody to be transferred and a bench warrant for the Jensens' arrest was issued on August 13, 2003. The SW filed charges of misdemeanor custodial interference and felony kidnapping for the Jensens.

On September 5, 2003, the parties entered into a stipulation wherein the Jensens agreed to allow Dr. Johnston to care for P.J and that they would abide by his treatment recommendations. In light of the agreement, the court returned custody of P.J. to the Jensens. Dr. Johnston confirmed the Ewing' sarcoma diagnosis and order chemotherapy. Again, the Jensens did not comply.

On October 22, 2003, DCFS filed a motion to dismiss the verified petition because the state had concluded that forcing P.J. to undergo chemotherapy was unworkable. P.J.'s case was dismissed by the juvenile court. The Jensens filed suit for damages in July 2005 claiming that the defendants violated their following rights:

(1) substantive due process rights to direct P.J.'s medical care (based on misrepresentations allegedly made by the defendants during the juvenile court proceedings and with respect to P.J.'s medical treatment and on DCFS's alleged failure to conduct an independent investigation of P.J.'s case before filing the verified petition); (2) substantive due process right to familial association- the Jensens allegedly suffered from an undue burden on their associational rights based on the defendants actions; (3) procedural due process rights- the Jensens hold Dr. Wagner liable for breach of their procedural due process rights based on his alleged misrepresentations made in court which infected the proceedings to a point where they could not be heard in a meaningful manner. The Jensens hold SW liable for this breach based on her failure to independently investigate the medical neglect allegations made by Dr. Wagner before filing the verified petition in the juvenile court ; and (4) the Fourth Amendment right to be free from unreasonable search and seizure based on alleged malicious prosecution. All of the defendants filed motions for summary judgment based on absolute and qualified immunity and the doctors argued the entire case should be dismissed for lack of jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The district court rejected the *Rooker-Feldman* argument and granted summary judgment for all of the defendants. The Jensen's appealed and the Tenth Circuit reviewed the case de novo.

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When addressing the issue of absolute immunity the Court found there was undisputed evidence demonstrated by statements made by the prosecutor to the juvenile court were made in her role as an advocate for the state and that any research she performed was intimately associated with the judicial process and the prosecutors role as an advocate for the states. *Scott v. Hern*, 216 F.3d 897, 908 (10th Cir. 2000); *Pfeiffer v. Hartford Fire Ins. Co.*, 929 F.2d 1484, 1490 (10th Cir. 1991). Therefore, the Court found the prosecutors actions fulfilled both her roles as officer of the court and advocate for the state, and were therefore protected by absolute immunity.

As to the Jensen's substantive due process right to direct PJ's medical care, the court concluded the Jensen's asserted right to direct PJ's medical care in this case was not clearly established , but they had a "high duty" to recognize illnesses and follow medical advice. Parham 442 U.S. 602. The court also stated when a child's life is under an immediate threat the states' interest in protecting the child is at its peak and the state has the authority to intervene in decision making if there is a corresponding threat to the child's life

The Jensens also failed to show that the defendants imposed an undue burden on their relationship with PJ and thus failed to violate their associational rights. The court applied a balancing test where the individual interest in liberty was balanced against the state's asserted reasons for restraining individual liberty. This is to determine whether the defendant's conduct constitutes an undue burden to the plaintiff's associational rights. Here, PJ was never physically removed from the Jensen's and the state gave them many opportunities to obtain treatment for PJ before seeking to remove him. The Court found the burden to be minimal and therefore the Jensen's failed to show a violation of their associational rights.

The Court concluded that the Jensens failed to establish any constitutionally cognizable liberty interest and thus failed to meet the threshold requirement for a procedural due process claim against Dr. Wagner and SW. A plaintiff must establish a cognizable liberty or property interest of which she has been deprived in order to succeed on a procedural due process claim. *Doyle v. Okla. Bar Ass'n*, 998 F.2d 1559, 1569 (10th Cir. 1993). Once that interest is recognized the court must "examine whether the procedures attendant upon the deprivation were constitutionally sufficient." *Ky. Dep't of Corr. V. Thompson*, 490, U.S. 454, 460 (1989). In conclusion, the Jensens failed to show that any of the defendants violated their constitutional rights and the Tenth Circuit concluded that it lacks jurisdiction under the *Rooker-Feldman* doctrine to address the claim premised on malicious prosecution.

New study from OJJDP on juvenile delinquency statistics - http://ncjrs.gov/pdffiles1/ojjdp/230168.pdf

Colorado Supreme Court Cases

A.L.L. v. People ex rel. C.Z., No. 09SC621, 226 P.3d 1054 (Colo. March 1, 2010).

In a termination proceeding, the trial court terminated parental rights. Mother directed their court-appointed counsel to appeal. Mother's counsel for the parents found no viable issues on appeal and argued that Colorado should adopt a procedure under *Anders v. California*, 386 U.S. 738 (1967) for D&N proceedings. The Court of Appeals referred the case to the state Supreme Court pursuant to Colo. Rev. Stat. § 13-4-109(a), (b), (c) (2009). The Colorado Supreme Court accepted prejudgment certiorari under C.A.R 50 to clarify the duties of court-appointed counsel when their client appeals by right and does not have a meritorious legal argument to support that appeal. The Court concluded the U.S. Supreme Court's rationale from *Anders v. California*, 386 U.S. 738 (1967) could not apply in this case because an indigent parent's right to an appeal and to counsel are better served where a court-appointed lawyer does not withdraw from representation. The Court reasoned that the safeguards from *Anders*, which allow court-appointed counsel to withdraw if their client's appeal is wholly frivolous, cannot coincide here with the interest of due process and equal protection.

The Colorado Supreme Court declined to adopt the *Anders* procedure in a termination of parental rights proceeding holding the court-appointed counsel was required to file petitions on appeal in accordance with Colo. App. R. 3.4, and counsel must present the parent's argument. "An appointed appellate lawyer who reasonably concludes a parent's appeal is without merit must nonetheless file petitions on appeal in accordance with C.A.R. 3.4. The rule requires petitions on appeal from D&N proceedings include, *inter alia*, a statement of the nature of the case, concise statements of the facts and legal issues presented on appeal, and a description and application of pertinent sources of law. *See* C.A.R. 3.4(g)(3). *A.L.L. v. People ex rel. C.Z.*, 226 P.3d 1054, 1063-1064 (Colo. March 1, 2010).

The legal issues presented in the brief may be those identified and developed by the attorney, or, if she can find none, those points the parent wants argued. *Id.* The petition in such instances, though perhaps wholly unpersuasive, is not wholly frivolous. *Id.* In so doing, even where the parent's attorney concludes the appeal is meritless, she abides by her dual obligations to her client and to the court, and remains an advocate in fact as well as in

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name. *Id.* The case was remanded to the court of appeals with direction to order the appellate counsel to brief their case in accordance with this opinion.

Domestic Violence: Existence of an Intimate Relationship

People v. Disher, No. 07SC1088, 224 P.3d 254 (Colo. February 16, 2010). The defendant was convicted in county court of harassing a woman who he had previously dated. The county court held a domestic violence evaluation it was not required because there was no showing of an "intimate relationship" under Colo. Rev. Stat. § 18-6-800 (2009). The Adams County District Court affirmed and the Adam's Count DA's office petitioned for cert. In January 2006, the defendant and the victim were no longer dating when the defendant entered the victim's house and refused to leave. The police arrested the defendant and he was convicted of harassment and obstructing an officer. The State requested a domestic violence evaluation on the defendant but the district court held that it would be inappropriate because there was no evidence or testimony of a sexual relationship. The victim testified that she and the defendant had dated exclusively. The Court found this to be sufficient to establish an intimate relationship. Furthermore, the Court held that a sexual relationship was not a necessary condition of an intimate relationship for the purpose of the Colorado Domestic Violence Statue, Colo. Rev. Stat. § 18-6-800.3 (2009). The Court reasoned that the relationship must be more than that of a roommate, friend or acquaintance; but that the word "intimate" does not mean "sexual." The Court stated the relationship must contain a shared parental status or romantic attachment. Finally, the court found merit in the weight of authority nationally which stands against the requirement of a sexual relationship before a court may find domestic violence. The case was reversed and remanded for further proceedings.

Marriage Dissolution

In re the Marriage of Schelp; In re the Marriage of Roberts; In re they Marriage of Barnett, Consolidated Case Nos. 08SC748, 08SC749, 08SC887; 228 P.3d 151 (Colo. March 22, 2010). In three consolidated cases, appellant husbands challenged Colorado Court of Appeals opinions holding that a new procedural rule, Colo. R. Civ. P. 16.2, provided the trial courts with jurisdiction to modify property divisions entered in marital dissolution cases that were originally filed before that new rule went into effect. The Supreme Court granted certiorari to determine whether the court of appeals erred when it held that Colo. R. Civ. P. 16.2(e)(10) gave a trial court five years of continuing jurisdiction to retroactively reopen divorce cases when a post-decree motion alleging improper asset disclosure was filed after the rule's effective date of January 1, 2005, even though the underlying divorce case was filed before the new rule became effective. Under the new rule C.R.C.P. 16.2, a court retains jurisdiction for five years over marital dissolution cases when a spouse has misstated or omitted assets in financial disclosures. The Colorado Supreme Court reviewed whether this five-year retention provision applies when the disclosure was made pursuant to a petition for dissolution filed before the new rule's effective date. The Court determined the five-year retention provision and related provisions apply to future, as opposed to past, disclosures. The language indicates the five-year retention provision becomes operative only after a party has made disclosures under the new rule to resolve petitions for marital dissolution filed after the effective date or disclosures necessary to resolve the issues contained in a post-decree motion filed after the effective date. Because the present cases involved disclosures made before the new rule's effective date, the trial courts did not retain jurisdiction under the new rule to address post-decree motions seeking to reopen the property divisions. The three court of appeals opinions were reversed, and the cases were remanded to the appellate court with directions to return each case to the trial court for further proceedings.

Colorado Court of Appeals

Child Support Modification

In re the Parental Responsibilities of M.G.C.-G: *Cabello, Jr. and Gomez*, No. 08CA1118, 228 P.3d 271 (Colo. Ct. App. Feb. 18, 2010). In 2003, mother, her new husband and her child from a previous marriage, planned to move to Hawaii. The father objected because the move would effectively terminate his relationship with his child. However, the parents were able to reach an agreement where the mother accepted child support payments of $500/month and they moved to Hawaii. Four years after the move, mother claimed father's income had substantially increased and filed for an increase in his support obligation. The trial court denied the motion on behalf of appellant mother holding that the change in father's income was not substantial. The trial court reasoned if the support obligation had been determined under the child support guidelines in 2003, it would have been $625 and that father's obligation now under the guidelines was $650; not a substantial change. Mother appealed. The Colorado Court of Appeals held that, under Colo. Rev. Stat. § 14-10-122 (2009), the amount in effect at the time mother filed her motion was $500. The trial court erred in considering the hypothetical amount that would have been in effect under the child support guidelines. The Court reversed and remanded with directions to consider mother's motion based on the amount in effect at the time, $500.

Colorado Victim Compensation Board-Calculation for Victim v. Aggressor

People ex. rel. K.M., No. 09CA1699, (April 15, 2010). The prosecution appeals the trial court's order entered in a juvenile delinquency proceeding against K.M. thus denying the restitution sought by the Crime Victim Compensation Board (herein "CVCB"). The people argue the court lacked authority to request confidential documents necessary to calculate the amount of disbursements that the CVCB had made for victim expenses, which the court had previously concluded were compensable. The question before the Court of Appeals was whether the court abused its discretion by refusing to order that K.M. pay restitution. K.M. and D.D. were involved in an altercation at school. K.M. plead guilty to a single count of harassment pursuant to a plea bargain. At the restitution hearing, the court heard testimony about the altercation from the two juveniles. The CVCB testified that they made disbursements for D.D.'s medical expenses ($1755.70) and for his mother's lost wages ($2630.53). At the conclusion of the

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hearing, K.M. argued he should not have to pay any restitution because D.D. had punched him in the face first, and he had merely acted in self-defense when delivering a similar blow in return. K.M. filed a brief arguing that he should not be required to pay restitution because the prosecution had failed to specify which medical bills related to D.D.'s hand injury and which related to his broken jaw. The court determined D.D. "was acting in self-defense when he threw the first punch." The court refused to award restitution to the CVCB for payments it had made related to D.D.'s hand injury, reasoning that the injury was not proximately caused by K.M's unlawful pushing because D.D.'s disproportionate response was not reasonably foreseeable. The court stated the prosecution "must provide the court with a breakdown specifically showing the pecuniary loss related only to D.D.'s broken jaw, and an order in that amount shall enter." *People ex. rel. K.M.*, 232 P.3d 310, 311 (April 15, 2010). The prosecution asserted that it was impossible to "produce the breakdown as ordered by the court" because it did "not have access to the specific information contained in" the CVCB's records due to the confidentiality provision of section 24-4.1-107.5(2). *Id.* The court ruled that "no order of restitution shall enter" because the People have declined to provide the itemization of restitution that is due and owing as set forth in this court's orders." *Id.* The prosecution therefore appealed.

The fact that a CVCB made an award of compensation does not determine an offender's liability for the disbursement. Rather, as with any other claim for restitution, the trial court has an obligation to make an independent determination whether the prosecution has carried its burden of proving, by a preponderance of the evidence that a particular loss was "proximately caused by an offender's conduct." § 18-1.3-602(3)(a), C.R.S. 2009. Because the prosecution refused to comply with the court's request for additional evidence necessary to apportion expenses between these two injuries, the court lacked a factual basis to enter a final order specifying the exact amount of restitution owed in conjunction with the broken jaw, the medical bills or for the earnings that were lost by D.D.'s mother when performing support services for him in connection with his broken jaw.

The statutory confidentiality of materials submitted to a CVCB is not absolute, but is subject to an in camera review. § 24-4.1-107.5(2), C.R.S. 2009. Although the prosecution claimed on appeal that it could not have submitted materials for in camera review because "such a review cannot occur without a court order," the Court concluded the prosecution could have either (1) asked the court to issue such an order before submitting the materials; or (2) submitted the materials under seal with an accompanying request for an in camera review.

In light of the prosecutions noncompliance, the Court read the trial court's orders as impliedly finding that the prosecution failed to carry its burden of proving the amount of restitution owed. And under these unusual circumstances, the Court could not say the trial court abused its discretion by refusing to draft a restitution order based on mere speculation. The order was affirmed.

Evidence- In Camera View

The People of the State of Colorado, in the Interest of A.D.T., No. 09CA0848, LEXIS 579 (Colo. Ct. App. April 29, 2010) A.D.T., a minor, appeals her adjudications for acts that, if committed by an adult, would constitute unlawful sexual conduct and harassment. On September 28, 2008, A.D.T and the victim were minors living in the Family Crisis Center (herein Center) when A.D.T. allegedly touched the victim's breasts and vagina over her clothes. The victim reported the incident to the supervisor of the center stating that A.D.T. warned her that if she told anyone what happened, A.D.T. would kill her. A juvenile delinquency petition was subsequently filed charging A.D.T. with unlawful sexual contact.

Prior to trial, defense counsel learned the victim may have sexually assaulted someone on a prior occasion and counsel then requested the juvenile court review the files in camera and disclose any pertinent records. A senior judge (who was sitting in for the juvenile court judge) ordered the review of the DHS records by the juvenile court judge who was presiding over both this case and the dependency and neglect proceedings concerning the victim's family. Based on her "limited knowledge of the prosecution and defense cases," the juvenile court judge held there was no basis to conclude that any of the material contained in that volume was discoverable. At the conclusion of the trial A.D.T. was found guilty of both charges and appealed.

A.D.T contended that the juvenile court abused its discretion in reviewing only one of the nine available DHS files and in failing to allow her access to those documents that might be necessary for the determination of an issue before the court. If the state has an interest in the confidentially of certain sensitive information, such as those regarding dependency and neglect proceedings, the court must balance that interest against the defendants constitutional right to discover favorable evidence. If, after completing its review, the court determines that disclosure of the information, contained in the DHS records was "necessary for the resolution of an issue then pending before it," then the court is authorized to disclose that information to the parties. § 19-1-307 (2)(f). Such disclosure, however, is not automatic or self-executing. *People v. Jowell*, 199 P.3d 38, 43 (Colo. App. 2008). The Court determined the juvenile court abused its discretion when it chose to only review one of the nine volumes of DHS records. The Court remanded this case to the juvenile court with directions that the court conduct an in camera review of the eight volumes of DHS records that it did not previously review to determine whether the information was necessary to the determination of the issue. If the juvenile court concludes that it was reasonably probable that the result of the trial would have been different, then it must grant A.D.T. a new trial. If it finds no such probability, then the court may reinstate the adjudication, subject to A.D.T.'s right to appeal.

A.D.T next argued the juvenile court abused its discretion by refusing to disclose any of the information contained in volume nine of the victim's DHS records, which the court reviewed. The Court concluded that they were not barred from conducting their own in camera view and the juvenile court erred in refusing to order disclosure of certain DHS records that were exculpatory or impeaching. The Court further concluded the

other DHS records appear to satisfy the above-noted requirements for disclosure because they would materially assist in preparing the defense. The juvenile court did not make findings as to why it refused to order the disclosure of these documents. Accordingly, the Court remanded the case to the juvenile court with directions to reconsider whether the eight listed records should be disclosed and to make specific findings supporting any decision not to disclose such records.

Finally, A.D.T. asserted the juvenile court erred in refusing to allow her to introduce into evidence the security video at trial. The juvenile court, sitting as the fact finder, reviewed the video and concluded it was not useful because the video was difficult to decipher. The Court concluded any error in refusing to allow A.D.T. to introduce the video was harmless. The judgment of the juvenile court was reversed and the case was remanded for further proceedings consistent with the opinion.

Termination- Clear and Convincing Evidence

People in the Interest of G.R.N.M ., and Concerning R.D.M., No. 09CA1856, (Colo. Ct. App. March 4, 2010). Appellant mother challenged a judgment of the Juvenile Court terminating her parent-child legal relationship with her son, arguing that the state failed to prove its case by clear and convincing evidence. Mother's petition on appeal did not comply with C.A.R. 3.4(g)(3)(E) and (F). The Court of Appeals could have declined to address mother's appeal. Regardless, the Court decided to address the merits because the appeal concerned mother's constitutional right to care, custody, and control, of her son. *See Troxel v. Granville,* 530 U.S. 57, 66, (2000).

On appeal, the court held the record supported the juvenile court's findings that mother had not successfully complied with her treatment plan; she was unfit, and her conduct was unlikely to improve within a reasonable time. The Court reasoned mother had not complied with her treatment plan specifically in the areas of substance abuse, mental health and domestic violence. The Court acknowledged the mother did attend family therapy, but highlighted the fact that therapy had been unsuccessful because mother did not show any improvement in over a year. Accordingly, the Court found the juvenile court did not err in finding mother was unfit under Colo. Rev . Stat. § 19-3-694(2)(h) (2009) and that mother was unlikely to become fit within a reasonable time. The judgment was affirmed.

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Termination- Expedited Petition to Relinquishment

In the Matter of the Petition of A.T.M., and Concerning S.C.M., No. 09CA1970 (Colo. Ct. App. March 25, 2010)

Mother's rights were terminated under a statue that allows parents to file expedited petitions to relinquish rights to children under one year. § 19-5-103.5, C.R.S. 2009. Mother filed an expedited relinquishment petition but sought to withdraw it before it was acted upon. The district court refused to allow the petition to be withdrawn and (over mother's objection) granted it. Counsel for mother filed (1) an expedited petition for relinquishment and, (2) a motion to hold the relinquishment in abeyance stating that the mother did not want to terminate her parental rights until the "estranged," incarcerated father's rights were terminated. The child was placed out of state with potential adoptive parents.

Mother moved to withdraw her relinquishment petition and for the "emergency forthwith" return of her child. The motion stated that the mother had "given serious consideration to this situation and had made the careful decision to parent her child." The court granted the motion but the potential adoptive parents refused to return the child, filed a motion to intervene, and asked the court to stay and vacate its orders allowing the mother's petition to be withdrawn. The court stayed the order and held a hearing where the court denied mother's motion to withdrawal the petition finding that the mother received sufficient counseling; she made the decision to relinquish knowing and voluntarily (not under duress); and mother knew she could not withdrawal the petition once it had been filed. The court found relinquishment was in the child's best interest and granted the motion for relinquishment. Mother appealed.

The issue on appeal was whether the General Assembly had precluded birth parents from withdrawing expedited relinquishment petitions. The Court of Appeals concluded it did not. The appellee's were trying to broaden the meaning of 19-5-103(1)(b)(I), C.R.S. 2009, to include a statutory proscription against withdrawal of a petition. The Court found that if the legislature intended to make the termination decision irrevocable, they would have expressly said so in the plain language of the statutes. Moreover, the court found that until the petition is granted, nothing in the statute makes it irrevocable.

The Court held since mother moved to hold her relinquishment in abeyance pending termination of the father's rights, it was apparent from the outset that this was not a true expedited relinquishment case and before the petition had been granted, the mother filed a motion to withdrawal. The Court stated that the trial court should not have reinstated-and granted- the petition over the mother's objection. The order terminating mother's parental rights was reversed and the case was remanded for further proceedings consistent with the opinion.

Termination- No Statutory Preference for Adoption

In the Interest of S.M., *Jr., and Concerning* S.M. *Sr., and* S.R.G., No. 09CA2722 (Colo. Ct. App. April 29, 2010). S.R.G. (mother) and S.M., Sr. (father) appeal from the judgment terminating their parental rights with respect to their child, S.M., Jr. (the child). At the time of the child's birth, mother had an open D&N on her older children. After the department received a report that mother gave birth and that mother and father fled, the court ordered the department to locate the mother and the child.

The court adopted a treatment plan for mother and required father to contact the caseworker once he was released from prison at which time a treatment plan would be developed for him. The court ultimately terminating the rights of both parents finding that neither had complied with their treatment plans and that they were unwilling or unable to provide nurturing and safe parenting. The parents appealed.

Mother claims that she was not given reasonable time to comply with her treatment plan. What constitutes a reasonable time is necessarily fact-specific. *People in Interest of D.Y.*, 176 P.3d 874, 876 (Colo. App. 2007). The court looked at the mother's behaviors and found she missed several drug tests; she tested positive for methamphetamine on others; she was arrested and incarcerated for driving while impaired on a revoked license; she did not retain inpatient treatment; her visitation with the child was sporadic at best; and she failed to maintain contact with her caseworker. For these reasons, the Court of Appeals did not disturb the trial court decision. Next, mother argued the department did not make reasonable efforts to implement her treatment plan. Because the parent is responsible for assuring compliance with and success of the services provided, the Court concluded the mother's treatment plan did not fail because of inaction on behalf of the department, but it failed because mother was unable to willing to do what was necessary to succeed. *People in Interest of* C.T.S., 140 P.3d 332, 335 (Colo. App. 2006)

Father argued the record does not prove that he failed to comply with his treatment plan by clear and convincing evidence. The treatment plan required father to contact the caseworker once he was released from prison. Father was still incarcerated at the time of the termination, and did not fail to comply with the treatment plan. The Court held that the plan itself was the problem and that it would be unjust to terminate father's parental rights when he complied fully with the court's order. For these reasons, the Court concluded that the trial court's judgment terminating father's parental rights must be reversed and remanded as to further proceedings for father. Father also claims the department did not consider less drastic alternatives to termination. The requirement for the court to consider less drastic alternatives before terminating parental rights thus "gives due deference to the constitutional interest of the parent in preventing the irretrievable destruction of the parental relationship and ensures that the extreme remedy of termination will be reserved for those situations in which there are no other reasonable means of preserving the relationship." M.M., 726 P.2d at 1122 n.9.

Here, the child was placed with father's cousin, her husband, and her two older children. Reports submitted to the court by the department and by

the CASA indicated the child was doing well in this placement. Father's cousin testified that she wanted to adopt the child. The Court found that section 19-3-702(4), C.R.S. 2009, specifically recognizes permanent guardianship as an acceptable alternative goal. The Court concluded the trial court erred in determining the existence of a statutory preference for adoption. On remand, the court should not employ such a presumption in determining less drastic alternative to termination of father's rights.

The judgment terminating the parent-child relationship between mother and the child was affirmed. The judgment terminating the parent-child relationship between father and the child is reversed, and the case was remanded for further proceeding consistent with the opinion.

Termination- ICWA

The People of the State of Colorado, In the Interest of J.H., No. 09CA1679, LEXIS 87 (Colo. Ct. App. Jan. 21, 2010). **Not Published Pursuant to C.A.R. 35(f)* *Father appeals from the judgment terminating the parent-child legal relationship with his son, J.H. The Yuma County Dept. of Social Services (herein Department) filed a D&N petition on behalf of J.H., after the half-sibling alleged that father had sexually abused her and that mother abused illegal substances.

Father denied the allegations in this petition and subsequently he stipulated that J.H. was dependent and neglected and a treatment plan was adopted. In 2008, father was incarcerated. Several months later, the department moved to terminate father's parental rights. Thereafter, J.H. was diagnosed with a malignant brain tumor. His condition required significant medical treatment and constant care. Following a contested hearing, the court terminated father's parental rights. The Court of Appeals noted a potential jurisdictional issue under the Indian Child Welfare Act of 1978 (ICWA) indicating that early in the proceedings, the department learned that J.H. had Blackfeet Indian heritage through his mother. Although the appellate record does not show that the department served the tribe with written notice, the documents reflect an order to show cause was faxed to the tribe on January 31, 2008, and the tribe responded that no one named in the notice, including J.H. and his mother, were enrolled members of the Blackfeet tribe. Because the portion of the notices indicate J.H.'s family tree was comprehensive and appears to have provided all known information, and because the tribe's response to the notices make it clear that J.H. would not have been found to be an enrolled member of the tribe had the notices been proper in all respects, the Court concluded that any errors in the notices were harmless. *In re N.M.*, 74 Cal. Rptr. 3d 138, 148 n.8 (Cal. Ct. App. 2008).

Father asserts his treatment plan was inappropriate because it required him to admit to sexually abusing his stepdaughter. A parent who agrees to a treatment plan in the district court may not challenge its propriety on appeal. *People in Interest of M.S.*, 129 P.3d 1086, 1087 (Colo. App. 2005). The record shows father did not object when the treatment plan was adopted. Accordingly, father was precluded from challenging the initial treatment plan now. *Id.*

Father also claims the department failed to prove all of section 19-3-604(1), C.R.S. 2009, factors by clear and convincing evidence. To terminate parental rights under this section, the court must find, by clear and convincing evidence, that (1) an appropriate, court-approved treatment plan has not been reasonably complied with by the parent or has not been successful in rehabilitation the parent, (2) the parent is unfit, and (3) the parent's conduct or condition is unlikely to change within a reasonable time. *People in Interest if C.H.*, 166 P.3d 288, 289 (Colo. Ct. App. 2007).

Here, the district court found the father did not reasonably comply with his treatment plan by (1) not complying with the treatment plan components relating to the "basic obligation" of parenting; (2) not having steady employment or housing and (3) missing various visits without good cause. Finally, the court found father's condition was unlikely to change within a reasonable time considering J.H.'s "very urgent physical need due" to the brain tumor. Because of his non compliance with the treatment plan and parental unfitness, the record supported the district court's findings and the Court did not disturb the district court's findings on appeal.

Finally, father argued the district court should have found a less drastic alternative to termination. Section 19-3-604(1)(c) requires the district court to consider and eliminate less drastic alternatives before entering a termination order. *See People in Interest of M.M.*, 726 P.2d 1108, 1122 (Colo. 1986). The court, however, must give primary consideration to the child's physical, mental, and emotional conditions and needs. § 19-3-604 (3), C.R.S. 2009. The district court found that terminating father's parental rights was in J.H.'s best interests. The caseworker testified that J.H. (1) had special needs as a result of his having been diagnosed with a brain tumor, (2) required an "intense level of care," including chemotherapy, radiation, physical and occupational therapy, and (3) needed permanency, not an allocation of parental rights. Because the record supports the district court's findings that there were no less drastic alternatives, the Court would not disturb them on appeal. *See D.P.*, 181 P.3d at 408. The Court dismissed the appeal and the judgment was affirmed.

People ex rel. A.R.Y.-M., No. 09CA2295, LEXIS 353 (Colo. Ct. App. March 18, 2010). Mother appeals from a judgment terminating her parental rights to her son. Mother contends that the department failed to comply with the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C.S. §§ 1901 to 1963 (2006). Mother, a minor, was in the department's custody at the time of the filing of the dependency and neglect petition on her child's behalf. Mother claimed to have Native American ancestry though her biological father and notice was sent to the Navajo Nation and the Eastern Shawnee Tribe of Oklahoma; the former was unable to verify that the child was eligible for enrollment, while the latter responded that the child was not a member of the tribe and was not eligible for enrollment.

The Court of Appeals held that the department failed to comply with several provisions of ICWA, but the failures were harmless because mother did not provide the department with any additional information to verify if the child was a member of the Navajo Nation. The Court held that the child

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did not fall under the protections of ICWA and any violations were harmless. The judgment terminating mother's parental rights was affirmed.

GAL in Paternity Action

In re the Parental Responsibilities of A.D., and Concerning Rueda, No. 09CA0756 (Colo. Ct. App. April 1, 2010). Mother appealed this paternity action arguing that the child, A.D., should have been made a party to the action and therefore should have been appointed a GAL. Appellant mother gave birth to A.D., and lived with father as a family for five years. Mother discontinued contact with father and he initiated a proceeding under Colo. Rev. Stat. § 19-4-101 to-130 (2009) to establish parental responsibilities and paternity. A.D.'s birth certificate states "Father unknown." Although father conceded that he was not the biological father of A.D, the presumption that he was the father could not be rebutted under Colo. Rev. Stat § 19-4-105(1)(d) because he received A.D. into his home and held her out as his own child. The court found the child would face possible trauma if her relationship with father was severed. The court held that father was the psychological parent by clear and convincing evidence. The Court held under 19-4-110, "a child may be a party to the action and if a minor may be appointed a GAL" but it was not a necessary requirement. The statute no longer makes the child an indispensible party to the paternity action and no longer requires the child be joined in the action or the appointment of a guardian ad litem. *People ex rel. Orange County v.* M.A.S., 962 P.2d 339,341 (Colo. App. 1998). The Court affirmed and awarded father parenting time.

Liberty Interest in care, Custody and Control of Child: "Special Weight"

In re the Parental Responsibilities of Reese, and Concerning E.B.H., No. 08CA2428, 227 P.3d 900 (Colo. Ct. App. Feb. 4, 2010). Respondent mother appealed claiming the trial court did not give "special weight" to her determination of the child's best interest. The Adams County District Court awarded sole decision-making authority and majority parenting time to the petitioners.

The Colorado Court of Appeals held when a non-parent seeks allocation of parental responsibilities contrary to the wishes of a parent, the court must comply with the requirement to accord "special weight" to the parent's determination of the best interests of the child. Here, if the court does not give special weight to the parent's determination of the best interests of the child, then the court may not allocate parental responsibilities.

The parent's determination of the best interest of the child can be overcome by clear and convincing evidence in conjunction with the court's determination of the best interest of the child. This does not infringe on the parent's fundamental right to care, custody and control of their child. The trial court found the petitioners to be psychological parents of the child; however, the Court of Appeals found this to be insufficient to grant special weight to the mother's fundamental right to care, custody and control of her child. In addition, the district court entered its orders under the "best interest" standard and did not state that it was based on clear and convincing evidence. The order was vacated and remanded to the trial court for a determination of whether the couple met their burden of proof that allocation of parental responsibilities to them was in the best interests of the child.

Medical Marijuana- Parenting Time

In re the Marriage of Parr and Lyman., No. 09CA0854 (Colo. Ct. App. May, 27 2010). In dissolution of marriage proceeding, the trial court ordered a restriction on father's parenting time. As part of the parenting plan, father agreed to submit to ongoing UA's and drug screening to ensure that he did not use marijuana. Approximately one week after signing the parenting plan, father was approved for a listing in the State of Colorado medical marijuana Registry. Father then filed a pro se motion seeking waiver of the UA's in his parenting plan. The magistrate concluded the father was "stuck with" his parenting plan because he knowingly and voluntarily signed the plan which was a valid court order. In addition, the magistrate found father acted in bad faith by signing the parenting plan while anticipating a listing on the Medial Marijuana Registry. Father appealed the order requiring him to adhere to all of the components of the parenting plan under the Colorado Constitution article XVIII, section 14. Mother filed a pro-se motion five months later requesting a restriction on father's parenting time because he "had not provided proof of clean monthly UA drug screenings." The trial court ordered supervised parenting time for father until he could prove by clear and convincing evidence that his marijuana use was not detrimental to the child. Furthermore, the trial court ordered father to refrain from marijuana use while in the presence of the child and that he must provide a clean hair follicle test before he could have unsupervised visits. On appeal, the issue was whether the trial court erred in adding the modified provision to father's treatment plan and whether it applied the wrong legal standard. The Court rejected the notion that prohibiting the use of marijuana was a restriction on father's parenting time. The Court found that the prohibition amounted to a modification of the parenting plan and therefore, it did not constitute a restriction. Next, the appellant father argued the trial court lacked evidence to support a finding that the child would be in physical endangerment if father consumed marijuana in her presence. The Court agreed for two reasons. First, the trial court modified the magistrate's order without any evidence. Second, absent an evidentiary hearing, the father's use of medical marijuana did not support the trial court's restriction on his parenting time. The Court did not express an opinion as to whether medical marijuana use may constitute endangerment but that endangerment was not shown in this case. The Court vacated the restrictions on parenting time but the plan remained in effect including the UA requirement. The modified provisions of the trial court order were vacated but affirmed in all other respects.

Termination- Recusal/Waiver, Specific Findings, Ineffective Assistance of Counsel

People in the Interest of A.G., A.G., R.B, and N.B., No. 09CA1451 (Colo. Ct. App. April 15, 2010). In October 2007, mother's four-year old child, died in mother's home. The child died because of bacterial sepsis due to abuse and neglect. The Otero Dept of Human Services, (department) obtained emergency custody of Mother's children A.G., A.G., R.B., and N.B. In December 2007, mother's children were found to be dependent and neglected by the trial court and were placed with their respective fathers.

In April 2009, mother's parent rights were terminated by the trial court. Mother appealed, and sought a new trial claiming (1) the trial judge should have recused himself, and (2) ineffective assistance of counsel for not timely filing the motion to recues. The trial judge denied the motion for recusal finding no conflict of interest. Mother's first issue on appeal concerns the trial judge's duty to recuse himself. The judge's court clerk was the mother of the caseworker who was a material witness in the case. The question before the court was whether his relationship with his clerk, and her relationship to the caseworker, created the appearance of impropriety sufficient to warrant recusal. The Court of Appeals found that the judge erred by not recusing himself because the relationship between the caseworker and the clerk created the appearance of impropriety. The court reasoned, "[T]he mere existence of a relationship—whether personal or professional—is not insufficient grounds for disqualification. Rather, it is the closeness of the relationship and its bearing on the underlying case that determines whether disqualification is necessary." *Schupper v. People*, 157 P.3d 516, 520 (Colo. 2007). Furthermore, the Code of Conduct for Judicial Employees states that "a court clerk should not perform any official duties in any mater in which the clerk knows that a person within the third degree of relationship to her is likely to be a material witness. C.C.J.E. 3(F)(2)(b)." The Court also considered that courts must meticulously avoid any appearance of impartiality. "Although the trial judge believed in his own impartiality, it is the courts duty to 'eliminate every semblance of reasonable doubt or suspicion that a trial by a fair and impartial tribunal may be denied.'" *Pierce v. United Bank*, 780 P.2d 6, 7 (Colo. App. 1989). Since the caseworker was the primary witness who testified about mother's compliance with the treatment plan, her credibility was at issue and the trial judge abused his discretion by not finding a conflict of interest. The trial judge could have avoided this situation by advising the parties of a potential conflict and obtaining a written waiver allowing him to continue to preside over the case. The Court found the trial judge's failure to obtain a waiver and no subsequent recusal as error.

Mother's second issue on appeal concerns ineffective assistance of counsel and her ability to appeal the denial of her motion for recusal. Mother did not timely raise the recusal issue even though her counsel was aware of the conflict of interest from the outset of the case. "Waiting until an adverse ruling has been made before filing a motion to recuse may constitute a waiver." *In re Marriage of Fifield*, 776 P.2d 1167, 1168 (Colo. App. 1989). Since termination proceedings "cue constitutional dues process concerns," the relevant facts and circumstances here hinge on mother's assertion that trial counsel was ineffective for not timely seeking the trial judge's recusal. *A.L.L. v. People in Interest of C.Z.*, (Colo. No. 09SC621, Mar. 1, 2010). The Court acknowledged that mother's counsel may have decided not to file the motion for recusal based on strategy. The question was whether counsels' action fell below the standard of care. In addition, Mother claimed the trial court did not make adequate findings by clear and convincing evidence to terminate her parent-child relationship because it did not state under which subdivision of 19-3-604(1), C.R.S. 2009, it was terminating parental rights. Similarly, the trial court failed to make any findings regarding the children's best interest. The Court ordered a remand, presided over by a different judge and appointment of new counsel for mother. On remand, the court will determine whether counsels' actions fell below the standard of care and make new findings of fact.

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CASES FROM OTHER JURISDICTIONS

Request for Stay of D & N Proceedings

In re Amber M., No. D055539, 2010 Cal. App. (Cal. App. April 27, 2010): The San Diego County Superior Court, California, denied appellant father's request for a stay of dependency proceedings involving his two children under the Service members Civil Relief Act (SCRA), 50 U.S.C. Appx. § 501 et seq. The juvenile court ordered a voluntary service plan under Welf. & Inst. Code, § 360, subd. (b), and terminated jurisdiction. Father appealed.

The court concluded that it met the requirements of the SCRA. A letter from the father's commanding officer indicated the father was under orders to deploy to Iraq and was not expected to return until February 2010. Furthermore, the letter stated that the father was unable to attend the June 9, 2009, contested disposition/jurisdiction hearing. From these facts, it could be inferred that the father was not authorized to take leave.

On review, the Court found that even if the letter from the commanding officer did not technically meet all the requirements of the SCRA, it substantially complied with it. In addition, the court held even if the father's application was insufficient, the failure to grant a stay was an abuse of discretion. It was undisputed that the father was unavailable to appear at the June 9 hearing.

There was no detriment to the mother or the children as they remained detained with her. The Court held that a stay should have been granted at least until information could be received from the father's commanding officer as to whether the father would be available to appear prior to the end of his deployment. The juvenile court's order was reversed, and the case was remanded for further proceedings.

Articles

Articles and periodicals are on file in the OCR library. The OCR has all the current and back issues of the Juvenile and Family Court Journal, The Child Welfare Journal and the Family Court Review. Stop by the office or call Melanie in order to check out materials.

- *Using Mediation in Guardianship Litigation*, Katherine Anne Seal and Michael A. Kirtland, Alternative Dispute Resolution, The Colorado Lawyer, March 2010, Vol. 39, No. 3.
- *Children with Autism Spectrum Disorders in the Child Welfare System: A Guide for Lawyers and Judges*, Emily Lechner, Child Law Practice, Vol. 29 No. 1 (March) 2010.
- *Protecting and Defending a Young Person in Foster Care from Financial Identity Theft*, Jean Clemente, Child Law Practice, Vol. 28 No. 12, (February) 2010.
- *Collaboration Is Key to Improving Responses to Crossover Youth*. This article highlights a collaborative project benefiting crossover youth by identifying the principles underlying collaborative work in both the dependency and delinquency arenas, discusses work being done on the national level by NCJFCJ's Crossover Committee, and outlines beginning steps that every jurisdiction can take in developing an integrated approach towards crossover youth. Judge Patricia Escher, Juvenile & Family Justice Today, (Spring) 2010.
- *A Not So Happy Birthday: The Foster Youth Transition From Adolescence Into Adulthood*, Miriam Aroni Krinsky, Family Court Review: The Journal of the Association of Family and Conciliation Courts, Vol. 48 No. 2 (April 2010). This Article discusses strategies for changing the disheartening outcomes for transitioning foster youth, by collectively taking charge of the lives of children; keeping a watchful eye on data and outcomes and using that information to guide actions; and ensure that youth are present in every stage of the decision-making process that determines their future.
- *Involving Youth in the Dependency Court Process: The Washington State Experience, Hon. Bobbe J. Bridge*, Family Court Review: The Journal of the Association of Family and Conciliation Courts, Vol. 48 No. 2 (April 2010). This article details the development of a pilot program established by the Washington State Legislature, its implementation and evaluation results.
- *Challenges Facing Crossover Youth: An Examination of Juvenile Justice Decision Making and Recidivism*, Denise C. Herz, Family Court Review: The Journal of the Association of Family and Conciliation Courts, Vol. 48 No. 2 (April 2010). This article examines data to identify what characteristics among a crossover population are more likely to result in receiving harsher dispositions and higher recidivism rates.
- *When Jail Fails: Amending the ASFA to Reduce Its Negative Impact on Children of Incarcerated Parents*, Stephanie Sherry, Family Court Review: The Journal of the Association of Family and Conciliation Courts, Vol. 48 No. 2 (April 2010). This Note advocates for the amendment of ASFA to include factors courts should consider when terminating parental rights of incarcerated parents and encourages states to focus not on a time frame for termination, but rather consideration of circumstances relevant to each individual family.
- *Reponses to Children during a Parent's Arrest: The Problem, Promising Practices, and Recommendations.* Child Law Practice: Policy Update, Vol. 29 No. 2, (April) 2010- *can be found in OCR Library*.

Oral argument in the Gabriesheski case is set for Sept. 28 at 10:30 a.m. Feel free to listen online or attend in person at the Supreme Court.

BLOGS and WEBSITES

Check out the baby brain map here http://www.zerotothree.org/baby-brain-map.html

Immigration questions? See the immigration bench book for juvenile and family court judges at http://www.ilrc.org/resources/sijs/2005%20SIJS%20benchbook.pdf

Check out the ethics website www.legalethics.com

Resources

- *Is Child Abuse Declining?* How a big drop was calculated and what it means, Patrick Boyle, Youth Today, Vol. 19 No. 3 (March 2010). http://www.YouthToday.org
- *Earmarks 2010*, Youth Today, Vol. 19 No. 2 (February 2010). http://www.YouthToday.org
- *Study: ADHD linked to pesticide exposure*. This article details the first study to ever examine the effects of pesticide exposure in the population at large and how it correlates to ADHD. http://www.cnn.com/2010/HEALTH/05/17/pesticides.adhd/index.html?hpt=T2
- *Bulletin on the Effects of Federal Legislation on the Commercial Sexual Exploitation of Children:* http://ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=250651 Examines the effects of the Trafficking and Violence Prevention Act of 2000 on the prosecution of commercial sexual exploitation of children (CSEC) cases.
- *Child's Ordeal Shows Risks of Psychosis Drugs for Young*, by Duff Wilson, *The New York Times*, http://www.nytimes.com/2010/09/02/business/02kids.html?_r=1&hp, September 1, 2010.
- CFSR Review Document, http://www.cdhs.state.co.us/childwelfare/PDFs/CFSR_Final_Report_November_2009.pdf - A review of 65 Child Welfare cases in Colorado as part of the Federal Government's assessment of child welfare services in Colorado and nationwide.
- *Trends in Foster Care and Adoption*, Chart on the statistics from FY 2002—2009: http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm

Conferences

Save the Date—The OCR Fall Conference, Sept. 13-14, 2010, Broomfield Auditorium.

NACC Conference: August, Hilton Austin, Austin, Texas Oct. 20-23, 2010

Association of Family and Conciliation Courts: Ninth Symposium on Child Custody Evaluations. Cambridge/Boston, Massachusetts. 10/28-10/30, 2010 at the Hyatt Regency. http://www.afccnet.org

2010 Annual Family Law Institute Conference- August 6-8, 2010 in Steamboat, CO. http://www.cobar.org/cle

Global Youth Justice- December 7-9, Las Vegas, NV. 2010 International Training to Establish a Youth/Teen Court. Registration opens in July. Contact Scott.Peterson@GlobalYouthJustice.org, http://www.GlobalYouthJustice.org

OFFICE OF THE CHILD'S REPRESENTATIVE

1580 Logan St., Suite 340
Denver, CO 80203

Phone: 303-860-1517
Fax: 303-860-1735
E-mail: resourcecenter@coloradochildrep.org

Check out the web site

www.Coloradochildrep.org

RFP Announcement

Three entities are involved in contract negotiations with the OCR as part of the RFP process. In Denver, the Rocky Mountain Children's Law Center and a newly founded firm consisting of Kate Radley, Gabriela Sandoval and Kelly Sutherland will be covering the three D&N divisions of Denver District Court. In Arapahoe County, Bettenberg, Sharsel and Valdez, LLC, (Alison Bettenberg, Ranee Sharshel, Maria Valdez, Tracy McGuire, Laura Dunbar, Mark Dalessandro and Dana Tartar) will be covering the majority of the D&N and delinquency cases. Congratulations to the three entities.

OCR will have a limited number of slots for conflict attorneys in both jurisdictions. Please contact Linda Weinerman or Cathleen Kendall at the OCR if you have questions about the RFP process.

OCR in Brief

- Congratulations to Howard Bartlett, the new Magistrate in Denver Juvenile Court.
- Congratulations to Liz Brodsky, GAL in Boulder. Liz received the John Marshall Pro Bono Award from the Boulder Bar Association.
- Magistrate Carolyn McLean of the 20th JD was named "Outstanding Judicial Officer by the Colorado Judicial Branch.
- Jim Bullock was honored by the 16th JD Bar Association for his work with the adult Integrated Treatment Court in La Junta.
- The following GALs were nominated by their peers for the 1st annual GAL awards: Jim Covino award- Ed Rodgers, Standing up for Kids Award- Jim Shaner, Courtroom Advocacy Award- Renee Cooper, Going the Distance Award- Danita Alderton, SuperGAL of the Year award- Ruth Acheson, Contribution to GAL Practice Award- Graham Peper. The awardees were honored at the OCR Salida Conference in May.
- The following won the Excellence in Practice Awards from the Court Improvement Committee: Boulder won the best practice court team, Colene Robinson, GAL award, Judge J. Steven Patrick won the judicial award, and Bill DeLisio won the Key to Judicial Success award.