

ADJUDICATION

Case Law Update

In Interest of K.J.B., 342 P.3d 597 (Colo. App. 2014)

- Default Adjudication – Mother participated by phone and was ordered to appear in person for ADJ Trial, she did not (although counsel did) and trial court adjudicated via default.
- Court relied on CRCP 55 which provides that a court may enter default judgment when requested by a party entitled to judgment and the other party **has failed to plead or otherwise defend.**
- When a party fails to appear for trial, the court may receive evidence in the party's absence and render judgment on the merits.

Default is not a sanction.

Default for non-appearance is not statutorily authorized in Colorado (is in other states).

In Interest of J.G., 2014 COA 182

- Re: jury instruction and special verdict forms.
- Instruction 17 and the special verdict form misstated the law and misled the jury by suggesting that the children could be deemed to be dependent and neglected without considering, for each child, the actions or omissions of each parent and each parent's availability, ability, and willingness to provide reasonable parental care.
- If properly instructed to examine the children's status in relation to each parent separately, the jury might have concluded that the children's environment was *not* injurious to their welfare because mother was available, willing, and able to provide reasonable parental care.
- And had the jury made such a determination the children could not have been adjudicated as dependent and neglected.

In Interest of S.N., 338 P.3d 508 (Colo. App. 2014)

Summary Judgment/Prospective Harm

History:

- (1) The Court of Appeals held that the question of prospective harm is inappropriate for summary judgment because prior conduct *alone* can never be sufficiently predictive of future conduct to take the question from a trier of fact by summary judgment.
- (2) The Supreme Court disagreed with the COA analysis. It concluded that holding that prospective harm is purely a factual question is incorrect. The material evidentiary facts, not the ultimate legal conclusion, must be undisputed in order for a court to grant summary judgment. Trial courts should evaluate whether to grant summary judgment in a dependency and neglect adjudication involving prospective harm on a case-by-case basis.

When applying a case-by-case analysis, courts can use traditional summary judgment standards because a dependency and neglect case alleging prospective harm is no different from any other case involving a mixed question of fact and law. The court must determine whether the material facts are disputed. If the material facts are undisputed, the court must apply the statute to the facts and determine whether reasonable minds can draw differing inferences.

In Interest of S.N., 338 P.3d 508 (Colo. App. 2014)

Summary Judgment/Prospective Harm

ON REMAND:

- (3) On remand, the Court of Appeals ruled that trial courts began with a review of the procedural framework for adjudicatory trials in the Children's Code and traditional summary judgment standards. Courts must then determine whether the "underlying material facts are undisputed" and, if they are, "apply the [dependency and neglect] statute to the facts and determine whether reasonable minds can draw differing inferences."
- COA looks at (a) are material facts undisputed? (b) could reasonable minds draw differing inferences? Ultimately SJ denied and COA remanded for ADJ trial.

In Interest of M.C.S., 327 P.3d 360

- Subject child must be under the age of 18 for the court to have subject matter jurisdiction to adjudicate the child dependent or neglected.
- *However jurisdiction can continue to 21 after adjudication.*

In the Interest of A.W., 14CA1934

Two Issues:

- (1) Court denied a continuance when witness was not available because Mother did not show due diligence re: procuring the witness.
 - Importance of subpoenas
 - (2) Court allowed evidence of Mother's prior terminations - because mother's acts in a prior dependency and neglect case were used to predict whether A.W. would be exposed to an injurious environment, and were relevant to the jury determining A.W.'s status as dependent and neglected.
- Court held that neither CRE 404(b) nor the four-part *Spoto* test applied to this case.
- Court denied a CRE 403 issue because the trial court gave a limiting instruction which protected use of mother's prior acts from improper purpose

In the Interest of S.T., 14CA2347

- Father won Adjudicatory trial, yet trial court granted APR to maternal grandparents through D&N on grounds that child was adjudicated as to mother and essentially didn't know father who resided out of state and who had not exercised physical custody of the child.
- DHS and GAL supported placement with grandparents on grounds that adjudication against mother was sufficient because she had physical custody of the child (status of child/best interests argument).
- COA ruled that once father prevailed at Adjudicatory hearing the Juvenile Court lost subject matter jurisdiction to enter APR order. COA vacated APR order granted to grandparents, and ordered that when adjudication is not granted, the Petition must be dismissed and all restrictions and temporary orders must be discharged.
- *Query:* What happens in real life? If the Petition is dismissed, and all restrictions/temporary orders are discharged, with no custody ruling, the mother (who was the at-fault parent and who had entered an admission to the petition) now has an equal right to custody with the father, who was not adjudicated. This is kind of a big hole in the process, because there is no third party to ensure that father files for APR or takes custody of the child.
- **Practice Tip:** In negotiation/mediation with not-at-fault parent, request the parent to file for APR in DR court prior to agreeing to dismiss the Petition.