2008 COLORADO SUMMIT ON CHILDREN, YOUTH AND FAMILIES

SURVEY OF CASE LAW PERTAINING TO THE COLORADO CHILDREN'S CODE

(January 1, 2007 to May 16, 2008)

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In the little world in which children have their existence,
whosoever brings them up,
there is nothing so finely perceived and so finely felt,
as injustice.

Charles Dickens, **Great Expectations** (1861)

I. DEPENDENCY OR NEGLECT

A. Initial Proceedings

Temporary Protective Custody: In People ex rel A.E.L. and K.C-M., ___ P.3d ___, 2008 WL 597649 (Colo. App. 2008), a mother appealed a decree of adjudication, arguing procedural errors in the orders for temporary legal custody. The police conducted a welfare check on the mother's home and found pipes and a powdery substance apparently belonging to the mother's live-in boyfriend. The mother signed a safety plan placing one child with the child's father and retaining custody of her son. After the mother announced her intention to renege on the safety plan a magistrate signed an order granting temporary custody to DHS without conducting a hearing. DHS placed the children with their respective fathers. On review, the juvenile court held that the issues were moot because both children were in the custody of a parent and the children had been adjudicated after jury trial. The Court of Appeals declined to consider the issue of procedural errors, holding that temporary custody and shelter orders are not final orders subject to appeal.

B. Adjudication

Summary Judgment: The Court of Appeals addressed a conflict between CRCP 56(c) (summary judgment motions must be filed no later than 85 days before trial) and CRS 19-3-505(3) (adjudicatory hearings must be held no later than 60 days after service of process for children under 6) in People ex rel. A.C., 170 P.3d 844 (Colo. App. 2007). Pursuant to CRCP 81(a), the Court held that the statute controls and the trial court did not err in permitting DHS to file a motion for summary judgment 21 days before the adjudicatory hearing.

Evidence; Exclusionary Rule; Due Process: In People ex rel A.E.L. and K.C-M., ___ P.3d ___, 2008 WL 597649 (Colo. App. 2008), a mother appealed a decree of adjudication arguing that the juvenile court should have suppressed evidence found by police during a welfare check of her home. Based on reports of drug use by the mother's live-in boyfriend, the police conducted a welfare check on the mother's home and found pipes and a powdery substance. The police destroyed those items without conducting any testing. In a case of first impression the Court of Appeals affirmed the juvenile court's denial of the mother's motion to suppress evidence of the pipes and powdery substance. In determining whether the exclusionary rule applies to a civil case courts must weigh the deterrent benefits of applying the rule against the societal cost of excluding relevant evidence. The Court of Appeals concluded that applying the exclusionary rule in D&N cases would result in too great a societal cost. The Court of Appeals also rejected the mother's argument that she was denied procedural due process of law. In D&N cases due process requires that parents be given notice of the proceedings, an opportunity to be

heard (i.e., presenting evidence and cross-examining witnesses), and the assistance of counsel. The mother was afforded those rights.

C. Disposition & Treatment Plans

Self Incrimination; Privileged Communications; CRS 19-3-207(2): In a case involving underlying allegations of sexual abuse, the Court of Appeals rejected a father's challenge to a treatment plan. People ex rel I.L., 176 P.3d 878 (Colo. App. 2007). The father was accused of sexually abusing his 16 year old daughter. While criminal charges were pending the father admitted that the child's environment was injurious. The proposed treatment plan required the father to participate in a sex offender evaluation and a domestic violence evaluation. The father objected to the plan, arguing that it contravened his Fifth Amendment privilege against self incrimination. The trial court approved the treatment plan and the father appealed the decree of disposition. Relying on CRS 19-3-207, the Court of Appeals held that any statements made by the father during the course of evaluation or treatment were privileged and therefore the father's rights under the Fifth Amendment were not implicated. *Note:* Consider the effect of CRS 19-1-307 and CRS 19-3-308.

D. Termination of Parental Rights

Personal Jurisdiction; Service by Publication; Standing: The case of People ex rel. J.C.S., 169 P.3d 240 (Colo. App. 2007), involved the constitutionality of CRS 19-3-503(8)(b), which permits service of an absent parent by single publication. After the D&N petition was filed the mother evaded authorities for fear of arrest and incarceration for a probation violation. Service of the petition was completed by publication. The child was adjudicated. Later, DHS filed a motion for termination. Notice of termination proceedings, per CRS 19-3-602(2), was given by publication. The mother filed a motion to set aside the order of adjudication and dismiss the motion for termination, arguing that the single publication statute is unconstitutional. The trial court denied the motion. After hearing, the trial court terminated the mother's parental rights. The Court of Appeals dismissed the mother's appeal, holding that the mother lacked standing to raise a due process challenge to the publication statute. Standing is jurisdictional and requires a showing of injury in fact. To establish standing, the mother was required to show that she lacked actual notice of her legal rights because of the manner in which notice was given. Her lack of notice resulted from her actions in concealing herself.

Subject Matter Jurisdiction; Prompt Hearing; Invited Error: In People ex rel. T.E.H., 168 P.3d 5 (Colo. App. 2007), the Court of Appeals rejected the parents' jurisdictional challenge to a termination order. The Court acknowledged that CRS 19-3-602(1) requires the court to conduct a termination hearing within 120 days after filing of the motion but rejected the parents' challenge to subject matter jurisdiction for several reasons: (1) The motion was held in abeyance by agreement of the parties to continue reasonable efforts; (2) the motion was revived after those efforts were unsuccessful and

the hearing was conducted within 120 days of its revival; and (3) the parents did not object to the delay until bringing their appeal. The Court of Appeals also rejected the mother's contention that the trial court lacked jurisdiction because it failed to conduct a dispositional hearing after revoking the parents' continued adjudication. CRS 19-3-505(5). The Court held that approval of the initial treatment plan under the continued adjudication was sufficient and the trial court was not required to adopt a subsequent, amended treatment plan. *Cf.*, People ex rel. D.R.W., 91 P.3d 453 (Colo. App. 2004). In People ex rel. D.M., ___ P.3d ___, 2008 WL 1745809 (Colo. App. 2008), the Court of Appeals revisited the time constraints of CRS 19-3-602(1). The Court affirmed an order terminating a mother's parental rights, concluding that the statutory deadline is not jurisdictional and that the trial judge's failure to make express findings that good cause existed to delay the proceedings in the best interests of the children did not require reversal. The Court noted that valid reasons for delay were apparent from the record (continuances were granted to complete paternity testing of putative fathers) and the mother did not object to the continuances.

Uniform Child Custody Jurisdiction and Enforcement Act: In People ex rel. D.P., 181 P.3d 403 (Colo. App. 2008), a father appealed a judgment terminating his parental rights. In 2002 a Rhode Island court awarded joint custody of the child to his mother and father. In May 2006 the child, who was then in the care of his mother and residing in Colorado, was adjudicated D&N. The father, a Rhode Island resident, admitted that the child was homeless, without proper care, and not domiciled with a parent. DHS filed its motion to terminate after the father failed to comply with his treatment plan. The father then brought proceedings in Rhode Island to modify custody and enjoin further court proceedings in Colorado. After conducting a hearing the Rhode Island court concluded that jurisdiction was proper in Colorado and dismissed the father's motion. The Colorado court subsequently terminated the father's parental rights. On appeal, the father argued that the trial court lacked jurisdiction because it did not comply with the procedures set forth in the UCCJEA. The father first argued that the trial court did not make a record of its telephone communications with the Rhode Island court. The Court of Appeals rejected this argument, noting that the required record may be "a memorandum or an electronic record made by a court after the communication." The Court of Appeals concluded that this requirement was met because the Rhode Island court made a transcript of its hearing on the father's motion and entered a minute order concerning that hearing and there was no showing that the father was denied access to that record. The father also argued that the trial court erred in allowing a law clerk to conduct the telephone conference with the Rhode Island court. The Court of Appeals agreed but concluded that the error was harmless because the father had not demonstrated prejudice.

Appropriate Treatment Plan; Reasonable Efforts; Waiver or Acquiescence: In People ex rel. D.P., 160 P.3d 351 (Colo. App. 2007), the Court of Appeals held that parents who failed to object to a treatment plan during the dispositional hearing and who did not seek amendments to the plan during review hearings waived appellate review of claim that plan was not appropriate. The Court also held that the mother waived appellate review of

reasonable efforts by not objecting to the sufficiency of services provided to her during review hearings.

No Appropriate Treatment Plan Can be Devised; Emotional Illness: In People ex rel. K.D., 155 P.3d 634 (Colo. App. 2007), the Court of Appeals affirmed a TPR order in which the trial court concluded that no appropriate TP could be devised based on the father's emotional illness. In K.D. a therapist testified that the father suffered from a personality disorder, the precise nature of which could not be determined without further testing, and exhibited a broad range of emotional impairments including substance abuse. The Court of Appeals determined that "mental illness" and "emotional illness" have different meanings. A finding of "emotional illness" does not require evidence of a specific diagnosis; rather, the evidence is sufficient if it shows that a parent has "longstanding emotional conditions that render him unable to provide for the needs of his children." See, CRS 19-3-60O4(1)(b)(I).

Reasonable Compliance with TP: The Court of Appeals reversed a decree terminating a father's parental rights because the father had not been given a reasonable period of time to comply with a treatment plan in People ex rel. D.Y., 176 P.3d 874 (Colo. App. 2007). The child was removed from the mother's care in October 2006, shortly after birth, because of signs of cocaine exposure *in utero*. A treatment plan was approved in early March 2007. In late March 2007, DHS filed a motion to terminate parental rights. At the termination hearing in June 2007, the father argued that he had not been given sufficient time to comply with his treatment plan. The trial court terminated parental rights and the father appealed. In reversing the trial court, the Court of Appeals noted that DHS proceeded as if there was no treatment plan. The plan might have been successful had the father been allowed sufficient time to comply.
However, in People ex rel. S.M.A.M.A., 172 P.3d 958 (Colo. App. 2007), the Court of Appeals affirmed a termination decree even though the mother partially complied with the treatment plan. The Court also held that the mother's failure to address her mental health disability was attributable to her noncompliance with treatment, not the unavailability of treatment services.

Parental Unfitness; Successful Treatment Plan; Likelihood of Achieving Parental Fitness; Standing: In People ex rel. D.P., 160 P.3d 351 (Colo. App. 2007), the Court of Appeals discussed factors to weigh in determining whether a parent is unfit, whether a parent is likely to attain fitness within a reasonable period of time, and whether or not a treatment plan has been successful. An unfit parent is one whose conduct or condition renders him/her unable to provide reasonable parental care. A treatment plan is successful if it renders a parent fit to provide reasonable parental care. Success is not equivalent to substantial compliance or improvement in parenting skills. Parents are responsible for complying with and securing the success of a TP. In determining whether a parent is likely to become fit within a reasonable time, a court may consider any changes in parental conduct or condition during the proceedings, the parent's social history, the chronic or long-term nature of the parents' conduct or condition (*e.g.*,

intellectual functioning and mental health); and the child(ren)'s needs. See, CRS 19-3-604(c)(III) (conduct or condition unlikely to change within a reasonable period of time). See also, People ex rel. J.A.S., 160 P.3d 257 (Colo. App. 2007), concerning TP compliance and success. In J.A.S., the Court of Appeals also held that the mother lacked standing to challenge, on appeal, a trial court's finding that the father was unfit and unlikely to change within a reasonable period of time.

Less Drastic Alternatives: On the topic of less drastic alternatives see, People ex rel. J.A.S., 160.3d 257 (Colo. App. 2007); People ex rel. D.P., 160 P.3d 351 (Colo. App. 2007); and People ex rel. Z.P., 167 P.3d 211 (Colo. App. 2007).

Evidence: Admission of a parent's CBI criminal history was not reversible error. People ex rel. J.A.S., 160 P.3d 257 (Colo. App. 2007).

Effective Assistance of Counsel: In People ex rel. C.H., 166 P.3d 288 (Colo. App. 2007), the Court of Appeals remanded a case for an evidentiary hearing on the issue of whether a mother had been deprived of effective assistance of counsel during a parental rights termination hearing. The mother contended that she did not receive effective assistance of counsel because her trial attorney failed to call her therapist as a witness without making an informed strategic decision to do so. The mother's appellate counsel submitted an offer of proof in support of the allegation in the mother's petition on appeal. The Court of Appeals concluded that the offer of proof was sufficient to make a *prima facie* case for ineffective assistance of counsel and remanded the case for further proceedings.
In contrast, in People ex rel. Z.P., 167 P.3d 211 (Colo. App. 2007), a father's claim of ineffective assistance of counsel was rejected. Two attorneys for the father were permitted to withdraw before termination proceedings, leaving the father without counsel at the termination hearing. The Court of Appeals held that the father waived his right to counsel because he did not object to his attorneys' motions to withdraw and did not ask for appointment of substitute counsel.

ICWA, Tribal Notice: In People ex rel. J.A.S., 160 P.3d 257 (Colo. App. 2007), a trial court properly found that ICWA did not apply. Several tribes were notified; each concluded that the children were not eligible for membership. The trial court did not abuse its discretion in denying the mother's request for a continuance to contact the tribes. Eligibility for tribal membership is not defined by ICWA; each tribe sets its own membership criteria to determine if a child is enrolled or eligible for enrollment. However, notice was found to be deficient in People ex rel. J.O., 170 P.3d 840 (Colo. App. 2007). There, the father claimed to be ¼ Apache, though not registered with a tribe. The mother did not claim Native American ancestry. DHS sent notice to the Bureau of Indian Affairs. BIA responded, indicating that the information was insufficient to identify tribal affiliation. Later, DHS filed a termination motion and sent notice to BIA. At the termination hearing the father appeared and confessed the motion and the mother did not appear. The trial court determined that ICWA did not apply and terminated

parental rights of both parents. The mother appealed, arguing that DHS did not comply with ICWA's notice requirements. The Court of Appeals concluded that the father had provided sufficiently reliable information to require further inquiry regarding the child's tribal heritage and notice to Apache tribal authorities. The department's notice to BIA was deficient in that it was not sent via registered mail, the motion to terminate was not attached, the notice did not specify the father's claim of Apache tribal heritage, and the notice did not contain an advisement of the tribe's right to intervene. The case was reversed and remanded for further proceedings to determine if the child was an Indian child. See also, B.H. v. People ex rel. X.H., 138 P.3d 299 (Colo. 2006) (maternal grandmother's assertion of Cherokee ancestry during a TPR hearing and acknowledgement of that assertion in a previously filed DHS report constituted "sufficiently reliable information" to trigger the notice provisions of ICWA).

ICWA; Active Efforts; No Appropriate Treatment Plan Can be Devised: In People ex rel. K.D., 155 P.3d 634 (Colo. App. 2007), the Court of Appeals considered the "active efforts" requirement of ICWA, which is a condition precedent to bringing a motion for TPR. The tribe intervened in the case. The tribe did not contest adjudication and requested that the father not be offered another TP. DHS alleged and the trial court found, after hearing, that no appropriate TP could be devised to address the father's emotional illness. The Court of Appeals affirmed, holding that, despite denial of services in the present case, "active efforts" had been made to prevent the breakup of the Indian family because substantial, but unsuccessful, services had been provided to the father in 2 previous D&N cases and there was no reason to believe that additional services would prevent TPR.

ICWA; Qualified Expert Witness: In People ex rel K.D., *supra*, the Court of Appeals also considered the sufficiency of expert testimony. The Court noted that ICWA requires testimony from a "qualified expert witness." While Department of Interior Guidelines suggest that a person with specialized knowledge of Indian culture and society is most likely to meet that standard, specialized social and cultural knowledge is not required if the motion is based on culturally neutral reasons—in this case, the father's emotional illness (personality disorder and substance abuse) and the likely effects of placing the child with the father.

E. Appeals

C.A.R. 3.4, Timely Notice of Appeal: Under CRCP 5(b)(2)(D), delivery of an order terminating parental rights to a attorney's courthouse mailbox is equivalent to service by mail; therefore, under CRCP 6(e) and CAR 26(c), 3 days are added to the time in which a notice of appeal must be filed. People ex rel. S.M.A.M.A., 172 P.3d 958 (Colo. App. 2007).

Withdrawal of Appellate Counsel; Anders Briefs: During an appeal from a termination order, respondent mother's counsel filed a motion to withdraw with the Court of Appeals,

alleging that there were no viable grounds to appeal. The Court of Appeals denied the motion but granted counsel leave to file a petition under Anders v. California, 386 U.S. 738 (1967). Counsel then filed a noncompliant petition on appeal stating that there were no viable legal or factual grounds for appeal. Noting that noncompliance with CAR 3.4(g)(3) could result in dismissal of the appeal, the Court of Appeals nevertheless ordered counsel to either renew the motion to withdraw by filing an Anders brief or file a petition that complied with CAR 3.4(g)(3). Counsel then filed a compliant petition on appeal. Ultimately, the termination order was affirmed. People ex rel. D.M., ___ P.3d ___, 2008 WL 1745809 (Colo. App. 2008).

II. JUVENILE DELINQUENCY

Direct Filings; Minimum Age; Non-enumerated Crimes; Sentencing Discretion: The Supreme Court resolved an ambiguity in a former version of the direct filing statute and determined, for the statute to apply, a child must be at least 14 years of age at the time of the delinquent act. Bostelman v. People, 162 P.3d 686 (Colo. 2007). At age 13, Bostelman committed the offense of burglary. The district attorney charged him as an adult after his 14th birthday. He was later convicted and sentenced as an adult. The Court of Appeals affirmed the conviction and sentence. The Supreme Court reversed, holding that the prosecution did not have authority to charge him as an adult and the district court did not have authority to sentence him as an adult. See, CRS 19-2-517(1), (3)(c).
In People v. Vickers, 168 P.3d 9 (Colo. App. 2007), the Court of Appeals vacated sentence and remanded for a new sentencing hearing, holding that the trial court erred in concluding that it was required to impose an adult sentence. Vickers, who was 17 when she committed her offenses, was originally charged as an adult. She accepted a plea bargain and pled guilty to criminally negligent homicide and first degree criminal trespass, neither of which are enumerated offenses under the direct filing statute. The trial judge imposed an adult sentence. On appeal, the Court of Appeals held that the trial court had discretion to impose either a juvenile sentence or an adult criminal sentence and remanded for a new sentencing hearing. See, Flakes v. People, 153 P.3d 427 (Colo. 2006), for a discussion of pertinent factors for a trial court to consider in determining whether it should impose an adult sentence or a juvenile sentence: "[1] the interests of the juvenile and the community in imposing either a juvenile or adult sentence, [2] the nature and seriousness of the offense including the use of weapons, [3] the age and relative maturity of the juvenile, [4] any criminal or delinquent history, and [5] the impact of the offense on the victim and on the community. "

Review of Magistrate's Order of Adjudication; Untimely Petition for Review: In People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007), the Court of Appeals remanded for reconsideration of a district court order denying an untimely request for review of a magistrate's order adjudicating M.A.M. a juvenile delinquent. The issue was whether counsel's inexcusable neglect in filing a notice of appeal with the Court of Appeals, instead of filing a petition for district court review, constituted good cause to consider the

juvenile's untimely petition for review. The Court of Appeals remanded for consideration of relevant factors including potential prejudice to the juvenile, the interests of judicial economy, the propriety of requiring the juvenile to pursue other remedies for his attorney's neglect, and how the late filing would prejudice the prosecution.

Restitution; Discharge in Bankruptcy: The Tenth Circuit held that a restitution order entered in a juvenile delinquency case is dischargeable in bankruptcy because, under federal law, juvenile delinquency is a status, not a criminal conviction. In re Sweeney, 492 F.3d 1189 (10th Cir. 2007).

III. ADOPTION

Standing to Petition for Adoption; Temporary Guardianship: In the case of In re Adoption of K.L.L. ex rel. V.M.D., 160 P.3d 383 (Colo. App. 2007), the Court of Appeals considered issues arising from a petition to adopt brought by court appointed guardians of a child. The child was born in S.D., 8/03. Shortly thereafter, the parents placed the child temporarily with father's aunt in CO. The aunt then placed the child with the petitioners. The petitioners were appointed emergency guardians in a Probate Code proceeding. Subsequently, the probate court appointed petitioners temporary guardians for a period of 6 months. The parents were notified of initial guardianship proceedings. Later, the probate court granted the petitioners' ex parte application for extension of their appointment as temporary guardians. The parents were not notified of the motion to extend the temporary guardianship. In May 2005, petitioners filed a petition for adoption in juvenile court, relying on C.R.S. 19-5-203(1)(k) (child is available for adoption upon submission of an affidavit of a legal guardian or legal custodian who has had the child in his/her custody or guardianship for one year or more, alleging that a child has been abandoned by birth parents). The parents objected. After a contested hearing the trial court granted the adoption and terminated the parental rights of the parents. The parents appealed. The Court of Appeals reversed and remanded, holding: (1) The trial court had jurisdiction to consider the adoption per C.R.S. 19-5-201; (2) the UCCJEA does not apply to adoption proceedings; (3) the order of the probate court extending the temporary guardianship was void for lack of notice to the parents; and (4) the juvenile court therefore erred in granting the adoption because the petitioners lacked standing to petition for adoption—they were neither legal custodians nor legal guardians when they sought to adopt the child.

ICWA Applied to Stepparent Adoptions: In a matter of first impression, the Court of Appeals applied ICWA to a stepparent adoption. In re N.B., ___ P.3d ___, 2007 WL 2493906 (Colo. App. 2007). There, the Court of Appeals affirmed the dismissal of a stepparent adoption petition. The child was born of two Native American parents. The parents separated and the child remained in the care of the father. The mother rarely saw the child and provided no child support. Later, the father married. After several years of marriage the stepmother petitioned to terminate the mother's parental rights and to adopt

the child. Appropriate tribes were notified of the proceedings. After a hearing, the trial court found that the mother had abandoned the child but concluded that "active efforts" had not been made to prevent the breakup of the Indian family and therefore denied the petition. The stepmother appealed, arguing that ICWA does not apply to stepparent adoptions or to adoptions in which the child remains with a biological parent. The Court of Appeals affirmed the trial court's decision, concluding: (1) ICWA applies in stepparent adoption cases; (2) ICWA applies, even though the child would remain in the custody of one biological parent if the petition were granted; (3) the "existing Indian family exception" (*i.e.*, ICWA should apply only to the removal of Indian children who were members of an Indian home and participated in Indian culture), created by the Kansas Supreme Court, should not be adopted in Colorado; (4) ICWA is constitutional; and (5) even a private petitioner is required to show that "active efforts" were made.

Adoption Subsidies: In Sapp v. El Paso County Dept. of Human Services, ___ P.3d ___, 2008 WL 451750 (Colo. App. 2008), the Court of Appeals affirmed the denial of adoptive grandparents' request for nonrecurring adoption expenses and adoption assistance payments. The main issue on appeal was whether the administrative law judge (ALJ) erred in determining that the children were "special needs" children. The Court of Appeals held that the ALJ's decision was supported by the record and that the ALJ did not err in applying the statutory and regulatory definition of "special needs" contained in CRS 26-7-101(2), as opposed to the federal definition of that term.

Parental Responsibility Order as a Prelude to Adoption; Duty of Support: In the case of Marriage of Rodrick, 176 P.3d 806 (Colo. App. 2007), the Court of Appeals concluded that a husband was obligated to provide child support for a child for whom the husband and wife had been awarded parental responsibility. Husband and wife were married in 1996. In 1999 they accepted an offer to raise a friend's child. The child was placed with them on his date of birth. The parents signed a power of attorney delegating parental authority over the child to husband and wife. In 2001, husband and wife petitioned for and were granted parental responsibility for the child. They intended to adopt the child and obtaining legal custody of the child was a step toward that goal. In 2003 husband and wife separated and filed for dissolution of marriage. At the permanent orders hearing the husband argued that the child was a ward and therefore he had no duty to pay child support. The trial court awarded child support and the husband appealed. The Court of Appeals affirmed, concluding that the APR order was not a guardianship order but in the nature of a prelude to a custodial adoption under CRS 19-5-203(1)(k) (adoption petitioners have been legal custodians of a child for a period of 1 year or more). Because the APR order made husband and wife legal custodians with parental responsibilities they were mutually responsible to support the child.

IV. MISCELLANEOUS

Access to DHS Records of Child Abuse or Neglect: The case of People v. Jowell, ___ P.3d ___, 2008 WL 191485 (Colo. App. 2008), involved disclosure of social services records to a criminal defendant. Jowell appealed his convictions on two counts of sexual assault on a child, arguing that the trial judge erred in withholding disclosure of certain DHS records. Applying CRS 19-1-307, the Court of Appeals held that a criminal defendant is not entitled to receive any child abuse or neglect records directly from DHS. Instead, a defendant seeking disclosure of such records must file an appropriate motion in which the defendant identifies the type of information sought, explains why disclosure of the information is necessary, and requests the trial court to conduct an *in camera* review of the records to determine if public disclosure is necessary to resolve a material issue in the case. The Court of Appeals concluded that, because the trial court conducted an *in camera* review on its own motion (defendant did not make such a request) and released certain documents to defendant, no error occurred. Jowell also argued that the trial court erred in failing to grant pretrial disclosure of a caseworker's report that was first disclosed during trial. The Court of Appeals agreed that the report should have been disclosed but found that the error was harmless because Jowell did not show that his case was prejudiced by the late disclosure.

Stepparent Visitation; Standing to Request Parenting Time; Psychological Parent; Due Process: In re C.T.G., 179 P.3d 213 (Colo. App. 2007), involved stepparent visitation rights arising out of a paternity action brought in Minnesota. The Minnesota court granted joint legal custody to biological mother and father and temporary visitation rights to stepfather. The mother and stepfather divorced. Later, the biological parents moved to Colorado with the child. The stepfather continued to visit the child in Colorado. Jurisdiction was transferred from Minnesota to Colorado and the biological parents filed a motion to terminate the stepfather's visitation rights. The trial court denied the motion, finding that the stepfather was a psychological parent and that granting the motion would hinder the child's emotional development. The Court of Appeals reversed and remanded with directions to grant the parent's motion to terminate stepparent visitation rights. The Court held that the stepfather lacked standing to seek parenting time because the conditions of CRS 14-10-123(1) were not met; *i.e.*, the step father failed to show (1) he had physical care of the child for a period of six months and (2) he commenced the action for parenting time within six moths of the termination of that period of care. The Court declined to apply the psychological parent doctrine in a manner that would contradict the statutory criteria. The Court also distinguished In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004), because, in that case, both same-gender, co-parents of an adopted child met the statutory criteria for standing. The Court also held that the Minnesota order granting visitations to the stepfather were temporary in nature and, therefore, the trial court erred in applying the endangerment standard rather than the best interest standard. Finally, the Court concluded that the parents were deprived of due process rights because the trial court did not apply the presumption that the parents' decision was in the best interest of the child and did not require the stepfather to prove by clear and convincing evidence that special circumstances existed which justified intrusion on the parents' rights.

Probate Court vs. Juvenile Court Jurisdiction: In J.C.T. v. Three Affiliated Tribes, 155 P.3d 452 (Colo. App. 2006), the Court of Appeals determined that the probate court exceeded its jurisdiction by exercising jurisdiction over matters exclusively vested in the juvenile court. J.C.T. was born in Colorado in 1997 to a teenage mother. With the mother's consent, C.A.H. was appointed guardian of J.C.T. by a Colorado probate court. C.A.H. married and moved to Georgia in 2002. Four years later, C.A.H.'s mother and stepfather, who lived in Colorado, brought proceedings in Georgia to obtain custody of J.C.T. and C.A.H.'s daughter. The Georgia court deferred jurisdiction over J.C.T. to the Colorado probate court. The probate court appointed a GAL, suspended C.A.H.'s appointment as guardian, and appointed C.A.H.'s mother and stepfather temporary guardians of J.C.T. The Tribes intervened but the magistrate found good cause not to transfer jurisdiction to the tribal court and the Tribes did not appeal that ruling. In 2004, upon motion of the GAL, the appointment of C.A.H.'s mother (her stepfather had died) was suspended and A.B. was appointed temporary substitute guardian. In 2005, the GAL filed motions to restrict both C.A.H.'s and A.B.'s contact with the child. After hearing, the probate court terminated A.B.'s appointment as substitute guardian, declared J.C.T. to be a ward of the state, denied C.A.H.'s petition for reappointment, and appointed the GAL as "guardian designee". The probate court also ordered the parties to make J.C.T. available for a weekend visit with a family that was interested in adopting him. C.A.H. appealed the orders terminating her previously suspended appointment as guardian. The Court of Appeals vacated the probate court's orders, holding: (1) The probate court exceeded its jurisdiction by conducting what amounted to *de facto* adoption proceedings; (2) neither the probate court nor the GAL was legally authorized to serve as J.C.T.'s guardian or "guardian designee"; (3) since J.C.T. was not domiciled with a parent or legally authorized guardian at the time of the probate court's orders, grounds existed to refer the matter to the juvenile court for exercise of its jurisdiction over dependent or neglected children. The Supreme Court reversed and remanded with instructions to reinstate the order of the probate court. In re J.C.T., 176 P.3d 726 (Colo. 2007). The Supreme Court determined that the probate court did not exceed its jurisdiction by directing the GAL to find a permanent guardian for J.C.T. or by considering a potential adoptive placement for the child. Furthermore, appointing the GAL as temporary guardian for the child, where no other placement was available, did not divest the probate court of jurisdiction.

Appointment of DHS as Guardian: The case of In re Estate of Morgan, 160 P.3d 356 (Colo. App. 2007), involved guardianship of an incapacitated 20 year old who was formerly adjudicated D&N. On petition of the GAL who served in the D&N case, the district court appointed El Paso County DHS as permanent guardian over its objection. DHS appealed and the Court of Appeals reversed, holding: A department of human services can be appointed guardian of an incapacitated person, even though departments do not appear on the statutory priority list for such appointment, but a department cannot be compelled to accept such an appointment. The decision to provide such services is in the discretion of DHS.

Abortion; Waiver of Parental Notification: The Court of Appeals affirmed a trial court order denying a 16 year old petitioner's request for waiver of parental notification concerning a proposed abortion. In re Doe, 166 P.3d 293 (Colo. App. 2007). The trial court found that the petitioner lacked maturity to decide whether to have an abortion based on her unwillingness to communicate with her mother or to consult with other adults, her focus on her own needs, and her failure to discuss the matter with a physician. The Court of Appeals affirmed, concluding that the record supported the trial court's decision.

TABLE OF CASES

People ex rel. D.P., 181 P.3d 403 (Colo. App. 2008)

People ex rel. D.R.W., 91 P.3d 453 (Colo. App. 2004)

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