§ 14-10-124. Best interests of child.

Colorado Statutes

Title 14. DOMESTIC MATTERS

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

Article 10. Uniform Dissolution of Marriage Act

Current through Chapter 420 of the 2014 Legislative Session

§ 14-10-124. Best interests of child

(1) **Legislative declaration.** While co-parenting is not appropriate in all circumstances following dissolution of marriage or legal separation, the general assembly finds and declares that, in most circumstances, it is in the best interest of all parties to encourage frequent and continuing contact between each parent and the minor children of the marriage after the parents have separated or dissolved their marriage. In order to effectuate this goal when appropriate, the general assembly urges parents to share the rights and responsibilities of child-rearing and to encourage the love, affection, and contact between the children and the parents.

(1.3) **Definitions.** For purposes of this section and section 14-10-129(2) (c), unless the context otherwise requires:

(a) "Domestic violence" means an act of violence or a threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship, and may include any act or threatened act against a person or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(b) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both parents of the same child regardless of whether the persons have been married or have lived together at any time.

(c) "Sexual assault" has the same meaning as set forth in section 19-1-103 (96.5), C.R.S.

(1.5) **Allocation of parental responsibilities.** The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child giving paramount consideration to the child's safety and the physical, mental, and emotional conditions and needs of the child as

follows:

(a) **Determination of parenting time.** The court, upon the motion of either party or upon its own motion, may make provisions for parenting time that the court finds are in the child's best interests unless the court finds, after a hearing, that parenting time by the party would endanger the child's physical health or significantly impair the child's emotional development. In addition to a finding that parenting time would endanger the child's physical health or significantly impair the child's emotional development, in any order imposing or continuing a parenting time restriction the court shall enumerate the specific factual findings supporting the restriction and may enumerate the conditions that the restricted party could fulfill in order to seek modification in the parenting plan. When a claim of child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child was conceived as a result of the sexual assault has been made to the court, or the court has reason to believe that a party has committed child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child was conceived as a result of the sexual assault, prior to determining parenting time, the court shall follow the provisions of subsection (4) of this section. In determining the best interests of the child for purposes of parenting time, the court shall consider all relevant factors, including:

(I) The wishes of the child's parents as to parenting time;

(II) The wishes of the child if he or she is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule;

(III) The interaction and interrelationship of the child with his or her parents, his or her siblings, and any other person who may significantly affect the child's best interests;

(IV) The child's adjustment to his or her home, school, and community;

(V) The mental and physical health of all individuals involved, except that a disability alone shall not be a basis to deny or restrict parenting time;

(VI) The ability of the parties to encourage the sharing of love, affection, and contact between the child and the other party; except that, if the court determines that a party is acting to protect the child from witnessing domestic violence or from being a victim of child abuse or neglect or domestic violence, the party's protective actions shall not be considered with respect to this factor;

(VII) Whether the past pattern of involvement of the parties with the child reflects a system of values, time commitment, and mutual support;

(VII The physical proximity of the parties to each other as this relates to the

I) practical considerations of parenting time;

(IX) and (X) Repealed.

(XI) The ability of each party to place the needs of the child ahead of his or her own needs.

(b) **Allocation of decision-making responsibility.** The court, upon the motion of either party or its own motion, shall allocate the decision-making responsibilities between the parties based upon the best interests of the child. In determining decision-making responsibility, the court may allocate the decision-making responsibility with respect to each issue affecting the child mutually between both parties or individually to one or the other party or any combination thereof. When a claim of child abuse or neglect or domestic violence has been made to the court, or the court has reason to believe that a party has committed child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child in question was conceived as a result of the sexual assault, prior to allocating decision-making responsibility, the court shall follow the provisions of subsection (4) of this section. In determining the best interests of the child for purposes of allocating decision-making responsibilities, the court shall consider, in addition to the factors set forth in paragraph (a) of this subsection (1.5), all relevant factors including:

(I) Credible evidence of the ability of the parties to cooperate and to make decisions jointly;

(II) Whether the past pattern of involvement of the parties with the child reflects a system of values, time commitment, and mutual support that would indicate an ability as mutual decision makers to provide a positive and nourishing relationship with the child;

(III) Whether an allocation of mutual decision-making responsibility on any one or a number of issues will promote more frequent or continuing contact between the child and each of the parties;

(IV) and (V) Repealed.

(1.7) Pursuant to section 14-10-123.4 , children have the right to have the determination of matters relating to parental responsibilities based upon the best interests of the child. In contested hearings on final orders regarding the allocation of parental responsibilities, the

court shall make findings on the record concerning the factors the court considered and the reasons why the allocation of parental responsibilities is in the best interests of the child.

(2) The court shall not consider conduct of a party that does not affect that party's relationship to the child.

(3) In determining parenting time or decision-making responsibilities, the court shall not presume that any person is better able to serve the best interests of the child because of that person's sex.

(3.5) A request by either party for genetic testing shall not prejudice the requesting party in the allocation of parental responsibilities pursuant to subsection (1.5) of this section.

(4) (a) When a claim of child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child was conceived as a result of the sexual assault has been made to the court, or the court has reason to believe that a party has committed child abuse or neglect, domestic violence, or sexual assault that resulted in the conception of the child, prior to allocating parental responsibilities, including parenting time and decision-making responsibility, and prior to considering the factors set forth in paragraphs (a) and (b) of subsection (1.5) of this section, the court shall consider the following factors:

(I) Whether one of the parties has committed an act of child abuse or neglect as defined in section 18-6-401 , C.R.S., or as defined under the law of any state, which factor must be supported by a preponderance of the evidence. If the court finds that one of the parties has committed child abuse or neglect, then it shall not be in the best interests of the child to allocate mutual decision-making with respect to any issue over the objection of the other party or the legal representative of the child.

(II) Whether one of the parties has committed an act of domestic violence, has engaged in a pattern of domestic violence, or has a history of domestic violence, which factor must be supported by a preponderance of the evidence. If the court finds by a preponderance of the evidence that one of the parties has committed domestic violence:

(A) It shall not be in the best interests of the child to allocate mutual decision-making responsibility over the objection of the other party or the legal representative of the child, unless the court finds that there is credible evidence of the ability of the parties to make decisions cooperatively in the best interest of the child in a manner that is safe for the abused party and the child; and

(B) The court shall not appoint a parenting coordinator solely to ensure

that mutual decision-making can be accomplished.

(III) Whether one of the parties has committed an act of sexual assault resulting in the conception of the child, which factor must be supported by a preponderance of the evidence. If the court finds by a preponderance of the evidence that one of the parties has committed sexual assault and the child was conceived as a result of the sexual assault, there is a rebuttable presumption that it is not in the best interests of the child to allocate sole or split decision-making authority to the party found to have committed sexual assault or to allocate mutual decision-making between a party found to have committed sexual assault and the party who was sexually assaulted with respect to any issue.

(IV) If one of the parties is found by a preponderance of the evidence to have committed sexual assault resulting in the conception of the child, whether it is in the best interests of the child to prohibit or limit the parenting time of that party with the child.

(b) The court shall consider the additional factors set forth in paragraphs (a) and (b) of subsection (1.5) of this section in light of any finding of child abuse or neglect, domestic violence, or sexual assault resulting in the conception of a child pursuant to this subsection (4).

(c) If a party is absent or leaves home because of an act or threatened act of domestic violence committed by the other party, such absence or leaving shall not be a factor in determining the best interests of the child.

(d) When the court finds by a preponderance of the evidence that one of the parties has committed child abuse or neglect, domestic violence, or sexual assault resulting in the conception of the child, the court shall consider, as the primary concern, the safety and well-being of the child and the abused party.

(e) When the court finds by a preponderance of the evidence that one of the parties has committed child abuse or neglect, domestic violence, or sexual assault resulting in the conception of the child, in formulating or approving a parenting plan, the court shall consider conditions on parenting time that ensure the safety of the child and of the abused party. In addition to any provisions set forth in subsection (7) of this section that are appropriate, the parenting plan in these cases may include, but is not limited to, the following provisions:

(I) An order limiting contact between the parties to contact that the court deems is safe and that minimizes unnecessary communication between the parties;

(II) An order that requires the exchange of the child for parenting time to occur in a protected setting determined by the court;

(III) An order for supervised parenting time;

(IV) An order restricting overnight parenting time;

(V) An order that restricts the party who has committed domestic violence, sexual assault resulting in the conception of the child, or child abuse or neglect from possessing or consuming alcohol or controlled substances during parenting time or for twenty-four hours prior to the commencement of parenting time;

(VI) An order directing that the address of the child or of any party remain confidential;

(VII) An order that imposes any other condition on one or more parties that the court determines is necessary to protect the child, another party, or any other family or household member of a party; and

(VIII) An order that requires child support payments to be made through the child support registry to avoid the need for any related contact between the parties and an order that the payments be treated as a nondisclosure of information case.

(f) When the court finds by a preponderance of the evidence that one of the parties has committed domestic violence, the court may order the party to submit to a domestic violence evaluation. If the court determines, based upon the results of the evaluation, that treatment is appropriate, the court may order the party to participate in domestic violence treatment. At any time, the court may require a subsequent evaluation to determine whether additional treatment is necessary. If the court awards parenting time to a party who has been ordered to participate in domestic violence treatment, the court may order the party to obtain a report from the treatment provider concerning the party's progress in treatment and addressing any ongoing safety concerns regarding the party's parenting time. The court may order the party who has committed domestic violence to pay the costs of the domestic violence evaluations and treatment.

(5) Repealed.

(6) In the event of a medical emergency, either party shall be allowed to obtain necessary medical treatment for the minor child or children without being in violation of the order allocating decision-making responsibility or in contempt of court.

(7) In order to implement an order allocating parental responsibilities, both parties may submit

a parenting plan or plans for the court's approval that shall address both parenting time and the allocation of decision-making responsibilities. If no parenting plan is submitted or if the court does not approve a submitted parenting plan, the court, on its own motion, shall formulate a parenting plan that shall address parenting time and the allocation of decision-making responsibilities. When issues relating to parenting time are contested, and in other cases where appropriate, the parenting plan must be as specific as possible to clearly address the needs of the family as well as the current and future needs of the aging child. In general, the parenting plan may include, but is not limited to, the following provisions:

(a) A designation of the type of decision-making awarded;

(b) A practical schedule of parenting time for the child, including holidays and school vacations;

(c) A procedure for the exchanges of the child for parenting time, including the location of the exchanges and the party or parties responsible for the child's transportation;

(d) A procedure for communicating with each other about the child, including methods for communicating and frequency of communication;

(e) A procedure for communication between a parent and the child outside of that parent's parenting time, including methods for communicating and frequency of communication; and

(f) Any other orders in the best interests of the child.

(8) The court may order mediation, pursuant to section 13-22-311 , C.R.S., to assist the parties in formulating or modifying a parenting plan or in implementing a parenting plan specified in subsection (7) of this section and may allocate the cost of said mediation between the parties.

Cite as C.R.S. § 14-10-124

History. Amended by 2014 Ch. 167, §7, eff. 7/1/2014.

Amended by 2013 Ch. 124, §1, eff. 8/7/2013.

Amended by 2013 Ch. 218, §2, eff. 7/1/2013.

L. 71: R&RE, p. 529, § 1. C.R.S. 1963: § 46-1-24. L. 79: (3) added, p. 645, § 1, effective March 2. L. 81: (4) added, p. 904, § 1, effective May 22. L. 83: (1) R&RE and (1.5) and (5) added, p. 647, §§ 3, 4, effective June 10. L. 87: (1.5)(g) to (1.5)(m) added and (5) repealed, pp. 574, 576, §§ 3, 6, effective July 1; (1.5)(m) repealed, p. 1578, § 22, effective July 1. L. 98: Entire section amended, p. 1380, § 10, effective February 1, 1999. L. 2005: (1.5)(b)(IV) and (1.5)(b)(V) amended, p. 961, § 6, effective July 1; (3.5) added, p. 377, § 2, effective January 1, 2006. L. 2010: (1.3) added and

(1.5)(a)(X), (1.5)(b)(V), and (4) amended, (HB10-1135), ch. 87, p. 290, §1, effective July 1.

Related Legislative Provision: *See 2013 Ch. 218, §24.*

Editor's Note:
(1) Amendments to the introductory portion to subsection (1.5)(a) by House Bill 13-1259 and House Bill 13-1243 were harmonized.

(2) Section 24 of chapter 218, Session Laws of Colorado 2013, provides that the act amending subsection (1), the introductory portions to subsection (1.5) and subsection (1.5)(a), subsection (1.5)(a)(VI), the introductory portion to (1.5)(b), and subsections (4) and (7), repealing subsections (1.5)(a)(IX), (1.5)(a)(X), (1.5)(b)(IV), and (1.5)(b)(V), and adding subsection (1.7) applies to petitions or motions filed on or after July 1, 2013.

(3) Subsections (4)(a)(I) and (4)(a)(II) are similar to § 14-10-124 (1.5)(b)(IV) and (1.5)(b)(V) as they existed prior to August 7, 2013.

Note: 2013 Ch. 124, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Legislation: Domestic Relations -- New Colorado Statutes Govern Procedure in Contested Child Custody Cases", see 40 U. Colo. L. Rev. 485 (1968). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Moving the Children Out of State", see 12 Colo. Law. 1450 (1983). For article, "Helping Joint Custody Work", see 14 Colo. Law. 1984 (1985). For article, "Dealing with Sexual Abuse Allegations in Custody and Visitation Disputes -- Parts I and II", see 16 Colo. Law. 1005 and 1225 (1987). For article, "Children of Divorce", see 16 Colo. Law. 1853 (1987). For article, "The Role of the Guardian ad Litem in Custody and Visitation Disputes", see 17 Colo. Law. 1301 (1988). For article, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Drafting the Joint Parenting Plan", see 18 Colo. Law. 2117 (1989). For article, "Custody Cases and the Theory of Parental Alienation Syndrome", see 20 Colo. Law. 53 (1991). For article, "Relocation: An Issue In Need of Clarification in Colorado", see 20 Colo. Law. 2517 (1991). For article, "Elimination of 'Custody' in Colorado: The Impact of H.B.1183", see 27 Colo. Law. 83 (September 1998). For article, "How to Explain the New Parental Responsibility Law to Clients", see 27 Colo. Law. 85 (October 1998). For article, "Addressing New Standards for Modification Under the Parental Responsibility Act", see 28 Colo. Law. 67 (June 1999). For article, "Representing Children When There Are Allegations of Domestic Violence", see 28 Colo. Law. 77 (November 1999). For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (October 2002). For article, "The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", see 36 Colo. Law. 33 (January 2007). For article, "Domestic Violence Intervention: 2010 Update", see 39 Colo. Law. 83 (September 2010). For article, "Emerging Spousal Support and Parenting Issues", see 41 Colo. Law. 45 (October 2012).

Annotator's note. Since § 14-10-124 is similar to repealed § 46-1-5 (1)(b), C.R.S. 1963, § 46-1-5, CRS 53, and CSA, C. 56, § 8, relevant cases construing those provisions have been included in the annotations to this section.

Trial court should have applied the standard for an original determination of visitation, which is based on the best interests of the child, where the order awarding parenting time to stepfather was a temporary order. Although paternity decree operated as a final order and permanent allocation as to paternity and custody, its award of parenting time to stepfather was a temporary order because the parties had not reached an agreement on a permanent parenting time schedule but had agreed to maintain the interim schedule and work toward a permanent one. The fact that the parties adhered to the schedule for nearly three years did not change the nature of the order. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

Trial court erred by failing to afford parents their due process rights because court did not presume parents were acting in the child's best interests, but instead placed upon them the burden of demonstrating that visitation with stepfather would endanger the child; the court did not find that "special circumstances" existed which justified the intrusion on the parents' rights; and the court did not apply a clear and convincing evidence standard. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

Even if stepfather was a psychological parent, stepfather failed to present evidence to rebut presumption that parents were acting in their child's best interests by terminating stepfather's visitation and failed to show or proffer evidence of special circumstances that would justify trial court's order allowing visitation against the wishes of the parents. The visitation order infringed upon parents' fundamental right to direct the upbringing of their child. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

A court meets the due process requirement in Troxel v. Granville, 530 U.S. 57(2000), to accord "special weight" to a parent's determination of the best interests of a child by considering all relevant factors set forth in this section and entering findings based on clear and convincing proof that the best interests of the child justify the award of parental responsibilities to the nonparent. In re Reese, 227 P.3d 900 (Colo. App. 2010).

The intrinsic threat of emotional harm to child from curtailment or termination of relationship with psychological parent is not, in itself, sufficient to satisfy the requirement that the court give special weight to the presumption that a parent's determination is in the best interests of the child. This section identifies non-exclusive statutory factors courts should consider in determining the best interests of the child. In re Reese, 227 P.3d 900 (Colo. App. 2010).

Applied in Woodhouse v. District Court, 19 6 Colo. 558, 587 P.2d 1199 (1978); In re Pilcher, 628 P.2d 126 (Colo. App. 1980); In re Rinow, 624 P.2d 365 (Colo. App. 1981); Dawson v. Pub. Employees' Retirement Ass'n, 664 P.2d 702 (Colo. 1983).

II. DETERMINATION OF BEST INTERESTS.

A. In General.

Applications for parental responsibilities by a nonparent implicate the fundamental constitutional right to family autonomy and privacy, and a legislative enactment that infringes on a fundamental right is constitutionally permissible only if it is necessary to promote a compelling state interest and does so in the least restrictive manner possible. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

The constitutional presumption that a fit parent acts in the best interests of the child applies to all stages of an allocation of parental responsibilities proceeding. The applicable standard for consideration of an order granting any parenting time to non-parents in the face of the parent's objection includes a presumption in favor of the parental determination; an opportunity to rebut this presumption with a showing by the non-parents through clear and convincing evidence that the parental determination is not in the child's best interests; and placement of the ultimate burden on the non-parents to establish by clear and convincing evidence that allocation of parenting time to them is in the best interests of the child. In re B.J., 242 P.3d 1128 (Colo. 2010).

Determining whether to apply the best interest standard or the endangerment standard may involve inquiry into both the quantitative and the qualitative aspects of the proposed change to parenting time, as well as the reason or reasons advanced for the change. In re West, 94 P.3d 1248 (Colo. App. 2004).

The principal issue before the courts is the welfare of the child, and to that welfare the rights and personal desires of the parents are subservient. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954); Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956); Jensen v. Jensen, 142 Colo. 420, 351 P.2d 387 (1960); Grosso v. Grosso, 149 Colo. 183, 368 P.2d 561 (1962); Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

The prime criterion of a custody award in the court's determination is the welfare of the children. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

The primary focus of any custody determination, including one involving separation of children, must be the best interests of the children. In re Dickey, 658 P.2d 276 (Colo. App. 1982).

The best interests of the child must predominate in any custody determination. In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

It is the well-being of the child rather than the reward or punishment of a parent that ought to guide every aspect of a custody determination, including visitation. In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

Where trial court made no finding that father's conduct in his homosexual lifestyle endangered the child physically or impaired the child's emotional development, father could not be precluded from having overnight guests during his parenting time or taking child to gay environment of father's church. In re Dorworth, 33 P.3d 1260 (Colo. App. 2001).

The best interests of a child as an individual, and not as a sibling, are the controlling factors in divided custody determinations. In re Barnthouse, 765 P.2d 610 (Colo. App. 1988), cert. denied, 490 U.S. 1021, 109 S. Ct. 1747, 104 L. Ed. 2d 184 (1989).

In cases involving child custody the principal issue before the court is not the convenience of the parents. Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

Section 14-10-123.4 coupled with the permissive language found throughout § 14-10-123.5 and this section indicates that the best interests of the child, and not the rights or wishes of either parent, must dictate the outcome of any custody dispute. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

In determining a custodial dispute between a parent and a nonparent, Colorado courts recognize that the best interests standard is subject to a presumption that the biological parent has a first and prior right to custody. Abrams v. Connolly, 781 P.2d 651 (Colo. 1989); In re Custody of C.C.R.S., 892 P.2d 246 (Colo. 1995); In re C.M., 74 P.3d 342 (Colo. App. 2002); People ex rel. A.M.K., 68 P.3d 563 (Colo. App. 2003).

Natural parents have a fundamental liberty interest in the companionship, care, custody, and management of their children. This fundamental liberty interest gives rise to a presumption that the best interests of the child will be furthered by a fit natural parent. People ex rel. A.M.K., 68 P.3d 563 (Colo. App. 2003).

This presumption may be rebutted by evidence establishing that the welfare of the child, i.e., the best interests of the child, is better served by granting custody to a nonparent. Abrams v. Connolly, 781 P.2d 651 (Colo. 1989); In re Custody of C.C.R.S., 892 P.2d 246 (Colo. 1995); In re C.M., 74 P.3d 342 (Colo. App. 2002); In re M.J.K., 200 P.3d 1106 (Colo. App. 2008).

The right of a parent to have the custody of his child must give way where the welfare of the child requires it. Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

When it is conducive to the child's best interests, a trial court may refuse to award custody to either parent and may award custody to someone other than a natural parent of the child and even to a nonresident of the state. Rippere v. Rippere, 157 Colo. 29, 400 P.2d 920 (1965).

In determining the best interests of the child, the court must consider all relevant factors, including those enumerated in subsection (1.5). In re Lester, 791 P.2d 1244 (Colo. App. 1990); In re Finer, 920 P.2d 325 (Colo. App. 1996); In re Fickling, 100 P.3d 571 (Colo. App. 2004).

When the court is determining the best interests of the child, the analysis must consider the least detrimental alternative. In re Martin, 42 P.3d 75 (Colo. App. 2002).

The phrase "best interests of the child" has identical meaning in this section and § 19-1-101 et seq. People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part and rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

Factors enumerated in subsection (1.5) may be considered in dependency action pursuant to the Children's Code. People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part and rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

The general assembly did not intend to bar or presumptively bar an abusive parent or spouse from exercising individual decision-making responsibility with respect to children by enacting subsections (1.5)(b)(IV) and (1.5)(b)(V). The general assembly chose to either prohibit or presumptively prohibit only mutual decision-making responsibility. In re Bertsch, 97 P.3d 219 (Colo. App. 2004).

The general assembly's failure to amend bill following testimony from proponent noting that there was nothing in the bill requiring or prohibiting court from giving sole decision-making on every issue to one party or the otherled court to conclude that the general assembly did not mean to preclude as a matter of law abusive parents or spouses from exercising individual, or even sole, decision-making responsibility. In re Bertsch, 97 P.3d 219 (Colo. App. 2004).

The court is to consider whether a parent has been a perpetrator of child or spouse abuse as but two, albeit important, factors in assessing the best interests of the child in determining whether to award parenting time or individual decision-making responsibility. In re Bertsch, 97 P.3d 219 (Colo. App. 2004); In re Yates, 148 P.3d 304 (Colo. App. 2006).

This construction does not lead to an absurd result. Because the court makes a finding that a person has abused a child or spouse in the past does not necessarily and inevitably mean either that history is doomed to repeat itself or that the individual is capable of becoming a fit, or even the more fit, parent of a child. In re Bertsch, 97 P.3d 219 (Colo. App. 2004).

Allocation of parental responsibilities to wife was proper where wife, despite being previously convicted of child abuse, had since received and benefitted from counseling, and there was no suggestion of prospective child abuse; however, there was a greater concern about husband's parenting skills. In re Yates, 148 P.3d 304 (Colo. App. 2006).

Authority of court. A court has authority under the uniform act to award custody of a natural child of one spouse to the other spouse who is neither a natural, nor adoptive, parent of that child. In re Tricamo, 42 Colo. App. 493, 599 P.2d 273 (1979).

A court has authority under the uniform act to order a change of name of a minor child. In re Nguyen, 684 P.2d 258 (Colo. App. 1983), cert. denied, 469 U.S. 1108, 105 S. Ct. 785, 83 L. Ed. 2d 779 (1985).

Custody cases are not adversary proceedings, but hearings to determine what placement of the child will be in the child's best interests. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

The question as to whether a court may permit a child to be taken from the state first having jurisdiction to another jurisdiction was, like all other questions affecting the welfare and best interests of the child, vested in the sound legal discretion of a trial court. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956).

Policy of law in state is to permit removal of child from jurisdiction where it will serve the well-being and future interests of the child. In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

In an initial determination to allocate parental responsibilities, a court has no statutory authority to order a parent to live in a specific location. The court, rather, must accept the location in which each party intends to live and allocate parental responsibilities accordingly in the best interests of the child. Spahmer v. Gullette, 113 P.3d 158 (Colo. 2005).

Where the custody of a child was awarded in a divorce proceeding, the child became a ward of the court, and it was against the policy of the law to permit its removal to another jurisdiction unless its well-being and future welfare were served thereby. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

A change of custody should not be awarded as punishment for a parent's disregard of the court's orders prohibiting removal of the child from the jurisdiction, since the best interests of the child were paramount. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

"Joint selection of schools" provision in separation agreement is unenforceable because such a provision promotes discord between the parents and is not, therefore, "in the best interests of the child". Custodial parent retains the ultimate authority to select the child's school. Griffin v. Griffin, 699 P.2d 407 (Colo. 1985).

Guardian ad litem represents wishes of child. This section does not require representation of the child's wishes by an attorney chosen by the child rather than a court appointed guardian ad litem. In re Hartley, 886 P.2d 665 (Colo. 1994).

Representation of child's wishes by attorney chosen by child unnecessary and duplicative. The statutory safeguards inherent in the obligations of the guardian ad litem as well as the ability of the court to interview the child concerning the child's wishes provide sufficient opportunity for a child to be heard. In re Hartley, 886 P.2d 665 (Colo. 1994).

Permanent orders restriction on religious upbringing of minor child in dissolution of marriage unconstitutional. Permanent orders in a dissolution of marriage action that adopted the special advocate's recommendation to place a restriction on the mother's right to influence her child's upbringing, absent a finding of substantial harm to the child, violate the mother's constitutional right to free exercise of religion. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

Absent a clear showing of substantial harm to the child, a parent who does not have decision-making authority with respect to religion nevertheless retains a constitutional right to educate the child in that parent's religion. However, harm to the child will be found if one parent disparages the other parent's religion, thus justifying a limitation on that parent's right to religious education of the child. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

Harm to the child from conflicting religious instructions or practices must be demonstrated in detail and be substantial to warrant limitations on either parent's instructions or practices. In the absence of a demonstrated harm to the child, the best interests of the child standard is insufficient to serve as a compelling state interest that overrules the parents' fundamental rights to freedom of religion. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

B. Evidence.

The court did not err in determining under the rules of civil procedure and by a preponderance of the evidence that the criminal child abuse statute was violated. The use of the preponderancy standard in domestic proceedings does not offend due process and is adequate to protect a parent from false accusations of child abuse while serving the strong societal interest in protecting children from abusive parents. In re McCaulley-Elfert, 70 P.3d 590 (Colo. App. 2003).

Although subsections (1.5)(a)(IX) and (1.5)(b)(IV) do not say a factor must be proven by a preponderance of the evidence, those subsections do state that it shall be "supported by credible evidence". "Supported by credible evidence" means no more than supported by a preponderance of the evidence. In re McCaulley-Elfert, 70 P.3d 590 (Colo. App. 2003).

Because the presumption that a child's welfare is best served through custody of the natural parent is rebuttable, and where the evidence establishes that the best interest of the child will not be promoted by such custody, it will not be granted. Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

That the natural parents have a first and prior right to custody does not require that custody be awarded to the parent or parents merely because the evidence shows fitness and ability to care for the child. Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959); Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

When considering non-parents' assertions of parental rights, Colorado rejects a requirement that a parent be found unfit before interfering with the parent's parenting plan. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Proof that a fit parent's exercise of parental responsibilities poses actual or threatened emotional harm to the child establishes a compelling state interest sufficient to permit state interference with parental rights. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

The fitness of the mother was not in issue when it was not established that the welfare of her children would be better served by changing the custody back to her. Munson v. Munson, 155 Colo. 427, 395 P.2d 103 (1964).

Where wife living with man to whom she is not married. It is an abuse of discretion for the trial court to impose its own standard in regard to the wife living with a man to whom she is not married in the face of the clear and mandatory language of the statute, where there was no evidence to infer that such conduct was detrimental to the children's welfare. In re Moore, 35 Colo. App. 280, 531 P.2d 995 (1975).

A natural father, shown to be a fit and proper person to have custody of his minor child, could have been denied custody where findings of trial court, amply supported by evidence, determined that such custody would not be in the best interests of the child. Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

Court presumed to disregard incompetent evidence. The presumption is that in making its decision to award custody of a child, the trial court disregards any incompetent evidence, or additional information to which it might have

had access. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Conduct of proposed custodian not affecting children is not to be considered. The general assembly has directed that in determining child custody the court shall not consider conduct of a proposed custodian that does not affect the children. In re Moore, 35 Colo. App. 280, 531 P.2d 995 (1975).

Inquiry into religious practices. Evidence of a party's religious beliefs or practices is relevant and admissible in a custody proceeding if it is shown that such beliefs or practices are reasonably likely to present or future harm to the physical or mental development of the child. In re Short, 698 P.2d 1310 (Colo. 1985).

Court order requiring children be returned to Colorado one year following the dissolution of marriage decree cannot stand since court made no finding that such a move would be in the best interests of the children. In re Hoffman, 701 P.2d 129 (Colo. App. 1985).

Record supported the trial court's determination that sole custody by mother was in children's best interests. Among the factors favoring this determination were the mother's status as primary-caretaker and the parties' lack of communication and poor ability to agree with each other. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

It is not necessary that the trial court make specific findings on each and every factor included in subsection (1.5). All that is required is an indication that the trial court considered those factors which were pertinent and that the findings are sufficient to enable this court to determine the grounds for the trial court's decision and whether the decision was supported by competent evidence. In re Lester, 791 P.2d 1244 (Colo. App. 1990); In re Finer, 920 P.2d 325 (Colo. App. 1996).

It is not necessary that a trial court make specific findings on each and every factor included in the statute, but there must be some indication in the record that the trial court considered those factors that were pertinent. In re Garst, 955 P.2d 1056 (Colo. App. 1998); In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

A party is entitled to an evidentiary hearing before a court may prohibit parenting time. In re D.R.V-A, 976 P.2d 881 (Colo. App. 1999).

Trial court did not err in entering findings with respect to husband's stepdaughter even though it did not have jurisdiction over her. Although the trial court had no jurisdiction over the stepdaughter, jurisdiction over the stepdaughter was not necessary for the trial court to consider evidence of the husband's sexual misconduct regarding the stepdaughter in determining the parental responsibility issues raised with respect to husband's son. Nothing precludes the court's inquiry into alleged child abuse or neglect when determining the best interests of the child, even if the alleged abuse or neglect involves other children. In re McCaulley-Elfert, 70 P.3d 590 (Colo. App. 2003).

Trial court did not err in granting parental responsibilities to nonparent when trial court applied best interests standard and incorporated all relevant factors and further found clear and convincing evidence that the parent filed for joint custody of the child with the nonparent, requested co-parenting responsibilities with the nonparent, entered into a plan for joint parenting with the nonparent, permitted the nonparent to jointly parent the child during the

course of their relationship, and encouraged the nonparent's participation in raising the child and that the child equally recognizes both parties as her parents and is doing extremely well both academically and socially. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Trial court's order granting the child's psychological parent, a nonparent, equal parental responsibilities was proper when curtailment and eventual termination of parental responsibilities threatened emotional harm to the child and constituted a compelling state interest justifying modification of parent's proposed parenting plan by the court. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Presumption favoring a parent's determination regarding the best interests of the child may be rebutted by proof by clear and convincing evidence of either: (1) The parent's unfitness; or (2) the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Nonparent need not show demonstrated harm to child to satisfy "special weight" accorded to parental determinations. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Court may not allocate parental responsibilities to a nonparent unless it accords "special weight" to the parent's determination of the best interests of the child. Application of the clear and convincing proof standard is necessary to accord special weight to a parent's determination of best interests. In re Reese, 227 P.3d 900 (Colo. App. 2010).

A court meets the due process requirement in Troxel v. Granville, 530 U.S. 57(2000), to accord "special weight" to a parent's determination of the best interests of a child by considering all relevant factors set forth in this section and entering findings based on clear and convincing proof that the best interests of the child justify the award of parental responsibilities to the nonparent. In re Reese, 227 P.3d 900 (Colo. App. 2010).

The intrinsic threat of emotional harm to child from curtailment or termination of relationship with psychological parent is not, in itself, sufficient to satisfy the requirement that the court give special weight to the presumption that a parent's determination is in the best interests of the child. This section identifies non-exclusive statutory factors courts should consider in determining the best interests of the child. In re Reese, 227 P.3d 900 (Colo. App. 2010).

C. Discretion of Court.

Questions of custody must of necessity rest upon the judgment of the trier of facts; hence are best left in the hands of the trial court, and its determination should not be disturbed if there is sufficient competent evidence to support its conclusion. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954); Harris v. Harris, 140 Colo. 591, 345 P.2d 1061 (1959); Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960); Jensen v. Jensen, 142 Colo. 420, 351 P.2d 387 (1960); Flor v. Flor, 148 Colo. 514, 366 P.2d 664 (1961); Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962); Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970); Meene v. Meene, 194 Colo. 304, 572 P.2d 472 (1977).

The trial court is best able to appraise the circumstances of the parties and best fitted to make the factual

determinations regarding custody. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

The determination of custody is left to the discretion of the trial judge, and in the absence of an abuse of that discretion, an appellate court will not disturb these determinations. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973); In re Dickman, 670 P.2d 20 (Colo. App. 1983).

Custody awards in dissolution of marriage proceedings are a matter to be determined within the sound discretion of the trial court. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

Question of custody is a matter within the discretion of the trial court after taking into consideration the various factors outlined in this section for the purpose of determining the best interest of the child. Rhoades v. Rhoades, 188 Colo. 423, 535 P.2d 1122 (1975).

In a custody and support proceeding, where a defendant presented his entire case and made no request for a further hearing, fact that trial court did not hold additional hearing after indicating it might do so, did not deprive defendant of his day in court. Grosso v. Grosso, 149 Colo. 183, 368 P.2d 561 (1962).

Prior to the enactment of subsection (1.5) in its present form, an imposition of joint custody over the objection of either parent constituted an abuse of discretion. However, that subsection now permits the trial court to order joint or sole custody after determining which form of custody is in the best interest of the child. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

The general assembly did not intend to state a preference or a mandate for joint custody under subsection (1.5). In re Lester, 791 P.2d 1244 (Colo. App. 1990).

Where one expert testified that he felt the mother to be the best guardian for the child at his current age of one year, but felt that the mother's psychiatric problems would begin to tell on the child as he reached four or five, the trial court did not err in ruling that it must look at the whole picture, and decided that it would be best to merely allow the mother liberal visitation rights for the first few years. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Where the record revealed absolutely nothing as to the conditions in a home maintained by the paternal grandparents in New Jersey, or that the paternal grandparents ever desired custody of their grandchild, there quite clearly was an abuse of discretion by the trial court in awarding them custody. Rippere v. Rippere, 157 Colo. 29, 400 P.2d 920 (1965).

Where the trial court did not make any finding of fact or even assert the conclusion of law that the mother was unfit to have custody of the minor children of the parties, and the findings were also deficient in that there were no facts set forth or determination made that it was for the best interests of the children that their custody be given to the father, the court could not have ordered an award of custody to any party, because such findings and conclusions were necessary. Cacic v. Cacic, 164 Colo. 103, 432 P.2d 768 (1967).

A statement by a trial judge, disclosing that his decision in a custody matter was based largely on irritation

and aggravation, and not on the evidence, indicated such failure to exercise a sound judicial discretion as to require reversal. Crites v. Crites, 137 Colo. 220, 322 P.2d 1045 (1958).

Court improperly restricted the visitation rights of the mother where court made no finding that her instability was so severe as to endanger the child physically or impair his emotional development. In re Jarman, 752 P.2d 1068 (Colo. App. 1988).

Visitation orders are within the sound discretion of the trial court. This discretion must, however, be exercised consistently with the express public policy of encouraging contact between each parent and the children. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

The trial court abused its discretion by effectively reducing father's visitation rights where court limited the father to four days per four-week period where he previously had portions of eight days in any four-week period and there was no evidence that the children would benefit by this reduction in visitation. This restriction was both contrary to the public policy of encouraging frequent visitation and to the evidence in the record. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

D. Custody and Visitation.

Award of joint custody absent agreement of the parties is contrary to the best interests of the child. In re Lampton, 677 P.2d 352 (Colo. App. 1983); In re Posinoff, 683 P.2d 377 (Colo. App. 1984) (decided prior to 1987 amendment).

Joint custody warranted only in the most exceptional cases. In re Lampton, 704 P.2d 847 (Colo. 1985) (decided prior to 1983 amendment).

Division of the children between the parents was not generally proper unless the paramount interest of the children required it. Songster v. Songster, 150 Colo. 466, 374 P.2d 197 (1962).

The trial court does not abuse its discretion in separating the children by awarding custody of the youngest son to the wife. In re Dickey, 658 P.2d 276 (Colo. App. 1982).

General visitation order does not meet purposes for which visitation intended when evidence shows a total lack of cooperation. In re Plummer, 709 P.2d 1388 (Colo. App. 1985).

Although the stability of the environment is a valid consideration in awarding custody, instability alone is not sufficient to justify a restriction on visitation. In re Jarman, 752 P.2d 1068 (Colo. App. 1988).

Where evidence shows a lack of cooperation between the parties or between the therapists for the mother and the child, the general visitation order does not meet the purposes for which the visitation was intended and is in essence a nullity. In re Sepmeier, 782 P.2d 876 (Colo. App. 1989).

In determining custody in dependency and neglect hearing, juvenile court committed reversible error by failing to consider any purposes of §19-1-101 et seq. and in relying solely on a limited number of purposes set forth in this

section. L.A.G. v. People in Interest of A.A.G., 912 P.2d 1385 (Colo. 1996).

Where neither party submitted a plan for implementing previously ordered joint custody, court acted properly in ordering the parties to contact a parenting-time coordinator to facilitate and improve the parties' communication in the exercise of joint custody and to establish father's parenting time, given mother's move out of state. In re Garst, 955 P.2d 1056 (Colo. App. 1998) (decided under former §14-10-123.5 prior to its 1999 repeal).

Alienation is a significant and foreseeable harm. When a psychotherapist of a divorced mother, who sought counseling because she believed her ex-husband, the father of the mother's two children, had abused her children, sent a letter to the father and the new therapist for the mother and children opining the mother's conduct was alienating the father from the children, the psychotherapist did breach her duty to the mother. Mitchell v. Ryder, 20 P.3d 1229 (Colo. App. 2000).

Applied in In re Murphy, 834 P.2d 1287 (Colo. App. 1992).

III. TENDER YEARS DOCTRINE.

In its concern for children, particularly those of tender years, the supreme court formerly enunciated guides for trial courts in the disposition of controversies regarding their custody. Songster v. Songster, 150 Colo. 466, 374 P.2d 197 (1962).

Formerly, courts did not deprive the mother of the custody of her children of tender years, unless it was clearly shown that she was so unfit a person as to endanger the welfare of the minors. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956); Evans v. Evans, 136 Colo. 6, 314 P.2d 291 (1957); Green v. Green, 139 Colo. 551, 342 P.2d 659 (1959).

A mother's love, care, and affection for a child of tender years were considered the most unselfish of all factors in human relations, and a child was not to be deprived thereof unless for a very good reason, founded on lack of moral fitness and proper home surroundings. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956).

Mere fact of motherhood is not sufficient to give a mother any special standing in the proceeding or preference as to custody. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Court's undue emphasis on motherly instincts reversible error. Court's undue emphasis on "motherly instincts" constituted a presumption that the mother was better able to serve the best interests of the child because of her sex and was both an abuse of discretion and reversible error. In re Miller, 670 P.2d 819 (Colo. App. 1983).

Sufficient findings unrelated to parental gender. Although the court states that one of its considerations in making a custody award is a belief in the importance of a "meaningful relationship" between a father and son, the remark does not rise to the level of a presumption where the court makes sufficient findings unrelated to parental gender to support the award. In re Clarke, 671 P.2d 1334 (Colo. App. 1983).

IV. JURISDICTION OF COURT.

The trial court had a continuing jurisdiction and control based upon the welfare of the child. Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959).

Where the court could provide for custody of children by orders made "before or after" the entry of a final decree, the trial court could provide for the custody of the child even though the subject was not mentioned in the original decree. Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

When the wife-defendant died before any divorce decree had entered, the divorce action thereupon abated, and thereafter the court was without jurisdiction to enter any order concerning custody or right of visitation. Wood v. Parkerson, 163 Colo. 271, 430 P.2d 467 (1967).

Contempt for failure to comply with custody order was not separate procedure, but continuance of divorce action. Brown v. Brown, 31 Colo. App. 557, 506 P.2d 386 (1972).

The district court in a divorce action could not acquire exclusive jurisdiction over custody of minor children residing in a foreign jurisdiction. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

A custody award entered by one court is not binding on courts of another state under the full faith and credit clause of the federal constitution after the child has become domiciled in the latter state, because when a child's domicile is changed he is no longer subject to the control of the court which first awarded his custody. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

A child's domicile is that of the parent with whom it lives. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

V. MOTIONS AND ORDERS.

The court could make an order for the care and custody of minor children, and make provision for their maintenance, and this in the same decree making an award for alimony. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Motions for determination of custody of children are different in kind from actions to enforce wholly personal rights as property or alimony, because the question of custody of children deals with a status and the issue on such a motion is the welfare of the children. Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

An order determining custody of children, like an order determining alimony, was reviewable in the supreme court. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954).

Trial court findings necessary for review. While it is not necessary that a trial court make specific findings on each and every factor included in this section, there must be some indication in the record that the trial court considered such of those factors as were pertinent, and the findings thereon must be sufficient to enable this court to determine on what ground the trial court reached its decision, and whether that decision was supported by competent evidence.

In re Jaramillo, 3 7 Colo. App. 171, 543 P.2d 1281 (1975).

C.R.C.P. 52 is applicable to judgments in custody proceedings. In re Jaramillo, 3 7 Colo. App. 171, 543 P.2d 1281 (1975).

In a divorce action involving the custody of minor children, where no reporter was present and no record made of the evidence, and the written conclusions of the trial judge indicate that the orders entered were arbitrary and unsupported by evidence, the judgment must be reversed. Crites v. Crites, 137 Colo. 220, 322 P.2d 1045 (1958).

Where custodial orders of the trial court were silent on the question of character and fitness of either parent to have custody of the children, the trial court should have made findings of fact thereon, because lacking such findings the supreme court was without compass to ascertain whether trial court acted properly. Songster v. Songster, 150 Colo. 466, 374 P.2d 197 (1962).

Cross References:

(1) For the "Uniform Child-custody Jurisdiction and Enforcement Act", see article 13 of this title.

(2) For the legislative declarations contained in the 2005 act amending subsections (1.5)(b)(IV) and (1.5)(b)(V), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005.