Colorado Statutes

Title 14. DOMESTIC MATTERS

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

Article 10. Uniform Dissolution of Marriage Act

Current through 2021 Legislative Session

§ 14-10-101. Short title

This article shall be known and may be cited as the "Uniform Dissolution of Marriage Act".

Cite as (Casemaker) C.R.S. § 14-10-101

History. L. 71: R&RE, p. 520, § 1. C.R.S. 1963: § 46-1-1.

Case Notes:

ANNOTATION

Law reviews. For note, "The Extraterritorial Validity of Colorado Divorces", see 7 Rocky Mt. L. Rev. 271 (1935). For article, "Divorce -- Stalemate", see 16 Dicta 107 (1939). For article, "What Divorce Statutes Are Now in Effect in Colorado?", see 21 Dicta 68 (1944). For article, "Ten Years of Domestic Relations in Colorado -- 1940-1950", see 27 Dicta 399 (1950). For article, "Workmen's Compensation, Attorneys and Family Law", see 31 Dicta 1 (1954). For article, "A Proposal for Some Modest Changes in Divorce and Annulment Laws", see 26 Rocky Mt. L. Rev. 221 (1954). For article, "Colorado's New Divorce Law", see 35 Dicta 219 (1958). For note, "The New Colorado Divorce Statute", see 31 Rocky Mt. L. Rev. 207 (1959). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Divorce Policy and Divorce Reform", see 42 U. Colo. L. Rev. 403 (1971). For article, "Effects of Reconciliation on Separation Agreements in Colorado", see 51 U. Colo. L. Rev. 399 (1980). For article, "Mediation of Contested Child Custody Disputes", see 11 Colo. Law. 336 (1982). For article, "Colorado: Now a Community Property State?", see 25 Colo. Law. 55 (May 1996). For article, "Blending Spousal Tort Claims and Colorado Divorce Actions", see 25 Colo. Law. 57 (May 1996).

Act applicable regardless of date marriage began. Regardless of the date the marriage began, if the dissolution of marriage occurs after the effective date of this article, the parties are subject to all provisions of the uniform act. In re Lester, 647 P.2d 688 (Colo. App. 1982).

§ 14-10-102. Purposes - rules of construction

(1) This article 10 must be liberally construed and applied to promote its underlying purposes.

(2) The underlying purposes of this article 10 are:

(a) To promote the amicable settlement of disputes that have arisen between parties to a marriage;

(b) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(c) To make the law of legal dissolution of marriage more effective for dealing with the realities of matrimonial experience by making an irretrievable breakdown of the marriage relationship the sole basis for its dissolution; and

(d) To provide safeguards for a parent with a disability, pursuant to the provisions of section 24-34-805.

Cite as (Casemaker) C.R.S. § 14-10-102

History. Amended by 2018 Ch. 164, §2, eff. 4/25/2018.

L. 71: R&RE, p. 520, § 1. C.R.S. 1963: § 46-1-2. L. 2018: Entire section amended, (HB 18-1104), ch. 164, p. 1133, § 2, effective April 25.

Case Notes:

ANNOTATION

Every state as a sovereign has rightful and legitimate concern in marital status of those persons who are domiciled within the state. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

Marriage is favored over less formalized relationships. The state of Colorado has an interest in marriage, and marriage is favored over less formalized relationships which exist without the benefit of marriage. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Temporary support orders further purpose of article to mitigate potential harm to spouses and their children caused by the process of legal dissolution of marriage by maintaining status quo pending final disposition of dissolution proceeding. In re Price, 727 P.2d 1073 (Colo. 1986).

Joinder of interspousal tort claims with marriage dissolution proceedings precluded. Marriage dissolution action cannot be joined with an interspousal claim sounding in tort since this section encourages the amicable settlement of disputes between parties to a marriage. Simmons v. Simmons, 773 P.2d 602 (Colo. App. 1988); In re Lewis, 66 P.3d 204 (Colo. App. 2003).

Dissolution court lacks jurisdiction to determine whether a parent should be removed as custodian of a Uniform Gift to Minors Act account. This issue may be considered instead by a district court that obtains jurisdiction over the account in a separate civil proceeding. In re Ludwig, 122 P.3d 1056 (Colo. App. 2005).

This act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations, and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

The public policies to be furthered under this act include dividing of assets equitably and mitigating the harm to spouses and children. These policies take precedence over any contract arguments that may be raised by either spouse. Thus, the trial court was correct in refusing husband's indemnification argument and in interpreting the divorce decree as requiring the husband to compensate the wife for the fair market value of business property apportioned to her in the equitable distribution. In re Plesich, 881 P.2d 379 (Colo. App. 1994).

§ 14-10-103. Definitions and interpretation of terms

(1) As used in this article, unless the context otherwise requires, the term "decree" includes the term "judgment"; and, for the purposes of the tax laws of the state of Colorado or of any other jurisdiction, the term "maintenance" includes the term "alimony".

(2) Whenever any law of this state refers to or mentions divorce, annulment, or separate maintenance, said law shall be interpreted as if the words dissolution of marriage, declaration of invalidity of marriage, and legal separation, respectively, were substituted therefor.

(3) On and after July 1, 1993, the term "visitation" has been changed to "parenting time". It is not the intent of the general assembly to modify or change the meaning of the term "visitation" nor to alter the legal rights of a parent with respect to the child as a result of changing the term "visitation" to "parenting time".

(4) On and after February 1, 1999, the term "custody" and related terms such as "custodial" and "custodian" have been changed to "parental responsibilities". It is not the intent of the general assembly to modify or change the meaning of the term "custody" nor to alter the legal rights of any custodial parent with respect to the child as a result of changing the term "custody" to "parental responsibilities".

(5) As used in this article 10, unless the context otherwise requires, for purposes of proceedings for allocation of parental responsibilities pursuant to section 14-10-123 (1.5) only, the term "child" means an unmarried individual who has not attained twenty-one years of age.

Cite as (Casemaker) C.R.S. § 14-10-103

History. Amended by 2019 Ch. 55, §4, eff. 3/28/2019.

L. 71: R&RE, p. 520, § 1. C.R.S. 1963: § 46-1-4. L. 72: p. 595, § 73. L. 73: p. 552, § 1. L. 93: (3) added, p. 576, § 5, effective July 1. L. 98: (3) amended and (4) added, p. 1376, § 1, effective February 1, 1999.

Cross References:

For the legislative declaration contained in the 1993 act enacting subsection (3), see section 1 of chapter 165, Session Laws of Colorado 1993.

§ 14-10-104. Uniformity of application and construction

(1) This article shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact it.

(2) The term "irretrievable breakdown" shall be construed as being similar to other terms having a like import in the law of other jurisdictions adopting this or a similar law.

Cite as (Casemaker) C.R.S. § 14-10-104

History. L. 71: R&RE, p. 520, § 1. C.R.S. 1963: § 46-1-3.

Case Notes:

ANNOTATION

Applied in In re Parsons, 30 P.3d 868 (Colo. App. 2001).

§ 14-10-104.5. Legislative declaration

The general assembly recognizes that it is in the best interests of the parties to a marriage in which a dissolution has been granted and in which there are children of the marriage for the parties to be able to resolve disputes that arise subsequent to the dissolution in an amicable and fair manner. The general assembly further recognizes that, in most cases, it is in the best interests of the children of the marriage to have a relationship with both parents, including a parent with a disability, and that, in most cases, it is the parents' right to have a relationship with their children. The general assembly emphasizes that one of the underlying purposes of this article 10 is to mitigate the potential harm to the spouses and their children and the relationships between the parents and their children caused by the process of legal dissolution of marriage. The general assembly recognizes that when a marriage in which children are involved is dissolved, both parties either agree to or are subject to orders that contain certain obligations and commitments. The general assembly declares that the honoring and enforcing of those obligations and commitments made by both parties are necessary to maintaining a relationship that is in the best interest of the children of the marriage. Therefore, the general assembly declares that both parties should honor and fulfill all of the obligations and commitments made between the parties and ordered by the court.

Cite as (Casemaker) C.R.S. § 14-10-104.5

History. Amended by 2018 Ch. 164, §3, eff. 4/25/2018.

L. 88: Entire section added, p. 633, § 8, effective July 1. L. 98: Entire section amended, p. 1376, § 2, effective February 1, 1999. L. 2018: Entire section amended, (HB 18-1104), ch. 164, p. 1134, § 3, effective April 25.

Case Notes:

ANNOTATION

The state has a public interest in mitigating the potential harm to children caused by the dissolution of marriage. Thus, a parent has no privacy interest in the process by which child support obligations are determined because support levels are not purely private determinations but serve a public function and are subject to court approval. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

Furthermore, the child support guidelines do not infringe upon a fundamental right. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

Nor do the child support guidelines discriminate against a suspect class or significantly interfere with a fundamental right. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

The state has a legitimate interest in requiring divorced or separated parents to provide child support based on the parties' combined gross incomes. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

Intent of act requires enforcement of child support agreement even though it does not specify a dollar amount. To allow otherwise would be to allow father to unilaterally terminate child support obligation without first obtaining an order of modification. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

§ 14-10-105. Application of Colorado rules of civil procedure

(1) The Colorado rules of civil procedure apply to all proceedings under this article, except as

otherwise specifically provided in this article.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of ..... and .....". A proceeding for the allocation of parental responsibilities or a support proceeding shall be entitled "In re the (Parental responsibilities concerning) (Support of) .....".

(2.5) A proceeding for dissolution of a civil union, legal separation, or declaration of invalidity of a civil union shall be entitled "In re the Civil Union of ..... and .....".

(3) The initial pleading in all proceedings under this article shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings and all pleadings in other matters under this article shall be denominated as provided in the Colorado rules of civil procedure.

Cite as (Casemaker) C.R.S. § 14-10-105

History. Amended by 2013 Ch. 49, §13, eff. 5/1/2013.

L. 71: R&RE, p. 521, § 1. C.R.S. 1963: § 46-1-5. L. 98: (2) amended, p. 1395, § 33, effective February 1, 1999. L. 2013: (2.5) added, (SB 13-011), ch. 49, p. 163, § 13, effective May 1.

Case Notes:

ANNOTATION

Annotator's note. Since § 14-10-105 is similar to repealed § 46-1-2, C.R.S. 1963, and CSA, C. 56, § 3, relevant cases construing those provisions have been included in the annotations to this section.

The rules of civil procedure, where the divorce statutes are silent as to any method of procedure, govern. Myers v. Myers, 110 Colo. 412, 135 P.2d 235 (1943); Holman v. Holman, 114 Colo. 437, 165 P.2d 1015 (1946).

The rules of civil procedure apply to a divorce action, unless a contrary rule appears in the divorce statutes. Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

Service of notice in proceedings under this article is governed by the rules of civil procedure. In re Henne, 620 P.2d 62 (Colo. App. 1980).

On the question of venue in divorce actions, C.R.C.P. 98(c) is controlling, notwithstanding this article concerning divorce actions and kindred matters. People ex rel. Stanko v. Routt County Court, 110 Colo. 428, 135 P.2d 232 (1943); Brownell v. District Court ex rel. County of Larimer, 670 P.2d 762 (Colo. 1983).

For the purpose of the venue requirements in C.R.C.P. 98, the petitioner and respondent in a dissolution of marriage proceeding are the equivalent of a plaintiff and defendant, respectively. Brownell v. District Court ex rel. County of Larimer, 670 P.2d 762 (Colo. 1983).

There is no specific venue statute which would override the rules of civil procedure. Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

The rules of procedure do not govern procedure and practice in actions in divorce where they may conflict with the procedure and practice provided by the applicable statutes. Moats v. Moats, 168 Colo. 120, 450 P.2d 64 (1969).

There is no exception in this section which dispenses with the necessity of filing a motion for a new trial, or which permits the court in the exercise of its discretion to dispense with such a motion. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Order under C.R.C.P. 54(b) authorized. This section, providing that the Colorado rules of civil procedure apply to dissolution proceedings except as "otherwise specifically provided in the act", and § 14-10-120, providing that a decree of dissolution of marriage is "final" when entered, subject to the right of appeal, authorize the trial court to enter an order pursuant to C.R.C.P. 54(b) making the decree final for purposes of appeal. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Appealability of decree on entry of such order. Upon the entry of an order under C.R.C.P. 54(b) a decree of dissolution of marriage may be appealed prior to entry of permanent orders on the issues of child custody, support, and division of property. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Applied in Hubbard v. District Court, 192 Colo. 98, 556 P.2d 478 (1976); Menne v. Menne, 194 Colo. 304, 572 P.2d 472 (1977); In re Femmer, 39 Colo. App. 277, 568 P.2d 81 (1977); In re Gallegos, 41 Colo. App. 116, 580 P.2d 838 (1978); M & G Engines v. Mroch, 631 P.2d 1177 (Colo. App. 1981); In re Boyd, 643 P.2d 804 (Colo. App. 1982).

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§ 14-10-106. Dissolution of marriage - legal separation

(1)

(a) The district court shall enter a decree of dissolution of marriage or a decree of legal separation when:

(I) The court finds that one of the parties has been domiciled in this state for ninety-one days next preceding the commencement of the proceeding;

(II) The court finds that the marriage is irretrievably broken; and

(III) The court finds that ninety-one days or more have elapsed since it acquired jurisdiction over the respondent either as the result of process pursuant to rule 4 of the Colorado rules of civil procedure or as the result of the act of the respondent in joining as copetitioner in the petition or in entering an appearance in any other manner.

(b) In connection with every decree of dissolution of marriage or decree of legal separation and to the extent of its jurisdiction to do so, the court shall consider, approve, or allocate parental responsibilities with respect to any child of the marriage, the support of any child of the marriage who is entitled to support, the maintenance of either spouse, and the disposition of property; but the entry of a decree with respect to parental responsibilities, support, maintenance, or disposition of property may be deferred by the court until after the entry of the decree of dissolution of marriage or the decree of legal separation upon a finding that a deferral is in the best interests of the parties.

(c) In a proceeding to dissolve a marriage or in a proceeding for legal separation or in a proceeding for declaration of invalidity, the court is deemed to have made an adjudication of the parentage of a child of the marriage if the court acts under circumstances that satisfy the jurisdictional requirements of section 14-5-201 and the final order:

(I) Expressly identifies a child as a "child of the marriage", "issue of the marriage", or similar words indicating that the husband is the father of the child; or

(II) Provides for support of the child by the husband unless paternity is specifically disclaimed in the order.

(d) Paternity is not adjudicated for a child not mentioned in the final order.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

Cite as (Casemaker) C.R.S. § 14-10-106

History. L. 71: R&RE, p. 521, § 1. C.R.S. 1963: § 46-1-6. L. 73: p. 552, § 2. L. 77: (1)(a)(I) and (1)(a)(II) amended and (1)(a)(III) added, p. 823, § 1, effective June 1. L. 98: (1)(b) amended, p. 1395, § 34, effective February 1, 1999. L. 2003: (1)(c) and (1)(d) added, p. 1264, § 50, effective July 1. L. 2012: IP(1)(a) and (1)(b) amended, (HB12-1233), ch. 52, p. 187, § 1, effective July 1; (1)(a)(I) and (1)(a)(III) amended, (SB 12-175), ch. 208, p. 830, § 24, effective July 1.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article on residence of plaintiff in divorce action, see 25 Dicta 110 (1948). For article, "Ten Years of Domestic Relations in

Colorado -- 1940-1950", see 27 Dicta 399 (1950). For comment on People v. District Court, appearing below, see 31 Dicta 118 (1954). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For article, "One Year Review of Domestic Relations", see 37 Dicta 55 (1960). For article, "One Year Review of Domestic Relations", see 40 Den. L. Ctr. J. 115 (1963). For article, "Child Support Obligations After Death of the Supporting Parent", see 16 Colo. Law. 790 (1987). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017).

Annotator's note. Since § 14-10-106 is similar to repealed §§ 46-1-2 and 46-1-3, C.R.S. 1963, §§ 46-1-2 and 46-1-3, CRS 53, CSA, C. 56, §§ 6 and 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

An action for divorce is of a purely personal nature. Morris v. Propst, 98 Colo. 213, 55 P.2d 944 (1936); Wood v. Parkerson, 163 Colo. 271, 430 P.2d 467 (1967).

The power of the court in such an action to issue decrees relative to alimony, to exonerate the wife's estate from the husband's claims, and to make orders relative to the care and custody of the children is merely incidental to the primary object of changing the status or relation of the parties to each other. Wood v. Parkerson, 163 Colo. 271, 430 P.2d 467 (1967).

Such actions, in the absence of a statute providing to the contrary, abate absolutely upon the death of either party before judgment, and cannot be revived in the name of or against the representatives of the deceased party. Wood v. Parkerson, 163 Colo. 271, 430 P.2d 467 (1967).

Masters should not be appointed as a routine matter in divorce cases where the issues are not complex and the facts are not complicated. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

The trial court may, for good cause shown, allow an extension of time within which to file an answer in a divorce action, even though the original time within which to file has expired. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

Not abuse to refuse continuance when party could not appear. It is not an abuse of discretion for the court to refuse to grant a continuance at a hearing as to the question of dissolution of the marriage, where the wife could not appear at the hearing. In re Lester, 647 P.2d 688 (Colo. App. 1982).

Deferring property division. A specific finding that it is in the best interest of the parties to defer the property division is required to prevent unwarranted delays in dividing property in dissolution of marriage cases. That purpose is complied with when the parties are given time limits within which to submit their proposals for the property division. In re Rose, 40 Colo. App. 176, 574 P.2d 112 (1977).

II. DOMICILE OR RESIDENCY REQUIRED.

Domicile is keystone for jurisdiction to determine the marital status, and domicile of one of the parties to the divorce action is required. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

Jurisdiction cannot be conferred by consent; lack of residence cannot be waived. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957); McMillion v. McMillion, 31 Colo. 33, 497 P.2d 331 (1972).

Actual bona fide residence is essential and must be established with some degree of certainty. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

Unless the residence required by this section is in some manner shown, the court is without jurisdiction. People ex rel. Plunkett v. District Court, 127 Colo. 483, 258 P.2d 483 (1953).

When bona fide residence in a county is not established, the court is under a mandatory duty to refuse to hear or grant any motions whatever in an action, and its dismissal must follow. People ex rel. Plunkett v. District Court, 127 Colo. 483, 258 P.2d 483 (1953).

Under statutes pertaining to jurisdiction in divorce proceedings, the word "residence" is synonymous with the legal meaning of the word "domicile", and a person's domicile, once established, continues until he acquires legal residence or domicile elsewhere. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

Residence requires domicile. Residence for the purposes of divorce jurisdiction has always required and continues to require domicile. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

Where husband's residency was established by an earlier proceeding as being in Colorado, that determination is res judicata and creates a presumption that he is still a resident, absent a showing that a new residency has been established. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

Where jurisdictional facts are admitted in pleadings, decree is not void for failing to recite them. Jones v. Jones, 71 Colo. 420, 207 P. 596 (1922).

Failure to allege 90-day residence immediately prior to proceeding is not fatal. Section 14-10-107 does not require that a petition for dissolution of marriage contain an allegation that the residency period includes the 90 days immediately prior to the commencement of the proceeding, and petitioner's failure to make her allegation in the words of this section was not a fatal defect. In re Alper, 33 Colo. App. 225, 517 P.2d 404 (1973).

Purpose of residency requirements was to prevent nonresidents from establishing temporary residence to obtain divorce. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902); Sedgwick v. Sedgwick, 50 Colo. 164, 114 P. 488 (1911).

An alien who made this state his home, in good faith, and had no residence elsewhere, was a citizen within the meaning of the former statute. Sedgwick v. Sedgwick, 50 Colo. 164, 114 P. 488 (1911).

Where no witness testified to plaintiff's residence, in answer to any direct question, but in effect it appeared that he had resided here for many years prior to the institution of his action, it was held a compliance with the statute. Sedgwick v. Sedgwick, 50 Colo. 164, 114 P. 488 (1911).

Where plaintiff alleged and proved more than a year's residence in Colorado before the commencement of the action, but defendant at the time of filing his cross complaint had resided in Colorado less than one year, the allegations of plaintiff's complaint vested the court with jurisdiction of plaintiff and the subject matter. Harms v. Harms, 120 Colo. 212, 209 P.2d 552 (1949).

Where prior to the trial plaintiff had registered to vote in Colorado, his automobile was registered in Colorado, he had a Colorado driver's license, and for several months prior to trial he has been engaged in part-time civilian employment in Colorado Springs in a field in which he intended to continue on his retirement, and plaintiff had for four years been present in Colorado in military service, the foregoing facts formed a sound basis for the finding of the trial judge that the court had jurisdiction based on residence. Mulhollen v. Mulhollen, 145 Colo. 479, 358 P.2d 887 (1961).

Mere presence in state as member of armed forces insufficient to confer jurisdiction but after 90 days domicile may be established. A serviceman may establish a Colorado domicile to support jurisdiction for a Colorado court to grant a decree of dissolution of marriage after he has been stationed in Colorado for 90 days. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

III. DISTRICT COURT'S JURISDICTION.

The district courts are invested by the statute with jurisdiction in this class of actions. Pleyte v. Pleyte, 1 Colo. App. 70, 28 P. 23 (1891).

Only a final decree of divorce in a foreign state constitutes a bar to a divorce action in Colorado. In re Quay, 647 P.2d 693 (Colo. App. 1982).

Formerly, where a complaint alleged that the parties were residents of the state of Colorado, and that defendant had been guilty of acts of mental cruelty committed within the state of Colorado, and prayed for divorce alleging sufficient facts to give the court jurisdiction. Raygor v. Raygor, 29 Colo. App. 453, 485 P.2d 930 (1971).

Service by publication insufficient for jurisdiction in custody issue. Service by publication pursuant to the uniform act is not sufficient to vest a trial court with jurisdiction to resolve a custody issue. In re Blair, 42 Colo. App. 270, 592 P.2d 1354 (1979).

A trial court which in fact lacks jurisdiction over the subject matter cannot acquire jurisdiction even though the parties expressly or impliedly consent thereto. Triebelhorn v. Turzanski, 149 Colo. 558, 370 P.2d 757 (1962).

The jurisdiction of the district court of Adams county, arising from the filing and disposition of the divorce action would not preclude the district court of the city and county of Denver from proceeding pursuant to the reciprocal support act when the mother and children had moved to Nevada. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

A district court is without jurisdiction to hear a divorce action involving two members of a reservation Indian tribe. Whyte v. District Court, 140 Colo. 334, 346 P.2d 1012 (1959), cert. denied, 363 U.S. 829, 80 S. Ct. 1600, 4 L. Ed. 2d 1524 (1960).

Where the trial court had jurisdiction to divide property at the time of entry of a final decree of divorce, but did not do so, nor then reserve the matter for further consideration, it lost jurisdiction to thereafter make a valid division of such property. Triebelhorn v. Turzanski, 149 Colo. 558, 370 P.2d 757 (1962); Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

Trial court, which had personal jurisdiction over husband but lacked the authority to divide the husband's military pension as marital property, did not retain jurisdiction to divide the pension at a later date. Even though final decree provided that trial court had continuing jurisdiction over the action and that the wife would remain entitled to any and all military benefits, the court did not have the authority to divide military pension as a result of subsequent case law declaring such pensions to be marital property. Language in final decree refers only to the court's continuing authority to divide property as such court had on the date of the final decree. In Re Booker, 833 P.2d 734 (Colo. 1992).

Federal act specifying whether the court has jurisdiction over a military member's pension preempts state rules of procedure governing jurisdiction. In Re Booker, 833 P.2d 734 (Colo. 1992).

Jurisdiction retained until all matters resolved. A district court which properly acquires jurisdiction of the parties and subject matter in a dissolution action retains that jurisdiction until all matters arising out of the litigation are resolved. Gonzales v. District Court, 629 P.2d 1074 (Colo. 1981).

Jurisdiction does not extend to resolution of all financial issues. Jurisdiction to grant a divorce does not automatically include the right to resolve all financial issues between the parties to the marriage. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

The dissolution court has jurisdiction to grant relief but only in equity and not at law. Tort claims concerning property that was the subject of the dissolution court may not be joined into an otherwise equitable dissolution proceeding. In re Mockelmann, 121 P.3d 335 (Colo. App. 2005).

Where it appears from a record and from the conduct of counsel that the parties agreed that a court would defer determination of permanent alimony, property settlement, and related matters until after the entry of a final decree. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

Although, resumption of marital relations by the parties to a divorce action affords good grounds for a dismissal thereof, it does not serve to divest the court of jurisdiction. Stockham v. Stockham, 145 Colo. 376, 358 P.2d 1026 (1961).

Husband's motion to abate and reduce child support amounted to consent to the court's personal jurisdiction. In Re Booker, 833 P.2d 734 (Colo. 1992).

Purported father found to have transacted business in state. Purported father's sending of letter agreeing to pay support that father knew would be relied upon by Colorado authorities for purpose of determining eligibility for public assistance constituted transacting business in this state conferring personal jurisdiction over him pursuant to § 13-1-124. In re Parental Responsibilities of H.Z.G., 77 P.3d 848 (Colo. App. 2003).

Decree of dissolution entered after a spouse's death is void for lack of jurisdiction, and the dissolution action is abated. In Re Connell, 870 P.2d 632 (Colo. App. 1994).

This section mandates that bifurcation of dissolution proceedings may occur only if the district court finds that "such a deferral is necessary in the best interest of the parties" and should only be considered in exceptional cases. Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

A decree of dissolution when entered by the district court is final to dissolve the marriage even when the district court refuses to certify the decree as a final judgment appealable under C.R.C.P. 54 (b). Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

§ 14-10-106.5. Dissolution of civil unions - legal separation - jurisdiction - applicability of article and case law

(1) Any person who enters into a civil union in Colorado pursuant to article 15 of this title consents to the jurisdiction of the courts of Colorado for the purpose of any action relating to a civil union even if one or both parties cease to reside in this state. In a matter seeking a dissolution, legal separation, or declaration of invalidity of a civil union, the court shall follow the procedures that are set forth in this article for dissolution, legal separation, or declaration of invalidity. The provisions of this article and any case law construing this article apply to the dissolution, legal separation, or declaration of invalidity of a civil union.

(2) The court shall follow the laws of Colorado in a matter filed in Colorado that is seeking a dissolution, legal separation, or invalidity of a civil union that was entered into in another jurisdiction.

Cite as (Casemaker) C.R.S. § 14-10-106.5

History. Added by 2013 Ch. 49, §14, eff. 5/1/2013.

L. 2013: Entire section added, (SB 13-011), ch. 49, p. 163, § 14, effective May 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Maintenance Revisited The New Act", see 42 Colo. Law. 69 (Nov. 2013).

§ 14-10-107. Commencement - pleadings - abolition of existing defenses - automatic, temporary injunction - enforcement

(1) All proceedings under this article shall be commenced in the manner provided by the Colorado rules of civil procedure.

(2) The petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) The residence of each party and the length of residence in this state;

(b) The date and place of the marriage;

(c) The date on which the parties separated;

(d) The names, ages, and addresses of any living children of the marriage and whether the wife is pregnant;

(e) Any arrangements as to the allocation of parental responsibilities with respect to the children of the marriage and support of the children and the maintenance of a spouse;

(f) The relief sought; and

(g) A written acknowledgment by the petitioner and the co-petitioner, if any, that he or she has received a copy of, has read, and understands the terms of the automatic temporary injunction required by paragraph (b) of subsection (4) of this section.

(2.5) Upon the filing of a petition for dissolution of marriage or legal separation pursuant to this article, each party shall provide to the court, in the manner prescribed by the court, his or her social security number and the social security number of each child named in the petition pursuant to paragraph (d) of subsection (2) of this section.

(3) Either or both parties to the marriage may initiate the proceeding. In addition, a legal guardian, with court approval pursuant to section 15-14-315.5, C.R.S., or a conservator, with court approval pursuant to section 15-14-425.5, C.R.S., may initiate the proceeding. If a legal guardian or conservator initiates the proceeding, the legal guardian or conservator shall receive notice in the same manner as the parties to the proceeding.

(4)

(a) Upon the commencement of a proceeding by one of the parties, or by a legal guardian or conservator of one of the parties, the other party shall be personally served in the manner provided by the Colorado rules of civil procedure, and he or she may file a response in accordance with such rules; except that, upon motion verified by the oath of the party commencing the proceeding or of someone in his or her behalf for an order of publication stating the facts authorizing such service, and showing the efforts, if any, that have been made to obtain personal service within this state, and giving the address or last-known address of each person to be served or stating that his or her address and last-known address are unknown, the court shall hear the motion ex parte and, if satisfied that due diligence has been used to obtain personal service within this state or that efforts to obtain the same would have been to no avail, shall order one publication of a consolidated notice in a newspaper published or having general circulation in the county in which the proceeding is filed, notwithstanding the provisions of article 70 of title 24. A consolidated notice shall be published at least once during a calendar month and shall list the proceedings filed subsequent to those named in the previously published consolidated notice, stating as to each proceeding the names of the parties, the action number, the nature of the action, that a copy of the petition and summons may be obtained from the clerk of the court during regular business hours, and that default judgment may be entered against that party upon whom service is made by such notice if he or she fails to appear or file a response within thirty-five days after the date of publication. Costs of publication of a consolidated notice may be assessed pro rata to each of the proceedings named in the notice; except that, if a party is indigent or otherwise unable to pay such publication costs, the costs shall be paid by the court from funds appropriated for the purpose. Service shall be complete upon such publication, and a response or appearance by the party served by publication under this subsection (4) shall be made within thirty-five days thereafter, or default judgment may be entered. No later than the day of publication, the clerk of the court shall also post for thirty-five consecutive days a copy of the process on a bulletin board in his or her office or on the website of

the district court in which the case was filed and shall mail a copy of the process to the other party at his or her last-known address, and shall place in the file of the proceeding his or her certificate of posting and mailing. Proof of publication of the consolidated notice shall be by placing in the file a copy of the affidavit of publication, certified by the clerk of the court to be a true and correct copy of the original affidavit on file in the clerk's office.

(b) (I) Upon the filing of a petition for dissolution of marriage or legal separation by the petitioner or copetitioner or by a legal guardian or conservator on behalf of one of the parties and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, a temporary injunction shall be in effect against both parties until the final decree is entered or the petition is dismissed or until further order of the court:

(A) Restraining both parties from transferring, encumbering, concealing, or in any way disposing of, without the consent of the other party or an order of the court, any marital property, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the injunction is in effect;

(B) Enjoining both parties from molesting or disturbing the peace of the other party;

(C) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the consent of the other party or an order of the court; and

(D) Restraining both parties, without at least fourteen days' advance notification and the written consent of the other party or an order of the court, from canceling, modifying, terminating, or allowing to lapse for nonpayment of premiums, any policy of health insurance, homeowner's or renter's insurance, or automobile insurance that provides coverage to either of the parties or the minor children or any policy of life insurance that names either of the parties or the minor children as a beneficiary.

(II) The provisions of the injunction shall be printed upon the summons and the petition and the injunction shall become an order of the court upon fulfillment of the requirements of subparagraph (I) of this paragraph (b). However, nothing in this paragraph (b) shall preclude either party from applying to the court for further temporary orders, an expanded temporary injunction, or modification or revocation under section 14-10-108.

(III) The summons shall contain the following advisements:

(A) That a request for genetic tests shall not prejudice the

requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5); and

(B) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the legal final decree of dissolution, the genetic tests may not be allowed into evidence at a later date.

(4.1) With regard to the automatic, temporary injunction that becomes effective in accordance with paragraph (b) of subsection (4) of this section when a petition for dissolution of marriage or legal separation is filed and served, whenever there is exhibited by the respondent to any duly authorized peace officer as described in section 16-2.5-101, C.R.S., a copy of the petition and summons duly filed and issued pursuant to this section, or, in the case of the petitioner, a copy of the petition and summons duly filed and issued pursuant to this section, together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and the peace officer has cause to believe that a violation of that part of the automatic, temporary injunction which enjoins both parties from molesting the other party has occurred, such peace officer shall use every reasonable means to enforce that part of the injunction against the petitioner or respondent. A peace officer shall not be held civilly or criminally liable for his or her action pursuant to this subsection (4.1) if the action is in good faith and without malice.

(5) Defenses to divorce and legal separation existing prior to January 1, 1972, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are hereby abolished.

(6) All issues raised by these proceedings shall be resolved by the court sitting without a jury.

Cite as (Casemaker) C.R.S. § 14-10-107

History. Amended by 2017 Ch. 66, §5, eff. 9/1/2017.

Amended by 2016 Ch. 116, §1, eff. 4/21/2016.

L. 71: R&RE, p. 521, § 1. C.R.S. 1963: § 46-1-7. L. 72: p. 296, § 1. L. 83: (4) amended, p. 641, § 1, effective July 1. L. 86: (4.1) added, p. 716, § 1, effective April 29. L. 87: (4.1) amended, p. 1578, § 21, effective July 10. L. 98: (2)(e) amended, p. 1395, § 35, effective February 1, 1999. L. 99: (2)(g) and (4)(b)(I)(D) added and (4)(b)(I)(B), (4)(b)(I)(C), and (4)(b)(II) amended, p. 1059, §§ 1, 2, effective June 1; (3), (4)(a), and IP(4)(b)(I) amended, p. 465, § 3, effective July 1. L. 2000: (3) amended, p. 1833, § 7, effective January 1, 2001. L. 2003: (4.1) amended, p. 1621, § 34, effective August 6. L. 2005: (4)(b)(III) added, p. 377, § 1, effective January 1, 2006. L. 2011: (2.5) added, (SB 11-123), ch. 46, p. 118, §2, effective August 10. L. 2012: (4)(a) amended, (SB 12-175), ch. 208, p. 830, § 25, effective July 1. L. 2016: (4)(a) amended, (HB 16-1258), ch. 116, p. 329, § 1, effective April 21. L. 2017: (4)(a) amended, (HB 17-1142), ch. 66, p. 209, § 5, effective September 1.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Expediting Court Procedure", see 10 Dicta 113 (1933). For an article on divorce, see 16 Dicta 107 (1939). For article, "Comments on the Rules of Civil Procedure", see 22 Dicta 154 (1945). For article, "The Doctrine of Recrimination in Divorce Proceedings", see 21 Rocky Mt. L. Rev. 407 (1949). For article, "Forms Committee Presents Standard Pleading Samples to be Used in Divorce Litigation", see 29 Dicta 94 (1952). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For comment on Reed v. Reed, appearing below, see 31 Rocky Mt. L. Rev. 240 (1959). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Recovering the Parentally Kidnapped Child", see 12 Colo. Law. 1798 (1983). For article, "Injunctive Remedies for Interpersonal Violence", see 18 Colo. Law. 1743 (1989). For article, "A Modest Proposal: The Rule 3(a) Waiver Agreement", see 46 Colo. Law. 23 (Mar. 2017). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017).

Annotator's note. Cases relevant to § 14-10-107 decided prior to its earliest source, L. 71, p. 521, § 1, have been included in the annotations to this section.

A court having properly acquired jurisdiction over the subject matter and parties to a divorce action, including minor children, is not at liberty to thereafter divest itself of such jurisdiction to the prejudice of interested parties. Cartier v. Cartier, 94 Colo. 157, 28 P.2d 1010 (1934).

In divorce proceedings, the parties are the husband and wife, and the jurisdiction of the divorce court is exercised as between husband and wife. Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931).

There are, in reality, three parties to every divorce action: The plaintiff, the defendant, and the state. Reed v. Reed, 138 Colo. 74, 329 P.2d 633 (1958).

A wife or husband may well be entitled to a divorce, but whether or not she or he will exercise that right is optional with her or him. Faith v. Faith, 128 Colo. 483, 261 P.2d 225 (1953).

The policy of the court should be to discourage, rather than encourage, divorces. Faith v. Faith, 128 Colo. 483, 261 P.2d 225 (1953).

When a plaintiff moves to dismiss a divorce action, it is the duty of a trial court to dismiss the case. McClanahan v. County Court, 136 Colo. 426, 318 P.2d 599 (1957).

The court cannot compel one to take a divorce when he does not desire to have one. Faith v. Faith, 128 Colo. 483, 261 P.2d 225 (1953).

Due process notice and hearing requirements met. The basic requirements of the due process clause of our constitution are that no person be deprived of valuable rights without adequate notice and opportunity for hearing, and the divorce statute does make provision for such notice and hearing before the termination of the marriage. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Action for dissolution of marriage is proceeding in rem. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Scope of court's jurisdiction over nonresident respondent is established by this section. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Service by publication insufficient for jurisdiction in custody issue. Service by publication pursuant to the uniform act is not sufficient to vest a trial court with jurisdiction to resolve a custody issue. In re Blair, 42 Colo. App. 270, 592 P.2d 1354 (1979).

Default judgment would be proper after a member of the armed services entered an appearance and asserted cross claims. Federal Soldiers' and Sailors' Civil Relief Act is to protect members of the military from having default judgments entered against them without their notice of the pendency of the action. It does not prevent entry of such a judgment when there has been notice of the pendency of the action and the member has had adequate time to defend the action. In re Custody of Nugent, 955 P.2d 584 (Colo. App. 1997).

In an action for divorce it is sufficient compliance with the rules of civil procedure if a court makes findings on the material and ultimate facts. Lininger v. Lininger, 138 Colo. 338, 333 P.2d 625 (1958).

Maintenance must be requested in petition. Under the uniform act, maintenance must be requested in the petition for dissolution. In re Boyd, 643 P.2d 804 (Colo. App. 1982).

All the provisions of the code which are applicable shall control in the trial and disposition of divorce cases, except as otherwise provided in the divorce act itself, either expressly or by necessary implication. Eickhoff v. Eickhoff, 27 Colo. 380, 61 P. 225 (1900); People ex rel. Lackey v. District Court, 30 Colo. 123, 69 P. 597 (1902).

The former defense of condonation was in the nature of confession and avoidance. Cochran v. Cochran, 164 Colo. 99, 432 P.2d 752 (1967).

Condoned adultery was not a bar to a divorce, because it was not a ground for divorce. Jones v. Jones, 71 Colo. 420, 207 P. 596 (1922).

If there was any collusion or fraud between the parties, the court would see to it that a decree for divorce is not entered. Reed v. Reed, 138 Colo. 74, 329 P.2d 633 (1958).

Where each party was at fault, a court could not grant relief to either party. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

Formerly, the defendant in an action for divorce could set up any matter by way of cross-complaint that would defeat the plaintiff's action. Cupples v. Cupples, 33 Colo. 449, 80 P. 1039 (1905).

It was not necessary, in order to entitle the defendant to set up matters by way of cross-complaint, in bar of the plaintiff's action, that the defendant was seeking a divorce. Cupples v. Cupples, 33 Colo. 449, 80 P. 1039 (1905).

Where a cross-complaint, defective because it omitted a jurisdictional averment so that no divorce could be awarded thereon to the defendant, must have been investigated, and could serve to defeat the action. Cupples v. Cupples, 33 Colo. 449, 80 P. 1039 (1905); Garver v. Garver, 52 Colo. 227, 121 P. 165 (1911).

Decedent's naming of her brother as the payable-on-death beneficiary of her accounts and joint accounts of her and her husband did not amount to an encumbrance of marital property. Estate of Westfall v. Westfall, 942 P.2d 1227 (Colo. App. 1996).

Changing accounts from multi-party to sole accounts before divorce did not affect the other spouse's rights since the accounts remained part of the marital estate and either party had a legal right to deplete the joint accounts. Estate of Westfall v. Westfall, 942 P.2d 1227 (Colo. App. 1996).

It was error to receive a verdict which failed to respond to counter charge of violation of marital duties pleaded in answer. Garver v. Garver,

52 Colo. 227, 121 P. 165 (1911).

II. COMMENCEMENT OF THE PROCEEDING.

Nothing in subsection (2) requires that a dissolution petitioner who seeks to pierce the corporate veil of an entity related to the respondent must set forth in the petition a veil-piercing claim in accordance with applicable pleading standards. In re Gromicko, 2017 CO 1, 387 P.3d 58.

Domicile in the state is alone sufficient to bring an absent defendant in a divorce action within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service. In re Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

Its adequacy so far as due process is concerned is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard, if it is, the traditional notions of fair play and substantial justice implicit in due process are satisfied. In re Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

Fraud relative to service by publication operates to void a divorce decree. In re Wilson, 653 P.2d 85 (Colo. App. 1982).

A decree of divorce based upon constructive service is void unless the record shows a strict compliance with all the statutory requirements. Roberts v. Roberts, 3 Colo. App. 6, 31 P. 941 (1892).

The record must show a compliance with the statute respecting the mailing of a copy of the summons to the defendant to justify the entry of a judgment. Roberts v. Roberts, 3 Colo. App. 6, 31 P. 941 (1892).

Parole proof that the defendant had actual knowledge of the pendency of the action was not considered on the hearing of his motion to set aside the judgment, because of the failure to mail him a copy of the summons, as required by law. Roberts v. Roberts, 3 Colo. App. 6, 31 P. 941 (1892).

Where upon a service of a summons in a divorce suit in which the defendant, if served within the county in which the action was pending, was required to appear and answer the complaint within 20 days thereafter, the court was not authorized to proceed to a judgment if defendant failed to comply with such command, for it was in direct conflict with the mandatory provision which gives a defendant 30 days to appear and answer in such circumstances. Mottschall v. Mottschall, 31 Colo. 260, 72 P. 1053 (1903).

Where plaintiff had removed her child to a foreign country, a motion by her attorney for leave to withdraw as her counsel was properly denied, since such withdrawal would make service of process impossible and deprive the trial court of authority to make proper orders. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

Failure to allege 90-day residency immediately prior to proceeding not fatal. This section does not require that a petition for dissolution of marriage contain an allegation that the residency period includes the 90 days immediately prior to the commencement of the proceeding, and petitioner's failure to make her allegation in the words of § 14-10-106 was not a fatal defect. In re Alper, 33 Colo. App. 225, 517 P.2d 404 (1973).

Theory of mutual mistake not waived by failure to raise issue in reply to petition. In a dispute over a separation agreement, a theory of mutual mistake is not waived by failure to raise the issue in the reply to the petition for dissolution of marriage, since no reply is required and averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided. In re Deines, 44 Colo. App. 98, 608 P.2d 375 (1980).

Withdrawal of marital property after dissolution proceeding commenced. In determining the total value of the marital property, trial court did not err in including the $45,000 husband, had withdrawn from the fund after the dissolution proceeding had commenced since husband, who had not obtained an order of the court or consent of his wife before using the money, failed to show that the withdrawal was done either in the usual course of business or was for the necessities of life. In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Trial court properly credited husband with the amount of funds existing prior to wife's sale of stock shares when wife cashed out shares after entry of the automatic temporary injunction. Wife's argument that the parties routinely cashed out shares to meet living expenses was rejected by the court as a rationale for not including the amount she cashed out in the division of marital shares, since the prior sales of stock took place inconsistently and was not used as income on a monthly basis. In re Huston, 967 P.2d 181 (Colo. App. 1998).

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§ 14-10-107.5. Entry of appearance and notice of withdrawal by delegate child support enforcement unit

(1) The attorney for the delegate child support enforcement unit may file an entry of appearance on behalf of the county department of human or social services in any proceeding for dissolution of marriage or legal separation under this article 10 for purposes of establishing, modifying, and enforcing child support and medical support if any party is receiving child support services pursuant to section 26-13-106 and for purposes of establishing and enforcing reimbursement of payments for temporary assistance to needy families.

(2) The delegate child support enforcement unit, upon the filing of the entry of appearance described in subsection (1) of this section or upon the filing of a legal pleading to

establish, modify, or enforce the support obligation, is from that date forward, without leave or order of court, a third-party intervenor in the action for the purposes outlined in subsection (1) of this section without the necessity of filing a motion to intervene.

(3) The delegate child support enforcement unit may withdraw as a party from a case when the case is closed without leave of the court by filing a notice pursuant to the Colorado rules of civil procedure. Upon the filing of such notice, the delegate child support enforcement unit is no longer considered a party to the action without the necessity of filing a motion to dismiss party.

Cite as (Casemaker) C.R.S. § 14-10-107.5

History. Amended by 2018 Ch. 389, §1, eff. 8/8/2018.

Amended by 2018 Ch. 38, §12, eff. 8/8/2018.

L. 89: Entire section added, p. 792, § 13, effective July 1. L. 90: Entire section amended, p. 889, § 8, effective July 1. L. 2007: (1) amended, p. 1648, § 1, effective May 31. L. 2018: Entire section amended, (SB 18-092), ch. 38, p. 400, § 12, effective August 8; entire section amended, (HB 18-1363), ch. 389, p. 2321, § 1, effective August 8.

Editor's Note:

This section was amended in SB 18-092. Those amendments were superseded by the amendment of this section in HB 18-1363, effective August 8, 2018.

Cross References:

For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

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§ 14-10-107.7. Required notice of involvement with state department of human services

When filing a petition for dissolution of marriage or legal separation, a petition in support or proceedings for the allocation of parental responsibilities with respect to the children of the marriage, or any other matter pursuant to this article 10 with the court, if the parties have joint legal responsibility for a child for whom the petition seeks an order of child support, the parties are required to indicate on a form prepared by the court whether or not the parties or the dependent children of the parties have received within the last five years or are currently receiving benefits or public assistance from either the state department of human services or county department of human or social services. If the parties indicate that they have received such benefits or assistance, the court shall inform the appropriate delegate child support enforcement unit so that the unit can determine whether any support enforcement services are required. There is no penalty for failure to report as specified in this section.

Cite as (Casemaker) C.R.S. § 14-10-107.7

History. Amended by 2018 Ch. 38, §13, eff. 8/8/2018.

L. 92: Entire section added, p. 202, § 8, effective August 1. L. 93: Entire section amended, p. 1558, § 6, effective September 1. L. 94: Entire section amended, p. 2644, § 106, effective July 1. L. 98: Entire section amended, p. 1396, § 36, effective February 1, 1999. L. 2018: Entire section amended, (SB 18-092), ch. 38, p. 400, § 13, effective August 8.

Cross References:

For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

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§ 14-10-107.8. Required notice of prior restraining, civil protection, or emergency protection orders to prevent domestic abuse - petitions for dissolution of marriage or legal separation

(1) When filing a petition for dissolution of marriage or legal separation pursuant to this article, the filing party shall have a duty to disclose to the court the existence of any prior temporary or permanent restraining orders and civil protection orders to prevent domestic abuse issued pursuant to article 14 of title 13, C.R.S., any mandatory restraining order and protection orders issued pursuant to section 18-1-1001, C.R.S., and any emergency

protection orders issued pursuant to section 13-14-103, C.R.S., entered against either party by any court within two years prior to the filing of the petition of dissolution of marriage or legal separation. The disclosure required pursuant to this section shall address the subject matter of the previous restraining, civil protection, or emergency protection orders, including the case number and jurisdiction issuing such orders.

(2) After the filing of the petition, the court shall advise the parties concerning domestic violence services and potential financial resources that may be available and shall strongly encourage the parties to obtain such services for their children, in appropriate cases. If the parties' children participate in such services, the court shall apportion the costs of such services between the parties as it deems appropriate.

(3) The parties to a domestic relations petition filed pursuant to this article shall receive information concerning domestic violence services and potential financial resources that may be available.

Cite as (Casemaker) C.R.S. § 14-10-107.8

History. L. 95: Entire section added, p. 83, § 1, effective July 1. L. 99: Entire section amended, p. 502, § 9, effective July 1. L. 2001: Entire section amended, p. 978, § 1, effective August 8. L. 2004: (1) amended, p. 554, § 10, effective July 1. L. 2005: (1) amended, p. 764, § 22, effective June 1.

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§ 14-10-108. Temporary orders in a dissolution case

(1) In a proceeding for dissolution of marriage, legal separation, the allocation of parental responsibilities, or declaration of invalidity of marriage or a proceeding for disposition of property, maintenance, or support following dissolution of the marriage, either party may move for temporary payment of debts, use of property, maintenance, parental responsibilities, support of a child of the marriage entitled to support, or payment of attorney fees. The motion may be supported by an affidavit setting forth the factual basis for the motion and the amounts requested.

(1.5) The court may consider the allocation of parental responsibilities in accordance with the best interests of the child, with particular reference to the factors specified in section 14-10-124 (1.5).

(2) As a part of a motion of such temporary orders or by an independent motion accompanied by an affidavit, either party may request the court to issue a temporary order:

(a) Restraining any party from transferring, encumbering, concealing, or in any way disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the order is issued;

(b) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result.

(2.3) and (2.5) (Deleted by amendment, L. 2004, p. 553, § 4, effective July 1, 2004.)

(3) A party to an action filed pursuant to this article may seek, and the court may issue, a temporary or permanent protection order pursuant to the provisions of part 1 of article 14 of title 13, C.R.S.

(4) (Deleted by amendment, L. 2004, p. 553, § 4, effective July 1, 2004.)

(5) A temporary order or temporary injunction:

(a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified prior to final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 14-10-122 ; and

(c) Terminates when the final decree is entered, unless continued by the court for good cause to a date certain, or when the petition for dissolution or legal separation is voluntarily dismissed.

(6) (Deleted by amendment, L. 2004, p. 553, § 4, effective July 1, 2004.)

(7) At the time a protection order is requested pursuant to part 1 of article 14 of title 13, C.R.S., the court shall inquire about, and the requesting party and such party's attorney shall have an independent duty to disclose, knowledge such party and such party's attorney may have concerning the existence of any prior protection orders or restraining orders of any court addressing in whole or in part the subject matter of the requested protection order.

Cite as (Casemaker) C.R.S. § 14-10-108

History. Amended by 2013 Ch. 218, §17, eff. 7/1/2013.

L. 71: R&RE, p. 522, § 1. C.R.S. 1963: § 46-1-8. L. 73: pp. 553, 555, §§ 3, 12. L. 81: (6) added, p. 903, § 1, effective May 13. L. 83: (1) amended, p. 644, § 1, effective April 26; (1.5) added, p. 645, § 1, effective June 10. L. 87: (1.5) amended, p. 575, § 4, effective July 1. L. 94: (2.5) and (7) added and (3) amended, p. 2008, § 4, effective January 1, 1995. L. 98: (2.3) added and (3) amended, p. 245, § 4, effective April 13; (1) and (2.5) amended, p. 1396, § 37, effective February 1, 1999. L. 99: (2.3) amended, p. 501, § 4, effective July 1. L. 2000: (1.5) amended, p. 1844, § 24, effective August 2. L. 2003: (2.3), (2.5), (3), (6), and (7) amended, p. 1010, § 14, effective July 1. L. 2004: IP(2), (2.3), (2.5), (3), (4), (6), and (7) amended, p. 553, § 4, effective July 1. L. 2013: (3) and (7) amended, (HB 13-1259), ch. 218, p. 1016, § 17, effective July 1.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Legislative Update", see 12 Colo. Law. 1257 (1983).

Annotator's note. Since § 14-10-108 is similar to repealed § 46-1-5, C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The general rule is that courts of equity should and will in a proper case enjoin a party to a divorce or separate maintenance action from proceeding in an annulment suit in a foreign jurisdiction. Hayutin v. Hayutin, 152 Colo. 261, 381 P.2d 272 (1963).

Evidence of extreme circumstances necessitating sale of co-owned property. If there is evidence of extreme circumstances that co-owned property needs to be sold to preserve equities therein, a court may decree a sale of the property prior to a final determination of the merits of the dissolution action. In re Gavend, 781 P.2d 161 (Colo. App. 1989).

Permanent orders that substantially reduce the amount of parenting time originally specified in the temporary orders are not subject to the endangerment standard but rather the best interests of the child standard. In re Fickling, 100 P.3d 571 (Colo. App. 2004).

Best interest standard, and not the endangerment standard, was properly applied to award father residential care despite mother's award of temporary custody, where awarding father residential custody of the children was not abuse of discretion and record supported findings. In re Monteil, 960 P.2d 717 (Colo. App. 1998).

Applied in In re Westlake, 674 P.2d 1386 (Colo. App. 1983).

II. TEMPORARY ORDERS.

Law reviews. For article, "Attorney Fees at Temporary Orders: Reality or Illusion?", see 24 Colo. Law. 2185 (1995).

An order granting a temporary change of custody following an ex parte hearing with no notice to the mother denied her due process where no evidence was presented and no finding was made that irreparable injury would result if no order were issued until the time for responding had elapsed. Olson v. Priest, 193 Colo. 222, 564 P.2d 122 (1977).

Court lost jurisdiction to enforce order. When an order dismissing a marriage dissolution action was signed, the court was divested of any further jurisdiction in that action and had no jurisdiction to hold husband in contempt for failing to pay support required by temporary order which was entered in that action. Hill v. District Court, 189 Colo. 356, 540 P.2d 1079 (1975).

The purpose of temporary alimony is to allow a wife to live in her accustomed manner during pendency of the action and to provide her with means to properly litigate the controversy, and is not definitive of her entitlement to support under permanent orders. Bieler v. Bieler, 130 Colo. 17, 272 P.2d 636 (1954); MacReynolds v. MacReynolds, 29 Colo. App. 267, 482 P.2d 407 (1971).

If she possesses independent means sufficient for these purposes the allowances should not be granted; however, she is not required first to impair the capital of her separate estate. Bieler v. Bieler, 130 Colo. 17, 272 P.2d 636 (1954).

The allowance of temporary alimony is dependent upon the existence of the marriage relation, and all necessary facts to establish such relation must be made to appear at least prima facie before such allowance is made by the court, but where a prima facie case is established alimony should be awarded. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

In an action for divorce where it is clear upon the admitted facts that the marriage alleged in the complaint is void in law, or where the preponderance of the evidence tends to show that there was never a marriage in fact, temporary alimony should not be awarded, and if awarded will be set aside on review. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

It appears that in a divorce proceeding, the right to apply for alimony pendente lite is dependent upon the previous filing of a complaint for a divorce, and then the application may be made to, and acted upon, by the court in term time, or by the judge in vacation. Eickhoff v. Eickhoff, 14 Colo. App. 127, 59 P. 411 (1899).

The allowance to be made for temporary alimony, attorney fees, and suit money is within the sound discretion of the trial court, and unless that discretion has been abused the order of allowance will not be disturbed on review. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902); Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

In a divorce suit where the wife was in indigent circumstances and the husband was a man of large means, an allowance of $50 per month as temporary alimony, $250 attorney fees, and $25 suit money was not excessive, and was not an abuse of discretion by the trial court. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

In determining the amount of temporary alimony to be allowed, the ability of the husband is an element to be considered, and the same element must necessarily be taken into consideration in fixing the amount of permanent alimony. Fahey v. Fahey, 43 Colo. 354, 96 P. 251 (1908).

If the evidence as to the ability of the husband to pay temporary alimony in a divorce action is conflicting, the order of the trial court based thereon is not reviewable. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

An award of temporary alimony may be modified by the supreme court. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

No appeal from temporary orders that have terminated due to entry of permanent orders. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

Temporary alimony awarded a wife cannot be modified except upon motion and sufficient showing in support thereof; thus, where no motion was made respecting the alimony, it was an abuse of discretion for the court to suspend the order for temporary alimony at a hearing on a citation for the husband to show cause why he was not in contempt of court for failure to pay alimony Wright v. Wright, 122 Colo. 179, 220 P.2d 881 (1950).

The question whether an order for temporary alimony should be modified is also within the discretion of the court. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

Orders resolving child support issue are final. In dissolution proceedings, orders which resolve the issue of child support, even on a temporary basis, are final for purposes of review. In re Henne, 620 P.2d 62 (Colo. App. 1980).

"Final decree", as used in subsection (5)(c), is not limited to a final decree of dissolution, but may also include a final order concerning child support. In re Price, 727 P.2d 1073 (Colo. 1986); In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

Where court continued determination of permanent child support to time subsequent to entry of decree of dissolution, temporary child support order was not terminated on date of dissolution by virtue of statute terminating temporary order or temporary injunction when final decree is entered. In re Price, 727 P.2d 1073 (Colo. 1986).

Temporary orders as to maintenance are reviewable as a final judgment even if there has not been a final judgment in the form of a decree of dissolution. In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

If the decree of dissolution leaves the issue of maintenance to be resolved later, an order of temporary maintenance is not terminated on the date of dissolution by virtue of subsection (5)(c). When possible, however, at the time the decree is entered, the court should set a definite date for

consideration of permanent orders concerning maintenance. In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

A request for a temporary award includes attorney fees and related litigation expenses. In re Mockelmann, 944 P.2d 670 (Colo. App. 1997).

An award of attorney fees is a final judgment subject to appellate review as it establishes a financial right and obligation of the parties until the entry of permanent orders. A temporary award of attorney fees is based upon the same underlying premise as a temporary award of maintenance or child support in that it concerns the immediate financial need of the party to whom the attorney fees are awarded. In re Mockelmann, 944 P.2d 670 (Colo. App. 1997).

The duty to pay maintenance is independent and is not limited or specifically tied to the entry of a decree of dissolution. To allow a party to terminate his or her maintenance payments when a decree of dissolution is entered that is mute on the issue of maintenance would disturb the status quo, frustrate a central purpose of the statute, and allow evasion of an important stabilizing aspect of the dissolution process. In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

Where a husband, plaintiff in a divorce suit, is unable to make reasonable provision for his wife during the pendency of the suit, the suit should be abated until he is able to do so. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902).

Where a wife, defendant in a divorce suit, is a nonresident of the state and desires to come to Colorado to defend the suit, she should be given an opportunity to do so and the plaintiff should be required to deposit in court a sufficient sum to pay to the state the expenses of the wife which shall be paid to her upon her arrival, within a reasonable time, with such additional sum as may be necessary to properly defend the suit. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902).

Where a trial court denies motions of both parties with respect to temporary alimony pending trial on the merits, a writ of error to review such action is premature. Hizel v. Hizel, 132 Colo. 379, 288 P.2d 354 (1955).

Since temporary orders are not in any way res judicata as to matters properly the subject of permanent order, a showing of change of circumstances is not an essential element for the trial court's consideration in its establishment of permanent alimony. MacReynolds v. MacReynolds, 29 Colo. App. 267, 482 P.2d 407 (1971).

Temporary orders do not grant "parenting time rights", as that term is specified in § 14-10-129(1)(b)(I), but simply provide for parenting time pending a final determination of permanent orders. In re Fickling, 100 P.3d 571 (Colo. App. 2004).

Temporary orders are not determinative of the permanent orders regarding allocation of parental responsibility or other matters. In re Lawson, 608 P.2d 378 (Colo. App. 1980); In re Fickling, 100 P.3d 571 (Colo. App. 2004).

There is no enforceable temporary order where the claim for spousal maintenance is based on a referee's recommendation and where the transcript is not signed and no separate order of the court is entered. In re Burke, 680 P.2d 1338 (Colo. App. 1984).

Formerly, an execution was authorized on an order for temporary alimony. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Paul v. Marty, 72 Colo. 399, 211 P. 667 (1922).

The temporary order of the "Beth Din", or its adoption in a prior proceeding for legal separation that was later dismissed, has no legal effect in a subsequent proceeding for dissolution of marriage between the same parties. In re Popack, 998 P.2d 464 (Colo. App. 2000).

Applying the intent of the Indian Child Welfare Act of 1978, court determined that trial court improperly found that mother had abandoned child for the purpose of granting a temporary allocation of parental responsibilities to caregiver. Although mother had signed document granting caregiver guardianship, the document did not suggest the placement was to be permanent, and the mother remained in continued contact with child. A parent's placement of a child in the care of another, even if prolonged, does not constitute abandonment if the parent remains in contact and demonstrates an intent to maintain the relationship. In re S.M.J.C., 262 P.3d 955 (Colo. App. 2011).

III. TEMPORARY INJUNCTIONS.

Restraining orders should not be issued in divorce actions except in circumstances of actual emergency, and where it is clearly established that grounds exist for granting such extraordinary remedy. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

It is an unusual situation in which an order on one spouse to refrain from transferring property is inadequate to afford needed protection to the other who seeks to maintain the status quo pending a hearing on notice. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

The right of the husband in a divorce action to manage his property and carry on his business in due course is fundamental and should not be interfered with or suspended by the issuance of ex parte restraining orders without notice upon persons with whom he transacts business, except upon a clear showing of emergency and a need therefor. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

The practice of bringing in third parties as defendants in a divorce action and issuing restraining orders against them without notice is not to be encouraged, it being only under extraordinary circumstances that such persons engaged in legitimate business transactions with one of the parties to the divorce action and not involved in their marital difficulties may be restrained or enjoined from continuing business activities with one of the spouses involved. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

Any reasons justifying permanent injunctive relief in dissolution of marriage proceeding must arise from factors independent of those with which the trial court is empowered to deal in a dissolution proceeding. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

§ 14-10-109. Enforcement of protection orders

The duties of peace officers enforcing orders issued pursuant to section 14-10-107 or 14-10-108 shall be in accordance with section 18-6-803.5, C.R.S., and any rules adopted by the Colorado supreme court pursuant to said section.

Cite as (Casemaker) C.R.S. § 14-10-109

History. L. 71: R&RE, p. 523, § 1. C.R.S. 1963: § 46-1-9. L. 92: Entire section amended, p. 176, § 2, effective July 1. L. 94: Entire section amended, p. 2009, § 5, effective January 1, 1995.

Cross References:

For civil contempt, see C.R.C.P. 107.

§ 14-10-110. Irretrievable breakdown

(1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, there is a presumption of such fact, and, unless controverted by evidence, the court shall, after hearing, make a finding that the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and shall:

(a) Make a finding whether the marriage is irretrievably broken; or

(b) Continue the matter for further hearing not less than thirty-five days nor more than sixty-three days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken.

Cite as (Casemaker) C.R.S. § 14-10-110

History. L. 71: R&RE, p. 523, § 1. C.R.S. 1963: § 46-1-10. L. 2012: (2)(b) amended, (SB 12-175), ch. 208, p. 831, § 26, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Is Residence of the Plaintiff, in Colorado, Necessary to Support a Divorce Action Based on Cruelty Within the State, If Defendant Is a Resident of Colorado?", see 24 Dicta 110 (1947). For article, "When the State Had an Interest in Marriage: Colorado's Divorce Acts, 1861-1917", see 16 Colo. Law. 1627 (1987).

Annotator's note. Some of the cases appearing under § 14-10-110 were decided under repealed § 46-1-1, C.R.S. 1963, § 46-1-1, CRS 53, CSA, C. 56, § 1, and laws antecedent thereto, which specifically enumerated the grounds for divorce.

Marriage is a contract between the parties, but it is distinguishable from the ordinary civil contract. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Marriage is the subject of a more immediate interest to the state than is the ordinary contract. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Marriage is not a "contract" within the meaning of the contract clause of the constitution. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

General assembly control of marriage is constitutional. Since marriage is not a contract within the meaning of the constitutional contract clause, the general assembly has broad control over it, the reasonable exercise of which will not run afoul of the constitutional protection of contracts. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

In attempting to increase availability of divorces to estranged spouses, the general assembly recognized that public policy does not encourage keeping two people together once the legitimate objects of matrimony have ceased to exist. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Decree not automatic. Although the dissolution of marriage statute was intended as a "no-fault" divorce act, the actual granting of the decree is not automatic or perfunctory under all circumstances. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Court's discretion to continue case sufficient safeguard against hastiness. The general assembly declined to include in the Colorado act, which is modeled on the uniform dissolution of marriage act, the language of the uniform act allowing the court to order a conciliation conference, and thus, in effect, determined that vesting discretion in the court to continue the case from 30 to 60 days was sufficient safeguard against hasty and insensate decisions. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

"Irretrievable" breakdown is no more vague or incapable of definition than "became impotent through immoral conduct", has been "extremely and repeatedly cruel", or being an "habitual drunkard", all of which constituted, under the prior Colorado statute, grounds for divorce. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

A finding of irretrievable breakdown is one of fact and, where the allegation of the petition is denied, it must be proven as any other essential element of the cause of action. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Where the parties do not agree as to the breakdown of the marriage, it is imperative for the court to weigh all the evidence and make its own independent determination of that fact. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

The issue of whether a marriage has been irretrievably broken is a question of fact to be resolved upon consideration of the facts and circumstances of each case, and the factors underlying that determination will necessarily vary from case to case. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Finding of irretrievable breakdown must be proved when denied. While the dissolution of marriage act did eliminate all the former defenses to divorce in this state, it did not eliminate the necessity of proving an irretrievable breakdown where that basic allegation is denied in the pleadings. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

No requirement that valid goals of marriage must be unattainable. There is no requirement that for the marriage to be beyond redemption, substantial proportion of legitimate objectives of a marriage must be no longer attainable by the parties. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Elucidating valid goals of marriage which must be either lost or beyond accomplishment before the marriage can be classified as irretrievably broken would constitute an amendment to the act, and that power is reserved exclusively for the general assembly. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

The parentage of a child is not an issue in a divorce or annulment action between the parents. Devereaux v. Devereaux, 144 Colo. 31, 354 P.2d 1015 (1960).

Formerly, before a court could enter its findings in favor of a defendant, it must have necessarily found that the defendant had not been guilty of a violation of the marriage contract. Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958).

In a divorce action where a defendant pleaded grounds for divorce by way of counterclaim, the issue was the guilt or innocence of the parties on the grounds alleged against each other, and findings by a trial court that plaintiff was entitled to a divorce was necessarily a finding against the defendant on the issues. Schleiger v. Schleiger, 137 Colo. 279 324 P.2d 370 (1958).

Formerly, the grounds for divorce in this state were purely statutory. Pleyte v. Pleyte, 1 Colo. App. 70, 28 P. 23 (1891); Redington v. Redington, 2 Colo. App. 8, 29 P. 811 (1892); Githens v. Githens, 78 Colo. 102, 239 P. 1023 (1925).

For the former ground for divorce, adultery, see Redington v. Redington, 2 Colo. App. 8, 29 P. 811 (1892); Harding v. Harding, 36 Colo. 106, 85 P. 423 (1906); Jones v. Jones, 71 Colo. 420, 207 P. 596 (1922).

For the former ground for divorce, desertion, see Stein v. Stein, 5 Colo. 55 (1879); Calvert v. Calvert, 15 Colo. 390, 24 P. 1043 (1890); Johnson v. Johnson, 22 Colo. 20, 43 P. 130, 55 Am. St. R. 113 (1895); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922); Oates v. Oates, 72 Colo. 195, 210 P. 325 (1922); Mulhollen v. Mulhollen, 145 Colo. 479, 358 P.2d 887 (1961).

For the former ground for divorce, cruelty, see Sylvis v. Sylvis, 11 Colo. 319, 17 P. 912 (1888); Gilpin v. Gilpin, 12 Colo. 504, 21 P. 612 (1889); Williams v. Williams, 1 Colo. App. 281, 28 P. 726 (1892); Geisseman v. Geisseman, 34 Colo. 481, 83 P. 635 (1905); Harding v. Harding, 36 Colo. 106, 85 P. 423 (1906); Sedgwick v. Sedgwick, 50 Colo. 164, 114 P. 488 (1911); Shaff v. Shaff, 72 Colo. 184, 210 P. 400 (1922); Miller v. Miller, 90 Colo. 428, 9 P.2d 616 (1932); Hilburger v. Hilburger, 110 Colo. 409, 135 P.2d 138 (1943); Harms v. Harms, 120 Colo. 212, 209 P.2d 552 (1949); Mentzer v. Mentzer, 120 Colo. 412, 209 P.2d 920 (1949); Carroll v. Carroll, 135 Colo. 379, 311 P.2d 709 (1957); Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958); Reed v. Reed, 138 Colo. 74, 329 P.2d 633 (1958); Lininger v. Lininger, 138 Colo. 338, 333 P.2d 625 (1958); Poos v. Poos, 145 Colo. 334, 359 P.2d 3 (1961); Harvey v. Harvey, 150 Colo. 449, 373 P.2d 304 (1962); Cochran v. Cochran, 164 Colo. 99, 432 P.2d 752 (1967); Moats v. Moats, 168 Colo. 120, 450 P.2d 64 (1969).

For the former ground for divorce, nonsupport by the husband, see Rogers v. Rogers, 57 Colo. 132, 140 P. 193 (1914).

Applied in In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979); In re Lester, 647 P.2d 688 (Colo. App. 1982).

Cross References:

For marriage counseling, see article 12 of this title 14.

§ 14-10-111. Declaration of invalidity

(1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances.

(b) A party lacked the physical capacity to consummate the marriage by sexual intercourse, and the other party did not at the time the marriage was solemnized know of the incapacity.

(c) A party was under the age as provided by law and did not have the consent of his parents or guardian or judicial approval as provided by law.

(d) One party entered into the marriage in reliance upon a fraudulent act or representation of the other party, which fraudulent act or representation goes to the essence of the marriage.

(e) One or both parties entered into the marriage under duress exercised by the other party or a third party, whether or not such other party knew of such exercise of duress.

(f) One or both parties entered into the marriage as a jest or dare.

(g) The marriage is prohibited by law, including the following:

(I) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(II) A marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood;

(III) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures;

(IV) A marriage which was void by the law of the place where such marriage was contracted.

(2) A declaration of invalidity under subsection (1) of this section may be sought by any of the following persons and shall be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage, except as provided in subsection (3) of this section:

(a) For the reasons set forth in either subsection (1)(a), (1)(d), (1)(e), or (1)(f) of this section, by either party to the marriage who was aggrieved by the conditions or by the legal representative of the party who lacked capacity to consent no later than six months after the petitioner obtained knowledge of the described condition;

(b) For the reason set forth in subsection (1)(b) of this section, by either party no later than one year after the petitioner obtained knowledge of the described condition;

(c) For the reason set forth in subsection (1)(c) of this section, by the underage

party, his parent, or his guardian, if such action for declaration of invalidity of marriage is commenced within twenty-four months of the date the marriage was entered into.

(3) A declaration of invalidity, for the reason set forth in subsection (1)(g) of this section, may be sought by either party; by the legal spouse in case of bigamous, polygamous, or incestuous marriages; by the appropriate state official; or by a child of either party at any time prior to the death of either party or prior to the final settlement of the estate of either party and the discharge of the personal representative, executor, or administrator of the estate or prior to six months after an estate is closed under section 15-12-1204, C.R.S.

(4) Repealed.

(5) Marriages declared invalid under this section shall be so declared as of the date of the marriage.

(6) The provisions of this article relating to the property rights of spouses, maintenance, and support of and the allocation of parental responsibilities with respect to the children on dissolution of marriage are applicable to decrees of invalidity of marriage.

(7) No decree shall be entered unless one of the parties has been domiciled in this state for thirty days next preceding the commencement of the proceeding or unless the marriage has been contracted in this state.

Cite as (Casemaker) C.R.S. § 14-10-111

History. Amended by 2018 Ch. 96, §8, eff. 8/8/2018.

L. 71: R&RE, p. 523, § 1. C.R.S. 1963: § 46-1-11. L. 73: pp. 553, 1647, §§ 4, 5, 6. L. 80: (1)(g)(II) amended, p. 794, § 47, effective June 5. L. 98: (6) amended, p. 1397, § 38, effective February 1, 1999. L. 2018: (4) repealed, (SB 18-095), ch. 96, p. 754, § 8, effective August 8.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Ten Years of Domestic Relations in Colorado -- 1940-1950", see 27 Dicta 399 (1950). For note, "The Presumption of Death and a Second Marriage", see 27 Dicta 414 (1950). For article, "A Decade of Colorado Law: Conflict of Laws, Security, Contracts and Equity", see 23 Rocky Mt. L. Rev. 247 (1951). For note, "Jurisdiction to Annul a Marriage Celebrated Without the Forum", see 26 Rocky Mt. L. Rev. 57 (1953). For article, "One Year Review of Domestic Relations", see 35 Dicta 36 (1958). For article, "Choice of the Applicable Law in Colorado", see 35 Dicta 162 (1958). For article, "One Year Review of Domestic Relations", see 39 Dicta 102 (1962). For article, "The Incestuous Marriage -- Relic of the Past", see 36 U. Colo. L. Rev. 473 (1964). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Marriage, Divorce, and Annulment When One Party is Arguably Incapacitated", see 43 Colo. Law. 39 (Feb. 2014).

Annotator's note. Since § 14-10-111 is similar to repealed § 46-3-1 et seq., CRS 53, and CSA, C. 56, §§ 33 through 38, relevant cases construing those provisions have been included in the annotations to this section.

There is a wide distinction between a conventional annulment proceeding and a conventional action for divorce. An annulment proceeding is one in which the validity of a marriage is challenged from its inception on the ground that one or both of the parties was underage, on the ground that one or both of the parties was married to another person, on the ground that the proceeding was attended by fraud, or on some other fairly comparable ground. An action for divorce is one in which termination is sought of a valid marriage. Gainey v. Fleming, 279 F.2d 56 (10th Cir. 1960).

For the effect of an invalidity of marriage determination on maintenance payments which were terminated upon remarriage, see Torgan v. Torgan, 159 Colo. 93, 410 P.2d 167 (1966).

Reestablishment of a support obligation following annulment of a subsequent marriage must be decided on a case-by-case basis, taking into account the facts and equities of the particular case. In re Cargill and Rollins, 843 P.2d 1335 (Colo. 1993).

The children of the deceased had no standing to challenge the validity of his marriage when it was not prohibited. Matter of Estate of Fuller, 862 P.2d 1037 (Colo. App. 1993).

Where wife fraudulently induced husband into marriage, an award of property and maintenance to the wife would be inequitable and unjust. Wife married husband to obtain a green card and left him immediately following receipt of her permanent green card. In re Joel, 2012 COA 128, 404 P.3d 1251.

Although subsection (6) states that the provisions of the Uniform Dissolution of Marriage Act (UDMA) relating to property, support, and allocation of parental responsibilities apply to invalidity actions, the purpose of that subsection is to protect innocent participants in meretricious relationships and the children of those relationships, not to reward the party perpetrating the void marriage. In re Joel, 2012 COA 128, 404 P.3d 1251.

In dividing property and awarding maintenance, the court's equitable powers require the court to award property and maintenance as the court deems equitable and just. An award to wife of a portion of husband's retirement account, to which husband was the sole contributor, would be inequitable in light of the wife's fraud. In re Joel, 2012 COA 128, 404 P.3d 1251.

The parties' car is properly valued as of the date of the decree of invalidity and not the date of permanent orders as wife contends. In re Joel, 2012 COA 128, 404 P.3d 1251.

Applied in In re Heinzman, 198 Colo. 36, 596 P.2d 61 (1979).

II. THE INVALIDITY OF MARRIAGE PROCEEDING.

Originally, authority to grant divorces and annul marriages in England was vested solely in the ecclesiastical courts. This authority terminated around 1870, during the reign of Victoria, at which time a special court was created to hear and decide all divorces and annulments of marriage, but ecclesiastical courts and their authority never became a part of American common law. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

An annulment action is a statutory proceeding in which the court exercises equity powers. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

The severance of marital ties, the entry of custodial orders regarding children, the application of equitable principles in divorce and annulment actions, and so forth, are or have aspects of the conventional activities of a court of equity. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

This article provides that in suits for annulment the practice and proceedings shall be in accordance with the rules of civil procedure. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

In the interplay of this section and the rules of civil procedure, there is no trial by jury of an annulment suit as a matter of right. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

A cursory reading of C.R.C.P. 38(a) makes obvious the conclusion that an annulment suit does not come within the meaning of any of the enumerated actions requiring trial by jury unless waived. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

But C.R.C.P. 39(c) provides that in actions not triable by a jury, the court may upon motion or of its own initiative try any issue with an advisory jury, or when statute provides for trial without a jury, the court with the consent of both parties may order a jury trial. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Proof in an annulment case must be clear and convincing, and the court should so instruct the jury, and the preponderance rule is inapplicable. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

The giving of confusing and incompatible instructions in an annulment action is fatal error. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

III. MENTAL INCAPACITY TO CONSENT TO MARRIAGE.

Marriages are not easily annulled, and consequently, there must be clear and convincing proof that such party was mentally incompetent at the time the marriage was entered into. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

An instruction "that the husband would be incapable of giving voluntary consent if you find that at the time of the marriage ceremony he did not have sufficient mental capacity to understand the nature, obligations, and responsibilities of a marriage contract, and to appreciate the solemnity of the marriage vows" goes beyond the statutory ground for annulment which provides that if "one or both parties were mentally incapable of giving voluntary consent to the marriage", the marriage may be set aside. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

In an action for annulment of a marriage on the ground of mental incapacity, testimony of a witness to marriage ceremony that she observed plaintiff before, during, and after ceremony, conversed with him, and that in her opinion he was mentally competent, was erroneously rejected, the credibility of such witness being for the jury. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Testimony of a psychiatrist who based his opinion on the incompetency of plaintiff, and in part upon the testimony of another witness, was erroneously admitted. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

An order of adjudication of mental incompetency was properly admitted. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Evidence of forgery of a blood test certificate was immaterial and inadmissible, as not tending to prove any of the alleged grounds of annulment. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Evidence that wife had applied for driver's license and signed a delinquency tax statement in former name, subsequent to the alleged marriage, were remote circumstances having no legitimate bearing on the issues and should have been rejected. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

IV. LEGITIMACY OF CHILDREN.

A judgment and decree annulling the marriage of the parents does not determine the parentage of a child conceived prior to the marriage, and is not res judicata in a dependency proceeding to determine the paternity of the child. Devereaux v. Devereaux, 144 Colo. 31, 354 P.2d 1015 (1960).

The parentage of a child is not an issue in an annulment action between the parents. Devereaux v. Devereaux, 144 Colo. 31, 354 P.2d 1015 (1960).

Subsection (4) refers only to cases where an annulment proceeding is brought. Valdez v. Shaw, 100 Colo. 101, 66 P.2d 325 (1937); Gainey v. Fleming, 279 F.2d 56 (10th Cir. 1960).

V. CONFLICT OF LAWS.

Marriages being lawful in other states are recognized as lawful and valid in the state of Colorado. Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956).

It is the public policy of this state concerning foreign marriages that such marriages are valid if valid where performed. Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956).

In an action for annulment, the marriage is held to be valid or void, according to the statutes in force and effect in the jurisdiction where the same was entered into, and if, according to these statutes, it is found to be valid, it must be so considered in this jurisdiction. Payne v. Payne, 121 Colo. 212, 214 P.2d 495 (1950).

Annulment issued in a foreign jurisdiction does not prevent Colorado courts from entering orders as to property and maintenance. In re Dickson, 983 P.2d 44 (Colo. App. 1998).

Cross References:

(1) For the effect of a declaration of invalidity on marital agreements, see § 14-2-308.

(2) For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

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§ 14-10-112. Separation agreement

(1) To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the allocation of parental responsibilities, support, and parenting time of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except terms providing for the allocation of parental responsibilities, support, and parenting time of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, the court may request the parties to submit a revised separation agreement, or the court may make orders for the disposition of property, support, and maintenance.

(4) If the court finds that the separation agreement is not unconscionable as to support, maintenance, and property:

(a) Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation, and the parties shall be ordered to perform them; or

(b) If the separation agreement provides that its terms shall not be set forth in the

decree, the decree shall identify the separation agreement and shall state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt, but are no longer enforceable as contract terms.

(6) Except for terms concerning the support, the allocation of decision-making responsibility, or parenting time of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides.

Cite as (Casemaker) C.R.S. § 14-10-112

History. L. 71: R&RE, p. 525, § 1. C.R.S. 1963: § 46-1-12. L. 93: (1), (2), and (6) amended, p. 576, § 6, effective July 1. L. 98: (1), (2), and (6) amended, p. 1397, § 39, effective February 1, 1999.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Incorporation by Reference of Agreements Made by the Parties in Divorce Decrees", see 21 Rocky Mt. L. Rev. 420 (1949). For note, "The Paradoxical Separation Agreement", see 21 Rocky Mt. L. Rev. 434 (1949). For comment on Irwin v. Irwin, appearing below, see 35 U. Colo. L. Rev. 440 (1963). For note, "Effects of Reconciliation on Separation Agreements in Colorado", see 51 U. Colo. L. Rev. 399 (1980). For article, "Pre-Nuptial Agreements Revisited", see 11 Colo. Law. 1882 (1982). For article, "Mediation and the Colorado Lawyer", see 11 Colo. Law. 2315 (1982). For article, "Dischargeability of Dissolution Debts under the Bankruptcy Code", see 13 Colo. Law. 814 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Seeking Change in Separation Agreement", see 15 Colo. Law. 806 (1986). For article, "Cohabitation Agreements in Colorado", see 15 Colo. Law. 979 (1986). For article, "Common Law Marriage in Colorado", see 15 Colo. Law. 252 (1987). For article, "Postsecondary Education Expenses after Chalat: Paying College Expenses after Divorce", see 38 Colo. Law. 19 (Jan. 2009).

Annotator's note. Although § 14-10-112 enacted in 1971 has no similar provision in previous codes and laws of Colorado, relevant cases decided under repealed §§ 46-1-1 through 46-1-11, C.R.S. 1963, §§ 46-1-1 through 46-1-15, CRS 53, CSA, C. 56, §§ 1 through 32, and laws antecedent thereto have been included in the annotations to this section. (But see In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975), concerning the precedential value of such cases.)

Purpose of the separation agreement is to enable divorcing parties to reach an amicable out-of-court settlement of their claims to the property of the other. In re Manzo, 659 P.2d 669 (Colo. 1983).

This section does not preclude a stipulated oral separation agreement; the issue is whether the parties intend to be bound by the terms of an agreement, whether oral or written. In re Chambers, 657 P.2d 458 (Colo. App. 1982).

It has been established that a husband and wife may enter into contracts which settle their differences, and the trial court, while determining division of property accumulated during the marriage, cannot disregard such a contract where it is free from fraud, collusion, compulsion, or unconscionability. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960); Irwin v. Irwin, 150 Colo. 261, 372 P.2d 440 (1962); Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973).

While courts generally adopt stipulations between the parties, relating to alimony, they are not bound to do so. Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922).

The agreement must be in all respects fair, reasonable, and just, and it must make sufficient provision for the maintenance of the wife according to the status of the parties. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922).

In agreements of this nature it must be made to appear that the husband has dealt fairly and equitable with his wife in the transaction. Hill v. Hill, 70 Colo. 47, 197 P. 236 (1921); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922).

Parents may not by agreement divest the court of continuing jurisdiction over the custodial rights and duties of maintenance of children during their minority. Irwin v. Irwin, 150 Colo. 261, 372 P.2d 440 (1962).

Legal or equitable lien not created by decree. Language of dissolution decree which awarded the house to husband and his mother and ordered husband to execute a promissory note in favor of wife to become due upon the occurrence of one of several possible events did not create a legal or equitable lien on the property in favor of wife where the court did not impose any duty on the husband to pay the note from the proceeds resulting from the sale of the property and did not order the husband to execute a deed of trust or other security instrument to secure payment of the note. Leyden v. Citicorp Indus. Bank, 762 P.2d 689 (Colo. App. 1988).

Applied in Lowery v. Lowery, 195 Colo. 86, 575 P.2d 430 (1978); In re Stedman, 632 P.2d 1048 (Colo. App. 1981).

II. ANTENUPTIAL AGREEMENTS.

Precedential value of prior decisions. In interpreting the current statute, the courts do not consider that the decisions on separation agreements incorporated in decrees in actions arising under the 1917 act (CRS 53, § 46-1-5) have any precedential value. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

This section is explicitly limited to separation agreements; antenuptial agreements cannot be challenged as unconscionable under this section. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979); In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Separation agreements and antenuptial agreements are separate and distinct legal documents. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd on other grounds, 653 P.2d 728 (Colo. 1982).

While separation agreements contemplate disposition of property interests which mature because of the marriage status, prenuptial agreements fix the property rights of the parties, regardless of the duration of the marriage. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979); In re Lemoine-Hofmann, 827 P.2d 587 (Colo. App. 1992).

Spouses-to-be have right to enter into antenuptial agreements which contemplate the possibility of dissolution. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd on other grounds, 653 P.2d 728 (Colo. 1982).

Where husband conceded that wife put him through college pursuant to their oral prenuptial agreement, such agreement is not void pursuant to statute of frauds since oral contracts otherwise unenforceable under § 38-10-101, et seq., may substitute for a writing if there is part performance of the oral contract. In re Lemoine-Hofmann, 827 P.2d 587 (Colo. App. 1992).

Standard for review compared with review of antenuptial agreement. The standard applied for court review of the division of property in a separation agreement allows the court more discretion than the standard for court review of the division of property in an antenuptial agreement. In re Manzo, 659 P.2d 669 (Colo. 1983).

Courts reviewing separation agreements prior to entry of a decree of dissolution need more latitude than is allowed for review of antenuptial agreements because of the public policy concern for safeguarding the interests of a spouse whose consent to the agreement may have been obtained under more emotionally stressful circumstances, especially if that spouse is unrepresented by counsel. In re Manzo, 659 P.2d 669 (Colo. 1983).

Where parties to a divorce action had settled all their differences by agreement, and the only duties of husband are those set forth therein, there being no authority for the allowance of attorney fees to the wife, the court was without authority to award such fees. Irwin v. Irwin, 150 Colo. 261, 372 P.2d 440 (1962); Newey v. Newey, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1967).

The trial court, in determining the pecuniary provision for the wife upon granting a decree of divorce to her, has no right to disregard a previous agreement free from fraud, collusion, or compulsion, and fair to her, entered into between her and her husband in contemplation of a divorce, settling and adjusting all their property rights, including dower, alimony, and support. Newey v. Newey, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1967).

Where there was a self-operative trust agreement between the parties to a divorce action in settlement of their property rights, such agreement was binding upon the parties, and the court was without jurisdiction to set it aside, no showing of fraud, duress, or mistake appearing. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Formerly, an agreement between husband and wife which provided for alimony or property settlement in contemplation of divorce was presumptively fair, and the burden was on the wife to establish the contrary. Newey v. Newey, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1967).

An agreement between present spouses entered into "attendant upon" separation or dissolution must be considered a separation agreement, rather than a marital agreement, even if it was signed prior to filing for dissolution of marriage or legal separation. If an agreement is executed under circumstances accompanying, connected with, or surrounding a contemplated divorce or separation, it is considered a separation agreement. In re Bisque, 31 P.3d 175 (Colo. App. 2001); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

Whether an agreement is executed "attendant upon" a contemplated dissolution is a question of fact for the trial court, and the court's findings will not be set aside unless clearly erroneous. In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

Termination of a dissolution proceeding as a result of the death of one of the parties did not render the controversy over the antenuptial agreement moot. Even though the death of one spouse mooted the dissolution proceeding, because the antenuptial agreement had a practical legal effect on an ongoing probate proceeding, the trial court was in error when it ruled the agreement invalid. Schwartz v. Schwartz, 183 P.3d 552 (Colo. 2008).

III. UNCONSCIONABLE AGREEMENTS.

The court is not required to approve blindly an agreement it finds unconscionable. In re Eller, 38 Colo. App. 74, 552 P.2d 30 (1976).

Provisions of a proposed separation settlement agreement proffered for incorporation into a dissolution decree may be refused as "unconscionable" if the trial court concludes that the agreement is not fair, reasonable, and just. In re Carney, 631 P.2d 1173 (Colo. App. 1981).

Court may determine whether written separation agreement accurately expresses intent and agreement of parties and may exercise its equitable powers where necessary before this section becomes applicable. In re Deines, 44 Colo. App. 98, 608 P.2d 375 (1980).

Unconscionability has no relevance to testing of custody agreement. In re Lawson, 44 Colo. App. 105, 608 P.2d 378 (1980).

In determining whether an agreement is, or has become, unconscionable, the trial court should consider and apply the pertinent criteria set forth in the following sections: This section as to the economic circumstances of the parties; § 14-10-113(1) as to the division of property; § 14-

10-114(1) as to maintenance; and § 14-10-115(1) as to child support. In re Lowery, 39 Colo. App. 413, 568 P.2d 103 (1977), aff'd, 195 Colo. 86, 575 P.2d 430 (1978).

Review of provisions before incorporation into dissolution decree. Before a court incorporates property division provisions of a separation agreement into a dissolution decree, it should first review the provisions for fraud, overreaching, concealment of assets, or sharp dealing not consistent with the obligations of marital partners to deal fairly with each other, and then look at the economic circumstances of the parties which result from the agreement, including a determination whether under the totality of the circumstances the property disposition is fair, just and reasonable. In re Manzo, 659 P.2d 669 (Colo. 1983); In re Seely, 689 P.2d 1154 (Colo. App. 1984).

To set aside a property settlement agreement prior to its being incorporated in a dissolution decree, the court need not find that overreaching, inequality of bargaining power, or other elements of fraud are present. Rather, before the agreement is set forth in the decree, a court may set aside as unconscionable any agreement that is not "fair, reasonable and just". In re Wigner, 40 Colo. App. 253, 572 P.2d 495 (1977); In re Thornhill, 200 P.3d 1083 (Colo. App. 2008), aff'd in part and rev'd in part on other grounds, 232 P.3d 782 (Colo. 2010).

Appellate court was not bound by the determination of the trial court applying the unconscionability standard set forth in this section to an agreement, inasmuch as the resolution of that issue would be based upon the interpretation of the document and on uncontroverted facts. In re Lemoine-Hofmann, 827 P.2d 587 (Colo. App. 1992); In re Thornhill, 200 P.3d 1083 (Colo. App. 2008), aff'd in part and rev'd in part on other grounds, 232 P.3d 782 (Colo. 2010).

Provision for support payment increases based on salary increases allowable. A provision in a separation agreement that the amount of child support payments to be made by husband would increase in proportion to actual increases in husband's salary is allowable and creates no presumption of unconscionability which would violate this section. In re Pratt, 651 P.2d 456 (Colo. App. 1982).

In order for agreement for binding Rabbinical arbitration to be enforceable, it must be conscionable and must be entered into by the parties voluntarily after full disclosure. In re Popack, 998 P.2d 464 (Colo. App. 2000).

Separation agreement giving wife approximately 91 percent of the marital property and entered into when husband's emotional state was adversely affected by the circumstances surrounding the execution of the agreement was unfair. In re Bisque, 31 P.3d 175 (Colo. App. 2001).

Separation agreement that did not provide wife with interest on her share of husband's business paid out over time was unconscionable. In the parties' separation agreement, husband agreed to make monthly payments to wife over a 10-year period for payment of her share of the value of the marital business. The agreement did not require the husband to pay interest on the total sum owed to wife or to secure the obligation. The lack of an interest provision in the agreement rendered the entire agreement unconscionable. In re Thornhill, 200 P.3d 1083 (Colo. App. 2008), aff'd in part and rev'd in part on other grounds, 232 P.3d 782 (Colo. 2010).

IV. INCORPORATION OF AGREEMENT INTO DECREE.

Formerly, where the stipulation and property settlement was approved by the courts, but the terms thereof were not set forth in a decree of divorce, the rights of the parties rested upon a contract, and not upon the decree, and were contractual and not decreed rights and obligations. Murphy v. Murphy, 138 Colo. 516, 335 P.2d 280 (1959); Cawley v. Cawley, 139 Colo. 439, 340 P.2d 122 (1959).

Formerly, where parties to a divorce action entered into a binding contract settling all their differences, the obligation of each to the other stemmed from the contract, and relief, if any, must have been based upon the rights of the parties under the contract. Irwin v. Irwin, 150 Colo. 261, 372 P.2d 440 (1962).

Formerly, where a trial court in a divorce action had no part in determining the property and financial rights of the parties, other than to approve and confirm an agreement purporting to settle all such financial and property rights, the incorporation of such agreement by references in the interlocutory or final decree in the action did not make the terms of such agreement an order or decree of the court, and was not a determination by the court of the respective rights of the parties, but was their voluntary adjustment of their differences, and unless the terms thereof are adopted by the court and fully and specifically set forth in the order or decree, the rights of the parties rest wholly upon the contract and not upon the decree of the court. Murphy v. Murphy, 138 Colo. 516, 335 P.2d 280 (1959).

Prior to incorporation in decree, separation agreement is contract. Prior to its incorporation in a dissolution decree, a separation agreement is a contract between the parties to a marriage. In re Manzo, 659 P.2d 669 (Colo. 1983).

Subsection (5) is inapplicable where child support provisions of an agreement have not been incorporated into the dissolution decree. The provisions remain enforceable as contract terms. Williamson v. Williamson, 39 P.3d 1199 (Colo. App. 2001).

A reference to a separation agreement and an approval thereof by the court is sufficient to make it a part of the decree. Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970).

The terms of any agreement must have been fully and specifically set forth in a decree. Murphy v. Murphy, 138 Colo. 516, 335 P.2d 280 (1959).

Incorporation by reference allowed. The wording in subsection (4)(a) that "its terms shall be set forth in the decree" does not prohibit incorporation by reference. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

When an agreement has been incorporated by reference into the decree, it is as effectively a part thereof as if recited therein in haec verba. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

So long as it is clear what document is being referred to and that the parties intended for it to be a part of the decree, such incorporation is within the underlying purposes of this section and there is no apparent reason for requiring the recopying of the words into the court order. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

If an executed agreement for a division of property was not incorporated in or made a part of an interlocutory and final decree of divorce, and was not reserved for future action, it was not merged in the divorce proceedings. Cawley v. Cawley, 139 Colo. 439 340 P.2d 122 (1959).

If the property rights and obligations of the parties to a divorce action who had entered into a settlement agreement were to rest upon the court decree, then any such agreement as to those rights should have been fully and specifically set forth in the decree in order that the duties and rights could be definitely ascertained from the decree itself. Taylor v. Taylor, 147 Colo. 140, 362 P.2d 1027 (1961).

Failure to attach prior stipulation as to maintenance of no consequence. Where both parties clearly intended to have a copy of the stipulation regarding maintenance, child support, and division of property, "a part and portion of the decree of dissolution", the absence of any question as to what document is being alluded to, and the agreement by the husband's lawyer, at the hearing for the decree, to the adoption by reference of the stipulation in the earlier separate maintenance case, make the failure to have a copy identified as an exhibit and attached to the decree of no consequence. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

Incorporation of parties' agreement regarding medical insurance and expenses into permanent orders was not beyond the trial court's jurisdiction, and father's failure to pay such expenses could constitute contempt. In re Alverson, 981 P.2d 1123 (Colo. App. 1999).

V. MODIFICATION.

Formerly, where parties to a divorce action entered into an agreement settling their property rights, which agreement it incorporated in the final decree, the court was thereafter without jurisdiction -- no fraud in procuring the settlement appearing -- to modify the terms of the decree concerning such property rights in the absence of consent of the parties. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955); Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960); Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967); Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970); Watson v. Watson, 29 Colo. App. 449, 485 P.2d 919 (1971); Ingels v. Ingels, 29 Colo. App. 585 487 P.2d 812 (1971).

Modification or revocation of agreement incorporated into decree. Where the parties' property settlement agreement has been incorporated into the decree of dissolution, it is subject to revocation or modification to the same extent as a property division rendered solely by the court. In re Stroud, 631 P.2d 168 (Colo. 1981).

Modification of property division provisions. Once property division provisions of a separation agreement have been incorporated into a dissolution of marriage decree, they may not be set aside or modified unless the conditions of C.R.C.P. 60 are met. In re Seely, 689 P.2d 1154 (Colo. App. 1984); Camack v. Camack, 62 P.3d 1097 (Colo. App. 2002).

When court has power to modify maintenance. A trial court has authority to test a settlement agreement on the standard of present unconscionability and for possible modification of maintenance under two circumstances: If the agreement or the decree reserves that power to the trial court, or, if the agreement and the decree are silent on the power to modify. In re Thompson, 640 P.2d 279 (Colo. App. 1982).

The court retained jurisdiction to modify the separation agreement where the agreement specifically provided that the issue of retirement benefits obtained as a result of the husband's military service shall remain open and modifiable. In re Sinkovich, 830 P.2d 1101 (Colo. App. 1992).

Restriction of court's jurisdiction to modify must be unequivocal. While subsection (6) permits the parties to restrict the jurisdiction of the court to modify the maintenance terms of a settlement agreement, such a restriction must specifically and unequivocally preclude modification. In re Rother, 651 P.2d 457 (Colo. App. 1982).

Where maintenance provision not modifiable. Where there was no reservation in the trial court of the power to modify a maintenance provision, the court cannot do so later. In re Thompson, 640 P.2d 279 (Colo. App. 1982).

The waiver of the right to seek modification in and of itself could well be the consideration for a concession in the amount or duration of maintenance, or in the property received by a party. Thus, to permit reconsideration of the amount of maintenance contracted for, without also reopening the property division, would be inequitable. In re Thompson, 640 P.2d 279 (Colo. App. 1982).

Modification by parties' agreement not reservation to court of power. The fact that an agreement allows modification by agreement of the parties is not a reservation to the court of the power to modify; rather, it is a limitation on the court's power. In re Thompson, 640 P.2d 279 (Colo. App. 1982).

Only unequivocal language in the terms of the settlement precludes the court from modifying the support provisions. No such language existed where the settlement provided that the period for payment of maintenance could be extended by further order of the court. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

Where the parties' dissolution decree incorporated a separation agreement that stated that the husband's retirement benefits remained open and modifiable, the trial court had the authority to divide the husband's military retirement pension. In re Sinkovich, 830 P.2d 1101 (Colo. App. 1992).

Modification of agreement permitted upon showing of fraud or overreaching. Where the terms of a divorce decree specifically preclude modification, without the written consent of the parties, a court can modify the agreement only upon a showing of fraud or overreaching. In re Cohen, 44 Colo. App. 200, 610 P.2d 1092 (1980).

Where separation agreement and alimony not modifiable. Where a separation agreement was adopted and incorporated into the decree of divorce, and the agreement did not reserve to the court jurisdiction to modify the terms of the alimony provision, nor did the court in its order adopting and incorporating the agreement into the divorce decree specifically reserve the right to modify the terms thereof, the court cannot later modify the agreement or the alimony provisions. Burleson v. District Court, 196 Colo. 455, 586 P.2d 665 (1978).

Waiver clause in separation agreement is binding to bar pursuit of further spousal maintenance since promised maintenance payments were actually made despite technical default regarding the method of payment where wife acquiesced to such manner and there was no showing

of fraud, collusion, or compulsion. In re Vincent, 709 P.2d 959 (Colo. App. 1985).

Modification of parenting time and the related nonmodification of child support agreement was made an order of court and so constituted an amendment to the original order and therefore are no longer enforceable as contract terms because they were made an order of court. In re Rosenthal, 903 P.2d 1174 (Colo. App. 1995).

The promise in a separation agreement to pay postsecondary education expenses, once adopted by the court and incorporated in a decree of dissolution, is no longer enforceable as a contract term. In re Ludwig, 122 P.3d 1056 (Colo. App. 2005).

VI. ENFORCEMENT.

Property lien to enforce agreement. A court may impose a lien on a party's property in order to enforce an agreement where the party has threatened to dispose of the property and put himself beyond the court's jurisdiction. In re Valley, 633 P.2d 1104 (Colo. App. 1981).

Separation agreement is incorporated into and superceded by decree and, therefore, governed by remedies available for the enforcement of a judgment. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

Although attorney fees cannot be awarded as a punitive sanction in a contempt proceeding, attorney fees can be awarded if the case involves an agreement or contract for an award of such fees to the prevailing party. Marital agreements governing the manner in which each party's attorney fees will be paid should be enforced by the trial court, and the determination of which party succeeded or prevailed under a contractual fee-shifting provision is committed to the discretion of the trial court subject to an abuse of discretion standard of review on appeal. In re Sanchez-Vigil, 151 P.3d 621 (Colo. App. 2006).

To be a prevailing party for the purpose of an award of attorney fees pursuant to a contract, the applicant must have succeeded upon a significant issue presented by the litigation and must have achieved some of the benefits sought in the lawsuit. A party need not prevail upon the "central" issue, only upon a significant one. In re Watters, 782 P.2d 1220 (Colo. App. 1989); In re Sanchez-Vigil, 151 P.3d 621 (Colo. App. 2006).

Cross References:

(1) For the "Uniform Premarital and Marital Agreements Act", see part 3 of article 2 of this title 14.

(2) For the legislative declaration contained in the 1993 act amending subsections (1), (2), and (6), see section 1 of chapter 165, Session Laws of Colorado 1993.

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§ 14-10-113. Disposition of property - definitions

(1) In a proceeding for dissolution of marriage or in a proceeding for legal separation or in a proceeding for disposition of property following the previous dissolution of marriage by a court which at the time of the prior dissolution of the marriage lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, subject to the provisions of subsection (7) of this section, shall set apart to each spouse his or her property and shall divide the marital property, without regard to marital misconduct, in such proportions as the court deems just after considering all relevant factors including:

(a) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

(b) The value of the property set apart to each spouse;

(c) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse with whom any children reside the majority of the time; and

(d) Any increases or decreases in the value of the separate property of the spouse during the marriage or the depletion of the separate property for marital purposes.

(2) For purposes of this article only, and subject to the provisions of subsection (7) of this section, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(a) Property acquired by gift, bequest, devise, or descent;

(b) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(c) Property acquired by a spouse after a decree of legal separation; and

(d) Property excluded by valid agreement of the parties.

(3) Subject to the provisions of subsection (7) of this section, all property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property described in this subsection (3) is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

(4) Subject to the provisions of subsection (7) of this section, an asset of a spouse acquired prior to the marriage or in accordance with subsection (2)(a) or (2)(b) of this section shall be considered as marital property, for purposes of this article only, to the extent that its present value exceeds its value at the time of the marriage or at the time of acquisition if acquired after the marriage.

(5) For purposes of this section only, property shall be valued as of the date of the decree or as of the date of the hearing on disposition of property if such hearing precedes the date of the decree.

(6)

(a)

(I) Notwithstanding any anti-assignment, anti-alienation, or other provision of law to the contrary, all retirement benefits of any nature for public employees from a plan described in section 401 (a), 403 (b), 414 (d), or 457 of the federal "Internal Revenue Code of 1986", as amended, that is established pursuant to Colorado law shall be, in all actions for dissolution of marriage, legal separation, and declaration of invalidity of marriage, divisible directly by the plan upon written agreement of the parties to such an action pursuant to paragraph (c) of this subsection (6).

(II) The provisions of this subsection (6) shall apply to all dissolution of marriage, legal separation, and declaration of invalidity of marriage actions filed on or after January 1, 1997, and all dissolution of marriage, legal separation, or declaration of invalidity of marriage actions filed prior to January 1, 1997, in which the court did not enter a final property division order concerning the parties' public employee retirement benefits prior to January 1, 1997.

(b) As used in this subsection (6), unless the context otherwise requires:

(I) "Alternate payee" means a party to a dissolution of marriage, legal separation, or declaration of invalidity action who is not the participant of the public employee retirement plan divided or to be divided but who is married to or was married to the participant and who is to receive, is receiving, or has received all or a portion of the participant's retirement

benefit by means of a written agreement as described in paragraph (c) of this subsection (6).

(II) "Defined benefit plan" means a retirement plan that is not a defined contribution plan and that usually provides benefits as a percentage of the participant's highest average salary, based on the plan's benefit formula and the participant's age and service credit at the time of retirement.

(III) "Defined contribution plan" means a retirement plan that provides for an individual retirement account for each participant and the benefits of which are based solely on the amount contributed to the participant's account and that includes any income, expenses, gains, losses, or forfeitures of accounts of other participants that may be allocated to the participant's account.

(IV) "Participant" means the person who is an active, inactive, or retired member of the public employee retirement plan.

(c) (I) The parties may enter into a marital agreement pursuant to part 3 of article 2 of this title or a separation agreement pursuant to section 14-10-112 concerning the division of a public employee retirement benefit between the parties pursuant to a written agreement. The parties shall submit such written agreement to the plan administrator within ninety days after entry of the decree and the permanent orders regarding property distribution in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage.

(II) A written agreement dividing a public employee retirement benefit shall:

(A) Specify the full legal name of the retirement plan or plans to which it applies;

(B) Specify the name, social security number, and last-known mailing address of the participant and the alternate payee as well as the alternate payee's relationship to the participant;

(C) For an agreement concerning a defined benefit plan, specify the distribution method, as described in subparagraph (III) of this paragraph (c), subject, if the plan permits, to benefit adjustments payable at the same time and in the same manner as any benefit adjustments applied to the participant's distribution;

(D) For an agreement concerning a defined contribution plan, specify the alternate payee's portion of the participant's account as a fixed lump-sum amount, or as a percentage, in either case, as of a specified date, from specific accounts of the participant and, unless the plan adopts rules and regulations pursuant to paragraph (d) of this subsection (6) permitting the plan to retain the alternate payee's portion of the participant's account, require that distribution to the alternate payee be made within one

hundred twenty days after a certified court order approving the agreement has been submitted to and received by the plan;

(E) Not provide for payments to the alternate payee or to the participant for which he or she would not otherwise be eligible if there were no dissolution of marriage, legal separation, or declaration of invalidity action pending;

(F) For an agreement concerning a defined benefit plan, not require the plan to pay the alternate payee prior to the date payments commence to the participant or prior to the participant attaining age sixty-five or actual retirement date, whichever date is earlier, or at such later date as the parties may otherwise agree in writing;

(G) For an agreement concerning a defined benefit plan, provide that the alternate payee's rights to payments terminate upon the involuntary termination of benefits payable to the participant or upon the death of the alternate payee, whichever occurs first, unless the parties agree to elect, or have already elected, a benefit option under the plan that provides for a cobeneficiary benefit to the alternate payee;

(H) Provide that the manner of payment shall be in a form or type permissible under the plan. The agreement shall not require through this subsection (6) the payment of a benefit, benefit amount, or distribution option not otherwise set out in the plan document or statute.

(I) Not require the plan to pay benefits that are already required to be paid to another alternate payee or are already subject to an assignment or lien;

(J) Specify that it shall apply to successor plans;

(K) Comply with any rules or procedures promulgated pursuant to paragraph (d) of this subsection (6); and

(L) Specify that, once approved by the court, the order approving the agreement shall be certified by the clerk of the court and submitted to and received by the retirement plan at least thirty days before the plan may make its first payment.

(III) The written agreement between the parties described in subparagraph (II) of this paragraph (c) shall contain only one method or formula to be applied to divide the defined benefit plan. For purposes of sub-subparagraph (C) of subparagraph (II) of this paragraph (c), the parties may select any one of the following methods by which to divide the defined benefit plan:

(A) A fixed monetary amount;

(B) A fixed percentage of the payment to the participant;

(C) The time-rule formula determined by dividing the number of months of service credit acquired under the plan during the marriage as set forth in the court's order by the number of months of service credit in such plan at the time of the participant's retirement as determined by the plan, which quotient shall be multiplied by a percentage specified in the court's order, and the product thereof shall be further multiplied by the amount of the payment to the participant at the date of retirement;

(D) A formula determined by dividing the number of months of service credit acquired under the plan during the marriage as set forth in the court's order by the number of months of service credit in such plan as of the date of the decree as determined by the plan, regardless of when the participant is expected to retire, which quotient shall be multiplied by a percentage specified in the court's order, and the product thereof shall be further multiplied by the amount of the payment the participant would be entitled to receive as if the participant were to retire and receive an unreduced benefit on the date of the decree; or

(E) Any other method or formula mutually agreed upon by the parties that specifies a dollar amount or percentage payable to the alternate payee.

(d) The trustees or the administrator of each retirement plan may promulgate rules or procedures governing the implementation of this subsection (6) with respect to public employee retirement plans that they administer. Such rules or procedures may include the requirement that a standardized form be used by the parties and the court for an order approving the parties' agreement to be effective as well as other provisions consistent with the purpose of this subsection (6).

(e) Compliance with the provisions of this subsection (6) by a public employee retirement plan shall not subject the plan to any portions of the federal "Employee Retirement Income Security Act of 1974", as amended, that do not otherwise affect governmental plans generally. Any plan that reasonably complies with an order approving an agreement entered into pursuant to this subsection (6) shall be relieved of liability for payments made to the parties subject to such order.

(f) A court shall have no jurisdiction to enter an order dividing a public employee retirement benefit except upon written agreement of the parties pursuant to this subsection (6). A court shall have no jurisdiction to modify an order approving a written agreement of the parties dividing a public employee retirement benefit unless the parties have agreed in writing to the modification. A court may retain jurisdiction to supervise the implementation of the order dividing the retirement

benefits.

(7) (a) For purposes of subsections (1) to (4) of this section only, except with respect to gifts of nonbusiness tangible personal property, gifts from one spouse to another, whether in trust or not, shall be presumed to be marital property and not separate property. This presumption may be rebutted by clear and convincing evidence.

(b) For purposes of subsections (1) to (4) of this section only, "property" and "an asset of a spouse" shall not include any interest a party may have as an heir at law of a living person or any interest under any donative third party instrument which is amendable or revocable, including but not limited to third-party wills, revocable trusts, life insurance, and retirement benefit instruments, nor shall any such interests be considered as an economic circumstance or other factor.

(c) (I) The provisions of this subsection (7) shall apply to all causes of action filed on or after July 1, 2002. The provisions of this subsection (7) shall also apply to all causes of action filed before said date in which a final property disposition order concerning matters affected by this subsection (7) was not entered prior to July 1, 2002.

(II) For purposes of this paragraph (c), "final property disposition order" means a property disposition order for which the time to appeal has expired or for which all pending appeals have been finally concluded.

Cite as (Casemaker) C.R.S. § 14-10-113

History. L. 71: R&RE, p. 525, § 1. C.R.S. 1963: § 46-1-13. L. 73: pp. 553, 555, §§ 6, 7, 12. L. 75: IP(1) amended, p. 210, § 25, effective July 16. L. 96: (6) added, p. 1457, § 1, effective January 1, 1997. L. 97: (6)(a) amended, p. 100, § 1, effective March 24. L. 98: (6)(c)(I) and (6)(c)(II)(C) amended and (6)(c)(III) added, p. 355, § 1, effective August 5; (1)(c) amended, p. 1397, § 40, effective February 1, 1999. L. 99: (6)(c)(I), (6)(c)(II)(L), and (6)(f) amended, p. 46, § 1, effective March 15. L. 2002: (6)(a)(I) amended, p. 138, § 1, effective March 27; IP(1), IP(2), (3), and (4) amended and (7) added, p. 1054, § 1, effective June 1. L. 2004: (6)(a)(I) amended, p. 222, § 5, effective April 1.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Effects of Reconciliation on Separation Agreements in Colorado", see 51 U. Colo. L. Rev. 399 (1980). For article, "The Economy: Its Effects on Family Law", see 11 Colo. Law. 97 (1982). For article, "Pre-Nuptial Agreements Revisited", see 11 Colo. Law. 1882 (1982). For article, "Marital Property", see 13 Colo. Law. 1209 (1984). For article, "Taxation", which discusses a Tenth Circuit decision dealing with periodic payments as alimony or property settlement, see 61 Den. L.J. 392 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Division of Pension Benefits in Divorce Proceedings", see 14 Colo. Law. 378 (1985). For article, "Cohabitation Agreements in Colorado", see 15 Colo. Law. 979 (1986). For article, "Common Law Marriage in Colorado", see 16 Colo. Law. 252 (1987). For article, "Division of Civil Service Retirement Benefits in Divorce", see 17 Colo. Law. 643 (1988). For article, "Standards for Tracing Marital Property Back to Non-Marital Property", see 17 Colo. Law. 853 (1988). For article, "Determining Benefits for Former Spouses of Military Personnel", see 19 Colo. Law. 1073 (1990). For article, "Classifying Income, Rents, and Profits from Separate Property", see 24 Colo. Law. 1303 (1994). For article, "Marital or Separate Property: An Overview for Practitioners", see 24 Colo. Law. 571 (1995). For article, "Employee Stock Options and Restricted Shares: Determining and Dividing the Marital Property", see 25 Colo. 87 (Oct. 1996). For article, "Valuing Business Goodwill in a Divorce", see 26 Colo. Law. 53 (Apr. 1997). For article, "Establishing Separate Property Through Asset Tracing After Burford", see 28 Colo. Law. 55 (Jan. 1999). For article, "How Income Taxes Affect Property Settlements", see 29 Colo. Law. 55 (Jan. 2000). For article, "Divorce Considerations Relevant to an Estate Planning Practice", see 29 Colo. Law. 53 (Feb. 2000). For article, "Retirement Benefits in Divorce: Mixing, Matching, and Offsetting", see 29 Colo. Law. 67 (June 2000). For article, "Balanson: Drafting Trust to Deflect the Spousal Creditor", see 30 Colo. Law. 131 (Oct. 2001). For article, "Planning for Community Property in Colorado", see 31 Colo. Law. 79 (June 2002). For article, "Complex Financial Issues in Family Law Cases", see 37 Colo. Law. 53 (Oct. 2008). For article, "Determining When Trusts are Property for the Purpose of Equitable Division", see 39 Colo. Law. 39 (June 2010). For article, "Distributing Personal Injury Settlements and Workers' Compensation Awards in Divorce", see 45 Colo. Law. 25 (Oct. 2016). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017). For article, "How Powers of Appointment Affect Irrevocable Trust Remainder Interests in Dissolution of Marriage Proceedings", see 48 Colo. Law. 48 (Dec. 2019).

Annotator's note. Since § 14-10-113 is similar to repealed § 46-1-5(2), C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Subsection (7)(b) is not unconstitutionally retrospective. In re Balanson, 107 P.3d 1037 (Colo. App. 2004).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations, and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

There is a distinction between maintenance awards and property settlements. Property divisions are intended to accomplish a just apportionment of marital property over time, whereas maintenance is intended be a substitute for marital support that can be used, for example, to ease a spouse's transition into the work force and prevent the spouse from becoming dependent on public assistance. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Division of property is mandatory under this section, whereas an award of maintenance is discretionary under § 14-10-114. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

This statute is a legislative recognition of preexisting Colorado law. Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d 853 (10th Cir. 1975).

Awarding of attorney fees is discretionary with trial court and will not be disturbed on review if supported by the evidence. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982); In re Kiefer, 738 P.2d 54 (Colo. App. 1987).

Equitable lien created by decree of dissolution. Where wife was ordered to quitclaim her undivided one-third interest in the family home to husband and his mother in exchange for a promissory note representing the value of such interest, an equitable lien to prevent unjust enrichment was imposed on the property because repayment of the note was conditioned in part on events involving disposition of the property. Leyden v. Citicorp Indus. Bank, 782 P.2d 6 (Colo. 1989).

The needs of the children are of paramount importance; therefore, statutory provisions may not be modified by agreement if to do so would affect the rights of the child whom the statute is designed to protect. In re Miller, 790 P.2d 890 (Colo. App. 1990).

Attorney fees are not a non-challengeable marital debt under this section. In re Rieger, 827 P.2d 625 (Colo. App. 1992).

Partition of marital property pursuant to § 38-28-101 after the entry of the final dissolution decree is permissible, but the partition order must not conflict with explicit provisions of the decree. Wilson v. Prentiss, 140 P.3d 288 (Colo. App. 2006).

Applied in In re Mitchell, 195 Colo. 399, 579 P.2d 613 (1978); Mayer v. District Court, 198 Colo. 199, 597 P.2d 577 (1979); In re Engelman, 43 Colo. App. 531, 605 P.2d 490 (1979); In re Hartford, 44 Colo. App. 303, 612 P.2d 1163 (1980); In re Carney, 631 P.2d 1173 (Colo. 1981); In re Stewart, 632 P.2d 287 (Colo. App. 1981); In re Everhart, 636 P.2d 1321 (Colo. App. 1981); In re Manzo, 659 P.2d 669 (Colo. 1983).

II. DIVISION OF PROPERTY.

A. In General.

Law reviews. For article, "Property or Expectancy: The Division of Trust Assets at Dissolution of Marriage", see 30 Colo. Law. 63 (Feb. 2001). For article, "The Continuing Evolution of Balanson: Trusts as Property in Divorce", see 34 Colo. Law. 79 (June 2005). For article, "Divorce in the Land of Startups", see 43 Colo. Law. 47 (Dec. 2014).

This statute makes property division mandatory. Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d 853 (10th Cir. 1975); In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Where the trial court has the necessary jurisdiction, over not only the subject matter but the persons as well, it is required to divide the marital property in accordance with this section. In re Quay, 647 P.2d 693 (Colo. App. 1982).

Language of subsection (1)(c) is not mandatory. In re Warrington, 44 Colo. App. 294, 616 P.2d 177 (1980).

Colorado is not a community property state. In re Ellis, 36 Colo. App. 234, 538 P.2d 1347 (1975), aff'd, 191 Colo. 317, 552 P.2d 506 (1976).

The statutory mandate to distribute property equitably does not require equality. In re Warrington, 44 Colo. App. 294, 616 P.2d 177 (1980); In re Weiss, 695 P.2d 778 (Colo. App. 1984); In re Fenimore, 782 P.2d 872 (Colo. App. 1989); In re Bookout, 833 P.2d 800 (Colo. App. 1991), cert. denied 846 P.2d 189 (Colo. 1993); In re Morehouse, 121 P.3d 264 (Colo. App. 2005).

The parties need not be accorded equal shares in the marital estate. In re Boyd, 643 P.2d 804 (Colo. App. 1982).

It has been held repeatedly that in matters of division of property the trial court is imbued with broad discretion, and that the mandate to distribute property equitably does not require equality. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

Facially disproportionate division of property not inequitable where economic circumstances of each spouse were properly considered. In re Sorensen, 679 P.2d 612 (Colo. App. 1984).

There is no requirement that the court divide property with precise equality in order to achieve an equitable division. In re Howard, 42 Colo. App. 457, 600 P.2d 93 (1979).

Increases in separate property or marital property do not mandate that such property be divided equally, nor does it necessarily preclude the award of substantially all of such property to only one spouse. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

A trial judge cannot in all circumstances evaluate marital property with razor-sharp exactness so that each party's share has a precise monetary value. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

The distribution of marital property must be just and equitable, but need not be necessarily equal. In re McGinnis, 778 P.2d 281 (Colo. App. 1989); In re Jaeger, 883 P.2d 577 (Colo. App. 1994); In re Goldin, 923 P.2d 376 (Colo. App. 1996); In re Stumpf, 932 P.2d 845 (Colo. App. 1996); In re Eisenhuth, 976 P.2d 896 (Colo. App. 1999).

This section authorizes the trial court to make an equitable and just division of the property of persons involved in divorce proceedings as that property is shown to exist at the time of the order entered with regard thereto. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964).

The dissolution court has jurisdiction to grant relief but only in equity and not at law. Tort claims concerning property that was the subject of the dissolution court may not be joined into an otherwise equitable dissolution proceeding. In re Mockelmann, 121 P.3d 335 (Colo. App. 2005).

Court may not become a surrogate attorney for party who has chosen not to appear before the court in order to reach an equitable division of marital property. Therefore, trial court did not abuse its discretion in failing to elicit evidence concerning husband's current earnings, the use husband made of funds he withdrew from the joint bank account, or the classification of certain property as separate or marital. In re Eisenhuth, 976 P.2d 896 (Colo. App. 1999).

The public policies to be furthered under this act include dividing of assets equitably and mitigating the harm to spouses and children. These policies take precedence over any contract arguments that may be raised by either spouse. Thus, the trial court was correct in refusing husband's indemnification argument and in interpreting the divorce decree as requiring the husband to compensate the wife for the fair market value of business property apportioned to her in the equitable distribution. In re Plesich, 881 P.2d 379 (Colo. App. 1994).

It is not objectionable that an exact dollar amount of the husband's contribution to assets cannot be determined from the testimony, as it is not a prerequisite to a fair and equitable division of property that such distribution be made in exact proportion to contribution of funds. Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971).

There is no mathematical formula for establishing a just and equitable property settlement, or alimony, or support. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

It is improper for the court to continue a joint or common tenancy between divorced spouses in marital property. Rather, in dividing the marital property, the court should leave to each party a definable portion of ownership. In re Paul, 821 P.2d 925 (Colo. App. 1991).

In dividing marital property, specific findings regarding value of assets are not required as long as basis for decision of trial court is apparent from its findings. In re Sharp, 823 P.2d 1387 (Colo. App. 1991).

This issue of property division in a divorce action is not one of marital fault, but whether the wife is entitled thereto by reason of having contributed to the accumulation or preservation of the assets sought to be divided, and whether her conduct was such as to justify her sharing in a division of such property. Liggett v. Liggett, 152 Colo. 110, 380 P.2d 673 (1963); Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Although marital fault or misconduct may not be considered by the trial court when it is dividing marital assets, economic fault may be considered. Economic fault comes into play in extreme cases, such as a spouse's dissipation of marital assets in the contemplation of divorce, and it must be strictly confined so as not to circumvent the prohibition against consideration of marital fault. In re Jorgenson, 143 P.3d 1169 (Colo. App. 2006).

Formerly, it was only one of the elements to be taken into consideration, and in the absence of moral delinquency or a complete disregard of the marriage vows, individual fault should not have acted as an obstacle to an equitable division of property. Bell v. Bell, 156 Colo. 513, 400 P.2d 440 (1965); Schrader v. Schrader, 156 Colo. 521, 400 P.2d 675 (1965).

Maintenance and property settlement must be considered together to achieve just result in dissolution proceedings. If an order dividing property cannot stand, the provision for maintenance must also be set aside to permit the trial court to consider both matters in relation to each other upon remand. In re Lord, 626 P.2d 698 (Colo. App. 1980), appeal dismissed, 653 P.2d 385 (Colo. 1982).

Property division must precede consideration of maintenance. In re Jones, 627 P.2d 248 (Colo. 1981); In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Fact that the parties waived maintenance has no bearing on the classification of stock shares as marital property; thus, wife's argument that because the stock purchase was made through a payroll deduction it constituted her compensation and could not be divided as property or considered maintenance, since both parties waived maintenance, was misplaced. In re Huston, 967 P.2d 181 (Colo. App. 1998).

There is a qualitative difference between a maintenance award and a division of property. A property division is final and non-modifiable absent conditions justifying relief from judgment. In re Wells, 833 P.2d 797 (Colo. App. 1991).

Statutory criteria for dividing property is general in nature, and the trial court has wide discretion in dividing marital property to accomplish a just result. In re Jackson, 698 P.2d 1347 (Colo. 1985).

Division of property must be based on the situation of the parties at the time of the decree rather than that at the time of their marriage. Shapiro v. Shapiro, 115 Colo. 505, 176 P.2d 363 (1946); Stephenson v. Stephenson, 134 Colo. 96, 299 P.2d 1095 (1956); Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964).

Subsection (1)(c) requires the trial court to consider the economic circumstances of the respective spouses at the time of the hearing relating to the division of marital property. Therefore, the trial court erred as a matter of law in considering the economic circumstances of the parties at the time of the dissolution, rather than at the time of the permanent orders, which occurred in the year following the entry of the dissolution. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Every property division action depends on the particular facts of each case. Granato v. Granato, 130 Colo. 439, 277 P.2d 236 (1954).

Many factors enter into the determination of what division of property shall be made in the event of a divorce, among these are the value of the estate to be divided; the financial condition of the parties; the ability of each spouse to earn money; how the property was acquired; the age and status of the parties, and all pertinent facts and circumstances bearing on the question. Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955); Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959); Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966); Larrabee v. Larrabee, 31 Colo. App. 493 504 P.2d 358 (1972).

Spouse's earning capabilities are properly part of the "economic circumstances" the court must consider in compliance with subsection (1). In re Faulkner, 652 P.2d 572 (Colo. 1982).

Future social security benefits may be properly considered as part of the "economic circumstances" the court must consider in compliance with subsection (1). The trial court may not, however, directly distribute marital property to offset the computed value of social security benefits. In re Morehouse, 121 P.3d 264 (Colo. App. 2005).

Contribution to an increase in separate property is an important factor, but not the sole factor to consider in dividing such property. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

Value of husband's interest in corporation considered in determining division of property. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

Factors such as occupational experience, coupled with education, training, and business background should also be considered in determining what division should be made of property. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

The award of rights in property to the wife was only another factor in the determination of the interests of the parties in the realty which they owned. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

That the husband had transferred his property to his brother with fraudulent intent, and that it was reasonable to presume that he would not deal fairly, frankly, and openly with his wife and child, were facts properly to be considered by the court in making division of property. Shapiro v. Shapiro, 115 Colo. 505, 176 P.2d 363 (1946).

Where the division of property was not in the nature of alimony or support money for the minor children, but was an equitable division based upon the fact that the wife, during marriage, in addition to the usual household duties, performed services that contributed to the husband's business advantage, a division of property could be ordered in addition to alimony. Shapiro v. Shapiro, 115 Colo. 505, 176 P.2d 363 (1946).

The fact that much of the husband's property came by inheritance did not preclude the court from making an equitable division of property between a husband and a wife who had performed services contributing to her husband's business advantage, but was only one of many facts to be considered by the court. Shapiro v. Shapiro, 115 Colo. 505, 176 P.2d 363 (1946).

Inherited property was formerly not per se excluded from consideration by the court in making a determination of the property rights of the parties. Santilli v. Santilli, 169 Colo. 49, 453 P.2d 606 (1969).

Property division could be made even where a wife is not entitled to alimony. Britt v. Britt, 137 Colo. 524, 328 P.2d 947 (1958).

It is not a necessary prerequisite that a wife show that she has contributed by funds or efforts to the acquiring of any specific property awarded her. Britt v. Britt, 137 Colo. 524, 328 P.2d 947 (1958); Bell v. Bell, 156 Colo. 513, 400 P.2d 440 (1965); Santilli v. Santilli, 169 Colo. 49, 453 P.2d 606 (1969).

But whether the wife has contributed to or in some manner aided in the accumulation or preservation of the assets sought to be divided must be ascertained. Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966).

Where by her services beyond the usual duties of a homemaker, a wife contributes either funds or services which enable the husband to increase his property holdings, or to preserve those already held, the wife is entitled upon divorce to an equitable award of money or property as may be justified by the circumstances of the parties. Britt v. Britt, 137 Colo. 524, 328 P.2d 947 (1958).

The pecuniary resources of the husband were not to be regarded as a basis for a division of property, which was not the purpose of an allowance for the support of the wife, but they had a bearing upon the condition in life of the parties and thus upon the necessities of the wife, for as had been recognized in considering the liability of a husband for necessaries supplied to his wife, the term "necessaries" in this connection was not confined to articles of food or clothing required to sustain life, but had a much broader meaning and included such articles for use by a wife as were suitable to maintain her and the family according to the property and condition in life of her husband. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

Where a wife advanced $8,000 from her own funds to her husband to purchase property, a finding that the husband was indebted to the wife in such amount and that she should have had a lien on property to secure repayment thereof, being amply supported by the evidence, was not erroneous. Flor v. Flor, 148 Colo. 514, 366 P.2d 664 (1961).

Where a wife in outburst of emotion, damaged or destroyed husband's personal effects, it was not error to award husband value thereof against the wife. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

It was not a prerequisite to a fair and equitable division of property that the wife must show that she had contributed by funds or effort to the acquisition of the specific property awarded to her. Schrader v. Schrader, 156 Colo. 521, 400 P.2d 675 (1965).

Where the husband was the owner of a minority stock interest and was not the owner of the home, piercing the corporate veil to determine the true value of an interest in a closely held corporation did not allow for an order that part of the corporation's property should be distributed to or used by a legal stranger, and the wife was not entitled to corporate assets, but to a sum of money, or possibly even shares of stock, based upon the fair value of her husband's interest. Kalcevic v. Kalcevic, 156 Colo. 151, 397 P.2d 483 (1964).

A dissolution of a marriage must be effective before any court had power to decree a division of property between a husband and wife. Ikeler v. Ikeler, 84 Colo. 429, 271 P. 193 (1928); McCoy v. McCoy, 139 Colo. 105, 336 P.2d 302 (1959).

Otherwise, the parties would still be married, and while that status continues there is always the possibility of a termination of the separation, and a court is therefore without power to finally determine the property rights of the parties. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

This section does not prohibit a hearing on the parties' property settlement before the entry of the divorce decree, but merely provides that at the time of the issuance of the divorce decree, or thereafter, on application the court may make orders relating to property divisions. Kalcevic v. Kalcevic, 156 Colo. 151, 397 P.2d 483 (1964).

Personal service upon nonresident is not prerequisite to division of property. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Jurisdiction over petitioner extends to property in state. Where petitioner has possession of property located in Colorado, the property being specifically described in the petition as an asset subject to disposition, the court acquires control of the property by virtue of its jurisdiction over petitioner, and the court thereby obtains jurisdiction to determine the appropriate disposition of that property. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Where the trial court has jurisdiction to divide property of the parties by virtue of the fact that the property was located in Colorado, it can properly adjudicate the rights of the parties with respect to property owned by them in Colorado. In re Wilson, 653 P.2d 85 (Colo. App. 1982).

Where trial court had jurisdiction to divide a partnership interest equitably, wife had standing to challenge partnership's valuation of husband's partnership interest and a legally cognizable interest in its value. In re Nevarez, 170 P.3d 808 (Colo. App. 2007).

The trial court did not exceed its jurisdiction in requiring the husband to execute and deliver deeds conveying his interest in the property to the wife, because although it has generally been held that a divorce court in one state does not have the power directly to affect, by means of its decree, the title to real property situated in another state, where the decree itself does not operate as a conveyance, but was wholly an in personam decree requiring that a party under the court's jurisdiction execute the conveyance, the court did not exceed its jurisdiction. Larrabee v. Larrabee, 31 Colo. App. 493, 504 P.2d 358 (1972).

"Date of the hearing". Where the hearing on disposition of property takes more than one day and there is a substantial interval between hearing days, the "date of the hearing" referred to in subsection (5) is the day when the last evidence was presented on this matter. In re Femmer, 39 Colo. App. 277, 568 P.2d 81 (1977).

Where the trial court had jurisdiction to divide property at the time of entry of a final decree of divorce, but did not do so, nor then reserve the matter for further consideration, it lost jurisdiction to thereafter make a valid division of such property. Triebelhorn v. Turzanski, 149 Colo. 558, 370 P.2d 757 (1962).

Because former § 46-1-5(2), C.R.S. 1963, did not contemplate or authorize the court to exercise continuing supervisory powers over the management of the property subject to division. Larrick v. Larrick, 30 Colo. App. 327, 491 P.2d 1401 (1971).

Former § 46-1-5(2), C.R.S. 1963, required that an order dividing the property of the parties to a divorce proceeding be made either at the time the divorce decree was issued, or within such "reasonable time thereafter as may be set by the court at the time of the issuance of said divorce decree". Larrick v. Larrick, 30 Colo. App. 327, 491 P.2d 1401 (1971).

Where the trial court retained the jurisdiction to award such alimony as may be just upon a proper showing, in no way altered the finality of a portion of the decree which determined the rights and interests of the parties in the real estate. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

The trial court retained jurisdiction of the controversy concerning the property settlement between these divorced parties as to matters affecting their property rights following the death of the husband. Sarno v. Sarno, 28 Colo. App. 598, 478 P.2d 711 (1970).

Trust where wife settlor and sole income beneficiary. Where wife had established a trust with herself as sole income beneficiary, the court had jurisdiction, in a subsequent divorce action, to order the trustee to make payments from the trust to the husband. In re Kaladic v. Kaladic, 41 Colo. App. 419, 589 P.2d 502 (1978).

The trial court in the absence of agreement between the parties to the divorce action could not, over the objection of the wife, order that her share in the property division be impressed with a trust. Ferguson v. Olmsted, 168 Colo. 374, 451 P.2d 746 (1969).

Reconsideration of property division to correct error unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Payment of interest on spouse's equity in house. The wife may be required to pay interest on the husband's share of the equity in the house which was awarded to the wife, for the period between the dissolution of marriage and payment of the equity. In re Garcia, 638 P.2d 848 (Colo. App. 1981).

Interest on portion of sale price of marital residence representing husband's share is to be calculated from date specified in decree that payment of such amount become due, not date of sale. In re Schutte, 721 P.2d 160 (Colo. App. 1986).

Transfer is not taxable event. When, under this section, a property settlement agreement is entered into providing for a transfer of property from husband to wife in acknowledgment of the wife's contribution to the accumulation of the marital estate, or a decree of the divorce court requires such transfer because of wife's contributions to the accumulation of the family estate, and the transfer is not made in satisfaction of the husband's obligation for support, the transfer is not a taxable event giving rise to capital gains tax liability for purposes of federal income taxation. Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d 853 (10th Cir. 1975).

Acts of depletion of marital estate are relevant considerations in making a division of property and not an imputation of marital misconduct on the part of a spouse. In re Paulsen, 677 P.2d 1389 (Colo. App. 1984).

Spouse may be required to apply future earnings against present marital debts. Subsection (2)(c) is not violated solely because the award forces the husband to apply future earnings to retire present debts of the marital estate. In re Faulkner, 652 P.2d 572 (Colo. 1982).

A spouse's contribution to the professional education and career of the other spouse must be considered in the distribution of property pursuant to this section. In re Speirs, 956 P.2d 622 (Colo. App. 1997).

Gift by a third-party donor during the marriage that increases the value of a jointly titled asset is presumably a gift to the marriage. This presumption can only be rebutted by clear and convincing evidence. In re Krejci, 2013 COA 6, 297 P.3d 1035.

Trial court erred in classifying pre-decree but post-separation student loan debt as wife's separate debt. All debt acquired during a marriage is marital debt. However, classifying student loan debt as marital debt does not preclude court from allocating responsibility for payment of the loan to the party who incurred the loan. Because court's error affects substantial rights, order dividing property must be reversed. Court must consider parties' economic circumstances at the time of remand. In re Morton, 2016 COA 1, 369 P.3d 800.

B. Definition of Property.

This section does not define "property" but merely specifies that the "marital property" is to be divided "in such proportions as the court deems just". In re Ellis, 36 Colo. App. 234, 538 P.2d 1347 (1975), aff'd, 191 Colo. 317, 552 P.2d 506 (1976).

The legislature intended the term "property" to be broadly inclusive, as indicated by its use of the qualifying adjective "all" in subsection (2) of this section. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

There are necessary limits upon what may be considered "property", and the concept as used by the general assembly is other than that usually understood to be embodied within the term. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

An insurance policy with no cash surrender value does not represent any asset proper for consideration on the theory that it is "property" which is subject to equitable division between the parties. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964).

Degree is not property. Where a spouse provides financial support while the other spouse acquires a degree, the degree is not considered property. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977); In re Olar, 747 P.2d 676 (Colo. 1987).

At best, education is an intangible property right, the value of which, because of its character, cannot have a monetary value placed upon it for division between spouses. In re Graham, 38 Colo. App. 130, 555 P.2d 527 (1976), aff'd, 194 Colo. 429, 574 P.2d 75 (1978); In re Olar, 747 P.2d 676 (Colo. 1987).

And is not subject to division under this section. Although a litigant's education is a factor to be considered, among many others, in arriving at an equitable property division and in determining matters of maintenance and child support, it is not property subject to division under this section. In re Graham, 38 Colo. App. 130, 555 P.2d 527 (1976), aff'd, 194 Colo. 429, 574 P.2d 75 (1978); In re Olar, 747 P.2d 676 (Colo. 1987); In re Speirs, 956 P.2d 622 (Colo. App. 1997).

Husband's beneficial interest in discretionary trust is not "property" subject to division as such under this section. In re Rosenblum, 43 Colo. App. 144, 602 P.2d 892 (1979).

Husband's rights in a discretionary trust are to be considered by the court as any other "economic circumstance" of the husband in determining a just division of the marital property pursuant to subsection (1)(c) and as a "relevant factor" in making an award of maintenance under § 14-10-114(2). In re Rosenblum, 43 Colo. App. 144, 602 P.2d 892 (1979).

Wife's remainder interest in her grandfather's irrevocable trust was a gift, vested long before her marriage to husband, and was therefore separate property. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Remainder interests in irrevocable trusts are property for purposes of the disposition of property in dissolution actions. Such interests may present only a right to future enjoyment and are subject to complete divestment or defeasance, but they are certain, fixed interests subject only to the condition of survivorship and may not be withheld by the trustee in his or her discretion. Thus, they are distinct from interests in a discretionary or revocable trust, which are viewed as mere expectancies. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Wife's interest in family trust constitutes "property" and is not a "mere expectancy", despite the fact that wife's father must pay the entire net income from the trust to himself during his lifetime and has the discretion to invade the corpus for his own support, care, and maintenance. Because the trust was created during the marriage, wife's interest constitutes a gift that is excepted from the definition of marital property, but appreciation on wife's interest in the trust during the course of the marriage does constitute marital property. In re Balanson, 25 P.3d 28 (Colo. 2001).

Trial court properly determined that any increase in the value of wife's vested remainder interest in an irrevocable trust during the

marriage was marital property subject to division under subsection (4). In re Dale, 87 P.3d 219 (Colo. App. 2003).

Court found husband's vested remainder interest in his father's trust to be a property interest, where father possessed the power to revoke the trust during his lifetime but died without exercising that power. Husband's remainder interest in his father's trust was, therefore, subject to depletion only by exercise of the trustee's right to invade the corpus of the trust for the benefit of husband's mother, which right did not convert husband's vested remainder property interest into a mere expectancy. In re Gorman, 36 P.3d 211 (Colo. App. 2001).

Court found husband's vested remainder interest in his mother's trust to be a property interest, even though the mother, still living at the time of the permanent orders, had the power to revoke the trust during her lifetime. The mother's exercise of her right to revoke is a condition subsequent, and unless the event occurs, husband's interest remains vested. In re Gorman, 36 P.3d 211 (Colo. App. 2001).

The legislative history shows that subsection (7)(b) was adopted to overturn the holding in Gorman that a vested remainder interest in a revocable or modifiable trust is a property interest subject to division. The legislative history reveals that the general assembly relied upon the plain meaning of "heir at law" and that the statute applies only to remainder interests in trusts that are revocable or amendable and not to remainder interests in irrevocable trusts. In re Dale, 87 P.3d 219 (Colo. App. 2003).

The term "heir at law" in subsection (7)(b) pertains to any interest or resource a spouse may expect to inherit from his or her parent were the parent to die intestate. As a practical consequence of that language, the trial court may not consider any such prospective inheritance as either a property interest or as an economic circumstance. By including the phrase "heir at law," the statute thus treats intestate expectancies consistently with interests under a donative third-party instrument that can be revoked or changed. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Interest in a trust cannot be classified as property until that trust becomes irrevocable under subsection (7)(b). In re Balanson, 107 P.3d 1037 (Colo. App. 2004).

A life insurance policy lacking cash surrender value is not "property" since it has not objective, tangible, or vested value that can be divided. McGovern v. Broadstreet, 720 P.2d 589 (Colo. App. 1985).

Discretionary trust corpus cannot be considered the separate property of a beneficiary for purposes of division of property. This is because the beneficiary of such trust has no contractual or enforceable right to income or principal from the trust, cannot force any action by the trustee, cannot assign an interest in the trust, and because such interest cannot be reached by either party's creditors. In re Jones, 812 P.2d 1152 (Colo. 1991).

When beneficiary has no interest in the corpus, and right to control how the corpus is invested, the income is a mere gratuity deriving from the beneficence of the settlors. In re Guinn, 93 P.3d 568 (Colo. App. 2004).

In the absence of some ownership interest in the corpus itself, even a mandatory right to unrealized future discretionary allocations of income is an expectancy arising from the largess of the settlors and does not constitute property. In re Guinn, 93 P.3d 568 (Colo. App. 2004).

Income received by the wife from the discretionary trust during the marriage is properly considered a gift and thus not divisible pursuant to subsection (2)(a). In re Jones, 812 P.2d 1152 (Colo. 1991).

Wife's expectancy interest in a discretionary trust should be considered an economic circumstance pursuant to subsection (1)(c). In re Jones, 812 P.2d 1152 (Colo. 1991).

Wife's future anticipated interest in German "social security" benefits is an economic circumstance that can be considered pursuant to subsection (1)(c) in the equitable division of the marital estate. In re Lockwood, 971 P.2d 264 (Colo. App. 1998).

Trial court did not err in concluding that an irrevocable trust of which wife was beneficiary but over which wife had no control over the principal or the income and from which wife had no right to demand or request distributions was not marital property but an "economic circumstance" to be considered in arriving at an equitable property division. In re Pooley, 996 P.2d 230 (Colo. App. 1998).

Vested and matured military retirement pay accrued during all or part of a marriage constitutes marital property subject to equitable distribution in a marriage proceeding. In re Gallo, 752 P.2d 47 (Colo. 1988).

The key to an equitable distribution is fairness, not mathematical precision. Two possible methods of valuation are the present cash value method and the reserve jurisdiction method. In re Gallo, 752 P.2d 47 (Colo. 1988).

The rule that military retirement pay is marital property subject to equitable distribution in a marriage proceeding should be applied prospectively only. In re Wolford, 789 P.2d 459 (Colo. App. 1989).

Trial court, which had personal jurisdiction over husband but lacked the authority to divide the husband's military pension as marital property, did not retain jurisdiction to divide the pension at a later date. Even though final decree provided that trial court had continuing jurisdiction over the action and that the wife would remain entitled to any and all military benefits, the court did not have the authority to divide military pension as a result of subsequent case law declaring such pensions to be marital property. Language in final decree refers only to the court's continuing authority to divide property as such court had on the date of the final decree. In re Booker, 833 P.2d 734 (Colo. 1992).

Federal act specifying whether the court has jurisdiction over a military member's pension preempts state rules of procedure governing jurisdiction. In re Booker, 833 P.2d 734 (Colo. 1992).

Military retirement benefits subject to distribution as marital property in dissolution of marriage cases are limited to disposable retired pay which, under federal law, excludes disability pay. The exclusion also applies to that portion of a veteran's retirement pay that is computed using the percentage of disability on the date the veteran is placed on the temporary disability retirement list (TDRL). In re Williamson, 205 P.3d 538 (Colo. App. 2009).

Because husband was not entitled to a longevity retirement at the time he was placed on the TDRL, no portion of his retirement benefit that is based upon his disability status is distributable to wife pursuant to the parties' separation agreement that required the parties to divide the husband's pension equally according to the time rule formula. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

In case where service member had attained twenty or more years of service and was eligible for a longevity retirement when placed on the TDRL, an amount equal to the amount of TDRL pay, as calculated based on husband's percentage of disability when he was placed on the TDRL, must be excluded from the marital property. Any amounts in excess of that amount may be divided as marital property. In re Poland, 264 P.3d 647 (Colo. App. 2011).

Trial court did not err in its conclusion that military voluntary separation incentive payments constitute marital property subject to distribution. Compensation that is deferred until after the dissolution of marriage, but fully earned during the marriage, is marital property. In re Shevlin, 903 P.2d 1227 (Colo. App. 1995).

Cash received during the marriage pursuant to an employment contract which provides for payments in installments in advance of work is cash on hand and therefore marital property subject to division and not future income. In re Anderson, 811 P.2d 419 (Colo. App. 1990).

Compensation deferred until after the dissolution, but earned fully during the marriage, is marital property. Wife's performance award for her performance as an employee during the marriage was marital property, subject to equitable division. In re Huston, 967 P.2d 181 (Colo. App. 1998).

Although the interest of the policy owner of a life insurance policy constitutes marital property, the interest of the named beneficiary is only an expectancy and vests no present property interest in the beneficiary. Gorman-English v. Estate of English, 849 P.2d 840 (Colo. App. 1992).

A life insurance policy lacking cash surrender value is not "property" since it has no objective, tangible, or vested value that can be divided in a dissolution action. In re Foottit, 903 P.2d 1209 (Colo. App. 1995).

Spouse's disability pension payments do not constitute marital property and are not subject to distribution in a dissolution of marriage action. Such a distribution would contravene the legislative intent that only the beneficiary receive the disability benefits. In re Peterson, 870 P.2d 630 (Colo. App. 1994).

However, income received during the marriage from disability benefits becomes a marital asset when it is commingled with marital funds. Disability payments themselves are not marital property, but they lose their exempt character when commingled with marital assets. In re Green, 169 P.3d 202 (Colo. App. 2007).

Public employees' retirement association (PERA) disability benefit prior to age 65 replaces future earnings and does not constitute marital property. In re Hansen, 62 P.3d 1066 (Colo. App. 2002).

When disabled employee reaches the age of 65, the portion of PERA benefits attributable to years of service before disability constitutes marital property, and the balance remains separate property. Regardless of employee's recovery or work status, the benefits, excluding the unearned service credit projected until age 65, are more akin to retirement benefits. In re Hansen, 62 P.3d 1066 (Colo. App. 2002).

A stock option that is not vested does not constitute property. Only a vested stock option is "property" subjection to a determination of whether it was granted in consideration of past or future services for purpose of ascertaining its marital or separate nature. In re Huston, 967 P.2d 181 (Colo. App. 1998).

Employee stock option constitutes property for purposes of dissolution only when employee has enforceable right to options. Whether the stock option is "vested" is not determinative. When an employee has a presently enforceable right under the contract, the stock option is property and not a mere expectancy, regardless of whether the options are presently exercisable. In re Powell, 220 P.3d 952 (Colo. App. 2009).

Parents' promise to give property to husband in their will does not make the property marital property. Any interest in a donative third-party instrument that is amendable or revocable, is not marital property subject to division. In re Schmedeman, 190 P.3d 788 (Colo. App. 2008).

Wife's objection to husband's valid gift of property during the marriage, absent evidence that gift was made in contemplation of divorce, did not preserve wife's right to have property classified as marital property upon dissolution. Classification and valuation of marital property takes place upon dissolution. Absent dissipation, "marital" property that no longer exists cannot be valued. In re Schmedeman, 190 P.3d 788 (Colo. App. 2008).

Gifts made from one spouse to the other during the course of the marriage cannot be presumed to be gifts, nor do they necessarily constitute marital property. To qualify as a "gift", a transfer of property must involve a simultaneous intention to make a gift, delivery of the gift, and acceptance of the gift. In re Balanson, 25 P.3d 28 (Colo. 2001); In re Amich, 192 P.3d 422 (Colo. App. 2007).

Accrued vacation and sick leave is marital property where employee spouse has an enforceable right to be paid for the leave. Where the value of the leave at the time of dissolution can be reasonably ascertained, it is subject to equitable division under the UDMA. Where the value of such leave cannot be reasonably ascertained, the court should consider the employee spouse's right to the leave as an economic circumstance of the parties when equitably dividing the marital estate. In re Cardona, 2014 CO 3, 316 P.3d 626.

In dissolution proceedings, a couple's cryogenically frozen pre-embryos constitute marital property of a special character. In re Rooks, 2018 CO 85, 429 P.3d 579.

In determining the disposition of pre-embryos, the court should first look to any existing agreement between the parties regarding the disposition of their remaining pre-embryos in the event of divorce. In the absence of any such agreement, the court should balance the parties' interests by considering the following: (1) how the party who wishes to preserve the pre-embryos intends to use them; (2) the demonstrated

physical ability or inability of the party seeking to use the pre-embryos for in vitro fertilization (IVF) to have biological children through other means; (3) the parties' original reasons for undertaking IVF; (4) the potential hardship on the party that wishes to avoid becoming a genetic parent, including emotional, financial, or logistical factors; (5) either party's demonstrated bad faith or attempt to use the pre-embryos as unfair leverage in divorce proceedings; and (6) other factors relevant to the parties' specific situation. The court should not consider: (1) the ability of the party seeking to use the pre-embryos to afford a child; (2) standing alone, the number of a party's existing children; and (3) the ability of the party seeking to use the pre-embryos to adopt or otherwise parent non-biological children. In re Rooks, 2018 CO 85, 429 P.3d 579.

C. Discretion of Court.

The division of property in a divorce action is a matter within the sound discretion of the trial court, and its judgment will not be disturbed on review unless it is shown that the division made was an abuse of discretion. Granato v. Granato, 130 Colo. 439, 277 P.2d 236 (1954); Todd v. Todd, 133 Colo. 1, 291 P.2d 386 (1955); Britt v. Britt, 137 Colo. 524, 328 P.2d 947 (1958); Drake v. Drake, 138 Colo. 388, 33 P.2d 1038 (1959); Bell v. Bell, 150 Colo. 174, 371 P.2d 773 (1962); Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962); Harvey v. Harvey, 150 Colo. 449, 373 P.2d 304 (1962); Liggett v. Liggett, 152 Colo. 110, 380 P.2d 673 (1963); Bell v. Bell, 156 Colo. 513, 400 P.2d 440 (1965); Larrick v. Larrick, 30 Colo. App. 327, 491 P.2d 1401 (1971); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973); Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973); In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974); Harrod v. Harrod, 34 Colo. App. 172, 526 P.2d 666 (1974); In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975); Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976); In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977); In re Carruthers, 40 Colo. App. 278, 577 P.2d 773 (1977); In re Schulke, 40 Colo. App. 473, 579 P.2d 90, cert. denied, 439 U.S. 861, 99 S. Ct. 181, 56 L. Ed. 2d 170 (1978); In re Howard, 42 Colo. App. 457, 600 P.2d 93 (1979); In re Garcia, 638 P.2d 848 (Colo. App. 1981); In re Hoffman, 650 P.2d 1344 (Colo. App. 1982); In re Faulkner, 652 P.2d 572 (Colo. 1982); In re Mann, 655 P.2d 814 (Colo. 1982); In re Lester, 647 P.2d 668 (Colo. App. 1982); In re Seely, 689 P.2d 1154 (Colo. App. 1984); In re Sarvis, 695 P.2d 772 (Colo. App. 1984); In re Hulse, 727 P.2d 876 (Colo. App. 1986); In re Price, 727 P.2d 1073 (Colo. 1986); In re McGinnis, 778 P.2d 281 (Colo. App. 1989); In re Stumpf, 932 P.2d 845 (Colo. App. 1996); In re Dale, 87 P.3d 219 (Colo. App. 2003).

The division of marital property is committed to the sound discretion of the trial court and there is no rigid mathematical formula that the court must adhere to. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

Judiciary not to interfere with "division" of property. Whatever the role of judicial solicitude in the division of property, it will not be permitted to interfere with the statutory command that the property be literally and effectively "divided". In re Gehret, 41 Colo. App. 162, 580 P.2d 1275 (1978).

Property division hearings are equitable in nature and trial courts have broad discretion to fashion an equitable division of the parties' property in a dissolution proceeding. In re Wells, 850 P.2d 694 (Colo. 1993).

Under the authority of this section, the trial court is clearly limited in adjusting and dividing the assets of the husband and wife as between them alone. Giambrocco v. Giambrocco, 161 Colo. 510, 423 P.2d 328 (1967).

Trial court lacks authority to award marital property to the children of the marriage or to compel a parent to make such a conveyance. In re Mohrlang, 85 P.3d 561 (Colo. App. 2003).

Under this section authorizing a "division of property" in a divorce action, the court may decree a transfer from the wife to the husband, in a proper case, even of property which he has conveyed to her. Ikeler v. Ikeler, 84 Colo. 429, 271 P. 193 (1928).

It was proper for the trial court to consider contributions of parties to the increase in or accumulation of assets by means other than direct contribution of capital. Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971).

Where the parties to a divorce action agreed to submit the partition of real property issue to the court, rather than incur the expense of a formal statutory partition proceeding, the court, under its broad powers, could have declined to partition at that point, and, in the absence of a final agreement concerning the property, it could either have sold the property and divided the proceeds, or it could have declared that each party would henceforth be a tenant in common. Either course would have been a fair and equitable division of the property. Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973).

Judicial notice of general economic trends, such as the inflationary trend since the time of the marriage, was proper in considering the disposition of property. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

A decree of a trial court permitting a wife to keep her separate inherited property and awarding her a division of property acquired through the joint efforts of the parties, where no alimony is requested or awarded, does not constitute an abuse of discretion. Green v. Green, 139 Colo. 551, 342 P.2d 659 (1959).

Where stocks and securities acquired solely by a defendant's mother out of her inheritance, and earnings were held in joint tenancy with defendant, it was error for the trial court to allot one half of the value thereof to defendant in making a division of property as between husband and wife. Stephenson v. Stephenson, 134 Colo. 96, 299 P.2d 1095 (1956).

Non-marital disability pension payments may be considered as an economic circumstance in determining maintenance. In re Peterson, 870 P.2d 630 (Colo. App. 1994).

In a property settlement proceedings in a divorce action, where the evidence disclosed that the wife had contributed substantially to the family income over a period of years, which enabled the husband to devote virtually all of his earnings to assisting his mother in preserving a valuable piece of business property, through whom he received a substantial inheritance, which he would not have received but for the wife's efforts and contributions during the period, it was error for the court to fail to take such inheritance into consideration in determining the property settlement between the parties. Lee v. Lee, 133 Colo. 128, 293 P.2d 293 (1956).

A court order empowering the wife to make the selection of the husband's stocks was erroneous because the division is a function requiring the exercise of judicial discretion, and the danger in delegating full discretion to the wife was that her selection could work to an unfair advantage for her and a decided detriment to the husband's holdings. Santilli v. Santilli, 169 Colo. 49, 453 P.2d 606 (1969).

Where properties awarded to the husband were heavily encumbered, and the businesses awarded financially involved, and in addition he was required to pay off a large indebtedness on property awarded to wife plus substantial support for children, evidence offered was insufficient to support such burdensome order. Bell v. Bell, 150 Colo. 174, 371 P.2d 773 (1962).

Where under facts disclosed, order of division of property in divorce action was so manifestly unfair, inequitable, and unconscionable as to amount to an abuse of discretion, it will be ordered vacated and set aside. Bell v. Bell, 150 Colo. 174, 371 P.2d 773 (1962).

No abuse of discretion. In and of itself, the award of 35 percent of the marital assets is not an abuse of discretion. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

And although distribution was not equal, it certainly was equitable, and thus well within the court's discretion. In re Gercken, 706 P.2d 809 (Colo. App. 1985).

Award of interest within trial court's discretion. Whether interest should be allowed on a promissory note which represents a property division award upon dissolution of marriage is a matter which lies within the discretion of the trial court based on all of attendant circumstances. In re Lucas, 631 P.2d 1175 (Colo. App. 1981).

Trial court is required to consider the economic circumstances of the spouses at the time of any hearing relating to the division of marital property. In re Wells, 850 P.2d 694 (Colo. 1993).

Marital partnership interest made subject to "charging order" pursuant to § 7-60-128 as part of property division is not an abuse of discretion, nor was it error to leave the actual amount recoverable to determination in a separate action, although property division had to be set aside because it could be unconscionable. In re Weiss, 695 P.2d 778 (Colo. App. 1984).

Where a wife was awarded a final divorce decree without alimony and given control of a jointly owned taxicab business, it was held that there was ample evidence in the record to support the finding of fact by the trial court that wife did contribute to and was entitled to a one-half interest in the business since it appeared that the operations, continued under her guidance and later under a receiver with her assistance, owed their successful outcome to these efforts. Shreyer v. Shreyer, 112 Colo. 281, 148 P.2d 1003 (1944).

Award of a share of benefits of husband's vested pension plan through the use of installment payments when lump-sum distribution at the time of decree was impractical is within the discretion of court. In re Blake, 807 P.2d 1211 (Colo. App. 1990).

Trial court's use of two different methods to distribute the parties' two pensions, was within the sound discretion of the trial court. In re Kelm, 912 P.2d 545 (Colo. 1996).

The trial court did not abuse its discretion in awarding the property and the proceeds therefrom to plaintiff where evidence showed that he furnished substantially all the purchase money, but allowed title to be taken in his wife's name. Bieber v. Bieber, 112 Colo. 229, 148 P.2d 369 (1944).

Where the husband asserted the court abused its discretion in awarding the real property to the wife without having first determined its value, there was no abuse of discretion, because before value becomes important the court must first determine whether the property is subject to division. Larrabee v. Larrabee, 31 Colo. App. 493, 504 P.2d 358 (1972).

Where the husband was on active duty as a petty officer in the Navy during the five year duration of the marriage, and the court found that his participation, if any, in the management of the land given to the wife prior to the marriage was adequately compensated by the income received therefrom, and the court further found that the gift from the wife's mother was intended primarily as a gift to her own children and that the husband was not entitled to retain any interest in the land under the circumstances of this case, the award of the property to the wife, based on these findings was not an abuse of discretion. Larrabee v. Larrabee, 31 Colo. App. 493, 504 P.2d 358 (1972).

Court abused its discretion when it acknowledged the parties' relatively equal contributions to the marriage and marital property, yet awarded the wife only the benefits of the increased value of the property without any responsibilities for its burdens. Under these circumstances, equity requires that the wife share a part of the debt incurred on the home during the marriage as well as a part of the increase in the home's value. In re Kiefer, 738 P.2d 54 (Colo. App. 1987).

It was an abuse of discretion to give the wife ownership of the couple's percentage of a partnership, granting one-third to the husband only upon full or partial distribution and holding the husband responsible for payment of his share of capital calls and any debt related to the partnership interest. In re Paul, 821 P.2d 925 (Colo. App. 1991).

Once initial order is entered, subsequent hearings are not merely corrections of errors committed by the trial court in the first proceeding. In re Wells, 850 P.2d 694 (Colo. 1993).

D. Antenuptial Agreements.

Separation agreements and antenuptial agreements are separate and distinct legal documents. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

Antenuptial contracts may be rescinded or modified by the mutual consent of the parties and whether such a contract has been rescinded by mutual consent is a question of fact. In re Young, 682 P.2d 1233 (Colo. App. 1984).

Spouses-to-be have right to enter into antenuptial agreements which contemplate the possibility of dissolution. In re Newman, 44 Colo. App.

307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

Agreement not bar to claim for maintenance unless expressly relinquished. In the absence of any reference in an antenuptial agreement to a relinquishment of the right to maintenance, the agreement does not bar the wife's claim for maintenance. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

As a general principle, antenuptial agreements will be given effect in this state. In re Thompson, 39 Colo. App. 400, 568 P.2d 98 (1977).

Antenuptial agreements, as a matter of law, do not violate public policy and are not void ab initio in Colorado. In re Newman, 653 P.2d 728 (Colo. 1982).

Antenuptial agreements, absent fraud, are binding on the parties according to their terms, and the judiciary cannot relieve the parties from the obligations thereof. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

Otherwise legislative provisions control. When an antenuptial agreement does not provide for the distribution of marital property upon the dissolution of the marriage, then the applicable legislative provisions are controlling. In re Thompson, 39 Colo. App. 400, 568 P.2d 98 (1977).

Section 14-10-112 conscionability review not extended to antenuptial agreements. The conscionability review of separation agreements, pursuant to § 14-10-112, does not extend to antenuptial agreements. In re Newman, 653 P.2d 728 (Colo. 1982).

Burden of proof is on party seeking to avoid antenuptial contract. In re Ingels, 42 Colo. App. 245, 596 P.2d 1211 (1979); In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

The burden of proving failure to disclose is upon the party contesting the validity of the antenuptial agreement. In re Ross, 670 P.2d 26 (Colo. App. 1983).

Failure to provide wife with independent counsel does not render antenuptial agreement void per se. In re Ingels, 42 Colo. App. 245, 596 P.2d 1211 (1979).

Agreement not set aside solely because bulk of marital assets go to husband. In re Ingels, 42 Colo. App. 245, 596 P.2d 1211 (1979).

Itemized property list not necessary for agreement. Where the amount of the husband's assets was not materially misstated, his failure to supply an itemized list was not fatal to the validity of an antenuptial agreement. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

While it would have been preferable for the trial court to have entered specific values for each item in a property division, reversal was not required where it could determine that the property division made was not an abuse of discretion. In re Warrington, 44 Colo. App. 294, 616 P.2d 177 (1980).

Where antenuptial agreement is unambiguous as to treatment of increases in value of separate property, the court is required to enforce the agreement according to its terms. In re Vickers, 686 P.2d 1370 (Colo. App. 1984).

Where antenuptial agreement was silent on matter of attorney fees, the awarding of such fees was controlled by § 14-10-119. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

For holding as to enforceability of prenuptial agreement which conceived disposition of property, see Franks v. Wilson, 369 F. Supp. 304 (D. Colo. 1973), appeal dismissed, 415 U.S. 986, 94 S. Ct. 1583, 39 L. Ed. 2d 884, reh'g denied, 416 U.S. 975, 94 S. Ct. 2004, 40 L. Ed. 2d 565 (1974).

E. Separate Property.

Property must be classified as separate or marital. Under the requirements of this section, it is essential for the court to classify the property of the parties as either separate or marital. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

This section mandates that separate property remain separate, subject to the narrow exception that any increase in value during marriage is marital property. In re Campbell, 43 Colo. App. 72, 599 P.2d 275 (1979).

Property acquired by either spouse during the marriage is presumed marital as is the appreciation in the value of separate property and any income produced by separate assets during the marriage. In re Dale, 87 P.3d 219 (Colo. App. 2003).

However, the marital property presumption can be overcome by evidence establishing that the property in question was acquired by a method listed in subsection (2), which excludes, among other things, property from the marital estate that was acquired in exchange for premarital property. To claim separate ownership successfully under the exchange provision, a spouse must trace the property by proving a series of exchanges back to an original asset. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Court must determine the separate properties' appreciation in value and the part of the increase that is marital property and take those values into consideration when determining the property division. In re Martinez, 77 P.3d 827 (Colo. App. 2003).

In order to obtain status of separate property under this section, it must appear that the property was acquired prior to marriage with the intent that it become the separate property of husband. In re Altman, 35 Colo. App. 183, 530 P.2d 1012 (1974).

Property not "separate" because of spouse's lack of interest or concern. Property titled in the name of one spouse that was acquired during the parties' marriage cannot be considered nonmarital property merely because of a course of conduct by the other spouse showing a lack of interest or concern for property. In re Heim, 43 Colo. App. 511, 605 P.2d 485 (1979).

The classification of increases in separate property as marital property is a substantial departure from prior law wherein such increases were generally classed as separate property. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

When award of increases in separate property to be made. The award of increases in separate property is to be made after considering all of the factors stated in subsection (1)(a) through (1)(d), and not just contribution. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977); In re Seewald, 22 P.3d 580 (Colo. App. 2001).

It is proper for a court to consider the depletion of separate property for marital purposes pursuant to subsection (1)(d); however, the statute does not require that the depletion of separate property for nonmarital purposes be considered and the trial court's failure to make findings as to this factor was harmless error. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Where court without authority to order sale of home. Where home was separate property of husband before marriage and after dissolution of marriage, the court was without authority to order sale of home despite fact that increase in the value of home during marriage was marital property. In re Campbell, 43 Colo. App. 72, 599 P.2d 275 (1979).

Income received by a spouse that is generated from the property of a third party is not marital property. In re Guinn, 93 P.3d 568 (Colo. App. 2004).

Money accumulated in pension fund prior to marriage should be considered "separate property". In re Rogers, 709 P.2d 1383 (Colo. App. 1985).

Husband's worker's compensation settlement is separate property to the extent it compensates for post-dissolution loss of income or earning capacity. In re Breckenridge, 973 P.2d 1290 (Colo. App. 1999).

Insurance proceeds acquired by husband during marriage constituted a gift and was properly classified as separate property. In re Sharp, 823 P.2d 1387 (Colo. App. 1991).

Shares of stock owned by husband at the time of the marriage that were later involved in a stock split during the marriage were properly considered husband's separate property except to the extent the shares appreciated during the marriage. In re Renier, 854 P.2d 1382 (Colo. App. 1993).

In order for premarital property to retain its separate character, the property must be traceable to specific assets. In the absence of evidence tracing shares of stock obtained in a stock split during the marriage to the shares husband owned at the time of the marriage, the additional shares should not have been set apart as husband's separate property where husband combined the additional shares with other shares acquired during the marriage and many of the combined shares were sold. In re Renier, 854 P.2d 1382 (Colo. App. 1993).

Trial court did not abuse its discretion when it awarded the wife 50 percent of the husband's disposable retirement pay where the ruling was rationally based on considerations of the wife's marital contributions during the husband's military career and the fact that the wife had no survivor benefits in the event of the husband's death. In re Sinkovich, 830 P.2d 1101 (Colo. App. 1992).

Trial court erred in setting apart to wife as her separate property the portions of investment traceable to income generated from trust. In re Foottit, 903 P.2d 1209 (Colo. App. 1995).

Requiring a party to execute a noncompete agreement is within court's authority where agreement is necessary to protect goodwill of business awarded to other party and agreement is otherwise valid under § 8-2-113. In re Fischer, 834 P.2d 270 (Colo. App. 1992).

Gifts made from one spouse to the other during the course of the marriage cannot be presumed to be gifts, nor do they necessarily constitute marital property. To qualify as a "gift", a transfer of property must involve a simultaneous intention to make a gift, delivery of the gift, and acceptance of the gift. In re Balanson, 25 P.3d 28 (Colo. 2001); In re Amich, 192 P.3d 422 (Colo. App. 2007).

To qualify as a gift, a transfer of property must involve a simultaneous intention to make a gift, delivery of the gift, and acceptance of the gift. That determination hinges fundamentally on the intent and acts of the donor and recipient, which, in turn, are questions of fact for the trial court to resolve. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Finding that home and car were wife's separate property upheld. In re Bartolo, 971 P.2d 699 (Colo. App. 1998).

The portion of husband's railroad retirement benefits that are equivalent to those an employee would have received if covered by the Social Security Act was husband's separate property, not subject to division, and court erred in treating it as marital property along with the portion of the railroad retirement benefits that are supplemental annuities. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

Bailment allowed between spouses. Subsection (1) does not prohibit a court from assigning liability to one spouse for the loss of separate property belonging to the other spouse upon a finding of negligence on the part of the spouse in possession of the property. In re Amich, 192 P.3d 422 (Colo. App. 2007).

Separate property pledged as collateral does not become marital property. The parties secured a line of credit for marital purposes using husband's separate property. Loan payments were made when due; the husband and wife did not default; and the lender did not foreclose on the property to satisfy the debt. In re Corak, 2014 COA 147, 412 P.3d 642.

F. Marital Property.

The purpose of the division of marital property is to allocate to each spouse what equitably belongs to him or her. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

Weighing of factors set forth in this section is within the sound discretion of the trial court. In re Casias, 962 P.2d 999 (Colo. App. 1998).

The court had the discretion to enter an equitable division of property where the court had retained jurisdiction and a period had expired for meeting certain conditions set forth in an agreement between the parties and such conditions had not been met. In re Ebel, 874 P.2d 406 (Colo. App. 1993).

State courts are preempted from crafting equitable remedies to reimburse a former spouse for payments she otherwise would have received from the division of a veteran's military retirement pay. The federal Uniformed Services Former Spouses' Protection Act does not allow disability retirement benefits to be divided as marital property, and former husband's military retirement consisted only of disability retirement benefits. In re Tozer, 2017 COA 151, 410 P.3d 835.

Division gives each party some attributes of ownership. The efficacy of a division of property in a dissolution of marriage action results from placing in the hands of each party a definable or ascertainable portion of at least some of the attributes of ownership. In re Cehret, 41 Colo. App. 162, 580 P.2d 1275 (1978).

Right to property division inchoate. In dissolution of marriage proceedings, a wife may be entitled to a division of the husband's property, and that right, prior to the dissolution action and possibly subject to an exception or two, is completely inchoate. In re Questions Submitted by United States Dist. Court, 184 Colo. 1, 517 P.2d 1331 (1974).

Property to be transferred is not determined at time of filing. At the time of the filing of the dissolution of marriage action in which the division of property will be later determined, a vesting takes place, and this interest which has vested is inchoate only in the sense that, prior to the division, the property to be transferred to the wife has not yet been determined. In re Questions Submitted by United States Dist. Court, 184 Colo. 1, 517 P.2d 1331 (1974).

At time divorce action is filed there vests in wife her interest in property in name of husband. In re Questions Submitted by United States Dist. Court, 184 Colo. 1, 517 P.2d 1331 (1974).

Justice requires that the joint accumulations of a husband and wife, or property which was acquired during marriage or added to through the joint efforts of both spouses, should be considered for equitable division on termination of the marriage. Kalcevic v. Kalcevic, 156 Colo. 151, 397 P.2d 483 (1964).

Specific circumstances and feelings of each party are appropriate considerations in determining which specific items of property should be sold, or alternatively, distributed to a particular party. In re Woodrum, 618 P.2d 732 (Colo. App. 1980).

Highly relevant factor to be considered by court in effecting just division of marital property is the extent to which the division will promote the objective of providing for each party's financial needs without maintenance. In re Jones, 627 P.2d 248 (Colo. 1981).

Value of separate property considered. The court must consider all of the many relevant facets of the situation of the parties, including the value of property set apart to each spouse. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

Upon remand to redistribute marital property, trial court may consider the economic circumstances of each spouse. In re Wells, 850 P.2d 694 (Colo. 1993).

Award of additional $6,000 for "recreational opportunities" for children was fairly embraced within the factors to be considered by court in dividing the marital property and did not create a separate "recreational fund" for the needs of the children. In re Jackson, 698 P.2d 1347 (Colo. 1985).

Contribution of spouse to acquisition of specific property is not a factor to be considered in determining whether that property is part of the marital estate, but this may be considered in determining the shares allocated to each spouse. In re Carruthers, 40 Colo. App. 278, 577 P.2d 773 (1977).

Decrease in value of separate property. Under subsection (1)(d), the court may consider as a relevant factor in dividing marital property the decrease in the value of separate property. In re Talarico, 36 Colo. App. 389, 540 P.2d 1147 (1975).

When applying subsection (1)(d), the court must consider an increase in the value of separate property without reference to the fact that the increase has just previously been classified as marital property under subsection (4). The trial court did not err in finding that there was an increase in the value of the husband's separate property during the marriage despite the fact that there was an aggregate decrease in the value of such property. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Value of retirement account considered. The public employees' retirement association's interest of the husband or his estate is not subject to divestment by death or discharge. At some time, he or his estate must receive, at the very minimum, the amount of accumulated deductions in his individual account. His rights have a presently determinable cash surrender value equal to his salary deductions which otherwise would have been available for the use of the parties during the marriage. Even though the husband's interest in the fund is, by its very nature, incapable of division in kind, the value of that interest was properly taken into account in a marital property division. In re Pope, 37 Colo. App. 237, 544 P.2d 639 (1975).

Because a 401(k) account is a defined contribution plan, the court must determine the marital interest; but unlike a defined benefit plan, it need not consider future appreciation. In re Casias, 962 P.2d 999 (Colo. App. 1998).

When one spouse causes title to be placed jointly with the other spouse, a gift is presumed, and the burden to show otherwise is upon the donor. In re Moncrief v. Moncrief, 36 Colo. App. 140, 535 P.2d 1137 (1975).

Transfer during the marriage by one spouse to both spouses is understood to evidence a transfer to the marital estate in the absence of appropriate evidence that the property was excluded from being marital property by a valid agreement of the parties. The exception from the definition of marital property for any property acquired by gift does not apply to such transfer. In re Stumpf, 932 P.2d 845 (Colo. App. 1996).

Gift by a third-party donor during the marriage that increases the value of a jointly titled asset is presumably a gift to the marriage. This presumption can only be rebutted by clear and convincing evidence. In re Krejci, 2013 COA 6, 297 P.3d 1035.

Where separation agreement has been set aside, property transferred in accordance with the agreement was not excluded from the division of the marital property. In re Bisque, 31 P.3d 175 (Colo. App. 2001).

Presumption of gift not overcome. Parties' explanation that title to their home was placed in joint tenancy so as to avoid inheritance taxes does not overcome the presumption that a gift occurred; it merely expresses a reason why the gift was made. In re Moncrief v. Moncrief, 36 Colo. App. 140, 535 P.2d 1137 (1975).

Resembles division of property by co-owners rather than conveyance. Transfer of property by husband to his former wife in fulfillment of a property settlement agreement entered into by the parties and approved by the court granting the divorce is a recognition of a "species of common ownership" of the marital estate by the wife resembling a division of property between co-owners and is not a transfer which resembles a conveyance by the husband for the release of an independent obligation owed by him to the wife. Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d 853 (10th Cir. 1975); In re Questions Submitted by United States Dist. Court, 184 Colo. 1, 517 P.2d 1331 (1974).

Property acquired before legal separation deemed marital. Property acquired subsequent to a marriage but after the parties have separated without a decree of legal separation is not excepted from "marital property" by subsection (2). In re Carruthers, 40 Colo. App. 278, 577 P.2d 773 (1977); In re Huff, 834 P.2d 244 (Colo. 1992).

Where parties lived apart for over eleven years without a decree of legal separation or a valid agreement for exclusion of property, property acquired during that period was marital property. In re Huff, 834 P.2d 244 (Colo. 1992).

The presumption that property acquired by either spouse after marriage is marital property may be overcome by establishing that the property in question was acquired by a method listed in subsection (2). Assets not falling with the specific definition of separate property are deemed to be marital in nature subject to equitable division by the court. In re McCadam, 910 P.2d 98 (Colo. App. 1995); In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Marital agreements must be in writing and signed by both parties. Although subsection (2)(d) does not require a "valid agreement" to be in writing, the more specific language of the Uniform Premarital and Marital Agreement Act prevails over the general language in this section. Therefore, parties' oral agreement during marriage to exclude the parties' respective retirement accounts and inheritances from the marital estate was not a valid agreement. In re Zander, 2019 COA 149, __ P.3d __.

Where a spouse takes title to property under circumstances that give rise to a resulting trust, that property has not been "acquired" for purposes of subsection (3), and, therefore, the trust property is not part of the marital estate. In re Martinez, 77 P.3d 827 (Colo. App. 2003).

Appreciation of separate property during the course of the marriage is considered marital property and such increase is subject to division under conditions set forth in this section. In re Fleet, 701 P.2d 1245 (Colo. App. 1985).

Appreciation accrued during period of reconciliation to be shared. The husband is entitled to an equitable share in the total amount of appreciation that accrued during a period of reconciliation after the wife became sole owner of the family home. In re Reeser, 635 P.2d 930 (Colo. App. 1981).

Where trial court failed to determine if there had been commingling of husband's premarital assets or if any marital appreciation in any of the trust assets had occurred and should have been included in the estate, property division could not be evaluated to determine whether it was inequitable. In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Value of marital property sold by a spouse prior to filing of divorce action where spouse kept proceeds for himself is properly considered in dividing marital estate. In re Paulsen, 677 P.2d 1389 (Colo. App. 1984).

Partnership property divided according to spouse's contribution. A trial court's division of partnership property can be based upon the contribution made by each party to the purchase of the property. In re Howard, 42 Colo. App. 457, 600 P.2d 93 (1979).

In order for partnership property to be considered as other than marital property under subsection (2)(d), the parties must have expressly agreed that the partnership assets would not become marital property. Otherwise, the question is one of intent of the parties, to be found as a fact by the trial court. In re Howard, 42 Colo. App. 457, 600 P.2d 93 (1979).

Home excluded from marital property when husband conveyed the home to wife as her separate property through an interspousal transfer deed with the intent to make it her separate property. Although not a marital agreement under the Uniform Premarital and Marital Agreements Act, because it was not signed by both parties, transfer was upheld because husband conveyed the property to wife as her sole property, admitting that this was his intent and that he was familiar with the concept of separate property and the effect of the transfer. A conveyance is different from an agreement to convey. Therefore, the interspousal transfer deed did not have to meet the requirements and formalities of the act. In re Blaine, 2019 COA 164, __ P.3d __.

Because husband's partnership interest was vested and mature and not subject to future contingencies, trial court erred when it valued that interest by projecting the value of the partnership to the date of husband's expected retirement rather than the date of the parties' legal separation. In re Nevarez, 170 P.3d 808 (Colo. App. 2007).

Court can award any rights party may have resulting from existence of corporate assets. Although the court cannot award corporate assets to individual parties in a dissolution proceeding, the court can award to a party any rights he may have because of the existence of corporate assets. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

Where husband's rights to commissions arose prior to the date of hearing, they constituted "marital property" and were subject to division.

In re Johnson, 40 Colo. App. 250, 576 P.2d 188 (1977).

Money husband received in lieu of retirement benefits upon mandatory separation from Army constituted marital property subject to distribution under the terms of this section. In re Moore, 35 Colo. App. 280, 531 P.2d 995 (1975).

Residence acquired in anticipation of marriage is marital property. Where a family residence is selected and acquired within a few days of the parties' marriage in contemplation of that marriage, and the equity accumulated therein results from contributions by both parties, the court does not err in treating the residence and all equity obtained therein as marital property. In re Altman, 35 Colo. App. 183, 530 P.2d 1012 (1974).

Home purchased with wife's proceeds from sale of home owned prior to marriage is not. In view of evidence that the family home was purchased by the wife with the proceeds of the sale of a home which she owned prior to the marriage, the home was not "marital property" within the meaning of this statute. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

Value of good will of spouse's business deemed marital property. In a division of marital property, the value of good will incident to husband's dental practice, which is an asset acquired during his marriage, must be considered as marital property. In re Nichols, 43 Colo. App. 383, 606 P.2d 1314 (1979).

Funds withdrawn by husband from joint bank account prior to wife's filing of petition for dissolution are "marital property" and should have been taken into account by trial court in making its property distribution, notwithstanding that the wife could not trace the funds after the withdrawal. In re Posinoff, 683 P.2d 377 (Colo. App. 1984).

Personal injury settlement offer, even if just for pain and suffering, is marital property if it arises from an accident which occurred during marriage. In re Fjeldheim, 676 P.2d 1234 (Colo. App. 1983).

Trial court erred in classifying a claim for personal injury protection (PIP) benefits as a marital asset where a claim had not been submitted to the insurance company as of the date of the hearing. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Accounts receivable constituted marital property. In re Bayer, 687 P.2d 537 (Colo. App. 1984).

Appreciation of premarital property which is realized during marriage is subject to division upon dissolution of marriage. In re Van Genderen, 720 P.2d 593 (Colo. App. 1985).

Reorganization under chapter 11 of bankruptcy code does not necessarily establish a business held premaritally by husband as worthless, so that entire sum received from sale of business's subsidiary stock and liquidation of business constituted marital property for purposes of division of property pursuant to dissolution. In re Van Genderen, 720 P.2d 593 (Colo. App. 1985).

Shares in mutual fund were "marital property" subject to equitable division, notwithstanding that funds used to purchase shares may have originally been husband's separate property, where evidence established that husband's intent in purchasing shares was to make a joint investment with wife and that he intended that shares should pass to wife upon his death. In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Full increase in value of parties' separate property was properly treated as marital property. In re Young, 682 P.2d 1233 (Colo. App. 1984).

Property acquired during first marriage not marital property. Absent evidence of a contrary intent, property acquired during a first marriage between the parties and before their remarriage may not be declared marital property. In re Stedman, 632 P.2d 1048 (Colo. App. 1981).

Spouse's interest in a vested but unmatured employer-supported pension plan is marital property to the extent such plan has been funded by either employee or employer contributions during the marriage and is, therefore, subject to equitable distribution in dissolution proceeding. In re Grubb, 745 P.2d 661 (Colo. 1987); In re Blake, 807 P.2d 1211 (Colo. App. 1990).

Marital property subject to division does not include property acquired after the dissolution; however, compensation that is deferred until after the dissolution, but fully earned during the marriage, is marital property. In re Vogt, 773 P.2d 631 (Colo. App. 1989); In re Anderson, 811 P.2d 419 (Colo. App. 1990); In re Miller, 888 P.2d 317 (Colo. App. 1994).

Before a trial court can make an equitable distribution of pension rights, it must first determine the present value of such rights. In re Gavito, 794 P.2d 1377 (Colo. App. 1990).

Husband's vested, employer-supported pension plan held to be "marital property". In re Nelson, 746 P.2d 1346 (Colo. 1987); In re Blake, 807 P.2d 1211 (Colo. App. 1990).

Husband's nonvested military pension held to be marital property. In re Beckman, 800 P.2d 1376 (Colo. App. 1990).

Trial court did not err in ruling that it had no authority to distribute the military retirement pay that husband received during the year that the parties were separated where there was no evidence presented concerning the amount received during that period nor any evidence that either party had dissipated any funds that had been received. In re Riley-Cunningham, 7 P.3d 992 (Colo. App. 1998).

Under the federal Uniformed Services Former Spouses' Protection Act, the portion of a military retirement pension that constitutes veterans' disability retirement benefits may not be divided as marital property. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004); In re Warkocz, 141 P.3d 926 (Colo. App. 2006).

In case where service member had attained twenty or more years of service and was eligible for a longevity retirement when placed on the TDRL, an amount equal to the amount of TDRL pay, as calculated based on husband's percentage of disability when he was placed on the TDRL, must be excluded from the marital property. Any amounts in excess of that amount may be divided as marital property. In re Poland, 264

P.3d 647 (Colo. App. 2011).

Colorado state courts are not prohibited from dividing a military pension consisting of nondisability and disability retirement benefits as long as the portion of nondisability benefits is large enough to satisfy the other party's fractional share of the division. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004).

Military retirement benefits subject to distribution as marital property in dissolution of marriage cases are limited to disposable retired pay which, under federal law, excludes disability pay. The exclusion also applies to that portion of a veteran's retirement pay that is computed using the percentage of disability on the date the veteran is placed on the temporary disability retirement list (TDRL). In re Williamson, 205 P.3d 538 (Colo. App. 2009).

Because husband was not entitled to a longevity retirement at the time he was placed on the TDRL, no portion of his retirement benefits that is based upon his disability status is distributable to wife pursuant to the parties' separation agreement that required the parties to divide the husband's pension equally according to the time rule formula. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

Husband's total pay based and computed on his disability is excluded from distribution to wife as marital property, not solely the husband's specific VA benefits. Further, because the husband was not entitled to any retirement benefits but for his disability benefits, it is immaterial that he waived a portion of his disability benefits to receive VA benefits. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

The nature of husband's disability retirement benefits as marital or nonmarital does not depend on whether the benefits are subject to taxation. Benefits based and computed on husband's disability are nonmarital, even if taxable. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

Trial court was not preempted by federal law from characterizing special separation benefits (SSB) received by former husband upon his voluntary discharge from the Air Force as marital property and from awarding a portion of them to wife. The SSB had more of the characteristics of a deferred compensation plan than a severance payment, and, therefore, constituted marital property subject to distribution. In re McElroy, 905 P.2d 1016 (Colo. App. 1995); In re Heupel, 936 P.2d 561 (Colo. 1997).

SSB benefit paid out after entry of the decree held not to be a "post-decree benefit". Hence, trial court's action in awarding a portion of the benefit to wife as marital property did not constitute a reopening of the decree, but rather an appropriate action to enforce the decree which incorporated the parties' separation agreement. In re Heupel, 936 P.2d 561 (Colo. 1997).

Spouse's election under federal law to receive indivisible veterans' disability benefits and waive divisible military retirement after entry of permanent orders does not divest trial court of jurisdiction in subsequent contempt action to enforce permanent orders. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004); In re Warkocz, 141 P.3d 926 (Colo. App. 2006).

For public policy reasons, military spouse should not be allowed to unilaterally defeat the other spouse's interest in military retirement pay by voluntarily waiving retirement pay in order to receive disability pay. In re Warkocz, 141 P.3d 926 (Colo. App. 2006).

A specific dollar amount need not be set forth in the dissolution decree in order to give the nonmilitary spouse a vested interest in military spouse's retirement benefit. In re Warkocz, 141 P.3d 926 (Colo. App. 2006).

Husband's interest in contingency attorney fees which were earned during the marriage constitutes marital property subject to division. However, any portion of the fees earned after dissolution should be subject to the "reserve jurisdiction method" whereby the trial court retains jurisdiction to distribute payments when the contingent funds are received. In re Vogt, 773 P.2d 631 (Colo. App. 1989).

An unliquidated personal injury claim is marital property within the meaning of this section. The trial court should consider the actual effect that personal injury had on the marital estate in determining what the equitable share of the claim should be, and the court is required to make specific findings supporting the division of such claim. In re Fields, 779 P.2d 1371 (Colo. App. 1989), cert. denied, 781 P.2d 1040 (Colo. 1989).

Assets which consist of amounts received in settlement of husband's personal injury claim and wife's loss of consortium claim are marital property and should be distributed by the court after consideration of the needs and circumstances of the parties. In re Simon, 856 P.2d 47 (Colo. App. 1993).

Stock options owned by husband at the time of marriage but exercised during the marriage using marital funds are presumed to be marital property in the absence of a showing that husband used separate property, such as money he received from an inheritance, to exercise the options. In re Renier, 854 P.2d 1382 (Colo. App. 1993).

Husband's right to severance pay as a substitute for a loss of future wages does not constitute marital property. In re Holmes, 841 P.2d 388 (Colo. App. 1992).

To the extent an employee stock option is granted in consideration of past services, the option may constitute marital property when granted. On the other hand, an employee stock option granted in consideration of future services does not constitute marital property until the employee has performed those future services. In re Miller, 915 P.2d 1314 (Colo. 1996).

Restricted stock options constitute marital property in their entirety where they represent a form of deferred compensation because husband had already earned the right to receive those shares. That husband's full enjoyment of the benefit is conditioned on his remaining an employee affects the present value of the restricted stock shares, not their marital nature. In re Miller, 915 P.2d 1314 (Colo. 1996).

A trial court has discretion to apply the "time rule" formula to the division of stock options acquired during the marriage or to reserve jurisdiction to distribute the stock options if and when they are exercised. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Employee stock options constitute property only when the employee has a presently enforceable right to the options, regardless of

whether the options are presently exercisable. In re Balanson, 25 P.3d 28 (Colo. 2001); In re Powell, 220 P.3d 952 (Colo. App. 2009).

Issue of "vesting" of employee stock options not determinative in ascertaining whether interest in employee stock options constitutes marital property. Rather, an employee stock option constitutes marital property for purposes of dissolution proceedings when an employee has an enforceable right to the options, regardless of whether the options are presently exercisable. In re Powell, 220 P.3d 952 (Colo. App. 2009).

Although wife's employment the year prior to issuance of the stock options may have been an eligibility requirement for the stock options, such employment did not, without more, confer any enforceable property right under the stock option plan. Wife had a mere expectancy and no property right in the stock options prior to the actual grant of the stock options after the date of the marriage. Therefore, no portion of the employee stock options were the wife's separate property, and wife did not "earn" any portion of the stock options prior to marriage. In re Powell, 220 P.3d 952 (Colo. App. 2009).

Public employees' retirement association (PERA) disability benefit prior to age 65 replaces future earnings and does not constitute marital property. In re Hansen, 62 P.3d 1066 (Colo. App. 2002).

When disabled employee reaches the age of 65, the portion of PERA benefits attributable to years of service before disability constitutes marital property, and the balance remains separate property. Regardless of employee's recovery or work status, the benefits, excluding the unearned service credit projected until age 65, are more akin to retirement benefits. In re Hansen, 62 P.3d 1066 (Colo. App. 2002).

Future disability income of husband based upon disability insurance purchased during marriage with marital funds is marital property. In re Simon, 856 P.2d 47 (Colo. App. 1993).

Trial court erred in setting apart to wife as her separate property the portions of investment traceable to income generated from trust. In re Foottit, 903 P.2d 1209 (Colo. App. 1995).

Mechanism employed by the court for dividing the marital estate is a matter within the trial court's discretion. In re Dickey, 658 P.2d 276 (Colo. App. 1982).

Property order not terminable upon remarriage. Court order constituting an adjustment of property rights between a former husband and wife did not terminate upon remarriage of wife. Greer v. Greer, 32 Colo. App. 196, 510 P.2d 905 (1973).

Share of marital estate contingent on remaining alive. Court cannot make a portion of husband's share of the marital estate contingent on his remaining alive. In re Paulsen, 677 P.2d 1389 (Colo. App. 1984).

Home to spouse with child custody. Subsection (1)(c) makes it clear that it is desirable to award the family home to the spouse having custody of the children. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Subsection (3) provides that possession of title is not dispositive of the method of distribution of marital property. In re Thompson, 39 Colo. App. 400, 568 P.2d 98 (1977).

Intent evidenced that property no longer in joint tenancy. An order for the sale of marital property and distribution of the proceeds evidences an intent that the property is no longer to be held in joint tenancy. Gaskie v. Hugins, 640 P.2d 248 (Colo. App. 1981).

Order charging husband with selling property within one year effectively divided the marital property as of the date of the decree. In re Weaver, 39 Colo. App. 523, 571 P.2d 307 (1977).

Court ordered conveyance of separate property to wife or sale of both non-marital and marital property is violative of statute unless there is no other way to value and divide the property equitably. In re Sarvis, 695 P.2d 772 (Colo. App. 1984).

Where the husband's expenditures and labor enabled the wife to invest a considerable percentage of her income, they should be considered as contributions to the increase in their joint, and her several, property. Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971).

Promissory note between the husband and wife and the principal due thereunder, being property acquired in exchange for property acquired prior to the marriage, were correctly treated as wife's separate property. Accrued interest should be treated as marital property and the interest payable as a marital debt, while interest accruing after the date of the decree is the wife's separate property. In re McCadam, 910 P.2d 98 (Colo. App. 1995).

Unless promissory notes demonstrate an intent that interest be treated as separate property, the interest accruing during the marriage is a marital asset, and any interest due at the time of the dissolution of the marriage is a marital debt. In re Lewis, 66 P.3d 204 (Colo. App. 2003).

In dissolution proceedings, a couple's cryogenically frozen pre-embryos constitute marital property of a special character. In re Rooks, 2018 CO 85, 429 P.3d 579.

In determining the disposition of pre-embryos, the court should first look to any existing agreement between the parties regarding the disposition of their remaining pre-embryos in the event of divorce. In the absence of any such agreement, the court should balance the parties' interests by considering the following: (1) how the party who wishes to preserve the pre-embryos intends to use them; (2) the demonstrated physical ability or inability of the party seeking to use the pre-embryos for in vitro fertilization (IVF) to have biological children through other means; (3) the parties' original reasons for undertaking IVF; (4) the potential hardship for the party that wishes to avoid becoming a genetic parent, including emotional, financial, or logistical factors; (5) either party's demonstrated bad faith or attempt to use the pre-embryos as unfair leverage in divorce proceedings; and (6) other factors relevant to the parties' specific situation. The court should not consider: (1) the ability of the party seeking to use the pre-embryos to afford a child; (2) standing alone, the number of a party's existing children; and (3) the ability of the party seeking to use the pre-embryos to adopt or otherwise parent non-biological children. In re Rooks, 2018 CO 85, 429 P.3d 579.

Trial court lacked jurisdiction over the securities owned by the parties' children. However, trial court may consider the securities as a factor in determining how to allocate between the parties any marital debt related to the children's education. In re Gorman, 36 P.3d 211 (Colo. App. 2001).

G. After-acquired Property.

A trial court, in ordering a division of property, cannot award to the divorced wife a share in property which might be acquired by the ex-husband after the order for a division of property has been made. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964).

Courts cannot divide property acquired after hearing or decree. Although courts must divide property on the basis of conditions existing at the date of the hearing or decree, they cannot consider the division of property which the parties may acquire afterwards. In re Johnson, 40 Colo. App. 250, 576 P.2d 188 (1977).

A trial court cannot award to one spouse in a dissolution a share in property which might be acquired by the other spouse after the order for division of property has been made. In re Ward, 657 P.2d 979 (Colo. App. 1982).

Court can allow wife to use husband's separate property if husband waived or intentionally relinquished the right to sole ownership of that separate property. Court, however, could not convey any ownership attributes of that property to wife. In re Ikeler, 148 P.3d 347 (Colo. App. 2006), rev'd on other grounds, 161 P.3d 663 (Colo. 2007).

III. VALUATION OF PROPERTY.

Law reviews. For article, "Valuation of Businesses in Colorado Divorces", see 32 Colo. Law. 73 (June 2003). For article, "Business Valuations in Light of Thornhill", see 38 Colo. Law. 77 (Aug. 2009). For article, "Recent Changes to Military Retirement Division in Divorce", see 47 Colo. Law. 34 (Apr. 2018).

Market value of real property in dispute is standard adopted by the general assembly. In re Lord, 626 P.2d 698 (Colo. App. 1980), appeal dismissed, 653 P.2d 385 (Colo. 1982).

Necessity of finding current value of all property. Generally, in making a division of property, the court must find the approximate current value of all property owned by the parties, as well as the value of separate property at the time of the marriage or at the time of acquisition, if after marriage. However, where the court determines the percentage ownership each party has in the marital property, and that percentage is not an issue on appeal, the failure to make such findings of current value is not necessarily erroneous. In re Weaver, 39 Colo. App. 523, 571 P.2d 307 (1977).

This section expressly requires that property be valued as of the date of the dissolution of the marriage or as of the date of the hearing on disposition of the property if such hearing precedes the date of dissolution. This provision is mandatory, and the only exception is that the marital property dissipated before dissolution of the marriage can be valued as of the date the property last existed. In re Hunt, 909 P.2d 525 (Colo. 1995); In re Finer, 920 P.2d 325 (Colo. App. 1996); In re Lockwood, 971 P.2d 264 (Colo. App. 1998).

The trial court did not have discretion to create, for equitable purposes, a fictitious date of dissolution for purposes of calculating the wife's share of the husband's military pension. In re Lockwood, 971 P.2d 264 (Colo. App. 1998).

Court's discretion in determining property valuation date. This section gives the trial court broad discretion in matters of property division, including determination of the property valuation date for division of marital property. Gaskie v. Hugins, 640 P.2d 248 (Colo. App. 1981).

Court's valuation was sufficiently supported by evidence of parties' agreement as to value of lot, wife's response to husband's request for admission of current market value of property, and verified financial statements and proposed final orders submitted by both parties. In re Price, 727 P.2d 1073 (Colo. 1986).

Valuation on the date of dissolution based on an earlier agreement does not abuse court's discretion, where trial court was fully appraised of its duty to value the disputed lot as of the date of dissolution. In re Price, 727 P.2d 1073 (Colo. 1986).

Subsequent testimony to the valuation as of the date of dissolution which concerned the value of the disputed lot was not sufficient as a matter of law to overcome documentary evidence to the contrary. In re Price, 727 P.2d 1073 (Colo. 1986).

Stipulated values not binding. Where the trial court has determined that fairness and equity require that the division be an equal one, the stipulated values set 10 years before are neither binding nor relevant. Gaskie v. Hugins, 640 P.2d 248 (Colo. App. 1981).

However, parties' agreement as to the value nine months before the date of dissolution was not outdated and irrelevant to court's determination of real estate's value. In re Price, 727 P.2d 1073 (Colo. 1986).

Trial court is not bound by partnership agreement in determining value of law practice. Where partnership agreement was designed to discourage partners from leaving firm and it appeared husband intended to stay with firm, court was free to use an alternate valuation method such as the excess earnings method. In re Huff, 834 P.2d 244 (Colo. 1992).

Because husband's partnership interest was vested and mature and not subject to future contingencies, trial court erred when it valued that interest by projecting the value of the partnership to the date of husband's expected retirement rather than the date of the parties' legal separation. In re Nevarez, 170 P.3d 308 (Colo. App. 2007).

Excess earnings method is a generally accepted method for determining the present value of a person's interest in a business, representing both tangible assets and goodwill. In re Huff, 834 P.2d 244 (Colo. 1992).

Excess earnings method did not result in "double dipping" by wife awarded maintenance as well as a portion of present value of husband's

interest in law practice. In re Huff, 834 P.2d 244 (Colo. 1992).

Weight to be accorded to the valuation techniques of an expert is for the trial court's determination, depending upon the court's assessment of the reliability of the data in a particular case. In re Bookout, 833 P.2d 800 (Colo. App. 1991), cert. denied, 846 P.2d 189 (Colo. 1993); In re Antuna, 8 P.3d 589 (Colo. App. 2000).

Decision as to which valuation method to rely on is a factual determination to be made by the trial court. In re Huff, 834 P.2d 244 (Colo. 1992); In re Page, 70 P.3d 579 (Colo. App. 2003).

Marketability discount may be applied in determining value of husband's business where court determines that failure to do so would unfairly penalize husband for ownership of shares that cannot be readily sold or liquidated. The court must make a clear record of the reasons for applying a given discount rate. In re Thornhill, 200 P.3d 1083 (Colo. App. 2008), aff'd, 232 P.3d 782 (Colo. 2010).

It was within the trial court's discretion to accept wife's opinion of value as an owner of the marital residence, which opinion was partially based upon her extensive knowledge of the property, a heightened awareness of its value, and the valuations provided to her. In re Lewis, 66 P.3d 204 (Colo. App. 2003).

Goodwill is a property or asset which supplements the earning capacity of another asset, business, or a profession, and, therefore, is not the earning capacity itself. In re Bookout, 833 P.2d 800 (Colo. App. 1991), cert. denied, 846 P.2d 189 (Colo. 1993).

The value of goodwill in an ongoing physical therapy practice is properly measured by arriving at a present value based upon past results and not by accounting for the postmarital efforts of the professional spouse. In re Bookout, 833 P.2d 800 (Colo. App. 1991), cert. denied, 846 P.2d 189 (Colo. 1993).

Identification, valuation, and division of husband's "good will" as a portion of his physical therapy practice did not divide husband's future income. In re Bookout, 833 P.2d 800 (Colo. App. 1991), cert. denied, 846 P.2d 189 (Colo. 1993).

Trial court erred in failing to credit wife with the value of her interest in a medical practice as a marital asset. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

The conservation of the principal of an estate is, in itself, a valuable contribution which should be considered. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

When determining the present value of a vested interest in a trust that is subject to divestment based on a condition subsequent, a variety of circumstances should be considered, including actuarial information concerning the life expectancy of the life estate beneficiary and information concerning the future distributions to that beneficiary. In re Dale, 87 P.3d 219 (Colo. App. 2003).

In disposing of a vested but unmatured pension plan, the principles of fairness and equity must attend the valuation process, and the contingencies underlying the particular pension plan must be taken into account. In re McGinnis, 778 P.2d 282 (Colo. App. 1989).

Valuation of undisclosed assets. Once property has been divided pursuant to this section, such property becomes akin to separate property, and any increase in the valve of ownership interest therein should be considered when determining valuation. The failure to do so constitutes a confiscatory taking. In re Hiner, 710 P.2d 488 (Colo. 1985).

Increase in value of separate property after dissolution of marriage is necessarily separate. In re Campbell, 43 Colo. App. 72, 599 P.2d 275 (1979).

The amount by which the present value of an asset of a spouse acquired before the marriage exceeds its value at the time of the marriage constitutes a marital asset. In re Burford, 950 P.2d 682 (Colo. App. 1997).

In carrying out the division of the marital estate, the dissolution court should first add to the marital estate the amount of increase during the course of the marriage, if any, in each asset that was owned by each party before marriage. If an asset suffered a decrease in value, it should be disregarded in calculating the overall value of a spouse's separate property. Then the court should consider whether the overall value of the spouse's entire separate property has increased or decreased for the purpose of dividing the marital estate. In re Burford, 950 P.2d 682 (Colo. App. 1997).

Although the assets paid off by husband may not have increased in fair market value, husband's use of marital funds to pay off his separate debts substantially increased his equity in his separate property and must be considered in the property division. It is not necessary that the spouse produce a marital "asset" capable of being divided when marital funds are used to pay off one spouse's premarital debts. It is sufficient that the spouse paying off or paying down the separate property received a benefit from the marital income such as increased equity in its own property. The court should consider the benefit as an economic circumstance. In re Burford, 26 P.3d 550 (Colo. App. 2001).

When debts have already been paid, they may be allocated in the property division through reimbursement. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Debts incurred during the marriage but which are dissolution litigation costs should be allocated pursuant to § 14-10-119. In re Burford, 26 P.3d 550 (Colo. App. 2001).

In the case of a pension plan inaccessible prior to the employee's distant retirement and terminable upon the employee's death, the risk of forfeiture is an important factor for the trial court to consider. In such a case it would be inequitable to require an immediate, lump-sum payment unless the present value included the risk of forfeiture as a factor. In re McGinnis, 778 P.2d 281 (Colo. App. 1989).

Vested but unmatured pension benefits are marital property not subject to inflexible rules of property valuation. Combination of deferred

distribution and reserve jurisdiction valuation based on earliest possible retirement date for husband with full benefits proper where husband was not currently entitled to retirement benefits. In re Kelm, 878 P.2d 34 (Colo. App. 1994), aff'd in part and rev'd in part on other grounds, 912 P.2d 545 (Colo. 1996).

No basis for reversal despite court error in valuing wife's vested but unmatured PERA retirement fund. Because PERA combines elements of defined benefit and defined contribution plans, it was error for the court to base the present value of the wife's PERA account purely upon her contributions as of the date of dissolution. A proper determination of present value required the application of a series of actuarial and investment assumptions relating to the wife's life expectancy and probable retirement age to the contractual or statutorily awarded benefit. However, because husband acquiesced in this error and failed to present any evidence at trial as to the value of wife's PERA pension and because he made no objection or argument challenging wife's valuation during the permanent orders hearing, there is no basis for reversal. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

Unvested, unmatured, noncontributory defined benefit pension plans are affected by different contingencies from those where plans are vested. In re Hunt, 909 P.2d 525 (Colo. 1995).

Three methods of distribution are at court's disposal in order to divide a pension plan upon dissolution: (1) net present value; (2) deferred distribution; and (3) reserve jurisdiction. In re Hunt, 909 P.2d 525 (Colo. 1995).

"Time rule" formula, used to apportion pension benefits under the net present value and deferred distribution methods, described in In re Hunt, 909 P.2d 525 (Colo. 1995).

"Subtraction method" disapproved. Under the net present value method of distributing a pension plan, trial court's procedure of subtracting the present value of the husband's pension at the time of the marriage from the present value of the husband's pension at the time of the dissolution represented an abuse of discretion because, under the circumstances, this procedure grossly overstated the wife's share. In re James, 950 P.2d 624 (Colo. App. 1997).

Trial court had discretion to use subtraction method instead of the time-rule formula where the value of the trust was unrelated to any efforts taken by wife or husband, post-dissolution enhancements were irrelevant, and the wife failed to explain why the time-rule formula would produce a more accurate and fair apportionment of the trust interest. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Trial court is not preempted from using the net present value method to distribute an unmatured military pension. In re Riley-Cunningham, 7 P.3d 992 (Colo. App. 1998).

Trial court did not abuse its discretion in offsetting the net present values of the parties' military pensions and making a present distribution of the respective pensions, even though husband was retired from active duty while wife was not entitled to retire immediately and was still on active reserve. In re Riley-Cunningham, 7 P.3d 992 (Colo. App. 1998).

Court did not err by distributing husband's railroad retirement benefits using the net present value method. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

However, trial court is required to apply the coverture fraction, the accepted means of calculating the marital share of a pension, by multiplying the present value of the pension by the number of years or months that benefits accumulated during the marriage and dividing by the total number of years or months that benefits accumulated. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

Court should have considered actuarial information concerning the life expectancy of husband's parents and relevant information concerning the likelihood that trustee would invade the trust corpus in the future in determining the net present value of a vested interest in a trust that is subject to divestment on a condition subsequent. In re Mohrlang, 85 P.3d 561 (Colo. App. 2003).

Post-divorce pension enhancements are not necessarily separate property. Although post-divorce earnings are undisputably separate property, pension enhancements are subject to application of the "time rule" formula and may be apportioned. In re Hunt, 909 P.2d 525 (Colo. 1995).

Economic fault may be considered by the trial court when it is dividing marital assets. In re Jorgenson, 143 P.3d 1169 (Colo. App. 2006).

"Economic fault" concept rejected as a factor in distribution of post-divorce pension enhancements. In re Hunt, 909 P.2d 525 (Colo. 1995).

Court is not required to value or divide the parties' respective retirement plans by any set method so long as the division is equitable. No error in awarding wife the entire contribution she had made to a Public Employee Retirement Account where the benefits from such contribution were significantly less than husband's retirement benefits. In re Kelm, 878 P.2d 34 (Colo. App. 1994), aff'd in part and rev'd in part on other grounds, 912 P.2d 545 (Colo. 1996).

Court may retain jurisdiction over the distribution and valuation of stock options so that each party will "share in the risk of the fate of each of the options." In re Huston, 967 P.2d 181 (Colo. App. 1998).

Wife entitled to amount of husband's retirement funds, in the event of his death, only to extent of contributions made as of the date of dissolution. In re Kelm, 878 P.2d 34 (Colo. App. 1994), aff'd in part and rev'd in part on other grounds, 912 P.2d 545 (Colo. 1996).

An obligation to guarantee the debt of another should not be considered in a property valuation when the chance of liability is so small as to be speculative. If there is a quantifiable likelihood of liability, the obligation should be valued at its face amount times the percentage chance of liability. In re Jorgenson, 143 P.3d 1169 (Colo. App. 2006).

Just as a court is required to allocate the contingent value of assets in pensions and trusts, it must similarly determine the value of a contingent marital debt. It may do so in one of two ways: (1) Determine, on the basis of testimony, the potential obligation, discounted to reflect the percentage of liability; or (2) otherwise divide the marital assets and debts, reserving jurisdiction to allocate the contingent marital debt until

such time as the amount of such contingent debt has been determined. In re Jorgenson, 143 P.3d 1169 (Colo. App. 2006).

"Seller's costs". The trial court did not err in not deducting normal seller's costs from the value of the home when it purported to split between the parties the remaining equity in the home because "seller's costs" were speculative at best. Rhoades v. Rhoades, 188 Colo. 423, 535 P.2d 1122 (1975).

Husband not entitled to share in the future appreciation of the home because property is valued at the dissolution hearing or property division hearing. In re Wornell, 697 P.2d 812 (Colo. App. 1985).

Loss apportioned. The trial court may apportion a loss in value of separate property between the parties. In re Talarico, 36 Colo. App. 389, 540 P.2d 1147 (1975).

Conclusion that parties did not contribute to enhancement of stock proper. Since investment patterns of persons in a situation similar to a particular married couple is not a matter of common knowledge, and therefore, comparisons of the investments in the wife's portfolio to those of some hypothetical average investor or a skilled investment counselor were merely speculation, it was proper for the trial court to conclude on the basis of such observations that neither party contributed to enhancement of the value of the stocks. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

Valuation of intangible assets of husband's business. In determining the intangible value of husband's business, the important consideration is whether husband's business has a value to him above and beyond the tangible assets. In re Martin, 707 P.2d 1035 (Colo. App. 1985); In re Huff, 834 P.2d 244 (Colo. 1992).

Spouse was not entitled to any increase in value of assets awarded to her from the date of the decree to the date the permanent orders were entered where the decree was entered prior to the date of the hearing on disposition of property. In re Graff, 902 P.2d 402 (Colo. App. 1994).

Specific determination of the nature and elements of goodwill may be required when court orders one party to execute a covenant not to compete for protection of the goodwill of a business awarded to the other party. In re Fischer, 834 P.2d 270 (Colo. App. 1992).

Central to the valuation of property is the determination whether the property will actually be sold, thereby resulting in a net equity. The court should consider husband's intentions as to whether he will sell the property at issue, and if the property is to be sold, the finding of net equity must comport with the evidence. In re Finer, 920 P.2d 325 (Colo. App. 1996).

In case of dissipation of property, trial court's alternative ruling that stock shares could be valued at the time when they were sold, if that value was higher than the value on the date of the decree, was proper. In re Huston, 967 P.2d 181 (Colo. App. 1998).

Trial court did not err in valuing a leased automobile at $13,500, where husband had recently prepaid $13,500 on the lease of the leased vehicle. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Subsection (5) makes no provision regarding the date on which interest should begin to accrue on any sum ordered to be paid as part of the division of marital property. In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

Applied in In re Thompson, 706 P.2d 428 (Colo. App. 1985).

IV. SCOPE OF REVIEW.

Scope of review. Division of property in dissolution of marriage proceedings may only be overturned upon a finding that the trial court abused its discretion. In re Talarico, 36 Colo. App. 389, 540 P.2d 1147 (1975); In re Sharp, 823 P.2d 1387 (Colo. App. 1991).

An appellate court will alter a division of property only if the trial court abuses its discretion. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

One who has accepted benefits of judgment may not seek reversal of that judgment on appeal. In re Jones, 627 P.2d 248 (Colo. 1981).

Acceptance of the benefits of a judgment constitutes a waiver of appeal rights only if such action is inconsistent with the basis for the appeal. It is when the appeal, if successful, will again put into issue the right of the party to receive the benefits already accepted that a waiver of the right to appeal has been found. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

Husband is not barred from appealing portion of the property division where he had previously received his share of the retirement funds pursuant to the parties' agreement before the hearing on permanent orders. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

A trial court having reached its conclusions and entered its order and judgment on documentary evidence alone, the supreme court was as well qualified to determine the equities involved in a divorce action concerning a division of the property of the parties as was the trial court, and under such circumstances, presumptions in favor of the correctness of the order and judgment were not conclusive. Stephenson v. Stephenson, 134 Colo. 96, 299 P.2d 1095 (1956).

In an action for divorce, where the questions presented to the appellate court for review concern only the property rights of the parties, matters relating to the divorce were not considered. Wigton v. Wigton, 73 Colo. 337, 216 P. 1055 (1923).

Where the reporter's transcript of the testimony taken at a hearing on division of property in a divorce action was not included in the record on error, the supreme court assumed that the trial court had before it the entire situation of the parties, that the evidence before the court fully supported the determination made, and that all conflicting claims of the parties were properly resolved. Gier v. Gier, 139 Colo. 289, 339 P.2d 677 (1959).

Where a decree ordering the title to property to remain in joint tenancy and granting the rights of possession and income in the

property to the wife was not challenged, and had long since become final, the supreme court could not review it. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

Under the law of the case doctrine, conclusions of an appellate court on issues presented to it, as well as rulings logically necessary to sustain such conclusions, become the law of the case and generally must be followed in subsequent proceedings in that case. However, application of the law of the case by a trial court to its property division rulings entered prior to an appeal is a discretionary rule of practice. The trial court's original permanent orders lose any binding effect or precedential value when they are reversed on appeal. In re Burford, 26 P.3d 550 (Colo. App. 2001).

V. ENFORCEMENT.

Enforcement of property settlement. Ordering the payment of an amount due pursuant to the terms of the property settlement, together with interest, is an enforcement of the original decree and not a modification of the property settlement. In re Schutte, 721 P.2d 160 (Colo. App. 1986).

Cross References:

For the federal "Employee Retirement Income Security Act of 1974", see 29 U.S.C. sec. 1001 et seq.

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§ 14-10-114. Spousal maintenance - advisory guidelines - legislative declaration - definitions

(1) **Legislative declaration.**

(a) The general assembly hereby finds that:

(I) The economic lives of spouses are frequently closely intertwined in marriage and that it is often impossible to later segregate the respective decisions and contributions of the spouses; and

(II) Consequently, awarding spousal maintenance may be appropriate if a spouse needs support and the other spouse has the ability to pay support.

(b) The general assembly further finds that:

(I) Because the statutes provide little guidance to the court concerning maintenance awards, there has been inconsistency in the amount and term of maintenance awarded in different judicial districts across the state in cases that involve similar factual circumstances; and

(II) Courts and litigants would benefit from the establishment of a more detailed statutory framework that includes advisory guidelines to be considered as a starting point for the determination of fair and equitable maintenance awards.

(c) Therefore, the general assembly declares that it is appropriate to create a statutory framework for the determination of maintenance awards, including advisory guidelines for the amount and term of maintenance in certain cases, that will assist the court and the parties in crafting maintenance awards that are fair, equitable, and more consistent across judicial districts and in their application to both parties.

(2) At the time of permanent orders in dissolution of marriage, legal separation, or declaration of invalidity proceedings, and upon the request of either party, the court may order the payment of maintenance from one spouse to the other pursuant to the provisions of this section. An award of maintenance shall be in an amount and for a term that is fair and equitable to both parties and shall be made without regard to marital misconduct.

(3) (a)

(I) **Determination of maintenance.** When a party has requested maintenance in a dissolution of marriage, legal separation, or declaration of invalidity proceeding, prior to granting or denying an award of maintenance, the court shall make initial written or oral findings concerning:

(A) The amount of each party's gross income;

(B) The marital property apportioned to each party;

(C) The financial resources of each party, including but not limited to the actual or potential income from separate or marital property;

(D) Reasonable financial need as established during the marriage; and

(E) Whether maintenance awarded pursuant to this section would be deductible for federal income tax purposes by the payor and taxable income to the recipient.

(II) After making the initial findings described in subparagraph (I) of this paragraph (a), the court shall determine the amount and term of the maintenance award, if any, that is fair and equitable to both parties after considering:

(A) The guideline amount and term of maintenance set forth in paragraph (b) of this subsection (3), if applicable, based upon the duration of the marriage and the combined gross incomes of the parties;

(B) The factors relating to the amount and term of maintenance set forth in paragraph (c) of this subsection (3); and

(C) Whether the party seeking maintenance has met the requirement for a maintenance award pursuant to paragraph (d) of this subsection (3).

(b) **Advisory guideline amount and term of maintenance.** If the duration of the parties' marriage is at least three years and the parties' combined annual adjusted gross income does not exceed two hundred forty thousand dollars, the court shall make additional oral or written findings concerning the duration of the marriage in whole months and the advisory guideline amount and term of maintenance, calculated as follows:

(I) (A) If the maintenance award is deductible for federal income tax purposes by the payor and taxable income to the recipient, the amount of maintenance under the advisory guidelines is equal to forty percent of the parties' combined monthly adjusted gross income minus the lower income party's monthly adjusted gross income. If the calculation results in a negative number, the amount of maintenance is zero.

(B) If the maintenance award is not deductible for federal income tax purposes by the payor and not taxable income to the recipient, the amount of maintenance under the advisory guidelines for parties with a combined monthly adjusted gross income of ten thousand dollars or less is equal to eighty percent of the amount calculated pursuant to subsection (3)(b)(I)(A) of this section.

(C) If the maintenance award is not deductible for federal income tax purposes by the payor spouse and not taxable income to the recipient spouse, the amount of maintenance under the advisory guidelines for parties with a combined monthly adjusted gross income of more than ten thousand dollars but not more than twenty thousand dollars is equal to seventy-five percent of the amount calculated pursuant to subsection (3)(b)(I)(A) of this section.

(II) (A) The advisory term of maintenance under the guidelines, calculated in whole months, for marriages of at least three years but not more than twenty years, is set forth in the table contained in subsection (3)(b)(II)(B) of this section. When the duration of the parties' marriage exceeds twenty years, the court may award maintenance for a specified term of years or for an indefinite term, but the court shall not specify a maintenance term that is less than the maintenance term under the guidelines for a twenty-year marriage without making specific findings that support a reduced term of maintenance.

(B) Table of guideline maintenance term (in whole months)
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(c) **Factors affecting the amount and term of maintenance.** In any proceeding for maintenance, the court shall consider all relevant factors, including but not limited to:

(I) The financial resources of the recipient spouse, including the actual or potential income from separate or marital property or any other source and the ability of the recipient spouse to meet his or her needs independently;

(II) The financial resources of the payor spouse, including the actual or potential income from separate or marital property or any other source and the ability of the payor spouse to meet his or her reasonable needs while paying maintenance;

(III) The lifestyle during the marriage;

(IV) The distribution of marital property, including whether additional marital property may be awarded to reduce or alleviate the need for maintenance;

(V) Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, if necessary, and any necessary reduction in employment due to the needs of an unemancipated child of the marriage or the circumstances of the parties;

(VI) Whether one party has historically earned higher or lower income than the income reflected at the time of permanent orders and the duration and consistency of income from overtime or secondary employment;

(VII) The duration of the marriage;

(VIII) The amount of temporary maintenance and the number of months that temporary maintenance was paid to the recipient spouse;

(IX) The age and health of the parties, including consideration of significant health care needs or uninsured or unreimbursed health care expenses;

(X) Significant economic or noneconomic contribution to the marriage or to the economic, educational, or occupational advancement of a party, including but not limited to completing an education or job training, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property;

(XI) Whether the circumstances of the parties at the time of permanent orders warrant the award of a nominal amount of maintenance in order to preserve a claim of maintenance in the future;

(XII) Whether the maintenance is deductible for federal income tax purposes by the payor and taxable income to the recipient, and any adjustments to the amount of maintenance to equitably allocate the tax burden between the parties; and

(XIII) Any other factor that the court deems relevant.

(d) After considering the provisions of this section and making the required findings of fact, the court shall award maintenance only if it finds that the spouse seeking maintenance lacks sufficient property, including marital property apportioned to him or her, to provide for his or her reasonable needs and is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it inappropriate for the spouse to be required to seek employment outside the home.

(e) The maintenance guidelines set forth in paragraph (b) of this subsection (3) do not create a presumptive amount or term of maintenance. The court has discretion to determine the award of maintenance that is fair and equitable to both parties based upon the totality of the circumstances. The court shall make specific written or oral findings in support of the amount and term of maintenance awarded pursuant to this section or an order denying maintenance.

(f) The court may award additional marital property to the recipient spouse or otherwise adjust the distribution of marital property or debt to alleviate the need

for maintenance or to reduce the amount or term of maintenance awarded.

(g) The court may reserve jurisdiction to establish, review, or modify an award of maintenance at a later date pursuant to the provisions of this section by setting forth:

(I) The reasons for reserving jurisdiction;

(II) The ascertainable future event that forms the basis for reserving jurisdiction; and

(III) A reasonably specific time within which maintenance may be considered pursuant to this section.

(h) The court may award maintenance in short-term marriages, including marriages of less than three years in duration, when, given the circumstances of the parties, the distribution of marital property is insufficient to achieve an equitable result. In determining the award of maintenance, the court may consider the maintenance guidelines and the relevant factors affecting the amount and term of maintenance set forth in this subsection (3). The court shall make written or oral findings pursuant to paragraph (e) of this subsection (3).

(i) Nothing in this section prohibits an award of maintenance in gross.

(3.5) **Combined annual adjusted gross income in excess of advisory guideline amount.** If the parties' combined annual adjusted gross income exceeds two hundred forty thousand dollars, the calculation methodology described in subsection (3)(b)(I) of this section for determining the advisory guideline amount of maintenance does not apply, and the court shall instead consider the factors set forth in subsection (3)(c) of this section in determining the amount of maintenance. The court may consider the advisory guideline term of maintenance set forth in subsection (3)(b)(II) of this section.

(4) **Temporary maintenance.**

(a)

(I) In every proceeding for dissolution of marriage, legal separation, or declaration of invalidity where temporary maintenance is requested by a party, the court may award a monthly amount of temporary maintenance pursuant to the provisions of subsection (3) of this section that are relevant to a determination of temporary maintenance.

(II) The guideline term of maintenance set forth in subparagraph (II) of paragraph (b) of subsection (3) of this section does not apply to temporary maintenance orders. The court shall determine the term for payment of temporary maintenance.

(III) In addition to the relevant factors set forth in paragraph (c) of subsection (3) of this section, the court shall consider any additional factors specific to the determination of temporary maintenance, including the payment of family expenses and debts.

(b) After determining the amount of temporary maintenance pursuant to this subsection (4) and the amount of temporary child support pursuant to section

14-10-115, the court shall consider the respective financial resources of each party and determine the temporary payment of marital debt and the temporary allocation of marital property.

(c) A determination of temporary maintenance does not prejudice the rights of either party at permanent orders.

(5) **Modification or termination of maintenance.**

(a) Except upon written agreement of the parties, an award of maintenance entered pursuant to this section may be modified or terminated pursuant to the provisions of section 14-10-122. The court may consider the guideline amount and term of maintenance and the statutory factors set forth in subsection (3) of this section only in a modification or termination proceeding concerning a maintenance award entered on or after January 1, 2014.

(b) The enactment of this section does not constitute a substantial and continuing change of circumstance for purposes of modifying maintenance orders entered before January 1, 2014.

(c) The enactment of the December 2017 "Tax Cuts and Jobs Act", Pub.L. 115-97, federal tax legislation, does not constitute a substantial and continuing change of circumstance for purposes of modifying maintenance orders entered prior to the effective date of that law.

(6) **Security for the payment of maintenance.**

(a) The court may require the payor spouse to provide reasonable security for the payment of maintenance in the event of the payor spouse's death prior to the end of the maintenance term.

(b) Reasonable security may include, but need not be limited to, maintenance of life insurance for the benefit of the recipient spouse. In entering an order to maintain life insurance, the court shall consider:

(I) The age and insurability of the payor spouse;

(II) The cost of the life insurance;

(III) The amount and term of the maintenance;

(IV) Whether the parties carried life insurance during the marriage;

(V) Prevailing interest rates at the time of the order; and

(VI) Other obligations of the payor spouse.

(c) Orders to maintain security may be modified or terminated pursuant to section 14-10-122.

(7) **Maintenance agreements - waiver - unrepresented parties.**

(a) Either or both of the parties may agree in writing or orally in court to waive maintenance consistent with the provisions of section 14-10-112. The parties may also agree to waive maintenance in a premarital agreement or marital

agreement consistent with the provisions of the "Uniform Premarital and Marital Agreements Act", created in part 3 of article 2 of this title. The enforceability of maintenance provisions in a premarital agreement or marital agreement is determined pursuant to the provisions of section 14-2-309.

(b) In any proceeding that falls within the maintenance guidelines set forth in subsection (3) of this section, at the time of either temporary orders or permanent orders, if either party is not represented by an attorney, the court shall not approve an agreement waiving maintenance or agreeing to an amount or term of maintenance that does not follow the maintenance guidelines unless the unrepresented party has indicated that he or she is aware of the maintenance guidelines pursuant to this section.

(8) **Definitions.** As used in this section, unless the context otherwise requires:

(a) (I) "Adjusted gross income" means gross income as defined in subsection (8)(c) of this section, less preexisting court-ordered child support obligations actually paid by a party, preexisting court-ordered alimony or maintenance obligations actually paid by a party, as adjusted, if applicable, pursuant to subsection (8)(a)(III) of this section, and the adjustment to a party's income as determined pursuant to section 14-10-115(6)(b) for any children who are not children of the marriage for whom the party has a legal responsibility to support.

(II) For purposes of this subsection (8)(a), "income" means the actual gross income of a party, if employed to full capacity, or potential income, if unemployed or underemployed.

(III) (A) For purposes of this subsection (8)(a), if the preexisting court-ordered alimony or maintenance obligations actually paid by a party are deductible for federal income tax purposes by that party, then the full amount of alimony or maintenance actually paid must be deducted from that party's gross income.

(B) If the preexisting court-ordered alimony or maintenance obligations actually paid by a party are not deductible for federal income tax purposes by that party, then the amount of preexisting court-ordered alimony or maintenance that is deducted from that party's gross income is the amount actually paid by that party multiplied by 1.25.

(b) "Duration of marriage" means the number of whole months, beginning from the first day of the month following the date of the parties' marriage until the date of decree or the date of the hearing on disposition of property if such hearing precedes the date of the decree.

(c) (I) "Gross income" means income from any source and includes, but is not limited to:

(A) Income from salaries;

(B) Wages, including tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater;

(C) Commissions;

(D) Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment;

(E) Bonuses;

(F) Dividends;

(G) Severance pay;

(H) Pension payments and retirement benefits actually received that have not previously been divided as property in this action, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and article 30 of title 31, C.R.S.;

(I) Royalties;

(J) Rents;

(K) Interest;

(L) Trust income and distributions;

(M) Annuity payments;

(N) Capital gains;

(O) Any moneys drawn by a self-employed individual for personal use that are deducted as a business expense, which moneys must be considered income from self-employment;

(P) Social security benefits, including social security benefits actually received by a party as a result of the disability of that party;

(Q) Workers' compensation benefits;

(R) Unemployment insurance benefits;

(S) Disability insurance benefits;

(T) Funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages;

(U) Monetary gifts;

(V) Monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office;

(W) Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies; except that, if a party is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, then the income to be recognized may be limited to actual cash distributions received;

(X) Expense reimbursements or in-kind payments received by a party in the course of employment, self-employment, or operation of a business if they are significant and reduce personal living expenses;

(Y) Alimony or maintenance received pursuant to a preexisting court order with a payor who is not a party to the action, as adjusted, if applicable, pursuant to subsection (8)(c)(VI) of this section; and

(Z) Overtime pay, only if the overtime is required by the employer as a condition of employment.

(II) "Gross income" does not include:

(A) Child support payments received;

(B) Benefits received from means-tested public assistance programs, including but not limited to assistance provided under the Colorado works program, as described in part 7 of article 2 of title 26, C.R.S., supplemental security income, food stamps, and general assistance;

(C) Income from additional jobs that result in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment;

(D) Social security benefits received by a parent on behalf of a minor child as a result of the death or disability of a parent or stepparent; and

(E) Earnings or gains on retirement accounts, including individual retirement accounts; except that such earnings or gains shall not be included as income unless a party takes a distribution from the account. If a party may take a distribution from the account without being subject to a federal tax penalty for early distribution and the party chooses not to take a distribution, the court may consider the distribution that could have been taken in determining the party's gross income.

(III) (A) For income from self-employment, rent, royalties, proprietorship

of a business, or joint ownership of a partnership or closely held corporation, "gross income" equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph (B) of this subparagraph (III), required to produce such income.

(B) "Ordinary and necessary expenses", as used in sub-subparagraph (A) of this subparagraph (III), does not include amounts allowable by the internal revenue service for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating maintenance.

(IV) If a party is voluntarily unemployed or underemployed, maintenance shall be calculated based on a determination of potential income; except that a determination of potential income shall not be made for a party who is physically or mentally incapacitated or is caring for a child under the age of thirty months for whom the parties owe a joint legal responsibility or for an incarcerated parent sentenced to one year or more.

(V) For the purposes of this section, a party shall not be deemed "underemployed" if:

(A) The employment is temporary and is reasonably intended to result in higher income within the foreseeable future; or

(B) The employment is a good faith career choice; or

(C) The party is enrolled in an educational program that is reasonably intended to result in a degree or certification within a reasonable period of time and that will result in a higher income, so long as the educational program is a good faith career choice.

(VI) For purposes of subsection (8)(c)(I)(Y) of this section, if alimony or maintenance received by a party pursuant to a preexisting court order is taxable income to that party for federal income tax purposes, then the actual amount of alimony or maintenance received is included in that party's gross income. If the alimony or maintenance received by a party pursuant to a preexisting court order is not taxable income to that party for federal income tax purposes, then the amount of alimony or maintenance that is included in that party's gross income is the amount of alimony or maintenance received multiplied by 1.25.

(9) **Application.** The provisions of this section apply only to actions in which a petition for dissolution of marriage, legal separation, or declaration of invalidity, or an action for the initial establishment of maintenance is filed on or after January 1, 2014. Actions filed before January 1, 2014, are determined pursuant to the provisions of this section as it

existed at the time of the filing of the action.

Cite as (Casemaker) C.R.S. § 14-10-114

History. Amended by 2018 Ch. 251, §1, eff. 8/8/2018.

Amended by 2016 Ch. 157, §10, eff. 1/1/2017.

Amended by 2015 Ch. 259, §36, eff. 8/5/2015.

L. 71: R&RE, p. 526, § 1. C.R.S. 1963: § 46-1-14. L. 79: (2)(b) amended, p. 644, § 1, effective July 1. L. 98: (2)(a) amended, p. 1397, § 41, effective February 1, 1999. L. 2001: Entire section amended, p. 481, § 1, effective July 1. L. 2007: (2)(b)(IV)(A) amended, p. 107, § 2, effective March 16. L. 2013: Entire section R&RE, (HB 13-1058), ch. 176, p. 639, § 1, effective January 1, 2014. L. 2014: (9) amended, (HB 14-1379), ch. 307, p. 1300, § 1, effective May 31. L. 2015: (7)(a) amended, (SB 15-264), ch. 259, p. 951, § 36, effective August 5. L. 2016: (8)(a)(I) amended, (HB 16-1165), ch. 157, p. 497, § 10, effective January 1, 2017. L. 2018: (1)(c), (3)(a)(I)(C), (3)(a)(I)(D), IP(3)(b), (3)(b)(I), (3)(b)(II)(A), (3)(c)(XI), (3)(c)(XII), (8)(a), and (8)(c)(I)(Y) amended and (3)(a)(I)(E), (3)(c)(XIII), (3.5), (5)(c), and (8)(c)(VI) added, (HB 18-1385), ch. 251, p. 1543, § 1, effective August 8.

Editor's Note:

For purposes of subsection (3)(b), the uppermost limits of the schedule of basic child support obligations were changed by House Bill 13-1209 from an annual combined adjusted gross income of $240,000 to an annual combined adjusted gross income of $360,000, effective January 1, 2014. (See § 14-10-115(7).)

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Legislation Which Should Interest the Bar", see 20 Dicta 217 (1943). For article, "Forms Committee Presents Standard Pleading Samples to Be Used in Divorce Litigation", see 29 Dicta 94 (1952). For note, "The Effect of a Divorce Decree on a Subsequent Claim for Alimony", see 35 U. Colo. L. Rev. 402 (1963). For note on divorce, separation, and the federal income tax, see 39 U. Colo. L. Rev. 544 (1967). 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, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Pre-Nuptial Agreements Revisited", see 11 Colo. Law. 1882 (1982). For article, "Automatic Escalation Clauses Relating to Maintenance and Child Support", see 12 Colo. Law. 1083 (1983). For article, "The Continued Jurisdiction of the Court to Modify Maintenance", see 13 Colo. Law. 62 (1984). For article, "Taxation", which discusses a Tenth Circuit decision dealing with periodic payments as alimony or property settlement, see 61 Den. L.J. 392 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Marital Agreements", see 18 Colo. Law. 31 (1989). For article, "The Case For Maintenance Reform", see 23 Colo. Law. 53 (1994). For article, "Voluntary Early Retirement as a Factor in Modifying Maintenance", see 25 Colo. Law. 43 (Apr. 1996). For article, "Post-dissolution Maintenance Review in Trial Court Under CRS §§ 14-10-114 or -122", see 26 Colo. Law. 93 (July 1997). For article, "New Temporary Formulaic Spousal Maintenance in Colorado: An Overview", see 30 Colo. Law. 87 (Aug. 2001). For article, "Complex Financial Issues in Family Law Cases", see 37 Colo. Law. 53 (Oct. 2008). For article, "Emerging Spousal Support and Parenting Issues", see 41 Colo. Law. 45 (Oct. 2012). For article, "Maintenance Revisited The New Act", see 42 Colo. Law. 69 (Nov. 2013). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017). For article, "How the Tax Cuts and Jobs Act of 2017 Affects Divorce", see 47 Colo. Law. 26 (June 2018). For article, "Leap of Faith: Retiring while Paying Spousal Maintenance", see 48 Colo. Law. 28 (Oct. 2019).

Annotator's note. Since § 14-10-114, effective January 1, 2014, is similar to § 14-10-114 as it existed prior to its 2013 repeal and reenactment, relevant cases construing that provision and former provisions similar to that section have been included in the annotations to this section.

Any award of maintenance to a spouse in Colorado is a personal statutory right and not a property right. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001), aff'd, 285 B.R. 8 (Bankr. D. Colo. 2002), aff'd, 346 F.3d 1239 (10th Cir. 2003).

The spirit of this section was comprehensive enough to cover a case where there might be some question as to whether a marriage was one de jure, provided there was a marriage de facto. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

There is a distinction between maintenance awards and property settlements. Property divisions are intended to accomplish a just apportionment of marital property over time, whereas maintenance is intended be a substitute for marital support that can be used, for example, to ease a spouse's transition into the work force and prevent the spouse from becoming dependent on public assistance. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Division of property is mandatory under § 14-10-113, whereas an award of maintenance is discretionary under this section. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Maintenance used to balance equities. A trial court may use an award of maintenance as a tool to balance equities and compensate a spouse whose work has enabled the other spouse to obtain an education; however, this tool is available for use only where the spouse seeking maintenance meets the statutory threshold requirements of need. In re McVey, 641 P.2d 300 (Colo. App. 1981).

Trial court did not abuse its discretion in determining that it would be equitable in view of the division of property for the income of husband and wife to be relatively equal. In re Martin, 707 P.2d 1035 (Colo. App. 1985).

Reading section as a whole illustrates that the general assembly intended the guidelines to be advisory in nature and did not intend to cap or restrict a court's maintenance determination. In re Vittetoe, 2016 COA 71, __ P.3d __.

The divorce decree was the principal thing and the judgment for alimony was incidental, and whether they were entered separately or together, they were treated as part of the same decree. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954).

Matters of maintenance and property division are inextricably interwoven. In re McVey, 641 P.2d 300 (Colo. App. 1981).

It was well-established in Colorado that the courts viewed the testimony in alimony and property settlement matters in the light most favorable to the prevailing party. Gleason v. Gleason, 162 Colo. 212, 425 P.2d 688 (1967).

Alimony was defined generally as payments necessary for food, clothing, habitation, and other necessities for the support of the wife. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960).

Insurance policies and the premiums necessary to maintain them in full force were not in any sense to provide for food, clothing, habitation, or other necessities for the support of the wife. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960).

An award to the wife of the use, possession, and income of the real estate did not constitute an award of alimony, because the right to use and possession and the income of real property were but incidents of the ownership of that property. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

When parties availed themselves of the good offices of the court to fix the amounts of alimony to be paid from time to time and themselves changed the action from one for separate maintenance to one for divorce, it was assumed that they submitted themselves to the jurisdiction of the court for the entry of such orders as it deemed just and fair in accordance. Gavette v. Gavette, 104 Colo. 71, 88 P.2d 964 (1939).

Where the parties made a good faith although unsuccessful attempt at reconciliation and where the husband supported the family during this time, the support paid and contributed by the husband constituted payment of the maintenance installments accruing during the period they were living together. In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977).

For the effect of an invalidity of marriage determination on maintenance payments which were terminated upon remarriage, see Torgan v. Torgan, 159 Colo. 93, 410 P.2d 167 (1966).

Laches is recognized as a defense to the collection of maintenance arrearages or interest or both. Trial court must consider whether wife's twenty-six-year delay in enforcing the maintenance order was unreasonable given the circumstances and whether husband suffered prejudice as a result of not paying for that period of time. The concepts of delay and prejudice are interrelated and must be considered together. In re Kann, 2017 COA 94, __ P.3d __.

Applied in In re Thompson, 39 Colo. App. 400, 568 P.2d 98 (1977); In re Mitchell, 195 Colo. 399, 579 P.2d 613 (1978); In re Wagner, 44 Colo. App. 114, 612 P.2d 1147 (1980); In re Angerman, 44 Colo. App. 298, 612 P.2d 1166 (1980); In re Hartford, 44 Colo. App. 303, 612 P.2d 1163 (1980); In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980); In re Carney, 631 P.2d 1173 (Colo. 1981); Faris v. Rothenberg, 648 P.2d 1089 (Colo. 1982); In re Dickey, 658 P.2d 276 (Colo. App. 1982); In re Manzo, 659 P.2d 669 (Colo. 1983); In re Westlake, 674 P.2d 1386 (Colo. App. 1983); In re Dixon, 683 P.2d 803, (Colo. App. 1983); In re Wormell, 697 P.2d 812 (Colo. App. 1985); In re Thompson, 706 P.2d 428 (Colo. App. 1985); In re Martin, 707 P.2d 1035 (Colo. App. 1985); People in Interest of V.H., 749 P.2d 460 (Colo. App. 1987); In re Micaletti, 796 P.2d 54 (Colo. App. 1990); In re Sim, 939 P.2d 504 (Colo. App. 1997); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

II. AWARD OF MAINTENANCE.

A. Prerequisites.

Maintenance must be requested in petition. Under the uniform act, maintenance must be requested in the petition for dissolution. In re Boyd, 643 P.2d 804 (Colo. App. 1982).

Property division must precede consideration of maintenance. In re Jones, 627 P.2d 248 (Colo. 1981). In re Huff, 834 P.2d 244 (Colo. 1992).

Application of subsection (1)(a) presupposes dividing marital property after setting apart separate property. The application of subsection (1)(a) presupposes that the court has first set apart to each spouse his or her respective separate property and has divided the marital property. In re Jones, 627 P.2d 248 (Colo. 1981).

Alimony being consequent upon obtaining a divorce, there could be no judgment for alimony without a divorce decree, though they may have been and generally were entered together, the incident could not exist without the principal. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954).

Where no cause of action was stated in a complaint for divorce, no allowance of alimony or attorney fees could have been made. Oates v. Oates, 72 Colo. 195, 210 P. 325 (1922).

No personal judgment for alimony could be entered against the husband where service was by publication, but such alimony could be made a charge on land over which the court acquired jurisdiction by such service. Fowler v. Fowler, 74 Colo. 231, 220 P. 988 (1923).

Awards of maintenance are nondischargeable in bankruptcy and the question of whether a domestic obligation is in the nature of

maintenance must be determined based on federal bankruptcy standards, taking into account the substance of the obligation and the intent of the parties at the time of dissolution. In re Wilson, 888 P.2d 365 (Colo. App. 1994).

The parties' designation of a debt in the decree of dissolution as either a maintenance award that is non-dischargeable in bankruptcy or a property settlement that is dischargeable is not dispositive and in determining the intent of the parties and the substance of the obligation, the trial court must look beyond the language of the decree and may consider extrinsic evidence. In re Wilson, 888 P.2d 365 (Colo. App. 1994).

Trial court improperly found that husband's obligation to pay a street improvement debt was a nondischargeable lump sum maintenance obligation since, although an obligation to pay such a debt can be in the nature of maintenance, there was no evidence in the record that the parties intended that the obligation be in the nature of maintenance. In re Wilson, 888 P.2d 365 (Colo. App. 1994).

B. Determination of Right or Need for Maintenance.

This section leaves to the trial court the determination under the particular facts of each case whether to award alimony. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

This section does not compel a court to grant alimony in a divorce case; it is merely permissive. Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958); Int'l Trust Co. v. Liebhardt, 111 Colo. 208, 139 P.2d 264 (1943).

Alimony could be waived, and the right to seek alimony could be surrendered for a valuable consideration. Newey v. Newey, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1966).

Court must make findings of fact which demonstrate the basis of its award of maintenance. In re Laychak, 704 P.2d 874 (Colo. App. 1985).

Evidence relevant to issue of "need". While evidence that husband allegedly inflicted the injuries which resulted in wife's medical expenses and decreased her earning capacity is irrelevant, evidence of wife's medical expenses and earning capacity are relevant to establishing statutory requirements of need and trial court's exclusion of such evidence adversely affected wife's rights regarding maintenance. In re Hulse, 727 P.2d 876 (Colo. App. 1986).

Determination of spouse's reasonable needs depends on the particular facts and circumstances of the parties' marriage, and court should consider the reasonable expectations of the parties in determining whether the a party should be granted maintenance. In re Marshall, 781 P.2d 177 (Colo. App. 1989), cert. denied, 794 P.2d 1011 (Colo. 1990).

The wife is not required to consume her portion of the marital property before being entitled to maintenance. In re Eller, 38 Colo. App. 74, 552 P.2d 30 (1976); In re Sewell, 817 P.2d 594 (Colo. App. 1991); In re Nordahl, 834 P.2d 838 (Colo. App. 1992); In re Bartolo, 971 P.2d 699 (Colo. App. 1998).

A court awarding maintenance need not make explicit findings that the wife has insufficient property to meet reasonable needs or is unable to support herself through appropriate employment. In re Lee, 781 P.2d 102 (Colo. App. 1989).

All that is required is that the court consider the wife's share of the marital property in arriving at its maintenance award. In re Eller, 38 Colo. App. 74, 552 P.2d 30 (1976).

In determining whether to award maintenance, the court must make a threshold determination that the spouse requesting it lacks sufficient property, including marital property, to provide for her reasonable needs and is unable to support herself through appropriate employment. In re Renier, 854 P.2d 1382 (Colo. App. 1993); In re Fisher, 931 P.2d 558 (Colo. App. 1996); In re Bartolo, 971 P.2d 699 (Colo. App. 1998); In re Rose, 134 P.3d 559 (Colo. App. 2006).

In making threshold inquiry into a party's entitlement to temporary maintenance, trial court may consider the parties' standard of living during the marriage. The ability of a party to meet his or her reasonable needs through appropriate employment is dependent upon the particular facts and circumstances of the marriage and the expectations established during the marriage. In re Thornhill, 232 P.3d 782 (Colo. 2010).

The trial court properly determined questions of alimony and support basing its findings on the financial conditions, abilities, and needs of the parties as they appeared at the time of the hearing rather than on what those conditions might have been in the past or may be in the future. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

Because an award of permanent alimony must be based upon the circumstances existing at the time of the hearing thereon, including, but not limited to, the duration of the marriage, the financial condition of the parties, their needs and their abilities. Boyer v. Boyer, 148 Colo. 535, 366 P.2d 661 (1961).

Highly relevant factor to be considered by court in effecting just division of marital property is the extent to which the division will promote the objective of providing for each party's financial needs without maintenance. In re Jones, 627 P.2d 248 (Colo. 1981).

Fact that parties are in debt and having serious financial problems at time of dissolution does not preclude a nominal award of maintenance, if there is reason to believe that one party may rebound financially and may again be in the position to assist the other spouse in obtaining a standard of living nearer to that enjoyed during their marriage. In re Fernstrum, 820 P.2d 1149 (Colo. App. 1991).

Under subsection (1)(a) propriety of award of maintenance depends upon the inadequacy of the property and earning capacity possessed by the party seeking the award. In re Jones, 627 P.2d 248 (Colo. 1981); In re Olar, 747 P.2d 676 (Colo. 1987).

Husband's rights in discretionary trust are to be considered as "economic circumstance" of the husband in determining a just division of the marital property pursuant to § 14-10-113(1)(c) and as a "relevant factor" in making an award of maintenance under subsection (2). In re

Rosenblum, 43 Colo. App. 144, 602 P.2d 892 (1979).

Contribution to education of spouse. Among the relevant factors to be considered in a division of marital property is the contribution of the spouse seeking maintenance to the education of the other spouse from whom the maintenance is sought. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977); In re Olar, 747 P.2d 676 (Colo. 1987).

Voluntary financial contributions to wife by adult children, which are not based upon any legal obligation, are not appropriate factors for the trial court to consider in determining the amount of a maintenance award. In re Serdinsky, 740 P.2d 521 (Colo. 1987).

Limited consideration of a third party's resources, such as a current spouse's income, is not absolutely prohibited if the existence or use of such assets is directly relevant to an allegation by the payor spouse of a substantial and continuing change of circumstances. In re Bowles, 916 P.2d 615 (Colo. App. 1995).

The conduct of the party seeking alimony was formerly to be examined closely by the trial court, and evidence of moral delinquency or complete disregard of the marital vows and duties would be viewed as a bar to alimony. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

In Colorado, fault was not the sole standard in determining whether alimony would be awarded. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

Permanent alimony could be awarded the divorced wife although the decree may have been granted the husband for her fault. Neander v. Neander, 35 Colo. 495, 84 P. 69 (1906); Vigil v. Vigil, 49 Colo. 156, 111 P. 833 (1910); Bock v. Bock, 154 Colo. 408, 390 P.2d 956 (1964).

The fact that a person is without funds and without profitable employment has been held not to preclude the allowance of reasonable alimony and support where nothing but a disinclination to work, regardless of the motive therefor, interferes with his ability to earn a reasonable living. Rapson v. Rapson, 165 Colo. 188, 437 P.2d 780 (1968); Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975).

The fact that defendant decided to quit his employment and return to college did not preclude the allowance of a reasonable support order based on his demonstrated earning capacity. Rapson v. Rapson, 165 Colo. 188, 437 P.2d 780 (1968).

Even though husband was out of work through no fault of his own and despite his good faith efforts to obtain work, award of monthly maintenance to wife was not an abuse of discretion because the husband retained a significant earning capacity. In re Gray, 813 P.2d 819 (Colo. App. 1991).

"Appropriate employment" means the employment is suited to the individual, including the individual's expectations and intentions as expressed during marriage. In re Olar, 747 P.2d 676 (Colo. 1987).

What constitutes "appropriate employment" requires consideration of the party's economic circumstances and reasonable expectations established during the marriage. The terms "reasonable needs" and "appropriate employment" should not be interpreted narrowly. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

The determination of what constitutes "appropriate employment" and "reasonable needs" under subsection (1) is dependent upon the particular facts and circumstances of each case. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

It is a defense to an action by a wife for alimony, support, maintenance, or separate maintenance that the husband already is making her a suitable and regular allowance, provided that allowance is a sufficient one. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

A claim that a trial court failed to rule on the issue of granting or denying alimony in a divorce action was not supported by a record which showed an interlocutory decree providing for monthly support payments for a minor child until further order of the court, together with fees for defendant's counsel. Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958).

A spouse who accepts maintenance payments or an attorney fee award is not precluded from appealing such order. In re Lee, 781 P.2d 102 (Colo. App. 1989).

Court must reconsider the amount and duration of maintenance awarded upon correcting the property division. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

For the purpose of determining maintenance, student loan proceeds that have to be repaid are not financial resources available to a party to reduce unmet need. Considering student loan proceeds as either financial resources or income for purposes of determining an award of maintenance would thwart the purpose of the maintenance statute. In re Morton, 2016 COA 1, 369 P.3d 800.

Court did not err in failing to include husband's GI bill tuition assistance and stipend for books and supplies in husband's income for purposes of calculating maintenance. The tuition payment was not available for husband's discretionary use or to reduce living expenses and would in no discernable way assist him in paying maintenance or child support. In re Tooker, 2019 COA 83, 444 P.3d 856.

C. Amount and Form of Maintenance.

There is no mathematical formula for establishing a just and equitable property settlement or alimony or support. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Reading section as a whole illustrates that the general assembly intended the guidelines to be advisory in nature and did not intend to cap or restrict a court's maintenance determination. In re Vittetoe, 2016 COA 71, __ P.3d __.

In the absence of special circumstances, an order for the support of a wife in a divorce case should be a reasonable sum, based on the

necessities of the wife and the husband's ability to pay. Elmer v. Elmer, 132 Colo. 57, 285 P.2d 601 (1955); Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

Alimony in gross will not normally be awarded unless special circumstances are present which support such award. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

While the needs of a divorced wife remaining unmarried are not controlling on the amount of alimony to be awarded, they are deserving of careful consideration. Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938).

A personal judgment against a husband in a divorce action for alimony in a sum not justified by the record should not be entered simply on the ground of possible indefinite future increase in income, because if his financial situation improves so as to justify an increase in alimony, the power of the court to make additional appropriate orders may be invoked at the wife's pleasure. Gourley v. Gourley, 101 Colo. 430, 73 P.2d 1375 (1937).

In the absence of special circumstances which require or make a lump-sum award of alimony proper, or a compelling reason that necessitates the desirability for such an award, a lump-sum or gross award of alimony should not be made. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Absent extraordinary circumstances, court may not order one party to use property awarded in a dissolution proceeding to pay maintenance to the other party. In re Gray, 813 P.2d 819 (Colo. App. 1991).

Each case depends on own facts. As to the determination as to whether to make a lump-sum award of alimony, each case depends upon its own peculiar facts and circumstances. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

Alimony in gross is not unacceptable per se. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

While maintenance in gross is not favored, nevertheless, in a proper case in may be awarded. In re McVey, 641 P.2d 300 (Colo. App. 1981).

Since the granting of alimony in gross, or lump-sum alimony, as it is sometimes called, provides a definite and final judgment which the court cannot later modify, periodic payments are preferred, because such payments can be modified if a change in circumstances occurs. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Whether the court should award periodic alimony or alimony in gross is generally held to be a matter within the sound discretion of the court. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973); Moss v. Moss, 35 Colo. App. 53, 531 P.2d 635 (1974), aff'd, 190 Colo. 491, 549 P.2d 404 (1976); In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975).

The trial court has broad discretion in determining the amount of alimony and the form of the award, i.e., periodic payments or alimony in gross. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

Although alimony could consist of periodic payments, indefinite in time and certain in amount, it was not necessarily true that all such payments in fixed amounts constituted alimony. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960).

Periodic alimony is generally favored because the court retains jurisdiction of the matter and may later modify the award. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Awards of periodic payments of alimony are preferred over awards of alimony in gross because an award of alimony in gross is a final judgment which is not modifiable at a later time while an award of periodic payments may be modified to adjust for changes in the circumstances of the parties. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

A decree giving land as alimony was not ipso facto erroneous, because entered after the interlocutory and before the final decree of divorce, there being a prayer for alimony. Wigton v. Wigton, 73 Colo. 337, 216 P. 1055 (1923); Fowler v. Fowler, 74 Colo. 231, 220 P. 988 (1923).

In awarding permanent alimony, care should be taken that it does not amount to an appropriation of the entire estate of the husband. Elmer v. Elmer, 132 Colo. 57, 285 P.2d 601 (1955).

An order for "permanent alimony" cannot amount to confiscation of the assets of the husband. Elmer v. Elmer. 132 Colo. 57, 285 P.2d 601 (1955).

Moreover, a court cannot make an award which will impoverish the husband. Santilli v. Santilli, 169 Colo. 49, 453 P.2d 606 (1969).

In setting the amount of maintenance to be awarded, the court must consider all relevant factors including the ability of the spouse paying maintenance to meet his own needs and the needs of the spouse receiving maintenance. The court may also consider the future earning potential of the spouse. In re Gray, 813 P.2d 819 (Colo. App. 1991).

Trial court was required to balance all of the factors of subsection (4), including the mother's needs and abilities, her future earning capacity, the duration of the marriage and standard of living established throughout, and the parties' financial restrictions, and absent an abuse of discretion, court's award will not be reversed and, when the order is supported by competent evidence, it should not be disturbed on review. In re Atencio, 47 P.3d 718 (Colo. App. 2002).

No income is imputed to the wife for choice of a retirement option that resulted in a smaller payment, for delaying payment in another plan, or for requesting that the court ignore the equity in her home. A decision that income should be imputed to the wife for not choosing differing retirement options or for not using equity in the house for living expenses would be tantamount to requiring her to exhaust her portion of the marital property before she is entitled to maintenance. In re Folwell, 910 P.2d 91 (Colo. App. 1995).

Court may not incorporate attorney fees into maintenance award. While award of attorney fees must be reviewed in light of parties' resources following property division and award of maintenance, standards for the different elements of the order are separate and distinct; tax consequences also may differ. In re Huff, 834 P.2d 244 (Colo. 1992).

Unliquidated workers' compensation award held to be different from pension. Whether award is marital property depends on extent to which award compensates for loss of earning capacity and medical expenses incurred during the marriage. If award compensates the spouse for post-dissolution loss of earning capacity, it is not marital property even if the compensable injury occurred during the marriage. If workers' compensation claim is pending on date of dissolution and will likely include indemnification for loss of marital earnings or medical expenses, trial court may reserve jurisdiction to apportion marital interest upon receipt of award. In re Smith, 817 P.2d 641 (Colo. App. 1991).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its maintenance award in light of its new property division and in light of the significant decrease in the value of one of the parties' investment accounts. In re Balanson, 25 P.3d 28 (Colo. 2001).

Court may rely on a previous allowance paid and other expenses paid by one party as evidence of the other party's reasonable needs for purposes of calculating the amount of temporary orders. In re Rose, 134 P.3d 559 (Colo. App. 2006).

Court could consider husband's income from second job in determination of wife's motion to modify maintenance. While this section references the child support guidelines, the child support guidelines require a determination of income for purposes of applying a mathematical formula. Conversely, maintenance is determined by a discretionary balancing of factors. The court did not err in failing to recalculate husband's income according to the child support guidelines and could properly consider husband's income from his second job as indicative of his ability to meet his own needs while meeting the needs of the payee-spouse. In re Nelson, 2012 COA 205, 292 P.3d 1214.

D. Discretion of Court.

The awarding of alimony and fixing the amount thereof rested in the sound discretion of the trial court and unless an abuse of discretion was shown its judgment in such cases was not disturbed. Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938); Kleiger v. Kleiger, 127 Colo. 86, 254 P.2d 426 (1953); Bieler v. Bieler, 130 Colo. 17, 272 P.2d 636 (1954); Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955); Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958); Green v. Green, 139 Colo. 551, 342 P.2d 659 (1959); Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959); Lanz v. Lanz, 143 Colo. 73, 351 P.2d 845 (1960); Brownfield v. Brownfield, 143 Colo. 262, 352 P.2d 674 (1960); Walden v. Walden, 147 Colo. 221, 363 P.2d 168 (1961); Flor v. Flor, 148 Colo. 514, 366 P.2d 664 (1961); McMichael v. McMichael, 152 Colo. 65, 380 P.2d 233 (1963); Hayutin v. Hayutin, 152 Colo. 261, 381 P.2d 272 (1963); Alden v. Alden, 155 Colo. 51, 393 P.2d 5 (1964); Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966); MacReynolds v. MacReynolds, 29 Colo. App. 267, 482 P.2d 407 (1971); Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973); In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975); In re Martin, 707 P.2d 1035 (Colo. App. 1985); In re Gray, 813 P.2d 819 (Colo. App. 1991); In re Bartolo, 971 P.2d 699 (Colo. App. 1998); In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

Awards of child support and maintenance are matters generally within the sound discretion of the trial court and will not be set aside on appellate review in the absence of an abuse of discretion. In re Krise, 660 P.2d 920 (Colo. App. 1983).

Reading section as a whole illustrates that the general assembly intended the guidelines to be advisory in nature and did not intend to cap or restrict a court's maintenance determination. In re Vittetoe, 2016 COA 71, __ P.3d __.

Although a wife did not request alimony in her answer, once the trial court decided the issue of divorce, it was within its power under this section to determine whether the circumstances required additional orders for alimony and support. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

A trial court certainly could, if so inclined, consider the effect of state and federal income taxes on its contemplated award. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

The task of a trial court in a divorce action was to make a fair and equitable award of alimony and support, letting the taxes, and tax deductions, fall where they may. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

The supreme court cannot say as matter of law that a trial court abuses its discretion in limiting the period of time during which alimony should be paid by the husband where the trial court awards alimony in a definite sum payable in monthly installments based on the finding that the award meets the reasonable needs of the wife in light of her present condition. Liggett v. Liggett, 152 Colo. 110, 380 P.2d 673 (1963).

Trial court erred in determining that it did not have discretion to determine the duration of maintenance and that it was therefore required to provide for maintenance for an unspecified period of time. In re Fisher, 931 P.2d 558 (Colo. App. 1996).

Alimony, support, and property settlement issues were formally considered together to determine whether the court had abused its discretion, and in making the determination, the court would consider a variety of factors, including whether the property was acquired before or after marriage, the efforts and attitudes of the parties toward its accumulation, the respective ages and earning abilities of the parties, the conduct of the parties during the marriage, the duration of the marriage, their stations in life, their health and physical condition, the necessities of the parties, their financial condition, and all other relevant circumstances. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

In determining whether the trial court abused its discretion in awarding maintenance, the property and maintenance awards must be considered together. In re Huff, 834 P.2d 244 (Colo. 1992).

Where the maintenance award reflected a thorough consideration of the family's standard of living, the length of the marriage, the husband's

ability to pay, the wife's age and earning capacity, and the wife's responsibilities as residential custodian of five children, the award was amply supported by the evidence and would not be overturned. In re Hunt, 868 P.2d 1140 (Colo. App. 1993).

The age of the parties, in conjunction with the relative earning potential each of the parties can reasonably anticipate, and also their relative wealth will be considered in determining whether the trial judge abused his discretion in the alimony award. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Consideration of maintenance and attorney fees to determine whether court abused its discretion. In cases where an appeal has been taken from the property division, maintenance, and attorney fee provisions of a dissolution of marriage decree as a whole, they must be considered together to determine whether the trial court abused its discretion. In re Jones, 627 P.2d 248 (Colo. 1981); In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Finding as to earning capacity not confiscatory. Where the evidence supported the court's finding that the husband was capable of earning sums greatly in excess of his present net salary, although it appeared that the court based its order on the present net income of the husband, the orders were not confiscatory. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Where the amount of property the trial court ordered the defendant to pay the plaintiff restored the plaintiff substantially to the same asset position she had occupied prior to the marriage, since the plaintiff's ability to support herself was substantially the same as it had been prior to the marriage, the trial court did not abuse its discretion. Cohan v. Cohan, 172 Colo. 563, 474 P.2d 792 (1970).

Where former husband's business expenses were offset by in-kind payments from his girlfriend's construction company, district court did not abuse its discretion in calculating his self-employment income. In re Gibbs, 2019 COA 104, 446 P.3d 968.

Where the husband's income was not stable but fluctuated from month to month, the trial court did not abuse its discretion in directing payments of support and alimony on a percentage of the husbands's income. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

Where the wife had contributed her own funds to the purchase of the family home, and there was a comparatively small amount of property owned by the parties, and the wife was left without any right to receive alimony payments, the trial court did not abuse its discretion in awarding the jointly owned home to the wife in its order amended after the husband's death. Sarno v. Sarno, 28 Colo. App. 598, 478 P.2d 711 (1970).

Where a party has not historically earned rental income from his or her primary residence, potential rental income from that asset cannot be imputed to the party for purposes of calculating maintenance. In re Gibbs, 2019 COA 104, 446 P.3d 968.

Awarding maintenance to wife on decreasing schedule held abuse of discretion. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

Trial court has discretion to award maintenance that decreases incrementally on a future date when wife's earning potential is expected to increase and again on a future date when wife is expected to begin receiving pension benefits. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

E. Modification and Scope of Review.

That the court has continuing jurisdiction over the payment of alimony may be assumed as the settled law of this state. Zlaten v. Zlaten, 117 Colo. 296, 186 P.2d 583 (1947).

A trial court may expressly reserve jurisdiction to review, adjust, or extend a maintenance award if: (1) An important contingency exists, the outcome of which may significantly affect the amount or duration of the maintenance award; (2) the contingency is based upon an ascertainable, future event or events; (3) the contingency can be resolved within a reasonable and specific period of time. In re Caufman, 829 P.2d 501 (Colo. App. 1992).

If a trial court intends to reserve jurisdiction over maintenance pursuant to this section it should: (1) State its intent to do so on the record; (2) briefly outline its reasons for doing so, stating what the ascertainable future event upon which the reservation of maintenance jurisdiction is based; and (3) set forth a reasonably specific future time within which maintenance may be reconsidered under this section. In re Caufman, 829 P.2d 501 (Colo. App. 1992).

A trial court may retain jurisdiction over maintenance if, at the time of permanent orders, an important future contingency exists that can be resolved in a reasonable and specific period of time, and if the court explicitly states its intent to reserve jurisdiction, describes the future event, and sets forth a reasonably specific future time within which maintenance may be considered. In re Folwell, 910 P.2d 91 (Colo. App. 1995); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

The phrase "a proceeding for maintenance following dissolution of marriage by a court" in subsection (3) applies only to those circumstances where the court issuing the decree of dissolution initially lacked personal jurisdiction over the absent spouse and, therefore, could not have ordered one spouse to pay maintenance. It does not provide an alternative for a party to request maintenance at a subsequent date even though he or she waived maintenance at permanent orders. In re Ebel, 116 P.3d 1254 (Colo. App. 2005).

The trial court erred in providing for future adjustments to maintenance. The assumptions made constitute improper speculation upon which to base future changes in maintenance. In re Folwell, 910 P.2d 91 (Colo. App. 1995).

Court not required to reserve jurisdiction over the issue of maintenance when, after sale of residence and an additional period in which to reacclimate to working, wife would have sufficient means to satisfy her own needs. In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

If a payor asks a court to modify or to terminate a maintenance obligation because he or she intends to retire, then the court should follow a general rule. First, it should decide whether the payor's decision to retire was made in good faith. Second, it should then incorporate its findings concerning the payor's decision to retire as one of the factors to consider in deciding whether circumstances have changed in such a substantial and continuing way as to make the original order unfair. In re Thorstad, 2019 COA 13, 434 P.3d 165.

In modifying provision for maintenance, burden is on party seeking modification to prove a substantial and continuing change of circumstances. Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981); In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

Reconsideration of maintenance and attorney fees unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Award of further maintenance upheld. The trial court neither abused its discretion nor exceeded its jurisdiction in awarding further maintenance to the wife where a separation agreement, having been incorporated into the divorce decree, became part of the final order when the decree was entered, and allowed a court to "review the issue" of spousal maintenance at end of six months. In re Sinn, 674 P.2d 988 (Colo. App. 1983); In re Woodman, 676 P.2d 1232 (Colo. App. 1983).

A provision of divorce decree retaining jurisdiction to award such alimony as may be just, did not alter the finality of that portion of the decree determining the rights and interests of the parties in real estate involved. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

Where it appeared from the record in a divorce case that both parties intended that a court retain jurisdiction of a question of permanent alimony and related matters after the entry of a final decree of divorce, orders entered determining such matters after entry of the decree were not void for want of jurisdiction. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

To correct an order for support directing payments in excess of defendant's ability to pay, required formal action by the one thus burdened, since to reduce support payments required by an order of the trial court necessitated a motion by him who sought relief. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

One who has accepted benefits of judgment may not seek reversal of that judgment on appeal. In re Jones, 627 P.2d 248 (Colo. 1981).

Awarding of attorney fees is discretionary with trial court and will not be disturbed on review if supported by the evidence. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982); In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

Fixing permanent alimony, and readjusting a property settlement was a function of the trial court and could not be assumed by the supreme court. Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955); Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959).

A trial court award to a plaintiff of permanent alimony was subject to review by a trial court in the event a changed condition arises. Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955).

Limited consideration of a third party's resources, such as a current spouse's income, is not absolutely prohibited if the existence or use of such assets is directly relevant to an allegation by the payor spouse of a substantial and continuing change of circumstances. In re Bowles, 916 P.2d 615 (Colo. App. 1995).

Five-year reach-back provision in C.R.C.P. 16.2(e)(10) for failure to disclose assets and liabilities does not apply to maintenance or income for the purpose of determining maintenance. The rule does not allow a redetermination of maintenance. In re Dadiotis, 2014 COA 28, 343 P.3d 1017.

III. SEPARATE MAINTENANCE.

An allowance for separate maintenance was not alimony within the strict definition of that term. Weston v. Weston, 79 Colo. 478, 246 P. 790 (1926).

When an original divorce action was dismissed, the parties were still husband and wife, and the wife was at liberty to institute a separate maintenance action against the husband, just as though there had been no former litigation between the parties. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

In determining the amount of support to be awarded in a separate maintenance action, the trial court could have considered the ability of the husband, the value of his estate; and his earning capacity, and adjudication could not result in appropriation of his entire estate or impoverishment to the extent of rendering him unable to maintain himself. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961); Fahey v. Fahey, 43 Colo. 354, 96 P. 251 (1908).

In a separate maintenance action only such alimony and support could be awarded as was necessary to adequately maintain a family in the manner to which it was accustomed and suitable to their station, and a husband could be divested of a reasonable proportion of his earnings and, if need be, of his property, that his wife and children could have reasonable support. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

In all cases there was a factor to consider, and that was the ability of a husband and father to meet the reasonable needs of his wife and children. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

The purpose was not to enrich the wife, but to provide suitable support and maintenance for her, taking into consideration the manner in which she is accustomed to living with him, and his ability to provide support. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

A reasonable amount for her maintenance during coverture, or until reconciliation, estimated with reference to the means of her husband, and payable out of his estate, was the relief to which a wife was entitled, if the case made by her complaint should be established. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

In the absence of very special circumstances a lump-sum award could not be made in a separate maintenance suit, and the considerations which supported a lump-sum award or division of property in a divorce action that terminate property rights, were not present in

separate maintenance suits where property rights were retained. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

It was an abuse of discretion, to award a wife the equivalent of one-third of the husband's estate, instead of a periodical payment for her support. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its maintenance award in light of its new property division and in light of the significant decrease in the value of one of the parties' investment accounts. In re Balanson, 25 P.3d 28 (Colo. 2001).

IV. ANTENUPTIAL AGREEMENTS.

There is no statutory proscription against contracting for maintenance in an antenuptial agreement. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Separation agreements and antenuptial agreements are separate and distinct legal documents. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

Spouses-to-be have right to enter into antenuptial agreements which contemplate the possibility of dissolution. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

Antenuptial agreement no bar to maintenance unless specifically stated. In the absence of any reference in an antenuptial agreement to a relinquishment of the right to maintenance, the agreement does not bar the wife's claim for maintenance. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

Antenuptial agreement did not preclude an award of maintenance or reflect any waiver of maintenance by wife. In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Antenuptial maintenance agreement is subject to judicial scrutiny for conscionability. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

"Unconscionability", as applied to a maintenance agreement, exists when enforcement of the terms of the agreement results in a spouse having insufficient property to provide for his reasonable needs and who is otherwise unable to support himself through appropriate employment. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Maintenance agreement may become unconscionable because of circumstances at time of dissolution. Even though an antenuptial agreement is entered into in good faith, with full disclosure and without any element of fraud or overreaching, the maintenance provisions thereof may become voidable for unconscionability occasioned by circumstances existing at the time of the marriage dissolution. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Burden of proof of unconscionability. One who claims that an antenuptial maintenance agreement is unconscionable must prove that at the time of the marriage dissolution the maintenance agreement rendered the spouse without a means of reasonable support, either because of a lack of property resources or a condition of unemployability. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Where antenuptial agreement was silent on matter of attorney fees, the awarding of such fees was controlled by § 14-10-119. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

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§ 14-10-115. Child support guidelines - purpose - determination of income - schedule of basic child support obligations - adjustments to basic child support - additional guidelines - child support commission - definitions

(1) Purpose and applicability.

(a) The child support guidelines and schedule of basic child support obligations have the following purposes:

(I) To establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;

(II) To make awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(III) To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards.

(b) The child support guidelines and schedule of basic child support obligations do

the following:

(I) Calculate child support based upon the parents' combined adjusted gross income estimated to have been allocated to the child if the parents and children were living in an intact household;

(II) Adjust the child support based upon the needs of the children for extraordinary medical expenses and work-related child care costs; and

(III) Allocate the amount of child support to be paid by each parent based upon physical care arrangements.

(c) This section shall apply to all child support obligations, established or modified, as a part of any proceeding, including, but not limited to, articles 5, 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., regardless of when filed.

(2) **Duty of support - factors to consider.**

(a) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support and may order an amount determined to be reasonable under the circumstances for a time period that occurred after the date of the parties' physical separation or the filing of the petition or service upon the respondent, whichever date is latest, and prior to the entry of the support order, without regard to marital misconduct.

(b) In determining the amount of support under this subsection (2), the court shall consider all relevant factors, including:

(I) The financial resources of the child;

(II) The financial resources of the custodial parent;

(III) The standard of living the child would have enjoyed had the marriage not been dissolved;

(IV) The physical and emotional condition of the child and his or her educational needs; and

(V) The financial resources and needs of the noncustodial parent.

(3) **Definitions.** As used in this section, unless the context otherwise requires:

(a) (I) "Adjusted gross income" means gross income, as specified in subsection (5) of this section, less preexisting child support obligations and less alimony or maintenance actually paid by a parent, as described in subsection (3)(a)(II) of this section.

(II) For purposes of this subsection (3)(a), if the alimony or maintenance actually paid by a parent is deductible for federal income tax purposes by that parent, then the actual amount of alimony or maintenance paid by that parent must be deducted from that parent's gross income. If the alimony or maintenance actually paid by a parent is not deductible for

federal income tax purposes by that parent, then the amount of alimony or maintenance deducted from that parent's gross income is the amount of alimony or maintenance actually paid by that parent multiplied by 1.25.

(b) "Combined gross income" means the combined monthly adjusted gross incomes of both parents.

(c) "Income" means the actual gross income of a parent, if employed to full capacity, or potential income, if unemployed or underemployed. Gross income of each parent shall be determined according to subsection (5) of this section.

(c.5) "Mandatory school fees" means fees charged by a school or school district, including a charter school, for a child attending public primary or secondary school for activities that are directly related to the educational mission of the school, including but not limited to laboratory fees; book or educational material fees; school computer or automation-related fees, whether paid to the school directly or purchased by a parent; testing fees; and supply or material fees paid to the school. "Mandatory school fees" does not include uniforms, meals, or extracurricular activity fees.

(d) "Number of children due support", as used in the schedule of basic child support obligations specified in subsection (7) of this section, means children for whom the parents share joint legal responsibility and for whom support is being sought.

(e) "Other children" means children who are not the subject of the child support determination at issue.

(f) "Postsecondary education" includes college and career and technical education programs.

(g) "Postsecondary education support" means support for the following expenses associated with attending a college, university, or career and technical education program: Tuition, books, and fees.

(h) "Shared physical care", for the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, and as further specified in paragraph (b) of subsection (8) of this section, means that each parent keeps the children overnight for more than ninety-two overnights each year and that both parents contribute to the expenses of the children in addition to the payment of child support.

(i) "Split physical care", for the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, and as further specified in paragraph (c) of subsection (8) of this section, means that each parent has physical care of at least one of the children by means of that child or children residing with that parent the majority of the time.

(4) **Forms - identifying information.**

(a) The child support guidelines shall be used with standardized child support guideline forms to be issued by the judicial department. The judicial department

is responsible for promulgating and updating the Colorado child support guideline forms, schedules, worksheets, and instructions.

(b) All child support orders entered pursuant to this article shall provide the names and dates of birth of the parties and of the children who are the subject of the order and the parties' residential and mailing addresses. The social security numbers of the parties and children shall be collected pursuant to section 14-14-113 and section 26-13-127, C.R.S.

(5) **Determination of income.**

(a) For the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, the gross income of each parent shall be determined according to the following guidelines:

(I) "Gross income" includes income from any source, except as otherwise provided in subsection (5)(a)(II) of this section, and includes, but is not limited to:

(A) Income from salaries;

(B) Wages, including tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater;

(C) Commissions;

(D) Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment;

(E) Bonuses;

(F) Dividends;

(G) Severance pay;

(H) Pensions and retirement benefits, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and article 30 of title 31, C.R.S.;

(I) Royalties;

(J) Rents;

(K) Interest;

(L) Trust income;

(M) Annuities;

(N) Capital gains;

(O) Any moneys drawn by a self-employed individual for personal use that are deducted as a business expense, which moneys

must be considered income from self-employment;

(P) Social security benefits, including social security benefits actually received by a parent as a result of the disability of that parent or as the result of the death of the minor child's stepparent but not including social security benefits received by a minor child or on behalf of a minor child as a result of the death or disability of a stepparent of the child;

(Q) Workers' compensation benefits;

(R) Unemployment insurance benefits;

(S) Disability insurance benefits;

(T) Funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages;

(U) Monetary gifts;

(V) Monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office;

(W) Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies. However, if a parent is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, then the income to be recognized may be limited to actual cash distributions received.

(X) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business if they are significant and reduce personal living expenses;

(Y) Alimony or maintenance received, as adjusted, if applicable, pursuant to subsection (5)(a)(I.5) of this section; and

(Z) Overtime pay, only if the overtime is required by the employer as a condition of employment.

(I.5) For purposes of subsection (5)(a)(I)(Y) of this section, if the alimony or maintenance actually received by a parent is taxable income to that parent for federal income tax purposes, then the actual amount of alimony or maintenance received is included in that parent's gross income. If the alimony or maintenance actually received by a parent is not taxable income to that parent for federal income tax purposes, then the amount of alimony or maintenance that is included in that parent's gross income is the amount of alimony or maintenance received by that parent multiplied by 1.25.

(II) "Gross income" does not include:

(A) Child support payments received;

(B) Benefits received from means-tested public assistance programs, including but not limited to assistance provided under the Colorado works program, as described in part 7 of article 2 of title 26, C.R.S., supplemental security income, food stamps, and general assistance;

(C) Income from additional jobs that result in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment;

(D) Social security benefits received by the minor children, or on behalf of the minor children, as a result of the death or disability of a stepparent are not to be included as income for the minor children for the determination of child support; and

(E) Earnings or gains on a retirement account, including an IRA, which earnings or gains must not be included as income unless or until a parent takes a distribution from the account. If a distribution from a retirement account may be taken without being subject to an IRS penalty for early distribution and the parent decides not to take the distribution, the court may consider the distribution that could have been taken in determining the parent's gross income if the parent is not otherwise employed full-time and the retirement account was not received pursuant to the division of marital property.

(III) (A) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph (B) of this subparagraph (III), required to produce such income.

(B) "Ordinary and necessary expenses" does not include amounts allowable by the internal revenue service for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

(b) (I) If a parent is voluntarily unemployed or underemployed, child support must be calculated based on a determination of potential income; except that a determination of potential income must not be made for:

(A) A parent who is physically or mentally incapacitated;

(B) A parent who is caring for a child under the age of twenty-four months for whom the parents owe a joint legal responsibility; or

(C) An incarcerated parent sentenced to one hundred eighty days or more.

(I.5) If the court or delegate child support enforcement unit imputes income pursuant to this subsection (5), the provisions of subsection (5)(b.5) of this section apply.

(II) If a noncustodial parent who owes past-due child support is unemployed and not incapacitated and has an obligation of support to a child receiving assistance pursuant to part 7 of article 2 of title 26, C.R.S., the court or delegate child support enforcement unit may order the parent to pay such support in accordance with a plan approved by the court or to participate in work activities. Work activities may include one or more of the following:

(A) Private or public sector employment;

(B) Job search activities;

(C) Community service;

(D) Vocational training; or

(E) Any other employment-related activities available to that particular individual.

(III) For the purposes of this section, a parent is not deemed "underemployed" if:

(A) The employment is temporary and is reasonably intended to result in higher income within the foreseeable future; or

(B) The employment is a good faith career choice that is not intended to deprive a child of support and does not unreasonably reduce the support available to a child; or

(C) The parent is enrolled full-time in an educational or vocational program or is employed part-time while enrolled in a part-time educational or vocational program, based on the institution's enrollment definitions, and the program is reasonably intended to result in a degree or certification within a reasonable period of time; completing the program will result in a higher income; the program is a good faith career choice that is not intended to deprive the child of support; and the parent's participation in the program does not unreasonably reduce the amount of child support available to a child.

(b.5) (I) Except as otherwise provided in this section, if the court or delegate

child support enforcement unit determines that a parent is voluntarily unemployed or underemployed or employment information is unreliable, the court or delegate child support enforcement unit shall determine and document, for the record, the parent's potential income.

(II) In determining potential income, the court or delegate child support enforcement unit shall consider, to the extent known, the specific circumstances of the parent, including consideration of the following information, when available:

(A) The parent's assets;

(B) Residence;

(C) Employment and earnings history;

(D) Job skills;

(E) Educational attainment;

(F) Literacy;

(G) Age;

(H) Health;

(I) Criminal record;

(J) Other employment barriers;

(K) Record of seeking work;

(L) The local job market;

(M) The availability of employers hiring in the community, without changing existing law regarding the burden of proof;

(N) Prevailing earnings level in the local community; and

(O) Other relevant background factors in the case.

(c) Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. A copy of wage statements or other wage information obtained from the computer data base maintained by the department of labor and employment shall be admissible into evidence for purposes of determining income under this subsection (5).

(6) **Adjustments to gross income.**

(a) At the time a child support order is initially established, or in any proceeding to modify a child support order, if a parent is also legally responsible for the support

of any other children for whom the parents do not share joint legal responsibility, the court shall make an adjustment to the parent's gross income prior to calculating the basic child support obligation for the child or children who are the subject of the support order in question as follows:

(I) If a parent is obligated to pay support for another child pursuant to an order, the amount actually paid on the order must be deducted from that parent's gross income;

(II) If the other child is residing in the home of a parent, the court shall deduct from that parent's gross income the amount calculated pursuant to paragraph (b) of this subsection (6);

(III) If another child of a parent is residing outside the home of that parent, the court shall deduct from that parent's gross income the amount of documented money payments actually paid by the parent for the support of the other child, not to exceed the schedule of basic support obligations set forth in subsection (7) of this section.

(b) The amount of the adjustment must not exceed the schedule of basic support obligations listed in this section. For a parent with gross income of less than one thousand five hundred dollars, the adjustment is seventy-five percent of the amount listed under the schedule of basic child support obligations in subsection (7)(b) of this section that would represent a child support obligation based only upon the responsible parent's income, without any other adjustments for the number of children for whom the parent is responsible. For a parent with gross income of one thousand five hundred dollars or more per month, the adjustment is seventy-five percent of the amount listed under the schedule of basic child support obligations in subsection (7)(b) of this section that would represent a child support obligation based only upon the responsible parent's income, without any other adjustments for the number of other children for whom the parent is responsible. The amount calculated as set forth in this subsection (6)(b) must be subtracted from the amount of the parent's gross income prior to calculating the basic child support obligation based upon both parents' gross income, as provided in subsection (7) of this section.

(7) **Schedule of basic child support obligations.**

(a) (I) The basic child support obligation shall be determined using the schedule of basic child support obligations contained in paragraph (b) of this subsection (7). The basic child support obligation shall be divided between the parents in proportion to their adjusted gross incomes.

(II) (A) For combined gross income that falls between amounts shown in the schedule of basic child support obligations, basic child support amounts shall be interpolated. The category entitled "number of children due support" in the schedule of basic child support obligations shall have the meaning defined in subsection (3) of this section.

(B) In circumstances in which the obligor's monthly adjusted gross income is less than one thousand five hundred dollars but more than six hundred fifty dollars, the obligor is required to pay a child support payment of fifty dollars per month for one child, seventy dollars per month for two children, ninety dollars per month for three children, one hundred ten dollars per month for four children, one hundred thirty dollars per month for five children, and one hundred fifty dollars per month for six or more children. The minimum order amount shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (3)(h) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(C) For an obligor with an adjusted gross income that is less than or equal to one thousand five hundred dollars but more than six hundred fifty dollars, the obligor's child support amount, as determined pursuant to subsection (7)(a)(II)(B) of this section, must be adjusted pursuant to subsection (11)(c)(III) of this section. The obligor's child support amount may be further adjusted to include a share of the work-related and education-related child care costs, health insurance, extraordinary medical expenses, and other extraordinary adjustments as described in subsections (9), (10), (11)(a), and (11)(b) of this section. However, if at the time the child support obligation is calculated, adjustments made pursuant to subsections (9), (10), (11)(a), and (11)(b) of this section, together with the low-income adjustment amount, exceed twenty percent of the obligor's adjusted gross income, the child support obligation must be capped at twenty percent of the obligor's adjusted gross income. The low-income adjustment does not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(D) In any circumstance in which the obligor's monthly adjusted gross income is less than or equal to six hundred fifty dollars, regardless of the monthly adjusted gross income of the obligee, the obligor must be ordered to pay the minimum monthly order amount in child support. The minimum order amount is ten dollars per month, regardless of the number of children between these parties. The ten-dollar minimum monthly order amount is not adjusted by the number of the obligor's overnights with children.

(E) The judge may use discretion to determine child support in circumstances where combined adjusted gross income exceeds the uppermost levels of the schedule of basic child support obligations; except that the presumptive basic child support obligation shall not be less than it would be based on the highest level of adjusted gross income set forth in the schedule of basic child support obligations.

(b) Schedule of basic child support obligations:

Obligor's Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	S C
0-650	10	10	10	10	10	1
651-1500	50	70	90	110	130	1

COMBINED ADJUSTED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHIL
1500	50	70	90	110	130	150
1550	85	105	125	145	165	185
1600	120	140	160	180	200	220
1650	155	175	195	215	235	255
1700	190	210	230	250	270	290
1750	225	245	265	285	305	325
1800	260	280	300	320	340	360
1850	295	315	335	355	375	395
1900	330	350	370	390	410	430
1950	360	385	405	425	445	465
2000	368	420	440	460	480	500
2050	377	455	475	495	515	535
2100	385	490	510	530	550	570
2150	393	525	545	565	585	605
2200	401	560	580	600	620	640
2250	410	595	615	635	655	675
2300	418	630	650	670	690	710
2350	426	658	685	705	725	745
2400	435	671	720	740	760	780
2450	443	683	755	775	795	815
2500	451	696	790	810	830	850
2550	459	709	825	845	865	885
2600	468	722	860	880	900	920
2650	476	734	895	915	935	955
2700	484	747	913	950	970	990
2750	493	760	928	985	1005	1025
2800	501	772	944	1020	1040	1060
2850	509	785	959	1055	1075	1095
2900	517	797	974	1087	1110	1130
2950	525	809	988	1103	1145	1165
3000	533	821	1002	1119	1180	1200

3050	541	833	1016	1135	1215	1235
3100	548	844	1030	1150	1250	1270
3150	556	856	1044	1166	1283	1305
3200	564	868	1058	1182	1300	1340
3250	572	880	1072	1198	1318	1375
3300	580	892	1086	1214	1335	1410
3350	588	904	1101	1229	1352	1445
3400	596	915	1115	1245	1370	1480
3450	604	928	1129	1261	1388	1508
3500	612	940	1144	1278	1406	1529
3550	620	953	1160	1295	1425	1549
3600	628	965	1175	1312	1444	1569
3650	636	977	1189	1328	1460	1587
3700	643	987	1202	1342	1477	1605
3750	650	998	1215	1357	1493	1622
3800	657	1009	1228	1372	1509	1640
3850	664	1020	1241	1386	1525	1658
3900	671	1031	1254	1401	1541	1675
3950	678	1042	1267	1416	1557	1693
4000	685	1053	1280	1430	1573	1710
4050	692	1063	1294	1445	1589	1728
4100	699	1074	1306	1459	1605	1744
4150	706	1084	1319	1473	1620	1761
4200	713	1095	1331	1487	1635	1778
4250	720	1105	1344	1501	1651	1794
4300	727	1115	1356	1515	1666	1811
4350	734	1126	1368	1529	1681	1828
4400	741	1136	1381	1542	1697	1844
4450	747	1147	1393	1556	1712	1861
4500	754	1157	1406	1570	1727	1878
4550	761	1167	1418	1584	1743	1894
4600	768	1178	1431	1598	1758	1911
4650	775	1188	1443	1612	1773	1928
4700	782	1199	1456	1626	1789	1944
4750	788	1209	1467	1639	1803	1960
4800	795	1218	1478	1651	1817	1975
4850	801	1227	1489	1664	1830	1989
4900	808	1237	1500	1676	1844	2004
4950	814	1246	1511	1688	1857	2019
5000	820	1256	1523	1701	1871	2033
5050	827	1265	1534	1713	1884	2048
5100	833	1274	1545	1725	1898	2063
5150	840	1284	1556	1738	1911	2078
5200	846	1293	1567	1750	1925	2092
5250	852	1303	1578	1762	1938	2107
5300	859	1312	1589	1774	1952	2122
5350	865	1322	1600	1787	1965	2136
5400	871	1330	1610	1798	1978	2150
5450	875	1337	1617	1806	1987	2160

5500	879	1343	1624	1814	1996	2169
5550	883	1349	1631	1822	2005	2179
5600	887	1355	1639	1830	2013	2189
5650	891	1361	1646	1838	2022	2198
5700	896	1367	1653	1846	2031	2208
5750	900	1373	1660	1854	2040	2217
5800	904	1379	1667	1862	2049	2227
5850	908	1385	1674	1870	2057	2236
5900	912	1391	1682	1878	2066	2246
5950	916	1397	1689	1886	2075	2256
6000	920	1404	1696	1894	2084	2265
6050	924	1410	1703	1902	2093	2275
6100	928	1416	1710	1910	2101	2284
6150	932	1422	1717	1918	2110	2294
6200	937	1428	1725	1926	2119	2303
6250	941	1434	1732	1934	2128	2313
6300	945	1440	1739	1942	2136	2322
6350	949	1446	1746	1950	2145	2332
6400	953	1452	1753	1958	2154	2341
6450	957	1458	1760	1966	2162	2351
6500	961	1464	1767	1974	2171	2360
6550	965	1470	1774	1982	2180	2370
6600	969	1476	1782	1990	2189	2379
6650	973	1482	1789	1998	2198	2389
6700	977	1488	1796	2006	2207	2399
6750	981	1494	1803	2014	2216	2408
6800	985	1500	1810	2022	2225	2418
6850	989	1506	1818	2030	2233	2428
6900	993	1512	1825	2038	2242	2437
6950	997	1518	1832	2047	2251	2447
7000	1001	1524	1839	2055	2260	2457
7050	1005	1530	1847	2063	2269	2466
7100	1009	1536	1854	2071	2278	2476
7150	1013	1542	1861	2079	2287	2486
7200	1017	1548	1868	2087	2296	2495
7250	1021	1554	1876	2095	2304	2505
7300	1025	1560	1883	2103	2313	2515
7350	1029	1567	1890	2111	2322	2524
7400	1033	1573	1897	2119	2331	2534
7450	1037	1579	1904	2127	2340	2544
7500	1041	1585	1912	2135	2349	2553
7550	1045	1591	1919	2143	2358	2563
7600	1049	1597	1926	2151	2367	2572
7650	1053	1603	1933	2159	2375	2582
7700	1057	1608	1940	2167	2384	2591
7750	1061	1614	1947	2175	2392	2600
7800	1063	1618	1952	2180	2398	2607
7850	1066	1622	1956	2184	2403	2612
7900	1068	1625	1959	2188	2407	2617

7950	1070	1628	1963	2193	2412	2622
8000	1072	1631	1967	2197	2416	2627
8050	1074	1634	1970	2201	2421	2632
8100	1077	1638	1974	2205	2426	2637
8150	1079	1641	1978	2209	2430	2642
8200	1081	1644	1982	2214	2435	2647
8250	1083	1647	1985	2218	2439	2652
8300	1085	1651	1989	2222	2444	2657
8350	1088	1654	1993	2226	2449	2662
8400	1090	1657	1997	2230	2453	2667
8450	1092	1660	2000	2234	2458	2672
8500	1094	1664	2004	2239	2463	2677
8550	1097	1667	2008	2243	2467	2682
8600	1099	1670	2012	2247	2472	2687
8650	1101	1673	2015	2251	2476	2692
8700	1103	1677	2019	2255	2481	2697
8750	1105	1680	2023	2260	2486	2702
8800	1108	1683	2027	2264	2490	2707
8850	1110	1686	2030	2268	2495	2712
8900	1112	1690	2034	2272	2499	2717
8950	1115	1693	2038	2277	2504	2722
9000	1117	1697	2042	2281	2510	2728
9050	1119	1700	2047	2286	2515	2733
9100	1122	1704	2051	2291	2520	2739
9150	1125	1708	2055	2296	2525	2745
9200	1130	1716	2065	2307	2537	2758
9250	1135	1724	2075	2317	2549	2771
9300	1141	1732	2084	2328	2561	2784
9350	1146	1740	2094	2339	2573	2796
9400	1151	1748	2103	2350	2585	2809
9450	1157	1756	2113	2360	2596	2822
9500	1162	1764	2123	2371	2608	2835
9550	1167	1772	2132	2382	2620	2848
9600	1172	1780	2142	2393	2632	2861
9650	1178	1788	2152	2403	2644	2874
9700	1183	1796	2161	2414	2656	2887
9750	1188	1804	2171	2425	2667	2899
9800	1194	1812	2181	2436	2679	2912
9850	1199	1820	2190	2446	2691	2925
9900	1204	1828	2200	2457	2703	2938
9950	1210	1836	2209	2468	2715	2951
10000	1215	1844	2219	2479	2727	2964
10050	1220	1852	2229	2489	2738	2977
10100	1226	1860	2238	2500	2750	2990
10150	1231	1868	2248	2511	2762	3002
10200	1236	1876	2258	2522	2774	3015
10250	1242	1884	2267	2533	2786	3028
10300	1247	1892	2277	2543	2798	3041
10350	1252	1901	2287	2554	2809	3054

10400	1258	1909	2296	2565	2821	3067
10450	1262	1914	2303	2572	2830	3076
10500	1265	1920	2309	2579	2837	3084
10550	1269	1925	2315	2586	2845	3092
10600	1272	1930	2322	2593	2853	3101
10650	1276	1936	2328	2600	2860	3109
10700	1280	1941	2334	2607	2868	3117
10750	1283	1946	2340	2614	2875	3126
10800	1287	1952	2346	2621	2883	3134
10850	1291	1957	2353	2628	2891	3142
10900	1294	1962	2359	2635	2898	3150
10950	1298	1968	2365	2642	2906	3159
11000	1301	1973	2371	2649	2913	3167
11050	1305	1978	2377	2655	2921	3175
11100	1309	1984	2383	2662	2929	3183
11150	1312	1989	2390	2669	2936	3192
11200	1316	1994	2396	2676	2944	3200
11250	1320	2000	2402	2683	2951	3208
11300	1323	2005	2408	2690	2959	3216
11350	1327	2010	2414	2697	2967	3225
11400	1330	2016	2421	2704	2974	3233
11450	1334	2021	2427	2711	2982	3241
11500	1338	2026	2433	2718	2989	3250
11550	1341	2032	2439	2725	2997	3258
11600	1345	2037	2445	2731	3005	3266
11650	1349	2043	2452	2738	3012	3274
11700	1352	2048	2457	2745	3019	3282
11750	1355	2052	2463	2751	3026	3289
11800	1359	2057	2468	2757	3032	3296
11850	1362	2062	2473	2763	3039	3303
11900	1365	2066	2479	2769	3045	3310
11950	1368	2071	2484	2775	3052	3318
12000	1372	2076	2489	2781	3059	3325
12050	1375	2080	2495	2786	3065	3332
12100	1378	2085	2500	2792	3072	3339
12150	1382	2090	2505	2798	3078	3346
12200	1385	2095	2511	2804	3085	3353
12250	1388	2099	2516	2810	3091	3360
12300	1391	2104	2521	2816	3098	3367
12350	1395	2109	2527	2822	3104	3375
12400	1398	2113	2532	2828	3111	3382
12450	1401	2118	2537	2834	3118	3389
12500	1405	2123	2543	2840	3124	3396
12550	1408	2128	2548	2846	3131	3403
12600	1411	2132	2553	2852	3137	3410
12650	1414	2137	2559	2858	3144	3417
12700	1418	2142	2564	2864	3150	3424
12750	1421	2146	2569	2870	3157	3431
12800	1424	2151	2575	2876	3163	3439

12850	1427	2156	2580	2882	3170	3446
12900	1431	2160	2585	2888	3176	3453
12950	1434	2165	2591	2894	3184	3461
13000	1438	2171	2598	2903	3193	3471
13050	1441	2177	2606	2911	3202	3480
13100	1444	2183	2613	2919	3211	3490
13150	1448	2188	2621	2927	3220	3500
13200	1451	2194	2628	2936	3229	3510
13250	1455	2200	2636	2944	3239	3520
13300	1458	2205	2643	2952	3248	3530
13350	1462	2211	2651	2961	3257	3540
13400	1465	2217	2658	2969	3266	3550
13450	1469	2223	2666	2977	3275	3560
13500	1472	2228	2673	2986	3284	3570
13550	1475	2234	2680	2994	3293	3580
13600	1479	2240	2688	3002	3303	3590
13650	1482	2246	2695	3011	3312	3600
13700	1486	2251	2703	3019	3321	3610
13750	1489	2257	2710	3027	3330	3620
13800	1493	2263	2718	3036	3339	3630
13850	1496	2268	2725	3044	3348	3640
13900	1500	2274	2733	3052	3358	3650
13950	1503	2280	2740	3061	3367	3660
14000	1506	2286	2748	3069	3376	3670
14050	1510	2291	2755	3077	3385	3680
14100	1513	2297	2762	3086	3394	3690
14150	1517	2303	2770	3094	3403	3699
14200	1520	2309	2777	3102	3413	3709
14250	1524	2314	2783	3109	3420	3717
14300	1528	2319	2789	3115	3427	3725
14350	1532	2325	2795	3122	3434	3732
14400	1536	2330	2800	3128	3441	3740
14450	1540	2336	2806	3134	3448	3748
14500	1544	2341	2812	3141	3455	3755
14550	1548	2346	2817	3147	3462	3763
14600	1552	2352	2823	3153	3469	3771
14650	1556	2357	2829	3160	3476	3778
14700	1560	2362	2835	3166	3483	3786
14750	1564	2368	2840	3173	3490	3793
14800	1568	2373	2846	3179	3497	3801
14850	1572	2379	2852	3185	3504	3809
14900	1576	2384	2857	3192	3511	3816
14950	1580	2389	2863	3198	3518	3824
15000	1584	2395	2869	3204	3525	3832
15050	1588	2400	2875	3211	3532	3839
15100	1592	2406	2880	3217	3539	3847
15150	1596	2411	2886	3223	3545	3854
15200	1599	2416	2891	3229	3552	3861
15250	1603	2421	2896	3235	3558	3868

15300	1607	2426	2901	3241	3565	3875
15350	1610	2431	2907	3247	3571	3882
15400	1614	2436	2912	3253	3578	3889
15450	1618	2441	2917	3258	3584	3896
15500	1621	2445	2922	3264	3591	3903
15550	1623	2448	2926	3268	3595	3908
15600	1625	2451	2929	3272	3599	3912
15650	1627	2454	2933	3276	3603	3917
15700	1629	2457	2936	3280	3607	3921
15750	1630	2459	2939	3283	3612	3926
15800	1632	2462	2943	3287	3616	3930
15850	1634	2465	2946	3291	3620	3935
15900	1636	2468	2950	3295	3624	3940
15950	1638	2471	2953	3299	3628	3944
16000	1639	2473	2957	3302	3633	3949
16050	1641	2476	2960	3306	3637	3953
16100	1643	2479	2963	3310	3641	3958
16150	1645	2482	2967	3314	3645	3962
16200	1647	2485	2970	3318	3649	3967
16250	1649	2487	2974	3322	3654	3972
16300	1650	2490	2977	3325	3658	3976
16350	1652	2493	2980	3329	3662	3981
16400	1654	2496	2984	3333	3666	3985
16450	1656	2499	2987	3337	3670	3990
16500	1658	2501	2991	3341	3675	3994
16550	1659	2504	2994	3344	3679	3999
16600	1661	2507	2998	3348	3683	4004
16650	1663	2510	3001	3352	3687	4008
16700	1665	2513	3004	3356	3691	4013
16750	1667	2515	3008	3360	3696	4017
16800	1668	2518	3011	3364	3700	4022
16850	1670	2521	3015	3367	3704	4026
16900	1672	2524	3018	3371	3708	4031
16950	1674	2527	3021	3375	3712	4035
17000	1676	2529	3025	3379	3717	4040
17050	1678	2532	3028	3383	3721	4045
17100	1679	2535	3032	3386	3725	4049
17150	1681	2538	3035	3390	3729	4054
17200	1683	2541	3039	3394	3733	4058
17250	1685	2543	3042	3398	3738	4063
17300	1687	2546	3045	3402	3742	4067
17350	1688	2549	3049	3406	3746	4072
17400	1690	2552	3052	3409	3750	4077
17450	1692	2555	3056	3413	3754	4081
17500	1694	2557	3059	3417	3759	4086
17550	1696	2560	3063	3421	3763	4090
17600	1698	2564	3067	3426	3769	4096
17650	1701	2568	3072	3431	3774	4103
17700	1704	2572	3076	3436	3780	4109

17750	1706	2576	3081	3441	3785	4115
17800	1709	2580	3085	3446	3791	4121
17850	1711	2583	3090	3451	3797	4127
17900	1714	2587	3095	3457	3802	4133
17950	1717	2591	3099	3462	3808	4139
18000	1719	2595	3104	3467	3813	4145
18050	1722	2599	3108	3472	3819	4151
18100	1724	2603	3113	3477	3825	4157
18150	1727	2607	3117	3482	3830	4164
18200	1730	2611	3122	3487	3836	4170
18250	1732	2615	3127	3492	3842	4176
18300	1735	2618	3131	3497	3847	4182
18350	1738	2622	3136	3503	3853	4188
18400	1740	2626	3140	3508	3858	4194
18450	1743	2630	3145	3513	3864	4200
18500	1745	2634	3149	3518	3870	4206
18550	1748	2638	3154	3523	3875	4212
18600	1751	2642	3159	3528	3881	4219
18650	1753	2646	3163	3533	3887	4225
18700	1756	2650	3168	3538	3892	4231
18750	1758	2653	3172	3543	3898	4237
18800	1761	2657	3177	3549	3903	4243
18850	1764	2661	3181	3554	3909	4249
18900	1766	2665	3186	3559	3915	4255
18950	1769	2669	3191	3564	3920	4261
19000	1771	2673	3195	3569	3926	4267
19050	1774	2677	3200	3574	3931	4274
19100	1777	2681	3204	3579	3937	4280
19150	1779	2685	3209	3584	3943	4286
19200	1782	2689	3213	3589	3948	4292
19250	1785	2692	3218	3595	3954	4298
19300	1787	2696	3223	3600	3960	4304
19350	1790	2700	3227	3605	3965	4310
19400	1792	2704	3232	3610	3971	4316
19450	1795	2708	3236	3615	3976	4322
19500	1798	2712	3241	3620	3982	4328
19550	1800	2716	3245	3625	3988	4335
19600	1803	2720	3250	3630	3993	4341
19650	1805	2724	3255	3635	3999	4347
19700	1808	2727	3259	3640	4005	4353
19750	1811	2731	3264	3646	4010	4359
19800	1813	2735	3268	3651	4016	4365
19850	1816	2739	3273	3656	4021	4371
19900	1819	2743	3277	3661	4027	4377
19950	1821	2747	3282	3666	4033	4383
20000	1824	2751	3287	3671	4038	4390
20050	1826	2755	3291	3676	4044	4396
20100	1829	2759	3296	3681	4049	4402
20150	1832	2762	3300	3686	4055	4408

20200	1834	2766	3305	3692	4061	4414
20250	1837	2770	3309	3697	4066	4420
20300	1839	2774	3314	3702	4072	4426
20350	1842	2778	3319	3707	4078	4432
20400	1845	2782	3323	3712	4083	4438
20450	1847	2786	3328	3717	4089	4445
20500	1850	2790	3332	3722	4094	4451
20550	1853	2794	3337	3727	4100	4457
20600	1855	2797	3341	3732	4106	4463
20650	1858	2801	3346	3738	4111	4469
20700	1860	2805	3351	3743	4117	4475
20750	1863	2809	3355	3748	4123	4481
20800	1866	2813	3360	3753	4128	4487
20850	1868	2817	3364	3758	4134	4493
20900	1871	2821	3369	3763	4139	4500
20950	1873	2825	3373	3768	4145	4506
21000	1876	2829	3378	3773	4151	4512
21050	1879	2832	3383	3778	4156	4518
21100	1881	2836	3387	3784	4162	4524
21150	1884	2840	3392	3789	4167	4530
21200	1887	2844	3396	3794	4173	4536
21250	1889	2848	3401	3799	4179	4542
21300	1892	2852	3405	3804	4184	4548
21350	1894	2856	3410	3809	4190	4554
21400	1897	2860	3415	3814	4196	4561
21450	1900	2864	3419	3819	4201	4567
21500	1902	2867	3424	3824	4207	4573
21550	1905	2871	3428	3829	4212	4579
21600	1907	2875	3433	3835	4218	4585
21650	1910	2879	3438	3840	4224	4591
21700	1913	2883	3442	3845	4229	4597
21750	1915	2887	3447	3850	4235	4603
21800	1918	2891	3451	3855	4241	4609
21850	1921	2895	3456	3860	4246	4616
21900	1923	2899	3460	3865	4252	4622
21950	1926	2902	3465	3870	4257	4628
22000	1928	2906	3470	3875	4263	4634
22050	1931	2910	3474	3881	4269	4640
22100	1934	2914	3479	3886	4274	4646
22150	1936	2918	3483	3891	4280	4652
22200	1939	2922	3488	3896	4285	4658
22250	1941	2926	3492	3901	4291	4664
22300	1944	2930	3497	3906	4297	4671
22350	1947	2934	3502	3911	4302	4677
22400	1949	2937	3506	3916	4308	4683
22450	1952	2941	3511	3921	4314	4689
22500	1955	2945	3515	3927	4319	4695
22550	1957	2949	3520	3932	4325	4701
22600	1960	2953	3524	3937	4330	4707

22650	1962	2957	3529	3942	4336	4713
22700	1965	2961	3534	3947	4342	4719
22750	1968	2965	3538	3952	4347	4725
22800	1970	2969	3543	3957	4353	4732
22850	1973	2972	3547	3962	4359	4738
22900	1975	2976	3552	3967	4364	4744
22950	1978	2980	3556	3973	4370	4750
23000	1981	2984	3561	3978	4375	4756
23050	1983	2988	3566	3983	4381	4762
23100	1986	2992	3570	3988	4387	4768
23150	1989	2996	3575	3993	4392	4774
23200	1991	3000	3579	3998	4398	4780
23250	1994	3004	3584	4003	4404	4787
23300	1998	3010	3591	4011	4412	4796
23350	2002	3016	3598	4019	4421	4806
23400	2006	3022	3606	4027	4430	4816
23450	2010	3028	3613	4035	4439	4825
23500	2014	3034	3620	4044	4448	4835
23550	2018	3040	3627	4052	4457	4844
23600	2022	3046	3634	4060	4466	4854
23650	2026	3052	3642	4068	4474	4864
23700	2030	3058	3649	4076	4483	4873
23750	2034	3064	3656	4084	4492	4883
23800	2038	3070	3663	4092	4501	4893
23850	2042	3076	3670	4100	4510	4902
23900	2046	3082	3678	4108	4519	4912
23950	2050	3088	3685	4116	4528	4922
24000	2054	3094	3692	4124	4536	4931
24050	2058	3100	3699	4132	4545	4941
24100	2062	3106	3707	4140	4554	4950
24150	2066	3112	3714	4148	4563	4960
24200	2070	3118	3721	4156	4572	4970
24250	2074	3124	3728	4164	4581	4979
24300	2078	3130	3735	4172	4590	4989
24350	2082	3137	3743	4180	4598	4999
24400	2086	3143	3750	4188	4607	5008
24450	2090	3149	3757	4197	4616	5018
24500	2094	3155	3764	4205	4625	5027
24550	2098	3161	3771	4213	4634	5037
24600	2102	3167	3779	4221	4643	5047
24650	2106	3173	3786	4229	4652	5056
24700	2110	3179	3793	4237	4661	5066
24750	2114	3185	3800	4245	4669	5076
24800	2118	3191	3807	4253	4678	5085
24850	2122	3197	3815	4261	4687	5095
24900	2126	3203	3822	4269	4696	5104
24950	2130	3209	3829	4277	4705	5114
25000	2134	3215	3836	4285	4714	5124
25050	2138	3221	3844	4293	4723	5133

25100	2142	3227	3851	4301	4731	5143
25150	2146	3233	3858	4309	4740	5153
25200	2150	3239	3865	4317	4749	5162
25250	2154	3245	3872	4325	4758	5172
25300	2158	3251	3880	4333	4767	5182
25350	2162	3257	3887	4342	4776	5191
25400	2166	3263	3894	4350	4785	5201
25450	2170	3269	3901	4358	4793	5210
25500	2174	3276	3908	4366	4802	5220
25550	2178	3282	3916	4374	4811	5230
25600	2182	3288	3923	4382	4820	5239
25650	2186	3294	3930	4390	4829	5249
25700	2190	3300	3937	4398	4838	5259
25750	2194	3306	3944	4406	4847	5268
25800	2198	3312	3952	4414	4855	5278
25850	2202	3318	3959	4422	4864	5287
25900	2206	3324	3966	4430	4873	5297
25950	2210	3330	3973	4438	4882	5307
26000	2214	3336	3981	4446	4891	5316
26050	2218	3342	3988	4454	4900	5326
26100	2222	3348	3995	4462	4909	5336
26150	2226	3354	4002	4470	4917	5345
26200	2230	3360	4009	4478	4926	5355
26250	2234	3366	4017	4486	4935	5365
26300	2238	3372	4024	4495	4944	5374
26350	2242	3378	4031	4503	4953	5384
26400	2247	3384	4038	4511	4962	5393
26450	2251	3390	4045	4519	4971	5403
26500	2255	3396	4053	4527	4979	5413
26550	2259	3402	4060	4535	4988	5422
26600	2263	3408	4067	4543	4997	5432
26650	2267	3415	4074	4551	5006	5442
26700	2271	3421	4081	4559	5015	5451
26750	2275	3427	4089	4567	5024	5461
26800	2279	3433	4096	4575	5033	5470
26850	2283	3439	4103	4583	5041	5480
26900	2287	3445	4110	4591	5050	5490
26950	2291	3451	4118	4599	5059	5499
27000	2295	3457	4125	4607	5068	5509
27050	2299	3463	4132	4615	5077	5519
27100	2303	3469	4139	4623	5086	5528
27150	2307	3475	4146	4631	5095	5538
27200	2311	3481	4154	4640	5103	5547
27250	2315	3487	4161	4648	5112	5557
27300	2319	3493	4168	4656	5121	5567
27350	2323	3499	4175	4664	5130	5576
27400	2327	3505	4182	4672	5139	5586
27450	2331	3511	4190	4680	5148	5596
27500	2335	3517	4197	4688	5157	5605

27550	2339	3523	4204	4696	5165	5615
27600	2343	3529	4211	4704	5174	5625
27650	2347	3535	4218	4712	5183	5634
27700	2351	3541	4226	4720	5192	5644
27750	2355	3547	4233	4728	5201	5653
27800	2359	3554	4240	4736	5210	5663
27850	2363	3560	4247	4744	5219	5673
27900	2367	3566	4255	4752	5228	5682
27950	2371	3572	4262	4760	5236	5692
28000	2375	3578	4269	4768	5245	5702
28050	2379	3584	4276	4776	5254	5711
28100	2383	3590	4283	4785	5263	5721
28150	2387	3596	4291	4793	5272	5730
28200	2391	3602	4298	4801	5281	5740
28250	2395	3608	4305	4809	5290	5750
28300	2399	3614	4312	4817	5298	5759
28350	2403	3620	4319	4825	5307	5769
28400	2407	3626	4327	4833	5316	5779
28450	2411	3632	4334	4841	5325	5788
28500	2415	3638	4341	4849	5334	5798
28550	2419	3644	4348	4857	5343	5808
28600	2423	3650	4355	4865	5352	5817
28650	2427	3656	4363	4873	5360	5827
28700	2431	3662	4370	4881	5369	5836
28750	2435	3668	4377	4889	5378	5846
28800	2439	3674	4384	4897	5387	5856
28850	2443	3680	4392	4905	5396	5865
28900	2447	3686	4399	4913	5405	5875
28950	2451	3692	4406	4921	5414	5885
29000	2455	3699	4413	4929	5422	5894
29050	2459	3705	4420	4938	5431	5904
29100	2463	3711	4428	4946	5440	5913
29150	2467	3717	4435	4954	5449	5923
29200	2471	3723	4442	4962	5458	5933
29250	2475	3729	4449	4970	5467	5942
29300	2479	3735	4456	4978	5476	5952
29350	2483	3741	4464	4986	5484	5962
29400	2487	3747	4471	4994	5493	5971
29450	2491	3753	4478	5002	5502	5981
29500	2495	3759	4485	5010	5511	5990
29550	2499	3765	4492	5018	5520	6000
29600	2503	3771	4500	5026	5529	6010
29650	2507	3777	4507	5034	5538	6019
29700	2511	3783	4514	5042	5546	6029
29750	2515	3789	4521	5050	5555	6039
29800	2519	3795	4529	5058	5564	6048
29850	2523	3801	4536	5066	5573	6058
29900	2527	3807	4543	5074	5582	6068
29950	2531	3813	4550	5083	5591	6077

30000	2535	3819	4557	5091	5600	6087

(8) **Computation of basic child support - shared physical care - split physical care - stipulations - deviations - basis for periodic updates.**

(a) Except in cases of shared physical care or split physical care as defined in paragraphs (h) and (i) of subsection (3) of this section, a total child support obligation is determined by adding each parent's respective basic child support obligation, as determined through the guidelines and schedule of basic child support obligations specified in subsection (7) of this section, work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule of basic child support obligations. The parent receiving a child support payment shall be presumed to spend his or her total child support obligation directly on the children. The parent paying child support to the other parent shall owe his or her total child support obligation as child support to the other parent minus any ordered payments included in the calculations made directly on behalf of the children for work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule of basic child support obligations.

(b) Because shared physical care presumes that certain basic expenses for the children will be duplicated, an adjustment for shared physical care is made by multiplying the basic child support obligation by one and fifty hundredths (1.50). In cases of shared physical care, each parent's adjusted basic child support obligation obtained by application of paragraph (b) of subsection (7) of this section shall first be divided between the parents in proportion to their respective adjusted gross incomes. Each parent's share of the adjusted basic child support obligation shall then be multiplied by the percentage of time the children spend with the other parent to determine the theoretical basic child support obligation owed to the other parent. To these amounts shall be added each parent's proportionate share of work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule of basic child support obligations. The parent owing the greater amount of child support shall owe the difference between the two amounts as a child support order minus any ordered direct payments made on behalf of the children for work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule of basic child support obligations. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(c) (I) In cases of split physical care, a child support obligation shall be computed separately for each parent based upon the number of children living with the other parent in accordance with subsections (7), (9), (10), and (11) of this section. The amount so determined shall be a theoretical support obligation due each parent for support of the child or children for whom he or she has primary physical custody. The obligations so determined shall then be offset, with the parent owing the larger amount owing the difference between the two amounts as a child

support order.

(II) If the parents also share physical care as outlined in paragraph (b) of this subsection (8), an additional adjustment for shared physical care shall be made as provided in paragraph (b) of this subsection (8).

(d) Stipulations presented to the court shall be reviewed by the court for approval. No hearing shall be required; however, the court shall use the guidelines and schedule of basic child support obligations to review the adequacy of child support orders negotiated by the parties as well as the financial affidavit that fully discloses the financial status of the parties as required for use of the guidelines and schedule of basic child support obligations.

(e) In an action to establish or modify child support, whether temporary or permanent, the guidelines and schedule of basic child support obligations set forth in subsection (7) of this section shall be used as a rebuttable presumption for the establishment or modification of the amount of child support. A court may deviate from the guidelines and schedule of basic child support obligations where its application would be inequitable, unjust, or inappropriate. Any such deviation shall be accompanied by written or oral findings by the court specifying the reasons for the deviation and the presumed amount under the guidelines and schedule of basic child support obligations without a deviation. These reasons may include, but are not limited to, instances where one of the parents spends substantially more time with the child than is reflected by a straight calculation of overnights, the extraordinary medical expenses incurred for treatment of either parent or a current spouse, extraordinary costs associated with parenting time, the gross disparity in income between the parents, the ownership by a parent of a substantial nonincome producing asset, consistent overtime not considered in gross income under sub-subparagraph (C) of subparagraph (II) of paragraph (a) of subsection (5) of this section, or income from employment that is in addition to a full-time job or that results in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment. The existence of a factor enumerated in this section does not require the court to deviate from the guidelines and basic schedule of child support obligations but may be a factor to be considered in the decision to deviate. The court may deviate from the guidelines and basic schedule of child support obligations even if a factor enumerated in this section does not exist.

(f) The guidelines and schedule of basic child support obligations may be used by the parties as the basis for periodic updates of child support obligations.

(g) For purposes of calculating child support, when two or more children are included in the child support worksheet calculation and the parties have a different number of overnights with two or more of the children, the number of overnights used to determine child support is determined by adding together the number of overnights for each child and then dividing that number by the number of children included in the child support worksheet calculation.

(9) **Adjustments for child care costs.**

(a) Net child care costs incurred on behalf of the children due to employment or job search or the education of either parent shall be added to the basic obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(b) Child care costs shall not exceed the level required to provide quality care from a licensed source for the children. The value of the federal income tax credit for child care shall be subtracted from actual costs to arrive at a figure for net child care costs.

(10) **Adjustments for health care expenditures for children.**

(a) In orders issued pursuant to this section, the court shall also provide for the child's or children's current and future medical needs by ordering either parent or both parents to initiate medical or medical and dental insurance coverage for the child or children through currently effective medical or medical and dental insurance policies held by the parent or parents, purchase medical or medical and dental insurance for the child or children, or provide the child or children with current and future medical needs through some other manner. If a parent has been directed to provide insurance pursuant to this section and that parent's spouse provides the insurance for the benefit of the child or children either directly or through employment, a credit on the child support worksheet shall be given to the parent in the same manner as if the premium were paid by the parent. At the same time, the court shall order payment of medical insurance or medical and dental insurance deductibles and copayments.

(b) The payment of a premium to provide health insurance coverage on behalf of the children subject to the order shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income.

(c) The amount to be added to the basic child support obligation shall be the actual amount of the total insurance premium that is attributable to the child who is the subject of the order. If this amount is not available or cannot be verified, the total cost of the premium should be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the policy. This amount shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(d) After the total child support obligation is calculated and divided between the parents in proportion to their adjusted gross incomes, the amount calculated in paragraph (c) of this subsection (10) shall be deducted from the obligor's share of the total child support obligation if the obligor is actually paying the premium. If the obligee is actually paying the premium, no further adjustment is necessary.

(e) Prior to allowing the health insurance adjustment, the parent requesting the adjustment must submit proof that the child or children have been enrolled in a health insurance plan and must submit proof of the cost of the premium. The court shall require the parent receiving the adjustment to submit annually proof

of continued coverage of the child or children to the delegate child support enforcement unit and to the other parent.

(f) If a parent who is ordered by the court to provide medical or medical and dental insurance for the child or children has insurance that excludes coverage of the child or children because the child or children reside outside the geographic area covered by the insurance policy, the court shall order separate coverage for the child or children if the court determines coverage is available at a reasonable cost.

(g) Where the application of the premium payment on the guidelines and schedule of basic child support obligations results in a child support order of fifty dollars or less, or the premium payment is five percent or more of the parent's gross income, the court or delegate child support enforcement unit may elect not to require the parent to include the child or children on an existing policy or to purchase insurance. The parent is, however, required to provide insurance when it becomes available at a reasonable cost.

(h)

(I) Any extraordinary medical expenses incurred on behalf of the children shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(II) Extraordinary medical expenses are uninsured expenses, including copayments and deductible amounts, in excess of two hundred fifty dollars per child per calendar year. Extraordinary medical expenses include, but need not be limited to, such reasonable costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any uninsured chronic health problem. At the discretion of the court, professional counseling or psychiatric therapy for diagnosed behavioral or mental health disorders may also be considered as an extraordinary medical expense.

(11) **Extraordinary adjustments to the schedule of basic child support obligations - periodic disability benefits.**

(a) By agreement of the parties or by order of court, the following reasonable and necessary expenses incurred on behalf of the child must be divided between the parents in proportion to their adjusted gross income:

(I) Any expenses for attending any special or private elementary or secondary schools to meet the particular educational needs of the child or public school mandatory school fees; and

(II) Any expenses for transportation of the child, or the child and an accompanying parent if the child is less than twelve years of age, between the homes of the parents.

(b) Any additional factors that actually diminish the basic needs of the child may be considered for deductions from the basic child support obligation.

(c)

(I) If the noncustodial parent receives periodic disability benefits granted by

the federal "Old-age, Survivors, and Disability Insurance Act", 42 U.S.C. sec. 401 et seq., due to the disability of the noncustodial parent or receives employer-paid retirement benefits from the federal government due to the retirement of the noncustodial parent, the noncustodial parent shall notify the custodial party, and the delegate child support enforcement unit, if a party to the case, within sixty days after the noncustodial party receives notice of such benefits.

(II) Absent good cause shown, the custodial parent must apply for dependent benefits for the child or children within sixty days after the custodial parent receives notification pursuant to subsection (11)(c)(I) of this section, and shall cooperate with the appropriate federal agency in completing any application for benefits.

(III) In cases where the custodial parent receives periodic disability benefits granted by the federal "Old-age, Survivors, and Disability Insurance Act", 42 U.S.C. sec. 401 et seq., on behalf of dependent children due to the disability of the noncustodial parent or receives employer-paid retirement benefits from the federal government on behalf of dependent children due to the retirement of the noncustodial parent, the noncustodial parent's share of the total child support obligation as determined pursuant to subsection (8) of this section must be reduced in an amount equal to the amount of the benefits.

(d) In cases where the custodial parent receives a lump sum retroactive award for benefits granted by the federal old-age, survivors, or disability insurance benefits program, 42 U.S.C. sec. 7, on behalf of a dependent child due to the disability of the noncustodial parent, or receives a lump sum retroactive award for employer-paid retirement benefits from the federal government on behalf of a dependent child due to the retirement of the noncustodial parent, the lump sum award received by the custodial parent must be credited against any retroactive support judgment or any past-due child support obligation, regardless of whether the past-due obligation has been reduced to judgment owed by the noncustodial parent. This credit must not be given against any amounts owed by the noncustodial parent for debt as defined in section 14-14-104 or for any retroactive support or any arrearage that accrued prior to the date of eligibility for disability or retirement benefits as determined by the social security administration. Any lump sum retirement or disability payments due to the retirement or disability of the noncustodial parent, received by the custodial parent as a result of the retirement or disability of the noncustodial parent, paid for a period of time that precedes the date of such benefit date eligibility, or any amount in excess of the established child support order or judgment, must be deemed a gratuity to the child.

(12) **Dependency exemptions.** Unless otherwise agreed upon by the parties, the court shall allocate the right to claim dependent children for income tax purposes between the parties. These rights shall be allocated between the parties in proportion to their contributions to the costs of raising the children. A parent shall not be entitled to claim a child as a dependent if he or she has not paid all court-ordered child support for that tax

year or if claiming the child as a dependent would not result in any tax benefit.

(13) **Emancipation.**

(a) For child support orders entered on or after July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates without either party filing a motion when the last or only child attains nineteen years of age unless one or more of the following conditions exist:

(I) The parties agree otherwise in a written stipulation after July 1, 1997;

(II) If the child is mentally or physically disabled, the court or the delegate child support enforcement unit may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of nineteen;

(III) If the child is still in high school or an equivalent program, support continues until the end of the month following graduation. A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.

(IV) If the child marries, the child shall be considered emancipated as of the date of the marriage. If the marriage is annulled, dissolved, or declared invalid, child support may be reinstated.

(V) If the child enters into active military duty, the child shall be considered emancipated.

(b) Nothing in paragraph (a) of this subsection (13) or subsection (15) of this section shall preclude the parties from agreeing in a written stipulation or agreement on or after July 1, 1997, to continue child support beyond the age of nineteen or to provide for postsecondary education expenses for a child and to set forth the details of the payment of the expenses. If the stipulation or agreement is approved by the court and made part of a decree of dissolution of marriage or legal separation, the terms of the agreement shall be enforced as provided in section 14-10-112.

(14) **Annual exchange of information.**

(a) When a child support order is entered or modified, unless otherwise ordered by the court, the parties shall exchange information relevant to child support calculations on changes that have occurred since the previous child support order, and other appropriate information once a year or less often, for the purpose of updating and modifying the order without a court hearing. The parties shall use the approved standardized child support forms specified in subsection (4) of this section in exchanging financial information. The parents shall include the forms with any agreed modification or an agreement that a modification is not appropriate at the time. If the agreed amount departs from the guidelines and schedule of basic child support obligations, the parties shall furnish statements of explanation with the forms and shall file the documents with the court. The court shall review the agreement pursuant to this paragraph (a) and inform the parties by regular mail whether or not additional or corrected information is

needed, or that the modification is granted, or that the modification is denied. If the parties cannot agree, a modification pursuant to this paragraph (a) shall not be entered; however, either party may move for or the court may schedule, upon its own motion, a modification hearing.

(b) Upon request of the noncustodial parent, the court may order the custodial parent to submit an annual update of financial information using the approved standardized child support forms, as specified in subsection (4) of this section, including information on the actual expenses relating to the children of the marriage for whom support has been ordered. The court shall not order the custodial parent to update the financial information pursuant to this paragraph (b) in circumstances where the noncustodial parent has failed to exercise parenting time rights or when child support payments are in arrears or where there is documented evidence of domestic violence, child abuse, or a violation of a protection order on the part of the noncustodial parent. The court may order the noncustodial parent to pay the costs involved in preparing an update to the financial information. If the noncustodial parent claims, based upon the information in the updated form, that the custodial parent is not spending the child support for the benefit of the children, the court may refer the parties to a mediator to resolve the differences. If there are costs for such mediation, the court shall order that the party requesting the mediation pay such costs.

(15) **Postsecondary education.**

(a) This subsection (15) shall apply to all child support obligations established or modified as a part of any proceeding, including but not limited to articles 5 , 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., prior to July 1, 1997. This subsection (15) shall not apply to child support orders established on or after July 1, 1997, which shall be governed by paragraph (a) of subsection (13) of this section.

(b) For child support orders entered prior to July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates without either party filing a motion when the last or only child attains nineteen years of age unless one or more of the following conditions exist:

(I) The parties agree otherwise in a written stipulation after July 1, 1991;

(II) If the child is mentally or physically disabled, the court or the delegate child support enforcement unit may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of nineteen;

(III) If the child is still in high school or an equivalent program, support continues until the end of the month following graduation, unless there is an order for postsecondary education, in which case support continues through postsecondary education as provided in this subsection (15). A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.

(IV) If the child marries, the child shall be considered emancipated as of the

date of the marriage. If the marriage is annulled, dissolved, or declared invalid, child support may be reinstated.

(V) If the child enters into active military duty, the child shall be considered emancipated.

(c) If the court finds that it is appropriate for the parents to contribute to the costs of a program of postsecondary education, then the court shall terminate child support and enter an order requiring both parents to contribute a sum determined to be reasonable for the education expenses of the child, taking into account the resources of each parent and the child. In determining the amount of each parent's contribution to the costs of a program of postsecondary education for a child, the court shall be limited to an amount not to exceed the amount listed under the schedule of basic child support obligations in paragraph (b) of subsection (7) of this section for the number of children receiving postsecondary education. If such an order is entered, the parents shall contribute to the total sum determined by the court in proportion to their adjusted gross incomes as defined in paragraph (a) of subsection (3) of this section. The amount of contribution that each parent is ordered to pay pursuant to this subsection (15) shall be subtracted from the amount of each parent's gross income, respectively, prior to calculating the basic child support obligation for any remaining children pursuant to subsection (7) of this section.

(d) In no case shall the court issue orders providing for both child support and postsecondary education to be paid for the same time period for the same child regardless of the age of the child.

(e) Either parent or the child may move for an order at any time before the child attains the age of twenty-one years. The order for postsecondary education support may not extend beyond the earlier of the child's twenty-first birthday or the completion of an undergraduate degree.

(f) Either a child seeking an order for postsecondary education expenses or on whose behalf postsecondary education expenses are sought, or the parent from whom the payment of postsecondary education expenses are sought, may request that the court order the child and the parent to seek mediation prior to a hearing on the issue of postsecondary education expenses. Mediation services shall be provided in accordance with section 13-22-305, C.R.S. The court may order the parties to seek mediation if the court finds that mediation is appropriate.

(g) The court may order the support paid directly to the educational institution, to the child, or in such other fashion as is appropriate to support the education of the child.

(h) A child shall not be considered emancipated solely by reason of living away from home while in postsecondary education. If the child resides in the home of one parent while attending school or during periods of time in excess of thirty days when school is not in session, the court may order payments from one parent to the other for room and board until the child attains the age of nineteen.

(i) If the court orders support pursuant to this subsection (15), the court or delegate child support enforcement unit may also order that the parents provide health insurance for the child or pay medical expenses of the child or both for the duration of the order. The order shall provide that these expenses be paid in proportion to their adjusted gross incomes as defined in subsection (3) of this section. The court or delegate child support enforcement unit shall order a parent to provide health insurance if the child is eligible for coverage as a dependent on that parent's insurance policy or if health insurance coverage for the child is available at reasonable cost.

(j) An order for postsecondary education expenses entered between July 1, 1991, and July 1, 1997, may be modified pursuant to this subsection (15) to provide for postsecondary education expenses subject to the statutory provisions for determining the amount of a parent's contribution to the costs of postsecondary education, the limitations on the amount of a parent's contribution, and the changes to the definition of postsecondary education consistent with this section as it existed on July 1, 1994. An order for child support entered prior to July 1, 1997, that does not provide for postsecondary education expenses shall not be modified pursuant to this subsection (15).

(k) Postsecondary education support may be established or modified in the same manner as child support under this article.

(16) **Child support commission.**

(a) The child support guidelines, including the schedule of basic child support obligations, and general child support issues must be reviewed at least once every four years by a child support commission, which commission is hereby created. After the periodic review described in this section, the commission shall submit a report to the governor and to the general assembly explaining the commission's recommendations.

(b) As part of its review, the commission must consider economic data on the cost of raising children and analyze case data on the application of, and deviations from, the guidelines and the schedule of basic child support obligations to be used in the commission's review to ensure that deviations from the guidelines and schedule of basic child support obligations are limited.

(c) The child support commission consists of no more than twenty-one members. The governor shall appoint persons to the commission who are representatives of the judiciary and the Colorado bar association. Members of the commission appointed by the governor must also include the director of the division in the state department of human services who is responsible for child support enforcement, or his or her designee, a director of a county department of human or social services, the child support liaison to the judicial department, interested parties, a certified public accountant, and parent representatives. In making his or her appointments to the commission, the governor may appoint persons as parent representatives. In making his or her appointments to the commission, the governor shall attempt to assure geographical diversity. The remaining two members of the commission are a member of the house of representatives appointed by the speaker of the house of representatives and a member of the

senate appointed by the president of the senate and must not be members of the same political party.

(d) Members of the child support commission shall not be compensated for their services on the commission except as otherwise provided in section 2-2-326, C.R.S., and except that members shall be reimbursed for actual and necessary expenses for travel and mileage incurred in connection with their duties. The child support commission is authorized, subject to appropriation, to incur expenses related to its work, including the costs associated with public hearings, printing, travel, and research.

(d.5) and (e) (Deleted by amendment, L. 2013.)

Cite as (Casemaker) C.R.S. § 14-10-115

History. Amended by 2021 Ch. 212, §1, eff. 7/1/2021.

Amended by 2019 Ch. 270, §2, eff. 7/1/2019.

Amended by 2019 Ch. 270, §1, eff. 7/1/2019 and 7/1/2020.

Amended by 2018 Ch. 251, §2, eff. 8/8/2018.

Amended by 2018 Ch. 38, §14, eff. 8/8/2018.

Amended by 2017 Ch. 154, §1, eff. 8/9/2017.

Amended by 2017 Ch. 264, §29, eff. 5/25/2017.

Amended by 2017 Ch. 263, §113, eff. 5/25/2017.

Amended by 2016 Ch. 157, §7, eff. 1/1/2017.

Amended by 2016 Ch. 157, §6, eff. 1/1/2017.

Amended by 2016 Ch. 157, §5, eff. 1/1/2017.

Amended by 2016 Ch. 157, §4, eff. 1/1/2017.

Amended by 2014 Ch. 390, §7, eff. 6/6/2014.

Amended by 2013 Ch. 103, §2, eff. 1/1/2014.

Amended by 2013 Ch. 103, §1, eff. 1/1/2014.

L. 71: R&RE, p. 527, § 1. C.R.S. 1963: § 46-1-15. L. 85: (2) added, p. 592, § 10, effective July 1. L. 86: (3) to (16) added, p. 718, § 1, effective November 1. L. 87: (3)(b), (5), IP(7)(a), (10)(a), (11), and (12) amended, (7)(b)(II), (15), and (16) repealed, (7)(d), (7)(e), (10)(c), and (17) added, and (8), (9), (13), and (14) R&RE, pp. 587, 588, 600, 591, 589, §§ 5, 7, 38, 9, 6, 8, effective July 10. L. 89: (7)(d.5) added and (17) amended, p. 792, §§ 14, 15, effective July 1. L. 90: (18) added, p. 890, § 10, effective June 7; (7)(a)(I)(A), (7)(c), and (13)(a)(III) amended and (7)(b)(III) added, pp. 564, 890, 889, §§ 35, 10, 9, effective July 1. L. 91: (18)(a) amended, p. 359, § 21, effective April 9; (1.5) added and (7)(b), (13), (14)(b), and (18) amended, p. 234, § 1, effective July 1. L. 92: (17) amended, p. 2171, § 18, effective June 2; (1.5)(b)(I), (2), (3)(a), (3)(b), (7)(a), (7)(e), (8), (10)(a)(II), (10)(c), (14)(c)(I), (18), and (18)(a) amended, (1.5)(d), (13.5), (14.5), and (16.5) added, (7)(e) repealed, and (10)(b) R&RE, pp. 166, 203, 188, 169, 198, 193, §§ 1, 9, 2, 3, effective August 1. L. 93: (1.5)(b)(I) and (3)(b)(III) amended and (1.5)(e) added, pp. 1556, 577, §§ 1, 7, effective July 1; (1.5)(b)(I), (2), and (10)(c) amended and (3.5) and (18)(e) added, pp. 1559, 1560, §§ 7, 8, effective September 1. L. 94: (1.5)(b)(I), (1.5)(e), (7)(a)(I)(A), (7)(b)(III), (7)(d.5)(I), and (18)(e) amended, p. 1536, § 5, effective July 1; (18)(a) amended, p. 2645, § 107, effective July 1. L. 96: IP(1), (2), (3)(a), (3)(b)(II), (7)(a)(I)(A), (7)(a)(I)(C), (7)(b)(I), (10)(a)(II), (11)(a), (12), (13.5), and (16.5) amended, p. 594, § 7, effective July 1. L. 97: (1.5) amended and (1.6) and (1.7) added, p. 565, § 20, effective July 1; (1.5), (3.5), (7)(b), and (18)(a) amended and (1.6) and (1.7) added, pp. 1264, 1312, §§ 8, 49, effective July 1; (5) and (17) amended, p. 561, § 5, effective July 1; (7)(a)(I)(B) amended, p. 1240, § 37, effective July 1. L. 98: (3)(a), (7)(d.5)(I), and (13)(a)(II) amended, p. 768, § 21, effective July 1; (7)(a)(I)(A) amended, p. 921, § 7, effective July 1; (4)(c), (8), (9), (10)(c), and (14) amended, p. 1398, § 42, effective February 1, 1999. L. 99: (3.5) amended, p. 1085, § 2, effective July 1; (7)(a)(I)(A) amended, p. 621, § 15, effective August 4. L. 2000: (18) amended, p. 1709, § 6, effective July 1. L. 2001: (18)(a) amended and (19) added, p. 721, § 4, effective May 31. L. 2002: (10)(a)(II), (10)(b), and (13.5)(h)(II) amended, p. 286, § 1, effective January 1, 2003. L. 2003: (3)(b)(III) amended, p. 1011, § 15, effective July 1; (10)(a)(II)(B), (10)(a)(II)(C), and (10)(a)(II)(D) amended, p. 1264, § 51, effective July 1. L. 2004: (5), (10)(a)(II)(A), (13.5)(h)(II), and (19) amended, p. 385, § 1, effective July 1. L. 2005: (1.6) amended, p. 80, § 1, effective August 8. L. 2006: IP(1.6) amended, p. 516, § 1, effective August 7. L. 2007: Entire section amended with relocated provisions, p. 73, § 1, effective March 16; (16)(d.5) added, p. 178, § 7, effective March 22; (13)(a)(IV), (13)(a)(V), (15)(b)(IV), and (15)(b)(V) added and IP(15)(b) amended, p. 1649, §§ 5, 3, effective May 31; (6)(b)(I) and (10)(a) amended, p. 1651, § 7, effective January 1, 2008. L. 2008: (4)(b) and (5)(b)(I) amended, p. 1347, § 1, effective July 1. L. 2009: (5)(a)(I)(H) amended, (SB 09-282), ch. 288, p. 1397, §59, effective January 1, 2010. L. 2013: (5)(a)(I)(D), (5)(a)(I)(O),

(5)(a)(I)(W), (6)(b)(I), (7)(a)(II)(B), (7)(a)(II)(C), (7)(a)(II)(D), and (16) amended, (5)(a)(II)(E) and (11)(d) added, and (7)(b) R&RE, (HB 13-1209), ch. 103, pp. 327, 332, §§ 1, 2, effective January 1, 2014. L. 2014: (16)(d) amended, (SB 14-153), ch. 390, p. 1961, § 7, effective June 6. L. 2016: (6), (8)(e), (10)(g), and (14)(a) amended, (HB 16-1165), ch. 157, pp. 493, 494, 495, §§ 4, 5, 6, 7, effective January 1, 2017. L. 2017: (3)(f) and (3)(g) amended, (SB 17-294), ch. 264, p. 1391, § 29, effective May 25; (10)(h)(II) amended, (SB 17-242), ch. 263, p. 1295, § 113, effective May 25; (16)(a) amended, (SB 17-234), ch. 154, p. 520, § 1, effective August 9. L. 2018: (3)(a), IP(5)(a)(I), and (5)(a)(I)(Y) amended and (5)(a)(I.5) added, (HB 18-1385), ch. 251, p. 1546, § 2, effective August 8; (16)(c) amended, (SB 18-092), ch. 38, p. 400, § 14, effective August 8.

Editor's Note:

(1) This section was amended in Senate Bill 07-015, resulting in the relocation of provisions.

(2) Subsection (16.5)(d.5) was originally numbered as subsection (18)(a.5), and the amendments to it in Senate Bill 07-076 were harmonized with Senate Bill 07-015 and renumbered as subsection (16)(d.5).

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court", see 57 Den. L.J. 21 (1979). For article, "Automatic Escalation Clauses Relating to Maintenance and Child Support", see 12 Colo. Law. 1083 (1983). For article, "Support Calculation Revisited", see 12 Colo. Law. 1647 (1983). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Child Support Guidelines: Will They Cause More Problems Than They Cure?", see 15 Colo. Law. 408 (1986). For article, "Summary of the Report on the Colorado Commission Child Support and Proposed Child Support Guidelines", see 15 Colo. Law. 665 (1986). For article, "New Child Support Guideline Adopted", see 15 Colo. Law. 1662 (1986). For article, "Key Issues in the Colorado Child Support Guidelines", see 16 Colo. Law 51 (1987). For article, "Postsecondary Education Costs: Forging Through a Legislative Labyrinth", see 24 Colo. Law. 43 (1995). For article, "Calculating Income in Child Support Cases", see 25 Colo. Law. 53 (Mar. 1996). For article, "Post-secondary Education Expenses: A Multi-tiered Approach", see 27 Colo. Law. 61 (Jan. 1998). For article, "Determining Gross Income for Child Support Purposes", see 32 Colo. Law. 65 (May 2003). For article, "The State of Voluntary Unemployment and Underemployment in Colorado", see 34 Colo. Law. 49 (Nov. 2005). For article, "Colorado Child Support Case Law Update", see 36 Colo. Law. 79 (Oct. 2007). For article, "Postsecondary Education Expenses after Chalat: Paying College Expenses after Divorce", see 38 Colo. Law. 19 (Jan. 2009). For article, "Child Support Continuation for Disabled Children", see 40 Colo. Law. 61 (Dec. 2011). For article, "Retroactive Child Support: Conflicting Decisions and Practical Advice", see 41 Colo. Law. 91 (Aug. 2012). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017).

Annotator's note. Since § 14-10-115 is similar to § 14-10-115 as it existed prior to the 2007 amendment relocating provisions, § 46-1-5(1)(c), 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.

This section does not violate equal protection, due process, and privacy rights, and enforcement of the section is not an unconstitutional taking of property or an ongoing threat of imprisonment for debt. A distinction between sets of parents based on marital status is rationally related to the legitimate state interest to insure that children of divorced or separated parents receive support despite the divorce or separation. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

Because it approximates the amount of parental income that the child would have received in an intact family, application of the child support guidelines is not arbitrary, capricious, fundamentally unfair, or coercive. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

There may be a remedy for child support apart from a divorce action. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

Duty of child support is independent, and is not limited to, entry of decree of dissolution. In re Price, 727 P.2d 1073 (Colo. 1986).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

Child has standing to seek support for herself under this section. In re Conradson, 43 Colo. App. 432, 604 P.2d 701 (1979).

Reasonable and necessary business expenses may be satisfied before support payment. Obligations relating to reasonable and necessary expenses associated with maintaining the structure and solvency of a business or the production of income can be satisfied before payment of child support. In re Crowley, 663 P.2d 267 (Colo. App. 1983).

Interest accrues on arrearages from the date each installment becomes due. In re Pote, 847 P.2d 246 (Colo. App. 1993).

Award of past pregnancy expenses and support. There is no jurisdiction under this section to award expenses incurred prior to the date of the filing of a motion for child support. In re Garcia, 695 P.2d 774 (Colo. App. 1984).

Reasonable to charge support against Colorado property of out-of-country father. Where the trial court ordered the father, who resides in Norway, to pay child support in a lump sum amount, and the court further ordered that such sum should be a charge against certain Colorado property interests of the father, such order was reasonable and not confiscatory. Berge v. Berge, 189 Colo. 103, 536 P.2d 1135 (1975).

Subsection (1.5)(a)(II) provides that emancipation occurs and an order for child support terminates when a child attains 19 years of age, unless the child is then mentally or physically disabled and, if a child is physically or mentally incapable of self-support upon attaining majority at age 21, the duty of parental support continues for the duration of the disability. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

The plain language of subsection (1)(b)(I) creates no exemption for separation agreements entered into under and consistent with earlier legislation. Although the parties' specific intention in 1991 separation agreement to share four years of college costs prevailed over general intention that child would be emancipated at 21 years of age, subsection (1)(b)(I) nevertheless controls and requires that father's college cost obligation terminates upon the earlier of the child's 21st birthday or completion of a four-year college program. In re Crowder, 77 P.3d 858 (Colo. App. 2003).

Subsection (1.5)(c) was modified to distinguish between orders for postsecondary education costs entered prior to, and after, July 1, 1997, when in a distinct departure from prior law, the court could no longer enter orders for postsecondary education expenses absent written agreement of the parties. In re Chalat, 94 P.3d 1191 (Colo. App. 2004), aff'd in part and rev'd in part on other grounds, 112 P.3d 47 (Colo. 2005).

Subsection (1.5)(c.5) was added in 1997 to clarify that the convoluted legislation that had been passed since 1991 was applicable to all orders that concerned postsecondary education expenses and that were established or modified prior to July 1, 1997. In re Chalat, 94 P.3d 1191 (Colo. App. 2004), aff'd in part and rev'd in part on other grounds, 112 P.3d 47 (Colo. 2005).

Tax exemptions. Court has authority to divide tax exemptions between the parents. In re Berjer, 789 P.2d 468 (Colo. App. 1989); In re Nielson, 794 P.2d 1097 (Colo. App. 1990); In re Larsen, 805 P.2d 1195 (Colo. App. 1991).

Court must allocate dependency exemption between the parties based on their respective gross incomes. Federal tax law contemplates such an allocation, and does not preempt it. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

When allocating tax exemptions between the parents, the phrase "contributions to the costs of raising the children" refers to the percentage of child support attributed to each parent in the course of making the child support computation. In re Staggs, 940 P.2d 1109 (Colo. App. 1997).

The trial court may consider the allocation of tax exemptions in a motion for modification. In re Oberg, 900 P.2d 1267 (Colo. App. 1994).

A parent may not be ordered to pay an ex-spouse child support amounts for a period prior to entry of a child support order. In re Pote, 847 P.2d 246 (Colo. App. 1993).

Husband's discovery request that wife list all gifts, including without limitation, jewelry, clothes, entertainment, travel, and restaurant meals provided to her or the children by her current husband; list all amounts paid by wife's current husband directly to wife or to other parties from which she received a benefit, including attorney fees, maid service, cable television, mortgage payments, car and home repairs, insurance, and utilities; and list all assets purchased for which her current husband contributed, and husband's definition of "income" to include "all funds available for your use, including gifts" was significantly broader than the statutory definition of gross income, and therefore, denial of husband's motion to compel was proper. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

Applied in Smith v. Casey, 198 Colo. 433, 601 P.2d 632 (1979); In re Hartford, 44 Colo. App. 303, 612 P.2d 1163 (1980); In re Dickey, 658 P.2d 276 (Colo. App. 1982); In re Steele, 714 P.2d 497 (Colo. App. 1985); In re Stone, 749 P.2d 467 (Colo. App. 1987).

II. DUTY OF SUPPORT.

This section includes adopted children as well as natural children. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

Absent a legal parent-child relationship, there is no duty to support a child under this section. In re Bonifas, 879 P.2d 478 (Colo. App. 1994).

Husband and wife who sought and were granted custody of a non-biological child under a parental responsibility order owed a duty of support to the child, and trial court had the authority in their dissolution of marriage proceeding to order husband to pay child support pursuant to subsections (1) and (17). In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

Although this section does not define "psychological parent", it is a well-founded legislative concept in other parts of statute. In this case, the father was unquestionably the psychological parent to children. He fought for and obtained orders for parenting time and certain decision-making responsibilities. Because he not only sought to remain in the children's lives but was granted such opportunity by the court, he is also bound by the parental duty to financially support those children. In re A.C.H., 2019 COA 43, 440 P.3d 1266.

Only the parents' incomes and not the guardians' are to be included in the determination of child support, as supported by § 15-14-209(2), which states, "A guardian need not use the guardian's personal funds for the ward's expenses". Sidman v. Sidman, 240 P.3d 360 (Colo. App. 2009).

Section contemplates a parent being responsible for the support of his children, not his former spouse, however reprehensible his behavior. Therefore it was error to award the reimbursement of mother's transportation costs as child care. In re Kluver, 771 P.2d 34 (Colo. App. 1989).

Child must reside and be supported by spouse granted custody and support. Wife who has been granted child custody is only entitled to support payments when the children were actually with her and supported by her. Brown v. Brown, 183 Colo. 356, 516 P.2d 1129 (1973).

This section contemplates that, when in a divorce case, custody of a minor child is awarded to the wife, an order for its support may be made on the husband, and in proceeding to such order the court looks only to the future. Gourley v. Gourley, 101 Colo. 430, 73 P.2d 1375 (1937).

It was not an abuse of discretion for trial court to award child support during the pendency of the dissolution proceeding. In re Atencio, 47 P.3d 718 (Colo. App. 2002).

Where plaintiff alleged that defendant was the father of the minor children of the parties, but had failed and refused to support them,

and that they were in need of support which he has the means and ability to provide, if established by evidence, plaintiff would be entitled to appropriate relief. Hutchinson v. Hutchinson, 149 Colo. 38, 367 P.2d 594 (1961).

Person without funds or profitable employment not relieved of support obligation. Merely because a spouse desires to work on a long-range investment does not relieve him of his obligation to support his children, and the fact that a person is without funds and without profitable employment has been held not to preclude the allowance of reasonable alimony and support where nothing but a disinclination to work, regardless of the motive therefor, interferes with his ability to earn a reasonable living. Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975).

Where the oldest of three children of the parties was living with father, the trial court did not abuse its discretion in declining to award plaintiff support money for all of the children, since such award would require defendant to pay twice for support of child in his custody. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

Custodial parent can be ordered to pay support to noncustodial parent under Uniform Dissolution of Marriage Act. In re Fest, 742 P.2d 962 (Colo. App. 1987).

In order for child support to be calculated according to shared physical custody, sufficient evidence must be submitted that each parent keeps the children overnight for more than 25% of the time and that both parents contribute to the expenses of the children in addition to the payment of child support. In re Redford, 776 P.2d 1149 (Colo. App. 1989).

There is no statutory requirement that any particular amount of expense be proven by the parent seeking a support adjustment for shared physical custody. In re Redford, 776 P.2d 1149 (Colo. App. 1989).

Application of shared custody formula that results in a support payment by the custodial parent to the noncustodial parent is not necessarily prohibited. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

Where there was an absence of evidence from husband establishing that he contributed to the child's financial needs, there was no basis for application of the shared custody formula under worksheet B. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

Where a mother removed her child from the state and deliberately concealed her whereabouts from the father, and by her affirmative acts voluntarily assumed responsibility for the child's support for a period of several years, during which time it appears that the child wanted for nothing necessary to health, comfort, and welfare, the mother was not in a position to claim reimbursement for such support. Griffith v. Griffith, 152 Colo. 292, 381 P.2d 455 (1963).

Where a father asserted that his right to direct and select the nature of the education of his son coexisted with the obligation to contribute to the costs of the education, it was held that it was for the divorced wife as custodian to make the decisions concerning the place and nature of the son's college education, subject only to the approval of the divorce court acting with due regard for the financial capabilities of the father. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

A divorced father did not have an absolute duty to pay for the college expenses of his minor child. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

When it had been properly demonstrated at trial that the welfare of the child would be served by further education at the college level, the father could properly be compelled to contribute to the costs of such education on a basis commensurate with the father's ability to pay until such time as the child attained majority or was otherwise emancipated. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

Travel expenses for a child, including the travel expenses of the guardians accompanying the child, shall be divided between the parents. Court did not apply the correct legal standard when it ordered the guardians to travel with juvenile at their own expense. Sidman v. Sidman, 240 P.3d 360 (Colo. App. 2009).

Award of retroactive child support is error. Since the court lacked proper jurisdiction to enter support orders until husband was personally served, its attempt to order retroactive child support was void. In re McKendry, 735 P.2d 908 (Colo. App. 1986).

Termination of support pursuant to decree. Absent a provision in the decree or a court order to the contrary, a father's duty to support pursuant to a decree which was paid to his ex-wife terminated with her death, although his common law and statutory duty of support continued. Application of Connolly, 761 P.2d 224 (Colo. App. 1988).

Phrase "each will contribute whatever may be necessary for the support of their children" creates a binding promise on part of father to contribute to children's financial support. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

"Absolute requirement" or "necessary requirement" is not the appropriate standard to apply in determining whether private school was an appropriate placement for a child. The court should consider whether private schooling meets the child's particular educational needs. In re Eaton, 894 P.2d 56 (Colo. App. 1995).

A motion to quash subpoenas issued to third persons allegedly contributing to support of children was properly granted where the voluntary donations of such parties had nothing to do with a defendant's duty to support children. Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963).

Support for adult child. A dissolution action is a proper proceeding to enforce continued support of an adult child. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983).

III. AWARD OF SUPPORT.

A. Amount.

Law reviews. For article, "Calculation of Potential Income in Child Support Matters", see 20 Colo. Law. 233 (1991). For article, "Postsecondary Education Costs: Forging Through a Legislative Labyrinth", see 24 Colo. Law. 43 (1995).

Needs of the children are of paramount importance in determining child support obligations. Wright v. Wright, 182 Colo. 425, 514 P.2d 73 (1973); In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

There is no mathematical formula for establishing a just and equitable property settlement or alimony or support. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

The guidelines for calculating child support require a court to calculate a monthly amount of child support based on the parties' combined adjusted gross income, adjust the child support based upon the needs of the children for extraordinary medical expenses and work-related child care costs, and allocate each parent's share based on the physical custody arrangements. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Adoption subsidy. An adoption subsidy should not be considered a credit against the noncustodial parent's child support obligation. The underlying intent of the child support statute is best served by declining to offset a noncustodial parent's support obligation by the amount of an adoption subsidy or to consider the subsidy as a factor that may diminish the child's basic needs within the meaning of subsection (13)(b). In re Bolding-Roberts, 113 P.3d 1265 (Colo. App. 2005).

An award of alimony and child support should bear a reasonable relationship to the needs of a wife and children. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

Subsection (1)(a) authorizes the court to consider social security disability payments received on behalf of the children in calculating child support. In re Quintana, 30 P.3d 870 (Colo. App. 2001).

Social security disability benefits received by custodial parent for benefit of child on account of custodial parent's disability are not included in the custodial parent's gross income but are instead considered a financial resource of the child pursuant to subsections (2)(b)(I) and (11)(b). In re Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009).

The extent to which the child's social security disability payment represents a "reduction in need" of the child is a question to be determined by the trial court based upon the totality of the circumstances. The court is not bound to deduct the entire amount of the child's social security disability payment from the basic support obligation. In re Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009).

Social security survivor benefits should not be treated any differently than disability benefits. Thus, survivor benefits received by the wife in a representative capacity for son from previous marriage should not be included in wife's gross income for purposes of calculating husband's support obligation for daughter. In re Ross-Ooley, 251 P.3d 1221 (Colo. App. 2010).

Trial court did not err in excluding adoption subsidies and foster care payments from mother's gross income in child support considerations. These payments are income of the children on whose behalf the mother receives them and are not part of mother's income. In re Dunkle, 194 P.3d 462 (Colo. App. 2007).

Father is not entitled to an offset of his support obligation against the benefit amount he receives through his railroad retirement on behalf of his child since he retains the payments and he is the noncustodial parent. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

Subsection (1.5)(b)(I) does not require that expenses be absolutely necessary but only that they be reasonable. In re Eaton, 894 P.2d 56 (Colo. App. 1995); In re Elmer, 936 P.2d 617 (Colo. App. 1997).

Determination of conscionability of support provisions. To determine whether the child support provisions of a separation agreement which has been incorporated into a prior dissolution decree are fair, reasonable, and just, a trial court should consider and apply all the criteria provided by the general assembly for judicial evaluation of the provisions of property settlement agreements: the economic circumstances of the parties, § 14-10-112 ; the division of property, § 14-10-113(1) ; and the provisions for maintenance, § 14-10-114(1). In re Carney, 631 P.2d 1173 (Colo. 1981).

In determining whether the terms of the original child support decree have become unconscionable, the trial court should apply the criteria set forth in subsection (1). In re Hughes, 635 P.2d 933 (Colo. App. 1981); In re Gomez, 728 P.2d 747 (Colo. App. 1986).

In a divorce action, particularly with respect to the care, custody, and maintenance of minor children, the court, at the time of making an award for the minor children, was obligated to appraise conditions as they exist at the time of the presentation. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955); Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957); Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963); In re Serfoss, 642 P.2d 44 (Colo. App. 1981); In re McKendry, 735 P.2d 908 (Colo. App. 1986).

Parent's net income is primary consideration in determining support. With regard to a parent's ability to pay support for his child, net income after reasonable and justifiable business expenses should be the primary consideration. In re Crowley, 663 P.2d 267 (Colo. App. 1983).

The applicable rule of support ability is the father's ability to pay weighed against the reasonable needs of his children, because society does not require a father in poor or moderate circumstances to support children on a higher scale just because the family once so lived or because the mother may desire to so live after the divorce. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

In making its award of child support, a trial court must weigh the father's ability to pay against the reasonable needs of the children. Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975).

Where the father's income, while substantial, is limited and subject to numerous demands, an order contemplating only the needs of the child and not bearing any relationship to the ability of the father to pay, and that could possibly become confiscatory of all of the father's available resources, is not valid. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

Finding as to earning capacity not confiscatory. Where the evidence supports the court's finding that the husband is capable of earning sums greatly in excess of his present net salary, although it appears that the court based its order on the present net income of the husband, the orders are not confiscatory. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Order that husband pay one-half of extraordinary medical and dental bills of the children, while unlimited as to amount or duration, was not confiscatory considering that the expenses were to be borne equally by each parent. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Factors considered in assessing propriety of child support provisions in separation agreement. In assessing the propriety of child support provisions in a separation agreement, the court must consider, in addition to unconscionability, other factors, such as the living standards the child would have enjoyed had the parties not dissolved the marriage and the physical and emotional well-being of the child. In re Brown, 626 P.2d 755 (Colo. App. 1981).

Child support obligations cannot be altered by agreement of the parents. Wright v. Wright, 182 Colo. 425, 514 P.2d 73 (1973).

Child support cannot be based on financial resources of nonparent with whom child living. The factors to be considered in making a support award do not include the financial resources of a nonparent with whom the child is living. In re Conradson, 43 Colo. App. 432, 604 P.2d 701 (1979).

Estimates of children's expenses to be considered. A trial court should not determine the amount of child support to be paid by a husband based solely on some amount that it feels is commensurate with his income but should make the determination on evidence that includes estimates of the actual needs and expenses of the children involved. In re Berry, 660 P.2d 512 (Colo. App. 1983).

A court must consider and make findings concerning a reasonable pro rata portion of necessary general family expenses as "necessary for support of the child." In re Klein, 671 P.2d 1345 (Colo. App. 1983).

Standard of living employed in determination of child support. Where the evidence shows that the standard of living at the time of separation in all probability would have continued but for the dissolution, that is the standard of living the court must employ in its determination of child support. In re Klien, 671 P.2d 1345 (Colo. App. 1983).

This section does not require specific findings of fact concerning children's assets, but only that, before determining the amount of support to be paid by a parent, the court consider, among other things the financial resources of the child. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

Obligation of support not affected by gifts or transfers. The intent of the uniform act, § 11-50-101 et seq., is to allow custodians to disburse funds whether or not the children are adequately supported. Gifts under that act do nothing to relieve a parent of the separate duty to support the children, nor does that act authorize the custodian to disburse the funds as a means of fulfilling the parent's obligation of support. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

Where a parent or parents voluntarily make gifts to children during the parents' marriage and the gifts are not in fulfillment of a court order to pay support, and where the parents are, at the time of dissolution of the marriage, able to meet their support obligations, the court may order that such gifts not be used to reduce the legal obligation of support. This rule assumes that the court has properly considered the financial resources of the children as required by subsection (1), before ordering the amount of support to be paid by the parents. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

Court may order life insurance naming children as beneficiaries be maintained by parent obligated to pay child support, just as its provisions for child support now extend beyond the death of the parent, unless otherwise provided. In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975).

Award of additional $6,000 for "recreational opportunities" for children was fairly embraced within the factors to be considered by court in dividing marital property and did not create a separate "recreational fund" for the needs of the children in the nature of child support. In re Jackson, 698 P.2d 1347 (Colo. 1985).

The judgment in the divorce action did not determine the limits of the husband's obligation to support the children, and the children were not parties to that action, and their rights were not concluded thereby. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

Where there was no verification of the father's income as required by this section, the trial court was directed to take additional evidence to determine the income and to modify the support order. In re Velasquez, 773 P.2d 635 (Colo. App. 1989).

Trial court may draw inference that parent was concealing income, where parent refused to make a willing disclosure of financial status. In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

Although the general assembly specifically provided for the use of extrapolation for combined gross income amounts falling between amounts shown in the guideline schedule, it did not provide for the use of extrapolation when combined gross incomes fall above or below the guideline schedule. In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

Section guidelines applicable in determination of amount of modified award despite fact that guidelines were enacted after the original support order. In re Anderson, 761 P.2d 293 (Colo. App. 1988).

Application of new child support guidelines resulting in more than a ten percent change in support due creates a rebuttable presumption that existing support award must be modified. In re Pugliese, 761 P.2d 277 (Colo. App. 1988).

The general assembly intended income imputation to be an important exception to the normal rule of computation based on actual gross income of the parent. This exception applies when the parent shirks his or her child support obligation by unreasonably foregoing higher

paying employment that he or she could obtain. The legislature meant this exception to prevent detriment to children by deterring parents from making employment choices that do not account for their children's welfare. Nevertheless, the general assembly intended courts to approach income imputation with caution. People v. Martinez, 70 P.3d 474 (Colo. 2003).

Imputing to voluntarily unemployed wife an income equal to income that of a person employed at the minimum wage even though evidence indicated that wife had been offered a higher paying job was not abuse of court's discretion given evidence of wife's ill health and problems in obtaining day care. In re Beyer, 789 P.2d 468 (Colo. App. 1989).

Imputing of full-time income to mother working part-time was error where mother did not voluntarily choose part-time employment but was required to stay home during the day to care for one of her children who had Downs syndrome. In re Pote, 847 P.2d 246 (Colo. App. 1993).

Court abused its discretion in finding that mother's underemployment was voluntary where mother worked only 32 hours per week so that she would have time to take the parties' child, who had cerebral palsy, to physical therapy. In re Foss, 30 P.3d 850 (Colo. App. 2000).

Interest was properly included in calculation of imputed income. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

"Overtime", in determination of parent's gross income (prior to 1996 amendment), does not include income from "extra" jobs. In re Marson, 929 P.2d 51 (Colo. App. 1996).

It was proper for the trial court to find that the overtime worked by father was required and to include such income within the father's gross income for the following reasons: (1) In his position as equity owner, director, and officer of the family-owned corporation, he was his own supervisor; (2) the evidence established, and the court found, that his position as vice-president and job-site foreman required that he work more than other employees as evidenced by his own testimony that his job as foreman could not always be done in a 40-hour week; and (3) the evidence established that the reason the father was required to work twenty to 25 hours of overtime per week was to assure that the jobs for which he was responsible would be completed in a timely fashion in order to avoid penalties that would work a direct financial disadvantage to the father. In re Rice & Foutch, 987 P.2d 947 (Colo. App. 1999).

Trial court did not abuse its discretion in excluding mother's overtime pay from the determination of her gross income. Mother chose to work extra hours voluntarily, and the overtime was not required as a condition of her employment. In re Dunkle, 194 P.3d 462 (Colo. App. 2007).

Section imposes no burden on one parent to prove that an available job exists for the other parent. Rather, the determination of income hinges on the ability of the parent to perform work. In re Mackey, 940 P.2d 1112 (Colo. App. 1997).

Court is merely required by subsection (7)(b)(I) to determine potential income and statute imposes no burden on one parent to prove that an available job exists for the other parent or that a particular job is available. In re Bregar, 952 P.2d 783 (Colo. App. 1997).

In order to impute income based upon a parent's voluntary underemployment, the trial court must examine all relevant factors bearing on whether the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment that he or she could obtain, and, if the parent is, the trial court must determine what he or she can reasonably earn and contribute to the child's support. If the trial court does not find that the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment, the court should calculate the amount of child support from actual gross income only. People v. Martinez, 70 P.3d 474 (Colo. 2003).

In determining if a parent is voluntarily underemployed, the factors the court may consider may include: The firing and post-firing conduct of the parent; the amount of time the parent spent looking for a job of equal caliber before accepting a lower paying job; whether the parent refused an offer of employment at a higher salary; whether the parent sought a job in the field in which he or she has experience and training; the availability of jobs for a person with the parent's level of education, training, and skills; the prevailing wage rates in the region; the parent's prior employment experience and history; and the parent's history of child support payment. People v. Martinez, 70 P.3d 474 (Colo. 2003).

The court must make findings sufficient to support a determination of underemployment. Imputing support without factual findings supporting a determination of underemployment is in error. In re Martin, 42 P.3d 75 (Colo. App. 2002); In re Garrett, 2018 COA 154, 444 P.3d 812.

Father not underemployed where mother presented no evidence that employment at income previously earned by father was available to him, no evidence of alternative employment at a higher level of remuneration than he presently earned, and no evidence that support to the children had been unreasonably reduced. In re Campbell, 905 P.2d 19 (Colo. App. 1995).

Trial court properly found father was voluntarily underemployed where father, a licensed attorney, had opted for inactive status and worked seasonally for an apple orchard at $10 per hour. In re Elmer, 936 P.2d 617 (Colo. App. 1997).

Trial court properly declined to find that father was voluntarily unemployed or underemployed where he voluntarily refused to file a claim for damages resulting from a work-related accident. In re England, 997 P.2d 1288 (Colo. App. 1999).

Loss of employment due to addiction and re-employment at a lower wage does not constitute voluntary underemployment; however, a person who has been involuntarily terminated from a position for drug use may subsequently become voluntarily unemployed or underemployed based on actions taken after the termination. In re Atencio, 47 P.3d 718 (Colo. App. 2002).

The trial court erroneously computed child support by relying solely upon the husband's income and disregarding the wife's statutory obligation to contribute to the child's support. If both parents have actual income, or a reasonable ability to earn income, it is erroneous as a matter of law to allocate the support obligation to one parent. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

In computing child support, the trial court erred in failing to consider either the wife's income as represented by the monthly maintenance award or her ability to earn income from the marital property distributed to her under the court's decree. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

For purposes of child support, father's income, as derived from the exercise of stock options, is limited to the difference between his

purchase price of the optioned stock and the price at which he then sold it. In re Campbell, 905 P.2d 19 (Colo. App. 1995).

Court should initially include the amount of a capital gain as a component of gross income for the year in which the gain was received. Thereafter, the court has authority to deviate from the child support guidelines if their application would be inequitable, unjust, or inappropriate. In re Zisch, 967 P.2d 199 (Colo. App. 1998).

When considering capital gains from the sale of property awarded in a property division, the court shall include in gross income only those capital gains realized from post-property division appreciation in the property. In re Upson, 991 P.2d 341 (Colo. App. 1999).

Court erred in not deducting ordinary and necessary expenses from capital gains when self-employed. For purposes of determining a person's gross income, when the person was self-employed as a builder of custom homes, ordinary and necessary expenses incurred to sell property should have been deducted from the person's gross income. In re Glenn, 60 P.3d 775 (Colo. App. 2002).

Husband's taxable distributions from a subchapter S corporation owned wholly by him and two partners, one of whom had left, while not properly considered as extra income, should have been included as gross income, less ordinary and necessary business expenses. In re Upson, 991 P.2d 341 (Colo. App. 1999).

In determining monthly child support obligation for the period following the year in which a capital gain is received, the court should impute as income to the party a rate of return that the net capital gain, after taxes, can reasonably be expected to generate. In re Zisch, 967 P.2d 199 (Colo. App. 1998).

Subsection (7)(a) does not provide for deduction of federal and state income taxes in computing gross income, including from lottery winnings, for purposes of calculating child support. In re Bohn, 8 P.3d 539 (Colo. App. 2000).

The amount received as gross income from lottery winnings is used to calculate child support for the year in which the income is received. Thereafter, if a parent invests a portion of the funds which were received as income in one year, any interest earned in the subsequent years is properly included as gross income for purposes of calculating child support in those years. In re Bohn, 8 P.3d 539 (Colo. App. 2000).

Income from an irrevocable trust of which wife was beneficiary should not be omitted from wife's gross income for purposes of calculating child support, even though the trial court correctly declined to treat the income as property subject to division. In re Pooley, 996 P.2d 230 (Colo. App. 1998).

If a parent is voluntarily unemployed or underemployed, child support must be based on the parent's potential income. While a parent is entitled to remain underemployed, the other parent's child support obligation may not be increased as a result. In re Mackey, 940 P.2d 1112 (Colo. App. 1997).

The magistrate did not err in imputing to the father the annual income he had earned prior to his resignation. The evidence amply supports the magistrate's determination that the father quit his job because he won the lottery, that he was physically capable of working but was voluntarily unemployed, and that his decision to resign from his job was not a good faith career choice. In re McCord, 910 P.2d 85 (Colo. App. 1995).

Trial court did not err in imputing income to husband absent findings regarding involuntary job loss, ability to pay, and needs of the child. Although the child's needs may be considered in determining the amount of child support that must be paid at a given level of income, nothing in subsection (7) suggests that the child's needs are relevant to the determination of a parent's income. In re Yates, 148 P.3d 304 (Colo. App. 2006).

Mother's decision to accept travel agency job, rather than to collect unemployment benefits until she found a higher paying job, was a good faith career choice and she therefore was not voluntarily underemployed. In re McCord, 910 P.2d 85 (Colo. App. 1995).

Trial court has the prerogative to determine that husband's decision to leave the practice of law and pursue cattle ranching does not fit the exceptions set forth in subsection (7)(b)(III)(B), where husband argued the change was a good faith career choice, was not intended to reduce the support available to his children, and did not unreasonably reduce support. In re Bregar, 952 P.2d 783 (Colo. App. 1997).

Person who is involuntarily terminated from his position due to his own misconduct is not voluntarily unemployed or underemployed. Whether a person lost a job because of willful or knowing misconduct is not determinative of whether the person is voluntarily unemployed or underemployed. What is determinative is the person's subsequent course of action and decision making. A person who has been involuntarily terminated from a position may thereafter become voluntarily unemployed or underemployed by not attempting in good faith to obtain new employment at a comparable salary or by refusing to accept suitable employment offers. People ex rel. J.R.T., 55 P.3d 217 (Colo. App. 2002), aff'd sub nom. People v. Martinez, 70 P.3d 474 (Colo. 2003).

"Support available to a child" in subsection (7)(b)(III)(B) is not synonymous with "basic child support obligation" elsewhere in this section. "Basic child support obligation", as defined in subsection (10), typically involves consideration of both parties' respective incomes. "Support available to a child" in subsection (7)(b)(III)(B), however, focuses on the career decision and any associated income change of the putatively underemployed parent that affects his or her ability to provide child support. People ex rel. Cerda v. Walker, 32 P.3d 628 (Colo. App. 2001).

Thus, if the mother has improved her ability to provide child support, it does not necessarily mean that the father's voluntary underemployment did not unreasonably reduce his ability to provide child support. Because both parents have a duty to support a child to the best of their abilities, an increase in one parent's ability to provide child support cannot serve as justification for the other parent's unreasonable reduction in his or her ability to provide child support. People ex rel. Cerda v. Walker, 32 P.3d 628 (Colo. App. 2001).

In computing parental income for purposes of establishing child support payments, child support for other dependents which a parent is legally obligated to pay, shall be deducted, and such deduction is not limited to amounts actually paid pursuant to such obligation. In re

Eze, 856 P.2d 75 (Colo. App. 1993).

The intent of this section is that a parent who is legally responsible for the support of other children be given a deduction, within statutory guidelines, for child support actually paid, regardless whether an order for that support had been entered. Thus, when a prior support order does not reflect the parent's full legal responsibility for support, the parent is entitled to a deduction under paragraph (d.5) of subsection (7), instead of under paragraph (d), in determining the parent's gross income. In re K.M.T., 33 P.3d 1276 (Colo. App. 2001).

Adequate proof of child support obligations actually paid for other dependents is required when computing parental income for the purpose of establishing child support for present dependents. In re Dickson, 983 P.2d 44 (Colo. App. 1998).

"Maintenance actually paid by a parent", as used in subsection (10)(a)(II), includes payments made by a parent to a former spouse. It is not limited to payments made to the mother of the child in the paternity proceedings before the court; it includes all maintenance payments made by a parent. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

The court must consider the father's and the child's financial resources in addition to considering the mother's resources in deciding the appropriate amount of the parents' contributions to the child's college expenses. In re Eaton, 894 P.2d 56 (Colo. App. 1995) (decided under law in effect prior to 1993 amendment).

Court did not err in including $350 rent in father's gross income without excluding allowable business deductions since record revealed nothing to warrant reversal of the trial court's implicit determination that any claimed expenses were not necessary or required to produce the rental income in question. In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

Trial court should have considered mother's detailed evidence of the children's living expenses and the fact that father provided and fully paid for a residence for the children in determining the child support obligation, given the difficulty in applying Colorado child support guidelines to the needs of children in Russia. People ex rel. A.K., 72 P.3d 402 (Colo. App. 2003).

Once the requisites for shared physical custody have been established, subsection (10)(c) requires that the child support obligation be adjusted by the mathematical formula contained in subsection (14)(b). In re Redford, 776 P.2d 1149 (Colo. App. 1989).

If trial court deviates from the guidelines, it is required to make findings that application of the guidelines would be inequitable and specifying the reasons for the deviation. Thus, when court deviated from guidelines, it was required to find either that one of the relevant factors in subsection (1) applied or that the husband did not make contributions to the child's expenses beyond what he was obligated to pay in child support. In re Marshall, 781 P.2d 177 (Colo. App. 1989), cert. denied, 794 P.2d 1011 (Colo. 1990).

Modification of award required where trial court deviates from guidelines but fails to make findings required by subsection (3)(a). In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

Trial court must make provision for expense of transportation of child between homes of parents, which expense is to be divided between parents in proportion to their adjusted gross income. In re Marshall, 781 P.2d 177 (Colo. App. 1989), cert. denied, 794 P.2d 1011 (Colo. 1990); In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

Trial court did not err in including transportation expenses in the child support calculation before those expenses were actually known since there was no dispute as to the parents' income and the magistrate was free to adopt the percentage share of the father's income as shown in the father's computation. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

Husband's personal injury settlement payments are a financial resource that constitutes "gross income" under the child support guidelines. In re Fain, 794 P.2d 1086 (Colo. App. 1990).

Proper for court to base child support calculation on father's monthly income from his railroad annuity despite that income deriving from a previously divided asset since the property division does not change the status of those monthly payments as an income source to be considered in determining the husband's child support obligation. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

For investments, income is limited to the gain on the original investment. However, a party's characterization of payments as a return on investment is not binding on the court. In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

Trial court did not err in using a two-year average of father's investment income when calculating father's overall income for the purposes of calculating child support. In re Rice and Foutch, 987 P.2d 947 (Colo. App. 1999).

No error in the trial court's conclusion that father's "actual gross income" included interest or dividends which had accrued to his IRA but which he had not withdrawn. The use of the word "actual" in subsection (7)(a) does not limit gross income to that "actually received". In re Tessmer, 903 P.2d 1194 (Colo. App. 1995).

Trial court correctly excluded father's voluntary enhanced retirement program (VERP) benefit from calculation of his gross income. In determining whether the VERP benefit constitutes income for child support purposes, the court must answer the following questions: (1) Is the VERP benefit severance pay? (2) Is the VERP benefit an employer contribution to pension and retirement benefits? (3) Should an undistributed employer contribution be treated as income? (4) Does father's option to elect a lump sum distribution or monthly annuity payments of his retirement account, including the VERP benefit, mean that the VERP benefit should be credited as income? In re Mugge, 66 P.3d 207 (Colo. App. 2003).

The requirements that father voluntarily retire rather than be terminated and that he provide a general release of the employer distinguish the VERP benefit from a typical severance pay program, and thus the VERP benefit was not severance pay includable within the statutory definition of gross income. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

The employer denominated the VERP benefit as a retirement benefit, credited the benefit to the father's retirement account in its pension plan,

and calculated the amount using age and years of service, therefore the VERP benefit was an employer-contributed pension or retirement benefit. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

Because the employer determined the amounts of pension plan contributions and the employees did not have the option of directly receiving the amounts as wages, prior to any distribution, the employer's VERP contribution to father's account in its pension plan did not constitute gross income for consideration under the child support guidelines. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

VERP benefit should not be treated as gross income for child support purposes merely because father could have elected a lump sum distribution or monthly annuity payments instead of rolling the benefit over into another qualified pension plan. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

Employer contributions to father's insurance plans not income for child support purposes. Similar to employer retirement plan contributions, father did not have the option to take the contributions as wages and use them for general living expenses, so such contributions are not properly considered income for purposes of the child support calculation. In re Davis, 252 P.3d 530 (Colo. App. 2011).

Deferred compensation in father's nonqualified retirement plan is not income for child support purposes under the Uniform Parentage Act. Applying the definition of income in this section, the court determined that it was not income because father did not have the ability to use it to pay his expenses, including child support. Father was not vested in the plan, there was no account in his name, the plan would pay only upon retirement if certain conditions were met, and father would forfeit the plan if he was fired, quit, or retired before age sixty-five, and once retired, it would pay out over 10 years. In re Interest of N.J.C., 2019 COA 153M, __ P.3d __.

Extraordinary medical expenses were required to be divided between the parties in direct proportion to their adjusted gross income and added to the basic child support, even where the child's condition existed and was known at the time of the original agreement where the parties agreed to each pay one-half of these expenses. In re Nielsen, 794 P.2d 1097 (Colo. App. 1990).

Meaning of "adjusted gross income". Definition of "adjusted gross income" in subsection (10)(a) does not provide for the deduction of federal and state income taxes or FICA taxes in computation for child support purposes. In re Baroni, 781 P.2d 191 (Colo. App. 1989).

The fact that certain items may be deductible on a party's federal income tax return does not require exclusion from gross income under the child support guideline. In re Eaton, 894 P.2d 56 (Colo. App. 1995).

Trial court did not err in determining that "gross income" included the foreign service premium, the commodities and services allowance, and the expatriate tax equalization payment made to compensate person for the cost of living in a foreign locale. In re Stress, 939 P.2d 500 (Colo. App. 1997).

Meaning of "extraordinary medical expenses". Extraordinary medical expenses, as defined in subsection (12)(b), must be "uninsured". Where psychological counseling services were insured expenses under the father's medical insurance plan, trial court erred in requiring him to pay for child's counseling by a psychologist not participating in the plan absent a finding that such counseling was not adequately or reasonably covered by the plan. In re Ahrens, 847 P.2d 257 (Colo. App. 1993).

A parent's obligation for extraordinary medical expenses is an integral part of the child support obligation and, as such, is nondischargeable in bankruptcy. Parent who provided letter to court asserting the obligation had been discharged was ordered to pay for his share of the extraordinary medical expenses on behalf of the children. In re Campbell, 140 P.3d 320 (Colo. App. 2006).

Basic allowance for quarters (BAQ) constitutes an in-kind payment that is income for child support purposes. In re Long, 921 P.2d 67 (Colo. App. 1996).

Military housing and food allowances are part of gross income under the plain language of subsection (5)(a)(I)(X). In re Parental Responsibilities of L.K.Y., 2013 COA 108, 410 P.3d 492.

Military housing and food allowances that are not paid to children or on behalf of the children but rather are paid to the parent as part of parent's salary should not be deducted under subsection (11)(b) as financial resources of the children despite the fact that the parent is the recipient of temporary child support. In re Parental Responsibilities of L.K.Y., 2013 COA 108, 410 P.3d 492.

Increased cost for the addition of teenage son to automobile insurance is not an extraordinary expense under subsection (13). In re Long, 921 P.2d 67 (Colo. App. 1996).

Court does not have authority to impute a gross income where actual income is tax exempt. Rather the amount received each month shall be deemed to be a gross income. In re Fain, 794 P.2d 1986 (Colo. App. 1990).

"Gross" income for purposes of calculating child support can include the amount of income an asset could reasonably be expected to generate even if that asset has been consumed prior to the support determination. In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

The burden is upon the parent contesting the support order to prove that a deviation from the presumptive award is both reasonable and necessary. In re Baroni, 781 P.2d 191 (Colo. App. 1989).

No automatic adjustment of gross income for non-ordered support. Non-ordered child support payments to others are not to be determined by a mechanical application of the child support schedule. Rather the impact of payment of non-ordered obligations must be evaluated as provided in subsection (3)(a). People in Interest of C.D., 767 P.2d 809 (Colo. App. 1989).

Party alleging that payment of non-ordered support obligation requires deviation from presumptive award determined under statutory guidelines has burden to prove the claim. Deviation from guidelines must be shown reasonable and necessary considering certain enumerated factors. People in Interest of C.D., 767 P.2d 809 (Colo. App. 1989).

An agreement of the parties regarding child support, custody, and visitation does not bind the court, and the court must review child support guidelines to determine the adequacy of the child support agreement of the parties. In re Micaletti, 796 P.2d 54 (Colo. App. 1990).

Trial court's apportionment of costs for child's guardian ad litem upheld where court apportioned costs between mother and father on the basis of the underemployed mother's potential income. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

Specific written or oral findings must be made by the court to support deviation from the child support amounts specified by the statutory schedule, and this applies to approving a stipulation of the parties. In re Miller, 790 P.2d 890 (Colo. App. 1990); In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

Where the parties' gross income exceeded the uppermost level of income scheduled in the guidelines and the minimum child support amount is presumed to be set forth in the highest level in the guidelines, this presumption may be rebutted, and the court must exercise discretion considering the financial resources of both parents and the children, the physical and emotional condition of the children and their educational needs, the needs of the noncustodial parent, and the standard of living that the children would have enjoyed had the parents' marriage not been dissolved. In re Schwaab & (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Where parties' gross income exceeded the uppermost level of income in the guidelines, trial court was required to calculate the minimum presumptive amount of support and, in addition, translate the children's higher standard of living into specific monetary requirements. In re Bookout, 833 P.2d 800 (Colo. App. 1990), cert. denied, 846 P.2d 189 (Colo. 1993).

There is a rebuttable presumption that the basic child support obligation at the upper level of the guidelines is the minimum presumptive amount of support. Where father won five million dollars in the Colorado state lottery and the parties' adjusted gross incomes thereafter exceeded the uppermost levels of the guidelines, the court remanded the case for a redetermination of child support. In re Foss, 30 P.3d 850 (Colo. App. 2000).

Where parties' income exceeded the highest combined gross income level set out in the guidelines, the gross disparity in their incomes may explain the initial basis for deviation by the court, but additional findings concerning the needs of the children must be entered to establish the amount of deviation ordered. In re Upson, 991 P.2d 341 (Colo. App. 1999).

Where parties' income exceeded the highest combined gross income level set forth in the guidelines, the amount set for child support at the highest combined gross income level reflects the minimum, not maximum, presumptive amount. In such circumstances, the court may use its discretion to determine a higher amount based on the factors set forth in subsection (2)(b). In re Boettcher, 2018 COA 34, 454 P.3d 321, aff'd, 2019 CO 81, 449 P.3d 382.

Because the children's needs are of paramount importance in determining the child support obligation, in calculating the appropriate amount of child support, the court should look at, among other things, the costs of food, shelter, clothing, medical care, education, and recreational costs at the level enjoyed before the dissolution. In re Schwaab & Rollins, 794 P.2d 1112 (Colo. App. 1990).

Viewing the statute as a whole, the means of meeting the "particular educational needs of a child" are not limited to providing private school only when a child has a learning disability or otherwise qualifies for a program of special education. In re Payan, 890 P.2d 264 (Colo. App. 1995).

Where the mother has sole custody of the three children, and there is a different visitation schedule for each child, in deciding whether the shared custody calculation for child support is applicable, the court must calculate the number of overnight stays for each child, divide each by three and total the results to determine the total amount of time the father spends with the children. If the cumulative number of overnights is less than 25% of the year, the shared custody calculation is inapplicable. In re Quam, 813 P.2d 833 (Colo. App. 1991).

Court erred in beginning the child support calculation for children with different parenting time schedules who are in the mother's primary care by using a separate worksheet for each child. This error effectively treated each child as an only child under the guidelines and resulted in an inflated child support amount. The court did not enter sufficient findings to support a deviation from the presumed amount under the guidelines. In re Wells, 252 P.3d 1212 (Colo. App. 2011).

Each parent in a dissolution proceeding has the obligation to support their children to the best of their abilities, and the court may determine that one parent's failure to find or keep a job is a voluntary refusal to carry out a support obligation. In re Nordahl, 834 P.2d 838 (Colo. App. 1992).

Costs of high school extracurricular activities such as cheerleading, driver's education, sports, and debate do not qualify as higher educational expenses under subsection (13). In re Ansay, 839 P.2d 527 (Colo. App. 1992).

Inclusion of ice skating fees in the support calculation as a reasonable and necessary expense was warranted. In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

Trial court erred in ordering parent to pay percentage of children's estimated educational expenses without specifying sum to be paid. In re Pollock, 881 P.2d 470 (Colo. App. 1994).

Because of a lack of certainty of future bonuses, the court did not abuse its discretion in refusing to estimate the amount of any possible future bonuses for present support purposes. In re Finer, 920 P.2d 325 (Colo. App. 1996).

The trial court did not err in not considering income from the parties' mentally retarded adult son in calculating child support obligation. The trial court is not bound to deduct automatically the amount of a child's income from the basic child support obligation when that income does not reduce the need for parental support. In re Folwell, 910 P.2d 91 (Colo. App. 1995).

Trial court did not abuse its discretion setting appropriate amount of child support when it included the child's pro rata share of the

standard and ongoing living expenses in wife's monthly needs. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd, 25 P.3d 28 (Colo. 2001).

The first $250 of uninsured medical expenses per child per year is included in the shared basic child support obligation of parents with equal parenting time. The trial court properly rejected father's argument that wife should pay the first $250 in uninsured medical expenses per year per child. Each party must pay uninsured medical expenses incurred during their parenting time until the child's expenses for the year exceed $250, at which time a parent may seek reimbursement from the other for the proportional share of expenses incurred for the child. A court could deviate from the guidelines if one parent were likely to incur all of these expenses despite shared equal parenting time. In re Alvis, 2019 COA 97, 446 P.3d 963.

Court did not err in failing to include husband's GI bill tuition assistance and stipend for books and supplies in husband's income for purposes of calculating child support. The tuition payment was not available for husband's discretionary use or to reduce living expenses and would in no discernable way assist him in paying maintenance or child support. In re Tooker, 2019 COA 83, 444 P.3d 856.

B. Discretion of Court.

Determination of child support is in the sound discretion of the trial court, and in the absence of an abuse of that discretion, not shown here, it will not be disturbed on review. Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959); Lanz v. Lanz, 143 Colo. 73, 351 P.2d 845 (1960); Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Ferguson v. Ferguson, Colo. App. , 507 P.2d 1110 (1973); Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975); In re Krise, 660 P.2d 920 (Colo. App. 1983); In re Garcia, 695 P.2d 774 (Colo. App. 1984); In re Pierce, 720 P.2d 591 (Colo. App. 1985).

Alimony, support, and property settlement issues were formerly considered together to determine whether the court had abused its discretion, and in making the determination, the court would consider a variety of factors, including whether the property was acquired before or after marriage, the efforts and attitudes of the parties towards its accumulation, the respective ages and earning abilities of the parties, the conduct of the parties during the marriage, the duration of the marriage, their stations in life, their health and physical condition, the necessities of the parties, their financial condition, and other relevant circumstances. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Court may consider only relevant provisions of section. In awarding child support, a trial court is obligated to consider only the relevant provisions of this section. It commits reversible error by considering matters related to adoption. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

In granting a divorce a court has no authority under the statute to decree that a part of the property of the husband shall be the sole property of his children. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964); Giambrocco v. Giambrocco, 161 Colo. 510, 423 P.2d 328 (1967).

The trial court was without authority to direct the husband to give to each of his children a share in a future estate which he may or may not acquire, because the obligation of the defendant is to provide reasonable support for his children according to their need, within the range of his ability, and a father of children is under no obligation to settle any property upon his children, or to deed them an interest in any asset; on the contrary he may by will or deed or other voluntary act disinherit a child if he sees fit to do so. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964); Giambrocco v. Giambrocco, 161 Colo. 510, 423 P.2d 328 (1967).

Former husband may not discover the amount of former wife's current husband's income but may discover the existence of former wife's income in the form of regular payments made to the former wife by her current husband. In re Nimmo, 891 P.2d 1002 (Colo. 1995).

Although trial court abused its discretion in modifying child support and cause was remanded upon appeal, the trial court order for child support remained in full force and effect pending entry of a new support order. In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

Court improperly ordered noncustodial mother to make support payments when the court made a finding that the mother did not have the financial ability to pay child support. In re Jarman, 752 P.2d 1068 (Colo. App. 1988).

There is a rebuttable presumption in any action to establish or modify child support that $1,000 is the minimum presumptive amount of child support for one child when the parental combined income exceeds the uppermost levels of the guideline; however, the trial court may exercise its discretion and choose to set a different amount after consideration of all relevant factors. In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

As a matter of law, the trial court may not initially refuse to apply child support guidelines. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

Cost of a nanny may be included in the calculation of child support. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Trial court erred in failing to divide uninsured medical expenses in proportion to parents' adjusted gross incomes without making necessary findings to support deviation from guidelines. In re Pollock, 881 P.2d 470 (Colo. App. 1994).

The trial court has discretion to order that the reasonable and necessary costs of a child's attendance at a private school be divided between the parents in proportion to their income. In re Elmer, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)); In re West, 94 P.3d 1248 (Colo. App. 2004).

Attendance at a private school may be approved where it is necessary to meet the particular educational needs of the child. In re West, 94 P.3d 1248 (Colo. App. 2004).

In determining whether the children's parochial school tuition should be approved prospectively as a reasonable and necessary expense, the court should consider the parents' income, the standard of living that the children would have enjoyed if the parents' marriage had not been dissolved, and other factors as appropriate. In re West, 94 P.3d 1248 (Colo. App. 2004).

The trial court exceeded its authority in ordering the husband to fund an educational trust for the benefit of the parties' son. The courts have been granted no authority to order the creation of a trust for the benefit of minor children. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

Trial court did not abuse its discretion in ordering the husband to pay all college expenses of the parties' son. Use of word "divided" in subsection (13) does not imply that both parents must contribute to each item of support; court is given discretion in subsection (1) to order "either or both" parents to pay support. In re Huff, 834 P.2d 244 (Colo. 1992) (decided under law in effect prior to enactment of subsection (1.5), dealing specifically with postsecondary education support).

A parent may also be required to contribute to the costs associated with a child's athletic activities in some cases. The child's particular needs and predissolution standard of living are among the factors to be considered by the court. In re West, 94 P.3d 1248 (Colo. App. 2004).

Psychiatric therapy for child was properly included as an extraordinary medical expense in an order under this section. In re Elmer, 936 P.2d 617 (Colo. App. 1997).

Trial court erred in allocating to father all of child's travel expenses for visitation, rather than proportionately allocating them between the parties, in absence of finding that such allocation was appropriate. In re Elmer, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)).

Child support guideline does not provide for allocation between the parties of a parent's travel expenses. In re Elmer, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)).

Adjustment of the child support amount to allow for transportation expenses is not limited to expenses incurred in long distance or interstate travel and does apply to automobile expenses incurred in transporting a child between the homes of the parents. In re L.F., 56 P.3d 1249 (Colo. App. 2002).

Award constituted an application of, and not a deviation from, the guidelines where the evidence and the findings were sufficient to support only a partial offset of the child's income for her pro rata share of reasonable and necessary monthly expenses as well as the maintenance of a fund for vacations, one-time purchases, and other occasional expenses. In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

The burden is upon the parent contesting the support order to prove that a deviation from the presumptive award is both reasonable and necessary. In re Stress, 939 P.2d 500 (Colo. App. 1997).

Trial court did not abuse its discretion in finding that parent did not meet this burden. In re Stress, 939 P.2d 500 (Colo. App. 1997).

Trial court may deviate from the child support guidelines set forth in this section if the application of such guidelines would be inequitable, but if it does deviate, the court must make specific factual findings to support any deviation and failure to make such specific findings requires reversal. In re English, 757 P.2d 1130 (Colo. App. 1988); In re Hoffman, 878 P.2d 103 (Colo. App. 1994); In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

The trial court has discretion to deviate from the guidelines where justified, provided it makes appropriate findings. In re Thornton, 802 P.2d 1194 (Colo. App. 1990); In re Payan, 890 P.2d 264 (Colo. App. 1995).

Deviation from child support guidelines is not justified by hardship resulting solely from application of the guidelines, absent other unusual or unique financial circumstances. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

Taking care of three-year-old triplets may be considered extraordinary circumstances justifying a deviation from the child support guidelines. In re Ikeler, 148 P.3d 347 (Colo. App. 2006), rev'd on other grounds, 161 P.3d 663 (Colo. 2007).

The court must make specific factual findings, however, justifying such a deviation. In re Ikeler, 148 P.3d 347 (Colo. App. 2006), rev'd on other grounds, 161 P.3d 663 (Colo. 2007).

The finding that it is important for the child to spend extended time with mother is, in itself, irrelevant to the issue of whether there should be a deviation in child support. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

A finding that one parent has a higher cost of living will not, in and of itself, ordinarily justify deviating from the guidelines. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

Case remanded for reconsideration of deviation from guidelines based on new spouse's income under the guidelines in In re Nimmo, 891 P.2d 1002 (Colo. 1995). In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

Subsection (13) does not require an automatic adjustment to presumptive amount of child support but rather gives the trial court discretion to determine if an adjustment on account of a child's financial resources is appropriate. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

Application of child support guidelines establishes an amount of support that is presumed to be necessary to meet a child's needs; however, the extent to which an unemancipated child's income should be used to defray basic support obligations is within the trial court's discretion and depends upon the totality of circumstances in a particular case. In re Pollock, 881 P.2d 470 (Colo. App. 1994); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

Trial court did not abuse its discretion in declining to include child's receipt of public support payments as income available to the child under subsection (13)(b). Such payments represent gratuitous contributions from the government and do not reduce the parent's duty to provide support. They are intended to supplement other income, not to substitute for it. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

But it is proper under subsection (13)(b) for the court to consider mother's receipt of social security disability payments on behalf of the children as an adjustment to child support because those payments actually diminished the children's basic needs. In re Quintana, 30 P.3d 870 (Colo. App. 2001).

Court is authorized under this section to calculate child support based on a determination of a parent's potential income if parent is voluntarily unemployed or underemployed. In re Marshall, 781 P.2d 177 (Colo. App. 1989), cert. denied, 794 P.2d 1011 (Colo. 1990).

Trial court did not abuse its discretion in reducing the father's amount of child support, where it found that the father was not voluntarily underemployed but had terminated his full time employment to return to college to obtain an advanced degree. In re Ehlert, 868 P.2d 1168 (Colo. App. 1994).

If a court determines that a parent engaged in a good faith effort to achieve higher income, financial independence, or a career in the foreseeable future, to impute income to that parent would unfairly penalize the parent's effort at self-sufficiency and would be contrary to the public policy of encouraging the financial independence of dependent spouses. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

Wife was engaged in a good faith effort to achieve a college education in order to further her income position where the evidence showed she had not worked for approximately nine years and she had completed two years of study towards a bachelors degree in a three-year period, during which time she had achieved a 3.72 grade point average. She had not attended school the previous year because of the death of her current spouse's mother and the hospitalization and continued medical complications and concerns of one of the children. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

Trial court properly determined that father, a convicted sex offender, was voluntarily underemployed. Although the conviction likely limited father's employment opportunities, father did not attempt to find gainful employment despite having an M.B.A. degree, a real estate broker's license, and many years of work experience. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Extent to which a child's income and assets should be applied to the payment of educational expenses or basic support is a question of fact to be determined by the trial court under the totality of circumstances in each case. In re Barrett, 797 P.2d 848 (Colo. App. 1990); In re Pollock, 881 P.2d 470 (Colo. App. 1994); In re Davis, 252 P.3d 530 (Colo. App. 2011).

The limit on postsecondary expenses is the amount calculated as if the child receiving such education had been the only child. Legislative history makes it clear that the 1994 amendment was intended to clarify rather than change the statute. In re Parker, 886 P.2d 312 (Colo. App. 1994).

Trial court did not abuse discretion in not deviating from the child support guidelines in order to avoid calculating child support based on IRA interest and dividends. In re Tessmer, 903 P.2d 1194 (Colo. App. 1995).

Absent a finding that a child has been diagnosed as having a mental disorder, a noncustodial parent cannot be required to share in the costs for therapy, whether such costs are included within the child support obligation or ordered to be paid separately. Absent the need for therapy because of a mental disorder, such cost must be borne by the party who makes the decision to provide the child with therapy. In re Finer, 920 P.2d 325 (Colo. App. 1996).

Court may not deviate downward from the presumptive child support award to ensure continued eligibility for public assistance benefits. Court erred in ordering mother to pay $245 per month in child support instead of the statutory amount of $399 per month in order to preserve the paternal grandparents' public daycare benefits. In re Hein, 253 P.3d 636 (Colo. App. 2010).

Applied in In re Rosser, 767 P.2d 807 (Colo. App. 1988).

C. Modification.

The provisions of subsections (2) and (7)(e) indicate that the general assembly did not intend to include health insurance premiums in the ordinary and necessary expenses covered by the basic child support obligation set forth in the guidelines; therefore, health insurance premiums paid by the father cannot be deducted from the total amount of the father's support obligation under the child support guidelines. In re English, 757 P.2d 1130 (Colo. App. 1988).

Where there was no evidence presented to establish the asserted extra cost of purchasing health insurance through the employment of the father's present spouse, there was no basis for the trial court to apply this section. In re Ansay, 839 P.2d 527 (Colo. App. 1992).

Application of the provisions of this section by the court for the modification of a prior child support order entered under the Uniform Parentage Act was error as a matter of law. Ashcraft v. Allis, 747 P.2d 1274 (Colo. App. 1987).

Pre-1991 postsecondary education support orders. Subsection (1.5)(c.5) allows the modification of pre-1991 postsecondary education support orders. In re Chalat, 112 P.3d 47 (Colo. 2005).

Substantial and continuing changed circumstances requirement and postsecondary education support orders. Absent application of the age of emancipation (§ 14-10-122(4)) or medical insurance (§ 14-10-122(1)) exceptions, the court's continuing jurisdiction to modify postsecondary education support orders is invoked only upon a showing of substantial and continuing changed circumstances by the party seeking modification. Nothing in the plain language of subsection (1.5)(c.5) or § 14-10-122 alters this clear, unambiguous requirement. In re Chalat, 112 P.3d 47 (Colo. 2005).

Effect of amendments to postsecondary education support scheme on the substantial and continuing changed circumstances requirement. The general assembly did not express an intent that its enactments of amendments to the postsecondary education support scheme alone automatically triggers a court's continuing jurisdiction to modify child support. The requirement for substantial and continuing changed circumstances must still be shown. In re Chalat, 112 P.3d 47 (Colo. 2005).

Order specifying amount where original order merely imposed duty. Where an original court order imposes a duty of support without specifying an amount under the criteria of this section, a subsequent court order specifying the amount need only conform with this section, rather than the modification requirements of § 14-10-122. In re Saiz, 634 P.2d 1020 (Colo. App. 1981).

If the financial ability of the husband and father improves, and the needs of the minor children increase, the jurisdiction of the court to make additional orders for the care and maintenance of the minor children may be invoked at any time in a proper proceeding. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Trial court properly denied father's motion for modification, which was based solely on the 1993 statutory amendment to subsection (1.5)(b)(I) and which did not allege any substantial or continuing change in the parents' or the child's circumstances. In re Eaton, 894 P.2d 56 (Colo. App. 1995).

The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification. Thus, if child support is modified, the modification should be effective as of the date of filing of the request therefor. In re Mackey, 940 P.2d 1112 (Colo. App. 1997).

Any order reducing the amount of support money operated only in future. Engleman v. Engleman, 145 Colo. 299, 358 P.2d 864 (1961).

The proposition that future support payments could not be reduced as long as a husband was in default, even though a proper showing could be made of inability to pay, was not the law in Colorado. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

Parent's medical expenses relevant to modification as well as to initial determination of support. Where change in presumed support under guideline based on gross income is less than ten percent, the parent seeking modification may nonetheless establish a substantial and continuing change in circumstances, justifying a deviation from the guideline, due to an increase in the parent's personal medical expenses. In re Ford, 851 P.2d 295 (Colo. App. 1993).

Deviation from the guidelines in calculating the basic child support obligation was error where court reasoned that father would not be able to support himself if required to pay the amount specified in the guidelines in light of his required contribution to the extraordinary medical expenses required by the child. In re Nielsen, 794 P.2d 1097 (Colo. App. 1990).

In circumstances where father is providing health insurance coverage for new spouse and father's other children living with him, in addition to child who is subject to order, the amount of the premium attributable to such child was "not available or cannot be verified" and trial court erred by refusing to allow the addition to the support obligation for a portion of that premium. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

Child's income may allow for a reduction of the support obligation if the court determines that it does "actually diminish basic needs" of child. In re Kluver, 771 P.2d 34 (Colo. App. 1989).

Mother's receipt of social security disability payments on behalf of the children actually diminished children's basic needs and court did not abuse its discretion by including the payments in the adjustment of the father's child support obligation. In re Quintana, 30 P.3d 870 (Colo. App. 2001).

Modification of award based on child's income for purposes of extraordinary educational expenditures or the satisfaction of basic needs is a question of fact to be determined under the totality of circumstances in each case. In re Barrett, 797 P.2d 848 (Colo. App. 1990).

A trial court is not bound to deduct automatically the entire amount of a child's income from his or her educational costs or basic support obligation but must look at the child's reduced need, if any, for parental support. In re Barrett, 797 P.2d 848 (Colo. App. 1990); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

Trial court abused its discretion in refusing to deviate from a strict application of the guideline calculations for basic child support where certain expenses were shown to be duplicative. In re Barrett, 797 P.2d 848 (Colo. App. 1990).

The court did not err in denying a modification for contributions earned by the children where evidence showed that the older children did not receive any Pell grants toward their college expenses, and testimony regarding the additional expenses towards which the children put their earnings was sufficient for the court to determine that a reduction in the amount of support was not appropriate. In re Ansay, 839 P.2d 527 (Colo. App. 1992).

A trial court does not err if it requires parents who are legally responsible for support to contribute to a dependent child's needs in lieu of requiring the child to expend all of his or her own resources. In re Pring, 742 P.2d 343 (Colo. App. 1987); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

Child support obligations to children of a second marriage may be deducted from a parent's income when the court is considering a modification of child support ordered for children of a first marriage. In re Hannum, 796 P.2d 57 (Colo. App. 1990).

The allocation of tax exemptions may be considered when the court is considering a modification of child support. In re Oberg, 900 P.2d 1267 (Colo. App. 1994).

In considering a modification of child support, the trial court is bound by the facts and circumstances of the parents and the children as they exist at the time of the hearing. If there is a pending foreclosure sale, the court should await the sale's completion and complete its record on the amount of debt incurred before it determines the modification question. In re Kimbrough, 784 P.2d 852 (Colo. App. 1989).

Court did not violate prohibition against adjustment that results in support payments lower than previously existing support order under subsection (7)(d.5)(II) when the decrease in the husband's child support obligation was due solely to the switch to a shared custody child support calculation and a decrease in the wife's work-related child care expenses. The decrease was entirely unrelated to the income adjustment given to the wife for her after-born child. In re Martin, 910 P.2d 83 (Colo. App. 1995).

Court had authority to recalculate child support using a different worksheet than previously used. Once court gained jurisdiction to modify child support pursuant to the wife's motion, the court is not prohibited from utilizing the proper formula for such support, particularly when that formula was part of the same statute under which the wife filed her motion to modify. In re Martin, 910 P.2d 83 (Colo. App. 1995).

Rebuttable presumption of a change of circumstances existed under the child support guidelines where the parties changed custody of one of the minor children from the mother to the father. In re Miller, 790 P.2d 890 (Colo. App. 1990).

For purpose of calculating and modifying child support, trial court properly included in gross income of husband an amount which a one-time post-decree inheritance could be expected to yield, although calculation of such amount was incorrect. In re Armstrong, 831 P.2d 501 (Colo. App. 1992).

Trial court did not impermissibly interfere with husband's constitutional property rights by including in gross income an amount which a one-time post-decree inheritance received by husband could be expected to yield. In re Armstrong, 831 P.2d 501 (Colo. App. 1992).

A monetary inheritance should be included in gross income for purposes of calculating child support in the year that the beneficiary withdraws from the inheritance and relies on it as a source of income. In re A.M.D., 78 P.3d 741 (Colo. 2003).

That remainder of a monetary inheritance that is not withdrawn and spent should be treated as an income-producing asset and the actual interest income it generates should be included in gross income. In re A.M.D., 78 P.3d 741 (Colo. 2003).

In determining how much of the principal of an inheritance to include in gross income, the trial court should apply a two-part test: (1) The court must decide whether an inheritance is monetary; and, if so, (2) whether the recipient used the principal as a source of income either to meet existing living expenses or to increase the recipient's standard of living. In re A.M.D., 78 P.3d 741 (Colo. 2003).

Court did not make findings required by subsection (14.5) to modify the allocation of federal income tax exemptions between the parties. Order allocating exemptions to the parties in alternating years, therefore, was reversed and the cause remanded to the trial court. In re Trout, 897 P.2d 838 (Colo. App. 1994).

Failure to submit financial information to the trial court and the failure of the trial court to review the modified agreement between the parties rendered the resulting trial court order subject to being set aside under C.R.C.P. 60 (b)(5). In re Smith, 928 P.2d 828 (Colo. App. 1996).

Court's award of income tax exemption to father in alternate years, as part of court's judgment on mother's motion to modify child support was supported by the record and complies with the requirements of this section. The court was not required to hold an additional hearing before amending the judgment when it had already heard testimony concerning the parties' incomes and had determined the percentage contribution of the parties to the costs of raising the child. The court could conclude on that record that father would receive a tax benefit from the exemption award. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

Father's post-dissolution motion for reimbursement of previously paid child care expenses was properly denied. Reimbursement is not mandated under this section and the court has discretion whether to refer the parties to mediation. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

Court should compare child support order currently in effect with child support guidelines to determine whether a substantial and continuing change of circumstances exists. Although the parties' current child support order was the result of the parties' agreement to a reduced amount of child support, the court should have compared the current child support order with the presumed child support obligation under the guidelines at the time of mother's motion to determine if mother had shown a substantial and continuing change of circumstances sufficient to maintain her motion for modification. In re M.G.C.-G., 228 P.3d 271 (Colo. App. 2010).

D. Termination upon Emancipation.

The resolution of the question of emancipation was concerned more with the extinguishment of parental rights and duties than with the removal of the disabilities of infancy, and it occurred only when there was a complete severance of the filial tie, and the child's possession or lack of possession of the right to vote had little or no bearing on the determination as to whether such tie had or had not been severed. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

The enactment of the voting rights act of 1970, lowering the federal voting age to 18 years, did not emancipate a 20 year old son, as a matter of law. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

In Colorado, a person retains the status of minority until the age of 21 years, and that statutory definition is controlling as to the age at which emancipation occurs as a matter of law, except where otherwise provided by statute. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

In the absence of emancipation occurring upon attainment of majority, the question of whether a child was emancipated was essentially one of fact determinable by the trier of fact. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

Change in the age of emancipation and duty of support in this section did not automatically modify a parent's existing obligation of support which required obligor to pay support until child reached 21 years. In re Dion, 970 P.2d 968 (Colo. App. 1997).

The marriage of the minor daughter terminated the parental duty of support and no enforceable rights to support payments could thereafter accrue to the mother. Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970).

Support for dependent child after attainment of majority. This article gives the court jurisdiction to enter a decree for support of a dependent child of the marriage after attainment of majority. In re Koltay, 646 P.2d 405 (Colo. App. 1982), aff'd, 667 P.2d 1374 (Colo. 1983).

Once a child is over 21 and physically and mentally capable of self support, such child is not entitled to receive support payments from father, despite the fact that the child had an expectation of attending college had parents not divorced. Factors such as standard of living child would have enjoyed and educational needs can only be applied in determining child support if the child had not reached majority. In re Plummer, 735 P.2d 165 (Colo. 1987).

Express provision for post-emancipation support, where circumstances warrant, may be made in a decree entered before the child's twenty-first birthday. In such a case, factors such as standard of living and expectation of attending college may be considered. In re Huff, 834 P.2d 244 (Colo. 1992) (decided under law in effect prior to enactment of subsection (1.5), dealing specifically with postsecondary education support).

Provision for post-emancipation support may also be made by written agreement of the parties, as is indicated by reading this section together with § 14-10-122(3). In re Huff, 834 P.2d 244 (Colo. 1992).

Meaning of "previously existing support order". An order entered October 22, 1993, nunc pro tunc August 12, 1993, made retroactive to August 1, 1992, modifying a March 1992 support order, is not a "previously existing support order" with regard to a modification of support to take into account a child born to the father and his new wife in December 1992, because it was not "previously existing" until it was actually entered by the court. In re Oberg, 900 P.2d 1267 (Colo. App. 1994).

IV. PAST DUE SUPPORT.

Past due child support payments in themselves constitute debt. Colo. State Bank v. Utt, 622 P.2d 584 (Colo. App. 1980).

Amount owed may be garnished by bank which held judgment against former wife. Colo. State Bank v. Utt, 622 P.2d 584 (Colo. App. 1980).

It was not error to require a husband to pay arrears of support money for his minor children during the period of time the wife refuses him the right to visit the children, where no objection was made to the entry of such order. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956).

A trial court could not punish a father, delinquent in his child support payments through no fault of his own, by denying him visitation rights until he became current in his payments. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

A trial court was without authority to forgive delinquent payments of support money. Gier v. Gier, 139 Colo. 289, 339 P.2d 677 (1959); Engleman v. Engleman, 145 Colo. 299, 358 P.2d 864 (1961); Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963).

Overpayments on child support made direct to one child could not be set off against accrued overdue installments which were owed to the mother on behalf of another child. Dorsey v. Dorsey, 28 Colo. App. 63, 470 P.2d 581 (1970).

The general rule was to the effect that when a father was required by a divorce decree to pay to the mother money for the support of their dependent children, and the unpaid and accrued installments became judgments in her favor, he could not, as a matter of law, claim credit on account of payments voluntarily made directly to the children, special considerations of an equitable nature could justify a court in crediting such payments on his indebtedness to the mother when that could be done without injustice to her. Dorsey v. Dorsey, 28 Colo. App. 63, 470 P.2d 581 (1970).

Cross References:

(1) For provisions concerning deductions for health insurance from wages due an obligor ordered to provide health insurance, see § 14-14-112.

(2) For the legislative declaration contained in the 1993 act amending subsection (3)(b)(III), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the act amending subsection (18)(a), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1997 act amending subsections (1.5), (3.5), (7)(b), and (18)(a) and enacting subsections (1.6) and (1.7), see section 1 of chapter 236, Session Laws of Colorado 1997. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

(3) For the "Old-age, Survivors, and Disability Insurance Act", see 42 U.S.C. sec. 401 et seq.

§ 14-10-116. Appointment in domestic relations cases - representation of the best interests of the child - legal representative of the child - disclosure - short title

(1) The court may, upon the motion of either party or upon its own motion, appoint an attorney, in good standing and licensed to practice law in the state of Colorado, to serve as the legal representative of the child, representing the best interests of the child in any domestic relations proceeding that involves allocation of parental responsibilities. In no instance may the same person serve as both the child's legal representative pursuant to this section and as the child and family investigator for the court pursuant to section 14-10-116.5. Within seven days after the appointment, the appointed person shall comply with the disclosure provisions of subsection (2.5) of this section.

(2) (a) The legal representative of the child, appointed pursuant to subsection (1) of this section, shall represent the best interests of the minor or dependent child, as described in section 14-10-124 , with respect to the parenting time, the allocation of parental responsibilities, financial support for the child, the child's property, or

any other issue related to the child that is identified by the legal representative of the child or the appointing court. The legal representative of the child shall actively participate in all aspects of the case involving the child, within the bounds of the law. The legal representative of the child shall comply with the provisions set forth in the Colorado rules of professional conduct and any applicable provisions set forth in chief justice directives or other practice standards established by rule or directive of the chief justice pursuant to section 13-91-105(1)(c) concerning the duties or responsibilities of best interest representation in legal matters affecting children, including training requirements related to domestic violence and its effect on children, adults, and families. The legal representative of the child shall not be called as a witness in the case. While the legal representative of the child shall ascertain and consider the wishes of the child, the legal representative of the child is not required to adopt the child's wishes in the legal representative of the child's recommendation or advocacy for the child unless such wishes serve the best interests of the child, as described in section 14-10-124.

(b) The short title of this subsection (2) is "Julie's law".

(2.5) (a) Within seven days after his or her appointment, the appointed person shall disclose to each party, attorneys of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (2.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(3) (a) The court shall enter an order for costs, fees, and disbursements in favor of the child's legal representative appointed pursuant to subsection (1) of this section. The order shall be made against any or all of the parties; except that, if the responsible parties are determined to be indigent, the costs, fees, and disbursements shall be borne by the state.

(b) In a proceeding for dissolution of marriage or legal separation, prior to the entry of a decree of dissolution or legal separation, the court shall not enter an order requiring the state to bear the costs, fees, or disbursements related to the appointment of a child's legal representative unless both parties are determined to be indigent after considering the combined income and assets of the parties.

(c) If the appointment of a child's legal representative occurs in a case involving unmarried parties, including those proceedings that occur after the entry of a decree for dissolution of marriage or of legal separation, the court shall make

every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees, and disbursements that shall be borne by the state.

Cite as (Casemaker) C.R.S. § 14-10-116

History. Amended by 2021 Ch. 292, §3, eff. 6/22/2021.

L. 71: R&RE, p. 527, § 1. C.R.S. 1963: § 46-1-16. L. 73: p. 554, § 8. L. 93: Entire section amended, p. 577, § 8, effective July 1. L. 97: Entire section R&RE, p. 32, § 1, effective July 1. L. 98: (2)(a) amended, p. 1399, § 43, effective February 1, 1999. L. 2000: (1) amended, p. 1773, § 3, effective July 1. L. 2005: Entire section amended, p. 958, § 2, effective July 1. L. 2009: (3) amended, (SB 09-268), ch. 207, p. 941, §1, effective May 1. L. 2012: (1) amended and (2.5) added, (SB 12-056), ch. 108, p. 367, § 1, effective July 1.

Editor's Note:

The duties of a special advocate, as formerly set out in subsection (2), were similar to the guidelines for the child and family investigator as set forth in section 14-10-116.5.

Case Notes:

ANNOTATION

Law reviews. For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "The Role of the Guardian ad Litem in Custody and Visitation Disputes", see 17 Colo. Law. 1301 (1988). For article, "Custody Cases and the Theory of Parental Alienation Syndrome", see 20 Colo. Law. 53 (1991). For article, "Final Draft of Proposed GAL Standards of Practice", see 22 Colo. Law. 1907 (1993). For article, "Child Custody: The Right Choice at the Right Price", see 26 Colo. Law. 67 (Aug. 1997). For article, "Division of the GAL Role in Domestic Relations Cases", see 27 Colo. Law. 45 (April 1998). For article, "The Role of Guardian ad Litem: Changes in the Wind", see 27 Colo. Law. 73 (Nov. 1998). For article, "Considerations Regarding the Role of the Special Advocate", see 29 Colo. Law. 107 (July 2000). For article, "Special Advocates-Some Fundamentals", see 30 Colo. Law. 39 (June 2001). For article, "Special Advocates-Revised Chief Judge Directive", see 30 Colo. Law. 83 (July 2001). For article, "Use of the Special Advocate as Arbitrator in Domestic Relations Cases", see 31 Colo. Law. 123 (July 2002). For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (Oct. 2002).

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1997 repeal and reenactment.

No right to participate through chosen counsel. This section does not include a right for a child to participate in custody matters through counsel chosen by the child. In re Hartley, 886 P.2d 665 (Colo. 1994).

Relationship between an attorney and child client differs from relationship between attorney and adult client. In re Hartley, 886 P.2d 665 (Colo. 1994).

Child's attorney acts both as guardian and as advocate, since child is not competent to make legally binding decisions. In re Hartley, 886 P.2d 665 (Colo. 1994).

Imposition of higher degree of objectivity on a child's attorney. An attorney appointed to represent a child in a custody dispute must present all evidence available concerning the child's best interests. The attorney's role is not simply to parrot the child's expressed wishes. 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).

Trial court did abuse its discretion by denying a motion for appointment of a child representative to present the child's wishes regarding parenting time. A child representative cannot be called as a witness and cannot represent a child's views without question. The attorney is charged with a higher degree of objectivity than when representing an adult. In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

Quasi-judicial immunity. A court appointed guardian ad litem in service of the public interest in the welfare of children is entitled to absolute quasi-judicial immunity. Short by Ossterhous v. Short, 730 F. Supp. 1307 (D. Colo. 1990).

Attorney should practice in county of child's residence. If the court, in exercise of its discretion, appointed an attorney to represent these minor children, it is obvious that in terms of client access and the mitigation of expenses, any attorney so appointed should be practicing in the county where the child is residing. Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

Trial court's apportionment of costs for child's guardian ad litem upheld where court apportioned costs between mother and father on the basis of the underemployed mother's potential income. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

Court's order specifying that the special advocate's cost may be later assessed between the parties sufficiently preserved the issue, despite the father's original indication in his motion for appointment of a special advocate that he would pay the special advocate's initial fee. Therefore, the trial court did not abuse its discretion requiring mother to later share in that fee. In re Emerson, 77 P.3d 923 (Colo. App. 2003).

In a custody action, the attorney-client relationship with the child's mother is insufficient as a matter of law to impose a duty from the mother's attorneys to the child as if the child were a client. McGee v. Hyatt Legal Serv., Inc., 813 P.2d 754 (Colo. 1991).

Mere inability of parents to communicate is not a sufficient ground to continue the appointment of the GAL so that he may act as a mediator or facilitator for them beyond the entry of a final decree. In re Finer, 920 P.2d 325 (Colo. App. 1996).

Claim for fees by a child and family investigator (CFI) appointed by a court, which claim the parties agree was in the nature of a "domestic support obligation", is discharged under 11 U.S.C. §§ 101(14A) and 523(a)(5) because the claim was assigned to a nongovernmental third party.

The CFI is not one of the enumerated parties under 11 U.S.C. § 101(14A) that can assign its claim to a nongovernmental entity. In re Cordova, 439 B.R. 756 (Bankr. D. Colo. 2010).

Applied in In re Parker, 41 Colo. App. 287, 584 P.2d 103 (1978); In re Conradson, 43 Colo. App. 432, 604 P.2d 701 (1979); Deeb v. Morris, 14 B.R. 217 (D. Colo. 1981); In re Koltay, 646 P.2d 405 (Colo. App. 1982).

Cross References:

(1) For the duty of the public defender to represent indigents, see §§ 21-1-103 and 21-1-104.

(2) For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declarations contained in the 2005 act amending this section, see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005.

§ 14-10-116.5. Appointment in domestic relations cases - child and family investigator - disclosure - background check

(1) The court may, upon the motion of either party or upon its own motion, appoint a neutral third person to serve the court as a child and family investigator pursuant to subsection (2) of this section in a domestic relations proceeding that involves allocation of parental responsibilities. The court shall set forth the specific duties of the child and family investigator in a written order of appointment. The same person may not serve as both the legal representative of the child pursuant to section 14-10-116 and as the child and family investigator for the court pursuant to this section. Within seven days after the appointment, the appointed person shall comply with the disclosure provisions of subsection (2.5) of this section.

(2)

(a) A child and family investigator appointed by the court from an eligibility roster established pursuant to chief justice directive may be an attorney, a mental health professional, or any other individual with appropriate training and qualifications, as set forth in subsection (2)(f) of this section, and an independent perspective acceptable to the court. The child and family investigator for the court shall investigate and report as specifically directed by the court in the appointment order, taking into consideration the relevant factors for determining the best interests of the child, as described in section 14-10-124 . The purpose of the investigation is to assist in determining the best interests of the child, with the child's safety always paramount.

(b) The child and family investigator shall make independent and informed recommendations to the court, in the form of a written report with the court, unless otherwise ordered by the court. While the child and family investigator shall consider the wishes of the child, the child and family investigator need not adopt such wishes in making his or her recommendations to the court, unless they serve the best interests of the child, as described in section 14-10-124 . The child's wishes, if expressed, must be disclosed in the child and family investigator's written report. The court shall consider the entirety of the report, as well as any testimony by the child and family investigator, the parties, and any other professionals, before adopting any recommendations made by the child and family investigator.

(c) The child and family investigator may be called to testify as a court-appointed expert witness regarding the child and family investigator's reports, but only if the court finds that the child and family investigator has the appropriate training and qualifications set forth in subsection (2)(f) of this section. Recommendations

should be considered in full context of the report.

(d) In addition to the training requirements and qualifications set forth in subsection (2)(f) of this section, the child and family investigator shall comply with applicable provisions set forth in chief justice directives, and any other practice or ethical standards established by rule, statute, or any licensing board that regulates the child and family investigator. A child and family investigator shall strive to engage in culturally informed and nondiscriminatory practices.

(e) A party wishing to file a complaint related to a person's duties as a child and family investigator shall file such complaint in accordance with the applicable provisions in chief justice directives.

(f) The court shall not appoint a person from the eligibility registry to be a child and family investigator for a case pursuant to this section unless the court finds that the person is qualified as competent by training and experience in, at a minimum, domestic violence and its effects on children, adults, and families, child abuse, and child sexual abuse. The person's training and experience must be provided by recognized sources with expertise in domestic violence and the traumatic effects of domestic violence. As of January 1, 2022, initial and ongoing training must include, at a minimum:

(I) Six initial hours of training on domestic violence, including coercive control, and its traumatic effects on children, adults, and families;

(II) Six initial hours of training on child abuse and child sexual abuse and its traumatic effects; and

(III) Four subsequent hours of training every two years on domestic violence, including coercive control, child abuse, and child sexual abuse, and the traumatic effects on children, adults, and families.

(2.5) (a) Within seven days after his or her appointment, the appointed person shall disclose to each party, attorneys of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (2.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(3) (a) The court shall enter an order for costs, fees, and disbursements in favor of the child and family investigator appointed pursuant to subsection (1) of this section. The order must be made against any or all of the parties; except that, if the

responsible parties are determined to be indigent, the costs, fees, and disbursements are borne by the state.

(b) In a proceeding for dissolution of marriage or legal separation, prior to the entry of a decree of dissolution or legal separation, the court shall not enter an order requiring the state to bear the costs, fees, or disbursements related to the appointment of a child and family investigator unless both parties are determined to be indigent after considering the combined income and assets of the parties.

(c) If the appointment of a child and family investigator occurs in a case involving unmarried parties, including those proceedings that occur after the entry of a decree for dissolution of marriage or of legal separation, the court shall make every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees, and disbursements that shall be borne by the state.

(4) (a) Prior to being appointed as a child and family investigator, the person shall submit a complete set of his or her fingerprints to the judicial department for the purposes of a background check, and the judicial department shall determine based on the background check whether the person is suitable to act as a child and family investigator. The department shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing the records of the Colorado bureau of investigation and the federal bureau of investigation. The department is the authorized agency to receive information regarding the result of a national fingerprint-based criminal history record check.

(b) For any person whose fingerprints are unclassifiable or when the results of a fingerprint-based criminal history record check of a person performed pursuant to this section reveal a record of arrest without a disposition, the department shall require that applicant to submit to a name-based criminal history record check, as defined in section 22-2-119.3(6)(d). Upon request of the department pursuant to this section, the Colorado bureau of investigation shall also provide a name-based criminal history record check for any person.

(c) The applicant shall pay the cost associated with the background check.

Cite as (Casemaker) C.R.S. § 14-10-116.5

History. Amended by 2021 Ch. 292, §4, eff. 6/22/2021.

Amended by 2019 Ch. 125, §18, eff. 4/18/2019.

Amended by 2014 Ch. 146, §2, eff. 5/2/2014.

L. 2005: Entire section added, p. 960, § 4, effective July 1. L. 2009: (3) amended, (SB 09-268), ch. 207, p. 942, §2, effective May 1. L. 2012: (1) amended and (2.5) added, (SB 12-056), ch. 108, p. 368, § 2, effective July 1. L. 2014: (4) added, (SB 14-027), ch. 146, p. 496, § 2, effective May 2.

Case Notes:

ANNOTATION

Law reviews. For article, "Child and Family Investigator Standards in Colorado--Part I", see 35 Colo. Law. 61 (July 2006). For article, "Child and Family Investigator Standards in Colorado--Part II", see 35 Colo. Law. 75 (Aug. 2006). For article, "CFIs and APR Evaluators--Similarities and Differences", see 37 Colo. Law. 31 (Jan. 2008).

Cross References:

For the legislative declarations contained in the 2005 act enacting this section, see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005.

§ 14-10-117. Payment of maintenance or child support

(1) Upon its own motion or upon motion of either party, the court may at any time order that maintenance or child support payments be made to the clerk of the court or, if the executive director of the department of human services has notified the state court administrator that the judicial district issuing the order is ready to participate in the family support registry pursuant to section 26-13-114(5), C.R.S., and, for payments for maintenance obligations, the family support registry is ready to accept maintenance payments, through the family support registry, as trustee, for remittance to the person entitled to receive the payments. The court may not order payments to be made to the clerk of the court once payments may be made through the family support registry. The payments shall be due on a certain date or dates of each month. If the support payments are required under this section, title 19, C.R.S., or section 26-13-114(1), C.R.S., to be made through the family support registry, the court shall order that payments be made through the registry in accordance with the procedures specified in section 26-13-114 , C.R.S.

(2) The clerk of the court shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order for those payments he or she receives through the court registry.

(3) If payments are to be made through the family support registry, the parties affected by the order shall inform the family support registry, and if payments are to be made through the court registry, the parties affected by the order shall inform the clerk of the court of any change of address or of other conditions that may affect the administration of the order.

(4) (Deleted by amendment, L. 98, p. 756, § 6, effective July 1, 1998.)

(5) and (6) Repealed.

(7) In cases in which a party is ordered to make payments through the court registry, upon receipt of a verified notice of a support obligation assigned to the state, the clerk of the court shall, without further action by the court, pay the support to the county child support enforcement unit rather than to the obligee. When the state no longer has authorization to receive any support payments, the county child support enforcement unit shall notify the clerk of the court to stop sending the support payments to the county and to send the support payments directly to the obligee.

Cite as (Casemaker) C.R.S. § 14-10-117

History. L. 71: R&RE, p. 527, § 1. C.R.S. 1963: § 46-1-17. L. 77: (4) amended, p. 824, § 1, effective May 24. L. 86: (1) amended, p. 724, § 2, effective July 1. L. 88: (7) added, p. 632, § 6, effective July 1. L. 90: (1) amended, p. 1414, § 13, effective June 8. L. 98: (1), (2), (3), (4), and (7) amended, p. 756, § 6, effective July 1. L. 99: (1) amended, p. 1091, § 11, effective July 1. L. 2005: (5) and (6) repealed, p. 498, § 1, effective August 8.

Case Notes:

ANNOTATION

Applied in Adams County Dept. of Soc. Servs. v. Frederick, 44 Colo. App. 378, 613 P.2d 642 (1980).

§ 14-10-118. Enforcement of orders

(1) Repealed.

(2) The court has the power to require security to be given to insure enforcement of its orders, in addition to other methods of enforcing court orders prescribed by statute or by the Colorado rules of civil procedure on or after July 6, 1973.

Cite as (Casemaker) C.R.S. § 14-10-118

History. L. 71: R&RE, p. 528, § 1. C.R.S. 1963: § 46-1-18. L. 73: p. 554, § 9. L. 81: (1) amended, p. 909, § 3, effective June 8. L. 82: (1) amended, p. 280, § 3, effective April 7. L. 87: (1) amended, p. 595, § 25, effective July 10. L. 92: (1) amended, p. 577, § 5, effective July 1. L. 93: (1) amended, p. 1871, § 5, effective June 6. L. 94: (1) amended, p. 1252, § 6, effective July 1. L. 96: (1) repealed, p. 598, § 8, effective July 1.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Enforcement of Divorce Decrees in Colorado", see 21 Rocky Mt. L. Rev. 364 (1949).

Annotator's note. Since § 14-10-118 is similar to repealed § 46-1-5(3), C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The early law allowed the court to require husband to give security and permitted enforcement of decree in any manner consistent with rules and practice of court. Johnson v. Johnson, 22 Colo. 20, 43 P. 130 (1895).

Section provides only for issuance of temporary injunction. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

C.R.C.P. 65 (h) grants authority to courts in dissolution proceedings to make prohibitive or mandatory orders as may be just. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

Order to direct employer to withhold payments. This section does not preclude an order to the person obligated to pay support or maintenance to direct an employer to withhold child support or maintenance payments as they become due. In re McCue, 645 P.2d 854 (Colo. App. 1982).

Enforcement of agreement which did not specify dollar amount for child support is not modification of agreement. Agreement established duty on father to pay child support and it is within the discretion of the court to determine a reasonably necessary dollar amount. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

Attorney fees. An award of attorney fees may not be enforced by an assignment under this section. In re McCue, 645 P.2d 854 (Colo. App. 1982).

II. SECURITY FOR ENFORCEMENT OF ORDER.

The general assembly authorized a court to require security for the payment of alimony. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Security required by court must be reasonable in both amount and duration. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

If the amount ordered as security is greatly in excess of the amount actually owed, it is not security, but is confiscatory. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955); In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

It was held that the supreme court was fortified in limiting the court's authority to require security for the payment of alimony by reason of the fact that with respect to orders for the payment of sums required for the support and maintenance and education of the minor children of the parties, the general assembly had wisely enacted § 14-6-101 which made it a felony for a husband to neglect, fail or refuse to provide reasonable support and maintenance for his minor children under the age of 16 years, and a father who thus neglected to discharge his natural, as well as his statutory, duty to his children "shall be deemed guilty of a felony", and may be imprisoned for so doing unless he provided a bond conditioned upon the support of such children. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

The writ of ne exeat was not a form of security for the payment of alimony within the meaning of this section. Price v. Price, 80 Colo. 158, 249 P. 648 (1926).

Property lien authorized. A court may impose a lien on a party's property in order to enforce an agreement where the party has threatened to dispose of the property and put himself beyond the court's jurisdiction. In re Valley, 633 P.2d 1104 (Colo. App. 1981).

Amount and duration of security held unreasonable where court required replacement of any security used for payment of maintenance, and amount of security equaled the amount of maintenance awarded, and where there was no competent evidence supporting the amount required to be set aside as security for the payment of child support and health insurance. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

III. ENFORCEMENT BY EXECUTION.

Mature installments of alimony under a divorce decree were final judgments, the payment of which the court could enforce by execution or imprisonment. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Paul v. Marty, 72 Colo. 399, 211 P. 667 (1922); Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926); Burke v. Burke, 127 Colo. 257, 255 P.2d 740 (1953); Beardshear v. Beardshear, 143 Colo. 293, 352 P.2d 969 (1960).

Child support payment becomes money judgment when it matures. A child support payment under a decree for dissolution of marriage becomes a money judgment when it matures and may be enforced as other judgments without further action by the court. In re McCue, 645 P.2d 854 (Colo. App. 1982).

The judgments were enforceable during the entire period of the statute of limitations. Hauck v. Schuck, 143 Colo. 324, 353 P.2d 79 (1960).

Action by a court, in the form of an order of entry of judgment, is a mandatory prerequisite to enforcement of child support obligations by means other than remedial contempt proceedings. People in Interest of G.S., 678 P.2d 1033 (Colo. App. 1983).

A husband was not prejudiced by the entering of a judgment for the correct total amount due under a divorce decree, as each installment which matures under a decree which had not been modified became a judgment debt similar to any other judgment for money. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958).

A trial court had power, without previous notice to a husband, to enter judgment for any total arrears so that execution might issue thereon and the proceedings available to any judgment creditor could thereby be made available to the wife. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958).

The trial court exceeded its jurisdiction in an order limiting the wife's right to collect her judgment on an arrearage, because the judgment entered was no different than any other money judgment, and the wife was entitled to levy execution on her judgment in the same manner as any other judgment creditor was entitled to collect on a judgment, and no authority empowered the trial court to enter an order authorizing a judgment creditor to parcel out payments in liquidating a judgment. Green v. Green, 168 Colo. 303, 451 P.2d 282 (1969).

Each installment of child support maturing under a decree which had not been modified became a judgment debt similar to any other judgment for money and retroactive modifications thereof could not be effected. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958); Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963); Talbot v. Talbot, 155 Colo. 350, 394 P.2d 607 (1964).

Since past due installments for support money under a valid order constituted a debt and were in and of themselves judgment, a trial court had no power or authority to cancel such payments. Carey v. Carey, 29 Colo. App. 328, 486 P.2d 38 (1971).

Since accrued installments of support or alimony were final judgments, the appropriate statute of limitations was that which pertained to judgments. Hauck v. Schuck, 143 Colo. 324, 353 P.2d 79 (1960).

The defense of laches was not applicable in an action to enforce accrued child support payments ordered in a divorce action; it was applicable only where the attempted enforcement was by contempt proceedings. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958); Hauck v. Schuck, 143 Colo. 324, 353 P.2d 79 (1960); Carey v. Carey, 29 Colo. App. 328, 486 P.2d 38 (1971).

A husband in default in the payment of support money was not entitled to notice of the entry of a judgment thereon. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958).

Assignment of wages is proper. An assignment of wages to satisfy a judgment for child support arrearages is proper. In re McCue, 645 P.2d 854 (Colo. App. 1982).

Order is analogous to garnishment. An order entered pursuant to subsection (1) is analogous to a garnishment and should be governed by applicable limitations on garnishment. In re McCue, 645 P.2d 854 (Colo. App. 1982).

IV. ENFORCEMENT BY CONTEMPT.

A court may exercise its power of contempt to enforce orders entered in a dissolution of marriage proceeding. Gonzales v. District Court, 629 P. 2d 1074 (Colo. 1981).

Contempt not separate proceeding. Contempt for failure to comply with the court's orders is not a separate proceeding but a continuance of the dissolution action. Gonzales v. District Court, 629 P.2d 1074 (Colo. 1981).

The power to punish for contempt should be used with caution after due deliberation, and only when necessary to prevent actual, direct obstruction of, or interference with, the administration of justice. Engleman v. Engleman, 145 Colo. 299, 358 P.2d 864 (1961).

Absent any procedural attempt to correct an order for support payments under this section, based upon its being founded in mistake, or absent action designed to seek modification of the order, the trial court could only determine whether the husband was in contempt for failure to comply with the order. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

Moreover, a defendant could not be held in contempt for failure to pay alimony where it clearly appeared that he was unable to perform the acts required of him by the support order. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

A defendant could not be imprisoned for failure to pay alimony where it clearly and satisfactorily appeared that he was absolutely unable to perform the acts required of him at the time the order of commitment was made. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

Where a divorced wife for a long period of time supported the minor child of herself and divorced husband without receiving or claiming the alimony adjudged her for its support, there being no sufficient cause shown for her delay in attempting to enforce payment, the doctrine of laches applied, and a judgment of contempt against defendant for failure to pay the alimony was reversed. Price v. Price, 80 Colo. 158, 249 P. 648 (1926).

The contention of defendant that an order abating the proceedings until he complied with an order of court for the payment of alimony deprived him of his right to make a defense, and that imprisonment for failure to comply with the order was in violation of his constitutional rights,

was overruled. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

§ 14-10-119. Attorney's fees

The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Cite as (Casemaker) C.R.S. § 14-10-119

History. L. 71: R&RE, p. 528, § 1. C.R.S. 1963: § 46-1-19.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Payment of the Wife's Attorney Fee in Colorado Divorce Cases", see 34 Rocky Mt. L. Rev. 481 (1962). For article, "Attorney's Fees", see 11 Colo. Law. 411 (1982). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Attorney Fees at Temporary Orders: Reality or Illusion?", see 24 Colo. Law. 2185 (1995).

Annotator's note. Since § 14-10-119 is similar to repealed § 46-1-5(1)(e), C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The former divorce act was silent on the subject of counsel fees and suit money, but in discussing the power of the district court to make allowance for these items, the supreme court held that notwithstanding the silence of the statute with respect to these matters, it had the authority to order such allowances because its jurisdiction as to such items did not depend upon the statute. Pleyte v. Pleyte, 15 Colo. 125, 25 P. 25 (1890); Hart v. Hart, 31 Colo. 333, 73 P. 35 (1903).

Attorney fees are not a non-challengeable marital debt under § 14-10-113. In re Rieger, 827 P.2d 625 (Colo. App. 1992).

Debts incurred during the marriage but which are dissolution litigation costs should be allocated pursuant to this section, not § 14-10-113. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

This section inapplicable to wife's independent action seeking to reopen dissolution decree. In re Burns, 717 P.2d 991 (Colo. App. 1985); cert. denied, Burns v. Burns, 745 P.2d 1391 (Colo. 1987).

Intent to equalize status. The provision in the dissolution of marriage statute which sanctions the assessment of attorney fees was intended to equalize the status of the parties to the dissolution proceeding. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

The purpose of allowing the court discretion as to attorney fees is to equalize the status of the parties by enabling the court to ensure that neither party is forced to suffer unduly as a consequence of the termination of the marriage. In re Mitchell, 195 Colo. 399, 579 P.2d 613 (1978); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

This section is designed to allow the court to apportion costs and fees equitably between the parties. In re Nichols, 38 Colo. App. 82, 553 P.2d 77 (1976); In re Hauger, 679 P.2d 604 (Colo. App. 1984).

This section empowers the trial court to equitably apportion costs and fees between parties based on relative ability to pay. Section 5-12-106(1)(a) mandates interest on such an order and C.A.R. 37 specifies the trial court's authority to mandate interest. In re Gutfreund, 148 P.3d 136 (Colo. 2006).

Attorney fees are to be awarded primarily to equalize the financial positions of the parties. In re Trout, 897 P.2d 838 (Colo. App. 1994); In re Bregar, 952 P.2d 783 (Colo. App. 1997).

Primary purpose of award of attorney fees under this section is to equalize the parties' financial positions. Although mother deceived father by failing to disclose disability benefits received on behalf of the minor child, the court reduced father's child support arrearages in payment of father's attorney fees to punish mother without making the proper findings pursuant to this section for an award of attorney fees and without considering the policies relating to child support and the best interests of the child before reducing child support arrearages. In re Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009).

The principle that in maintenance and divorce proceedings a wife had a right to be placed on an equal footing with her husband was particularly applicable where the facts show that the wife's absence from the state is due to being unable to afford the expenses of litigation without her fault, and where she may have meritorious claims difficult to pursue in absentia. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

Fairness in domestic relations cases seeks to place the wife on a plane of equality with the husband in such litigation by allowing her suit money and attorney fees out of the husband's estate or earnings, where such appears necessary to bring about such parity, but such allowance will not be granted unless it is shown that the wife is destitute in whole or in part of the means necessary to maintain herself and carry on the litigation, and a concomitant to this condition for relief is a showing of the husband's present ability to pay such allowance. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961); Peercy v. Peercy, 154 Colo. 575, 392 P.2d 609 (1964).

Provision in agreement granting parties remedies at law and in equity for enforcement of agreement gave court jurisdiction to hear motion for attorney fees. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

By the allowance of attorney fees, full and complete adjudication of all claims in the one action will result; otherwise, a multiplicity of suits will ensue, forcing the attorney to sue the wife, and she in turn to join the husband under his indemnity agreement. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

The power of the court to allow attorney fees to the wife for the purpose of prosecuting her suit or defending the husband's suit was an incident to the court's powers to award alimony and divide property. Krall v. Krall, 31 Colo. App. 538, 504 P.2d 681 (1972).

If there is a wide disparity in the parties' earning capacities, an award of attorney fees is permissible. In re Renier, 854 P.2d 1382 (Colo. App. 1993).

An allowance for counsel fees, being for the benefit of the wife to put her in a position to litigate on the same footing as the husband, was made on the same basis as alimony or other forms of support by the husband to the wife. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

Trial court has the authority to advance prospective fees and costs during the litigation of a dissolution of marriage action if necessary to diminish the advantage that one spouse may have over the other in litigation because of their respective financial circumstances. In re Rose, 134 P.3d 559 (Colo. App. 2006).

The purpose of an award of attorney fees is to apportion equitably the costs of dissolution, based on the current resources of the parties. In re Renier, 854 P.2d 1382 (Colo. App. 1993); In re Foottit, 903 P.2d 1209 (Colo. App. 1995); In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Waiver of attorney fee provision in an antenuptial agreement is voidable on the grounds of unconscionability. In re Dechant, 867 P.2d 193 (Colo. App. 1993) (decided under law in effect prior to amendment effective July 1, 1986).

The allowance to a wife was based upon the same underlying thought as is an allowance to her to buy food, shelter, and clothing. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

Payment of attorney fees is a substantive aspect of a dissolution action, and permanent orders are not final until the court addresses that issue. Unlike statutory and contractual fee-shifting provisions that premise the award of attorney fees on the merits of the claims and a determination of who prevailed in the action, the apportionment of attorney fees in a dissolution action is inextricably intertwined with the other issues to be resolved by the court in determining permanent orders. In re Hill, 166 P.3d 269 (Colo. App. 2007).

For purposes of attorney-fees award in dissolution action, trial court should consider parties' financial resources as of the dissolution decree issuance date or the disposition of property hearing date, if the property hearing precedes the decree date. Trial court did not err in issuing a protective order prohibiting further discovery of husband's financial resources for the period after the entry of decree and property disposition and prior to attorney fees hearing scheduled six months after dissolution hearing. In re de Koning, 2016 CO 2, 364 P.3d 494.

Attorney fee request sought in a post-decree modification motion is no longer an integral and substantive part of the proceeding but is ancillary to the motion and may be decided independently of the modification motion. The underlying motion, once decided, is a final appealable order, notwithstanding the unresolved request for attorney fees. In re Nelson, 2012 COA 205, 292 P.3d 1214.

Where an attorney withdrew as counsel for the wife in a divorce action and his motion for fees was ordered held in abeyance until final settlement of the action, a subsequent property settlement agreement providing that each of the parties would pay his own counsel fees was not binding on the counsel if services rendered prior to withdrawal entitled him to additional fees. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

Withdrawal of wife's counsel before determination of attorney fees issue cannot be construed as a waiver by wife regarding payment of the fees. In re Hill, 166 P.3d 269 (Colo. App. 2007).

Reconciliation did not deprive the court of jurisdiction to award attorney fees. Pacheco v. Pacheco, 156 Colo. 356, 398 P.2d 978 (1965).

The trial court was in error when it concluded that it was without jurisdiction to grant an allowance of attorney fees. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

On review of an order adjudging a defendant in a divorce case guilty of contempt for failure to pay alimony, under the facts disclosed, it was held that the trial court had jurisdiction to make an order allowing counsel fees to the wife for the hearing on review. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926); Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

No violation of involuntary servitude proscription. The assertion in a divorce that one may be forced to work for the benefit of the other spouse's attorney, despite the fact that the burdened party is without "fault", cannot be equated with slavery or involuntary servitude within the meaning of § 26 of art. II, Colo. Const. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Because the dissolution of marriage statute, in an effort to eliminate the inequities resulting from the termination of the relationship, provides for attorney fees, as well as maintenance and child support, when the relative status of the parties involved indicates the need of such, it does not constitute involuntary servitude. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Applied in In re Deines, 44 Colo. App. 98, 608 P.2d 375 (1980); Gann v. Gann, 616 P.2d 1000 (Colo. App. 1980); In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980); In re Kiefer, 738 P.2d 54 (Colo. App. 1987).

II. AWARD OF ATTORNEY FEES.

A. Right and Need for Award.

When a husband desires the luxury of a divorce from his wife, he should be compelled to pay the expenses of his wife pending the litigation, and, in cases where the wife is a nonresident of the state, if she desires to come to the state to make a defense, she should be given an opportunity to do so, and the courts should require plaintiff to deposit in court a sum sufficient to pay the expenses of the wife from her home to the state of Colorado, to be paid to her upon her arrival here within a reasonable time, with such additional sum as may be necessary to properly defend the suit, and in case the plaintiff is unable to make reasonable provision for his wife during the pendency of the suit, the suit should be abated until he is able to do so. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

On the question of allowance of attorney fees for the wife, the court should take into consideration, among other things, the financial condition of the parties, their income, and necessities of the case. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

In awarding fees and costs under this section, the district court must consider the relative financial status of each party by making findings concerning their relative incomes, assets, and liabilities. In re Aldrich, 945 P.2d 1370 (Colo. 1997); In re Chalat, 94 P.3d 1191 (Colo. App. 2004), aff'd in part and rev'd in part on other grounds, 112 P.3d 47 (Colo. 2005).

The financial resources of the husband were greater than those of the wife and that disparity supports the order for attorney fees. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

An order providing for the father to pay attorney fees for the mother could not stand in view of the favorable financial condition of the mother, since the purpose of providing an allowance for attorney fees is to place the wife on an equal footing with the husband. Andrews v. Andrews, 161 Colo. 529, 423 P.2d 573 (1967).

Where defendant initiated the circumstances making attorney fees necessary, an allowance to plaintiff therefor was proper. Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960).

Where a wife's estate is small, she is not required to impair her capital in order to litigate properly her side of the controversy, especially is this true where the value of the assets of the parties are grossly disproportionate. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Additional expert testimony was unnecessary to support award of attorney fees to mother in child support modification action where testimony of the mother, her attorney, and the attorney's affidavit adequately supported the award. In re Pollock, 881 P.2d 470 (Colo. App. 1994).

Husband is not liable for deceased wife's attorney fees where the wife dies during the pendency of the action and prior to the entry of an order making permanent property disposition. In re Benjamin, 740 P.2d 532 (Colo. App. 1987).

A spouse who accepts maintenance payments or an attorney fees award is not precluded from appealing such order. In re Lee, 781 P.2d 102 (Colo. App. 1989).

Plaintiff not entitled to attorney fees under this section when the statutory basis for grandparents' visitation request was § 19-1-117. Additionally, because the attorney fee provision contained in § 19-1-117(3) was the more specific provision, it should control. In re Gallegos, 251 P.3d 1086 (Colo. App. 2010).

B. Amount.

This section cannot be construed as a general grant of authority to determine the amount of fees to which an attorney is entitled. In re Nichols, 38 Colo. App. 82, 553 P.2d 77 (1976); In re Shapard, 129 P.3d 1007 (Colo. App. 2004).

The trial court's duty is to determine what reasonable fee a party should be responsible for under all the circumstances of the case. The effect of an order granting fees to a party less than the amount actually billed by the attorney is not to modify the fee contract between the attorney and client. In re Seely, 689 P.2d 1154 (Colo. App. 1984); In re Bowles, 916 P.2d 615 (Colo. App. 1995).

The lodestar method should be applied when determining reasonable attorney fees in the domestic relations context. In re Aragon, 2019 COA 76, 444 P.3d 837.

Enforcement of attorney's charging lien raises separate issues. Nothing in this section allows a spouse's attorney, as lienholder or otherwise, to litigate a claim for fees against the other spouse. In re Shapard, 129 P.3d 1007 (Colo. App. 2004).

Predicate to an award of attorney fees. There must be proof of reasonableness premised upon considerations of the amount of the fees charged, the time spent by the attorney, the services rendered, and the prevailing rates in the community. In re Sarvis, 695 P.2d 772 (Colo. App. 1984).

On application for allowance of attorney fees in a divorce suit, it may be that no evidence is required as to the amount to be allowed, where all the facts are within the knowledge of the court. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

Where the same judge had heard various aspects of this case over a period of several months and was thoroughly familiar with the file and with the financial resources of the parties, it was not necessary that evidence be presented as to the current situation unless there was a claim of change of circumstances. In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977).

C. Discretion of Court.

Before or after the issuance of a decree in a divorce action, the trial court could make such orders as the circumstances warrant for suit money, court costs, and attorney fees. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

The allowance of attorney fees and suit money is within the sound discretion of the trial court, and unless that discretion has been abused, the allowance made or denied will not be disturbed. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959); Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962); Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970); Krall v. Krall, 31 Colo. App. 538, 504 P.2d 681 (1972); In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977); In re DaFoe, 677 P.2d 426 (Colo. App. 1983); In re Connell, 831 P.2d 913 (Colo. App. 1992); In re LeBlanc, 944 P.2d 686 (Colo. App. 1997); In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

This section confers significant discretion on the trial court, and permits consideration of the financial resources of both parties, so that where the husband has limited income and substantial financial obligations including payment of child support and the children's attorney fees, there is no abuse of discretion in the court's denial of the wife's motion for attorney fees. In re Parker, 41 Colo. App. 287, 584 P.2d 103 (1978); In re Rieger, 827 P.2d 625 (Colo. App. 1992).

The awarding of attorney fees is discretionary with the trial court and will not be disturbed on review if supported by the evidence. In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975); In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

An award of attorney fees in subsequent litigation to enforce a separation agreement is within the trial court's discretion. Baker v. Baker, 667 P.2d 767 (Colo. App. 1983).

Notwithstanding the trial court's discretion in the allowance of fees, such discretion is a judicial one, and requires and presupposes a hearing together with a presentation of facts upon which to base the exercise of such discretion. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

Court must conduct a hearing, on the reasonableness of an award of attorney fees if a party requests a hearing. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

But a court need not conduct a hearing sua sponte if a hearing is not timely requested by a party. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

This section does not limit the authority of the trial court to award counsel fees only as against a defendant, but such fees may be assessed against either or both of the parties. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

It is within the trial court's discretion to award only a portion of the attorney fees. In re Schwaab, 794 P.2d 1112 (Colo. App. 1990); In re Connell, 831 P.2d 913 (Colo. App. 1992).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its attorney fee award, since in making an attorney fee award, the court must consider the financial resources of both parties. In re Balanson, 25 P.3d 28 (Colo. 2001).

On a final property settlement, if it developed that the wife had ample assets of her own to pay for the services of her attorneys, then any additional fees, including the services of counsel on a writ of error and other related matters, may have or may not have been awarded against the husband as the court determines. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

The trial court erred in not affording the plaintiff an opportunity to present evidence as to the services rendered by her attorneys, and the reasonable value of such services. Hoffman v. Hoffman, 167 Colo. 432, 447 P.2d 1005 (1968).

The trial court in a separate maintenance action had no authority to award counsel fees to the wife in a divorce action instituted by the husband and pending in another state, such fees being a matter for determination by the courts of the state where the divorce action is pending. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

Order for defendant to pay portion of plaintiff's attorney fees upheld. Krall v. Krall, 31 Colo. App. 538, 504 P.2d 681 (1972).

Abuse of discretion. Where the wife not only earned more than husband, but had assets worth substantially more than husband's, and, moreover, initiated the proceedings making attorney fees necessary, the trial court abused its discretion in awarding attorney fees to wife. In re Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979).

Because family owned corporations were not parties to the dissolution action and because wife instituted post-decree proceedings that were groundless for lack of jurisdiction over the corporations against which relief was sought, court abused its discretion in imposing attorney fees against corporation and divorced husband. In re Noon, 735 P.2d 884 (Colo. App. 1986).

Where the trial court's property division order was an attempt to place the wife in the same financial position insofar as her separate property was concerned as she had been prior to the two-year-old marriage, but after the wife deducted her attorney fees, she was left with less than she had when she was married, the supreme court held that the portion of that order requiring the wife to pay her attorney fees constituted an abuse of discretion. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Denial of wife's motion for expenses held abuse of discretion. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

There is no abuse of discretion where trial court does not take into account the resources of wife's new husband in concluding that she is entitled to attorney fees. In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979).

Where wife is unemployed and has no income, there is no abuse of discretion in an order for partial payment of her attorney fees. In re Erickson,

43 Colo. App. 319, 602 P.2d 909 (1979).

Where husband was temporarily unemployed at the time of the hearing and wife's assets were substantially greater than husband's, trial court did not abuse its discretion in denying wife's request for attorney fees. In re McKendry, 735 P.2d 908 (Colo. App. 1986).

Trial court did not err in awarding attorneys fees in a nonparent custody proceeding authorized by § 14-10-123. The award was neither punitive nor inequitable and did not constitute an abuse of discretion. In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

Where the agreement which provided that each party bear its own legal fees did not contemplate efforts to change the agreement after it was finally approved by the court and incorporated into the decree of divorce, the award of attorney fees by the trial court was within its discretion. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

Because the issue as to whether special separation benefits received by former husband upon his voluntary discharge from the Air Force constituted marital property was one of first impression, trial court did not abuse its discretion in denying wife attorney fees. In re McElroy, 905 P.2d 1016 (Colo. App. 1995).

Award of attorney fees to attorney appearing on pro bono basis is allowable under statute. In re Swink, 807 P.2d 1245 (Colo. App. 1991).

Trial court has wide discretion in awarding fees and costs and is not bound by the general provisions for recovery of costs for a prevailing party. In re Pickering, 967 P.2d 164 (Colo. App. 1997).

Trial court considering the award of attorney fees under this section must consider not only the reasonableness of the charge per hour but also the necessity for incurring the hours billed. In re Rieger, 827 P.2d 625 (Colo. App. 1992).

Trial court erred in denying husband's request for hearing on the reasonableness and necessity of wife's attorney fees and other costs. In re Mockelmann, 944 P.2d 670 (Colo. App. 1997).

This section allows for the award of attorney fees in subsequent proceedings even though the spouse was denied attorney fees in the original dissolution proceeding. Thus, it was an abuse of discretion for the court to deny attorney fees on a subsequent motion where the denial was based on the denial of fees in the original proceeding. In re Plesich, 881 P.2d 379 (Colo. App. 1994).

Trial court may review a waiver of attorney fees in a marital agreement for unconscionability at the time of dissolution, because an unconscionable waiver violates the public policy interest behind protecting spouses and thus is not a valid contract term under § 14-2-304. In re Ikeler, 161 P.3d 663 (Colo. 2007).

D. Enforcement.

The allowance to a wife was enforceable by contempt. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

An order for payment of counsel fees decreed by the court to a wife in a divorce action was not a debt dischargeable in bankruptcy. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

Award of attorney fees may not be enforced by an assignment under § 14-10-118. In re McCue, 645 P.2d 854 (Colo. App. 1982).

E. Modification and Scope of Review.

Reconsideration of property division to correct error unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Despite a disparity of income, when the court found that the spouse receiving maintenance had considerable assets and ordered her to pay her own attorney fees, there was no abuse of discretion. In re Weibel, 965 P.2d 126 (Colo. App. 1998).

Issues on review whether attorney fees should have been awarded must depend upon whether the record reflects that the property settlement order contemplated attorney fees and whether as a whole it was fair and equitable. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Lack of written findings of facts leaves no basis for review. Where a trial court makes no written findings of fact in support of its denial of an award of attorney fees, a reviewing court has no basis on which to review the ruling. In re Pilcher, 628 P.2d 126 (Colo. App. 1980).

Where the motion of an attorney, who had withdrawn as counsel for the wife in a divorce action, for allowance of fees was denied, and record disclosed no evidence or offer of proof to show value of services rendered prior to withdrawal, the action was remanded for findings on the value of his services rendered, if any, for which he had not been compensated, and for judgment pursuant thereto. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

A finding by the trial court that under the circumstances shown each party should pay his or her own costs and attorney fees, supported by the record, will not be disturbed. Jensen v. Jensen, 142 Colo. 420, 351 P.2d 387 (1960).

Under the circumstances shown, the trial court's order was adequate to permit appellate review. In re Woolley, 25 P.3d 1284 (Colo. App. 2001).

Where an order requiring a husband to pay attorney fees for his wife was a means of paying off her indebtedness rather than of enabling her to prosecute, it could properly be considered by the court as part of the division of property settlement and the question on review would have been whether the property settlement as a whole was fair and equitable, not whether the wife had the financial ability to pay her own fees. Krall v.

Krall, 31 Colo. App. 538, 504 P.2d 681 (1972).

The supreme court has, in the exercise of its appellate jurisdiction, power to act on applications for attorney fees, costs, alimony, etc., in matters pending on error; however, under ordinary circumstances all of these matters should be presented to the trial court for the reason that the trial court has already had the case before it and is better equipped to determine questions of fact and to make a full and complete investigation and adjudication. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

An order granting attorney fees was reviewable even though there had been no final judgment in the case. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Bagot v. Bagot, 68 Colo. 562, 191 P. 96 (1920); Benham v. Willmer, 71 Colo. 451, 207 P. 592 (1922); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922); Stockham v. Stockham, 145 Colo. 376, 358 P.2d 1026 (1961).

III. ANTENUPTIAL AGREEMENTS.

Section controls awarding of attorney fees where antenuptial agreement was silent on the matter. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part and rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

No unconstitutional impairment of antenuptial contract by award. Where the matter of attorney fees was left open by an antenuptial contract, there was therefore no unconstitutional impairment of that contract by the award of such. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Cross References:

For allowance of attorney fees generally, see C.R.C.P. 3(a), 30(g), 37(a), 37(c), 56(g), and 107(d); for awarding of attorney fees in civil actions generally, see § 13-17-102.

§ 14-10-120. Decree

(1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, so that either of the parties may remarry pending appeal.

(2) No earlier than one hundred eighty-two days after entry of a decree of legal separation, on motion of either party and proof that a notice has been mailed to the other party at his or her last-known address, the court shall convert the decree of legal separation to a decree of dissolution of marriage, and a copy thereof shall be mailed to both parties.

(3) The clerk of the court shall give notice of the entry of a decree of dissolution to the office of state registrar of vital statistics in the division of administration of the department of public health and environment, which office shall make this information available to the public upon request.

(4) No decree that may enter shall relieve a spouse from any obligation imposed by law as a result of the marriage for the support or maintenance of a spouse determined to be mentally incompetent by a court of competent jurisdiction prior to the decree, unless such spouse has sufficient property or means of support.

(5) Whenever child support has been ordered, the decree of dissolution, legal separation, declaration of invalidity, allocating parental responsibilities, or support shall contain an order for an income assignment pursuant to section 14-14-111.5.

(6) Notwithstanding the entry of a final decree of dissolution of marriage or of legal separation pursuant to this section, the district court may maintain jurisdiction to enter such temporary or permanent civil protection orders as may be provided by law upon request of any of the parties to the action for dissolution of marriage or legal separation, including, but not limited to, any protection order requested pursuant to section 14-10-108.

Cite as (Casemaker) C.R.S. § 14-10-120

History. L. 71: R&RE, p. 528, § 1. C.R.S. 1963: § 46-1-20. L. 75: (3) R&RE, p. 585, § 1, effective May 31; (4) amended, p. 925, § 21, effective

July 1. L. 77: (2) amended, p. 825, § 1, effective May 26. L. 85: (5) added, p. 592, § 11, effective July 1. L. 94: (5) amended, p. 1539, § 6, effective May 31; (3) amended, p. 2731, § 348, effective July 1. L. 96: (5) amended, p. 622, § 31, effective July 1. L. 98: (5) amended, p. 1399, § 44, effective February 1, 1999. L. 99: (6) added, p. 500, § 2, effective July 1. L. 2003: (6) amended, p. 1012, § 16, effective July 1. L. 2012: (2) amended, (SB 12-175), ch. 208, p. 831, § 27, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Income Tax on Alimony", see 30 Dicta 263 (1953).

Annotator's note. Since § 14-10-120 is similar to repealed § 46-1-7, C.R.S. 1963, § 46-1-9, CRS 53, CSA, C. 56, §§ 13 through 17, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The general assembly intended to eliminate the six-month delay for a decree of dissolution to become effective and intended to terminate the marital status of the parties immediately upon entry of the decree of dissolution. Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

This section permits a party to appeal the termination of the marital status only when the party challenges the district court's finding that the marriage is irretrievably broken or by raising a jurisdictional defect in the proceedings. Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

An unappealed decree of dissolution is final when entered to determine the status of the parties and that abatement does not occur should one party die after the decree is entered. Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

There was but one final decree in a divorce suit, although it may consist of different provisions, one for a dissolution of the marriage relation, another for security for the payment of alimony, and various other provisions embodied in the one instrument. Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923).

No other decree was required to be entered than the interlocutory one which in a normal situation mechanically became final. Morris v. Propst, 98 Colo. 213, 55 P.2d 944 (1936); Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

A court need not have entered a final decree reiterating or summarizing or tying together its previous orders including an interlocutory decree in Colorado. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

It may have been said that the interlocutory decree was a final order by express provision of the former statute, but, it was pertinent to observe that while the statute said that the interlocutory decree was a final order and therefore subject to review on writ of error, that it did not say that such order was a final decree of divorce. Doty v. Doty, 103 Colo. 543, 88 P.2d 573 (1939).

An unverified, unsupported motion to set aside an interlocutory decree of divorce was not a "motion or petition" within the meaning of the former section concerning the setting aside of interlocutory decrees. Morris v. Propst, 98 Colo. 213, 55 P.2d 944 (1936).

The prevailing party in a divorce action could not be compelled to permit a decree to become final against his express desire and over his objection. Faith v. Faith, 128 Colo. 483, 261 P.2d 255 (1953); McClanahan v. County Court, 136 Colo. 426, 318 P.2d 599 (1957).

Where the prevailing party in a divorce action moved to dismiss the same prior to the entry of a final decree, a trial court lacked jurisdiction to act in the case other than to dismiss the same. McClanahan v. County Court, 136 Colo. 426, 318 P.2d 599 (1957).

Decree of dissolution entered after a spouse's death is void for lack of jurisdiction, and the dissolution action is abated. In Re Connell, 870 P.2d 632 (Colo. App. 1994).

A reversal of the judgment of the trial court was had because of its refusal to grant plaintiff's motion to dismiss her divorce case after the entry of the interlocutory decree. Faith v. Faith, 128 Colo. 483, 261 P.2d 225 (1953).

Where it appears from a record and from the conduct of counsel that the parties agreed that a court would defer determination of permanent alimony, property settlement, and related matters until after the entry of a final decree of divorce, orders entered pursuant thereto were not void because not included in such decree, or the questions reserved therein. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

Where orders for permanent alimony and related matters were not included in the interlocutory decree, because a court had taken the matter under advisement, orders resulting therefrom were valid and remained in full force and effect, constituting a modification of the interlocutory decree and were merged in a final decree which recited upon the terms and conditions contained in the interlocutory decree or any modification of change thereof. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

Provision in agreement incorporated into dissolution decree which required a father to pay a daughter's medical bills until the daughter was "gainfully employed" was not ambiguous and required that the employment of the daughter be self-supporting, rather than remunerative, in order to terminate the father's obligations. In re Norton, 757 P.2d 1127 (Colo. App. 1988).

The former section relating to the entry of an interlocutory decree in a divorce action within 48 hours after close of a trial, or the return of a verdict, was directory and not mandatory or jurisdictional. Kemper v. Kemper, 140 Colo. 367, 344 P.2d 449 (1959).

Formerly, the necessity for the lapse of six months and the entry of a final decree was just as essential to the power of a court to order a division of property, as to authorize it to enter a final decree. McCoy v. McCoy, 139 Colo. 105, 336 P.2d 302 (1959).

A writ of error in a divorce case was not dismissible on the ground that it was not filed within six months after the issuance of the interlocutory decree. Simmons v. Simmons, 107 Colo. 78, 108 P.2d 871 (1940).

However, notice of a motion to vacate an interlocutory decree of divorce, served upon the administrator of the estate of successful party after the latter's death and after the expiration of the six-month period designated by statute, was futile and without effect. Morris v. Propst, 98 Colo. 213, 55 P.2d 944 (1936).

Where the wife's lien was created by the judgment of the court in a divorce action based upon the stipulation of the parties, the judgment became final and where a subsequent order of abatement terminated the proceedings relative to the motion which the husband had filed to reduce the payments to the wife, it had no effect upon the final judgment which created the lien. Willis v. Neilson, 32 Colo. App. 129, 507 P.2d 1106 (1973).

C.R.C.P. 59(e) specifies that a party may move to alter or amend a judgment by a motion filed not later than 10 days after entry of judgment; therefore, where appellate filed such a motion within the allotted time, and the trial court subsequently did amend its judgment pursuant to such motion and the supplemental motion, the original court's judgment never became final, and it was not enforceable by either divorced party with respect to his or her property rights, because it did not create an enforceable right either in the husband or in his estate to take a divided share of the joint tenancy property. Sarno v. Sarno, 28 Colo. App. 598, 478 P.2d 711 (1970).

Order under C.R.C.P. 54(b) authorized. Section 14-10-105, providing that the Colorado rules of civil procedure apply to dissolution proceedings except as "otherwise specifically provided" in the act, and this section, providing that a decree of dissolution of marriage is "final" when entered, subject to the right of appeal, authorize the trial court to enter an order pursuant to C.R.C.P. 54(b) making the decree final for purposes of appeal. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Appealability of decree on entry of such order. Upon the entry of an order under C.R.C.P. 54(b) a decree of dissolution of marriage may be appealed prior to entry of permanent orders on the issues of child custody, support, and division of property. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Stay of decree pending appeal. When an appeal is taken from the finding that the marriage is "irretrievably broken", the finality of the decree dissolving the marriage may be stayed upon an appropriate motion duly made. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Where a decree in a divorce action ordering title to real property to remain in joint tenancy, and granting the right to possession and income therefrom to the wife, had become final and the time for appeal had expired, the decree could not be reversed by the supreme court. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

Dissolution decree severing joint tenancy upheld, even though documents conveying house into tenancy in common were not executed. Cannon v. Waddell, 642 P.2d 520 (Colo. App. 1981).

Where the record on error in a divorce action contained no reporter's transcript, the supreme court had no means of reviewing the evidence; hence, the findings and judgment of a trial court were presumed to be supported by the evidence. Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958).

Erroneous divorce decree valid and binding. Although divorce decree was an erroneous judgment, until modified by the court which entered it, or set aside on motion for new trial, or until reversed by an appellate court on direct review proceedings, it was valid and binding. McLeod v. Provident Mut. Life Ins. Co., 186 Colo. 234, 526 P.2d 1318 (1974).

The validity of the arbitration agreement is not governed by the characterization of the proceeding as one for legal separation or for dissolution of marriage. While the agreement for binding Rabbinical arbitration was entered into in the context of a legal separation proceeding that was later dismissed, its validity and application to the current dissolution of marriage proceeding between the same parties is not affected. In re Popack, 998 P.2d 464 (Colo. App. 2000).

For appeals procedure in divorce cases under early laws, see Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Mercer v. Mercer, 13 Colo. App. 237, 57 P. 750 (1899); Mercer v. Mercer, 27 Colo. 216, 60 P. 349 (1900); Eickhoff v. Eickhoff, 27 Colo. 380, 61 P. 225 (1900); Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902); Carlton v. Carlton, 44 Colo. 27, 96 P. 995 (1908); Dickinson v. Dickinson, 46 Colo. 351, 104 P. 414 (1909); Rudolph v. Rudolph, 50 Colo. 243, 114 P. 977 (1911); Prewitt v. Prewitt, 52 Colo. 522, 122 P. 766 (1912); Harrington v. Harrington, 58 Colo. 154, 144 P. 20 (1914); Gill v. Gill, 59 Colo. 40, 148 P. 264 (1915); Boyd v. Boyd, 63 Colo. 157, 164 P. 703 (1917); Chamberlain v. Chamberlain, 66 Colo. 562, 185 P. 354 (1919); Kurtz v. Kurtz, 70 Colo. 20, 196 P. 530 (1921); Hobbs v. Hobbs, 72, Colo. 190, 210 P. 398 (1922); Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923); Perry v. Perry, 74 Colo. 106, 219 P. 221 (1923); Miller v. Miller, 74 Colo. 143, 219 P. 783 (1923); Unzicker v. Unzicker, 7 4 Colo. 211, 220 P. 495 (1923); Fowler v. Fowler, 74 Colo. 231, 220 P. 988 (1923); Diebold v. Diebold, 76 Colo. 255, 230 P. 605 (1924); Hultquist v. Hultquist, 77 Colo. 260, 236 P. 777 (1925); Lednum v. Lednum, 78 Colo. 57, 239 P. 877 (1925); Weston v. Weston, 79 Colo. 478, 246 P. 790 (1926); Ikeler v. Ikeler, 82 Colo. 278, 260 P. 104 (1927); Taylor v. Taylor, 85 Colo. 65, 273 P. 878 (1928); Blackmer v. Blackmer, 87 Colo. 173, 286 P. 114 (1930); Laizure v. Baker, 91 Colo. 48, 11 P.2d 560 (1932); Hayhurst v. Hayhurst, 91 Colo. 58, 11 P.2d 804 (1932); Pierce v. Pierce, 97 Colo. 39, 46 P.2d 748 (1935).

Cross References:

For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

§ 14-10-120.2. Ex-parte request for restoration of prior name of party

(1) Pursuant to the provisions of this section, at any time after the entry of a decree of dissolution or legal separation, a party to the action may request restoration of a prior full name.

(2) The requesting party must file a verified motion and affidavit under the same case number in the district court in which the decree of dissolution or legal separation was entered. The requesting party's motion and affidavit must include:

(a) The caption and case number for the action in which the decree of dissolution or legal separation was entered; and

(b) The requesting party's sworn statement that the restoration of a prior full name is not detrimental to any person.

(3) The court shall enter an order restoring the requesting party's name if the court determines that:

(a) The court entered a decree of dissolution or legal separation in an action concerning the requesting party; and

(b) The request to restore a prior full name is not detrimental to any person.

(4) The order restoring a prior full name of the party does not affect any party's rights or obligations pursuant to the decree of dissolution or legal separation entered in the action.

Cite as (Casemaker) C.R.S. § 14-10-120.2

History. Added by 2016 Ch. 55, §1, eff. 9/1/2016.

L. 2016: Entire section added, (HB 16-1085), ch. 55, p. 133, § 1, effective September 1.

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§ 14-10-120.3. Dissolution of marriage or legal separation upon affidavit - requirements

(1) Final orders in a proceeding for dissolution of marriage or legal separation may be entered upon the affidavit of either or both parties when:

(a) There are no minor children of the husband and wife and the wife is not pregnant or the husband and wife are both represented by counsel and have entered into a separation agreement that provides for the allocation of parental responsibilities concerning the children of the marriage and setting out the amount of child support to be provided by the husband or wife or both; and

(b) The adverse party is served in the manner provided by the Colorado rules of civil procedure; and

(c) There is no genuine issue as to any material fact; and

(d) There is no marital property to be divided or the parties have entered into an agreement for the division of their marital property.

(2) If one party desires to submit the matter for entry of final orders upon an affidavit, the submitting party shall file his or her affidavit setting forth sworn testimony showing the court's jurisdiction and factual averments supporting the relief requested in the proceeding together with a copy of the proposed decree, a copy of any separation agreement proposed for adoption by the court, and any other supporting evidence. The filing of the affidavit does not shorten any statutory waiting period required for entry of a decree of dissolution or decree of legal separation.

(3) The court shall not be bound to enter a decree upon the affidavits of either or both parties, but the court may, upon its own motion, require that a formal hearing be held to determine

any or all issues presented by the pleadings.

Cite as (Casemaker) C.R.S. § 14-10-120.3

History. L. 82: Entire section added, p. 303, § 1, effective May 22. L. 98: (1)(a) amended, p. 1399, § 45, effective February 1, 1999. L. 2012: IP(1) and (2) amended, (HB 12-1233), ch. 52, p. 187, § 2, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Legislative Activities in Family Law", see 11 Colo. Law. 1560 (1982). For article, "Mediation and the Colorado Lawyer", see 11 Colo. Law. 2315 (1982).

§ 14-10-120.5. Petition - fee - assessment - displaced homemakers fund

(1) There shall be assessed against a nonindigent petitioner a fee of five dollars for each filing of a petition for dissolution of marriage, declaration of invalidity of marriage, legal separation, or declaratory judgment concerning the status of marriage. All such fees collected shall be transmitted to the state treasurer for deposit in the displaced homemakers fund created pursuant to section 8-15.5-108, C.R.S.

(1.5) There shall be assessed against a nonindigent petitioner a fee of five dollars for each filing of a petition for dissolution of a civil union, declaration of invalidity of a civil union, legal separation, or declaratory judgment concerning the status of a civil union. All such fees collected shall be transmitted to the state treasurer for deposit in the displaced homemakers fund created pursuant to section 8-15.5-108, C.R.S.

(2) Notwithstanding the amount specified for the fee in subsection (1) or (1.5) of this section, the chief justice of the supreme court by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402(3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the chief justice by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402(4), C.R.S.

Cite as (Casemaker) C.R.S. § 14-10-120.5

History. Amended by 2013 Ch. 49, §15, eff. 5/1/2013.

L. 80: Entire section added, p. 455, § 2, effective July 1. L. 98: Entire section amended, p. 1330, § 40, effective June 1. L. 2009: (1) amended, (SB 09-038), ch. 119, p. 498, §2, effective July 1. L. 2013: Entire section amended, (SB 13-011), ch. 49, p. 163, § 15, effective May 1.

Cross References:

For the docket fees for dissolution of marriage actions, see § 13-32-101.

§ 14-10-121. Independence of provisions of decree or temporary order

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit parenting time is not suspended; but said party may move the court to grant an appropriate order.

Cite as (Casemaker) C.R.S. § 14-10-121

History. L. 71: R&RE, p. 529, § 1. C.R.S. 1963: § 46-1-21. L. 93: Entire section amended, p. 577, § 9, effective July 1.

Case Notes:

ANNOTATION

Intent of general assembly is to make matters relating to child support and child custody independent of each other. County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979).

Applied in Wise v. Bravo, 666 F.2d 1328 (10th Cir. 1981).

Cross References:

For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 165, Session Laws of Colorado 1993.

§ 14-10-122. Modification and termination of provisions for maintenance, support, and property disposition - automatic lien - definitions

(1) (a) Except as otherwise provided in sections 14-10-112(6) and 14-10-115(11)(c), the provisions of any decree respecting maintenance may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unfair, and, except as otherwise provided in subsection (5) of this section, the provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of changed circumstances that are substantial and continuing or on the ground that the order does not contain a provision regarding medical support, such as insurance coverage, payment for medical insurance deductibles and copayments, or unreimbursed medical expenses. The trial court retains continuing jurisdiction to modify a decree respecting maintenance or child support pursuant to this section during the pendency of an appeal. The court shall not revoke or modify the provisions as to property disposition unless the court finds the existence of conditions that justify the reopening of a judgment.

(b) Application of the child support guidelines and schedule of basic child support obligations set forth in section 14-10-115 to the circumstances of the parties at the time of the filing of a motion for modification of the child support order which results in less than a ten percent change in the amount of support due per month shall be deemed not to be a substantial and continuing change of circumstances.

(c) In any action or proceeding in any court of this state in which child support, maintenance when combined with child support, or maintenance is ordered, a payment becomes a final money judgment, referred to in this section as a support judgment, when it is due and not paid. Such payment is not retroactively modified except pursuant to subsection (1)(a) of this section and may be enforced as other judgments without further action by the court; except that an existing child support order with respect to child support payable by the obligor may be modified retroactively to the time that a mutually agreed upon change of physical custody occurs pursuant to subsection (5) of this section. A support judgment is entitled to full faith and credit and may be enforced in any court of this state or any other state. In order to enforce a support judgment, the obligee shall file with the court that issued the order a verified entry of support judgment specifying the period of time that the support judgment covers and the total amount of the support judgment for that period. The obligee or the delegate child support enforcement unit is not required to wait fourteen days to execute on such support judgment. However, a copy of the verified entry of support judgment must be provided to all parties pursuant to rule 5 of the Colorado rules of civil procedure, upon filing with the court. A verified entry of support judgment is not required to be signed by an attorney. A verified entry of support judgment

may be used to enforce a support judgment for debt entered pursuant to section 14-14-104. The filing of a verified entry of support judgment revives all individual support judgments that have arisen during the period of time specified in the entry of support judgment and that have not been satisfied, pursuant to rule 54 (h) of the Colorado rules of civil procedure, without the requirement of a separate motion, notice, or hearing. Notwithstanding the provisions of this subsection (1)(c), no court order for support judgment nor verified entry of support judgment is required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or to the department of revenue for purposes of intercepting a federal or state tax refund or lottery winnings.

(d) If maintenance or child support is modified pursuant to this section, the modification should be effective as of the date of the filing of the motion, unless the court finds that it would cause undue hardship or substantial injustice or unless there has been a mutually agreed upon change of physical custody as provided for in subsection (5) of this section. In no instance shall the order be retroactively modified prior to the date of filing, unless there has been a mutually agreed upon change of physical custody. The court may modify installments of maintenance or child support due between the filing of the motion and the entry of the order even if the circumstances justifying the modification no longer exist at the time the order is entered.

(1.5) (a) **Lien by operation of law.**

(I) Commencing July 1, 1997, all cases in which services are provided in accordance with Title IV-D of the federal "Social Security Act", as amended, referred to in this subsection (1.5) as "IV-D cases", shall be subject to the provisions of this subsection (1.5), regardless of the date the order for child support was entered. In any IV-D case in which current child support, child support when combined with maintenance, or maintenance has been ordered, a payment becomes a support judgment when it is due and not paid, and a lien therefor is created by operation of law against the obligor's real and personal property and any interest in any such real or personal property. The entry of an order for child support debt, retroactive child support, or child support arrearages or a verified entry of judgment pursuant to this section creates a lien by operation of law against the obligor's real and personal property and any interest in any such real and personal property.

(II) The amount of such lien shall be limited to the amount of the support judgment for outstanding child support, child support when combined with maintenance, maintenance, child support debt, retroactive child support, or child support arrearages, any interest accrued thereon, and the amount of any filing fees as specified in this section.

(III) A support judgment or lien shall be entitled to full faith and credit and may be enforced in any court of this state or any other state. Full faith and credit shall be accorded to such a lien arising from another state that complies with the provisions of this subsection (1.5). Judicial notice

or hearing or the filing of a verified entry of judgment shall not be required prior to the enforcement of such a lien.

(IV) The creation of a lien pursuant to this section shall be in addition to any other remedy allowed by law.

(b) **Lien on real property.**

(I) To evidence a lien on real property created pursuant to this subsection (1.5), a delegate child support enforcement unit shall issue a notice of lien and record the same in the real estate records in the office of the clerk and recorder of any county in the state of Colorado in which the obligor holds an interest in real property. From the time of recording of the notice of lien, such lien shall be an encumbrance in favor of the obligee, or the assignee of the obligee, and shall encumber any interest of the obligor in any real property in such county.

(II) The lien on real property created by this section shall remain in effect for the earlier of twelve years or until all past-due amounts are paid, including any accrued interest and costs, without the necessity of renewal. A lien on real property arising pursuant to this subsection (1.5) may be extended or renewed indefinitely beyond twelve years by rerecording the lien every twelve years. Within twenty calendar days after satisfaction of the debt or debts described in the notice of lien, the delegate child support enforcement unit shall record a release of lien with the clerk and recorder of the county where the notice of lien was recorded. A release of lien shall be conclusive evidence that the lien is extinguished.

(III) The child support enforcement unit shall be exempt from the payment of recording fees charged by the clerk and recorder for the recording of notices of lien or releases of lien.

(c) **Lien on personal property other than wages, insurance claim payments, awards, and settlements, and money held by a financial institution as defined in 42 U.S.C. sec. 669a(d)(1) or motor vehicles.**

(I) To evidence a lien on personal property, other than wages; insurance claim payments, awards, and settlements as authorized in section 26-13-122.7 ; accounts as authorized in section 26-13-122.3 ; and money held by a financial institution as defined in 42 U.S.C. sec. 669a(d)(1) or motor vehicles, created pursuant to this subsection (1.5), the state child support enforcement agency shall file a notice of lien with the secretary of state by means of direct electronic data transmission. From the time of filing the notice of lien with the secretary of state, the lien is an encumbrance in favor of the obligee, or the assignee of the obligee, and encumbers all personal property or any interest of the obligor in any personal property.

(II) The lien on personal property created by this section shall remain in effect for the earlier of twelve years or until all past-due amounts are

paid, including any accrued interest and costs, without the necessity of renewal. A lien on personal property arising pursuant to this subsection (1.5) may be extended or renewed indefinitely beyond twelve years by rerecording the lien every twelve years. Within twenty calendar days after satisfaction of the debt or debts described in the notice of lien, the state child support enforcement agency shall file a release of lien with the secretary of state. The filing of such a release of lien shall be conclusive evidence that the lien is extinguished.

(III) The state child support enforcement agency shall be exempt from paying a fee for the filing of notices of liens or releases of liens with the secretary of state pursuant to this paragraph (c).

(IV) For purposes of this paragraph (c), "personal property" means property that the child support enforcement agency has determined has a net equity value of not less than five thousand dollars at the time of the filing of the notice of lien with the secretary of state.

(d) **Lien on motor vehicles.**

(I) (A) To evidence a lien on a motor vehicle created pursuant to this subsection (1.5), a delegate child support enforcement unit shall issue a notice of lien to the authorized agent as defined in section 42-6-102 (1.5) by first class mail. From the time of filing of the lien for public record and the notation of such lien on the owner's certificate of title, such lien shall be an encumbrance in favor of the obligee, or the assignee of the obligee, and must encumber any interest of the obligor in the motor vehicle. In order for any such lien to be effective as a valid lien against a motor vehicle, the obligee, or assignee of the obligee, shall have such lien filed for public record and noted on the owner's certificate of title in the manner provided in sections 42-6-121 and 42-6-129.

(B) Liens on motor vehicles created by this section shall remain in effect for the same period of time as any other lien on motor vehicles as specified in section 42-6-127, C.R.S., or until the entire amount of the lien is paid, whichever occurs first. A lien created pursuant to this section may be renewed pursuant to section 42-6-127, C.R.S. Within twenty calendar days after satisfaction of the debt or debts described in the notice of lien, the delegate child support enforcement unit shall release the lien pursuant to the procedures specified in section 42-6-125, C.R.S. When a lien on a motor vehicle created pursuant to this subsection (1.5) is released, the authorized agent and the executive director of the department of revenue shall proceed as provided in section 42-6-126, C.R.S.

(C) The child support enforcement unit shall not be exempt from the

payment of filing fees charged by the authorized agent for the filing of either the notice of lien or the release of lien. However, the child support enforcement unit may add the amount of the filing fee to the lien amount and collect the amount of such fees from the obligor.

(II) For purposes of this subsection (1.5), "motor vehicle" means any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways, trailers, semitrailers, and trailer coaches, without motive power; that has a net equity value based upon the loan value identified for such vehicle in the national automobile dealers' association car guide of not less than five thousand dollars at the time of the filing of the notice of lien and that meets such additional conditions as the state board of human services may establish by rule; and on which vehicle a lien already exists that is filed for public record and noted accordingly on the owner's certificate of title. "Motor vehicle" does not include low-power scooters, as defined in section 42-1-102, C.R.S.; vehicles that operate only upon rails or tracks laid in place on the ground or that travel through the air or that derive their motive power from overhead electric lines; farm tractors, farm trailers, and other machines and tools used in the production, harvesting, and care of farm products; and special mobile machinery or industrial machinery not designed primarily for highway transportation. "Motor vehicle" does not include a vehicle that has a net equity value based upon the loan value identified for such vehicle in the national automobile dealers' association car guide of less than five thousand dollars at the time of the filing of the notice of lien and does not include a vehicle that is not otherwise encumbered by a lien or mortgage that is filed for public record and noted accordingly on the owner's certificate of title.

(e) **Priority of a lien.**

(I) A lien on real property created pursuant to this section shall be in effect for the earlier of twelve years or until all past-due amounts are paid and shall have priority over all unrecorded liens and all subsequent recorded or unrecorded liens from the time of recording, except such liens as may be exempted by regulation of the state board of human services. A lien on real property arising pursuant to this subsection (1.5) may be extended or renewed indefinitely beyond twelve years by rerecording the lien every twelve years.

(II) A lien on personal property, other than motor vehicles, created pursuant to this section shall be in effect for the earlier of twelve years or until all past-due amounts are paid and shall have priority from the time the lien is filed with the central filing officer over all unfiled liens and all subsequent filed or unfiled liens, except such liens as may be exempted by regulation of the state board of human services. A lien on personal

property arising pursuant to this subsection (1.5) may be extended or renewed indefinitely beyond twelve years by rerecording the lien every twelve years.

(III) Liens on motor vehicles created pursuant to this section shall remain in effect for the same period of time as any other lien on motor vehicles as specified in section 42-6-127, C.R.S., or until all past-due amounts are paid, whichever occurs first, and shall have priority from the time the lien is filed for public record and noted on the owner's certificate of title over all unfiled liens and all subsequent filed or unfiled liens, except such liens as may be exempted by regulation of the state board of human services.

(f) **Notice of lien - contents.**

(I) The notice of lien shall contain the following information:

(A) The name and address of the delegate child support enforcement unit and the name of the obligee or the assignee of the obligee as grantee of the lien;

(B) The name, social security number, and last-known address of the obligor as grantor of the lien;

(C) The year, make, and vehicle identification number of any motor vehicle for liens arising pursuant to paragraph (d) of this subsection (1.5);

(D) A general description of the personal property for liens arising pursuant to paragraph (c) of this subsection (1.5);

(E) The county and court case number of the court of record that issued the order of current child support, child support debt, retroactive child support, child support arrearages, child support when combined with maintenance, or maintenance or of the court of record where the verified entry of judgment was filed;

(F) The date the order was entered;

(G) The date the obligation commenced;

(H) The amount of the order for current child support, child support debt, retroactive child support, child support arrearages, child support when combined with maintenance, or maintenance;

(I) The total amount of past-due support as of a date certain; and

(J) A statement that interest may accrue on all amounts ordered to be paid, pursuant to sections 14-14-106 and 5-12-101, C.R.S., and may be collected from the obligor in addition to costs of sale, attorney fees, and any other costs or fees incident to such sale for liens arising pursuant to paragraphs (b) and (c) of this

subsection (1.5).

(II) For purposes of liens against motor vehicles, the notice of lien shall include the information set forth in subparagraph (I) of this paragraph (f) in addition to the information specified in section 42-6-120, C.R.S.

(g) **Rules.** The state board of human services shall promulgate rules and regulations concerning the procedures and mechanism by which to implement this subsection (1.5).

(h) **Bona fide purchasers - bona fide lenders.**

(I) The provisions of this subsection (1.5) shall not apply to any bona fide purchaser who acquires an interest in any personal property or any motor vehicle without notice of the lien or to any bona fide lender who lent money to the obligor without notice of the lien the security or partial security for which is any personal property or motor vehicle of such obligor.

(II) For purposes of this paragraph (h):

(A) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim, including but not limited to an automatic lien arising pursuant to this subsection (1.5).

(B) "Bona fide lender" means a lender for value in good faith and without notice of an adverse claim, including but not limited to an automatic lien arising pursuant to this subsection (1.5).

(i) **No liability.** No clerk and recorder, authorized agent as defined in section 42-6-102 (1.5), financial institution, lienholder, or filing officer, nor any employee of any of such persons or entities, shall be liable for damages for actions taken in good faith compliance with this subsection (1.5).

(j) **Definition.** For purposes of this subsection (1.5), "child support debt" shall have the same meaning as set forth in section 26-13.5-102(3), C.R.S.

(2) (a) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the earlier of:

(I) The death of either party;

(II) The end of the maintenance term, unless a motion for modification is filed prior to the expiration of the term;

(III) The remarriage of or the establishment of a civil union by the party receiving maintenance; or

(IV) A court order terminating maintenance.

(b) A payor spouse whose income is reduced or terminated due to his or her retirement after reaching full retirement age is entitled to a rebuttable

presumption that the retirement is in good faith.

(c) For purposes of this subsection (2), "full retirement age" means the payor's usual or ordinary retirement age when he or she would be eligible for full United States social security benefits, regardless of whether he or she is ineligible for social security benefits for some reason other than attaining full retirement age. "Full retirement age" shall not mean "early retirement age" if early retirement is available to the payor spouse, nor shall it mean "maximum benefit retirement age" if additional benefits are available as a result of delayed retirement.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

(4) Notwithstanding the provisions of subsection (1) of this section, the provisions of any decree respecting child support may be modified as a result of the change in age for the duty of support as provided in section 14-10-115(15), but only as to installments accruing subsequent to the filing of the motion for modification; except that section 14-10-115(15)(b) does not apply to modifications of child support orders with respect to a child who has already achieved the age of nineteen as of July 1, 1991.

(5) Notwithstanding the provisions of subsection (1) of this section, when a court-ordered, voluntary, or mutually agreed upon change of physical care occurs, the provisions for child support of the obligor under the existing child support order, if modified pursuant to this section, will be modified or terminated as of the date when physical care was changed. The provisions for the establishment of a child support order based on a court-ordered, voluntary, or mutually agreed upon change of physical care may also be entered retroactively to the date when the physical care was changed. When a court-ordered, voluntary, or mutually agreed upon change of physical care occurs, parties are encouraged to avail themselves of the provision set forth in section 14-10-115(14)(a) for updating and modifying a child support order without a court hearing. The court shall not modify child support pursuant to this subsection (5) for any time more than five years prior to the filing of the motion to modify child support, unless the court finds that its application would be substantially inequitable, unjust, or inappropriate. The five-year prohibition on retroactive modification does not preclude a request for relief pursuant to any statute or court rule.

(6)

(a) Notwithstanding any other provisions of this article, within the time frames set forth in paragraph (c) of this subsection (6), the individual named as the father in the order may file a motion to modify or terminate an order for child support entered pursuant to this article if genetic test results based on DNA testing, administered in accordance with section 13-25-126, C.R.S., establish the exclusion of the individual named as the father in the order as the biological parent of the child for whose benefit the child support order was entered.

(b) If the court finds pursuant to paragraph (a) of this subsection (6) that the individual named as the father in the order is not the biological parent of the child for whose benefit the child support order was entered and that it is just and

proper under the circumstances and in the best interests of the child, the court shall modify the provisions of the order for support with respect to that child by terminating the child support obligation as to installments accruing subsequent to the filing of the motion for modification or termination, and the court may vacate or deem as satisfied, in whole or in part, unpaid child support obligations arising from or based upon the order determining parentage. The court shall not order restitution from the state for any sums paid to or collected by the state for the benefit of the child.

(c) (I) A motion to modify or terminate an order for child support pursuant to this subsection (6) must be filed within two years from the date of the entry of the initial order establishing the child support obligation.

(II) Repealed.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (6), a court order for child support shall not be modified or terminated pursuant to this subsection (6) if:

(I) The child support obligor acknowledged paternity pursuant to section 19-4-105(1)(c) or (1)(e), C.R.S., knowing that he was not the father of the child;

(II) The child was adopted by the child support obligor; or

(III) The child was conceived by means of assisted reproduction.

(e) A motion filed pursuant to this section may be brought by the individual named as the father in the order and shall be served in the manner set forth in the Colorado rules of civil procedure upon all other parties. The court shall not modify or set aside a final order determining parentage pursuant to this section without a hearing.

(f) For purposes of this subsection (6), "DNA" means deoxyribonucleic acid.

Cite as (Casemaker) C.R.S. § 14-10-122

History. Amended by 2021 Ch. 116, §2, eff. 5/7/2021.

Amended by 2019 Ch. 270, §3, eff. 7/1/2019.

Amended by 2017 Ch. 264, §30, eff. 5/25/2017.

Amended by 2016 Ch. 157, §8, eff. 1/1/2017.

Amended by 2016 Ch. 157, §2, eff. 1/1/2017.

Amended by 2014 Ch. 307, §2, eff. 5/31/2014.

Amended by 2013 Ch. 176, §2, eff. 1/1/2014.

Amended by 2013 Ch. 103, §3, eff. 1/1/2014.

Amended by 2013 Ch. 316, §35, eff. 8/7/2013.

L. 71: R&RE, p. 529, § 1. C.R.S. 1963: § 46-1-22. L. 86: (1) amended, p. 724, § 3, effective November 1. L. 87: (1)(c) added, p. 587, § 4, effective July 10. L. 88: (1)(c) amended, p. 633, § 7, effective July 1. L. 89: (1)(a) and (1)(c) amended, p. 792, § 16, effective July 1. L. 90: (1)(c) amended, p. 891, § 11, effective July 1. L. 91: (4) and (5) added, pp. 238, 253, §§ 2, 8, effective July 1. L. 92: (1)(d) added, p. 203, § 10, effective August 1. L. 93: (1)(a) amended, p. 1557, § 2, effective July 1. L. 97: (1)(c) amended, p. 561, § 6, effective July 1; (1.5) added, p. 1266, § 9, effective July 1. L. 98: (1)(a), (1)(c), (1)(d), and (5) amended, p. 764, § 14, effective July 1; (5) amended, p. 1400, § 46, effective February 1,

1999. L. 99: (1.5)(c), (1.5)(e)(II), and (1.5)(i) amended, p. 751, § 21, effective January 1, 2000. L. 2000: (1.5)(b)(II) amended, p. 1704, § 1, effective July 1. L. 2001: (1.5)(c) amended, p. 1445, § 38, effective July 1. L. 2004: (1.5)(b)(II), (1.5)(c)(II), (1.5)(e)(I), and (1.5)(e)(II) amended, p. 386, § 2, effective July 1. L. 2007: (1)(b), (4), and (5) amended, p. 107, § 3, effective March 16. L. 2008: (6) added, p. 1656, § 3, effective August 15. L. 2009: (1.5)(d)(II) amended, (HB 09-1026), ch. 281, p. 1258, §19, effective October 1. L. 2010: (1.5)(d)(II) amended, (HB 10-1172), ch. 320, p. 1493, §18, effective October 1. L. 2012: (1)(c) amended, (SB 12-175), ch. 208, p. 831, § 28, effective July 1. L. 2013: (1.5)(c)(I) amended, (HB 13-1300), ch. 316, p. 1675, § 35, effective August 7; (1)(a) and (5) amended, (HB 13-1209), ch. 103, p. 354, § 3, effective January 1, 2014; (2) amended, (HB 13-1058), ch. 176, p. 652, § 2, effective January 1, 2014. L. 2014: (2)(a)(III) amended, (HB 14-1379), ch. 307, p. 1300, § 2, effective May 31. L. 2016: (1.5)(c)(I) and (5) amended, (HB 16-1165), ch. 157, pp. 490, 496, §§ 2, 8, effective January 1, 2017. L. 2017: (1.5)(d)(I)(A) and (1.5)(i) amended, (SB 17-294), ch. 264, p. 1391, § 30, effective May 25.

Editor's Note:

(1) Amendments to subsection (5) by Senate Bill 98-139 and House Bill 98-1183 were harmonized, effective February 1, 1999.

(2) The term "custody" has been changed in other places in the Colorado Revised Statutes to correspond with the use of the term "parental responsibility" as described in § 14-10-124.

(3) Subsection (6)(c)(II)(B) provided for the repeal of subsection (6)(c)(II), effective July 1, 2011. (See L. 2008, p. 1656.)

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Interstate Modification of Support Decrees", see 28 Rocky Mt. L. Rev. 355 (1956). For article, "The Economy: Its Effects on Family Law", see 11 Colo. Law. 97 (1982). For article, "Automatic Escalation Clauses Relating to Maintenance and Child Support", see 12 Colo. Law. 1083 (1983). For article, "Support Calculation Revisited", see 12 Colo. Law. 1647 (1983). For article, "The Continued Jurisdiction of the Court to Modify Maintenance", see 13 Colo. Law. 62 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Child Support Obligations After Death of the Supporting Parent", see 16 Colo. Law. 790 (1987). For article, "Maintenance in Colorado: Issues and Factors", see 21 Colo. Law. 2399 (1992). For article, "Overcoming Difficulties in Collecting Child Support and Maintenance", see 24 Colo. Law. 2725 (1995). For article, "Post-dissolution Maintenance Review in Trial Court Under CRS §§ 14-10-114 or -122", see 26 Colo. Law. 93 (July 1997). For article, "Postsecondary Education Expenses after Chalat: Paying College Expenses after Divorce", see 38 Colo. Law. 19 (Jan. 2009). For article, "Modifying or Terminating Maintenance Based on Cohabitation", see 38 Colo. Law. 45 (June 2009). For article, "The Modification of a Denial of Spousal Maintenance at Permanent Orders", see 39 Colo. Law. 37 (Feb. 2010). For article, "Retroactive Child Support: Conflicting Decisions and Practical Advice", see 41 Colo. Law. 91 (Aug. 2012). For article, "Maintenance Revisited The New Act", see 42 Colo. Law. 69 (Nov. 2013). For article, "Leap of Faith: Retiring while Paying Spousal Maintenance", see 48 Colo. Law. 28 (Oct. 2019).

Annotator's note. Cases relevant to § 14-10-122(1) decided prior to its earliest source, L. 71, p. 529, § 1, have been included in the annotations to this section.

This section effects a legislative abrogation of the common law that developed under the divorce statutes operative prior to the uniform dissolution of marriage act. In re Icke, 189 Colo. 319, 540 P.2d 1076 (1975).

For the effect of this section on prior law, see In re Edwards, 39 Colo. App. 26, 560 P.2d 849 (1977).

Abatement of maintenance payments not authorized by this section. In re Ward, 717 P.2d 513 (Colo. App. 1985).

Social security benefits may be credited towards support obligation. Social security disability benefit payments and social security retirement benefit payments for minor children may, at the discretion of the trial court, be credited toward a father's obligation to pay support. In re Robinson, 651 P.2d 454 (Colo. App. 1982).

When social security disability benefit payments for children are set off against a father's obligation to pay support, the father is entitled to credit only up to the extent of his obligation for monthly payments of child support, but not in excess thereof. In re Robinson, 651 P.2d 454 (Colo. App. 1982).

Life insurance reasonable means of meeting obligation. The maintenance of a life insurance policy with the former husband's minor children as beneficiaries provides a reasonable and practical means by which the obligation under this section can be met. In re Icke, 189 Colo. 319, 540 P.2d 1076 (1975).

Where the husband was in very poor health, suffering from diabetes and high blood pressure, had heart damage and had previously suffered a stroke, and furthermore, because of his poor health, the husband was under doctor's orders to work in a low pressure occupation, the trial court did not err in ordering the husband to carry a life insurance in favor of his former wife. In re Koktavy, 44 Colo. App. 305, 612 P.2d 1161 (1980).

Court may order life insurance naming children as beneficiaries be maintained by parent obligated to pay child support, just as its provisions for child support now extend beyond the death of the parent, unless otherwise provided. In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975).

Valuation of undisclosed assets. Once property has been divided pursuant to § 14-10-113, such property becomes akin to separate property, and any increase in the value of ownership interest therein should be considered when determining valuation. The failure to do so constitutes a confiscatory taking. In re Hiner, 710 P.2d 488 (Colo. 1985).

The doctrine of equitable estoppel may properly be applied to afford relief from accrued arrearages in child support if the party asserting the claim demonstrates reasonable reliance, to the party's detriment, upon the acts or representations of the other person and lack of knowledge

or convenient means of knowing the facts. In re Dennin & Lohf, 811 P.2d 449 (Colo. App. 1991).

The doctrine of equitable estoppel did not prevent enforcement of California decree to pay child support where father's failure to pay ordered amount or to seek modification did not fall within any of the special circumstances for which estoppel is applicable. In re Barone, 895 P.2d 1075 (Colo. App. 1994).

Where a court finds that the doctrine of equitable estoppel will support a reduction in child support arrearages due to a parent's misconduct, the court must determine whether such reduction meets the statutory policies contained in § 14-10-115 and whether such reduction will damage the child's interests. The court's calculation of the reduction of the arrearages must be based on the amount of child support that would have been paid but for the misconduct of the parent. In re Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009).

Child support obligations may be modified only as to installments accruing after motion to modify has been filed. In re Pote, 847 P.2d 246 (Colo. App. 1993) (decided under law in effect prior to 1991 amendment relating to voluntary change of physical custody).

The provisions of any decree respecting child support may be modified only as to installments accruing after the filing for modification. Thus, the trial court's ability to modify retroactively an accrued child support obligation is severely restricted. In re Wright, 924 P.2d 1207 (Colo. App. 1996).

Interest accrues on arrearages from the date each installment becomes due. In re Pote, 847 P.2d 246 (Colo. App. 1993).

Entry of a judgment pursuant to this section for past due support payments will not alter a trial court's authority to enforce its order underlying that judgment through contempt proceedings. The entry of a judgment, by operation of law pursuant to this section, does not deprive the trial court of its authority to enforce its child support and maintenance orders underlying the judgment. In re Nussbeck, 974 P.2d 493 (Colo. 1999) (overruling In re Woodrum, 618 P.2d 732 (Colo. App. 1980)).

Order on post-decree modification of maintenance is final, appealable order despite unresolved request for attorney fees. Attorney fee request sought in post-decree motion is no longer an integral and substantive part of the proceeding but is ancillary to the motion and may be decided separately. In re Nelson, 2012 COA 205, 292 P.3d 1214.

Applied in Blank v. District Court, 190 Colo. 114, 543 P.2d 1255 (1975); Glickman v. Mesigh, 200 Colo. 320, 615 P.2d 23 (1980); Soehner v. Soehner, 642 P.2d 27 (Colo. App. 1981); In re Manzo, 659 P.2d 669 (Colo. 1983); In re Ward, 670 P.2d 1260 (Colo. App. 1983); In re Hauger, 679 P.2d 604 (Colo. App. 1984); In re Burns, 717 P.2d 991 (Colo. App. 1985); In re Aragon, 773 P.2d 1110 (Colo. App. 1989); In re Wisdom, 833 P.2d 884 (Colo. App. 1992).

II. MODIFICATION.

A. Procedure.

Application for increase of alimony, and not contempt proceeding, was proper remedy of divorced wife complaining of reduction of alimony by court order. Weydeveld v. Weydeveld, 100 Colo. 301, 67 P.2d 72 (1937).

Orderly process requires a motion for modification of support payments, notice thereof, and a setting of the matter for hearing and disposition, and the party opposing modification has the right to prepare for such issue and present countervailing evidence. Wheeler v. Wheeler, 155 Colo. 7, 392 P.2d 285 (1964).

The mere filing of a petition to modify support payments and even having a hearing thereon without proceeding to a conclusion and the entry of an order thereon can have no legal effect. Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963).

The former statute of 1883 made provision for a reasonable and proper alteration in the amount of alimony allowed in a decree of divorce, and was held to contemplate that when such a change occurred in the condition or circumstances of the parties as renders a modification of the decree in this respect proper, that the application therefor should be made to the trial court, but such an application, necessarily based on new and additional matters, could be entertained in the supreme court on a petition for a rehearing of an appeal, although the original decree was here modified on the hearing. Luthe v. Luthe, 12 Colo. 421, 21 P. 467 (1889).

A judgment modifying, or refusing to modify, that part of the original divorce decree awarding alimony was a judgment in a divorce action, and was clearly subject to the requirement of notice as to a review, as was the original judgment or decree. Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923).

Where a modification of a decree awarding alimony was sought, the application, though made in the same case, was upon a petition asserting new facts, and upon a new notice, and the judgment of the court thereon was a final judgment to which a writ of error would lie. Prewitt v. Prewitt, 52 Colo. 522, 122 P. 766 (1912).

Order specifying amount where original order merely imposed duty. Where an original court order imposes a duty of support without specifying an amount under the criteria of § 14-10-115, a subsequent court order specifying the amount need only conform with § 14-10-115 rather than the modification requirements of this section. In re Saiz, 634 P.2d 1020 (Colo. App. 1981).

Reference to C.R.C.P. 60 to reopen judgment. There is no specific provision in this section, controlling the procedure by which a property division order may be reopened. Therefore, in order to determine whether the judgment may be reopened, reference must be made to C.R.C.P. 60. In re Scheuerman, 42 Colo. App. 206, 591 P.2d 1044 (1979).

Appropriate motion required to alter, amend, or vacate original trial court's order. Original trial court's order valuing the marital property was a valid final judgment which could be altered only upon appropriate motion under either C.R.C.P. 59 or 60. In re McKendry, 735 P.2d 908 (Colo. App. 1986).

The provisions of this section governing retroactive modification of child support upon a change of physical custody conflict with, but control over, C.R.C.P. 60 (b) because subsection (1)(c) expressly provides for retroactive modification of child support without imposing any time limit. In re Green, 93 P.3d 614 (Colo. App. 2004).

Upon registration, decree of foreign court becomes in effect a Colorado order, and is subject to the same limitations as to modification as if entered in a Colorado court. Such orders can only be modified by compliance with this section. Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981).

Informal motion to modify is permissible. Unless due process is violated, the informality of an oral motion by one party to set aside the property agreement amounts to no more than an irregularity which does not affect the jurisdiction of the district court. In re Stroud, 631 P.2d 168 (Colo. 1981).

A property division is final and nonmodifiable absent conditions justifying relief from judgment. In re Wells, 833 P.2d 797 (Colo. App. 1991).

Reconsideration of property division to correct error unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Findings based on needs and circumstances on hearing date. In modification of support orders, the court must base its findings and orders on the needs of the children and the circumstances of the parents at the time of the hearing rather than on what those conditions might have been in the past or may be in the future. In re Serfoss, 642 P.2d 44 (Colo. App. 1981).

In modification of maintenance, court must base its findings and orders on needs and circumstances of parties at the time of the hearing rather than on what those conditions might have been in the past or may be in the future and should consider the parties' actual financial situation and their ability to earn. In re Ward, 717 P.2d 513 (Colo. App. 1985).

Although a separation agreement incorporated into a decree may expressly prohibit any modification of maintenance provisions contained therein, a district court may modify the maintenance provisions of a separation agreement incorporated into a dissolution decree on grounds of unconscionability if the agreement is silent on the subject or if the parties specifically reserve such power to the court. Any effort to limit or preclude the authority of district court to modify the maintenance provision of separation agreement must be articulated by language that is specific and unequivocal. In re Udis, 780 P.2d 499 (Colo. 1989).

Family law referee lacks authority to hear a motion for the modification of child support when the party against whom such motion is filed objects to a hearing before a referee. In re Mead, 765 P.2d 1072 (Colo. App. 1988).

In those cases in which a child support obligation has been ordered and the obligated parent becomes eligible for social security benefits, a motion to modify child support is required before the child support obligation of the parent may be reduced by the amount of social security benefits paid for the benefit of the child. In re Wright, 924 P.2d 1207 (Colo. App. 1996).

B. Unconscionability.

Premise for challenge to separation agreement. A challenge to a separation agreement under this article directed to the provisions pertaining to maintenance and child support must be premised on whether the agreement is unconscionable. In re Lowery, 39 Colo. App. 413, 568 P.2d 103 (1977), aff'd, 195 Colo. 86, 575 P.2d 430 (1978).

Fraud and overreaching must also be shown. In order to set aside the property division provisions of a settlement agreement, in addition to establishing the unconscionability of the agreement, fraud and overreaching must be shown. In re Lowery, 39 Colo. App. 413, 568 P.2d 103 (1977), aff'd, 195 Colo. 86, 575 P.2d 430 (1978).

"Unconscionable" construed. The term "unconscionable", in subsection (1), has the same meaning of fair, reasonable and just, as the identical term used in § 14-10-112. In re Carney, 631 P.2d 1173 (Colo. App. 1981); In re Dixon, 683 P.2d 803, (Colo. App. 1983).

In determining whether an agreement is, or has become, unconscionable, the trial court should consider and apply the pertinent criteria set forth in the following sections: Section 14-10-112 as to the economic circumstances of the parties; § 14-10-113(1) as to the division of property; § 14-10-114(1) as to maintenance; and § 14-10-115(1) as to child support. In re Lowery, 39 Colo. App. 413, 568 P.2d 103 (1977), aff'd, 195 Colo. 86, 575 P.2d 430 (1978).

In determining whether the terms of the original child support decree have become unconscionable, the trial court should apply the criteria set forth in § 14-10-115(1). In re Hughes, 635 P.2d 933 (Colo. App. 1981).

In deciding whether the terms of a dissolution decree have become unconscionable, a trial court should consider and apply the criteria listed in § 14-10-115(1). In re Pring, 742 P.2d 343 (Colo. App. 1987).

A party seeking modification of the terms of a separation agreement incorporated into a dissolution decree has a heavy burden of proving that those provisions have become unconscionable under all relevant circumstances. In re Udis, 780 P.2d 499 (Colo. 1989).

Presumption of unconscionability provision deprived parties of right to objective judicial determination. Provision in divorce decree specifying conditions under which unconscionability would be presumed deprived parties of the right to have an objective judicial determination in the future, based on the circumstances then existing. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

No presumption of unconscionability in cost of living increase provision. Provision in property settlement providing for a cost of living increase in child support based on the consumer price index does not create presumption of unconscionability because provision was not imposed by the court. In re Lamm, 682 P.2d 67 (Colo. App. 1984).

Educational savings not basis for unconscionability. The fact that a parent manages to save money for her children's education should not be a reason to punish that parent's frugality by allowing such savings to serve as a basis to characterize the initial agreement as unconscionable. In re Anderson, 638 P.2d 826 (Colo. App. 1981).

Parties are free to mutually agree upon child support provision which a court could not impose upon them. In re Lamm, 682 P.2d 67 (Colo. App. 1984).

Where the trial court reserves jurisdiction for the modification of a maintenance decree but does not establish a standard other than the unconscionability standard in this section, the unconscionability standard must be applied. In re Bowman-Berry, 749 P.2d 465 (Colo. App. 1987).

The fact that a spouse who receives maintenance enjoys increased income in comparison to the amount of income earned by that spouse at the time the decree was entered does not necessarily require the conclusion that the initial award of maintenance has been rendered unconscionable. In re Udis, 780 P.2d 499 (Colo. 1989).

Wife's increased earnings do not require conclusion that maintenance amount is unconscionable nor do they reduce dollar for dollar the amount properly awarded where record supports the determination that wife met the threshold for maintenance. In re Connell, 831 P.2d 913 (Colo. App. 1992).

Where wife was earning $1,500 per month, but her standard of living was below that enjoyed during the marriage, it was within the court's discretion to determine that the continuing disparity of income between the husband and wife required continuing maintenance, although in a lower monthly amount. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

Obligor spouse's reduced income as a result of a job change in anticipation of or in connection with early retirement may be considered by court in reducing maintenance, and the obligor shall not be considered voluntarily underemployed if (1) the obligor's decision was made in good faith and not with the motivation to decrease or eliminate maintenance, and (2) the decision was objectively reasonable based on factors such as the obligor's age, health, and the practice of the industry in which the obligor was employed. A similar analysis would apply to an obligee spouse who took an early retirement and sought to increase maintenance on that basis. In re Swing, 194 P.3d 498 (Colo. App. 2008).

C. Changed Circumstances.

It was fundamental that orders for the payment of alimony were subject to modification due to the changed circumstances of the parties. Stevens v. Stevens, 31 Colo. 188, 72 P. 1061 (1903); Prewitt v. Prewitt, 52 Colo. 522, 122 P. 766 (1912); Jewel v. Jewel, 71 Colo. 470, 207 P. 991 (1922); Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923); Huff v. Huff, 77 Colo. 15, 234 P. 167 (1925); Harris v. Harris, 113 Colo. 41, 154 P.2d 617 (1944); Elmer v. Elmer, 132 Colo. 57, 285 P.2d 601 (1955); Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960); Brownfield v. Brownfield, 143 Colo. 262, 352 P.2d 674 (1960); Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

There must be evidence of change of circumstances from time of previous decree awarding child support to justify a change in provisions. Manson v. Manson, 35 Colo. App. 144, 529 P.2d 1345 (1974); In re Soderquist, 44 Colo. App. 131, 608 P.2d 851 (1980); In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

The question is not whether, based on current financial circumstances of the parties, a court would have awarded the same amount of child support as that incorporated in the original decree. Instead, the question on a motion to modify is different: Have the terms of the original award become unfair, i.e., unconscionable. In re Anderson, 638 P.2d 826 (Colo. App. 1981); In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

The burden is heavy upon him who seeks modification; "changed circumstances so substantial and continuing as to make the terms unconscionable" must be shown. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975); In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979); In re Anderson, 638 P.2d 826 (Colo. App. 1981); McVay v. Johnson, 727 P.2d 416 (Colo. App. 1986); In re Pring, 742 P.2d 343 (Colo. App. 1987).

This section places the burden upon the party who seeks the modification to show changed circumstances so substantial as to make the terms of the decree unconscionable. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

In modifying a provision for maintenance, the burden is on the party seeking the modification to prove a substantial and continuing change of circumstances, and that, in considering the modification, the court should take into account the provisions of § 14-10-114. Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981).

Question is not whether, based on the current financial circumstances of the parties, a court would have awarded the same amount of child support as that incorporated in the original decree, but whether the terms of the original agreement have become unfair. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Provisions as to property disposition may not be modified absent conditions justifying the reopening of a judgment, and no attempt was made to establish the existence of such conditions. In re Anderson, 711 P.2d 699 (Colo. App. 1985).

Child support may be modified only upon a showing of changed circumstances that are substantial and continuing. In re Hamilton, 857 P.2d 542 (Colo. App. 1993); In re Aldrich, 945 P.2d 1370 (Colo. 1997); In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

A change is not substantial and continuing if application of the guidelines to the parties' present situation results in a change of less than 10% in the amount of child support. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

It is not every change of circumstance that entitles a former husband to a reduction of his support payments. Frazier v. Frazier, 164 Colo. 245, 433 P.2d 764 (1967).

Substantial and continuing changed circumstances requirement and postsecondary education support orders. Absent application of the

age of emancipation (subsection (4)) or medical insurance (subsection (1)) exceptions, the court's continuing jurisdiction to modify postsecondary education support orders is invoked only upon a showing of substantial and continuing changed circumstances by the party seeking modification. Nothing in the plain language of § 14-10-115 (1.5)(c.5) or this section alters this clear, unambiguous requirement. In re Chalat, 112 P.3d 47 (Colo. 2005).

Effect of amendments to postsecondary education support scheme on the substantial and continuing changed circumstances requirement. The general assembly did not express an intent that its enactments of amendments to the postsecondary education support scheme alone automatically triggers a court's continuing jurisdiction to modify child support. The requirement for substantial and continuing changed circumstances must still be shown. In re Chalat, 112 P.3d 47 (Colo. 2005).

Trial court properly denied father's motion for modification, which was based solely on the 1993 statutory amendment to § 14-10-115 (1.5)(b)(I) and which did not allege any substantial or continuing change in the parents' or the child's circumstances. In re Eaton, 894 P.2d 56 (Colo. App. 1995).

Where the divorce decree by its terms anticipated the very change in circumstances upon which the court at the modification hearing based its new order, such an increase in income could not support a later decree of the court modifying the original decree, because where the alleged change in the circumstances of the parties was one that the trial court anticipated and made allowance for when entering the original decree, such change would not be a ground for a modification of the decree. Andrews v. Andrews, 161 Colo. 529, 423 P.2d 573 (1967).

Where the most recent court order in a divorce action was based on the parties' written stipulation and agreement, and the wording of the order clearly and unambiguously stated that defendant was to pay $25 per week for the support of the minor children, and there was no mention in that order of any alimony or support for plaintiff, the subsequent remarriage of plaintiff was immaterial in the disposition of the case considering reduction in payments. Ferguson v. Ferguson, 32 Colo. App. 145, 507 P.2d 1110 (1973).

When a divorce decree directed the father to pay a specified amount periodically for the joint benefit of more than one minor child, the emancipation of one of the children did not automatically affect the liability of the father for the full sum prescribed by the order, rather it became the burden of the father to make such showing as would entitle him to be relieved of all or a part of such obligation, and his failure to do so estopped him from asserting any credits for such emancipation under an arrearage judgment for the full amount of the group allowance. Ferguson v. Ferguson, 32 Colo. App. 145, 507 P.2d 1110 (1973).

If the financial ability of the husband and father improves, and the needs of the minor children increase, the jurisdiction of the court to make additional orders for the care and maintenance of the minor children may be invoked. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957); Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963).

If the financial ability of the father improves and the needs of the minor children increase, it is proper to make appropriate increases in the amount of child support. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

A former spouse receiving maintenance should be permitted to benefit from his or her frugality and not the obligor. The former spouse should not be penalized for choosing a more austere lifestyle. In re Weibel, 965 P.2d 126 (Colo. App. 1998).

The fact that the spouse receiving maintenance is able to increase his or her income does not, in itself, make the initial award unconscionable. In re Weibel, 965 P.2d 126 (Colo. App. 1998).

The evidence did not support the husband's allegations with reference to his income or inability to pay, where he had the same employer and there was a very negligible difference in his income, and the substantial increase in his expenses was brought about by obligations incurred through entering into a new marriage, since this type of change was not, by itself, a ground for modification. Beddoes v. Beddoes, 155 Colo. 115, 393 P.2d 1 (1964).

Improved ability to pay support insufficient for modification. Evidence of the father's ability to pay an increased amount of child support is insufficient alone to justify modification. In re Hughes, 635 P.2d 933 (Colo. App. 1981).

Nor does it provide a basis for reduction. Where a father's income exceeds that which he was earning at the time of entry of the original decree, there was no basis for reduction of future support payments. In re Anderson, 638 P.2d 826 (Colo. App. 1981).

Child's needs more compelling than father's. Despite the fact that the father had left the military and enrolled in college, the trial court erred when it denied the mother's motion for an increase in child support where there was a reasonable inference from the evidence that the father's military experience qualified him for civilian employment. In re Mizer, 683 P.2d 382 (Colo. App. 1984).

Applications for a reduction in child support payments based on such a change in the mother's financial condition as her gainful employment, an increase in her earnings, her acquisition of property, or the like, have been denied in many cases, where no other circumstances warranted a reduction in the payments, because a mother's employment or income does not relieve the father of the obligation to support his children under a support order, and the mother's employment or property would not inure to the father's benefit as a change of circumstances diminishing his obligation to support children. Beddoes v. Beddoes, 155 Colo. 115, 393 P.2d 1 (1964).

In equitably adjusting financial obligations of parties based upon changed circumstances, the property division remains fixed and requisite adjustments to achieve fairness are to be made in the maintenance provisions of a decree. In re Jones, 627 P.2d 248 (Colo. 1981).

In making a determination of changed circumstances that are substantial and continuing, the statutory child support guidelines must be considered in conjunction with the other evidence presented. In re Miller, 790 P.2d 890 (Colo. App. 1990).

The courts have not created a rigid rule precluding reduction in support or maintenance payments when both incomes have increased. In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

Inflation may be considered. The effects of inflation are a proper factor to be considered in an action for child support modification. Nevertheless, there must be proper proof of the rate of inflation and its specific effects on the petitioner's circumstances. In re Hughes, 635 P.2d 933 (Colo. App. 1981).

Social security payments made to a dependent child as a result of the supporting parent's death must be considered by the court on a motion to terminate or modify its order for child support. In re Meek, 669 P.2d 628 (Colo. App. 1983).

Voluntarily accepted reduction due to temporarily reduced income not relevant. The fact that a custodial parent has voluntarily agreed to a reduction of child support during the time when the noncustodial parent's income was temporarily reduced has no relevance to the situation, where that parent's income later increases. In re Anderson, 638 P.2d 826 (Colo. App. 1981).

Where there was no showing of change in the circumstances of the parties subsequent to a prior hearing as would justify a modification of orders for the payment of alimony, a motion therefor was properly denied. Brownfield v. Brownfield, 143 Colo. 262, 352 P.2d 674 (1960).

Nothing in the statute precludes the trial court from ordering a support payment that exceeds the known needs of the child. In re McCord, 910 P.2d 85 (Colo. App. 1995).

Subsection (1)(a) no longer requires a finding of unconscionability for modification of child support. In re Ehlert, 868 P.2d 1168 (Colo. App. 1994).

Even if there was no change, as such, in the circumstances, the trial court could modify a support order where it resulted solely from an agreement between the parties, and was not an order entered after contested hearing before the court, because the parties could not tie the hands of a court as concerns the issue of support for minor children. Wright v. Wright, 31 Colo. App. 381, 504 P.2d 1119 (1972), rev'd on other grounds, 514 P.2d 73 (1973).

Application of new child support guidelines resulting in more than a 10 percent change in support due creates a rebuttable presumption that existing support award must be modified. In re Pugliese, 761 P.2d 277 (Colo. App. 1988); In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Language in subsection (1)(b) requiring courts to evaluate motions to modify child support in view of "the circumstances of the parties at the time of the filing of a motion for modification" does not limit a court to consider only the actual, not potential, income of the parties. Such an interpretation is undermined by the preceding text in subsection (1)(b) requiring the application of the child support guidelines to the parties circumstances at the time the motion was filed, which guidelines include the requirement that child support be calculated based upon a determination of potential income where a parent is voluntarily unemployed or underemployed. People ex rel. J.R.T., 55 P.3d 217 (Colo. App. 2002), aff'd on other grounds sub nom. People v. Martinez, 70 P.3d 474 (Colo. 2003).

Presumption regarding 10 percent change set forth in subsection (1)(b) is rebuttable, not conclusive. Where change in presumed support under guideline based on gross income is less than 10 percent, the parent seeking modification may nonetheless establish a substantial and continuing change in circumstances, justifying a deviation from the guideline, due to an increase in the parent's personal medical expenses. In re Ford, 851 P.2d 295 (Colo. App. 1993).

If the party requesting modification demonstrates that an increase in the obligor's income would result in at least a 10 percent change in the amount of child support, the child's needs are presumed. In re McCord, 910 P.2d 85 (Colo. App. 1995).

A rebuttable presumption exists that a modification of child support must be granted whenever application of the child support guidelines would result in more than a 10 percent change in the amount due. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

Increase in parties' income constitutes a substantial change of circumstances sufficient to justify increased child support. In re Anderson, 761 P.2d 293 (Colo. App. 1988).

Unmarried cohabitation does not constitute "remarriage" for the purposes of a suspension, reduction, or termination of spousal maintenance. In re Dwyer, 825 P.2d 1018 (Colo. App. 1991).

Original support decree anticipated continual support for children while attending school past age 21, and, therefore, the court was without authority to change decree under auspices of changed circumstances. In re Channell, 797 P.2d 819 (Colo. App. 1990).

Court did not make findings required by § 14-10-115 (14.5) to modify the allocation of federal income tax exemptions between the parties. Order allocating exemptions to the parties in alternating years, therefore, was reversed and the cause remanded to the trial court. In re Trout, 897 P.2d 838 (Colo. App. 1994).

The court is without authority to create a presumption of changed circumstances that alone would require modification of a support order. The court's order in effect creates such a presumption only as to the husband's income. While the court may order both parties to exchange relevant financial information, it may not order an automatic increase in child support based solely upon a cost of living raise that the husband might receive. In re Trout, 897 P.2d 838 (Colo. App. 1994).

Obligor spouse's reduced income as a result of a job change in anticipation of or in connection with early retirement may be considered by court in reducing maintenance, and the obligor shall not be considered voluntarily underemployed if (1) the obligor's decision was made in good faith and not with the motivation to decrease or eliminate maintenance, and (2) the decision was objectively reasonable based on factors such as the obligor's age, health, and the practice of the industry in which the obligor was employed. A similar analysis would apply to an obligee spouse who took an early retirement and sought to increase maintenance on that basis. In re Swing, 194 P.3d 498 (Colo. App. 2008).

Although court must consider the interests of both parties in determining whether the maintenance established in the original order

has become unfair as a result of a change in circumstances, nothing precludes an obligor from making a decision that serves the obligor's own interests, nor does the section require that modification be denied solely because an obligor's decision disadvantages the obligee by reducing the ability to pay maintenance. In re Swing, 194 P.3d 498 (Colo. App. 2008).

Court should compare child support order currently in effect with child support guidelines to determine whether a substantial and continuing change of circumstances exists. Although the parties' current child support order was the result of the parties' agreement to a reduced amount of child support, the court should have compared the current child support order with the presumed child support obligation under the guidelines at the time of mother's motion to determine if mother had shown a substantial and continuing change of circumstances sufficient to maintain her motion for modification. In re M.G.C.-G., 228 P.3d 271 (Colo. App. 2010).

Court could consider husband's income from second job in determination of wife's motion to modify maintenance. While § 14-10-114 references the child support guidelines, the child support guidelines require a determination of income for purposes of applying a mathematical formula. Conversely, maintenance is determined by a discretionary balancing of factors. The court did not err in failing to recalculate husband's income according to the child support guidelines and could properly consider husband's income from his second job as indicative of his ability to meet his own needs while meeting the needs of the payee-spouse. In re Nelson, 2012 COA 205, 292 P.3d 1214.

Evidence sufficient to constitute "changed circumstances". Where neither party had ever followed original support order and instead had made their own agreement and operated under it for several years, it was appropriate for the trial court to modify the child support provision specified in the original decree. In re Menu, 719 P.2d 742 (Colo. App. 1986).

For evidence insufficient to constitute "changed circumstances", see In re Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979); In re Soderquist, 44 Colo. App. 131, 608 P.2d 851 (1980); McVay v. Johnson, 727 P.2d 416 (Colo. App. 1986).

Subsection (5) does not require a written agreement between the parties for a change in physical care, only a mutual agreement. Court erred, therefore, in requiring a written agreement and in failing to hold a hearing when it acknowledged that there was a disputed issue of fact as to the existence of a mutual agreement. In re Paige, 2012 COA 83, 282 P.3d 506.

D. Discretion of Court.

Modification of decree allowing alimony is clearly discretionary and discretion depends upon the facts. Weydeveld v. Weydeveld, 100 Colo. 301, 67 P.2d 72 (1937); Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960); Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963).

In exercising jurisdiction to change or modify an alimony decree courts should proceed with caution, and unless the evidence clearly shows that the original decree is no longer fair and just, it should not be changed. Harris v. Harris, 113 Colo. 41, 154 P.2d 617 (1944); Beddoes v. Beddoes, 155 Colo. 115, 393 P.2d 1 (1964).

A trial court does not have the power to retroactively modify child support arrearages which accrue prior to the filing of a motion to modify. In re Greenblatt, 789 P.2d 489 (Colo. App. 1990).

Although a trial court has broad discretion in determining the amount and duration of a maintenance award, a trial court's order will not be upheld if it produces an unfair or inequitable result. Sinn v. Sinn, 696 P.2d 333 (Colo. 1985).

No authority of court to modify permanent orders without findings supported by evidence justifying modification. In re Mattson, 694 P.2d 1285 (Colo. App. 1984).

Payment of alimony in full to date of application for reduction was not a condition precedent to the court's power to reduce. Weydeveld v. Weydeveld, 100 Colo. 301, 67 P.2d 72 (1937).

Where an action was on the motion of a defendant for modification of support and visitation orders, the trial court was under no duty to make written findings of fact and conclusions of law. Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963).

Child support provisions of separation agreement are not binding on court. In re Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979).

Maintenance and attorney fee provisions considered together to determine court's abuse of discretion. In cases where an appeal has been taken from the property division, maintenance and attorney's fee provisions of a dissolution of marriage decree as a whole, they must be considered together to determine whether the trial court abused its discretion. In re Jones, 627 P.2d 248 (Colo. 1981).

Where the husband's annual salary had not decreased since the entry of the decree, his voluntary assumption of obligations incident to his second marriage did not constitute such a change in circumstances as to require a modification of the original order, the court did not abuse its discretion in denying his motion to modify. Watson v. Watson, 29 Colo. App. 449, 485 P.2d 919 (1971).

Where financial status changed between date motion filed and date of hearing. While the trial court is authorized to consider the needs of the parties as they appear on the date the motion is filed, where the financial status of a party had changed materially between the date the motion was filed and the date of the hearing, the court must take into consideration the circumstances present on each date in determining what relief should be granted. In re Edwards, 39 Colo. App. 26, 560 P.2d 849 (1977).

Trial judge lacked authority to order husband's assets transferred and sold where husband sought modification of decree due to changed circumstances and former wife made no challenge to property disposition and did not establish conditions justifying such relief. Mackey v. Hall, 694 P.2d 1275 (Colo. 1985).

Where only 12 days elapsed between the denial of a motion for modification of a final decree fixing support payments and the filing of a new motion, no change of circumstances being shown since the denial of the former motion, it was error for trial court to modify the decree on a showing that the husband had remarried and assumed additional obligations as a result thereof. Haase v. Haase, 151 Colo. 168, 376 P.2d 698 (1962).

Burden of proof for request for modification was not circumvented by court by requiring automatic reinstatement of original spousal maintenance award at end of period of reduction. In re Ward, 740 P.2d 18 (Colo. 1987).

Trial court has discretion to determine on a case by case basis whether the best interests of the child require it to raise guideline factors on its own motion in a proceeding for modification of child support. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Court did not abuse discretion by refusing to modify maintenance amount so that it would stay at higher level which was intended to be temporary while the wife completed her education and obtained employment even though wife had not obtained suitable employment. In re Wolford, 789 P.2d 459 (Colo. App. 1989).

Court did not abuse discretion in requiring husband to reimburse wife for deficiencies created by temporarily reduced spousal maintenance payments. In re Ward, 740 P.2d 18 (Colo. 1987).

Trial court erred in modifying judgment on its own motion to allow payment of attorney fees and home sale proceeds in installments without evidence, argument, or finding of "existence of conditions that justify reopening of a judgment." In re Connell, 831 P.2d 913 (Colo. App. 1992).

Trial court erred in denying mother's motion to set aside ex parte judgment in favor of father for medical and college expenses and attorney fees since subsection (1)(c) applies to child support payments, which mature under a decree without modification and become a judgment debt similar to any other judgment for money, but not to medical and college expenses, which are subject to additional elements of proof. In re Jacobs, 859 P.2d 914 (Colo. App. 1993).

Although subsection (1)(c) restricts a trial court's discretion to modify retroactively an accrued child support obligation, the restriction does not extend to the authority to set aside such a judgment on an appropriate basis. Remand to the district court is appropriate where the mother's motion to set aside the judgment contested her liability for further payments of child support, including the medical and college expenses, because of the emancipation of the children. In re Jacobs, 859 P.2d 914 (Colo. App. 1993).

The provisions of any decree respecting child support may be modified only as to installments accruing after the filing for modification. Thus, the trial court's ability to modify retroactively an accrued child support obligation is severely restricted. In re Wright, 924 P.2d 1207 (Colo. App. 1996).

Equitable estoppel doctrine did not bar relief from accrued child support arrearages. While the trial court found that father made reduced child support payments in reliance upon his agreement with mother, there were no findings that father was either unaware of the continuing obligations under the original support order or lacked the knowledge or means to seek modification of it. Further, the father did not detrimentally rely on mother's acts or representations, such as incurring additional expenses for either the child or himself or by giving up a benefit based upon the agreement. Accrued child support arrearages will be abated only under extremely limited circumstances, such as concealment of the child or uncompleted adoption proceedings. In re Beatty, 2012 COA 71, 279 P.3d 1225.

Laches is recognized as a defense to the collection of maintenance arrearages or interest or both. Trial court must consider whether wife's twenty-six-year delay in enforcing the maintenance order was unreasonable given the circumstances and whether husband suffered prejudice as a result of not paying for that period of time. The concepts of delay and prejudice are interrelated and must be considered together. In re Kann, 2017 COA 94, __ P.3d __.

E. Jurisdiction of Court.

The former section, under which jurisdiction was retained by the court to make revisions of its orders in divorce proceedings, did not provide for a retrial procedure, such was not its purpose, as an application for modification of a divorce decree in pursuance of the statute was neither a rehearing of the original case nor a review of the equities. Peercy v. Peercy, 154 Colo. 575, 392 P.2d 609 (1964).

Such rule applied to the incidental fact of paternity in a divorce proceeding. Peercy v. Peercy, 154 Colo. 575, 392 P.2d 609 (1964).

The trial court's jurisdiction in divorce actions, for the purpose of later revisions of its orders, including division of property, "because of fraud, misrepresentation, or concealment", was controlled by statute rather than by C.R.C.P. 60(b). Ingels v. Ingels, 29 Colo. App. 585, 487 P.2d 812 (1971).

A court had jurisdiction to modify a decree as to permanent alimony at a term subsequent to that at which the decree was entered and before the completion of the payments therein provided, without regard to the section of the code of civil procedure dealing with relief from judgments. Stevens v. Stevens, 31 Colo. 188, 72 P. 1061 (1903); Huff v. Huff, 77 Colo. 15, 234 P. 167 (1925).

It was held a court rendering a decree of divorce retained jurisdiction to modify provisions thereof relating to alimony, division of property or a money judgment. Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923); Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938); Mockelmann v. Mockelmann, 121 P.3d 337 (Colo. App. 2005).

The court has continuing jurisdiction for the purpose of such later revisions of its order pertaining to child support as changing circumstances may require. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

The holding that the trial court retained jurisdiction to hear an application for modification of the judgment for permanent alimony, where an agreement was incorporated in the decree, was overruled. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

Where there had been a change in circumstances before approving an application for a reduction, in matters of that kind the trial court had jurisdiction, notwithstanding the fact that prior to the modification order a writ of error had been issued by this court. Michaelson v. Michaelson, 167 Colo. 58, 445 P.2d 211 (1968).

Continuing jurisdiction as to child support. After jurisdiction of the parties in a divorce action attaches, the court retains jurisdiction over matters concerning the support of the minor children, and may, without notice to husband, enter judgment for arrearages in child support

payments. Sauls v. Sauls, 40 Colo. App. 275, 577 P.2d 771 (1977); In re Warner, 719 P.2d 363 (Colo. App. 1986).

Formerly, terms of agreement not subject to modification absent court's reservation of such powers. Where a separation agreement was adopted and incorporated into the decree of divorce, and the agreement did not reserve to the court jurisdiction to modify the terms of the alimony provision, nor did the court in its order adopting and incorporating the agreement into the divorce decree specifically reserve the right to modify the terms thereof, the court cannot later modify such an agreement. Burleson v. District Court, 196 Colo. 445, 586 P.2d 665 (1978).

Specific agreement that court would retain jurisdiction controls. Where the parties specifically agreed that the trial court would retain jurisdiction to reopen the proceedings if any undisclosed assets were subsequently discovered, that agreement is binding, notwithstanding the provisions of C.R.C.P. 60(b) and this section. In re Hiner, 669 P.2d 135 (Colo. App. 1983), aff'd in part and rev'd in part on other grounds, 710 P.2d 488 (Colo. 1985).

Court has the power to reserve the right to modify its judgment based upon the occurrence of an expressly anticipated change of circumstances and is not required to find that the statutory threshold as contained in this section has been met. In re Mirise, 673 P.2d 803 (Colo. App. 1983).

The court retains jurisdiction to modify an award of limited maintenance even after the term for maintenance has passed where an actual need for continued support may not have been evident during the term of limited maintenance and the parties have provided for further court orders. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

The court should not be deprived of the authority to modify an award of support based solely on the desire of promoting the goals of finality and permanency of a dissolution decree, even though the term for limited maintenance has expired. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

The court has jurisdiction to consider a motion to modify maintenance which is filed after the original maintenance obligation has ended where maintenance was awarded as part of a decree of dissolution and the parties have not by agreement expressly precluded the court's jurisdiction. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

A trial court may expressly reserve jurisdiction to review, adjust, or extend a maintenance award if: (1) An important contingency exists, the outcome of which may significantly affect the amount or duration of the maintenance award; (2) the contingency is based upon an ascertainable, future event or events; (3) the contingency can be resolved within a reasonable and specific period time. In re Caufman, 829 P.2d 501 (Colo. App. 1992).

If a trial court intends to reserve jurisdiction over maintenance pursuant to this section it should: (1) State its intent to do so on the record; (2) briefly outline its reasons for doing so, stating what the ascertainable future event upon which the reservation of maintenance jurisdiction is based; and (3) set forth a reasonably specific future time within which maintenance may be reconsidered under this section. In re Caufman, 829 P.2d 501 (Colo. App. 1992).

Only where the parties have expressly agreed to preclude modification under § 14-10-112(6), should maintenance be incapable of modification. Sinn v. Sinn, 696 P.2d 333 (Colo. 1985); In re Lee, 781 P.2d 102 (Colo. App. 1989); Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

By accepting the parties' separation agreement, incorporating it into the decree of dissolution, and granting the decree of dissolution that specified that the court retained jurisdiction "as provided by law", the court retained jurisdiction even though the contractual maintenance agreement specified that at the end of a three-year period, maintenance would be waived forever. In re Burke, 39 P.3d 1226 (Colo. App. 2001).

Any effort to limit or preclude the authority of a district court to modify the maintenance provision of a separation agreement must be articulated in language that is specific and unequivocal; if the parties are silent or if the parties reserve such power to the court, a district court may modify the maintenance provisions of a separation agreement incorporated into a decree. In re Burke, 39 P.3d 1226 (Colo. App. 2001).

District court did not have the power to void a separation agreement that was incorporated in an Illinois judgment. Upon remand, if the conditions for modification of child support are shown, the district court may modify the Illinois decree but it must recognize the Illinois judgment as the standard against which a change sought under this section must be measured. Rae v. Rubin, 719 P.2d 743 (Colo. App. 1986).

This section authorizes the modification of those awards traditionally labeled as maintenance in gross, even though the decree does not expressly reserve the power to modify the order. Sinn v. Sinn, 696 P.2d 333 (Colo. 1985).

The characterization of periodic payments as maintenance or property division should be based on the purpose of the payments as determined by the totality of the circumstances. Sinn v. Sinn, 696 P.2d 333 (Colo. 1985).

No authority to award "equitable reimbursement" of past expenses. The court does not have the authority in a dissolution of marriage action to award to the wife an "equitable reimbursement" of expenses incurred and paid by wife for the past support of the children. In re Serfoss, 642 P.2d 44 (Colo. App. 1981).

Separation agreement provision that was incorporated into the dissolution of marriage decree requiring husband to pay part of his future social security benefits to wife is void. State courts lack subject matter jurisdiction to divide parties' social security benefits in a property distribution. In re Anderson, 252 P.3d 490 (Colo. App. 2010).

It was formerly well-established in this state that a property settlement agreement which was approved and incorporated in a divorce decree could not subsequently be modified, in the absence of fraud or overreaching. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967); In re Corley, 38 Colo. App. 319, 558 P.2d 450 (1976).

Where the agreement of the parties specifically stated that no modification of any term in the agreement would be valid unless in writing and signed by both parties and there was no reservation to the court of the power to modify the maintenance provisions, nor did the court, as a condition of approval of the agreement, reserve the power to modify, the maintenance aspect of the property settlement provision in the decree could only be modified upon proof of fraud or overreaching, or by the subsequent agreement of the parties. In re Corley, 38 Colo. App. 319, 558 P.2d 450 (1976).

A provision in an agreement which obligated the husband to make fixed monthly payments to the wife, where the agreement was approved by the court and incorporated in the decree of divorce, was not subject to subsequent modification. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

The parties could, in an agreement, reserve to the court the power to modify the "alimony" provision, and the court, as a condition to approval of the agreement, could reserve such power to itself, and it could also be modified by the subsequent agreement of the parties. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

The law is well settled in Colorado that a decree determining property rights in a divorce matter is final and cannot be subsequently modified by reason of changed circumstances. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

Formerly, where parties to a divorce action enter into an agreement settling their property rights, which agreement was incorporated in the final decree, the court was thereafter without jurisdiction, no fraud in procuring the settlement appearing, to modify the terms of the decree concerning such property rights in the absence of consent of the parties. Hall v. Hall, 105 Colo. 227, 97 P.2d 415 (1939).

Although a former section gave the courts jurisdiction to enforce separate maintenance agreements, it was not to be construed to mean that parties to such agreements could not modify them by mutual consent. Gavette v. Gavette, 104 Colo. 71, 88 P.2d 964 (1939).

Trial court's modification of property division, to pay home sale proceeds and attorney fees in installments, limited wife's collection remedies and was therefore in excess of its jurisdiction. In re Greenblatt, 789 P.2d 489 (Colo. App. 1990); In re Connell, 831 P.2d 913 (Colo. App. 1992).

Where child was disabled and unable to support herself, an agreement between the parties that child support would terminate when the child reached 21 did not divest the court of jurisdiction to order continuing child support. In re Salas, 868 P.2d 1180 (Colo. App. 1994).

F. Effective Date of Modification.

Formerly a modifying order or decree relates only to future support payments and can be effective only from the time of its entry. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961); Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963).

The general rule that an order reducing the amount of support money operates only in futuro was not always applicable. Griffith v. Griffith, 152 Colo. 292, 381 P.2d 455 (1963).

Docketing delays do not excuse or reduce a child support obligation. Without specific findings of hardship or injustice under subsection (1)(d), modification must be made retroactive. However, amounts awarded retroactively are not arrearages requiring payment of interest under § 14-14-106. In re Armit, 878 P.2d 101 (Colo. App. 1994).

Generally the modification of support orders must be based on the needs of the parties at the time of the hearing thereon, rather than on what such conditions may have been in the past or may be in the future. Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960).

Court may now modify support payments back to date of filing of motion, rather than only from the date of the hearing on the motion as was the case under the earlier statute. In re Walsh, 44 Colo. App. 502, 614 P.2d 913 (1980).

But the trial court has discretion in determining whether to back date a reduction order to the time motion was filed, and trial court's determination will stand absent an abuse of discretion. In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

Under subsection (5), modification of support must date from the change in physical custody. Mother was not liable for child support arrearages based on a stipulation between the parties under which she agreed to pay child support, because she regained physical custody of the child and the child continued to live with her for the entire period for which support was claimed. In re Foley, 879 P.2d 452 (Colo. App. 1994).

Provisions of subsection (1) and subsection (5) relating to retroactivity of modification date are irreconcilable. The subsection enacted latest, which states that modification should be effective as of the date of the filing of the motion for modification of child support, read together with the consistent provisions of the statutory section, prevails. The conflicting subsection relating to retroactive modification back to the date of change of physical custody is repealed by implication. In re Pickering, 967 P.2d 164 (Colo. App. 1997) (decided prior to 1998 amendments to subsection (1) and (5)).

Subsection (5) provides that when children change their primary residence, the provisions for obligor's child support under the existing child support order will be modified as of the date when the physical care was changed. It does not provide that either parent's obligation terminates for a time; instead, the existing order is to be modified as of the date the children switch residences. In re Emerson, 77 P.3d 923 (Colo. App. 2003).

The general assembly legislatively overruled In re White, 240 P.3d 534 (Colo. App. 2010), when it amended subsection (5) in 2013. It intended to change the statute in favor of the statutory interpretation of In re Emerson. In re Garrett, 2018 COA 154, 444 P.3d 812.

Subsection (5) allows a court to retroactively enter a child support order against either parent, as of the date of a change in physical care of a child, regardless of the parent's status as an obligor or obligee under the existing child support order. In re Garrett, 2018 COA 154, 444 P.3d 812.

The inability to calculate the amount of support due does not change the fact that mother became the obligor as of the date of the

change in residence. In re Emerson, 77 P.3d 923 (Colo. App. 2003).

Subsection (5) relates only to provisions for child support for the obligor under the existing order. Where parents agreed that child could live with father who is the obligor under the existing child support order, child support may be ordered for mother effective the date of filing of a motion, not retroactive to the date when physical care was changed. In re White, 240 P.3d 534 (Colo. App. 2010) (holding contrary to In re Emerson, annotated above). But see In re Garrett, 2018 COA 154, 444 P.3d 812, annotated above.

Mother does not become "obligor" under existing child support order by virtue of a mutually agreed upon change in physical care. The statute encourages parties in such cases to modify or update the child support order. Mother's obligation commences at the time of filing of the motion. In re White, 240 P.3d 534 (Colo. App. 2010) (holding contrary to In re Emerson, annotated above). But see In re Garrett, 2018 COA 154, 444 P.3d 812, annotated above.

Subsection (5) provides a limited exception to the general rule that child support may only be modified retroactive to the date of filing of a motion and was designed to protect the obligor in an existing order who has accepted the physical care of the child. In re White, 240 P.3d 534 (Colo. App. 2010) (holding contrary to In re Emerson, annotated above). But see In re Garrett, 2018 COA 154, 444 P.3d 812, annotated below.

After a voluntary change in parenting time, retroactive child support may be awarded to the obligor of the previous order beginning on the date when the physical care was changed. Despite the persistent ambiguity of the statute after it was amended in 2013, the general assembly appears to have attempted to overrule In re White, 240 P.3d 534, and affirm In re Emerson, 77 P.3d 923 (Colo. App. 2003), both annotated above. In re Garrett, 2018 COA 154, 444 P.3d 812.

G. Scope of Review.

Application of the provisions of this section by the court for the modification of a prior child support order entered under the Uniform Parentage Act was error as a matter of law. Ashcraft v. Allis, 747 P.2d 1274 (Colo. App. 1987).

One who has accepted benefits of judgment may not seek reversal of that judgment on appeal. In re Jones, 627 P.2d 248 (Colo. 1981).

Unless it clearly appeared that the trial court, in resolving the problems arising under the evidence appearing in the record, acted unreasonably or arbitrarily in making the orders and awards of which complaint is made, it was not proper for the supreme court to modify or set them aside. Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938); Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

There was no difficulty in laying down the rule that governed, but there was difficulty in applying it, because what was, and what was not, reasonable and where a reasonable discretion ended and arbitrary action began was not susceptible of mathematical demonstration, and the application of the rule necessarily introduced the factor of individual judgment, which, as between different persons in the same case, was a variable quantity. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

A decree of divorce which had been modified by the supreme court on the determination of an appeal in respect to the amount and payment of alimony could have been further modified on petition for rehearing as to provide for the acceptance of the husband's tender of a deed of real estate in lieu of all pecuniary allowances of alimony. Luthe v. Luthe, 12 Colo. 421, 21 P. 467 (1889).

Where a mother through her attorney in open court, disclaimed any interest in upholding a judgment for cumulated support payments and recommended that the judgment be set aside and lesser sum substituted in justice to both parties, she could not change her position in the supreme court because dissatisfied with amount of reduction by the trial court. Griffith v. Griffith, 152 Colo. 292, 381 P.2d 455 (1963).

Referee's findings concerning whether a sufficient change of circumstances has occurred to justify modification of child support order is binding upon the court, unless such findings are without evidentiary support. McVay v. Johnson, 727 P.2d 416 (Colo. App. 1986).

Judgment which took into consideration the proceeds of moneys embezzled by the husband set aside. In re Allen, 724 P.2d 651 (Colo. 1986).

III. TERMINATION OF MAINTENANCE AND CHILD SUPPORT.

Annotator's note. Since §§ 14-10-122(2) and 14-10-122(3) are similar to repealed § 46-1-5(5), C.R.S. 1963, and § 46-1-5, CRS 53, and because repealed § 46-2-5, C.R.S. 1963, and § 46-2-5, CRS 53 have some relevance, relevant cases decided under those provisions have been included in the annotations to this section.

The "writing" referred to in subsection (2) must expressly or by clear implication provide that maintenance payments will continue after the death of the obligor. In re Williams, 2017 COA 120M, 410 P.3d 1271.

A general provision at the end of a premarital or separation agreement providing that the agreements are binding on and inure to the benefit of the parties' heirs, assigns, and personal representatives does not bind the estate to continue the maintenance payments to the obligee without a clear indication in the maintenance provision of the agreement that such payments are intended to continue after obligor's death. In re Williams, 2017 COA 120M, 410 P.3d 1271.

Without a clear expression of intent to continue a payment obligation beyond husband's lifetime, the period that husband was obligated to pay, during which the amount of the payments was nonmodifiable, ended with his death. In re Williams, 2017 COA 120M, 410 P.3d 1271.

Section inapplicable where agreement provides that only wife's death would absolve husband's liability. Although the language of a separation agreement does not explicitly provide for the continuation or termination of maintenance in the event of remarriage where it indicates that it was the contemplation of the parties that only the wife's death would absolve the husband of liability for payment of maintenance, the provisions of this section do not apply. In re Hahn, 628 P.2d 175 (Colo. App. 1981).

The presence of a general nonmodification clause in the separation agreement is sufficient to overcome the statutory presumption that maintenance terminates upon the recipient's remarriage. While express language concerning termination is preferable, the absence of that language is not fatal if the intent is evident from the agreement or decree as a whole. In re Parsons, 30 P.3d 868 (Colo. App. 2001).

The public policy which provides an obligation for one spouse to support the other spouse when there is a need and an ability to pay applies equally to reinstate a support obligation following annulment of a subsequent marriage where the equities dictate. In re Cargill & Rollins, 843 P.2d 1335 (Colo. 1993).

Ordinarily alimony ceased upon the death of the husband, or the wife. Elmer v. Elmer, 132 Colo. 57, 285 P.2d 601 (1955); Doll v. Doll, 140 Colo. 546, 345 P.2d 723 (1959); Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964); In re Piper, 820 P.2d 1198 (Colo. App. 1991).

Child support obligation of noncustodial parent continues after death of custodial parent. When a noncustodial parent's child support obligation is incorporated into a dissolution decree, and the custodial parent dies and the child is not in the physical custody of the noncustodial parent, the child support obligation of the noncustodial parent continues beyond the death of the custodial parent in accordance with the terms of the dissolution decree. Abrams v. Connolly, 781 P.2d 651 (Colo. 1989).

Legal obligation expanded. In effect, by this section the general assembly has expanded the legal obligation of the parent of a minor child entitled to receive support pursuant to a dissolution of marriage decree. In re Icke, 189 Colo. 319, 540 P.2d 1076 (1975).

Parent was not divested of child support obligation based on payments that accrued prior to a final adoption decree. In addition, father was denied equitable relief from child support obligation where record did not reflect evidence of representations upon which the father relied or that an evidentiary hearing was requested. In re Murray, 790 P.2d 868 (Colo. App. 1989).

Unless otherwise provided, the obligation to support minor children survives the death of the parent. In re Icke, 189 Colo. 319, 540 P.2d 1076 (1975).

There was no authority under which a husband could be compelled to carry insurance on his life to the end that a divorced wife could from that source continue to receive alimony after the death of the husband, as this obligation to pay alimony ends with death. Ferguson v. Olmsted, 168 Colo. 374, 451 P.2d 746 (1969).

Carrying life insurance as means of continuing alimony permitted. Subsection (2) changes the rule under prior law that an order requiring a husband to carry life insurance as a means of continuing alimony after his death was not permitted. In re Koktavy, 44 Colo. App. 305, 612 P.2d 1161 (1980).

Court may order spouse to obtain life insurance to secure future maintenance payments even though the obligation to pay maintenance terminated upon the death of the spouse. In re Graff, 902 P.2d 402 (Colo. App. 1994).

Under subsection (5) of former § 46-1-5, C.R.S. 1963, where there is no written agreement or stipulation to the contrary, the right to alimony automatically terminated by operation of law upon remarriage of the wife without the necessity of the husband's affirmative action for termination by court order. Spratlen v. Spratlen, 30 Colo. App. 91, 491 P.2d 608 (1971).

Where an agreement to pay alimony was indefinite in time, and merely provided that the reduction of husband's obligations at his father's death would be taken into consideration in fixing the amount of periodic alimony payments due thereafter, since there was no written agreement to the contrary, the trial court should have ruled that the husband's obligation to pay alimony ceased at the wife's remarriage. Spratlen v. Spratlen, 30 Colo. App. 91, 491 P.2d 608 (1971).

The term "remarriage" as used in this section means the status of remarriage, including both common law and ceremonial marriage. In re Cargill & Rollins, 843 P.2d 1335 (Colo. 1993).

Remarriage does not terminate property right adjustment. Court order constituting an adjustment of property rights between a former husband and wife did not terminate upon remarriage of wife. Greer v. Greer, 32 Colo. App. 196, 510 P.2d 905 (1973).

An annulment of a marriage does not automatically reinstate a maintenance obligation from a previous marriage as a matter of law, but the obligation may be reinstated depending on the facts and equities of the situation. In re Cargill & Rollins, 843 P.2d 1335 (Colo. 1993).

Remarriage may warrant reduction in "child support" payments to eliminate that portion of the payment actually intended as maintenance. Gebhardt v. Gebhardt, 198 Colo. 28, 595 P.2d 1048 (1979).

Duty to support dependent adult child. Where an adult child, subject to proof of her alleged incapacity, is still dependent on her parents, then the child is not emancipated under this article and the duty of support continues. In re Koltay, 646 P.2d 405 (Colo. App. 1982), aff'd, 667 P.2d 1374 (Colo. 1983).

Provision for post-emancipation support may be made by written agreement of the parties or, in proper circumstances, may be included in a decree entered before the child's 21st birthday and guided by consideration of the factors listed in § 14-10-115. In re Huff, 834 P.2d 244 (Colo. 1992).

What constitutes emancipation is a question of law. In re Robinson, 629 P.2d 1069 (Colo. 1981); Baker v. Baker, 667 P.2d 767 (Colo. App. 1983).

Establishment of emancipation. When, by express or implied agreement between a child and a parent, a child who is capable of providing for his own care and support undertakes to leave his parent's home, earn his own living and do as he wishes with his earnings, emancipation occurs. In re Robinson, 629 P.2d 1069 (Colo. 1981).

Whether emancipation has been established must be determined in light of all the relevant facts and circumstances of the case. In re Robinson,

629 P.2d 1069 (Colo. 1981).

Emancipation ordinarily occurs upon the attainment of majority. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983).

Burden of proving emancipation is on the one asserting it. In re Robinson, 629 P.2d 1069 (Colo. 1981).

Minor unemancipated child's earnings from summer employment do not affect the noncustodial parent's obligation to provide support. In re Anderson, 638 P.2d 826 (Colo. App. 1981).

Emancipation does not occur where child incapable of self-support. If a child is physically or mentally incapable of self-support when he attains the age of majority, "emancipation" does not occur, and the duty of parental support continues for the duration of the child's disability. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983).

Emancipation automatic upon child's marriage. Emancipation occurs automatically upon the valid marriage of child, and the validity of a marriage is tested under the laws of the jurisdiction where the marriage took place. In re Fetters, 4 1 Colo. App. 281, 584 P.2d 104 (1978).

Child, once emancipated by marriage, could become unemancipated by the subsequent annulment of that marriage. In re Fetters, 4 1 Colo. App. 281, 584 P.2d 104 (1978).

A minor may be emancipated for some purposes but not for others. In re Robinson, 629 P.2d 1069 (Colo. 1981).

For evidence insufficient to support finding that child emancipated, see In re Clay, 670 P.2d 31 (Colo. App. 1983).

For evidence insufficient to establish temporary emancipation during summer vacation, see In re Robinson, 629 P.2d 1069 (Colo. 1981).

Support payments for a child who is emancipated by marriage do not automatically terminate unless there is a specific amount separately stated for the support of the particular child emancipated. Ferguson v. Ferguson, 32 Colo. App. 145, 507 P.2d 1110 (1973).

Change in the age of emancipation and duty of support in § 14-10-115 did not automatically modify a parent's existing obligation of support and plain language of subsection (4) makes clear that the changes in the age of emancipation will affect a support obligation only if a motion to modify is filed and only with respect to those support payments coming due after such filing. In re Dion, 970 P.2d 968 (Colo. App. 1997).

This section plainly establishes substantial and continuing changed circumstances as the prerequisite to modification of all postsecondary education support orders. While the parties can agree to postsecondary education support, the terms of their agreement do not bind the court, and the parties cannot preclude or limit subsequent court modification of terms concerning child support. In re Ludwig, 122 P.3d 1056 (Colo. App. 2005).

A defendant who sought reduction in support payments had burden of proving that the payments should be reduced by any particular amount. Ferguson v. Ferguson, 32 Colo. App. 145, 507 P.2d 1110 (1973).

Good faith retirement does not create a reason that automatically terminates a payor's duty to pay maintenance. Subsection (2)(b) creates a "rebuttable presumption" that a payor who retires "after reaching full retirement age" has retired in "good faith." This rebuttable presumption is not conclusive on the question of whether the court should terminate the payor's maintenance obligation. Because the presumption is rebuttable, the spouse who is receiving maintenance must have the opportunity to rebut the presumption. Once the payor satisfies the rebuttable presumption created by subsection (2)(b), the presumption shifts the burden of going forward to the recipient to show that the payor's decision to retire was not made in good faith. If the recipient does not meet this burden, then the court will presume, as a matter of law, that the payor's decision to retire was made in good faith. In re Thorstad, 2019 COA 13, 434 P.3d 165.

If a payor asks a court to modify or to terminate a maintenance obligation because he or she intends to retire, then the court should follow a general rule. First, applying subsections (2)(b) and (2)(c), it should decide whether the payor's decision to retire was made in good faith. Second, it should then incorporate its findings concerning the payor's decision to retire as one of the factors to consider in deciding whether, under subsection (1)(a), circumstances have changed in such a substantial and continuing way as to make the original order unfair. In re Thorstad, 2019 COA 13, 434 P.3d 165.

Formerly, the necessity for a separate maintenance could have terminated at any time by reconciliation of the parties, or by the death of one of them. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

The general rule was that reconciliation did not automatically terminate property settlement agreements, and the courts in such cases looked to the intent of the parties to determine if reconciliation was meant to revoke the property settlement agreement, and the question of whether or not reconciliation affects a property settlement agreement was a question of fact to be determined by the evidence. Larson v. Goodman, 28 Colo. App. 418, 475 P.2d 712 (1970).

It is error as a matter of law to fail to weigh the evidence giving due consideration and thought to all of the statutory factors of § 14-10-115(1) where the noncustodial parent has ample resources with which to contribute to his children's education, and their ability to acquire and their need for an education are established by the evidence. In re Pring, 742 P.2d 343 (Colo. App. 1987).

Hence, the trial court erred in requiring these children to exhaust their own assets for educational purposes before requiring either parent to contribute to their education. In re Pring, 742 P.2d 343 (Colo. App. 1987).

Absent a finding that a motion for custody evaluation was made for purpose of delay, the court must order an evaluation upon request of one of the parties. Kuyatt v. District Court, 817 P.2d 116 (Colo. 1991).

Where the agreement fails to expressly provide for the termination of child support or educational costs, the court must interpret and

enforce the implied obligation to render it lawful. In re Meisner, 807 P.2d 1205 (Colo. App. 1990); In re Wisdom, 833 P.2d 884 (Colo. App. 1992).

When court interprets an implied obligation, it must consider all of the provisions of the agreement as well as the circumstances at the time it was made, consonant with its dominant purpose. In re Wisdom, 833 P.2d 884 (Colo. App. 1992).

Cross References:

For the legislative declaration contained in the 1997 act enacting subsection (1.5), see section 1 of chapter 236, Session Laws of Colorado 1997.

§ 14-10-123. Commencement of proceedings concerning allocation of parental responsibilities - jurisdiction - automatic temporary injunction - enforcement - definitions

(1) A proceeding concerning the allocation of parental responsibilities is commenced in the district court or as otherwise provided by law:

(a) By a parent:

(I) By filing a petition for dissolution or legal separation; or

(II) By filing a petition seeking the allocation of parental responsibilities with respect to a child in the county where the child is permanently resident or where the child is found; or

(b) By a person other than a parent, by filing a petition seeking the allocation of parental responsibilities for the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical care of one of the child's parents;

(c) By a person other than a parent who has had the physical care of a child for a period of one hundred eighty-two days or more, if such action is commenced within one hundred eighty-two days after the termination of such physical care; or

(d) By a parent or person other than a parent who has been granted custody of a child or who has been allocated parental responsibilities through a juvenile court order entered pursuant to section 19-1-104(6), C.R.S., by filing a certified copy of the juvenile court order in the county where the child is permanently resident. Such order shall be treated in the district court as any other decree issued in a proceeding concerning the allocation of parental responsibilities.

(1.3) As used in this section, excluding subsection (1.5) of this section:

(a) "Child" has the same meaning as set forth in section 19-1-103 (18).

(b) "Parent" has the same meaning as set forth in section 19-1-103 (82)(a).

(1.5) (a) For purposes of this subsection (1.5) only, "child" means an unmarried individual who has not attained twenty-one years of age.

(b) The court may enter an order for allocation of parental responsibilities for a child, as defined in subsection (1.5)(a) of this section, and a determination of whether the child shall be reunified with a parent or parents, when the requirements of subsection (1) of this section are met, the order is in the child's best interests, and:

(I) The child has not attained twenty-one years of age;

(II) The child is residing with and dependent upon a caregiver; and

(III) A request is made for findings from the court to establish the child's eligibility for classification as a special immigrant juvenile pursuant to 8 U.S.C. sec. 1101(a)(27)(J).

(c) If a request is made for findings from the court to establish the child's eligibility for classification as a special immigrant juvenile under federal law and the court determines that there is sufficient evidence to support the findings, the court shall enter an order, including factual findings and conclusions of law, determining that:

(I) The child has been placed under the custody of an individual appointed by the court pursuant to an order for allocation of parental responsibilities;

(II) Reunification of the child with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and

(III) It is not in the best interests of the child to be returned to the child's or parents' previous country of nationality or country of last habitual residence.

(1.8) The court shall make all necessary persons parties to the proceeding pursuant to the requirements of section 19-4-110 and shall make a determination pursuant to section 19-4-105 as to legal parentage.

(2) Except for a proceeding concerning the allocation of parental responsibilities commenced pursuant to paragraph (d) of subsection (1) of this section, notice of a proceeding concerning the allocation of parental responsibilities shall be given to the child's parent, guardian, and custodian or person allocated parental responsibilities, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

(2.5) Upon the filing of a petition pursuant to subsection (1) of this section, each party shall provide to the court, in the manner prescribed by the court, his or her social security number and the social security number of each child named in the petition.

(3) (a) Upon the filing of a petition concerning the allocation of parental responsibilities pursuant to this section and upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent, a temporary injunction shall be in effect against both parties:

(I) Enjoining each party from molesting or disturbing the peace of the other party;

(II) Restraining each party from removing a minor child who is the subject of the proceeding from the state without the consent of all other parties or an order of the court modifying the injunction; and

(III) Restraining each party, without at least fourteen days' advance

notification and the written consent of all other parties or an order of the court modifying the injunction, from cancelling, modifying, terminating, or allowing to lapse for nonpayment of premiums a policy of health insurance or life insurance that provides coverage to a minor child who is the subject of the proceeding or that names the minor child as a beneficiary of a policy.

(b) The provisions of the temporary injunction shall be printed upon the summons and the petition. The temporary injunction shall be in effect upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent and shall remain in effect against each party until the court enters the final decree, dismisses the petition, or enters a further order modifying the injunction. A party may apply to the court for further temporary orders pursuant to section 14-10-125, an expanded temporary injunction, or modification or revocation of the temporary injunction.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (3), the temporary injunction described in this subsection (3) shall not apply to a proceeding concerning the allocation of parental responsibilities commenced pursuant to paragraph (d) of subsection (1) of this section or to a proceeding concerning the allocation of parental responsibilities commenced by a parent that is governed by the automatic temporary injunction pursuant to section 14-10-107(4)(b).

(d) For purposes of enforcing the automatic temporary injunction that becomes effective in accordance with this subsection (3), if the respondent shows a duly authorized peace officer, as described in section 16-2.5-101, C.R.S., a copy of the petition and summons filed and issued pursuant to this section, or if the petitioner shows the peace officer a copy of the petition and summons filed and issued pursuant to this section together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and the peace officer has cause to believe that a violation of the part of the automatic temporary injunction that enjoins a party from molesting or disturbing the peace of the other party has occurred, the peace officer shall use every reasonable means to enforce that part of the injunction against the petitioner or respondent, as applicable. A peace officer shall not be held civilly or criminally liable for his or her actions pursuant to this subsection (3) if the peace officer acts in good faith and without malice.

Cite as (Casemaker) C.R.S. § 14-10-123

History. Amended by 2021 Ch. 212, §2, eff. 7/1/2021.

Amended by 2019 Ch. 55, §5, eff. 3/28/2019.

L. 71: R&RE, p. 529, § 1. C.R.S. 1963: § 46-1-23. L. 73: p. 554, § 10. L. 97: Entire section amended, p. 515, § 1, effective July 1. L. 98: Entire section amended, p. 1377, § 3, effective February 1, 1999. L. 2010: (3) added, (HB 10-1097), ch. 39, p. 159, §2, effective August 15. L. 2011: (2.5) added, (SB 11-123), ch. 46, p. 119, §3, effective August 10. L. 2012: (1)(c) amended, (SB 12-175), ch. 208, p. 832, § 29, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For note, "The Puzzle of Jurisdiction in Child Custody Actions", see U. Colo. L. Rev. 541 (1966). For article, "Mediation of Contested Child Custody Disputes", see 11 Colo. Law. 336 (1982). 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, "Legal Protection of Children in Nontraditional Families", see 29 Colo. Law. 79 (Nov. 2000). For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001). For article, "The Constitutionality of Colorado's Grandparent Visitation and Third-Party Standing Statutes", see 32 Colo. Law. 51 (Feb. 2003). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (Oct. 2008). For article, "Constitutional Issues and Legal Standards in Parental Responsibility Matters", see 42 Colo. Law. 33 (Jan. 2013). For article, "Who's Their Daddy: Navigating Allocation of Parental Responsibilities and Paternity Actions", see 45 Colo. Law. 29 (May 2016).

No jurisdiction. Colorado court lacks jurisdiction to hear a petition for custody filed by a parent when a child is not a permanent resident nor located in the state when the petition is filed. In re Barnes, 907 P.2d 679 (Colo. App. 1995).

This section permits the intervention of interested parties; it does not mandate that they be made parties. In re Trouth, 631 P.2d 1183 (Colo. App. 1981).

Court retains jurisdiction over child custody issues until the child reaches the age of emancipation. In re Hartley, 886 P.2d 665 (Colo. 1994).

Petition need not be incidental to dissolution of marriage. Petitions for legal custody do not have to be incidental to a dissolution of marriage proceeding for the district court to have jurisdiction. In re Davis, 656 P.2d 42 (Colo. App. 1982); In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

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).

Subsection (1)(c) limits jurisdiction to the class of nonparents who may seek parental responsibilities to only those individuals who have had a recent or continuing role as a caretaker and thereby protects against undue interference with the parent-child relationship. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Subsection (1)(c) is the legislature's recognition of psychological parenting, and a determination of "physical care" includes the amount of time a child has spent in the actual, physical possession of a nonparent and the psychological bonds nonparents develop with children who have been in their physical possession and control for a significant period of time and does not require that this be exclusive physical care; but the jurisdictional requirements of this paragraph (c), which creates standing for non-parents, must be applied narrowly. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Nothing in subsection (1)(c) requires that a legal relationship exist between the nonparent and the child, but only that the nonparent had physical care of the child for at least six months. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Parental consent is not necessary for a nonparent to establish standing under subsections (1)(b) and (1)(c). The plain language of the statute does not require parental consent to a nonparent caring for a child to satisfy the constitution. In re B.B.O., 2012 CO 40, 277 P.3d 818.

To establish standing, however, the nonparent must show that the natural parent or parents voluntarily relinquished custody of the child. The nonparent bears the burden of proving that the natural parent voluntarily permitted the nonparent to share in or assume the parent's responsibility to provide physical care to the child. In re C.R.C., 148 P.3d 458 (Colo. App. 2006).

Under any definition of psychological parent, emotional harm to a young child is intrinsic in the termination or significant curtailment of the child's relationship with the person who is the psychological parent. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Once a petition under this section is certified to be determined as part of a pending dependency and neglect action under the Children's Code, dissolution-of-marriage statutes cease to apply. Instead, provisions of the Children's Code govern, in view of the differing policies behind the respective statutes. People in Interest of D.C., 851 P.2d 291 (Colo. App. 1993).

This section does not give standing to a person on the basis that he is a presumptive father under the Uniform Parentage Act. In re Ohr, 97 P.3d 354 (Colo. App. 2004).

Nonparents who had physical custody of child beginning immediately after his birth had standing to seek custody under this section where, in adopting subsection (1)(b), the general assembly intended that a literal meaning be applied to the term "physical custody" and did not intend to equate "physical custody" with either "legal custody" or the "parental right to continued physical or legal custody". Thus, in keeping with the overriding policy of promoting the best interests of children, Colorado has adhered to a liberalized view as to the standing of nonparents to commence and participate in custody proceedings. In re Custody of C.C.R.S., 872 P.2d 1337 (Colo. App. 1993), aff'd, 892 P.2d 246 (Colo. 1995).

To establish standing, however, the nonparent must show that the natural parent or parents voluntarily relinquished custody of the child. The nonparent bears the burden of proving that the natural parent voluntarily permitted the nonparent to share in or assume the parent's responsibility to provide physical care to the child. In re C.R.C., 148 P.3d 458 (Colo. App. 2006).

Person fitting criteria in subsection (1) of this section may qualify as an "appropriate party" within the meaning of § 19-4-116. In re Ohr, 97 P.3d 354 (Colo. App. 2004).

To determine whether a nonparent had "physical care" and, thus, standing to seek allocation of parental responsibilities, courts should consider the nature, frequency, and duration of contacts between the child and the parent and between the child and the nonparent, including the amount of time the child has spent in the actual, physical possession of the nonparent and the parent, which physical care need not be uninterrupted or exclusive. In re L.F., 121 P.3d 267 (Colo. App. 2005).

The court should consider the manner in which a child came into the nonparent's physical possession in determining the threshold issue of whether the nonparent has standing under this section, and the nonparent must show that the natural parent voluntarily

relinquished custody of the child. The nonparent bears the burden of proving that the natural parent voluntarily permitted the nonparent to share in or assume the parent's responsibility to provide physical care to the child. In re C.R.C., 148 P.3d 458 (Colo. App. 2006).

The existence of a bond between a caregiver and a child, or the lack of a bond between the parents and the child, where the parents continue to exercise their personal rights by directing the caregiver, is irrelevant to the determination of whether the caregiver had "physical care" of the child as required by subsection (1)(c). In re L.F., 121 P.3d 267 (Colo. App. 2005).

Granting standing under subsection (1)(c) to those who care for and nurture a child at the request of and under the ongoing direction and control of the parents could be disruptive of the parent-child relationship and implicate the parents' decision-making rights, regardless of whether the caregiver developed a bond with the child; it could also burden parents who continue to exercise their decision-making rights with the threat that those who provide care at their discretion and under their direction would be able to initiate emotionally and financially costly litigation. In re L.F., 121 P.3d 267 (Colo. App. 2005).

Nonparent did not have physical care of the child for purposes of standing to seek parental rights where nonparent's care was provided at mother's direction and under mother's supervision. Despite child's frequent overnights with the nonparent, mother acted as the child's parent with the nonparent serving as a mentor to the young mother and a grandmother-like figure to the child. In re D.T., 2012 COA 142, 292 P.3d 1120.

Subsection (1)(b) creates a basis for standing that is independent of subsection (1)(c), and, because it was not disputed that the child was in the care of her grandmother, stepfather met the requirements of subsection (1)(b). Based on the plain language of the statute, stepfather was eligible to bring the action even though child was not in his physical care. In re K.M.B., 80 P.3d 914 (Colo. App. 2003).

Nothing within the plain language of either subsection (1)(b) or (1)(c) requires the two subsections to be applied together or engrafts the physical care requirement imposed in the latter subsection upon nonparents who seek standing under the former subsection. By its terms, subsection (1)(b) establishes that any nonparent has standing as long as the child is not in the physical care of a parent. In re K.M.B., 80 P.3d 914 (Colo. App. 2003).

Both subsection (1)(b) and subsection (1)(c) are limited by the requirement that the biological parent consent or acquiesce in the transfer of physical care to the party seeking standing. Both subsections require volition on the part of the biological parents. In re C.R.C., 148 P.3d 458 (Colo. App. 2006).

Proof that the nonparent had become the psychological parent of the child is not a condition precedent to standing under either subsection (1)(b) or (1)(c). In re Custody of A.D.C., 969 P.2d 708 (Colo. App. 1998).

The fact that reported cases under this section involved step-parents or blood relatives of the child or his parents does not mean that only those persons should be accorded standing as "person(s) other than a parent" where no language in the statute or in any Colorado appellate decision indicates that such relationship is a legal requirement for nonparent standing to commence custody proceedings. In re Custody of C.C.R.S., 872 P.2d 1337 (Colo. App. 1993), aff'd, 892 P.2d 246 (Colo. 1995).

Petition filed within six months of child's nonparent's departure from the joint residence was timely, and court properly exercised jurisdiction over motion for parental responsibilities by second mother to child when both mothers lived with child for six and one-half years, both shared financial cost of supporting the child, and both shared in major decisions involving the child, even though only one mother was listed as the child's mother on the child's adoption papers. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Colorado district court had no jurisdiction under this section when it issued order granting full faith and credit to Wyoming court order. Gutierrez v. District Court, 183 Colo. 264, 516 P.2d 647 (1973).

Proceedings under the Uniform Dissolution of Marriage Act are not preempted by the Colorado Children's Code where mother placed child with non-parents in contemplation of relinquishment and adoption proceedings under the Children's Code, but such proceedings later became impossible when the mother withdrew her consent and did not honor her agreement to obtain counseling as required by the Children's Code. In re Custody of C.C.R.S., 872 P.2d 1337 (Colo. App. 1993), aff'd, 892 P.2d 246 (Colo. 1995).

Showing of unfitness of biological parent is not required before parental responsibilities can be allocated to nonparent. People ex rel. A.M.K., 68 P.3d 563 (Colo. App. 2003).

Due process does not require a showing of parental unfitness or the use of an enhanced standard of proof in a case that does not involve the termination or relinquishment of parental rights nor their abrogation by adoption. In re Custody of C.C.R.S., 872 P.2d 1337 (Colo. App. 1993), aff'd, 892 P.2d 246 (Colo. 1995).

Due process does not require clear and convincing evidence to support the award of custody to a nonparent with standing to seek custody of a child, but, rather, a showing by a preponderance of the evidence that it is in the best interests of the child. In re Custody of A.D.C., 969 P.2d 708 (Colo. App. 1998).

Child is not an "other" party who may intervene through independent counsel pursuant to this section. Since a child is represented by a guardian ad litem in custody, visitation, and parenting time proceedings, a child is already fully represented and is not a party able to intervene in such proceedings. In re Hartley, 886 P.2d 665 (Colo. 1994).

Stepfather lacked standing to seek parenting time, even under argument of "psychological parent", under subsection (1)(c) because he did not have physical care of the child in the six months prior to filing his motion as required by subsection (1). In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

Presumption favoring a parent's determination regarding the best interests of the child may be rebutted by proof of 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, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (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 § 14-10-124 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).

Nonparent need not prove that child's parents are unfit. Court may award parental rights to a nonparent if the nonparent can rebut the presumption in favor of the parents by proving by clear and convincing evidence that granting parental responsibilities to the nonparent is in the child's best interests. In re M.W., 2012 COA 162, 292 P.3d 1158.

In allocation of parental responsibilities proceedings involving nonparents, before granting nonparent's request for parental responsibilities, a court must consider the following: (1) A presumption exists favoring the parental determination regarding parental responsibilities; (2) to rebut this presumption, the nonparent must show by clear and convincing evidence that the parental determination is not in the child's best interests; and (3) the nonparent must show that the nonparent's requested allocation is in the child's best interests. Finally, a court allocating parental responsibilities to a nonparent must make factual findings and legal conclusions identifying the "special factors" on which the court relies. In re M.W., 2012 COA 162, 292 P.3d 1158.

Although whether the mother and father are fit parents, or whether they generally make decisions in the child's best interests, is relevant, it is not a dispositive or conclusive factor in determining whether it would be in the child's best interests to allocate parental responsibilities to the nonparent. In re M.W., 2012 COA 162, 292 P.3d 1158.

When a nonparent is involved in a child's life to the degree that he or she becomes a psychological parent and meets the strict standing requirements under subsection (1), a court may intervene, without violating Troxel v. Granville, 530 U.S. 57 (2000), and determine, after according special weight to the parent's determination, whether it is in the child's best interests to allocate parental responsibilities to the nonparent. In re M.W., 2012 COA 162, 292 P.3d 1158.

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. Section 14-10-124 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).

Husband and wife who sought and were granted custody of a nonbiological child under a parental responsibility order owed a duty of support to the child, and trial court had the authority in their dissolution of marriage proceeding to order husband to pay child support pursuant to § 14-10-115(1) and (17). In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

Applied in In re Pilcher, 628 P.2d 126 (Colo. App. 1980); Deeb v. Morris, 14 B.R. 217 (Bankr. D. Colo. 1981); In re Johnson, 634 P.2d 1034 (Colo. App. 1981); In re Matter of V.R.P.F., 939 P.2d 512 (Colo. App. 1997).

Cross References:

For procedure for intervention of other parties generally, see C.R.C.P. 24; for procedure in a custody proceeding, see § 14-13-209.

§ 14-10-123.3. Requests for parental responsibility for a child by grandparents

Whenever a grandparent seeks parental responsibility for his or her grandchild pursuant to the provisions of this article, the court entering such order shall consider any credible evidence of the grandparent's past conduct of child abuse or neglect. Such evidence may include, but shall not be limited to, medical records, school records, police reports, information contained in records and reports of child abuse or neglect, and court records received by the court pursuant to section 19-1-307(2)(f), C.R.S.

Cite as (Casemaker) C.R.S. § 14-10-123.3

History. L. 91: Entire section added, p. 261, § 1, effective May 31. L. 98: Entire section amended, p. 1378, § 4, effective February 1, 1999. L. 2003: Entire section amended, p. 1401, § 4, effective January 1, 2004.

Case Notes:

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001).

Cross References:

For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 196, Session Laws of Colorado 2003.

§ 14-10-123.4. Rights of children in matters relating to parental responsibilities

(1) The general assembly hereby declares that children have certain rights in the determination of matters relating to parental responsibilities, including:

(a) The right to have such determinations based upon the best interests of the child;

(b) The right to be emotionally, mentally, and physically safe when in the care of either parent; and

(c) The right to reside in and visit in homes that are free of domestic violence and child abuse or neglect.

Cite as (Casemaker) C.R.S. § 14-10-123.4

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

L. 87: Entire section added, p. 574, § 1, effective July 1. L. 98: Entire section amended, p. 1378, § 5, effective February 1, 1999. L. 2013: Entire section amended, (HB 13-1259), ch. 218, p. 995, § 1, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "The Constitutionality of Colorado's Grandparent Visitation and Third-Party Standing Statutes", see 32 Colo. Law. 51 (Feb. 2003).

This section, coupled with the permissive language found throughout §§ 14-10-123.5 and 14-10-124, 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).

An award of custody to a nonparent with standing may be made upon a showing by a preponderance of the evidence that it is in the best interests of the child. In re Custody of A.D.C., 969 P.2d 708 (Colo. App. 1998).

No right to participate through chosen counsel. This section does not include a right for a child to participate in custody matters through counsel chosen by the child. In re Hartley, 886 P.2d 665 (Colo. 1994).

To protect rights of the child, the court may interview the child or appoint a guardian ad litem to represent the child's interests. In re D.R.V-A, 976 P.2d 881 (Colo. App. 1999).

§ 14-10-123.5. Joint custody. (Repealed)

Cite as (Casemaker) C.R.S. § 14-10-123.5

History. L. 83: Entire section added, p. 645, § 2, effective June 10. L. 84: (4) amended, p. 1118, § 10, effective June 7. L. 87: (1) and (6) amended and (8) added, pp. 574, 575, §§ 5, 2, effective July 1; (6) repealed, p. 577, § 2, effective July 1. L. 98: (9) added by revision, pp. 1378, 1415, §§ 6, 85.

Editor's Note:

Subsection (9) provided for the repeal of this section, effective February 1, 1999. (See L. 98, pp. 1378, 1415.)

§ 14-10-123.6. Required notice of prior restraining orders to prevent domestic abuse - proceedings concerning parental responsibilities relating to a child - resources for family services

(1) The general assembly hereby finds, determines, and declares that domestic violence is a pervasive problem in society and that a significant portion of domestic violence in society occurs in or near the home. The general assembly further recognizes research demonstrating that children in a home where domestic violence occurs are at greater risk of emotional, psychological, and physical harm. Studies have found that eighty to ninety percent of the children living in homes with domestic violence are aware of the violence.

The general assembly finds that emerging research has established that these children are at greater risk of the following: Psychological, social, and behavioral problems; higher rates of academic problems; more physical illnesses, particularly stress-associated disorders; and a greater propensity to exhibit aggressive and violent behavior, sometimes carrying violent and violence-tolerant roles to their adult relationships. Studies have also noted that children are affected to varying degrees by witnessing violence in the home, and each child should be assessed on an independent basis. Accordingly, the general assembly determines that it is in the best interests of the children of the state of Colorado for the courts to advise the parents or guardians of children affected by domestic violence about the availability of resources and services and for such persons to be provided with information concerning the resources and services available to aid in the positive development of their children. It is the intent of the general assembly that such information would increase the awareness of the possible effects of domestic violence on children in the home, while providing the parents and legal guardians of these children with a comprehensive resource of available children's services as well as potential financial resources to assist parents and legal guardians seeking to retain services for their children affected by domestic violence.

(2) When filing a proceeding concerning the allocation of parental responsibilities relating to a child pursuant to this article, the filing party shall have a duty to disclose to the court the existence of any prior temporary or permanent restraining orders to prevent domestic abuse issued pursuant to article 14 of title 13, C.R.S., and any emergency protection orders issued pursuant to section 13-14-103, C.R.S., entered against either party by any court within two years prior to the filing of the proceeding. The disclosure required pursuant to this section shall address the subject matter of the previous restraining orders or emergency protection orders, including the case number and jurisdiction issuing such orders.

(3) After the filing of the petition, the court shall advise the parties concerning domestic violence services and potential financial resources that may be available and shall strongly encourage the parties to obtain such services for their children, in appropriate cases. If the parties' children participate in such services, the court shall apportion the costs of such services between the parties as it deems appropriate.

(4) The parties to a domestic relations petition filed pursuant to this article shall receive information concerning domestic violence services and potential financial resources that may be available.

Cite as (Casemaker) C.R.S. § 14-10-123.6

History. L. 95: Entire section added, p. 83, § 1, effective July 1. L. 98: Entire section amended, p. 1379, § 7, effective February 1, 1999. L. 99: Entire section amended, p. 502, § 10, effective July 1. L. 2001: Entire section amended, p. 979, § 2, effective August 8. L. 2004: (2) amended, p. 555, § 11, effective July 1.

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§ 14-10-123.7. Parental education - legislative declaration

(1) The general assembly recognizes research that documents the negative impact divorce and separation can have on children when the parents continue the marital conflict, expose the children to this conflict, or place the children in the middle of the conflict or when one parent drops out of the child's life. This research establishes that children of divorce or separation may exhibit a decreased ability to function academically, socially, and psychologically because of the stress of the divorce or separation process. The general assembly also finds that, by understanding the process of divorce and its impact

on both adults and children, parents can more effectively help and support their children during this time of family reconfiguration. Accordingly, the general assembly finds that it is in the best interests of children to authorize courts to establish, or contract with providers for the establishment of, educational programs for separating, divorcing, and divorced parents with minor children. The intent of these programs is to educate parents about the divorce process and its impact on adults and children and to teach coparenting skills and strategies so that parents may continue to parent their children in a cooperative manner.

(2) A court may order a parent whose child is under eighteen years of age to attend a program designed to provide education concerning the impact of separation and divorce on children in cases in which the parent of a minor is a named party in a dissolution of marriage proceeding, a legal separation proceeding, a proceeding concerning the allocation of parental responsibilities, parenting time proceedings, or postdecree proceedings involving the allocation of parental responsibilities or parenting time or proceedings in which the parent is the subject of a protection order issued pursuant to this article.

(3) Each judicial district, or combination of judicial districts as designated by the chief justice of the Colorado supreme court, may establish an educational program for divorcing and separating parents who are parties to any of the types of proceedings specified in subsection (2) of this section or arrange for the provision of such educational programs by private providers through competitively negotiated contracts. The educational program shall inform parents about the divorce process and its impact on adults and children and shall teach parents coparenting skills and strategies so that they may continue to parent their children in a cooperative manner. Any such educational program shall be administered and monitored by the implementing judicial district or districts and shall be paid for by the participating parents in accordance with each parent's ability to pay.

Cite as (Casemaker) C.R.S. § 14-10-123.7

History. L. 96: Entire section added, p. 249, § 1, effective July 1. L. 97: (2) amended, p. 80, § 1, effective March 24. L. 98: (2) amended, p. 1380, § 8, effective February 1, 1999. L. 2003: (2) amended, p. 1012, § 17, effective July 1.

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§ 14-10-123.8. Access to records

Access to information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to any party allocated parental responsibilities, unless otherwise ordered by the court for good cause shown.

Cite as (Casemaker) C.R.S. § 14-10-123.8

History. L. 98: Entire section added, p. 1380, § 9, effective February 1, 1999.

Case Notes:

ANNOTATION

Because father receives parenting time, this section entitles him to have access to his child's records absent a showing of good cause for depriving him of that right, despite fact that mother is sole custodian. In re Schenck, 39 P.3d 1250 (Colo. App. 2001).

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§ 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.

(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;

(III.5) Any report related to domestic violence that is submitted to the court by a child and family investigator, if one is appointed pursuant to section 14-10-116.5; a professional parental responsibilities evaluator, if one is appointed pursuant to section 14-10-127; or a legal representative of the child, if one is appointed pursuant to section 14-10-116. The court may consider other testimony regarding domestic violence from the parties, experts, therapists for any parent or child, the department of human services, parenting time supervisors, school personnel, or other lay witnesses.

(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;

(VIII) The physical proximity of the parties to each other as this relates to the 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 (Casemaker) C.R.S. § 14-10-124

History. Amended by 2021 Ch. 136, §19, eff. 10/1/2021.

Amended by 2021 Ch. 292, §5, eff. 6/22/2021.

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, (HB 10-1135), ch. 87, p. 290, §1, effective July 1. L. 2013: (1), IP(1.5), IP(1.5)(a), (1.5)(a)(VI), IP(1.5)(b), (4), and (7) amended, (1.5)(a)(IX), (1.5)(a)(X), (1.5)(b)(IV), and (1.5)(b)(V) repealed, and (1.7) added, (HB 13-1259), ch. 218, p. 995, § 2, effective July 1; IP(1.5)(a) amended, (HB 13-1243), ch. 124, p. 418, § 1, effective August 7. L. 2014: (1.3)(c), (4)(a)(III), and (4)(a)(IV) added and IP(1.5)(a), IP(1.5)(b), IP(4)(a), (4)(b), (4)(d), and (4)(e) amended, (HB 14-1162), ch. 167, p. 591, § 7, effective July 1.

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

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 (Sept. 1998). For article, "How to Explain the New Parental Responsibility Law to Clients", see 27 Colo. Law. 85 (Oct. 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 (Nov. 1999). For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (Oct. 2002). For article, "The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", see 36 Colo. Law. 33 (Jan. 2007). For article, "Domestic Violence Intervention: 2010 Update", see 39 Colo. Law. 83 (Sept. 2010). For article, "Emerging Spousal Support and Parenting Issues", see 41 Colo. Law. 45 (Oct. 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 Colorado 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 other led 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); In re Morgan, 2018 COA 116M, 428 P.3d 550.

Mother's admission that she would not move without her children did not make ambiguous her repeated statements, both oral and written, that she intended to move out of state. Court erred in fashioning an order for weekly shared parenting time with father that effectively coerced mother into abandoning her plans to relocate. In re Morgan, 2018 COA 116M, 428 P.3d 550.

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).

Court not precluded from awarding joint decision-making over mother's objection after finding that father committed domestic

violence. Presumption that mutual decision-making was not in the children's best interest was overcome by evidence of the parents' ability to make decisions concerning the children in a manner that considered mother's safety. In re Morgan, 2018 COA 116M, 428 P.3d 550.

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).

While appeal is pending, trial court cannot modify orders concerning parental responsibilities or parenting time that are material to the appeal. Sections 14-10-129(1)(a)(I) and 14-10-131(2) do not specifically grant trial courts continuing jurisdiction to rule on motions to modify orders already on appeal. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

The trial court does not have jurisdiction in this case because father's motions were material to the appeal because they sought to modify the very orders on appeal. The court did not consider whether an emergency exception to grant a trial court jurisdiction would be appropriate if father had alleged imminent physical or emotional harm to the child due to the orders. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

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 14.

(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.

§ 14-10-124.3. Stay of proceedings - criminal charges of allegations of sexual assault. (Repealed)

Cite as (Casemaker) C.R.S. § 14-10-124.3

History. Repealed by 2014 Ch. 167, §2, eff. 7/1/2014, and applies to convictions occurring on or after July 1, 2013.

Added by 2013 Ch. 353, §4, eff. 7/1/2013.

L. 2013: Entire section added, (SB 13-227), ch. 353, p. 2059, § 4, effective July 1. L. 2014: Entire section repealed, (HB 14-1162), ch. 167, p. 586, § 2, effective July 1.

§ 14-10-125. Temporary orders

(1) A party to a proceeding concerning the allocation of parental responsibilities may move

for a temporary order. The court may allocate temporary parental responsibilities, including temporary parenting time and temporary decision-making responsibility, after a hearing.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary order concerning the allocation of parental responsibilities is vacated unless a parent or the person allocated parental responsibilities moves that the proceeding continue as a proceeding concerning the allocation of parental responsibilities and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a decree concerning the allocation of parental responsibilities be issued.

(3) If a proceeding concerning the allocation of parental responsibilities commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary order concerning the allocation of parental responsibilities is vacated.

Cite as (Casemaker) C.R.S. § 14-10-125

History. L. 71: R&RE, p. 530, § 1. C.R.S. 1963: § 46-1-25. L. 84: (1) amended, p. 479, § 1, effective March 16. L. 98: Entire section amended, p. 1383, § 11, effective February 1, 1999.

Case Notes:

ANNOTATION

Temporary order is not "in any way res judicata" as to permanent order. In re Lawson, 44 Colo. App. 105, 608 P.2d 378 (1980).

Order granting temporary custody of children is not final for purposes of appeal. In re Henne, 620 P.2d 62 (Colo. App. 1980).

§ 14-10-126. Interviews

(1) The court may interview the child in chambers to ascertain the child's wishes as to the allocation of parental responsibilities. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made, and it shall be made part of the record in the case.

(2) The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel of record, parties, and other expert witnesses upon request, but it shall otherwise be considered confidential and shall be sealed and shall not be open to inspection, except by consent of the court. Counsel may call for cross-examination any professional personnel consulted by the court.

Cite as (Casemaker) C.R.S. § 14-10-126

History. L. 71: R&RE, p. 530, § 1. C.R.S. 1963: § 46-1-26. L. 98: (1) amended, p. 1384, § 12, effective February 1, 1999.

Case Notes:

ANNOTATION

Law reviews. For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", see 36 Colo. Law. 33 (Jan. 2007).

Section does not mandate interviews. In re Rinow, 624 P.2d 365 (Colo. App. 1981); In re Turek, 817 P.2d 615 (Colo. App. 1991).

Trial court did not abuse its discretion in refusing to interview child in chambers. Court had the benefit of prior interview of child, reports filed with the court, and testimony during the hearing. In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

Parent may not cross-examine child at interview. The father is not entitled, as a matter of law, to cross-examine the children at the time of the interview. In re Agner, 659 P.2d 53 (Colo. App. 1982).

Making record is for benefit of parties. Though the language of this section is mandatory in form, the obvious purpose of making a record is for the benefit of the parties. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

Requirement for record of interview concerning child's preference not violated. Where the court conducted a 15-minute interview with the two minor children but did not inquire concerning their preference the requirement of this section for a record of an interview concerning the children's preference was not violated. In re Short, 675 P.2d 323 (Colo. App. 1983), rev'd on other grounds, 698 P.2d 1310 (Colo. 1985).

Requirement of making record may be waived. The requirement of making a record, i.e., a verbatim transcript, of the interview between the court and child may be waived either expressly or by implication. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

Waiver of the requirement of making a record by implication held sufficient. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

For the standard of the common law with respect to interviews, see Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Applied in In re Schulke, 40 Colo. App. 473, 579 P.2d 90 (1978).

§ 14-10-127. Evaluation and reports - training and qualifications of evaluators - disclosure

(1) (a) (I) (A) In all proceedings concerning the allocation of parental responsibilities with respect to a child, the court may, upon motion of either party or upon its own motion, order any county or district department of human or social services or a licensed mental health professional qualified pursuant to subsection (4) of this section and referred to in this section as an "evaluator" to perform an evaluation and file a written report concerning the disputed issues relating to the allocation of parental responsibilities for the child, unless the motion by either party is made for the purpose of delaying the proceedings. The purpose of the evaluation and report is to assist in determining the best interests of the child, with the child's safety always paramount. The evaluation and subsequent report must focus on the best interests of the child and the factors set forth in sections 14-10-124 and 14-10-129 in any post-decree or relocation case. In addition, the evaluator shall assess a party's parenting attributes as those attributes relate to the best interests of the child, and consider any psychological needs of the child when making recommendations concerning decision making and parenting time.

(B) Any court or any personnel of a county or district department of human or social services appointed by the court to do an evaluation pursuant to this section must be qualified pursuant to subsection (4) of this section and be selected from an eligibility roster established pursuant to applicable chief justice directive.

(C) When a mental health professional performs the evaluation, the court shall appoint or approve the selection of the mental health professional as the evaluator. Within seven days after the appointment, the evaluator shall comply with the disclosure provisions of subsection (1.2) of this section. The court shall, at the time of the evaluator's appointment, order one or more of the parties to deposit a reasonable sum with the court to pay the cost of the evaluation. The court may order the reasonable charge for the evaluation and report to be assessed as costs between the parties at the time the evaluation is completed.

(I.3) In determining whether to order an evaluation pursuant to this section, in addition to any other considerations the court deems relevant, the court shall consider:

(A) Whether an investigation by a child and family investigator pursuant to section 14-10-116.5 would be sufficient or appropriate given the scope or nature of the disputed issues relating to the allocation of parental responsibilities for the child;

(B) Whether an evaluation pursuant to this section is necessary to assist the court in determining the best interests of the child; and

(C) Whether involving the child in an evaluation pursuant to this section is in the best interests of the child.

(I.5) A party may request a supplemental evaluation to the evaluation ordered pursuant to subsection (1)(a)(I) of this section. The court shall appoint another qualified evaluator to perform the supplemental evaluation at the initial expense of the moving party. The evaluator appointed to perform the supplemental evaluation shall comply with the disclosure provisions of subsection (1.2) of this section. The court shall not order a supplemental evaluation if it determines that any of the following applies, based on motion and supporting affidavits:

(A) Such motion is interposed for purposes of delay;

(B) A party objects, and the party who objects or the child has a physical or mental condition that would make it harmful for such party or the child to participate in the supplemental evaluation;

(C) The purpose of such motion is to harass or oppress the other party;

(D) The moving party has failed or refused to cooperate with the first evaluation;

(E) The weight of the evidence other than the evaluation concerning the allocation of parental responsibilities or parenting time by the mental health professional demonstrates that a second evaluation would not be of benefit to the court in determining the allocation of parental responsibilities and parenting time; or

(F) In addition to the evaluation ordered pursuant to subparagraph (I) of this paragraph (a), there has been an investigation and report prepared by a child and family investigator pursuant to section 14-10-116.5, and the court finds that a supplemental evaluation concerning parental responsibilities will not serve the best interests of the child.

(II) Each party and the child, if possible, shall cooperate in the supplemental evaluation. If the court finds that the supplemental evaluation was necessary and materially assisted the court, the court may order the

costs of such supplemental evaluation to be assessed as costs between the parties. Except as otherwise provided in this section, the report is confidential and is not available for public inspection unless by order of court. The cost of each department of human services evaluation is based on an ability to pay and must be assessed as part of the costs of the action or proceeding, and, upon receipt of such sum by the clerk of court, the clerk of court shall transmit the money to the department or agency performing the evaluation.

(b) The person signing a report or evaluation and supervising its preparation must be a licensed mental health professional. The licensed mental health professional signing a report or evaluation must be qualified as competent, by training and experience, as described in subsection (4) of this section. Unlicensed associates or other persons may work with the mental health professional to prepare the report.

(c) An evaluator shall strive to engage in culturally informed and nondiscriminatory practices, and strive to avoid conflicts of interest or multiple relationships in conducting evaluations.

(1.2) (a) Within seven days after his or her appointment, the evaluator shall disclose to each party, attorneys of record, and the court any familial, financial, or social relationship that the evaluator has or has had with the child, either party, the attorneys of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (1.2), the court may, in its discretion, terminate the appointment and appoint a different evaluator in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(2) In preparing the report concerning a child, the evaluator may consult any person who may have information about the child and the child's potential parenting arrangements. Upon order of the court, the evaluator may refer the child to other professional personnel for diagnosis. The evaluator may consult with and obtain information from medical, mental health, educational, or other expert persons who have served the child in the past without obtaining the consent of the parent or the person allocated parental responsibilities for the child; but the child's consent must be obtained if the child has reached the age of fifteen years unless the court finds that the child lacks mental capacity to consent. If the requirements of subsections (3) to (7) of this section are fulfilled, the evaluator's report may be received in evidence at the hearing.

(3) The evaluator shall mail the report to the court and to counsel and to any party not represented by counsel at least twenty-one days prior to the hearing. The evaluator shall make available to counsel and to any party not represented by counsel his or her file of

underlying data and reports, complete texts of diagnostic reports made to the evaluator pursuant to the provisions of subsections (2), (5), and (6) of this section, and the names and addresses of all persons whom the evaluator has consulted. Any party to the proceeding may call the evaluator and any person with whom the evaluator has consulted for cross-examination. No party may waive his or her right of cross-examination prior to the hearing.

(4) A person is not allowed to testify as an expert witness regarding a parental responsibilities or parenting time evaluation that the person has performed pursuant to this section unless the court finds that the person is qualified as competent, by training and experience, in the areas of:

(a) The effects of divorce and remarriage on children, adults, and families;

(a.5) The effects of domestic violence on children, adults, and families, including the connection between domestic violence and trauma on children, child abuse, and child sexual abuse. The person's training and experience must be provided by recognized sources with expertise in domestic violence and the traumatic effects of domestic violence. As of January 1, 2022, initial and ongoing training must include, at a minimum:

(I) Six initial hours of training on domestic violence, including coercive control, and its traumatic effects on children, adults, and families;

(II) Six initial hours of training on child abuse and child sexual abuse and its traumatic effects; and

(III) Four subsequent hours of training every two years on domestic violence, child abuse, and child sexual abuse and the traumatic effects on children, adults, and families.

(b) Appropriate parenting techniques;

(c) Child development, including cognitive, personality, emotional, and psychological development;

(d) Child and adult psychopathology;

(e) Applicable clinical assessment techniques; and

(f) Applicable legal and ethical requirements of parental responsibilities evaluation.

(5) If an evaluation is indicated in an area beyond the training or experience of the evaluator, the evaluator shall consult with a mental health professional qualified by training or experience, as described in subsection (4) of this section, in that area. Such areas may include, but are not limited to, domestic violence, child abuse, child sexual abuse, alcohol or substance abuse, or psychological testing.

(6)

(a) An evaluator may make specific reports when the evaluator has interviewed and assessed all parties to the dispute, assessed the quality of the relationship, or the potential for establishing a quality relationship, between the child and each of the parties, and had access to pertinent information from outside sources.

(b) An evaluator may make reports even though all parties and the child have not been evaluated by the same evaluator in the following circumstances, if the evaluator states with particularity the limitations of the evaluator's findings and reports:

(I) Any of the parties reside outside Colorado and it would not be feasible for all parties and the child to be evaluated by the same mental health professional; or

(II) One party refuses or is unable to cooperate with the court-ordered evaluation; or

(III) The mental health professional is a member of a team of professionals that performed the evaluation and is presenting recommendations of the team that has interviewed and assessed all parties to the dispute.

(c) Recommendations should be considered in full context of the report.

(7) (a) A written report of the evaluation shall be provided to the court and to the parties pursuant to subsection (3) of this section.

(b) The report of the evaluation shall include, but need not be limited to, the following information:

(I) A description of the procedures employed during the evaluation;

(II) A report of the data collected;

(III) A conclusion that explains how the resulting recommendations were reached from the data collected, with specific reference to criteria listed in section 14-10-124 (1.5), and, if applicable, to the criteria listed in section 14-10-131, and their relationship to the results of the evaluation;

(IV) Recommendations concerning the allocation of parental responsibilities for the child, including decision-making responsibility, parenting time, and other considerations; and

(V) An explanation of any limitations in the evaluations or any reservations regarding the resulting recommendations.

(8) All evaluations and reports, including but not limited to supplemental evaluations and related medical and mental health information, that are submitted to the court pursuant to this section shall be deemed confidential without the necessity of filing a motion to seal or otherwise limit access to the court file under the Colorado rules of civil procedure. An evaluation or report that is deemed confidential under this subsection (8) shall not be made available for public inspection without an order of the court authorizing public inspection.

(9) On and after January 1, 2022, a party wishing to file a complaint related to a person's duties as an evaluator shall file such complaint in accordance with the applicable provisions in chief justice directives.

(10) The requirements of this section apply only to activities related to work performed that is

related to proceedings concerning the allocation of parental responsibilities. All other licensure requirements for mental health professionals, as established by the department of regulatory agencies and set forth in article 245 of title 12, still apply.

Cite as (Casemaker) C.R.S. § 14-10-127

History. Amended by 2021 Ch. 292, §6, eff. 6/22/2021.

Amended by 2018 Ch. 38, §15, eff. 8/8/2018.

Amended by 2015 Ch. 99, §1, eff. 8/5/2015.

Amended by 2013 Ch. 218, §3, eff. 7/1/2013.

L. 71: R&RE, p. 530, § 1. C.R.S. 1963: § 46-1-27. L. 76: (1) amended, p. 529, § 1, effective April 16. L. 79: (1) amended, p. 646, § 1, effective March 2. L. 83: Entire section amended, p. 649, § 1, effective June 10. L. 88: Entire section amended, p. 639, § 1, effective May 11. L. 93: IP(1)(a)(I), IP(4), and (7)(b)(IV) amended, p. 577, § 10, effective July 1. L. 94: (1)(a)(II) amended, p. 2645, § 108, effective July 1. L. 96: (1)(b) amended, p. 1287, § 1, effective January 1, 1997. L. 98: IP(1)(a)(I), (2), (3), (4), (6)(b), and (7) amended, p. 1384, § 13, effective February 1, 1999. L. 2005: (1)(a) amended, p. 1224, § 1, effective June 3; (1)(a)(I.5)(F) amended, p. 963, § 10, effective July 1. L. 2006: (8) added, p. 447, § 1, effective April 13. L. 2012: (1)(a)(I) and IP(1)(a)(I.5) amended and (1.2) added, (SB 12-056), ch. 108, p. 368, § 3, effective July 1; (3) amended, (SB 12-175), ch. 208, p. 832, § 30, effective July 1. L. 2013: (1)(a)(I) amended and (1)(a)(I.3) added, (HB 13-1259), ch. 218, p. 1000, § 3, effective July 1. L. 2015: (1)(a)(II) amended, (SB 15-099), ch. 99, p. 289, § 1, effective August 5. L. 2018: (1)(a)(I) amended, (SB 18-092), ch. 38, p. 401, § 15, effective August 8.

Case Notes:

ANNOTATION

Law reviews. For article, "Therapist Privilege in Custody Cases", see 15 Colo. Law. 47 (1986). For article, "Helping a Client Handle a Child Custody Evaluation", see 16 Colo. Law. 1991 (1987). For article, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Evaluating Child Custody Evaluations", see 22 Colo. Law. 2541 (1993). For article, "Considerations Regarding the Role of the Special Advocate", see 29 Colo. Law. 107 (July 2000). For article, "Tips for Working With Evidence in Domestic Relations Cases", see 31 Colo. Law. 87 (June 2002). For article, "The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", see 36 Colo. Law. 33 (Jan. 2007). For article, "CFIs and APR Evaluators--Similarities and Differences", see 37 Colo. Law. 31 (Jan. 2008). For article, "Evaluating the Evaluators: Work Product Reviews as Evidence", see 40 Colo. Law. 35 (May 2011).

Annotator's note. Since § 14-10-127 is similar to repealed § 46-1-5(7), C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

The purpose of the legislation providing for the preparation and filing of reports in custody proceedings is to make the information contained therein available to assist the court in determining what is in the best interest of the children concerned. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

The purpose of the legislation providing for court assistants in the capacity of investigators of domestic relations cases to assist the court in the transaction of the judicial business of said court was obviously to assist the court and not to replace it. The general assembly would have no power to substitute an investigator for a judge, and neither would such legislation authorize a trial court to deny to the parties any of the usual attributes of a fair trial in open court upon due notice. Anderson v. Anderson, 167 Colo. 88, 445 P.2d 397 (1968).

Provisions of this section do not apply to custody determination in a dependency proceeding under the Children's Code. People in Interest of D.C., 851 P.2d 291 (Colo. App. 1993).

Provisions of this section do not apply to the child's treating therapist who was designated as a witness to testify as to her observations of the minor child. In re Woolley, 25 P.3d 1284 (Colo. App. 2001).

The act of the general assembly (§ 46-1-5(7), C.R.S. 1963), which purported to authorize the trial court to call upon the probation department for a report concerning "the ability of each party to serve the best interest of the child", and further directing that "Each report shall be considered by the court" could not be so construed as to deny due process which includes the right to be heard in open court and to have a determination of issues based upon competent evidence offered by persons who submit themselves to cross examination. Anderson v. Anderson, 167 Colo. 88, 445 P.2d 397 (1968).

A probation officer, or other persons, who have been designated to investigate and report to the court in custody hearings matters involving the ability or fitness of parents to best serve the interests of their children, are subject to examination as witnesses concerning matters contained in their reports. Saucerman v. Saucerman, 170 Colo. 318, 461 P.2d 18 (1969).

However, touching upon matters related to them in confidence, the trial court should preliminarily rule in each instance what matters are in fact confidential, and whether the public interest requires the confidence to be preserved, and no examination of the officer should be permitted with respect to such confidential matters. Saucerman v. Saucerman, 170 Colo. 318, 461 P.2d 18 (1969).

Where the trial court received in evidence the investigative reports of welfare and health department employees in reference to conditions found in the respective homes of the two contestants, and in reference to the psychological effects living with the father or the mother might have on one of the children, and the record indicated that at one hearing after the reports were filed the individuals who made the reports were either in court or could have been made available to the parties for cross-examination, there was no unfairness nor a denial of due process.

Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Opportunity to test report's reliability and offer evidence exists. Because any party has the right to call for cross-examination of the investigator and any person he has consulted, and because the investigator's file is available to counsel, ample opportunity exists for a party to test the reliability of the report and to offer evidence in explanation of or to disprove any statements or conclusions based on hearsay. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

In making an order changing the custody of children, the trial court is actually making the decision, though such order is based on the recommendations of a psychiatrist and welfare personnel whose reports constitute nothing more than recommendations. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Court did not improperly utilize an investigative report made by an officer of the juvenile probation department in arriving at its decision relative to custody, for while it is true that the investigative report was not formally offered and received in evidence, the report was made a part of the record and had been furnished previously to both parties, and although she did not choose to do so, the wife had the right to call and examine the author of the report. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973); In re Lorenzo, 721 P.2d 155 (Colo. App. 1986).

The reports simply furnish specific information of a specialized nature for aid and assistance to the trial court, but in the final analysis the judge makes the decision, and whatever recommendations may be made to the judge, be they by experts or counsel, are merely recommendations and nothing more. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Where objections and exceptions were filed to the report of the probation department, since it was a hearsay document, if the conclusions reached therein were objected to by either party, it would be necessary that competent evidence, upon which the conclusions were based, be presented in open court. Anderson v. Anderson, 167 Colo. 88, 445 P.2d 397 (1968).

Waiver of objections to admission of report. Unless a party notifies the court and the opposing party within 10 days after receipt of a copy of the report (or if a copy has not been received at least 10 days prior to the hearing day, then at or prior to the commencement of the hearing at which the report may be used) that he intends to object to the admission of the report on the grounds of noncompliance with the 10-day rule or the hearsay nature of the report, any such objections are waived. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

Where a copy of the report was received by counsel a reasonable time prior to the hearing and no objection was made thereto until after the commencement of the hearing, objections as to hearsay and the 10-day rule were waived. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

Effect of valid objection. If a valid objection is made within the period specified above, then, on motion of either party or of the court, the court shall grant a reasonable continuance of the custody hearing date in order that the parties may obtain appropriate testimony. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

The trial court erred in relying upon the probation report where it afforded no opportunity for the husband to offer evidence in explanation thereof, or to disprove any conclusions based on hearsay that were contained therein. Anderson v. Anderson, 167 Colo. 88, 445 P.2d 397 (1968).

It was not prejudicial error for the trial court to have received in evidence the hearsay reports of the case worker of the welfare department in custody proceedings, since the nature of the "report" was such that the father could not possibly have been prejudiced by anything contained therein, and furthermore, it affirmatively appeared from the court's decree that it did not in any manner enter into the court's thinking to the prejudice of the father. Suzuki v. Suzuki, 162 Colo. 204, 425 P.2d 44 (1967).

Compliance with the 10-day provisions of this section is not a condition precedent to the reception of the report. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

Effect of noncompliance. Noncompliance with the 10-day rule merely prohibits the court from proceeding with a hearing wherein the report can be considered absent consent of or waiver by the parties. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

Communications disclosed pursuant to this section are not privileged under § 13-90-107 since the information was necessary to make an evaluation for the court, not to treat the person disclosing the information. Anderson v. Glismann, 577 F. Supp. 1506 (D. Colo. 1984).

Actions of a court-appointed expert are made under the authority of the state, but not on behalf of the state, and will not sustain a cause of action under 42 U.S.C. § 1983. Anderson v. Glismann, 577 F. Supp. 1506 (D. Colo. 1984).

The language that "the court shall" order an evaluation or a supplemental evaluation is mandatory unless the express conditions apply, and a trial court must make specific findings to support its denial of any requested evaluation in order to insure effective and meaningful review. In re Sepmeier, 782 P.2d 876 (Colo. App. 1989).

Trial court erred when it denied petitioner's request for an evaluation. This section applies to both the determination of parenting time and the allocation of parental decision-making when a court is asked to rule on the intended relocation of one of the parents. Because the statute is mandatory, a trial court must order an evaluation pursuant to this section when requested by either party when one party seeks to relocate. In re Hall, 241 P.3d 540 (Colo. 2010).

The trial court must make specific findings to support its denial of any requested evaluation. In re Chatten, 967 P.2d 206 (Colo. App. 1998).

Denial of supplemental custody evaluation appropriate where court found that a further delay in the resolution of the custody motion would cause emotional stress to the child and that discussions mother had had with the child as to where she was going to live and attend school had already contributed to the child's anxiety, stress, and resulting stomach aches. In re Chatten, 967 P.2d 206 (Colo. App. 1998).

"Custody proceedings" does not automatically include a motion to modify custody. The threshold requirements of § 14-10-132 must be met before a custody proceeding is established. In re Michie, 844 P.2d 1325 (Colo. App. 1992).

Denying petitioner's motion for custody evaluation based upon inability to pay was abuse of discretion by court. Hernandez v. District Ct., 814 P.2d 379 (Colo. 1991).

Court properly balanced its obligation to accord mother due process against its need to efficiently manage the case when it denied mother's last minute request to call 40 witnesses without providing prior notice to father. In re Hatton, 160 P.3d 326 (Colo. App. 2007).

Applied in In re Schulke, 40 Colo. App. 473, 579 P.2d 90 (1978); In re Agner, 659 P.2d 53 (Colo. App. 1982); In re Kasten, 814 P.2d 11 (Colo. App. 1991).

Cross References:

(1) For the licensing of mental health professionals, see article 245 of title 12.

(2) For the legislative declaration contained in the 1993 act amending the introductory portions to subsections (1)(a)(I) and (4) and subsection (7)(b)(IV), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act amending subsection (1)(a)(II), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declarations contained in the 2005 act amending subsection (1)(a)(I.5)(F), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

§ 14-10-128. Hearings

(1) Proceedings concerning the allocation of parental responsibilities with respect to a child shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a hearing concerning the allocation of parental responsibilities but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary in order to protect the child's welfare that the record of any interview, report, investigation, or testimony in a proceeding concerning the allocation of parental responsibilities be kept secret, the court shall make an appropriate order sealing the record.

Cite as (Casemaker) C.R.S. § 14-10-128

History. L. 71: R&RE, p. 531, § 1. C.R.S. 1963: § 46-1-28. L. 98: (1), (3), and (4) amended, p. 1386, § 14, effective February 1, 1999.

Case Notes:

ANNOTATION

Award for fees of eight witnesses without specific finding of their necessity held to be error in child custody hearing. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

Applied in In re Agner, 659 P.2d 53 (Colo. App. 1982).

§ 14-10-128.1. Appointment of parenting coordinator - disclosure

(1) Pursuant to the provisions of this section, at any time after the entry of an order concerning parental responsibilities and upon notice to the parties, the court may, on its own motion, a motion by either party, or an agreement of the parties, appoint a parenting coordinator as a neutral third party to assist in the resolution of disputes between the parties concerning parental responsibilities, including but not limited to implementation of the court-ordered parenting plan. The parenting coordinator shall be a neutral person with

appropriate training and qualifications and an independent perspective acceptable to the court. Within seven days after the appointment, the appointed person shall comply with the disclosure provisions of subsection (2.5) of this section.

(2) (a) Absent agreement of the parties, a court shall not appoint a parenting coordinator unless the court makes the following findings:

(I) That the parties have failed to adequately implement the parenting plan;

(II) That mediation has been determined by the court to be inappropriate, or, if not inappropriate, that mediation has been attempted and was unsuccessful; and

(III) That the appointment of a parenting coordinator is in the best interests of the child or children involved in the parenting plan.

(b) In addition to making the findings required pursuant to paragraph (a) of this subsection (2), prior to appointing a parenting coordinator, the court may consider the effect of any claim or documented evidence of domestic violence, as defined in section 14-10-124 (1.3)(a), by the other party on the parties' ability to engage in parent coordination.

(2.5) (a) Within seven days after his or her appointment, the appointed person shall disclose to each party, attorneys of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (2.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(3) A parenting coordinator shall assist the parties in implementing the terms of the parenting plan. Duties of a parenting coordinator include, but are not limited to, the following:

(a) Assisting the parties in creating an agreed-upon, structured guideline for implementation of the parenting plan;

(b) Developing guidelines for communication between the parties and suggesting appropriate resources to assist the parties in learning appropriate communication skills;

(c) Informing the parties about appropriate resources to assist them in developing improved parenting skills;

(d) Assisting the parties in realistically identifying the sources and causes of conflict

between them, including but not limited to identifying each party's contribution to the conflict, when appropriate; and

(e) Assisting the parties in developing parenting strategies to minimize conflict.

(4)

(a) The court may not appoint a person pursuant to this section to serve in a case as a parenting coordinator if the person has served or is serving in the same case as an evaluator pursuant to section 14-10-127 or a representative of the child pursuant to section 14-10-116. After appointing a person pursuant to this section to serve as a parenting coordinator in a case, the court may not subsequently appoint the person to serve in the same case as an evaluator pursuant to section 14-10-127 or a representative of the child pursuant to section 14-10-116.

(b) The court may appoint a person who has served or is serving in a case as a child and family investigator pursuant to section 14-10-116.5 to serve in the same case as the parenting coordinator, upon the agreement of the parties. After appointing a person pursuant to this section to serve as a parenting coordinator in a case, the court may not subsequently appoint the person to serve as a child and family investigator in the same case pursuant to section 14-10-116.5.

(5) A court order appointing a parenting coordinator shall be for a specified term; except that the court order shall not appoint a parenting coordinator for a period of longer than two years. If an order fails to specify the length of the court-ordered appointment, it shall be construed to be two years from the date of appointment. Upon agreement of the parties, the court may extend, modify, or terminate the appointment, including extending the appointment beyond two years from the date of the original appointment. The court may terminate the appointment of the parenting coordinator at any time for good cause. The court shall allow the parenting coordinator to withdraw at any time.

(6) A court order appointing a parenting coordinator shall include apportionment of the responsibility for payment of all of the parenting coordinator's fees between the parties. The state shall not be responsible for payment of fees to a parenting coordinator appointed pursuant to this section.

(7)

(a) A parenting coordinator appointed by the court pursuant to this section shall be immune from civil liability in any claim for injury that arises out of an act or omission of the parenting coordinator occurring on or after April 16, 2009, during the performance of his or her duties or during the performance of any act that a reasonable parenting coordinator would believe was within the scope of his or her duties unless the act or omission causing the injury was willful and wanton.

(b) Nothing in this subsection (7) shall be construed to bar a party from asserting a claim:

(I) Based upon a parenting coordinator's failure to comply with the provision set forth in subsection (8) of this section;

(II) Related to the reasonableness or accuracy of any fee charged or time

billed by a parenting coordinator; or

(III) Based upon a negligent act or omission involving the operation of a motor vehicle by a parenting coordinator.

(c) (I) In a judicial proceeding, administrative proceeding, or other similar proceeding between the parties to the action, a parenting coordinator shall not be competent to testify and may not be required to produce records as to any statement, conduct, or decision that occurred during the parenting coordinator's appointment to the same extent as a judge of a court of this state acting in a judicial capacity.

(II) This paragraph (c) shall not apply:

(A) To the extent testimony or production of records by the parenting coordinator is necessary to determine a claim of the parenting coordinator against a party; or

(B) To the extent testimony or production of records by the parenting coordinator is necessary to determine a claim of a party against a parenting coordinator; or

(C) When both parties have agreed, in writing, to authorize the parenting coordinator to testify.

(d) If a person commences a civil action against a parenting coordinator arising from the services of the parenting coordinator, or if a person seeks to compel a parenting coordinator to testify or produce records in violation of paragraph (c) of this subsection (7), and the court determines that the parenting coordinator is immune from civil liability or that the parenting coordinator is not competent to testify, the court shall award to the parenting coordinator reasonable attorney fees and reasonable expenses of litigation.

(8) The parenting coordinator shall comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, guideline, or licensing board that regulates the parenting coordinator.

Cite as (Casemaker) C.R.S. § 14-10-128.1

History. L. 2005: Entire section added, p. 952, § 1, effective June 2; (4)(b) amended, p. 963, § 11, effective July 1. L. 2009: (7) and (8) amended, (SB 09-069), ch. 121, p. 502, §1, effective April 16. L. 2012: (1) and (2)(b) amended and (2.5) added, (SB 12-056), ch. 108, p. 369, § 4, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006). For article, "A Brief Overview of Parenting Coordination", see 38 Colo. Law. 61 (July 2009).

This section does not permit the parenting coordinator to make decisions or resolve disputes that the parents are unable to resolve. A grant of decision-making authority to the parenting coordinator is contrary to subsection (3). In re Dauwe, 148 P.3d 282 (Colo. App. 2006).

This section and § 13-22-313 are in conflict and cannot be harmonized with respect to the standards for the appointment of a parenting coordinator if abuse is alleged by one parent by the other. Although § 13-22-313 bars the court from referring a case to any ancillary form of alternative dispute resolution if one of the parties claims abuse by the other party, under this section, a mere claim of abuse by one parent is

insufficient to bar the appointment of a parenting coordinator. Even documented evidence of domestic violence does not automatically bar such an appointment. Rather, the court is required only to consider the effect of the evidence on the parties' ability to engage in parenting coordination. In re Rozzi, 190 P.3d 815 (Colo. App. 2008).

Court erred in directing that the parenting coordinator should assume the duties of a special master and follow the procedures set forth in C.R.C.P. 53. However, the court was proper in providing that the parenting coordinator may make nonbinding recommendations to the parties in the event that they are unable to resolve a dispute themselves. In re Rozzi, 190 P.3d 815 (Colo. App. 2008).

Cross References:

For the legislative declarations contained in the 2005 act amending subsection (4)(b), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005.

§ 14-10-128.3. Appointment of decision-maker - disclosure

(1) In addition to the appointment of a parenting coordinator pursuant to section 14-10-128.1 or an arbitrator pursuant to section 14-10-128.5, at any time after the entry of an order concerning parental responsibilities and upon written consent of both parties, the court may appoint a qualified domestic relations decision-maker and grant to the decision-maker binding authority to resolve disputes between the parties as to implementation or clarification of existing orders concerning the parties' minor or dependent children, including but not limited to disputes concerning parenting time, specific disputed parental decisions, and child support. A decision-maker shall have the authority to make binding determinations to implement or clarify the provisions of a pre-existing court order in a manner that is consistent with the substantive intent of the court order. The decision-maker appointed pursuant to the provisions of this section may be the same person as the parenting coordinator appointed pursuant to section 14-10-128.1. At the time of the appointment, the appointed person shall comply with the disclosure provisions of subsection (4.5) of this section.

(2) The decision-maker's procedures for making determinations shall be in writing and shall be approved by the parties prior to the time the decision-maker begins to resolve a dispute of the parties. If a party is unable or unwilling to agree to the decision-maker's procedures, the decision-maker shall be allowed to withdraw from the matter.

(3) All decisions made by the decision-maker pursuant to this section shall be in writing, dated, and signed by the decision-maker. Decisions of the decision-maker shall be filed with the court and mailed to the parties or to counsel for the parties, if any, no later than twenty days after the date the decision is issued. All decisions shall be effective immediately upon issuance and shall continue in effect until vacated, corrected, or modified by the decision-maker or until an order is entered by a court pursuant to a de novo hearing under subsection (4) of this section.

(4)

(a) A party may file a motion with the court requesting that a decision of the decision-maker be modified by the court pursuant to a de novo hearing. A motion for a de novo hearing shall be filed no later than thirty-five days after the date the decision is issued pursuant to subsection (3) of this section.

(b) If a court, in its discretion based on the pleadings filed, grants a party's request for a de novo hearing to modify the decision of the decision-maker and the court substantially upholds the decision of the decision-maker, the party that requested the de novo hearing shall pay the fees and costs of the other party and shall pay the fees and costs incurred by the decision-maker in connection with the request for de novo hearing, unless the court finds that it would be

manifestly unjust.

(4.5) (a) Within seven days after his or her appointment, the appointed person shall disclose to each party, attorneys of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (4.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(5) A court order appointing a decision-maker shall be for a specified term; except that the court order shall not appoint a decision-maker for a period of longer than two years. If an order fails to specify the length of the court-ordered appointment, it shall be construed to be two years from the date of appointment. Upon agreement of the parties, the court may extend, modify, or terminate the appointment, including extending the appointment beyond two years from the date of the original appointment. The court may terminate the appointment of the decision-maker at any time for good cause. The court shall allow the decision-maker to withdraw at any time.

(6) A court order appointing a decision-maker shall include apportionment of the responsibility for payment of all of the decision-maker's fees between the parties. The state shall not be responsible for payment of fees to a decision-maker appointed pursuant to this section.

(7) (a) A decision-maker shall be immune from liability in any claim for injury that arises out of an act or omission of the decision-maker occurring during the performance of his or her duties or during the performance of an act that the decision-maker reasonably believed was within the scope of his or her duties unless the act or omission causing such injury was willful and wanton.

(b) Nothing in this subsection (7) shall be construed to bar a party from asserting a claim related to the reasonableness or accuracy of any fee charged or time billed by a decision-maker.

(c) (I) In a judicial proceeding, administrative proceeding, or other similar proceeding, a decision-maker shall not be competent to testify and may not be required to produce records as to any statement, conduct, or decision, that occurred during the decision-maker's appointment, to the same extent as a judge of a court of this state acting in a judicial capacity.

(II) This paragraph (c) shall not apply:

(A) To the extent testimony or production of records by the decision-maker is necessary to determine the claim of the decision-maker against a party; or

(B) To the extent testimony or production of records by the decision-maker is necessary to determine a claim of a party against a decision-maker; or

(C) When both parties have agreed, in writing, to authorize the decision-maker to testify.

(d) If a person commences a civil action against a decision-maker arising from the services of the decision-maker, or if a person seeks to compel a decision-maker to testify or produce records in violation of paragraph (c) of this subsection (7), and the court decides that the decision-maker is immune from civil liability or that the decision-maker is not competent to testify, the court shall award to the decision-maker reasonable attorney fees and reasonable expenses of litigation.

(8) The decision-maker shall comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, or licensing board that regulates the decision-maker.

Cite as (Casemaker) C.R.S. § 14-10-128.3

History. L. 2005: Entire section added, p. 954, § 1, effective June 2. L. 2012: (1) amended and (4.5) added, (SB 12-056), ch. 108, p. 370, § 5, effective July 1; (4)(a) amended, (SB 12-175), ch. 208, p. 832, § 31, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006).

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§ 14-10-128.5. Appointment of arbitrator - de novo hearing of award

(1) With the consent of all parties, the court may appoint an arbitrator to resolve disputes between the parties concerning the parties' minor or dependent children, including but not limited to parenting time, nonrecurring adjustments to child support, and disputed parental decisions. Notwithstanding any other provision of law to the contrary, all awards entered by an arbitrator appointed pursuant to this section shall be in writing. The arbitrator's award shall be effective immediately upon entry and shall continue in effect until vacated by the arbitrator pursuant to part 2 of article 22 of title 13, C.R.S., modified or corrected by the arbitrator pursuant to part 2 of article 22 of title 13, C.R.S., or modified by the court pursuant to a de novo hearing under subsection (2) of this section.

(2) Any party may apply to have the arbitrator's award vacated, modified, or corrected pursuant to part 2 of article 22 of title 13, C.R.S., or may move the court to modify the arbitrator's award pursuant to a de novo hearing concerning such award by filing a motion for hearing no later than thirty-five days after the date of the award. In circumstances in which a party moves for a de novo hearing by the court, if the court, in its discretion based on the pleadings filed, grants the motion and the court substantially upholds the decision of the arbitrator, the party that requested the de novo hearing shall be ordered to pay the

fees and costs of the other party and the fees of the arbitrator incurred in responding to the application or motion unless the court finds that it would be manifestly unjust.

Cite as (Casemaker) C.R.S. § 14-10-128.5

History. L. 97: Entire section added, p. 33, § 2, effective July 1. L. 2004: Entire section amended, p. 1731, § 3, effective August 4. L. 2005: Entire section amended, p. 956, § 2, effective June 2. L. 2012: (2) amended, (SB 12-175), ch. 208, p. 833, § 32, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Child Custody: The Right Choice at the Right Price", see 26 Colo. Law. 67 (Aug. 1997). For article, "Use of a Parenting Coordinator in Domestic Cases", see 27 Colo. Law. 53 (May 1998). For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006).

While issues of child custody, visitation, child support, and other matters relating to the children are arbitrable, the trial court retains jurisdiction to decide all issues relating to the children de novo upon the request of either party. In re Popack, 998 P.2d 464 (Colo. App. 2000).

Because there was no arbitration award issued pursuant to this section, mother was not entitled to a trial de novo. Although the order of appointment clothed the parenting coordinator with arbitration power, the court found no arbitration occurred. In re Kniskern, 80 P.3d 939 (Colo. App. 2003).

Trial court is not required to conduct an evidentiary hearing on an arbitrator's request for payment of fees. Although the necessity or reasonableness of an arbitrator's fees may be subject to dispute, the parties' due process rights to litigate the scope of the services and the amounts requested are well protected by written motion practice. In re Eggert, 53 P.3d 794 (Colo. App. 2002).

Requests for de novo review must be filed within 30 days after the arbitrator's ruling. This conclusion is consistent with the plain meaning of the statute since it specifically refers to the Uniform Arbitration Act of 1975 that creates the 30-day time frame. In re Schmitt, 89 P.3d 510 (Colo. App. 2004).

Request for de novo review of parenting time order must be timely filed. While the Uniform Dissolution of Marriage Act takes precedence over other laws, including those applicable to alternative dispute resolution, this section requires a party to request a de novo hearing on an arbitration award no later than 35 days after the date of the arbitration award. Court erred in setting permanent orders hearing on parenting issues. In re Rivera, 2013 COA 21, 300 P.3d 994.

Statute does not grant an absolute right to a de novo hearing. Plain language of statute gives the court discretion to grant or deny a party's motion for such a hearing. In re Vanderborgh, 2016 COA 27, 370 P.3d 661.

Arbitration award must be confirmed by the court in order for the award to be enforced as a court order through contempt proceedings. Although the arbitration order was effective immediately, neither spouse petitioned the district court to confirm the award. An arbitrator's award is not a "court order" for purposes of the contempt statute. In re Leverett, 2012 COA 69, 318 P.3d 31.

§ 14-10-129. Modification of parenting time

(1) (a) (I) Except as otherwise provided in subsection (1)(b)(I) of this section, the court may make or modify an order granting or denying parenting time rights whenever such order or modification would serve the best interests of the child. The trial court retains continuing jurisdiction to make or modify an order granting or denying parenting time rights pursuant to this section during the pendency of an appeal.

(II) In those cases in which a party with whom the child resides a majority of the time is seeking to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party, the court, in determining whether the modification of parenting time is in the best interests of the child, shall take into account all relevant factors, including those enumerated in paragraph (c) of subsection (2) of this section. The party who is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party shall provide the other party with written notice as soon as practicable of his or her intent to relocate, the

location where the party intends to reside, the reason for the relocation, and a proposed revised parenting time plan. A court hearing on any modification of parenting time due to an intent to relocate shall be given a priority on the court's docket.

(b) (I) The court shall not restrict a parent's parenting time rights unless it finds that the parenting time 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. Nothing in this section shall be construed to affect grandparent or great-grandparent visitation granted pursuant to section 19-1-117, C.R.S.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply in those cases in which a party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party.

(1.5) If a motion for a substantial modification of parenting time which also changes the party with whom the child resides a majority of the time has been filed, whether or not it has been granted, no subsequent motion may be filed within two years after disposition of the prior motion unless the court decides, on the basis of affidavits, that the child's present environment may endanger the child's physical health or significantly impair the child's emotional development or that the party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party.

(2) The court shall not modify a prior order concerning parenting time that substantially changes the parenting time as well as changes the party with whom the child resides a majority of the time unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the party with whom the child resides the majority of the time and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the parenting time schedule established in the prior decree unless:

(a) The parties agree to the modification; or

(b) The child has been integrated into the family of the moving party with the consent of the other party; or

(c) The party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party. A court hearing on any modification of parenting time due to an intent to relocate shall be given a priority on the court's docket. In determining whether the modification of parenting time is in the best

interests of the child, the court shall take into account all relevant factors, including whether a party has committed an act of domestic violence, has engaged in a pattern of domestic violence, or has a history of domestic violence, as that term is defined in section 14-10-124 (1.3), which factor shall be supported by a preponderance of the evidence, and shall consider such domestic violence whether it occurred before or after the prior decree, and all other factors enumerated in section 14-10-124 (1.5)(a) and:

(I) The reasons why the party wishes to relocate with the child;

(II) The reasons why the opposing party is objecting to the proposed relocation;

(III) The history and quality of each party's relationship with the child since any previous parenting time order;

(IV) The educational opportunities for the child at the existing location and at the proposed new location;

(V) The presence or absence of extended family at the existing location and at the proposed new location;

(VI) Any advantages of the child remaining with the primary caregiver;

(VII) The anticipated impact of the move on the child;

(VIII) Whether the court will be able to fashion a reasonable parenting time schedule if the change requested is permitted; and

(IX) Any other relevant factors bearing on the best interests of the child; or

(d) The child's present environment endangers the child's physical health or significantly impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

(2.5) (a) When the court restricts a party's parenting time pursuant to section 19-5-105.5, C.R.S., or section 19-5-105.7, C.R.S., or section 14-10-124(4)(a)(IV), the court may make or modify an order granting or denying parenting time rights whenever such order or modification would serve the best interests of the child. Within thirty-five days after the filing of a verified motion by the restricted party seeking a modification of parenting time, the court shall determine from the verified motion, and response to the motion, if any, whether there has been a substantial and continuing change of circumstances such that the current parenting time orders are no longer in the child's best interests, including consideration of whether the restricted parent has satisfactorily complied with any conditions set forth by the court when the court imposed the restrictions on parenting time, and either:

(I) Deny the motion, if there is an inadequate allegation; or

(II) Set the matter for hearing as expeditiously as possible with notice to the parties of the time and place of the hearing.

(b) If the court finds that the filing of a motion under paragraph (a) of this subsection (2.5) was substantially frivolous, substantially groundless, substantially vexatious, or intended to harass or intimidate the other party, the court shall require the moving party to pay the reasonable and necessary attorney fees and costs of the other party.

(3)

(a) If a parent has been convicted of any of the crimes listed in paragraph (b) of this subsection (3) or convicted in another state or jurisdiction, including but not limited to a military or federal jurisdiction, of an offense that, if committed in Colorado, would constitute any of the crimes listed in paragraph (b) of this subsection (3), or convicted of any crime in which the underlying factual basis has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3(1), C.R.S., that constitutes a potential threat or endangerment to the child, the other parent, or any other person who has been granted custody of or parental responsibility for the child pursuant to court order may file an objection to parenting time with the court. The other parent or other person having custody or parental responsibility shall give notice to the offending parent of such objection as provided by the Colorado rules of civil procedure, and the offending parent shall have twenty-one days from such notice to respond. If the offending parent fails to respond within twenty-one days, the parenting time rights of such parent shall be suspended until further order of the court. If such parent responds and objects, a hearing shall be held within thirty-five days of such response. The court may determine that any offending parent who responds and objects shall be responsible for the costs associated with any hearing, including reasonable attorney fees incurred by the other parent. In making such determination, the court shall consider the criminal record of the offending parent and any actions to harass the other parent and the children, any mitigating actions by the offending parent, and whether the actions of either parent have been substantially frivolous, substantially groundless, or substantially vexatious. The offending parent shall have the burden at the hearing to prove that parenting time by such parent is in the best interests of the child or children.

(b) The provisions of paragraph (a) of this subsection (3) shall apply to the following crimes:

(I) Murder in the first degree, as defined in section 18-3-102, C.R.S.;

(II) Murder in the second degree, as defined in section 18-3-103, C.R.S.;

(III) Enticement of a child, as defined in section 18-3-305, C.R.S.;

(IV)

(A) Sexual assault, as described in section 18-3-402, C.R.S.; and

(B) Sexual assault in the first degree, as described in section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(V) Sexual assault in the second degree, as described in section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(VI) (A) Unlawful sexual contact if the victim is compelled to submit, as described in section 18-3-404(2), C.R.S.; and

(B) Sexual assault in the third degree if the victim is compelled to submit, as described in section 18-3-404(2), C.R.S., as it existed prior to July 1, 2000;

(VII) Sexual assault on a child, as defined in section 18-3-405, C.R.S.;

(VIII) Incest, as described in section 18-6-301, C.R.S.;

(IX) Aggravated incest, as described in section 18-6-302, C.R.S.;

(X) Child abuse, as described in section 18-6-401(7)(a)(I) to (7)(a)(IV), C.R.S.;

(XI) Human trafficking of a minor for sexual servitude, as described in section 18-3-504(2), C.R.S.;

(XII) Sexual exploitation of children, as defined in section 18-6-403, C.R.S.;

(XIII) Procurement of a child for sexual exploitation, as defined in section 18-6-404, C.R.S.;

(XIV) Soliciting for child prostitution, as defined in section 18-7-402, C.R.S.;

(XV) Pandering of a child, as defined in section 18-7-403, C.R.S.;

(XVI) Procurement of a child, as defined in section 18-7-403.5, C.R.S.;

(XVII) Keeping a place of child prostitution, as defined in section 18-7-404, C.R.S.;

(XVIII) Pimping of a child, as defined in section 18-7-405, C.R.S.;

(XIX) Inducement of child prostitution, as defined in section 18-7-405.5, C.R.S.;

(XX) Patronizing a prostituted child, as defined in section 18-7-406, C.R.S.

(c) If the party was convicted in another state or jurisdiction of an offense that, if committed in Colorado, would constitute an offense listed in subparagraphs (III) to (XX) of paragraph (b) of this subsection (3), the court shall order that party to submit to a sex-offense-specific evaluation and a parental risk assessment in Colorado and the court shall consider the recommendations of the evaluation and the assessment in any order the court makes relating to parenting time or parental contact. The convicted party shall pay for the costs of the evaluation and the assessment.

(4) A motion to restrict parenting time or parental contact with a parent which alleges that the child is in imminent physical or emotional danger due to the parenting time or contact by the parent shall be heard and ruled upon by the court not later than fourteen days after the day of the filing of the motion. Any parenting time which occurs during such fourteen-

day period after the filing of such a motion shall be supervised by an unrelated third party deemed suitable by the court or by a licensed mental health professional, as defined in section 14-10-127(1)(b). This subsection (4) shall not apply to any motion which is filed pursuant to subsection (3) of this section.

(5) If the court finds that the filing of a motion under subsection (4) of this section was substantially frivolous, substantially groundless, or substantially vexatious, the court shall require the moving party to pay the reasonable and necessary attorney fees and costs of the other party.

Cite as (Casemaker) C.R.S. § 14-10-129

History. Amended by 2021 Ch. 116, §3, eff. 5/7/2021.

Amended by 2014 Ch. 374, §4, eff. 6/6/2014.

Amended by 2014 Ch. 282, §9, eff. 7/1/2014.

Amended by 2014 Ch. 167, §8, eff. 7/1/2014.

Amended by 2013 Ch. 124, §2, eff. 8/7/2013.

Amended by 2013 Ch. 218, §4, eff. 7/1/2013.

L. 71: R&RE, p. 531, § 1. C.R.S. 1963: § 46-1-29. L. 73: p. 554, § 11. L. 88: (3) added, p. 643, § 1, effective March 15. L. 89: (4) and (5) added, p. 803, § 2, effective April 27. L. 90: (3)(a) amended, p. 902, § 1, effective March 16. L. 91: (2) amended, p. 261, § 2, effective May 31. L. 93: (1), (2), (3)(a), and (4) amended, p. 578, § 11, effective July 1. L. 98: (1), (2), and (3)(a) amended and (1.5) added, p. 1387, § 15, effective February 1, 1999. L. 2000: (3)(b)(IV), (3)(b)(V), and (3)(b)(VI) amended, p. 701, § 21, effective July 1. L. 2001: (1), (1.5), and (2) amended, p. 761, § 1, effective September 1. L. 2008: (3)(a) amended and (3)(c) added, p. 1636, § 1, effective May 29. L. 2010: (3)(b)(XI) amended, (SB 10-140), ch. 156, p. 537, §3, effective April 21; IP(2)(c) amended, (HB 10-1135), ch. 87, p. 291, §2, effective July 1. L. 2012: (3)(a) amended, (SB 12-175), ch. 208, p. 833, § 33, effective July 1. L. 2013: IP(2)(c) and (4) amended, (HB 13-1259), ch. 218, p. 1000, § 4, effective July 1; (1)(b)(I) amended, (HB 13-1243), ch. 124, p. 418, § 2, effective August 7. L. 2014: (1)(b)(I) amended, (HB 14-1362), ch. 374, p. 1789, § 4, effective June 6; (2.5) added, (HB 14-1162), ch. 167, p. 594, § 8, effective July 1; (3)(b)(XI) amended, (HB 14-1273), ch. 282, p. 1152, § 9, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Moving the Children Out of State", see 12 Colo. Law. 1450 (1983). 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, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Addressing New Standards for Modification Under the Parental Responsibility Act", see 28 Colo. Law. 67 (June 1999). For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (Oct. 2002). For article, "Relocation in Family Law Cases", see 35 Colo. Law. 47 (Mar. 2006). For article, "Dissolution of Marriage and Domestic Violence: Considerations for the Family Law Practitioner", see 37 Colo. Law. 43 (Oct. 2008). For article, "Constitutional Issues and Legal Standards in Parental Responsibility Matters", see 42 Colo. Law. 33 (Jan. 2013).

Annotator's note. Cases relevant to § 14-10-129 decided prior to its earliest source, L. 71, p. 531, § 1, have been included in the annotations to this section.

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

The court did not abuse its discretion in adopting an agreement and modifying the parenting time despite the fact that the agreement was not reduced to writing or signed. This section allows the trial court to modify parenting time whenever doing so would be in the child's best interests. In re Barker, 251 P.3d 591 (Colo. App. 2010).

An appeal of a parenting time order is mooted when the child who is the subject of the order turns eighteen while the appeal is pending. While "child" is not defined in this article, it is defined in other statutory sections such as §§ 13-22-107 and 13-91-103. In re Tibbetts, 2018 COA 117, 428 P.3d 686.

Parenting time issues on appeal are moot because the parties' eighteen-year-old child is no longer subject to the dissolution court's jurisdiction to allocate parenting time and the court's existing parenting time order that father challenges is no longer enforceable as to her. In re Tibbetts, 2018 COA 117, 428 P.3d 686.

Determining whether to apply the best-interests 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).

While endangerment will necessarily encompass best interests, few best interests arguments will show endangerment. In re West, 94 P.3d 1248 (Colo. App. 2004).

Before parenting time may be completely eliminated, court must consider both the endangerment standard and the best interests of the child. Although trial court may allocate parenting time substantially to one parent under the endangerment standard, it may not completely deny other parent parenting time under the best interests standard without express consideration of whether doing so is the least detrimental alternative. In re Hatton, 160 P.3d 326 (Colo. App. 2007).

A reduction in parenting time resulting from the other parent's relocation with the child is not to be construed as a restriction requiring the court to apply the endangerment standard set forth in subsection (1)(b). In re DeZalia, 151 P.3d 647 (Colo. App. 2006).

This section eliminates the In re Francis test in relocation cases, including the presumption in favor of the majority-time parent. The trial court, however, abused its discretion in applying this section to the facts of this case, and such abuse of discretion unconstitutionally infringed upon mother's right to travel. In re Ciesluk, 113 P.3d 135 (Colo. 2005).

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

In the best interests of a minor child, a trial court may deny visitation rights. Grosso v. Grosso, 149 Colo. 183, 368 P.2d 561 (1962).

Both parents' constitutional interests, the right to travel and the right to the care and control of the child, as well as the best interests of the child, will be best protected if each parent shares equally in the burden of demonstrating how the child's best interests will be affected by a proposed relocation. In re Ciesluk, 113 P.3d 135 (Colo. 2005).

This procedure applies to a parent who shares parenting time equally with the other parent but who desires to relocate with the child and to modify parenting time so as to become the majority time parent. In re DeZalia, 151 P.3d 647 (Colo. App. 2006).

It is incumbent upon the trial court to consider all the relevant factors to determine what arrangement will serve the child's best interests. Though the best interests of the child are of primary importance in making this determination, they do not automatically overcome the constitutional interests of the parents, which must be weighed against each other in the best-interests analysis. In re Ciesluk, 113 P.3d 135 (Colo. 2005); In re Newell, 192 P.3d 529 (Colo. App. 2008).

Presumption that parent has "first and prior" right to custody of children is not implicated when dispute is between mother and father and not mother and stepmother. As between two fit parents, duty of court is to weigh the wishes of both to determine what is in the best interests of the children. In re DePalma, 176 P.3d 829 (Colo. App. 2007).

Where a parent's role as day-to-day caregiver of a minor is relinquished through contested or uncontested judicial proceedings and with no indication by the court that the relinquishment was intended to be temporary, the parent has enjoyed and exercised his or her fundamental rights. In re M.J.K., 200 P.3d 1106 (Colo. App. 2008).

Subsequent application of the statutory standards for terminating guardianships or modifying allocations of parental responsibility, which standards certainly allow a court to consider the relationship between the biological parent and the child, does not violate the parent's constitutional rights. In re M.J.K., 200 P.3d 1106 (Colo. App. 2008).

To hold otherwise would effectively afford a parent who relinquishes his or her day-to-day parenting responsibilities through judicial processes a substantial, if not automatic, right to terminate a guardianship or modify an allocation of parental rights with no regard for the perhaps significant impact on his or her children. In re M.J.K., 200 P.3d 1106 (Colo. App. 2008).

Where father wished to delegate his parenting time to his new wife while deployed in Iraq, the court did not err by considering first the presumption that father was acting in the best interests of the children because father was not attempting to impermissibly establish parental rights for his new wife over the established parental rights of the children's mother. In re DePalma, 176 P.3d 829 (Colo. App. 2007).

"Special weight" must be given to parent's motion to modify parental responsibilities where sole decision-making and primary residential custody is with non-parents. Rather than presuming that the existing order remains in effect, there is a presumption in favor of modifying the order at the parent's request. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden shifts from parent to non-parents in modification of parental responsibilities proceeding. Non-parents must rebut presumption by showing: (1) That the proposed modification is not in the child's best interests and that the present allocation of parental responsibilities does not endanger the child; and (2) that the present allocation of parental responsibilities is in the child's best interests. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden of proof for non-parents who have sole decision-making authority and primary residential custody is a preponderance of the evidence in modification action brought by parent who consented to the initial custody orders. Court denying parent's modification order must make findings of fact identifying appropriate special factors upon which it relies. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Trial court abused its discretion when it prematurely concluded that it would be in the child's best interests to remain in close proximity to both parents. The effect of this conclusion was to create a presumption in father's favor contrary to the legislative intent of subsection (2)(c). In re Ciesluk, 113 P.3d 135 (Colo. 2005).

It is against the policy of the law in Colorado to permit the removal of a child from the jurisdiction, unless his best interests would be served thereby. Tanttila v. Tanttila, 152 Colo. 445, 382 P.2d 798 (1963); In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

Before a court may allow a majority-time parent to relocate with the child, subsection (2)(c) dictates that the court must consider 21 relevant factors, including 11 factors listed in § 14-10-124 (1.5)(a), and nine factors in subsection (2)(c) specifically tailored to modification proceedings arising out of a majority-time parent's desire to relocate. In re Ciesluk, 113 P.3d 135 (Colo. 2005).

Where it was established that removal of the child from the jurisdiction would be conducive to the child's best interests, then the court

should have permitted removal from the jurisdiction. Tanttila v. Tanttila, 152 Colo. 445, 382 P.2d 798 (1963).

In determining what was for the best welfare of a child of tender years, the courts considered not only food, clothing, shelter, care, education, and environment, but also kept in mind that every such child was entitled to the love, nurture, advice, and training of both father and mother, and to deny to the child an opportunity to know, associate with, love, and be loved by either parent may have been a more serious ill than to refuse him in some part those things which money can buy. Tanttila v. Tanttila, 152 Colo. 445, 382 P.2d 798 (1963).

Trial court need not make specific findings on each factor when considering the statutory factors that affect the child's best interest, so long as the court's findings indicate the court considered all pertinent factors and enable the appellate court to understand the basis of the trial court's order. In re Ciesluk, 100 P.3d 527 (Colo. App. 2004), rev'd on other grounds, 113 P.3d 135 (Colo. 2005).

Trial court can determine relative weight to be given each relevant factor in making a decision regarding parenting time. As decisions regarding parenting time are matters within the sound discretion of the trial court, it follows that it is within the discretion of the trial court to determine the weight to be given to each relevant factor in making a decision regarding the effect relocation of the primary residential parent and the child would have on the parenting time of the other parent. In re Ciesluk, 100 P.3d 527 (Colo. App. 2004), rev'd on other grounds, 113 P.3d 135 (Colo. 2005).

Where the trial court specifically found that the best interests of the child would be served in permitting her removal to California, and there was evidence to support this finding, a change in the father's visitation privileges was an unfortunate, but not unusual, result of a broken marriage. Nelson v. Card, 162 Colo. 274, 425 P.2d 276 (1967).

Determination of whether a child should relocate with one parent or remain in Colorado with another depends on assessment of the child's best interests, and the court's decision, based on special advocate's research and opinions concerning the factors specified in § 14-10-124, was supported by the record. In re Graham, 121 P.3d 279 (Colo. App. 2005).

Where, for all practical purposes, an order authorizing removal of the children of the parties to another state eliminated any opportunity for visitation by the father, except during summer vacations, and there was no showing of any substantial reasons of health, cultural opportunities, or other advantages contributing to the best interests of the children justifying such removal, such order was erroneous. Tanttila v. Tanttila, 152 Colo. 445, 382 P.2d 798 (1963).

The suggestion, advanced for the first time in the supreme court, that defendant having been denied visitation rights should be relieved of the duty to support his minor child was without merit. Grosso v. Grosso, 149 Colo. 183, 368 P.2d 561 (1962).

Parent seeking enlarged visitation rights need not establish that child's present circumstances are harmful. When the issue is whether visitation rights should be enlarged, the suggestion that a parent seeking greater visitation rights must establish that the child's present circumstances are harmful is not only not authorized by this section but, if adopted, would defeat the legislative policy. In re Adamson, 626 P.2d 739 (Colo. App. 1981).

Evidence sufficient for denial of motion to reduce father's visitation rights. Where the court found that the visitation rights previously granted to the father would not endanger the children's physical health or significantly impair their emotional development, this was sufficient to warrant denial of mother's motion which sought to reduce father's visitation rights. Manson v. Manson, 35 Colo. App. 144, 529 P.2d 1345 (1974).

Motion under subsection (4) does not require any third party verification. A party's verification suffices under the statute, therefore the trial court erred in dismissing father's motion under subsection (4) without a hearing. In re Slowinski, 199 P.3d 48 (Colo. App. 2008).

Visitation rights within sound discretion of court. The question of visitation rights is within the sound discretion of the district court, taking into account the best interests of the children. In re Mann, 655 P.2d 814 (Colo. 1982); In re Schenck, 39 P.3d 1250 (Colo. App. 2001).

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 determination of parenting time is a matter within the sound discretion of the trial court, taking into consideration the child's best interests and the policy of encouraging the parent-child relationship. In re Velasquez, 773 P.2d 635 (Colo. App. 1989); In re Finer, 920 P.2d 325 (Colo. App. 1996).

Even a parent who is unfit to be the custodial parent may be entitled to liberal visitation rights. In re Jarman, 752 P.2d 1068 (Colo. App. 1988).

Subsection (3)(a) does not usurp the court's authority to make an individualized determination of the best interests of the child after a hearing. Thus, it does not presume that termination of parenting time and contact is in the best interests of every sexually abused child, nor does it require that the court give greater weight to any particular opinion or testimony. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Permanent orders that substantially reduce the amount of parenting time originally specified in the temporary orders are not subject to the endangerment standard but rather the best interests of the child standard. In re Fickling, 100 P.3d 571 (Colo. App. 2004).

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).

The court did not err in applying the best interests standard set forth in subsection (1)(a)(II) and considering the factors mandated under that subsection rather than applying the endangerment standard set forth in subsection (1)(b)(I) to mother's motion to relocate the children where children did not reside with either parent a majority of the time. In re DeZalia, 151 P.3d 647 (Colo. App. 2006).

Court abused its discretion in limiting father's visitation rights. Where the trial court found that the father was fit and proper to be a custodial parent and there was no finding by the court, nor anything in the record to indicate that reasonable visitation by the father would endanger the child's physical health or significantly impair her emotional development, visitation limited to one week per year to be held in jurisdiction of mother's residence was unreasonable and an abuse of discretion. In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

The trial court's order limiting visitation to two days per month during the school year amounted to an abuse of discretion since it reduced the father's visitation rights and was contrary to the public policy of encouraging frequent visitation. In re Velasquez, 773 P.2d 635 (Colo. App. 1989).

Trial court's order granting wife parenting time with child only for one week at Christmas and four weeks each summer is unreasonable considering wife's extensive time spent with the child prior to the entry of permanent orders. In re Finer, 920 P.2d 325 (Colo. App. 1996).

Modification of parenting plan to return to supervised visits required a finding of endangerment by the trial court, which it failed to do. In re Parr, 240 P.3d 509 (Colo. App. 2010).

Trial court had no authority to delegate to the child's psychiatrist the decision when overnight visitation could begin to occur. In re Elmer, 936 P.2d 617 (Colo. App. 1997).

It was improper for trial court to delegate decisions regarding parenting time to the guardian and the therapist, and then, when the guardian withdrew, to the therapist, alone. Trial court's order that effectively defers to the family therapist the trial court's decisions as to when the mother should be allowed to participate in family therapy or to exercise unsupervised parenting time constitutes an improper delegation of the court's authority. In re D.R.V-A, 976 P.2d 881 (Colo. App. 1999).

Trial court may not delegate to one parent or a third party decision-making responsibility regarding other parent's exercise of parenting time, even assuming that parent or third party were to rely on professionals for reasonable advice in his or her decisions. Decisions regarding the exercise of parenting time are the sole discretion of the court and may not be allocated to a third party, even a parent. In re Hatton, 160 P.3d 326 (Colo. App. 2007).

But a court's discretion to impose conditions precedent to the exercise of parenting time is distinguishable from the improper delegation of decision-making authority. Court did not err when it limited father's right to file motion for modification of parenting time until after he completed sex offender treatment program. Such limitation did not deny the father access to the courts. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Award of custody to breastfeeding mother not sex bias. Sex bias is not readily found in a visitation order awarding custody to a mother who is breastfeeding her child. In re Norton, 640 P.2d 254 (Colo. App. 1981).

Two-year rule in § 14-10-131 does not apply to motions for modification of visitation rights under this section. Manson v. Manson, 35 Colo. App. 144, 529 P.2d 1345 (1974).

In a dissolution of marriage proceeding, the trial court may grant visitation privileges to a stepparent or surrogate parent under the following conditions: (1) The nonparent is jurisdictionally capable of litigating custody under § 14-10-123(1) ; (2) the nonparent has acted in a custodial and parental capacity toward the minor child; and (3) visitation would be in the minor child's best interest. In re Dureno, 854 P.2d 1352 (Colo. App. 1992).

A court lacks authority to proceed under subsection (4) after failing to conduct the hearing as required by statute. Therefore, the automatic sanction of supervised visitation terminates as a result of failing to conduct a timely hearing. In re Slowinski, 199 P.3d 48 (Colo. App. 2008).

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).

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).

Parenting time issues related to guardianship may be determined in accordance with this section by the probate court in which the guardianship was established. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Entry of permanent orders does not trigger the start of the two-year period during which motions for modification of parenting time are

limited. The initial order concerning parenting time is not a motion seeking "substantial modification of parenting time". In re F.A.G., 148 P.3d 375 (Colo. App. 2006).

Order allowing father to delegate his parenting time to new wife during his deployment to Iraq does not violate mother's constitutional right to care, custody, or control of the children because it does not provide the stepmother with any legal rights. In re DePalma, 176 P.3d 829 (Colo. App. 2007).

Right of first refusal in parties' parenting plan not violated by allowing father to offer time to stepmother before offering it to mother if inconsistent with the parenting plan as a whole. Here, where father wished to delegate his parenting time to stepmother while he was deployed in Iraq, the court held that given the circumstances and evidence presented, requiring him to offer children to mother during that time would be inconsistent with the parenting plan as a whole and not in the children's best interests. In re DePalma, 176 P.3d 829 (Colo. App. 2007).

Prohibition on use of medical marijuana while parenting constitutes a modification to existing parenting plan rather than a restriction that requires a finding of endangerment. Because the prohibition is consistent with the parenting plan and did not present a qualitative change in the nature of the father's parenting time, it does not constitute a restriction of parenting time. In re Parr, 240 P.3d 509 (Colo. App. 2010).

While appeal is pending, trial court cannot modify orders concerning parental responsibilities or parenting time that are material to the appeal. Subsection (1)(a)(I) of this section and § 14-10-131(2) do not specifically grant trial courts continuing jurisdiction to rule on motions to modify orders already on appeal. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

The trial court does not have jurisdiction in this case because father's motions were material to the appeal because they sought to modify the very orders on appeal. The court did not consider whether an emergency exception to grant a trial court jurisdiction would be appropriate if father had alleged imminent physical or emotional harm to the child due to the orders. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

Applied in Wise v. Bravo, 666 F.2d 1328 (10th Cir. 1981); In re Brown, 626 P.2d 755 (Colo. App. 1981); In re Casida v. Casida, 659 P.2d 56 (Colo. App. 1982).

Cross References:

For the legislative declaration contained in the 1993 act amending subsections (1), (2), (3)(a), and (4), see section 1 of chapter 165, Session Laws of Colorado 1993.

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§ 14-10-129.5. Disputes concerning parenting time

(1) Within thirty-five days after the filing of a verified motion by either parent or upon the court's own motion alleging that a parent is not complying with a parenting time order or schedule and setting forth the possible sanctions that may be imposed by the court, the court shall determine from the verified motion, and response to the motion, if any, whether there has been or is likely to be substantial or continuing noncompliance with the parenting time order or schedule and either:

(a) Deny the motion, if there is an inadequate allegation; or

(b) Set the matter for hearing with notice to the parents of the time and place of the hearing as expeditiously as possible; or

(c) Require the parties to seek mediation and report back to the court on the results of the mediation within sixty-three days. Mediation services shall be provided in accordance with section 13-22-305, C.R.S. At the end of the mediation period, the court may approve an agreement reached by the parents or shall set the matter for hearing.

(2) After the hearing, if a court finds that a parent has not complied with the parenting time order or schedule and has violated the court order, the court, in the best interests of the child, shall issue an order that may include but not be limited to one or more of the following orders:

(a) An order imposing additional terms and conditions that are consistent with the court's previous order; except that the court shall separate the issues of child support and parenting time and shall not condition child support upon parenting time;

(b) An order modifying the previous order to meet the best interests of the child;

(b.3) An order requiring either parent or both parents to attend a parental education program as described in section 14-10-123.7, at the expense of the noncomplying parent;

(b.7) An order requiring the parties to participate in family counseling pursuant to section 13-22-313, C.R.S., at the expense of the noncomplying parent;

(c) An order requiring the violator to post bond or security to insure future compliance;

(d) An order requiring that makeup parenting time be provided for the aggrieved parent or child under the following conditions:

(I) That such parenting time is of the same type and duration of parenting time as that which was denied, including but not limited to parenting time during weekends, on holidays, and on weekdays and during the summer;

(II) That such parenting time is made up within six months after the noncompliance occurs, unless the period of time or holiday can not be made up within six months in which case the parenting time shall be made up within one year after the noncompliance occurs;

(III) That such parenting time takes place at the time and in the manner chosen by the aggrieved parent if it is in the best interests of the child;

(e) An order finding the parent who did not comply with the parenting time schedule in contempt of court and imposing a fine or jail sentence;

(e.5) An order imposing on the noncomplying parent a civil fine not to exceed one hundred dollars per incident of denied parenting time;

(f) An order scheduling a hearing for modification of the existing order concerning custody or the allocation of parental responsibilities with respect to a motion filed pursuant to section 14-10-131 ;

(g) (Deleted by amendment, L. 97, p. 970, § 1, effective August 6, 1997.)

(h) Any other order that may promote the best interests of the child or children involved.

(3) Any civil fines collected as a result of an order entered pursuant to paragraph (e.5) of subsection (2) of this section shall be transmitted to the state treasurer, who shall credit the same to the dispute resolution fund created in section 13-22-310, C.R.S.

(4) In addition to any other order entered pursuant to subsection (2) of this section, the court shall order a parent who has failed to provide court-ordered parenting time or to exercise court-ordered parenting time to pay to the aggrieved party, attorney's fees, court costs, and expenses that are associated with an action brought pursuant to this section. In the event the parent responding to an action brought pursuant to this section is found not to be in violation of the parenting time order or schedule, the court may order the petitioning parent to pay the court costs, attorney fees, and expenses incurred by such responding

parent. Nothing in this section shall preclude a party's right to a separate and independent legal action in tort.

Cite as (Casemaker) C.R.S. § 14-10-129.5

History. L. 87: Entire section added, p. 578, § 1, effective July 1. L. 93: IP(1) and (2) amended, p. 579, § 12, effective July 1. L. 97: Entire section amended, p. 970, § 1, effective August 6. L. 98: IP(2) and (2)(f) amended, p. 1388, § 16, effective February 1, 1999. L. 2012: IP(1) and (1)(c) amended, (SB 12-175), ch. 208, p. 833, § 34, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (Oct. 2002). For article, "Enforcing Family Law Orders Through Contempt Proceedings Under C.R.C.P. 107", see 332 Colo. Law. 75 (March 2003).

Notice of potential punitive sanctions is all the notice required to satisfy due process under section. Notice of possible remedial orders of the court is not required. In re Herrera, 772 P.2d 676 (Colo. App. 1989).

Wages lost by parent for attending contempt proceedings under section are a reimbursable expense. In re Herrera, 772 P.2d 676 (Colo. App. 1989).

Bond required to insure future compliance of parent need not be dismissed by court upon dismissal of contempt citation. In re Herrera, 772 P.2d 676 (Colo. App. 1989).

The plain language of this section requires, upon the filing of a motion to clarify visitation, that the court deny the motion, conduct a hearing, or refer the matter to mediation. Where cross motions of mother and father sought to modify father's visitation, the trial court erred in granting the father's motion and denying the mother's motion. In re Williams-Off, 867 P.2d 205 (Colo. App. 1993).

Trial court erred in imposing sanctions based upon an unverified motion. In re Slowinski, 199 P.3d 48 (Colo. App. 2008).

The trial court abused its discretion by conditioning child support on an anticipated lack of parenting time when mother was planning to move to Singapore with children and father was entitled to "reasonable and liberal" parenting time. In re Hoffman, 878 P.2d 103 (Colo. App. 1994).

Order of abatement of child support was not proper as an award of actual travel expenses when the abatement order was not premised on any actual expenses incurred as a result of the mother's failure to provide parenting time but only on anticipated future expenses. In re Hoffman, 878 P.2d 103 (Colo. App. 1994).

If a parenting time dispute gives rise to a tort claim for damages, that claim must be brought, not in the dissolution court (which is authorized to award only attorney's fees, court costs, and expenses), but in a court that has jurisdiction over the parties and subject matter. Therefore, the court erred in dismissing father's tort claims under C.R.C.P. 12(b)(1). The court had subject matter jurisdiction over those claims, even though the claims arose from a dispute over parenting time. Marshall v. Marshall, 183 P.3d 699 (Colo. App. 2008).

District court erred in finding that it lacked subject matter jurisdiction to enforce an out-of-state parenting time order. On registering the out-of-state order, the district court was empowered to enforce the order through any remedy normally available under state law, including those outlined in this section. In re Parental Responsibilities of W.F-L., 2018 COA 164, 433 P.3d 168.

Cross References:

For the legislative declaration contained in the 1993 act amending the introductory portion to subsection (1) and subsection (2), see section 1 of chapter 165, Session Laws of Colorado 1993.

§ 14-10-130. Judicial supervision

(1) Except as otherwise agreed by the parties in writing at the time of the decree concerning the allocation of parental responsibilities with respect to a child, the person or persons with responsibility for decision-making may determine the child's upbringing, including his or her education, health care, and religious training, unless the court, after hearing and upon motion by the other party, finds that, in the absence of a specific limitation of the person's or persons' decision-making authority, the child's physical health would be endangered or the child's emotional development significantly impaired.

(2) If both parties or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development significantly impaired, the court may order the county or district welfare department to exercise continuing supervision over the case to assure that the terms

relating to the allocation of parental responsibilities with respect to the child or parenting time terms of the decree are carried out.

Cite as (Casemaker) C.R.S. § 14-10-130

History. Amended by 2015 Ch. 99, §2, eff. 8/5/2015.

L. 71: R&RE, p. 531, § 1. C.R.S. 1963: § 46-1-30. L. 93: (2) amended, p. 580, § 13, effective July 1. L. 98: Entire section amended, p. 1388, § 17, effective February 1, 1999. L. 2015: (2) amended, (SB 15-099), ch. 99, p. 289, § 2, effective August 5.

Case Notes:

ANNOTATION

Law reviews. For article, "Moving the Children Out of State", see 12 Colo. Law. 1450 (1983). For article, "Family Law and Juvenile Delinquency", see 37 Colo. Law. 61 (Oct. 2008).

Section does not deny noncustodial parent equal protection. The contention that this section, which gives the custodial parent the right to determine the child's upbringing, "including his education, health care, and religious training", denies to a noncustodial parent the equal protection of the law is totally without merit. Rhoades v. Rhoades, 188 Colo. 423, 535 P.2d 1122 (1975).

Premarital agreements concerning religious training of unborn children are unenforceable in courts. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

"Joint selection of schools" provision in separation agreement is unenforceable and the custodial parent retains the ultimate authority to select the child's school. Griffin v. Griffin, 699 P.2d 407 (Colo. 1985).

Section does not deny noncustodial parent first amendment rights where noncustodial parent does not allege physical or emotional harm to child and custodial parent approves and ratifies court's order specifying terms of mental health counseling for child. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

Ability to permit child to initiate litigation is within authority of custodial parent only. Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

Order allowing noncustodial grandparent to take children to church was invalid where unsupported by any finding that, absent order, children's physical or mental health would be at risk. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Grandparent visitation statute does not authorize an order impinging on custodial parent's rights under this section. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Order tending to negate custodial parent's preference concerning religion is unconstitutional, even if parent chooses to provide no religious instruction at all. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Cross References:

For the legislative declaration contained in the 1993 act amending subsection (2), see section 1 of chapter 165, Session Laws of Colorado 1993.

§ 14-10-131. Modification of custody or decision-making responsibility

(1) If a motion for modification of a custody decree or a decree allocating decision-making responsibility has been filed, whether or not it was granted, no subsequent motion may be filed within two years after disposition of the prior motion unless the court decides, on the basis of affidavits, that there is reason to believe that a continuation of the prior decree of custody or order allocating decision-making responsibility may endanger the child's physical health or significantly impair the child's emotional development.

(2) The court shall not modify a custody decree or a decree allocating decision-making responsibility unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the child's custodian or party to whom decision-making responsibility was allocated and that the modification is necessary to serve the best interests of the child. The trial court retains jurisdiction to modify an order allocating decision-making responsibility pursuant to this section during the pendency of an appeal. In applying these standards, the court shall retain the allocation of decision-making responsibility established by the prior decree unless:

(a) The parties agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other party and such situation warrants a modification of the allocation of decision-making responsibilities;

(b.5) There has been a modification in the parenting time order pursuant to section 14-10-129, that warrants a modification of the allocation of decision-making responsibilities;

(b.7) A party has consistently consented to the other party making individual decisions for the child which decisions the party was to make individually or the parties were to make mutually; or

(c) The retention of the allocation of decision-making responsibility would endanger the child's physical health or significantly impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

Cite as (Casemaker) C.R.S. § 14-10-131

History. Amended by 2021 Ch. 116, §4, eff. 5/7/2021.

L. 71: R&RE, p. 532, § 1. C.R.S. 1963: § 46-1-31. L. 83: (1) and IP(2) amended, p. 648, § 5, effective June 10. L. 98: Entire section amended, p. 1389, § 18, effective February 1, 1999.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75). 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, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Removal Issues and Standards for Modification of Custody", see 24 Colo. Law. 1045 (1995). For article, "Addressing New Standards for Modification Under the Parental Responsibility Act", see 28 Colo. Law. 67 (June 1999). For article, "Constitutional Issues and Legal Standards in Parental Responsibility Matters", see 42 Colo. Law. 33 (Jan. 2013).

Annotator's note. Cases relevant to § 14-10-131 decided prior to its earliest source, L. 71, p. 532, § 1, have been included in the annotations to this section.

This section applies only where there is motion filed by noncustodial parent seeking a change of permanent custody. In re Lawson, 44 Colo. App. 105, 608 P.2d 378 (1980).

This section does not apply to modification of child support. In re Jones, 703 P.2d 1328 (Colo. App. 1985).

This section applies only in cases where a noncustodial parent is seeking a change of custody. In re Dickman, 670 P.2d 20 (Colo. App. 1983).

Where the parties share custody of the child, and both seek sole custody, the statutory criteria for modification in this section are inapplicable. In re Dickman, 670 P.2d 20 (Colo. App. 1983).

The "best interests" standard is governing standard for modification of parental responsibilities where the parents equally share joint legal and physical custody under the original decree and where the permanent orders did not designate a residential parent. In re Stewart, 43 P.3d 740 (Colo. App. 2002).

This section is limited to those cases where a parent has been awarded sole custody and the noncustodial parent is seeking sole custody. Where a parent seeks a change in custody from sole custody to joint custody, § 14-10-131.5(4) provides the correct standards for determining whether joint custody shall be granted. In re Wall, 868 P.2d 387 (Colo. 1994) (disapproving In re Murphy, 834 P.2d 1287 (Colo. App. 1992), to the extent it holds that § 14-10-131 applies to a motion for a change in the prior order of sole custody to that of joint custody).

When modifying sole custody from one parent to another would result in a residential change in custody, then the "endangerment" standard should apply. In re Francis, 919 P.2d 776 (Colo. 1996).

When the court is considering a removal motion that involves a change in the residential custody of the children, it must similarly apply the

"endangerment" standard of this section. In re Francis, 919 P.2d 776 (Colo. 1996).

In a modification of sole to joint custody, the "best interest of the child" standard of § 14-10-131.5 should apply only to those situations where only modification of legal custody and not residential custody is at stake. In re Francis, 919 P.2d 776 (Colo. 1996).

In amending § 14-10-129 in 2001, the general assembly intended to eliminate the three-part test set forth in In re Francis in relocation cases, including the presumption in favor of the majority-time parent seeking to relocate. In re Ciesluk, 113 P.3d 135 (Colo. 2005).

Both prongs of subsection (2)(c) must be established to warrant a change in custody or relocation. In re Steving, 980 P.2d 540 (Colo. App. 1999) (decided under law in effect prior to 1998 amendment).

The endangerment standard applies when removal is sought by a party who shares joint legal custody. In re Garst, 955 P.2d 1056 (Colo. App. 1998).

Where the separation agreement addressed the consequences of mother's continued alienation of the children from father, the father's motion was in the nature of enforcement rather than modification. Given that there was no modification, the court correctly ruled that the endangerment or removal standard was inapplicable and that the parenting plan in the decree had already been reviewed under the best interests standard. In re Kniskern, 80 P.3d 939 (Colo. App. 2003).

Two-year rule in this section does not apply to motions for modification of visitation rights under § 14-10-129. Manson v. Manson, 35 Colo. App. 144, 529 P.2d 1345 (1974).

Application where original custody order entered before article enacted. This article does not apply to proceedings between parents to change custody of children when the original order relative to custody was entered pursuant to Colorado statutes in effect prior to this article. Spurling v. Spurling, 34 Colo. App. 341, 526 P.2d 671 (1974).

Subsection (2) is constitutional. Ford v. Ford, 194 Colo. 134, 571 P.2d 717 (1977).

Change in physical custody is tantamount to modification of custody. McGraw v. District Court, 198 Colo. 489, 601 P.2d 1383 (1979); Darner v. District Court, 680 P.2d 235 (Colo. 1984).

Parties may not alter requirements of this section through an agreement incorporated into the decree of dissolution. In re Johnson, 42 Colo. App. 198, 591 P.2d 1043 (1979).

"Joint selection of schools" provision in separation agreement is unenforceable and the custodial parent retains the ultimate authority to select the child's school. Griffin v. Griffin, 699 P.2d 407 (Colo. 1985).

There was nothing irrevocable about a custody order. Wiederspahn v. Wiederspahn, 146 Colo. 214, 361 P.2d 125 (1961).

Section does not apply since request was not for decree to place sole custody with a different parent but for change from sole to joint custody. Section 14-10-131.5 applies. In re Wall, 851 P.2d 224 (Colo. App. 1992).

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).

"Special weight" must be given to parent's motion to modify parental responsibilities where sole decision-making and primary residential custody is with non-parents. Rather than presuming that the existing order remains in effect, there is a presumption in favor of modifying the order at the parent's request. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden shifts from parent to non-parents in modification of parental responsibilities proceeding. Non-parents must rebut presumption by showing: (1) That the proposed modification is not in the child's best interests and that the present allocation of parental responsibilities does not endanger the child; and (2) that the present allocation of parental responsibilities is in the child's best interests. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden of proof for non-parents who have sole decision-making authority and primary residential custody is a preponderance of the evidence in modification action brought by parent who consented to the initial custody orders. Court denying parent's modification order must make findings of fact identifying appropriate special factors upon which it relies. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Applied in In re Rinow, 624 P.2d 365 (Colo. App. 1981); In re Eckman, 645 P.2d 866 (Colo. App. 1982); In re Davis, 656 P.2d 42 (Colo. App. 1982).

II. PROCEDURE.

An ex parte order of court changing the custody of children was void because a parent cannot be deprived of the custody of his or her children without the notice required by due process of law. Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960); Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

Section limits scope of inquiry. For the sake of continuity and stability, this section limits the scope of inquiry to the change in circumstances of the child or the custodial parent, and dictates that "the court shall retain the custodian established by the prior decree" absent the showing required by subsection (2)(c). In re Larington, 38 Colo. App. 408, 561 P.2d 17 (1976).

III. CHANGE OF CIRCUMSTANCES.

A. In General.

Repeated decisions of the supreme court authorized a modification of a custodial order where there was a change in circumstances and conditions, and the modification would have been beneficial to the minor. Bird v. Bird, 132 Colo. 116, 285 P.2d 816 (1955); Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959); Wiederspahn v. Wiederspahn, 146 Colo. 214, 361 P.2d 125 (1961); Deines v. Deines, 157 Colo. 363, 402 P.2d 602 (1965).

A change in circumstances alone does not compel award of custody. Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959).

The mere fact that the mother's circumstances may have changed for the better does not constitute a sufficient basis for changing the original custody order. In re Larington, 38 Colo. App. 408, 561 P.2d 17 (1976).

A mere change of circumstances alone is insufficient to justify a change of custody. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

The interest and welfare of the children was the primary and controlling consideration of the court in ordering the change of custody. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Subsection (2)(c) recognizes that a modification of custody is likely to result in some harm to the child involved. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

In determining the issue of integration, the trial court should consider the totality of the circumstances, including: (1) The frequency, duration, and quality of the child's contacts with the custodial parent and the proposed custodial parent; (2) the identity of the person making the primary decisions with respect to health care, education, religious training, and the child's general welfare; and (3) the views of the child as to which environment constitutes his or her "home". In re Chatten, 967 P.2d 206 (Colo. App. 1998).

The consent requirement is satisfied when the custodian has voluntarily placed the child with the noncustodial parent and willingly permitted the child to become integrated into the new family. In re Chatten, 967 P.2d 206 (Colo. App. 1998).

Consent of the custodial parent may be implied from a voluntary transfer of custody that results in the child's integration into the family of the noncustodial parent. In re Chatten, 967 P.2d 206 (Colo. App. 1998).

B. Evidence.

Strong showing needed to justify modification of custody. The public policy of this state as expressed in this section favors retention of the child in a stable atmosphere, thus requiring a strong showing, including a change in circumstances, to justify modification of custody. The protection for children created by this statute would be defeated by allowing parents to determine independently that a lesser showing is sufficient grounds for changing custody arrangements. In re Johnson, 42 Colo. App. 198, 591 P.2d 1043 (1979).

To support the trial court's finding of a sufficient change in circumstances to justify changing the custody of the children, it was necessary to show a change of circumstances or new facts which were not in existence at the time of the prior order. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Noncustodial parent must demonstrate change of circumstances necessitating change of custody, and change of custody may not be based solely on custodial parent's misconduct. Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

When the power of the court is invoked to place an infant into the custody of its parents and to withdraw such child from other persons, the court will scrutinize all the circumstances and ascertain if a change of custody would be disadvantageous to the infant; if so, the change will not be made, and it matters not whether it is through the fault or the mere misfortune of the legal guardian that the infant has come to be out of his custody. Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

Party seeking modification of prior custody decree has burden of proving that the statutory standards justifying the change are present. In re Davis, 43 Colo. App. 302, 602 P.2d 904 (1979).

Burden shifts from parent to non-parents in modification of parental responsibilities proceeding. Non-parents must rebut presumption by showing: (1) That the proposed modification is not in the child's best interests and that the present allocation of parental responsibilities does not endanger the child; and (2) that the present allocation of parental responsibilities is in the child's best interests. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden of proof for non-parents who have sole decision-making authority and primary residential custody is a preponderance of the evidence in modification action brought by parent who consented to the initial custody orders. Court denying parent's modification order must make findings of fact identifying appropriate special factors upon which it relies. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Evidence of events which occurred prior to the original custody order, unless such were unknown to the trial court at the time the original order was entered, or unless the trial court was in some fashion imposed upon through fraud and concealment, may not be basis for a modification of the earlier custody order, because there must be proof of a change of circumstances in order to justify any modification of the order and decree awarding custody. Deines v. Deines, 157 Colo. 363, 402 P.2d 602 (1965).

In the hearing of a petition for the modification of a decree awarding custody of a minor child in a divorce proceeding, the contention that the court erred in considering evidence of matters that occurred prior to the entry of the original decree, overruled. Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931).

Where the custody of a child was awarded in a divorce proceeding, the child became the 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 could have been better served thereby. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

Fact that mother who had been awarded custody was undergoing a transsexual change from female to male was not sufficient for changing custody in view of uncontradicted evidence of the high quality of the environment and home life between mother and children and in absence of a showing that the mother's relationship with the children had been adversely affected or that their emotional development had been impaired. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

Evidence of ex-wife's inability to properly supervise older children is relevant to the determination of a motion to modify custody of the youngest child. In re Pilcher, 628 P.2d 126 (Colo. App. 1980).

Evidence of sexual abuse in record is sufficient to justify change of custody. In re Utzinger, 721 P.2d 703 (Colo. App. 1986).

Even though a court could modify an earlier decree to insure the carrying out of provisions for the best interests of the child, and violation of a decree was a good ground to file a motion to modify, nevertheless, a change of custody should not have been awarded as punishment for a parent's unwarranted acts, for the best interest of the child was paramount. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962); Heckel v. Heckel, 156 Colo. 20, 396 P.2d 602 (1964).

Although the mother sought to prevent the father from visiting the children by hiding them, this alone, unaccompanied by other evidence, did not constitute sufficient grounds for a change in custody of the children because the father did not produce evidence of changed circumstances and produced nothing to show that the change would have been in the best interests of his two children, and the evidence, therefore, was legally insufficient to support the change of custody. Deines v. Deines, 157 Colo. 363, 402 P.2d 602 (1965).

When a parent showed little or no regard for the legitimate order of a court relating to custody, that fact was certainly one factor for the court to weigh in considering suitability of who should have custody of a child along with other facts such as the consequences of removal to a foreign jurisdiction, and this was true no matter how laudable the desire of the offending parent. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

While it was true that custody of children of tender years was ordinarily given to the mother, and that custody of several children would normally not be split between the parents, it was also clear that the overriding concern of the court should have been for the welfare of the children. Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

A new family situation of the mother was sufficient to justify a change of custody from the father to the mother providing always that the interest and welfare of the children was the primary and controlling consideration of the trial court in ordering such change of custody. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

In the absence of a clear showing to the contrary, decisions of custodial parent reasonably made in a good faith attempt to fulfill the responsibility imposed by award of custody should be presumed to have been made in the best interests of children. Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972).

The authority that must be exercised and the decisions that must be made by a custodial parent, both on a daily and long term basis, in carrying out the responsibility of custody of minor children, are entitled to the support of the court which initially awarded custody to the parent. Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972).

Custodial parent has great latitude in carrying out custodial responsibilities. Absent some restrictive conditions in the applicable dissolution decree or separation agreement, a custodial parent is permitted great latitude in carrying out the custodial responsibilities of providing a primary home for the minor children of the parties. In re Casida, 659 P.2d 56 (Colo. App. 1982).

Custodial discretion may include the removal of the child from the jurisdiction of the court which entered the permanent orders. In re Casida, 659 P.2d 56 (Colo. App. 1982).

C. Discretion of Court.

In sound exercise of its discretion, a trial court has authority to modify its previous orders relative to custody and visitation upon a showing of circumstances warranting a change in the best interests of the children. Bird v. Bird, 132 Colo. 116, 285 P.2d 816 (1955); Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972).

In awarding custody, the trial court has the advantage of personal contact with the parties, to appraise the worth of their testimony, and consider the circumstances involved, and if desirable to interview the subject child. Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959); Schlabach v. Schlabach, 155 Colo. 377, 394 P.2d 844 (1964).

Where the one parent acts in disregard of the decree so as to deny the other parent the rights he had under it, the court was not limited to mere punitive measures, but could modify the decree in such a way as to insure the carrying out of those provisions which it conceived to be for the best interests of the child. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

The trial court erred in using a custodial change to punish the mother for her unjustified actions in secreting the children to prevent visitation. Pearson v. Pearson, 141 Colo. 336, 347 P.2d 779 (1959).

IV. JURISDICTION OF COURT.

Trial court has continuing jurisdiction by implication. Under former § 46-1-5(4), C.R.S. 1963, the trial court was specifically granted continuing jurisdiction "of the action" for the purpose of revising orders determining child custody. This article does not expressly grant such jurisdiction, but, since it contains a section permitting modification of child custody orders, it does give continuing jurisdiction by implication. Dockum v. Dockum, 34 Colo. App. 98, 522 P.2d 744 (1974).

Although juvenile court has exclusive jurisdiction to make custody determinations with respect to a child who is the subject of a valid petition in dependency and neglect, juvenile court cannot retain jurisdiction of a motion for modification of custody filed pursuant to this section once it has been determined that the child is not dependent and neglected. People in Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988).

A court had continuing authority to modify existing orders or enter additional orders to minimize any detrimental effect of a move upon the relationship between a noncustodial parent and his children. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958); Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970); Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972); Wood v. District Court, 181 Colo. 95, 508 P.2d 134 (1973).

While appeal is pending, trial court cannot modify orders concerning parental responsibilities or parenting time that are material to the appeal. Section 14-10-129(1)(a)(I) and subsection (2) of this section do not specifically grant trial courts continuing jurisdiction to rule on motions to modify orders already on appeal. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

The trial court does not have jurisdiction in this case because father's motions were material to the appeal because they sought to modify the very orders on appeal. The court did not consider whether an emergency exception to grant a trial court jurisdiction would be appropriate if father had alleged imminent physical or emotional harm to the child due to the orders. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

Where the original custody award of a child and a subsequent habeas corpus proceeding were in the same state, but in different courts, although the habeas corpus court would not have jurisdiction to test the wisdom of or to modify the custody decree, it could and should have made the writ permanent to enforce the decree, and should have ordered the child returned to the one lawfully entitled to custody. Wood v. District Court, 181 Colo. 95, 508 P.2d 134 (1973).

The trial court which acquired personal jurisdiction over party in divorce proceedings had continuing in personam jurisdiction to modify child support orders and to enforce original custody orders through the exercise power of contempt, therefore, personal service on a party out of state was sufficient and party's failure to appear did not deprive court of jurisdiction or power to punish for contempt. Brown v. Brown, 31 Colo. App. 557, 506 P.2d 386 (1972).

Well-established was the rule that when a child from another state became domiciled in Colorado, and there was a material change in the circumstances of the divorced parents which would have justified modification of the rights to custody of the child, the Colorado courts could have and did take jurisdiction of the custody proceedings and enter appropriate orders based on conditions as they then appeared, and in such a case the supreme court held that the custody provisions of a decree rendered by the court of former domicile was subject to modification in Colorado if there was a change in conditions arising after the decree in the foreign state, which could not have been considered by that court in making the award. Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

Factors listed in this section are not relevant in determining custody in a dependency proceeding under the Colorado Children's Code. People in Interest of R.E., 721 P.2d 1233 (Colo. App. 1986).

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

V. APPELLATE REVIEW.

Any final order in a custody proceeding regardless of the label placed upon it by the trial court was appealable as a matter of law. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

On appellate review of such an order modifying a previous order relative to custody and visitation, every presumption will be made in favor of the validity of the trial court's decision and only where a clear abuse of discretion can be shown will an appellate court interfere with orders of a trial court delineating visitation rights and awarding custody. Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972).

In reviewing an order affecting the custody of a child, appellate courts will make every reasonable presumption in favor of the action of the trial court. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

Questions of custody must of necessity rest upon the judgment of the trier of fact, and its determination will not be disturbed if there is evidence to support its conclusion. In re Trouth, 631 P.2d 1183 (Colo. App. 1981); In re Agner, 659 P.2d 53 (Colo. App. 1982); In re Utzinger, 721 P.2d 703 (Colo. App. 1986).

Appellate courts are reluctant to disturb rulings of the trial court in custody matters, absent circumstances clearly disclosing an abuse of discretion. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

The modification of a divorce decree with respect to custody of minor children lies within the sound discretion of the trial court and will be disturbed on review only if clear abuse of discretion is shown. Dockum v. Dockum, 34 Colo. App. 98, 522 P.2d 744 (1974); In re Utzinger, 721 P.2d 703 (Colo. App. 1986).

Change of custody in violation of subsection (2) cannot stand. Although appellate courts are reluctant to disturb the trial court's ruling in a custody matter, subsection (2) is clear and the trial court must comply with its provisions. If the trial court's findings show no indication of endangered physical health or impairment of emotional development, an order changing custody cannot stand. In re Harris, 670 P.2d 446 (Colo. App. 1983).

Trial court must comply with section. Although appellate courts are reluctant to disturb rulings of the trial court in custody matters, this section is clear, and the trial court must comply with its provisions. In re Larington, 38 Colo. App. 408, 561 P.2d 17 (1976).

Cross References:

For the "Uniform Child-custody Jurisdiction and Enforcement Act", see article 13 of this title 14.

§ 14-10-131.3. Modification of the allocation of parental responsibilities and parenting time based upon military service - legislative declaration - definitions. (Repealed)

Cite as (Casemaker) C.R.S. § 14-10-131.3

History. Repealed by 2013 Ch. 174, §1, eff. 5/10/2013.

L. 2008: Entire section added, p. 331, § 1, effective August 5. L. 2013: Entire section repealed, (HB 13-1200), ch. 174, p. 624, § 1, effective May 10.

§ 14-10-131.5. Joint custody modification - termination. (Repealed)

Cite as (Casemaker) C.R.S. § 14-10-131.5

History. L. 83: Entire section added, p. 646, § 2, effective June 10. L. 98: Entire section repealed, p. 1390, § 19, effective February 1, 1999.

§ 14-10-131.7. Designation of custody for the purpose of other state and federal statutes

For purposes of all other state and federal statutes that require a designation or determination of custody, the parenting plan set forth in the court's order shall identify the responsibilities of each of the parties.

Cite as (Casemaker) C.R.S. § 14-10-131.7

History. L. 98: Entire section added, p. 1390, § 20, effective February 1, 1999.

§ 14-10-131.8. Construction of 1999 revisions

The enactment of the 1999 revisions to this article does not constitute substantially changed circumstances for the purposes of modifying decrees involving child custody, parenting time, or grandparent visitation. Any action to modify any decree involving child custody, parenting time, grandparent or great-grandparent visitation, or a parenting plan shall be governed by the provisions of this article.

Cite as (Casemaker) C.R.S. § 14-10-131.8

History. Amended by 2014 Ch. 374, §5, eff. 6/6/2014.

L. 98: Entire section added, p. 1390, § 20, effective February 1, 1999. L. 2014: Entire section amended, (HB 14-1362), ch. 374, p. 1789, § 5, effective June 6.

§ 14-10-132. Affidavit practice

A party seeking the modification of a custody decree or a decree concerning the allocation of parental responsibilities shall submit, together with his or her moving papers, an affidavit setting forth facts supporting the requested modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested modification should not be granted.

Cite as (Casemaker) C.R.S. § 14-10-132

History. L. 71: R&RE, p. 532, § 1. C.R.S. 1963: § 46-1-32. L. 84: Entire section amended, p. 479, § 2, effective March 16. L. 98: Entire section amended, p. 1390, § 21, effective February 1, 1999.

Case Notes:

ANNOTATION

An ex parte order changing custody of a child without notice to the custodial parent violates due process and is, therefore, void. Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

Verified motion for modification does not change burden of proof. A verified motion for modification of a prior custody decree, alleging various changes of circumstances for the mother, the father and the children, does not place the burden of proof or of going forward on the custodial parent. In re Davis, 43 Colo. App. 302, 602 P.2d 904 (1979).

Where affidavits show noncooperation which renders the general order for visitation, in essence, a nullity, adequate cause for a hearing is established and the court should set a date for a hearing to show cause why the requested modification should not be granted. In re Sepmeier,

782 P.2d 876 (Colo. App. 1989).

Motion to modify custody that was unverified and not supported by any factual averments failed to meet the threshold requirement. A claim contesting the court's denial of the motion on the ground that it failed to meet the threshold was without merit. In re Michie, 844 P.2d 1325 (Colo. App. 1992).

This section does not apply to modification of child support. In re Jones, 703 P.2d 1328 (Colo. App. 1985).

Applied in McGraw v. District Court, 198 Colo. 489, 601 P.2d 1383 (1979).

§ 14-10-133. Effective date - applicability

This article shall take effect January 1, 1972, and shall apply only to actions affected by this article which are commenced on or after such date; all such actions commenced prior to said date shall be governed by the laws then in effect.

Cite as (Casemaker) C.R.S. § 14-10-133

History. L. 71: p. 532, § 3. C.R.S. 1963: § 46-1-33.

Case Notes:

ANNOTATION

Although the agreement and the decree refer to "alimony" rather than to "maintenance" payments, the Uniform Dissolution of Marriage Act governs these proceedings because the petition for dissolution was filed subsequent to the effective date of that statute. In re Udis, 780 P.2d 499 (Colo. 1989).

Applied in Wilkinson v. Wilkinson, 41 Colo. App. 364, 585 P.2d 599 (1978); Bradshaw v. Bradshaw, 626 P.2d 752 (Colo. App. 1981); In re Perlmutter, 772 P.2d 621 (Colo. 1989).