§ 14-10-129. Modification of parenting time.

Colorado Statutes

Title 14. DOMESTIC MATTERS

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

Article 10. Uniform Dissolution of Marriage Act

Current through 2019 Legislative Session

§ 14-10-129. Modification of parenting time

(1) (a) (I) Except as otherwise provided in subparagraph (I) of paragraph (b) of this subsection (1), 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.

(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 C.R.S. § 14-10-129

History. 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

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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 (March 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 factorin 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).

Despite pending appeal of permanent orders, court has continuing jurisdiction to modify parenting time and decision-making orders based on changed circumstances. No limited remand is necessary because motion is essentially seeking a new order based on a material change in circumstances or endangerment that has occurred after the order on appeal was entered. In re Parental Responsibilities Concerning W.C., 2018 COA 63, __ P.3d __.

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.