

## Guardian Ad Litem in Civil Cases

Abrams v. Connolly, 781 P.2d 651 (Colo. 1989).

The issue is whether custodial guardians of a child can intervene on behalf of the child for purposes of seeking child support arrearages from the non-custodial parent when the custodial parent is deceased.

C.R.C.P. 17(c) states that “if an infant or incompetent person does not have a duly appointed representative, [the infant] may sue by [her] next friend or by a GAL. A next friend is one who, without necessarily being appointed guardian, aids the child in the assertion of the child’s rights against another. Southard by and Through Southard v. Miles, 714 P.2d 891, 900 (Colo. 1986).

The court is authorized to make orders as it deems proper for the protection of the infant. Therefore, when a minor child’s claim for child support from a non-custodial parent is brought to attention of the court by an adult acting on behalf of the child, the court may permit the adult to proceed as next friend to the child. The court can also appoint a GAL to represent the interests of the child.

The guardians intervened as the child’s next friend and judgment should have been in favor of the child, ordering the non-custodial father to pay child support arrearages and continuing to pay according to the terms of his dissolution agreement.

Elgin v. Bartlett, 994 P.2d 411 (Colo. 1999).

The Bartletts brought an action for medical malpractice as parents and next friend of Heather Bartlett, their daughter. The trial court ruled that the Bartlett’s suit as next friend was the functional equivalent of a suit brought by a GAL. The trial court then dismissed part of the complaint as barred by the statute of limitations. The court of appeals reversed.

The issue here is whether Heather’s claims are time-barred when her parents brought the claim as “next friend” to their daughter.

Section 13-81-101(3) defines “person under disability” as “any person who is a minor under eighteen years of age, a mental incompetent or a person under other legal disability who does not have a legal guardian. A person under disability, for whom the court has not appointed a legal representative, is protected by the statute of limitations’ tolling provisions.” Section 13-81-101(3), 5 C.R.S. (1999). The statute of limitations begins to run when the minor reaches eighteen or when the court appoints a legal representative for the minor.

“Legal representative” is defined as “a guardian, conservator, personal representative, executor, or administrator duly appointed by a court having jurisdiction of any person under disability.”

The language of the statute is clear. “Legal representative” does not include natural parents or next friends acting on behalf of the minor. Here, no legal representative was

appointed for Heather and she is therefore protected by the statute of limitations' tolling provisions. The court of appeals was correct in reversing the judgment of the trial court.

Landsberg v. Hutsell, 837 P.2d 205 (Colo. App. 1992).

The Skaggs family was in a car accident in which the mother was killed and the other family members injured. The father brought, inter alia, a wrongful death action against the driver of the other vehicle and his employer. Subsequently, a GAL was appointed to represent the children. The GAL joined as a plaintiff, bringing, inter alia, a wrongful death action. The father reaffirmed all of his claims, except the wrongful death claim. The GAL also filed a separate claim against the father for his negligence in causing the mother's and the children's injuries.

The first issue is whether the trial court erred in admitting evidence of the father's pecuniary loss and in instructing the jury to consider such evidence in assessing wrongful death damages.

Section 13-21-201(1), C.R.S. (1987 Repl. Vol. 6A) provides that suit for wrongful death damages may be brought by the husband or wife of deceased; or if there is no husband or wife, or if he fails to sue within one year after such death, then by the heir or heirs at law of the deceased. According to Pierce v. Conners, 37 P. 721 (1894), "the true measure of compensatory relief in an action [for wrongful death] is a sum equal to the net pecuniary benefit which *plaintiff* might reasonably have expected to receive from the deceased in case his life had not been terminated by the wrongful act of the defendant." (emphasis added)

Here, the children were the plaintiffs and the father's evidence of pecuniary loss had no place in the wrongful death action brought by the children. The statute makes it clear that joint wrongful death actions are not proper. The trial court erred in allowing evidence of father's pecuniary loss as pertaining to wrongful death damages.

A second issue is whether the trial court erred in failing to admit evidence or failing to instruct the jury as to the fact of settlement of the claim between the GAL and the father.

Colorado uses a comparative fault system. Section 13-21-111.5, C.R.S. (1987 Repl. Vol. 6A). Jurors are required to apportion fault among joint tortfeasors whose fault or negligence contributed to the plaintiff's injuries.

Here, the jury apportioned fault, but were not informed of the settlement between the father and his children. The statute provides disclosing such information is at the discretion of the court, but if the court decides that the settlement should not be disclosed to the jury it must make specific findings as to why the information should be withheld. On remand, the court must either disclose or make such specific findings.

Tenney v. Flaxer, 727 P.2d 1079 (Colo. 1986).

The parents of a mentally incompetent child filed a medical malpractice action on behalf of their child after they were appointed his co-guardians. The trial court granted the defendants' motion for summary judgment, ruling that the action was barred by the Colorado statute of limitations.

Section 13-81-103, C.R.S. addresses the tolling of statutes of limitation and extends the time for filing actions for "persons with disabilities," which includes mentally incompetent persons. The tolling period for a "mentally incompetent" person continues until the mental incompetency is removed or a "legal representative" is appointed, in which event the action must be filed within two years of such appointment.

Section 13-81-101(2), 6 C.R.S. (1973), defines a "legal representative" to include a "guardian... appointed by a court having jurisdiction of any under disability," but does not include a natural parent not so appointed.

The statute of limitations in Section 13-80-105, 6 C.R.S. (1985 Supp.), was tolled until the child's parents were appointed his co-guardians by the court.

Penny v. Anderegg, 160 P.2d 361 (Colo. 1945).

An eighteen year old girl brought an action through her mother as her GAL to recover damages for injuries she sustained as a result of being struck by a taxicab. There was a verdict and judgment in favor of the girl. After she reached the age of majority, the plaintiff (the girl) made a motion refusing to accept the judgment and asking for a new trial. She argued, inter alia, that her GAL differed with counsel concerning the conduct and proposed settlement of the case. However, nowhere in the record is there a showing that the plaintiff's rights were adversely affected.

The rule is that where an infant plaintiff, as here, has been fully represented in the trial of a contested case by a GAL and competent counsel, in the absence of clear showing of fraud, collusion or injustice, he is bound by the resulting judgment and by the statutes and rules of court in matters pertaining to its review as fully as though he was of legal age.

The record shows the girl was adequately represented and she will not be granted a new trial.