

Guardian ad Litem in Dissolution Cases

Cox v. Armstrong, 221 P.2d 371 (Colo. 1950).

Ms. Cox died intestate. Her sister and her alleged husband both petitioned the court to be declared her sole heir. The issue is whether the marriage was properly annulled when a GAL filed the annulment because Ms. Cox was mentally incompetent.

The conservator of an incompetent person may not bring suit for divorce but may bring a suit for annulment on the ground of insanity. A GAL, in this instance, is appointed to represent the estate of his ward and to protect the assets of his ward. One of the prime purposes of an action for annulment is the protection of the property of the ward. It is within the GAL's duties to petition for an annulment and to have that annulment properly granted.

The annulment was proper and the alleged husband is no longer the husband nor is he Ms. Cox's heir.

In re Marriage of Chatten, 967 P.2d 206 (Colo. App. 1998).

One of the issues here is whether the trial court erred in finding no evidence that father was abusive when considering the best interests of the child.

Pursuant to Sections 18-6-491 and 14-10-124, C.R.S. 1998, in determining the best interests of the child the court must consider whether one of the parties has been the perpetrator of abuse. If the court makes a finding that one of the parties is an abuser, it shall not be in the best interests of the child for the court to award joint custody over the objection of the other party or of the child's GAL.

Here, the trial court found insufficient evidence to support a finding that father was abusive and thus it was not error for the court to award him custody over mother's objection.

In re Marriage of Davis, 602 P.2d 904 (Colo. App. 1979).

The issue is whether the trial court erred in not interviewing the parties' youngest child when the mother was seeking modification of a prior custody order.

Mother concedes that the statute permits but does not require the court to interview a child. Here, the record reflects that the court and the GAL considered the child too young to be interviewed. The court did not abuse its discretion.

In re Marriage of Hartley, 886 P.2d 665 (Colo. 1994).

The issue is whether a minor child has the right to be represented by the attorney of his choice in a custody dispute arising under the Uniform Dissolution of Marriage Act (UDMA)

when the child has already been appointed a GAL.

Section 14-10-123.4, 6B C.R.S. (1987) provides that children have certain rights in the determination of custody, including the right to have such determination based upon the best interests of the child. These rights include the right to family relationships and the right to be safe from physical, psychological, and emotional harm. In determining the best interests of the child, the court shall consider all relevant factors, including: a) the wishes of the child's parents as to his custody; b) the wishes of the child as to his custodian.

Nowhere in the statute is the right to a child to have the counsel of his choice. The wishes of the child are considered in the best interest analysis of the court, and the child's GAL argues for those best interests. The GAL's role is to represent the best interests of the child. The desires of the child are considered by the GAL, but often times difficult decisions must be made by the GAL.

Here, the boy's interests were adequately represented at trial by the GAL. The GAL repeatedly advised the court of the boy's wishes, including his disagreement with the GAL's recommendations. A minor child has no separate right to have counsel of his choice in a custody proceeding when the GAL has adequately represented the best interests of the child.

In re Marriage of Jaeger, 883 P.2d 577 (Colo. App. 1994).

The issue is whether the trial court abused its discretion when it ordered that \$25,000 of husband's property be held by the GAL as a security for payment of maintenance, child support, and the child's health insurance.

According to Section 14-10-118(2), .R.S. (1987 Repl.Vol. 6B), the trial court has discretion to require security to be given to ensure enforcement of its orders. The amounts of security established to ensure payment of support obligations must be reasonable both in amount and duration. Brown v. Brown, 283 P.2d 951 (Colo. 1955).

Here, it was reasonable for the trial court to order the security held by the GAL because father had not paid all temporary support. However, the court did abuse its discretion in requiring replacement of the security used for payment of maintenance. Also, only \$5,000 of the money was backed by evidence. The court must make specific findings as to amount owed for child support and use that amount for the security.

People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987).

S.B.'s paternal grandfather filed a petition in the family court of Horry County, South Carolina, requesting that, pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA), the South Carolina court assume jurisdiction and grant permanent custody of S.B. to him. The People and S.B.'s GAL then each filed a notice and motion pursuant to the UCCJA with both the CO and SC courts requesting that the respective judges determine the appropriate forum for the determination of S.B.'s custody. The CO court then declined to exercise continuing jurisdiction in order to allow the SC court to assume jurisdiction. The issue here is whether the trial court

abused its discretion in declining to exercise continuing jurisdiction.

Both South Carolina and Colorado follow the UCCJA. It provides that the states must have been the child's "home state" for six months prior to the commencement of the pending proceedings. Section 14-13-104(1)(b), C.R.S. and S.C.Code Ann. Section 20-7-788(a)(2) define "home state" as the state in which the child has the most significant connection and where there is substantial evidence concerning the child's present and future care. Alternatively, it authorizes the court to find that it would be in the child's best interests for a state to assume jurisdiction because the child has significant connections with that state and substantial evidence as to the child's present and future care is available there.

Here, Colorado has jurisdiction because S.B. resided in CO for six months prior to adjudication of dependency and neglect. However, South Carolina also has jurisdiction because S.B. has been living there a year-and-one-half and is attending school and receiving therapy there. The general purposes of the UCCJA include an assurance that, ordinarily, litigation concerning the custody of a child take place in the state in which the child and his family have the closest connection, where significant evidence concerning his care, protection, training, and personal relationships is most readily available. The courts of CO should decline jurisdiction when a child has a closer connection to another state.

It was not error for the CO court to decline to exercise continuing jurisdiction because South Carolina is the proper forum for continuing assessment of S.B.'s case.