Guardian Ad Litem Fees

G.K.D. v. R.A.D., 759 P.2d 851 (Colo. App. 1988).

The issue is whether the juvenile court abused its discretion in ordering Mother to pay GAL fees in a paternity action when Mother opposed the motion to appoint a GAL.

Section 19-6-117, C.R.S. (1986 Repl. Vol. 8B) provides that a determination as to payment of GAL fees is within the discretion of the juvenile court, and its decision will not be reversed on appeal unless there is a clear abuse of discretion.

Here, respondent moved for appointment of a GAL and agreed to pay the fees, while Mother opposed the appointment.

Because the respondent agreed to pay the feeds, ordering Mother to pay full costs of the GAL was an abuse of discretion.

In re Heil, 33 P.3d 1270 (Colo. App. 2001).

The issue is whether the magistrate erred in ordering the husband to pay the GAL's fee when the GAL was representing his mentally ill wife, who passed away during their dissolution of marriage proceeding.

The jurisdiction of the court over a dissolution of marriage ends upon the death a spouse. In re Marriage of Connell, 870 P.2d 632 (Colo. App. 1994). A GAL, however, who is appointed pursuant to C.R.C.P. Rule 17 governing infants or incompetent persons, is not subject to the rules of the dissolution proceeding.

Here, the GAL was appointed to represent an incompetent person and was not appointed pursuant to the Uniform Dissolution of Marriage Act. Because the source governing the appointment and payment of the GAL was not the dissolution proceeding, the court properly retained jurisdiction to require the husband to pay the GAL's fee.

Nicholson v. Williams, 203 F. Supp. 2d 153 (E.D.N.Y. 2002).

In this class action, mothers who were victims of domestic violence sued employees and officers of the administration for children services (ACS) and the city of New York alleging that removal of their children based solely on the fact that the mother's had been victims of domestic violence violated their substantive and procedural due process rights. One of the issues in the case is whether appointed counsel is effective given the current system and pay rate for appointed Family Court attorneys.

Evidence was presented showing that appointed attorney must often be prepared to be in court all day because the system is so overburdened that it cannot schedule realistic times for appearances. These attorneys are currently earning $40/hour in-court and $25/hour our-of-court.

During 2000, there was not court appointed attorney available to accept cases in the Family Courts of Manhattan on 40 percent of court days. Because these attorneys are not supported by an institutional framework, they must pay their own overhead; it has become increasingly difficult to maintain a private practice and still take appointments due to the demanding court time and little pay.

The court found that the court appointed attorney system as now organized and financed is largely a sham. It holds out the promise to abused mothers that they will be properly represented by a competent attorney when they seek to have their children returned who were wrongly taken away in the first place. However, the attorneys are unavailable, unreachable, and uneducated about their clients' situations. This results in further and unnecessary separations between mothers and children.

The mothers' due process rights are being violated by the appointment of ineffective counsel. A preliminary injunction raised the rate of pay for court-appointed Family Court attorneys to $90/hour. New York County Lawyers' Association v. State, 745 N.Y.S.2d 376 (N.Y. 2002). We hold this preliminary injunction was proper given the current problems of the system. While this rate may be too low, this court errs on the side of caution in interfering with state affairs. We find this is the minimal level which will protect the constitutional rights of indigent mothers. The court assumes the New York courts will continue their practice of granting compensation in excess of the statutory maximum when necessary to ensure adequate representation.

People in Interest of L.W., 756 P.2d 392 (Colo. App. 1988).

The issue is whether the trial court erred in charging Social Services to pay the legal fees of the GAL in a paternity action.

According to Section 19-6-117, C.R.S. (1986 Repl. Vol. 8B), in paternity actions the court is authorized to order reasonable legal fees of the child's GAL and other costs of the action to be paid by the parties in proportions and at times determined by the court.

Here, the court divided the costs equally between the petitioner and respondent. The statute does not state that one of the parties to which the court allocates cost cannot be social services. The trial court did not abuse its discretion in ordering DSS to pay some of the cost.

Romberg v. Slemon, 778 P.2d 315 (Colo. App. 1989).

Carol Romberg brought an action to quiet title to an access easement. Carol and her sister, Barbara, previously had a right to the easement in question. When the defendant's sought to have Barbara joined as an indispensable party to the action, Barbara's capacity came into question and a GAL was appointed to represent her. Subsequently, the GAL made a motion to withdraw, which was granted because Barbara was not determined to be incompetent.

The issue is whether it was error for the trial court to order Carol to pay Barbara's

guardian ad litem fees.

Section 15-14-303(6), C.R.S. (1987 Repl. Vol. 6B) says that if a petition allege that a person is incapacitated, a court has authority to determine the reasonable compensation and method of payment for a court-appointed GAL. The court also has the authority to apportion all or any of those fees between the petitioner and alleged incapacitated person, as it deems just.

Here, Carol raised the issue of Barbara's competency when defendants sought to have her joined. Carol requested that if Barbara was joined as an indispensable party that a GAL be appointed.

Because Carol raised the issue and requested appointment of the GAL, there was no abuse of discretion in allocating the cost to Carol.

W.C. in Interest of A.M.K., 907 P.2d 719 (Colo. App. 1995).

The petition is appealing the trial court's order regarding attorney's fees.

Under the Uniform Parentage Act (UPA), the trial court is required to order that the parties pay reasonable fees of counsel, expert, and the guardian ad litem. The court determines in what proportion the parties are to pay those fees. Section 19-4-117, C.R.S. (1995 Cum. Supp.).

Here, the court made factual findings regarding the fees and the record supports the court's determination. Generally, the appellate court will not disturb the trial court's awarding of fees unless there is a clear abuse of discretion.

Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

The issue is whether the trial court erred in calculating Mother's income for purposes of allocating future fees of the GAL in a proceeding over Mother's motion change a custody agreement that was the result of a dissolution of marriage.

Section 14-19-116, C.R.S. (1987 Repl. Vol. 6B) provides for the appointment of an attorney to represent the child and feeds to be paid by "any or all of the parties." Section 14-10-115 of the same statute says that for purposes of determining child support, the obligation of a parent who is voluntarily underemployed shall be based on that parent's potential income.

When reading the Uniform Dissolution of Marriage Act as a whole, it is clear that it was not error for the court to apportion the GAL's fees as it did, calculating Mother's potential income.