

Guardian Ad Litem in Paternity Cases

In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

The issue is whether a GAL is considered a party to a paternity proceeding.

To be a true party, that person must be competent to sue and have the right to control the proceedings, to defend, to present and cross-examine witnesses, and to appeal in his or her own right. People in Interest of E.E.A., 854 P.2d 1346 (Colo. App. 1992).

While the child is a party, the GAL doesn't have the right to control the proceedings to defend the action, or to appeal in his or her own right in a paternity action. The statutory provisions setting out the duties of a GAL in a dependency and neglect case do not apply to GALs in paternity cases. A GAL is not a party in a paternity action.

A second issue is whether the appointment of the GAL continues past the entry of permanent orders.

The Uniform Parentage Act provides only that the court "may appoint a GAL." The statute gives no other specifics.

The statute does not authorize appointment to continue past the determination of paternity as the statute covering dependency and neglect GAL appointment specifically provides for continued appointment until permanent placement or the jurisdiction of the court is terminated.

Absent special circumstances, once determination of paternity has been made and permanent orders have been entered resolving custody, child support, and parenting time, appointment of a GAL terminates.

In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

The issue is whether the trial court erred in limiting the children's contact with the paternal grandparents when the father argues this visitation is inadequate.

Section 19-4-110, C.R.S. (1994 Cum.Supp.) provides that a parent cannot assert the rights of a child; only a GAL may do so.

Here, the children are represented by a GAL and so father does not have standing to assert rights on behalf of his children. Only the GAL has the authority to argue for visitation rights on behalf of the children.

K.H.R. By and Through D.S.J. v. R.L.S., 807 P.2d 1201 (Colo. App. 1990).

Mother brought a paternity action naming R.L.S. as the presumed father of her minor child. Mother alleged that blood tests showed R.L.S.'s probability of paternity was 97%. The child's GAL then filed an amended petition naming D.R.R. as an additional

presumptive father. The amended petition alleged D.R.R. received the child into his home and held the child out as his natural child.

The court upheld the trial court's granting of Mother's motion for summary judgment, concluding that evidence of blood test results can overcome other presumptions of paternity.

Morgan County Department of Social Services v. J.A.C., 791 P.2d 1157 (Colo. App. 1989).

The issue in this case is whether the trial court committed reversible error in allowing the GAL two preemptory challenge in addition to the four challenges allocated jointly to the Department of Social Services and Mother.

"The rule in Colorado is that multiple litigants, designated as co-plaintiffs or co-defendants are together entitled to only one set of preemptory challenges [four total], regardless of whether their interest are essentially common or generally antagonistic." Blades v. DaFoe, 704 P.2d 317 (Colo. 1985). The improper allocation of preemptory challenges is reversible error even in the absence of a showing of actual prejudice.

Here, respondent's counsel objected to the method of allocation of preemptory challenges, but purposely did not cite the rule from *Blades* so that respondent could get a second trial if the first was lost.

Because counsel invited the error committed by purposely omitting the current rule, the judgment is affirmed despite the error committed.

People in Interest of T.L.H. by M.P.H. v. F.P.V., 701 P.2d 87 (Colo. App. 1985).

The issue is whether the trial court erred in dismissing this paternity action because it was not brought within the three year statute of limitations.

Under Section 19-6-108, C.R.S. (1978 Repl. Vol. 8) a paternity action must be brought within three years of the child's birth unless the action is brought by or on behalf of the child by the child's general guardian or GAL, but not by the child's mother or father. If the action is brought by or on behalf of the child, it may be brought any time within three year after the child reaches the age of majority.

Here, the action was brought by the People, naming mother as "next friend" to the child, and was not brought within the three year time period.

The trial court properly dismissed the action because social services did not request the appointment of a GAL so that the GAL could bring the action on behalf of the child.

S.F.E. ex. Rel. T.I.E., 981 P.2d 642 (Colo. App. 1998).

Paternity actions are governed by the Uniform Parentage Act (UPA). Section 19-4-101, et. Seq., C.R.S. 1998. It provides in pertinent part that the judgment determining the existence or non-existence of the parent and child relationship may contain a provision concerning custody and parenting time privileges, or any other matter, in the best interest of the child.

The issue in this case is whether the appointment of a GAL is required for continued intervention after a final paternity decree when father claims the circumstances require it.

In paternity actions, a GAL is appointed for the sole purpose of representing the child's best interests. Absent special circumstances, there is no authority under the UPA to continue the appointment of a GAL beyond entry of a final paternity decree and orders respecting custody, support, and parenting time.

Here, the court found that the custody and parenting time orders were sufficiently simple and that there should be little need for mediation despite the animosity between the parents. Special circumstances do not exist here.

Therefore, the trial court did not err in terminating the services of the GAL.

S.O.V. v. People in Interest of M.C., 914 P.2d 355 (Colo. 1996).

The issue is whether the doctrines of Res Judicata or Collateral Estoppel operate to bar M.C., a minor child, from collaterally attacking a jury finding of non-paternity in a prior action brought by the state seeking recovery for child support payments when the child's GAL, appointed late in the proceeding, has determined it is in her best interests to collaterally attack.

Res Judicata, or claim preclusion, "operates as a bar to a second action on the same claim as one litigated in a prior proceeding when there is a final judgment, identity of subject matter, claims for relief, and parties to the action."

Collateral Estoppel, or issue preclusion, bars re-litigation of an issue if: 1) the issue is identical to that actually adjudicated in a prior proceeding; 2) the party against whom estoppel is asserted is a party or in privity with a party in a prior proceeding; 3) there was a final judgment on the merits; and 4) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issues in the prior proceeding.

When the trial court applied res judicata and collateral estoppel to bar M.C.'s petition for a declaration of paternity, the case had not yet been concluded. The issue of what action the court should take as a result of the failure to initially appoint a GAL for M.S. still remained open. Also, M.C.'s petition for declaration of paternity and motion to intervene in the proceeding were filed in the same case, and a prior verdict from that case was relied upon to establish res judicata and collateral estoppel. Res judicata and collateral estoppel have no applicability to prior rulings in the same pending case. Further, M.C. was not a party to the proceeding. M.C. is a minor and was not initially represented by a GAL. M.C. had no standing to become a party to

the action without representation from a GAL or other guardian. M.C. was also not in privity with a party to the action. Privity between a party and a non-party requires both a “substantial identity of interests” and a “working or functional relationship in which the interests of the non-party are presented and protected by the party in the litigation.” The interests of the child, the parents, and the state may be different and therefore the parties are not in privity with each other.

Because of these reasons res judicata and collateral estoppel do not apply here.