

INTERVENTION AND FOSTER PARENTS RIGHTS

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Title 19 Intervention Statutes

- Relatives requesting custody pursuant to C.R.S. § 19-3-605(1)
- Parents, grandparents, relatives & foster parents pursuant to C.R.S. § 19-3-507(5)(a)

Required showing under § 19–3-605(1)

- Relative requests guardianship and legal custody be placed with relative
- Relative files request no more than 20 days after the motion to terminate parental rights has been filed
- 20 day requirement is not jurisdictional
People ex rel. S.R.M. & People in the Interest of C.E.

C.R.S. § 19-3-507(5)(a)

- Dynamic area of law
 - What showing must be made in order to intervene
 - What is role of intervenor
- Do foster parents have a liberty interest in the child placed in their care

§ 19-3-507(5)(a)

Parents, grandparents, relatives, or foster parents who have the child in their care for more than three months who have information or knowledge concerning the care and protection of the child may intervene as a matter of right following adjudication with or without counsel.

In the Interest of O.C., 12 CA 649
(Sept 27, 2012)

- Issue: Whether grandparent seeking to intervene as a matter pursuant to § 19-3-507(5)(a) must “have the child in their care for more than three months”
- Trial Court ruled grandfather could not intervene since he did not meet the “3 month custody rule”

§ 19-3-507(5)(a)

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In the Interest of O.C., cont.

- COA found that denial of the motion to intervene is a final, appealable order.
- COA details the principles of statutory construction.
 - Court notes that the “last antecedent rule” has not been adopted in Colorado.
 - Last Antecedent Rule provides, “in the absence of a contrary intention, referential and qualifying words or phrases refer solely to the immediately preceding clause”

In the Interest of O.C., cont.

- COA finds statute is ambiguous
- Title 19's goal “[t]o preserve and strengthen family ties whenever possible.” 19-1-102(1)(b)
- Court held grandparents do not need to meet the three-month custody test before allowed to intervene
- Court notes that “parents and other relatives” are in same category of persons as grandparents

Required showing under 19-3-507(5)(a)

- After adjudication
- Parents, grandparents, other relatives
- Foster parents
 - 3 month custodian
- Which category of potential intervenor must show
 - Information or knowledge concerning the care & protection of the child

§ 19-3-507(5)(a)

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Role of Intervenor

- *A.W.R.*, (COA 2006)

At PPH trial court allowed foster parent's direct testimony as to the child's physical, mental, and emotional conditions, but not on issue of whether child could be returned to parent – interests of child and mother at issue, not interest of foster parent

- *C.P.*, (COA 1974)

Intervenor GMOC fully participated at hearing regarding her request for custody

People ex rel A.M., 10 CA 522 (12/23/10)

- A year after dispo hearing, FPs moved to intervene because they had “specific knowledge and information about [the child] and what is in his best interest.”
 - Trial Court allowed FPs to intervene “with full party status” July 2009
- GAL filed motion to terminate Oct. 2009
 - MCDSS opposed motion

People ex rel A.M., cont.

- FPs filed motion to exercise right to fully participate in TPR hearing
 - MCDSS & Mother opposed
 - Trial Court ruled the FPs have right to “cross-examine and call witnesses; whatever they wish to do.”
- FPs participated, through counsel, at TPR hearing
 - Opposed parent’s motions to exclude witnesses
 - Made objections
 - Cross-examined wits
 - Opposed mother’s motion to dismiss termination motion
 - “explicitly advocated” the termination of parent’s rights during opening statements & closing arguments

People ex rel A.M., cont.

COA determined trial court erred as a matter of statutory construction and constitutional law

- Reaffirmed statutory analysis in *A.W.R.*
FPs intervene as full participants under § 507(5)(a) only in dispositional hearings and their role is limited post dispo hearing
- COA found parent's Due Process rights were violated by foster parent's level of participation in termination hearing

11 SC 53, A.M. v. N.M (argued 6/7/12)

- Issue: Whether the COA erred when it determined that the intervenors' cross-exam of witnesses concerning the "care & protection" of the child during a TPR hearing exceeded the meaning of "intervention" pursuant to 507(5)(a) and violated the parent's rights to DP
- Implications of full-party status to intervenors

Foster Parents seek liberty interest in continuing relationship w/ child

- A.W.R., COA rejected the argument
- A.M., COA notes FPs cannot have a realistic expectation of continuation of the FP-foster child legal relationship under circumstances presented (pre-TPR)
- A.C., COA also rejected the argument

In the Interest of A.C., 10 CA 2536 (Sept. 15, 2011)

- Foster Parents assert that as “prospective adoptive parents” they have a constitutionally protected liberty interest in a continued relationship with A.C.
- *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816 (1977)
- Ct rejected FP’s claimed liberty interest

11 SC 725 M.S. and Concerning People (argued 6/7/12)

Whether pre-adoptive foster parents of a child whose biological parents' rights have been terminated have a constitutionally protected liberty interest in a continuing relationship with the child and a right to due process concerning removal of the child from the parents' home.

11 SC 725 M.S. and Concerning People (argued 6/7/12)

- Foster parents hope to get a ruling in which the court ...
- Implications