

The Importance of Resolving Paternity Early in D&N Cases

Debra Dodd, Esq. | Gina Hickman, Esq.



1

FIRST THINGS FIRST....

The Department must conclusively establish paternity pursuant to the UPA *prior* to adjudication.

People in Interest of JDK, 21CA616 (unpublished)

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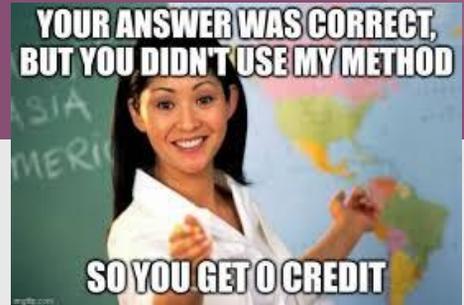
The court must follow the UPA!

When a paternity or maternity dispute arises in a non-UPA proceeding, the court must still adhere to the UPA provisions.

People In Interest of C.D.P., 2023 COA 90, ¶ 69 (J. Johnson, concurring)

A failure to follow the UPA's requirements deprives the court of jurisdiction to determine paternity.

People In Int. of O.S.-H., 2021 COA 130, ¶ 40, 503 P.3d 884, 891



3

A failure to follow the UPA voids the order!

Husband contends that because the district court did not comply with the UPA when it determined biological father's paternity in 2013, it lacked subject matter jurisdiction to do so and therefore the APR modification order is void.

We agree.

In re: Parental Responsibilities Concerning CLB, 21CA0143 (unpub)

VOID!

4

THERE CAN ONLY BE ONE

The court cannot enter a D&N adjudication “as to” more than one father.

The court must determine the LEGAL father prior to adjudication.

We conclude that the trial court erred in adjudicating the child dependent and neglected with respect to both a presumptive father and an alleged father.

People in Interest of ML, 17CA0549 (unpub)

5

Daddy can mean Mommy, too

Nothing in the UPA prohibits a child from having two same-sex parents.

Rather, the plain language of the UPA is gender-neutral and specifically allows the terms “father” and “mother” to be used interchangeably, where practicable.”

§ 19-4-125, C.R.S.

In re Parental Resps. of A.R.L., 2013 COA 170, ¶ 34, 318 P.3d 581, 586.



6

BIOLOGY DOES NOT TRUMP THE OTHER PRESUMPTIONS!



Biology does not trump the other presumptions!



Contrary to biological father's argument, the court was not required to prioritize his position as the child's biological father over husband's position as mother's spouse.



Interest of MFLW, 21CA0473 (unpub)

7

BUT... It is not error to *consider* biology

The court reasoned that if biological father was given the opportunity to develop a psychological relationship with the child, that connection would be the best way to maintain the child's link to the maternal and paternal sides of the child's family because biological father had a link to the mixed-sibling group, while wife did not.



People in Interest of ELC, 22CA1636 (unpub)

8

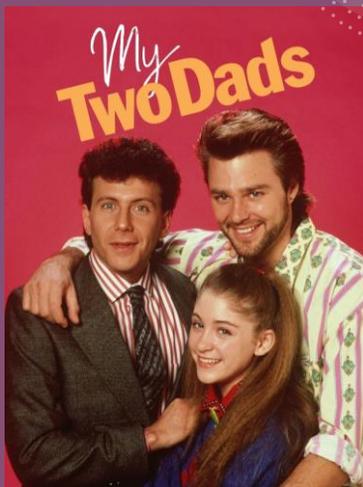
A paternity challenge must be raised before the juvenile court



Even assuming the UPA applies where there aren't competing presumptions of paternity - an issue we don't reach - because father never raised the issue, we conclude that he waived any objection that the juvenile court didn't comply with the UPA.

People in Interest of ANB, 23CA0296 (unpub)

9



If there are two (or more) presumed fathers, the court must hold a 19-4-105 hearing!

10

A paternity determination is reviewed for abuse of discretion.

So long as the 19-4-105 factors are addressed in the ruling, it will most likely be affirmed on appeal.

We review for abuse of discretion the court's fact-intensive process of weighing the UPA factors and the child's best interests to determine which paternity presumption should control.

N.A.H. v. S.L.S., 9 P.3d354, 362-66 (Colo. 2000); *K.L.W.*, ¶¶ 41, 51-52



11

The GAL has a responsibility to ensure that the UPA is followed and paternity is properly determined!

The Department and other “interested parties,” such as a GAL, have a responsibility to bring a UPA claim if they have sufficient notice that a participant in a dependency and neglect action might be a child's natural parent.

- *People In Interest of C.D.P.*, 2023 COA 90, ¶ 92 (J. Johnson, concurring)

12



Practice Tips

13



Paternity Inquiry In Court

Is there a named father on the birth certificate?
 Did the father consent to being named on the birth certificate?
 (C.R.S. §19-4-105(c)(II))

Has genetic testing been done?
 C.R.S. §13-25-126(1)(a)(I) and C.R.S. §19-4-105(f)

Has paternity been adjudicated in another case?
 Consider Child Support/Paternity, Domestic Relations, or Dependency and Neglect Case

14

Paternity Inquiry In Court

- Has mother completed an Affidavit of Presumptive Paternity? (JDF 481 pursuant to C.R.S. §19-5-103.5)
- Inquiry of any other presumed or alleged fathers
 - Has the person received the child into their home and openly held out the child as the person's natural child? (C.R.S. §19-4-105(d))
- Is the court on notice that paternity (or maternity) is at issue? (*In the Interest of C.D.P.*, 2023 COA 90)



15

CFY and GAL Can Raise the Issue

- CFY/GAL can bring an action to determine the father child relationship. C.R.S. §19-4-107(1) (on behalf of the child-CFY) or C.R.S. §19-4-107(2) (any interested party-GAL)



16

Non-Custodial Parent Engagement, Reasonable Efforts and Permanency

Case Scenario:

- Paternity was adjudicated in a child support case. Child was 9yo.
- GAL appointed to provide best interest recommendations regarding parenting time. Case closed with supervised visits with Father.
- Three years later a D&N opened as to Mother and Father's whereabouts were unknown. GAL on paternity case was appointed in the D&N.
- The D&N Petition noted Father's whereabouts were unknown and listed the prior paternity case number.

Question:

- What reasonable efforts could have been attempted by the Department of Human Services to locate Father?

17

Two or More Conflicting Presumptions: 8 Factors

“In determining which of two or more conflicting presumptions controls, based upon weightier considerations of policy and logic, the judge or magistrate **shall** consider all pertinent factors, **including but not limited to...**” (C.R.S. § 19-4-105 (2a)(I)-(VIII))

18

Two or More Conflicting Presumptions

Case Scenarios

19

Two or More Conflicting Presumptions

Nature of Existing Father-Child Relationship

C.R.S. §19-4-105(IV)

Child's Relationship to Any Presumed Parent or Parents

C.R.S. §19-4-105(VI)

Interview of the child

- Tell me about your dad

Interview of family/kin

- Observed interactions of the child and alleged/presumed father

Information from school

- Emergency Contact List
- Drop Off/Pick up
- Parent Teacher Conference

20



- Child is 10yo. Child lived with Mother and Father A, believing he was her biological father. Mother and Father A divorced and Father A was granted parenting time.
- After the divorce, Mother started seeing Father B (biological) again and decided to introduce the child to him when child was 7yo.
- At the time of the GAL's appointment, Father B was having parenting time with the child, as well as Father A.
- Child wanted to have parenting time with both Father A and Father B and wanted both of them to be her "legal father."

21

The Child's Age

C.R.S. §19-4-105(V)



- Child is 11yo and has lived with Mother and Father A most of her life. She does not recall Father B, as she was only 3yo when Mother and child left the state (Texas) and moved to Colorado.
- Mother told CLR child does not know Father B and would be traumatized to know Father A was not her biological father.
- Due to the age of the child, the CLR wanted the child to have input into the legal determination of paternity. CLR recommended therapy with the goal of the child being in a safe emotional and mental state to be told about Father B.

Question:

- Do you think an 11yo child's opinion should be taken into consideration when determining who the legal father should be?

22



Any other factors that may affect the equities arising from the disrupting of the parent-child relationship between the child and the presumed parent or parents or the **chance of other harm to the child.**

C.R.S. §19-4-105(VIII)

- Child is 6yo. She was 2yo the last time she saw biological Father A.
- Mother and Father A had a significant domestic violence history. On one occasion mother was beaten and bruised all over her body. Child has a sibling on Father A's side whose mother also experienced significant domestic violence from Father A.
- Both mothers fled the state of Colorado for their safety and the safety of the children.
- Mother has had a significant other, Father B, since child was 3yo. Child refers to Father B as "dad" and has no recollection of Father A. Child spends significant time with Father B, has adapted to his cultural norms, and refers to herself by his last name.

23

CJD 04-06 Independent Investigation

"A determination by the GAL or CLR of a child or youth's best interests must include consultation with the child or youth in a developmentally appropriate manner and **consideration of the child or youth's position** regarding the disposition of the matter before the court." (V)(B)(1)

"The GAL or CLR should **explain their determination** of the child or youth's best interests **and the basis** for that determination to the child or youth in a developmentally appropriate manner." (V)(B)(1)

24

CJD 04-06 Independent Investigation

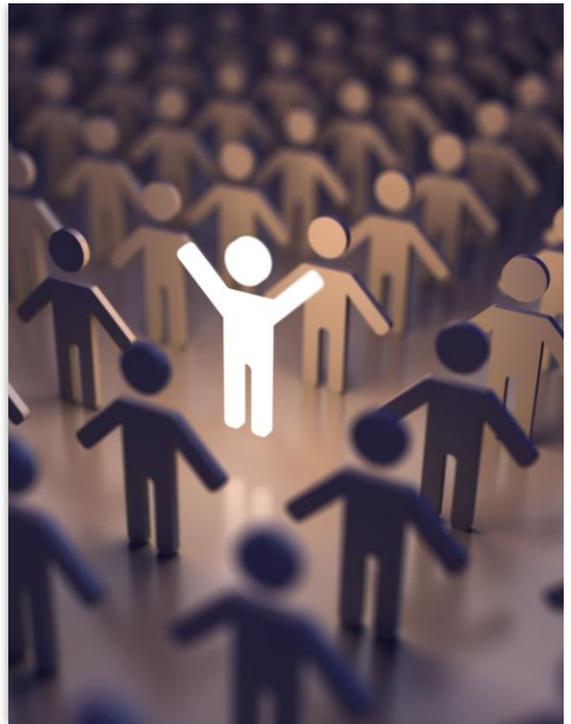
“In determining best interests, GAL’s and CLR’s should engage in an **ongoing inquiry to avoid asserting personal desires, values, and beliefs into their assessment** and to continually reflect on and strive to mitigate their own biases.” (V)(B)(1)

“A CFY has a duty to explain to the youth in a developmentally appropriate manner the information that will **assist the youth in having maximum input** in determining the particular position at issue.” (V)(B)(2)

25

CJD 04-06 Independent Investigation

“A CFY must remain aware of the power dynamics inherent in adult-child relationships, strive to understand what the youth knows and what factors are influencing the youth’s decisions, and strive to ensure that the youth’s expressed preferences reflect the youth’s actual position.”(V)(B)(2)



26

A Final Note: Why Resolving Paternity Matters?

Permanency

Family Connections

Cultural Norms

Family Traditions

Financial Support/Health/Life Insurance Benefits