

RECENT MEETINGS AND EVENTS

On **November 9, 2011**, the JLS held a **CLE Luncheon Meeting** at the **Colorado Bar Association Office**. **Linda Weirnerman** and **Sheri Danz**, both with the OCR presented on "**Gabriesheski: Implications for Juvenile Law Practitioners and Next Steps**," for 1 hour CLE credit.

On **January 11, 2012**, the JLS meeting was **cancelled** due to a snowstorm which caused treacherous roads. That meeting on the **2012 Legislative Preview** will not be rescheduled. The JLS will present current information on the 2012 legislative session on its website and through weekly conference calls as discussed later in the Legislative Section of this newsletter.

SCHEDULE OF FUTURE JLS EVENTS

Meetings are held at noon on the second Wednesday of all odd numbered months. Please put these dates on your calendar now and send in your RSVP when you get the meeting notice from Andrea Mueller. Notices about CLE topics, speakers and any special locations for the meetings will be sent separately by email.

March 14, 2012 - Permanency Roundtable

April 20, 2012 - All Day Juvenile Law CLE Conference

May 9, 2012 - 2012 Legislative Session Wrap Up and Elections

Unless otherwise noted, all meetings are held at the **Colorado Bar Association Office**, 1900 Grant Street, 3rd Floor, Denver, CO 80203. The meetings are available by **audio conference** for members who are unable to travel to Denver. Please contact Andrea Mueller, our CBA Liaison, to arrange for audio conferencing at amuellerarias@cobar.org.

OTHER EVENTS OF INTEREST – MANY OF THESE CONFERENCES OFFER SPECIAL DISCOUNTS FOR CBA JUVENILE LAW SECTION MEMBERS – BE SURE TO ASK WHEN REGISTERING FOR AN EVENT

August 14-16, 2012 - The **NACC** will present the **35th National Child Welfare, Juvenile, and Family Law Conference** at the Historic Palmer House Hilton, in

Chicago, IL. For information, contact the NACC at 1 888-828-NACC or www.NACCchildlaw.org.

JUVENILE LAW SECTION EXECUTIVE COUNCIL REPORTS

The Executive Council has a conference call meeting at 7:30 a.m. on Wednesday, one week prior to each scheduled meeting of the section. The Executive Council is made up of the officers (Current Chair, Immediate Past Chair, Chair-elect, and Secretary) and the current JLS committee Heads.

If you have any interest in serving on any of the committees, please contact one of the officers or committee heads. The Committees are:

Legislative - Bonnie Saltzman, (303) 333-3554, Saltzmanlaw@aol.com

Membership - (Vacant)

Newsletter - Sue Thibault, (303) 679-2432, sthibault@co.clear-creek.co.us

Website - Lyn Stewart-Hunter (720) 862-7712, lynstewarhunter@gmail.com

Program - Pax Moultrie, (303) 271-8900 , pmoultri@co.jefferson.co.us

LEGISLATIVE SUBCOMMITTEE REPORT

The first regular session of the General Assembly will began on January 11, 2012 and will adjourn sine die on May 9, 2012. We are fortunate to have **Bonnie Saltzman** tracking the bills that relate to our work again this year. Bonnie has already compiled a helpful and informative matrix of pending bills for your review, which can be accessed at <http://www.cobar.org/index.cfm/ID/21807/JUV/JLS-Legislative-Session-Conference-Calls/>. Bonnie will begin holding weekly conference calls with JLS members to report on the bills and their status throughout the legislative session. The first conference call is scheduled for **Tuesday, January 31, 2012 at 7:15 a.m.** The number to call in to the conference call is **1 (866) 200-5786** and the conference ID is: **303 824 5340#**.

COLORADO LAWYER – JUVENILE LAW ARTICLES AND OTHER ARTICLES OF INTEREST

No articles directly relating to Juvenile Law practitioners have appeared this period. An interesting article entitled "**Child Support Continuation for Disabled**

Children", written by Gregg A. Greenstein, appeared in the December 2011, Colorado Lawyer, Vol. 40, No. 12.

Barbara Shaklee and Linda Weirnerman, both past Chairs of the JLS are Co-editors of the Juvenile Law articles that appear in *The Colorado Lawyer*. For information about submitting articles please contact Barbara Shaklee at (720) 944-2965 or barbara.shaklee@denvergov.org or Linda Weirnerman at (303) 860-1517 or lindaweirnerman@coloradochildrep.org.

CASE LAW UPDATE

Please note, Colorado Court of Appeal Summaries and links to the full opinions for are also available online by going to <http://www.cobar.org/opinions/index.cfm?CourtID=1> and clicking the appropriate case date.

The Court of Appeals summaries are written for the Colorado Bar Association by licensed attorneys Teresa Wilkins (Denver) and Paul Sachs (Steamboat Springs). Please note that the summaries of Opinions of the Colorado Court of Appeals are provided as a service by the Colorado Bar Association and are not the official language of the Court. The Colorado Bar Association cannot guarantee the accuracy or completeness of the summaries.

No. 08CA2156. **People v. Harmon**

<http://www.cobar.org/opinions/opinion.cfm?opinionid=8238&courtid=1>

Child Abuse—Juror Confusion—Constitutional Right to a Fair Trial.

Defendant James Harmon appealed his conviction for knowing or reckless child abuse. The judgment was reversed and the case was remanded with directions.

Harmon was taking care of his 3-year-old daughter H.H. while his wife was at work. When Harmon picked up his wife from work later that day, she noticed that H.H.'s head was swollen and she seemed unusually lethargic. Harmon's wife asked Harmon how this happened, and he said he didn't know. The Harmons ultimately took H.H. to the hospital, where doctors determined she had a skull fracture, fractured ribs, and an injury to her adrenal gland. They also observed a number of bruises on her body. A consulting pediatrician concluded that the injuries were caused by blunt force trauma. Police were called and spoke with Harmon, who eventually told them that he had accidentally dropped H.H. while bathing her. Harmon was charged with one count of knowing or reckless child abuse. His principal defense was that the injuries resulted from an accident.

During the first day of trial, a juror submitted a note to the court asking why it was necessary to call witnesses and scrutinize facts that both sides agreed to in their opening remarks when “the disagreement is only over what level of guilt is indicated.” Harmon’s counsel asked that the juror be excused for cause because the juror had already decided Harmon’s guilt. The court refused to excuse the juror and then denied a motion for a mistrial.

At the close of the evidence, the court instructed the jury on the originally charged offense and a lesser-included charge of criminally negligent child abuse. Harmon continued to assert he was not guilty of any crime. The jury convicted him of the greater charge.

On appeal, Harmon argued that the trial court deprived him of his constitutional right to a fair trial when it failed to take action after receiving the juror note. The Court of Appeals agreed. The note reflected a fundamental misunderstanding of the juror’s role and duty to reserve judgment regarding guilt until jury deliberations. The trial court was required to take some action to ensure that the jury remained fair and impartial. Although the Court did not specify what the trial court should have done, it gave a number of examples of what the trial court could have done in this situation.

The Court then determined that it could not conclude the error was harmless beyond a reasonable doubt and found that defendant was entitled to a new trial. The Court chose not to remand the case because the trial had taken place more than three years earlier and there was no record of the identity of the juror who submitted the note.

No. 08CA2453. **People v. Mendoza.**

<http://www.cobar.org/opinions/opinion.cfm?opinionid=8239&courtid=1>

Sexual Assault—Sexually Violent Predator Assessment Screening Instrument—Constitutionality of CRS § 18-3-414.5.

Defendant challenged the district court’s order designating him a sexually violent predator (SVP). The order was affirmed.

Defendant, in connection with numerous alleged assaults of his teenage stepdaughter, was charged with one count of sexual assault on a child, one count of sexual assault on a child as a pattern of abuse, five counts of sexual assault on a child by one in a position of trust, and three counts of habitual criminal. Defendant pleaded guilty to an added count of attempted sexual assault on a child in exchange for dismissal of all other charges.

At sentencing, defendant filed a motion to declare the SVP risk assessment part of the SVP statute unconstitutional, and to exclude his SVP Assessment

Screening Instrument (SVPASI). The court denied the motion and found he met the SVP criteria. He was sentenced to a six-year term of imprisonment.

An SVP is an offender (1) who is 18 years of age or older at the time of the offense; (2) who has been convicted of an enumerated sexual offense; (3) whose victim was a stranger or a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization; and (4) who is likely to subsequently commit one or more of the enumerated offenses under the circumstances specified in the statute. When convicted of an enumerated offense, the probation department must complete the SVPASI. The court will then determine whether the defendant is an SVP. As a part of the SVPASI, the offender's probability of re-offending is assessed based on a Sex Offender Risk Scale.

On appeal, defendant argued that the district court erred in relying on the SVPASI because it does not predict likely future commission of an SVP offense but only identifies offenders who are likely to fail treatment or be rearrested for non-sexual violent crimes. The Court disagreed, finding that the Sex Offender Management Board that developed the SVPASI had created a test that had sufficient bases on which to predict the likelihood of committing a future SVP offense.

The Court also rejected defendant's argument that the SVPASI violated equal protection and due process guarantees. Statutes are presumed to be constitutional. To attack a statute's validity, the statute must be established unconstitutional beyond a reasonable doubt.

Defendant argued that the SVP statute treats similarly situated people differently because an offender designated as an SVP based on a score of four or more was slightly less likely to be rearrested for an SVP offense than one not designated as an SVP. Although this was correct, the Court noted that the SVP designated offender was much more likely to be arrested for a new violent offense, as well as any new offense. Thus, the Court found the slight difference between the arrest rates of an SVP versus a non-SVP for a sexual offense did not mean that the SVP statute treats similarly situated persons differently.

The Court also rejected defendant's argument that under the 2010 SVPASI, he would not be designated an SVP. Defendant presented no authority, nor did the Court have any, that he was entitled to be reevaluated under the revised SVPASI.

Finally, the Court rejected defendant's argument that the district court had erred in designating him an SVP. The Court found ample evidence in the record to support the trial court's finding.

No. 08SC945. **People v. Gabriesheski.**

<http://www.cobar.org/opinions/opinion.cfm?opinionid=8255&courtid=2>

Dependency and Neglect Proceeding—Attorney–Client Privilege—Confidentiality of Communications—Guardian ad Litem—Social Worker—Witnesses.

The People sought review of the court of appeals' judgment affirming two in limine evidentiary rulings of the district court in a prosecution for sexual assault on a child by one in a position of trust. Following the district court's exclusion of testimony concerning the recantation of defendant's step-daughter, the alleged sexual assault victim, the prosecutor conceded her inability to go forward, and the case was dismissed. The court of appeals concluded that CRS § 16-12-102(1) gave it jurisdiction to entertain the People's appeal, and it affirmed both of the trial court's evidentiary rulings.

With regard to the exclusion of testimony by the guardian ad litem (GAL) appointed in a parallel dependency and neglect (D&N) proceeding, the court of appeals held that the child's communications with the GAL fell within the attorney–client privilege, as set out at CRS § 13-90-107(1)(b). With regard to the exclusion of testimony by a social worker also involved in the D&N proceeding, the court of appeals found her to be a professional who could not be examined in a criminal case without the consent of the parent-respondent, pursuant to CRS § 19-3-207, as well as a licensed professional who could not be examined without the consent of her client, pursuant to CRS § 13-90-107(1)(g).

The Supreme Court affirmed in part and reversed in part. The Court held that the court of appeals did have jurisdiction to entertain the People's appeal, but disapproved of its conclusions with regard to the trial court's evidentiary rulings. The Court found that because a child who is the subject of a D&N proceeding is not the client of a court-appointed GAL, neither the statutory attorney–client privilege nor ethical rules governing an attorney's obligations of confidentiality to a client strictly apply to communications by the child. Further, the Court found that because the trial court apparently understood § 19-3-207 to bar the examination of the social worker in defendant's criminal case—as long as she qualified as a professional involved in the D&N proceeding—it failed to make sufficient findings to satisfy the additional statutory requirement that the statements at issue be made in compliance with court treatment orders, or to demonstrate the applicability of § 13-90-107, which is limited by its own terms to communications made by a client in the course of professional employment or psychotherapy.

No. 10CA1980. **People in the Interest of C.L.S., and Concerning T.V.**

<http://www.cobar.org/opinions/opinion.cfm?opinionid=8292&courtid=1>

Paternity—Presumption—Standard of Proof—Preponderance Standard—Clear and Convincing Standard.

Husband appealed the magistrate's order declaring T.R.S. the presumptive father of C.L.S. The order was affirmed.

Mother and husband were married when C.L.S. was conceived in early 2006. During this time, mother also had a brief, intimate relationship with T.R.S. Mother filed for dissolution of marriage later in 2006, before C.L.S. was born. Mother and T.R.S. began dating in the spring of 2007, about three months after C.L.S. was born. Genetic testing was performed a short time later. It excluded T.R.S. as C.L.S.'s biological father. However, T.R.S. acted as C.L.S.'s father, signed an acknowledgement of paternity, and added his name to the son's birth certificate as his father.

Husband and T.R.S. each established presumptions of paternity that were not rebutted. The magistrate, after applying the relevant statutes, named T.R.S. the child's legal father. Reviewing the magistrate's order based on the preponderance standard, the district court upheld the magistrate's decision.

On appeal, husband contended that the district court committed reversible error by rejecting the clear and convincing standard in favor of the preponderance standard. Husband established the presumption of paternity by way of marriage during C.L.S.'s birth and a genetic test establishing paternity. T.R.S. established the presumption of paternity by way of receiving C.L.S. into his home and holding him out as his own child and acknowledging paternity in writing.

Once presumptions are established, they may be rebutted by clear and convincing evidence. Husband successfully rebutted T.R.S.'s second presumption by showing husband did not provide written consent for T.R.S. to acknowledge the son as his child. The second step in the process occurs after the presumptions are established and have not been rebutted. According to CRS § 19-4-105(2)(a), when two or more conflicting presumptions arise, the presumption founded on the "weightier considerations of policy and logic" controls. The proper standard of proof to determine this second step is the preponderance of evidence standard. Therefore, the district court used the proper standard. The order was affirmed.

Nos. 09SC665 & 09SC1043. **People v. Simon; Tillery v. People.**
Criminal Law—Sexual Assault on a Child by One in a Position of Trust—Pattern of Abuse.

The Supreme Court held that CRS §§ 18-3-405(2)(d) and 405.3(2)(b) unambiguously allow each separately charged incident of sexual assault on a child, or sexual assault on a child by one in a position of trust, to be elevated to a class 3 felony, where each incident is committed as part of a pattern of sexual abuse. The Court further held that these statutes, construed according to their

plain language, do not violate the double jeopardy protection against multiple punishments under either the U.S. or the Colorado Constitution.

The Court therefore reversed the court of appeals' decision in *People v. Simon*, reinstated Simon's ten class 3 felony pattern convictions and sentences, and remanded the case to the court of appeals for consideration of the remaining issue raised by Simon on appeal. The Court affirmed the court of appeals' decision in *Tillery v. People* and remanded with directions to return the case to the trial court for resentencing in accordance with the court of appeals' decision.

No. 10CA2141. **Shirk v. Forsmark.**

Adoption—Department of Social Services—42 U.S.C. § 1983—Abuse—Injuries—Foster Care—Qualified Immunity.

Defendants Joan Forsmark, Cathy O'Donnell, and Angela Lytle, who are all employees of the Adams County Department of Social Services (Department), sought review of the trial court's orders denying their motions for summary judgment, which asserted qualified immunity for their discretionary decisions as government officials regarding claims arising from the placement and adoption of foster children. The orders were affirmed.

Plaintiffs Michael and Joanna Shirk filed this action individually and on behalf of their adopted children, B.N.S., R.T.S., and B.K.S., who were in the Department's custody from approximately August 2000 through their adoption in August 2003. The case from which this interlocutory appeal arises involves 42 U.S.C. § 1983 claims on behalf of children for injuries suffered in connection with their foster care placement and adoption.

Defendants contended that because their conduct did not constitute a violation of a clearly established constitutional right, the trial court erred in denying them qualified immunity. Children in the state's legal custody have a clearly established "constitutional right to be reasonably safe from harm; and that if the persons responsible place children in a foster home or institution that they know or suspect to be dangerous to the children they incur liability if the harm occurs." Here, plaintiffs alleged that Forsmark placed the children in an obviously dangerous foster home because (1) there were previous reports of abuse at that home; (2) the previous foster mother, Penny Staley, had been placed on the central registry for child abuse; (3) two of Staley's adoptive children were reported for sexually abusing other children; (4) Forsmark and O'Donnell ignored many signs of ongoing sexual abuse while the children were at the Staley home; and (5) defendants failed to disclose to the Shirks the abuse, including incestuous behavior between the children. Because plaintiffs alleged conduct violated the constitutional rights of B.N.S., R.T.S. and B.K.S, defendants were not entitled to summary judgment based on qualified immunity.

No. 10CA2303. **People in the Interest of S.N-V., and Concerning B.A.N.**
Parental Rights—Termination—Treatment Plan—Waiver—Estoppel—Forfeiture.

Father appealed the judgment terminating the parental relationship with his daughter, S.N-V. The judgment was affirmed.

The Denver Department of Human Services (Department) contended that a parent's failure to object to the treatment plan constituted a waiver, estoppel, and forfeiture of the parent's right to seek appellate review of the sufficiency of the evidence supporting the court's termination findings pursuant to CRS § 19-3-604. However, a respondent parent's position regarding his or her treatment plan at the time of its adoption, or at any point thereafter before the termination hearing, is not equivalent to, or a substitute for, a juvenile court's finding at the termination hearing by clear and convincing evidence that the services provided to the respondent parent were appropriate but unsuccessful in rendering him or her a fit parent. Therefore, father had the right to seek appellate review in this matter.

Father argued that the juvenile court erred in finding that he was unfit because the Department did not make reasonable efforts to rehabilitate him. The court ordered the Department to pay for a psychological evaluation of father. The court also authorized a full neuropsychological valuation if necessary. The Department, however, declined to provide father the full neuropsychological evaluation because it could not afford to pay for it. Instead, it paid for the psychological evaluation of father. The psychologist who performed the psychological evaluation of father testified that, based on both father's cognitive disorder diagnosis and his seizure disorder that had been occurring since he was 9 years old, his treatment plan providing visitations with S.N-V. and therapy to address parenting skills was appropriate. Therefore, the record supports the court's findings that an appropriate treatment plan had been adopted for father and determined that, despite his recent efforts to comply with his treatment plan, father was unfit and unlikely to become fit within a reasonable period of time.

Father also contended that the juvenile court erred in finding that no less drastic alternative to termination existed. Father's therapist and caseworker testified that termination of parental rights was appropriate, that no less drastic alternatives existed, and that adoption was in S.N-V.'s best interests. The paternal aunt testified that S.N-V. lived with her and had developed a close relationship with her other children. She also testified that she wanted to adopt S.N-V. Because the record supports the juvenile court's findings, the court did not err in finding that clear and convincing evidence showed no less drastic alternative to termination existed.

No. 08CA1884. **People v. Marsh.**

Sexual Assault on a Child—Sexual Exploitation of a Child—Evidence—Internet Cache—Possession—Psychologist—Patient Privilege—Waiver—Continuance—Challenge for Cause—C.R.E. 404(a)—Relevance—Lay Opinion Testimony.

Defendant appealed his judgment of conviction entered on a jury verdict finding him guilty on nine counts: three counts of sexual assault on a child by one in a position of trust, two counts of sexual assault on a child, two counts of sexual assault on a child as part of a pattern of abuse, one count of sexual exploitation of a child, and one count of inducement of child prostitution. The judgment was affirmed.

The charges in this case arose from incidents involving three of defendant's granddaughters, C.S., E.M., and S.O., whose ages ranged from 9 to 11 years at the time of trial. Each of these granddaughters testified at trial that defendant took her to his basement, where she sat on his lap in front of his computer and viewed pornographic material on his computer, and that defendant sexually assaulted each of them.

Defendant contended there was insufficient evidence to support his conviction for sexual exploitation of a child as a class 4 felony, which requires that a defendant possess more than twenty items of sexually exploitative material. The presence of digital images in an Internet cache, such as the "AOL cache" in this case, can constitute evidence of a previous act of possession. Therefore, there was sufficient evidence to support defendant's conviction.

Defendant contended that the trial court erred by refusing to allow him to question A.S. about a session she had with a psychologist and denying his request to enter the psychologist's report of this session into evidence. A.S.'s session with the psychologist was protected by the psychologist-patient privilege. As a general matter, parents can waive privileges held by their minor children. However, the nature of a conflict between the interests of a parent and of his or her child may preclude the parent from waiving the child's psychologist-patient privilege. Here, based on the nature of the proceedings at issue, A.S.'s mother (defendant's daughter) lacked authority to waive A.S.'s privilege.

Defendant contended that the trial court erred by refusing to grant his requested continuance. However, defendant did not show that a continuance would prevent any prejudice, and the court found that a continuance would be highly prejudicial to the prosecution. Thus, the trial court's decision was not arbitrary, unreasonable, or unfair.

Defendant contended that the trial court erred by denying his challenges for cause to jurors M, F, and R. Juror M stated in his juror questionnaire he had an ex-girlfriend who had been sexually assaulted by her stepfather; juror F disclosed

to the court that two daughters of a friend were victims of child abuse; and juror R indicated on her juror questionnaire that she had read about the case in the local newspaper. The Court of Appeals found, after inquiring further, that all jurors would abide by the law, remain fair and impartial to both sides, and follow the court's instructions. Therefore, the trial court acted within its discretion by relying on its own credibility determinations and did not err in denying defendant's challenges for cause of jurors M, F, and R.

At trial, defendant sought to call two of his other granddaughters to testify that he had not sexually assaulted them. Defendant argued that the trial court erred by ruling that this proffered testimony would be admitted only as C.R.E. 404(a) character evidence and would open the door to the prosecution's use of defendant's prior convictions. The trial court did not abuse its discretion in finding that the proffered testimony of the other granddaughters was not relevant to whether defendant assaulted the three victims.

Defendant also challenged the trial court's limiting of his cross-examination of C.S.'s mother, R.K., and S.O.'s mother, C.O. The trial court did not abuse its discretion in limiting defendant's cross-examination of R.K. and C.O. as to irrelevant evidence.

Defendant also argued that the trial court erred by allowing two forensic interviewers to offer testimony that constituted expert testimony and improperly vouched for the granddaughters they interviewed. A witness may be qualified as an expert in the area of interviewing techniques, and may testify as to her qualifications, training, and techniques for interviewing children. Here, this was the testimony offered by the forensic interviewers, and neither interviewer vouched for the credibility of the children they interviewed. Therefore, the court did not err by allowing this testimony.

No. 10CA1302. In the Interest of S.N.V., and Concerning C.A.T.C.
Maternity Action—Capacity—Allocation of Parental Responsibilities—Colorado Uniform Parentage Act.

The wife of S.N.V.'s father (wife) appealed the district court's judgment finding that she lacked capacity to bring an action under the Colorado Uniform Parentage Act (CUPA). The judgment was reversed and the case was remanded.

S.N.V. was born in 2007. It is undisputed that he was conceived through sexual intercourse between his birth mother and respondent N.M.V. (husband). However, husband and wife assert that they arranged with birth mother to act as a surrogate, and birth mother asserts that S.N.V.'s conception was the result of her intimate personal relationship with husband.

Birth mother sought an allocation of parental responsibilities under CRS § 14-10-123, and wife filed an action under CUPA to establish that she is S.N.V.'s legal mother. Birth mother moved to dismiss wife's petition, arguing that wife lacked the capacity to bring an action under CUPA. The court granted birth mother's motion to dismiss.

Wife contended that the court erred in ruling that she lacked the capacity to bring this action. The Court of Appeals agreed. Wife asserted presumptions of maternity under CRS § 19-4-105 because (1) she was married to husband at the time of S.N.V.'s conception and birth, and (2) she accepted S.N.V. into her home and has held him out to her family and community as her own child. Therefore, wife has the capacity as an "interested party" under CRS § 19-4-122 to bring this action to establish her legal maternity, even though she is not the biological mother.

Wife also argued that biology is not the only factor to consider in determining the mother-child relationship under CUPA. The Court agreed. The Colorado Supreme Court's interpretation of CUPA also applies to maternity actions. Neither the presumption of legitimacy nor the presumption based on biology is conclusive, and competing claims must be resolved by focusing on the best interests of the child.

2012 CO 3. No. 11SA248. **In re Marriage of Brandt.**

<http://www.cobar.org/opinions/opinion.cfm?opinionid=8361&courtid=2>

CRS §§ 14-13-202 and -203—Interpretation of the Term "Presently Reside"—Modification of an Out-of-State Child Custody Order—Uniform Child Custody Jurisdiction and Enforcement Act—Burden of Proof on Party Asserting That the Issuing State Lost Exclusive Continuing Jurisdiction.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) provides that the issuing state has exclusive continuing jurisdiction over its child custody order until it decides it no longer maintains a significant connection with the child or until it, or another state, makes a determination that the child and the child's parents do not "presently reside" in the issuing state. Until either occurs, a different state may enforce, but may not modify, the custody order.

On May 25, 2011, the Arapahoe County District Court assumed jurisdiction to modify a Maryland child custody order on the ground that neither the child nor the child's parents currently reside in Maryland. At the time of George Brandt's petition, the child lived in Colorado, and the mother, Christine Brandt, lived in Texas pursuant to military assignment.

The Supreme Court disagreed with the trial court's ruling. The statutory term "presently reside" is not equivalent to "currently reside" or "physical presence,"

the two notions on which the trial court based its order assuming jurisdiction to modify Maryland's child custody decree. Instead, the court's determination should be based on an inquiry into the totality of the circumstances that make up a person's permanent home—"domicile"—to which he or she intends to return to and remain. Therefore, the Court concluded that the appropriate legal standard to be applied in determining whether the issuing state lost exclusive continuing jurisdiction based on non-residency involves application of a totality of the circumstances test. Factors to be weighed in making the residency determination, a mixed question of fact and law, include but are not limited to: the length and reasons for the parents' and the child's absence from the issuing state; their intent in departing from the state and returning to it; reserve and active military assignments affecting one or both parents; where they maintain a home, car, driver's license, job, professional licensure, and voting registration; where they pay state taxes; the issuing state's determination of residency based on the facts and the issuing state's law; and any other circumstances demonstrated by evidence in the case. The party asserting that the issuing state has lost exclusive continuing jurisdiction bears the burden of proof. Accordingly, the Court reversed and vacated the district's court's order assuming jurisdiction, and remanded the case for further proceedings.

Petitions for Writ of Certiorari to Colorado Supreme Court

No. 11SC725

Court of Appeals Case No. 10CA2536

Petitioners:

M.S. and S.S.,
and Concerning

Respondent:

The People of the State of Colorado,

In the Interest of A.C., Minor Child.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issue:

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.

No. 11SC529

Court of Appeals Case No. 10CA2408

Petitioners:

L.A.N., a/k/a L.A.C., by and through her Guardian ad Litem, and The People of the State of Colorado,

In the Interest of L.A.N., a/k/a L.A.C., Minor Child,

v.
Respondent:
L.M.B.

Petitions for Writ of Certiorari GRANTED. EN BANC.

Summary of Issues:

Whether a guardian ad litem in a dependency and neglect proceeding can waive the child's psychotherapist-patient privilege.

Whether the court of appeals erred in determining that the child's psychotherapist-patient privilege was waived with respect to certain materials in the psychotherapist's file.

DENIED AS TO ALL OTHER ISSUES.

No. 11SC413

Court of Appeals Case No. 10CA325

Petitioner:

The People of the State of Colorado, **In the Interest of A.H.**, Minor Child, and concerning

Respondent:

G.H.

Petition for Writ of Certiorari DENIED. EN BANC.

SPRING NEWSLETTER

The Spring 2012 Newsletter is scheduled to go out by March 21, 2012. The deadline for submitting cases, articles and events is March 14, 2012. Please send any submission requests to sthibault@co.clear-creek.co.us, or call (303) 679-2432 (phone) or by fax at (303) 679-2444.
