

Winter 2023 Family Case Law Update

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January 20, 2022



Case Map by Date

<u>Case Names</u>	<u>Categories</u>	<u>Citation</u>	<u>Date Decided</u>	<u>That Case About?</u>
<i>In re Marriage of Badawiyeh</i>	Parental Responsibilities	2023 COA 4	1/12/2023	The non-Hague Convention country abduction case.
<i>People in the Interest of S.Z.S.</i>	D&N	2022 COA 133	11/17/2022	Terminating parental rights & the ADA
<i>Matter of Storey</i>	Collateral Issues	2022 CO 48	10/4/2022	Its a "Long Storey."
<i>In re Marriage of Schaefer & DePumpo</i>	Maintenance	2022 COA 112	9/29/2022	Maintenance, unrealized capital gains, and depreciation
<i>People In Interest of E.A.M. v. D.R.M.</i>	Collateral Issues	2022 CO 42	9/12/2022	"Reason to know" a child is an Indian Child
<i>Parental Responsibilities Concerning S.Z.S.</i>	Parental Responsibilities	2022 COA 105	9/8/2022	Integration of child by parent's consent under C.R.S. 14-10-129(2)(b)
<i>In re the Marriage of Thorburn</i>	Parental Responsibilities	2022 COA 80	7/21/2022	Interplay between subsections (1)(b)(I) and (4) of section 14-10-129,
<i>In re the Marriage of Wenciker</i>	Parental Responsibilities	2022 COA 74	7/14/2022	"Imminent danger" under Section 129(4) vs. "significant impairment" under Section 129(1)(b)(I)
<i>Nakauchi v. Cowart</i>	Procedure	2022 COA 77	7/7/2022	Child support IWO Case
<i>In re the Marriage of Olsen</i>	Property	2022 COA 66	6/23/2022	The pre-embryo case that is not <i>IRM Rooks</i>
<i>In re E.K.</i>	Parental Responsibilities	2022 CO 34	6/21/2022	Psychological parentage of stepchildren under Section 123(1)(c)
<i>Johnson Family Law v. Bursek</i>	Collateral Issues	2022 COA 48	4/28/2022	Case about restricting an attorneys right to practice law and "financial disincentives" under CRPC 5.6(a)
<i>In re Marriage of Mack</i>	Property	2022 CO 17	4/11/2022	PERA benefits and decisions
<i>In re the Marriage of Turner</i>	Property	2022 COA 39	3/31/2022	Potential, discretionary bonus awarded after PO not property because not contractually enforceable
<i>In re Marriage of Sheehan</i>	Enforcement of Orders	2022 COA 29	3/3/2022	Contempt & Voluntary underemployment
<i>In re the Marriage of Flanders</i>	Child Support	2022 COA 18	2/12/2022	A nonparent is not a "psychological parent" and is not obligated to pay child support.
<i>In re the Parental Responsibilities of A.C.B.</i>	Enforcement of Orders	2022 COA 3	1/6/2022	Court appointed counsel for contempt re: indigency
<i>In re the Marriage of Turilli</i>	Attorney Fees	2021 COA 151	12/16/2021	Attorney fees related to 14-10-129.5 motion
<i>In re the Marriage of Stradtman</i>	Maintenance	2021 COA 145	12/2/2021	Retroactive Maintenance before personal jurisdiction
<i>Wesley v. Newland</i>	Attorney Fees	2021 COA 142	11/24/2021	Joining former counsel for attorney fees
<i>In re the Marriage of Evans</i>	Procedure	2021 COA 141	11/18/2021	CRCP 16.2(e)(10) claims
<i>In re the Marriage of Thomas</i>	Parental Responsibilities	2021 COA 123	9/16/2021	Trial court can resolve school choice
<i>In re the Marriage of Cerrone</i>	Maintenance	2021 COA 116	8/26/2021	Separation agreement must refer to remarriage explicitly
<i>In re the Marriage of Martin</i>	Procedure	2021 COA 101	7/22/2021	CRCP 16.2(e)(10) claims (Wife did not fail to disclose)
<i>In re the Marriage of Vega</i>	Procedure	2021 COA 99	7/22/2021	Notice requirement for magistrate consent. Responses to DOM
<i>In re the Marriage of Young</i>	Maintenance	2021 COA 96	7/15/2021	Underemployment in CS/Maintenance and findings related to modification
<i>In re the Marriage of Schlundt</i>	Parental Responsibilities	2021 COA 58	4/29/2021	Endangerment related to parenting time switch

Property

- ▶ IRM Mack
- ▶ IRM Olsen
- ▶ IRM Turner

In re Marriage of Mack

2022 CO 17 (Colo. April 11, 2022)

▶ PERA Case

- ▶ When applying for retirement benefits, a PERA member can choose from three (3) options for benefits. Option 1 results in a higher monthly benefit payment, but when the retiree dies, the monthly payments stop. C.R.S. 24-51-801(1)(a). Options 2 and 3 have a lower monthly payment during the retiree's lifetime, but continue after the retiree's death to the named co-beneficiary.
- ▶ Who can change the beneficiary?
- ▶ while the retiree may request that the court remove the former spouse as co-beneficiary and facilitate a conversion to Option 1 benefits, the statute does not obligate the court to carry out the retiree's wishes. Instead, C.R.S. 24-51-802(3.8) vests the district court, not the retiree, with the authority to remove the former spouse.

In re the Marriage of Olsen, 2022 COA 66 (Colo. App. June 23, 2022)

Pre-embryos

- ▶ Case applies the *Rooks* balancing test to decide which party should be awarded the cryogenically frozen pre-embryos.
- ▶ Trial court considered Wife's desire to donate the pre-embryos as carrying more weight than Husband's interest in avoiding procreation. The trial court cited her religious beliefs as carrying more weight.
- ▶ Court of Appeals: The Court of Appeals also concluded, as a matter of law, that this case did not present one of the rare scenarios which could overcome the *Fabos* mandate that "ordinarily, a party not wanting to procreate should prevail when the other party wants to donate the pre-embryos instead of using them to have a child of his or her own."

In re the Marriage of Turner, 2022 COA 39 (Colo. App. March 31, 2022)



- ▶ A spouse's potential year-end bonuses are not property if the right to the bonus is not contractually enforceable.
- ▶ Wife had completed the most recent year with the company at time of final orders hearing. But the two plans had discretionary components decided by others at the company.
- ▶ Husband argued that Wife had earned the right to the bonuses; only the amount was uncertain.
- ▶ The appellate court disagreed, focusing on whether Wife had enforceable rights and determining that she did not.
- ▶ Analogy made to stock options and accrued time plans in *Balanson*, *Miller*, and *Cardona*.

Maintenance

- ▶ IRM Schaefer & DePumpo
- ▶ IRM Stradtman
- ▶ IRM Young
- ▶ IRM Cerrone

In re Marriage of Schaefer & DePumpo 2022 COA 112 (Colo. App. Sep. 29, 2022)

- ▶ (1) whether gains in an investment account awarded in a property division constitute income for maintenance and child support
 - ▶ The Court of Appeals found that unrealized, “paper only” gains on an investment account are not income for maintenance and child support purposes unless the gains are realized and therefore can be used to meet living expenses, pay discretionary expenses, or increase the standard of living.
- ▶ (2) whether the calculation of rental income for maintenance and child support purposes excludes all depreciation. .
 - ▶ The Court of Appeals found the plain language of C.R.S. 14-10-114 and C.R.S. 14-10-115 exclude only the accelerated component of depreciation expenses.
- ▶ Don't forget about equitable considerations....



In re the Marriage of Stradtman, 2021 COA 145 (Colo. App. Dec. 2, 2021)

- ▶ May the Court enter an order for maintenance retroactive to a date before the case was filed?
- ▶ The reenacted 2014 maintenance statute reflects intent by the General Assembly for a court to have broad discretion as to retroactivity.
- ▶ Yes, the Court cannot act until it has personal jurisdiction.
 - ▶ But, once jurisdiction attaches, orders can enter as to periods before there was jurisdiction.
- ▶ Also: in maintenance determinations, the court “shall” make initial findings concerning five factors and then “shall” determine amount/duration considering three specific factors.

Marriage of Young, 2021 COA 96 (Colo. App. July 15, 2021)

- ▶ Husband made \$70K/month and parties agreed to \$20K/month maintenance.
 - ▶ Income fell to \$42,333/month at filing of motion and to \$17,333/month at hearing.
 - ▶ Magistrate denied motion to reduce maintenance.
- ▶ When considering maintenance modification, does a Court have to make findings on all of the CRS § 14-10-114(3)(a)(I) factors?
 - ▶ Appellate Panel: No
 - ▶ Unlike Thorstad (Colo. App. 2019) - and Wright (2020), this modification was being addressed under CRS § 14-10-122.
 - ▶ And, CRS § 14-10-114(5), added in 2013, provides that a court “may” consider the factors.
- ▶ But, magistrate did commit errors:
 - ▶ Finding Husband hadn’t sought to sell the company where he worked as CEO.
 - ▶ Finding Husband worked “max 20 hours per week”.
 - ▶ Finding a second part-time job was realistic and would provide an additional \$120K to \$150K per year.

In re the Marriage of Cerrone, 2021 COA 116 (Colo. App. Aug. 26, 2021)

- ▶ If a separation agreement includes a non-modification clause, is that enough to overcome the statutory presumption that maintenance ends on recipient's remarriage?
 - ▶ This division concludes it is not, declining to follow IRM Parsons, 30 P.3d 868 (Colo. App. 2001).
- ▶ The Court does not view “as talismanic the terms ‘contractual’ and ‘nonmodifiable’”
- ▶ The “language of the separation agreement must be read as a whole, and in context, to determine the meaning of those terms or any others.”

Child Support

▶ IRM Flanders

IRM Flanders, 2022 COA 18 (Feb 10, 2022)

- ▶ Focused on differences between stepfather in *A.C.H.* case and grandmother here, noting that the stepfather had held himself out as father almost since the child's birth and is the only father the child has ever known. He exercised equal parenting time after the parties broke up. He initiated an A.P.R. case.
- ▶ Here, grandmother stepped in through a D&N proceeding and did not fight to obtain parental responsibilities.



Parental Responsibilities

- IRM Badawiyeh
- In Re S.Z.S.
- In re E.K.
- IRM Schlundt
- IRM Thomas
- Adoption of E.A.T.
- IRM Wenciker
- IRM Thorburn

In re Marriage of Badawiyeh

2023 COA 4 (Jan. 12, 2023)

- ▶ May a court impose child abduction prevention measures without first making express findings under the Uniform Child Abduction Prevention Act (UCAPA), §§ 14-13.5-101 to -112?
 - ▶ NO
- ▶ May a court impose what would typically be considered abduction prevention measures under C.R.S. 14-10-124 when incorporated into a parenting plan?
 - ▶ NO. UCAPA is the more specific statute and findings are required under UCAPA
- ▶ Is it sufficient that a party has generalized fears of abduction and the other party wants to travel to non-Hague signatory nation?
 - ▶ NO. Generalized fears and intended travel to a non-Hague nation is not sufficient.

Parental Responsibilities Concerning S.Z.S. 2022 COA 105 (Sep. 8, 2022) (Facts)



- ▶ One child named S.Z.S.
- ▶ Mother initially had primary care and sole decision making. (2017)
- ▶ Father had “alternating weekends and school breaks.”
- ▶ Mother relocates to Minnesota six months after initial order.
 - ▶ Following summer (2018), parties agree that child will live in Colorado with Father.
 - ▶ In summer of (2019), parties agree child will remain in Colorado.
 - ▶ In August of (2020), Father asks for child to remain. Magistrate disagrees and sends child back to Minnesota based on prior parenting plan.
- ▶ Father files motion to modify
 - ▶ Magistrate holds hearing . Allocates Father primary parenting time and converts to joint decision making.
 - ▶ Petition for Magistrate review filed. District Court upholds order under C.R.S. 14-10-129(2)(b).

Parental Responsibilities Concerning S.Z.S. 2022 COA 105 (Sep. 8, 2022) (Law)

- ▶ Can a Court “flip” the majority time parent under C.R.S. 14-10-129(2)(b) where there is “integration” by “consent?”
 - ▶ YES
- ▶ Does “integration” mean “expanded visitation?”
 - ▶ NO. It “includes the parent performing normal parental duties and guiding the child physically, mentally, morally, socially, and emotionally” and “the time spent by the child with the parent seeking primary residential care ‘must be of sufficient duration that the child has become settled into the home of that parent as though it were his or her primary home.’” *Id. quoting In re Marriage of Chatten*, 967 P.2d 206, 208 (Colo. App. 1998).

In re E.K. 2022 CO 34 (Colo. June 21, 2022)

- ▶ CAR 21 petition to Colorado Supreme Court where standing to assert rights as psychological parent denied.
- ▶ Is “exclusive physical care” of a child required to assert rights as a psychological parent?
 - ▶ NO. The psychological parent can be a “stepparent” or other parent figure who shares non-exclusive care.
- ▶ Is “parental consent” of a child required to assert rights as a psychological parent?
 - ▶ NO.

IRM Schlundt, 2021 COA 58 (Colo. App. 4/29/21)

- ▶ May a court substantially modify parenting time without applying the endangerment standard when implementing a remedy for parenting time violations?
- ▶ In harmonizing §14-10-129 (2)(d) and §14-10-129.5(2)(b), must find endangerment standard is met.
- ▶ Further, the trial court's alternative findings (if the endangerment standard applied) were insufficient as the findings didn't meet the three-part test:
 - ▶ Presumption to retain prior order.
 - ▶ To overcome, finding that child is endangered by status quo and benefits of the change will outweigh the harm.
 - ▶ The proposed modification is in the child's best interest.
- ▶ Change cannot be ordered to punish a parent's attitude or demeanor.

IRM Thomas, 2021 COA 123 (Sept 16, 2021)

- ▶ Matter of first impression: does the presence of a provision in a parenting plan designating one parent's residence as the child's residence "for purposes of school attendance" give that parent the final say where the child will attend school?
- ▶ When school dispute arose, the district court denied mother's motion stating:
 - ▶ No change in circumstances justifying modification
 - ▶ Mother did not demonstrate child endangered, and
 - ▶ Under § 14-10-130 the role of the court was not to exercise parental decision-making, but to allocate it.
 - ▶ But, after ordering and then revoking the order for a decision maker, the trial court found the parties were at an impasse and resolved the dispute.
- ▶ Father appealed.



Adoption of E.A.T., 2022 COA 520 (Colo. App. April 21, 2022)

Divorce Court

- ▶ During their short marriage, husband became psychological parent to wife's child.
- ▶ Court granted husband parenting time.
- ▶ Noting adoption court order, determined that divorce court had original and continuing jurisdiction and denied mother's request to conform.

Adoption Court

- After divorce but before written permanent orders, former wife started living with another man and they filed for adoption.
- Court contravened divorce court, stated there'd be no further contact with the child
- Court reconsidered, vacated its order. But still determined that father is not a "parent" entitled to access file or intervene.

Appellate Court: Both trial courts ultimately got it right.

In re the Marriage of Wenciker, 2022 COA 74 (Colo. App. July 14, 2022)

- ▶ Post-decree, Father first filed an emergency motion related to parenting time, which the Court denied.
- ▶ Father then filed a motion to modify parenting time with the same substantive allegations he provided with the emergency motion.
- ▶ Trial Court granted Father's motion.
- ▶ On Appeal, Mother contended that the Court could not rely on the same allegations already presented, as the motion must be based on "facts that have arisen since the prior decree".
- ▶ Appellate Court disagrees with Mother: The "prior decree" in this case wasn't the order denying Father's emergency motion; it was the order for parenting time that was already in place.

In re the Marriage of Thorburn, 2022 COA 80 (Colo. App. July 21, 2022)

- ▶ Does a motion filed under CRS § 14-10-129(4) require the moving party to prove, at the emergency hearing, that the child is in imminent danger?
- ▶ Answer: By majority opinion: No; endangerment standard needs to be met to restrict parenting time and, after contested hearing, to continue any restriction.
- ▶ Dissent, by Judge Taubman, argued that a moving party must prove, not merely allege, imminent harm.

ATTORNEY'S FEES

- ▶ Wesley V. Newland
- ▶ IRM Turilli

Wesley v. Newland, 2021 COA 142 (Colo. App. Nov. 24, 2021)

- ▶ Not a family law case, but a highly relevant interpretation of C.R.S. § 13-17-102.
- ▶ 1. Do the Rules of Procedure permit joinder of former counsel in post-judgment proceedings for attorney fees?
 - ▶ Answer: yes.
- ▶ 2. How can a trial court comply with the mandate that it “shall allocate” fees under C.R.S. § 13-17-102(3)?
 - ▶ Answer: Court must consider the allocation between the party and counsel and make sufficient findings when imposing an award.

In re the Marriage of Turilli, 2021 COA 151 (Colo. App. Dec. 16, 2021)

- ▶ Attorney Fee
 - ▶ C.R.S. 14-10-129.5 (4)
 - ▶ C.R.S. 14-10-129 (4)
- ▶ Majority: C.R.S. 14-10-129.5(4) requires the court to award attorney fees, costs, and expenses “that are associated with an action brought pursuant to this section”
- ▶ Fees incurred for a motion brought under C.R.S. § 14-10-129(4) were not “associated with an action brought pursuant to” C.R.S. § 14-10-129.5.

Procedure

- ▶ IRM Martin
- ▶ IRM Evans
- ▶ IRM Vega
- ▶ Nakauchi v. Cowart

In re the Marriage of Martin, 2021 COA 101 (Colo. App. July 22, 2021)

- ▶ Husband's CRCP 60 (b)(1) motion treated as 16.2(e)(10) motion.
 - ▶ Claimed the Stagecoach property should be divided.
 - ▶ Claimed an IRA should be divided.
- ▶ Facts demonstrated Husband knew about both assets before divorce.
- ▶ District Court reopened and divided these assets, also awarding Husband his attorney fees.
- ▶ Appellate Court reversed: Wife did not fail to disclose Stagecoach or the IRA; Husband knew about both. Also, Husband made no allegation that the IRA materially affected the property division.
- ▶ 16.2 (e)(10) is an “extraordinary” and “narrow” remedy.

In re the Marriage of Evans, 2021 COA 141 (Colo. App. Nov. 18, 2021)

- ▶ Holding: when a misstated/omitted asset under Rule 16.2(e)(10) is being divided, the trial court must apply C.R.S. § 14-10-113, making factual findings and considering financial circumstances at the time of the order.
- ▶ Here, in 2013, parties divorced.
- ▶ In 2018, case was heard and magistrate determined Husband failed to disclose a business, awarding wife half of its present value.
- ▶ Magistrate also increased child support from \$534 to \$12,000 and awarded Wife \$63K in fees. After district court review and further proceedings, the magistrate's decisions were reaffirmed.
- ▶ On contention that wife had waived: a waiver is the intentional relinquishment of a known right.

IRM Evans Continued

- ▶ Three questions of first impression:
- ▶ (1) whether the reopening required a complete reallocation of the marital estate,
- ▶ (2) whether C.R.S. § 14-10-113 factors are relevant when allocating previously non-disclosed assets, and
- ▶ (3) whether the financial circumstances to be considered are those in place at the time of the decree or presently.

In re Marriage of Vega 2021 COA 99 (Colo. App. July 22, 2021)

- ▶ Magistrate found Husband in default since he did not file a Response to the Petition.
- ▶ Court of Appeals reversed: Husband came to initial status conference, as required, and a Response does not need to be filed.
 - ▶ Since this wasn't a default, Permanent Orders was contested.
 - ▶ Since it was contested, Magistrate did not have authority to hear the case unless he had the parties' consent.
 - ▶ Since Magistrate did not have authority, the entire order was reversed and the case remanded to re-do the proceedings.

Nakauchi v. Cowart, 2022 COA 77 (Colo. App. July 7, 2022)

- ▶ What process is due to direct-pay obligors prior to implementing Income Withholding Order (IWO) for future child support payments?
- ▶ Father alleged Mother missed child support payment; CSE implements IWO without notice to Mother.
- ▶ Mother files civil suit against CSE and state employees for violation of due process.
- ▶ Held: due process requires direct-pay obligor to be granted advance notice prior to implementation of IWO for future child support payments, along with opportunity to contest IWO on limited grounds (i.e. mistake of fact).
- ▶ Does NOT apply to IWOs for arrears/past-due support.

COLLATERAL ISSUES

- ▶ Matter of Storey
- ▶ People In Interest of E.A.M.
v. D.R.M.
- ▶ People in the Interest of
S.Z.S.

Matter of Storey 2022 CO 48 (Colo. Oct. 4, 2022) (Facts / Timeline)

- ▶ Attorney disciplinary proceeding involving a DR case
- ▶ Timeline
 - ▶ June 2018 --- Wife hires Storey
 - ▶ Late November 2018 --- Husband files for divorce. Husband earns all income.
 - ▶ May 2018 to June 2019 --- Storey's monthly bill paid on time using joint AMEX
 - ▶ January 7, 2019 --- Storey asks for temporary orders at ISC. Court denies and orders parties to maintain status quo
 - ▶ May 2019 --- Husband stops paying AMEX bill in full due to financial difficulties
 - ▶ June 20, 2019 --- Wife cannot pay Storey's bill of \$12,511.21
 - ▶ June 21, 2019 --- Contempt citation filed against Husband

Matter of Storey 2022 CO 48 (Colo. Oct. 4, 2022) (Facts / Timeline Cont.)

- ▶ June 18, 2019 --- Storey e-mails client and tells client to sell marital property such as furniture.
- ▶ June 21, 2019 --- Storey e-mails client to say bill must be paid even if Husband does not pay it. Storey says she will withdraw.
- ▶ June 28, 2019 --- Storey asks client to provide proof of listings to sell marital property.
- ▶ Early July 2019 --- Client shows proof that she is selling marital property.
- ▶ July 25, 2019 --- Court authorizes payment of attorney fees with each Party to receive \$25,000. Client pays Storey this amount.
- ▶ July 29, 2019 --- Storey receives payment but it is not enough to pay entire bill, so Storey asks for more funds.

Matter of Storey 2022 CO 48 (Colo. Oct. 4, 2022) (Facts / Timeline Cont.)

- ▶ July 30, 2019 --- Storey files motion to withdraw
- ▶ August 1, 2019 --- Client e-mails Storey and says she has an “solution” to the fee problem. The solution is a joint IRS check for \$47,578.43.
- ▶ August 2, 2019 --- Storey agrees to idea but says that even more money will be necessary for case.
- ▶ August 2, 2019 --- IRS check delivered to Storey. Husband not aware of check.
- ▶ August 6, 2019 --- Storey does a trust-to-business transfer
- ▶ August 7, 2019 --- Meeting between client and Storey. Differing accounts.
- ▶ August 12, 2019 - Client asks whether she can give Husband his mail. Includes notification of IRS check.
- ▶ Story does not respond for 8 days. She tells client to “do whatever you want on this issue.”

Matter of Storey 2022 CO 48 (Colo. Oct. 4, 2022) (Facts / Timeline Cont.)

- ▶ August 22, 2019 --- Storey urges client to sell marital property again.
- ▶ August 26, 2019 --- Storey files second motion to withdraw
- ▶ August 27, 2019 --- Hearing held. Attorney fees discussed. No disclosure of IRS check by Storey.
- ▶ September 1, 2019 --- Second trust-to-business transfer occurs. All IRS funds depleted.
- ▶ September 4, 2019 --- Jennifer Aldridge enters on behalf of Wife.
- ▶ September 25, 2019 --- Aldridge and Husband's counsel discuss what to do.
- ▶ October 9, 2019 --- Court holds hearing. Court says it lacks jurisdiction over Storey.

Matter of Storey 2022 CO 48 (Colo. Oct. 4, 2022) (Facts / Timeline Cont.)

- ▶ March 20, 2020 --- After much litigation, Storey agrees to return IRS funds to be held in escrow.
- ▶ September 21, 2020 --- Parties agree to give Storey the funds for payment of her fees.
- ▶ September 17, 2020 --- OARC files complaint against Storey alleging violations of:
 - ▶ CRPC 1.7(a)(2)
 - ▶ CRPC 1.15A(a) and (c)
 - ▶ CRPC 3.4(c)
 - ▶ CRPC 8.4(c)

Matter of Storey 2022 CO 48 (Colo. Oct. 4, 2022) (Law)

- ▶ CRPC 1.7(a)(2)
 - ▶ Did pressuring client to sell marital furniture violate CRPC 1.7(a)(2)? YES
 - ▶ Did cashing of IRS check violate CRPC 1.7(a)(2)? YES
- ▶ CRPC 1.15A(a) and (c)
 - ▶ Did transferring the IRS check into operating account to pay fees violate CRPC 1.15A(a) and (c)? YES
 - ▶ However, holding is due to conflicting testimony and credibility.
 - ▶ Expert said it would be common practice to disclose
- ▶ CRPC 8.4(c)
 - ▶ Did attorney engage in a “reckless omission” by failing to disclose IRS check at “key moments?” YES
 - ▶ Other attorney was seeking ethical assistance whereas Storey was not justified in her delayed disclosure.
- ▶ CRPC 3.4(c)
 - ▶ Did Storey violate CRPC 3.4(c)?
 - ▶ Facts were “confusing” regarding violation of court order and therefore order reversed on this issue

People In Interest of E.A.M. v. D.R.M. 2022 CO 42 (Colo. Sep. 12, 2022)

- ▶ Case concerning the Indian Child Welfare Act (“ICWA”)
- ▶ Consolidated several other cases into one appeal where the Colorado Supreme Court decided what it means to have “reason to know” that a child is an Indian child.
- ▶ Are “mere assertions” of a child’s Indian heritage (including those that specify a tribe or multiple tribes by name), without more, sufficient to trigger ICWA’s “reason to know” standard?
 - ▶ NO.

People in the Interest of S.Z.S. 2022 COA 133 (Nov. 17, 2022)

- ▶ Disability and D&N Termination - Mother
- ▶ Notice and D&N Termination - Father
 - ▶ C.R.S. 19-3-604(c) allows the juvenile court to terminate parental rights if it finds, by clear and convincing evidence, that (1) the child was adjudicated dependent and neglected; (2) the parent has not complied with an appropriate, court-approved treatment plan or the plan hasn't been successful; (3) the parent is unfit; and (4) the parent's conduct or condition is unlikely to change within a reasonable time.
 - ▶ The appellate court found that "if mother's counsel believed that she [had a qualifying disability], given the Department's failure to recognize any such disability, it was incumbent on mother's counsel to raise the issue with the court so that it could resolve that factual question."
 - ▶ Father's rights were terminated pursuant to C.R.S. 19-3-604(1)(a) which requires the Department to prove, by clear and convincing evidence that the parent (1) surrendered physical custody of the child for a period of six (6) months or more and (2) did not manifest during such period the firm intention to resume physical custody of the child or make permanent legal arrangement for the care of the child.
 - ▶ The Department was not required to provide a treatment plan before termination. Accordingly, the juvenile court is also not required to consider whether the Department made reasonable efforts.

Enforcement of Orders

- ▶ In re A.C.B.
- ▶ IRM Sheehan

In re the Parental Responsibilities of A.C.B., 2022 COA 3 (Colo. App. Jan. 6, 2022)

- ▶ When the government initiates contempt proceedings and where (1) the alleged contemnor is indigent, and (2) the government seeks a jail sentence, is the alleged contemnor entitled to court-appointed counsel?
 - ▶ YES, where “a contempt proceeding is initiated by a governmental entity and where a jail sentence is an available remedial sanction, an alleged contemnor who is indigent has the right to court-appointed counsel.” *In re A.C.B.*, 2022 COA 3, ¶ 3
- ▶ Must a trial court inquire into an alleged contemnor’s indigency status when such a proceeding is brought against them?
 - ▶ YES,” the trial court violated [the alleged contemnor’s] due process rights when it refused to inquire into his indigency status to determine whether he qualified for court-appointed counsel.” *In re A.C.B.*, 2022 COA 3, ¶ 3

In re Marriage of Sheehan, 2022 COA 29 (Colo. App. Mar. 3, 2022)

- ▶ Trial Court found Husband in punitive and remedial contempt for failure to pay spousal maintenance.
- ▶ 2014 decree called for maintenance of \$5,300/mo, but Husband lost his job earning \$13,750/mo. On motion to modify, Magistrate gave Husband only a temporary reduction, finding his income would rise to \$11K/mo.
- ▶ Wife then filed six contempt motions; Husband was held in contempt and purged contempt by payment of the arrears.
- ▶ In seventh contempt hearing, Husband's defense was that he had no ability to pay. Court found him in remedial and punitive contempt and incarcerated him.

IRM Sheehan, continued

- ▶ In order to find remedial contempt, the court must find present ability to pay. And, to incarcerate, there must be a finding as to the ability to purge the contempt.
- ▶ For punitive contempt, must find failure to pay amounts at a time when contemnor had the ability to pay.
- ▶ Remedial Contempt Holding: A finding that the alleged contemnor is acting in bad faith as to employment cannot support a finding of present ability to pay.
- ▶ Punitive Contempt Holding: Punitive requires findings sufficient for appellate review, which did not occur here.

QUESTIONS?