Summaries of Published Opinions

June 6, 2019

2019 COA 86. No. 18CA1147. Weld Air & Water v. Colorado Oil and Gas Conservation Commission. *Administrative Law—Standing—Injury-in-Fact—Oil and Gas Conservation Act—Colorado Administrative Procedure Act—Setback Rules.*

Extraction Oil and Gas, Inc. (Extraction) filed two Form 2A applications with the Colorado Oil and Gas Conservation Commission (the Commission) seeking approval to conduct oil and gas operations at an existing drilling site. The proposed site was approximately 1,360 feet from a middle school. The Commission accepted public comments on the applications and subsequently approved the applications. Weld Air & Water, Sierra Club, NAACP Colorado State Conference, and Wall of Women (petitioners) are organizations that have aesthetic, recreational, health, and environmental interests in the proposed development location and sued in district court. The district court affirmed the Commission's decision.

On appeal, the Commission asserted that the district court erred when it held that petitioners had standing to seek judicial review of the Commission's authorization of Extraction's Form 2A permit applications. Petitioners offered declarations from members on how the expected air and noise pollution from Extraction's proposed development would negatively impact their interests. Petitioners thus established injuries-in-fact to legally protected interests under the Colorado Administrative Procedure Act (the APA) and the Oil and Gas Conservation Act (the Act), which authorizes judicial review of the Commission's permit approvals via the APA. The district court did not err in holding that petitioners had standing to seek judicial review of the Commission's permit approvals.

Petitioners argued that the district court erred when it found that the Commission did not act arbitrarily and capriciously by failing to consider public comments. They contended that the Commission was obligated to respond to substantive public comments because its rules require it to make a record of its decision-making process to show that it considered public comments. The record shows that the Commission considered and responded to public concerns regarding (1) the students' health, (2) Extraction's emergency response plan, and (3) alternative siting. The district court did not err in concluding that the Commission did not act arbitrarily or capriciously in granting the challenged permits.

Petitioners also argued that the district court erred when it found that the Commission complied with its own setback rules because it did not require Extraction to conduct an alternative site analysis before granting the permits. Dep't of Nat. Res. Rule 604.c.(2)(E)(i) does not require an alternative site analysis before the Commission can grant a Form 2A permit. Here, the Commission complied with its own regulations in authorizing Extraction's permits and did not act arbitrarily or capriciously.

The judgment was affirmed.

June 13, 2019

2019 COA 87. No. 17CA2416. In re Marriage of January. *Dissolution of Marriage—Contempt—Remedial Sanctions—Attorney Fees—Final Appealable Order.*

The permanent orders in the parties' dissolution of marriage required them to share their daughter's tutoring expenses in proportion to their incomes. Father subsequently refused to pay his share of the daughter's tutoring costs. Mother moved for remedial sanctions in the form of tutoring expenses and attorney fees. The magistrate found father in contempt and imposed sanctions consisting of the tutoring expenses and mother's attorney fees incurred in connection with the contempt proceeding. Father objected to the attorney fees award and requested a hearing. The magistrate has not yet set a hearing or ruled on father's objection. Father also petitioned for district court review of the contempt order. The district court adopted the magistrate's order awarding the tutoring expenses to mother.

Father appealed the district court's ruling. The parties were ordered to show cause why the appeal should not be dismissed, without prejudice, for lack of a final, appealable judgment. The Court of Appeals determined that CRCP 107(d)(2) allows a district court to award reasonable attorney fees as a remedial sanction. Thus, a contempt order is not final until the attorney fees portion of the remedial sanction has been resolved, and father appealed too soon.

The appeal was dismissed without prejudice.

2019 COA 88. No. 18CA0748. Ryser v. Shelter Mutual Insurance Co. *Personal Injury—Insurance—Workers' Compensation—Co-Employee Immunity Rule—Uninsured/Underinsured Motorist—Coverage and Liability.*

Babion owned a car. With Babion's permission, Forster was driving the car with Ryser as a passenger. A one-car accident occurred and Ryser suffered serious injuries. When the accident occurred, Babion, Forster, and Ryser were Walmart employees acting in the course

and scope of their employment. According to Ryser, Forster's negligence caused his injuries.

Ryser received workers' compensation benefits and obtained uninsured/underinsured motorist (UM/UIM) benefits under his own auto policy. Ryser also submitted a claim for UM/UIM benefits from Babion's policy with Shelter Mutual Insurance Co. (Shelter). Shelter rejected the claim, and Ryser sued. Shelter moved for summary judgment. The trial court ruled for Shelter based on co-employee immunity.

On appeal, Ryser contended that the trial court erred in finding that he was not entitled to UM/UIM benefits under Babion's policy. The exclusivity provision of the Workers' Compensation Act of Colorado, and the related co-employee immunity rule, bar a person who was injured in the course and scope of employment by a co-employee's negligence in driving a car from receiving UM/UIM benefits under an insurance policy maintained by another co-employee who owned the car. Therefore, Ryser was not legally entitled to recover damages from Forster and, as a result, cannot recover UM/UIM benefits from Babion. The trial court properly granted summary judgment in favor of Shelter on Ryser's claim for UM/UIM benefits.

The judgment was affirmed.

June 20, 2019

2019 COA 89. No. 16CA1289. People In re the Interest of TB. *Criminal Law—Juvenile Law—Colorado Sex Offender Registration Act—Repeat Offenders—Cruel and Unusual Punishment—Constitutional Law—Eighth Amendment.*

In 2001, when T.B. was 12 years old, he was adjudicated for unlawful sexual contact, a class 1 misdemeanor if committed by an adult. In 2005, he pleaded guilty to sexual assault. Following the 2005 adjudication, T.B. successfully completed probation and offense-specific treatment. He has no other criminal record. In 2010, T.B. filed a pro se petition to discontinue sex offender registration in both cases, which the trial court granted as to the 2005 case and denied as to the 2001 case. About five years, later T.B. filed another petition to discontinue registration, arguing that lifetime registration violated due process and constituted cruel and unusual punishment. After a hearing, the juvenile court denied the petition.

On appeal, the People asserted that T.B.'s constitutional arguments were procedurally barred. T.B.'s claims are not barred as successive because he did not seek relief under Crim. P. 35(c), and the legal landscape involving juvenile sentencing generally, and lifetime registration in particular, has evolved substantially since

Affinity University —
Your FREE Member Benefit

What You Get...

An Affinity University Subscription gives your entire firm access to training on the programs your business uses every day. With over 100 courses covering more than 30 different products, your team will have anytime, anywhere access to the training they need.

- Practice Management
- Document Management
- Microsoft Office
- Time Billing and Accounting
- PDF
- Affinity Educational Webinars

Visit **affinityuniversity.com** and create your **FREE** account. Access over 150 training videos. Use code **CoBarMember** for a 100% discount.

his 2010 petition. Further, the law of the case doctrine does not bar review because no other Court of Appeals division has addressed T.B.'s first petition.

T.B. contended that when applied to juveniles, automatic lifetime registration under the Colorado Sex Offender Registration Act (CSORA) for repeat offenders violates the Eighth Amendment's prohibition against cruel and unusual punishment. CSORA requires that juveniles who have more than one adjudication for unlawful sexual behavior must register as sex offenders for life, unless a court entered an order discontinuing the registration requirement. The Court of Appeals analyzed the factors in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), for determining whether a statute's punitive effect overrides its declared civil intent, and concluded that requiring a juvenile, even one who has been twice adjudicated for offenses involving unlawful sexual behavior, to register as a sex offender for life without regard to whether he or she poses a risk to public safety is an overly inclusive, and therefore excessive, means of protecting public safety. Therefore, CSORA operates as a punishment within the meaning of the Eighth Amendment. Here, the juvenile court specifically found that T.B. "successfully addressed all issues related to his sexual offending behavior" and that he was "not likely to reoffend." However, the juvenile court did not reach the issue of whether the lifetime registration requirement is cruel and unusual on its face or as applied to T.B.

The order denying T.B.'s petition to discontinue the requirement that he register as a sex offender was reversed and the case was remanded for the juvenile court to determine whether the lifetime registration requirement is cruel and unusual on its face or as applied to T.B.

2019 COA 90. No. 16CA1944. People v. Hamm. *Criminal Law—Ineffective Assistance of Counsel—Uniform Controlled Substances Act of 2013—Retroactivity—Postconviction Review—Sentencing—Evidentiary Hearing.*

Hamm was charged with one count of distribution of a controlled substance (3.4 grams of cocaine) and five habitual criminal counts based on his prior felony convictions. A jury convicted him on the distribution count. In exchange for dismissal of the habitual counts and to avoid a mandatory 64-year sentence, Hamm stipulated to a sentence of 30 years in the custody of the Department of Corrections and five years of parole. Hamm did not directly appeal his conviction or sentence, but over a year later, he filed a petition for postconviction relief and requested an evidentiary hearing. The district court denied the motion without a hearing.

Colorado Lawyer Assistance Program

The Colorado Lawyer Assistance Program (COLAP) is an ***independent and confidential*** program exclusively for judges, lawyers, and law students. Established by Colorado Supreme Court Rule 254, COLAP provides assistance with practice management, work/life integration, stress/anger management, anxiety, depression, substance abuse, and any career challenge that interferes with the ability to be a productive member of the legal community. COLAP provides referrals for a wide variety of personal and professional issues, assistance with interventions, voluntary monitoring programs, supportive relationships with peer volunteers, and educational programs (including ethics CLEs).

We would love to share our success stories, but they are completely confidential.

For more information or for confidential assistance, please contact COLAP at **303-986-3345**.
Visit our website at **www.coloradolap.org**.

On appeal, Hamm contended that his trial counsel was ineffective by not advising him that the penalty reductions enacted through the Uniform Controlled Substances Act of 2013 (the Act) applied retroactively and if the Act had been applied to him, his maximum sentence would have been 16 years. Hamm's failure to file a direct appeal, however, precluded him from seeking postconviction review of his sentence based on a "significant change in the law." Thus, the district court should not have considered the claim.

Hamm also contended that the district court erred in denying him an evidentiary hearing on his challenge to the voluntariness of his stipulation. He contended that the stipulation was involuntary and should be set aside because he was not aware that the sentence reductions applied to him and he accepted the stipulation equivocally. However, the Act does not apply retroactively, and the sentencing ranges in the Act cannot reduce Hamm's sentence because the offense for which the jury convicted him occurred more than two years before the effective date of the Act. Further, the petition, files, and record establish the voluntariness of the stipulation. Therefore, the trial court did not err in denying Hamm an evidentiary hearing.

The order was affirmed.

2019 COA 91. No. 18CA0534. Martinez v. CSG Redevelopment Partners LLLP. *Premises Liability Act—Injuries—Public Entity—Colorado Governmental Immunity Act—Instrumentality—Public Building Open for Public Business Exception.*

Martinez was a resident of Casa Loma Apartments, a low-income housing facility. He slipped and fell on a walkway leading to the apartment building and sued CSG Redevelopment Partners, LLLP (CSGR), Casa Loma's management company and the building's owner, under the Premises Liability Act, CRS § 13-21-115, and alternatively, for negligence, alleging that CSGR had allowed snow and ice to accumulate on the walkway. CSGR moved to dismiss the complaint, arguing that it was an "instrumentality" of the Denver Housing Authority (DHA), a public entity, and thus immune from tort liability under the Colorado Governmental Immunity Act (CGIA). The trial court granted the motion.

On appeal, Martinez argued that the district court erred by concluding that CSGR is an instrumentality of DHA. He contended that CSGR's status as a private partnership precludes its treatment as a public entity. The DHA created CSGR and other instrumentalities to finance Casa Loma and other low-income properties. CSGR was made up entirely of public entities when it was founded, and it only became a "private" partnership when an investor joined as a limited entity. Because of both DHA's extensive control over CSGR and CSGR's public purpose, CSGR is an instrumentality of a public entity within the meaning of the CGIA, and therefore a public entity itself entitled to governmental immunity.

Martinez also contended that even if CSGR is a public entity under the CGIA, its immunity was waived because Casa Loma is a "public building open for public business." Based on the district court's findings that only residents and staff have key cards to enter the building, no public events take place on the premises, and no public business is conducted there, this exception to governmental immunity in the CGIA doesn't apply.

Finally, Martinez contended that the district court erred by not addressing his argument that the recreation area waiver to CIGA immunity applies. Martinez presented no evidence that Casa Loma is a "public facility located in a park or recreation area." Therefore, the district court did not err.

The judgment was affirmed.

2019 COA 92. No. 18CA0578. Massihzadeh v. Seaver. *Administrative Law—State Lottery Division—Prizes.*

Massihzadeh held one of three winning lottery tickets for a Lotto $4.8 million jackpot. He received one-third of the jackpot prize after taxes. A decade later, the other two tickets were invalidated based upon fraud. Massihzadeh sued the Colorado State Lottery Division (the Division), alleging breach of contract, and sought to obtain the other two-thirds of the jackpot with interest. The trial court dismissed the case for failure to state a claim because CRS § 44-40-113(4) discharges the Division from liability upon the payment of any prize.

On appeal, Massihzadeh contended that the district court erred in granting the motion to dismiss because his claims against the Division were not precluded; he asserted that the statute only pertains to claims against the Division by third parties. Here, the Division tendered a prize, and Massihzadeh accepted it. Based on the plain language of CRS § 44-40-113(4), Massihzadeh's acceptance of the payment constituted "any prize" sufficient to discharge the Division of liability. Thus, the district court did not err in granting the motion to dismiss.

The judgment was affirmed.

2019 COA 93. No. 18CA1067. Ferguson v. Spalding Rehabilitation, LLC. *Wrongful Death—Standing—Heir—Adult Adoptee.*

Ann and Jim Ferguson adopted 25-year-old Marty in 1995. Jim predeceased Ann, who died after being examined or treated by defendants. Marty brought a wrongful death lawsuit against Ann's medical providers. Defendants moved to dismiss under CRCP 12(b)(5), contending that Marty lacks standing to sue because an adult adoptee isn't an heir within the meaning of the Wrongful Death Act (WDA). The district court converted the motion to dismiss into a motion for summary judgment and granted the motion.

On appeal, Marty argued that the district court erred in finding that as an adult adoptee, she's not an heir and doesn't have standing to sue under the WDA. The WDA provides that in the second year after the death of a person, the deceased's heirs may sue to recover on behalf of a decedent who died from an injury caused by another's negligence. The Court of Appeals concluded that an adult adoptee is a lineal descendant of a decedent, and therefore an heir, so Marty is entitled to sue under the WDA. Therefore, the district court erred in dismissing Marty's complaint.

The judgment was reversed and the case was remanded.

2019 COA 94. No. 18CA1990. Baum v. Industrial Claim Appeals Office. *Workers' Compensation—Wage Continuation Plan—Credit—Final Admission of Liability—Temporary Total*

Disability Benefits—Due Process—Separation of Powers Doctrine—Benefits.

Baum sustained work-related injuries that caused him to be temporarily totally disabled. United Airlines (UAL) paid Baum full pay under its wage continuation plan after he sustained an admitted work-related injury, but UAL also claimed a credit on its final admission of liability (FAL) for the comparable temporary total disability (TTD) benefits it would have otherwise been statutorily required to pay Baum. This credit increased Baum's reported TTD benefits, pushing them over the statutory cap.

Baum challenged UAL's right to take the credit. The Division of Workers' Compensation director concluded that benefits paid under the wage compensation plan are not similar to vacation or sick leave. Therefore, their accrual and exercise did not bar UAL from taking the claimed TTD credit. A panel of the Industrial Claim Appeals Office (the Panel) affirmed on review.

On appeal, Baum argued that CRS § 8-42-124 is unconstitutional on its face and as applied because the plan was approved by the director without the opportunity for injured workers to challenge it in court. UAL's plan was adopted and approved before Baum sustained any injury. Baum could not meet the threshold test of being deprived of a property interest without due process when the plan was approved because he had no such interest when the plan was approved.

Baum also argued that this absence of appellate review of wage continuation plans violates separation of powers. The separation of powers doctrine does not guarantee that the judicial branch will be given oversight over every action taken by a governmental entity. In adopting CRS § 8-24-124, the legislature made wage continuation plans subject to the director's, not its own, approval. Further, the judicial branch is not excluded from reviewing these plans through court review of agency actions. The approval of CRS § 8-42-124 did not violate the separation of powers doctrine.

Baum next contended that the Panel erroneously affirmed the director's grant of summary judgment to UAL. He argued that the director misinterpreted CRS § 8-42-124 when he concluded that UAL's wage continuation program benefits did not fall under the statute's residual provision of "other similar benefits." Earned benefits that an employee can exercise only if he or she suffers a work-related injury and that cannot otherwise be converted to any other use or cashed out at separation do not fall within the scope of "other similar benefits" as used in CRS § 8-42-124(2)(a).

Finally, Baum contended that UAL gains a windfall unless it is barred from taking a credit for TTD benefits. The legislature sought to encourage employers to implement wage continuation plans so workers could receive a full salary even while disabled by a work-related injury. By taking the statutorily authorized credit, UAL did not enjoy a windfall.

The order was affirmed.

June 27, 2019

2019 COA 95. No. 16CA2178. People v. Villela.
Criminal Law—Plea Agreement—Probation Revocation—Resentencing—Aggravated Range Sentence.

Defendant pleaded guilty to menacing and child abuse in a plea agreement. Pursuant to the plea agreement, the sentence to be imposed would be at the district court's discretion, but if the district court sentenced defendant to the custody of the Department of Corrections (DOC), the sentences would be in the presumptive range of one to three years and would run concurrently to each other. Defendant requested a sentence to probation, and the district court sentenced him to five years of probation. After defendant violated probation the first time, the court revoked and reinstated defendant's probation. After defendant violated probation the second time, the court revoked probation

Are you troubled by rude and unprofessional attorneys?

Call Peer Professional Assistance for **FREE** one-on-one intervention.

PPA has been sponsored by the Denver Bar Association since 1994.

Call 303-860-1115, ext. 1, for more information.

All inquiries are confidential.

and imposed concurrent four-year terms in the DOC on each count.

On appeal, defendant argued that the court erred by imposing an aggravated range sentence when his probation was revoked because the original plea agreement mandated a presumptive range sentence for his crimes. Here, the plea agreement prescribed the sentence to be imposed following defendant's guilty plea, but it did not expressly address the sentence to be imposed after the initial sentencing. Defendant could have bargained for language to cover this contingency, but he did not. After revoking defendant's probation, the district court was free to resentence defendant to any sentence authorized by statute, including an aggravated prison sentence.

Defendant also argued that the sentence was aggravated in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004). Here, as part of the plea agreement, defendant waived his *Blakely* rights and agreed to judicial factfinding as to facts that could result in an aggravated range sentence, and the court could impose an aggravated range DOC sentence of up to six years on a finding of exceptional circumstances. The district court properly sentenced defendant in the aggravated range based on its finding that extraordinary aggravating circumstances were present due to the original crimes.

The sentence was affirmed.

2019 COA 96. No. 17CA1482. In re Marriage of Stockwell. *Family Law—Allocation of Parental Responsibilities—Biological Parent—Indian Child Welfare Act—Foster Care Placement.*

Dees and Stockwell are divorced. L.D-S. was born during their marriage. Stockwell is not L.D-S.'s biological father, but he was declared his legal father under the paternity presumption in CRS § 19-4-105(1)(a). The district court entered an allocation of parental responsibilities (APR) order naming Stockwell L.D.-S.'s primary residential parent and limiting Dees's parenting time to weekends, which was increased over time. Dees subsequently filed a motion asking the district court to return L.D.-S. to her custody based on violations of the Indian Child Welfare Act (ICWA). Dees asserted that L.D-S. was Choctaw and Wailaki, and the APR to Stockwell was a "foster care placement" because he was not L.D.-S.'s biological father. The court denied the motion as untimely, finding that Dees did not show good cause for the delay.

On appeal, Dees argued that the district court erred by issuing the APR order without first inquiring into the child's possible Indian heritage. Under the ICWA, when an Indian child is the subject of an action for foster care placement or termination of parental rights, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe, may petition the court to invalidate such action upon a showing that the action violated the ICWA. The ICWA places no time limit on such a petition. The ICWA defines a parent as a biological parent or an Indian person who has adopted an Indian child. The ICWA does not apply to an award of custody to one of the parents, including in a divorce proceeding.

Stockwell is neither L.D-S.'s biological parent nor an Indian person who has adopted the child. The APR to Stockwell was a "foster care placement" and thus a child custody proceeding for ICWA purposes. Therefore, the district court erred in not inquiring into whether L.D.-S. is an Indian child.

The order was reversed and the case was remanded for further proceedings to determine whether L.D-S is an Indian child.

2019 COA 97. No. 18CA0251. In re Marriage of Alvis. *Family Law—Child Support—Extraordinary Medical Expenses—Equal Parenting Time.*

The parties' marriage was dissolved. The court ordered equal parenting time for the parties' three children and ordered father to pay mother child support based on the child support schedule. Subsequently, father moved for an order requiring mother to pay the first $250 of uninsured medical expenses per child per year, which the district court initially granted. Mother moved for relief under CRCP 59(a), requesting the court to allocate the expenses in proportion to the parties' incomes. The court ruled that neither party can request reimbursement of uninsured medical expenses from another party for amounts less than $250 per child per year.

Father appealed, arguing that mother should bear the uninsured medical expenses because she receives child support. CRS § 14-10-115(10)(h)(II) specifically excludes from the definition of "extraordinary medical expenses" the first $250 of uninsured medical expenses per child per year. Thus, the Court of Appeals concluded that the first $250 of uninsured medical expenses per child per year is included in the shared basic child support obligation. Where the parties share parenting time equally, each parent must pay uninsured medical expenses incurred during his or her parenting time, until the total for each child reaches $250, at which time the parents may seek reimbursement in proportion to their adjusted gross incomes.

The order was affirmed.

2019 COA 98. No. 18CA1154. Nieto v. Clark's Market, Inc. *Colorado Wage Claim Act—Accrued but Unused Vacation—Employment Agreement—Nonwaiver of Employee Rights.*

Nieto worked for Clark's Market, Inc. (the Market) and accrued vacation time pursuant to the vacation policy in the Market's employee handbook. The handbook stated that an employee is entitled to payment for accrued but unused vacation time if she voluntarily resigns and gives at least two weeks' notice, but if the Market discharges an employee for any reason or for no reason, or if the employee fails to give two weeks' notice before quitting, the employee forfeits all earned vacation pay benefits. The Market discharged Nieto and refused to pay her for accrued but unused vacation time pursuant to its policy.

Nieto sued for payment for accrued vacation time, alleging that the Market's policy violated CRS §§ 8-4-101(14)(a)(III) and -121 of the Colorado Wage Claim Act (CWCA). The district court granted the Market's motion to dismiss for failure to state a claim.

On appeal, Nieto argued that CRS § 8-4-121 voids the Market's policy because her accrued vacation pay was earned and determinable, so she has a right to payment for vacation time under the CWCA, and the Market's policy is an illegal waiver of her right to payment. CRS § 8-4-101(14)(a)(III) explicitly includes

vacation pay in the definition of wages, but it also provides that no amount is to be considered wages until it is earned, vested, and determinable. Further, nothing in the CWCA creates a substantive right to payment for accrued but unused vacation time; rather, an employee's right to such compensation is determined by the parties' employment agreement. Here, the agreement conditioned payment for accrued but unused vacation time, and Nieto did not meet those conditions. Therefore, she did not assert a plausible claim that she was entitled to accrued but unused vacation time. Further, the anti-waiver provision does not create any substantive entitlement to payment independent of the parties' agreement; it only applies to rights conferred by the CWCA, which looks to the parties' agreement as the sole potential source of any substantive right to payment.

The judgment was affirmed.

2019 COA 99. No. 19CA0647. People in the Interest of R.C. *Involuntary Administration of Medication—Burden of Proof.*

R.C. was committed to the Colorado Mental Health Institute at Pueblo (CMHIP) after being found incompetent to proceed in a criminal case. A CMHIP staff psychiatrist diagnosed R.C. with bipolar disorder mania with psychosis and treated him with Zyprexa. Following R.C.'s assault of a CMHIP staff member, the People filed a petition seeking a court order authorizing the involuntary administration of six other drugs. At the hearing, the staff psychiatrist testified that R.C. was voluntarily taking Zyprexa but he might refuse to continue taking it. The district court granted the petition.

On appeal, R.C. argued that insufficient evidence supported the order. An order for involuntary medication administration must be supported by clear and convincing evidence of the four elements set forth in *People v. Medina*, 705 P.2d 961, 973 (Colo. 1985). R.C. contended that the third element of the test, that no less intrusive treatment alternative was available, was not met. He argued that he was voluntarily taking Zyprexa at the time of the hearing, which clearly showed a less intrusive option was available. Here, the psychiatrist's testimony established that continued administration of Zyprexa is a less intrusive treatment alternative than administration of the six medications. Therefore, the record does not support the district court's determination of the third *Medina* factor.

The order was reversed. CL

40 years of combined experience
LITIGATION • TRANSACTIONS • MEDIATION

Providing a full range of ADR services to parties and counsel in the Front-Range and Western Slope

(303) 906-3709 // Hope-Mediation.com

KENNETH R. HOPE ATTORNEY - MEDIATOR // ken@hope-mediation.com

These summaries of published Court of Appeals opinions are written by licensed attorneys Teresa Wilkins (Englewood) and Paul Sachs (Steamboat Springs). They are provided as a service by the CBA and are not the official language of the Court; the CBA cannot guarantee their accuracy or completeness. The full opinions, the lists of opinions not selected for official publication, the petitions for rehearing, and the modified opinions are available on the CBA website and on the Colorado Judicial Branch website.

©2019 Colorado Bar Association. All rights reserved.