



The Gathering Storm in Post-Decree Family Law Litigation

BY JOHN H. TATLOCK

Two 2018 Colorado Court of Appeals opinions present starkly different interpretations and applications of CRCP 16.2(e)(10). This article discusses the opinions and the rule to inform practitioners on navigating this area pending resolution of this case conflict.

On February 1, 2018, a divided panel of the Colorado Court of Appeals announced its decision in *In re Marriage of Runge*.¹ In three separate opinions—majority, special concurrence, and dissent—the panel held that the district court correctly determined that the appellant-wife failed to allege a sufficient basis for a reallocation of allegedly misstated or omitted marital assets under CRCP 16.2(e)(10) (the Rule). Concluding that the Rule is “extraordinary and also very narrow,”² the panel also concluded that its plain language did not permit a party to conduct post-decree

discovery into a former spouse’s assets. The special concurring opinion also addressed a related jurisdictional issue, whether the trial court has jurisdiction to decide a timely filed motion under the Rule after expiration of the Rule’s five-year jurisdictional period, and concluded that once a court acquires jurisdiction, it retains that jurisdiction through the occurrence of all subsequent events, including the arrival of the five-year deadline.³ The dissenting opinion disagreed, interpreting the Rule’s five-year jurisdictional limit as an absolute, plain-language bar on any further judicial action.⁴

More than seven months after *Runge*, a separate panel of the Court of Appeals issued its ruling in *In re Marriage of Durie*, holding that a party filing a CRCP 16.2(e)(10) post-decree motion for reallocation of misstated or omitted marital assets may allege in the motion facts that are based upon “information and belief,” and may conduct appropriate discovery under the Rule to support the post-decree motion and resulting litigation.⁵ This expansive interpretation and application of the Rule directly conflicts with the *Runge* holding that CRCP 16.2(e)(10) is an “extraordinary and very narrow” remedy. And it authorizes open-ended factual allegations

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that warrant extensive post-decree discovery of the other party, also contrary to the panel’s holding in *Runge*. To further complicate the situation, another case pending before the Court of Appeals, *In re Marriage of Laurnen*,⁶ asserts that the Rule’s five-year jurisdictional limit does not constitute an absolute bar to judicial action if a party files a motion to extend that time period, even on the last day of the fifth year.

Taken together, this trio of decided and pending Court of Appeals opinions cannot be easily reconciled. In fact, the *Laurnen* appellant has asserted that the Court of Appeals panel’s holding in *Durie* could have been applied to overrule the *Runge* division’s conclusion that wife’s “suspicions and speculations” could not adequately support a CRCP 16.2(e)(10) reallocation motion.⁷

Parties, counsel, and trial courts will likely confront motions asserting the controlling authority of *Runge*, *Durie*, or some combination of both in post-decree litigation brought under the Rule. Until dispositive caselaw resolving these apparently contradictory authorities is issued, practitioners must proceed on uncertain ground. This article discusses the Rule and its interpretations in these cases to inform practitioners on how to navigate their cases in the face of this ambiguity.

The Architecture of CRCP 16.2(e)

CRCP 16.2(e)(10) is the exclusive post-decree remedy for parties in a domestic relations case to challenge a property division and allocation, and the viability of a motion brought under the Rule depends on its compliance with the Rule’s other provisions.

The Duty to Disclose

Pursuant to CRCP 16.2(e)(1), the parties in a domestic relations case owe a duty to each other and to the court to make “full and honest disclosure of all facts that materially affect their rights and interests and those of the children” in each case brought before the court. Fulfilling this comprehensive duty requires each party to “affirmatively disclose all information that is material to the resolution of the case without awaiting inquiry from the other party.”⁸ This voluntary disclosure obligation is coupled with

the affiliated duty of mutual and reciprocal candor that a domestic relations party must meet.⁹

The Required Disclosures

These professional and legal duties materialize in CRCP 16.2(e)(2), which requires each party in a family law case to provide the specific disclosures contained in the Appendix to Chapters 1 to 17A of the Colorado Rules of Civil Procedure. Those mandatory disclosures are set forth in Forms 35.1 through 35.3 of the Rules of Civil Procedure and the Appendices to those Rules. In addition, again without the need for a discovery request from the other spouse, CRCP 16.2(e)(3) requires the disclosing party to provide “a list of expert and lay witnesses whom the party intends to call at a contested hearing or final orders.” Under CRCP 16.2(e)(4) to (5), all parties subject to these disclosure obligations must supplement or amend any prior disclosures according to the terms of CRCP 26(e) and may be subject to sanctions for failure to timely provide these disclosures, presumably including any required supplementations.

Effect of the Disclosures

CRCP 16.2(e)(7) requires each party completing and serving the mandatory disclosures to accompany the service with a certificate, also filed with the court, attesting that to “the best of the [party’s] knowledge, information, and belief, formed after a reasonable inquiry,” the disclosures are “complete and correct as of the time [they are] made,” unless specifically noted in the certificate. In general, service and filing of the certificate signals the end of the disclosure phase of the case, and either the beginning or continuation of the discovery phase, which is governed and directed according to CRCP 16.2(f) and applicable trial court orders.

No reported Colorado opinion identifies any legal significance to a party’s certificate of compliance, for example, a presumption that the certificate shifts the burden of demonstrating noncompliance with the CRCP 16.2(e)(1) disclosure obligation to the other spouse, although that may be the practical effect of each party’s certification. To the extent either party believes the other party may have provided

incomplete or inaccurate disclosures, formal and informal discovery conducted on the other party or selected nonparties allows the parties to test the sufficiency of the disclosures and to explore other aspects of the marital assets and liabilities in greater scope and intensity. With the close of discovery, and subject to each party's continuing duty to supplement disclosures and discovery responses, the content of the marital estate is essentially fixed, pending evidentiary revelation at hearing or trial.

Applying CRCP 16.2(e)(10):

The Scope of Relief

CRCP 16.2(e)(10) is a mere 122 words, but it is the sole and exclusive post-decree remedy available to either party in a domestic relations case to identify and attempt to correct inaccuracies in the other party's mandatory financial disclosures. Despite the myriad other post-decree motions that can be heard in a trial court (e.g., motions to modify parenting time, decision-making, maintenance, or child support, or to restrict or terminate parenting time), CRCP 16.2(e)(10) is intentionally limited to correcting errors in a party's financial disclosures. To underscore the point, Colorado courts have held that even the adjustment of assets and debts within a marital estate under the Rule does not empower a district court to also modify maintenance and child support or other financial allocations in its permanent orders or the parties' separation agreement; in *In re Marriage of Dadiotis*, the Court of Appeals stated, "[B]ecause the rule's plain language, limited to material assets or liabilities, does not allow the court to redetermine maintenance, we decline to extend the rule to that situation."¹⁰

Despite this closely circumscribed grant of post-decree authority, CRCP 16.2(e)(10) contains its own ambiguities and uncertainties. Although the Rule restates the duty of each party "to provide full disclosure of all material assets and liabilities," "materiality" is never defined, leaving that determination to the subjective judgment of each party and, ultimately, the courts. "Full disclosure" under the Rule means accurate and complete disclosure; if either party's disclosure "contains misstatements or omissions," the district court "retain[s] jurisdiction" for a period

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of five years after the entry of a final decree "to allocate material assets or liabilities." However, the next clause of that same sentence refers only to "the omission or non-disclosure" of those material assets and liabilities, excluding the earlier reference to "misstatements" with respect to the court's continued jurisdiction to allocate those same assets and liabilities.

Additional uncertainties arise from the Rule's silence on how to define its terms. Given the anodyne, nonspecific reference to "misstatements or omissions" in a party's financial disclosures, the cause of the misstatement or nondisclosure,

whether fraudulent, negligent, or innocent, is apparently legally irrelevant. If a party moving for post-decree relief under CRCP 16.2(e)(10) asserts that the other spouse "fraudulently" or "intentionally" misrepresented or concealed a material debt, asset, or associated value for either, the court would be indifferent to the assertion. Even attributing the basest motives to the allegedly disobedient party would not add a featherweight to the resulting reallocation under the Rule.¹¹

The Rule is also silent on post-decree discovery and the duration of the court's jurisdiction and related authority to enlarge that jurisdiction beyond the five years after the entry of a decree or judgment. The few appellate opinions interpreting CRCP 16.2(e)(10) since its adoption in 2005 (discussed below) have clarified some of these questions, but have left most either unaddressed or subject to conflicting interpretations and applications.

In re Marriage of Schelp

The Colorado Supreme Court consolidated three cases in *In re Marriage of Schelp*¹² and made clear that the Rule shifted the burden for making full and complete financial disclosures consistent with the parties' fiduciary duties to each other, eliminating the burden on the recipient spouse to verify compliance with the duty of full and candid disclosure. The main thrust of *Schelp* limited the Rule's application to exclude reallocations for dissolution cases commenced before the Rule's adoption, while "render[ing] C.R.C.P. 60 inactive when a spouse seeks to reopen a division of assets and liabilities based on disclosures made pursuant to the new rule."¹³ Although the moving party in each of the three consolidated cases asserted that the other spouse had intentionally concealed or misrepresented the existence or value of the marital assets and liabilities, the Supreme Court declined to address that issue because all three cases attempted to retrospectively apply the Rule to property allocations that occurred before the Rule's adoption.¹⁴

In re Marriage of Hunt

The 2015 Court of Appeals decision in *In re Marriage of Hunt* incrementally extended

the Rule's application.¹⁵ In the parties' legal separation, husband filed a certificate of compliance with respect to his financial disclosures and, shortly afterward, the parties entered into a memorandum of understanding that recited their agreement allocating to husband a \$500,000 marital business that he alone operated.¹⁶ Based on that memorandum, the trial court entered partial permanent orders with respect to the business, awarding wife \$250,000 as her share of the enterprise.¹⁷ Approximately six months later, and before the entry of the final decree of legal separation, wife moved pursuant to CRCP 16.2(e)(10) to set aside the partial permanent orders, alleging that, based on financial documents husband produced in response to discovery served after the memorandum was signed, her valuation expert appraised the business at \$2,165,000.¹⁸ Husband's subsequently retained

expert estimated the business value to be \$740,000.¹⁹ Concluding that the parties had "simply made the choice to go forward with the [memorandum] without seeking additional information," the trial court found no violation of the Rule and denied wife's motion.²⁰

The Court of Appeals reversed the trial court, finding that CRCP 16.2(e) "shifts the burden of disclosure to the party in possession of the material information," without the other party having to request it.²¹ Because husband "was in possession of documents relevant to the value of a significant marital asset, and wife was not," his failure to voluntarily produce those relevant documents violated his duty under CRCP 16.2(e).²² In the overall context of the marital estate, the misrepresented business value stated in the memorandum "materially affected" the value of the marital estate and resulted in a misallocation of the marital assets.²³

The Conflicting Applications of Rule 16.2(e)(10) in *Runge* and *Durie*

As discussed below, the *Runge* and *Durie* panels both addressed the standards for evaluating a post-decree motion under the Rule, the sufficiency of the allegations, and post-decree discovery. But the Court's holdings on these issues were not always consistent. *Runge* is also instructive on post-decree jurisdiction, which *Durie* did not address.

In re Marriage of *Runge*

Runge was decided before *Durie* and addressed the sufficiency of a party's allegations that the other spouse misstated or omitted marital assets and debts, the availability of discovery under the Rule, the jurisdictional duration of the court's five-year post-decree authority to rule on a reallocation motion, and the overall scope of the Rule's application.



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Standards for evaluating a motion. In *Runge*, wife challenged the trial court's denial of her post-decree reallocation motion, asserting that the court erred in not applying the Colorado Supreme Court's "plausibility standard" for evaluating motions to dismiss under CRCP 12(b)(5), announced in *Warne v. Hall*.²⁴ Distinguishing between "pleadings" and "motions," as defined in CRCP 7(a) and 7(b), respectively, the *Runge* division rejected wife's argument. The Court reasoned that CRCP 16.2(e)(10) expressly authorizes a challenge to the allocation of marital assets and debts in the form of a "motion," but because a motion is legally distinct from a pleading, Rule 12(b)(5) and any case law construing that rule by definition applies only to a pleading, not a motion, especially a motion brought pursuant to CRCP 16.2(e)(10).²⁵ A CRCP 12(b)(5) motion unequivocally applies only as a defense to a claim brought in a pleading, not a motion.²⁶ Accordingly, neither Rule 12(b) nor the plausibility doctrine applies to a post-decree motion under the Rule.

Sufficiency of allegations. Unlike husband in *Hunt*, who violated CRCP 16.2(e) by failing to disclose or by making materially inaccurate disclosures, wife in *Runge* did not claim that husband failed to make any of the required disclosures he had certified.²⁷ Instead, she asserted "suspicions and speculations" that husband "likely" failed to disclose and misrepresented material assets, and that affidavits from his business partners raised "significant concerns" about husband's business practices.²⁸ Affirming the district court's factual findings and orders, the *Runge* panel held that "[s]uch vague assertions are not sufficient to trigger an allocation of omitted or misstated assets under C.R.C.P. 16.2(e)(10) in light of the information wife had pre-decree," while acknowledging that wife had no duty to conduct discovery of husband.²⁹

Availability of post-decree discovery. In her motion, wife requested a court order authorizing her to conduct discovery of husband's financial activities and businesses in anticipation of a reallocation of assets and liabilities. As the Court of Appeals framed the discovery issue, wife's proposed discovery plan would consist

of "discovery into and analysis of husband's financial and business interests that her attorney had planned to do [pre-decree] and the analysis that could have been done by her attorneys and accounting expert . . . before the separation agreement was signed."³⁰ Emphasizing that

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“[t]he remedy created by the C.R.C.P. 16.2(e)(10) is extraordinary and also very narrow,” the division agreed with the district court that the Rule “was not intended to create a right for an ex-spouse to conduct discovery into the other spouse’s assets post-decree.”³¹ Between husband’s certification of his compliance with the pre-decree mandatory disclosures and wife’s decision to forgo discovery to sign the separation agreement, the court found no rule-based authority to permit post-decree discovery.³²

Post-decree jurisdiction. CRCP 16.2(e)(10) provides temporal and substantive limits.³³ Thus, the Rule functions similar to a limitations statute by restricting the court’s jurisdiction to receive a CRCP 16.2(e)(10) motion to five years after “entry of a final decree or judgment” to “allocate material assets or liabilities” misstated or omitted from the non-moving party’s mandatory financial disclosures.

The *Runge* panel fractured over this issue. A special concurring opinion agreed with the trial court that wife’s post-decree motion was timely and rejected husband’s argument that the court automatically lost its jurisdiction when it did not rule on wife’s motion until after the five-year period had expired.³⁴ Reasoning from similar jurisdictional precedent, the concurrence concluded that “a court ordinarily does not lose jurisdiction by the occurrence of subsequent events, even if those events would have prevented acquiring jurisdiction in the first place.”³⁵

The dissent in *Runge* invoked a plain-meaning interpretation of the Rule. Noting that wife filed her motion one day before the expiration of the Rule’s five-year period, the dissent concluded that the Rule’s plain language commands dismissal or denial of the motion because “[o]nce five years have passed since the date of permanent orders, the court loses jurisdiction under CRCP 16.2(e)(10) to consider a motion to reopen a property division in a dissolution of marriage case.”³⁶ The dissent also noted that “discovery may be necessary to establish whether an initial disclosure of assets and liabilities contained material misstatements or omissions.”³⁷ Overall, the dissent asserted a strict five-year post-decree period in which the trial court may exercise

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reallocation authority under the Rule; but the trial court loses its jurisdiction entirely at the end of the fifth post-decree year, whether it has ruled on the reallocation or not. In effect, this would mean the moving party is implicitly compelled to move for a reallocation well before the five-year deadline, with the trial court required to rule on the motion within that same period, regardless of the other demands and constraints on its docket.

In re Marriage of Durie

Another division of the Court of Appeals ruled in *Durie* that husband’s post-decree sale of a marital business for \$6.9 million—more than seven times the valuations the parties’ respective accounting experts rendered—warranted post-decree discovery under CRCP 16.2(e)(10), even though wife’s motion pursuant to the Rule alleged misstatements and omissions in husband’s pre-decree disclosures “on information and belief.”³⁸ The *Durie* panel concluded that the relatively brief passage of time between valuation, decree, and sale justified wife’s request for post-decree discovery to determine whether negotiations for the sale of the business occurred before the decree entered and were based on facts and valuations contrary to husband’s certified mandatory disclosures.³⁹

Standards for evaluating a motion. In a rare point of agreement with *Runge*, the *Durie*

division agreed that the “plausibility standard” under CRCP 12(b)(5) and the holding in *Warne* apply only to pleadings, not motions. Adopting the *Runge* analysis, the *Durie* panel concluded that post-decree motions under the Rule are motions, not pleadings, and cannot be decided based on an inapplicable pleading standard.⁴⁰

Sufficiency of allegations. Noting that CRCP 8(e)(1) does not require “technical forms of pleading or motions,” the *Durie* division concluded that allegations in a Rule 16.2(e)(10) motion can be based on “information and belief.”⁴¹ The Court reasoned that CRCP 8(e)(1) permits factual allegations based on “information and belief” in post-decree reallocation motions, even though this rule pertains specifically to pleadings.⁴² Because the party moving under the Rule “may not have complete information about the circumstances of an alleged misstatement or omission,” the more forgiving interpretation of CRCP 16.2(e) is appropriate to allow a spouse to assert pre-decree violations.⁴³

Wife’s speculative allegations in *Durie* were given presumptive validity and weight “on information and belief.” Consequently, wife avoided denial (or dismissal) of her CRCP 16.2(e)(10) reallocation motion for insufficiency. But the *Runge* panel might have rejected alleged misstatements and omissions grounded on “information and belief” as another form of “suspicion and speculation” barren of facts



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warranting post-decree judicial consideration and determination.

Availability of post-decree discovery. Acknowledging the absence of express authorization for post-decree discovery under the Rule, the *Durie* panel constructed a rationale for such discovery by construing selected general provisions of Rule 16.2 with CRCP 26(b)(1) to permit parties “generally” to “obtain discovery regarding any matter that is not privileged and is relevant to the claim or defense of any party and proportional to the needs of the case.”⁴⁴ Blending the general concepts of “proportionality” and “active case management,” the *Durie* opinion commits to trial courts the general discretion to permit and regulate tailored discovery in domestic relations cases, including post-decree reallocation motions. Coupled with the long-recognized “liberal interpretation of discovery rules to effectuate their truth-seeking purpose,” the division in *Durie* found “discovery especially important in the context of Rule 16.2(e)(10), where the movant spouse is unlikely to possess relevant information precisely because he or she is claiming that the other party failed to disclose material assets or liabilities.”⁴⁵ Rejecting the *Runge* conclusion that the Rule does not expressly authorize post-decree discovery, the *Durie* panel found the undisputed fact that husband’s post-decree sale of his separate property business for “\$6.9 million, about 850% of its valuation at the time of the decree,” was sufficient “on information and belief” alone to justify post-decree discovery, at the trial court’s discretion, consistent with the “principle of proportionality.”⁴⁶

Reconciling *Runge* and *Durie*

These disparate opinions cannot be reconciled on their face. Aside from a limited agreement that pleadings are not motions, and pleading standards do not apply to the determination of motions generally or post-decree motions brought specifically under CRCP 16.2(e)(10), the points of common jurisprudence between the two cases are continents apart.

Runge decisively rejects CRCP 16.2(e)(10) motions grounded in “suspicions and speculations,” while *Durie* permits such otherwise unsupported factual allegations when asserted

in support of a post-decree reallocation motion on information and belief. The *Runge* division found no express authorization in Rule 16.2(e)(10) for post-decree discovery relating to a reallocation motion, while the *Durie* panel found post-decree discovery essential for a moving party “unlikely to possess relevant information precisely because he or she is claiming that the other party failed to disclose material assets or discovery.”⁴⁷

It is implicit in *Runge* that post-decree discovery is neither authorized nor appropriate.⁴⁸ The combination of mandatory pre-decree disclosures under the Rule and the opportunity for largely unrestricted pre-decree discovery provides each party with the power to discover any party’s actual misstatements or omissions, including those made in pre-decree negotiations for the sale of a marital business, thus eliminating the need for post-decree discovery.

Just as emphatically, the *Durie* panel reasoned that the absence of express authorization in CRCP 16.2(e)(10) does not preclude a trial court, under its general powers of active case management and general discovery powers under the Rules of Civil Procedure, from entering post-decree discovery orders as it would do for any post-decree domestic relations motions.

Although no issues arose in *Durie* concerning the court’s five-year jurisdiction over CRCP 16.2(e)(10) motions, the author of the *Durie* opinion also wrote the *Runge* dissent, which suggests that whether a court totally loses jurisdiction at the end of the five-year period or retains jurisdiction beyond the five-year limit to rule on the post-decree reallocation motion remains disputed.

And other questions about *Durie*’s potential effects remain. Having affirmed its solidarity with the *Runge* panel that the Rule requires a

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motion, not a pleading, to reallocate misstated or omitted marital assets, the division in *Durie* effectively contradicted this interpretation in another respect: By authorizing the moving party under CRCP 16.2(e)(10) to allege facts on “information and belief,” *Durie* extended a rule exclusive to pleadings to a post-decree Rule 16.2(e)(10) motion.

Further, the *Durie* panel expressly allows a pleader without direct knowledge of the actual facts to assert unconfirmed factual allegations in a CRCP 16.2(e)(10) motion upon information and belief pursuant to CRCP 8(e)(1), relying on CRCP 8(e)(1)’s provision that “[n]o technical forms of pleadings or motions are required.”⁴⁹ But *Durie* does not elaborate the reasons why CRCP 8(e)(1) should be extended in this way, given that it expressly applies only to pleadings, and the rule’s reference to motions pertains exclusively to motions directed at pleadings, such as motions to dismiss under CRCP 12(b), motions for judgment on the pleadings under CRCP 12(c), motions for separate or more definite statement under CRCP 12(e), or motions to strike under CRCP 12(f).

No appeal was taken from *Runge*, but husband in *Durie* has petitioned the Colorado Supreme Court for issuance of a writ of certiorari. These twin rulings leave district courts, parties, and counsel on shifting and unsteady legal ground. On the three principal points of departure—the legal sufficiency of factual allegations in a CRCP 16.2(e)(10) motion, including assertions based solely “on information and belief”; the legal warrant for post-decree discovery under the Rule; and the proper interpretation and application of the five-year jurisdictional grant under the Rule—parties moving under CRCP 16.2(e)(10) may customize their law, strategies, and tactics by liberally borrowing from *Runge* and *Durie* to suit the particular needs and objectives of their respective cases.

Conclusion

While *Runge* and *Durie* are consistent on some points, until the Colorado Supreme Court provides further guidance to resolve their fundamental differences, predictability in post-decree rulings on CRCP 16.2(e)(10)

motions will have to wait. In the meantime, practitioners should consider the specific circumstances of each case and use their best judgment when deciding whether to rely on *Runge* or *Durie*, and the weight and emphasis those case holdings should receive. **CL**



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NOTES

1. *In re Marriage of Runge*, 415 P.3d 884 (Colo. App. 2018).

2. *Id.* at 890.

3. *Id.* at 891–92.

4. *Id.* at 893–94.

5. *In re Marriage of Durie*, 2018 COA 143.

6. *In re Marriage of Laurnen*, Colo. Ct. App. No. 18CA1042.

7. *Id.* Opening Brief at 14–15, October 17, 2018.

8. *Id.*

9. *Id.*

10. *In re Marriage of Dadiotis*, 343 P.3d 1017, 1018 (Colo.App. 2014).

11. If intent were an element of the misstatement/omission allegations under the Rule, the required allegations in the reallocation motion might, for example, conceivably include particularized factual assertions about the specific acts of the allegedly disobedient party constituting a misrepresentation or concealment.

12. *In re Marriage of Schelp*, 228 P.3d 151 (Colo. 2010).

13. *Id.* at 157. CRCP 60(b) formerly limited the filing of post-decree motions to within six months of entry of the decree.

14. *Id.* at 153–54, 158.

15. *In re Marriage of Hunt*, 353 P.3d 911, 913 (Colo. App. 2015).

16. *Id.* at 912.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Hunt*, 353 P.3d at 913 (citing *Schelp*, 228 P.3d at 155–56).

22. *Id.* at 914.

23. *Id.* at 915.

24. *Runge*, 415 P.3d at 886 (citing *Warne v. Hall*, 373 P.3d 588 (Colo. 2016)).

25. *Id.* at 887–88.

26. *Id.* at 887.

27. *Id.* at 889.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 889–90.

32. *Id.* at 890.

33. Other dissolution-related post-decree motions, such as those affecting parenting

time, decision-making, relocation, and similar family-related subjects, are beyond the reach of the Rule.

34. *Id.* at 891–92.

35. *Id.* at 891 (citing *Thomas v. Fed. Deposit Ins. Corp.*, 255 P.3d 1073, 1081 (Colo. 2011)).

36. *Runge*, 415 P.3d at 894 (Taubman, J., dissenting).

37. *Id.* Judge Taubman wrote for the majority in *Durie* and made a similar conclusion there.

38. *Durie*, 2018 COA 143.

39. *Id.* at ¶¶ 40–42.

40. *Id.* at ¶¶ 20–23. The Court concluded that the standard of proof is a preponderance of the evidence.

41. *Id.* at ¶¶ 27–28 (emphasis in original).

42. *Id.* at ¶¶ 27–29.

43. *Id.* at ¶ 28.

44. *Id.* at ¶ 38.

45. *Id.* at ¶¶ 39–40.

46. *Id.* at ¶ 40.

47. *Id.* at ¶ 40.

48. *Runge*, 415 P.3d 884.

49. *Durie* at ¶ 27.