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**COLORADO SUPREME COURT OPINION**
**(WITH DISSENT)**
**(JULY 25, 2022)**

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COLORADO SUPREME COURT

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IN RE: THE PETITION OF:

R. M. C., III,

*Petitioner,*

v.

J. D. L.,

*Respondent.*

FOR THE ADOPTION OF A CHILD, E. A. T.,

*Child.*

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Supreme Court Case No: 2022SC322

Certiorari to the Court of Appeals, 2021CA520
District Court, Morgan County, 2020JA18

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Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

CHIEF JUSTICE BOATRIGHT AND JUSTICE MARQUEZ WOULD GRANT as to the following issues:

> Whether an adoption automatically terminates a previously issued order allocating parental responsibilities over the adopted child.
>
> Whether a court can require an adoptive parent to follow an order allocating parental responsibilities over the adopted child when that adoptive parent was not a party to the Allocation of Parental Responsibility ("APR") proceedings that produced the order.

BY THE COURT, EN BANC, JULY 25, 2022.

**COLORADO COURT OF APPEALS OPINION (APRIL 21, 2022)**

COLORADO COURT OF APPEALS

IN RE THE PETITION OF R.M.C. III

*Appellant and Cross-Appellee,*

FOR THE ADOPTION OF E.A.T.,
A CHILD, AND CONCERNING J.D.L

*Appellee and Cross-Appellant.*

2022COA46

Court of Appeals No. 21CA0520
Morgan County District Court No. 20JA18
Honorable Kevin L. Hoyer, Judge

Before: TOW, RICHMAN and GROVE, JJ.

ORDERS AFFIRMED
Division IV
Opinion by JUDGE TOW
Richman and Grove, JJ., concur

Announced April 21, 2022

In this stepparent adoption proceeding, R.M.C. III (adoptive father) appeals two separate orders dated March 5, 2021, issued by the Morgan County District Court (the adoption court), which vacated a prior order supplementing the adoption decree. J.D.L. (psycho-

logical father)[1] cross-appeals the same orders, asserting that the court erroneously denied his request to intervene in the adoption action and to set aside the adoption decree. Psychological father also challenges an April 8, 2021, order denying access to the adoption case file and register of actions.

We hold, as a matter of first impression, that a decree of adoption does not vitiate a prior allocation of parental responsibilities (APR) to a nonparent. Rather, the court that issued the prior order retains jurisdiction related to the nonparent's APR. We also hold that the nonparent is not entitled to receive notice of, and participate in, the adoption proceeding. Consequently, we affirm the orders.

## I. Background

Mother and A.R. (biological father) had E.A.T. (child) in 2015. In 2017, mother married psychological father. They separated shortly thereafter and mother began living with adoptive father. In 2019, psychological father filed for dissolution of marriage in the El Paso County District Court (the domestic relations court). In August 2020, the domestic relations court orally entered a decree dissolving the marriage and announced permanent orders, though neither the decree

[1] A psychological parent is "someone other than a biological parent who develops a parent-child relationship through day-to-day interaction, companionship, and caring for the child." *In re Parental Responsibilities Concerning E.L.M.C.*, 100 P.3d 546, 559 (Colo. App. 2004).

nor the permanent orders were reduced to writing at that time.[2]

In October 2020, before the written decree and permanent orders were entered in the dissolution of marriage case, adoptive father filed a petition in the adoption court for stepparent adoption. Mother and biological father consented to the adoption. Psychological father was not given notice of the adoption petition.

Three weeks later, the domestic relations court entered the written decree and permanent orders finding, as relevant to this case, that psychological father was the child's psychological parent and granting him parenting time.

Shortly thereafter, the adoption court entered an adoption decree. The court also entered a supplemental order, finding that

- the court had jurisdiction;
- psychological father had been previously granted parenting time through an action in El Paso County;
- there was no "scientific or biological" basis for psychological father to be "the actual psychological father of the minor child";

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[2] For some aspects of the timeline, we take judicial notice of the filings and orders in the dissolution of marriage case, El Paso County District Court Case No. 2019 DR 30762. *See People v. Sa'ra*, 117 P.3d 51, 55-56 (Colo. App. 2004) ("A court may take judicial notice of the contents of court records in a related proceeding.").

- because of the adoption, mother and adoptive father are parents who get to make parenting and visitation decisions; and
- psychological father would be permitted no further contact or parenting time with the child.

One month later, mother and psychological father appeared in the domestic relations court on a motion regarding parenting time. The domestic relations court recognized that an adoption decree had been entered, making adoptive father the legal father. The court also acknowledged that, as a result of the adoption decree, there was "a competing order indicating that [psychological father was] to have no contact." But the domestic relations court concluded that it had original and continuing jurisdiction over the parental responsibilities concerning the child and denied modifications to the parenting time schedule set forth in the permanent orders.

Psychological father filed a motion in the adoption court to intervene in the adoption action. He asserted that the domestic relations court had previously entered permanent orders naming him the child's psychological parent and allocating certain "parental rights." He further argued that, after the adoption court had entered the adoption decree, the domestic relations court had entered another order that, among other things, reaffirmed its jurisdiction over the parental responsibilities concerning the child.

Psychological father also filed a motion in the adoption court to set aside the adoption decree. He asserted that, as a psychological parent, his rights "are equivalent to the rights of a legal parent." He

argued that he had "a protected liberty interest because he was granted parental rights" and was thus entitled to — but did not — receive notice of the stepparent adoption before the decree had been entered; therefore, his "parental rights" had been terminated without due process. He further contended that he was entitled to relief under C.R.C.P. 60(b)(1)-(3), (5).

On March 5, 2021, the adoption court denied both of psychological father's motions. In denying the motion to set aside the adoption decree, the court ruled that psychological father was not entitled to notice of the adoption proceeding and lacked standing to challenge the adoption decree because he was not a "natural parent" as defined in section 19-1-103(105), C.R.S. 2021. In denying the motion to intervene, the court ruled that the stepparent adoption statute, § 19-5-203(1)(f), C.R.S. 2021, does not provide for intervention by anyone who is not a natural parent; therefore, psychological father did not have an unconditional right to intervene under C.R.C.P. 24. The court also found that, because an order regarding psychological father's parenting time had been entered in the domestic relations court, psychological father had "failed to demonstrate that the stepparent adoption may impair or impede his ability to protect his interest in visitation with the child."

Because the domestic relations court had asserted original and continuing jurisdiction with regard to psychological father's parenting time, however, the adoption court also vacated the supplemental order. The adoption court reiterated that the domestic relations court was the only court that had jurisdiction over psychological father's parenting time with the

child and disputes regarding such time should be resolved there.

Psychological father then filed a motion in the adoption court for access to the adoption case file and register of actions. He argued that he needed the case file and register of actions to appeal the orders denying his motions to intervene and set aside the adoption decree.

On April 8, 2021, the adoption court denied psychological father's motion for access to the adoption court file and register of actions. In doing so, the court found that under section 19-5-305, C.R.S. 2021, psychological father does not fall within the class of people permitted to access confidential adoption records.

## II. Adoptive Father's Contention

Adoptive father contends that the adoption court erred by vacating the supplemental order. Specifically, he argues that the court's decision was based on an erroneous conclusion that the domestic relations court has continuing jurisdiction to determine psychological father's parenting time. We disagree.

Juvenile courts (including the juvenile divisions of district courts outside of the City and County of Denver) have exclusive original jurisdiction in proceedings concerning adoption. *See* § 19-1-104(1)(g), C.R.S. 2021; *see also* § 19-1-103(89); *In re C.A.O.*, 192 P.3d 508, 510 (Colo. App. 2008). District courts have jurisdiction over domestic relations matters, including APR. Colo. Const. art. VI, § 9; § 14-10-123, C.R.S. 2021. The district court's jurisdiction in a case, even if continuing, does not preclude the juvenile court from taking jurisdiction in another case involving

other issues related to the same child. § 19-1-104(5) ("Where a custody award or an order allocating parental responsibilities with respect to a child has been made in a district court in a dissolution of marriage action or another proceeding and the jurisdiction of the district court in the case is continuing, the juvenile court may take jurisdiction in a case involving the same child if the child comes within the jurisdiction of the juvenile court.").

In this case, the domestic relations court was the district court that had original jurisdiction over the APR concerning the child, having entered an APR in the dissolution of marriage action. The adoption court was the juvenile court (or, more accurately, the juvenile division of the Morgan County District Court) that then took jurisdiction over the adoption-related issues in the stepparent adoption action. Thus, both courts properly exercised jurisdiction over certain issues related to the child.

To be sure, nothing in section 19-1-104(5) permitted the adoption court to modify an existing APR to a nonparent. In contrast, that section explicitly contemplates the juvenile court making such modifications in dependency and neglect cases and in juvenile delinquency cases.[3]

True, as adoptive father points out, the effect of the adoption decree is that he "is entitled to all the rights and privileges and is subject to all the obligations of a child born to" him. § 19-5-211(1), C.R.S.

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[3] The scope of the juvenile court's authority differs depending on whether it is sitting in an adoption case, a dependency and neglect case, or a delinquency case. This opinion addresses only what may be done by a juvenile court handling an adoption matter.

2021. Further, "[t]he parents [are] divested of all legal rights and obligations with respect to the child." § 19-5-211(2).[4] But, contrary to adoptive father's contention, this language does not automatically vitiate the domestic relations court's order granting parenting time to psychological father.

Psychological father is not a "parent" for purposes of the adoption statute. The Children's Code defines parent as "either a natural parent of a child, as may be established pursuant to article 4 of this title 19, or a parent by adoption." § 19-1-103(105)(a). At oral argument, psychological father's counsel invoked the language from a different part of the same statute: "'Parent,' as used in sections 19-1-114, [C.R.S. 2021;] 19-2.5-501, [C.R.S. 2021;] and 19-2.5-611, [C.R.S. 2021,] includes . . . a parent allocated parental responsibilities with respect to a child." § 19-1-103(105)(b). But this provision is unavailing for two reasons: (1) by its terms, this definition of parent applies to only three statutory sections, none of which is at issue here; and (2) it still refers to a "parent" — rather than a "person" — who has been allocated parental responsibilities.

Significantly, the General Assembly has used the phrase "person to whom parental responsibilities have been allocated" elsewhere in the Children's Code. *See, e.g.*, § 19-1-111(2)(a)(I), C.R.S. 2021 (setting forth the conditions for appointing a guardian ad litem); § 19-1-114(1) (authorizing the juvenile court to "make an order of protection" setting forth "reasonable conditions of behavior" not only on a parent but on a

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[4] Because this was a stepparent adoption, the statute clarifies that the decree of adoption had no impact on mother's rights and obligations. § 19-5-211(3), C.R.S. 2021.

"person to whom parental responsibilities have been allocated"). Clearly, when the legislature wants to include people in psychological father's position in the same group as parents, it knows how to do so. *See Meardon v. Freedom Life Ins. Co.*, 2018 COA 32, ¶ 46.

As it relates to psychological father's allocation of parental responsibilities, the "rights and privileges" adoptive father enjoys and the "obligations" to which he is subject are no more than those enjoyed by the child's biological father before the adoption. In other words, adoptive father is subject to the existing parenting time order, including the allocation of parenting time to psychological father. Adoptive father can no more ignore that order than biological father could have before the adoption.

In short, by entering the supplemental order, the adoption court improperly modified an existing APR order. This was outside the purview of section 19-1-104(5) and in derogation of section 19-1-104(8)(a)(II). By vacating the supplemental order, the adoption court correctly recognized that the domestic relations court had jurisdiction over psychological father and matters related to his parenting time.

Indeed, if adoptive father's position on the issues in this case were correct, a psychological parent would not be entitled to participate in an adoption proceeding, but his rights under an existing court order could nevertheless be taken away. We cannot conclude that the legislature intended to create such a blatant due process problem.

Adoptive father argues that the supplemental order "was the only protection" he and mother had to

protect their parental rights because — now that the order has been vacated — the domestic relations court can deny his and mother's rights to the child and grant rights to a nonparent. But this argument ignores that the domestic relations court had already granted APR to psychological father. Nothing in section 19-1-104 precludes adoptive father from seeking to modify parenting time and asserting his *Troxel* presumption in the domestic relations court. *See Troxel v. Granville*, 530 U.S. 57, 66 (2000).[5]

Accordingly, we conclude that the adoption court's order vacating the supplemental order was not only proper, but necessary.

## III. Psychological Father's Contentions

### A. Motions to Intervene

Psychological father contends that the adoption court erred by denying his motion to intervene in the adoption action. In particular, he argues that he is a legal parent and section 14-10-123 gave him an unconditional right to intervene under C.R.C.P. 24(a). We disagree.

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[5] At oral argument, adoptive father's counsel represented that adoptive father's attempt to intervene in the domestic relations court had been denied. This representation appears to be incorrect. According to a December 15, 2021, minute order in the domestic relations case, the parties stipulated that adoptive father would be joined as a respondent. Adoptive father's counsel was instructed to file a written motion if adoptive father sought to raise any issue related to parenting time, but no such motion appears to have been filed.

We review de novo the denial of a motion to intervene under C.R.C.P. 24. *In Interest of K.L.O-V.*, 151 P.3d 637, 640 (Colo. App. 2006).

C.R.C.P. 24(a)(1) provides that a person shall be permitted to intervene when a statute confers an unconditional right to intervene. "Although a statutory scheme may not expressly provide for intervention, the mechanism of intervention may be inherent in the scheme when it provides to a nonparty absolute redress against a party in the context of an existing lawsuit." *K.L.O-V.*, 151 P.3d at 640.

Initially, we reiterate that psychological father is not a legal parent. We recognize that the domestic relations court noted that psychological father had "significant rights that are equivalent to a legal parent." But the court's statement does not make psychological father a legal parent. It is undisputed that, prior to the adoption, mother and biological father were the child's legal parents. And the child can only have two legal parents. *See People in Interest of K.L.W.*, 2021 COA 56, ¶ 2.

We next conclude that section 14-10-123 does not expressly provide for intervention in a stepparent adoption. Section 14-10-123(1)(c) gives psychological father, as a nonparent, the ability to *seek* an APR. *See People in Interest of E.L.M.C.*, 100 P.3d 546, 553 (Colo. App. 2004). But this statute does not vest a nonparent with an absolute right to an APR. *See People in Interest of K.M.B.*, 80 P.3d 914, 917 (Colo. App. 2003) (noting "no such parental responsibility award [to a nonparent] will be made unless a court in fact determines that it would be in the best interests of the child.")

As we have observed above, issues concerning an APR are separate from a stepparent adoption. The statute clearly evinces a legislative intent that issues related to an APR be resolved by a district court handling the domestic relations matter rather than a juvenile court handling an adoption. Consequently, we conclude that section 14-10-123 does not confer an unconditional right to intervene under C.R.C.P. 24(a) in a stepparent adoption.

To the extent psychological father argues that he had a conditional right to intervene under C.R.C.P. 24(b) because his claim to parenting time and the stepparent adoption have a question of law or fact in common, we are unconvinced. Contrary to his contention, his rights to parenting time were not terminated. Even though the adoption court initially terminated his parenting time through the supplemental order, the court subsequently corrected that error by vacating that order, and we have affirmed that decision. And, to the extent there is overlap, the statute clearly requires that the APR issues remain in the domestic relations court.

Accordingly, we conclude that the adoption court did not err by denying the motion to intervene.

### B. Motion to Set Aside Adoption Decree

Psychological father contends that the adoption court erred by denying his motion to set aside the adoption decree. Specifically, he argues that the court should not have granted the adoption decree because the child was not available for adoption under section 19-5-203(1), C.R.S. 2021. He also asserts that the court violated his due process rights. We discern no basis for reversal.

We review the denial of a C.R.C.P. 60(b) motion to set aside a judgment for an abuse of discretion. *Gold Hill Dev. Co. v. TSG Ski & Golf, LLC*, 2015 COA 177, ¶ 65. A court abuses its discretion if the ruling is manifestly arbitrary, unreasonable, or unfair, or based on a misunderstanding of the law. *Id.*

We conclude that the child was available for adoption. Section 19-5-203(1)(f) provides that a child may be available for adoption upon written or verified consent of the parent or parents where the child's parents were not married at the time the child was conceived or born. Again, for purposes of the Children's Code, "[p]arent" means either a natural parent or a parent by adoption. § 19-1-103(105)(a). At the time of the adoption, mother and biological father were the child's natural parents and they consented to the adoption. Therefore, the child was available for adoption. *See* § 19-5-203(1)(f).

We also conclude that the adoption court did not violate psychological father's due process rights. We review procedural due process claims de novo. *People in Interest of C.J.*, 2017 COA 157, ¶ 25. To establish a violation of due process, one must first establish a constitutionally protected liberty interest that warrants due process protections. *Id.* To be sure, a legal parent has a fundamental liberty interest in the care, custody, and control of her child. *Troxel*, 530 U.S. at 66. To protect the parental liberty interest, due process requires the state to provide fundamentally fair procedures to a legal parent facing termination. *A.M. v. A.C.*, 2013 CO 16, ¶ 28; *see also Santosky v. Kramer*, 455 U.S. 745, 753 54 (1982). These procedures include a legal parent receiving notice of the hearing, advice

of counsel, and the opportunity to be heard and defend. *People in Interest of Z.P.S.*, 2016 COA 20, ¶ 40.

But psychological father was not a legal parent facing termination of his parental rights. And his ability to protect his interests related to the APR remains intact, albeit in the domestic relations court. Therefore, the court did not have to ensure that psychological father received notice and the opportunity to be heard on the issue of stepparent adoption.[6]

Accordingly, we conclude that the adoption court did not err by denying the motion to set aside.

### C. Motion for Access

We next reject psychological father's contention that he is entitled to access to the adoption case file and register of actions. Psychological father is not within the class of persons who are permitted to receive access to adoption records under section 19-5-

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6 That being said, the General Assembly may wish to consider requiring notice of an adoption to a person to whom parental responsibilities have been allocated. Such a person — perhaps, as here, a psychological parent or a family member who was allocated parental responsibilities in lieu of terminating a parent's rights at the conclusion of a dependency and neglect case — may very well be able to provide an adoption court with valuable information related to the factors the court must consider when determining whether to grant the adoption request, including, among other things, the moral character of the party seeking to adopt the child, whether the adoption is in the best interest of the child, and whether the child has a significant relationship with a sibling or half-sibling that might be adversely impacted by the adoption. *See* § 19-5-210(2), C.R.S. 2021 (enumerating the factors an adoption court is to consider before granting an adoption request).

305(2)(b)(I)(A).[7] While the statute permits a court to authorize disclosure of these records to other parties for good cause shown, § 19-5-305(1), there is no such good cause here. Psychological father sought access to the records to assist in his appeal of the denial of his request to intervene and set aside the adoption for lack of notice. Because this claim turns on the purely legal issue of whether psychological father is statutorily entitled to notice and to participate in the adoption case, psychological father can adequately brief the issue (and has done so) without access to the record.

Accordingly, we conclude that the adoption court did not err by denying the motion for access.

## IV. Appellate Attorney Fees

Finally, we decline adoptive father's and psychological father's requests for appellate attorney fees under C.A.R. 39.5 and section 13-17-102, C.R.S. 2021. Given our resolution of the issues, it cannot be said that either party's position was substantially groundless, frivolous, or vexatious.

## V. Conclusion

The orders are affirmed.

JUDGE RICHMAN and JUDGE GROVE concur.

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[7] In addition, adoption cases are sealed and not accessible to nonparties. Chief Justice Directive 05-01, Directive Concerning Access to Court Records § 4.60(b)(1) (effective Jan. 4, 2022).

**NOTICE CONCERNING**
**ISSUANCE OF THE MANDATE**

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT:

Gilbert M. Román
Chief Judge

DATED: January 6, 2022

**MORGAN COUNTY DISTRICT COURT ORDER AFFIRMING THE ADOPTION, BUT REINSTATING CERTAIN PARENTAL RIGHTS TO PSYCHOLOGICAL FATHER (MARCH 5, 2021)**

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DISTRICT COURT, MORGAN COUNTY, COLORADO

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IN THE MATTER OF THE PETITION OF:
R.M.C., III
FOR THE ADOPTION OF CHILD E.A.T.

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Case No. 2020 JA18

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THIS MATTER comes before the court on the Motion to Set Aside Final Decree of Adoption. The applicant, J.D.L. (herein the "Mr. J.D.L.") appears by his attorney, Jason A. Marquez of Marquez Law. The petitioner, R.M.C., III (herein the "petitioner"), appears by his attorney. Said Sharbini of Johnson Law Group. LLC. The court has reviewed the Motion to Set Aside Final Decree of Adoption, Response to Motion to Set Aside Final Decree of Adoption and Reply, and being fully advised in the premises. FINDS AND DETERMINES:

## I. Procedural History

1. On October 8, 2020, the petitioner filed a Petition for Stepparent Adoption for the adoption of the child, E.A.T. (herein "child"), who was born on January 10, 2015.

2. On October 8, 2020, the biological mother of the child, A.L.C. (herein "mother"), filed her Consent to Adoption - Custodial Parent.

3. On October 14, 2020, the biological father of the child, A.J.R. (herein "biological father"), filed his Consent to Adoption - Non-Custodial Parent. In this pleading, the biological father voluntarily consented to the adoption of the child and waived notice of any further proceedings in this matter.

4. On November 18, 2020, this court entered a Final Decree of Adoption.

5. On November 19, 2020, this court entered a Supplemental Order regarding Mr. J.D.L.'s parenting time with the child.

6. On October 28. 2020. the District Court of El Paso County, Colorado (Case No. 2019 DR 30762), entered Final Orders. Pursuant to H 45 of this order, the court found that, pursuant to the factors set out in the case of *In re the Interest of E.L.C.,* 100 P.3d 546 (Colo.App.2004), that Mr. J.D.L. was the psychological father of the child. This court was not provided with a copy of the Final Orders from the El Paso County District Court.

7. On January 4, 2021, the District Court of El Paso County issued its Order Regarding December 22, 2020 Hearing Concerning Motion to Restrict Parenting Time, in which the court found that "based on the Court's original and continuing jurisdiction, the October 28, 2020, Final Orders, and the finding that Mr. J.D.L. is a psychological parent with significant rights that are equivalent to a legal parent, it has jurisdiction."

8. On January 4. 2021, Mr. J.D.L. filed a Motion to Set Aside Final Decree of Adoption.

## II. Legal Analysis

9. This stepparent adoption was brought pursuant to C.R.S. § 19-5-203(l)(f), which states that a child may be available for adoption upon the written and verified consent of the parent or parents as defined in C.R.S. § 19-1 - 103(82) where the child's parents were not married at the time the child was conceived. *See* C.R.S. § 19-5-203(l)(f). "Parent" means either a natural parent of a child, as may be established pursuant to article 4 of this title, or a parent by adoption. C.R.S. § 19-1-103(82). In this case, both natural parents of the child consented to the stepparent adoption. A stepparent adoption under this provision of the law does not provide for notice to anyone other than the natural parents. Therefore, Mr. J.D.L. was not entitled to notice of this proceeding and does not have standing to object to the adoption of the child by petitioner.

10. In his motion, Mr. J.D.L.'s reliance upon C.R.S. § 19-5-505 is misplaced as this was a private stepparent adoption. C.R.S. § 19-5-100.5 states that except where indicated otherwise, each provision of this article pertaining to relinquishment or adoption shall apply only to child welfare adoptions and not private adoptions. Therefore, the provisions of C.R.S. § 19-5-505 are not applicable to this proceeding.

11. However, because of the order entered on January 4, 2021, by the District Court of El Paso County (2019 DR 30762), in which it found that it had original and continuing jurisdiction with regard to the issue of parenting time between the child and Mr. J.D.L., the Supplemental Order entered in this

case on November 19, 2020, was in error and shall be vacated and set aside.

Based upon the foregoing,

IT IS ORDERED that the Motion to Set Aside the Final Decree of Adoption be, and the same hereby is DENIED.

IT IS FURTHER ORDERED that as the District Court of El Paso County, Colorado has original and continuing jurisdiction regarding the issue of parenting time between the child and J.D.L., the Supplemental Order entered by this court on November 19, 2020, be, and the same hereby is VACATED AND SET ASIDE.

IT IS FURTHER ORDERED that the parties shall pay their own costs and attorneys' fees in this proceeding.

Dated this 5th day of March, 2021

BY THE COURT:

/s/
District Court Judge

**MORGAN COUNTY DISTRICT COURT SUPPLEMENTAL ORDER TERMINATING PARENTAL RIGHTS OF PSYCHOLOGICAL FATHER (NOVEMBER 19, 2020)**

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DISTRICT COURT, MORGAN COUNTY, COLORADO

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IN THE MATTER OF THE PETITION OF:
R.M.C., III
FOR THE ADOPTION OF CHILD E.A.T.

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Case No. 2020 JA18

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THIS MATTER coming on for hearing regarding the Stepparent Adoption, the court having heard the testimony of the witnesses, and the court now being fully advised in the premises,

DOTH FIND AS FOLLOWS:

1. This court has jurisdiction over the parties and the subject matter of this action.

2. The court has received testimony that the minor child herein was granted visitation with his stepfather, J.D.L., presumably upon the basis of some sort of psychological parenting basis. However, the evidence has established that in the proceeding in El Paso County, District Court, Mr. J.D.L. was given no decision-making authority and the sole involvement of Mr. J.D.L. was that of some sort of psychological father.

3. Having heard the evidence, the court is satisfied that there was no professional scientific testimony provided establishing a scientific or biological basis of Mr. J.D.L. being the actual psychological father of the minor child.

4. Given prior rulings of the United States Supreme Court, the parents get to make all decisions regarding the minor child including all parenting decisions and visitation decisions.

5. Now that the minor child has a legal father based upon the adoption granted in this case. Mr. J.D.L. shall have no further contact or visitation with the minor child. The court sees no reason for any further visitation with Mr. J.D.L., as the minor child now has a mother and father.

DONE IN OPEN COURT this 19th day of November 2020, *nunc pro tunc* November 18, 2020.

/s/
Judge

**EL PASO COUNTY DISTRICT COURT ORDER MEMORIALIZING DISTRICT COURT FINDINGS GRANTING PSYCHOLOGICAL FATHER PARENTAL RIGHTS (OCTOBER 28, 2020)**

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DISTRICT COURT, EL PASO COUNTY, COLORADO

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J.D.L.,

*Petitioner(s),*

and

A.L.T.

*Respondent(s).*

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Case No. 2019DR30762

Before: Catherine Diane Mitchell HELTON, District Court Judge.

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The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

The attached Order is intended to memorialize the Court's findings and orders made in open court on August 27, 2020. The findings made from the bench are deemed incorporated into this Order and shall supplement this Order. To the extent these Final Orders diverge from any oral findings or orders, these Final Orders shall control.

This case was heard together with 15DR30082 at the request of the parties. Respondent in 15DR30082 (biological father of the minor child E.A.T.) appeared through counsel on August 21, 2020 for the final orders hearing but Respondent did not appear. Counsel for Respondent A.J.R. informed the court that Mr. A.J.R. did not wish to be heard and would not be appearing to participate in the hearing. The court enters no further orders regarding parenting time for Mr. A.J.R. with respect to the minor child E.A.T. Mr. A.J.R.'s counsel was excused from participating in the hearing at Mr. A.J.R.'s request.

/s/ Catherine Diane Mitchell Helton
District Court Judge

Issue Date: 10/28/2020

**EL PASO COUNTY DISTRICT COURT, PERMANENT ORDERS HEARING, FINDINGS (AUGUST 27, 2020)**

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DISTRICT COURT, EL PASO COUNTY, COLORADO

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IN RE THE MARRIAGE OF: J.D.L.

J.D.L., SR.,

*Petitioner,*

and

A.L.T.

*Respondent.*

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Case No. 2019DR30762

Related Case No. 2015DR30082

Before: Catherine Diane Mitchell HELTON, District Court Judge.

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THIS MATTER, having come before the Court for a Permanent Orders Hearing on August 21, 2020 and continued onto August 27, 2020, Petitioner, J.D.L., was present with his attorney, Alexandra Cavin of Cordell & Cordell, LLP, and Respondent, A.L.T., was present with her attorney, Erin Young of The Jones Law Firm, P.C.

The Court having reviewed the Court's file, the testimony of the parties, the exhibits, and being otherwise fully advised, hereby FINDS and ORDERS the following:

1. The Court has jurisdiction in this matter. The Petitioner filed a Petition on July 1, 2019, and at least one party was domiciled in Colorado for 91 days before the Petition was filed.

2. Respondent, A.L.T. was served on July 17, 2019.

3. 91 days have passed since the Petition was filed and the Court acquired jurisdiction based on personal service.

4. The parties were married on August 2, 2017.

5. The parties separated on August 24, 2017.

6. There is one minor child of the marriage, J.D.L., DOB 12/XX/15; the Court has jurisdiction of over this child under the UCCJEA. He resided in Colorado for at least 182 days prior to the filing of this action.

7. Respondent is not pregnant.

8. The marriage is irretrievably broken.

9. Venue is proper in El Paso County, Colorado.

10. A Decree of Dissolution of Marriage is entered.

**Marital Assets**

11. The court divides the marital assets pursuant to C.R.S. § 14-10-113, and as follows.

12. There is no real property owned by the parties. Pursuant to agreement of the parties, each party is to keep their own vehicles in their respective

possessions and any personal property that each party has will become that party's sole and separate property.

13. Also pursuant to agreement of the parties, each party shall keep their bank accounts in their names and any debt in their names. There are two retirement accounts at issue in the case: Petitioner's account through his current employer, valued currently at $900; and Respondent's PERA that she cashed out earlier this year. Respondent argued that the Court should decline to enter orders pertaining to her PERA because it was spent on reasonable and necessary expenses, to include living expenses, as well as attorney fees. Respondent also requests that Petitioner should keep his retirement account in full. Petitioner asked the Court to divide these accounts equally.

14. The court is not convinced that based on the evidence presented, Wife's PERA was appropriately liquidated. There was a temporary injunction in place. Respondent was employed, making a good income, with the exception of April – June of 2020. Prior to December of 2019, Respondent was earning $4,200 per month. There was undisputed evidence that Respondent lives with her fiancée. The household expenses are potentially shared by her fiancée. Respondent also received some child support which is the minor child E.A.T.'s income. Respondent's reason for liquidating the account was not compelling; it was a marital asset, at least in part.

15. The Court finds it appropriate to divide the accounts equally between the parties.

a. The Court values the marital portion of the PERA at $10,425 (the Court arrived at this

number by taking the full amount of the account of $12,938 and divided it by 36 months, which was the duration of Respondent's employment with the Department of Corrections. The Court then subtracted 7 months as separate property) since Respondent testified that was paying into the account since January of 2017 and the parties married in August of 2017.

b. The Court orders the marital portion of the PERA to be split equally, resulting in $5,212.50 to Petitioner. The Court also orders the Petitioner's retirement account to be split equally, which results is a total amount awarded to Petitioner of $4,762.50.

c. Respondent is ordered to pay $4,762.50 to Petitioner within 60 days of today (August 27, 2020).

**Debts**

16. The court adopts the parties' agreement to be responsible for any debt in their names in light of the fact that the parties were living separately since August 24, 2017. Each party will be solely responsible for the debt in their respective name.

**Maintenance**

17. The parties testified that they are both waiving any right to maintenance. The parties' incomes are fairly close. The parties testified that they have been living separately since August of 2017, paying their own bills, and were able to support themselves. Each party has made a knowing and voluntary waiver

of their right to request spousal maintenance. Spousal maintenance is denied to both parties.

**J.D.L. Jr.**

18. The Court considered all of the factors in C.R.S. 14-10-124 in determining what is best for J.D.L. Jr.

19. J.D.L. Jr. is too young to express a reasoned and independent preference as to parenting time.

20. Both parents have testified that it is appropriate for J.D.L. Jr. to continue to continue to reside primarily with Petitioner

21. Due to distance between the parties, it is not practical to have a 50/50 parenting time schedule.

22. J.D.L. Jr. is well adjusted in both his home, school and community with Petitioner and Mr. R.M.C. testified that J.D.L. Jr. is doing well at Respondent's home on weekends.

23. There are no concerns about either party's physical health. From a mental health perspective, there was some testimony that the Court found credible that Respondent is somewhat unstable at times.

24. The Court finds that Respondent committed domestic violence against Ms. Seibert and Petitioner; the court also finds that Respondent was physically abusive to Petitioner in front of the children. The court has concerns regarding the historical description of Respondent's mental health.

25. The ability of the parties to encourage the sharing of love, affection and contact between the minor children. Respondent indicates she encourages J.D.L. Jr.'s relationship with Petitioner; however, the

Court is not confident that this is true. The Court finds that she perhaps does this more so with J.D.L. Jr. than the other child. The Court has significant concerns regarding Respondent's credibility. Respondent's testimony was inconsistent within itself during the last court appearance, with prior transcripts, and her own fiancée's testimony. The Court does not have these same concerns with respect to Petitioner.

26. The ability of the parties to place the needs of the child ahead of his or her own needs. The Court sees this ability with Petitioner but does not see this with Respondent. None of Respondent's testimony concerning Respondents ability to come back to Colorado Springs with respect to not having a car and adjusting to life with Mr. R.M.C. made sense. Respondent made no effort, except for a handful of times, facilitated by Petitioner to see J.D.L. Jr. from August of 2017 until after November of 2019.

27. When admonished by Magistrate McGuire, after Magistrate McGuire found he didn't have jurisdiction over E.A.T., acknowledging that Respondent could go and pick up E.A.T., but how damaging that would be to both children, the very next day, regardless of impact, Petitioner went and picked up the minor child E.A.T. and failed arrange for any communication or visits. Respondent failed to facilitate the relationship with the two minor children.

28. The Court found Petitioner's testimony to be credible that J.D.L. Jr. stopped eating, was crying, and was incredibly upset after Respondent came and picked up E.A.T. Respondent was only concerned with her rights and did not place the children's needs ahead of her own.

29. J.D.L. Jr. will continue to reside primarily with Petitioner. Respondent shall enjoy parenting time with J.D.L. Jr. every other weekend from Friday at 6:00 pm through Sunday at 5:00 pm during the school year. During the summer, the parties will alternate on a week on/week off schedule. The exchanges will occur at a halfway point between the parties' homes and the parties are ordered to communicate to determine where the halfway point is. If the parties are unable to agree on a halfway point, they may set the matter for a status conference on the Court's docket.

30. Each party may enjoy two weeks of uninterrupted time with J.D.L. Jr. during the summer with 30 days' notice to the other party. If there is a fifth weekend in any month, Petitioner may exercise parenting time with J.D.L. Jr. on that weekend.

31. Respondent shall encourage some type of meeting or discussion between her fiancé and Mr. J.D.L.

32. The parties are ordered to advise the other party if someone else will be performing the exchange due to work obligations or other scheduling problems. If this occurs, the Court orders that the person performing the exchange must be someone the other parent has met and is unlikely to cause any issues.

33. The parties shall alternate holidays with J.D.L. Jr.

a. Thanksgiving shall be with Respondent on even years and Petitioner on odd years. Thanksgiving Break begins the day after school is let out at noon through the Sunday following Thanksgiving at noon.

b. The parties will equally split Winter Break with Petitioner having the first week and Respondent having the second week in even years and Respondent having the first week and Petitioner having the second week in odd years.

c. The Court declines to enter specific orders related to Mother's Day and Father's Day, but encourages the parties to schedule their time such that Petitioner would have Father's Day every year and Respondent would have Mother's Day every year.

d. The child's birthday will fall where it falls. The parent exercising parenting time at the time of child's birthday shall celebrate it. The other parent shall celebrate it on his or her own time.

e. Petitioner shall have Spring Break in even years and Respondent shall have Spring Break in odd years.

f. The parties are to discuss any other holidays which they would like to share or alternate. If the parties cannot agree, then regular parenting time shall apply.

**Decision-Making for J.D.L. Jr.**

34. The Court finds that Respondent perpetrated domestic violence against Petitioner in front of the minor child. The court has no credible evidence that the parties can make decisions cooperatively despite the domestic finding. As such, it does not find it is in J.D.L. Jr.'s best interests to allocate decision-making to Respondent. Petitioner shall have sole decision-

making for J.D.L. Jr. However, Petitioner shall consult with Respondent prior to making any major decisions for J.D.L. Jr. If, after Petitioner tries to consult, there is no agreement, Petitioner may make the decision.

**Child Support for J.D.L. Jr.**

35. With regard to the parties' income:

a. The Court finds Petitioner's income to be $3927 per month.

b. Respondent testified that she earns $19.50 per hour and left her employment with the Department of Corrections in order to be home with her other child, E.A.T., more often. Petitioner requested the Court find that Respondent was voluntarily underemployed. The Court finds that Respondent is voluntarily underemployed and imputes her income at $4200 per month, which is what she was previously earning at the Department of Corrections.

c. Child support in the amount of $237 per month is owed to Petitioner by Respondent beginning on September 1, 2020, through the Family Support Registry. The Court authorizes an income assignment. This is based on Respondent having 135 overnights.

d. The Court awards retroactive child support to Petitioner back to the date of filing the Petition. The Court orders retroactive child support in the amount of $557 per month for 12 months (the Court begins calculations of retroactive support on the first month after filing, which was August of 2019),

> which results in a total award of $6684, payable over 48 months. This results in an additional $139 per month payable by Respondent to Petitioner. Once Respondent pays the retroactive amount in full, child support will return to $237 per month.

**E.A.T. – 15DR30082**

36. The court analyzed whether Petitioner was a psychological parent to the minor child E.A.T. The Court considered the testimony and found Petitioner's testimony to be more credible than Respondent's. The Court is concerned because Respondent seemed to be untruthful about things that didn't matter in the case.

37. The Court found Mr. R.M.C.'s testimony to be credible that he and Respondent had been living together since August of 2017. This was not consistent with Respondent's testimony; things were not as Respondent tried to portray them.

38. The Court has concerns regarding Respondent's differing testimony regarding whom E.A.T. refers to as "Dad". The court does not believe that E.A.T. does not see Petitioner as "Dad" when Petitioner was caring for E.A.T. for most of his life without help from Respondent.

39. Petitioner's testimony was credible, and his demeanor was appropriate.

40. This Court rejects the notion that after being cared for by Petitioner for most of his life, he suddenly came up with calling Petitioner "J.D.L. Jr.'s Dad". The Court finds it unconscionable that Respondent removed E.A.T. not just from Petitioner's care, but

from his brother, to whom he is incredibly close, without regard to the negative effect it would have the children.

41. The Court heard from Ms. A.L.C.'s mother, who spent very little time with the children and does not know about their background, referring to the Respondent and Mr. R.M.C. as parents.

42. The Court suspects that E.A.T. is incredibly confused over what happened to him over the last eight-nine months.

43. "Psychological parent" is defined as someone other than a biological parent, who develops a parent/child relationship with a child through day-to-day interaction, companionship and caring for the child. *In Re Martin*, 42 P.3d. That Court found that once the bond forms, breaking it may be harmful to the child's emotional development.

44. The Court notes Dr. Lisa Routh expressed concerns regarding the frequent contact between Respondent and J.D.L. Jr. because of how bonds develop at this age (the children are nearly the name age). Respondent seems to pay attention to that regarding J.D.L. Jr., but is not at all concerned with respect to E.A.T.

45. The Court finds that, pursuant to the four factors set out in *In re the Interest of E.L.C.*, 100 P.3d 546 (Colo. Ct. App. 2004), that Petitioner is the psychological father of E.A.T.

46. The Court again considered all the factors pursuant to 14-10-124 and makes these specific findings: The Court has very real concerns regarding Mother's ability to encourage love, affection and

contact, between Mr. J.D.L. and E.A.T. The Court is concerned regarding Respondent's ability to place E.A.T.'s needs ahead of her own. Respondent has somewhat more stability than she did a year ago.

47. It is in E.A.T.'s best interests to have consistency, so the Court orders that Respondent shall remain the primary parent of E.A.T. Petitioner may enjoy parenting time with E.A.T. every other weekend, such that E.A.T. and J.D.L. Jr. are together every weekend (*i.e.* both boys are with Petitioner one weekend and with Respondent the next weekend). Petitioner shall be entitled to any fifth weekend if there is one. E.A.T.'s schedule shall mirror J.D.L. Jr.'s schedule.

48. The parties shall alternate weeks during the summer with a week on/week off schedule. Again, E.A.T. and J.D.L. Jr. are to remain on the same schedule.

49. E.A.T. shall be on the same holiday schedule as J.D.L. Jr.

50. E.A.T. shall continue with counseling.

51. Respondent shall provide Petitioner with information to Mr. J.D.L. about who E.A.T.'s therapist is.

52. Petitioner shall have access to E.A.T.'s school and medical records. This same obligation is extended to Petitioner for Respondent.

**Decision-Making**

53. The Court finds that Respondent perpetrated domestic violence on Petitioner. As such, it finds that the parties are not able to make decisions together.

Respondent is awarded sole decision-making for E.A.T., but Respondent shall consult with Petitioner prior to making any major decisions. If major decisions are not agreed upon, then Respondent will make decision for E.A.T.'s benefit. She must also advise him of doctors' appointments, school events and extracurriculars.

**Child Support**

54. With regard to the parties' income:

a. The Court finds Petitioner's income to be $3927 per month.

b. Respondent testified that she earns $19.50 per hour and left her employment with the Department of Corrections in order to be home with her other child, E.A.T., more often. Petitioner requested the Court find that Respondent was voluntarily underemployed. The Court finds that Respondent is voluntarily underemployed and imputes her income at $4200 per month, which is what she was previously earning at the Department of Corrections.

c. Child support in the amount of $148 per month is owed to Respondent by Petitioner beginning on September 1, 2020, which shall provide an offset to the amount owed to Petitioner by Respondent for the support of J.D.L. Jr. It is based on Petitioner having 143 overnights.

d. The total amount owed to Petitioner by Respondent is $228 per month while Respondent is still paying retroactive support.

Once the retroactive support is paid off, Respondent shall pay $89 per month.

**Extraordinary Medical Expenses**

55. For both boys, any extraordinary medical expenses shall be split in proportion to income. As it currently stands, Respondent's income accounts for 60% of the total and Petitioner's is 40%.

**Extracurricular Activities**

56. The parties shall equally split the cost of any extracurricular activities if they agree on the activity. If they do not agree on the activity, one parent may sign the child up for the activity but the other parent is not required to pay any portion.

57. Extracurricular activities are not to interfere in the other party's parenting time. Parenting time takes priority over extracurricular activities.

**Attorney Fees**

58. Attorney's Fees and Costs

e. The Court declines to enter an award of attorney's fees.

f. Respondent was already ordered to pay Petitioner half her PERA and retroactive child support. The Court does not want to set Respondent up to fail.

g. The Court cannot find that Respondent took an unreasonable position or caused additional fees, nor can the Court find that Respondent's actions have been frivolous.

h. The Court also is unable to find a disparity in income.

i. Each party shall pay their own attorney's fees.

**Miscellaneous Orders:**

59. Neither party may disparage the other party in front of the children, nor shall anyone else be permitted to do so. Each party is ordered to encourage a relationship between the children and the other parent.

60. Petitioner's counsel to prepare a joint long order within 21 days.

Dated this day of October, 2020.

BY THE COURT:

/s/
District Court Judge/Magistrate