PUBLIC APPENDIX
(PART OF THIS VOLUME)

Colorado Revised Statutes § 2-4-203

2-4-203. Ambiguous statutes - aids in construction.

(1) If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider among other matters:

(a) The object sought to be attained;

(b) The circumstances under which the statute was enacted;

(c) The legislative history, if any;

(d) The common law or former statutory provisions, including laws upon the same or similar subjects;

(e) The consequences of a particular construction;

(f) The administrative construction of the statute;

(g) The legislative declaration or purpose.

Colorado Revised Statutes § 14-10-124

The statute is lengthy. Pertinent portions are quoted here. The text comes from a compilation updated through 2020.

14-10-124. Best interests of child.

(1) Legislative declaration. While co-parenting is not appropriate in all circumstances following dissolution of marriage or legal separation, the general assembly finds and declares that, in most circumstances, it is in the best interest of all parties to encourage frequent and continuing contact between each parent and the minor children of the marriage after the parents have separated or dissolved their marriage. In order to effectuate this goal when appropriate, the general assembly urges parents to share the rights and responsibilities of child-rearing and to encourage the love, affection, and contact between the children and the parents.

...

(1.5) Allocation of parental responsibilities. The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child giving paramount consideration to the child's safety and the physical, mental, and emotional conditions and needs of the child as follows:

(a) Determination of parenting time. The court, upon the motion of either party or upon its own motion, may make provisions for parenting time that the court finds are in the child's best interests unless the court finds, after a hearing, that parenting time by the party would endanger the child's physical health or significantly impair the child's emotional development. In addition to a finding that parenting time would endanger the child's physical health or significantly impair the child's emotional development, in any order imposing or continuing a parenting time restriction, the court shall enumerate the specific factual findings supporting the restriction and may enumerate the conditions that the restricted party could fulfill in order to seek modification in the parenting plan. ... In determining the best interests of the child for purposes of parenting time, the court shall consider all relevant factors, including:

(I) The wishes of the child's parents as to parenting time;

(II) The wishes of the child if he or she is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule;

(III) The interaction and interrelationship of the child with his or her parents, his or her siblings, and any other person who may significantly affect the child's best interests;

(IV) The child's adjustment to his or her home, school, and community;

(V) The mental and physical health of all individuals involved, except that a disability alone shall not be a basis to deny or restrict parenting time;

(VI) The ability of the parties to encourage the sharing of love, affection, and contact between the child and the other party; except that, if the court determines that a party is acting to protect the child from witnessing domestic violence or from being a victim of child abuse or neglect or domestic violence, the party's protective actions shall not be considered with respect to this factor;

(VII) Whether the past pattern of involvement of the parties with the child reflects a system of values, time commitment, and mutual support;

(VIII) The physical proximity of the parties to each other as this relates to the practical considerations of parenting time;

(IX) and (X) Repealed.

(XI) The ability of each party to place the needs of the child ahead of his or her own needs.

...

Colorado Supreme Court

2023SC502

Certiorari to the Court of Appeals, 2022CA1484
District Court, Mesa County, 2012DR18

In re the Marriage of
Petitioner: Samuel Collin Robinson
and
Respondent: Katherine Lyman Robinson

ORDER OF COURT
Date Filed: December 11, 2023

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.

BY THE COURT, EN BANC, DECEMBER 11, 2023.

Colorado Supreme Court

2023SC502

Certiorari to the Court of Appeals, 2022CA1484
District Court, Mesa County, 2012DR18

In re the Marriage of
Katherine Lyman Robinson, Appellee
and
Samuel Collin Robinson, Appellant

PETITION FOR WRIT OF CERTIORARI

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[1] Page numbers here correspond to the present document, so they differ from the original.

Table of Authorities

CASES

COLORADO REVISED STATUTES

COURT RULE

CONSTITUTION OF THE UNITED STATES

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[2] Please see footnote 4.
[3] Please see footnote 5.

Issue for Review

Does disproportionate allocation of parenting time to fit divorced parents under auspice of standardless best interest statutes fail to honor legislative intent and violate equal protection?

Opinion to be Reviewed

The Colorado Court of Appeals filed its decision in this case on June 1st, 2023. Appendix A[4]. The mandate is set to issue after 43 days, on July 13th. This petition stays the mandate. There has been neither a petition for rehearing nor a motion for extension of time.

Grounds for Jurisdiction

This case is raised to the Colorado Supreme Court in supplication of discretionary exercise of jurisdiction per 13-4-108, C.R.S. and C.A.R. 49. Current statute inadequacy leads to domestic relations case disposition discrepancies that elicit continuing public interest within Colorado and beyond. Appendix B[5]. Please make occasion to cure this case and set precedent.

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[4] Appendix A to the Petition to the State Supreme Court appears as Appendix E to the present petition.

[5] Appendix B to the Petition to the State Supreme Court presented an article entitled "Yes, Virginia, the Constitution Applies in Family Court, Too" available online at this address. https://cdn.ymaws.com/www.nebar.com/resource/resmgr/nebraskalawyer_2017plus/2018/julyaugust/TNL-0718f.pdf
The article is omitted from the present reproduction.

Statement of the Case

In May of 2005 Katherine and Collin married. As the years passed, their daughter and their son were born. Then Katherine departed and sought divorce. The terms of the divorce were reached through mediation in late 2012. At that time, their daughter was 5 and their son was 3 years of age. Although as result of settlement the children got only 25% of the time with Dad, the terms kept the children from being taken out of state. The parties remained in the same community here in Colorado, where the children continued to benefit from involvement with Dad.

During the next 3 years, everyone involved coped with the settlement parenting plan. In January 2016, Collin filed a motion to modify parenting time to afford the children equal opportunity to benefit from the contributions of both parents and to reduce the frequency of stressful exchanges. After a hearing in 2017, a magistrate denied the motion and ordered a parenting plan that worsened the disproportionate allocation. The District Court affirmed. In 2019, the Colorado Court of Appeals affirmed. Certiorari to the Colorado Supreme Court was denied, as was certiorari to the United States Supreme Court.

After the two years required by statute, Collin filed a fresh motion to modify parenting time in 2021. CF pp 2,567 - 2,582. Following a hearing in 2022, a magistrate denied the motion and adopted

Katherine's proposed parenting plan, further restricting time the children get to spend with Collin to 14%. TR (January 4, 2022). CF pp 2,642 - 2,656. A petition for judicial review was filed by Collin. CF pp 2,657 - 2,659. The District Court judge adopted the order. CF pp 2,660 - 2,661. Collin raised the case to the Colorado Court of Appeals. In 2023 the Court of Appeals affirmed. The children, at present 13 and 16, are not well served by the parenting time schedule that keeps them from their dad.

Argument

Reason to Issue Writ:

Judges often overlook Constitutional requirements when issuing orders in family law cases. Appendix B[6], 28. The superficially laudable so-called "best interests of the child standard" leads to such miscarriages of justice, thrusting two fit parents into a subjective character assassination cage fight and awarding parenting time to the one that destroys the other. This steamrolls the actual best interest of the children and produces arbitrary results that fall foul of the equal protection clause of the Fourteenth Amendment of the United States Constitution in Colorado and other states. Case outcome depends on the judge to greater degree than the facts. Facts that result in 50-50 parenting time in Omaha result in 80-20 parenting time in North

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[6] Please see footnote 5.

Platte. Appendix B[7], 30. Like statute prevails in Colorado. Absent addition of objective elements, the process does not survive scrutiny. In this case, the Hearing Magistrate, District Court Judge, and Court of Appeals have issued and affirmed an order that would not pass Constitutional muster in other contexts.

The Court of Appeals asserts that 14-10-124(1.5)(a) of the Colorado Revised Statutes (C.R.S.) is unambiguous, because it clearly enumerates factors to consider when allocating parenting time in the children's best interest. The Court of Appeals goes on to state that 14-10-129(1)(a)(I), C.R.S. unambiguously affords the magistrate discretion to modify parenting time in the children's best interest. While it is true that the statute texts contain clear assignment of authority to allocate parenting time and clear enumeration of factors to consider, they do not give objective standards for evaluation of the enumerated factors. Without defined evaluation standards, decisions are left to the personal preferences of sitting magistrates and judges. Sessions v. Dimaya, 584 U.S. ___ (2018), (Kagan, 5), (Gorsuch, 16).

As example, 14-10-124(1.5)(a)(IV) directs the court to consider adjustment of a child to their home, school, and community as a factor relevant to determination of best interest for allocation of

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[7] Please see footnote 5.

parenting time. This births question upon question without answer. What adjustment to home constitutes best interest? How is best interest interpreted as it relates to school enrollment, academic performance, attitude about education, and extra-curricular activities? Is participation in one church somehow preferable community involvement to participation in another church, tribe, or volunteer organization? What definition of best interest controls?

Compare this to water law. As example, 37-92-602(1)(b), C.R.S. allows exempt well permits to be issued for wells not exceeding fifteen gallons per minute of production that are used for ordinary household purposes, fire protection, domestic animals, livestock, and irrigation of not more than one acre of home gardens and lawns. There, specific objective standards for production rate and purpose of water use provide for clear determination whether a well qualifies. Wells, like children, manifest a diversity of attributes; yet, a level field provides like access to all and protects the aquifers and streams we share.

The comparison reveals the emptiness of the Court of Appeals' assertion that the parenting time statutes are unambiguous. The Supreme Court is endowed with power to dispel the haze and bridge the fissure by turning judicial attention to the legislative declaration articulating the intent of the statute. People ex rel Rein v. Meagher, 465 P.3d 554

(Colo. 2020), ¶ 22. 2-4-203(1)(g), C.R.S. At paragraph (1) of 14-10-124, C.R.S., the Colorado general assembly sets forth a finding that in most circumstances the best interest of all involved in dissolution of marriage is served by encouraging frequent and continuing contact between each parent and the minor children. The assembly urges parents to share the rights and responsibilities of bringing up their children. "Share" is used without any modifier that would indicate imbalance. Equal time gives optimum contact with each parent in the best interest of all. This is the general policy of the statute.

Exceptions to the typical prescription are defined by paragraph(1.5)(a). Parenting time is to be given according to best interest, unless the court finds that parenting time with a party would endanger the children's physical health or significantly impair their emotional development. Under such abnormal circumstances, parenting time may be restricted. The exceptions cannot be triggered by speculative or subjective testimony, as they must draw support from fact. Narrow construction of exceptions preserves primary operation of general policy. Commissioner v. Clark, 489 U.S. 726, 739 (1989).

Here, exceptions create distinct classes of parents, segregated by whether they endanger or impair the development of their children. In this case, the Magistrate did not find that either party

presents a danger to or impairs development of the children. Therefore, the situations of Mom and Dad relating to fitness to parent are similar; they are in the same class. Nevertheless, the Magistrate restricted time with Dad to 14%, and awarded 86% to Mom. No objective standard warrants this absurd result.

The Court of Appeals asserts that the ordinary meaning of the word "share" does not mandate equal participation. The Court of Appeals also avers that the skewed allocation does not amount to a "restriction", because, according to the judges, it does not deny reasonable parenting time or otherwise impede the relationships between the children and their dad. Personal experience is not in agreement; the lopsided schedule marginalizes the relationships between the children and their dad through atrophy. Regular involvement is degraded to sporadic interruptions of prevailing routine. Over years of imposed progressive diminution of contact, the children grow to misperceive their dad as an intruding outsider.

An involved dad gives some personal attention to his children almost every day. Here, a fit divorced dad living under an arbitrary court order is prohibited from giving attention to his children almost every day. No conviction of wrongdoing led to this sentence, to this court order that harms the dad and also harms the children. It is unconstitutional, intolerable, and way past ripe for correction.

Standard of Review:

A question regarding statutory interpretation, constitutional interpretation, or application of law is reviewed de novo. The standard of review for other cases involving fundamental Constitutional rights is strict scrutiny. Therefore, the Court of Appeals' exercise of every presumption in favor of upholding the decision by the court below in this family law case was an error. Due to blatant departure from equal treatment of parents of similar situation, appellate review should give this case thorough examination, with little deference to the courts below.

Preservation on Appeal:

The necessity of restoring balance by correcting allocation of time was raised in the motion to modify and during the hearing. CF, p 2,569. TR (January 4, 2022), pp 19, 20, 22, 25, 95, 102, 103. The Hearing Magistrate ordered an exacerbation of the disproportionate schedule. This failure to honor the operative statute and give the parties equal protection of law was raised to the District Court. CF, p 2,658. The District Court adopted the order. CF, pp 2,660 - 2,661. The issue was then raised to and rejected by the Court of Appeals.

Conclusion

As Thomas Paine observed, "a long habit of not thinking a thing wrong, gives it a superficial

appearance of being right, and raises at first a formidable outcry in defense of custom." Although the practice of letting a court take children away from a fit parent for most of the time as a matter of discretion not requiring satisfaction of objective criteria has been allowed to establish itself as common custom in many family court jurisdictions for decades, it is wrong. Defense of the custom by the Court of Appeals, does not make it less wrong. By granting this petition, the Colorado Supreme Court may pull our civilization from a pitfall and set it on an egalitarian course to realization of the true best interest of children of divorce. Please address the lack of evaluation standards within the best interest parenting time statutes and enunciate a precedent protecting equal participation by fit parents endeavoring to raise their children consistent with the intent of the legislature to encourage their love.

Pled from the heart,

s/ Samuel Collin Robinson — *2023.07.04*
Samuel Collin Robinson — Date

Colorado Court of Appeals

22CA1484

On Appeal From
Mesa County District Court, 12DR18
Honorable Valerie J. Robison, Judge

In re the Marriage of
Katherine Lyman Robinson, Appellee
and
Samuel Collin Robinson, Appellant

ORDER AFFIRMED

Division II
Opinion by JUDGE TOW
Furman and Taubman, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 1, 2023

No Appearance for Appellee

Samuel Collin Robinson, Pro Se

¶1 In this post-dissolution proceeding involving Samuel Collin Robinson (father) and Katherine Lyman Robinson, now known as Katherine Lyman Freeman (mother), father appeals the district court's order adopting the magistrate's decision to reduce his parenting time. We affirm.

I. Background

¶2 Mother and father are the parents of two children. The district court dissolved their marriage in 2012. As part of the permanent orders, the court named mother the children's primary residential parent and allocated to father certain holidays plus regular parenting time of two overnights, every other weekend, along with Wednesday dinner visits.

¶3 In 2016, father moved to modify parenting time, asserting that equal parenting time was in the children's best interests. Following an evidentiary hearing, the magistrate maintained the regular parenting time schedule but modified the holiday parenting time schedule. After the district court adopted the magistrate's decision, another division of this court affirmed in *In re Marriage of Robinson*, (Colo. App. No. 18CA0265, Jan. 3, 2019) (not published pursuant to C.A.R. 35(e)).

¶4 In early 2021, father filed another motion to modify parenting time, once again seeking equal parenting time. A modification hearing was held on January 4, 2022. The magistrate rejected father's

request for equal parenting time, and instead granted mother's request to reduce his regular, overnight parenting time to one weekend every third weekend, plus the Wednesday dinner visits. Upon further review, the district court modified the magistrate's decision to correct a minor error transposing the children's ages, but otherwise adopted it.

II. Standards of Review

¶5 Our review of a district court's order adopting a magistrate's decision is effectively a second layer of appellate review. *In re Marriage of Sheehan*, 2022 COA 29, ¶ 22. We must accept the magistrate's factual findings unless they are clearly erroneous, meaning that they have no support in the record. *In re Marriage of Young*, 2021 COA 96, ¶ 8. However, we review de novo questions of law, including questions of statutory interpretation and constitutional challenges. See Sheehan, ¶ 22; *In re Marriage of Boettcher*, 2019 CO 81, ¶ 12; *Howard v. People*, 2020 CO 15, ¶ 11.

¶6 A district court has broad discretion to establish a parenting time schedule that is in the child's best interests, and we will not disturb its orders absent an abuse of discretion. *In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007). We exercise every presumption in favor of upholding the court's decisions in parenting matters. *Id.* As long as there is competent evidence to support the court's

orders, we will not disturb the parenting time schedule. *Id.*

III. Equal Parenting Time Based on Legislative Declaration

¶7 We first consider and reject father's contention that the legislative declaration in section 14-10-124(1), C.R.S. 2022, required the magistrate to implement equal parenting time. That section provides that "the general assembly finds and declares that, in most circumstances, it is in the best interest of all parties to encourage frequent and continuing contact between each parent and the minor children," and therefore, "the general assembly urges parents to share the rights and responsibilities of child-rearing and to encourage the love, affection, and contact between the children and the parents." *Id.*

¶8 A legislative declaration is not substantive law but, rather, "an explicit or formal statement or announcement about the legislation." Colo. Off. of Legis. Legal Servs., *Colorado Legislative Drafting Manual* § 2.7.1 (Sept. 2020). It may provide "value statements about the subject addressed in the bill, findings made by the General Assembly, the history of a particular issue, or the manner for accomplishing a desired result." *Id.* As such, it is merely a tool to assist in interpreting the substantive

provisions of the statute. See § 2-4-203(1)(g), C.R.S. 2022.

¶9 Because it is an interpretive aid, we generally "do not resort to a legislative declaration when a statute is unambiguous." *Lester v. Career Bldg. Acad.*, 2014 COA 88, ¶ 23. And the statutes at issue here are unambiguous. Section 14-10-124(1.5)(a)(I) clearly enumerates factors for the magistrate to consider when allocating parenting time based on the children's best interests, and section 14-10-129(1)(a)(I), C.R.S. 2022, unambiguously affords the magistrate the discretion to modify parenting time based on the children's best interests. Accordingly, the legislative declaration in section 14-10-124(1) is not controlling in our interpretation of the statute.

¶10 In addition, even if we were to consider the legislative declaration in section 14-10-124(1), we conclude that nothing in that subsection suggests that equal parenting time is required. Contrary to father's assertion, while the ordinary meaning of the word "share" suggests that a parent should be able to participate in parental responsibilities, it does not mandate equal participation. See Webster's Third New International Dictionary 2087 (2002) (defining "share" as "to partake of, use, experience, or enjoy with others").

IV. Restriction on Father's Parenting Time

¶11 As best as we can discern, father next argues that the magistrate's decision reducing his parenting time amounted to a restriction on his parenting time, which required endangerment findings under section 14-10-124(1.5)(a). We disagree.

¶12 Parents generally have a right to a relationship and reasonable parenting time with their children. §14-10-104.5, C.R.S. 2022; *In re Marriage of Martin*, 42 P.3d 75, 77 (Colo. App. 2002). Therefore, orders restricting parenting time require a finding that parenting time would endanger the children's physical health or significantly impair their emotional development. § 14-10-124(1.5)(a). However, the statute does not define a "parenting time restriction," nor does it set forth any standard to determine whether an order restricts parenting time, thus requiring endangerment findings. *In re Marriage of West*, 94 P.3d 1248, 1250 (Colo. App. 2004).

¶13 While under the new schedule, father's regular parenting time of one weekend every third week, plus Wednesday evenings, is significantly less than mother's parenting time, it is not so inadequate as to deny him reasonable parenting time with the children, *Martin*, 42 P.3d at 77, or otherwise impede his relationship with the children, section 14-10 104.5. *Cf. West*, 94 P.3d at 1251 (holding that whether a reduction in parenting time constitutes a restriction turns on the "quantitative and the

qualitative aspects" of the modified parenting time, and noting that most cases addressing restrictions "involve outright denial of visitation or require supervised visitation").

V. Equal Protection

¶14 Last, father asserts the allocation of unequal parenting time violates his right to equal protection.

¶15 The right to equal protection of the law guarantees that all individuals who are similarly situated are treated similarly. See Colo. Const. art. II, § 25; *In re Marriage of Tonnessen*, 937 P.2d 863, 866 (Colo. App. 1996). If a law does not classify individuals, there can be no equal protection issue presented. See *Tonnessen*, 937 P.2d at 866.

¶16 Section 14-10-124(1.5)(a) sets forth the factors relevant to a child's best interests as related to allocation of parental responsibilities. The statute does not create any groups that would be treated differently in an allocation of parental responsibilities matter. Rather, it requires the court to consider the child's best interests in all cases involving parenting matters. See § 14-10-124(1.5); see also § 14-10-123.4(1)(a), C.R.S. 2022 (children have the right to have decisions in parental responsibilities proceedings made based on their best interests). "Because the focus in applying the best interests standard is on the child, and not on the parents, the standard applies equally to all parents."

In re Marriage of Graham, 121 P.3d 279, 283 (Colo. App. 2005), overruled on other grounds by *In re Marriage of Ciesluk*, 113 P.3d 135 (Colo. 2005). Thus, application of the best interests standard does not implicate equal protection concerns.[1]

VI. Disposition

¶17 The order is affirmed.

JUDGE FURMAN and JUDGE TAUBMAN concur.

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[1] Moreover, in light of the court's specific findings regarding the best interests factors, such as that the children are more bonded to mother and are well adjusted in their current primary residence with mother, father has not demonstrated that he is similarly situated to mother.

Colorado Court of Appeals

22CA1484

On Appeal From
Mesa County District Court, 12DR18
Honorable Valerie J. Robison, Judge

In re the Marriage of
Katherine Lyman Robinson, Appellee
and
Samuel Collin Robinson, Appellant

OPENING BRIEF

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[1] Page numbers here correspond to the present document, so they differ from the original.

Table of Authorities

CASES

STATUTE

CONSTITUTION

Issue on Appeal

With sharing of parenting found by the legislature of Colorado to be in the best interest of all, does disproportionate allocation of parenting time fail to honor state statute and violate equal protection?

Statement of the Case

In May of 2005 Katherine and Collin married. As the years passed, their daughter and their son were born. Then Katherine departed and sought divorce. The terms of the divorce were reached through mediation in late 2012. At that time, their

daughter was 5 and their son was 3 years of age. Although the terms of the divorce limited the amount of time the children got to spend with Collin to about 25%, the terms kept the children within the community here in Colorado, where they continued to benefit from substantial involvement with their dad.

In January 2016, Collin filed a motion to modify parenting time to afford the children equal opportunity to benefit from the contributions of both parents. A hearing on the subject took place in 2017, and the magistrate issued an order denying the motion. A parenting plan that worsened the disparate allocation of time was subsequently ordered. On review, the District Court upheld the order en masse. In 2019, the Colorado Court of Appeals upheld the District Court order. Certiorari to the Colorado Supreme Court was denied, as was certiorari to the United States Supreme Court.

After elapse of two years, per statute, Collin filed a fresh motion to modify parenting time in 2021. CF pp 2,567 - 2,582. The motion was heard in 2022. TR (January 4, 2022). The same month, the magistrate denied the motion and adopted Katherine's proposed parenting plan, which further restricts the amount of time the children get to spend with Collin to some 14%. CF pp 2,642 - 2,656. A petition for judicial review was filed by Collin. CF pp 2,657 - 2,659. In July, the District Court judge issued a final order denying the petition for judicial

review. CF pp 2,660 - 2,661. The preserved issue is failure of the District Court to honor Colorado statute and resulting violation of the United States constitution. The children, at present 13 and 15, are not well served by the order of the District Court.

Argument Summary

At the head of the statute used to allocate parenting time, the Colorado general assembly found that the best interest of all involved in dissolution of marriage is served by encouraging frequent and continuing contact between each parent and the minor children, and the assembly urged parents to share the rights and responsibilities of bringing up their children. The legislative declaration does leave room for exceptions; yet, there is no modifier that would indicate unequal shares where circumstances are typical. By exacerbating a lopsided allocation of parenting time, where no exception was warranted, the District Court order failed to give the statute proper execution. The result is violation of the equal protection passage of the Constitution of the United States.

Argument

Standard of Review:

A question of law regarding statutory interpretation, constitutional interpretation, or application of law is reviewed de novo. People v.

Sandoval, 383 P.3d 92, 95-96 (Colo. App. 2016); Carmichael v. People, 206 P.3d 800, 808 (Colo. 2009).

Preservation on Appeal:

The necessity of restoring balance by correcting the lopsided allocation of parenting time was raised in the motion to modify and during the hearing. CF, p 2,569. TR (January 4, 2022), pp 19, 20, 22, 25, 95, 102, 103. The hearing magistrate did not make the correction, instead ordering an exacerbation of the disproportionate allocation. This failure to honor the operative statute and give the parties equal protection of law was raised to the District Court as the question presented in the petition for judicial review. CF, p 2,658. In the final order, the District Court ruled to deny the petition. CF, pp 2,660 - 2,661.

Discussion:

Where sharing parenting time is declared by the state legislature to be in the best interest of all, and where criteria for exception have not been met, does disproportionate allocation of parenting time fail to give proper effect to state statute and violate the federal constitutional provision that equal protection of law be given every person? By resolution of this question, the Court of Appeals may enunciate a precedent protecting equal opportunity for each parent to preserve the integrity of their relationships with their children in divorce cases with parenting time determined by local magistrates and judges.

Here, the magistrate cited § 14-10-124, C.R.S. as basis for allocation of parenting time according to the best interest of the children. CF, p 2,642. At the head of the statute, the Colorado general assembly sets forth a finding that in most circumstances the best interest of all involved in dissolution of marriage is served by encouraging frequent and continuing contact between each parent and the minor children. The assembly urges parents to share the rights and responsibilities of bringing up their children. "Share" is used without any modifier that would indicate imbalance. Equal time is necessary for optimum contact with each parent in the best interest of all.

Exceptions to the typical prescription are defined in the same statute by (1.5)(a). Parenting time is to be given according to best interest, unless the court finds that parenting time with a party would endanger the children's physical health or significantly impair their emotional development. Under such abnormal circumstances, parenting time may be restricted. Ensuring that the exceptions not be invoked lightly, the statute requires that any order imposing or continuing a parenting time restriction must also enumerate the specific factual findings supporting the restriction and conditions that the restricted party may fulfill in order to seek modification of the parenting plan.

In this case, the magistrate made no finding that restriction of parenting time was necessary to

avoid danger to the physical health or emotional development of the children. The magistrate did not make a finding of endangerment, child abuse, or neglect. The statutory exception standard is not met. Therefore, the situation of the children and the parties relating to their eligibility to have parenting time allocated according to best interest is the same as that of most people going through divorce.

The Fourteenth Amendment of the Constitution of the United States prohibits any state from denying to any person the equal protection of the laws. Equal protection of the laws is given when the government treats similarly situated persons in a similar manner. Tassian v. People, 731 P.2d 672, 674 (Colo. 1987). An equal protection claim is valid independent of class or group membership. Village of Willowbrook et al. v. Olech, 528 U.S. 562, 564 - 565 (2000). Therefore, the people going through this divorce must be given like treatment to that endorsed for most divorce circumstances.

Responding to the petition for review, the final order opined that disposition of the motion to modify requires a finding in the best interest of the children, not a finding of endangerment. CF, p 2,660. There is agreement that best interest should govern here. According to the statute, best interest of all is served by frequent and continuing contact between each parent and their children, effectuated by sharing time; yet the magistrate issued an order that restricts the time the children are with their dad to a

minor fraction of their total time, broken up into fleeting and infrequent episodes. This lopsided allocation lies outside the domain of best interest. Between parents, equal before the law, equal sharing of time should prevail to support optimum conditions for the children and each of their parents. As issued, without a finding of endangerment to support an exception to the best interest scenario, the arbitrary order restricting parenting time with the dad to a trivial portion falls foul of statute. The 86% to 14% split is not sharing, it is hegemony.

As support for the decision to deny the petition for review, the judge noted that the magistrate specifically found that the mother and her witness believed that increasing parenting time for the children to be with their dad would be emotionally harmful to them, and that testimony by the witness was credible. CF, p 2,661; citing p 2,645 and p 2,643. Stated belief regarding future events is speculative and does not meet the statutory standard of a factual finding. The accompanying citation regarding witness credibility is specific to another point of testimony and does not characterize the noted statement, nor does it cover the testimony of the witness overall.

The goal of the statute giving rise to allocation of parenting time here is to provide for the best interest of the children and their parents by encouraging frequent and continuing contact. Parents are urged to reach the goal by sharing time.

The order on appeal gives improper execution of the governing statute, because it fails to give the children like amount of time with each parent. This violates the equal protection provision of the Fourteenth Amendment. The order on appeal should be reversed with remand for fresh disposition, granting equal time, consistent with law.

Conclusion

Resolution of the question of law above would restore parental balance to the formative years of upbringing that remain to the children and parents in this case and create a precedent preserving like opportunity for children to maintain the integrity of their relationship with each parent in other cases. Please reverse the order on appeal and remand the case to the District Court with instruction to modify parenting time consistent with the equality that serves the best interest of the children and both parents. Thank you!

Pled with kind esteem,

s/ Samuel Collin Robinson — *2022.12.07*

Samuel Collin Robinson — Date

District Court, Mesa County, Colorado

2012DR18

Petitioner, Katherine Lyman Robinson
and
Respondent, Samuel Collin Robinson

Order re: Petition for Judicial Review
Date Filed: July 17, 2022

The Court has considered the Respondent's Petition for Judicial Review (hereafter "Petition"), the file, and the applicable legal authority. No response was filed. Based upon its review, the Court finds as follows:

The Respondent argues that the "Parenting Plan prepared by the Petitioner and adopted by the magistrate includes objectionable terms and conditions that were not supported by evidence during the hearing and are not explained by the Order." The Respondent also argues that the Magistrate did not make any finding that "restriction of parenting time was necessary to avoid danger to the children's physical health or emotional development." Therefore, the Respondent asserts

that the parenting time ordered by the Magistrate should be reversed.

Additionally, the Respondent also points out that the Magistrate reversed the dates of birth and ages of the children.

On January 14, 2022, the the [sic] Honorable Magistrate, William McNulty, issued Findings and Order Modifying Parenting Time (hereafter "Order"). The Order set out the criteria for modifying parenting time and made detailed findings regarding the factors set out in C.R.S. §14-10-129 and 14-10-124.

Both Petitioner and Respondent had requested a modification of parenting time. The Respondent requested that his parenting time be expanded to a 50/50 arrangement. The Petitioner requested that the Respondent's parenting time be reduced.

C.R.S. §14-10-129(1)(a)(I) states, "the court may make or modify an order granting or denying parenting time rights whenever such order or modification would serve the best interests of the child." This provision does not require that a finding of endangerment be applied when parenting time is being modified. The Colorado Court of Appeals determined that when a modification would

"substantially change parenting time and change the parent with whom the child resides a majority of the time" the endangerment provision would apply. *In re Marriage of Schlundt*, 489 P.3d 781, 786, 2021 COA 58, ¶ 30 (Colo.App., 2021). Hence, the issues before the Magistrate required a finding in the best interests of the children, not a finding of endangerment, to modify parenting time.

The Court reviews decisions made by a magistrate pursuant to the Colorado Rules for Magistrates (C.R.M.), Rule 7. Pursuant to the Colorado Rules for Magistrates, Rule 7(a)(1), a party may obtain review of a magistrate's judgment or order by filing a motion requesting review by the district court. *In re Marriage of Schmidt*, 42 P.3d 81 (Colo.App. 2002).

The Colorado Rules for Magistrates instructs a reviewing judge to consider the motion and briefs filed, together with as much of the record as is necessary. C.R.M. 7(a)(8). C.R.M. Rule 7(a)(9) prohibits altering the findings of fact made by the Magistrate unless the findings are "clearly erroneous". The Court can consider only the information before the Magistrate. Any new information cannot be considered in determining whether a Magistrate was "clearly erroneous."

In this case, prior to the modification, the Respondent had parenting time with children every Wednesday from 3:00pm until 7:00pm and on alternating weekends from Friday evening until Sunday evening. The Magistrate modified the Respondent's parenting time to every third weekend and every third Wednesday.

Other than the statements and arguments made by the Respondent in the Petition, no record was provided upon which the Court can determine that the findings made by Magistrate are "clearly erroneous." Under these circumstances, the "reviewing judge shall presume that the record would support the magistrate's order." C.R.M. Rule 7(a)(9).

Given the Court's review of the file and the instant Petition, the Court must presume that the Magistrate's factual findings are supported by the record. Furthermore, the Court notes that the Magistrate specifically found that "Ms. Queally and Petitioner believed that increasing parenting time for the children with Respondent would be emotionally harmful to them." See Order, pg. 4. The Magistrate also found Ms. Queally's testimony to be credible. Id., pg. 2. Accordingly, the Magistrate's findings shall not be altered with respect to parenting time. C.R.M. Rule 7(a)(9).

The Court acknowledges that the Magistrate misstated the children's dates of birth on page 1, and their ages on page 2 of the Order. Therefore, the Court will modify the Order so that the first sentence in the second paragraph on page 1 will read: "The parties are the parents of Gordon Robinson, born August 10, 2009, and Grace Robinson, born April 15, 2007." The Order will also be modified to reflect that Gordon is twelve years old and Grace is fourteen years old on page 2 of the Order. Otherwise, the Court adopts the Magistrate's findings.

For the foregoing reasons, the Respondent's Petition for Judicial Review is substantially denied.

Issue Date: 7/17/2022

s/ *Valerie Robison*
VALERIE JO ROBISON
District Court Judge

District Court, Mesa County, Colorado

2012DR18

In re the Marriage of:
Petitioner, Katherine Lyman Robinson
and
Respondent, Samuel Collin Robinson

PETITION FOR JUDICIAL REVIEW
OF
ORDER ISSUED 2022.01.14

The Respondent filed a Motion to Modify Parenting Time in the subject case on 2021.08.18. A hearing on the motion was convened on 2022.01.04. The resulting decision was issued as a written Order by Magistrate McNulty on 2022.01.14. As provided by Colorado Rule for Magistrates 7(a), the Respondent hereby petitions for review of that Order by a District Court Judge. The Respondent requests that the Court please modify parenting time to give a balanced, alternating schedule.

Preliminary Issues

The subject Order mixed up the dates of birth of the children on page 1 and their ages on page 2. Grace is 14 and Gordon is 12, as opposed to the other way round.

The Parenting Plan prepared by the Petitioner and adopted by the magistrate includes objectionable terms and conditions that were not supported by evidence during the hearing and are not explained by the Order. An example is the limitation (on page 3 of the plan) that the children not exceed 8 consecutive overnights with the Respondent; whereas, there is no limitation on the number of overnights spent with the Petitioner. The condition is discriminatory. The magistrate gave no rationale for adoption of such a limitation. There is no evidence that although 8 overnights in a row with Dad are harmless, a 9th consecutive night would somehow be detrimental. This and other provisions of the plan make it inappropriate. Instead of finding fault line by line, this petition presents a question for review that addresses the fundamental decision, and requests that the Court prepare a fresh Parenting Plan that will be free from artifacts of partisan document preparation.

Question Presented for Review

Where shared parenting has been declared to be in the best interest of all and criteria for exception have not been met, does disproportionate allocation of parenting time violate the constitutional requirement that equal protection of law be given to every person?

In this case, a lopsided parenting time schedule gave the children opportunity to be with their dad, Robinson, only about 25% of the time. Robinson moved to modify the schedule to an equitable portion of the time. Applying Colorado Revised Statute 14-10-124, Magistrate McNulty denied the motion and instead adopted a plan that restricted opportunity for the children to be with their dad to only about 14% of the time.

14-10-124, starts with a declaration by the Colorado General Assembly that, in most circumstances, it is in the best interests of all to encourage frequent continuing contact between each parent and the children. Urging parents "to share...rights and responsibilities of child-rearing...", the assembly uses "share" without any modifier. There is nothing indicative of imbalance. Instead, "frequent and continuing contact" with "each parent" is encouraged. Equality is required for optimal achievement of contact with each parent in the "best interest of all". Between parents, equal before the law, equal shares of time are indicated. Shared parenting is declared to be in the best interest of the

children and their parents, and is the prescribed treatment for most circumstances.

Exceptions are defined by (1.5)(a), specifying that time not be allocated according to best interests where the court finds that it would endanger the children's physical health or significantly impair their emotional development. Ensuring that the exceptions not be invoked lightly, the assembly requires that in any order imposing a parenting time restriction, the court enumerate the specific factual findings supporting the restriction and conditions that the restricted party may fulfill in order to seek modification of the parenting plan.

In this case, the Court made no finding that restriction of parenting time was necessary to avoid danger to the children's physical health or emotional development. The Court did not make any finding of child abuse or neglect. Since the statutory exceptions are not met, the situation of the children here, regarding their eligibility to have parenting time allocated in their best interests, and their best interests being declared by the legislature to be served by shared parenting, is the same as that of most children of divorce.

"The Equal Protection Clause of the Fourteenth Amendment...is essentially a direction that all persons similarly situated should be treated alike." Cleburne v. Cleburne Living Center, Inc. 473 U.S. 432, 439 (1985). Therefore, the Constitution of the United States requires that Grace and Gordon be

afforded parenting time proportions similar to those recommended by the state legislature for children of like circumstance. The order by McNulty fails to satisfy this requirement. Please issue a revised order that provides a balanced parenting time schedule.

Pled with Respect and Gratitude,

s/ Samuel Collin Robinson *2022.01.26*
Samuel Collin Robinson Date