No.

IN THE
SUPREME COURT OF THE UNITED STATES

E.R.,
PETITIONER,
v.

THE PEOPLE OF THE STATE OF COLORADO
IN THE INTEREST OF:
S.M. AND E.M.,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COLORADO COURT OF APPEALS

APPENDICES

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March 13, 2024

Appendix A
Opinion of the Colorado Court of Appeals

COLORADO COURT OF APPEALS

DATE FILED: August 24, 2023
CASE NUMBER: 2020CA1524

Court of Appeals No. 20CA1524
Arapahoe County District Court No. 19JV563
Honorable Kenneth M. Plotz, Judge,
Honorable Natalie T. Chase, Judge

The People of the State of Colorado,

Appellee,

In the Interest of S.M. and E.M., Children,

and Concerning E.R.,

Appellant.

JUDGMENT AND ORDER AFFIRMED

Division III
Opinion by JUDGE FREYRE
Furman and Martinez*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced August 24, 2023

Ronald Carl, County Attorney, Jordan Lewis, Assistant County Attorney, Aurora, Colorado, for Appellee

Jeffrey C. Koy, Jordan Oates, Lauren Dingboom, Guardians Ad Litem

Katayoun A. Donnelly, Office of Respondent Parents' Counsel, Denver, Colorado, for Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

¶ 1 E.R. (father) appeals the judgment terminating the parent-child legal relationship between him and his children and the order denying his motion for relief under C.R.C.P. 60(b)(5). We affirm the termination judgment and the order denying the C.R.C.P. 60(b)(5) motion.

I. Background

¶ 2 In July 2019, the Arapahoe County Department of Human Services filed a petition in dependency and neglect regarding the then-six-year-old twins, S.M. and E.M. (the children). The Department alleged concerns about substance abuse, domestic violence, the condition of the home, and father's recent suicide attempt. The Department also alleged that the family had been involved in a prior dependency and neglect case.

¶ 3 The juvenile court adjudicated the children dependent and neglected. The court also adopted a treatment plan for father.

¶ 4 The Department later moved to terminate father's parental rights. In August 2020, following a hearing, the juvenile court granted the motion.

¶ 5 Father appealed the termination judgment. While the appeal was pending, he also moved to reverse the termination judgment

and remand the case to the juvenile court for a new termination hearing "before a qualified judicial officer" based on the public censure of Judge Natalie T. Chase.

¶ 6 This division issued a limited remand order, directing father to raise his contentions "in a C.R.C.P. 60(b) motion in the juvenile court and obtain a ruling from a judicial officer other than [former] Judge Chase." The division directed "a juvenile court judge, other than [former] Judge Chase" to "conduct further proceedings relevant to the allegations raised in the C.R.C.P. 60(b) motion and enter findings of fact and conclusions of law." *See People in Interest of S.M. & E.M.*, (Colo. No. 20CA1524, May 6, 2021) (published order).

¶ 7 On remand, father moved for relief under C.R.C.P. 60(b)(5). Following a hearing before a different judicial officer, the juvenile court denied the motion.

¶ 8 We recertified the appeal. Father appeals the termination judgment and the order denying his C.R.C.P. 60(b)(5) motion.

II. Termination of Parental Rights

A. Standard of Review and Applicable Law

¶ 9 The juvenile court may terminate parental rights if it finds, by clear and convincing evidence, that (1) the child has been adjudicated dependent and neglected; (2) the parent has not complied with an appropriate, court-approved treatment plan or the plan has not been successful; (3) the parent is unfit; and (4) the parent's conduct or condition is unlikely to change within a reasonable time. § 19-3-604(1)(c), C.R.S. 2023; *People in Interest of E.S.*, 2021 COA 79, ¶ 10.

¶ 10 Whether a juvenile court properly terminated parental rights presents a mixed question of fact and law because it involves application of the termination statute to evidentiary facts. *People in Interest of A.M. v. T.M.*, 2021 CO 14, ¶ 15. "We review the juvenile court's findings of evidentiary fact — the raw, historical data underlying the controversy — for clear error and accept them if they have record support." *People in Interest of S.R.N.J-S.*, 2020 COA 12, ¶ 10. But we review de novo the juvenile court's legal conclusions based on those facts, including whether the Department engaged in

reasonable efforts. *See id.*; *People in Interest of A.S.L.*, 2022 COA 146, ¶ 8.

¶ 11 The credibility of the witnesses, and the sufficiency, probative effect, and weight of the evidence, as well as the inferences and conclusions to be drawn from it, are within the court's discretion. *People in Interest of A.J.L.*, 243 P.3d 244, 249-50 (Colo. 2010).

B. Analysis

¶ 12 Father contends that the juvenile court violated his due process rights. In particular, he argues that he did not have a reasonable time to complete his treatment plan; the Department failed to make reasonable efforts; and that providing him with additional time was a less drastic alternative to termination. We discern no basis for reversal.

1. Due Process

¶ 13 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.*

¶ 14 A parent has a fundamental liberty interest in the care, custody, and control of his or her child. *Troxel v. Granville*, 530

U.S. 57, 66 (2000). To protect the parental liberty interest, due process requires the state to provide fundamentally fair procedures to a 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 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. The opportunity to be heard must be provided at a meaningful time and in a meaningful manner. *Patterson v. Cronin*, 650 P.2d 531, 537 (Colo. 1982).

¶ 15 We conclude that father was afforded his due process rights during the termination proceeding. He received notice of the Department's intent to seek the termination of his parental rights. At the termination hearing, he appeared with counsel. During the hearing, counsel cross-examined the Department's witnesses, presented additional evidence, and made a closing argument in defense of father's parental rights.

2. Reasonable Time to Comply

¶ 16 Once the juvenile court approves an appropriate treatment plan, a parent must be provided with a reasonable time to comply with it. *People in Interest of D.Y.*, 176 P.3d 874, 876 (Colo. App.

2007). What constitutes a reasonable time to comply with a treatment plan is fact-specific and varies from case to case. *Id.* However, a reasonable time is not indefinite. *People in Interest of J.C.R.*, 259 P.3d 1279, 1284 (Colo. App. 2011).

¶ 17 Periods as short as five to nine months have been held to be sufficient to comply with a treatment plan. *People in Interest of A.J.*, 143 P.3d 1143, 1152 (Colo. App. 2006). Moreover, a court may terminate the parent-child relationship before the proposed period of treatment has ended. *People in Interest of R.B.S.*, 717 P.2d 1004, 1006 (Colo. App. 1986).

¶ 18 The family began participating in a voluntary case six months before the Department filed a petition. The caseworker testified that, during those six months, father made no progress on his treatment plan. After the petition was filed, the "treatment plan stayed relatively the same."

¶ 19 In addition to these six months during the voluntary case, father had nearly one year to comply with his treatment plan between the adoption of the plan and the termination hearing. The caseworker testified that although the COVID-19 pandemic had created barriers, it had not prevented father from making progress

on his treatment plan for the first fourteen months of the case before the pandemic.

¶ 20 Because the record shows that father had a reasonable time to comply with his treatment plan, we see no basis for reversal.

3. Reasonable Efforts

¶ 21 In determining whether a parent is unfit, the juvenile court must consider whether the Department made reasonable efforts to reunify the family. § 19-3-604(2)(h), (k)(III); *see also* §§ 19-3-100.5, 19-3-208, C.R.S. 2023 (requiring the state to make reasonable efforts to reunite the family when appropriate).

¶ 22 Among the efforts required under section 19-3-208 are screening, assessments, and individual case plans for the provision of services; home-based family and crisis counseling; information and referral services to available public and private assistance resources; visitation services for parents with children in out-of-home placement; and placement services including foster care and emergency shelter. § 19-3-208(2)(b).

¶ 23 The reasonable efforts standard is deemed met if services are provided in accordance with section 19-3-208. § 19-1-103(114),

C.R.S. 2023; *People in Interest of J.A.S.*, 160 P.3d 257, 262 (Colo. App. 2007).

¶ 24 The parent is responsible for using those services to obtain the assistance that he needs to comply with his treatment plan's requirements. *J.C.R.*, 259 P.3d at 1285.

¶ 25 Here, the juvenile court found that the Department had "gone above and beyond reasonable efforts" by giving "countless resources" and reaching out "many times." The court also found that "ultimately, a treatment plan must be complied with by the parent."

¶ 26 The record shows that the Department devised a treatment plan for father; provided referrals for mental health, substance abuse, and domestic violence offender treatment, sobriety monitoring, and parenting education; facilitated supervised visitation; and coordinated placement services for the children. Therefore, the Department met the reasonable efforts standard.

¶ 27 On appeal, father asserts that the Department should have provided "reunification therapy" and separate visitation times for him and the children's mother. But, the caseworker testified repeatedly that family therapy had to be "post-domestic violence."

She said that couples or family therapy cannot be done "when there is active, untreated domestic violence" and that neither parent had completed domestic violence treatment. Moreover, both the parenting time coach and the caseworker described conflicts between the parents during visits and police contact at home. The caseworker testified that the "parents seemed to have a disconnect between what they perceive as violence and what the Department perceives as violence." She said it would have been unethical to make a referral for family therapy without the recommendation of the children's therapist, which she did not possess.

¶ 28 Regarding visits, the record shows that visits were stopped in November 2019 because of their impact on the children and concerns about the parents' behavior. The parenting time coach and the caseworker testified that the children experienced "somatic issues, such as diarrhea, throwing up, and missing a lot of school" and "burst into hysteric tears where they would hyperventilate for hours" before and after the visits. The caseworker testified that the children "were having so many somatic symptoms, and they would lose all day Thursday, all day Friday in school, and then it would take them until Sunday morning to re-regulate, which means they

[would] lose half their week." During the visits, the parents "would frequently belittle the girls, tell them they [felt] fine, and that [there was] nothing wrong with them." According to the caseworker, the children's somatic symptoms "were not due to a stomach flu . . . [t]hey were due to emotionally being afraid."

¶ 29 Visits were also stopped because of ongoing concerns about the mother's sobriety and conflicts between the parents during visits. The caseworker testified that the parents were unable to stay regulated and feedback "seemed to go in one ear and out the other." The caseworker said father did not understand the impact of the visits or implement parenting education skills during the visits. The caseworker also said while father attended visits, he did not maintain a bond or connection with the children or establish "an environment that made the children feel safe." The caseworker said the children were not ready for visits and had expressed fear of starting visits again. The parenting time coach agreed and said visits were not in the children's best interests.

¶ 30 Given this evidence, we cannot say that the Department failed to make reasonable efforts. Because the record supports the

juvenile court's findings, we will not disturb them or its legal conclusion.

4. Less Drastic Alternatives

¶ 31 The juvenile court must consider and eliminate less drastic alternatives before it terminates the parent-child legal relationship. *People in Interest of D.P.*, 181 P.3d 403, 408 (Colo. App. 2008). In considering less drastic alternatives, the court bases its decision on the best interests of the children, giving primary consideration to their physical, mental, and emotional conditions and needs. § 19-3-604(3).

¶ 32 The juvenile court determined that there were no less drastic alternatives to termination. The court noted that the Department had been involved with the family since January 2019. It found that father had not reasonably complied with his treatment plan or made progress in addressing his issues. The court also found that father had not seen the children in approximately eight months, and had demonstrated no insight, accountability, or sobriety and that he was "trying to check a box" regarding his participation in treatment.

¶ 33 The record supports the juvenile court's findings. The Department was involved with the family for nineteen months, yet father had not resolved the issues that led to the Department's involvement. His communication with the Department was "sporadic," and when he was in contact, he "was unable to stay emotionally regulated and appropriate." He did not complete a parenting education program until fourteen months into the case. He completed a mental health evaluation but didn't engage with the recommended treatment until over a year into the case. His urine tests were "overwhelmingly . . . positives or no-shows." He did not follow through with domestic violence offender treatment. And at the time of the termination hearing, he had not visited the children in almost nine months.

¶ 34 The record also shows that father was unable to understand how to be protective of the children. The caseworker testified that father was unable to put the children's needs above his own. She next said father had not made significant behavioral changes that would create a physically and emotionally safe environment for the children. She also testified that father blamed the children's mother and lacked accountability for his behavior. She further said

the Department continued to have concerns about police contact and violence in the home. The caseworker opined that if the children were returned, they would be at risk; an ongoing relationship with father would be "detrimental" for the children; and father could not mitigate the concerns within a reasonable time.

¶ 35 Given this evidence, we conclude that the juvenile court did not err when it found that there were no less drastic alternatives to termination. Because the record supports the court's findings, we will not disturb them or its legal conclusion.

III. Denial of C.R.C.P. 60(b)(5) Motion

¶ 36 Father contends that the juvenile court erred by denying his C.R.C.P. 60(b)(5) motion. He asserts that the court violated his right to due process by refusing to consider evidence of the former guardian ad litem's (GAL) racial bias. He reasons that former Judge Chase relied heavily on the GAL's recommendations, and therefore, the GAL's alleged bias was relevant to former Judge Chase's alleged bias. We discern no abuse of discretion in the court's ruling.

A. Additional Facts

¶ 37 In his C.R.C.P. 60(b)(5) motion, father alleged that he had evidence of racial bias by the Department and the former GAL that

would "cast serious doubt on the fairness and impartiality of these proceedings." He served a subpoena duces tecum on the former GAL, ordering her to produce any and all communications between her and "any other person or entity" with regard to father's case. The GAL moved to quash the subpoena duces tecum, which the juvenile court granted. The court determined that the GAL was "not the subject matter of the limited remand."

¶ 38 In an amended case management order, the juvenile court, citing *People in Interest of A.P.*, 2022 CO 24, concluded that the hearing on father's C.R.C.P. 60(b) motion would be "limited as to whether the record in this case demonstrates actual bias on the part of the trial judge and any witness presented by the moving party shall be limited to testifying as to whether or not the record in the case shows actual bias by the trial judge." The court also concluded that "the actions of the GAL are not at issue in this hearing and no statements or evidence will be permitted regarding the conduct of the GAL."

¶ 39 At the remand hearing, father's counsel argued that she had evidence of racial bias in the GAL's office. She tendered a written offer of proof that described specific examples indicating possible

racial bias against Hispanic and Native families. Counsel also argued that juvenile courts relied heavily on the recommendations from guardians ad litem in making decisions and that the majority of judicial decisions in dependency and neglect cases were recommended by a guardian ad litem. Counsel urged the court to allow testimony from witnesses. The Department objected, arguing that father had not identified these witnesses and that the parties were "not here to discuss what did or did not happen with the GAL's office." The court did not permit evidence regarding the GAL's alleged racial bias at the hearing.

¶ 40 At the end of the hearing, the juvenile court again relied on *A.P.* to determine whether the record demonstrated actual bias. It found

- there was no connection between the facts giving rise to the censure of former Judge Chase and father's case;
- the record did not reflect actual bias by former Judge Chase toward father;
- father had not met his burden of showing any grounds to vacate the termination judgment by clear and convincing evidence; and

- there were "no extraordinary circumstances" in the record that would require the termination judgment to be set aside.

B. Standard of Review and Applicable Law

¶ 41 We review a juvenile court's ruling on a C.R.C.P. 60(b)(5) motion for an abuse of discretion. *A.P.*, ¶ 20. A court abuses its discretion when it makes a manifestly arbitrary, unreasonable, or unfair decision or when it misunderstands or misapplies the law. *Id.*

¶ 42 To vacate a judgment under C.R.C.P. 60(b), "the movant bears the burden of establishing by clear and convincing evidence that the motion should be granted." *Goodman Assocs., LLC v. WP Mountain Props., LLC*, 222 P.3d 310, 315 (Colo. 2010). C.R.C.P. 60(b)(5) is reserved for "extraordinary circumstances" and "extreme situations." *A.P.*, ¶ 22 (citing cases).

¶ 43 A judge must not preside over a case if they are unable to be impartial. *Id.* at ¶ 25. Whether a judge should recuse depends on the impropriety or potential appearance of impropriety caused by their involvement. *Id.* at ¶ 26. Recusal may result from allegations of actual bias or a mere appearance of impropriety. *Id.*

¶ 44 "Only when a judge was actually biased will we question the reliability of the proceeding's result." *Id.* at ¶ 29.

¶ 45 The party asserting that a trial judge was biased "must establish that the judge had a substantial bent of mind against him or her." *People v. Drake*, 748 P.2d 1237, 1249 (Colo. 1988). The record must clearly demonstrate the alleged bias. *A.P.*, ¶ 30.

¶ 46 Adverse legal rulings by a judge are unlikely to provide grounds for a bias claim. *Id.* at ¶ 32.

C. Analysis

¶ 47 We conclude that the juvenile court did not abuse its discretion by denying father's C.R.C.P. 60(b) motion.

¶ 48 Although Judge Chase stipulated to several instances of misconduct and resigned her position, the censure order alone does not support father's claim of bias. *A.P.*, ¶ 36. "[T]here would need to be some connection between the facts giving rise to the censure and what's at issue in [father's] case," and here, there is no connection. *Id.*

¶ 49 Two experts testified generally about bias in the child welfare system and disparate outcomes for children of color. They reviewed the court file, transcripts, appellate briefs, and expert reports, and

confirmed that they had been asked to determine whether "bias existed within the decisions that were made with regard to this particular case and this family."

¶ 50 The licensed professional counselor criticized the requirements of father's treatment plan, especially the visitation component. She expressed particular concern about the suspension of father's visits and the lack of a plan to reinstate them. She admitted, however, that former Judge Chase's statements indicated that suspending visits was not something she would readily do and that she "wanted to know steps to resume visitation." The counselor noted that father is Hispanic and the children's mother is white, and that former Judge Chase had suspended both parents' visits. And she admitted that former Judge Chase had treated father kindly and with respect.

¶ 51 The psychotherapist consultant was concerned that "professional opinions from the people" who serve the children and father or information about the family's Hispanic heritage were not in the record. The consultant opined that a lack of consideration of the children's Hispanic culture indicated bias from the judge, the GAL, and the Department. The consultant further opined that if a

judge indicates that they are biased against multiple persons of color, father would not be excluded.

¶ 52 This record does not demonstrate actual bias. There was no evidence of comments or actions specific to former Judge Chase with regard to father or the children. Rather, the evidence points to generalized bias within the system or alleged bias by the GAL or Department. Without a showing of actual bias, the juvenile court lacked any legal basis for questioning the result of the termination proceeding. *See id.* at ¶ 39.

¶ 53 To the extent that father argues that he was prevented from discovering and presenting information related to possible bias by the former GAL, we are not persuaded that reversal is required. The issue on limited remand was whether former Judge Chase was biased against father, not the GAL. Thus, the court did not abuse its discretion by denying the motion.

¶ 54 Nevertheless, we find the allegations described in father's offer of proof disturbing. We note that a GAL "plays a central role" in dependency and neglect proceedings. *C.W.B., Jr. v. A.S.*, 2018 CO 8, ¶ 24. Moreover, a GAL is "statutorily obligated to advocate for the best interests of the child and is expressly authorized to

participate at all steps of the legal proceedings." *Id.* Specifically, a GAL can investigate, examine, and cross-examine witnesses at the adjudicatory and dispositional hearings, introduce their own witnesses, and "participate further in the proceedings to the degree necessary to adequately represent the child." § 19-3-203, C.R.S. 2023 (defining a GAL's role). Most importantly, a GAL "shall . . . make recommendations to the court concerning the child's welfare." § 19-3-203(3).

¶ 55 While father did not raise these allegations with particularity in his C.R.C.P. 60(b) motion or move to amend his motion to include them, he may file a new C.R.C.P. 60(b) motion challenging the termination judgment after this case mandates.

¶ 56 Lastly, we decline father's suggestion that we should apply a different test to "determine the impact of post-judgment discovery of racial bias." "[W]e are bound to follow supreme court decisions unless they have been overruled or abrogated." *People v. Kern*, 2020 COA 96, ¶ 42.

IV. Judicial Notice

¶ 57 Father asks us to take judicial notice of two news articles and the supreme court's record in *A.P.* We decline his request.

¶ 58 Colorado Rules of Evidence 201(b) provides: "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." "[N]otice should be taken only when the facts are of such common knowledge that they cannot reasonably be disputed." *Quintana v. City of Westminster*, 56 P.3d 1193, 1199 (Colo. App. 2002).

¶ 59 News articles are not the type of information of which a court can properly take judicial notice. *See Fry v. Lee*, 2013 COA 100, ¶ 56 n.4 (refusing to take judicial notice of reader comments on an article on the Denver Post website). Nor can we take judicial notice of the court file in *A.P.* because it is a different case that was in front of a different court. *People in Interest of O.J.S.*, 844 P.2d 1230, 1233 (Colo. App. 1992) (a court may only take judicial notice of its own file, its findings of fact, and its conclusions of law), *aff'd sub nom. D.A.S. v. People*, 863 P.2d 291 (Colo. 1993).

V. Disposition

¶ 60 The termination judgment and the order denying the C.R.C.P. 60(b)(5) motion are affirmed. Father may file a new C.R.C.P. 60(b) motion raising allegations related to the GAL or any other party to the case when this case mandates.

JUDGE FURMAN and JUSTICE MARTINEZ concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
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PAULINE BROCK
CLERK OF THE COURT

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

Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at **www.cobar.org/appellate-pro-bono** or contact the Court's self-represented litigant coordinator at 720-625-5107 or **appeals.selfhelp@judicial.state.co.us.

Appendix B
Colorado Supreme Court Decision in
In re People in Int. of A.P., 2022 CO 24

526 P.3d 177
Supreme Court of Colorado.

IN RE the PEOPLE of the State of Colorado, Petitioner,
IN the INTEREST OF Child, A.P.,
and
Concerning S.S. and D.P., Respondents.

Supreme Court Case No. 22SA6
|
June 6, 2022

Synopsis

Background: Following mother's and father's acceptances of no-fault adjudications that child was dependent and neglected, county department of human services (DHS) filed motion to terminate parental rights to both. The District Court, Arapahoe County, entered order terminating their parental rights. Parents subsequently filed motion for relief from judgment on ground of judicial bias, following District Court judge's public censure by Supreme Court. The District Court, Kenneth M. Plotz, Senior Judge, granted motion. DHS filed petition for Supreme Court to exercise its original jurisdiction in order to vacate District Court's order granting relief from judgment terminating parental rights.

Holdings: The Supreme Court, Hood, J., held that:

[1] Supreme Court's exercise of its original jurisdiction was appropriate;

[2] parents failed to show actual judicial bias based on judge's actions in dependency and neglect and termination proceedings, coupled with public censure of judge due to inappropriate conduct unrelated from their case, as ground for relief from judgment; and

[3] judgment terminating parental rights was not void based on alleged violation of due process.

Rule made absolute; remanded.

Procedural Posture(s): On Appeal; Motion for Relief from Order or Judgment; Petition to Terminate Parental Rights.

West Headnotes (25)

[1] **Courts** ⇨ Colorado

Supreme Court's exercise of its original jurisdiction is appropriate when an appellate remedy would be inadequate, when a party may otherwise suffer irreparable harm, or when a petition raises issues of significant public importance that Supreme Court has not yet considered. Colo. App. R. 21.

[2] **Courts** ⇨ Colorado

Supreme Court's exercise of its original jurisdiction was appropriate on petition by county department of human services (DHS) to vacate order granting mother's and father's motion for relief from judgment terminating their parental rights, under rule authorizing relief for "any reason justifying relief from operation of judgment," in light of Supreme Court's public censure of judge who presided over dependency and neglect petition and who issued termination judgment, due to inappropriate conduct documented in censure order, given potential harm that child could suffer by setting aside both adjudication and termination orders and restarting dependency and neglect proceeding three years into case. Colo. R. Civ. P. 60(b)(5).

[3] **Judgment** ⇨ Weight and Sufficiency of Evidence

To initially vacate a judgment, the movant bears the burden of establishing by clear and convincing evidence that the motion should be granted. Colo. R. Civ. P. 60(b).

[4] **Appeal and Error** ⇨ Relief from Judgment or Order

A trial court's ruling on a motion for relief from judgment must be reviewed in light of the purposes of the rule governing such a motion and

the importance to be accorded the principle of finality. Colo. R. Civ. P. 60(b).

[5] **Appeal and Error** ⬅ Grant of relief in general

An appellate court reviews for an abuse of discretion an order granting relief from judgment under the provision of the rule authorizing such relief "for any reason justifying relief from the operation of the judgment." Colo. R. Civ. P. 60(b)(5).

[6] **Courts** ⬅ Abuse of discretion in general

A court "abuses its discretion" when it makes a manifestly arbitrary, unreasonable, or unfair decision or when it misunderstands or misapplies the law.

[7] **Judgment** ⬅ Right to relief in general

A motion for relief from judgment under the rule authorizing such relief "for any reason justifying relief from the operation of the judgment" is reserved for extraordinary circumstances and extreme situations. Colo. R. Civ. P. 60(b)(5).

[8] **Judgment** ⬅ Nature and scope of remedy

Judgment ⬅ Right to relief in general

Rule providing for relief from judgment for "any other reason justifying relief" is not substitute for appeal, but rather is meant to provide relief in interest of justice where extraordinary circumstances exist. Colo. R. Civ. P. 60(b)(5).

[9] **Judges** ⬅ Bias and Prejudice

Judges must be free of all taint of bias and partiality.

[10] **Judges** ⬅ Bias and Prejudice

A judge must not preside over a case if she is unable to be impartial.

[11] **Judges** ⬅ Rights and duties of judge as to recusal

Unless a reasonable person could infer that the judge would in all probability be prejudiced against a party, the judge's duty is to sit on the case.

[12] **Judges** ⬅ Objections to Judge, and Proceedings Thereon

Whether a judge should recuse herself from a case depends entirely on the impropriety or potential appearance of impropriety caused by her involvement.

[13] **Judges** ⬅ Standards, canons, or codes of conduct, in general

Judges ⬅ Objections to Judge, and Proceedings Thereon

While recusal of a judge may result from allegations of actual bias or a mere appearance of impropriety, the recusal in each instance serves a distinct purpose to protect public confidence in the judiciary. Colo. Code of Judicial Conduct, Rule 2.11(A).

[14] **Judges** ⬅ Bias and Prejudice

A judge must recuse herself whenever her involvement in a case might create the appearance of impropriety. Colo. Code of Judicial Conduct, Rule 2.11(A).

[15] **Judges** ⬅ Bias and Prejudice

Actual bias of a judge that will require the judge's disqualification exists when, in all probability, the judge will be unable to deal fairly with a party; it focuses on the judge's subjective motivations. Colo. Code of Judicial Conduct, Rule 2.11(A)(1).

[16] **Judges** ⬅ Bias and Prejudice

Laws requiring disqualification of biased judge are intended to secure fair, impartial trial for litigants. Colo. Code of Judicial Conduct, Rule 2.11(A).

[17] **Appeal and Error** ⬅ Bias, recusal, and disqualification

Judgment ⬅ Right to relief in general

Although a judge's involvement in a case might create an appearance of impropriety warranting recusal, that alone does not imply that the judge was biased, and it is only when a judge was actually biased will a reviewing court question the reliability of the proceeding's result on a motion for relief from judgment under the provision of the rule authorizing relief "for any reason justifying relief from operation of the judgment"; in other words, while both an appearance of impropriety and actual bias are grounds for recusal from a case, only when the judge was actually biased will the court question the result. Colo. R. Civ. P. 60(b)(5); Colo. Code of Judicial Conduct, Rule 2.11(A).

[18] **Judges** ⬅ Time of making objection

Judges ⬅ Determination of objections

Motion for judge's disqualification on judge's own or any party's motion in action in which judge is interested or prejudiced must be timely filed so that judge has opportunity to ensure that trial proceeds without any appearance of impropriety; however, such motion should not be granted unless the judge was actually biased. Colo. R. Civ. P. 97.

[19] **Judgment** ⬅ Right to relief in general

Party asserting that trial judge was biased, as ground for obtaining relief from judgment under provision of rule authorizing relief "for any reason justifying relief from operation of judgment," must establish that judge had substantial bent of mind against him or her; record must clearly demonstrate alleged bias, and bare assertions and speculative statements are insufficient to satisfy burden of proof. Colo. R. Civ. P. 60(b)(5).

[20] **Judgment** ⬅ Right to relief in general

For claim of judicial bias to be viable, as ground for obtaining relief from judgment under provision of rule authorizing relief "for any reason justifying relief from operation of judgment," judge must show deep-seated favoritism or antagonism that would make fair judgment impossible. Colo. R. Civ. P. 60(b)(5).

[21] **Judges** ⬅ Statements and expressions of opinion by judge

Judgment ⬅ Right to relief in general

Judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge that would justify relief from judgment under provision of rule authorizing relief "for any reason justifying relief from operation of the judgment." Colo. R. Civ. P. 60(b)(5).

[22] **Judges** ⬅ Statements and expressions of opinion by judge

Judgment ⬅ Right to relief in general

A judge's expressions of impatience, dissatisfaction, annoyance, and even anger that are within the bounds of what imperfect people, even after having been confirmed as judges, sometimes display do not establish judicial bias or partiality that would justify relief from judgment under provision of rule authorizing relief "for any reason justifying relief from operation of judgment." Colo. R. Civ. P. 60(b)(5).

[23] **Judges** ⬅ Bias and Prejudice

Adverse legal rulings by a judge are unlikely to provide grounds for a claim of judicial bias, as they are proper grounds for appeal, not for recusal.

[24] **Infants** ⬅ Grounds, factors, and considerations in general

Trial court's actions in double-setting petition to terminate mother's and father's parental rights on top of another case that was unlikely to settle, discouraging parents from taking their case to adjudicatory hearing, expressing frustration with mother regarding conflict with her counsel, and allowing opposing counsel to become aware of that conflict, combined with post-termination public censure of judge by Supreme Court due to inappropriate conduct unrelated to termination case, was insufficient to show actual bias that warranted relief from judgments adjudicating child dependent and neglected and terminating parental rights, under provision of rule authorizing relief "for any reason justifying relief from operation of judgment"; none of facts that gave rise to finding of impropriety in judicial disciplinary proceeding shared any nexus with facts of parents' case, and judge actually demonstrated compassion and encouragement for parents to succeed with reunification plans. Colo. R. Civ. P. 60(b)(5).

[25] **Constitutional Law** ⬅ Removal or termination of parental rights

Infants ⬅ Requisites and validity in general

Judgment terminating mother's and father's parental rights was not void based on alleged violation of due process, due to judge's alleged lack of impartiality, as ground for relief from void judgment; proceedings were not rendered fundamentally unfair based on trial court's actions in double-setting petition to terminate mother's and father's parental rights on top of another case that was unlikely to settle, discouraging parents from taking their case to adjudicatory hearing, expressing frustration with mother regarding conflict with her counsel, and allowing opposing counsel to become aware of that conflict, combined with post-termination public censure of judge by Supreme Court due to inappropriate conduct unrelated to termination case. U.S. Const. Amend. 14; Colo. R. Civ. P. 60(b)(3).

***180** *Original Proceeding Pursuant to C.A.R. 21*, Arapahoe County District Court Case No. 19JV878, Honorable Kenneth M. Plotz, Senior Judge

Attorneys and Law Firms

Attorneys for Petitioner: Ronald A. Carl, Arapahoe County Attorney, Kristi Erickson, Assistant County Attorney, Aurora, Colorado, Writer Mott, Deputy County Attorney, Rebecca M. Taylor, Assistant County Attorney, Littleton, Colorado

Attorneys for Child A.P.: Bettenberg, Maguire & Associates, LLC, Alison A. Bettenberg, guardian ad litem, Centennial, Colorado

Attorney for Respondent S.S.: Alan M. Lijewski, Broomfield, Colorado

Attorney for Respondent D.P.: Just Law Group, LLC, John F. Poor, Denver, Colorado

En Banc

JUSTICE HOOD delivered the Opinion of the Court, in which CHIEF JUSTICE BOATRIGHT, JUSTICE MARQUEZ, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR, and JUSTICE BERKENKOTTER joined.

Opinion

JUSTICE HOOD delivered the Opinion of the Court.

¶1 In this original proceeding, we review the district court's order setting aside the adjudication and termination orders entered against A.P.'s parents, S.S. and D.P. (collectively referred to as "Parents"), under C.R.C.P. 60(b)(5). Because Parents failed to show that former Judge Natalie Chase [1] was actually biased in their case, and because Rule 60(b)(5) is reserved only for extraordinary circumstances not present here, we make the rule absolute.

I. Facts and Procedural History

¶2 The Arapahoe County Department of Human Services ("ACDHS") filed a petition in dependency and neglect ("D&N") on November 14, 2019, claiming that Parents were

using and selling heroin out of their home while caring for their three-year-old daughter, A.P. Judge Chase presided over most of this underlying D&N proceeding. Without objection from Parents, Judge Chase quickly placed A.P. in the temporary custody of her paternal grandparents, with whom she has remained.

¶3 Parents initially requested a jury trial. Judge Chase obliged and set a case management conference, a pretrial readiness conference, and a trial date. She also informed counsel that if Parents failed to appear at either conference, the jury trial would automatically convert into a bench trial. Parents failed to appear at both conferences. At the pretrial readiness conference, a different judge presided and determined that Parents had waived their right to a jury trial based on their failure to appear. At a second pretrial readiness conference, Judge Chase scheduled the bench trial on top of a different case that was unlikely to resolve.

¶4 At the bench trial, S.S. immediately accepted a no-fault adjudication upon her voluntary admission that A.P. was not domiciled with her, as A.P. was in the temporary custody of her grandparents, and that she could not provide A.P. with proper care. S.S. also agreed to a treatment plan addressing her substance abuse. Judge Chase encouraged S.S. "to work with this team so we can help you in this treatment plan."

¶5 About two months later, D.P. also accepted a no-fault adjudication upon his voluntary admission that he was unable to provide A.P. with a safe and stable environment. And ***181** he agreed to a treatment plan. In explaining to D.P. the potential consequences of his admission, Judge Chase warned him that he could lose his parental rights but also said that she didn't want to see that happen.

¶6 During subsequent monthly review hearings, ACDHS and the guardian ad litem ("GAL") voiced concerns that Parents were failing to comply with their treatment plans; were continuing to abuse drugs; were participating inconsistently in virtual visits with A.P.; and, at times, appeared to be under the influence during those visits. Additionally, A.P.'s grandparents reported that A.P. was struggling with the virtual parental visits, during which she would sometimes protest, run, and hide.

¶7 At the August 2020 review hearing, in response to the description of the parental visits, Judge Chase said "if we're chasing [A.P.], [and] we're forcing [visits] when she's running and hiding[,] [t]hen she's always going to think that this is a bad experience and that this is awful. And I don't want her to think that about her parents." At the same hearing, ACDHS informed Parents' counsel that unless circumstances markedly changed, it would likely seek termination of parental rights.

¶8 On September 22, 2020, citing the above concerns, ACDHS moved to terminate both S.S.'s and D.P.'s parental rights.

¶9 At the pretrial readiness conference for the termination hearing, S.S. and her counsel indicated to Judge Chase that they wanted to end their attorney-client relationship. Rather than grant their request, Judge Chase urged them to work together because she believed that S.S. wouldn't be entitled to another attorney.

¶10 On the morning of the termination hearing, S.S.'s counsel moved to withdraw. Judge Chase immediately referred the withdrawal issue to another judge. At an impromptu hearing minutes later, which included ACDHS and the GAL, the other judge allowed S.S.'s counsel to withdraw and sent the case back to Judge Chase to determine whether S.S. qualified for court-appointed counsel. Based on S.S.'s paystubs, Judge Chase found S.S. eligible.

¶11 Before the termination hearing concluded, ACDHS claimed that S.S.'s request for new counsel may have been a delay tactic based on information it received regarding text messages between Parents. Judge Chase agreed with ACDHS's characterization and warned Parents that she wouldn't continue the next date or entertain further attorney-client issues. Judge Chase then appointed new counsel for S.S. and advised the court-appointed counsel about S.S.'s alleged delay tactic and failure to communicate with prior counsel. She also rescheduled the termination hearing to allow the court-appointed counsel time to prepare.

¶12 Following the rescheduled termination hearing, Judge Chase terminated S.S.'s and D.P.'s parental rights by written order on January 25, 2021. Parents appealed. While their appeal was pending, this court publicly censured Judge Chase and accepted her resignation. *See Matter of Chase*, 2021 CO 23, ¶ 7, 485 P.3d 65, 67.

¶13 As relevant here, we noted in the censure order that Judge Chase acknowledged:

- her "use of the N-word" in the presence of court staff didn't "promote public confidence in the judiciary and

create[d] the appearance of impropriety" in violation of Canon Rule 1.2;

- she "undermined confidence in the impartiality of the judiciary by expressing [her] views about criminal justice, police brutality, race and racial bias, specifically while wearing [her] robe in court staff work areas and from the bench" in violation of Canon Rule 2.3, "which prohibits a judge from manifesting bias or prejudice based on race or ethnicity by word or action"; and
- she "failed to act in a dignified and courteous manner" by "disparag[ing] one or more judicial colleagues."

Matter of Chase, ¶ 3, 485 P.3d at 66.

¶14 In light of Judge Chase's censure, Parents sought a limited remand from the court of appeals for further factfinding regarding potential bias in their case. The division granted the request, *People in Int. of A.P.*, (Colo. App. No. 21CA222, May 21, 2021) ***182** (unpublished order), and on remand, Parents filed a Rule 60(b) motion, asserting that Judge Chase exhibited bias in their case, or, at a minimum, her involvement created an appearance of impropriety. They asked the district court to vacate the termination and adjudication orders.

¶15 The district court granted Parents' Rule 60(b) motion. While the court found that Judge Chase's actions during the proceedings were insufficient to justify vacating the prior orders, it concluded that some of those actions, combined with her behavior documented in the censure order, were sufficient to warrant relief under Rule 60(b)(5). And even though Parents and A.P. are white, the court reasoned that "any bias or prejudice to one person is bias and prejudice to all" and that "there was an appearance of an impropriety because Judge Chase was biased." The court, therefore, vacated both the adjudication and termination orders.

¶16 ACDHS now petitions this court under C.A.R. 21 to vacate the district court's order and to hold that Parents are not entitled to relief under Rule 60(b).

II. Analysis

A. Original Jurisdiction and Standard of Review

[1] ¶17 Relief under Rule 21 is extraordinary in nature and wholly within the discretion of this court. C.A.R. 21(a)(1). It is appropriate "when an appellate remedy would be inadequate, when a party may otherwise suffer irreparable harm, or when a petition raises 'issues of significant public importance that we have not yet considered.' " *People v. Rowell*, 2019 CO 104, ¶ 9, 453 P.3d 1156, 1159 (citations omitted) (quoting *Wesp v. Everson*, 33 P.3d 191, 194 (Colo. 2001)).

[2] ¶18 We exercise our original jurisdiction here because of the potential harm to A.P. posed by the district court's decision to set aside both the adjudication and termination orders. Restarting the D&N process three years into this case would almost certainly traumatize A.P., who is now six years old.

[3] [4] ¶19 To initially vacate a judgment under Rule 60(b), "the movant bears the burden of establishing by clear and convincing evidence that the motion should be granted." *Goodman Assocs. v. WP Mountain Props.*, 222 P.3d 310, 315 (Colo. 2010). Furthermore, "a trial court's ruling [under Rule 60(b)(5)] must be reviewed in light of the purposes of the rule and the importance to be accorded the principle of finality." *Davidson v. McClellan*, 16 P.3d 233, 239 (Colo. 2001).

[5] [6] ¶20 We review an order granting relief under Rule 60(b)(5) for an abuse of discretion. *See Davidson*, 16 P.3d at 238. A court abuses its discretion when it makes a manifestly arbitrary, unreasonable, or unfair decision or when it misunderstands or misapplies the law. *Rains v. Barber*, 2018 CO 61, ¶ 8, 420 P.3d 969, 972. We now turn to the nature of the relief granted by the district court.

B. Rule 60(b)(5): Reserved for Extraordinary Circumstances

¶21 Rule 60(b) "attempts to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice should be done." *Canton Oil Corp. v. Dist. Ct.*, 731 P.2d 687, 694 (Colo. 1987) (quoting 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2851 (1973)). It specifies several situations under which post-judgment relief may be warranted and provides a residuary provision, (b)(5), which allows courts to set aside a judgment for "any other reason justifying relief from the

operation of the judgment." *Id.* (quoting C.R.C.P. 60(b)(5)).

[7] ¶22 In the interest of preserving the proper balance, we've narrowly construed that residuary provision to avoid undercutting the finality of judgments. *Id.* In doing so, we've maintained that Rule 60(b)(5) is reserved for "extraordinary circumstances," *Canton Oil Corp.*, 731 P.2d at 694 (quoting *Cavanaugh v. State Dep't. of Soc. Servs.*, 644 P.2d 1, 5 (Colo. 1982)), and "extreme situations," *id.* (quoting *Atlas Constr. Co. v. Dist. Ct.*, 197 Colo. 66, 589 P.2d 953, 956 (1979)). *See also Cox v. Horn*, 757 F.3d 113, 122 (3d Cir. 2014) (discussing the movant's burden of ***183** establishing the existence of extraordinary circumstances warranting relief under Fed. R. Civ. P. 60(b)(6), the federal analogue to C.R.C.P. 60(b)(5)); 11 Wright & Miller, *supra*, at § 2864 (3d ed. 2022) (observing that under Fed. R. Civ. P. 60(b)(6) "relief often has been denied on the ground that an insufficient showing of extraordinary circumstances has been made").

[8] ¶23 Even when we've encountered unusual facts indicative of an extraordinary circumstance warranting relief under Rule 60(b)(5), we've cautioned that "trial courts [must] continue to give scrupulous consideration to our strong policies favoring the finality of judgments." *State Farm Mut. Auto. Ins. Co. v. McMillan*, 925 P.2d 785, 791 (Colo. 1996). As we've emphasized time and again, Rule 60(b)(5) "is not a substitute for appeal, but rather is meant to provide relief in the interest of justice where extraordinary circumstances exist." *State Farm*, 925 P.2d at 791.

¶24 Having identified Parents' burden to establish clear and convincing evidence of their entitlement to extraordinary relief, we now pivot to the source of law on which they rely in seeking a fresh set of proceedings.

C. Judicial Impartiality

[9] [10] [11] ¶25 A basic principle of our system of justice is that judges "must be free of all taint of bias and partiality." *People v. Julien*, 47 P.3d 1194, 1197 (Colo. 2002). A judge must not preside over a case if she is unable to be impartial. *Id.* But, "[u]nless a reasonable person could infer that the judge would in all probability be prejudiced against [a party], the judge's duty is to sit on the case." *Smith v. Dist. Ct.*, 629 P.2d 1055, 1056 (Colo. 1981).

[12] [13] ¶26 Whether a judge should recuse herself from a case depends entirely on the impropriety or potential appearance of impropriety caused by her involvement. *People in Int. of A.G.*, 262 P.3d 646, 650 (Colo. 2011). While recusal may result from allegations of actual bias or a mere appearance of impropriety, the recusal in each instance serves a distinct purpose. *Id.*

[14] ¶27 Rule 2.11(A) of Colorado's Code of Judicial Conduct requires a judge to recuse herself "in any proceeding in which the judge's impartiality might reasonably be questioned," *A.G.*, 262 P.3d at 650 (quoting C.J.C. 2.11(A)); that is, whenever her involvement in a case might create the appearance of impropriety, *id.* The main purpose of this broad standard is to protect public confidence in the judiciary. *Id.*

[15] [16] ¶28 Actual bias, on the other hand, exists when, in all probability, a judge will be unable to deal fairly with a party; it focuses on the judge's subjective motivations. *Id.* at 650–51. The Code of Judicial Conduct requires judicial disqualification when a judge "has a personal bias or prejudice concerning a party or a party's lawyer." C.J.C. 2.11(A)(1). Laws requiring disqualification of a biased judge are intended to secure a fair, impartial trial for litigants. *A.G.*, 262 P.3d at 651.

[17] [18] ¶29 Although a judge's involvement in a case might create an appearance of impropriety warranting recusal, that alone doesn't imply that the judge was biased. *See id.* at 652. Only when a judge was actually biased will we question the reliability of the proceeding's result. *See id.* In other words, while both an appearance of impropriety and actual bias are grounds for *recusal* from a case, only when the judge was actually biased will we question the *result*.[2]

[19] ¶30 The party asserting that a trial judge was biased "must establish that the judge had a substantial bent of mind against ***184** him or her." *People v. Drake*, 748 P.2d 1237,

1249 (Colo. 1988). The record must clearly demonstrate the alleged bias. *Id.* Bare assertions and speculative statements are insufficient to satisfy the burden of proof. *Id.*

[20] [21] [22] ¶31 While not binding, we also find instructive the Supreme Court's handling of similar issues under federal law. For a bias claim to be viable, the Supreme Court has suggested that a judge must show "deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994). "[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Id.* "[E]xpressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect [people], even after having been confirmed as ... judges, sometimes display" don't establish bias or partiality. *Id.* at 555–56, 114 S.Ct. 1147.

[23] ¶32 Additionally, adverse legal rulings by a judge are unlikely to provide grounds for a bias claim, as they are proper grounds for appeal, not for recusal. *Id.* at 555, 114 S.Ct. 1147; *see also Schupper v. People*, 157 P.3d 516, 521 n.5 (Colo. 2007) ("[R]ulings of a judge, although erroneous, numerous and continuous, are not sufficient in themselves to show bias or prejudice." (alteration in original) (quoting *Saucerman v. Saucerman*, 170 Colo. 318, 461 P.2d 18, 22 (1969))).

¶33 Against this legal backdrop, we now return to the facts present here.

D. Application

[24] ¶34 Parents relied in part on Judge Chase's censure as the basis for their motion. They also pointed to examples of alleged misconduct and missteps during the proceedings to suggest that Judge Chase was biased or, at a minimum, that her involvement in the case created an appearance of impropriety.

¶35 In granting Parents' motion under Rule 60(b)(5), the district court explicitly stated that Judge Chase's actions here—including double-setting this case on top of another case that was unlikely to settle, discouraging Parents from taking their case to an adjudicatory hearing, expressing frustration with S.S. regarding the conflict with her counsel, and allowing opposing counsel to become aware of that conflict—were insufficient to justify vacating the termination and adjudication orders. Instead, the court concluded that those actions *combined with* her behavior documented in the censure order were sufficient to warrant relief under Rule 60(b)(5).

¶36 The district court's extensive reliance on the censure order was misplaced. Although Judge Chase stipulated to several instances of misconduct and resigned her position, the censure order doesn't support Parents' claim of bias or an appearance of impropriety in their case. For that to be true, there would need to be some connection between the facts giving rise to the censure and what's at issue in Parents' case. We disagree with the district court's broad observation that "any bias or prejudice to one person is bias and prejudice to all." To be sure, bias inflicted on one person can pollute space shared by others. But that's not the issue here. Bias also often involves flawed preconceptions about groups of people. So, perhaps the court simply meant to suggest that someone who is willing to rely on such preconceptions in evaluating one group might be willing to jump to unreasonable conclusions about members of another group. If that's what the court was trying to convey, that observation still misses the mark here. After all, it is members of the *same* group, the group against whom the judicial officer has exhibited bias (or significant insensitivity), who are most at risk of being subjected to the *same* flawed thinking. And while, as Parents point out, Judge Chase's misconduct extended beyond racial insensitivity and included the disparagement of one or more colleagues as well as other episodes where she abused her judicial office, none of those situations shares a nexus with these facts. *See Matter of Chase*, ¶ 2, 485 P.3d at 65–66. Even if any meaningful nexus could be conjured, it would fall well short of satisfying the heavy burden Parents shoulder here.

***185** ¶37 Rather than showing a "substantial bent of mind," *Drake*, 748 P.2d at 1249, indicative of bias against Parents, several of Judge Chase's comments demonstrated compassion for them. She encouraged S.S. "to work with this team so we can help you in this treatment plan." She told D.P. she didn't want to see him lose his parental rights. And in reviewing the parental visits, Judge Chase said she didn't want A.P. "to think that this is a bad experience and that this is awful ... [and didn't] want her to think that about her parents."

¶38 Furthermore, we agree that Judge Chase's actions in this case, standing alone, don't warrant Rule 60(b)(5) relief. For example, Judge Chase's expressions of frustration with S.S. and her counsel fall within the Supreme Court's description of judicial remarks that fail to support a bias challenge. *See Liteky*, 510 U.S. at 555–56, 114 S.Ct. 1147. And although Judge Chase may have made several mistakes during the proceedings (e.g., stating that Parents' requested jury trial would automatically convert into a bench trial if they failed to appear at pretrial conferences, claiming that S.S. wouldn't be entitled to court-appointed counsel, and allowing opposing counsel to become aware of S.S.'s conflict with her counsel), such alleged legal missteps alone don't provide grounds for a bias claim. Instead, they might have constituted grounds for appeal. *See id.* at 555, 114 S.Ct. 1147; *see also Schupper*, 157 P.3d at 521 n.5.

[25] ¶39 In sum, this record doesn't demonstrate actual bias. *See Drake*, 748 P.2d at 1249. And without a showing of actual bias, the trial court lacked any legal basis for questioning the proceeding's result. *See A.G.*, 262 P.3d at 652. Because the district court misconstrued the law concerning impropriety and bias in this case, and it misapplied the Rule 60(b)(5) standard in granting Parents' relief, we conclude that the court abused its discretion.[3]

III. Conclusion

¶40 The district court abused its discretion in setting aside the adjudication and termination orders. Thus, we make the rule absolute and remand for further proceedings consistent with this opinion.

All Citations

526 P.3d 177, 2022 CO 24

Footnotes

1 As explained later in this opinion, this court publicly censured Judge Chase and accepted her resignation on April 16, 2021. *Matter of Chase*, 2021 CO 23, ¶ 1, 485 P.3d 65, 65. So, although throughout this opinion we refer to her as "Judge Chase" because of her involvement in this case, she is no longer a judicial officer.

2 Relatedly, but not directly at issue here, C.R.C.P. 97 allows for a judge's disqualification on her own or any party's motion "in an action in which [the judge] is interested or prejudiced." Crucially, such a motion "must be timely filed so that a judge has the opportunity to ensure that a trial proceeds without any appearance of impropriety." *A.G.*, 262 P.3d at 653. After a ruling has issued, the judge has missed the opportunity to disqualify herself, and the motion is essentially a challenge to the judgment. *Id.* At that time, a C.R.C.P. 97 motion shouldn't be granted unless the judge was actually biased. *A.G.*, 262 P.3d at 653. Here, Parents never made a motion under Rule 97. Only after Judge Chase's censure did they raise the issue of bias or potential appearance of impropriety under Rule 60(b).

3 Parents' Rule 60(b) motion included an argument under (b)(3), which provides that a trial court may relieve a party from a final judgment that is void. They suggested that Judge Chase's involvement in their case violated their due process rights because she wasn't impartial, and they maintained that a judgment entered in violation of due process is void. The district court didn't address this argument and instead ruled under Rule 60(b)(5), which is a residuary provision of last resort, *see Davidson*, 16 P.3d at 237 ("To prevent [Rule 60(b)(5)] from swallowing the enumerated reasons and subverting the principle of finality, it has been construed to apply only to situations not covered by the enumerated provisions and only in extreme

situations or extraordinary circumstances."). Based on our analysis under Rule 60(b)(5), we perceive no violation rendering the proceedings fundamentally unfair. Thus, Parents aren't entitled to relief under Rule 60(b)(3) or (5).

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Appendix C
Colorado Supreme Court Decision Denying Writ of Certiorari

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 14, 2023 CASE NUMBER: 2023SC696
Certiorari to the Court of Appeals, 2020CA1524 District Court, Arapahoe County, 2019JV563	
Petitioner: E. R., **v.** **Respondent:** The People of the State of Colorado, **In the Interest of Minor Children:** S. M. and E. M.	Supreme Court Case No: 2023SC696
ORDER OF COURT	

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, NOVEMBER 14, 2023.