

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

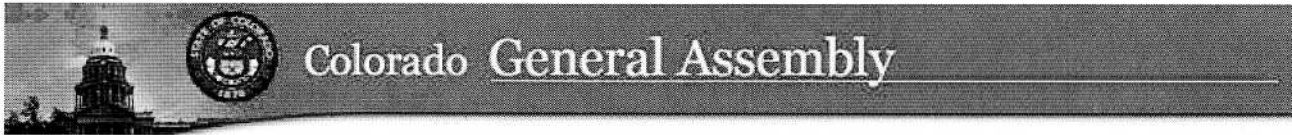
Civil Action No. 13-cv-01469-CMA-KLM

DAVID E. WILKENSON,
Plaintiff,

v.

STATE OF COLORADO, et al.,
MESA COUNTY, COLORADO, et al.,
Defendants.

**APPENDIX A
TO
REPLY IN SUPPORT OF
"MESA COUNTY"'S MOTIONS TO DISMISS PURSUANT TO
FED.R.CIV.P. 12(b)(2), 12(b)(5) AND 12(b)(6)**



Session Laws of Colorado 1997
First Regular Session, 61st General Assembly

CHAPTER 138

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 97-071 [Digest]

BY SENATORS Hopper, Arnold, Hernandez, Pascoe, Perlmutter, Rupert, and Wham;
 also REPRESENTATIVES George and Mace.

AN ACT

CONCERNING PROCEDURES TO EXPEDITE DEPENDENCY AND NEGLECT CASES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 14-10-123, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

14-10-123. Commencement of custody proceedings - jurisdiction. (1) A child custody proceeding is commenced in the district court or as otherwise provided by law:

(a) By a parent:

(I) By filing a petition for dissolution or legal separation; or

(II) By filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found; or

(b) By a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found, but only if the child is not in the physical custody of one of his parents; ~~or~~

(c) By a person other than a parent who has had physical custody of a child for a period of six months or more, if such action is commenced within six months of the termination of such physical custody; OR

(d) BY A PARENT OR PERSON OTHER THAN A PARENT WHO HAS BEEN GRANTED CUSTODY OF A CHILD THROUGH A JUVENILE COURT ORDER ENTERED PURSUANT TO SECTION 19-1-104 (6), C.R.S., BY FILING A CERTIFIED COPY OF THE JUVENILE COURT ORDER IN THE COUNTY WHERE THE CHILD IS PERMANENTLY RESIDENT. SUCH ORDER SHALL BE TREATED IN THE DISTRICT COURT AS ANY OTHER CUSTODY DECREE ISSUED IN A CHILD CUSTODY PROCEEDING.

(2) EXCEPT FOR A PROCEEDING COMMENCED PURSUANT TO PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION, notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a

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Appendix A - Mesa County Reply MTD

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showing of good cause, permit the intervention of other interested parties.

SECTION 2. 19-3-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-3-102. Neglected or dependent child. (1) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has abandoned the child or has subjected him OR HER to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(c) The child's environment is injurious to his OR HER welfare;

(d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his OR HER health, guidance, or well-being;

(e) The child is homeless, without proper care, or not domiciled with his OR HER parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;

(f) The child has run away from home or is otherwise beyond the control of his OR HER parent, guardian, or legal custodian.

SECTION 3. 19-1-104, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-1-104. Jurisdiction. (6) WHEN THE JUVENILE COURT MAINTAINS JURISDICTION IN A CASE INVOLVING A CHILD WHO IS DEPENDENT OR NEGLECTED AND NO CHILD CUSTODY ACTION CONCERNING THE SAME CHILD IS PENDING IN A DISTRICT COURT IN THIS STATE, UPON THE PETITION OF A PARTY TO THE DEPENDENCY OR NEGLECT CASE, THE JUVENILE COURT MAY ENTER AN ORDER AWARDING SOLE OR JOINT CUSTODY AND ADDRESSING PARENTING TIME AND CHILD SUPPORT MATTERS. THE PARENT OR PERSON OTHER THAN A PARENT WHO HAS BEEN GRANTED CUSTODY OF A CHILD PURSUANT TO THE JUVENILE COURT'S ORDER SHALL FILE A CERTIFIED COPY OF THE ORDER IN THE DISTRICT COURT IN THE COUNTY WHERE THE CHILD IS PERMANENTLY RESIDENT. SUCH ORDER SHALL BE TREATED IN THE DISTRICT COURT AS ANY OTHER CUSTODY DECREE ISSUED IN A CHILD CUSTODY PROCEEDING.

SECTION 4. 19-1-108 (3) and (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

19-1-108. Magistrates - qualifications - duties. (3)(a) Magistrates shall conduct hearings in the manner provided for the hearing of cases by the court. During the initial advisement of the rights of any party, the magistrate shall inform the party that, EXCEPT AS PROVIDED IN THIS SUBSECTION (3), he OR SHE has the right to a hearing before the judge in the first instance and that he OR SHE may waive that right but that, by waiving that right, he OR SHE is bound by the findings and recommendations of the magistrate, subject to a request for review as provided in subsection (5) of this section. THE RIGHT TO REQUIRE A HEARING BEFORE A JUDGE SHALL NOT APPLY TO HEARINGS AT WHICH A CHILD IS ADVISED OF HIS OR HER RIGHTS PURSUANT TO SECTION 19-2-706, DETENTION HEARINGS HELD PURSUANT TO SECTIONS 19-2-507 AND 19-2-508, PRELIMINARY HEARINGS HELD PURSUANT TO SECTION 19-2-705, AND DETENTION HEARINGS HELD PURSUANT TO SECTION 19-3-403.

(b) IN PROCEEDINGS UNDER ARTICLE 2 OF THIS TITLE, unless a request is made by a party at the outset of a hearing that the hearing be held before the judge, such right where applicable shall be deemed waived. ~~The right to require a hearing before a judge shall not apply to hearings at which a child is advised of his rights pursuant to section 19-2-402, detention hearings held pursuant to sections 19-2-203 and 19-2-204, preliminary hearings held pursuant to section 19-2-404, and detention hearings held pursuant to section 19-3-403.~~

(c) IN PROCEEDINGS UNDER ARTICLE 3 OF THIS TITLE, THE RIGHT TO REQUIRE A HEARING BEFORE A JUDGE SHALL BE DEEMED WAIVED UNLESS:

(I) A REQUEST IS MADE BY A PARTY THAT THE HEARING BE HELD BEFORE THE JUDGE AT THE TIME THE MATTER IS SET FOR HEARING, IF COUNSEL FOR THE PARTY IS PRESENT AT THE TIME THE MATTER IS SET; OR

(II) A REQUEST IS MADE IN WRITING WITHIN FIVE DAYS AFTER RECEIPT OF NOTICE OF THE SETTING IF THE MATTER IS SET FOR HEARING OUTSIDE OF THE PRESENCE OF COUNSEL FOR A REPRESENTED PARTY OR IF THE MATTER IS SET ON NOTICE.

(5) A request for review shall be filed within fifteen days FOR PROCEEDINGS UNDER ARTICLE 2 OF THIS TITLE OR WITHIN FIVE DAYS FOR PROCEEDINGS UNDER ARTICLE 3 OF THIS TITLE after the parties have received notice of the magistrate's ruling and shall clearly set forth the grounds relied upon. Such review shall be solely upon the record of the hearing before the magistrate and shall be reviewable upon the grounds set forth in rule 59 of the Colorado rules of civil procedure. A petition for review shall be a prerequisite before an appeal may be filed with the Colorado court of appeals or Colorado supreme court. The judge may, on his OR HER own motion, remand a case to another magistrate after action is taken on a petition for review.

SECTION 5. 19-3-207, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-3-207. Inadmissibility of certain evidence. (1) Upon the request of the county attorney, special county attorney, or the city attorney of a city and county, the court shall set a hearing to determine the admissibility in a subsequent criminal proceeding arising from the same episode of information derived directly from testimony obtained pursuant to compulsory process in a proceeding under this article. The district attorney of the judicial district in which the matter is being heard shall be given five days' written notice of the hearing by the clerk of the court. Such hearing shall be held in camera, and the district attorney shall have the right to appear at the hearing and to object to the entry of the order holding such information inadmissible. The court shall not enter such an order if the district attorney presents prima facie evidence that the inadmissibility of such information would substantially impair his OR HER ability to prosecute the criminal case. The provisions of this subsection (1) shall not be construed to prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

(2) No professional shall be examined in any criminal case without the consent of the respondent as to statements made pursuant to compliance with court treatment orders, including protective orders, entered under this article; except that such privilege shall not apply to any discussion of any future misconduct or of any other past misconduct unrelated to the allegations involved in the treatment plan. THE ADMISSIBILITY OF TESTIMONY AS SET FORTH IN THIS SUBSECTION (2) SHALL NOT BE SUBJECT TO THE HEARING AND NOTICE PROVISIONS OF SUBSECTION (1) OF THIS SECTION.

(3) NO ADMISSION MADE BY A RESPONDENT IN OPEN COURT OR BY WRITTEN PLEADING FILED WITH THE COURT TO A PETITION IN DEPENDENCY OR NEGLECT MAY BE USED AGAINST HIM OR HER IN ANY CRIMINAL PROSECUTION, EXCEPT FOR PURPOSES OF IMPEACHMENT OR REBUTTAL.

SECTION 6. 19-3-403 (3.5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-3-403. Temporary custody - hearing - time limits - restriction. (3.5) When temporary custody is placed with the county department of social services pursuant to this section OR SECTION 19-3-405 OR WHEN AN EMERGENCY PROTECTION ORDER IS ENTERED PURSUANT TO SECTION 19-3-405, the court shall hold a hearing WITHIN SEVENTY-TWO HOURS AFTER PLACEMENT, EXCLUDING SATURDAYS, SUNDAYS, AND COURT HOLIDAYS, to determine further custody of the child OR WHETHER THE EMERGENCY PROTECTION ORDER SHOULD CONTINUE. ~~within seventy-two hours, excluding Saturdays, Sundays, and court holidays.~~ Such a hearing need not be held if a hearing has previously been held pursuant to subsection (2) of this section.

SECTION 7. 19-3-405, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-3-405. Temporary protective custody. (1) In addition to other powers granted to the court for the protection of children, the court may issue verbal or written temporary protective custody orders OR EMERGENCY PROTECTION ORDERS, OR BOTH. Each judicial district shall be responsible for making available a person appointed by the judge of the juvenile court, who may be the judge, a magistrate, or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the court to issue such orders.

(2) (a) ~~Such~~ TEMPORARY PROTECTIVE CUSTODY orders may be requested by the county department of social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him OR HER a child he OR SHE reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the circumstances or conditions of the child are such that continuing ~~his~~ THE CHILD'S place of residence or in the care and custody of the person responsible for ~~his~~ THE CHILD'S care and custody would present a danger to that child's life or health in the reasonably foreseeable future.

(b) EMERGENCY PROTECTION ORDERS MAY BE REQUESTED BY THE COUNTY DEPARTMENT OF SOCIAL SERVICES, A LAW ENFORCEMENT OFFICER, AN ADMINISTRATOR OF A HOSPITAL IN WHICH A CHILD REASONABLY BELIEVED TO HAVE BEEN NEGLECTED OR ABUSED IS BEING TREATED, OR ANY PHYSICIAN WHO HAS BEFORE HIM OR HER A CHILD THE PHYSICIAN REASONABLY BELIEVES HAS BEEN ABUSED OR

