

Interested Parties in Juvenile Dependency And Neglect Cases

by Theresa L. Sidebotham

This column is sponsored by the CBA Juvenile Law Section to apprise practitioners of substantive and procedural information concerning the field of juvenile law.

This article addresses the questions of who should be joined as an interested party in juvenile dependency and neglect cases and whether interested parties are adequately defined by statutory and case law.

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When a dependency and neglect case is on the juvenile court docket, things have already gone wrong with the child and his or her family. Tangled relationships and unhealthy situations are almost certain. Although the court is entrusted with protecting the best interests of the child, other parties have certain rights and obligations.

People connected with the child may be joined in the case, either voluntarily or involuntarily. Those involuntarily joined are “respondents” and “special respondents.” Respondents are parties and include parents, guardians, and legal custodians who are alleged to have abused or neglected the child.¹

Special respondents may be involved with the child in ways related to an allegation of child abuse or neglect.² Although they often prefer not to be involved, they have been joined involuntarily by the court.

In contrast, interested parties request to be joined because of their interest in the case. Interested parties will be informed of all proceedings in the dependency and neglect case, and have access to its confidential records. Who should be joined as an interested party—and under what circumstances—are issues that may cause confusion, because settled law is not extensive. However, Colorado statutes and a modest body of case law offer some guidance.

This article distinguishes interested parties from respondents and special respondents. It reviews relevant Colorado statutes and case law to draw out prin-

ciples for the joining of interested parties. The article discusses the two main routes to becoming an interested party, analyzing the evolution of laws and principles that guide the definition of the attendant rights and requirements. It also clarifies guidelines as to who should be joined as an interested party, and under what circumstances.

Distinguishing Respondents and Special Respondents

As mentioned, in Colorado, respondents and special respondents may be joined involuntarily in a juvenile court case. In addition to parents, guardians, and legal custodians,³ the following may be named as respondents if it is in the best interests of the child: (1) any other parent; (2) guardian; (3) custodian; (4) legal custodian; (5) stepparent; or (6) parental equivalent.⁴

A special respondent is joined because the court wishes to protect the best interests of the child. A special respondent is not an interested party and has limited standing to control the course of events. CRS § 19-1-103(100) defines a “special respondent” as an involuntary party for limited purposes. He or she is not a parent, guardian, or legal custodian of a child.⁵ A special respondent may reside with a child or have a significant relationship with the child. He or she may have participated in the abuse or neglect of the child.⁶ A special respondent may be joined for a protective order or may be included in a treatment plan

to facilitate unification of the family or to protect the child's safety.⁷

The court joins special respondents as it deems necessary.⁸ Being joined involuntarily may be neither convenient nor complimentary; thus, the special respondent may contest either the joinder or any orders that affect him or her.⁹ Once a special respondent has been joined, he or she has a right to be represented by counsel; presumably, the court is obligated to provide counsel to a special respondent for the purpose of contesting the joinder. However, at other stages of the proceedings, a special respondent may be represented by counsel at his or her own expense.¹⁰

In a 2002 case, *People ex rel. E.S.*,¹¹ a termination proceeding was instituted after a stepfather allegedly beat his stepdaughter shortly after marrying her mother. Although the petition initially named him as a respondent, the natural father was located and the stepfather's status then was amended to that of a special respondent.¹²

The stepfather wished to participate as a party because as a special respondent, he was not allowed to present evidence or cross-examine witnesses.¹³ However, the Colorado Court of Appeals found no fundamental liberty interest for a stepparent and that naming a stepparent as a respondent is discretionary under CRS § 19-3-502(5).¹⁴ His rights were limited to contesting a protective order or treatment plan provisions that affected him directly.¹⁵

Overview of Interested Parties in Juvenile Cases

In a dependency and neglect case, the child may be placed in the custody of a parent, guardian, relative, or social services. He or she may receive a variety of services.¹⁶ Parents and other involved adults likely will be required to follow a treatment plan. Whether the parent-child legal relationship will be terminated depends in part on what kind of progress is made on the treatment plan.¹⁷

Interested parties are not the focus in a dependency and neglect case as are children and respondents. Nonetheless, as the U.S. Supreme Court commented in an adoption case, *Armstrong v. Manzo*:¹⁸

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the ac-

tion and afford them an opportunity to present their objections.¹⁹

Thus, interested parties receive information about a case and have a certain amount of power to control its progress.

Rights of Interested Parties in Colorado

Colorado law allows interested parties to participate in a juvenile case in the following ways, thereby potentially profoundly influencing the outcome. In a termination case, interested parties receive written reports (for instance, by case-workers) sufficiently in advance of the termination hearing. According to a 1982 case, *People in Interest of A.M.D.*,²⁰ the purpose is "to permit the parties to compel the attendance of the persons who wrote the reports or prepared the materials therein and to subject them to examination under oath."²¹

CRS § 19-1-107(2) also states that in all cases under the Children's Code,²² an interested party may request the juvenile court to "require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination."²³ That implies that interested parties are to be informed of any written report or other material. This is reiterated in CRS § 19-3-604(3) with respect to a termination hearing.²⁴ It gives interested parties not only access to information, but an opportunity to challenge and correct it.

Interested parties may alter the course of the proceedings in other ways. When evidence at an adjudicatory hearing discloses facts not in the petition, an interested party may ask the court to order the petition to be amended to conform to the evidence.²⁵ Further, if the requested amendment substantially changes the original allegations, the interested party may move to continue the scheduled hearing.²⁶ Similarly, at a dispositional hearing, an interested party may move to continue for a reasonable period "to receive reports or other evidence."²⁷ An interested party also may request a change of venue to the county where the child resides, as long as the transfer would not be detrimental to the interests of the child.²⁸

Requirements for Interested Parties

Relatives and others interested in a child's welfare often request to be joined, because interested parties have special rights in a court case. The Children's Code

has always presumed the existence of interested parties;²⁹ however, it has never clearly defined the term. Moreover, case law does not explicitly define "interested parties." Nonetheless, several statutes and a handful of cases deal with interested parties. Although the statutes are fairly recent and many of the cases are relatively old, the Historical and Statutory Notes ("Notes") refer to the case law. Thus, as discussed below, it is possible to define interested parties and their rights by drawing inferences from these sources.

There are two major categories of interested parties. These consist of: (1) those who have cared for the child for longer than three months; and (2) relatives who have made a timely request for custody before a termination hearing begins. Both groups of interested parties are discussed below.

Caretakers for More Than Three Months

The principle that a caretaker may become an interested party is developed in state statutes. However, because the statutes are not very clear, the progression of case law on the topic over the last thirty years is important.

CRS § 19-3-507(5), which minimally defines interested parties, was added to the Children's Code in 1997. It specifies:

Parents, grandparents, relatives, or foster parents who have the child in their care for more than three months who have information or knowledge concerning the care and protection of the child may intervene as a matter of right following adjudication with or without counsel.³⁰

This statute appears to allow standing as an interested party to a broad group of people who have cared for the child.

Nevertheless, CRS § 19-3-502(7), which was added in 1998,³¹ limits the joining of people who presently are caring for the child by stating that they are not automatically interested parties. According to this statute, relatives, foster parents, and would-be adoptive parents who are caring for the child are given the right to be heard at hearings and reviews. However, such an individual "shall not be made a party to the action for purposes of any hearings or reviews solely on the basis of such notice and opportunity to be heard."³²

Case law shows how the standards have been refined through the years. As discussed below, case law gives some clarification for balancing these two statutes.

Relative Who Cared for Child: A 1971 Colorado Court of Appeals case, *C.B. v. People in Interest of J.T.B.*,³³ introduced the principle that someone who has been caring for the child has standing to intervene and challenge the action of the court. J.T.B. was a neglected and dependent child in the custody of the Adams County Department of Public Welfare. Custodial care was given to his grandfather, C.B., who, along with the child's great-grandmother, cared for the boy. The grandfather wanted legal custody and would not surrender the child to the Adams County Department of Public Welfare.³⁴ The trial court ruled that C.B. was not a party in interest and had no standing.³⁵

The Court of Appeals reversed, indicating "that a grandparent to whom the child has been entrusted for care has status to appear and protest the actions of the court relative to the child."³⁶ Although *Interest of J.T.B.* involved a grandparent, the courts soon broadened the category.³⁷ In light of this case and pursuant to CRS § 19-3-507(5), any close relative with physical custody of the child could be an interested party.

Foster Parents: Foster parents also could be interested parties if they had been taking care of the child. A 1974 case, *People in Interest of M.*,³⁸ is quoted in the Notes to the modern CRS §§ 19-3-507(5) and -508, so the case is valid for interpreting those statutes. *Interest of M.* involved a married couple, the Sanchezes, who were acting as foster parents for M., a dependent and neglected child. Although M. was eligible for adoption and the Sanchezes wanted to adopt the child, the welfare department said their custody was an insufficient interest for them to intervene.³⁹

The Colorado Court of Appeals disagreed. The court explained that the Children's Code does not delineate who is an interested party; included in that category were "individuals who, because of their relationship with or particular knowledge concerning the child, can materially aid the court in its determination of what in fact is in the child's best interest."⁴⁰

The Sanchez couple had custody for a substantial number of months and a reciprocal relationship of love and affection with the child. The court discussed the Sanchezes' experience of caring for the child, commenting that their knowledge and concern brought them "within the classification" of interested parties, and gave them the right to intervene.⁴¹ Thus, *Interest of M.* holds that foster parents

should be permitted to intervene when they have cared for the child.

A 2000 Court of Appeals case, *People ex rel. A.W.R.*,⁴² limits the standing of foster parents as interested parties. The child, A.W.R., had been with a foster mother for about two years, but her mother had visited her regularly.⁴³ The juvenile court gave temporary custody to the mother, over the objections of both foster mother and guardian *ad litem*.⁴⁴ The Denver Department of Human Services ("Denver DHS") did not want the foster mother to have full standing in the permanency planning hearing.⁴⁵ The foster mother argued that, having intervened "as a matter of right at the permanency planning hearing, she was entitled to full party status."⁴⁶ However, the judge limited her involvement to relating information about the child's condition.⁴⁷

Based on the 2000 version of CRS § 19-3-507(5), a foster parent is entitled to "intervene as a matter of right." However, because the foster mother in *A.W.R.* did not have a constitutionally protected liberty interest herself, she was limited to "testifying as to the child's best interest."⁴⁸ The *A.W.R.* court decided that a liberty interest may exist in some limited situations where a permanent placement is contemplated. However, generally, the liberty interest will not exist, because "no expectation of a continued foster placement can arise until the goal of reunification of the child with his or her natural family has been abandoned."⁴⁹ The objective of the Children's Code is reunification, and the

Denver DHS was actively attempting to reunite the family. Thus, the court found that the foster mother did not yet have a realistic expectation of continuing the relationship.⁵⁰

*People in Interest of M.*⁵¹ can be distinguished from *A.W.R.* because, in the former case, the child was available to adopt. Therefore, intervention by a foster parent can be limited if there has been neither a termination of parental rights nor a current plan to seek termination of such rights. This seems to fit the intent of CRS § 19-3-502(7), by limiting the ability of someone who is caring for the child to become an interested party, even though that person has the right to be heard at hearings and reviews.

Stepparents: A 2002 Colorado Court of Appeals case, *People ex rel. E.S.*,⁵² involved termination proceedings where a stepfather had allegedly beaten his six-year-old stepdaughter shortly after marrying her mother.⁵³ The stepfather wanted to be an interested party, but the court did not find a fundamental liberty interest that would give him a right to be heard.⁵⁴

The court stated that a natural or adoptive parent has a fundamental liberty interest, but this is not created in a stepparent without evidence that he was *in loco parentis*.⁵⁵ The biological mother and stepfather were married only six weeks before the child was removed from the home, and had been acquainted only two-and-one-half months before the marriage.⁵⁶ A stepparent will not become an interested party unless he or she meets the require-



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ments of having custody or a significant long-term relationship with the child.

Limited Standing for Special Reason: There may be occasions when limited standing as an interested party is necessary in the interests of justice. In a 1976 case, *People in Interest of R.G.J.*,⁵⁷ a boy was placed at the Brockhurst Boys' Ranch ("Brockhurst"), with the Denver Department of Welfare ("Denver Department") as the legal custodian. The Denver Department did not pay for the boy's support, and Brockhurst filed a suit for the money.⁵⁸ The Denver Department argued that Brockhurst was not an interested party.⁵⁹ The Colorado Court of Appeals found that it necessarily follows that a person furnishing support to a child in accordance with an order of the juvenile court has the right to intervene in a . . . [juvenile court] proceeding as an interested party for the purpose of recovering the cost of that support.⁶⁰

The Denver Department appealed, and the Colorado Supreme Court agreed that Brockhurst was an interested party "entitled to intervene when the child was placed in its care with court approval at the expense of petitioners."⁶¹ *R.G.J.* develops the concept of a "limited opportunity," in this case for recouping expenses associated with the care of the child. Consequently, it is possible that a party caring for the child might have limited standing as an interested party to deal with other issues as well.

Timely Intervention by Relatives

The second major route to becoming an interested party is to make a timely request as a relative. According to CRS § 19-3-605, the court must consider and give preference to relatives' requests for custody if they are submitted in a timely way. Such a request must be made prior to the hearing on the petition for termination of parental rights. Preference in custody is given to the requesting relative,⁶² as long as the court determines that such placement is in the best interests of the child.

Although CRS § 19-3-605 has a long history in the Children's Code,⁶³ it does not specifically provide that if relatives are to be considered for custody, they must be interested parties. Case law gives some insight into how the courts consider: (1) timely requests for custody; and (2) relatives as interested parties. The case law has been consistent through the years.

Timely Application to Establish Standing: Making a timely request for

custody establishes interested party status. In *People in Interest of C.P. v. F.P.*,⁶⁴ a grandmother was appointed guardian of her grandchildren in 1971, but the parents subsequently took custody.⁶⁵ Parental rights later were terminated, and the grandmother filed a petition for custody of the children. The Colorado Court of Appeals found that the grandmother had standing to participate in the proceedings as an interested party.⁶⁶

The court reasoned that the Children's Code contemplated the participation of interested third parties. A relative who makes a timely application could become an interested party. The court stated:

We rule that since the court may give custody following an adjudication of dependency and neglect to a relative, a relative is entitled to intervene at the dispositional stage upon application made to the court prior to the dispositional hearing.⁶⁷

This court established that the grandmother's status as a relative who previously had custody was sufficient to allow intervention.⁶⁸

Although *Interest of C.P. v. F.P.* was decided in 1974, that case is referred to in the Notes on CRS § 19-3-508 (the general statute for disposition of neglected or dependent children) and CRS § 19-3-507 (addressing the continuation of dispositional hearings on the motion of any interested party for a reasonable period to receive reports or other evidence).⁶⁹ The Notes equate intervention with being a "party."⁷⁰

Timely Application Necessary: Not intervening in a timely way is equally determinative. In 1975, in *People in Interest of T.A.F. v. B.F.*,⁷¹ a judgment was made terminating the parental rights of T.A.F.'s parents, and the child was placed for adoption. A maternal aunt and uncle had not intervened at any stage of the dependency and neglect proceedings; therefore, the Colorado Court of Appeals concluded they had no standing to challenge the termination order.⁷² In other words, relatives had a right to intervene only if they did so in a timely way.

A similar case examined whether relatives who are not parents have any kind of liberty interest when they have not made a timely application. In a 1996 Colorado Court of Appeals case, *People in Interest of C.E.*,⁷³ after a petition in dependency or neglect was filed, a maternal aunt was asked if she wanted temporary custody of the child.⁷⁴ She did not want custody at that time. However, after termina-

tion of parental rights, she asked to be considered as an adoptive parent and her request was denied.

The aunt argued that she had a fundamental liberty interest in the custody of her nephew.⁷⁵ However, the court ruled that not even a parent "has a constitutionally protected substantive right to custody of his or her child," although a parent has "a fundamental liberty interest in the continuation of the parental relationship . . ." which gives a right to due process.⁷⁶ The court also found that there was no fundamental liberty interest for extended family members. If the aunt had made timely application, she could have been an interested party.⁷⁷

Although timely requests for custody can give interested party status, it is not clear in CRS § 19-3-605 and case law whether a timely request gives full standing as an interested party in a case prior to the termination of parental rights. However, the 1993 case of *Petition of B.D.G.*⁷⁸ may provide some clarification. *B.D.G.* involved an unmarried young couple who wished to place their child with a married couple. A grandmother tried to get custody and wanted interested party status under CRS § 19-3-605.⁷⁹

The Colorado Court of Appeals observed that in a dependency and neglect case, the court may place the child in the legal custody of the grandparent, and also may consider a request for custody if parental rights are terminated. The court noted that

[u]nder these provisions, a grandparent is an interested party and may participate in the proceedings to determine whether a child is dependent or neglected.⁸⁰ (*Emphasis added.*)

B.D.G. was not a dependency and neglect case; therefore, CRS § 19-3-605 did not apply and the grandmother had no standing.⁸¹ Nonetheless, the court equated the provisions of CRS § 19-3-605 with being an interested party. The case is important because it clarifies that relatives who intervene and become interested parties may participate in proceedings before termination. However, this observation occurs in a case that did not involve dependency and neglect, and may not be reliable.

Conclusion

Interested parties in dependency and neglect cases have broad rights. Colorado statutory and case law permit interested parties to be joined, but only according to narrow prescriptive standards. Special respondents are not interested parties, and

are joined by the court for the protection of the child and treatment of the family. The rights of special respondents are quite limited.

Relatives and others involved in these cases may request being joined in two ways. The first route is available to those who have cared for the child for more than three months. These caretakers may have full standing as interested parties or, depending on the circumstances of the case, the court may limit their standing. The second route is available to relatives requesting custody in a timely way prior to a planned termination hearing. CRS § 19-3-605 specifically allows other relatives to intervene to seek custody, but does not clarify whether this gives standing as an interested party.

However, a line of case law interprets intervention as equivalent to being an interested party. Generally, interested party status for relatives becomes relevant after termination of parental rights, although one case refers to intervention during the proceedings. The general direction of the cases indicates that intervention as an interested party should be interpreted narrowly rather than broadly, and the trend of the courts is to tighten the qualifications. Given the paucity of case law, a Colorado Supreme Court ruling would be useful. Nevertheless, the ultimate goal in each case is to reach a decision that is in the best interests of the child.

NOTES

1. CRS § 19-3-502(5).
2. CRS § 19-3-502(6).
3. CRS § 19-3-502(5).
4. *Id.*
5. CRS § 19-1-103(100).
6. CRS § 19-3-502(6).
7. CRS § 19-1-103(100).
8. CRS § 19-3-503(4).
9. CRS § 19-3-502(6).
10. *Id.*
11. *People ex rel. E.S.*, 49 P.3d 1221 (Colo. App. 2002).
12. *Id.* at 1222.
13. *Id.*
14. *Id.* at 1223 (CRS § 19-3-502(5)).
15. *Id.* at 1224.
16. CRS § 19-3-508(1)(a) through (d).
17. CRS § 19-3-604(1)(c)(I).
18. *Armstrong v. Manzo*, 380 U.S. 545 (1965).
19. *Id.* at 550.
20. *Interest of A.M.D.*, 648 P.2d 625 (Colo. 1982).
21. *Id.* at 641.
22. CRS §§ 19-1-101 *et seq.*
23. CRS § 19-1-107(4).
24. CRS § 19-3-604(3).

25. CRS § 19-3-505(4)(a) and (b).
26. CRS § 19-3-505(4)(c).
27. CRS § 19-3-507(3)(a) (court generally may continue dispositional hearing either on its own motion or on motion of any interested party).
28. CRS § 19-3-201(2).
29. *People in Interest of C.P. v. F.P.*, 524 P.2d 316, 319 (Colo.App. 1974) ("While the Children's Code does not expressly define those persons who may become 'parties' to proceedings such as those before us, it does contemplate the participation of interested third parties.").
30. CRS § 19-3-507(5).
31. Historical and Statutory Notes ("Notes") on CRS § 19-3-502(7).
32. CRS § 19-3-502(7).
33. *Interest of J.T.B.*, 493 P.2d 691, 692 (Colo. App. 1971).
34. *Id.* at 692, 693.
35. *Id.* at 693.
36. *Id.*
37. *Interest of M.*, 522 P.2d 1234 (Colo.App. 1974). This case also is cited as *People in Interest of M.D.C.M.*, 34 Colo.App. 91 (1974).
38. *Id.*
39. *Interest of M.*, *supra*, note 37 at 1236.
40. *Id.*
41. *Id.* at 1237.
42. *People ex rel. A.W.R.*, 17 P.3d 192 (Colo. App. 2000).
43. *Id.* at 194.
44. *Id.*
45. *Id.* at 195.
46. *Id.*
47. *Id.*
48. *Id.* at 197. Note that the statute is the same in the 2003 version.
49. *Id.* at 196.
50. *Id.* at 197.
51. *Interest of M.*, *supra*, note 37.
52. *People ex rel. E.S.*, *supra*, note 11.
53. *Id.* at 1222.
54. *Id.* at 1223.
55. *Id.*
56. *Id.* at 1223-24.
57. *Interest of R.J.G.*, 557 P.2d 1214 (Colo. App. 1976). This case is cited in the Notes for CRS § 19-3-507.

58. *Id.* at 1215.
59. *Id.* at 1216.
60. *Id.*
61. *City and Cty. of Denver v. Brockhurst Boys Ranch, Inc.*, 575 P.2d 843, 846 (Colo. 1978).
62. CRS § 19-3-605(1).
63. The Notes state that CRS § 19-3-605 was amended in 2003. It was contained in a title repealed and reenacted in 1987. The 1987 version was similar to CRS § 19-11-105.5 as it existed in 1986. According to the electronic version on Westlaw, it is derived from CRS 1963 §§ 22-1-1 *et seq.*, 22-2-1 *et seq.*, 22-11-1 *et seq.*, and 22-13-1 *et seq.*; and from Laws 1967, H.B. 1001, § 1 and Laws 1977, H.B. 1563, § 1.
64. *Interest of C.P. v. F.P.*, 524 P.2d 316 (Colo. App. 1974).
65. *Id.* at 318.
66. *Id.* at 319.
67. *Id.*
68. *Id.* at 320.
69. Notes to CRS § 19-3-507 (grandmother's rights included "right to be informed by the court of her right of cross-examination, to put on evidence in her own behalf asserting her fitness for custody, and to receive notice of subsequent hearings").
70. *Id.*
71. *Interest of T.A.F. v. B.F.*, 624 P.2d 349 (Colo.App. 1980).
72. *Id.* at 351.
73. *Interest of C.E.*, 923 P.2d 383 (Colo.App. 1996).
74. *Id.* at 384.
75. *Id.* at 385.
76. *Id.*
77. *Id.* at 386.
78. *Petition of B.D.G.*, 881 P.2d 375 (Colo. App. 1993).
79. *Id.* at 376 and 377.
80. *Id.*
81. *Id.* This was a relinquishment case under CRS § 19-5-104(2) (persons not eligible for custody in relinquishment case if birth parents designated otherwise). ■

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