



Psychological Parents and Child Support

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This article discusses the law regarding psychological parents and child support in Colorado, including who has standing to request parental rights and the circumstances under which a non-parent may be required to pay child support.

The composition of American families has transformed dramatically over the past century. The traditional nuclear family household has been largely replaced by nontraditional family structures. It is becoming less common for children to be raised by two biological, married parents, and more common for children to be raised by at least one non-biologically related individual.¹

The term “psychological parent” describes “someone other than a biological parent who develops a parent-child relationship with a child through day-to-day interaction, companionship, and caring for the child.”² Despite the changing landscape of American families, a psychological parent generally does not have the same ability as a biological or adoptive parent to seek an allocation of parental responsibilities.³ But Colorado courts are starting to place greater importance on the role of psychological parents in children’s lives and have recently assigned parental responsibilities to individuals who have consistently acted as biological parents.⁴ This expanding acceptance of the psychological parent’s role highlights the judiciary’s recognition of the importance of psychological parenting and its relationship to the best interests of the child.⁵

A psychological parent who has standing and meets the criteria under CRS § 14-10-123 may file a petition for allocation of parental responsibilities (APR) and seek an order for parenting time and decision-making over the child. Likewise, psychological parents may be obligated to financially support a child over whom they seek parental rights. By expanding the scope of who has standing to seek legal rights over a child, Colorado courts are expanding the pool of individuals who can be ordered to pay child support.

Rationale for the Legal Recognition of Psychological Parents

Courts continue to recognize a natural or adoptive parent’s fundamental due process rights.⁶ But being related to a child by blood does not determine whether a biological parent is the best caretaker.⁷ Children can form deep emotional bonds with caretakers even without a formal parental relationship.⁸ Children form inherent psychological bonds with adults from whom they regularly receive care and support.⁹ Breaking up or otherwise disrupting this relationship can be harmful to a child’s emotional development and contrary to the child’s best interest.¹⁰

When a psychological parent is involved in a child’s life, the risk of harming the child by destroying that relationship may outweigh the interest in protecting the parental rights of the child’s natural parents.¹¹ If the court believes that removing a psychological parent from a child’s life is likely to cause the child adverse long-term emotional effects, then there is a compelling state interest in protecting that relationship.¹² By giving non-parents standing to seek legal custody of a child under certain circumstances, the legislature acknowledges the importance that “psychological parenting” can have to children.¹³

Standing to File for Allocation of Parental Responsibilities

Before an individual can gain parental rights over a child as a psychological parent, they must first have standing to initiate an APR action. Traditionally, APR proceedings are filed by one or both parents seeking the court’s assistance in determining a parenting time schedule. In limited circumstances, however, a non-parent may initiate an APR action. CRS § 14-10-123

lists the prerequisites for a non-parent to satisfy the standing requirement.

CRS § 14-10-123(1)(b) and (c) allow non-parents to file an action for parental rights without the consent of either of the child’s natural parents.¹⁴ CRS § 14-10-123(1)(b) allows a non-parent to file a petition seeking the allocation of parental responsibilities “in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical care of one of the child’s parents.”¹⁵ CRS § 14-10-123(1)(c) gives a non-parent standing to initiate an APR proceeding if they had “the physical care of” the child for at least 182 days. However, if they are no longer caring for the child, the non-parent must commence the action within 182 days after the physical care ended.¹⁶ This time limitation exists because reintroducing a non-parent into the child’s life after a six-month absence—during which the child has presumably adjusted to life without the non-parent—may be disruptive to a child.¹⁷ This is particularly true where the relationship between non-parent and child is weakened by time and distance apart.¹⁸ The six-month period of custody seeks to ensure that the non-parent filer has had a recent and significant role as a caregiver in the child’s life.¹⁹ Courts do not wish to encourage neighbors, nannies, babysitters, au pairs, relatives, or family friends who have temporarily cared for a child to claim psychological parent status.²⁰ However, a non-parent can satisfy the statute’s six-month physical care requirement even if the child’s natural parents did not actively relinquish custody to, or otherwise consent to, the non-parent’s caring for the child at any point.²¹

Defining the “physical care” requirement is essential when assessing whether a non-parent cared for a child for the required 182 days.

This is a highly fact-dependent inquiry for the courts.²² The non-parent is not required to maintain exclusive custody of the child during the statutory six-month period in order to establish standing.²³ Instead, the controlling question is whether the child has formed an important attachment with the non-parent by spending a significant period of time in the custody of the non-parent.²⁴ If the legal parent(s) of the child also cared for the child during the six-month period of non-parent custody, the court should assess the nature, frequency, and duration of contacts the child had with their legal parent(s) to determine whether such contact deprives the litigant of standing.²⁵

Courts may determine that standing exists even when a legal parent occasionally resides with the non-parent litigant during the six-month custody period, or where the child periodically spends the night with a legal parent in a different location.²⁶ Accordingly, CRS § 14-10-123(1) limits the class of non-parents who can petition for parental rights as “psychological parents” to those who have had a recent or ongoing role as a caretaker of the child.²⁷ This limitation helps prevent undue interference in the relationship between natural/adoptive parents and their children.²⁸

Who Can Be Classified as a Psychological Parent?

While CRS § 14-10-123 may grant non-parents standing to petition for parental rights, initiating an APR proceeding is merely the first step in obtaining psychological parent status. Determining that an individual has standing to file an APR petition is separate from deciding whether an individual’s relationship with a child renders them a psychological parent entitled to parenting rights.²⁹ After a non-parent has established standing and has initiated an APR action, they must prove, by clear and convincing evidence, that the child’s best interests are served by allocating parental responsibilities to the non-parent.³⁰

While there is no set criteria or bright-line rule defining a psychological parent, the controlling question for the court is whether the non-parent assumed a parent-like role in the child’s life over a period of time.³¹ In making this

determination, the court will consider whether the non-parent has historically been involved in making decisions affecting the minor child and whether the non-parent has provided financial support for the child.³² Proving that the child loves and is comfortable with the non-parent is not enough; children routinely develop close emotional bonds with extended family members like grandparents or aunts and uncles. Expanding the class of potential psychological parents to include these individuals would unduly infringe on natural parents’ constitutional rights.

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Accordingly, the mere presence of a close familial bond is insufficient to support a finding that a non-parent family member has assumed the role of a psychological parent.³³

Courts are hesitant to grant parental responsibilities to relatives who care for a child “at the request of and under the ongoing direction and control of the parents.”³⁴ Instead, a court will consider the circumstances surrounding the relationship of the prospective psychological parent and the minor child to determine whether the non-parent acted as a surrogate parent. Courts are more likely to find that an

individual is a psychological parent if the child has viewed them as a parent.³⁵ While the absence of the child’s legal parent(s) may increase the likelihood that a court will view a caretaker as a psychological parent, a non-parent does not have to prove that a child’s biological parents are unfit or otherwise acting against the child’s best interests to establish themselves as a psychological parent.³⁶

Although there are no clearly established elements that an individual must satisfy to be considered a psychological parent, the current landscape suggests that a court will primarily focus on whether the actions of the non-parent, coupled with their level of involvement in the child’s life, are comparable to that of a parent. Once a court has concluded that a non-parent has become a psychological parent in a child’s life, the court must assess all relevant factors and give paramount consideration to the mental, physical, and emotional needs of the child in determining how to allocate parental rights.³⁷ To this end, courts will consider the best interests factors enumerated in CRS § 14-10-124 when considering whether to grant parental responsibilities, such as parenting time or decision-making authority, to a non-parent.³⁸

Who Can Be Ordered to Pay Child Support?

When an individual establishes themselves as a psychological parent and obtains parental rights over a child, they may also be responsible for supporting the child financially. CRS § 14-10-115 allows a court to order either or both parents owing a duty of support to a child under age 19 to pay a reasonable or necessary amount of child support. The statute does not explicitly define the term “parent,” nor does it refer to psychological parents. Still, Colorado courts have held that like biological parents, psychological parents have a duty to financially support their children in certain circumstances.

When a court awards a non-parent the same parental responsibilities as a natural or adoptive parent, it is likely to order child support as part of the same proceeding. It would seem illogical and inequitable for a court to determine that someone is a psychological parent—of a child they wish to parent—and grant them parenting

time and decision-making authority but decline to order them to financially support the child.³⁹ For example, the Court of Appeals in *In re Parental Responsibilities Concerning A.C.H.* determined that the ex-boyfriend of the child's biological mother qualified as a psychological parent because he held himself out to be the child's father, lived in the same residence as the child for four years, consistently cared for the child for six years after his romantic relationship with the child's mother ended, and took affirmative steps to remain an active part of the child's life.⁴⁰ After granting parenting rights to the ex-boyfriend in that case, the court also imposed a child support obligation on him.⁴¹

The Court of Appeals recently narrowed the holding of *In re A.C.H.* when it declined to order a grandmother to pay child support after she was allocated parental responsibilities in a dependency and neglect proceeding.⁴² In *In re Marriage of Bergeson-Flanders*, the child's legal father sought child support from the child's maternal grandmother.⁴³ In declining to order the child's grandmother to pay child support, the court distinguished an individual assigned parental rights as a result of a dependency and neglect proceeding from an individual seeking parental rights by initiating an independent APR action, suggesting that only the latter should be considered a "psychological parent" for purposes of ordering child support.⁴⁴ This serves to protect third-party caretakers who step in to care for a child who has been adjudicated as dependent or neglected.

Notably, the grandmother in *Bergeson-Flanders* assumed a parental role in the child's life only after the court determined that the child's parents were unfit caretakers and that the child would otherwise be placed in the foster care system. This is distinguishable from a non-parent who actively seeks an award of parental responsibilities without a finding of parental unfitness. Additionally, the grandmother in *Bergeson-Flanders* never held herself out as the parent of the minor child, whereas the ex-boyfriend in *In re A.C.H.* consistently claimed the minor child as his own. After *Bergeson-Flanders*, courts will look carefully at the non-parent's actions to determine whether that individual affirmatively sought a parental relationship with


the child by acting as a surrogate parent. If the quasi-parental relationship is thrust upon the non-parent due to the legal parents' inability to care for the child, a psychological parent finding is much less likely.

The key issue when considering whether a non-parent should be ordered to pay child support is whether the non-parent has taken "real and substantial legal steps to seek and maintain the same parental rights as the biological parent."⁴⁵ This analysis focuses heavily on the non-parent's intent. If a non-parent wishes to exercise parenting time as if they were a legal parent, they should also be expected to support the child financially as if they were a legal parent. For example, in *People in Interest of P.D.*, the court awarded legal and physical custody of a minor child to a married couple after permanently terminating the parental rights of the child's natural parents.⁴⁶ The court anticipated that the married couple would adopt P.D. However, the married couple never initiated formal adoption proceedings and instead filed for divorce. Additionally, the husband requested his parental rights over the child be terminated in conjunction with the divorce proceedings. The court determined that the husband was serving as a voluntary caretaker for the child, whom he had not formally adopted. Because the husband wanted to terminate his parental relationship with the child, and took affirmative steps to do so, the court did not require him to pay child support to the wife.⁴⁷ In similar cases, courts have imposed a child support obligation upon non-parents only when they actively seek to continue exercising parenting time with a child.⁴⁸

Conclusion

Courts are increasingly more likely to grant parental rights to individuals who have played a consistent and significant role in a child's life. This trend can protect children from the disruption and potential emotional harm that may result from losing relationships with individuals who have taken on a parental role. Children may be emotionally damaged if their relationship with a psychological parent is terminated or significantly curtailed.⁴⁹ This is why the statute that defines standing allows non-parents to petition for parental rights when they have had

ongoing involvement with a child similar to that of a natural parent.

Colorado courts have recognized psychological parents for decades without labeling them as such, but the concept has gained attention in recent years as it has expanded to include a financial obligation to care for a child.⁵⁰ Under the current state of the law, non-parents who are appointed as custodians of a minor child after the child's natural parents are deemed unfit, and not as a result of an affirmative choice to seek parental responsibilities, are not considered psychological parents and should not be ordered to pay child support.⁵¹ Non-parents who have previously assumed a parental role but who do not wish to continue exercising parenting time will also likely avoid a child support obligation. But non-parents who seek parenting time or decision-making authority over a child, and who file an action for APR requesting these rights, will likely be ordered to pay child support if they succeed in obtaining parental responsibilities as a psychological parent. 



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NOTES

1. *In re A.C.H.*, 440 P.3d 1266, 1267 (Colo.App. 2019).
2. *In re Marriage of Martin*, 42 P.3d 75, 77-78 (Colo.App. 2002).

3. *Troxel v. Granville*, 530 U.S. 57 (2000); *Devlin v. Huffman*, 339 P.2d 1008, 1010 (Colo. 1959).
4. *In re Marriage of Martin*, 42 P.3d at 78; *In re E.L.M.C.*, 100 P.3d 546, 558 (Colo.App. 2004).
5. *In re Marriage of Martin*, 42 P.3d at 78.
6. *In re E.L.M.C.*, 100 P.3d 546, 558 (Colo.App. 2004).
7. *Id.* at 556.
8. *In re B.B.O.*, 277 P.3d 818, 822 (Colo. 2012).
9. *Id.*
10. *Id.*
11. *In re E.L.M.C.*, 100 P.3d 546.
12. *Id.* at 560; *Root v. Allen*, 377 P.2d 117, 119 (Colo. 1962).
13. *In re Parental Resp. Concerning V.R.P.F.*, 939 P.2d 512, 514 (Colo.App. 1997).
14. *In re B.B.O.*, 277 P.3d 818.
15. *In re KMB*, 80 P.3d 914, 915 (Colo.App. 2003); *In re Custody of C.C.R.S.*, 872 P.2d 1337 (Colo.App. 1993).
16. CRS § 14-10-123(1)(c); *In re Parental Resp. Concerning V.R.P.F.*, 939 P.2d 512; *In the Interest of C.T.G.*, 179 P.3d 213 (Colo.App. 2007).
17. *In the Interest of C.T.G.*, 179 P.3d at 218.
18. *Id.*
19. *In re B.B.O.*, 277 P.3d at 823.
20. *In re E.L.M.C.*, 100 P.3d at 560.
21. *In re B.B.O.*, 277 P.3d at 819.
22. *In re Parental Resp. Concerning V.R.P.F.*, 939 P.2d at 514.
23. *In re E.L.M.C.*, 100 P.3d at 554.
24. *In re Parental Resp. Concerning V.R.P.F.*, 939 P.2d at 514.
25. *Id.*
26. *Id.* at 513-14.
27. *In re KMB*, 80 P.3d at 917; *In re C.T.G.*, 179 P.3d at 218.
28. *In re C.T.G.*, 179 P.3d 213 at 219.
29. *In re K.M.B.*, 80 P.3d at 917.
30. *In re B.J.*, 242 P.3d 1128 (Colo. 2010); *In re KMB*, 80 P.3d at 917; *In re Reese*, 227 P.3d 900, 901 (Colo.App. 2010).
31. *In re C.T.G.*, 179 P.3d at 219.
32. *In re E.L.M.C.*, 100 P.3d at 550.
33. *In re C.T.G.*, 179 P.3d at 220.
34. *Id.*
35. *In re E.L.M.C.*, 100 P.3d at 553.
36. *In re M.W.*, 292 P.3d 1158 (Colo.App. 2012).
37. *In re Reese*, 227 P.3d 900, 902 (Colo.App. 2010).
38. *Id.* at 903.
39. *In re A.C.H.*, 440 P.3d 1266, 1269 (Colo.App. 2019).
40. *Id.*
41. *Id.* at 1272.
42. *In re Marriage of Bergeson-Flanders*, 509 P.3d 1083 (Colo.App. 2022).
43. *Id.*
44. *Id.* at 1087.
45. *In re A.C.H.*, 440 P.3d at 1270.
46. *People in Interest of P.D.*, 580 P.2d 836 (Colo.App. 1978).
47. *Id.* at 838.
48. *In re Marriage of Bonifas*, 879 P.2d 478 (Colo.App. 1994); *In re Marriage of Rodrick*, 176 P.3d 806 (Colo.App. 2007); *People ex rel. B.S.M.*, 251 P.3d 511 (Colo.App. 2010).
49. *In re E.L.M.C.*, 100 P.3d 546.
50. *In re A.C.H.*, 440 P.3d at 1269.
51. *Sidman v. Sidman*, 240 P.3d 360, 362-63 (Colo.App. 2009).

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