

18CA1445 Parental Resp Conc CHH-H 06-27-2019

COLORADO COURT OF APPEALS

DATE FILED: June 27, 2019  
CASE NUMBER: 2018CA1445

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Court of Appeals No. 18CA1445  
Adams County District Court No. 18JV2009  
Honorable Priscilla J. Loew, Judge

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In re the Parental Responsibilities Concerning C.H.H-H., a Child,  
and Concerning B.D.V.,  
Appellant,  
and  
B.A.H. II,  
Appellee.

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JUDGMENT VACATED AND CASE  
REMANDED WITH DIRECTIONS

Division II  
Opinion by JUDGE PAWAR  
Dailey and Rothenberg\*, JJ., concur

**NOT PUBLISHED PURSUANT TO C.A.R. 35(e)**  
Announced June 27, 2019

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Meggin Rutherford, Emily Bright Hays, Arvada, Colorado, for Appellant  
B.A.H. II, Pro Se

\*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2018.

¶ 1 B.D.V. (mother) appeals the district court’s judgment adopting the magistrate’s order dismissing her petition for paternity. We vacate the judgment and remand the case for further proceedings.

## I. Background

¶ 2 Mother and B.A.H. (father) are the parents of one child, C.H.H-H. Paternity is not contested.

¶ 3 In April 2018, father moved for an allocation of parental responsibilities for the child under the Uniform Dissolution of Marriage Act (UDMA), section 14-10-123, C.R.S. 2018.

¶ 4 Two weeks later, mother filed a petition for paternity under the Uniform Parentage Act (UPA), sections 19-4-101 to -130, C.R.S. 2018, seeking, as relevant here, past child support and birth-related costs. She simultaneously moved to consolidate the paternity and allocation of parental responsibilities actions.

¶ 5 Father moved to dismiss the paternity action, arguing that jurisdiction was properly in the domestic relations court because paternity was not contested. Agreeing with father that “there is no longer a question of paternity before the court,” a magistrate granted father’s motion to dismiss. The district court subsequently

denied mother's C.R.M. 7 petition for review of the magistrate's order.

## II. Dismissal of Paternity Action

¶ 6 Mother contends that the district court erred in adopting the magistrate's order dismissing the paternity action. We agree.

### A. Legal Standards

¶ 7 Our review of the district court's order is effectively a second level of appellate review, and, like the district court, we must accept the magistrate's factual findings unless they are clearly erroneous. *See In re Parental Responsibilities Concerning G.E.R.*, 264 P.3d 637, 638-39 (Colo. App. 2011). However, we review legal conclusions de novo. *In re Parental Responsibilities Concerning B.J.*, 242 P.3d 1128, 1132 (Colo. 2010).

¶ 8 Under the UPA, a father may be ordered to pay for birth-related costs and for the support of the child in an amount determined "to be reasonable under the circumstances, for a time period which occurred prior to the entry of the order establishing paternity." § 19-4-116(3)(a), (4), C.R.S. 2018. But under the UDMA, child support may be ordered only as of the parties' physical

separation or the filing or service of the petition, whichever is latest.  
§ 14-10-115(2)(a), C.R.S. 2018.

## B. Analysis

¶ 9 We agree with mother that *G.E.R.* is directly on point. There, the mother petitioned under the UDMA to allocate parental responsibilities and for child support. *G.E.R.*, 264 P.3d at 638. And although paternity was not contested, she later initiated a separate action under the UPA to seek birth-related costs. *Id.*

¶ 10 A division of this court held that the district court “had no jurisdiction to award such [birth-related] costs under the UDMA” and that to recover such costs, the mother “was required to file a petition for paternity under the UPA.” *Id.* at 639. Because she had done so, the division held that she could recover such costs “in connection with [her] action to determine paternity.” *Id.* Thus, even though paternity was not contested, the mother in *G.E.R.* was not precluded from seeking relief under the UPA. *Id.*

¶ 11 Here, even though paternity was not contested, mother petitioned for paternity under the UPA. She sought relief not available to her under the UDMA, including past child support and birth-related costs. Because the district court did not have

jurisdiction to award such relief under the UDMA, mother was not precluded from pursuing relief under the UPA simply because she was not contesting paternity. See § 19-4-116; *G.E.R.*, 264 P.3d at 639.

¶ 12 As observed by the division in *G.E.R.*, “[w]hen the paternity of a child is ‘established beyond question,’ ‘the law should be liberally construed to insure the necessary help to the child and its mother, consonant with the father’s ability to pay.’” 264 P.3d at 639-40 (quoting *People in Interest of L.W.*, 756 P.2d 392, 393 (Colo. App. 1988)). Thus, the magistrate should have considered whether mother was entitled to relief under the UPA that was not otherwise available to her under the UDMA. See *G.E.R.*, 264 P.3d at 640.

¶ 13 We also agree with mother’s contention that she should not be precluded from seeking relief under the UPA simply because father sought relief under the UDMA first. See *id.* at 639 (noting that the mother was not required to “elect between pursuing an action under the UDMA or an action under the UPA”). Precluding mother’s paternity action would necessarily encourage a “race to the courthouse,” which we disfavor. See *Reno v. Marks*, 2015 CO 33, ¶ 33 (declining to interpret a statute in a manner that could

create a race to the courthouse where one party would always win). Moreover, by moving to consolidate the UDMA and UPA actions, mother attempted to follow the “better practice” of joining the actions, which is permitted by section 19-4-109(1), C.R.S. 2018. *See G.E.R.*, 264 P.3d at 639.

¶ 14 Accordingly, we conclude that the district court erred in adopting the magistrate’s order dismissing mother’s paternity action. *See* § 19-4-116(3)(a), (4) (court may exercise discretion to determine whether to order father to pay past child support and birth-related costs); *G.E.R.*, 264 P.3d at 640.

### III. Mother’s Request for Attorney Fees

¶ 15 Mother requests attorney fees and costs under C.A.R. 39(a), C.A.R. 39.1, and section 19-4-117, C.R.S. 2018, arguing that father did not cite relevant authority in his district court filings. Under the UPA, a court is required to order the parties to pay the reasonable fees of counsel and other costs of the action in proportions and at times determined by the court. § 19-4-117. Thus, on remand, the court should determine an appropriate award of attorney fees and costs in accordance with section 19-4-117. *See G.E.R.*, 264 P.3d at 640.

#### IV. Conclusion

¶ 16 The judgment is vacated, and the case is remanded for further proceedings consistent with this opinion.

JUDGE DAILEY and JUDGE ROTHENBERG concur.

# Court of Appeals

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PAULINE BROCK  
CLERK OF THE COURT

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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: Steven L. Bernard  
Chief Judge

DATED: December 27, 2018

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