The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

SUMMARY
April 29, 2021

2021COA58

No. 19CA1956, Marriage of Schlundt — Family Law — Disputes Concerning Parenting Time — Modification of Parenting Time — Endangerment

A division of the court of appeals considers whether a district court may substantially modify parenting time and change the parent with whom a child resides a majority of the time as a remedy for a parenting time violation under section 14-10-129.5(2)(b), C.R.S. 2020, without applying section 14-10-129(2)(d), C.R.S. 2020. Section 14-10-129(2)(d) requires a finding that the child's present environment endangers the child's physical health or significantly impairs the child's emotional development and that the harm likely to be caused by a change in environment is outweighed by the advantages to the child.

Interpreting these two statutes together and harmonizing them, the division concludes that when parenting time is modified to meet a child's best interests as a remedy under section 14-10-129.5(2)(b), if the modification substantially changes parenting time and changes the parent with whom the child resides a majority of the time, the court must apply section 14-10-129(2), including the endangerment standard under section 14-10-129(2)(d).

The district court had used the endangerment standard, but only as an alternative basis for its ruling. Even then, the division concludes, the court erred in applying the endangerment standard and its findings under the statute are insufficient to support the order changing the child's primary residence. Accordingly, the division reverses the district court's order and remands the case for further proceedings concerning parenting time and to address the appellant's request for appellate attorney fees under section 14-10-119, C.R.S. 2020.

COLORADO COURT OF APPEALS **2021COA58**

Court of Appeals No. 19CA1956
El Paso County District Court No. 16DR31514
Honorable Michael P. McHenry, Judge

In re the Marriage of

Zachary A. Schlundt,

Appellee,

and

Brittany L. Schlundt, n/k/a Brittany L. Fillingame,

Appellant.

ORDER REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division I
Opinion by JUDGE DAILEY
Berger and Tow, JJ., concur

Announced April 29, 2021

Travis Law Group, PLLC, Richard M. Travis, Colorado Springs, Colorado, for Appellee

Paige Mackey Murray, LLC, Paige Mackey Murray, Boulder, Colorado, for Appellant

¶ 1 In this post-dissolution of marriage proceeding, Brittany L. Schlundt (mother), now known as Brittany L. Fillingame, appeals the district court's order modifying parenting time for her child. In this appeal, we must determine whether a district court may substantially modify parenting time and change the parent with whom a child resides a majority of the time as an enforcement remedy under section 14-10-129.5(2)(b), C.R.S. 2020, without applying the endangerment standard of section 14-10-129(2)(d), C.R.S. 2020. We conclude that the court must apply the endangerment standard in this circumstance and that, although the court purportedly applied the endangerment standard, it failed to do so correctly. Consequently, we reverse the court's order and remand the case for further proceedings.

I. Background

¶ 2 Mother's marriage to Zachary A. Schlundt (father) ended in June 2017. Mother was designated the primary residential parent for the parties' minor child but alternated parenting time with father on a weekly basis.

¶ 3 In late 2017/early 2018, both parties moved to relocate with the child — father to Ouray and mother to Florida — and to modify

parenting time accordingly. After a hearing, the district court ordered that mother could relocate with the child and that father would have parenting time over the summer and for certain holidays/school breaks.

¶ 4 Six months later, father moved to enforce parenting time under section 14-10-129.5, contending that mother was refusing to communicate with him and denying him parenting time, and that the child was endangered in her care. He requested that the court designate him the child's primary residential parent in place of mother. A parental responsibilities evaluator (PRE) was appointed to investigate and report on father's allegations. Father subsequently filed an amended motion, expanding on the allegations from his initial motion and noting that mother and the child were now living in Georgia, not Florida.

¶ 5 The PRE filed a lengthy report applying the best interests of the child factors under section 14-10-124(1.5)(a), C.R.S. 2020, and recommending that the existing parenting time schedule be "flipped" so that father becomes the child's primary residential parent and mother has parenting time over the summer and for holidays and school breaks.

¶ 6 After a June 2019 hearing, at which mother appeared pro se, father was represented by counsel, and the PRE did not testify, the district court entered oral findings on the record adopting the PRE's recommendations and asked father's attorney to prepare a written order in fourteen days. However, no written order was entered within that time. And mother did not receive parenting time after the hearing even though under the court-ordered schedule, she should have had the child for the summer of 2019. Instead, father kept the child in his care, and both parties requested an emergency status conference. Mother contended that father was denying her summer parenting time. Father contended that mother's post-hearing communications with the child endangered him and asked that her summer parenting time be restricted.

¶ 7 The PRE prepared an updated report recommending that the parties stop their "petty arguing" and follow the court's order and emphasizing that mother's parenting time should not be restricted. The PRE further recommended that father allow the child to have parenting time with mother and encourage the child to be excited about his visits and contact with her, and that mother be positive and avoid emotional reactions when on the phone with the child.

¶ 8 The district court held another hearing in July 2019, after which it eliminated mother's summer parenting time. On September 6, 2019, the court entered a final written parenting time order.

II. The Primary Issues on Appeal

¶ 9 Father brought his motion under section 14-10-129.5, which addresses disputes concerning compliance with parenting time orders. Under section 14-10-129.5(2)(b), if a court finds after a hearing that a parent has violated a parenting time order, the court may enter one or more of several remedies, including "modifying the previous order to meet the best interests of the child."

¶ 10 Here, the court purported to enforce its original order by modifying its parenting time provisions. Section 14-10-129 addresses parenting time modifications specifically and provides in relevant part:

> The court shall not modify a prior order concerning parenting time that substantially changes the parenting time as well as changes the party with whom the child resides a majority of the time unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or

> the party with whom the child resides the majority of the time and that the modification is necessary to serve the best interests of the child.

§ 14-10-129(2).

¶ 11 Even if the court finds changed circumstances and that the modification serves the child's best interests, however, it still must retain the parenting time schedule from the prior decree unless, as relevant here, "[t]he child's present environment endangers the child's physical health or significantly impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child" (the endangerment standard). § 14-10-129(2)(d).

¶ 12 The issues raised on appeal concern the relationship, if any, between sections 14-10-129.5(2)(b) and 14-10-129(2)(d): (1) do they operate independently of one other, or (2) must they be read together to require a showing of endangerment before a court may remedy noncompliance with a previous order by changing the parent with whom the child resides a majority of the time?

¶ 13 Father argued the former position — that is, that under section 14-10-129.5(2)(b) alone, the district court could enforce its

earlier order by changing the parent with whom the child resides a majority of the time if it found that such a change was "in the best interests of the child." The district court agreed with that position.

¶ 14 Nonetheless, in an abundance of caution, the district court also purported to alternatively apply the additional endangerment standard of section 14-10-129(2)(d).

¶ 15 On appeal, mother argues that (1) the endangerment standard of section 14-10-129(2)(d) applies to section 14-10-129.5(2)(b) motions to enforce a parenting time order by substantially changing the parenting time as well as changing the parent with whom the child resides a majority of the time; and (2) the endangerment standard was not properly applied by the district court.

¶ 16 Father asserts that (1) mother has waived these arguments for purposes of appeal; (2) section 14-10-129.5(2)(b) operates totally independently of section 14-10-129(2)(d); and, in any event, (3) the district court properly applied the endangerment standard.

¶ 17 We address waiver first, then the applicable legal standard, and last the court's endangerment findings.

III. Mother Did Not Waive the Arguments She Presents on Appeal

¶ 18 "Waiver is the intentional relinquishment of a known right." *Universal Res. Corp. v. Ledford*, 961 P.2d 593, 596 (Colo. App. 1998). To establish waiver, there must be a clear, unequivocal, and decisive act by the party against whom waiver is asserted. *Id.*

¶ 19 At the pretrial conference before the June 2019 hearing, father's attorney argued that although father's motion had alleged that the child was endangered in mother's care, the child's primary residence could be modified as a sanction under section 14-10-129.5 based on the best interests standard alone. The court, addressing mother specifically, opined to the contrary that a substantial parenting time modification resulting in a change to a child's primary residence would require a showing that the child was endangered.

¶ 20 Father's attorney and the court again discussed the applicable legal standard at the beginning of the hearing with father again arguing that the best interests standard applied to his motion even though he was seeking a substantial change in parenting time. The court then asked mother whether she disagreed with father's attorney's argument, and mother responded: "Of course I do."

Mother then responded to the court's further questions by stating that she "absolutely" believes in the best interests of the child and that the court's order "should be in the best interest[s]."

¶ 21 We perceive no clear, unequivocal, and decisive act by mother that would preclude her from raising the arguments she does on appeal. In our view, the court's questions to mother did not make clear that the court would apply one of two standards in resolving father's motion: (1) best interests of the child *or* (2) endangerment. Although best interests is a separate standard, it is also a factor that the court must consider when applying the endangerment standard. *See* § 14-10-129(2) (requiring the court to find, in addition to changed circumstances and endangerment of the child, that "the modification is necessary to serve the best interests of the child"). Thus, mother's statement agreeing that the court's parenting time order must be *in* the child's best interests is not necessarily inconsistent with applying the endangerment standard and does not reflect a clear intent on her part to waive that standard.

¶ 22 Further, mother's rights are not the only rights at issue here. The parties' parenting time dispute implicates *the child's* interests

as well. *See* § 14-10-104.5, C.R.S. 2020 (recognizing child's right to have a relationship with both parents); *see also In re Marriage of Barker*, 251 P.3d 591, 592 (Colo. App. 2010) (describing child's interests as the controlling factor in resolving parenting time issues); *In re Marriage of Sepmeier*, 782 P.2d 876, 878 (Colo. App. 1989) ("It is the well-being of the child, rather than reward or punishment of a parent, that must guide every aspect of a custody determination including visitation.").

¶ 23 Accordingly, the ambiguity in mother's statements at the hearing does not bar her from pursuing her arguments on appeal.[1]

IV. The Endangerment Standard Applies

¶ 24 The district court found that it could modify the parenting plan under section 14-10-129.5(2)(b) to substantially change parenting time as well as change the child's primary residential

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[1] Because mother did not waive her legal standard argument, *and* the issue of the proper legal standard was brought to the district court's attention by father's attorney, and the court ruled on it in the final written order, the issue is preserved for review. *See Rinker v. Colina-Lee*, 2019 COA 45, ¶ 26 ("[W]here, as here, the trial court rules . . . on an issue, the merits of its ruling are subject to review on appeal, whether timely objections were made or not."); *cf. In re Estate of Ramstetter*, 2016 COA 81, ¶ 71 n.7 ("[W]here a trial court addresses an argument, whether that argument was preserved is moot.").

parent without applying the endangerment standard under section 14-10-129(2)(d). We conclude that the court erred in this regard.

¶ 25 Whether the endangerment standard applies to a section 14-10-129.5(2)(b) request to substantially modify the parenting plan and change the child's primary residential parent presents an issue of statutory interpretation. "[W]e interpret statutes de novo." *Garrou v. Shovelton*, 2019 COA 15M, ¶ 10.

¶ 26 "In construing a statute, we strive to give effect to the intent of the legislature and adopt the statutory construction that best effectuates the purposes of the legislative scheme, looking first to the plain language of the statute." *In re Marriage of Ciesluk*, 113 P.3d 135, 141 (Colo. 2005); *see also Portercare Adventist Health Sys. v. Lego*, 2012 CO 58, ¶ 12.

¶ 27 In interpreting provisions of the Uniform Dissolution of Marriage Act (UDMA), we do not read the provisions in isolation. *See In re Parental Responsibilities Concerning D.P.G.*, 2020 COA 115, ¶ 19. Instead, we read UDMA provisions together, harmonizing them whenever possible. *In re Marriage of Joel*, 2012 COA 128, ¶ 19; *see also Portercare Adventist Health Sys.*, ¶ 12.

¶ 28 Father argues that the district court did not err because section 14-10-129.5 does not require an endangerment finding before modifying parenting time as an enforcement sanction against a parent who has violated a parenting time order. However, section 14-10-129.5 does not address the particular type of modification at issue here — one that substantially changes parenting time as well as changes the parent with whom the child resides a majority of the time. That specific type of modification is addressed in section 14-10-129(2).

¶ 29 The policy behind requiring the more stringent endangerment standard before substantially modifying parenting time and a child's primary residence is to recognize the disruption such a change causes for the child and to promote stability for the child. *In re Marriage of Wall*, 851 P.2d 224, 227 (Colo. App. 1992), *aff'd*, 868 P.2d 387, 390 (Colo. 1994); *see Spahmer v. Gullette*, 113 P.3d 158, 163 (Colo. 2005) (noting that in modification proceedings, the child has "achieved a degree of stability in the post-decree family unit" and the goal is to maintain that stability); *see also In re Marriage of McNamara*, 962 P.2d 330, 332-33 (Colo. App. 1998) (noting that whether the endangerment or best interests standard

applies when modifying parenting time depends on the practical effect of the modification on the child).

¶ 30 The two statutes can be harmonized, and both effectuated without conflict consistent with the legislative policy recognized in *Wall*, 851 P.2d at 227. In doing so, we interpret the statutes such that although parenting time may be modified "to meet the best interests of the child" as a remedy for a parenting time dispute under section 14-10-129.5(2)(b), *if* such a modification would substantially change parenting time *and* change the parent with whom the child resides a majority of the time, section 14-10-129(2) also applies. *See* § 2-4-205, C.R.S. 2020 ("If a general provision conflicts with a special . . . provision, it shall be construed, if possible, so that effect is given to both.").

¶ 31 Both parties cite *Kniskern v. Kniskern*, 80 P.3d 939 (Colo. App. 2003). But that case is materially distinguishable from the present circumstances. In *Kniskern*, the permanent orders provided that if the children's mother did not stop alienating them, the primary residential parent would automatically change from her to the children's father. *Id.* at 941. After the mother then did not stop her behavior, the district court enforced the permanent orders by

making the father the primary residential parent instead of her. *Id.* at 940. The mother appealed and argued that the court had to find the children were endangered in her care before it could change their primary residence. A division of this court disagreed, holding that an endangerment finding is not required when a change in primary residence is an enforcement, rather than a modification, of the original decree. *See id.* at 940-41.

¶ 32 Here, however, the existing parenting time order did not specify that the child's primary residence would be changed based on mother's behavior. There was no such provision to enforce. Thus, although father ostensibly brought an enforcement motion, he did not seek to enforce a provision of the existing order allowing for a change in the child's primary residence. Rather, he asked to *modify* the existing order to that effect pursuant to section 14-10-129.5(2)(b). Therefore, section 14-10-129(2) applies to his request because it involves a change in the child's primary residence.

V. The District Court's Endangerment Findings Are Insufficient

¶ 33 Although the district court found that it could substantially modify parenting time and modify the child's primary residence without applying the endangerment standard, the court also noted

that it had "considered the endangerment factors set out by" section 14-10-129 and found that both the endangerment and best interests standards had been met. Mother contends, however, that the court's findings are inadequate under section 14-10-129(2)(d) to support the substantial change in parenting time and the change in the child's primary residence. We agree.

¶ 34 As to the endangerment standard, the court found that "[m]other endangers [the child's] emotional wellbeing because she refuses to accept the . . . findings and rulings of the [c]ourt" and, as a result, "has placed her interest ahead of [the child's] best interest[s]." The court also found that "[m]other has demonstrated herself to be someone completely unable to encourage a healthy relationship between [the] child and [f]ather." The court noted mother's "demeanor" at the hearing and "acknowledge[d] based on [m]other's testimony that she disagrees with the [c]ourt's ruling and that she will fight for the rest of her life and never accept that ruling," which it described as "a huge problem."

¶ 35 The court did not properly apply the legal standard established by section 14-10-129(2)(d). The statute requires "a three-step analytical process." *In re Parental Responsibilities Concerning*

B.R.D., 2012 COA 63, ¶¶ 19-21. First, there is a presumption that the prior order shall be retained. Second, in order to overcome that presumption, the court must find that the child is endangered by the status quo and that modifying the existing order will create advantages that outweigh any harm caused by the modification. Last, the court must find that the proposed modification is in the child's best interests. *Id.* at ¶ 21. The district court did not apply this analysis. It did not find that the prior order that the child reside primarily with mother in Georgia endangered his physical health or "significantly" impaired his emotional development and that the harm likely to be caused by a substantial change to reside primarily with father in Colorado was outweighed by the advantage of the change to the child. § 14-10-129(2)(d).

¶ 36 As mother argues, by not making these findings, the court failed to apply the required presumption in favor of the prior order, *see B.R.D.*, ¶ 21, which is intended to avoid disruption and promote stability for the child. *See Spahmer*, 113 P.3d at 163; *Wall*, 851 P.2d at 227.

¶ 37 Father argues that the missing findings may be implied. *See In re Marriage of Garst*, 955 P.2d 1056, 1058-59 (Colo. App. 1998)

(upholding relocation order based on limited best interests findings); *see also In re Marriage of Nelson*, 2012 COA 205, ¶¶ 40-41 (implying — based on evidence of the payor spouse's ability to pay — that a retroactive maintenance modification would not create an undue hardship). We decline to imply the necessary findings, however, because we conclude that they lack sufficient record support.

¶ 38 In its written order, the court adopted the PRE's recommendation to substantially change parenting time as well as change the child's primary residential parent "as a sanction" against mother for contempt. Consistent with that provision, the court's oral findings at the June and July 2019 hearings reflect its primary focus on mother's "attitude" and "demeanor" relative to the court's orders.

¶ 39 But a substantial change in parenting time to change a child's primary residence may not be ordered to punish a parent for an "attitude" or "demeanor." *See Sepmeier*, 782 P.2d at 878. Instead, the court's focus must be on the effect of such a substantial change on *the child*. *See* § 14-10-129(2)(d); *Spahmer*, 113 P.3d at 163; *see also Wall*, 851 P.2d at 227.

¶ 40 We acknowledge the court found that mother's refusal to accept the court's orders endangers the child's "emotional wellbeing," that mother was "completely unable to encourage a healthy relationship between the child and [f]ather," that she "was being combative and difficult," and that she was someone who "will fight for the rest of her life and never accept" the court's ruling. However, the court did not explain specifically how the child's emotional development would be "significantly impair[ed]" by mother's demeanor in court or her beliefs about the court's orders. *See* § 14-10-129(2)(d). Nor did it address at all whether the harm in changing the parenting time and the child's primary residence would be outweighed by the advantages to the child. *See id.*

¶ 41 We also acknowledge that the court adopted the PRE's parenting time recommendations. But the PRE's findings — in both the initial and update reports — do not support that the child's emotional development was "significantly impair[ed]" in mother's primary care or that the harm to be caused by a substantial change in parenting time and primary residence would be outweighed by the advantages to him. *See id.* Indeed, father's attorney admitted as much at the hearing. When mother asserted that father made

numerous endangerment allegations against her in his motion to enforce, but then presented no evidence to support those allegations, father's attorney responded by admitting that the PRE report "found no hard evidence . . . based on his interviews to identify endangerment of [the child]," and therefore father was no longer arguing the endangerment issues from his motion.

¶ 42 And father's attorney was correct. The PRE's report makes clear that the PRE applied only the best interests of the child standard and not the endangerment standard. The requirement to find physical endangerment or significant impairment of emotional development is not mentioned in the report, and the PRE frames the issue — after addressing each of the best interests factors in section 14-10-124(1.5)(a) — as "what is in the best interest of the child." *See In re Marriage of West*, 94 P.3d 1248, 1251 (Colo. App. 2004) ("[W]hile endangerment will necessarily encompass best interests, few best interests arguments will show endangerment."). Also, the PRE reported that he "struggled with what to recommend" and therefore relied on the then-four-year-old child's stated wish to live with father, which does not suggest that the endangerment standard was met.

¶ 43 Then, in the updated report, the PRE not only fails to address the endangerment standard, he also emphasizes that mother's parenting time should *not* be restricted, which is inconsistent with implying findings under the endangerment standard. *See* § 14-10-129(1)(b)(I), (2)(d).

¶ 44 Also, as mother points out, the PRE reports — on which the court relied for its finding that mother was unable to encourage the child's relationship with father and that father was better able to encourage the relationship with mother — express equal concerns about father in this regard. Specifically, the PRE reported that the child said that father talks to him about custody issues and told him that mother "lies all the time." The PRE further found that both parents likely have "underlying personality issues"; they struggled to encourage the sharing of love, affection, and contact between the child and the other parent; and they accused the other of being dishonest. In the PRE's supplemental report, he strongly chastises *both* parents for not following court orders and expresses concern that father was "intentionally restricting" the child's time with mother and did not seem to understand that he could not do that.

¶ 45 To sum up, the PRE's findings and recommendations, on which the district court relied, do not support that mother's behavior significantly impaired the child's emotional development or that the harm that would be caused by a substantial change in parenting time and the child's primary residence would be outweighed by the advantages to the child.

¶ 46 Accordingly, we conclude that further proceedings and findings under section 14-10-129(2)(d) are needed on remand regarding father's request to substantially modify parenting time and change the child's primary residence. Specifically, the district court must apply the three-part test from *B.R.D.*, ¶¶ 19-21, and make the necessary findings under section 14-10-129(2)(d) as supported by the record.

¶ 47 We do not agree, however, with mother's additional argument that the court must address the least restrictive alternative before changing the child's primary residential parent from her to father. Section 14-10-129(2)(d) does not require consideration of that factor, which applies when a court completely denies parenting time rights to a parent. *See In re Marriage of Hatton*, 160 P.3d 326, 333 (Colo. App. 2007).

VI. The Court's Order Restricting Mother's Summer (2019) Parenting Time Is Moot

¶ 48 Mother also argues that the court erred in eliminating her summer 2019 parenting time without making sufficient findings under section 14-10-129(1)(b)(I) to support the restriction. Mother's argument on this issue is moot as to the summer 2019 parenting time she lost. *See In re Marriage of Dauwe*, 148 P.3d 282, 284 (Colo. App. 2006) (an issue is moot when a judgment, if rendered, would have no practical effect on an existing controversy); *see also People in Interest of K.A.*, 155 P.3d 558, 560 (Colo. App. 2006) (addressing mootness, although neither party raised it, because it involves an appellate court's subject matter jurisdiction). Thus, we do not address it. *See Dauwe*, 148 P.3d at 284 (an appellate court will not render an opinion on an issue that has become moot by subsequent events); *see also Colo. Mining Ass'n v. Urbina*, 2013 COA 155, ¶ 33 ("The power of judicial review simply does not extend to moot questions.").

¶ 49 Given that the record reflects high conflict between these parties, however, we note that any future restrictions of parenting time rights will require an endangerment finding by the court as

well as "specific factual findings supporting the restriction," § 14-10-129(1)(b)(I), with the focus being on *the child* and not on correcting a parent's attitude or demeanor.

VII. Appellate Attorney Fees

¶ 50 Mother requests her attorney fees incurred on appeal under section 14-10-119, C.R.S. 2020, based on the parties' relative financial resources, and under section 13-17-102, C.R.S. 2020, contending that father's answer brief arguments lack substantial justification.

¶ 51 Father also requests appellate fees under these statutes, relying for his section 13-17-102 request on mother's failure to preserve her legal standard argument.

¶ 52 Based on the disposition, we deny father's section 13-17-102 fee request. We also deny mother's request under that statute. *See Mission Denver Co. v. Pierson*, 674 P.2d 363, 365 (Colo. 1984) ("Standards for determining whether an appeal is frivolous should be directed toward penalizing egregious conduct without deterring a lawyer from vigorously asserting his client's rights.").

¶ 53 We deny father's request for appellate fees under section 14-10-119 because he has failed to explain a basis for his request. *See*

C.A.R. 39.1 (appellate attorney fees are awardable only when the party seeking them states a basis for the award); *see also In re Marriage of Wells*, 252 P.3d 1212, 1216 (Colo. App. 2011).

¶ 54 We remand mother's section 14-10-119 request to the district court to determine based on the parties' relative financial circumstances at the time of the remand proceedings. *See* C.A.R. 39.1; *In re Marriage of Alvis*, 2019 COA 97, ¶ 30.

VIII. Disposition and Remand Instructions

¶ 55 The order is reversed, and the case is remanded for reconsideration, as instructed, of father's request to modify parenting time and the child's primary residence.

¶ 56 Because it has been over a year since the order on appeal entered, the court shall consider the parties' and child's circumstances at the time of the remand proceedings and conduct a hearing to allow the parties to present new evidence of such circumstances. *See In re Parental Responsibilities Concerning M.W.*, 2012 COA 162, ¶ 27. Pending the remand proceedings and the entry of a new order, which shall occur forthwith, *see* § 14-10-128(1), C.R.S. 2020, the parenting plan from the September 6, 2019, order shall remain in effect. *See M.W.*, ¶ 27.

¶ 57 We emphasize, however, that the previous order is reversed, and therefore mother need not show on remand that the child is endangered in father's primary care for the child to be returned to her primary care — with reunification or other transition procedures as the court deems appropriate.

¶ 58 The court should also determine mother's request for appellate attorney fees under section 14-10-119 based on the parties' relative financial resources at the time of remand.

JUDGE BERGER and JUDGE TOW concur.