SUMMARY
January 19, 2023

2023COA6

No. 22CA0402, *In Interest of AD* — Colorado Uniform Guardianship and Protective Proceedings Act — Guardianship of Minor — Judicial Appointment of Guardian — Parents Unwilling or Unable to Exercise Parental Rights

A division of the court of appeals reviews the guardianship appointment for a minor under section 15-14-204(2)(c), C.R.S. 2022. In so doing, the division adopts the analytical framework outlined in *In re Parental Responsibilities Concerning B.J.*, 242 P.3d 1128 (Colo. 2010). Applying that framework to section 15-14-204(2)(c), the division concludes that the moving party must prove, by clear and convincing evidence, that the parent is (1) "unable or unwilling" to exercise their parental rights, and (2) the guardianship is in the best interest of the minor notwithstanding the parent(s)' opposition to the guardianship. Moreover, in entering such an order, the court must articulate the "special factors" it relies upon

to justify this interference with parental rights. *See Troxel v. Granville*, 530 U.S. 57 (2000).

Utilizing that framework here, the division concludes that the court did not err in appointing a guardian for the minor.

COLORADO COURT OF APPEALS **2023COA6**

Court of Appeals No. 22CA0402
Larimer County District Court No. 21PR30624
Honorable Sarah B. Cure, Judge

In the Interest of A.D., a Child,

I.S. and V.T.,

Appellees,

and

L.D.

Appellant.

ORDER AFFIRMED

Division IV
Opinion by JUDGE FOX
Lipinsky and Schock, JJ., concur

Announced January 19, 2023

Lindsey Steele-Idem, Guardian Ad Litem

Liggett Johnson & Goodman, P.C., Gail B. Goodman, Fort Collins, Colorado, for Appellees

Wick & Trautwein, LLC, Julie M. Yates, Fort Collins, Colorado, for Appellant

¶ 1 L.D. appeals the district court's order granting guardianship of her son, A.D., to I.S. and V.T. (jointly, Petitioners) pursuant to section 15-14-204(2)(c), C.R.S. 2022. We affirm.

I. Background

¶ 2 L.D. is the sole living parent of A.D., one of her three children. A.D. was sixteen at the time of the guardianship proceeding. Although L.D. and A.D. once shared a healthy relationship, it deteriorated dramatically during the summer and fall of 2021. This deterioration gave rise to Petitioners' request for — and the district court's grant of — an unlimited guardianship over A.D. We turn to that history now.

¶ 3 In June 2021, A.D.'s car was vandalized while parked in front of the family home. A.D. and his mother had a heated argument about why it happened and who was responsible for cleaning it. Upset by this conversation, A.D. went to stay at his girlfriend's house. Although he soon returned home, A.D. ran away from home five more times following disagreements with L.D.

¶ 4 In early July 2021, L.D. gave A.D. an ultimatum: he could (1) go to military school, (2) attend therapeutic boarding school, or (3) abide by her house rules. A.D. ran away again that night, but this

time he spent over a month away from home, staying with his girlfriend, couch surfing at friends' homes, or sleeping in public parks.

¶ 5 On August 7, 2021, A.D. was taken to the emergency room after appearing to overdose while partying with friends at a park. The hospital made a mandatory report to the Department of Human Services (DHS). Once A.D. was stable, L.D. and V.T. (L.D.'s longtime colleague and family friend) met with a DHS representative to discuss next steps. L.D. agreed that, given the hostility between A.D. and herself, and between A.D. and his two siblings (who both lived with L.D.), it was in his best interest to stay with Petitioners.

¶ 6 On September 8, 2021, A.D. drove Petitioners' car to L.D.'s house for his first night back since early July. When he arrived, L.D. became extremely upset that he had driven there. In her mind, A.D.'s operation of a car — and Petitioners' facilitation of it — violated their agreement that he not drive until certain conditions were met. The next morning, without notice to Petitioners or her son, L.D. called the Division of Motor Vehicles (DMV) and withdrew her permission for A.D.'s driver's license. The DMV revoked his license the next day.

¶ 7 A.D. became enraged when he learned that his mother had revoked her consent and subsequently sent a series of angry texts to her. L.D. then blocked A.D.'s number, thus preventing A.D.'s calls or texts from coming through to L.D.'s phone (though texts came through on her computer).

¶ 8 On September 24, 2021, DHS facilitated an "adults only" meeting with L.D., Petitioners, and DHS representatives. That meeting resulted in three shared priorities: (1) Petitioners were to provide regular updates about A.D. to L.D., who would, in turn, communicate with Petitioners before making decisions affecting A.D.; (2) A.D.'s license would be reauthorized within thirty days once to-be-defined conditions were met; and (3) A.D. would be allowed to be on the high school wrestling team, which all parties agreed was good for him.

¶ 9 Over the next month, Petitioners regularly emailed L.D. updates on A.D. L.D. provided few, if any, responses to these updates. Petitioners also sent L.D. a proposed plan for A.D. to get his license back, but L.D. did not respond.

¶ 10 On October 20, 2021, Petitioners filed their petition for appointment as A.D.'s guardians. L.D. objected to the petition, sought dismissal of the action, and requested attorney fees.

¶ 11 On November 8, 2021, Petitioners requested that the court appoint a guardian ad litem (GAL) to represent A.D.'s interests. Over L.D.'s objection, the court appointed a GAL pursuant to section 15-14-115, C.R.S. 2022, after concluding that, owing to their disagreement over the guardianship, the parties could not represent A.D.'s best interest in the guardianship proceedings. The GAL represented A.D.'s best interest throughout the litigation, and the court also instructed the GAL to provide a report about whether L.D. was "unable to exercise her parental rights."

¶ 12 On November 14, 2021, before Petitioners filed their reply, L.D. — without consulting Petitioners or A.D. — revoked her permission for A.D. to wrestle the day before the first day of practice. Why she took this sudden action is unclear: L.D. testified it was because A.D. was not maintaining passing grades, while another witness testified that she wanted "leverage" over him to participate in family therapy. Regardless, A.D. was devastated by the timing and nature of this action.

¶ 13 While these motions were pending, Petitioners continued to care for A.D. Petitioners asked L.D. for permission to talk to A.D.'s teachers, coaches, and doctors about how to better care for him. Yet from August to early December 2021, L.D. refused to grant Petitioners permission to engage with these individuals. She ignored or outright refused to allow such communications until December 8, 2021, when, after repeated requests from a DHS representative, she allowed Petitioners to attend — but not participate in — a meeting with A.D.'s teachers.

¶ 14 L.D. also resisted Petitioners' requests for financial support for A.D.'s care. To her credit, L.D. provided A.D. with $25 per week for groceries. These funds came from A.D.'s $1,800 monthly survivorship benefit, which was established following the death of A.D.'s father when A.D. was three. Petitioners knew the benefit existed and requested more financial support. L.D. did not respond to these requests.

¶ 15 Except for the text exchange between L.D. and A.D. following the revocation of L.D.'s consent for A.D.'s license, L.D. and A.D. never communicated directly. Instead, all such communications went through Petitioners or DHS.

¶ 16 Consistent with section 15-14-205(1), C.R.S. 2022, the district court conducted a hearing on Petitioners' guardianship motion. The hearing spanned two days, with both sides calling numerous witnesses.

¶ 17 In a written order, the court granted Petitioners an unlimited guardianship over A.D. In so doing, the court concluded that Petitioners had proved by clear and convincing evidence that L.D. was, consistent with section 15-14-204(2)(c), "unwilling or unable" to care for A.D. and that the guardianship was in A.D.'s best interest notwithstanding his mother's opposition to it.

II. Discussion

¶ 18 We first address L.D.'s contention that it was improper for the court to proceed under section 15-14-204(2)(c) because, she claims, the order deprived her of parental rights in a manner akin to a dependency and neglect proceeding without affording her the attendant process. After determining that the court properly proceeded under section 15-14-204(2)(c), we examine the evidentiary burden and application of section 15-14-204(2)(c). With those legal principles in hand, we then turn to the district court's

judgment and conclude that the court did not err in granting the guardianship.

A. Guardianship Proceeding

¶ 19 Section 15-14-204(1) empowers district courts to appoint guardianships for minors upon request from "a person interested in the welfare of a minor."[1] A court can do so for several reasons. As pertinent here, it may appoint a qualified guardian if it finds the parents are "unwilling or unable to exercise their parental rights" and that the appointment is "in the minor's best interest." § 15-14-204(2)(c).

¶ 20 Unless otherwise limited by the court, a guardian possesses "the duties, responsibilities, and powers of a parent regarding the ward's support, care, education, health, and welfare." *In re D.I.S.*, 249 P.3d 775, 780 (Colo. 2011); §§ 15-14-207, -208, C.R.S. 2022. Of course, granting such a guardianship may result in the

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[1] Under the Colorado Constitution article VI, section 9(3), district courts (with the exception of the City and County of Denver, which has a separate probate court) retain jurisdiction to handle all probate matters — including guardianship proceedings. *See In re J.C.T.*, 176 P.3d 726, 732 (Colo. 2007) (holding that the Denver probate court did not exceed its jurisdiction when it took steps to find a permanent guardian for a minor).

coextensive loss of those duties, responsibilities, and powers for the parent(s).

¶ 21 Judicial actions taken under article 3 of the Colorado Children's Code can also affect parental rights. *See* §§ 19-3-100.5 to -705, C.R.S. 2022. For example, if the State alleges that a minor is dependent and neglected under section 19-3-102(1), C.R.S. 2022, then the court may hold an adjudicatory hearing at which the State must prove by a preponderance of the evidence that the child is dependent and neglected. *See L.L. v. People*, 10 P.3d 1271, 1277-78 (Colo. 2000). If the State meets its burden, the court may take a number of actions, including appointing a guardian for the minor. §§ 19-1-104(4), 19-3-508(1), 19-3-702(4)(a)(III), C.R.S. 2022.

¶ 22 On appeal, L.D. argues that the district court erred by proceeding under the guardianship statute. In her view, the court should have transferred the dispute to a juvenile court, where it would have been subject to the extensive procedural mechanisms associated with a dependency and neglect proceeding.

¶ 23 We discern no error. Foremost, the district court's action was consistent with the jurisdictional provisions of the Probate Code and the Children's Code. § 15-14-106(1), C.R.S. 2022 ("[T]he court

has jurisdiction over . . . guardianship and related proceedings for individuals domiciled or present in this state . . . ."); § 19-1-104(4) ("Nothing in this section shall deprive the district court of jurisdiction to appoint a guardian for a child . . . ."). The Children's Code allows a district court to request that the juvenile court make recommendations pertaining to guardianship. § 19-1-104(4)(b). But the State possesses the exclusive authority to initiate a dependency and neglect proceeding under the Children's Code. *L.A.G. v. People in Interest of A.A.G.*, 912 P.2d 1385, 1392 (Colo. 1996). And here, the State did not initiate such a proceeding to empower the juvenile court to assume jurisdiction over A.D. *See* § 19-1-104(4)(a) (providing that, when a petition involving the same child is pending in juvenile court, the district court shall certify the question of legal custody to the juvenile court).

¶ 24 The court's action was also consistent with binding precedent. For instance, in *In re J.C.T.*, the supreme court upheld a probate court order directing a GAL to find a permanent guardian for a minor under the probate court's supervision. 176 P.3d 726 (Colo. 2007). The supreme court reasoned that, although the guardianship closely resembled adoption, it was distinct because it

resulted only in the suspension of parental rights — as opposed to the termination of the legal relationship between parent and child. Thus, the probate court retained jurisdiction. *Id.* at 728-32; *see also* Deirdre M. Smith, *Termination of Parental Rights as a Private Remedy: Rationales, Realities, and Alternatives*, 72 Syracuse L. Rev. 1173, 1178-84 (2014) (examining the nature and significance of this crucial distinction).

¶ 25 While we recognize that the guardianship deprives L.D. of substantial parental rights — namely, her authority over A.D. — her legal status as his mother remains intact. *See People in Interest of K.S.*, 33 Colo. App. 72, 76, 515 P.2d 130, 132-33 (1973) (discussing the difference between the deprivation of a parent's custodial rights and the termination of the parent's legal status as a parent). And the suspension of such rights is within the district court's power. *See In re J.C.T.*, 176 P.3d at 730 (The district "court 'is granted broad discretion in all cases involving protected persons.'" (quoting *O.R.L. v. Smith*, 996 P.2d 788, 790-91 (Colo. App. 2000))).

¶ 26 Accordingly, the district court did not err by acting pursuant to section 15-14-204(2)(c).

B. Evidentiary Questions

¶ 27 We now address two related evidentiary questions. First, given that parents are entitled to a presumption that they act in their children's best interest, must the party seeking appointment as guardian under section 15-14-204(2)(c) prove, by clear and convincing evidence, that the guardianship is in the best interest of the child despite this presumption? And second, in granting a guardianship under section 15-14-204(2)(c), must the court delineate the "special factors" upon which it relies? We answer "yes" to both questions.

1. Clear and Convincing Evidence

¶ 28 Parents have a fundamental liberty interest in the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 68 (2000); *In re Adoption of C.A.*, 137 P.3d 318, 327 (Colo. 2006). To protect this liberty interest, there is a presumption that parents act in the best interest of their children. *Troxel*, 530 U.S. at 67. And Colorado courts have held, in analogous circumstances, that this presumption can only be overcome by clear and convincing evidence. *In re Parental Responsibilities Concerning B.J.*, 242 P.3d 1128, 1130 (Colo. 2010) (visitation time for nonparents

under section 14-10-123(1), C.R.S. 2022); *In Interest of Baby A*, 2015 CO 72, ¶ 29 (termination of parent-child legal relationship under section 19-5-105, C.R.S. 2022).

¶ 29 We conclude that this heightened evidentiary burden should also apply in the context of section 15-14-204(2)(c). *In re Parental Responsibilities Concerning B.J.*, 242 P.3d 1128, is particularly instructive. There, a child's former foster parents sought an order granting them visitation rights over father's objection. *Id.* at 1130-32. The court held that, before granting such an order, the nonparent must show by clear and convincing evidence that the allocation of parenting time to the nonparent is in the best interest of the child. *Id.* at 1130.

¶ 30 Although granting nonparental visitation rights is different than granting a guardianship, we nevertheless conclude that it is sufficiently analogous to warrant application of the same heightened evidentiary burden. Indeed, using the clear and convincing standard in the context of section 15-14-204(2)(c) not only protects the parents' fundamental liberty interest in the care, custody, and control of their children, *Baby A*, ¶ 24, but also ensures that the best interest of the minor is preserved. *See In re*

R.M.S., 128 P.3d 783, 788 (Colo. 2006) (observing, in the context of section 15-14-202, C.R.S. 2022, that the overarching purpose of the guardianship statute is to promote the best interest of the minor).

¶ 31 This interpretation is also consistent with section 15-14-121, C.R.S. 2022. Our guardianship statute is modeled after the Uniform Guardianship and Protective Proceedings Act (UGPPA). Section 15-14-121 states that, in applying and interpreting the statute, courts must consider "the need to promote uniformity of the law with respect to its subject matter among states that enact it." Other states that have enacted the UGPPA have also imposed a clear and convincing evidentiary standard where the parents oppose the guardianship. *See, e.g.*, Wash. Rev. Code § 11.130.185(2)(c) (2022); Me. Stat. tit. 18-C, § 5-204(2)(C) (2022).

¶ 32 Moreover, this interpretation is consistent with how other state courts have interpreted similar, although not identical, guardianship statutes. *See, e.g.*, *Terrence E. v. Christopher R.*, 842 S.E.2d 755, 760 (W. Va. 2020); *In re Guardianship of Nicholas P.*, 27 A.3d 653, 658 (N.H. 2011); *In re Guardianship of Elizabeth H.*, 771 N.W.2d 185, 192-93 (Neb. Ct. App. 2009).

¶ 33 For these reasons, we hold that a party invoking section 15-14-204(2)(c) must prove by clear and convincing evidence that (1) the parents are "unwilling" or, as relevant here, "unable" to exercise their parental rights; and (2) the guardianship is "in the minor's best interest."

2. Special Factors

¶ 34 In addition to the moving party's heightened burden of proof, interference with parental rights also imposes an affirmative obligation on courts. This duty stems from *Troxel*, which held that there must be "special factors" that justify the interference with parental rights. *Troxel*, 530 U.S. at 68. Because a parent's position is accorded "special weight" vis-a-vis the parental presumption, decisions that override that presumption must identify the "special factors" — that is, the specific reasons — that justify the court doing so. *Baby A*, ¶ 27.

¶ 35 The same courts that required movants to meet a heightened evidentiary burden before interfering with parental rights have also imposed this additional factfinding obligation on courts. *Id.*; *B.J.*, 242 P.3d at 1132. These holdings, coupled with the analogous gravity of a guardianship appointment, lead us to conclude that in

appointing a guardian under section 15-14-204(2)(c), a court must make findings of fact identifying the "special factors" upon which it relies.

C. Interpretation and Application of Section 15-14-204(2)(c)

¶ 36 L.D. contends that the district court erred by concluding that section 15-14-204(2)(c) was satisfied. More precisely, she argues that the discord between herself and A.D. was simply the product of him being a rebellious teenager, rather than her inability to exercise her parental rights within the meaning of section 15-14-204(2)(c). We conclude otherwise.

1. Additional Background

¶ 37 The district court determined that Petitioners showed, by clear and convincing evidence, that (1) L.D. was unable to exercise her parental rights and (2) the guardianship was in A.D.'s best interest. In reaching this conclusion, it articulated numerous "special factors" on which it relied.

¶ 38 First, the court observed that there was a complete breakdown in communication between L.D. and A.D. Indeed, the two had not meaningfully communicated for six months at the time of the hearing, and L.D. substantially contributed to this breakdown. For

one, her own actions prevented direct communication with A.D. She took away his phone because he would not allow her to track him, then refused to talk to him on the replacement phone he received from his girlfriend, only to later block his number following the license revocation. She also disregarded alternative communication systems set up in lieu of direct channels. For example, after she suddenly revoked her consent for him to drive and to wrestle, she then disregarded communications from Petitioners regarding A.D.'s educational needs. While the court recognized that A.D. contributed to this dynamic, it concluded that L.D.'s actions only worsened the situation.

¶ 39 The court also determined that there was a complete loss of trust between L.D. and A.D. It noted that, like the breakdown in communication, L.D.'s actions had contributed to this strife, most notably her unilateral decisions — without prior warning — to revoke her permissions for his license and for him to wrestle. It further observed that, although L.D. insisted that she wanted A.D. home, she also expressed that she did not feel safe with him at home. While A.D. undoubtedly contributed to this loss of trust, the court found that L.D. failed to take steps to rebuild it.

¶ 40 Finally, the court observed that L.D. seemed to be more interested in retaining her parental authority over A.D. than helping with his distress. This dynamic was highlighted by L.D.'s response to Petitioners' requests to communicate with A.D.'s teachers, coaches, and doctors. She knew A.D. was going through a tough time, and that these adults could help Petitioners help A.D., yet she refused to allow communication for several months. As with her actions regarding the breakdown in communication and loss of trust, this behavior likewise evinced an inability to place A.D.'s needs above her own and thus exercise her parental rights.

¶ 41 In addition to making these factual findings, the court concluded that the guardianship was in A.D.'s best interest. He had been living safely with Petitioners since September 2021, improving his academic performance, and participating in other high school activities (e.g., wrestling, dances, etc.). More importantly, the court found that A.D. trusted Petitioners and felt stable in their custody.

¶ 42 These findings were consistent with the GAL's report concluding that L.D. was unable to exercise her parental rights and that the guardianship was in A.D.'s best interest. The court thereby

concluded that the elements of section 15-14-204(2)(c) were satisfied.

2. Analysis

¶ 43 L.D.'s principal contention is that the court interpreted the meaning of "unable" too broadly. In her view, a court may only conclude that a parent is unable to exercise parental rights if an examining physician concludes that she is no longer able to care for the child.[2] To support this interpretation, she points to another portion of the statute — specifically, section 15-14-202, which concerns the appointment of a guardianship through a will or similar testamentary document. In particular, she relies on section 15-14-202(3), which states:

> [T]he appointment of a guardian becomes effective upon the death of the appointing parent or guardian, an adjudication that the parent or guardian is an incapacitated person, *or a written determination by a physician who has examined the parent or guardian that the parent or guardian is no longer able to care for the child,* whichever occurs first.

[2] L.D. does not argue that "unable" under section 15-14-204(2)(c), C.R.S. 2022, means "unfit."

(Emphasis added.) L.D. argues that accepting the district court's interpretation runs the risk of defining functionally identical terms differently across the statute. We are unpersuaded.

¶ 44 Adopting such a narrow interpretation reads a requirement into section 15-14-204(2)(c) that is not there. The General Assembly defines essential terms it deems appropriate, and it chose not to do so here. *See* § 15-14-102, C.R.S. 2022 (the definitional section of the Colorado UGPPA). Moreover, there is no evidence that the General Assembly intended the standards delineated in section 15-14-202 — which concerns distinct circumstances — to also apply in the context of appointment of guardians. *See Allstate Ins. Co. v. Smith*, 902 P.2d 1386, 1387 (Colo. 1995) (presuming that the General Assembly meant what it said).

¶ 45 Perhaps more importantly, L.D.'s interpretation would impede a court's ability to further the statute's primary purpose — namely, to protect the best interest of the minor. *See In re R.M.S.*, 128 P.3d at 788. By way of example, unless a court received clinical confirmation of the parents' inability to care for the minor, it could not appoint a guardian even if the appointment was in the minor's best interest. We decline to interpret section 15-14-204(2)(c) in a

manner that would directly undermine the General Assembly's intent. *See Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004).

¶ 46 The record supports the district court's finding that there was clear and convincing evidence that, while L.D. was willing, she was "unable" to exercise her parental rights under section 15-14-204(2)(c). A.D.'s behavior was undoubtedly challenging and he placed himself in danger by repeatedly running away. But, as the court found with record support, L.D.'s response to that behavior only made the situation worse. Her failure to meaningfully engage with him, her repeated betrayals of his trust, and her actions that arguably undermined his efforts at self-improvement all support the district court's finding that she was unable to exercise her parental rights. These are the "special factors" that support our conclusion that section 15-14-204(2)(c) is satisfied.

¶ 47 By no means do we suggest that L.D. is clinically incapable of parenting. Rather, the confluence of dynamics at play makes L.D.'s parenting of A.D. untenable. L.D. and A.D. do not talk to, trust, or respect one another, and no evidence was presented that indicated she will soon be able to alter those dynamics. While such dynamics do not, alone, render a parent "unable" to exercise their parental

rights, under the extreme facts of this case, the district court did not err in finding that this situation falls within the broad purview of section 15-14-204(2)(c).

¶ 48 In the alternative, L.D. claims that the court erred when it concluded that the guardianship was in A.D.'s best interest without applying the standards specified in the Uniform Dissolution of Marriage Act (UDMA). §§ 14-10-101 to -133, C.R.S. 2022. Specifically, section 14-10-124(1.5)(a), C.R.S. 2022, articulates the factors a court must consider before allocating parental responsibilities following a dissolution of marriage or legal separation. L.D. faults the court for not applying all the factors laid out in section 14-10-124(1.5)(a).

¶ 49 This argument fails because nothing in section 15-14-204 suggests that its best interest standard must mirror the UDMA analysis. Granted, a court may consider the section 14-10-124(1.5)(a) factors in a section 15-14-204 inquiry, as the court did here. But while such factors may be relevant, we see no basis for requiring that courts undertake an identical analysis under 15-14-204 when determining whether to appoint a guardian for a minor. Accordingly, the court did not err by not doing so.

¶ 50 Because the record supports the district court's finding that L.D. was unable to exercise her parental rights within the meaning of section 15-14-204(2)(c), and because L.D. does not challenge that the guardianship was in A.D.'s best interest, *Galvan v. People*, 2020 CO 82, ¶ 45, we conclude that the district court did not err in appointing Petitioners as guardians.

D. Other Issues

¶ 51 We last address three other issues the parties raise.

1. Appointment of Guardian Ad Litem

¶ 52 L.D. also faults the district court for appointing a GAL before it entered a finding that L.D. was "unable or unwilling" to exercise her parental rights.

¶ 53 Pursuant to section 15-14-115, a court may appoint a GAL "if the court determines that representation of the interest otherwise would be inadequate." The statute further states that the court "shall state on the record the duties of the [GAL] and its reasons for the appointment." § 15-14-115. Here, the district court determined that, given Petitioners and L.D.'s disagreement about the guardianship, A.D.'s interest was not adequately represented. It therefore appointed a GAL and outlined the scope of the GAL's

duties. Because the court provided a reason for the appointment, and because it articulated the breadth of the GAL's representation, the court did not err in appointing the GAL without first finding that L.D. was "unable or unwilling" to exercise her parental rights.

2. Financial Support for Guardianship

¶ 54 L.D. also takes issue with the court's order regarding financial support for A.D. Consistent with section 15-14-209, C.R.S. 2022, the court ordered L.D. to provide Petitioners with $1,100 of the $1,800 in monthly survivorship benefit she received on behalf of A.D. L.D. claims the court erred because, according to her, this amounts to a child support order — which the court could not enter without first making the factual findings specified in the child support guidelines statute. *See* § 14-10-115, C.R.S. 2022.

¶ 55 After the court entered its order, however, Petitioners were designated as the representative payees. Consequently, Petitioners — not L.D. — now receive A.D.'s monthly benefit. Because the court's order only required L.D. to provide Petitioners with a portion of the survivorship benefits while she was receiving those benefits, and because L.D. is no longer receiving those benefits, the issue is moot. *In re Parental Responsibilities Concerning S.Z.S.*, 2022 COA

105, ¶ 50 ("We will not render an opinion on the merits of an issue when subsequent events have rendered the issue moot.").

3. Attorney Fees

¶ 56 Finally, Petitioners request attorney fees pursuant to C.A.R. 39.1. But we deny that request because Petitioners fail to explain the legal or factual basis for the award as C.A.R. 39.1 requires. *Herbst v. Univ. of Colo. Found.*, 2022 COA 38, ¶ 20.

III. Conclusion

¶ 57 The order is affirmed.

JUDGE LIPINSKY and JUDGE SCHOCK concur.