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SUMMARY  
September 14, 2023

**2023COA81**

**No. 22CA1578, *People in Interest of J.R.M.* — Family Law — Juvenile Court — Dependency and Neglect; Civil Procedure — Trial by Jury or by the Court — Waiver of Statutory Right to Jury Trial**

In this dependency and neglect case, a division of the court of appeals holds that a juvenile court lacks authority under C.R.C.P. 39 to convert a jury trial into a court trial based on a respondent parent's failure to appear at a pretrial conference. The division also concludes that a respondent parent's subsequent failure to appear at the court trial does not constitute a waiver of the right to a jury trial.

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Court of Appeals No. 22CA1578  
Adams County District Court No. 21JV106  
Honorable Katherine R. Delgado, Judge

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The People of the State of Colorado,  
  
Appellee,  
  
In the Interest of J.R.M. and L.P-S., Children,  
  
and Concerning D.R.P.,  
  
Appellant.

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JUDGMENT REVERSED AND CASE  
REMANDED WITH DIRECTIONS

Division A  
Opinion by JUSTICE MARTINEZ\*  
Román, C.J., and Graham\*, J., concur

Announced September 14, 2023

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Appellant

\*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art.  
VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

¶ 1 In this dependency and neglect proceeding, D.R.P. (mother) appeals the juvenile court's judgment adjudicating J.R.M. and L.P-S. (the children) dependent and neglected. Mother argues that the juvenile court erred when it determined that she waived her right to a jury trial because she failed to appear in person at a pretrial conference. We agree and therefore reverse the judgment and remand for further proceedings.

### I. Background

¶ 2 The Adams County Human Services Department filed a petition in dependency and neglect regarding the children.

¶ 3 Mother requested an adjudicatory jury trial. The trial was delayed because of concerns regarding the high number of COVID-19 cases in Adams County. Meanwhile, about six months after the original petition was filed, the Department amended the petition to include additional allegations. The court continued mother's jury trial to give mother and her counsel more time to prepare in light of the additional allegations.

¶ 4 The court required mother to appear in person at several pretrial conferences. When mother failed to appear at the last scheduled pretrial conference, the court converted her jury trial to a

court trial, also referred to as a bench trial or a trial to the court. Mother did not appear at the adjudicatory court trial. After hearing testimony, the juvenile court adjudicated the children dependent and neglected.

## II. No Waiver of Jury Trial

¶ 5 Mother argues that the juvenile court erred when it found that she waived her right to a jury trial. She contends that no authority allowed the juvenile court to find a waiver of a jury trial because she failed to appear at a pretrial conference. We agree and also conclude that mother did not subsequently waive her right to a jury trial when she did not appear at the court trial.

### A. Standard of Review and General Law

¶ 6 We review questions of statutory interpretation de novo. See *People in Interest of L.M.*, 2018 CO 34, ¶ 13. We look to the entire statutory scheme of the Children’s Code “in order to give consistent, harmonious, and sensible effect to all of its parts, and we apply words and phrases in accordance with their plain and ordinary meanings.” *UMB Bank, N.A. v. Landmark Towers Ass’n*, 2017 CO 107, ¶ 22. Our goal when interpreting a statute is “to effectuate the

legislature’s intent.” *Blooming Terrace No. 1, LLC v. KH Blake St., LLC*, 2019 CO 58, ¶ 11.

¶ 7 Parents have a fundamental liberty interest in the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Additionally, “due process requires the state to provide fundamentally fair procedures in a dependency and neglect proceeding.” *People in Interest of J.A.S.*, 160 P.3d 257, 262 (Colo. App. 2007).

¶ 8 In Colorado, because “[d]ependency and neglect proceedings are civil in nature,” *People v. Johnson*, 2017 COA 11, ¶ 32 (citation omitted), the Colorado Constitution does not guarantee the right to jury trials in these cases. *People in Interest of C.C.*, 2022 COA 81, ¶ 11. However, the General Assembly has granted parents a statutory right to demand a jury trial at the adjudicatory phase of dependency and neglect cases. § 19-3-202(2), C.R.S. 2023 (providing that “any respondent . . . may demand a trial by jury of six persons at the adjudicatory hearing pursuant to section 19-3-505”).

¶ 9 “Generally, the Colorado Rules of Civil Procedure apply to those juvenile matters that are not governed by the Colorado Rules

of Juvenile Procedure or the Children’s Code.” *People in Interest of K.J.B.*, 2014 COA 168, ¶ 9. C.R.C.P. 39(a)(3) provides, as relevant here, that “[t]he trial shall be by jury of all issues so demanded unless . . . all parties demanding trial by jury fail to appear at trial.” A party may waive the right to a jury trial, either expressly or impliedly, but the waiver must be voluntary. *K.J.B.*, ¶ 29.

#### B. Additional Background

¶ 10 The juvenile court advised mother that she needed to appear in person at the pretrial conference or else the court would convert the jury trial to a court trial. Mother failed to attend the pretrial conference, but counsel appeared on her behalf. Counsel advised the court that mother had been sick for a couple of weeks and that she had sent counsel a photograph of a positive COVID-19 “home test.”

¶ 11 The juvenile court noted mother’s absence and stated: “I assume that [the] county will be requesting that the court convert the trial to a trial to the court.” The county attorney indeed asked the court to convert the trial to a court trial but cited no authority allowing the court to do so.

¶ 12 Mother’s counsel, on the other hand, objected to the conversion, arguing that mother was ill with symptoms of COVID-19 and could not appear in person, she did not intend to waive her right to a jury trial, and her right to a jury trial had not been lost for any of the reasons listed in C.R.C.P. 39 because she had failed to appear at a pretrial conference. Mother’s counsel also cited *Whaley v. Keystone Life Insurance Co.*, 811 P.2d 404, 405 (Colo. App. 1989), and argued that converting a jury trial to a court trial should not be used as a punishment for mother’s failure to follow court orders or for not appearing in person.

¶ 13 The juvenile court noted that mother knew she was supposed to appear in person, that she had outstanding warrants, and that “[mother’s] either going to come in here in person and take care of her warrant, or she’s gonna not come in here, which is what she chooses to do.” It went on to say that it did not “trust that [mother] will show up next week” for the jury trial and that it would not “bring in a jury under these circumstances.”

### C. Analysis

¶ 14 Mother argues that the juvenile court reversibly erred because it converted the jury trial to a court trial at the pretrial conference. We agree.

¶ 15 The Department points us to no rule, statute, or case law that confers authority on the juvenile court to find a waiver of the statutory right to a jury trial when a parent fails to appear at a pretrial conference. C.R.C.P. 39(a) requires that a jury trial be held unless “all parties demanding trial by jury fail to appear *at trial*.” (Emphasis added.) In our view, “at trial,” in the context of the quoted phrase, is a reference to the demanded trial by jury. Also, we note that our supreme court has mentioned that this practice may be error. *See People in Interest of A.P.*, 2022 CO 24, ¶ 38 (observing that the juvenile court may have made a mistake when it stated “that Parents’ requested jury trial would automatically convert into a bench trial if they failed to appear at pretrial conferences”).

¶ 16 The record does not reflect that mother voluntarily waived — expressly or impliedly — her right to a jury trial. To the contrary, at the pretrial conference, mother’s counsel expressly stated that



mother did not intend to waive her right to a jury trial. *See C.C.*, ¶ 16 (discussing Oklahoma case that found the parent “had asserted her right to a trial by jury early in the proceedings”).

Further, her counsel argued that she had a legitimate reason not to appear in person because she was experiencing symptoms of COVID-19. The juvenile court refused to accept counsel’s reasons and speculated that mother’s failure to appear had more to do with her outstanding warrants, calling mother’s purported symptoms “a ruse.”

¶ 17 Moreover, striking a jury trial as a sanction for failure to comply with court rulings is not proper when other sanctions are available. *See Whaley*, 811 P.2d at 405; *see also* C.R.C.P. 107 (disobeying a court order is contempt, which may result in punitive sanctions); *Kourlis v. Port*, 18 P.3d 770, 773 (Colo. App. 2000) (“[T]he authority to punish contempt is an exercise of a court’s inherent powers to enforce obedience to its orders.”). “[I]f the right to a jury trial is lost by a court sanction, then the resulting trial to the court could be viewed as ‘punishment’ to the party that initially sought a jury trial. It is unacceptable for a court trial to be imbued with such a negative connotation.” *Whaley*, 811 P.2d at 405.

¶ 18 We disagree with the Department's argument that, even if the juvenile court prematurely found mother had waived her right to a jury trial, mother waived her right to a jury trial under C.R.C.P. 39(a)(3) by failing to appear at the court trial. C.R.C.P. 39 does not apply because it refers to a party's failure to appear at a jury trial. Mother did not fail to appear at a jury trial. Her failure to appear at a court trial, scheduled because the court erroneously determined that she had waived her right to a jury trial by her nonappearance at a pretrial conference, does not fit C.R.C.P. 39's exception for when a party waives their right to a jury trial.

¶ 19 In reaching our conclusion, we are aware that requiring the personal appearance of respondent parents at a pretrial conference to preserve their right to a jury trial may be the practice of some juvenile courts, and we are sympathetic to the interest of preserving judicial resources by not calling potential jurors when it seems likely that a respondent parent might fail to appear at a requested jury trial. Nonetheless, there is no legal basis for converting a jury trial to a court trial when a respondent parent does not attend a pretrial conference. To the extent this practice, or some substitute, is desirable, a change in statute or rule would be necessary. *See*

*Prairie Mountain Publ'g Co., LLP v. Regents of Univ. of Colo.*, 2021 COA 26, ¶ 8 (“[M]aking statutes clearer, easier to administer, or ‘better’ are not proper roles of this state’s courts. That is the job of the General Assembly.”); *Winter v. Indus. Claim Appeals Off.*, 2013 COA 126, ¶ 27 (“[C]ourts cannot rewrite statutory or administrative rules under the guise of interpretation.”); *Humane Soc’y of Pikes Peak Region v. Indus. Claim Appeals Off.*, 26 P.3d 546, 548 (Colo. App. 2001) (“[I]f our interpretation of the clear language used in the statute does not correspond to the General Assembly’s intent, it is for that body, not this court, to rewrite it.”).

### III. Mother’s Remaining Contentions

¶ 20 Because we conclude that the juvenile court erred when it found mother had waived her right to a jury trial by failing to appear at a pretrial conference, we decline to address her contentions related to the evidence presented at the court trial. We also decline to address mother’s contention that the judicial officer should have disqualified herself from the proceeding. It is unlikely that the judicial officer, who is now retired, would be assigned to this case as a senior judge.

#### IV. Disposition

¶ 21 We reverse the judgment and remand the matter for a jury trial before another judge.

CHIEF JUDGE ROMÁN and JUDGE GRAHAM concur.