SUMMARY
September 28, 2023

**2023COA90**

**No. 22CA2074, *Peo in Interest of CDP* — Family Law — Juvenile Court — Dependency and Neglect — Uniform Parentage Act — Psychological Parent**

The majority concludes that the juvenile court did not err by dismissing the child's psychological mother from the case because she and the Department of Human Services did not timely and clearly assert a Uniform Parentage Act claim of maternity in the juvenile court.

The special concurrence concludes that the Department of Human Services is an "interested party" under the Colorado Uniform Parentage Act, and that when the Department has sufficient notice of facts that an individual other than a biological or legal adoptive parent might possess a parental presumption, it has the responsibility to raise a UPA claim before it seeks termination of

parental rights so that the court can adjudicate who is the child's natural parent.

COLORADO COURT OF APPEALS **2023COA90**

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Court of Appeals No. 22CA2074
Adams County District Court No. 21JV98
Honorable Katherine R. Delgado, Judge

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The People of the State of Colorado,

Appellee,

In the Interest of C.D.P., a Child,

and Concerning J.L.P.,

Appellant.

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ORDER AFFIRMED

Division II
Opinion by JUDGE FURMAN
Tow, J., concurs
Johnson, J., specially concurs

Announced September 28, 2023

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Heidi M. Miller, County Attorney, Megan Curtiss, Assistant County Attorney, Westminster, Colorado, for Appellee

Josi McCauley, Guardian ad Litem

Padilla Law, P.C., Beth Padilla, Durango, Colorado, for Appellant

¶ 1 In this dependency and neglect proceeding, J.L.P. (psychological mother) appeals the juvenile court's order dismissing her as a respondent concerning C.D.P. (the child). She contends that we should recognize her as the child's "psychological parent" under the Uniform Parentage Act (UPA), *see* §§ 19-4-101 to -130, C.R.S. 2023, or, alternatively, that we should reverse the court's dismissal order and remand the case so that she may be "given an opportunity to regain custody of her son and to complete a legal adoption."

¶ 2 Because she is a respondent custodian who was dismissed from the case, the case is final and we address her claims. *See People in Interest of D.C.C.*, 2018 COA 98, ¶ 11. We affirm the juvenile court's order.

## I. Psychological Mother

¶ 3 Psychological mother had physical custody of the child since his birth. Biological mother agreed that psychological mother would adopt the child, so she executed a power of attorney to psychological mother concerning the child, leading the women to believe the adoption was complete and legal. But no legal adoption was effectuated because adoption proceedings were not conducted.

¶ 4 When the child was two years old, the Adams County Human Services Department (the Department) filed a petition in dependency and neglect concerning the child. The petition named psychological mother as the child's respondent parent and alleged that the child had been exposed to domestic violence in her home.

¶ 5 A few weeks later, psychological mother overdosed on methamphetamine, while the child was in her home. Psychological mother survived and the child was removed from her home. The juvenile court ordered temporary legal custody with the Department and physical custody with psychological mother's parents.

¶ 6 At a continued advisement hearing, psychological mother's attorney told the court that "the adoption had never been completed." He also said that "we know she is not the biological mother" and that she "has really no legal relationship to this child." He advised the court that his client "wants to still be involved in this case as a psychological mother."

¶ 7 The Department then filed an amended petition that named psychological mother as the respondent custodian, *see* § 19-3-502(5), C.R.S. 2023 (providing that the "county attorney . . . may name any . . . custodian . . . as a respondent in the petition" if the

county attorney "determines that it is in the best interests of the child to do so"), and included biological mother and biological father as respondent parents. The amended petition stated that biological mother lived in Lakewood, Colorado, and she had a "history of drug abuse, homelessness, and mental health issues" and that the biological father was unknown. Psychological mother did not challenge biological mother's addition to this case, and she did not otherwise seek a maternity adjudication under the UPA. *See* § 19-4-122, C.R.S. 2023 ("Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.").

¶ 8 At a later hearing, psychological mother entered a no-fault admission to the petition and the court adjudicated the child dependent and neglected as to her.

¶ 9 The juvenile court also adjudicated the child dependent and neglected as to biological mother and biological father based on abandonment. And the court adopted psychological mother's treatment plan. Psychological mother did not challenge biological mother's adjudication, and she again did not otherwise seek a maternity adjudication under the UPA. *See id.*

¶ 10 The Department later filed a motion to terminate the parental rights of biological mother and biological father. In an affidavit that accompanied the motion, a caseworker from the Department stated that the "only parent named on [the child's] birth certificate is the biological mother."

¶ 11 At the termination hearing, psychological mother's attorney appeared and said that psychological mother did not have standing to participate in the proceeding. He and psychological mother did not object to the termination, and, again, they did not otherwise seek a maternity adjudication. *See id.*

¶ 12 After the juvenile court terminated biological mother's parental rights, the court continued physical custody of the child with the psychological grandparents. The court found that "[h]is continued out-of-home placement is necessary and appropriate and in his best interest. His permanency goal is adoption by nonrelatives." The court did not immediately dismiss psychological mother from the case; rather, the court and parties agreed to have her continue to work on her treatment plan with the goal that she would become sober and ultimately adopt the child.

¶ 13 The parties held a post-termination review hearing a few months later. *See* § 19-3-606, C.R.S. 2023 ("The court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days after the date of the termination."). At this hearing, the Department and guardian ad litem (GAL) requested that psychological mother be dismissed from the case due to her noncompliance with her treatment plan. The juvenile court agreed and dismissed psychological mother from the case, finding that she had no legal rights to the child because she was not the child's "legal parent," and, based on her noncompliance with treatment, she would not be approved as an adoptive parent. The court decided that psychological mother was not the child's "legal parent" because her role was based on an "agreement that was signed between the biological parent" and psychological mother that "was not binding on . . . any court. That's why the Department moved forward with termination on the biological parents."

¶ 14 Psychological mother filed a motion to reconsider the court's order, in which, for the first time, she pointed out that

"[p]sychological mothers can be made legal mothers." The juvenile court denied this motion in a written order.

## II. Maternity Claims

¶ 15 On appeal, psychological mother contends that we should recognize her as the child's "psychological parent" under the UPA because she "was the child's only parent and his psychological mother" and she "meets the legal definition of a natural parent pursuant to Title 19." We disagree.

### A. Law

¶ 16 The "UPA does not allow a court to recognize more than two legal parents for a child." *People in Interest of K.L.W.*, 2021 COA 56, ¶ 2.

¶ 17 "Under the UPA, a presumption of [maternity] may arise from several sets of circumstances." *People in Interest of J.G.C.*, 2013 COA 171, ¶ 20. As relevant here, such a presumption of maternity may arise if

- there is proof that the person gave birth to the child, as provided in section 19-4-104, C.R.S. 2023; or
- while the child is under the age of majority, the person receives the child into the person's home and openly holds

the child out as the person's natural child, as provided in section 19-4-105(1)(d), C.R.S. 2023.

¶ 18 "A presumption of [maternity] arising under the UPA can be rebutted by clear and convincing evidence." *J.G.C.*, ¶ 21; *see* § 19-4-105(2)(a). "None of the presumptions is conclusive, including the presumption based on biology." *J.G.C.* (citing *N.A.H. v. S.L.S.*, 9 P.3d 354, 361-62 (Colo. 2000)).

¶ 19 "If two or more conflicting presumptions arise, and none has been overcome by clear and convincing evidence, the presumption that is founded on the weightier considerations of policy and logic controls." *Id.* at ¶ 22.

¶ 20 The juvenile court determines which presumptions in a parentage determination control. *K.L.W.*, ¶ 20.

¶ 21 The UPA permits a maternity action to be brought by the Department, as well as by a presumed parent. *People in Interest of M.B.*, 2020 COA 13, ¶ 42; *see* § 19-4-122.

B. Standard of Review

¶ 22 "A determination of the proper legal standard to be applied in a case and the application of that standard to the particular facts of

the case are questions of law that we review de novo." *A.R. v. D.R.*, 2020 CO 10, ¶ 37.

C. Analysis

¶ 23 We conclude that psychological mother's actions in this case were not sufficient to have put the juvenile court on notice that she sought to have herself established as the child's "natural parent." We reach this conclusion for the following three reasons.

¶ 24 First, psychological mother made the statements during the juvenile court proceedings that she was the child's "psychological parent" in the context of her concessions that biological mother was the child's natural mother. For example, at her continued advisement hearing early in this case, her attorney admitted that psychological mother "has really no legal relationship to the child." So these statements did not put the juvenile court on notice that psychological mother wanted to contest maternity. *See M.B.*, ¶ 42.

¶ 25 Second, she did not object to the Department's amended petition, which recognized biological mother's role as the child's parent and recognized psychological mother's role as the child's custodian. *See K.L.W.*, ¶ 2. She also did not object to the juvenile court terminating biological mother's rights. *See id.* So her

position throughout the case was that she was the custodian who wanted to adopt the child. *See id.*

¶ 26 Third, until her motion to reconsider the juvenile court's dismissal order, no one, including psychological mother, raised any question about maternity. And psychological mother never requested that the juvenile court address a maternity claim. *See id.* at ¶ 42. Her single statement made one and a half years into this case, that "[p]sychological mothers can be made legal mothers," was not a demand for relief. So the statement did not put the juvenile court on notice that maternity was at issue. *See id.*

¶ 27 Psychological mother also contends on appeal that she meets the definition of "natural parent." While that *may* be true, she is only entitled to call herself a "natural parent" if a court establishes this fact under the UPA. *See* § 19-4-102.5(3), C.R.S. 2023 ("'[N]atural parent' means a nonadoptive parent *established* pursuant to [the UPA], whether or not biologically related to the child.") (emphasis added). As we have concluded, psychological mother did not seek to have herself established as the child's natural parent by commencing a maternity action in this case. Nor did the Department seek to commence a maternity action,

apparently because of psychological mother's position throughout this case that she wanted to adopt the child. So she cannot now claim that she is the child's natural parent.

## III. The Dismissal Order

¶ 28 Psychological mother alternatively contends (and her main point on appeal is) that we should reverse the juvenile court's dismissal order and remand the case so that she may be "given an opportunity to regain custody of her son and to complete a legal adoption." She also contends that she is entitled to "due process because of her custodial relationship" with the child and that the juvenile court denied her these rights. We disagree with each of her contentions.

### A. Law and Standard of Review

¶ 29 "Parties may be dropped . . . by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." C.R.C.P. 21; *see People in Interest of E.D.*, 221 P.3d 65, 68 (Colo. App. 2009); *see also* C.R.J.P. 1 ("Proceedings [under the Children's Code] are civil in nature and where not governed by these rules or the procedures set forth in Title 19 . . .

shall be conducted according to the Colorado Rules of Civil Procedure.").

¶ 30 The decision to drop parties will not be reversed on appeal absent a showing of an abuse of discretion. *E.D.*, 221 P.3d at 68 (citing *Cobbin v. City & Cnty. of Denver*, 735 P.2d 214, 217 (Colo. App. 1987)). To determine whether the court abused its discretion, we decide whether evidence supports the court's decision. *Id.*

B. Analysis

¶ 31 The juvenile court's order dismissing psychological mother from the dependency and neglect case occurred during the post-termination review hearing.

¶ 32 Section 19-3-606 required that, in this post-termination review hearing, the court hear a report from the individual vested with custody of the child (the Department) on what disposition of the child, if any, had occurred. § 19-3-606(1). And the child's GAL was required to submit a written report based on an independent investigation regarding the best disposition of the child. *Id.*

¶ 33 Both the Department and GAL informed the juvenile court that, because psychological mother was not in compliance with her treatment plan, she would not be considered as an option to adopt

the child. (She does not contest her non-compliance with her treatment plan.) The juvenile court had placed the child in the home of psychological mother's parents very early in this case, and they were planning to adopt the child. The child was available to be adopted because the juvenile court had terminated the parental rights of both biological parents. The Department represented that it was approving this adoption. And the court found that, based on psychological mother's noncompliance with treatment, she would not be approved as an adoptive parent. So, from the record, it appears that there was nothing left for the juvenile court to do in this dependency and neglect action. In turn, there was nothing else that the juvenile court could do with psychological mother in this case.

¶ 34 The case had been open for over a year and a half. The record shows that this is an expedited permanency planning case and permanency needed to be achieved for the child based on the statutory timeframes. *See* §§ 19-1-123, 19-3-702(5), C.R.S. 2023.

¶ 35 But psychological mother contends that she was dismissed without the juvenile court's consideration of the child's best interests. She reasons that "[r]ather than giving [her] an

opportunity to regain custody of the child, the . . . court removed the only mother that [the child] has ever known without notice." The record belies psychological mother's contention.

¶ 36 At the hearing, the county attorney said that psychological mother was "not compliant" with her treatment plan and that "her probation officer has indicated she's doing — I think he indicated she was doing just enough, at this point, not to go to jail. But that's, obviously, concerning that we're just not making progress and addressing the — the issues." She also said that the child was "in a home where he has stability. So the permanency goal is adoption. And it's the Department's intent to transfer this case to the adoption[] unit." The county attorney also said that "[psychological mother]'s had the benefit of a year and a half of services, and what we think is more important for [the child] is to move forward with him . . . in an adoptive home." All these statements were focused on the best interest of the child.

¶ 37 Psychological mother alternatively contends that the juvenile court could have changed her status to that of a "special respondent." We disagree. Section 19-1-103(129), C.R.S. 2023, defines "special respondent" as "any person who is not a parent,

guardian, or legal custodian and who is voluntarily or involuntarily joined in a dependency or neglect proceeding for the limited purposes of protective orders or inclusion in a treatment plan." Because psychological mother had a year and a half to complete her treatment plan, and had not done so, changing her status to that of a special respondent would not have made any difference.

¶ 38 Thus, we conclude the juvenile court did not err by dismissing psychological mother from this case.

¶ 39 We also conclude that the juvenile court did not deny psychological mother her due process rights. As a named respondent in the dependency and neglect case, she was provided statutory procedural rights throughout the proceedings.

- She had counsel for the duration of the case. § 19-3-202(1), C.R.S. 2023.
- She received the petition and the amended petition in dependency and neglect. § 19-3-502.
- She was provided notice of all hearings. § 19-3-502(7).
- She admitted to the child's adjudication in this case, which gave the juvenile court jurisdiction to order an

appropriate treatment plan to help her work toward custody and adoption. § 19-3-505(7)(a), (b), C.R.S. 2023.

- She received an appropriate treatment plan to provide her with services and needed treatment. § 19-3-507, C.R.S. 2023.

¶ 40 The record indicates that psychological mother had ample time and opportunity to comply with her treatment plan before the post-termination review hearing but had not done so successfully. She had notice of this hearing and attended with her counsel. The juvenile court permitted her counsel to file a motion to reconsider the court's dismissal and to put forth arguments to address the dismissal.

¶ 41 Thus, we conclude that the juvenile court did not deny psychological mother her due process rights.

## IV. Conclusion

¶ 42 We affirm the juvenile court's dismissal order.

JUDGE TOW concurs.

JUDGE JOHNSON specially concurs.

JUDGE JOHNSON, specially concurring.

¶ 43 In this dependency and neglect action involving C.D.P. (the child), the majority affirms the juvenile court's dismissal of J.L.P. (psychological mother) on the grounds that psychological mother's counsel never raised a claim that psychological mother should be declared the child's natural parent under the Uniform Parentage Act (UPA). I acknowledge that psychological mother's argument throughout the proceedings, both below and on appeal, was to remain in the case so that she might be a permanent adoption placement for the child. But the UPA is not a typical statute in which the *sole* responsibility to bring a claim rests with psychological mother or her counsel.

¶ 44 Under the facts of this case, everyone involved — the Adams County Department of Human Services (the Department), the guardian ad litem (GAL), psychological mother's counsel, and (to an extent) the juvenile court — bears some responsibility for how this case is postured on appeal. This is because all the participants and the court improperly considered the parentage of the child — specifically maternity — as a dichotomy between biology and legal adoption. Instead, parentage can be a spectrum in which biology

exists at one end, legal adoption exists at the other, and in certain circumstances a child's natural parentage under the UPA falls somewhere in the middle.

¶ 45 Psychological mother had a cognizable claim under the UPA to be considered the child's "natural parent," as the statutory scheme defines that term. Once the Department determined the adoption between the child's biological mother and psychological mother was not legal, the Department was just as responsible as psychological mother's counsel to invoke the UPA to determine who was the child's natural parent.[1]

¶ 46 The majority concludes that psychological mother's actions in this case were not sufficient to have put the juvenile court on notice that she sought to have herself established as the child's "natural parent." *Supra* ¶ 24, 26. I agree, which is why I concur with the majority that the juvenile court's order dismissing psychological mother from the case should be affirmed. But I specially concur

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[1] I recognize that case law uses the term "legal parent" in reference to the Uniform Parentage Act (UPA). *See, e.g.*, *People in Interest of K.L.W.*, 2021 COA 56, ¶ 21. But I use the term "natural parent" because the UPA uses that term in section 19-4-102.5(3), C.R.S. 2023.

because the UPA contemplates that a "natural parent" may be a person — irrespective of legal formalities — who falls in the middle of the biology-adoption spectrum and can be "a nonadoptive parent established pursuant to [the UPA], *whether or not biologically related to the child*." § 19-4-102.5(3), C.R.S. 2023 (emphasis added). Regardless of the legal arguments psychological mother's counsel asserted below, based on the facts, and given the rare — but certainly not unique — situation where there exists uncertainty as to who is the child's "natural parent," the Department had an independent duty under the Children's Code to ensure that it named and then sought to terminate the proper parties' parental rights. To that end, I discuss why (1) psychological mother had a cognizable claim under the UPA; (2) the Department and other "interested parties" may bring a claim under the UPA; and (3) it is important to adjudicate who is a child's natural parent under the UPA first because adjudications resolve many uncertainties raised by the Department, the GAL, and the juvenile court.

## I. Standard of Review

¶ 47 Whether psychological mother has a cognizable claim under the UPA and identification of who may bring a claim under the UPA

involve questions of statutory interpretation that a court reviews de novo. *See People in Interest of K.L.W.*, 2021 COA 56, ¶ 12. When interpreting a statute, the goal is to give effect to the General Assembly's intent. *People v. Coleman*, 2018 COA 67, ¶ 41. A court begins with the statute's language, giving words and phrases their ordinary meanings. *Id.* Because the UPA's statutory scheme is codified in the Children's Code, its provisions must be liberally construed to avoid technical readings that would disregard the best interests of the child. *People in Interest of C.L.S.*, 313 P.3d 662, 666 (Colo. App. 2011).

## II. Analysis

¶ 48 Psychological mother wanted to be a permanent placement for the child as the child's adoptive mother because, quite simply, psychological mother *thought* that she already was the child's adoptive mother. By all parties and the juvenile court treating parentage as a dichotomy instead of a spectrum, without determining whether psychological mother was the child's natural parent under the UPA, the juvenile court may have improperly deprived psychological mother of standing — with the due process

rights of a natural parent — to contest the termination of her parental rights.

¶ 49 And by the parties not recognizing the need for a UPA claim, the Department in essence had three respondent parents in the amended petition: biological father (who was unknown), biological mother (who thought she had given away her child through a legal adoption), and psychological mother (who was the only mother the child had ever known). The Department will say it named her as a respondent custodian in the discretion afforded to it by section 19-3-502(5), C.R.S. 2023. I do not disagree that the Department has the discretion under section 19-3-502(5) to name other people who might be involved in the care of a child that resulted in alleged abuse or neglect. I disagree though that the statute allows the Department to avoid or ignore a cognizable UPA claim.

¶ 50 Had this case been handled properly from a UPA perspective — just as when there are multiple persons who might be the father — the Department should have first asked the juvenile court to determine whether psychological mother qualified as the child's natural mother under the UPA so there were not three possible respondent parents. I now lay out the facts during the numerous

court proceedings that gave all participants sufficient notice that psychological mother had a cognizable UPA claim.

A. Psychological Mother's Cognizable Claim Under the UPA

¶ 51 Throughout the case until the September 2022 hearing, all parties and the juvenile court treated psychological mother as the child's mother. The majority faults her for not objecting to the petition being amended or raising a claim under the UPA, which meant that the juvenile court did not have sufficient notice that she wanted to be adjudicated the child's natural parent. *Supra* ¶ 25. While this is true, the Department and GAL had sufficient notice that psychological mother might have had a parental presumption under the UPA for them to initiate such a proceeding.

¶ 52 At the March 2021 shelter hearing, the magistrate specifically discussed whether psychological mother had adopted the child. Psychological mother said she had adopted the child, she had paperwork, and her husband — from whom she was separated at the time she adopted the child — did not have any legal rights to the child. Psychological mother's parents (psychological maternal grandparents) were present at the shelter hearing, and the magistrate agreed to place the child with them). The magistrate

continued the advisement hearing, given the relationship uncertainties between the child, psychological mother, and psychological mother's husband.

¶ 53 At the next hearing in April 2021, the parties advised the magistrate that no formal adoption case could be located but that psychological mother had a power of attorney from biological mother. The county attorney indicated that she thought it "likely that we will need to be adding a biological mother and possibly dismissing [psychological mother's separated husband]. However, we want to make sure that we have ruled out that there is an adoption before we actually do that." Counsel for psychological mother argued that it would be strange for psychological mother to "accept[] maternity" given that psychological mother was not the biological mother and had "no legal relationship to this child." The magistrate declined to accept any admissions and appreciated that the parties continued to dig "deeper" into the family status of all the parties.

¶ 54 In June 2021, the GAL notified the court that she had seen the power of attorney between biological mother and psychological mother. The GAL represented to the court that biological mother,

through the power of attorney, gave "all of her parental rights and responsibilities to" psychological mother. The GAL continued that she had since been in contact with biological mother through Facebook messenger. The GAL represented that biological mother "clearly wants nothing to do with this case." Indeed, the GAL stated, "I asked her if she was the biological mother of a child who would be approximately three years old this year, and she said, 'Yes. Why are you asking? *I signed my rights away*. And I know he's in a good home.'" (Emphasis added.)

¶ 55 The GAL also indicated that biological mother might need to be served with the petition by the Department. And the GAL concluded that the power of attorney did not give psychological mother the permanency she needed for the child, but that if psychological mother could confirm compliance with the treatment plan, the GAL hoped that the child could be returned to psychological mother to finalize an adoption. The child remained in the custody of psychological mother's parents, whom the GAL referred to as "maternal grandparents."

¶ 56 I acknowledge that psychological mother's counsel requested that she be dismissed from the case as a respondent mother and

named a special respondent to stay involved in the case to possibly adopt the child. The county attorney, though, wanted more time to assess whether psychological mother should remain in the case, noting that, as a "stranger," psychological mother would likely not qualify as an adoptive placement but that she might be the "parent." The county attorney noted the unusual posture of the case, stating "[b]ut we're situated in an interesting way where we have, as all parties have indicated, a — a person with a possible power of attorney who does not appear to be engaged with us and a known biological mother and a, I believe, unknown biological father who has no desire to engage." The county attorney requested a few more weeks to assess how the petition should be amended. The court noted that, at that time, it could not dismiss psychological mother as respondent mother and scheduled another hearing.

¶ 57 At the August 2021 dispositional hearing, the GAL made a further record that she had had a brief Facebook Messenger conversation with biological mother, who "indicated absolutely no interest in talking to me further" and "didn't understand why" the GAL had contacted her after she "signed away her rights."

The GAL also reported that she had a good faith basis to believe that she was messaging with biological mother because biological mother (1) confirmed her identity; (2) told the GAL the child's name; and (3) provided the child's "approximate birthdate." At that time, the court — referring to psychological mother as "respondent mother" — advised her of her rights if she made a no-fault admission to the allegations raised in the petition. Psychological mother admitted to the allegations, and the court adjudicated the child dependent and neglected as to psychological mother.

¶ 58 At an October 2021 hearing, the county attorney — referring, again to psychological mother as respondent mother — requested entry of a treatment plan to address psychological mother's substance abuse issues. The county attorney then indicated that as to the other respondent mother — biological mother — and the unknown biological father, the petition had been served by publication and the Department requested that no treatment plan be entered because the biological parents had abandoned the child. The court adjudicated the child dependent and neglected as to the biological parents and entered no treatment plans for them.

¶ 59 At that same hearing, the GAL reported that the child remained in the custody of psychological mother's parents, that psychological mother "does very well" with the child, and that the child is "very attached to her." The GAL hoped that if psychological mother's sobriety could be maintained, the child should be "with her as soon as possible."

¶ 60 In December 2021, all parties continued to refer to psychological mother as "respondent mother" and "mom." The county attorney and GAL were a bit frustrated with psychological mother's failure to comply with her treatment plan because, as the GAL noted, psychological mother "has a beautiful relationship with her child who's very much attached to her. But he's not living with her."

¶ 61 In February 2022, the county attorney again referred to psychological mother as the "respondent mother." The GAL indicated that because "mom" had not been making progress with her treatment plan, the court needed to move forward with permanency. The GAL continued that the "good news" was the child lived "with his grandparents" (psychological mother's parents) and the GAL recommended that is where he should stay.

Psychological mother's counsel disputed that psychological mother had not been making progress on her treatment plan and said the court should not "leapfrog[] past an [allocation of parental rights (APR)] to a — to a termination and adoption." The court indicated that permanency discussions needed to continue but the plan remained to have the child either return home concurrent with adoption or attain permanency with a relative.

¶ 62 In March 2022, the case was transferred to another judicial officer. At that hearing, the county attorney stated that, although the case was reaching a year, "thankfully" the child was placed with "family." Because of the case transfer to another presiding judge, the GAL gave a bit of history regarding the attempted adoption, her minimal contact with biological mother, and psychological mother being "the only mother that this child has ever known." The GAL indicated that the permanency goal was placement with the "maternal grandparents," who are "the only grandparents that this child knows."

¶ 63 As to the permanency goals for the child, the GAL rejected the idea of an allocation of parental responsibilities to either the maternal grandparents or psychological mother. Instead, she

thought the Department should be moving toward termination of parental rights with either adoption by psychological mother or maternal grandparents. Psychological mother's counsel argued that in a normal circumstance, this case would be "ripe for an APR" to the maternal grandmother. He indicated that the maternal grandmother does not want to see "her daughter's parental rights terminated." When the court was confused as to the relationships, the GAL noted that the maternal grandmother's daughter was the psychological mother "but neither of them are blood-related to the child."

¶ 64 The GAL noted that the child needed to be adopted for permanency because, although biological mother had indicated she had no desire to be involved with the case or the child, the GAL hypothesized a situation where biological mother would want the child back and would revoke the power of attorney.

¶ 65 When psychological mother's counsel again brought up the idea of an APR, the court interjected that psychological mother "doesn't have any parental rights" and the court would not recognize the power of attorney as a "valid custody order." The GAL agreed and indicated that the parental rights of the biological

parents needed to be terminated. The court reiterated that it did not recognize the power of attorney as a valid custody order and that to prevent the possibility of biological mother coming back into the picture, biological mother's rights needed to be terminated. The court also noted that a power of attorney "is not the way you give parental rights legally." The court ended the hearing by indicating that the parental rights of the biological parents should be terminated, after which the court would determine whether the permanency goal would be psychological mother or psychological grandparents adopting the child.

¶ 66 At the March 2022 hearing, the parties continued to assert that psychological mother should be named a respondent pursuant to section 19-3-502(5). That statutory provision authorizes the Department to name, in its discretion, other respondents on the petition, such as psychological mother, as a psychological parent, and her parents, as the psychological grandparents.

¶ 67 Following the court's termination of the biological parents' rights, it held a review hearing in September 2022. At that time, the county attorney requested that psychological mother be dismissed from the case, even though her counsel requested to

submit a written response because the court's ruling was "sort of" an "effective termination" of psychological mother's relationship with the child, who knew no other mother. The juvenile court granted the county attorney's request, concluding that even though the magistrate had accepted psychological mother's no-fault admission, she was not the natural mother and had no standing in the dependency and neglect proceeding. The court then "expel[led]" her from the virtual proceedings.

¶ 68 With this detailed backdrop, I conclude that all participants had sufficient notice that psychological mother had a cognizable claim under the UPA and that determination of which mother — biological or psychological — was the "natural parent" needed to be made before the Department moved to terminate parental rights.

B. UPA Legal Principles

¶ 69 "The UPA governs the court's jurisdiction to establish a parent-child relationship and mandates specific procedures that must be followed when a party seeks to establish paternity." *In re Support of E.K.*, 2013 COA 99, ¶ 9; *see also* §§ 19-4-101 to -130, C.R.S. 2023. As a result, the UPA can be invoked as part of a dependency and neglect proceeding. *K.L.W.*, ¶ 14; *see also People in*

*Interest of J.G.C.*, 2013 COA 171, ¶ 10. Except as otherwise provided by law, the juvenile court has exclusive jurisdiction over dependency and neglect proceedings and proceedings to determine the parentage of a child. § 19-1-104(1)(b), (f), C.R.S. 2023; *see also J.G.C.*, ¶ 10 (concluding that, through the UPA, the General Assembly intended for juvenile courts to have the same flexibility as district courts to add a paternity action as needed). But when a paternity or maternity dispute arises in a non-UPA proceeding, the court must still adhere to the UPA provisions. *J.G.C.*, ¶ 11.

¶ 70 Colorado courts have interpreted the UPA to apply equally to a determination of "maternity," even though section 19-4-105(2)(a), C.R.S. 2023, mentions only paternity. *K.L.W.*, ¶ 17 n.2; *In Interest of S.N.V.*, 284 P.3d 147, 151 (Colo. App. 2011) (noting that the terms "mother" and "father" are interchangeable under the UPA, so paternity presumptions apply equally to petitions for maternity). This interpretation is based on the General Assembly's intent that "a child is limited to having just two legal parents." *K.L.W.*, ¶ 21; *see also* § 19-4-102, C.R.S. 2023 (defining "parent and child relationship" to include both the mother and child relationship and the father and child relationship). Thus, just as the provisions of

the UPA allow a court to determine who is the natural father when two or more men might be the presumed father, so too must a court adjudicate who is the natural mother of a child if two women claim parental presumptions under the UPA.

¶ 71 Title 19 defines the word "parent" as "either a natural parent of a child, *as may be established pursuant to article 4 of this title 19*, or a parent by adoption." § 19-1-103(105)(a), C.R.S. 2023 (emphasis added). Article 4 of title 19 defines a "natural parent" to mean "a nonadoptive parent established pursuant to this article 4, *whether or not biologically related to the child*." § 19-4-102.5(3) (emphasis added); *see also S.N.V.*, 284 P.3d at 151 ("[U]nder section 19-4-105, a woman may gain the status of a child's natural mother even if she has no biological tie to the child."). The UPA allows a person to prove natural parentage based on factors set forth in section 19-4-105. *In re Parental Responsibilities Concerning A.R.L.*, 2013 COA 170, ¶ 19.

¶ 72 The Department contends and the majority concludes that it was psychological mother's responsibility to raise the UPA claim. *Supra* ¶ 27. The Department also contends that it had the "discretion" to treat psychological mother as a respondent because

she was a custodian, and with such discretion, it likewise had the discretion to ask the court to dismiss psychological mother from the dependency and neglect action. § 19-3-502(5). I do not disagree that psychological mother's counsel should have raised a UPA claim, but the breadth of the UPA authorizes a whole host of persons and entities to also bring such a claim.

1. Raising the UPA Claim

¶ 73 Psychological mother's cognizable claim under the UPA was based on the presumption that she was possibly the child's "natural parent" under section 19-4-105(1)(d). That provision states that a person is "presumed" to be the natural parent of a child if "[w]hile the child is under the age of majority, the person receives the child into the person's home and openly holds out the child as the person's natural child." *Id.*

¶ 74 Psychological mother is not the only person who might raise a claim that she was the child's natural parent under section 19-4-105(1)(d). The UPA says that "*[a]ny interested party*, including the state, the state department of human services, or a *county department of human or social services . . . may bring an action at any time* for the purpose of determining the *existence or*

*nonexistence*" of the parent-child relationship "presumed pursuant to section 19-4-105(1)(d), (1)(e), or (1)(f)." § 19-4-107(2), C.R.S. 2023 (emphasis added). Although section 19-4-107 refers to the "father and child" relationship, as already noted, Colorado courts have held that the UPA refers to determinations of both paternity and maternity. § 19-4-102.5(2) (the terms "father" and "mother" in the UPA refer to any parent of any gender, and references to "paternity" are equally applicable to "parentage"); *K.L.W.*, ¶ 17 n.2.

¶ 75 I acknowledge that in reference to the Department or other interested party, section 19-4-107(2) uses the word "may," and I assume the Department interprets this to mean that it is not mandated to bring a UPA claim. *See, e.g.*, *In re Marriage Vega*, 2021 COA 99, ¶ 18 (when the General Assembly uses the word "may" in a statute, courts will generally construe that provision to be a permissive rather than mandatory command). But the "may" in section 19-4-107(2) simply means that the Department is *authorized* to bring such an action at any time when it seeks to determine the "existence or nonexistence" of a presumption of parentage. In other words, when the Department or other interested person, like the GAL, is on sufficient notice that an

individual might be a child's natural parent, the Department cannot put its head in the sand and not bring such a claim simply because the individual or the individual's counsel may not be asserting such a claim.

¶ 76 The Department and GAL, as "interested" parties, had sufficient notice that psychological mother might possess a presumption of parentage over biological mother or biological father (who was unknown) given that

- biological mother thought she had legally given the child away at the child's birth to psychological mother through adoption;
- all participants called psychological mother — even after amending the petition — the respondent mother or mom and noted at multiple hearings that she was the only mother the child had ever known;
- all participants referred to psychological mother's parents as the child's "maternal grandparents" and noted at multiple hearings that they were the only grandparents the child had ever known; and

- biological mother and father were served the petition by publication because the GAL did not know where biological mother was located other than that she lived somewhere in Lakewood, and biological father was completely unknown.

In summary, the biological parents were completely absent, as supported by both the court's adjudicatory and termination findings of abandonment.

¶ 77 Because the juvenile court did not first adjudicate who might be the child's natural parents, psychological mother was likely deprived of the full panoply of her due process rights as a natural parent in a dependency and neglect action. Indeed, at the last hearing before she was dismissed, the juvenile court specifically told psychological mother that she had no standing and was not entitled to any due process as a respondent custodian in the action. Although the majority notes that psychological mother was provided counsel throughout the proceedings and a treatment plan was adopted for her, *supra* ¶ 39, she was unable to hold the Department to certain standards of proof or make the following arguments:

- The Department could only terminate her parental rights after proof by clear and convincing evidence. § 19-3-604(1), C.R.S. 2023.
- The Department did not make "reasonable efforts" in providing her services under her treatment plan. § 19-3-604(2)(h), (k)(III); *see also* § 19-1-103(114); § 19-3-100.5(2), (5), C.R.S. 2023.
- She could become fit within a reasonable period of time. § 19-3-604(1)(c)(III); *see also People in Interest of A.J.*, 143 P.3d 1143, 1152-53 (Colo. App. 2006).
- There were less drastic alternatives to termination of her parental rights, especially here where the child had been placed with his psychological maternal grandparents during the entirety of the proceedings. *People in Interest of A.M. v. T.M.*, 2021 CO 14, ¶ 19.

2. Determination of the UPA Claim

¶ 78 A division of this court in *K.L.W.* detailed the procedures that a court must employ when it determines parentage under the UPA. First, the court must determine which parental presumptions, if any, apply to all persons involved in the UPA proceeding. *K.L.W.*,

¶¶ 16, 18-21. Here, biological mother had a parental presumption as she was the genetic parent. *See* § 19-4-105(1)(f). A genetic parent is defined as a person who was tested pursuant to section 13-25-126, C.R.S. 2023, and the "results show that the alleged genetic parent is not excluded as the probable genetic parent and that the probability of the person's genetic parentage is ninety-seven percent or higher." *Id.* Ostensibly, a John Doe father would also have a parental presumption as the biological father under section 19-4-105(1)(f). And, as noted above, psychological mother likely had a parental presumption under section 19-4-105(1)(d).

¶ 79 Second, the court "must then determine whether any presumptions have been rebutted by clear and convincing evidence." *K.L.W.*, ¶ 19. Third, if there are conflicting presumptions because none of the presumptions have been rebutted, then the court must resolve the competing presumptions by adopting the "presumption that, on the facts, is founded on the weightier considerations of policy and logic." § 19-4-105(2)(a); *see also N.A.H. v. S.L.S.*, 9 P.3d 354, 360 (Colo. 2000).

¶ 80 If the court must proceed to the third step by resolving the conflicting presumptions, it may consider a variety of factors listed

in the UPA, along with any other factors "that may affect the equities arising from the disruption of the parent-child relationship between the child and the presumed parent or parents or the chance of other harm to the child." § 19-4-105(2)(a)(I)–(VIII). A court resolves the conflicting presumptions by weighing the factors and any other considerations under a preponderance of the evidence standard. *K.L.W.*, ¶ 70.

¶ 81 Given the substantial evidence that psychological mother received and held the child out as her own from his birth, she could likely have proved that she, too, had a parental presumption. At that point, with two conflicting presumptions (three if I include unknown biological father), the court would have needed to resolve, under a preponderance of the evidence standard, which presumption prevailed. § 19-4-105(2)(a).

3. The Importance of Determining UPA Claims

¶ 82 Determining whether psychological mother was a natural parent under the UPA first before moving forward with termination proceedings would have solved a litany of problems raised by the Department, the GAL, psychological mother's counsel, and the juvenile court.

¶ 83 First, to support that psychological mother was not the natural mother, and consistent with the Department's request to dismiss her from the case, the court concluded that the agreement between biological mother and psychological mother was not "binding" on any court. I acknowledge that biological mother and psychological mother's "adoption" was not legal. But, as section 19-4-107(2) contemplates, receiving a child into one's home and holding that child out as one's own also carries with it no legal formality, and yet, such a person could be presumed to be, and adjudicated as, the natural parent.

¶ 84 Second, the court reasoned that the invalid adoption was no different than when the Department seeks dismissal of "a father who [the court] thinks is the father and later find[s] out, it's not the father through genetic testing." The court's hypothetical about two fathers possibly being the presumed father skips the UPA analysis altogether.

¶ 85 Under the UPA, a person identified as the genetic father of a child is presumed to be the natural parent. § 19-4-105(1)(f). But a second individual may also claim to be the natural father, and if the second individual, though not biologically related, demonstrates he

qualifies for a different parental presumption recognized under the UPA, then as discussed above and in *K.L.W.*, the statute requires the court to resolve the two conflicting presumptions between the men based on a preponderance of the evidence. The juvenile court's assumption that the genetic father would prevail under the UPA again favors biology over other familial situations in which parent and child are not biologically related or part of a legally recognized relationship.

¶ 86 Indeed, a dependency and neglect proceeding might not have a named respondent mother and father. Of course, in a same-sex marriage or civil union, there could be two respondent mothers, or two respondent fathers named in the petition. But there could be other variations of named respondents. If the juvenile court had determined in this case that biological mother and psychological mother were the child's natural parents, the petition could have named two respondent mothers even though the familial situation was not a same-sex marriage or civil union partnership.

¶ 87 Third, the GAL raised the possibility that biological mother might renege on the invalid adoption and want the child back at some point in the future. As a result, the only permanent solution

for the child was termination of biological parents' rights so that the child could be adopted by his psychological maternal grandparents. While certainly a viable option, this path also ignores the purpose of the UPA. A parental "presumption is rebutted by a court decree establishing parentage of the child by another person other than the parent who gave birth." § 19-4-105(2)(a); *see also N.A.H.*, 9 P.3d at 360-62. As a result, "[t]he judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes." § 19-4-116(1), C.R.S. 2023. Thus, any finality issues regarding the child's biological mother or biological father could have been resolved through the court's decree under the UPA.

¶ 88 Finally, I must address two points that the Department made at oral argument that demonstrate to me a misunderstanding of the UPA. The Department argued that (1) to impose a responsibility on the Department to raise a claim under the UPA would mean it would be obligated to do so in every case, and (2) it was not clear that psychological mother had a cognizable claim under the UPA because biological mother possibly had multiple parental presumptions working in her favor that would allow her to prevail.

¶ 89 As to the first point, the Department, whether it likes it or not, is authorized under the plain language of the statute to bring a UPA claim to adjudicate the existence or nonexistence of parentage. *Coleman*, ¶ 41. And the Department should — as this court is required to — liberally construe the Children's Code to avoid technical readings that might disregard the best interests of the child. *C.L.S.*, 313 P.3d at 666. But this does not mean the Department would need to raise such a claim in every dependency and neglect case. Indeed, the juvenile court and the Department recognize the instances when a biological mother contends that multiple persons might be the biological father. In that scenario, the juvenile court and participants appear to have no problem invoking the UPA, even if they do not do so formally, by having the biological mother identify the possible fathers, requiring the identified men to be tested, and then having the court determine who is the genetic father.

¶ 90 But the genetic father scenario is not the *only* factual circumstance the Department may be confronted with that obligates it to raise a UPA claim. Because the General Assembly has authorized the Department to seek to terminate a parent's parental

rights, the Department has the concomitant authority and obligation to ensure it seeks to terminate the parental rights of the *correct* parent. This means, at times, the Department will need to raise a UPA claim to address familial scenarios that, though less common than the multiple possible fathers situation, involve adjudicating non-biological and nonadoptive maternity or paternity.

¶ 91 In response to the Department's second point, parental presumptions under the UPA are not a counting game to see how many presumptions one person might rack up against another. At oral argument, the Department posited that biological mother would likely have two presumptions: (1) a genetic presumption and (2) a presumption because her name was on the child's birth certificate. But if the UPA sought to have the presumptions be nothing more than a counting match, there would be no need under the statutory scheme to *resolve conflicting* presumptions. The presumption counting tally would almost *always* weigh in favor of biology because a biological mother is generally named on the child's birth certificate. Because a natural parent can, by court decree, be someone other than a biological or adoptive parent under the UPA, it would be contrary to the General Assembly's purpose to

interpret the statute in a manner that would weigh in favor of genetics without considering the specific familial circumstances of each case. *See Coleman*, ¶ 41 (we must interpret the statute to give effect to the General Assembly's intent).

## III. Conclusion

¶ 92 For the foregoing reasons, although I concur in the disposition, I write separately to highlight that (1) the UPA specifically contemplates determining parental relationships other than those formed legally by birth or adoption; (2) the Department and other "interested parties," such as a GAL, have a responsibility to bring a UPA claim if they have sufficient notice that a participant in a dependency and neglect action might be a child's natural parent; (3) by failing to raise a UPA claim when there is sufficient notice, the Department may end up naming three respondent parents in a dependency and neglect petition, contrary to the UPA's requirement that a child only have two parents; and (4) by dismissing psychological mother from the case without first determining whether she might be the child's natural parent, the juvenile court may have deprived her of all the due process rights she would be entitled to in a dependency and neglect action.