

Colorado Court of Appeals 2 East 14 th Avenue, Denver, CO 80203	
Parties: Children: A.B. _____ [Use initials only, C.R.S. § 19-1-109(1)] & Concerning: K.B. _____ [Use initials only, C.R.S. § 19-1-109(1)] Appellant / Respondent: J.B. _____	↑ Court Use Only ↑
Filed by: Name: J.B. _____ <i>Note to Parents - only use your initials.</i> Address: 9999 Ninth Street, Denver, CO 80219 _____ Phone 702-123-4567 _____ Fax: _____ Email: name.lastname@email.com _____ Bar Number: _____ (For lawyers)	District/Juvenile Court Case Number: 21JV1 _____ Division: 1 _____ Courtroom: 100 _____ Court of Appeals Case Number: 21CA1999 _____
Opening Brief	

1. Certificate of Compliance

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Word Limits: My brief has **1,439 words**, which is not more than the 9,500 word limit.

Standard of Review:

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J.B.

Signature of the Appellant

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4. Issues on Appeal

- I. The juvenile court erred in determining that J.B. was the legal parent of A.B. because the alleged biological father of A.B. was not a party to the case or given notice of the case.

5. Statement of the Case

I. Nature of Case

This is a parentage case that resulted in a determination that J.B. was the legal parent of A.B. (the child). J.B. seeks reversal of the juvenile court's parentage determination.

II. Procedural History

In January 2021, the Adams County Delegate Child Support Enforcement Unit (CSEU) filed a petition to establish parentage and support for the child. CF p. 1-4. CSEU claimed that J.B. was the child's presumed father because he and the child's mother, K.B., were married at the time of the child's birth. CF p. 2-3.

A magistrate held a hearing on the parentage petition in March 2021. Evidence presented at the hearing established that J.B. and mother had married in 2010 and separated in early 2016. TR 03/01/21

p. 25-27. Mother promptly filed for divorce. TR 03/01/21 p. 28. While the divorce proceeding was pending, mother gave birth to the child in early 2018. TR 03/01/21 p. 28-30. The divorce was finalized later in 2018 without addressing the child. TR 03/01/21 p. 30-33.

At the parentage hearing before the magistrate, both J.B. and mother testified that they always knew that J.B. was not the child's biological parent. TR 03/01/21 p. 35, 55. This was also confirmed through genetic testing completed by CSEU. TR 03/01/21 p. 10; EX, p. 2. Mother identified the child's biological father as her former boyfriend, L.L., who was not involved in the case. TR 03/01/21 p. 37.

At the end of the hearing, the magistrate declared J.B. the child's legal parent based on his marriage to mother at the time of the child's birth. TR 03/01/21 p. 75-80; CF p. 88-100. Although the magistrate recognized that L.L. did not know about the case, the magistrate determined that no notice was required because he had not done anything to assert his parentage of the child. TR 03/01/21 p. 77-78. The magistrate also ordered J.B. to pay child support. CF p. 88-100. J.B. then filed a motion asking the juvenile court to review the

magistrate's order. CF p. 101-103. The juvenile court upheld the
magistrate's order. CF p. 120-123.

J.B. now appeals.

6. Argument Summary

The juvenile court erred in adopting the magistrate's order because CSEU did not give L.L. notice of the case or make him a party to it. A court does not have subject matter jurisdiction to decide parentage unless each person presumed to be a parent and each person alleged to be the child's parent are made parties to or given notice of the case. Because L.L. was an alleged biological father of the child and he was not made a party to or given notice of the case, the magistrate lacked jurisdiction to determine parentage.

7. Argument

I. The juvenile court erred in adopting the magistrate's parentage order because CSEU did not give notice of the case to the child's alleged biological father.

A. Standard of Review:

Whether a juvenile court has subject matter jurisdiction is a question of law that is reviewed de novo. *People in Interest of E.Q.*, 2020 COA 118, ¶ 9.

B. Preservation:

J.B. preserved this argument by telling the magistrate that L.L. should be brought into the case and named the child's father. TR 03/01/21 p. 68. J.B. raised the lack of notice to L.L. and the requirement to do so in the motion for review in the juvenile court. CF p. 101-103.

C. Discussion and Argument:

i. Legal Authority

Subject matter jurisdiction concerns a court's authority to decide a particular matter. *E.Q.*, ¶ 10; *see also In re Support of E.K.*, 2013 COA 99, ¶ 8. The court's authority must be properly invoked before it can act, and a judgment rendered without subject matter jurisdiction is void. *E.K.*, ¶ 8.

The Uniform Parentage Act (the Act) 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

parentage. *E.K.*, ¶ 9. The failure to follow the requirements of the Act deprives the court of jurisdiction to determine parentage. *Id.*; *see also In re Marriage of Burkey*, 689 P.2d 726, 727 (Colo. App. 1984).

The Act provides that each person presumed to be a child's parent under section 19-4-105, C.R.S. 2021, and each person alleged to be a child's parent shall be made a party to the parentage case or if not subject to the jurisdiction of the court, shall be given notice of the case in a manner prescribed by the court and the opportunity to be heard. § 19-4-110, C.R.S. 2021; *In re Parental Responsibilities of A.D.*, 240 P.3d 488, 490 (Colo. App. 2010). Among other things, a person is presumed to be a child's father if he and the child's mother are or were married to each other and the child is born during the marriage. § 19-4-105(1)(a).

Accordingly, a juvenile court lacks jurisdiction to resolve matters in a parentage case unless each person presumed to be the child's father and each person alleged to be the child's father are made parties to or given notice of the case. *E.K.*, ¶ 12; *see also Smith v. Casey*, 198 Colo. 433, 435, 601 P.2d 632, 634 (1979) (holding that the failure to join the child, which was previously a requirement under section 19-4-110, deprived

the court of subject matter jurisdiction to resolve any matters pertaining to the parentage action).

ii. Discussion

Applying the law to the facts of this case, it is evident that the magistrate lacked jurisdiction to determine parentage of the child. Although J.B. was a presumed father of the child based on his previous marriage to mother, L.L. was identified as the child's alleged biological father. Thus, to have jurisdiction to determine the child's parentage, the magistrate had to ensure that both J.B. and L.L. were parties to the case or were at least given notice of the case.

Here, L.L. was not a party to the case and there is no indication in the record that he had any notice of the case. As a result, the magistrate lacked jurisdiction to determine the child's parentage and the juvenile court order adopting the magistrate's parentage determination must be vacated.

8. Conclusion

For the reasons stated above, J.B. respectfully requests that this court vacate the juvenile court's order adopting the magistrate's determination that he is the child's legal parent.

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Signature: _____ J.B. _____

Dated: March 1, 2022 _____