SUMMARY
February 10, 2022

2022COA18

No. 21CA0356, *In re Marriage of Flanders* — Family Law — Parental Responsibilities — Psychological Parent — Child Support

As a matter of first impression in a child support modification case, a division of the Court of Appeals holds that a nonparent who is allocated parental responsibilities in a dependency and neglect proceeding and who has not otherwise sought permanent custody of the child is not a "psychological parent" under *In re Parental Responsibilities Concerning A.C.H.*, 2019 COA 43 and, thus, cannot be ordered to pay child support to a legal parent. The dissent views the issue differently and concludes that such a nonparent has a legal child support obligation under provisions of both the UMDA and the Children's Code.

COLORADO COURT OF APPEALS **2022COA18**

Court of Appeals No. 21CA0356
Boulder County District Court No. 11DR637
Honorable Nancy W. Salomone, Judge

In re the Marriage of

Kayla Ann Bergeson-Flanders,

Petitioner,

and

Bryon Almon Flanders,

Appellant,

and Concerning Lori J. Moore,

Intervenor-Appellee.

ORDER AFFIRMED

Division IV
Opinion by JUDGE FREYRE
J. Jones, J., concurs
Tow, J., dissents

Announced February 10, 2022

RoweLaw, LLC, R. William Rowe, Denver, Colorado, for Appellant

No Appearance for Intervenor-Appellee

¶ 1 Sometimes when parents struggle to properly care for a child, a nonparent relative or friend volunteers to assume parental responsibilities to avoid the child being placed in foster care and to preserve the parent-child relationship. In this child support obligation case, we must decide whether such a nonparent must pay child support to the child's legal parent when that parent resumes a relationship with the child. Relying on *In re Parental Responsibilities Concerning A.C.H.*, 2019 COA 43, the child's father contends that the maternal grandmother, who was allocated parental responsibilities in a dependency and neglect proceeding, should be ordered to pay him child support. In *A.C.H.*, a division of this court held that a stepfather, who had fought for and obtained an allocation of parental responsibilities, was a "psychological parent" and could be ordered to pay child support to the child's legal parent. *Id.* at ¶¶ 3-5, 35. We conclude, under the circumstances here, that a nonparent who is allocated parental responsibilities in a dependency and neglect proceeding and has not otherwise initiated an independent action for parental responsibilities is not a "psychological parent" obligated to pay child

support to a legal parent. Accordingly, we affirm the district court's order denying father's motion to modify child support.

I. Relevant Facts

¶ 2 Bryon Almon Flanders (father) and Kayla Ann Bergeson-Flanders (mother) were married and share one child together. When their marriage ended in 2011, the parties agreed to name mother the child's primary residential parent and sole decision-maker. The court approved and incorporated this agreement into the dissolution decree.

¶ 3 In 2013, the State initiated a dependency and neglect proceeding against the parents. Through that case, the juvenile court ultimately allocated parental responsibilities for the child to mother, and the order was then certified into this dissolution case.

¶ 4 In 2015, the State initiated another dependency and neglect action concerning the child. At the end of the proceeding, the juvenile court found both parents unfit and allocated parental responsibilities to Lori J. Moore (maternal grandmother) because she was "able to provide the stability, consistency, nurturing and safety" that was in the child's best interests. After the order was certified into this dissolution case, the court ordered father (and

mother) to pay maternal grandmother monthly child support based on a calculation that considered the parents' financial information.

¶ 5 In 2018, maternal grandmother reintroduced the child to father, who had become sober and was living a stable life. In June 2019, father filed a motion to modify parental responsibilities, seeking parenting time every other weekend and sole decision-making authority. He subsequently filed a motion to modify child support. In it, he asked the district court to find that maternal grandmother was a "psychological parent" under *A.C.H.*, and, thus, a "parent" under section 14-10-115, C.R.S. 2021, who could be ordered to pay child support. He also asked the court to require maternal grandmother to disclose her current financial information so that child support could be recalculated and paid to him.

¶ 6 In July 2020, the district court conducted a hearing at which father, mother, maternal grandmother, and a child and family investigator (CFI) testified. Maternal grandmother objected to father having sole decision-making authority and to father's proposed parenting time schedule for the summer months, but she did not otherwise object to father maintaining a relationship with the child. The CFI testified that the child liked visiting with mother and father

but wished to continue living with maternal grandmother. The CFI opined that it would not be in the child's best interest to give father sole decision-making authority.

¶ 7 In a detailed written order, the court granted father's motion to modify parenting time in part. It left sole decision-making responsibility with maternal grandmother, but it granted father parenting time every other weekend during the school year, as well as on alternating holidays and during designated school breaks.

¶ 8 Shortly thereafter, father moved for reconsideration and clarification of the modification order under C.R.C.P. 60(b), arguing that the court had neglected to rule on his motion to modify child support. He asserted that because maternal grandmother "sought, fought for, and [had] been granted parental rights . . . as consistent with" *A.C.H.*, she should be ordered to pay him child support. The district court denied father's C.R.C.P. 60(b) motion, ruling that

> [t]he instant case is markedly different from *A.C.H.* and its progeny in all these significant respects. In the instant matter, [maternal] [g]randmother has a formal legal relationship that arises from a dependency and neglect proceeding involving [f]ather and [m]other. . . . Thus, case law imposing obligations on caregivers as a result of psychological parent status are inapposite. Second, [maternal]

> [g]randmother did not initially seek her legal relationship to the [c]hild. Rather, it was formed because [maternal] [g]randmother agreed to become the [c]hild's temporary guardian in 2015 while [m]other and [f]ather, who were both deemed unfit to parent the [c]hild, worked a treatment plan established by the [State]. The temporary guardianship arrangement was made permanent [in] 2016, when the [d]istrict [c]ourt found that both . . . parents remained unfit, noting that [f]ather "[had] not participated in the case nor attempted to comply with the treatment plan. Respondent [f]ather . . . has not seen the child in years and has no relationship with the child. . . ." Finally, [maternal] [g]randmother has not lost or relinquished physical custody of the [c]hild, and this [c]ourt is not called upon to determine whether a duty of support outlives the termination of the day-to-day caregiving. Rather, [maternal] [g]randmother retains majority parenting time and is *de facto* undertaking financial responsibilities by providing for the [c]hild's daily needs.

Father appeals.

II. Child Support

¶ 9 Father contends that the district court erred by refusing to order maternal grandmother to pay her fair share of child support under section 14-10-115, consistent with *A.C.H.* We disagree.

A. Standard of Review

¶ 10 We review a district court's child support decision for an abuse of discretion and its application of the proper legal standard de novo. *In re Marriage of Tooker*, 2019 COA 83, ¶ 12. A court abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair, or misapplies the law. *In re Marriage of Boettcher*, 2018 COA 34, ¶ 6, *aff'd*, 2019 CO 81.

B. Discussion

¶ 11 The issue presented here is a narrow one — whether maternal grandmother, who received parental responsibilities through a dependency and neglect proceeding, is a "psychological parent" under *A.C.H.* and therefore a "parent" under section 14-10-115 who can be ordered to pay child support.

¶ 12 In *A.C.H.*, the father (Hill) and the mother were in a four-year relationship and had one child together. *A.C.H.*, ¶ 3. The mother also had a son, A.F., from a prior relationship, whose biological father had been absent since his birth. *Id.* When the parties broke up, Hill remained an active parental figure in A.F.'s life. *Id.* at ¶ 4. A few years later, the mother requested permission to move to Texas and petitioned the court for an allocation of parental responsibilities

for her child with Hill. *Id.* at ¶ 5. Hill countered with his own petition opposing the mother's relocation, seeking designation as the primary residential parent for both children, arguing that he was A.F.'s psychological parent, asking for child support from mother, and urging that two parental responsibilities evaluators (PREs) investigate. *Id.* at ¶¶ 5-6. The parties later agreed that Hill was A.F.'s psychological parent under section 14-10-123, C.R.S. 2021. *Id.* at ¶¶ 7-8.

¶ 13 Ultimately, the district court allowed the mother to relocate to Texas with the children, granted Hill 107 overnights of parenting time with both children, and awarded joint decision-making responsibility, except that the mother would have the final say with respect to education and extracurricular activities. *Id.* at ¶ 8. Because Hill was not A.F.'s legal father, the court declined to order child support as to A.F., and the mother appealed that ruling. *Id.* at ¶¶ 10-11.

¶ 14 A division of this court reversed the child support ruling, concluding that it could not "embrace a situation in which a psychological parent who fights for and obtains all the same responsibilities of a legal parent does not also assume the

responsibility to pay child support." *Id.* at ¶ 33. Critical to its holding were the following facts:

> Hill held himself out as A.F.'s father, almost from birth, by treating him as his own. They lived together as a family for nearly four years, and Hill is the only father A.F. has ever known. And even after the parties broke up, Hill did not take his relationship with A.F. for granted. He exercised equal parenting time with the child for the next six years. When mother wanted to relocate with the child to Texas, he initiated an allocation of parental responsibilities, including a PRE investigation, and, at all times, he insisted that he be named the child's primary parent in Colorado. In the end, after numerous hearings, the court ultimately granted him an order for parenting time and decision-making responsibility for the child.

Id. at ¶ 32.

¶ 15 Indeed, the division expressly said that its holding was limited to these facts. *Id.* at ¶ 12. And it was careful to emphasize that it was "not creating a new class of stepparent obligors, nor [was] [it] suggesting that the mere existence of a psychological parent-child relationship, on its own, establishes a support obligation." *Id.* at ¶ 36.

¶ 16 We are not persuaded that *A.C.H.*'s holding extends to the facts of this case. Unlike Hill, maternal grandmother voluntarily

assumed parental responsibilities for the child through a dependency and neglect proceeding, not a child custody proceeding under section 14-10-123. The State, under its *parens patriae* authority, is the exclusive party that may initiate a dependency and neglect proceeding with respect to a child. *See L.A.G. v. People in Interest of A.A.G.*, 912 P.2d 1385, 1392 (Colo. 1996); *see also L.G. v. People*, 890 P.2d 647, 654 (Colo. 1995) (explaining that under the Children's Code, the State of Colorado acts as *parens patriae*, or sovereign guardian, to safeguard the interests of vulnerable children within the state; in keeping with this objective, the paramount concern in a dependency and neglect proceeding is to protect the child from any further harm as the result of abuse or neglect); § 19-3-502, C.R.S. 2021 (providing that the People of the State of Colorado, through the relevant county department of human services, may bring an action in dependency and neglect). Contrary to father's assertion, maternal grandmother never sought parental rights, and nothing in the record shows that maternal grandmother fought for permanent custody of the child or did anything more than agree to care for the child pursuant to the juvenile court's order. Nor does the record suggest that maternal

grandmother ever held the child out as her own. Thus, maternal grandmother did not, as father argues, independently fight to obtain the same parental responsibilities as a natural or adoptive parent, nor did she pursue an allocation of parental responsibilities as a nonparent under section 14-10-123, C.R.S. 2021. *See A.C.H.*, ¶ 33. Instead, maternal grandmother agreed to provide care and stability for the child because the parents were unfit. *See People in Interest of S.K.*, 2019 COA 36, ¶ 74 ("An unfit parent is one whose conduct or condition renders him or her unable or unwilling to give a child reasonable parental care.").

¶ 17 We are more persuaded by *People in Interest of P.D.*, 41 Colo. App. 109, 580 P.2d 836 (1978). There, the juvenile court adjudicated the child dependent or neglected as to the natural parents and ultimately terminated parental rights. *Id.* at 111, 580 P.2d at 837. However, the child's legal custodians and presumptive adoptive parents filed an action to dissolve their marriage before adoption proceedings were initiated. *Id.* The husband filed a motion to terminate his custody of the child in the juvenile court because the wife was the child's maternal aunt, wife had been awarded custody in the temporary orders in the dissolution case,

and the child had been in wife's sole custody for more than a year. *Id.* The juvenile court denied husband's motion because he was the person who had initiated the dependency and neglect proceeding that caused termination of the natural parents' parental rights. *Id.* In the permanent dissolution order, the district court awarded custody of the child to wife, but it ordered husband to pay child support based on the juvenile court's custody order. *Id.* A division of this court reversed the juvenile court's order and vacated the child support order. The division noted that in a dependency and neglect proceeding, "[o]ne who accepts legal custody of a dependent child does so on behalf of the State," and it held that legal custody "may not be imposed upon an unwilling person who is not the child's parent." *Id.* at 112-13, 580 P.2d at 838. Because the husband had voluntarily accepted legal custody of the child after a dependency and neglect determination and had never sought permanent custody through an adoption proceeding, the juvenile court erred by denying his motion to terminate custody, and the district court erred by ordering child support. *Id.*

¶ 18 Here, as in *P.D.*, maternal grandmother voluntarily accepted legal custody of the child in a dependency and neglect case and has

never sought permanent custody (or parental responsibilities). *See id.* We hold that maternal grandmother's willingness to assume parental responsibilities caused by mother's and father's parenting deficits did not transform her into a permanent custodian or a psychological parent with an obligation to pay child support under *A.C.H.* Accordingly, we discern no abuse of discretion in the court's order declining to impose a child support obligation on maternal grandmother. *See Tooker*, ¶ 12.

III. Conclusion

¶ 19 The district court's order is affirmed.

JUDGE J. JONES concurs.

JUDGE TOW dissents.

JUDGE TOW, dissenting.

¶ 20 I do not believe the proper question in this case is whether grandmother is a "psychological parent." Therefore, I must respectfully dissent.

¶ 21 I agree with, and adopt, the majority's recitation of the facts. *Supra* Part I.[1] However, because I think it important to a full understanding of the nature of this dispute, I add some contextual background gleaned from the record.

¶ 22 In his motion to modify child support, father states that grandmother "needs to be obligated for her proper share of the support obligation." At a status conference on this and other pending motions, the district court inquired into the status of the parties' financial disclosures. Father asserted that grandmother was obligated to complete the required financial disclosures, while

---

[1] Of particular note, I do not disagree with the majority's statement that grandmother did not "independently fight to obtain the same parental responsibilities as a natural or adoptive parent, nor did she pursue an allocation of parental responsibilities as a nonparent under section 14-10-123, C.R.S. 2021." *Supra* ¶ 16. That is true so far as it goes, but it ignores grandmother's subsequent litigation posture, in which she has actively fought father's efforts to retake legal custody of the child. However, as I will discuss, I do not think that fact is ultimately dispositive of the matter.

grandmother and Weld County Child Support Services (which is an intervenor in the trial court to address child support issues) argued that grandmother could not be required to pay child support and thus need not make any disclosures. The court set a schedule for the parties to brief the issue.[2]

¶ 23 In his brief in the district court, father argued that grandmother was not merely a guardian but, rather, "she has a full allocation of all of the rights and all of the responsibilities of a parent and asserts them." He continued, arguing that the district court had "the authority to determine that [grandmother], who has sought and been awarded sole allocation of parental *rights* and *responsibilities*[,] owes a 'duty of support' to the child within the meaning of section 14-10-115[, C.R.S. 2021,] and the authority to

---

[2] After father filed his motion to modify child support, grandmother filed a response requesting "the Court order all parties to submit updated financial information and to recalculate child support after the determination of" the pending motion to modify parenting time. Further, despite being given the opportunity to brief the issue before the district court, grandmother did not do so. (Nor, in fact, did grandmother file an answer brief with this court.) Notably, father does not appear to have asserted in the district court — and does not assert on appeal — that either of these facts constitutes a waiver of grandmother's current arguments opposing her obligation to disclose her financial information.

impose a child support obligation on [grandmother]." He concluded, "Respondent Father does not assert that this relieves either himself or Respondent mother from their respective support obligations, just that Ms. Moore is *also* responsible for [the child]'s support." In the opening brief on appeal, father reiterates this sentiment, asserting that grandmother "should share in the financial child support obligations for the minor child."

¶ 24 Father's assertions reveal a fundamental misunderstanding of the nature of a child support obligation. Grandmother houses, feeds, and clothes the child — a child for whom she bore no legal responsibility, at least until the court allocated parental responsibilities to her. Any suggestion that she is not bearing any of the financial brunt of caring for this child is simply untenable.

¶ 25 Indeed, father's assertion is contrary to the terms of the child support statute. In cases, such as here, where there is not shared physical care,[3] the party with whom the child resides is "presumed to spend [their] total child support obligation directly on the

[3] Shared physical care means that both parents have at least ninety-three overnights of parenting time. § 14-10-115(3)(h), C.R.S. 2021.

children." § 14-10-115(8)(a). Thus, grandmother is satisfying any statutory obligation she may have to support the child.

¶ 26 For this reason, this issue is arguably moot. At heart, father's request is to make grandmother contribute to the support of the child. She is already doing exactly that. Thus, father is already receiving the relief he has requested. *See Tippett v. Johnson*, 742 P.2d 314, 315 (Colo. 1987) (a claim is moot when the relief requested has already occurred). And, given the fact that father has fewer than ninety-three overnights of parenting time, grandmother would not be ordered to pay him child support in any event. *See* § 14-10-115(8) (providing that, in such circumstances, the parent with whom the child does not live pays their portion of the child support to the parent with whom the child lives).

¶ 27 That being said, however, father raised two interrelated threshold issues in the district court: Can grandmother be ordered to financially support the child; and, to that end, can she be required to provide financial disclosures in order to appropriately calculate child support? Thus, to the extent the second issue is the

gravamen of this dispute, the issue does not appear to be moot.[4] In this light, I turn to the merits of the issue.

¶ 28 Here, I must respectfully part ways with my colleagues because, as noted, I do not believe the proper question is whether grandmother is a psychological parent. Initially, it could be argued that father chose to ride the "psychological parent" horse and is therefore stuck with that steed. But, for two reasons, I would disagree. First, the crux of father's argument focuses less on whether grandmother is a psychological parent and more on the fact that grandmother is not a guardian but, rather, a person who has been allocated parental responsibilities — and thus a person on whom the court can impose a support obligation. The psychological parent aspect of father's argument is solely related to the

---

[4] For example, the total amount of the basic child support obligation is calculated using the parties' combined adjusted gross income. § 14-10-115(7)(b). If the court is required to use grandmother's income, instead of mother's income (as was apparently used in calculating the existing support obligation), the basic support obligation — and, consequently, father's share of that obligation — may well be higher than the present support order reflects. This is particularly true given the fact that, according to father's sworn financial affidavit filed with the court in connection with his motion, his income is quite a bit higher than it was when his existing obligation was calculated.

application of *In re Parental Responsibilities Concerning A.C.H.*, 2019 COA 43. Second, even if father's argument were so limited, an appellate court "may consider an issue 'antecedent to . . . and ultimately dispositive of' the dispute before it, even an issue the parties fail to identify and brief." *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 447 (1993) (quoting *Arcadia v. Ohio Power Co.*, 498 U.S. 73, 77 (1990)).

¶ 29 The majority, too, places its focus on whether grandmother is a psychological parent. Yet, in my view, the focus on whether grandmother is a psychological parent puts the cart before the horse. The import of a psychological parent relationship is the recognition that curtailing or terminating that relationship will cause harm to the child. *See In Interest of E.L.M.C.*, 100 P.3d 546, 560-61 (Colo. App. 2004). Thus, the question whether one is a psychological parent to a child is related not to whether one should be obligated to support the child but, instead, to whether one is in a position to seek parental rights. *Id.* at 561. Indeed, whether the individual provides support and sustenance to a child is a factor in

determining the existence of a psychological parent relationship, not the other way around. *See id.* at 560.[5]

¶ 30 Rather, I believe the fulcrum on which this dispute pivots is whether grandmother has a legal obligation to support the child. And I believe she does.[6]

¶ 31 The confusion in this area arises from the fact that the child support statute, § 14-10-115, speaks only in terms of "parents" but does not define that term. *See, e.g.*, § 14-10-115(1)(a)(I) (identifying as a consideration in imposing child support "the ability of parents to pay"); § 14-10-115(1)(b)(I) (providing that child support obligations are calculated "based upon the parents' combined adjusted gross income estimated to have been allocated to the child if the parents and children were living in an intact household"); § 14-10-115(1)(b)(III) (providing that the statute "[a]llocate[s] the amount of child support to be paid by each parent based upon physical care arrangements"). This is not entirely surprising, when

---

[5] To the extent *In re Parental Responsibilities Concerning A.C.H.*, 2019 COA 43, suggests to the contrary, I respectfully disagree with it.

[6] Again, I also believe grandmother is satisfying that obligation by providing the child with shelter, food, and clothing.

one considers that section 14-10-115 is housed in the Uniform Dissolution of Marriage Act (UDMA), §§ 14-10-101 to -133, C.R.S. 2021, which governs, among other things, the allocation of parental responsibilities and establishment of support obligations between divorcing and unmarried parents.

¶ 32 But the UDMA is not *limited* to such proceedings. Section 14-10-123, C.R.S. 2021, explicitly permits nonparents to seek an allocation of parental responsibilities in certain circumstances. *See* § 14-10-123(1)(b)-(d). Unlike section 14-10-115, section 14-10-123 contains a definition of parent, incorporating section 19-1-103, C.R.S. 2021. § 14-10-123(1.3)(b). Section 19-1-103(105)(a) defines parent as "either a natural parent of a child . . . or a parent by adoption." Significantly, the legislature did not apply this definition of parent throughout the UDMA, instead choosing to constrain it to section 14-10-123. § 14-10-123(1.3) (providing the definition of parent "[a]s used in this section"). Thus, it appears that the legislature did not intend the term "parent" in other parts of the UDMA, including section 14-10-115, to be so narrow in scope.

¶ 33 This fact becomes clearer when one considers that section 14-10-115 is not restricted to UDMA proceedings. Rather, the

provision applies "to all child support obligations, established or modified, *as a part of any proceeding*, including, but not limited to, articles 5, 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., regardless of when filed." § 14-10-115(1)(c) (emphasis added). Article 6 of title 19, for example, governs "proceedings to compel parents, *or other legally responsible persons*, to support a child." § 19-6-101(1)(a), C.R.S. 2021 (emphasis added). A proceeding under this statute may be initiated "by any person." *Id.* This statute reiterates that establishing or modifying any support order pursuant to this provision is governed by section 14-10-115. § 19-6-106, C.R.S. 2021. In *People in Interest of R.J.G.*, 38 Colo. App. 148, 151, 557 P.2d 1214, 1216 (1976), a division of this court interpreted identical language in this provision's predecessor, section 19-7-101(1), C.R.S. 1973, to permit an order compelling the Denver Department of Welfare, as the legal custodian of a child adjudicated to be "in need of supervision," to pay support.

¶ 34 So what does "parent" mean in the context of a support order established pursuant to section 14-10-115? Clearly, it is not always limited to a natural, legal, or adoptive parent, as it is in section 14-10-123.

¶ 35 Even in proceedings under the UDMA, divisions of this court have imposed obligations on nonparents in certain circumstances. Most recently, in *A.C.H.*, ¶ 2, the division held that "a psychological parent, who fought for and obtained a parenting time and decision-making responsibility order for his ex-girlfriend's biological child, can also be ordered to pay child support on behalf of that child."

¶ 36 In *In re Marriage of Rodrick*, 176 P.3d 806 (Colo. App. 2007), a husband and wife had been allocated parental responsibilities concerning a friend's child, whom the husband and wife planned to adopt. *Id.* at 809. Before the adoption was finalized, however, husband and wife divorced. *Id.* at 809-10. In the dissolution proceedings, husband asserted that, although he asked for parenting time with the child, neither he nor wife was obligated to pay child support because they were merely guardians of the child. *Id.* at 810.

¶ 37 A division of this court disagreed. The division held that the allocation of parental responsibilities "established a child support obligation by imposing the duties on husband and wife, described

in § 19-1-103(73)(a),[7] to provide [the child] with the necessities of life." *Id.* at 812. The division referenced the Children's Code definition of legal custody — i.e., "the right to the care, custody, and control of a child *and the duty to provide food, clothing, shelter,* ordinary medical care, education, and discipline for a child." § 19-1-103(94)(a) (emphasis added). While the Children's Code retains the term "custody," the UDMA changed in 1999 to the term "parental responsibilities"; however, the legislature specifically stated that this change would not "modify or change the meaning of the term 'custody' nor . . . alter the legal rights of any custodial parent with respect to the child as a result" of the change. § 14-10-103(4), C.R.S. 2021.

¶ 38 In other words, the husband and wife in *Rodrick* had an obligation to support the child — to be calculated under section 14-10-115 — not because they were psychological parents, but

---

[7] At the time of the decision in *In re Marriage of Rodrick*, 176 P.3d 806 (Colo. App. 2007), the Children's Code definition of "legal custody" was codified at section 19-1-103(73)(a), C.R.S. 2007. It was moved to section 19-1-103(94)(a), C.R.S. 2021, without substantive amendment in 2021. Ch. 136, sec. 144, § 19-1-103, 2021 Colo. Sess. Laws 766.

because they had legal custody through an allocation of parental responsibilities.

¶ 39 Thus, the unifying circumstance in *A.C.H.* and *Rodrick* is not, as suggested by the majority and the division in *A.C.H.*, the status of the nonparent as a "psychological parent" but, rather, the existence of a court order allocating parental responsibilities to the nonparent.

¶ 40 In sum, to harmonize section 14-10-115 with the statutes that explicitly incorporate it, I believe it is necessary to conclude that "parent" as used in that section means an individual who is the present recipient of an allocation of parental responsibilities pursuant to section 14-10-123 or who has legal custody as defined in section 19-1-103(94)(a).[8]

¶ 41 Indeed, the obligation to support the child is one — if not *the* — fundamental difference between an allocation of parental

---

[8] Of course, once an allocation of parental responsibilities or an order of legal custody is no longer in effect, the nonparent's obligation to support the child also ceases. *See, e.g.*, *People in Interest of P.D.*, 41 Colo. App. 109, 112-13, 580 P.2d 836, 837-38 (1978) (holding that an individual who had been allocated legal custody of a child through a dependency and neglect case remained free to terminate that custodial relationship and the concomitant duty to support the child).

responsibilities and a guardianship. *See Sidman v. Sidman*, 240 P.3d 360, 362 (Colo. App. 2009) ("A guardian 'has essentially the same authority and responsibilities with regard to the child as a parent would have, with the exceptions that the guardian typically does not provide the financial resources to support the child . . . .'" (quoting *In re J.C.T.*, 176 P.3d 726, 730 (Colo. 2007))). Notably, the probate code does not incorporate section 14-10-115; to the contrary, it explicitly provides that "[a] guardian need not use the guardian's personal funds for the ward's expenses." § 15-14-209(2), C.R.S. 2021. In this vein, father correctly asserts that the district court's order incorrectly referred to grandmother as the child's guardian.

¶ 42 I also recognize that our supreme court has noted that "the factors considered in determining child support at common law did not include the financial resources of third-parties." *In re Marriage of Nimmo*, 891 P.2d 1002, 1005-06 (Colo. 1995). In doing so, the court cited with approval *In re Marriage of Conradson*, 43 Colo. App. 432, 604 P.2d 701 (1979). The division in *Conradson* had stated, in very broad terms, "[t]he factors to be considered in making a support award do not include the financial resources of a

non-parent with whom the child is living." *Id.* at 434, 604 P.2d at 703.

¶ 43 However, neither *Nimmo* nor *Conradson* involved a nonparent who had been allocated parental responsibilities or otherwise had legal custody. In *Nimmo*, the issue was whether the father was entitled to discovery of gifts the mother had received from her present husband in order to calculate her income. 891 P.2d at 1004-05. In *Conradson*, a teenager who was living with her aunt had personally sought to enforce the father's child support obligation. 43 Colo. App. at 433, 604 P.2d at 703. The court rejected the father's claim that the aunt had the financial wherewithal to support the child. *Id.* at 434, 604 P.2d at 703. Significantly, the father in *Conradson* was the "custodial parent," the child was merely living with the aunt by consent of the parties, and the aunt had not sought or obtained an allocation of parental responsibilities concerning the child. *Id.* at 433, 604 P.2d at 703.

¶ 44 Unlike the aunt in *Conradson*, grandmother has been allocated parental responsibilities. And one such responsibility is to support the child. The statutory calculation of child support is based on the respective incomes of each parent (as parent is defined

to include one to whom parental responsibilities are allocated). Thus, in my view, grandmother is subject to the disclosure requirements when, as here, there is a pending request to modify child support.[9]

¶ 45 Because I believe grandmother, as a person to whom parental responsibilities have been allocated, falls within the definition of parent for purposes of section 14-10-115, I would reverse the district court's order.

---

[9] I note that concluding that grandmother cannot be required to make such disclosures in this child support proceeding under section 14-10-115 may well lead to unnecessary and duplicative litigation in the juvenile court. Having failed to secure the disclosures in this case, nothing would prevent father from instituting a child support action against grandmother, as a "legally responsible person," under section 19-6-101(1), C.R.S. 2021. I cannot believe the legislature would have intended such a waste of resources.