SUMMARY
April 22, 2021

2021COA56

No. 20CA1387, *People in Interest of K.L.W.* — Family Law — Children's Code — Uniform Parentage Act — Parent Child Relationship Defined — Presumption of Parentage

In this case concerning competing presumptions of parentage, a division of the court of appeals considers whether a child may have three legal parents. The division holds that the provisions of Colorado's Uniform Parentage Act require the juvenile court to determine which parentage presumption should control and, thus, do not allow a court to recognize more than two legal parents for a child.

The division further concludes that the juvenile court properly considered the children's best interests and other pertinent factors in making its parentage determination. And, under the circumstances of this case, the use of an improper standard of

proof when weighing the competing parentage presumptions does not require reversal. As a result, the division affirms the judgment.

COLORADO COURT OF APPEALS **2021COA56**

Court of Appeals No. 20CA1387
City and County of Denver Juvenile Court No. 19JV895
Honorable Pax Leia Moultrie, Judge

The People of the State of Colorado,

Appellee,

In the Interest of K.L.W. and J.L.W., Children,

and Concerning C.L.F.,

Appellant,

and

J.C.,

Appellee.

JUDGMENT AFFIRMED

Division II
Opinion by JUDGE ROMÁN
Welling and Brown, JJ., concur

Announced April 22, 2021

Barry Meinster, Guardian Ad Litem

Victor T. Owens, Office of Respondent Parents' Counsel, Parker, Colorado, for Appellant

Dodd Law, P.C., Debra W. Dodd, Berthoud, Colorado, for Appellee J.C.

¶ 1 In this dependency and neglect proceeding, the juvenile court had to decide who should be declared the legal parents of two children, K.L.W. and J.L.W. No one disputes that the children's biological mother is their parent, but the issue is who should be the children's other parent — C.L.F., who had previously been in a relationship with mother, or J.C., the children's biological father. The juvenile court named biological father as the legal parent, and C.L.F. appeals from the court's determination.

¶ 2 We must first decide whether the juvenile court was right when it determined that the children could not have three legal parents. We conclude that it reached the right decision because Colorado's Uniform Parentage Act (UPA) does not allow a court to recognize more than two legal parents for a child.

¶ 3 We also reject C.L.F.'s challenges to the parentage determination. The court properly considered the children's best interests and other pertinent factors in making its determination. And, while the court did not apply the proper standard of proof when weighing the competing parentage presumptions, this oversight does not require reversal under the circumstances of this case. As a result, we affirm the judgment.

I. The Dependency and Neglect Case

¶ 4 In March 2019, the Denver Department of Human Services learned that the children's mother was struggling with mental health issues and had started a fire in her home while the children were present. After conducting an initial assessment, the Department was unable to locate mother and the children. A few months later, the Department received a report that mother had committed domestic violence against C.L.F., who helped care for the children. Mother was also responsible for a fire that had rendered C.L.F.'s home unlivable.

¶ 5 Accordingly, in June 2019, the Department initiated a dependency and neglect proceeding concerning the nine-month-old twin children. The juvenile court granted custody of the children to the Department for placement with their maternal grandmother.

¶ 6 Less than two months later, C.L.F. filed a motion to declare her the mother of the children instead of recognizing father as the children's legal parent. In support of her motion, she asserted that she was listed as a parent on the children's birth certificates and had held the children out as her own.

¶ 7 Meanwhile, the court adjudicated the children dependent and neglected in relation to mother and adopted a treatment plan for her. It authorized the Department to serve father by publication. When father did not appear, the court entered a default adjudicatory and treatment plan order.

¶ 8 C.L.F. later began caring for the children in conjunction with the grandmother. And once father appeared in the case in January 2020, the court authorized him to have visits with the children.

¶ 9 In July 2020, the juvenile court held a contested hearing to decide the issue of parentage between C.L.F. and father.[1] The court determined that C.L.F. was a presumptive parent because she had held the children out as her own and father was a presumptive parent because genetic tests established that he was the children's biological parent. However, the court concluded that it was unable

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[1] The juvenile court did not consider the parentage determination in relation to mother. While proof that mother had given birth to the children was a basis for determining that she was their parent under section 19-4-104, C.R.S. 2020, it did not automatically prevail over other parentage presumptions under the UPA. *See In Interest of S.N.V.*, 284 P.3d 147, 150-51 (Colo. App. 2011).

Still, no party challenged mother's parentage or sought a determination that just C.L.F. and father be recognized as the children's legal parents. And no party raises this issue on appeal.

to recognize more than two legal parents for the children. And, after making further findings, it ultimately declared father the children's legal parent.

¶ 10 C.L.F. appealed the parentage determination. After she obtained a C.R.C.P. 54(b) order from the juvenile court certifying the parentage determination as final for purposes of appeal, this court permitted the appeal to proceed.

II. Parent-Child Relationships Under the UPA

¶ 11 To start, we address C.L.F.'s contention that the juvenile court erred by holding that the children could not have more than two legal parents. We disagree.

A. Standard of Review and Statutory Interpretation

¶ 12 Whether the UPA authorizes a court to declare more than two legal parents for a child is a question of statutory interpretation that we review de novo. *See People in Interest of M.B.*, 2020 COA 13, ¶ 40 (recognizing that the interpretation of the UPA, like that of any statute, is de novo).

¶ 13 In construing a statute, we look at the entire statutory scheme "in order to give consistent, harmonious, and sensible effect to all of its parts, and we apply words and phrases in accordance with their

plain and ordinary meanings." *People in Interest of L.M.*, 2018 CO 34, ¶ 13 (quoting *UMB Bank, N.A. v. Landmark Towers Ass'n*, 2017 CO 107, ¶ 22). We do not interpret a statute in a way that would render parts of it meaningless or absurd. *People in Interest of C.L.S.*, 313 P.3d 662, 666 (Colo. App. 2011). And, if the statute's language is clear and we can discern the legislature's intent with certainty, we do not resort to other rules of statutory interpretation. *Id.*

B. Applicability of the UPA

¶ 14 A parentage proceeding may be joined with a dependency and neglect proceeding. *People in Interest of J.G.C.*, 2013 COA 171, ¶ 10. However, it is governed by the provisions of the UPA. *Id.* at ¶ 11; *see also In re Support of E.K.*, 2013 COA 99, ¶ 9.

¶ 15 The purpose of the UPA is to establish and protect the parent-child relationship. *In re Parental Responsibilities Concerning A.R.L.*, 2013 COA 170, ¶ 18. Indeed, the outcome of a parentage proceeding is extraordinarily important because it determines who a child's legal parent will be, and, thus, who will enjoy the rights and responsibilities of legal parenthood. *N.A.H. v. S.L.S.*, 9 P.3d 354, 359 (Colo. 2000).

¶ 16 The parent-child relationship encompasses both a mother and child relationship as well as a father and child relationship. *A.R.L.*, ¶ 19; § 19-4-102, C.R.S. 2020. Under the UPA, a person is presumed to be the natural parent of a child if genetic tests show that he or she is not excluded as the probable parent and that the probability of his or her parentage is ninety-seven percent or higher. § 19-4-105(1)(f), C.R.S. 2020.

¶ 17 Still, establishing parentage under the UPA is not limited to those persons who have a biological connection to a child. *A.R.L.*, ¶ 19; *see also N.A.H.*, 9 P.3d at 360-62 (recognizing that biology is not conclusive in establishing parentage under the UPA). Rather, the UPA also allows a person to prove parentage based on other factors set forth in section 19-4-105.[2] *A.R.L.*, ¶ 19. As pertinent here, section 19-4-105(1)(d) provides that a person is presumed to be the parent of a child if he or she receives the child into his or her home and openly holds out the child as his or her natural child.

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[2] Although section 19-4-105, C.R.S. 2020, specifically addresses paternity, it applies equally to maternity. *See* § 19-4-125, C.R.S. 2020.

C. Procedure for Determining Parentage

¶ 18 C.L.F. correctly points out that the UPA does not contain express language prohibiting a child from having more than two legal parents. Even so, the UPA mandates specific procedures that must be followed when a party seeks to establish parentage. *E.K.*, ¶ 9.

¶ 19 Once a court determines which parentage presumptions apply, it must then determine whether any presumptions have been rebutted by clear and convincing evidence. *C.L.S.*, 313 P.3d at 666. Significantly, a parentage presumption is rebutted by a court decree establishing parentage of the child by another person. § 19-4-105(2)(a).

¶ 20 The next step in the process occurs when, as here, two or more conflicting presumptions of parentage arise under the UPA, and none has been rebutted. In these circumstances, the UPA provides a mechanism to choose among competing presumptions. *N.A.H.*, 9 P.3d at 360. The UPA requires the court to resolve the competing presumptions and adjudicate parentage of the child. § 19-4-105(2)(a). The plain language of section 19-4-105(2)(a) is mandatory — the court must weigh two or more conflicting

parentage presumptions and determine which controls. *See N.A.H.*, 9 P.3d at 360.

¶ 21 These provisions mean that a child is limited to having just two legal parents. Indeed, the result of this process is to render one of the people with a conflicting parentage presumption the child's parent while the other presumptive parent becomes a nonparent who does not have the same rights as a parent to visit a child or to make decisions about the child's education, health, or upbringing. *See M.B.*, ¶ 43; *C.L.S.*, 313 P.3d at 667. To be sure, a nonparent may have standing to pursue an allocation of parental responsibilities for a child in certain circumstances. *See* § 14-10-123(1), C.R.S. 2020; *In re Parental Responsibilities Concerning M.W.*, 2012 COA 162, ¶ 12. But a parental responsibilities dispute between a parent and a nonparent is not a contest between equals. *M.W.*, ¶ 13.

¶ 22 If, on the other hand, the legislature had intended to allow the possibility of a child having more than two legal parents, section 19-4-105(2)(a) would not require the court to always determine which competing parentage presumption should control. Nor would it provide that a parentage presumption is necessarily rebutted by a

prior parentage decree determining that another person is the child's parent. Instead, it would have provided a standard for a court to employ when tasked with deciding whether to recognize more than two legal parents for a child in these circumstances.

¶ 23 For example, in 2017, the Uniform Law Commission drafted a uniform parentage act that does just that. *See* Unif. Parentage Act (Nat'l Conf. of Comm'rs on Unif. State L. 2017), https://perma.cc/2UM4-GF7V. The section of the act addressing adjudicating competing claims of parentage includes an optional provision authorizing the court to adjudicate a child to have more than two parents if it finds that the failure to recognize more than two parents would be detrimental to the child. *Id.* at 35-36.

¶ 24 And, significantly, this section provides guidance on how to make this determination. It clarifies that a finding of detriment to the child does not require a finding of unfitness of any parent or individual seeking an adjudication of parentage. *Id.* at 36. It further provides that, in determining detriment to the child, the court shall consider all relevant factors, including the harm if the child is removed from a stable placement with an individual who

has fulfilled the child's physical and psychological needs for care and affection and has assumed the role for a substantial period. *Id.*

¶ 25 In contrast, Colorado's version of the UPA does not contain these or similar provisions.[3] As a result, it does not envision that competing parentage presumptions will create a possibility of three legal parents, but rather that the juvenile court will determine which presumption should control. *See A.R.L.*, ¶ 27.

D. Out-of-State Authority

¶ 26 C.L.F. relies on out-of-state cases to support her proposition that the children may have three parents. She first cites *LaChapelle v. Mitten*, 607 N.W.2d 151 (Minn. Ct. App. 2000), in which the Minnesota Court of Appeals determined that the mother's ex-partner, who was not a parent, could seek custody of the mother's child. *Id.* at 156, 159. In doing so, the court discussed the circumstances under which a nonparent could seek custody under a state statute. *Id.* at 159-61. In short, while the court

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[3] The language from the 2017 act drafted by the Uniform Law Commission was introduced in Colorado's House of Representatives in February 2020 through House Bill 20-1292. But a month later, the House Judiciary Committee voted to postpone the bill indefinitely. H. Journal, 72d Gen. Assemb., 2d Reg. Sess., at 730 (Mar. 12, 2020).

upheld the trial court's custodial arrangement between the mother, the mother's ex-partner, and the child's biological father, its description of the ex-partner as a nonparent clearly indicates that it was not in fact recognizing a third parent-child legal relationship.

¶ 27 This is similar to Colorado's statutory scheme allowing a person other than a parent to seek an allocation of parental responsibilities for a child. *See* § 14-10-123(1). And, recall, the ability to seek parental responsibilities does not elevate a nonparent to the same status as a parent. *See In re Parental Responsibilities Concerning B.J.*, 242 P.3d 1128, 1133 (Colo. 2010) (holding that while a nonparent may have standing under section 14-10-123, there is a presumption that parents have a first and prior right to the custody of their child as between a parent and a nonparent).

¶ 28 C.L.F. next cites *Sharon S. v. Superior Court*, 73 P.3d 554 (Cal. 2003). But, again, *Sharon S.* does not contemplate a child having three legal parents. Instead, the California Supreme Court considered whether a birth mother's former domestic partner could adopt a child conceived through artificial insemination during their partnership without terminating the rights of the birth mother. *Id.* at 557-58.

¶ 29 Because the child was conceived through artificial insemination, the child only had one legal parent at the time that mother's former partner sought the adoption. *Id.* at 571 n.19. Thus, the court did not recognize three parent-child legal relationships, but rather concluded that California's adoption statutory scheme allowed mother's former domestic partner to effectuate a second parent adoption for the child. *Id.* at 566, 572.

¶ 30 C.L.F. also points to *Jacob v. Shultz-Jacob*, 923 A.2d 473 (Pa. Super. Ct. 2007). This case concerned a mother, her former same sex partner, and the biological father of two children (he agreed to act as a sperm donor but had also been involved in the children's lives since birth). All three were awarded parenting time because the former partner had standing based on her *in loco parentis* status. *Id.* at 476-77. The court reiterated that the rights and liabilities arising out of *in loco parentis* status were exactly the same as between parent and child. *Id.* at 477. But, it explained that standing by virtue of *in loco parentis* status did not elevate a party to parity with a natural parent in determining custody disputes. *Id.*

¶ 31 As a result, the case does not establish that a child can have three legal parents, but rather two legal parents as well as a

relationship with another person who may have standing to seek parenting time. Again, this is similar to Colorado's statutory scheme under section 14-10-123(1), but it does not lead to the recognition that a child can have more than two legal parents.

¶ 32 Additionally, C.L.F. points to an unpublished Delaware opinion, *Jw.S. v. Em.S.*, No. CS11-01557, 2013 WL 6174814, at *5 (Del. Fam. Ct. May 29, 2013), that gave legal parental status to three people — the biological mother, the adjudicated biological father, and a de facto parent. Similarly, California courts have recognized the designation of a third parent for a child. *See In re Donovan L.*, 198 Cal. Rptr. 3d 550, 559 (Ct. App. 2016); *see also In re L.L.*, 220 Cal. Rptr. 3d 904, 914 (Ct. App. 2017). However, these cases are based on state statutory provisions that expressly authorize a court to do so.

¶ 33 In 2009, the Delaware General Assembly amended its parentage scheme. *Smith v. Guest*, 16 A.3d 920, 924 n.13 (Del. 2011). The amendment included a de facto parent within the statutory definition of parent, thereby expressly recognizing de facto parent-child relationships. *Id.* at 924. The statute defines a de facto parent as a person who

- "[h]as had the support and consent of the child's parent or parents who fostered the formation and establishment of a parent-like relationship between the child and the de facto parent";
- "[h]as exercised parental responsibility for the child as that term is defined in [another statutory provision]"; and
- "[h]as acted in a parental role for a length of time sufficient to have established a bonded and dependent relationship with the child that is parental in nature."

Del. Code Ann. tit. 13, § 8-201(c)(1)-(3) (2020).

¶ 34 And, in 2013, the California legislature enacted a statute that allows a court to recognize that a child has more than two parents. Cal. Fam. Code § 7612(c) (West 2020); *Donovan L.*, 198 Cal. Rptr. 3d at 559. The statute provides that in an appropriate action, a court may find that more than two persons with a parentage claim are parents if recognizing only two parents would be detrimental to the child. Cal. Fam. Code § 7612(c).

¶ 35 In short, these cases stand for the proposition that a court may recognize a third parent relationship when express statutory

authority authorizes such a result. The Colorado UPA, however, contains no such provision.

E. Policy Arguments

¶ 36 Finally, C.L.F. asserts that there are essential benefits to recognizing a third parent-child legal relationship in some circumstances. It may well be, as the juvenile court expressed, that the UPA has not kept up with the realities and rich complexity of modern family life and of raising children. This may in turn keep the court from implementing an order that it believes will truly serve the best interests of the children in some of those cases.

¶ 37 Indeed, more than two decades ago, our supreme court recognized that parenthood in our complex society comprises much more than biological ties, and litigants are increasingly asking courts to address issues that involve delicate balances between traditional expectations and current realities. *N.A.H.*, 9 P.3d at 359. And, today, more and more children are part of nontraditional families — they are raised by at least one person not biologically related to them, but who acts as a parent. *In re Parental Responsibilities Concerning A.C.H.*, 2019 COA 43, ¶ 1.

¶ 38 Nonetheless, it is up to the legislature to craft this type of statutory remedy, not this court. *Dep't of Transp. v. City of Idaho Springs*, 192 P.3d 490, 494 (Colo. App. 2008). Neither the juvenile court nor this court is free to rewrite the statute to effectuate a preferred outcome — even if that preferred outcome, in the fact finder's considered judgment, would better effectuate the children's best interests. *See id.* Rewriting the statute is the legislature's prerogative, not ours. *Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186, 1191 (Colo. 2010).

F. Conclusion

¶ 39 For these reasons, we conclude that the UPA does not allow a court to recognize more than two legal parents for a child. As a result, the juvenile court properly determined that it was unable to name both C.L.F. and father as the children's legal parents in addition to mother.

III. The Parentage Determination

¶ 40 C.L.F. also contends that the juvenile court erred by declaring father as the legal parent of the children. Specifically, she asserts that the court (1) failed to consider the children's best interests; (2) erred by concluding that policy and logic did not support

declaring her the legal parent; and (3) applied the incorrect standard of proof. We are not persuaded.

A. The Law

¶ 41 When two or more conflicting presumptions of parentage arise, and none has been overcome, the court must determine which presumption should control based on the weightier considerations of policy and logic. § 19-4-105(2)(a); *J.G.C.*, ¶ 22. In making this determination, the court must consider all pertinent factors, including the following:

- the length of time between the proceeding to determine parentage and the time that the presumed parent was placed on notice that he or she might not be the genetic parent;
- the length of time during which the presumed parent has assumed the role of the child's father or mother;
- the facts surrounding the presumed parent's discovery of his or her possible nonparentage;
- the nature of the parent-child relationship;
- the child's age;

- the child's relationship with any presumed parent or parents;
- the extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child; and
- 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). The inquiry is fact-intensive, and the court must focus on the child's best interests when weighing competing presumptions of parenthood. *See N.A.H.*, 9 P.3d at 362.

¶ 42 We defer to the court's factual findings if they are supported by the record. *M.A.W. v. People in Interest of A.L.W.*, 2020 CO 11, ¶ 32. However, whether the juvenile court applied the correct legal standard in making its findings is a question of law that we review de novo. *Id.* at ¶ 31.

B. The Court's Ruling

¶ 43 At the close of the parentage hearing, the juvenile court properly recognized that it needed to consider the factors under

section 19-4-105(2)(a)(I)-(VIII) and resolve the competing parentage presumptions based on the weightier considerations of policy and logic. And it made factual findings in relation to these statutory factors.

¶ 44 Specifically, the court determined that

- both father and C.L.F. "really desire to have the other person remain in these children's lives" and "acknowledge the importance of that to the children and the children's interests";
- the children recognized father as their "dad" and C.L.F. as their second mother;
- the children had some level of attachment to both father and C.L.F.;
- mother and her family had erected barriers to father assuming his role as a parent; and
- father would be unable to maintain his relationship with the children if he was not a legal parent.

C. Consideration of Children's Best Interests

¶ 45 C.L.F. claims that the juvenile court failed to consider the children's best interests because it did not expressly reference them as part of its parentage determination.

¶ 46 To be sure, the juvenile court was required to explicitly consider the children's best interests as part of the policy and logic analysis used to decide legal parentage. *See N.A.H.*, 9 P.3d at 362. While the juvenile court did not use the "best interests" terminology when weighing and resolving the competing presumptions of parentage between C.L.F. and father, its findings reflect that it did, in fact, consider the children's best interests. Indeed, the court's extensive consideration of the children's relationships and attachment to each of the presumptive parents necessarily meant that it was focused on the children's best interests.

¶ 47 Accordingly, we are satisfied that the juvenile court adequately considered the children's interests in making its parentage determination.

D. Weightier Considerations of Policy and Logic

¶ 48 Having addressed the children's best interests, we turn to C.L.F.'s assertion that the juvenile court erred by concluding that

policy and logic did not support declaring her the legal parent. In support of her assertion, C.L.F. challenges the court's consideration of various factors. We reject each argument in turn.

1. Consideration of Efforts to Exclude Father and Father's Ability to Maintain a Relationship with the Children

¶ 49 We first reject C.L.F.'s assertion that the court erred because its parentage decision stemmed from its concerns that mother and her family had intentionally impeded father's ability to be a parent and would not facilitate father's ability to maintain the relationship that he had established with the children.

¶ 50 There can be no doubt that the primary concern in making a parentage determination is the child's best interests and not the rights of, or the fairness to, each of the presumptive parents. As our supreme court explained, it is the child who has the most at stake in a parentage proceeding despite the numerous privileges and duties of being a parent. *N.A.H.*, 9 P.3d at 364.

¶ 51 Still, we are not persuaded that the court was totally precluded from considering whether mother and her family had erected barriers to father assuming his role as a parent. Recall that before enumerating eight specific factors that the court must

consider when weighing competing parentage presumptions, section 19-4-105(2)(a) directs the court to consider all pertinent factors.

¶ 52 This phrasing demonstrates that the enumerated factors are not exclusive. *See In re Marriage of Paulsen*, 677 P.2d 1389, 1390 (Colo. App. 1984) (recognizing that enumerated statutory factors were not exclusive where a statute directed the court to consider all relevant factors including factors enumerated in the statute). As a result, the court had discretion to consider whether a parent had acted fairly to another parent as one factor in determining the children's best interests and which parentage presumption should control. *See In re Marriage of Ohr*, 97 P.3d 354, 357 (Colo. App. 2004) (upholding a trial court's consideration of evidence of spousal abuse when determining legal parentage).

¶ 53 Additionally, the court viewed the likelihood that father would not be able to maintain the relationship that he had established with the children as a factor that could cause other harm to the children as contemplated under section 19-4-105(2)(a)(VIII).

¶ 54 And, contrary to C.L.F.'s claim, the record supports the court's determination that father would have difficulty maintaining his relationship with the children if he was not made a legal parent. To

be sure, C.L.F., who had cared for the children on at least a co-parenting basis from their birth in September 2018 until the dependency and neglect case was opened in June 2019, testified that she had tried to persuade mother to allow father to be involved with the children during that time.

¶ 55 C.L.F. had also taken steps to facilitate visits between father and the children while they were in her care during the dependency and neglect case. This included engaging the children during video calls with father.

¶ 56 Even so, C.L.F. acknowledged that she had chosen not to directly communicate with father or even seek his contact information before the dependency and neglect case opened. She explained that "there was a bunch of hearsay going on" and they "really didn't acknowledge each other." C.L.F. further elaborated that she did not have contact information for father when the case began because she and father had "got[ten] off on the wrong foot" because of a conversation that she had overheard him having with mother.

¶ 57 Father agreed that C.L.F. had convinced mother to allow him to see the children. However, father testified that neither C.L.F. nor

mother's family had told him about the dependency and neglect case even though he attended the children's first birthday party. Nor did C.L.F. provide the court with father's contact information even though he attended the birthday party while the court was unable to locate him. And it was father who initiated contact with C.L.F. after the case was opened.

¶ 58 Accordingly, we discern no error in the juvenile court's consideration of the actions of mother and her family in impeding father's ability to be a parent and the likelihood that father would be able to maintain a relationship with the children as pertinent factors in its parentage determination.

2. Factors in Support of Biological Parent Presumption

¶ 59 C.L.F. argues that the record does not support the court's determination that the biological presumption controlled over the holding out presumption because father had largely been absent from the children's lives and was employed in the trucking industry, which would require him to be away from the children. We reject this argument for three reasons.

¶ 60 First, we note that, in contrast to C.L.F.'s assertion, the juvenile court did not hold that either presumption controlled over

the other. Rather, it correctly recognized that it had to resolve the conflicting parentage presumptions based on the weightier considerations of policy and logic.

¶ 61 Second, the court considered evidence in the record showing that father had comparatively limited involvement with the children. Indeed, the juvenile court recognized that father could have been more assertive in being a parent to the children.

¶ 62 But the nature of the parent-child relationship and the relationship of the child to any presumed parent were just two of many factors that the court had to consider when weighing the competing parentage presumptions. *See* § 19-4-105(2)(a)(IV), (VI). And it is not our role to reweigh the evidence or substitute our judgment for that of the juvenile court. *See In re Marriage of Rahn*, 914 P.2d 463, 465 (Colo. App. 1995).

¶ 63 Third, C.L.F. cites no authority, and we are aware of none, holding that the juvenile court should consider the nature of a presumptive parent's occupation as a factor in determining parentage.

3. Factors in Support of Holding Out Parent Presumption

¶ 64 C.L.F. further argues that she should have been adjudicated the children's parent because she had been their primary caregiver and the psychological parent presumption — more commonly known as the holding out presumption — should control over the biological parental presumption. We reject these arguments.

¶ 65 To be sure, C.L.F. correctly points out that the record shows that she had provided extensive care for the children since their birth in September 2018. For example, when J.L.W. had to spend eight days in the hospital in January 2019, she was the one who stayed with him the entire time.

¶ 66 The juvenile court considered this evidence. Indeed, it expressly recognized that C.L.F. was a second mother to the children and had cared for them since their birth. But the length of time that a presumptive parent has assumed a parental role and the children's relationship to presumed parents were just two of the factors that the court had to consider when making a parentage determination. *See* § 19-4-105(2)(a)(II), (VI). And, again, it is not our role to reweigh the evidence.

¶ 67 Moreover, C.L.F.'s claim that the holding out presumption should control over the biological parent presumption does not comport with the law. As our supreme court explained, no statutory presumption of parentage is conclusive. *N.A.H.*, 9 P.3d at 361. And no presumption automatically eliminates other presumptions of parentage. *Id.* at 361-62.

E. Standard of Proof

¶ 68 Finally, we turn to C.L.F.'s contention that the juvenile court erred by failing to apply the preponderance of evidence standard when weighing the competing parentage presumptions. We discern no basis for reversal.

¶ 69 In considering the factors under section 19-4-105(2)(a)(I)-(VIII) and making findings in relation to those statutory factors, the juvenile court applied the clear and convincing standard of proof. We agree that this was the wrong standard.

¶ 70 A parentage presumption may only be rebutted by clear and convincing evidence. § 19-4-105(2)(a); *see also N.A.H.*, 9 P.3d at 361. However, when, as here, no presumption has been rebutted, the court must then apply a preponderance of the evidence standard to resolve the competing parentage presumptions and

determine which should control based on the weightier considerations of policy and logic. § 19-4-105(2)(a); *C.L.S.*, 313 P.3d at 670. This is because the use of the preponderance standard comports with the plain language of section 19-4-105(2)(a) and most effectively furthers our supreme court's directive to consider the child's best interests when determining the weightier considerations of policy and logic. *C.L.S.*, 313 P.3d at 668, 670.

¶ 71 Be that as it may, we discern no basis for reversal under the circumstances of this case. C.L.F. claims that the court's application of the heightened standard of proof adversely affected the outcome of the proceeding because it led the court to favor the biological parent over the psychological parent and diverted the court's focus from the best interests of the children.

¶ 72 But the court's findings belie this assertion. As previously discussed, the court gave ample consideration to the children's best interests. And the court recognized that C.L.F. and father each had a parentage presumption that had to be equally weighed.

¶ 73 Nor did the court find that C.L.F. had failed to meet the heightened burden to present clear and convincing evidence in support of her request to be named the children's legal parent.

Rather, after receiving evidence from both presumptive parents, the court determined that the weightier considerations of policy and logic supported naming father as the children's legal parent.

¶ 74 In other words, the court effectively determined that father had presented clear and convincing evidence establishing that he should be named the children's parent. Given that father prevailed under the higher standard of proof, he would also have prevailed under the lower preponderance of the evidence standard. *See People in Interest of A.J.L.*, 243 P.3d 244, 251 (Colo. 2010) (recognizing that clear and convincing evidence is evidence persuading the fact finder that the contention is highly probable and requires proof by more than a preponderance of the evidence).

¶ 75 As a result, we conclude that the misapplication of the standard of proof does not require reversal of the parentage judgment. Thus, we will not disturb it on appeal.

IV. Conclusion

¶ 76 The judgment is affirmed.

JUDGE WELLING and JUDGE BROWN concur.