AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, July 27th, 2018, 9:00 a.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver CO 80203
4th Floor, Supreme Court Conference Room

I. Call to Order

II. Chair's Report

A. Approval of the 5/4/18 meeting minutes

[separate email attachment]

III. Old Business

A. Permanency Planning-Judge Meinster, Colene Robinson, special guest Jennifer Mullenbach

[pages 1 to 42]

1. Proposed Rule [pages 1-2]
    i. Excerpt from People in Interest of S.L., 2017 COA 160 [pages 3-22] & People in Interest of H.K.W., 2017 COA 70 [pages 23-40] (resources for paragraph (d) of proposed rule)
2. Proposed Notice [page 41-42]

IV. New Business

A. Report from Ineffective Assistance of Counsel Group-Ruchi Kapoor

[page 43]

B. Termination Judge O'Hara; Magistrate Bartlett, and Sheri Danz

[materials will be emailed separately]

C. Plain Error Review – Judge Ashby

[page 44]

1. Email from Judge Freyre
2. Crim. P. 52; C.R.C.P. 61

D. C.R.C.P. 54(b) certification – Judge Ashby

[pages to 45 to 77]

1. Email from Judge Freyre [page 45]
2. People in Interest of R.S., 2018 CO 31 [pages 46-77]

V. Adjourn

Conference call information

To join the call please **dial 720-625-5050** and when prompted enter **participant code, 45279260#** (don't forget the pound sign!).

Adobe Connect link

https://connect.courts.state.co.us/wallace/

Rule ____. Permanency Hearings

(a) Hearing. The court must hold timely permanency hearings for any child who is placed out of the home. The court should schedule the initial permanency hearing at the dispositional hearing. The court must review the child's permanency plan at least once a year. The court must review the child's permanency plan every six months when the court determines that there is a substantial probability that the child will be returned to the physical custody of the child's parent, guardian, or legal custodian. The hearing may be scheduled by the court or upon motion of any party.

(b) Notice. For any permanency hearing, the court must ensure that notice is provided pursuant to section 19-3-702(2), C.R.S. Placement providers must provide notice of the hearing to the child and the guardian ad litem must ensure that the child understands the notice. The permanency hearing notice must substantially comply with Form ___ of the Appendix of Chapter 28.

(c) Adopting a Permanency Plan. When proper notice has been provided pursuant to paragraph (b), and the court has timely received the petitioner's permanency plan and recommendations or reports from the persons present for the hearing, the court must adopt a permanency plan for each child. The court must receive sufficient information or evidence to support its determinations under subsections (3.5), (4), (5), and (9) of section 19-3-702, C.R.S. If the court has insufficient information or evidence to make its determinations, the court may set the matter for further hearing, which must be held within 28 days.

(d) Consultation with the Child. The court must consult with the child in an age appropriate manner regarding the child's permanency plan.

(1) Age appropriate consultation may include, but not be limited to:

(I) The child may speak directly with the court in person, by phone, or by interactive audiovisual device at the permanency hearing;

(II) The child may provide a written statement to the court and a copy of the written statement must be provided to all parties;

(III) If the permanency plan is an Other Planned Permanent Living Arrangement, the court must ask the child about the desired permanency outcome for the child.

(2) If the court does not consult with the child directly or by a written statement, the guardian ad litem must report the following to the court:

(I) whether he or she consulted with the child concerning the permanency plan; and

(II) explain why the child is not consulting directly with the court; and

(III) state what the child's wishes are regarding the permanency plan; or

(VI) explain why the child is unable to be consulted in an age appropriate manner.

(3) Nothing in this rule limits the court's ability to speak with a child separately pursuant to section 19-1-106(5), C.R.S. If the court speaks separately with the child, the court must determine that speaking with the child separately is in the best interests of the child and must do so in a manner that provides fairness to the parties.

(I) If the court speaks separately with the child, the court must make a record of the consultation and the record may be made available to any party upon request.

(II) If the court relies upon statements made by the child while speaking separately in adopting a permanency plan for the child, the court must identify the statements it relied on and the weight the court gave the statements.

(e) Other Planned Permanent Living Arrangement. Before adopting an Other Planning Permanent Living Arrangement, the court must inquire of the parties and require documentation of compelling reasons for not adopting a plan of reunification, adoption, or custody or guardianship.

SUMMARY
December 28, 2017

2017COA160

No. 16CA2238, *People in Interest of S.L.* — Juvenile Court — Dependency and Neglect — In Camera Interview — Due Process

This case presents an issue of first impression, namely whether a parent is entitled to have his or her counsel present when a trial court conducts an in camera interview of children in a dependency and neglect proceeding. In Part III.A.2.a of the opinion, a division of the court of appeals concludes that whether to grant such a request is within a trial court's sound discretion, based upon a number of case-specific considerations. Applying these factors and the principles discussed in *People in Interest of H.K.W.*, 2017 COA 70, the division concludes that the trial court did not abuse its discretion in (1) the decision to conduct an in camera interview of the children; (2) the manner and contents of the interview; or (3) the weight it accorded the information obtained

during the interview in making its findings in support of its termination order.

The division also concludes that the trial court did not abuse its discretion in finding that the Rio Blanco County Department of Human Services (Department) used reasonable efforts to reunify the parents with their children. Further, the division rejects father's ineffective assistance of counsel claim. Finally, the division concludes that the trial court did not abuse its discretion in permitting the Department's expert witnesses to testify at the termination hearing notwithstanding certain deficiencies in the Department's C.R.C.P. 26 disclosures.

The division, therefore, affirms the trial court's termination order.

COLORADO COURT OF APPEALS **2017COA160**

Court of Appeals No. 16CA2238
Rio Blanco County District Court No. 15JV3
Honorable John F. Neiley, Judge

The People of the State of Colorado,

Petitioner-Appellee,

In the Interest of S.L. and A.L., Children,

and Concerning L.L. and K.L.,

Respondent-Appellants.

JUDGMENT AFFIRMED

Division II
Opinion by JUDGE WELLING
Dailey and Vogt*, JJ., concur

Announced December 28, 2017

Kent A. Borchard, County Attorney, Meeker, Colorado, for Petitioner-Appellee

Anna N.H. Ulrich, Guardian Ad Litem

Patrick R. Henson, Respondent Parents' Counsel, Longmont, Colorado, for Respondent-Appellant L.L.

Pamela K. Streng, Georgetown, Colorado, for Respondent-Appellant K.L.

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2017.

¶ 1 In this dependency and neglect proceeding, K.L. (mother) and L.L. (father) appeal from the judgment terminating their parent-child legal relationships with S.L. and A.L. (the children). Among the issues raised on appeal is an issue of first impression, namely whether a parent is entitled to have his or her counsel present when a trial court conducts an in camera interview of a child in a dependency and neglect proceeding. In Part III.A.2.a, we conclude that whether to grant such a request is within a trial court's sound discretion, based upon a number of case-specific considerations. Based on our resolution of this issue and the other claims raised on appeal, we affirm.

I. Background

¶ 2 The parents came to the attention of the Rio Blanco County Department of Human Services (Department) as a result of concerns about the welfare of the children due to the condition of the family home, the parents' use of methamphetamine, and criminal cases involving the parents. In January 2015, the parents voluntarily entered into an agreement for services with the Department whereby they retained physical custody of the children

and committed to individual and substance abuse counseling and monitoring.

¶ 3 In April 2015, after four months of voluntary services and following reports of continued methamphetamine use, the Department filed a petition in dependency or neglect for the children. The petition alleged that the parents had used illegal drugs which affected their ability to appropriately parent the children and they had also failed to provide the children with appropriate and safe housing.

¶ 4 The parents subsequently entered admissions to the allegation that the children lacked proper parental care. The court adjudicated the children dependent and neglected and subsequently adopted treatment plans for the parents.

¶ 5 Later, the Department moved to terminate the parent-child legal relationships with the children. After considering the evidence presented at a three-day hearing, the trial court terminated both mother's and father's parental rights.

¶ 6 The parents separately appeal the trial court's decision. We first address the parents' contentions that the Department failed to use reasonable efforts to reunify them with their children. Next, we

address the separate contentions father raises on appeal. We conclude that none of the contentions merit reversal of the trial court's judgment.

II. Reasonable Efforts

[Section not applicable]

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III. Father's Separate Appellate Issues

¶ 35 Father raises three other issues in his appeal. First, he contends that the trial court's decision to interview the children in

chambers fundamentally and seriously affected the basic fairness and integrity of the proceedings and violated his due process rights. Father also contends that he was provided ineffective assistance of counsel because his trial counsel failed to meet discovery and disclosure deadlines for an expert witness. Finally, father contends that the trial court abused its discretion and violated his due process rights by allowing five of the Department's witnesses to testify as experts despite the Department's failure to comply with C.R.C.P. 26(a). We address and reject each of these contentions.

A. In Camera Interview of Children

1. Factual Background

¶ 36 In March 2016, the trial court adopted a permanency plan, with the primary goal being adoption and a concurrent goal of returning home. In April 2016, the guardian ad litem (GAL) filed a motion for an in camera interview of the children pursuant to section 19-3-702(3.7), C.R.S. 2017, which requires the court to consult with children in an age-appropriate manner regarding their permanency plans. When the GAL filed her motion, the children, who are twins, were nine years old.

¶ 37 In support of her motion, the GAL also referenced section 19-1-106(5), C.R.S. 2017, which provides that a child may be heard separately when deemed necessary by the court, and section 14-10-126(1), C.R.S. 2017, of the Uniform Dissolution of Marriage Act (UDMA), which allows the court to conduct in camera interviews with children to determine their wishes regarding allocation of parental responsibilities. The GAL also attached a memorandum from a third party (the Rocky Mountain Children's Law Center) that advocated for in camera interviews with children in dependency and neglect cases.

¶ 38 In response, father objected to the in camera interviews due to the age of the children and his concern about potential trauma to them. Father argued further that, if the trial court was going to proceed with the interviews, the children should be interviewed separately and the interviews should be conducted in the presence of counsel and be recorded so that the parties could obtain a transcript. Mother also objected to the in camera interviews based on the age of the children and because they were represented by a GAL who could advocate for their positions.

¶ 39 The trial court granted the GAL's motion for an in camera interview of the children. The court ruled that the children would be interviewed together and would be the only ones present during the interview, but that the interview would be recorded and that all parties could request a copy of the transcript. In June 2016, more than five months before the termination hearing, the court interviewed the children in chambers; and the interview was recorded and transcribed. A copy of the transcript of the interview was provided to the parties in advance of the termination hearing. The trial court subsequently noted in its termination order that it had considered the children's wishes based on that interview.

2. Legal Framework and Analysis

¶ 40 The issue of whether a trial court may conduct an in camera interview of a child in a dependency and neglect proceeding was recently addressed by a division of this court in a published order. *See People in Interest of H.K.W.*, 2017 COA 70. In that order, the division addressed whether such a procedure was proper in the context of determining an allocation of parental responsibilities.

¶ 41 The division noted that under the Children's Code the trial court must allocate parental responsibilities based on the best

interests of the child and the public. *Id.* at ¶ 12; *see* §§ 19-1-104(4), (6); 19-3-508(1)(a), C.R.S. 2017. Similarly under the UDMA, the trial court must consider the best interests of the child in making an allocation of parental responsibilities. *See* § 14-10-124(1.5), C.R.S. 2017.

¶ 42 The division also noted that although the Children's Code does not specifically provide for a trial court to conduct an in camera interview with a child, it does allow for a child to "be heard separately when deemed necessary." *H.K.W.*, ¶ 14 (quoting § 19-1-106(5)). The division further noted that the UDMA provides that a "court may interview the child in chambers to ascertain the child's wishes as to the allocation of parental responsibilities." *Id.* at ¶ 15 (quoting § 14-10-126(1)). Based on those two provisions, the division concluded that a trial court may conduct an in camera interview of a child to determine the child's best interests in allocating parental responsibilities in a dependency and neglect proceeding. *Id.* at ¶ 17.

¶ 43 The division then determined whether the court was required to create a record of the interview given that the Children's Code is silent on the issue. *Id.* at ¶ 19. Again, relying on the UDMA, the

division noted that the UDMA requires a trial court to create a record of the interview and provides that it "shall be made part of the record in the case." *Id.* (quoting § 14-10-126(1)). The division was also persuaded by cases from other jurisdictions that imposed such a requirement, noting that a record ensures support for any findings regarding the interview and allows for meaningful appellate review of the evidence relied on by the trial court. *Id.* at ¶¶ 20-22.

¶ 44 The division further concluded that a record of the in camera interview must be made available, upon request, to parents when a parent needs to (1) determine whether the trial court's findings are supported by the record and (2) contest information supplied by the child during the interview. *Id.* at ¶ 27.

¶ 45 With these concepts in mind, we turn to father's specific objections.

a. The Trial Court Did Not Abuse its Discretion by Excluding Counsel from the Interview

¶ 46 First, father argues that the trial court reversibly erred in denying his request to permit counsel to be present during the interview. We are not persuaded.

¶ 47 Initially, we note that the division in *H.K.W.* did not address whether counsel must be permitted to be present during the trial court's in camera interview of a child. And courts in other jurisdictions are divided on whether counsel must be permitted to be present during the in camera interview. The jurisdictions requiring counsel's presence on request have done so on the ground that the parents' due process right of confrontation would be violated if counsel were not permitted to be present. *See, e.g.*, *Maricopa Cty. Juvenile Action No. JD-561*, 638 P.2d 692, 695 (Ariz. 1981) (termination proceeding is adversarial in nature and the parents must be given the opportunity to challenge the testimony of their children); *In Interest of Brooks*, 379 N.E.2d 872, 881 (Ill. App. Ct. 1978) (parents' right to confront all witnesses against them was violated when the court allowed child to testify outside their presence in the court's chambers). Other courts have not found that the Confrontation Clause requires the presence of counsel and have held that the trial court has discretion to determine whether counsel should be permitted to be present during the in camera interview. *See, e.g.*, *In re James A.*, 505 A.2d 1386, 1391 n.2 (R.I. 1986) (trial court has discretion over whether counsel may be

present during an in camera interview); *Hasse v. Hasse*, 460 S.E.2d 585, 682 (Va. Ct. App. 1995) (no bright-line rule that counsel must be present during an in camera interview of a child in divorce proceeding).

¶ 48 A division of this court has held that the Sixth Amendment's right of confrontation does not extend to dependency and neglect cases. *People in Interest of S.X.M.*, 271 P.3d 1124, 1127 (Colo. App. 2011). The trial court's decision whether to terminate parental rights, like the allocation of parental responsibilities considered in *H.K.W.*, must be based on the best interests of the child. *See People in Interest of D.P.*, 160 P.3d 351, 356 (Colo. App. 2007); *see also* § 19-3-604(3) (court must give primary consideration to the physical, mental, and emotional needs of the children).

¶ 49 Therefore, based on the reasoning in *H.K.W.*, and the foregoing cases, we are not persuaded that counsel must be permitted to be present during an in camera interview of a child in a dependency and neglect proceeding. Rather, we conclude that this determination is best left to the discretion of the trial court on a case-by-case basis. In making this determination, the trial court should consider, among other things, the age and maturity of the

child, the nature of the information to be obtained from the child, the relationship between the parents, the child's relationship with the parents, any potential harm to the child, and ultimately any impact on the court's ability to obtain information from the child. *See Hasse*, 460 S.E.2d at 590. In addition, although not requested here, in the interests of fairness and to allow for the development of a full record, the trial court should allow the parents or trial counsel to submit questions to the child, which the court may ask in its discretion. *See James A.*, 505 A.2d at 1391. Further, the interview, regardless of whether counsel is present, must be on the record, and, if timely requested by any party and the trial court anticipates relying on information from the interview in ruling on a termination motion, a transcript of the interview must be made available to the parties in advance of a termination hearing (as the trial court did here). *See H.K.W.*, ¶¶ 26-28; *In re T.N.-S.*, 347 P.3d 1263, 1271 (Mont. 2015) ("Due process considerations may require disclosure in certain instances, particularly where the district court relies on information from the interviews in reaching its determination."); *see also* § 19-1-106(3) ("A verbatim record shall be taken of all proceedings."). Finally, in considering the weight to

accord the information obtained from a child during an interview, the trial court should be mindful that the information did not pass through the crucible of cross-examination.

¶ 50 Next we turn to the question whether the trial court abused its discretion in denying father's request for his counsel to be present during the interview. We conclude that it did not abuse its discretion (and that even if it did, any error was harmless).

¶ 51 In a written order, the trial court granted the GAL's motion to interview the children outside of the presence of counsel. But that written order did not contain any findings as to why it was denying father's request for his counsel to be present for the interview. Nevertheless, where, as here, an abuse of discretion standard applies, "the test is not 'whether we would have reached a different result but, rather, whether the trial court's decision fell within a range of reasonable options.'" *People in Interest of T.B.*, 2016 COA 151M, ¶ 60 (*cert. granted* Aug. 21, 2017) (quoting *People v. Rhea*, 2014 COA 60, ¶ 58). And given the circumstances here, including the young age of the children (nine years old at the time of the interview), the acknowledgement by the GAL and both parents that because of their tender age this was going to be a difficult process

for them, and, as acknowledged by father, the presence of counsel may be a "hindrance" to the objective of the interview, we conclude that trial court's decision to exclude counsel from its on-the-record interview of the children fell squarely within a range of reasonable options. Accordingly, we discern no abuse of discretion. *Id.* at ¶¶ 60-61.

¶ 52 Moreover, even if the trial court's failure to make any factual findings was arguably an abuse of discretion, *see People v. Hardin*, 2016 COA 175, ¶ 30 ("A court's failure to exercise discretion can be an abuse of discretion."), we conclude that the error was harmless in light of the limited weight the trial court gave the information obtained from the interview in its termination order. The trial court did not rely on the interview to resolve any contested historical facts, such as the events that led to the Department's involvement with the family or whether the parents had complied with their treatment plans. Instead, the trial court's reliance on the interview was limited to the wishes of the children. Indeed, in its twenty-one page termination order, the trial court made the following three references to its interview of the children:

- "The [c]hildren did not participate in the hearing, but the [c]ourt previously conducted an informal, in chambers interview with the [c]hildren. A transcript of that interview was provided to all the parties. In entering this Order, the [c]ourt has therefore considered the [c]hildren's wishes."
- "In their interview with the [c]ourt, the [c]hildren expressed that they liked their current placement and had a desire to achieve permanency with that family."
- "The [c]hildren report that it has been 'a long time' since they were placed in the home. They both expressed a wish to be adopted by their foster parents. The [c]hildren are doing generally well at school although both are struggling with homework."

And the trial court's findings regarding these issues were supported by the testimony of witnesses who testified at the termination hearing (i.e., evidence separate and apart from the court's interview of the children).

¶ 53 Thus, even if the exclusion of counsel without making any findings was an abuse of discretion, we conclude that doing so was harmless. Accordingly, we conclude that the exclusion of father's

counsel from the interview of the children does not warrant reversal.

b. The Trial Court Did Not Abuse its Discretion by Declining to Conduct Separate Interviews

¶ 54 Next, father contends that the trial court erred in not conducting separate interviews of the children. We are not persuaded. As we indicated above, the procedures for conducting an in camera interview are best left to the discretion of the trial court. Nothing indicates that the trial court abused its discretion by not conducting separate interviews of the children, particularily in light of the young age of the twins. Nor do we discern any way in which conducting this interview jointly was prejudicial.

c. The Content of the Interview Does Not Require Reversal

¶ 55 Father contends that certain answers the trial judge gave to the children's questions regarding his favorite game, liar's dice, and his favorite action as a judge, performing adoptions, were improper. We do not share father's concerns that the content of the interview requires reversal. First, the court's statements were made after the children hald already shared with the court that they were happy in their current placement and that they wanted to "stay." Moreover,

the trial judge's answers were obviously aimed at maintaining a rapport with the children. Nevertheless, in so concluding, we note that a judge must maintain impartiality to avoid the appearance of favoring a particular outcome. That said, it does not appear that the judge's answers influenced the answers given by the children, and we do not perceive any prejudice to father.

3. Conclusion: The Trial Court Did Not Abuse Its Discretion With Respect to the Interview of the Children

¶ 56 For the reasons discussed above, we conclude that father's due process rights were not violated by the trial court's exclusion of his counsel from the in camera interview, by not conducting separate interviews of the children, or by the nature of the interview. Thus, although the trial court did not have the benefit of this opinion or the decision in *H.K.W.*, we conclude that the trial court acted within its discretion in granting the GAL's request to interview the children, and that it did not abuse its discretion in the procedures that it followed nor in the weight it accorded to the information elicited.

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COLORADO COURT OF APPEALS **2017COA70**

Court of Appeals No. 16CA0975
Weld County District Court No. 15JV278
Honorable Elizabeth B. Strobel, Judge

The People of the State of Colorado,

Petitioner-Appellee,

In the Interest of H.K.W., a Child,

and Concerning J.W. and A.M.,

Respondents-Appellants,

and

T.K. and J.M.,

Intervenors-Appellees.

ORDER

Division II
Opinion by JUDGE DAILEY
J. Jones and Berger, JJ., concur

Announced May 18, 2017

No Appearance for Petitioner-Appellee

Scott A. Jameson, Guardian Ad Litem

Carrie Ann Lucas, Windsor, Colorado, for Respondent-Appellant J.W.

Hopkins Law, LLC, Laurie L. Strand, James W. Hopkins, Loveland, Colorado, for Respondent-Appellant A.M.

Law Office of Keren C. Weitzel, LLC, Keren C. Weitzel, Longmont, Colorado, for Intervenors-Appellees

¶ 1 In this dependency and neglect proceeding, J.W. (father) and A.M. (mother) appeal the trial court's judgment allocating parental responsibilities of their daughter, H.K.W. (the child), to J.M. and T.K. (special respondents).

¶ 2 This case involves matters of first impression, to wit: (1) whether a trial court may conduct an in camera interview with a child who is the subject of an allocation of parental responsibilities proceeding arising from a dependency and neglect action; and, if the trial court conducts such an interview, (2) whether the court must cause a record of the interview to be created and then make that record available to the parents.

¶ 3 We conclude that the Children's Code permits a trial court to conduct an in camera interview with a child, and that due process requires that a record of the interview be created and, at least in certain circumstances, be made available upon request to the parents. Because the trial court in this case relied on the in camera interview of the child while denying the parents access to a transcript of that interview, we order that the record on appeal be supplemented with the transcript of the in camera interview. We further order that the parties be allowed to file supplemental briefs

addressing whether the trial court's findings of fact from the interview are supported by the record. We will issue an opinion addressing the merits of the appeal following the completion of supplemental briefing.

I. Background

¶ 4 The Weld County Department of Human Services (the Department) filed a dependency or neglect petition regarding the six-year-old child based on allegations of father's and mother's substance abuse; that the child had seen mother's boyfriend being kidnapped from the home; that the child had missed a lot of school; and that the family had been involved in two prior dependency and neglect cases because of substance abuse, lack of supervision, and domestic violence. The child was removed from the home and initially placed with father. Three days later, the child was placed with the special respondents. Notably, in the prior dependency and neglect cases, the child also had been placed with the special respondents.

¶ 5 Based on father's and mother's admissions, the trial court adjudicated the child dependent or neglected. The court adopted treatment plans, with which father and mother complied.

¶ 6 Father, mother, and the special respondents later moved for an allocation of parental responsibilities. At a hearing, the child's guardian ad litem (GAL) moved for an in camera interview with the child.[1] None of the parties objected. The trial court agreed to interview the child and told the parties that it would have a record made of the in camera interview and that a transcript of the interview would be sealed unless "the matter is appealed." Again, none of the parties objected.

¶ 7 Shortly thereafter, the trial court conducted an in camera interview with the child. The interview was recorded but not transcribed. None of the parties requested a transcript of the interview.

¶ 8 After a subsequent hearing, the trial court found as follows:

- the child had been the subject of three dependency and neglect cases;
- the child told the court that she wanted to stay with the special respondents;

[1] The GAL filed a written motion to that effect as well after the hearing.

- the child's primary attachment and bond was with the special respondents;
- the child needed stability and permanency;
- even though father and mother had complied with their treatment plans, they were unfit;
- father and mother had criminal histories that included domestic violence and child abuse;
- father and mother had not demonstrated sobriety, stability, and ongoing parental consistency "for a decent enough period of time"; and
- father and mother had exposed the child to domestic violence, drug addiction, and a criminal lifestyle, and had neglected the child's needs "for too long."

¶ 9 In making its findings, the trial court relied extensively on the child's statements during the in camera interview. The court then allocated parental responsibilities to the special respondents and set forth a parenting time schedule for father and mother.

¶ 10 Father and mother appealed, and father requested a transcript of the trial court's in camera interview of the child. Although it had

previously indicated that it would do otherwise, the trial court denied father's motion.[2]

II. Interviewing the Child and Making a Record Thereof Available to the Parents

¶ 11 Father and mother contend that the trial court erred by relying on the in camera interview with the child, which was not admitted into evidence, as the basis for its decision to allocate parental responsibilities to the special respondents. In particular, they assert that their due process rights were violated because, without access to the transcript of the interview, they were unable to contest the courts findings or the information on which the court relied in making its findings. We agree in part.

¶ 12 In dependency and neglect proceedings, the trial court has jurisdiction to allocate parental responsibilities between parents and nonparents. §§ 19-1-104(4), (6); 19-3-508(1)(a), C.R.S. 2016; *L.A.G. v. People in Interest of A.A.G.*, 912 P.2d 1385, 1390-91 (Colo. 1996).

¶ 13 Under the Children's Code, the trial court must allocate parental responsibilities based on the best interests of the child and

[2] A single judge of this court also denied a motion for access to the transcript.

the public. § 19-3-507(1)(a), C.R.S. 2016; *L.A.G.*, 912 P.2d at 1391 (In determining custody, "a juvenile court must fashion a custodial remedy that serves the public as well as the best interests of the child."). The court may consider the best interest factors listed in the Uniform Dissolution of Marriage Act (UDMA), section 14-10-124(1.5)(a), C.R.S. 2016, as long as the focus is on the protection and safety of the child and not on the "custodial interests" of the parents. *L.A.G.*, 912 P.2d at 1391-92; *People in Interest of M.D.*, 2014 COA 121, ¶ 12; *People in Interest of C.M.*, 116 P.3d 1278, 1282 (Colo. App. 2005). As now relevant, the court may consider the "wishes of the child if he or she is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule." § 14-10-124(1.5)(a)(II).

A. Was the Court Allowed to Interview the Child?

¶ 14 The Children's Code does not contain a provision specifically allowing a court to conduct an in camera interview with a child. However, under section 19-1-106(5), C.R.S. 2016, a child "may be heard separately when deemed necessary" by the court.

¶ 15 In contrast, the UDMA specifically provides that the "court may interview the child in chambers to ascertain the child's wishes

as to the allocation of parental responsibilities." § 14-10-126(1), C.R.S. 2016.

¶ 16 We have acknowledged that the UDMA procedures are not always useful in accomplishing the goals of the Children's Code. *People in Interest of D.C.*, 851 P.2d 291, 294 (Colo. App. 1993) (a dependency and neglect proceeding concerns different matters and fulfills a different purpose than a UDMA proceeding). However, given that a trial court may consider a child's separately stated wishes when deciding how to allocate parental responsibilities in both a dependency and neglect proceeding and a UDMA proceeding, looking to the UDMA in this instance is helpful. *See B.G.'s, Inc. v. Gross*, 23 P.3d 691, 694 (Colo. 2001) (consideration of other statutes dealing with the same subject can be useful in deciding questions of statutory interpretation).

¶ 17 Reading sections 19-1-106(5) and 14-10-126 together, we conclude that a trial court is permitted to conduct an in camera interview with a child to determine a child's best interests and how to allocate parental responsibilities within a dependency and neglect proceeding.

¶ 18 Our conclusion in this regard is bolstered by recognizing that permitting an in camera interview with a child would enable the trial court to ascertain the child's custodial preference while (1) lessening the ordeal for the child by eliminating the harm a child might suffer from exposure to the adversarial nature of the proceedings; (2) enhancing the child's ability to be forthcoming; and (3) protecting the child from the "tug and pull of competing custodial interests." *Ynclan v. Woodward*, 237 P.3d 145, 150-51 (Okla. 2010).

B. Was the Court Required to Create a Record of the Interview?

¶ 19 The Children's Code does not address whether a record of an in camera interview with a child must be made. The UDMA, in contrast, requires the trial court to "cause a record of the interview to be made, and it shall be made part of the record in the case." § 14-10-126(1).

¶ 20 Case law from numerous other jurisdictions parallels the UDMA requirement. *See Ex parte Wilson*, 450 So. 2d 104, 106-07 (Ala. 1984) (due process requires that in camera interview with minor children in custody dispute be recorded); *N.D. McN. v. R.J.H.*, 979 A.2d 1195, 1201 (D.C. 2009) (due process and state statute

require that an in camera interview with the children be recorded); *Strain v. Strain*, 523 P.2d 36, 38 (Idaho 1974) (in camera interview with the children must be recorded to determine if the interview supports the trial court's decision); *Hutchinson v. Cobb*, 90 A.3d 438, 442 (Me. 2014) (trial court is responsible for recording in camera interviews); *In re H.R.C.*, 781 N.W.2d 105, 113-14 (Mich. Ct. App. 2009) (use of unrecorded in camera interviews violates parents' due process rights); *Robison v. Lanford*, 841 So. 2d 1119, 1124-26 (Miss. 2003) (documentation of in camera interview with children must be made and be part of the record); *Williams v. Cole*, 590 S.W.2d 908, 911 (Mo. 1979) (error is presumed if a trial court interviews the children in chambers without making a record); *Donovan v. Donovan*, 674 N.E.2d 1252, 1255 (Ohio Ct. App. 1996) (requiring the trial court to make a record of an in camera interview with children involved in custody proceedings); *Stolarick v. Novak*, 584 A.2d 1034, 1038 n.1 (Pa. Super. Ct. 1991) (testimony of in camera interviews must be transcribed and made part of the record).

¶ 21 Two compelling reasons exist for requiring that a record be made of an in camera interview of a child: (1) to ensure record

support for a trial court's reliance on a child's testimony during the in camera interview; and (2) to permit meaningful appellate review of the evidence relied on by the trial court in determining the child's best interests. *See Wilson*, 450 So. 2d at 106-07; *N.D. McN.*, 979 A.2d at 1201; *Strain*, 523 P.2d at 38; *Hutchinson*, 90 A.3d at 442; *H.R.C.*, 781 N.W.2d at 114; *Robison*, 841 So. 2d at 1124-26; *Williams*, 590 S.W.2d at 911; *T.N.-S.*, 347 P.3d at 1270; *Donovan*, 674 N.E.2d at 1255; *see also Jenkins v. Jenkins*, 269 P.2d 908, 910-11 (Cal. Ct. App. 1954) (It would be wise for "the court to make a record of such interviews with children in custody cases in order to protect itself against any suspicion of unfairness on the part of the parent against whom the decision is rendered."); *cf. Kuzara v. Kuzara*, 682 P.2d 1371, 1373 (Mont. 1984) ("[T]he record and the court's findings should reflect the child's wishes" because otherwise "the interview is an empty exercise.").

¶ 22 Persuaded by these authorities, we conclude that, unless waived by the parties, a record of the interview must be made. A record of the interview was made in this case.

C. Were the Parents Entitled to Access a Transcript of the Interview?

¶ 23 The next issue before us is whether the trial court must also allow the record of an in camera interview with a child to be made available to the parents. Neither the Children's Code nor section 14-10-126 addresses this issue. Nonetheless, a division of this court has held that the purpose of making a record of an in camera interview of a child is "for the benefit of the parties." *In re Marriage of Armbeck*, 33 Colo. App. 260, 261, 518 P.2d 300, 301 (1974).

¶ 24 Many jurisdictions have determined that the record of an in camera interview with a child in a custody proceeding must be made available to the parents, at least in certain circumstances. *See N.D. McN.*, 979 A.2d at 1201; *In re Marriage of Hindenburg*, 591 N.E.2d 67, 69 (Ill. App. Ct. 1992); *Holt v. Chenault*, 722 S.W.2d 897, 898-99 (Ky. 1987); *Nutwell v. Prince George's Cty. Dep't of Soc. Servs.*, 318 A.2d 563, 568 (Md. Ct. Spec. App. 1974); *Abbott v. Virusso*, 862 N.E.2d 52, 60 (Mass. App. Ct. 2007); *Callen v. Gill*, 81 A.2d 495, 498 (N.J. 1951); *Muraskin v. Muraskin*, 336 N.W.2d 332, 335 n.2 (N.D. 1983); *Inscoe v. Inscoe*, 700 N.E.2d 70, 85 (Ohio Ct. App. 1997); *Hasse v. Hasse*, 460 S.E.2d 585, 590 (Va. Ct. App.

1995); *Rose v. Rose*, 340 S.E.2d 176, 179 (W. Va. 1985); *cf. Ynclan*, 237 P.3d at 158 (to have access to the transcript of the in camera interview of the child, the parent must appeal the custody determination).

¶ 25 The following reasons favor allowing parents access to the record of the in camera interview with the child:

- The child's interview is part of a court proceeding. *N.D. McN.*, 979 A.2d at 1201.
- To the extent that a court relies on the child's statements during the interview, a parent is prejudiced by his or her inability to challenge or rebut the child's statements or contest the court's custody determination. *See Holt*, 722 S.W.2d at 899; *Inscoe*, 700 N.E.2d at 85; *Rose*, 340 S.E.2d at 179; *see also Molloy v. Molloy*, 637 N.W.2d 803, 809 (Mich. Ct. App. 2001) ("[I]nformation [from an in camera interview with the child] detrimental to the parent seeking custody may influence a judge's decision without any guarantees as to its accuracy."), *aff'd in part and vacated in part*, 643 N.W.2d 574 (Mich. 2002).

- Due process and fundamental fairness require that a parent have access to the content of the interview. *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 288 n.4 (1974) ("A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the [decision-maker] relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids [a decision-maker] to use evidence in a way that forecloses an opportunity to offer a contrary presentation."); *see N.D. McN.*, 979 A.2d at 1201 ("In order to have an opportunity for meaningful presentation of evidence and argument, a litigant must have access, both in the trial court and on appeal, to the evidence that can be (or has been) used by the judge in ruling against her."); *Denningham v. Denningham*, 431 A.2d 755, 760 (Md. Ct. Spec. App. 1981) ("[O]ne of the cornerstones of our system of justice" is "the right of the parties to be aware of all of the evidence considered by the trier of fact" and "the opportunity to challenge and answer that evidence. . . . However sensitive the material may be, a party has a right

to know what evidence is being considered by the court in judging his case. A custody case can no more be tried and decided upon secret ex parte evidence than any other proceeding."); *In re T.N.-S.*, 347 P.3d 1263, 1270 (Mont. 2015) (due process requires disclosure of the transcript of an in camera interview when the trial court relies on the information from the interview in its decision); *Muraskin*, 336 N.W.2d at 335 n.2 ("A party to any procedure is entitled to know what evidence is used or relied upon and has a right generally to present rebutting evidence or to cross-examine . . . ."); *see also H.R.C.*, 781 N.W.2d at 114 (Without access to the record of the in camera interview of the child, a parent has "no opportunity to learn what testimony was elicited or to counter the information obtained, and no way of knowing how that information may have influenced the court's decision.").

¶ 26 Making the record of an in camera interview with a child available "serve[s] to protect a parent's due process rights to a fair trial, foster the state's ultimate goal of protecting the best interests of the child, and decrease the possibility that child custody

decisions will be based on inaccurate information." *Molloy*, 637 N.W.2d at 811.

¶ 27 Persuaded by these authorities, we conclude that a record of an in camera interview with a child must be made available, upon request, to parents in certain circumstances. There are, obviously, reasons why in camera interviews with children are held in the first place. Children might be intimidated by having to appear in court. They might also be reluctant to speak freely and honestly to the court if they knew that the contents of the interview would be made available to the parents as a matter of course.

¶ 28 Consequently, we limit our holding that the record of an in camera interview must be made available, upon request, to situations in which a parent needs (1) to determine whether the court's findings, insofar as they relied on facts from the interview, are supported by the record, or (2) an opportunity to contest information supplied by the child during the interview and relied on by the court. *In re T.N.-S.*, 347 P.3d at 1271 ("Due process considerations may require disclosure in certain instances, particularly where the district court relies on information from the interviews in reaching its determination.").

¶ 29 In this case, because the parents were unaware of the content of the child's in camera interview, they were unable to address, challenge, or rebut, either in a post-trial motion or on appeal, the child's statements or the trial court's findings as to the child's wishes regarding custodial preference. However, the parents requested access to a transcript of the in camera interview only after they had filed their notice of appeal. By not requesting access earlier (say, in a post-trial, pre-appeal motion), the parents waived their right to access the transcript for the purpose of rebutting any information presented during the interview. They did not, though, waive their right to access the transcript for the purpose of contesting the bases for the court's findings related to the interview. The trial court erred, then, in not ordering the transcript to be made and made part of the record in this appeal. *See Holt*, 722 S.W.2d at 899 (The parties were prejudiced by lack of access to the sealed transcript to "the extent the trial court relied on the child's statements.").

IV. Conclusion

¶ 30 The trial court is ordered to have the in camera interview transcribed and transmitted, as a suppressed document,[3] to this court as a supplement to the record on appeal. The supplemental record, properly certified by the trial court, is due 21 days from the date of this order. Within fourteen days of the filing of the supplemental record the parents may, if they so choose, file supplemental briefs, not to exceed 10 pages or 3,500 words, addressing whether the trial court's findings of fact from the interview are supported by the record. The other parties may file supplemental briefs in response, not to exceed 10 pages or 3,500 words, addressing the same issue within fourteen days of the filing of the parents' supplemental brief(s).

JUDGE J. JONES and JUDGE BERGER concur.

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[3] Court records are not accessible to the public in dependency and neglect proceedings. Chief Justice Directive 05-01, Public Access to Court Records, § 4.60(b)(2) (amended October 2016). Suppressed records are ordinarily accessible only by judges, court staff, parties to the case, and if represented, their attorneys. *Id.* at § 3.08.

District Court, _____County, Colorado Court Address: _____ THE PEOPLE OF THE STATE OF COLORADO In the Interest of _____**,** Child, and Concerning, _____and, _____ Respondents.	▲ **COURT USE ONLY** ▲ Case Number: Division
NOTICE OF PERMANENCY HEARING	

Notice is given, pursuant to section 19-3-702(2), C.R.S., that the court has set a permanency hearing in the above-captioned case on **[date], at [time] in [place]**.

I. At the permanency hearing, the court will adopt a permanency plan for the child and a target date for achieving the plan and may take up any other matter contemplated by section 19-3-702, C.R.S.

II. At the permanency hearing, the legal rights of the child's parents or guardians are as follows:
    1. The right to be present at the permanency hearing.
    2. The right to notice of the petitioner's proposed permanency plan at least three working days before the hearing.
    3. The right to have a lawyer at the hearing. Respondents found to be indigent may request that a lawyer be appointed to represent them at no expense. If you are under 18 years old, you have the right to have a guardian ad litem appointed for you to represent your best interests.
    4. The right to have the hearing in front of a district court judge instead of a district court magistrate. The right to a hearing in front of a judge will be waived unless (1) you request that the permanency hearing be held before a judge at the time the hearing is set, if you or your lawyer is present at the time the permanency hearing is set; or (2) you request that the permanency hearing be held before a judge within seven days after receiving notice that the matter has been set for hearing before a magistrate and the hearing was set outside of the presence of you or your lawyer.

III. At the permanency hearing, the legal rights of the child include the right to be present at the hearing, the right to have a guardian ad litem appointed to represent the best interests of the child, and the right to consult with the court in an age appropriate manner about the child's permanency plan. If the permanency plan is an Other Planned Permanent Living Arrangement, the court must ask the child about his or her desired permanency outcome as set forth in 42 U.S.C. section 675a(a)(2)(A). The child is also entitled to have any person attend the permanency hearing that he or she wishes to be present.

If you have questions about your rights, you may have those questions answered by contacting your lawyer, or you may raise them at the permanency hearing.

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of the **NOTICE OF PERMANENCY HEARING** was filed with the court and served on the Petitioner, Respondent(s), Guardian ad Litem(s), Persons with whom the child is placed, and _____ (other) in the following manner:
☐Hand Delivery, ☐E-Filed, ☐Email, ☐Faxed to this number _____, ☐Other manner _____ (describe) or ☐by placing it in the United States mail, postage pre-paid, and addressed to the following:

_____
_____
_____

_____
Signature

wallace, jennifer

From: ashby, karen
Sent: Tuesday, July 3, 2018 4:41 PM
To: Ruchi Kapoor
Cc: wallace, jennifer
Subject: RE: IAC Exploratory Group

Here are my thoughts:

You don't need a "conversion" but it may be helpful to get a consensus from the larger Committee as to whether they agree with the Subcommittee that a rule is necessary or appropriate before your Subcommittee gets too far down the road in drafting a proposed rule. I would suggest that you (and anyone else from the Subcommittee who you would like to appear with you) update the Committee on the discussions had by the Subcommittee, why the Subcommittee decided a rule was necessary, and any thoughts the Subcommittee has at this time as to very generally what the rule should include. I will not ask the Committee to do a deep dive into what should be in the rule at this point but see if there is a consensus that this is the direction to take and give the Subcommittee some guidance going forward.

JJ,

Do you have any other thoughts? Can we please set aside time on the 7/27 agenda for that discussion to occur, please? I know we will have a very full plate that day so we may want to give folks a head's up that it may be a little longer meeting. Thanks.

From: Ruchi Kapoor
Sent: Tuesday, July 03, 2018 9:19 AM
To: ashby, karen
Subject: IAC Exploratory Group

Hi Judge Ashby:

Our IAC group has met a few times now and, after much discussion, we are all in agreement that we want to proceed forward with drafting a procedural rule regarding ineffective assistance of counsel claims in juvenile cases. Before we got in too deep, I wanted to touch base with you to see if there needed to be a "conversion" (for lack of a better term) of our exploratory group into a drafting committee—or if there was some other formal procedure that I needed to follow so that we aren't going outside the bounds of the charge that you gave me when this group first started.

I am also happy to do a presentation on the discussion to the larger rules committee at the next committee meeting on July 27, if there needs to be a vote to allow us to move forward with drafting a rule.

Best,

Ruchi Kapoor, Esq. | Appellate Director – Legislative Liaison
Office of Respondent Parents' Counsel
1300 Broadway | **Suite 340** | Denver, CO 80203
| COLORADO**ORPC**.ORG

Hi Karen,

The parties in my termination cases lately have been agreeing that unpreserved errors are reviewed for plain error, which I find interesting since these are civil cases. Are you considering incorporating Rule 52 into the juvenile rules of procedure because fundamental constitutional rights are implicated? Might be something to consider.

Thanks,
Rebecca

Rebecca R. Freyre
Judge, Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
720.625.5226

Colo. Crim. P. 52

Rule 52. Harmless Error and Plain Error.

(a) Harmless Error. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

C.R.C.P. 61

Rule 61. Harmless Error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

wallace, jennifer

From: ashby, karen
Sent: Tuesday, June 12, 2018 12:24 PM
To: freyre, rebecca
Cc: wallace, jennifer
Subject: RE: Juvenile Rules Potential Issue

Thanks. I'll add it to the ever growing list! ☺

From: freyre, rebecca
Sent: Tuesday, June 12, 2018 10:24 AM
To: ashby, karen
Subject: Juvenile Rules Potential Issue

Hi Karen,

I wanted to alert you to a decision that issued out of the supreme court on April 30 that might impact your rules. It is P in Interest of R.S., 2018 CO 31. It holds that a finding of "no adjudication" is not a final appealable order, but it finds that a conflict exists between 19-3-102 and C.A.R. 3.4(a). It also leaves open the possibility that a county attorney could request 54(b) certification of a "no adjudication" finding. Just thought it was something your rules committee might want to look at.

Thanks,
Rebecca

Rebecca R. Freyre
Judge, Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
720.625.5226

ADVANCE SHEET HEADNOTE
April 30, 2018

2018 CO 31

No. 16S970, People in Interest of R.S.—Children's Code—Dependency or Neglect Proceedings—Appeals.

In this dependency or neglect case, the trial court held a single adjudicatory trial to determine the dependent or neglected status of the child, with the judge serving as fact-finder with respect to allegations against the child's mother, and a jury sitting as fact-finder with respect to the allegations against the child's father. The judge ultimately concluded that the child was dependent or neglected "in regard to" the mother. In contrast, the jury concluded there was insufficient factual basis to support a finding that the child was dependent or neglected. In light of these divergent findings, the trial court adjudicated the child dependent or neglected and continued to exercise jurisdiction over the child and the mother, but entered an order dismissing the father from the petition. The People appealed the jury's verdict regarding the father.

The court of appeals dismissed the People's appeal for lack of jurisdiction, reasoning that the dismissal of a single parent from a petition in dependency or neglect based on a jury verdict is not a final appealable order because neither the appellate rule

nor the statutory provision governing appeals from proceedings in dependency or neglect expressly permits an appeal from a "'no adjudication' finding."

The supreme court concludes that, with limited exceptions not relevant here, section 19-1-109(1) of the Colorado Children's Code authorizes appeals in dependency or neglect proceedings from "any order" that qualifies as a "final judgment" for purposes of section 13-4-102(1), C.R.S. (2017). Because the trial court's order in this case dismissing the father from the petition was not a "final judgment," the supreme court concludes that the court of appeals lacked jurisdiction and properly dismissed the Department's appeal.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2018 CO 31

Supreme Court Case No. 16SC970
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 16CA685

Petitioner:

The People of the State of Colorado,

In the Interest of Minor Child:

R.S.

v.

Respondents:

G.S. and D.S.

Dismissal Affirmed
en banc
April 30, 2018

Attorneys for Petitioner:
Ron Carl, County Attorney, Arapahoe County
Michael Valentine
Marilee McWilliams
Aurora, Colorado

Guardian ad Litem for the Minor Child:
Bettenberg, Sharshel & Maguire, LLC
Alison A. Bettenberg
Ranee Sharshel
Centennial, Colorado

Attorneys for Amicus Curiae Office of the Child's Representative:
Cara L. Nord
Denver, Colorado

Attorneys for Amicus Curiae Office of Respondent Parents' Counsel:
Ruchi Kapoor
Denver, Colorado

No appearance on behalf of Respondents.

JUSTICE MÁRQUEZ delivered the Opinion of the Court.
JUSTICE COATS concurs in the judgment.

¶1 In this case, the Arapahoe County Department of Human Services filed a petition in dependency or neglect concerning minor child R.S., and naming both parents as respondents. The mother requested a bench trial to adjudicate the dependent or neglected status of the child; the father requested a jury trial for the same purpose. The court held a single adjudicatory trial, with the judge serving as fact-finder with respect to the Department's allegations against the mother, and a jury sitting as fact-finder with respect to the allegations against the father. The judge ultimately concluded that the child was dependent or neglected "in regard to" the mother. In contrast, the jury, as the father's fact-finder, concluded there was insufficient factual basis to support a finding that the child was dependent or neglected. In light of these divergent findings, the trial court adjudicated the child dependent or neglected and continued to exercise jurisdiction over the child and the mother, but entered an order dismissing the father from the petition. The mother appealed the trial court's adjudication of the child as dependent or neglected; the Department appealed the jury's verdict regarding the father, as well as the trial court's denial of the Department's motion for adjudication notwithstanding the verdict.

¶2 In a unanimous, published opinion, the court of appeals dismissed the Department's appeal for lack of jurisdiction, reasoning that the dismissal of a single parent from a petition in dependency or neglect based on a jury verdict is not a final appealable order because neither the appellate rule nor the statutory provision governing appeals from proceedings in dependency or neglect expressly permits an

appeal from a "'no adjudication' finding." See People In Interest of S.M-L., 2016 COA 173, ¶¶ 15–23, ___ P.3d ___. We granted the Department and the guardian ad litem's petition for certiorari review.[1]

¶3 We conclude that, with limited exceptions not relevant here, section 19-1-109(1) of the Colorado Children's Code authorizes appeals in dependency or neglect proceedings from "any order" that qualifies as a "final judgment" for purposes of section 13-4-102(1), C.R.S. (2017). Because the trial court's order in this case dismissing the father from the petition was not a "final judgment," we conclude that the court of appeals lacked jurisdiction and properly dismissed the Department's appeal. We therefore affirm the court of appeals' dismissal of the Department's appeal, albeit under different reasoning.

I. Facts and Procedural History

¶4 In January 2016, the Arapahoe County Department of Human Services filed a petition in dependency or neglect before the Arapahoe County District Court concerning minor child R.S. and two other minor children,[2] naming R.S.'s biological mother ("Mother") and biological father ("Father") as respondents. The petition alleged

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[1] We granted certiorari to review the following issue: "Whether a denial of adjudication in a dependency and neglect action is a final order for purposes of appeal."

[2] The Department's petition also involves two other children, S.M-L. (Mother's biological daughter and Father's stepdaughter) and B.M-M. (Mother's biological son and Father's stepson), and names O.M-M. (the biological father of S.M-L. and B.M-M.) as an additional respondent. The appeal before this court concerns only the legal status of R.S. with respect to Mother and Father.

that R.S. was dependent or neglected under section 19-3-102(1)(a)–(d), C.R.S. (2017), on the grounds that her parents had "abandoned" her, "subjected [her] to mistreatment or abuse," or "suffered or allowed another to mistreat or abuse [her] without taking lawful means to stop such mistreatment or abuse"; she "lack[ed] proper parental care"; her "environment [was] injurious to [her] welfare"; and her parents failed or refused to provide proper or necessary care for her well-being. As factual support for these claims, the petition alleged that Father had sexually abused his stepdaughter (R.S.'s half-sister) S.M-L., who lived with R.S. and Mother. The petition further alleged that Mother did not believe S.M-L.'s outcry and that Mother stated that S.M-L. had lied about the abuse. The petition did not allege that Father had sexually abused R.S. or that R.S. made an outcry.

¶5 Father and Mother denied the allegations and each requested a trial to adjudicate the dependent or neglected status of R.S. Mother requested a bench trial, and Father requested a jury trial.

¶6 A single trial was held on April 19–21, 2016, with the trial court sitting as Mother's fact-finder and a jury sitting as Father's fact-finder.[3] The Department

[3] Because Mother's case required certain additional testimony, the adjudicatory trial proceeded in two phases. In the first phase, spanning April 19–20, the parties presented evidence pertaining to both Mother's and Father's cases. At the end of the second day of trial, the parties presented closing arguments to the jury, and the jury retired to deliberate as to Father. On April 21 (the third day of trial), the parties presented additional evidence regarding Mother's case and gave closing arguments to the trial

presented expert testimony from the Arapahoe County investigator who investigated the allegations that Father had sexually assaulted S.M-L., the caseworker assigned to the family, a forensic interviewer who interviewed S.M-L. regarding the sexual-assault allegations against Father, and a licensed clinical social worker with expertise in sexual abuse. The Department also presented lay testimony from S.M-L. and Mother. The Department contended that R.S. faced "prospective harm" as a result of Father's conduct toward S.M-L., stating in closing argument that, "If the evidence shows that [Father] was inappropriate with his stepdaughter [S.M-L.], then we know that [R.S.] is at risk." R.S.'s guardian ad litem (the "GAL") agreed with the Department, adding that R.S. should be adjudicated as dependent or neglected because Mother "is blatantly unwilling to even look at the idea that this may have happened to [S.M-L.]."

¶7 The trial court, as Mother's fact-finder, determined that R.S. was dependent or neglected, finding that Mother's response to S.M-L.'s outcry was insufficient to protect her children, even if the allegations were ultimately untrue. The trial court observed, "[Mother] does not believe that the information provided by [S.M-L.] is true. Nonetheless, [Mother] has not developed a way to protect [R.S.] should the allegations

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court. The court then made its ruling (as to Mother) and read the jury verdict (as to Father).

be true," nor has she "determined how she would shelter [R.S.] from [Father] during times that [R.S.] might be vulnerable."

¶8 In contrast, the jury, as Father's fact-finder, found insufficient factual basis to support a finding that R.S. was dependent or neglected. The Department moved for an adjudication notwithstanding the jury's verdict, arguing that the verdict was not supported by the evidence. The trial court denied the motion and entered an order dismissing Father from the petition. The court then entered an order adjudicating R.S. as dependent or neglected "in regard to" Mother and adopted a treatment plan for her. The case continued with Mother maintaining custody of R.S. under the Department's supervision.

¶9 Father later pled guilty in a separate criminal case to a charge of unlawful sexual contact—no consent, in violation of section 18-3-404(1)(a), C.R.S. (2017). On October 24, 2016, Father was sentenced to four years of Sex Offender Intensive Supervision Probation and was barred from contact with children under the age of 18.

¶10 Mother appealed the trial court's adjudication of R.S. as dependent or neglected with regard to her. The Department appealed the jury's nonadjudication verdict regarding Father and the trial court's denial of its motion for adjudication notwithstanding the verdict.[4]

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[4] The GAL did not file a notice of appeal with respect to the trial court's orders, but did file briefing urging the court of appeals to affirm the adjudication of R.S. as dependent or neglected and to reverse the trial court's orders dismissing Father from the petition

¶11 The court of appeals issued an order to show cause why the Department's appeal should not be dismissed for lack of a final appealable order, questioning whether the dismissal of a single parent from a dependency or neglect petition based on a jury verdict was a final appealable order. See People In Interest of S.M-L., 2016 COA 173, ¶ 15, ___ P.3d ___. In response to the show-cause order, the Department cited People in Interest of M.A.L., 592 P.2d 415 (Colo. App. 1976), in which the court of appeals entertained an appeal of a jury verdict finding that minor children were not dependent or neglected. See S.M-L., ¶ 15. A motions division of the court allowed the appeal to proceed and for the issue of finality to be considered on the merits. See id.

¶12 In a unanimous, published opinion, the court of appeals dismissed the Department's appeal, concluding that "the [trial] court's dismissal of a party from a dependency or neglect petition based on a jury's verdict is not a final appealable order under [the Colorado Appellate Rules] or the [Colorado] Children's Code." S.M-L., ¶ 15. The court examined C.A.R. 3.4(a) and section 19-1-109, C.R.S. (2017)—the appellate rule and statutory provision governing appeals from proceedings in dependency or neglect—and concluded that neither contains language expressly permitting an appeal

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based on the jury verdict. After the court of appeals dismissed the Department's appeal, the GAL joined in the Department's petition for writ of certiorari and in the Department's merits briefing before this court.

from a "'no adjudication' finding." Id. at ¶¶ 19–20. Thus, the court reasoned, the General Assembly did not intend for such findings to be appealable orders. Id.

¶13 We granted the Department and the GAL's joint petition for certiorari review of the court of appeals' dismissal of the Department's appeal.[5]

II. Analysis

¶14 As the court of appeals observed both in its show-cause order and its opinion, the question here is whether the dismissal of one parent from a petition based on a jury's "no adjudication" verdict constitutes a final appealable order. See S.M-L., ¶ 15. Accordingly, we analyze whether the statutory provisions and court rule governing appeals in dependency or neglect proceedings authorized the Department's appeal of the trial court's order dismissing Father from the petition based on the jury's "no adjudication" verdict. We conclude that section 19-1-109(1) of the Colorado Children's Code authorizes appeals from "any order, decree, or judgment" in dependency or neglect proceedings, but only to the extent that such appeals are permitted by section 13-4-102(1), C.R.S. (2017). As pertinent here, section 13-4-102(1) authorizes the appeal of any order that constitutes a final judgment. Here, the order dismissing Father from the petition was not a final judgment because it did not end the dependency or neglect proceeding or provide a final determination of the rights of all the parties to the

[5] Neither Mother nor Father entered appearances or filed briefing before this court. The Office of Respondent Parents' Counsel filed an amicus brief in support of Mother and Father. The Office of the Child's Representative filed an amicus brief in support of the Department and the GAL.

proceeding. Therefore, the court of appeals lacked jurisdiction and properly dismissed the Department's appeal.

A. Statutory Authorization for Appeals from Proceedings in Dependency or Neglect

¶15 We begin by examining the statutory provisions governing appeals from proceedings in dependency or neglect. We review questions of statutory construction de novo. Trujillo v. Colo. Div. of Ins., 2014 CO 17, ¶ 12, 320 P.3d 1208, 1212. In interpreting these provisions, "[o]ur objective is to effectuate the intent and purpose of the General Assembly." Id. at ¶ 12, 320 P.3d at 1212–13. To determine the legislature's intent, we look first to the plain language of a statutory provision. Bostelman v. People, 162 P.3d 686, 690 (Colo. 2007). Where the statutory language is clear, we apply the plain and ordinary meaning of the provision. Trujillo, ¶ 12, 320 P.3d at 1213. Additionally, a statute must be read "as a whole, construing each provision consistently and in harmony with the overall statutory design, if possible." Whitaker v. People, 48 P.3d 555, 558 (Colo. 2002).

¶16 Section 19-1-109 of the Colorado Children's Code governs appeals from proceedings in juvenile court, including dependency or neglect proceedings. Subsection (1) states that an appeal may be taken from "any order, decree, or judgment," "as provided in the introductory portion to section 13-4-102(1), C.R.S." § 19-1-109(1). In turn, section 13-4-102(1) provides that the court of appeals shall have

initial jurisdiction over appeals from "final judgments"[6] of district courts, including juvenile courts that preside over dependency or neglect proceedings.[7]

¶17 Section 19-1-109(1)'s reference to appeals "as provided in" section 13-4-102(1) means that an appeal from juvenile court proceedings must be brought in the court of appeals and must fall within the scope of appealable orders authorized by section 13-4-102(1). Because section 13-4-102(1), as pertinent here,[8] authorizes the court of appeals to review "final judgments," we conclude that section 19-1-109(1) authorizes appeals in dependency or neglect proceedings from any order that qualifies as "final" for purposes of section 13-4-102(1).

¶18 In considering whether section 19-1-109 authorized the appeal of the trial court's order dismissing Father from the petition, the court of appeals focused its analysis on subsection (2)(b) and (2)(c) of the statute, which designate certain types of orders in dependency or neglect proceedings as final appealable orders, including "an order terminating or refusing to terminate" a parent-child relationship and "an order

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[6] Consistent with C.R.C.P. 54(a), we understand the term "judgment" to include orders and decrees.

[7] The Colorado Children's Code defines "juvenile court" as "the juvenile court of the city and county of Denver or the juvenile division of the district court outside of the city and county of Denver." § 19-1-103(70), C.R.S. (2017).

[8] Section 13-4-102(1) also provides that the court of appeals shall have initial jurisdiction over interlocutory appeals of certified questions of law in civil cases from the district courts, the probate court of the City and County of Denver, and the juvenile court of the City and County of Denver, with certain exceptions. Such appeals are not at issue in this case.

decreeing a child to be neglected or dependent" following entry of the disposition. See § 19-1-109(2)(b)–(c); S.M-L., ¶¶ 19–20. The court of appeals reasoned that the omission of "no adjudication" findings from the list of appealable orders identified in subsection (2)(b) and (2)(c) reflects the legislature's intent not to permit such appeals. See S.M-L., ¶¶ 18–20.

¶19 We disagree with the court of appeals' construction of subsection (2)(b) and (2)(c) because it conflicts with the plain meaning of subsection (1). Subsection (2) must be read in conjunction with subsection (1), with the goal of giving harmonious and sensible effect to each subsection. See People v. Kennaugh, 80 P.3d 315, 317 (Colo. 2003). As discussed above, subsection (1) authorizes the appeal of "any order" from a dependency or neglect proceeding that is "final." Rather than treat subsection (2)(b) and (2)(c) as limiting the types of orders in dependency or neglect proceedings that may be appealed, we construe subsection (2)(b) and (2)(c) to authorize appeals from certain additional orders beyond those authorized by subsection (1).

¶20 Put differently, subsection (1) codifies a general rule of finality, and subsection (2)(b) and (2)(c) provide certain exceptions to that general rule by authorizing the appeal of certain orders from dependency or neglect proceedings that would not otherwise be considered "final." For example, subsection (2)(c) provides that an order of adjudication becomes a final appealable order after the entry of the disposition. Such an order, however, does not "end[] the particular action in which it is entered." People v. Guatney, 214 P.3d 1049, 1051 (Colo. 2009). Rather, an adjudication order authorizes

the juvenile court to make further orders affecting the child and the rights of the parents. See § 19-3-508, C.R.S. (2017); A.M. v. A.C., 2013 CO 16, ¶ 12, 296 P.3d 1026, 1031 ("The adjudication represents the court's determination that state intervention is necessary to protect the child and that the family requires rehabilitative services in order to safely parent the child"). In other words, but for section 19-1-109(2)(c), an adjudication order ordinarily would not be an appealable order because it would not be considered "final."

¶21 The statutory history of section 19-1-109 further supports our reading of subsections (1) and (2). Since its enactment, the statute has permitted the appeal of any "final" order in a dependency or neglect proceeding, and nothing in the subsequent amendments to section 19-1-109 (or its predecessor provisions) evinces a clear legislative intent to limit the right to appeal in dependency or neglect cases.

¶22 In 1967, the General Assembly enacted the Colorado Children's Code, which was then codified under Title 22 of the Revised Statutes. See Ch. 443, sec. 1, §§ 22-1-1 to 22-10-7, 1967 Colo. Sess. Laws 993, 993–1039. Section 22-1-12 of the 1967 Children's Code, a predecessor to section 19-1-109, allowed appeals from orders in juvenile proceedings to be taken to the supreme court.[9] That provision stated, in relevant part: "An appeal from any order, decree, or judgment may be taken to the supreme court by writ of error as provided by the Colorado rules of civil procedure . . . ." § 22-1-12, C.R.S.

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[9] At the time of the enactment of the 1967 Children's Code, the Colorado Court of Appeals did not exist.

(1963 & Supp. 1967). At the time, Rule 111 of the Colorado Rules of Civil Procedure provided that a writ of error shall lie from the supreme court to, among other things, "a final judgment of any district, county, or juvenile court in all actions or special proceedings whether governed by [the Colorado Rules of Civil Procedure] or by the [Colorado Revised Statutes]." C.R.C.P. 111(a)(1), (1963). Thus, in 1967, the legislature allowed "any order, decree, or judgment" in a dependency or neglect proceeding that was "final" to be appealed to the supreme court by writ of error.

¶23 The General Assembly reestablished the Colorado Court of Appeals in 1969, adding Article 21 ("Court of Appeals") to Title 37 ("Courts of Record") of the Revised Statutes. See ch. 106, sec. 1, 1969, §§ 37-21-1 to 37-21-14, Colo. Sess. Laws 265, 265–68. In so doing, the legislature provided that the court of appeals "shall have initial jurisdiction over appeals from final judgments of the district courts." § 37-21-2(1)(a), C.R.S. (1963 & Supp. 1969); see also § 13-4-102(1), C.R.S. (2017) (current codification). Two years later, in 1971, the legislature amended section 22-1-12 (the Children's Code provision governing appeals), to provide that an appeal may be taken from any order, decree or judgment "as provided in section 37-21-2(1)(a)." Ch. 87, sec. 5, § 22-1-12, 1971 Colo. Sess. Laws 286, 287.

¶24 The 1971 amendment to section 22-1-12 had the effect of redirecting appeals from juvenile proceedings to the court of appeals, thus replacing the prior method of appeal to the supreme court by writ of error. Significantly, the cross-reference to section 37-21-2 demonstrates the legislature's continued intent to allow appeals from any

"final" order in a juvenile proceeding. In other words, nothing in the 1971 amendment altered the scope of appealable orders in juvenile proceedings, which under the original version of section 22-1-12 likewise included all orders that were "final."

¶25 In 1973, the legislature amended section 22-1-12 by adding the following as subsection (2): "The People of the State of Colorado shall have the same right to appeal questions of law in delinquency cases under section 22-1-4(1)(b) as exists in criminal cases." Ch. 110, sec. 10, § 22-1-12, 1973 Colo. Sess. Laws 384, 388. The addition of subsection (2) appears to have altered, for the first time, the scope of appealable orders in juvenile proceedings. However, under its plain terms, the 1973 alteration affected only delinquency cases and did not suggest the legislature intended to alter or limit any party's right to appeal in other juvenile proceedings, such as dependency or neglect cases.

¶26 Following various recodification projects affecting the ordering of the Revised Statutes, see, e.g., ch. 138, sec. 1, §§ 19-1-101 to 19-6-105, 1987 Colo. Sess. Laws 695, 812 (recodifying the entire Children's Code), section 22-1-12 and section 37-21-2 were relocated to section 19-1-109 and section 13-4-102, respectively, and the cross-reference was correspondingly updated.

¶27 Finally, in 1997, the General Assembly amended section 19-1-109(2) by designating the provision governing the People's right to appeal in delinquency cases as paragraph (a), and adding new paragraphs (b) and (c) identifying certain types of orders in dependency or neglect proceedings as final and appealable:

> (b) An order terminating or refusing to terminate the legal relationship between a parent or parents and one or more of the children of such parent or parents on a petition, or between a child and one or both parents of the child, shall be a final and appealable order.
>
> (c) An order decreeing a child to be neglected or dependent shall be a final and appealable order after the entry of the disposition pursuant to section 19-3-508. Any appeal shall not affect the jurisdiction of the trial court to enter such further dispositional orders as the court believes to be in the best interests of the child.

Ch. 254, sec. 7, § 19-1-109(2)(b)–(c), 1997 Colo. Sess. Laws 1426, 1433. The legislature has not further amended subsections (1) or (2).

¶28 Nothing in the 1997 amendment to subsection (2) evinces legislative intent to restrict appealable orders in dependency or neglect proceedings to those orders described in paragraphs (b) and (c). Certainly, nothing in the language of the amendment altered subsection (1) or expressly limited the scope of appealable orders in such proceedings generally. Moreover, to construe paragraphs (b) and (c) as limitations on the right to appeal ignores that the statute historically has authorized the appeal of any final order in dependency or neglect proceedings, and that none of the previous amendments to section 19-1-109 (or its predecessors) ever sought to limit the scope of appealable orders in such proceedings.[10] If anything, the 1997 addition of paragraphs (b) and (c) in subsection (2) introduced examples of exceptions to the general finality

[10] Even if section 19-1-109(2)(a) could be construed to limit the orders that are appealable in delinquency cases, we see no reason to construe subsection (2)(b) and (2)(c) to circumscribe the right to appeal in dependency or neglect cases.

requirement embodied in section 109(1)—thus expanding the types of orders that may be appealed in dependency or neglect cases.

¶29 In sum, we hold that section 19-1-109(1) authorizes the appeal of any order from a dependency or neglect proceeding that is "final" and that section 19-1-109(2) authorizes the appeal of certain orders in addition to those orders whose appeal is authorized by section 19-1-109(1).

B. Whether Section 19-1-109 Conflicts with C.A.R. 3.4(a)

¶30 Having determined that section 19-1-109(1) authorizes the appeal of any final order and that subsection (2) of that statute does not limit the scope of appealable orders under subsection (1), we next examine whether this statutory provision conflicts with C.A.R. 3.4, the appellate rule governing appeals from proceedings in dependency or neglect. See § 19-1-109(1) ("Appellate procedure shall be as provided by the Colorado appellate rules.").

¶31 Because the Department filed its appeal on April 25, 2016, its appeal was governed by a prior version of C.A.R. 3.4(a), which stated: "How Taken. Appeals from orders in dependency or neglect proceedings, as permitted by section 19-1-109(2)(b) and (c), C.R.S., and including final orders of permanent legal custody entered pursuant to

section 19-3-702, C.R.S, shall be in the manner and within the time prescribed by this rule." (Second emphasis added.)[11]

¶32 We apply "[t]he standard principles of statutory construction . . . to our interpretation of court rules." In re Marriage of Wiggins, 2012 CO 44, ¶ 24, 279 P.3d 1, 7. Where a rule promulgated by this court and a statute conflict, the question becomes whether the affected matter is "procedural" or "substantive." See Borer v. Lewis, 91 P.3d 375, 380–81 (Colo. 2004); People v. Wiedemer, 852 P.2d 424, 436 (Colo. 1993); People v. McKenna, 585 P.2d 275, 276–79 (Colo. 1978). The state constitution vests this court with plenary authority to create procedural rules in civil and criminal cases, but the legislature has authority to enact statutes governing substantive matters as distinguished from procedural matters. Borer, 91 P.3d at 380; Wiedemer, 852 P.2d at 436. Thus, if the affected matter is "procedural," then the court rule controls; if the affected matter is "substantive," then the statute controls. See Borer, 91 P.3d at 380;

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[11] The current version of C.A.R. 3.4(a) was adopted by this court on May 23, 2016, and became effective for all cases filed on or after July 1, 2016. In its current form, C.A.R. 3.4(a) reads:

> How Taken. Appeals from judgments, decrees, or orders in dependency or neglect proceedings, as permitted by section 19-1-109(2)(b) and (c), C.R.S., including an order allocating parental responsibilities pursuant to section 19-1-104(6), C.R.S., final orders entered pursuant to section 19-3-612, C.R.S., and final orders of permanent legal custody entered pursuant to section 19-3-702 and 19-3-605, C.R.S., must be in the manner and within the time prescribed by this rule.

Because the Department filed its appeal on April 25, 2016, its appeal was subject to the pre–July 2016 version of C.A.R. 3.4(a), which, as quoted above in the text, referred only to appeals from orders, but not from judgments or decrees.

Wiedemer, 852 P.2d at 436. Although the distinction between "procedural" and "substantive" matters is sometimes difficult to discern, we have held that, generally, "rules adopted to permit the courts to function and function efficiently are procedural whereas matters of public policy are substantive and are therefore appropriate subjects for legislation." Wiedemer, 852 P.2d at 436. We have further explained that when distinguishing between legislative policy and judicial rulemaking, "we strive to avoid any unnecessary '[c]onfrontation[s] of constitutional authority,' and instead seek to reconcile the language and intent of the legislative enactment with our own well-established rules of procedure." Borer, 91 P.3d at 380 (alterations in original) (quoting McKenna, 585 P.2d at 279). Finally, we have recognized that "legislative policy and judicial rulemaking powers may overlap to some extent so long as there is no substantial conflict between statute and rule." McKenna, 585 P.2d at 279.

¶33 The applicable version of C.A.R. 3.4(a) generally establishes the manner and time for appeals in dependency or neglect proceedings. But by referring to "[a]ppeals from orders in dependency or neglect proceedings, as permitted by section 19-1-109(2)(b) and (c)," the rule also implies that only those orders specifically identified in subsection (2)(b) and (2)(c) may be appealed. Thus, the rule appears to conflict with section 19-1-109(1), which we have determined authorizes the appeal of any final order in dependency or neglect proceedings.

¶34 We conclude that the matter at issue here—the scope of appealable orders from dependency or neglect proceedings—is "substantive" and that the statute therefore

must prevail over the court rule. Even before we expressly adopted the distinction between "substantive" and "procedural" matters as a formal analytical framework for resolving conflicts between statutes and court rules, we held that "[s]tatutes pertaining to the creation of appellate remedies take precedence over judicial rules of procedure." Bill Dreiling Motor Co. v. Court of Appeals, 468 P.2d 37, 41 (Colo. 1970). Implicit in the notion that appellate remedies created by statute cannot be limited by court rules is our understanding that the state constitution confers to the legislature the right to define the subject matter jurisdiction of the appellate courts and, by extension, the kinds of orders that may be appealed. See id. at 40; People ex rel. City of Aurora v. Smith, 424 P.2d 772, 774 (Colo. 1967). We have thus long recognized that the question of what orders may be appealed is a "matter[] of public policy" that is an "appropriate subject[] for legislation," see Wiedemer, 852 P.2d at 436, even if we have not always expressly labeled it as a "substantive" matter. We conclude that the scope of appealable orders in dependency or neglect proceedings is a "substantive" matter, as it pertains to a party's right to appeal from such proceedings and to the subject matter jurisdiction of the court of appeals.

¶35 Accordingly, we hold that, to the extent that the prior version of C.A.R. 3.4(a) conflicts with section 19-1-109(1), the statute prevails and the rule cannot limit the types of orders from dependency or neglect proceedings that may be appealed under the statute.

C. Whether the Order Dismissing Father was "Final"

¶36 Having concluded that section 19-1-109(1) authorizes the appeal from any "final" order in a dependency or neglect proceeding, and that the applicable version of C.A.R. 3.4(a) does not limit the types of orders that may be appealed under the statute, we next consider whether the trial court's order dismissing Father from the petition was "final."

¶37 The general requirement that an order must be final to be appealable stems from the well-established principle "that an entire case must be decided before any ruling in that case can be appealed." Cyr v. Dist. Court, 685 P.2d 769, 770 (Colo. 1984). We have consistently characterized a final order as "one that ends the particular action in which it is entered, leaving nothing further for the court pronouncing it to do in order to completely determine the rights of the parties involved in the proceedings." Guatney, 214 P.3d at 1051 (citing People v. Jefferson, 748 P.2d 1223, 1224 (Colo. 1988); Stillings v. Davis, 406 P.2d 337, 338 (Colo. 1965)). Thus, in determining whether an order is final for purposes of appeal, we generally ask "whether the action of the court constitutes a final determination of the rights of the parties in the action." Cyr, 685 P.2d at 770.

¶38 We conclude that the order dismissing Father was not "a final determination of the rights" of all of the parties to the action, nor did it "end[] the particular action in which it [was] entered." See id. at 770 & n.2. Indeed, after entering the order dismissing Father, the trial court adjudicated R.S. as dependent or neglected ("in regard to" Mother). The court thus continued to exercise jurisdiction over the child and

Mother, adopted a treatment plan for Mother, and ordered the case to proceed with Mother maintaining custody of R.S. under the Department's supervision.

¶39 We do not address whether C.R.C.P. 54(b), which "creates an exception to the general requirement that an entire case be resolved by a final judgment before an appeal is brought," Lytle v. Kite, 728 P.2d 305, 308 (Colo. 1986), applies to the trial court's order dismissing Father. Rule 54(b) permits a trial court "to direct the entry of a final judgment as to one or more but fewer than all of the claims or parties," but "only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Here, the trial court did not certify the order dismissing Father as final under Rule 54(b) or make any determinations relating to Rule 54(b), and no party sought Rule 54(b) certification. Under these circumstances, we will not, sua sponte, inject into this case the issue of whether the order dismissing Father from the petition could have been certified as a final judgment pursuant to C.R.C.P. 54(b).

¶40 Because the order dismissing Father from the petition was not "final" for purposes of section 13-4-102, we conclude that the court of appeals lacked jurisdiction and properly dismissed the Department's appeal.

III. Conclusion

¶41 We conclude that, with limited exceptions not relevant here, section 19-1-109(1) of the Colorado Children's Code authorizes appeals of all orders in dependency or neglect proceedings that are "final judgments." Because the order dismissing Father

from the petition was not a "final judgment," the court of appeals lacked jurisdiction to hear the Department's appeal of that order. Accordingly, we affirm the court of appeals' dismissal of the Department's appeal.

JUSTICE COATS concurs in the judgment.

JUSTICE COATS, concurring in the judgment.

¶42 Because I agree that the People were not authorized to appeal either the jury verdict finding the child not dependent or neglected or the denial of their motion for an adjudication notwithstanding the jury's verdict, I concur in the majority's judgment affirming dismissal by the court of appeals. It is not the majority's finding that the People's appeal was unauthorized with which I disagree, but rather its determination, which I consider both unnecessary to the resolution of this case and mistaken, that but for the court's continued exercise of jurisdiction over the child as the result of its adjudication of dependency or neglect in regard to the mother, the People's appeal would be so authorized. Because I also understand the majority to concede, however, that it is the prerogative of the legislature to preclude an appeal by the People at this stage of the proceedings if, as a matter of policy, it chooses to do so, and that it has simply failed to do so thus far, I do not consider the error, as it concerns dependency or neglect orders, to be of substantial moment. Rather, I write to briefly explain why I do not consider the majority rationale the better construction of the applicable statutes and why I believe its premises should not be extended beyond the dependency or neglect context to which they are applied in this case.

¶43 The majority's construction rests entirely on the weight it attributes to the word "any" in the sentence appearing in section 19-1-109(1) of the revised statutes, "An appeal as provided in the introductory portion to section 13-4-102(1), C.R.S., may be taken from any order, decree, or judgment," and the fact that section 13-4-102(1), C.R.S.

(2017), describes, among other things, the court of appeals' "initial jurisdiction over appeals from final judgments," id. (emphasis added), of the district courts. The majority reasons that this subsection therefore authorizes an appeal to the court of appeals from any "final" order, decree, or judgment, by any party, notwithstanding the immediately following subsection of the statute, expressly authorizing certain, and limiting other, appeals by the "people of the state of Colorado." § 19-1-109(2), C.R.S. (2017). Unlike the majority, I believe that when read in conjunction with subsection (1) of section 19-1-109, subsection (2) can only be understood to specify when, and with regard to what questions, judgments in both delinquency and dependency or neglect proceedings will be subject to appeal by the People.

¶44 Whether or not the term "final" as used in section 13-4-102 could have the meaning ascribed to it, the word "any" simply cannot shoulder the burden levied upon it by the majority. Subsection (2) of section 19-1-109 contains three paragraphs distinguishing the right of the People to appeal from that of the juvenile or parents, with regard to three different classes of judgments. The majority asserts that rather than clarifying or limiting the appellate rights of the People with regard to the judgments referred to in subsection (1), these provisions permit appeals in addition to the already authorized appeal of "any" final judgment. This proposition is, however, difficult to square with the statutory scheme as a whole. Paragraph (2)(a) of section 19-1-109 permits appeals of questions of law by the People in delinquency cases to the same extent as permitted in criminal cases, but because such appeals are limited to final

judgments even in criminal cases, see § 16-12-102(1), C.R.S. (2017); People v. Gabriesheski, 262 P.3d 653, 656 (Colo. 2011), paragraph (2)(a) would be completely superfluous if the legislature had already authorized appeals by the People of all final judgments concerning juveniles in subsection (1). Similarly, paragraph (2)(b) expressly permits appeals both from orders terminating and orders refusing to terminate parental rights, but if appeals by the People of all final orders were already authorized, paragraph (2)(b) would add nothing by authorizing appeals of orders refusing to terminate parental rights. Rather, the only reasonable conclusion to be drawn from the legislature's choice, in back-to-back paragraphs, to specify with regard to termination of parental rights that both orders terminating and orders refusing to terminate would be appealable but, concerning dependency or neglect, to designate as appealable only orders actually decreeing a child to be dependent or neglected, must surely be that the legislature did not intend for orders declining to adjudicate a child dependent or neglected to be appealable by the People at all.

¶45 This, of course, is precisely the understanding of these statutory provisions incorporated by this court in C.A.R. 3.4. At all times pertinent to this case, that rule expressly permitted, and still does permit, appeals in dependency or neglect proceedings only as described in paragraphs (2)(b) and (c) of section 19-1-109, without reference to subsection (1). Despite our clear intent to conform the rule to the statute, and our long-expressed reluctance to enter the separation-of-powers fray by construing our own rules to be in conflict with the legislative statutes, see, e.g., People v. Owens,

228 P.3d 969, 971–72 (Colo. 2010), the majority is forced to overcome this hurdle to its current statutory interpretation by construing the rule and statute to be in irreconcilable conflict, and resolving that conflict by finding the matter to be "substantive," giving precedence to the statute, according to the majority's current interpretation. In addition to finding this maneuver wholly unconvincing, I am concerned by the majority's unnecessarily positing a conflict between statute and rule and gratuitously taking another stab at the delicate distinction between "procedural" and "substantive" matters.

¶46 Quite apart from its effect on dependency or neglect law, I am also concerned about the implications of the majority's construction for the reviewability of matters by the appellate courts in general, and the initial jurisdiction of the court of appeals in particular. Unlike the majority, I do not believe section 13-4-102 is concerned with the appellate reviewability of judgments at all, a matter as to which it defers to the appellate rules, but rather with the initial jurisdiction of this state's statutory, as distinguished from its constitutional, appellate court. Cf. Bill Dreiling Motor Co. v. Court of Appeals, 468 P.2d 37, 40–41 (Colo. 1970). As one clear indication that section 13-4-102 has not been understood to be exclusive, or at least that its use of the term "final" was intended broadly in the sense of "reviewable," within the contemplation of C.A.R. 1, the initial jurisdiction of the court of appeals over orders granting or denying temporary injunctions (made immediately reviewable by C.A.R. 1(a)(3)) has regularly been exercised without question, despite those orders not being "final" either according

to the categorization of Rule 1 or the majority's test. See, e.g., Gergel v. High View Homes, L.L.C., 58 P.3d 1132, 1135 (Colo. App. 2002). More importantly, however, neither section 13-4-102 nor section 19-1-109 remotely suggests that finality is the sole criterion determining the appealability of any particular judgment, by any particular party, at any particular point in time.

¶47 Appeals by the People in criminal and delinquency cases are among the clearest examples of review being barred as moot, notwithstanding the finality of the judgment with regard to which review is sought, in the absence of express statutory authorization to the contrary. See People v. Guatney, 214 P.3d 1049, 1050–51 (Colo. 2009); In re People in Interest of P.L.V., 490 P.2d 685, 687 (Colo. 1971). In providing such express statutory authorization in this jurisdiction, see § 16-12-102(1), the legislature has nevertheless subjected appeals by the People to the procedures dictated by the rules of this court, much as it has done in section 13-4-102, which we have construed to include a limitation to finality as required by C.A.R. 1. Notwithstanding this general limitation concerning finality, however, we have regularly acceded to specific legislative direction with regard to the finality of certain classes of orders, based on policy judgments within the purview of the legislature, even where we have previously found precisely the contrary according to our own jurisprudence concerning finality. See, e.g., § 16-12-102(1) (amendments permitting immediate review of orders dismissing some but not all counts prior to trial, orders granting new trials, orders judging legislative acts to be inoperative or unconstitutional). In this regard, our case law is replete with examples of

our deferring to the legislature, regardless of any general requirement of finality, concerning the immediate appealability of any particular order or judgment.

¶48 Finally, I note that the immediate reviewability of particular court orders, by particular parties, depends largely on how the legislature conceives of the entire process of which the order in question is a part. With regard to the denial of motions by the People to revoke probation, for example, we have concluded that despite clearly finalizing the question whether the defendant's probation is to be revoked on the basis of the current motion, such an order is not a final, appealable order as contemplated by section 16-12-102. See Guatney, 214 P.3d at 1051. In the probation revocation context, we relied primarily on two considerations: first, the fact that the review of an order revoking probation was expressly contemplated by both statute and rule, while no similar provision existed for orders declining to revoke; and second, the fact that, in light of such things as the defendant's unchanged status as a probationer and the continued ability of the People to file for revocation whenever warranted, orders denying revocation, in contrast to orders granting revocation, did not exhibit typical indicia of finality. Id. I believe both considerations apply with equal force to the no adjudication orders at issue here. Rather than the product of some ill-defined interplay among various canons of statutory construction, I believe the language with which the legislature has expressed itself in section 19-1-109 demonstrates, on its face, a legislative conception of the adjudication of dependency or neglect as merely one step in a process of identification, treatment, and if necessary termination, final only in the sense that an

adjudication adversely affects the parent's right to maintain custody, while an order of no adjudication merely maintains the status quo, without limiting the People's right, and obligation, to refile when warranted by additional circumstances.

¶49 I therefore believe the majority fails to grasp the true legislative intent reflected in these statutory provisions. Whether or not mine is the better view, however, I consider it unfortunate that the majority chooses to resolve this question in a case in which even it holds that the department's appeal on behalf of the People was premature and could not be sustained. Under these circumstances, I would simply disapprove the court of appeals' construction as unnecessary; affirm its ultimate judgment on the more narrow grounds upon which the majority relies in any event; and wait for a case in which our resolution of the broader question whether the People are statutorily authorized to appeal from no adjudication orders would be of consequence for the outcome.