ADVANCE SHEET HEADNOTE
June 30, 2025

2025 CO 48

No. 24SC621, *People in Int. of Kay.W.* — Dependency and Neglect Proceedings — Adjudicatory Trials — Jury Demand — Jury Waiver — Failure to Appear — Timeliness of Renewing Jury Demand — § 19-3-202, C.R.S. (2024) — C.R.J.P. 4.3 — C.R.C.P. 39 — Default Judgment.

In adjudicating five children dependent or neglected as to Father in this dependency and neglect proceeding, the juvenile court held a bench trial instead of a jury trial. The supreme court now determines that the juvenile court did not err.

There were two adjudicatory proceedings in this case. Father demanded a jury trial before the first but failed to appear for trial, thereby waiving his statutory right to a jury trial. The juvenile court then mistakenly entered a default adjudicatory judgment. But the juvenile court eventually corrected course, vacated the default judgment, and set a new adjudicatory trial (a bench trial, this time). Father appeared at the second proceeding, and following a bench trial, the juvenile court adjudicated the children dependent or neglected as to him. On

appeal, he claimed that the juvenile court should have held a jury trial, and a division of the court of appeals agreed with him.

The supreme court holds that, even assuming (without deciding), that Father's waiver of his statutory jury-trial right did not extend to the second proceeding, he still cannot prevail. Father never demanded a jury trial for purposes of the second proceeding, and the supreme court is unwilling to conclude that Father's demand for a jury trial before the first proceeding was automatically revived post-waiver when the juvenile court vacated the default judgment and set the second adjudicatory trial. Further, Father's "for the record" objection on the morning of the second trial was not a demand for a jury trial. And, regardless, it was untimely and would have caused an unnecessary delay in this time-sensitive case, interfered with the court's administration of justice, and inconvenienced the witnesses.

Because the division of the court of appeals below reached a contrary result, the supreme court reverses. The matter is remanded so the division may consider Father's outstanding claims on appeal.

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

2025 CO 48

Supreme Court Case No. 24SC621
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 23CA2106

Petitioner:

The People of the State of Colorado,

In the Interest of Minor Children:

Kay.W., Kai.W., E.W., D.W., and S.W.,

and

Petitioners:

Kay.W., Kai.W., E.W., D.W., and S.W.,

v.

Respondent:

K.L.W.

Judgment Reversed
en banc
June 30, 2025

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 In this dependency and neglect proceeding, a division of the court of appeals allowed K.L.W. ("Father") to take the judicial equivalent of a mulligan[1] by reversing the juvenile court's adjudicatory judgment. We conclude that the division erred.

¶2 The parties agree, as do we, that the juvenile court *correctly* found in 2021 that Father waived his statutory right to a jury trial by failing to appear for trial. However, everyone also agrees that the court *incorrectly* proceeded to adjudicate, by default, Father's five children, Kay.W., Kai.W., E.W., D.W., and S.W. (the "children"), as dependent or neglected with regard to him.

¶3 About two years later, in 2023, the juvenile court corrected course by vacating the default judgment and scheduling a new adjudicatory trial. In that order, the court found that Father had waived his statutory right to a jury trial by failing to appear in 2021. Consequently, it scheduled the matter for an adjudicatory trial to the court. Twenty days passed between the issuance of that

[1] A "mulligan" is "a free shot sometimes given a golfer in informal play when the previous shot was poorly played." *Mulligan*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/mulligan [https://perma.cc/5BQW-GVMF]. In common parlance, a "mulligan" refers to a second chance: an "opportunity to start again after an initial failure." *Mulligan*, Collins English Dictionary, https:// www.collinsdictionary.com/dictionary/english/mulligan [https://perma.cc/D7CT-MJP5].

order and the bench trial. Yet, Father took no steps during that timeframe to make a new demand for a jury trial. To the contrary, in a pretrial pleading, Father acknowledged, without objection, that the proceeding was set for an "adjudicatory court trial."

¶4 At the beginning of the 2023 bench trial, however, when the court asked the parties if there were any preliminary matters it needed to address, Father stated, "for the record," that he objected to the finding of a waiver of his statutory right to a jury trial. The court did not respond, and the issue was not raised again. At the conclusion of the bench trial, the court adjudicated the children dependent or neglected as to Father. Father then appealed, and a division of the court of appeals reversed, concluding that Father's 2021 waiver of a jury didn't extend to the 2023 proceeding. *People in Int. of Kay.W.*, No. 23CA2106, ¶¶ 18–19 (Aug. 29, 2024).

¶5 We now reverse the division. Even assuming, without deciding, that the 2021 waiver of Father's statutory right to a jury trial was not binding for the remainder of the case and thus did not bar him from reasserting his jury-trial right in the 2023 proceeding, Father still cannot prevail. Father never demanded a jury for purposes of the 2023 proceeding, as required by statute, section 19-3-202(2),

C.R.S. (2024), and rule, C.R.J.P. 4.3(a).[2] The only jury trial Father ever demanded was waived in 2021 by his failure to appear.

¶6 Contrary to the division's determination, Father's "for the record" objection in 2023 was not a demand for a jury. And even if we could construe it as such—we cannot—it would fail as untimely because Father waited twenty days, until the morning of the bench trial, to advance it. Had the court sustained Father's objection in this expedited permanency planning case,[3] a time-sensitive matter, it would have unnecessarily delayed the proceeding, to the detriment of the children. And that, in turn, would have run counter to the best interests of the children, which take precedence in dependency and neglect proceedings. Additionally, granting Father's objection would have interfered with the court's orderly administration of justice and inconvenienced the witnesses.

¶7 In the end, even if Father was entitled to make a new demand for a jury trial in 2023, he never did so, let alone in a timely fashion. And we are unwilling to conclude that his 2021 demand for a jury trial was automatically revived post-

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[2] C.R.C.P. 38 addresses jury-trial demands in civil cases, including the procedures that must be observed. We need not decide here whether the rule applies to dependency and neglect cases.

[3] An expedited permanency planning case is one in which the juvenile court must follow specific expedited timelines and procedures "for the permanent placement of children under the age of six years." § 19-1-123(1)(a), C.R.S. (2024). Four of the children had not yet celebrated their sixth birthday at the time the dependency and neglect petition was filed.

waiver when the juvenile court vacated the default judgment in 2023. Accordingly, the juvenile court correctly conducted a bench trial, and the division erred in reversing the adjudicatory judgment.

I. Facts and Procedural History

¶8 In May 2021, the Department of Human Services ("the Department") filed a petition alleging that the children were dependent or neglected with regard to Father. The petition contended that the children were at risk because Father's whereabouts were unknown and he was struggling with mental health conditions (including suicidal ideation) and substance use issues. Father was eventually located, and counsel was appointed for him. At a pretrial conference, Father denied the petition's allegations and requested a jury trial for the adjudicatory phase of the case. The juvenile court granted his request and scheduled the matter for a jury trial to commence on September 22, 2021.

¶9 When Father failed to appear, the court determined that he had waived his statutory right to a jury trial, emphasizing its "heavy juvenile docket" and the need to avoid engaging in "gamesmanship" with parents who fail to appear for a jury trial, as such engagement "would delay significantly proceedings getting resolved within [the] expedited permanency planning or just regular permanency planning guidelines." The court then proceeded to adjudicate, by default, the children dependent or neglected with respect to Father "based on [the] failure to appear."

Further, the court adopted an interim treatment plan for Father and granted his counsel's motion to withdraw from the case.

¶10 About eighteen months later, in March 2023, the Department moved for termination of Father's parental rights, and the court set the matter for a termination hearing. Shortly after the termination hearing commenced in late July 2023, Father's new counsel moved to vacate the 2021 default judgment pursuant to C.R.C.P. 60(b), arguing that the court had improperly adjudicated the children dependent or neglected by default. Father did not reassert his statutory right to a jury trial in this motion.

¶11 The court (with a different judicial officer presiding) granted Father's motion on September 26, 2023, after the second day of the termination hearing.[4] It agreed with Father that "[t]he Children's Code does not authorize entry of a default judgment against a parent for failing to appear at the adjudicatory hearing." (Quoting *People in Int. of K.J.B.*, 2014 COA 168, ¶ 25, 342 P.3d 597, 601.) Thus, the court converted the remainder of the termination hearing into a new adjudicatory trial, which the court scheduled to commence twenty days later, on October 16.

[4] The termination hearing was scheduled to take place over several noncontiguous days during a period spanning a handful of months.

¶12 Of particular relevance here, in its order granting Father's C.R.C.P. 60(b) motion, the court found that Father had "waived his right to a jury trial by failing to appear" at the 2021 trial. Accordingly, the court set the new adjudicatory trial as a bench trial. During the ensuing twenty days, Father did not make another demand for a jury trial. Quite the contrary, about a week before trial, Father filed an amended list of witnesses expressly stating, without complaint, that the matter was set for an "adjudicatory court trial."

¶13 At the beginning of the first day of trial, however, when the court inquired as to whether there were any preliminary matters it needed to address, Father's counsel spoke as follows: "[F]or the record[,] I'm going to object to the [c]ourt's finding and waiver of jury trial."[5] Counsel didn't elaborate, and the court didn't comment further on the issue. Indeed, the matter was not discussed again. At the conclusion of the bench trial, the court adjudicated the children dependent or neglected as to Father.

¶14 Father appealed. As pertinent here, he argued that the juvenile court erred in finding that he had waived his statutory right to a jury trial for purposes of the 2023 trial by failing to appear for the 2021 trial.

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[5] Father's counsel did not specify whether his "for the record" objection was premised on the finding in 2021 that his failure to appear constituted a waiver or the finding in 2023 that he'd previously waived a jury.

¶15 A division of the court of appeals agreed with Father in an unpublished, unanimous opinion. *Kay.W.*, ¶ 8. The division held that Father's waiver of his statutory right to a jury trial for failing to appear at the 2021 trial didn't extend to the 2023 trial. *Id.* at ¶¶ 18–19.

¶16 First, the division explained that the "two adjudicatory trials were separate and distinct" because the 2023 trial was a "completely new trial," not a continuation of the 2021 trial. *Id.* at ¶ 19. It then determined that the juvenile court's decision in 2023 to set aside the 2021 default adjudication "put [F]ather in the same legal position" he was in before the 2021 trial. *Id.* Relying on C.R.C.P. 39(a), which, as relevant here, requires a jury trial unless such a trial is waived because "all parties demanding trial by jury fail to appear at trial," the division ruled that the juvenile court erred because the waiver could not have occurred before Father had been given an opportunity to appear "at trial" in 2023. *Kay.W.*, ¶ 20. And because Father *did* appear at the 2023 trial, the division concluded that he could not have waived his statutory right to a jury trial for purposes of that proceeding. *Id.*

¶17 Second, the division decided that, because the statutory right to a jury trial is a "substantial right[]" under C.R.C.P. 61, the error was not harmless. *Kay.W.*, ¶ 21. It thus reversed the adjudication judgment and remanded the matter for

further proceedings. *Id.* at ¶ 24. Given this disposition, the division declined to address Father's remaining contentions on appeal. *Id.* at ¶¶ 21–23.

¶18 The children's guardian ad litem (the "GAL") and the Department (collectively, "Petitioners") separately sought our review.[6] We granted their petitions.[7] Before analyzing the issues raised, we make a pit stop to review some elemental legal tenets.

II. Basic Legal Principles

¶19 "'Dependency and neglect proceedings are civil in nature' and follow the Colorado Children's Code . . . ." *People v. Johnson*, 2017 COA 11, ¶ 32, 446 P.3d 826, 831 (quoting *People in Int. of Z.P.*, 167 P.3d 211, 214 (Colo. App. 2007)); *see also People v. D.A.K.*, 596 P.2d 747, 751 (Colo. 1979) (stating that a dependency and neglect proceeding is civil in nature and involves three parties—the parents, the

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[6] The division rejected the preservation argument advanced by the GAL. *Id.* at ¶¶ 14–15. The GAL reraises that argument here. That ship, however, sailed when we accepted the only two issues raised in Petitioners' requests for review, neither of which dealt with preservation.

[7] The issues upon which we granted certiorari are different framings of what is loosely the same question:

1. Whether the court of appeals correctly ruled that father regained his right to a jury trial for adjudication after he waived the statutory right by non-appearance.
2. Whether the division erred in finding that father did not waive his statutory right to an adjudicatory jury trial after he failed to appear for the first-scheduled trial, but where the judgment from the hearing was later vacated and another hearing was scheduled.

child, and the state); C.R.J.P. 1 (noting that proceedings brought in juvenile court are "civil in nature"). Accordingly, there is no right to a jury trial grounded in the Colorado Constitution in these cases. *Kaitz v. Dist. Ct.*, 650 P.2d 553, 554 (Colo. 1982) ("In Colorado there is no constitutional right to a trial by jury in a civil action."); *People in Int. of C.C.*, 2022 COA 81, ¶ 11, 519 P.3d 762, 765. However, our General Assembly has provided a *statutory* right to a jury trial at the adjudicatory hearing stage of dependency and neglect cases. § 19-3-202(2) ("[A]ny respondent . . . may demand a trial by jury of six persons at the adjudicatory hearing . . . .").

¶20 Generally, when juvenile matters are "not governed by" the Colorado Rules of Juvenile Procedure or the Children's Code, they are "conducted according to the Colorado Rules of Civil Procedure." C.R.J.P. 1; *see also K.J.B.*, ¶ 9, 342 P.3d at 599 (same). Thus, when the Colorado Rules of Juvenile Procedure and the Children's Code are silent on an issue, the Colorado Rules of Civil Procedure may kick in.

¶21 As relevant here, C.R.J.P. 4.3(a) states that a parent must demand a jury trial "[a]t the time the allegations of a petition are denied"; otherwise, the right is "deemed waived." No other rule in the Colorado Rules of Juvenile Procedure or the Children's Code further discusses the statutory right to a jury trial or its waiver once the right has been invoked.

¶22 C.R.C.P. 39, however, sets forth the circumstances under which such waiver may occur, including, as pertinent here, when "all parties demanding trial by jury fail to appear at trial." C.R.C.P. 39(a). As the division implicitly acknowledged, the waiver provisions of C.R.C.P. 39 are much more comprehensive than those of C.R.J.P. 4.3(a) and the Children's Code and thus apply in dependency and neglect cases.

III. Analysis

¶23 Petitioners argue that Father's 2021 waiver of his statutory right to a jury trial was permanently binding in this case and thus barred him from reasserting that right for purposes of the 2023 trial. In their view, the juvenile court's 2023 decision to set aside the 2021 default adjudication had no impact on the waiver because the waiver occurred before the error ultimately responsible for the reversal of the first adjudication. Father counters that the order granting his C.R.C.P. 60(b) motion rendered the 2021 adjudication void, which necessitated a "completely new adjudicatory trial," and since he didn't fail to appear at the 2023 trial, he was entitled to have a jury determine the issue of adjudication at that proceeding.

¶24 At the outset, we lay out what is not in dispute:

- In 2021, Father properly requested an adjudicatory jury trial but then failed to appear for that trial.

- Under Colorado law, Father's 2021 failure to appear constituted a waiver of his statutory right to a jury trial.
- On the day Father failed to appear in 2021, the juvenile court incorrectly adjudicated, by default, the children dependent or neglected as to him.
- In 2023, the juvenile court correctly granted Father's C.R.C.P. 60(b) motion and vacated the default judgment.
- In the order vacating the default judgment, the juvenile court scheduled an adjudicatory bench trial after finding that Father had waived his statutory right to a jury trial in 2021.

¶25 The question we confront is whether the juvenile court erred by ruling in its C.R.C.P. 60(b) order that Father had waived his jury-trial right for purposes of the 2023 trial by failing to appear for the 2021 jury trial. But the devil is in the details, as they say. So, we frame the issue before us more precisely as follows: Where, as here, a parent in a dependency and neglect proceeding waives the statutory right to a jury by failing to appear for an adjudicatory trial, and a default adjudicatory judgment is subsequently entered (incorrectly) and then vacated (correctly) pursuant to a C.R.C.P. 60(b) motion, does the waiver of the jury-trial right bar the parent from making a jury-trial demand at the second adjudicatory trial?

¶26 Not surprisingly, neither the parties' research nor ours unearthed any cases in Colorado or elsewhere on point. There is a body of case law outside of Colorado, however, that addresses somewhat similar questions in the context of the *constitutional* right to a jury trial and a waiver of that right *expressly* executed by a party. Of course, here, we deal with a *statutory* right to a jury trial and an

implied waiver of that right as a result of a party's failure to appear for a jury trial. Nevertheless, we think it useful to briefly discuss the case law from other jurisdictions because the principles that can be extracted from it are enlightening.

¶27 Most states appear to hold that the waiver of a jury trial is not operative for a subsequent trial in the same case. *See generally* H.D.W., Annotation, *Waiver of Right to Jury Trial as Operative After Expiration of Term During Which It Was Made, or as Regards Subsequent Trial*, 106 A.L.R. 203 (1937); H.H. Henry, Annotation, *Withdrawal of Waiver of Right to Jury Trial in Criminal Case*, 46 A.L.R.2d 919 (1956); *see also In re Hulcher Servs., Inc.*, 568 S.W.3d 188, 190 (Tex. App. 2018) (referring to this as "[t]he long-standing majority rule"). And most federal courts appear to be on the same page. *See generally* Wesley Kobylak, Annotation, *Waiver of Right to Trial by Jury as Affecting Right to Trial by Jury on Subsequent Trial of Same Case in Federal Court*, 66 A.L.R. Fed. 859 (1984). We explore each category of cases in turn.

¶28 Starting with the state cases, we note that the Washington Supreme Court has explained that, since a party waiving the right to a jury trial "likely does so without contemplating the possibility of a subsequent trial, the party does not *intentionally* 'waive' the right to trial by jury in the second trial." *Wilson v. Horsley*, 974 P.2d 316, 321–22 (Wash. 1999) (emphasis added); *see also Tesky v. Tesky*, 327 N.W.2d 706, 708–09 (Wis. 1983) (same); *People v. Hamm*, 298 N.W.2d 896, 899 (Mich. Ct. App. 1980) (same); *Nedrow v. Mich.-Wis. Pipe Line Co.*, 70 N.W.2d 843,

844–45 (Iowa 1955) (same). The Oklahoma Supreme Court came to a similar conclusion, observing that, because the right to trial by jury in the second trial didn't exist and couldn't have been known at the time of the execution of the waiver, it could not have been impliedly waived. *Seymour v. Swart*, 695 P.2d 509, 512 (Okla. 1985); *see also Horsley*, 974 P.2d at 322 (same).

¶29 In *Nedrow*, the Iowa Supreme Court reasoned that limiting a waiver of the right to a jury trial to the initial proceeding made sense given that circumstances may have changed by the time of the second proceeding—i.e., both the jury pool and the presiding judge could be different. 70 N.W.2d at 844 ("[I]t is hardly fair to presume that by waiving a jury for one trial the parties intended to waive a jury for any further trial that may be had . . . ."); *see also Horsley*, 974 P.2d at 322 (quoting *Nedrow* with approval). Even if a case is remanded for retrial in front of the same judge after reversal of a conviction, there may still be concerns with applying a waiver of the jury executed for purposes of the initial proceeding: A criminal defendant might well be opposed to a retrial in front of the same judge who previously reached a judgment of guilty.

¶30 The weight of authority in the federal system aligns with these teachings from our sister state courts. More than a century ago, the Seventh Circuit held that a stipulation to waive the jury applied only in the pending trial because it "should not be presumed that the parties, in making the stipulation, had in mind any

possible subsequent trial." *Burnham v. N. Chicago St. Ry. Co.*, 88 F. 627, 629 (7th Cir. 1898). Much more recently, in *United States v. Lutz*, 420 F.2d 414, 416 (3d Cir. 1970), the Third Circuit held that, following a mistrial, the parties may assert or waive their jury-trial rights. Likewise, around the same time, the Sixth Circuit held that, unless the waiver of a jury trial explicitly includes the contingency of a retrial, the waiving party may demand a jury trial before the retrial. *United States v. Groth*, 682 F.2d 578, 580 (6th Cir. 1982). Along the same lines, in *Zemunski v. Kenney*, 984 F.2d 953, 954 (8th Cir. 1993), the Eighth Circuit ruled that, although a mistrial doesn't automatically extinguish a jury-trial waiver, a party may withdraw the waiver before the second trial. And, in a similar context, the Ninth Circuit declared that the waiver of some constitutional rights "should not, once uttered, be deemed forever binding." *United States v. Mortensen*, 860 F.2d 948, 950 (9th Cir. 1988) (concluding that consent to try a case before a magistrate judge instead of an Article III judge may be withdrawn following a mistrial).

¶31 We reiterate that these state and federal cases are not on all fours with this case. For one thing, they implicated a *constitutional* right of heightened importance, the waiver of which "must be strictly construed." *Horsley*, 974 P.2d at 322; *see also United States v. Lee*, 539 F.2d 606, 609 (6th Cir. 1976) (indicating that the constitutional right to a jury trial in a criminal case is "a fundamental right, and a waiver should not be presumed"); *Burnham*, 88 F. at 629 ("The right of trial by jury

. . . is a high and sacred constitutional right in Anglo-Saxon jurisprudence . . . . A stipulation for the waiver of such right should therefore be strictly construed in favor of the preservation of the right."). For another, they were concerned with the prospect of applying a waiver of the jury-trial right, executed by a party for purposes of one trial, in an unforeseen subsequent trial. *See, e.g.*, *Horsley*, 974 P.2d at 322; *Seymour*, 695 P.2d at 512–13; *Burnham*, 88 F. at 629.

¶32 So, what happens where, as here, there's an *implied* waiver (by operation of law) of a *statutory* right to a jury as a result of a party's failure to appear at trial? Is such a waiver forever binding in the case so as to bar the party from demanding a jury trial in any subsequent proceeding? And if it's not, does Father prevail here? These questions compel us to delve deeper into the case law.

¶33 What is clear from the majority rule our research excavated is that, while a waiver of the right to a jury trial doesn't bar a jury-trial demand in a subsequent proceeding in the same case, the waiving party doesn't automatically receive a jury trial in the latter proceeding. *See, e.g.*, *Horsley*, 974 P.2d at 322. Nor is the burden on the trial court to inquire at the subsequent proceeding whether the waiving party wishes to persist in the waiver or demand a jury trial. *See, e.g.*, *id.* No: If the waiving party wants a jury trial in the subsequent proceeding, the burden is on that party to request such a trial. *See, e.g.*, *id.*

¶34 Moreover, any request for a jury trial in the subsequent proceeding must be timely made—i.e., without unnecessary delay. In *Mortensen*, the Ninth Circuit pointed out, in the context of a waiver of the right to a trial before an Article III judge, that a request to withdraw such a waiver for purposes of a retrial must be timely. 860 F.2d at 950. Of course, timeliness is not a concept that can be defined with "precise quantification." *Id.* Rather, its contours are necessarily set by the circumstances of each particular case. *Id.* The *Mortensen* court ultimately held that "a withdrawal motion is timely when granting the motion would not unduly interfere with or delay the proceedings." *Id.* Because Mortensen waited to seek withdrawal of his waiver until the morning of the retrial, the court concluded that he "clearly failed to satisfy the timeliness requirement." *Id.* at 951.

¶35 Notably, the Ninth Circuit was troubled by the fact that Mortensen's actions up until the morning of the retrial were inconsistent with his last-minute request to withdraw his waiver. *Id.* Specifically, Mortensen allowed the matter to be scheduled in front of a magistrate, set a date for the filing of pretrial motions to the magistrate, submitted a material witness warrant indicating the retrial would be in front of the magistrate, advanced a request to dismiss in front of the magistrate that made no mention of his desire to withdraw his waiver, and sought and obtained a continuance from the magistrate. *Id.*

¶36 In the same vein, in *Zemunski*, the Eighth Circuit reaffirmed that a defendant may move to withdraw a jury waiver following a mistrial only if the request is timely. 984 F.2d at 954. Applying the definition of timeliness from *Mortensen*, the court concluded that Zemunski's request to withdraw was untimely because he inexplicably waited until the first day of the retrial to make it. *Id.* The court reasoned that, like the waiver itself, which was made on the first day of the initial trial, the request to withdraw appeared to be dilatory in nature. *Id.*

¶37 Lastly, in *Talbert v. State*, 529 S.W.3d 212, 214 (Tex. App. 2017), the Court of Appeals of Texas cautioned that a criminal defendant's request to withdraw a jury waiver must be made "sufficiently in advance of trial such that granting the request will not: (1) interfere with the orderly administration of the business of the court, (2) result in unnecessary delay or inconvenience to witnesses, or (3) prejudice the State." The court determined that the trial court did not abuse its discretion in denying Talbert's motion to withdraw his jury waiver because he filed the motion on the day of trial, the motion was not supported with evidence addressing the aforementioned concerns, and the record supported "the trial court's finding that withdrawal would have interfered with the orderly administration of the court's business." *Id.* at 216.

¶38 Aided by this guidance, we turn back to the issues we agreed to review. For the reasons we articulate, we conclude that the division erred.

IV. Application

¶39 We need not decide whether Father's 2021 waiver of his jury-trial right was, on the one hand, forever binding in this case, thus barring him from reasserting his jury-trial right in 2023 as Petitioners contend, or, on the other, limited to the 2021 trial, and thus inoperative at the 2023 proceeding as Father asserts. And consistent with judicial restraint, we abstain from doing so.

¶40 Father cannot prevail regardless of which side is right. If Petitioners are correct, the analysis is simple: Father's waiver of his jury-trial right as a result of failing to appear in 2021 was permanently binding in this case and therefore precluded him from demanding a jury trial for purposes of the 2023 proceeding. Under this rationale, once a party fails to appear for an adjudicatory jury trial in a case, the party is barred from ever demanding a jury trial in the case. On the flip side of the coin, if Father is correct—which we assume solely for purposes of our analysis—then his 2021 waiver was not forever binding in this case. While this makes the analysis a little more complicated, it still doesn't get Father his desired fresh start.

¶41 In 2023, when the juvenile court vacated the default judgment, it returned the case to the procedural posture it was in right before the default judgment entered in 2021. It was as if the default judgment had never entered. The case in 2023 had to resume the *procedural posture* from two years earlier, where the case

was halted: There was a request by the Department to adjudicate the children dependent or neglected as to Father, Father had demanded a jury trial, and Father had then waived his right to a jury trial. Even limiting the effect of the waiver to the 2021 proceeding, there was *no active demand* for a jury trial. To be sure, Father was free to make a new jury-trial demand for purposes of the 2023 proceeding. But it was incumbent on him to do so, as required by section 19-3-202(2) and C.R.J.P. 4.3(a) and as supported by the majority rule we've examined. Because he made no such demand, the case proceeded to the bench trial that would have been conducted in 2021 if the juvenile court hadn't erroneously entered a default judgment after he failed to appear.

¶42 The division recognized that the vacatur of the default judgment in 2023 put Father "in the same legal position . . . he was in before the 2021 adjudicatory trial." *Kay.W.*, ¶ 19. But the division seemed to assume that Father was automatically entitled to have a jury trial in 2023: "C.R.C.P. 39(a) requires that a jury trial be held unless '*all parties demanding trial by jury* fail to appear at trial.' . . . And because [F]ather did appear at the 2023 adjudicatory trial, he didn't waive his right to a jury." *Id.* at ¶ 20 (emphasis added and original emphases omitted). In giving Father a do-over in this case, the division treated his waiver as lacking binding effect for purposes of the 2023 trial (which we assume was correct). *Id.* at ¶¶ 19–20. But that only meant that Father was *free to reassert his right to a jury trial*, not that

Father was automatically entitled to have a jury trial. The division was wrong to reflexively revive Father's 2021 demand for a jury trial after the waiver that resulted from his failure to appear.

¶43 No case that we have found in our research—in Colorado or elsewhere, in state court or federal court—supports the division's analysis. Even the cases in the majority camp (i.e., the cases most favorable to Father), which decline to deem the waiver of a jury as binding in a subsequent proceeding in the same case, make clear that the waiving party must assert the jury-trial right in the subsequent proceeding. *See, e.g.*, *Horsley*, 974 P.2d at 322 ("Parties who waive the right to a jury trial are *free to assert this right* following a mistrial." (emphasis added)); *Lutz*, 420 F.2d at 416 (noting that, following a mistrial, the parties may assert or waive their jury-trial rights); *Groth*, 682 F.2d at 580 (stating that, unless the waiver of a jury trial explicitly includes the contingency of a retrial, the waiving party may demand a jury trial before the second trial).

¶44 Importantly, following his waiver of a jury in 2021, section 19-3-202(2) and C.R.J.P. 4.3(a) required Father to demand a jury trial again in 2023. § 19-3-202(2) ("[A]ny respondent . . . may demand a trial by jury of six persons at the adjudicatory hearing . . . ."); C.R.J.P. 4.3(a) ("[A] respondent . . . may demand . . . a jury of not more than six. Unless a jury is demanded or ordered, it shall be deemed waived."). Father failed to comply with the statute and the rule.

¶45 To the extent that the division considered the 2023 trial to be a "separate and distinct" proceeding from the 2021 proceeding during which the jury was waived, *Kay.W.*, ¶ 19, we're not sure why that wouldn't require Father to make a new demand for a jury trial in accordance with section 19-3-202(2) and C.R.J.P. 4.3(a). True, C.R.J.P. 4.3(a) states that a party may demand a trial by jury "[a]t the time the allegations of a petition are denied," and, as of the 2023 proceeding, the petition's allegations had been denied for two years. But the statute doesn't tether a jury demand to the denial of the allegations, and we decline to construe the rule as dispensing with the requirement for a jury demand where, as here, a trial is conducted after the waiver of a previous demand for a jury trial. Thus, Father should have demanded a jury as provided in section 19-3-202(2) and C.R.J.P. 4.3(a).

¶46 Having waived his right to a jury trial in 2021—a waiver that preceded, and was thus unaffected by, the order that vacated the default judgment and required a new adjudicatory trial—there was no active demand for a jury trial on which Father could rely in 2023. Therefore, contrary to the division's suggestion, there was also no jury-trial right for Father to preserve by simply appearing at the 2023 trial.

¶47 We acknowledge that on the morning of the 2023 trial, in response to the juvenile court's inquiry about preliminary matters, Father objected, "for the

record," to the finding of a waiver. But we disagree with the division that this was the equivalent of a demand for a jury trial.

¶48 Besides, even if Father's objection could reasonably be deemed a jury demand—it cannot—it would still fall woefully short. Father waited twenty days, until the morning of trial, to make his objection. And he provided no explanation for his tardiness.[8] What's more, his actions preceding the start of the 2023 trial belied his objection. In an amended witness list filed just one week before trial, Father expressly acknowledged, without protestation, that the matter was set for a trial to the court. Why did Father seem to implicitly accept a bench trial a week before trial but not on the morning of trial?

¶49 Significantly, had the court sustained Father's objection, it inevitably would have resulted in an unnecessary delay of the proceeding, to the detriment of the children. This would have been unacceptable because the children's best interests are of preeminent importance in this proceeding. Of course, the expedited placement of young children is expressly among those best interests. Indeed, the Children's Code's preamble, § 19-1-102(1.6), C.R.S. (2024), emphasizes the need for "an expedited placement procedure to ensure that children under the age of six

[8] Petitioners maintain that Father should have renewed his demand for a jury trial in his C.R.C.P. 60(b) motion. While this may have been ideal, we do not hold it against Father that he failed to do so.

years who have been removed from their homes are placed in permanent homes as expeditiously as possible." As mentioned, four out of the five children involved in this case were under six years of age at the time the dependency and neglect petition was filed. Consistent with our legislature's declaration, the juvenile court had a duty to "proceed with all possible speed to a legal determination that [would] serve the best interests of the child[ren]." § 19-1-102(1)(c). And, although it is not lost on us that section 19-3-202(2) recognizes a parent's right to an adjudicatory jury trial, that statute nowhere endorses or even permits dilatory tactics.

¶50 Additionally, granting Father's objection would have interfered with the court's administration of justice and inconvenienced the witnesses. The court would have been required to postpone the matter so it could then summon prospective jurors for the case on a future date. All witnesses would then have been required to return for a jury trial.

¶51 Under these circumstances, Father's objection was too little, too late. Thus, the juvenile court did not err in holding an adjudicatory bench trial.

V. Conclusion

¶52 For the foregoing reasons, we reverse the division's judgment. We remand the case so the division may entertain Father's remaining contentions.