

§ 19-5-203. Availability for adoption.

Colorado Statutes

Title 19. CHILDREN'S CODE

Article 5. Relinquishment and Adoption

Part 2. ADOPTION

Current through 2012 First Extraordinary Session

§ 19-5-203. Availability for adoption

- (1) A child may be available for adoption only upon:
 - (a) Order of the court terminating the parent-child legal relationship in a proceeding brought under article 3 or 5 of this title;
 - (b) Order of the court decreeing the voluntary relinquishment of the parent-child legal relationship under section 19-5-103, 19-5-103.5, or 19-5-105;
 - (c) Written and verified consent of the guardian of the person, appointed by the court, of a child whose parents are deceased;
 - (d)(I) Written and verified consent of the parent in a stepparent adoption where the other parent is deceased or his parent-child legal relationship has been terminated under paragraph (a) or (b) of this subsection (1);
 - (II) Written and verified consent of the parent in a stepparent adoption, accompanied by an affidavit or sworn testimony of such parent, that the other birth parent has abandoned the child for a period of one year or more or that the other birth parent has failed without cause to provide reasonable support for such child for a period of one year or more. Upon filing of the petition in adoption, the court shall issue a notice directed to the other parent, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the other parent is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that, after diligent search, the address of the other parent remains unknown, the court shall order service upon the other parent by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such time, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210(2).

- (d.5)(I) Written and verified consent in a second-parent adoption that the child has a sole legal parent, and the sole legal parent wishes the child to be adopted by a specified second adult.
- (II) In a petition for a second-parent adoption, the court shall require a written home study report prepared by a county department of social services, designated qualified individual, or child placement agency and approved by the department pursuant to section 19-5-207.5(2). If the child of a sole legal parent was adopted by that parent less than one hundred eighty-two days prior to the filing of an adoption petition by a second prospective parent and if the second prospective parent was included in the home study report that was prepared pursuant to section 19-5-207 for the adoption of the child by the first parent, then that home study report shall be a valid home study report for the purpose of the second parent's adoption. If the filing of a petition for adoption by the second prospective parent occurs one hundred eighty-two days or more after the adoption by the first parent, a separate home study report shall be required pursuant to section 19-5-207.
- (e) Written and verified consent of the parent having only residual parental responsibilities when custody or parental responsibilities have been awarded or allocated to the other parent in a dissolution of marriage proceeding where the spouse of the parent having custody or parental responsibilities wishes to adopt the child;
- (f) Written and verified consent of the parent or parents as defined in section 19-1-103(82) in a stepparent adoption where the child is conceived and born out of wedlock;
- (g) A statement by the department of human services or its designated agent as to whether any placement arranged outside the state of Colorado was carried out by a child placement agency licensed or authorized under the laws of another state to make placements;
- (h) Verification by the child placement agency, a county department of social services, or the attorney for the petitioner in any adoption proceeding that any custody obtained outside the state of Colorado was acquired by:
 - (I) Proceedings to relinquish all parent-child legal relationships which complied with the laws of the state where conducted or conformed substantially to the laws of this state; or
 - (II) Proceedings to terminate all parent-child legal relationships which complied with the laws of the state where conducted or conformed substantially to the laws of this state; or
 - (III) Written and verified consent, under the conditions set forth in paragraphs (c) to (f) of

this subsection (1), which was executed in accord with the laws of the state where granted or in substantial conformity with the laws of this state;

- (i) Verification by the department of human services or its designated agent that any custody obtained outside the state of Colorado was acquired by proceedings sanctioned by the federal immigration and naturalization service, or any successor agency, in cooperation with the department of human services whenever such cooperation is authorized or advised by federal law;
- (j) Submission of an affidavit or sworn testimony of the adoptive relative in a kinship adoption that the birth parent or birth parents have abandoned the child for a period of one year or more or that the birth parent or birth parents have failed without cause to provide reasonable support for such child for a period of one year or more, and that the relative seeking the kinship adoption has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title. Upon filing of the petition in adoption, the court shall issue a notice directed to the birth parent or birth parents, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the birth parent is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that describes with specificity the diligent search made by the petitioner, and that states that, after diligent search, the address of the birth parent or birth parents remains unknown, the court shall order service upon the birth parent or birth parents by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such hearing, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210(2).
- (k) Submission of an affidavit or sworn testimony of the legal custodian or legal guardian in a custodial adoption that the birth parent or birth parents have abandoned the child for a period of one year or more or that the birth parent or birth parents have failed without cause to provide reasonable support for such child for a period of one year or more and that the legal custodian or legal guardian seeking the custodial adoption has had the child in his or her physical custody for a period of one year or more. Upon filing of the petition in adoption, the court shall issue a notice directed to the birth parent or birth parents, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the birth parent or birth parents is known, service of such notice shall be in the manner provided by the Colorado rules of civil procedure for service of process. Upon affidavit by the petitioner that describes with specificity the diligent search made by the petitioner,

and that states that, after diligent search, the address of the birth parent or birth parents remains unknown, the court shall order service upon the birth parent or birth parents by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such hearing, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210(2).

- (2) Written consent to any proposed adoption shall be obtained from the person to be adopted if such person is twelve years of age or older.

Cite as C.R.S § 19-5-203

History. L. 87: Entire title R&RE, p. 805, § 1, effective October 1; (1)(f) amended, p. 1587, § 61, effective October 1. L. 94: (1)(g) and (1)(i) amended, p. 2688, § 211, effective July 1. L. 97: (1)(d)(II) amended, p. 1161, § 4, effective July 1. L. 98: (1)(f) amended, p. 822, § 29, effective August 5; (1)(e) amended, p. 1410, § 73, effective February 1, 1999. L. 99: (1)(j) and (1)(k) added, p. 1062, § 3, effective June 1. L. 2005: (1)(b) amended, p. 765, § 25, effective June 1. L. 2007: (1)(d.5) added, p. 837, § 1, effective August 3. L. 2011: (1)(i) amended, (HB 11-1303), ch. 264, p. 1158, §38, effective August 10. L. 2012: (1)(d)(II), (1)(d.5)(II), (1)(j), and (1)(k) amended, (SB 12-175), ch. 208, p. 878, § 140, effective July 1.

Editor's Note:

(1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 173 of chapter 208, Session Laws of Colorado 2012, provides that the act amending subsections (1)(d)(II), (1)(d.5)(II), (1)(j), and (1)(k) applies to specified time intervals.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "The 1951 Amendments to the Relinquishment and Adoption Laws", see 28 Dicta 227 (1951). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960). For note, "Batton v. Massar: The Finality of Colorado Adoptions", see 35 U. Colo. L. Rev. 314 (1963). For article, "Substantive Changes in Adoption and Relinquishment Law in Colorado", see 16 Colo. Law. 2183 (1987). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (October 2008).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section held constitutional. *Stjernholm v. Mazaheri*, 180 Colo. 352, 506 P.2d 155 (1973).

C.A.R. 3.4 does not violate plaintiff's constitutional right to equal protection because parents whose rights are terminated under this article of the Colorado Children's Code are not similarly situated to parents whose rights are terminated under article 3 of the code. C.A.R. 3.4 applies to parents subject to dependency and neglect proceedings under article 3 of the Colorado Children's Code. As such, the proceedings focus primarily on the protection and safety of the children, not on the custodial interests of the parent. Further, such a proceeding can be initiated only by the state. *People ex rel. T.D.*, 140 P.3d 205 (Colo. App. 2006), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Purpose of section. The prime purpose of the provisions relating to adoption definitely pertain to the care, support, training, and welfare of children who are orphaned or left dependent during minority. *Martin v. Cuellar*, 131 Colo. 117, 279 P.2d 843 (1955).

The purpose of adoption proceedings is to change the status of a child and its adoptive parents and to create a new status, a new relationship of parent and child. *Johnson v. Black*, 137 Colo. 119, 322 P.2d 99 (1958).

The general assembly has evidenced a benign policy toward adopted persons. *People ex rel. Dunbar v. White*, 144 Colo. 212, 355 P.2d 963 (1960).

This section and § 19-5-211, when viewed together, exclude from the reach of adoption statutes all form of adoption not otherwise expressly permitted. *Adoption of T.K.J.*, 931 P.2d 488 (Colo. App. 1996).

This section, when read together with § 19-5-211 contemplates two types of adoptions. The first is an adoption in which the rights of the parents are terminated by the court or are relinquished by the parents, or by the child's guardian if the parents are deceased. In such situation, final decree of adoption has effect of divesting the child's natural parents of all legal rights and obligations with respect to the child. The second is a "stepparent adoption", which constitutes the only exception to the general rule that an adoption divests both of the child's parents of all legal rights and duties relating to the child. This exception applies only when custodial parent is married to the adopting stepparent. *Adoption of T.K.J.*, 931 P.2d 488 (Colo. App. 1996); *In re D.S.L.*, 18 P.3d 856 (Colo. App. 2001).

Reading the plain language of this section in harmony with other statutes relating to adoption, children of same-sex couple whose parents were not married and whose parents did not intend to relinquish or terminate custody of children were not available for adoption. *Adoption of T.K.J.*, 931 P.2d 488 (Colo. App. 1996).

Procedure mandatory. The procedure prescribed in subsection (1) cannot be ignored. *Foley v. Carnesi*, 123 Colo. 533, 232 P.2d 186 (1951).

Compliance with the provisions of the adoption statute is mandatory. *Allen v. Huffman*, 135 Colo. 1, 307 P.2d 802 (1957).

Petitioners lacked standing to seek custodial adoption after their temporary guardianship expired and they

failed to provide proper notice to parents of hearing to extend guardianship. Although trial court extended temporary guardianship, that order was void for lack of notice to mother and father, therefore, petitioners lacked standing as the child's legal guardian. *In re Adoption of K.L.L. ex rel. V.M.D.*, 160 P.3d 383 (Colo. App. 2007).

Petitioners lacked standing as the child's legal custodians because, although they had physical custody of the child for more than one year, there had been no court action divesting the parents of legal custody. *In re Adoption of K.L.L. ex rel. V.M.D.*, 160 P.3d 383 (Colo. App. 2007).

"One year" in former subsection (1)(e)(II) (now subsection (1)(b)(II)) means the consecutive 12-month period immediately preceding the filing of the petition for stepparent adoption. *In re R.H.N.*, 673 P.2d 805 (Colo. App. 1983); *In re R.H.N.*, 710 P.2d 482 (Colo. 1985).

Responsibility of state to protect child's best interests. In an adoption proceeding, not only the custody, support, and education of a minor is involved, but one or both the parents may be deprived of their rights as parents. In such cases the state has an obligation to see that the best interests of the child and its welfare are served by the decree of adoption. *Clerkin v. Geisendorfer*, 137 Colo. 139, 323 P.2d 633 (1958).

The primary consideration in adoption proceedings is the welfare of the child, and secondly the rights of the parents. *Moreau v. Buchholz*, 124 Colo. 302, 236 P.2d 540 (1951).

Except when it is essential and of paramount necessity in the best interests of the child itself to provide otherwise, the law recognizes and enforces the right to the custody of their own children which nature gives to parents. *Allen v. Huffman*, 135 Colo. 1, 307 P.2d 802 (1957).

In a valid adoption proceeding, the natural relationship of the parents is superseded by an artificial relationship, and courts should act with caution and circumspection in such proceedings, exerting every effort commensurate with the welfare of the child to prevail upon the natural parents to accept and fulfill their duties toward their child. *Smith v. Welfare Dept.*, 144 Colo. 103, 355 P.2d 317 (1960).

Parental rights (now parent-child legal relationship) must yield to interest and welfare of child. *Stjernholm v. Mazaheri*, 180 Colo. 352, 506 P.2d 155 (1973); *In re Petition of J.D.K.*, 37 P.3d 541 (Colo. App. 2001).

As child is ward of state. The initiation of any proceedings in a court in which the rights, status, and welfare of an infant may be affected immediately establishes the infant's relation to the court as that of its ward. *Smith v. Welfare Dept.*, 144 Colo. 103, 355 P.2d 317 (1960).

The power of the state to sever the ties between parent and child should be exercised with extreme care and only when the evidence clearly establishes the necessity of so doing. *People in Interest of S.S.T.*, 38 Colo. App. 110, 553 P.2d 82 (1976).

In assessing whether a parent has abandoned a child, the court must examine the totality of the circumstances, viewed in light of the best interests of the child, which assessment must include recognition

both that every child is entitled to support and nurturance and that, to preserve parental rights, a parent must give appropriate attention to parental responsibilities, with the primary consideration being the welfare of the child second to the rights of the parents. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

Where mother abandoned the child and did not have a relationship with the child, the court cannot benefit the best interests of the child by considering the prospects that the mother, having abandoned a child, may later seek to establish a relationship with the child where there has been no support and nurturance. In re Petition of J.D.K., 37 P.3d 541 (Colo. App. 2001).

Intent component of abandonment not adequately shown where, for most of one-year period prior to filing of petition for stepparent adoption, biological father was under court order that prohibited any meaningful contact concerning child, yet during that time period father's legal actions demonstrated that he did not intend to permanently abandon his rights with respect to the child. In re J.A.V., 206 P.3d 467 (Colo. App. 2009).

Further, trial court erred in deferring to the stay in the parental responsibilities case and proceeding with the stepparent adoption absent a prior resolution of father's motion for parenting time. In re J.A.V., 206 P.3d 467 (Colo. App. 2009).

Abandonment inquiry focuses on intent. Court must determine whether, under the totality of the circumstances, the parent's intent during the twelve months preceding the filing of the petition for adoption was to abandon the child. The abandonment determination is a question of fact best determined by the trial court, and the appellate court erred in holding, essentially as a matter of law, that father's filing of the parenting-time motions prior to the filing of the adoption petition precluded a finding of intent to abandon. D.P.H. v. J.L.B., 260 P.3d 320 (Colo. 2011).

Court was not required to stay adoption proceeding pending outcome of parenting-time motion so long as court took into account the fact of the motion in making its abandonment determination. D.P.H. v. J.L.B., 260 P.3d 320 (Colo. 2011).

A stepparent adoption proceeding is not based on a societal responsibility to improve a child's situation. The best interest of the child is only one of the factors to be considered in evaluating a petition in such a proceeding. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A parent-child relationship may not be destroyed and a new one created by adoption solely because an official of the state may believe the child's welfare and the stepparent's convenience will be served by such actions. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Where a petition for stepparent adoption is before the court, the court may consider the natural parent's past conduct and other relevant considerations in making a determination as to whether it is unlikely that the natural parent will make future support payments on a regular and continuous basis. E.R.S. v. O.D.A., 779 P.2d 844 (Colo. 1989).

A stepparent adoption proceeding, like all other adoption proceedings, is concluded by a final decree of adoption. It is only when the final decree is entered that a natural parent is divested of all rights and obligations with

respect to the child. People in Interest of S.M.O., 931 P.2d 572 (Colo. App. 1996).

A child is not available for adoption within the meaning of paragraph (f) of subsection (1), without the consent of both natural parents when both parents are living and the identity and whereabouts of both parents are known or ascertainable by due diligence. In re the Petition of S.O., 795 P.2d 254 (Colo. 1990).

Natural father's motion to set aside stepparent adoption was properly denied where father knowingly, intelligently, and voluntarily consented to his child's adoption by signing a waiver that was written in plain, clear, and unambiguous language. Father's claim that his consent was based on an understanding that he would receive visitation rights was insufficient to overcome the written consent and evidence that the father was sufficiently informed by court clerk as to the consequences of signing consent form. In re the Petition of S.O., 795 P.2d 254 (Colo. 1990).

Parent's incarceration. Incarceration is not a per se justification for failure to pay child support. The fact that a parent has been incarcerated for any or all of the 12-month period immediately preceding the filing of the petition is one factor to be considered by the court in making its determinations. In re R.H.N., 673 P.2d 805 (Colo. App. 1983); In re R.H.N., 710 P.2d 482 (Colo. 1985).

Determination of whether reasonable support was paid must be predicated on a party's financial circumstances rather than on a rigid interpretation of a support order entered at a prior time. In re R.H.N., 678 P.2d 1070 (Colo. App. 1984).

But parents are not excused from their obligation to support their children merely because their incomes are small. Although incarceration is a factual circumstance that the court may consider in deciding what level of support is reasonable, incarceration does not totally excuse a parent's obligation to provide some child support. In re R.H.N., 710 P.2d 482 (Colo. 1985).

Once court has determined that a natural parent has failed to provide child support during 12-month period preceding filing of petition under former subsection (1)(e)(II) (now subsection (1)(h)(II)), the court must look beyond the 12-month period to determine whether there is any likelihood that natural parent will provide child support. In re R.H.N., 710 P.2d 482 (Colo. 1985).

Whether a parent has failed to provide "reasonable support" is question of fact to be determined by the trial court on a case by case basis. In re F.J.H., 628 P.2d 159 (Colo. App. 1981); In re R.H.N., 710 P.2d 482 (Colo. 1985).

And parental rights not terminated whenever parent fails to provide support. This section does not permit the termination of parental rights (now parent-child legal relationship) whenever a parent fails to provide the amount of support specified under a decree for a period of one year. In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Mistaken belief on support obligation considered in ruling on failure to provide support. While a divorced parent's support obligation is not legally suspended by the other parent's violation of the visitation provisions in a custody decree, a mistaken belief to this effect is a factual circumstance which the trial court may consider in ruling on the question of the failure to provide reasonable support without cause in a proceeding which involves the termination

of a parent-child legal relationship. In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Because of the harshness of permanently terminating parental rights (now parent-child legal relationships), strict compliance with this section is required. Petition of T.C.H. v. J.M.S., 190 Colo. 246, 545 P.2d 1357 (1976); In re F.J.H., 628 P.2d 159 (Colo. App. 1981).

Substantial compliance with the statutory provisions is essential and must appear of record. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

Burden of statutory adoption is same on all citizens. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

Exclusive method of adoption. Except in a very limited and unique situation, the only method of legal adoption under the laws of Colorado is pursuant to the Colorado Children's Code. Chavez v. Shea, 185 Colo. 400, 525 P.2d 1148 (1974).

A juvenile court has exclusive jurisdiction in adoption proceedings, but such jurisdiction does not extend to ousting a district court of jurisdiction in habeas corpus proceedings involving the unlawful restraint of an infant. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

But court cannot determine custody apart from adoption. In adoption proceedings, where for lack of jurisdiction or failure to meet statutory requirements, the effort to adopt fails, a juvenile court has no power to make an award of custody, nor to determine the relative rights of natural parents or of persons seeking to adopt a child. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Parent's abandonment of child is question of intent. Lack of mental capacity may be cause for failure to provide support and the presumption that an insanity adjudication results in the continuation of a state of mental incapacity applies in a proceeding under this section. Petition of D.L.M., 703 P.2d 1330 (Colo. App. 1985).

Adoption and abandonment proceedings distinguished. The question of abandonment is one of the elements involved in adoption proceedings, but that does not change adoption proceedings under this article to an abandonment proceeding under § 19-1-104. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

An adjudication in a habeas corpus proceeding involving custody of a minor child is not an adjudication of abandonment as defined in the adoption statute, nor as used in the dependent and neglected child statute since a district court has no jurisdiction in abandonment proceeding. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

Section may not be supplemented or supplanted by action in dependency. This section provides within itself sufficient means and authority to accomplish its purpose, and it may not be supplemented or supplanted by an action in dependency. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

A petition in dependency may not be converted into a proceeding for stepparent adoption by the actions either of the parties, the referee, or the trial court. People in Interest of S.S.T., 38 Colo. App. 110, 553 P.2d 82 (1976).

And procedures are not interchangeable. Since a petition in dependency concerns different matters and fulfills a different purpose than a proceeding for a stepparent adoption, procedures applicable to one may not be used to accomplish the ends of the other. *People in Interest of S.S.T.*, 38 Colo. App. 110, 553 P.2d 82 (1976).

For the distinction between notice required by § 19-3-103 and that required by this section, see *People in Interest of S.S.T.*, 38 Colo. App. 110, 553 P.2d 82 (1976).

Colorado courts have not recognized cultural adoption as being legal adoption. *Chavez v. Shea*, 185 Colo. 400, 525 P.2d 1148 (1974).

Equitable adoption for purposes of intestacy. Where there is "an oral contract to adopt a child, fully performed except that there was no statutory adoption", the child could be held equitably adopted for purposes of intestacy. The court has never applied the doctrine to factual situations other than those involving succession to an estate. *Chavez v. Shea*, 185 Colo. 400, 525 P.2d 1148 (1974).

Trial court's findings supported by evidence binding on appeal. Where the record contains evidence which supports the findings of the trial court that it is not in the best interest of the child to proceed with adoption, those findings are binding on appeal. *In re J.A.A. v. C.R.*, 618 P.2d 742 (Colo. App. 1980).

Exclusion of expert witness testimony given the conflicting evidence was reversible error in kinship adoption case. Court must first determine whether terminating the parent-child legal relationship is in the best interests of the child before determining whether the child is available for adoption due to the parent's failure to provide reasonable support or abandonment. Social worker's excluded testimony did not relate to parent's failure to pay child support, but concerned threshold issue of whether termination was in the best interests of the child. *In re C.A.B.L.*, 221 P.3d 433 (Colo. App. 2009).

Magistrate in kinship adoption proceeding may not take judicial notice of guardian ad litem's report in mother's dissolution case because report contains facts relating to the issues being litigated and mother has no opportunity to cross-examine guardian ad litem. However, the court may take judicial notice of its own records and adopt factual findings from a previous case involving the same parties and the same issues. *In re C.A.B.L.*, 221 P.3d 433 (Colo. App. 2009).

Applied in *Bd. of Control of State Home v. Mulertz*, 60 Colo. 468, 154 P. 742 (1916); *People in Interest of K.S.*, 33 Colo. App. 72, 515 P.2d 130 (1973).

II. CONSENT AND AVAILABILITY WITHOUT CONSENT.

Law reviews. For note, "A Compilation of Consent Provisions of Adoption Statutes", see 24 *Rocky Mt. L. Rev.* 359 (1952). For comment on *White v. Davis* (163 Colo. 122, 428 P.2d 909 (1967)), see 40 *U. Colo. L. Rev.* 151 (1967).

This section applies simply to consent and not to waiver, and, in view of the expressed intent of the general assembly to give the natural parents protection from hurried and coerced decisions to give up their child, the meaning

of this section cannot be extended to include waiver of notice. Thus, the notice required may not be waived by a minor parent. *Foley v. Carnesi*, 123 Colo. 533, 232 P.2d 186 (1951).

General assembly has wide discretion in determining when and under what conditions child may be adopted without consent of natural parents. *Stjernholm v. Mazaheri*, 180 Colo. 352, 506 P.2d 155 (1973).

Parent has no absolute right to child under any and all circumstances. *Stjernholm v. Mazaheri*, 180 Colo. 352, 506 P.2d 155 (1973).

The determination that a child is "available for adoption" is only a preliminary step toward the replacement of the child's natural parent with one who appears to be more willing and able to provide the care, support, and training necessary for the child's proper development. *People in Interest of S.S.T.*, 38 Colo. App. 110, 553 P.2d 82 (1976).

Objecting parent must show willingness to assume obligations. While a natural parent's rights may not be disregarded, expressed public policy declares that a parent seeking to prevent the adoption of his natural child by a stepparent may not stand upon his parental rights without demonstrating a willingness to assume parental obligations. *People in Interest of S.S.T.*, 38 Colo. App. 110, 553 P.2d 82 (1976).

Failure to support and abandonment separate grounds. The Colorado Children's Code specifies that failure to support without cause is a separate and independent ground from that of abandonment for declaring a child available for adoption so that if sufficient proof on either or both grounds is submitted to the court, a judgment based thereon will not be disturbed. *Karkanen v. Valdesuso*, 33 Colo. App. 47, 515 P.2d 128 (1973).

This section does not require that abandonment and nonsupport must both be shown to terminate parental rights (now parent-child legal relationship). *Buder v. Reynolds*, 175 Colo. 28, 486 P.2d 432 (1971).

Prior court order mandating child support is not a prerequisite to a finding that a natural parent has failed without cause to provide child support. Accordingly, a child could be adopted without the natural father's consent where the natural father had failed to provide any child support for over a year preceding the filing for stepparent adoption, the evidence suggested that he would not pay child support in the future, and all procedural requirements of this section had been met. *In re I.R.D.*, 971 P.2d 702 (Colo. App. 1998).

In assessing whether a parent has abandoned a child, the court must examine the totality of the circumstances viewed in light of the best interests of the child, and mother's single phone call made during the year prior to the filing of the petition for adoption would not preclude a finding of abandonment. *In re Petition of J.D.K.*, 37 P.3d 541 (Colo. App. 2001).

Termination of parental rights (now parent-child legal relationship) constitutional. Requiring only a showing that the natural parent has failed without cause to provide reasonable support for a child for one year or more, when termination of a natural parent's rights is sought in a stepparent adoption, does not violate the natural parent's constitutional rights. *Buder v. Reynolds*, 175 Colo. 28, 486 P.2d 432 (1971).

Consent is necessary in all adoptions, since without valid consents courts are without jurisdiction to enter decrees of adoption. *Batton v. Massar*, 149 Colo. 404, 369 P.2d 434 (1962).

Minor parent may give consent. Under this section, the minority of a natural parent is not a bar to such parent's consent to adoption. *Batton v. Massar*, 149 Colo. 404, 369 P.2d 434 (1962).

A mother's consent to the adoption is necessary unless she has forfeited her rights. *Graham v. Francis*, 83 Colo. 346, 265 P. 690 (1928).

When the petition in adoption was filed, there was no valid order of dependency. Without such a valid order the consent of the mother was essential, and not being filed with that petition, the court was without jurisdiction to enter the decree of adoption, and its jurisdiction was no greater because of the subsequent order of dependency based on a new petition. The adjudication of dependency entered subsequent to the filing of the petition in adoption could not give vitality to the adoption petition. *Storey v. Shumaker*, 131 Colo. 131, 279 P.2d 1057 (1955).

Unverified consent ineffective. Where the written consent of the natural parent is not subscribed and sworn to as required by this section, a decree of adoption will not be sustained. *Allen v. Huffman*, 135 Colo. 1, 307 P.2d 802 (1957).

Consent valid in absence of fraud, coercion, or misrepresentation. A mother may not avoid the consequences of her voluntary acts in consenting to the adoption of her children, on the ground that she did not realize the seriousness and finality of the paper she was signing, in the absence of fraud, coercion, or misrepresentation. *Batton v. Massar*, 149 Colo. 404, 369 P.2d 434 (1962).

Consent required where divorce decree specifically relieved father of duty to support child. *T.C.H. v. J.M.S.*, 190 Colo. 246, 545 P.2d 1357 (1976).

After relinquishment, parental consent unnecessary. If there has been a relinquishment, then in proceedings for the adoption of the relinquished child, the agency to which the child has been relinquished is the only one that can consent. *Batton v. Massar*, 149 Colo. 404, 369 P.2d 434 (1962).

Consent is not required where the parent has abandoned the child. *Neville v. Bracher*, 94 Colo. 550, 31 P.2d 911 (1934).

And such parent not entitled to notice of adoption. Where the mother abandons and deserts her child, she has no right to receive notice of the child's adoption. *Smith v. Welfare Dept.*, 144 Colo. 103, 355 P.2d 317 (1960).

Notice of adoption proceedings under this section need not be given where a valid relinquishment has been made, such relinquishment divesting the natural parents of all legal right in their child. *Smith v. Welfare Dept.*, 144 Colo. 103, 355 P.2d 317 (1960).

Under this section, no notice of an adoption proceeding is required to be given parents who have relinquished or lost their rights to the custody of their children by prior court action. *Olsen v. Davidson*, 142 Colo. 205, 350 P.2d 338

(1960).

Hearing on adequacy of notice required. Where the motion to vacate the adoption decrees claims no notice whatsoever and further alleges that in support of an order authorizing service by publication the procurer of the order made a false representation that he was unaware of the whereabouts of the natural father, the inherent seriousness of such allegations require an evidentiary hearing to determine whether the due process requirements in the adoption proceedings were met. *White v. Davis*, 163 Colo. 122, 428 P.2d 909 (1967) (decided under former § 4-1-16, C.R.S. 1963).