

II. NATURE OF THE CASE

A. Nature of the Controversy

These matters concern clarification of the different roles of a Child Legal Representative (CLR), a Child and Family Investigator (CFI) and a determination of whether attorney Glynnna Baker violated the law; violated Chief Justice Directive 97-02; and violated several Rules of Professional Conduct when she acted in the dual role of both a CLR and a CFI in a post-dissolution parental decision-making and parenting time proceeding between two fit parents.

After the Court of Appeals denied her request for attorney fees and costs, attorney Glynnna Baker, a former Child and Legal Representative (CLR) returned to the trial court to seek an order and judgment for attorney fees and costs solely against the Respondent/Mother for representing herself in the Court of Appeals. Mother submitted a *Response; Affirmative Defense; and Counterclaim for Fees and Costs* pursuant to CRS §13-17-102 and C.R.C.P Rule 11 claiming Baker's claim for attorney fees and costs was groundless and frivolous because based upon the Court of Appeal's factual findings, Baker's Order of Appointment was void from its inception; Baker had violated the law; violated Chief Justice Directive 97-02; and had violated several Rules of Professional Conduct and that the Mother's right to procedural due process had been denied. Mother timely requested the newly appointed judge who had not previously presided over any aspect of the case to hold a hearing so that she could submit evidence to the court and be permitted to explain the circumstances surrounding attorney Baker's misconduct.

Attorney Baker did not deny or otherwise defend against Mother's Counterclaim.

The newly appointed judge refused to hold a hearing on Mother's Counterclaim and ordered solely the Mother to pay attorney fees and costs to attorney Baker.

B. Order being Appealed and Jurisdiction

This is an appeal from the order and judgment entitled “*Order Concerning Respondent’s Verified Motion For Relief Pursuant To C.R.C.P. Rule 59*” entered by the Honorable Robert H. Russell, II, Eighteenth Judicial District, State of Colorado on October 12, 2007 and mailed on October 18, 2007.

This Honorable court has jurisdiction pursuant to C.A.R. Rule 3 and the Appellant’s timely filing of this Notice Of Appeal.

C. Whether the Judgment or Order Resolved all Issues Before the Trial Court

Respondent/Appellant is of the belief that the “*Order Concerning Respondent’s Verified Motion For Relief Pursuant To C.R.C.P. Rule 59*” entered on October 12, 2007 and mailed on October 18, 2007 resolved all issues pending before the trial court with regard to attorney Baker’s claim for attorney fees and costs against the Respondent/Appellant and Respondent/Appellant’s Counterclaim for fees and costs against attorney Baker.

The Court has not yet ruled on Respondent/Appellant’s *Motion For A Finding Of Contempt and Sanctions* against the Petitioner/Appellee Danny G. Abbott; filed August 29, 2007.

Respondent/Appellant is of the belief that the court will not rule on Respondent/Appellant’s Motion because either 1) the Petitioner/Appellee’s former counsel did not provide the court with the Petitioner/Appellee’s correct address upon her withdrawal from the case or 2) the Petitioner/Appellee has failed to advise the Court of his current address since his former counsel was permitted to withdraw.

D. Finality of the Judgment Pursuant to C.R.C.P. 54 (b)

Respondent/Appellant's *Motion For A Finding Of Contempt and Sanctions* against the Petitioner/Appellee Danny G. Abbott; filed August 29, 2007 has not yet been ruled on by the trial court.

Respondent/Appellant is of the belief that the court will not rule on Respondent/Appellant's Motion because either 1) the Petitioner/Appellee's former counsel did not provide the court with the Petitioner/Appellee's correct address upon her withdrawal from the case or 2) the Petitioner/Appellee has failed to advise the Court of his current address since his former counsel was permitted to withdraw.

E. Date of Judgment or Order

The "*Order Concerning Respondent's Verified Motion For Relief Pursuant to C.R.C.P. Rule 59*" was signed on October 12, 2007. The Court did not attach a Certificate of Service to the Order nor was a Certificate of Service indicated on the Order. The envelope containing the Order indicates the Order was mailed on October 18, 2007. Copies of both the Order and the envelope are attached in the Appendix at numbers 1 and 2.

F. Extensions of Time to File Post-trial Motions

No extensions of time to file post-trial motions were requested.

G. Date any Motion for Post-Trial Relief Filed

Respondent/Appellant filed a *Motion For Relief From Judgment Entered on October 12, 2007 Pursuant to C.R.C.P Rule 59 and Motion For Evidentiary Hearing* on November 5, 2007.

Respondent/Appellant filed a *Motion For Leave To Amend Motion For Relief from Judgment Entered on October 12, 2007 Pursuant to C.R.C.P. Rule 59 and Motion For Evidentiary Hearing To Include Verified Affidavit of Nina M. Abbott – November 8, 2007* on November 9, 2007.

H. Date any Motion for Post-Trial Relief was Denied or Deemed Denied

Respondent/Appellant’s Motion For Relief From Judgment Entered on October 12, 2007 Pursuant to C.R.C.P Rule 59 and Motion For Evidentiary Hearing was “*deemed denied*” on January 4, 2008.

I. Whether any Extensions were Granted to File Notice of Appeal

None

III. Advisory Listing of Issues to Be Raised on Appeal

Issues may include, but are not limited to:

1. Because the newly appointed judge refused to permit a timely requested evidentiary hearing regarding Respondent/Appellant’s Counterclaim For Fees and Costs pursuant to §13-17-102 and C.R.C.P. Rule 11, all issues presented in the Respondent/Appellant’s briefs are subject to be issues raised on appeal.

2. Did the newly appointed judge misinterpret the Court of Appeals factual finding that attorney Baker’s October 15, 1998 *Order of Appointment* existed and the recognition of some---but not all---of the provisions of the October 15, 1998 *Order of Appointment* as being an “affirmation” of the lawfulness or legality of attorney Baker’s October 15, 1998 *Order of Appointment*.

3. Did the newly appointed judge err in finding that the Court of Appeals “already addressed” the violations of the Rules of Professional Conduct by attorney Baker that were enumerated in the Respondent’s Counterclaim when in

fact, there is nothing whatsoever in the Court of Appeal’s opinion that mentions or refers to the Rules of Professional Conduct?

4. Was attorney Baker’s October 15, 1998 *Order of Appointment* void from its inception when the *Order of Appointment* ordered the CLR to perform the functions of both a CLR and a CFI which clearly violated the law at §14-10-116(1) prohibiting the same person from serving in dual roles as both the Child Legal Representative (“CLR”) and as a Child and Family Investigator. (“CFI”).

5. Was attorney Baker’s October 15, 1998 *Order of Appointment* void from its inception when the *Order of Appointment* ordered the CLR to perform the functions of both a CLR and a CFI which clearly violated Chief Justice Directive 97-02

6. Was attorney Baker’s October 15, 1998 *Order of Appointment* void from its inception when the *Order of Appointment* required attorney Baker to violate the Colorado Rules of Professional Conduct 3.7 -- Lawyer as a Witness.

7. Was attorney Baker’s October 15, 1998 *Order of Appointment* void from its inception when the terms of the *Order of Appointment* operated to deny the Mother her right to due process of law because attorney Baker was permitted to submit “Reports and Recommendations” to the court but the Mother was prohibited by law to cross-examine the CLR, who functioned as both an advocate and a fact finder and whose written reports were relied on by the trial court in its findings.

8. Was the September 26, 2001 “*Order Reinstating Child’s Legal Representative’s Appointment To Answer Appeal*” void from it’s inception?

9. Was the Mother denied her right to due process of law when attorney Baker was permitted to present her “Reports and Recommendations” to the court

when the Mother was prohibited by law and had no attendant right to cross-examine attorney Baker?

10. Whether attorney Baker's "Reports and Recommendations" deprived the Respondent/Mother of procedural due process of law because her protected liberty interest in the companionship, care, custody, and control of her daughter was adversely affected by the statutory prohibition of calling the CLR as a witness and cross-examining her?

11. Did attorney Baker violate the law at §14-10-116(1)

12. Did attorney Baker violate Chief Justice Directive 97-02

13. Whether attorney Baker violated the Rules of Professional Conduct including:

- a. Colo. Rules of Professional Conduct 1.16
- b. Colo. Rules of Professional Conduct 3.3
- c. Colo. Rules of Professional Conduct 3.3(a)(1)
- d. Colo. Rules of Professional Conduct 3.7
- e. Colo. Rules of Professional Conduct 4.3
- f. Colo. Rules of Professional Conduct 4.4
- g. Colo. Rules of Professional Conduct 8.4
- h. Colo. Rules of Professional Conduct 8.4(c)

14. Did the newly appointed judge err in denying Respondent/Mother's request for a hearing regarding her counterclaim for fees and costs as sanctions under §13-17-102 and C.R.C.P. Rule 11 when the Mother timely requested the court conduct an evidentiary hearing and an opportunity to explain the circumstances surrounding the allegations of attorney Baker's misconduct and the damages the Mother incurred because of attorney Baker's misconduct when attorney Baker did not deny or otherwise defend against the allegations in the Mother's counterclaim?

15. Did the newly appointed judge err when he ordered the Mother to pay attorney fees and costs to the former CLR without determining whether attorney Baker's conduct in acting as both a CLR and a CFI had violated the law, Chief Justice Directive 97-02, the Colorado Rules of Professional Conduct and the Mother's due process rights?

16. Did the trial court have authority to award attorney fees and costs to attorney Baker for participating in the appeal absent direction to do so by the appellate court?

17. Did the court err in assessing only the Mother attorney fees and costs when the original Order of Appointment stated both parties would be responsible for any fees according to their income?

18. Did the newly appointed judge err in awarding attorney Baker attorney fees and costs when the Respondent Mother provided evidence to the court that *even if* attorney Baker's October 15, 1998 *Order of Appointment* were valid, her appointment terminated on April 14, 1999 upon the resolution of the post-decree motion regarding custody and parenting time when the court entered the Parenting Plan as an Order of the court and did not expressly continue attorney Baker's appointment and attorney Baker refused or could not provide any evidence of any other Order of Appointment that permitted her to participate in this case after April 14, 1999.

IV. Transcript Information

The trial court did not permit a hearing. All necessary transcripts from previous hearings in this case have been previously submitted to the Clerk of the District Court for inclusion in the record in previous appeals.

V. Pre-Argument Conference

No pre-argument conference is requested.

VI. Attorney Information

- A. Appellant/Respondent, Nina Abbott is appearing without counsel
Nina M. Abbott
16575 E. Alamo Place
Aurora, CO 80015
(303) 693-4797

- B. Appellee/Petitioner, Danny G. Abbott, is appearing without counsel
(last known address)
460 S. Marion Pkwy., Unit 1754
Denver, CO 80209
Telephone Number: Current telephone number has not been provided
to Appellant/Respondent

- C. Glynn Baker #28531, former Child Legal Representative
3900 E. Mexico Ave. Suite 330
Denver, CO 80210
(303) 777-7373

VII. Appendices to this Notice of Appeal

1. *Order Concerning Respondent's Verified Motion For Relief Pursuant to C.R.C.P. Rule 59* – signed October 12, 2007
2. Copy of envelope in which the “*Order Concerning Respondent's Verified Motion For Relief Pursuant to C.R.C.P. Rule 59*” was mailed – dated October 18, 2007.

3. *Motion For Relief From Judgment Entered on October 12, 2007 Pursuant to C.R.C.P. Rule 59 and Motion For Evidentiary Hearing* - filed November 5, 2007.
4. *Motion For Leave To Amend Motion For Relief From Judgment Entered On October 12, 2007 Pursuant to C.R.C.P. Rule 59 and Motion For Evidentiary Hearing To Include Verified Affidavit of Nina M. Abbott – November 8, 2007* filed on November 9, 2007
5. *Verified Affidavit of Nina M. Abbott – November 8, 2007* – filed on November 9, 2007

Respectfully submitted this ___15th___ day of February, 2008.

Nina M. Abbott,
Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the __15th___ day of February, 2008 an advisory copy of the above and foregoing **Notice of Appeal** was delivered to:

Clerk of the District Court
18th Judicial District, County of Arapahoe
7325 S. Potomac Street
Centennial, Colorado 80012

CERTIFICATE OF MAILING

I do hereby certify that on this ___15th___ day of February, 2008 I deposited in the U.S. Mail in a pre-addressed, stamped envelope, a true and correct copy of the foregoing **Notice of Appeal** to the following:

Danny G. Abbott
(last known address)
460 S. Marion Pkwy., Unit 1754
Denver, CO 80209

Glynn Baker
3900 E. Mexico Ave. Suite 330
Denver, CO 80210

APPENDIX

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5. *Verified Affidavit of Nina M. Abbott* – November 8, 2007 – filed on November 9, 2007