OPINION

Court Considerations for a Parent's Use of Marijuana: Does it Endanger the Child?

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As Colorado domestic courts see more cases concerning a parent's use of marijuana — medical or recreational — judges are increasingly faced with difficult decisions in determining whether a parent's marijuana use impairs the child's best interests.

At this time, case law on the issues is sparse and does not provide the courts substantial guidance. Experts are limited in information about marijuana's impact on a parent's ability to parent. We see many courts treat marijuana use similarly to how they treat a parent's alcohol consumption or consumption of any other substance which affects mental and physical capabilities to parent. Of course, each judge's personal background affects their opinion about the safety of a parent's consumption of marijuana. The reasons why a parent consumes marijuana can also affect how stringently a court will regulate their marijuana consumption.

In 2010, the Colorado Court of Appeals issued a decision regarding a parent's marijuana use. It is important to emphasize how narrow the holding in In re the Marriage of Parr is, which in turn may allow our courts to distinguish the facts of the Parr matter from the facts of other cases.

In the Parr case, the parents entered into a parenting plan that gradually increased Father's time from short, supervised visits to longer, unsupervised visits. The plan also provided that Father submit to "ongoing UA's and drug screenings to determine that he does not return to marijuana use." Soon after, Father was approved and added onto the State of Colorado Medical Marijuana Registry. Therefore, he filed a motion to waive the portion of the parenting plan that required urinalysis testing. A hearing was held and Father's motion was denied, and he was ordered to continue urinalysis testing, concluding that because he knowingly and voluntarily entered into the parenting plan, he was "stuck with it."


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Father then filed a petition for magistrate review, arguing that the requirement for urinalysis was contrary to his Colorado constitutional right to use marijuana. When the trial court reviewed Father's petition, no additional evidence was taken and no hearing was held, the petition was denied, and the order and the original parenting plan were affirmed. Of significance, the trial court added additional provisions to the existing orders for Father to have supervised parenting time until he could petition the court and provide clean weekly urinalysis and a clean hair follicle test to evidence that he was not using marijuana and that his marijuana use was not detrimental to the child.


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At that point, Father appealed the trial court's order and raised the narrowly tailored issue that the trial court erred by adding the additional provisions that in turn "restricted" his parenting time. The Court of Appeals looked to section 14-10-129(1)(b)(I) of the Colorado Revised Statutes, finding that a "court shall not restrict a parent's parenting time unless the parenting time would endanger the child's physical health or significantly impair the child's emotional development." With that, the court held that the first provision that Father may not use marijuana while with the child was simply a consistent provision from the original parenting plan and was not a restriction. However, the added provisions requiring hair follicle testing and to petition the court to obtain unsupervised visits were found to restrict Father's parenting time more so than the original parenting plan stated and restrict Father's parenting time because he had been exercising unsupervised parenting time. And the restriction was made without a hearing, and therefore without a finding of physical endangerment or impaired emotional development of the child. Interestingly, the court said, "[i]n reaching this conclusion, we do not express an opinion as to whether medical marijuana use may constitute endangerment; rather, we conclude only that endangerment was not shown here."

The narrowly tailored issue on appeal in Parr analyzed whether the trial court erred by adding the additional requirement for hair follicle testing and petitioning the court for unsupervised parenting time and basing these additional requirements or restrictions on the sole evidentiary fact that Father had admitted to medical marijuana use.

The Court of Appeals was clear to distinguish Parr from a Washington case

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That popular support at the local level is guiding the notion for the push for social spaces for marijuana, according to Chris Chiari, executive director of the Colorado NORML chapter, especially in a highly populous and tourism-centered city like Denver and in a home-rule state like Colorado.

With the city's focus on transit issues and other projects, Chiari said bringing through the ballot with popular support the best route.

"We could have brought this to the city council or through new legislation, but we can't ask elected officials to always be the ones to take all the risks when it comes to transformative policy around marijuana use." he said, referring to it as "carving the marble."

"So we're bringing a sensible policy to the ballot, knowing full well the day it wins, city council members will need to be engaged in that process," Chiari said.

Designed right, a group of private clubs for marijuana businesses should be a complement to the local economy, Chiari said, which is why the proposed ordinance language would bar clubs and private events from selling prepared food or alcohol. The idea is to encourage patrons to also buy food from area restaurants "with a stimulated appetite."

If passed as it's currently drafted, the proposed Denver city ordinance would also bar private marijuana social clubs and special events from being 1,000 feet of schools, daycares and addiction treatment facilities and would require "conspicuous signage" and a complete prohibition of individuals under the age of 21 from participating as patrons or proprietors at all levels.

There was talk of possible bills at the state level, but one promising to provide a permitting system for special events dissolved, according to Lewis Koski, the Director of the Marijuana Enforcement Division of the Colorado Department of Revenue. Although there is still a chance a bill to establish a statewide allowance for private clubs could surface, he said at the April 12 CLE.

According to Judd Golden, a Boulder attorney and Colorado NORML board member, there are also state laws and Clean Air considerations that make dovetailing restaurants and bars with public consumption allowances difficult. But there is also a provision in the citizen-passed Amendment 64 which bars consumption and use "openly or publicly."

"There are not any cases on point in Colorado concerning public and private that could be reasonably relied upon to stop an ordinance to establish a private club," Golden said.

That's where the "private" provisions in the proposed ordinance becomes good public policy, he said. It avoids running afoul of the intentions of Amendment 64 and also provides a safe social space for consumers.

"That's our theory, at least," he said. •

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where an evidentiary hearing was held and the restriction of parenting time was based on medical marijuana use and the danger of secondhand smoke and the parent's negative demeanor towards the children and others when the medical marijuana was used. By doing so, the Colorado Court of Appeals left the evidentiary door wide open with regards to showing medical marijuana use plus a showing of medical marijuana's negative attributes or any other showing of endangerment under C.R.S. section 14-10-129(1)(b)(I) at an evidentiary hearing may then constitute endangerment.

The crux of the court's narrowly tailored opinion hinges on the fact that there was no evidentiary hearing regarding endangerment.

Now, most courts are careful to consider many questions when determining why or how to limit or regulate a parent's marijuana use. Some courts view Parr as setting forth that the court cannot regulate any marijuana use without a showing of endangerment. Other judges have indicated that no marijuana use is appropriate during parenting time, regardless of the reason. Most courts view marijuana use, particularly recreational use, similarly to alcohol use: the court has the ability to regulate any parent's behavior under C.R.S. section 14-10-124 if the court finds that that behavior negatively impacts the child's best interests. •

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ON MARKETING
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BRAND REPUTATION: HOW YOU APPEAR IN PRINT AND ONLINE

In addition to being among the chief considerations in-house attorneys make in hiring a firm, managing your law firm's brand reputation has become a variable that law firms can positively impact, given all the opportunities to increase your visibility with online marketing. That said, a law firm that does not manage its online presence effectively can pay a huge price when an in-house client is unable to verify what led them to your firm.

IN-PERSON INTRODUCTORY MEETING: ACTIVITIES THAT LEAD TO A HANDSHAKE

In combination with or the absence of each of the above, BTI Consulting reported that in-house counsel have a tendency to hire attorneys whom they have personally met. It is important to note that while many law firm attorneys place an extremely high value on this form of engagement, their in-house peers rank it last to client service, referrals, thought leadership and brand reputation. Still, there is no question that an in-person meeting has value and presents significant opportunity. With that in mind, law firms should most certainly be exploring opportunities to position their lawyers within a handshake of their next client. •

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