

Survey of Family Law Cases 2004-2013

2009 Family Law Survey

GUARDIANS

In *Sidman v. Sidman*, 2009 Colo. App. LEXIS 1863 (Oct. 29, 2009), cert. granted 2009 Colo. LEXIS 1048 (Nov. 9, 2009), permanent guardians appealed from the district court's orders that their income, and capital gains, should be included in the child support calculation owed by the child's parents, and from the order that the guardians should travel with the child to Massachusetts, at their own expense, to allow parenting time with the parents.

The court of appeals found that C.R.S. § 14-10-115, relied upon by the trial court, does not mention a guardian's duty of support. According to the plain language of C.R.S. § 14-10-115, only the parents' income can be included in the determination of child support. This conclusion is supported by C.R.S. § 15-14-209(2), which provides that "[a] guardian need not use the guardian's personal funds for the ward's expenses," and various case law.

With regard to travel, the court found that C.R.S. § 14-10-115(11)(a)(II) provides that any expenses for transportation "shall be divided between the parents in proportion to their adjusted gross income." Thus, again according to the plain language of the statute, the parents, rather than the guardians, shall be responsible for any transportation costs. As such, the court reversed the trial court and remanded the case.

The supreme court granted certiorari as to the following issues:

(1) Whether a parent relinquishes his or her fundamental liberty interest in the care, custody, and control of his or her child by consenting to guardianship.

(2) Whether it was error to place the burden upon the parents to prove, by a preponderance of the evidence, that termination of non-parents' guardianship would be in the best interests of minor child, where the parents originally consented to the guardianship.