

Survey of Family Law Cases 2004-2013

2010 Family Law Survey

GUARDIANS, SPECIAL ADVOCATES, AND CHILD REPRESENTATIVES

The Permanent Guardians appeal 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 in In the Matter of Minor Child D.I.S., and Sidman v. Sidman, 2009 WL 3465724 (Colo. App. Oct 29, 2009) *cert. granted November 9, 2009*.

The Court 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. See In re the Marriage of Conradson, 604 P.2d 701 (Colo. 1979) (C.R.S. §14-10-115 does not include the financial resources of nonparents with whom the child is living); In re J.C.T., 176 P.3d 726 (Colo. 2007) (the guardian typically does not provide the financial resources to support the child).

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 orders are reversed and the case is remanded.

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 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 parents originally consented to the guardianship.

In In the Marriage of Kanefsky and Concerning Fremerman and Fremerman, 2010 WL 3432208 (Colo. App. 2010), Wife's co-conservators and co-guardians, who are not licensed to practice law, appealed Wife's permanent orders. A case of first impression in Colorado, the issue here is **whether a guardian or conservator**, acting as an incapacitated or protected person's legal representative, **may represent a ward or a ward's estate without an attorney**. After hearings in the dissolution and a related probate case, the probate court issued Letters naming Wife's Mother and Sister as co-conservators and co-guardians for the purpose of assisting Wife in her dissolution. After the permanent orders were entered, Mother's Conservators filed an "entry of appearance" in the dissolution case, and filed a notice of appeal on behalf of Wife seeking to reverse certain permanent orders. The Court of Appeals issued an Order to Show Cause for the Conservators to explain how they have standing.

A guardian or conservator is an incapacitated or protected person's legal representative. C.R.S. §15-14-102(6). Guardians may petition the court to initiate or maintain actions for dissolution of

marriage. C.R.S. §15-14-315.5(1). Conservators may prosecute or defend actions to protect the protected person's assets. C.R.S. §15-14-425(2)(x). While the Colorado Constitution allows every person to represent their interests in the courts, no one is allowed to prosecute or defend an action in which he is not a party without obtaining a license to practice law. C.R.S. §12-5-101.

The Court of Appeals held that non-lawyer conservators and guardians are statutory legal authorities only, and their legal authority does not create an exception to C.R.S. §12-5-101 requiring a license to practice law on behalf of others. Therefore, since the Conservators were not licensed to practice law, they cannot represent Wife without an attorney. The Court of Appeals stayed the case 60 days for the Conservators to obtain counsel.