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2024 IV-D Law Update

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Selected appellate decisions from October 1, 2023, through October 18, 2024

Administrative Authority

Note: An end to *Wright v. FSD*, 4:19-cv-00398 (E.D. Mo.), and the resumption of FSD's license suspension program may be on the horizon. The case, filed by a Washington D.C. public interest firm, raised constitutional concerns in Section 454.1005 RSMo. The district court dismissed claims of equal protection and right to travel violations; but the due process claim that the statute ignored the obligor's ability to pay spurred statutory changes.

Effective August 28, 2023, Senate Bill 35 amended Section 454.1005, providing for specific consideration of ability to pay in license suspension proceedings. The proposed regulations were published in the Missouri Register on July 15, 2024, and are found at 13 CSR 40-100.020.

Note: The first *Wright* class action case, *Jackson v. Rapps,* 947 F.2d 332 (8th Cir. 1991) (named by FSD personnel for District Court Judge Scott Wright) likewise addressed statutory failure to properly consider an obligor's financial condition.

Parentage

UPA applies to same-sex couples

In ***A.I.A.K. v. T.M.K.***, 695 S.W.3d 118 (Mo.App.W.D. 2024) the court held that the Uniform Parentage Act applies to same-sex couples.

Appellant and Respondent, both women, were in a romantic relationship. They agreed with a sperm donor that he would have no claim or interest in any resulting child. After a successful insemination, the women married in October 2016 while Appellant was pregnant. A daughter was born in December 2016 with both women listed as her parents on her birth certificate, "despite none of Respondent's genetic material being used to conceive Daughter."

In 2017, after a different man donated semen with the same "no claim or interest" agreements, Appellant gave birth to a son. Again, both women were listed as parents on his birth certificate.

In August 2019 Appellant filed a petition for dissolution of marriage in Platte County. "The judge assigned to preside over the dissolution action apparently questioned her ability to address issues related to the Children without a determination of the parties' legal relationships to the Children." In response, Appellant filed a UPA action in Platte County seeking custody and support against Respondent and both semen donors. One count requested "the trial court to determine the parent-child relationship with the Children held by Respondent and the respective donors of genetic material." The UPA action was assigned to a different judge than the one presiding over the dissolution action. Eventually the cases were consolidated and the UPA judge took all of them.

The trial court judgment, relying on *Schaberg v. Schaberg*, 637 S.W.3d 512 (Mo.App.E.D. 2021) concluded that to deny "Respondent the marital benefit of being the natural parent of [the Children] would be unconstitutional [because] being on birth certificates, child custody, and child support [are] benefits of marriage to which same-sex couples must have access." The judgment ordered that the children were the natural children of Appellant and Respondent, and that neither sperm donor had any claim or interest in either child.

Appellant claimed error because Respondent was excluded as the biological parent and the statutory exception for artificial insemination did not apply because Appellant was not inseminated under the supervision of a licensed physician.

Embarking upon a detailed analysis of the UPA's presumptions, the court ruled that "A review of the UPA indicates that, by its plain language, it applies to same-sex married couples."

Note: *Schaberg v. Schaberg*, 637 S.W.3d 512 (Mo.App.E.D. 2021) first decided this issue. *See Missouri IV-D Law,* pages 52-53.

Note: Finality for appeal was at issue because the Western District previously dismissed the appeal of the paternity issue because custody and support matters remined pending before the trial court. After that dismissal, Appellant dismissed her custody and support claims without prejudice and appealed again. The appellate court determined that dismissal of those matters was sufficient to vest the court with jurisdiction to hear the appeal.

"While the existence or nonexistence of a parent-child relationship under Chapter 210 is determinative for all purposes, issues of custody, visitation, support, and '[a]ny [other] matter in the best interest of the child' *may* but are not required to be determined in a paternity action. *See* section 210.841. In other words, issues relating to custody, parenting time, visitation, and child support do not need to be decided in this paternity action and can be decided in another proceeding. Thus, Appellant's dismissal of those issues does not affect our jurisdiction or the finality of the Judgments."

Picking the best UPA presumption of parentage (*Courtney* overruled)

A.I.A.K. v. T.M.K., 695 S.W.3d 118 (Mo.App.W.D. 2024) also dealt with the proper methodology of competing presumptions from Section 210.822 (marriage vs. genetic test). "If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is

rebutted by a court decree establishing the paternity of the child by another man." Section 210.822.3 RSMo. The facts supporting the best policy and logic were summarized by the court:

> Here, Appellant and Respondent were both identified as parents on the Children's birth certificates, and [sperm donors] each agreed with Appellant and Respondent prior to the Children's respective conceptions that, as the biological fathers, they would have no claim or interest in, and no contact or relationship with, any child that resulted from the artificial insemination of Appellant. Additionally, Respondent had been held out to the Children and the world as the natural parent of the Children, and actively participated in raising them as a parent. And, [sperm donors] never had parenting time with the Children, were never involved in decision-making concerning the Children, were never asked to provide emotional, financial or physical support to the Children, and, though both appeared at trial neither of them advocated for their own parenting time or any other rights with regard to the Children.

The court also addressed the last sentence of Section 210.822.3, which has caused problems for some litigants: "The presumption is rebutted by a court decree establishing the *paternity* of the child by another man." The court explained that the word *paternity* is not the equivalent of the UPA phrase "blood test" and thus does not trump the preceding sentence. "Thus, 'paternity' must be read to refer to the 'parent and child relationship,' meaning that the last sentence of section 210.822.2 must be read as any of the section 210.822.1 presumptions will be rebutted 'by a court decree establishing the paternity [parent and child relationship] of the child by another man [or woman].' *See also Schaberg*, 637 S.W.3d at 521 (holding that section 210.822 must be afforded a gender-neutral reading)."

The court then explained that the reading of "paternity" to mean "parent and child relationship" is "further buttressed by Section 210.836" which addresses what is to be considered as "evidence relating to paternity." Or, "evidence relating to a parent and child relationship." The court explained that relevant "evidence is *not* limited to blood tests." (emphasis original) Section 210.836:

> Evidence relating to paternity *may include*:
>
> (1) [evidence of sexual intercourse between two people during the possible time of conception]
>
> (2) [expert opinion about the probability one is the father based on duration of the birth mother's pregnancy]
>
> (3) [blood test results]
>
> (4) [medical or anthropological evidence based on tests performed by experts]; and
>
> (5) *All other evidence relevant to the issue of the paternity of the child.*

"All other evidence ..." was emphasized by the court. Thus: "Accordingly, section 210.836 contemplates a virtually unlimited array of 'relevant' evidence in considering paternity (the parent and child relationship), and certainly evidence of same is not limited to blood tests."

The Appellant also argued that Section 210.834 forecloses paternity with a negative genetic test and therefore negates the Section 210.822.1(1) marital presumption, which is merely a rebuttable presumption. A valiant effort, but nevertheless rejected by the appellate court. Reading the UPA provisions *in pari materia* (construed together) consistently and so that no part is rendered

meaningless, the court concluded that Section 210.834.4 applies only to the question of "nonpaternity," and not "paternity." Thus, that section only assists a person who is contesting the effort to establish the existence of a parent and child relationship."

"Stated differently, section 210.834.4 affords a person alleged to be a child's biological parent an absolute means by which said person can defeat an effort to declare that relationship – even if other presumptions under section 210.822 might support finding a parent and child relationship."

"In short, section 210.834.4 should be read as a 'shield' to protect someone who is challenging an assertion that they have a biological relationship to a child, and who is thus seeking a declaration of *non*paternity. To utilize section 210.834.4 as a 'sword' to block a person who a) *wants* to be declared to have a parent and child relationship and b) has a statutory basis for claiming a right to that relationship such as the section 210.822.1(1) marital presumption, as Appellant would have us do, betrays the underlying intent of the statute. This must be the result, because such a reading of section 210.834.4 is the *only* way that section 210.822.2 and section 210.836 are not rendered meaningless."

Note: The court overruled *Courtney v. Roggy*, 302 S.W.3d 141 (Mo.App.W.D. 2009) "to the extent that it reads section 210.822.2 as deeming one section 210.822.1 presumption 'clear and convincing' evidence able to rebut another section 210.822.1 presumption." *Courtney v. Roggy* was discussed and criticized at length at the 2010 MCSEA Conference. *See Missouri IV-D Law 3d* (2022), pages 50-51.

Note: So, Section 210.834 is a "shield" for someone challenging a biological relationship. What of the dis-establishment provisions of Section 210.854 that allow a court to decline to vacate a paternity judgment upon findings and conclusions "that it is in the best interests of the parties not to do so"?

Artificial insemination under the UPA need not require a physician

A.I.A.K. v. T.M.K., 695 S.W.3d 118 (Mo.App.W.D. 2024) also addressed the UPA's provision for artificial insemination, Section 210.824. Because neither child was conceived through insemination supervised by a physician, nor written consent obtained from Appellant's wife, the Respondent, Appellant argued that Respondent cannot be found to be a "natural mother" of the children. Rejecting this argument, the court noted that the definitions of "parent" and "parent and child relationship" in Section 210.817 "contemplate that a woman who is not a birth mother can nevertheless be a natural parent, as well as that the presumptions of a natural parent and child relationship set forth in section 210.822 are not in any way expressly limited by section 210.824."

The court also noted this portion of Section 210.824.1: "The physician's failure to comply with this section shall not affect the [parent] and child relationship."

Section 210.824 is "a safe harbor which *ensures* that a spouse who is not a biological contributor will be deemed the natural parent of the child as a matter of law."

"And, naturally, it follows that if a married couple's method of artificial insemination does not comport with section 210.824, the spouse who is not a biological contributor will not be *ensured* of a finding that he or she is the natural parent of the child as a matter of law pursuant to section 210.824. *However*, such a spouse would not be foreclosed from the possibility of such a finding

pursuant to the section 210.822.1 marital (or, perhaps other, relevant) presumption, and on the trial court's authority pursuant to section 210.836(5) to consider all evidence relevant to the issue of the parent and child relationship in determining whether that legal relationship exists."

Note: The "not be *ensured*" and "*however*" clauses envision various circumstances resulting in the conception of a child, some perhaps desired, others perhaps not.

Adjudicating paternity as an issue of fact: Admissions in pleadings

Kronk v. Awan, 694 S.W.3d 535 (Mo.App.W.D. 2024) dealt with odd claims by a parent who refused numerous orders for a psychological exam. It's a messy story but features some uncommon points that might one day prove helpful. The court confirmed that in a *dissolution* action, the court has authority to adjudicate issues involving the parties' children, regardless of whether they were born in or out of wedlock. "When contested, the determination of a child's paternity is an issue of fact." When the pleadings admit parentage, that factual issue is decided without the need for evidence.

If instead an issue is contested: "In all proceedings for child custody or for dissolution of marriage or legal separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem." Section 452.423.1 RSMo 2016.

Note: Assume at trial a parent denies paternity and a GAL is appointed. What should the GAL do? Now assume that after appointment but before the GAL did any work, that same parent recants and files an amended pleading admitting parentage. What should the GAL do at that point?

Note: In the above scenario, what are the obligations of the trial judge?

Dovetailing UPA and juvenile court: Due process and next friend required

In ***C.D.G. by & through Green v. Green*****,** 691 S.W.3d 342 (Mo.App.S.D. 2024), the children were taken into protective custody by the Children's Division in the fall of 2021. The Barry County Juvenile Officer thereafter filed a petition alleging abuse and neglect by both Mother and Father. These types of juvenile cases involve initial appearances, temporary custody orders, and then "permanency review hearings" to determine progress with reunification by at least one (and hopefully both) parents. While the juvenile case progressed, on February 25, 2023, Father filed a petition requesting a paternity declaration, sole legal and physical custody, and child support. He also filed a proposed parenting plan and motion to appoint himself as next friend. There was no record that the petition was served on Mother or that she had even been notified that it had been filed.

On March 8, 2023, the juvenile court held a scheduled permanency review hearing. The court also obliged Father and heard his paternity petition. Neither Mother nor her appointed counsel were present at the hearing. Inexplicably, the court entered judgment sustaining Father's paternity petition, awarding him custody and child support. Mother's motion to set aside the judgment was denied.

The appellate court reversed. Clearly, Mother had been denied procedural due process. A party not in default requires notice of the trial setting and an opportunity to be heard "at a meaningful

time and in a meaningful manner." The prior notice to Mother that a permanency review hearing had been scheduled was not sufficient to put her on notice that Father's petition would also be heard – especially since it was not filed until months later. Nor was Mother even afforded her thirty days to respond to the petition.

While the due process violation was determinative, the court also addressed the failure to appoint a next friend for the child, which was mandatory. Although the paternity "judgment" recited that Father was the child's next friend, there was no specific order appointing him. This too was fatal to the paternity judgment.

Note: Juvenile cases supersede any other type of custody matter, regardless of the posture of the other custody proceeding (e.g., final or temporary order). When a juvenile case is ready to be closed with a more permanent placement, often a hearing will be scheduled concurrently with the final juvenile proceeding to prevent a gap in a custody order. This case illustrates the error of not handling the other proceeding as a separate, albeit related, matter.

Note: When is it advisable not to issue notice to all interested parties in a matter involving a child even if a party is in default?

Note: Here, Father filed for child support about a year-and-a-half after the juvenile case had been filed. Although not reported, consider the ramifications of a support order entered shortly after the juvenile case was filed.

Retroactive Liability

Retroactive support only from date of personal service

Tolu v. Stientjes, 2024 WL 4487724 (Mo.App.E.D. 2024) reminds that a retroactive adjustment to child support can be made only from the date of personal service "or other date indicating the party's submission to personal jurisdiction." The trial court began exercising jurisdiction after only publication, so the award of retroactive support prior to personal service was reversed. The court discussed Section 453.370.6 RSMo that codifies the rule.

Determination and Imputation of Income

Statistical data may be considered for imputation

The obligor in ***Tolu v. Stientjes***, 2024 WL 4487724 (Mo.App.E.D. 2024) is a St. Louis immigration attorney. She "gave inconsistent testimony about the ups and downs in her legal career and the impact of COVID-19 and national immigration policies, and she expressed wanting to pay child support while simultaneously disputing paying child support." After reviewing her 2022 statement of income and expenses, and her 2020 tax returns, along with other past income reports, the trial court held that the obligor's testimony was not creditable; so, it concluded that it needed to impute income under Form 14, Line 1, Comment H. The trial court used data from both the Missouri Economic Research and Information Center and the Bureau of Labor Statistics – two surveys for which Comment H expressly allows judicial notice. Both

surveys suggested a monthly income of more than $10,000, and the trial court's imputation of $8,000 monthly income was affirmed.

Note: The appellate court also rejected the obligor's claim that a court may impute income only if there is a finding of underemployment.

Note: The U.S. Bureau of Labor Statistics reports begin at https://www.bls.gov/oes/. The MERIC data commences at https://meric.mo.gov/workforce-research/occupational-and-employment-wages-oews-dashboard.

Self-employment income properly determined from bank records

The obligor in ***Girgis v. Girgis***, 676 S.W.3d 510 (Mo.App.E.D. 2023) was self-employed. He complained that the trial court erred by not using his income reported on his tax returns. At trial the obligor submitted his tax returns from 2018 to 2020, when he worked as an independent contractor for Uber, Lyft, Postmates, Point Pickup, and Instacart. In 2021, he worked only for Point Pickup, but submitted no tax returns for 2021.

To establish the obligor's 2021 income, the obligee submitted his 2021 bank statements. The obligor admitted that the statements, minus certain deductions, accurately represented his current income. But he contended that the trial court erred by including certain deposits such as money from the sale of a truck, power washer, and an inheritance. But the obligor submitted no other records supporting the source of these deposits.

Affirming, the appellate court noted the trial court's significant discretion. "Where a parent has testified about calculating income, the circuit court is 'well within its discretion to find that [the] testimony was not credible and to reject that testimony.' ...The circuit court found 'parts of Father's testimony to be credible but a vast majority not to be credible or genuine.'"

Note: The technique of using a self-employed person's bank records is time well spent. Some obligors will have more accounts to locate and review as well.

Note: Carefully review Schedule C of any self-employed person's tax return. Not all legitimate business expenses should be considered to reduce actual income for child support purposes. Directions to Form 14, Line 1, Gross Income: "If a parent receives rents or royalties or is self-employed, in a sole proprietorship, or business with joint ownership, "gross income" is gross receipts minus the ordinary and necessary expenses incurred to produce such receipts. Depreciation, investment tax credits and other non-cash reductions of gross receipts may be excluded from such ordinary and necessary expenses."

Note: Directions to Form 14, Line 1, Gross Income, Comment A: "'Income'" for purposes of computing the presumed child support amount consists of a financial benefit or money received by a parent that could have a positive impact on the parent's ability to support the parent's children."

Child Support Calculation

Consideration and findings for work-related costs is mandatory

In ***M.D.P-W. by B.N.W. v. M.P.***, 684 S.W.3d 357 (Mo.App.W.D. 2024) the trial court awarded joint legal and physical custody, essentially alternating parenting time on a monthly basis. The

court ordered: “Each parent shall pay any/all daycare expenses incurred by him/her in association with daycare needed during his/her parenting time.” But, regarding these daycare expenses, the trial court also stated: “No childcare expenses will be included in the child support calculation.” It then entered “0” for those costs on Form 14.

Reversing, the appellate court noted that by the language of the judgment (“[e]ach parent shall pay any/all daycare expenses incurred by him/her in association with daycare needed during his/her parenting time”) “this wording presumes each parent *will* incur necessary childcare costs.” (emphasis added). “Without findings as to why no childcare cost was included for lines 6a and 6b, we cannot discern whether the trial court considered such costs in determining child support.”

The appellate court noted that directions to Form 14 allow a court to exclude work-related costs under certain circumstances. But because the trial court did not make findings explaining why it assigned daycare costs of zero on Form 14 while acknowledging that the parties would in fact incur costs, remand was required.

Extraordinary expenses must be proven by substantial evidence

In ***Woolery v. Woolery***, 679 S.W.3d 17 (Mo.App.W.D. 2023) the trial court added $234 in extraordinary expenses for cell phones for the children and car insurance for the older child. Reversing, the appellate court explained that there was no substantial evidence to support such costs as extraordinary expenses.

The Form 14 instructions direct that “other extraordinary child rearing costs” are not included in the basic child support calculation, but the trial court retains discretion to include them in its final child support calculation. In exercising that discretion: “An award of extraordinary expenses must not include a redundancy in the children's living expenses already, and must otherwise be just and reasonable.”

The court noted that in some cases, cell phone and car insurance costs might be includable. “We are not holding that costs related to cell phones and motor vehicle insurance cannot ever be appropriately considered extraordinary expenses. In today's society with the lack of access to public telephones, cell phones may be the only means of communication for parents and children. Where other means of transportation is not available, children who are licensed drivers may need to drive on their own to attend school, social and athletic activities.” To qualify as an extraordinary expense, “it should be related to an activity intended to enhance the athletic, social or cultural development of the children.” Here, the obligee “did not present any evidence that the costs of cell phones and motor vehicle insurance are more than ordinary living expenses for Children that are covered by the presumed child support amount. …[N]o evidence was presented that these costs were integral to, or even associated with, an activity intended to enhance the athletic, social or cultural development of Children.”

As part of its parenting plan, the trial court also ordered the following:

> Each parent shall pay one-half of extraordinary child rearing expenses incurred on behalf of the child. Extraordinary expenses include, but are not limited to the following:
>
> Educational expenses for college or post-secondary education,
>
> Special, private or parochial elementary and secondary schooling expenses,

> School supplies,
>
> School clothes and shoes,
>
> Tutoring sessions,
>
> Camps,
>
> Lessons,
>
> Athletic activities, including costs of the activity and equipment needed for the activity.
>
> Extracurricular activities,
>
> Travel and other activities intended to enhance the athletic, social or cultural development of a child.
>
> ...
>
> *Other Expenses For The Children:* Each parent shall pay up to $7,000.00 each to acquire a vehicle for each, and pay 50% of the sales tax for each vehicle. Each parent will pay one-half of the children's vehicle expenses, including but not limited to, maintenance and repairs for the vehicle up to $2,000.00 per year per child, such that each parent's one-half will be limited to $1,000.00 per year per child. The cost of insurance for [the older child] is included in the Form 14 calculation. The cost of insurance for [the younger child] shall be paid one-half by each parent when it is incurred. The cost of the children's monthly cell phone plan is included in the Form 14 calculation.

In similar fashion, the appellate court reversed, ruling that such an order permitted the obligee to receive a double recovery. "No evidence was presented that Children attend or need to attend a private or parochial school. No evidence was presented that the school Children attend required special school supplies, clothing, or shoes. Thus, expenses related to Children's schooling, school supplies, and school clothes and shoes are not extraordinary and are covered by the basic child support amount."

Extraordinary and basic expenses; no duplication allowed

In ***J.W. by K.C.G. and K.C.G. v. N.R.W.***, 695 S.W.3d 231 (Mo.App.W.D. 2024), the court ordered the parties to split the cost of certain "extraordinary" child expenses, in addition to the periodic support order: "school pictures, school lunches, graduation supplies, letter jackets, school clothes/shoes, school supplies, class rings, cell phones, cars, car insurance, and senior pictures." Reversing, the appellate court explained:

> Extraordinary costs are those expenses that are not included in the basic child support calculation, and include, but are not limited to, "tutoring sessions, special or private elementary and secondary schooling to meet the particular educational needs of a child, camps, lessons, travel and other activities intended to enhance the athletic, social or cultural development of a child.

See Form 14, Line 6e, Comment A. "An extraordinary expenses award must not be redundant by including costs already accounted for in the child's ordinary living expenses, and the award 'must otherwise be just and reasonable.'"

In this case, the order for school lunches, cell phones, and car insurance do not meet Form 14's definition of extraordinary expense and were already included in the basic child support amount.

Note: These trial court mistakes are sometimes the result of the court adopting a parenting plan listing certain "extraordinary expenses" and then elsewhere ordering each party to pay a portion (usually half) of "extraordinary expenses."

Overnight credit must be supported by record

In ***Hagen v. Harris***, 680 S.W.3d 529 (Mo.App.E.D. 2023) the trial court adopted the obligor's Form 14 with a 34% overnight credit but adopted the guardian ad litem's proposed custody schedule with a few adjustments. The custody schedule did not support a 34% overnight credit, so the appellate court remanded for correction.

Note: *See also* ***Girgis v. Girgis***, 676 S.W.3d 510 (Mo.App.E.D. 2023), where the appellate court corrected the judgment to increase a 9% overnight credit to a 10% overnight credit, amounting to an order $16 less for two children and $11 less for one child.

Healthcare and Insurance

Claim for cheaper insurance (e.g., Medicaid) must be supported by evidence

A party complaining that the trial court could have ordered a child be covered by less expensive health insurance must present evidence to support that proposition. In ***Girgis v. Girgis***, 676 S.W.3d 510 (Mo.App.E.D. 2023) the obligor claimed that the children could have been enrolled in Medicaid, a cheaper alternative to the health insurance provided through the obligee's employer. Affirming, the appellate court noted that the obligor did not object to the obligee's Form 14 with the health insurance amount listed; nor did he produce any evidence to the contrary. In fact, the obligor's proposed judgment directed the obligee to maintain health insurance through her employer. Thus, the obligor acquiesced and cannot now complain of error.

Modification

Judicial stay ends with case dismissal; Administrative mod remains

In ***FSD v. Adams***, 686 S.W.3d 663 (Mo.Appp.S.D. 2024) FSD docketed an administrative support order in 2014. In July 2017, FSD filed an administrative modification for $1,000 monthly. Rather than requesting an administrative hearing, father filed a judicial motion to modify. FSD's motion was docketed with the circuit court but stayed pending the judicial modification of the parents' "dueling judicial motions to modify."

In 2020, mother's motion was stricken due to discovery violations and father dismissed his judicial motion to modify. In October 2022 FSD filed a "Motion to Determine Current Support Amount Arrearages" in circuit court, arguing that father's voluntary dismissal of his judicial motion to modify extinguished the 2017 judicial stay of the administrative modification. The trial court determined that father's failure to request an administrative hearing constituted a failure to exhaust administrative remedies and thus foreclosed his right to judicial review of the 2017 administrative modification order.

Affirmed. The court explained that the process for seeking judicial modification of an administrative support order is different from the process for contesting an administrative proceeding. While an obligor may modify an administrative order administratively or judicially, the filing of a judicial modification does not absolve him of the requirement to exhaust administrative remedies if he is defending agency action. Because FSD had filed administratively, the obligor was required to exhaust his remedies regardless of whether he filed judicially. "A failure to request an administrative hearing to contest an administrative modification of a child support order is a failure to exhaust one's administrative remedies." (See **Note 1** below.)

The court explained that to seek *prospective* modification, an obligor has two options: (1) seek administrative modification under Section 454.500; or (2) seek judicial modification under Section 454.501. And the movant may seek a judicial stay. However, the stay does not apply to any "'support arrearage which may have accrued under the director's order." Section 454.501. "So, if a party files a judicial motion to modify seeking prospective relief, a trial court can enter a superseding order that alters the party's child support responsibilities going forward, but it does not impact the arrearages that have already accrued." "[T] o the extent Father's motion to modify could be graciously construed as a motion for a prospective relief of the 2017 administrative modification order, Father abandoned that claim when he voluntarily dismissed his motion in 2020."

Note 1: This case involved the administrative modification of an administrative support order (original "Notice & Finding of Financial Responsibility"). Because of the nuances of an administrative modification of a *judicial* support order, it should not be cited as authority to default a party not responding to the latter. *Chastain v. Chastain,* 932 S.W.2d 396, (Mo. Banc 1996): "Judicial review cannot be conducted by default or assumption. It requires active judicial consideration of the propriety of the actions and decisions of other departments of government. Where a statute makes judicial review mandatory, it cannot also erect a default procedure that assumes judicial approval by the mere passage of time."

Note: The opinion described that while the obligor's judicial motion to modify was pending, "the director of FSD entered a default administrative modification order … increasing [obligor's] child support obligation to $1000 per month." The term "default" for an administrative modification of an *administrative* order is found in Section 454.500.1. Because an answer is not required in a judicial motion to modify, there are effectively no pleading defaults in judicial modifications. *Cramer v. Cramer*, 125 S.W.3d 373 (Mo.App.W.D. 2004).

Note: FSD requested circuit court determination of the arrearage. Was it required to do that?

Post-Majority Support

Abatement for failure to confirm enrollment is discretionary

In ***Tolu v. Stientjes***, 2024 WL 4487724 (Mo.App.E.D. 2024) both children failed to provide formal documentation of college enrollment, but the trial court found the obligor had knowledge of their enrollment. Citing the permissive language of Section 452.340.5 RSMo, the court declined to abate child support.

Note: However, if the court elects to abate support, it cannot be reinstated:

> … Upon request for notification of the child's grades by the noncustodial parent, the child shall produce the required documents to the noncustodial parent within thirty days of receipt of grades from the education institution. If the child fails to produce the required documents, payment of child support may terminate without the accrual of any child support arrearage and shall not be eligible for reinstatement. …

Support redundancy viewed from perspective of payor

Sansone v. Fulton, 679 S.W.3d 9 (Mo.App.W.D. 2023) approved of an effective "abatement" during the child's attendance at college to avoid payment redundancy. While fact-specific, the case demonstrates an acceptable college support order to avoid redundancy.

At trial, the mother provided evidence to support her argument that her living expenses, including home maintenance, utilities, automobile maintenance, and real estate license fees, would remain the same while the child was attending college. She testified that her son lives with her full-time when he is not at college and introduced an email into evidence that purported to list 111 days between August 19, 2021, and April 17, 2022, (a period of 241 days) when child stayed at her home and was not at college. The father, on the other hand, testified that he pays for his son's health insurance, car insurance, vehicle repairs and maintenance, gas, and cell phone expenses. Father testified that he paid $30,000 to buy his son a car. He contested the contention that child always lived with his mother whenever he was not at college and testified that his son had been living with him that summer during the weeks preceding the evidentiary hearing.

The trial court increased the obligor's support obligation from $1,981 to $2,376 per month, but then prorated it by multiplying it by four months and then dividing that product by twelve months to "adjust" the amount to $792 monthly. The practical effect was to abate Husband's monthly child support obligation for eight months during a twelve-month period during any calendar year while Child was attending college full-time. The trial court also ordered that the father pay 95% and mother pay 5% of their son's room and board, tuition, books, and college fees moving forward. As mother had already paid some college expenses, the trial court ordered father to reimburse mother for $26,868.85, an amount equal to the 95% of their con's tuition and fraternity payments.

Affirming, the appellate court rejected mother's argument that the trial court "eliminated" father's support obligation for eight months when the child was attending college. She claimed that abatement was not appropriate unless the payments are redundant; and her evidence established that she had ongoing expenses.

The court explained that "'Redundancy' is … viewed from the perspective of the payor." The appellate court found no abuse of discretion in the trial court's findings including those of substantial payments for child described above. "Based on this evidence, the trial court could reasonably have concluded that Husband would be directly paying virtually all of Child's educational, living, medical, and recreational expenses … during the months Child was at college such that requiring Husband to also pay court ordered child support to Wife during those months would amount to an unreasonable redundancy."

Note: "Wife contends that Child stayed at Wife's home for a variety of reasons including overcoming COVID-19, feeling homesick, completing homework, school breaks, and remedying sleep deprivation that Child experienced from fraternity activities."

Enforcement

Waiver of defense of indefinite judgment

A classic rule from commercial law is that money judgments must be definite and certain to be enforceable. This had been applied to domestic support cases, and sometimes produced unfair results. Beginning with *Bryson v. Bryson*, 624 S.W.2d 92 (Mo.App.E.D. 1981), the law evolved to allow enforcement provided the amount due could be determined without resort to unfettered extrinsic evidence. The most notable case addressing this issue in the IV-D world was *Echele v. Echele*, 782 S.W.2d 430 (Mo.App.E.D. 1989). It was a watershed case for ordering college and post-high school support. Typically, college support clauses order contribution of a percentage of college costs without specifying a number but capped at a solid reference, often tied to the cost to attend Mizzou, as that school was used in an example of acceptable language set forth in *Echele*:

"Husband shall pay one-half of the cost each year for each child attending a post-secondary college, university, or vocational/technical school, state or private, subject to the following limitations:

> 1) 'Cost' shall include tuition, fees, books, dormitory costs for room and board. It does not include room and board while residing with either parent.
>
> 2) The 'one-half' husband is to pay shall be the actual cost to the child, i.e. if child receives a scholarship or other aid which reduces cost, the 'cost' does not include the amount of such scholarship or aid. For this purpose, loans to the student shall not be considered a 'scholarship or other aid.'
>
> 3) The child must carry at least a minimum number of credit hours each semester which, according to the institution the child attends, constitutes a full load.
>
> 4) The maximum cost which husband shall be responsible for in any given school year will be one-half of the then cost for tuition, fees, books, and dormitory costs for room and board at the University of Missouri at Columbia, regardless of what institution the child attends.
>
> 5) The husband shall not be responsible for paying for more than eight semesters at a college or university."

"Pursuant to *Echele*, a decree or order establishing child support is enforceable if it sufficiently identifies the categories of items for which a parent is financially responsible, using limiting criteria so that, although the exact amount owed by the parent cannot be determined from the fact of the order or decree, the parent's obligation is not open-ended and the exact amount due can be determined by ministerial computation or evidence presented at a hearing." *Pratt v. Ferber*, 335 S.W.3d 90, 95 (Mo.App.W.D. 2011).

In ***Brown v. Haley***, 687 S.W.3d 27 (Mo.App.S.D. 2024), the obligor was subject to a previous partially unenforceable order, but because he failed to challenge it with a post-judgment motion and on appeal, he was foreclosed from any relief from a subsequent modification determining his arrears.

A consent 2008 judgment directed each parent to be liable for 50% of uninsured medical expenses. And: "The parties shall share equally all expenses for extracurricular activities of the children such as private lessons, sports activities, etc., including sign up costs as well as

uniforms, etc." The court noted that no post-trial motions were filed nor an appeal taken. Father paid $250 toward his share in 2012 but still leaving an arrearage. In 2013, Father sent Mother a check for $2,500 with a notation that it was for: "All the medical expenses." On advice from counsel, Mother did not cash the check as it might have foreclosed her right to college a larger and more accurate sum.

In 2014, the court entered a judgment of modification. In the court's parenting plan, each parent was ordered to pay 50% for post-secondary education subject to several limitations and capped by the costs to attend Mizzou. For extracurriculars, the order stated: "Father and Mother shall each pay 50% of the minor children's extracurricular activities." No post-judgment motion was filed and an appeal was not taken.

In 2015 Father filed a motion to modify; Mother filed a countermotion. After amended pleadings the cause finally came to trial in 2021. The appellate court affirmed a judgment of $141,282.52 against Father for educational, extracurricular, and uninsured healthcare expenses. The court rejected Father's claim that the 2014 judgment was unenforceable because there was no limitation on the dollar amount. While that argument might have worked earlier, the court held Father had waived it by not filing a post-judgment motion or appealing the 2014 judgment.

Father argued that the absence of limiting language "renders an expense provision in a judgment void and unenforceable." The appellate court termed Father's argument as "a holdover from an era when many Missouri appellate decisions described mere legal errors as jurisdictional, which was then used to evade existing limitations on appellate review. This rationale is no longer valid in Missouri." Thus, the 2008 and 2014 judgments were not void and are not subject to collateral attack on an appeal of the 2021 judgment. The court also held that Father's failure to file a Rule 78.07(c) post-judgment motion in both cases precluded relief in the 2021 judgment.

Note: Would the fact that the 2008 judgment was by consent make any difference?

Note: If Mother had cashed the $2,500 check, would her right to collect more have been jeopardized?

Prospective order enforceable if not conditional or indefinite

In ***J.W. by K.C.G. and K.C.G. v. N.R.W.***, 695 S.W.3d 231 (Mo.App.W.D. 2024), the trial court ordered joint physical custody with parenting time to change upon the child beginning preschool at age three. At that time, mother was ordered to begin paying child support to father. Because there was no evidence that the child would in in fact begin preschool at age three, the appellate court reversed. The court explained that such a prospective order changing parenting time would be enforceable if it was not conditional and the circumstances were certain to occur. For example, because school attendance is mandatory, changing a schedule upon entry into kindergarten would be appropriate. Thus, the corresponding support order was reversed as well.

Note: Assume the trial court's judgment was not appealed. The child began preschool at age three, and father sought to enforce the support order. Would it be enforceable?

Passive objection to medical procedure no defense to contempt

Some obligors chafe at being asked to contribute to unique medical care, such as orthodontia. The argument goes like this: One parent gets a report and estimate for braces, asking the other parent to contribute half. That parent objects, claiming he (or she) doesn't believe braces are necessary. With a standard clause such as "each parent shall pay half of all necessary medical expenses," the fight turns to whether the braces are "necessary."

In ***Woolery v. Woolery***, 679 S.W.3d 17 (Mo.App.W.D. 2023) mother sought contempt when father refused to pay his half for orthodontia. Affirming the contempt finding, the appellate court noted that Father didn't present any evidence supporting his belief and did not attend any orthodontic appointments to question the necessity of the braces. Given these circumstances, expert evidence was unnecessary. Additional Facts:

> Mother testified that Father was aware that Mother took their child to the orthodontist in March 2020 to discuss getting braces. In July 2020, Mother reached out to Father to see what his thoughts were about that consultation. Father stated he would talk to his wife about the issue.
>
> Mother reached out to Father in August 2020, and Father stated that his insurance provider at work would be changing and that he would like to wait until after the first of the year. Father also stated that he had other children in his household who needed braces first. Mother reached out to Father in January 2021 about the braces. Father stated he wanted a second opinion. Mother took their child to a second orthodontist. Father was informed of this appointment ahead of time and did not come to the appointment. Mother sent Father the information from the second consultation.
>
> Father informed Mother that he wanted to take their child to an orthodontist close to where he lived for a consultation. Mother felt that the orthodontist being that far away was not feasible. Mother could not drive that far for orthodontist appointments. Mother intended to attend the appointment Father made anyway but the appointment was cancelled because of a conflict with soccer.
>
> In March or April of 2021, Mother informed Father that she was proceeding with the cheaper of the two estimates. Mother testified that the braces were not just for cosmetic reasons. The braces would adjust their child's jaw and would help with headaches. The braces should also help with the child's breathing given that the child had a deviated septum. Mother shared all the information she had with Father and provided Father with the contact information for the orthodontist. Father never called or spoke with the orthodontist. Father testified that one of his stepchildren received orthodontic work during this time.

Note: This was a contempt action. What other remedies could Mother have used?

Arrearage arising during Chapters 7-13-7 conversions not dischargeable

Child support debtors have never fared well in bankruptcy court. Years ago, other domestic support obligations ("DSOs", such as a money judgment for property division) were subject to a financial balancing test to determine whether they would be discharged. Following an amendment to the bankruptcy code, most of DSO's are not dischargeable. *See generally* Missouri IV-D Law, 3d ed (2022), pp. 312-16.

A Chapter 7 bankruptcy proceeding involves liquidating most assets to pay debts – a practical fiction as most creditors walk away from a process that will give them little or nothing. A Chapter 13 proceeding involves either a three or five-year repayment plan, where usually small portions of debts are paid (with the rest discharged) while the debtor retains much of his assets. The extent of bankruptcy litigation is driven by the motivation of the creditors to collect their obligations. A bankruptcy trustee monitors these proceedings, urging the bankruptcy court to act as deemed necessary.

DSOs are a different story. Child support and maintenance (alimony) is not dischargeable and in a Chapter 13 repayment plan, the debtor must pay at least the current amount ordered. Failing that, the Chapter 13 plan will be converted to a Chapter 7 plan and all non-exempt assets will be subject to liquidation. (Notably, *no* assets are exempt for support obligations.) But: To retain priority, nondischargeable status qualifying to receive bankruptcy estate property, DSOs must generally arise prior to filing or conversion. *Generally.* But not always.

Debtors with something to lose sometimes have their cases converted from a Chapter 7 to a Chapter 13 (and vice-versa if they don't comply with the repayment plan). The debtor in ***In re LaMonda***, 656 B.R. 491 (B.A.P. 8th Cir. 2024) filed a Chapter 7 case, converted to a Chapter 13, and then reconverted to a Chapter 7. The case is notable for its holding that a priority support debt retains its preferred prepetition status despite being created post-petition – because the second conversation back to a Chapter 7 rendered the debt pre-petition.

Dr. Justin LaMonda was a physician in Moberly, Missouri. In 2017 he was suspended from practicing medicine for 30 days after having sex with his office manager and prescribing her controlled substances without cause. In 2018, Medicare revoked Dr. LaMonda's privileges after discovering he had submitted reimbursement claims for services performed while he was suspended. He colluded with his father, also a physician, to submit claims under his father's name. The two then expanded their scheme for fraudulent claims under both Medicare and Medicaid totaling more than half a million dollars.

In August 2019 Dr. LaMonda filed a Chapter 7 case. In November 2019 he was ordered to pay child support of $2000 monthly. The following month, the bankruptcy court allowed him to convert his case to a Chapter 13. Several years later, in the face of a federal indictment and months of bankruptcy litigation, the case was reconverted to a Chapter 7. During all of this, the elder Dr. LaMonda died in 2021. In 2023 Justin LaMonda was sentenced to 22 months in prison and ordered to repay $537,000.

After the last conversion of the case to a Chapter 7, the debtor's ex-wife filed an $80,000 unsecured priority claim for child support. The bankruptcy trustee objected, citing a code provision that claims for post-petition domestic support are disallowed. The obligee claimed that while her claim arose after the initial order for bankruptcy relief, it arose before conversion and should therefore be treated as a prepetition claim. The bankruptcy court rejected the obligee's claim, but the Eighth Circuit Bankruptcy Panel reversed. The opinion sets forth a review of the applicable bankruptcy code provisions controlling conversions of these cases. It concludes that the code does not distinguish between one-conversion and two-conversion cases: "…[T]he claim against the estate or the debtor must arise after the order for relief but before conversion in a case that is converted … to be eligible to be treated as a prepetition claim." Because the claim arose before the last conversion, it qualified as a priority, nondischargeable debt.

UFTA statutes of limitation

The Missouri Uniform Fraudulent Transfer Act, UFTA, generally has a four-year statute of limitations with a one-year grace period after lapse for some transactions "after the transfer or obligation was or could reasonably have been discovered by the claimant." Section 428.040 RSMo 2016.

In ***Martin v. Martin***, 687 S.W.3d 416 (Mo.App.W.D. 2024) the parties were divorced in 2006 in Johnson County, Kansas. The obligor was ordered to pay $1,030 monthly child support and $1,333 monthly spousal maintenance for sixty consecutive months. The obligor has been in arrears for both child and spousal support since 2007. A Johnson County, Kansas district court has ordered the obligor to pay past due child support arrears at least seven times.

The obligor is a retired NFL football player. In 2015 (the opinion states "prior to 2018"), he and his "New Wife" (term used by the Court of Appeals) along with other NFL players sued the Kansas City Chiefs for injuries from concussions. (This was not the larger suit against the NFL for chronic traumatic encephalopathy, CTE). The obligee filed a judgment lien. In August 2018 the Chiefs settled with the obligor for $1.3M. The former linebacker made no effort to pay his support arrears.

In September 2019 the obligee filed a contempt action in Johnson County, Kansas. Following a March 4, 2022, hearing, the court found the obligor in "indirect civil contempt" and allowed him to purge himself by paying $94,657.67 cash.

Relevant for fraudulent conveyance litigation, the Johnson County court made the following findings:

> [The] Court notes the following as examples of the Respondent's conduct, but this is not an exhaustive list demonstrated through the evidence presented at trial. The Plaintiff received, from Respondent, a parcel of real estate in Alabama, as part of Plaintiff's collection efforts. Following this transfer, the Respondent then executed a Quit Claim Deed transferring an interest in the property to a family member. This act clouded the title to the property and, in essence, made the transfer worthless and of no value. In addition, the Respondent had transferred assets to his spouse in order to evade collection efforts and to ostensibly create an appearance of the lack of an ability to pay past due support judgments. Nonetheless, the Respondent, by his own testimony, stated that he has received a settlement from the NFL and other entities in 2018 of approximately $300,000.00. There was a lien on the settlement proceeds by virtue of the action filed in Missouri in favor of Plaintiff, yet the lien was not honored by the settling party, the Respondent's attorney, or the Respondent. Instead, Respondent indicated that he received those funds but paid none of that to Plaintiff to satisfy and/or reduce the existing judgment/court orders regarding past-due support. Respondent further testified that he took the remaining settlement monies (after fees were deducted by his personal injury lawyers) and applied it to his own needs by purchasing a home which he then appears to have titled solely in his current Wife's name. Similar efforts appear to have been taken with respect to his primary marital residence in Kansas City, Missouri (titled only in her name), based upon the evidence, as well as with numerous high-priced luxury automobiles. These are willful acts which this Court conclude are reflective of Respondent's bad faith and his unwillingness to pay his debts and comply with the Court's prior orders–despite an ability to address the same.

> ...
>
> [H]aving reviewed the evidence in this case and having heard the testimony of the witnesses, that the facts clearly demonstrate that the Respondent has willfully violated the Court's orders and existing judgments and has intentionally obfuscated in bad faith what is essentially bordering on fraudulent conduct as it relates to trying to pay the outstanding arrearage and judgments that have been previously entered by this Court.
>
> ...
>
> [T]his Court believes he has not only the ability to pay but the assets to pay and the resources to pay given the numerous properties, the numerous vehicles that this Court believes are in effect his with his wife, the fact that there were hundreds of thousands of dollars received from the NFL settlement that were immediately transferred to a home that was then titled in his wife's – new wife's name, does not make them any less his property.

Following the Kansas contempt judgment, the obligor and "New Wife" sold their prior home and moved to a new one. The obligor then transferred "real property, assets, and money to New Wife in an effort to evade the debt owed to [obligee]."

In February 2023, with all parties living in Missouri, the obligee filed to set aside the fraudulent conveyances under the UFTA. In June 2023 the Jackson County court dismissed the claim with prejudice, finding that the transfers occurred in August 2018 and October 2016, all beyond the statute of limitations.

Reversing, the appellate court held that because the petition did not specify dates of all questionable transactions, it "does not show on its face that it is barred by the statute of limitations," so a motion to dismiss was premature. The court further opined: "On remand, nothing prevents Respondent from filing a motion for a more definite statement pursuant to Rule 55.27(d), asserting the statute of limitations as an affirmative defense, or raising his statute of limitations arguments again in a properly supported motion for summary judgment pursuant to Rule 74.04."

The obligee was aware of the settlement and payment to the obligor when she filed her September 2019 Kansas motion for contempt. But the obligee was not alleging a fraudulent transaction from the Chiefs to the obligor. Rather, the fraudulent transaction was from the obligor to New Wife. If the Jackson County claim was filed within one year of learning of *any of those* transfers, it was timely for those transactions.

Note: The UFTA petition did not specify dates of all the claimed fraudulent conveyances, and thus was saved from an early dismissal. As discussed in the opinion, that kind of specificity is not required to survive a motion to dismiss. Because subsequent discovery will clarify evidence of knowledge, the better practice is to plead fraud with particularity.

Note: Borrowing mostly from the reported facts, assume these things:

2016	Obligor transfers home on 60th Terrace in Kansas City to himself and New Wife
August 2018	Obligor gets settlement from Kansas City Chiefs

September 2018	Obligor uses settlement money to buy new home titled sole in New Wife's name
April 2022	Obligor and New Wife sell 60th Terrace home
May 2022	Obligee learns of September 2018 new home purchase
March 2023	Obligee files to set aside all transfers

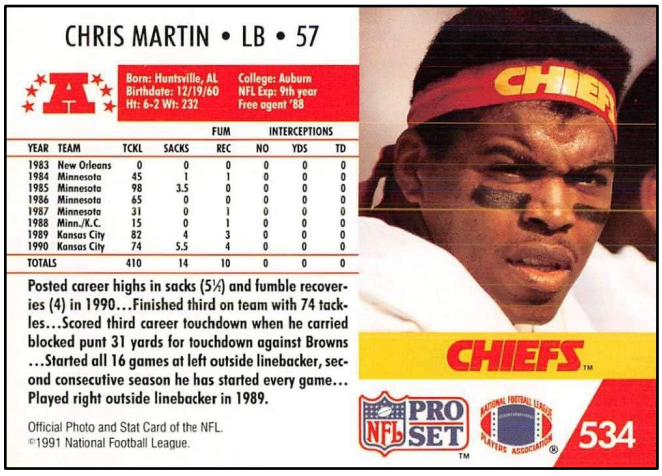
1. Under the UFTA, can obligor vacate the 2022 sale of the 60th Terrace home?
2. Under the UFTA, can obligor encumber the 2018 new home purchase in New Wife's name only?

Note: As reported by the appellate court: "Respondent's counsel for the Chief['s] [l]awsuit did not satisfy the judgment lien on the settlement proceeds." No further mention of that appears in the decision. Is the obligor's counsel liable?

Note: The child support creditor used the commercial UFTA. She could have availed herself of the more specialized Section 454.525 RSMo 2016, which includes fraudulent conveyances to a tenancy by the entireties. This statute specifies, in part:

> Any conveyance of real or personal property made by the obligor**, including conveyances made by the obligor to himself and his spouse as tenants by the entirety**, for the purpose and with the intent to delay, hinder or defraud the person to whom the support obligation is owed shall be voidable, as long as the tenancy by the entirety exists and until a good faith purchaser for value gains title to the property. (emphasis added)

Note: Chris Martin, now 63, played linebacker for the New Orleans Saints, Minnesota Vikings, and Kansas City Chiefs from 1988 to 1992. He retired from the Los Angeles Rams in 1994.



Interstate

(No notable cases)

Procedure

Emancipation by affidavit obviates need for new trial

In ***Gardner v. Gardner***, 689 S.W.3d 530 (Mo.App.S.D. 2024) the obligor was ordered to pay $2,000 monthly child support for the parties' two children. Dissatisfied mostly with the property division of the judgment, the obligor filed a motion for new trial. The motion included a claim that since the trial, eldest child got married and was therefore emancipated. The court of appeals denied that claim, noting that Section 452.340 RSMo 2016 provides a direct procedure for ending a support obligation.

"[S]ection 452.340 establishes a clear procedure for Husband to follow to notify the trial court of the emancipation. That procedure does not require setting aside the previous judgment, conducting a new trial, and entering a new judgment, which would be judicially inefficient and costly to the parties."

Note: The opinion does not discuss the fact that the $2,000 support order for the one unemancipated child remains. The order was not pro rata but was rebutted downward from the $2,426 presumed amount with the consent of the obligee, as the obligor agreed to pay all educational and medical expenses for the children.

The court distinguished cases that countenance reopening evidence to adjust a support order when convenient. The court noted that the obligor's motion "alleged no new additional evidence that would change his obligation to pay child support at the time the amended judgment was entered, since child was not yet married, and the judgment itself only obligated Father to pay such support 'until further order of court *or the children are no longer eligible for support under Missouri law*' (emphasis added)." Presumably, that *emphasis added* reference by the appellate court approved of the trial court's order that "children" meant the $2,000 order would remain for even just one child. Perhaps. But more likely that language was boilerplate often found in judicial support orders.

A review of the parties' appellate brief confirms that the obligor argued that the emancipation of one child would change the presumed support amount. The obligee argued that the trial court *approved* the parties' agreement for a downward rebuttal and the plural "children" language.

Generic post-trial motion does not preserve appellate review

In ***O.S.M. by N.T.M. v. C.N.M.***, 688 S.W.3d 310 (Mo.App.S.D. 2024) the obligor complained that the trial court's award of two overnights every two weeks was erroneous for a joint custody order. He also complained that the trial court should have imputed at least minimum wage to the obligee. Because errors like this must be first presented to the trial court to preserve those claims on appeal, a post-trial motion is required. The obligor's post-trial motion was this:

> (1) Various findings of the Court are against the weight of the evidence;
>
> (2) Various findings of the Court are not supported by any evidence;

(3) Various findings ignore uncontroverted evidence and the admissions of Mother and Father; and

(4) Various conclusions of law are contrary to Missouri law.

Because these "purely generic assertions … are devoid of any meaningful analysis based upon specific legal reasons and specific factual findings," there are "insufficient to inform the circuit court of the alleged error and they do not preserve anything for appellate review." The court dismissed the appeal.

Failure to join child as a party not subject to collateral attack

In ***Bowlin v. Stevens***, 694 S.W.3d 579 (Mo.App.W.D. 2024) the child, K.B., was four when mother died unexpectedly. K.B.'s grandmother filed a Petition for Declaration of Third-Party Custody, alleging father was unfit. On the day of trial, the parties and K.B.'s guardian ad litem announced a settlement that the trial court approved. (Joint legal & physical custody, holidays, etc.)

In August 2022, over a year after the judgment became final, father filed a motion to vacate pursuant to Rule 74.06(b), claiming the judgment was void as a matter of law. Father claimed that the trial court misapplied Section 475.375 by awarding joint custody between a third party (grandmother) and a natural parent.

The appellate court ruled that a Rule 74.06 motion is not an alternative to a timely appeal. "When a final judgment is not challenged on direct appeal … it is enforceable so long as the issuing court validly had jurisdiction, even if it contains legal error."

The case is notable for IV-D purposes because one argument advanced by father was that K.B. was not joined as a party in the original custody determination. In a footnote, the court explained the difference between a court exceeding its statutory authority with exceeding its jurisdiction. The claim that K.B. was not added as a necessary party does not "implicate jurisdictional considerations." "Father had multiple opportunities to request that K.B. be added in the proceedings below, but the objection was not raised until now. Father's failure to timely raise the objection means the objection is waived and does not subject the Judgment to collateral attack under Rule 74.06."

Note: K.B. had a guardian ad litem. Since K.B. was not joined as a party, what result if K.B. had not been appointed a GAL?

Note: "Nothing is better settled than the principle that an erroneous judgment has the same *res judicata* effect as a correct one." And: "It has been said that when a court has jurisdiction, it has jurisdiction to commit error, that if a judgment be merely irregular, the courts of the country pronouncing the judgment are the exclusive judges of that irregularity, and their decision binds the world." One more: "A judgment is 'void' under Rule 74.06 only if the court that rendered it lacked jurisdiction of the parties or the subject matter or acted in a manner inconsistent with due process of law. A judgment is not void simply because it is erroneous ...."

Note: In this case, there was no appeal of the stipulated judgment. "Here, Father fully participated in the proceedings leading up to the Judgment, including working alongside Grandmother and the guardian ad litem to formulate a *stipulated* parenting plan to be

incorporated into the Judgment." (emphasis original) What effect of the stipulation? What effect on the child?

Adjudicating paternity as an issue of fact: Admissions in pleadings

Kronk v. Awan, 694 S.W.3d 535 (Mo.App.W.D. 2024) dealt with odd claims by a parent who refused numerous orders for a psychological exam. It's a messy story but features some uncommon points that might one day prove helpful. The court confirmed that in a *dissolution* action, the court has authority to adjudicate issues involving the parties' children, regardless of whether they were born in or out of wedlock. "When contested, the determination of a child's paternity is an issue of fact." When the pleadings admit parentage, that factual issue is decided without the need for evidence.

If instead an issue is contested: "In all proceedings for child custody or for dissolution of marriage or legal separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem." Section 452.423.1 RSMo 2016.

Note: Assume at trial a parent denies paternity and a GAL is appointed. What should the GAL do? Now assume that after appointment but before the GAL did any work, that same parent recants and files an amended pleading admitting parentage. What should the GAL do at that point?

Note: In the above scenario, what are the obligations of the trial judge?

Failure to file post-judgment motion fatal to defense of indefinite judgment

In ***Brown v. Haley***, 687 S.W.3d 27 (Mo.App.S.D. 2024), the obligor was subject to a previous partially unenforceable order, but because he failed to challenge it with a post-judgment motion and on appeal, he was foreclosed from any relief of a subsequent modification determining his arrears.

A consent 2008 judgment directed each parent to be liable for 50% of uninsured medical expenses. And: "The parties shall share equally all expenses for extracurricular activities of the children such as private lessons, sports activities, etc., including sign up costs as well as uniforms, etc." The court noted that no post-trial motions were filed nor an appeal taken.

In 2014, the court entered a judgment of modification. In the court's parenting plan, each parent was ordered to pay 50% for post-secondary education subject to several limitations and capped by the costs to attend Mizzou. For extracurriculars, the order stated: "Father and Mother shall each pay 50% of the minor children's extracurricular activities." No post-judgment motion was filed and an appeal was not taken.

In 2015 Father filed a motion to modify; Mother filed a countermotion. After amended pleadings the cause finally came to trial in 2021. The appellate court affirmed a judgment of $141,282.52 against Father for educational, extracurricular, and uninsured healthcare expenses. The court rejected Father's claim that the 2014 judgment was unenforceable because there was no limitation on the dollar amount. While that argument might have worked earlier, the court held Father had waived it by not filing a post-judgment motion or appealing the 2014 judgment.

Father argued that the absence of limiting language "renders an expense provision in a judgment void and unenforceable." The appellate court termed Father's argument as "a holdover from an era when many Missouri appellate decisions described mere legal errors as jurisdictional, which was then used to evade existing limitations on appellate review. This rationale is no longer valid in Missouri." Thus, the 2008 and 2014 judgments were not void and are not subject to collateral attack on an appeal of the 2021 judgment. The court also held that Father's failure to file a Rule 78.07(c) post-judgment motion in both cases precluded relief in the 2021 judgment.

Note: Adherence to Rule 78.07 is critical in preserving appellate review. For court-tried domestic cases, Rule 78.01(c) states:

> **(c)** In all cases, allegations of error relating to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment in order to be preserved for appellate review.

"The purpose underlying Rule 78.07(c) 'is to ensure that complaints about the form and language of judgments are brought to the attention of the trial court where they can be easily corrected, alleviating needless appeals, reversals, and rehearings.'" ***Barth v. Barth***, 372 S.W.3d 496, 517 (Mo.App.W.D. 2012).

* * *

Criminal Nonsupport

Appointment of counsel for indigent obligor ≠ good cause defense

In ***State v. Rust***, 680 S.W.3d 563 (Mo.App.S.D. 2023) the defendant argued that he had good cause for not paying support because the trial court determined him indigent and appointed defense counsel. The appellate court rejected that argument for three reasons.

First, after the 2011 amendment of Section 568.040, "without good cause" is not a definitional element of criminal nonsupport. Rather, the inability to provide support for good cause is an affirmative defense, which the defendant bears the burden to raise and prove by a preponderance of the evidence. The state is not required to disprove this affirmative defense.

"Second, a determination of indigency for purposes of counsel appointment does not, as a matter of law, establish good cause under § 568.040.3 for a parent not to provide adequate support." The court noted that a defendant may be able to pay support yet be found indigent for the standard required for the appointment of counsel.

Third, "the appointment of counsel for litigants facing potential deprivation of liberty or another constitutionally-protected right does not excuse an existing duty to support a child." The court noted that indigent parents facing termination of their parental rights are appointed counsel, yet those appointments do not preclude findings of abandonment or neglect based partly on evidence that the parent failed to support their child.

Note: Rust's 180-day jail sentence was suspended and he was placed on probation with a condition that he pay $250 monthly toward his outstanding child support arrearage.

Note: The defendant also argued that there was no evidence of his paternity; but the court noted that "whether the defendant is truly the biological father of the child is irrelevant." "It is the existence of a civil child support order and its knowing violation that the state must show beyond

a reasonable doubt in order to convict Rust; the state need not prove that the underlying facts giving rise to the order are true beyond a reasonable doubt." These concepts are now well established in Missouri's criminal nonsupport arena.