

SUPREME COURT OF MISSOURI

Richard Otto Lueckenotte v. Mary Jane Lueckenotte

34 S.W.3d 387 (Mo. banc 2001) · No. SC 82868 · Decided January 9, 2001

SUMMARY

The Missouri Supreme Court considers cross-appeals concerning maintenance arrearages, child support for a disabled adult child, and attorney's fees in a dissolution proceeding. The court holds that the parties' separation agreement made the maintenance obligation nonmodifiable, affirms the maintenance arrearage and treatment of voluntary 401(k) contributions, and requires interest on delinquent maintenance. It also addresses extension of the father's child-support obligation under Missouri law for an incapacitated, insolvent, and unmarried child.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Missouri
DECIDED	January 9, 2001
DOCKET	SC 82868
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Father appealed the dismissal of his motion to terminate or modify maintenance and the award of delinquent maintenance and attorney's fees. Mother cross-appealed the denial of her motions concerning child support, health insurance premiums, and interest on delinquent maintenance. After an opinion, the court of appeals transferred the case to the Supreme Court of Missouri under Rule 83.02.
STANDARD OF REVIEW	For declaratory judgment and modification issues in a court-tried case, the judgment is affirmed unless unsupported by substantial evidence, against the weight of the evidence, erroneously declares the law, or erroneously applies the law, under <i>Murphy v. Carron</i> . Dismissal is reviewed by determining whether the pleadings were sufficient to withstand the motion and whether the dismissal is sustainable on any ground stated in the motion. Attorney's-fee awards are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Richard Otto Lueckenotte v. Mary Jane Lueckenotte

TOPICS

family law procedure

spousal support

child support

statutory interpretation

appellate procedure

PRACTICE AREAS

family law

appellate procedure

QUESTIONS PRESENTED

1. Whether the separation agreement and dissolution decree expressly precluded modification of the maintenance obligation.
2. Whether the trial court properly determined the amount of delinquent maintenance and could exclude voluntary 401(k) contributions from Father's maintenance-income calculation.
3. Whether Mother was entitled to mandatory statutory interest on delinquent maintenance.
4. Whether Father's child-support obligation could be extended after Kevin reached the age of majority because Kevin was physically or mentally incapacitated, insolvent, and unmarried.
5. Whether Mother could recover child support and health-insurance reimbursement for periods before she filed and served her motion to modify.
6. Whether the trial court abused its discretion by awarding Mother attorney's fees.

HOLDINGS

1. The maintenance obligation was nonmodifiable because the parties' written agreement, incorporated into the dissolution decree, provided that any modification or waiver had to be made in writing with the same formality as the agreement.
2. The maintenance formula was sufficiently definite and enforceable, and the trial court properly calculated delinquent maintenance using Father's actual tax obligation rather than his biweekly withholding and by including voluntary 401(k) contributions in his income.
3. Interest on delinquent maintenance automatically accrues under section 454.520 and the trial court had no discretion to deny Mother interest on the maintenance arrearage.
4. Mother established that Kevin was physically or mentally incapacitated from supporting himself, insolvent, and unmarried; therefore, Father's child-support obligation could be extended beyond Kevin's age of majority.
5. Mother could not recover child support for the period before she filed and served her motion to modify because the existing support order did not continue automatically past Kevin's majority without a judicial determination under section 452.340.4.
6. Father did not owe reimbursement for Mother's health-insurance premiums paid from 1992 through 1998, but on remand the trial court had to determine whether the prior health-coverage provision should be modified in light of the extended child-support obligation.

7. The trial court did not abuse its discretion by awarding Mother \$5,000 in attorney's fees.

KEY QUOTATIONS

“In other words, separation agreement decretal maintenance is modifiable, unless the parties specifically agree to preclude or limit modification.” (392)

“Where a statute provides that interest ‘shall’ be paid or received, a court has no discretion to refuse to award interest as directed by the statute.” (396)

“Because the weight of the evidence shows that Kevin is incapacitated, unmarried and insolvent, section 452.340.4 is applicable.” (398)

“A trial court has no authority to modify child support retroactive to a date before the filing of the motion to modify and service of summons.” (398)

FACTUAL BACKGROUND

The parties' 1980 dissolution decree incorporated an agreement requiring Father to pay Mother maintenance and child support and to provide health insurance for their child, Kevin. Kevin became completely and permanently disabled at age thirteen, but Father stopped child-support and health-insurance payments when Kevin turned twenty-one in 1992. Father also underpaid maintenance by manipulating tax withholding and making voluntary 401(k) contributions that reduced the income figure he used to calculate maintenance.

PROCEDURAL HISTORY

The parties' marriage was dissolved in 1980, and their separation agreement was incorporated into the dissolution decree. The trial court dismissed Father's maintenance-modification motion, awarded Mother \$28,693 in delinquent maintenance and \$5,000 in attorney's fees, denied Mother's requests for past-due child support and insurance expenses, denied her motion to modify child support, and declined to award interest on the maintenance arrearage. The Supreme Court affirmed in part, reversed in part, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine the amount of statutory interest on the delinquent maintenance; grant Mother leave to present additional evidence concerning delinquent maintenance for periods when no child support was paid; enter an order extending Father's child-support obligation; determine whether the amount of child support should be modified; determine whether the extended support order should be retroactive to the filing and service date; and determine whether the prior health-insurance provision should be modified. The dismissal of Father's maintenance-modification motion, the exclusion of voluntary 401(k) contributions from the maintenance-income deduction, denial of pre-motion child-support and insurance reimbursement, and attorney's-fee award remain affirmed.

CASES CITED

- Shaver v. Shaver, 913 S.W.2d 443, 444 (Mo. App. 1996)
- Paynton v. Paynton, 914 S.W.2d 63, 65-66 (Mo. App. 1996)
- Bryson v. Bryson, 624 S.W.2d 92, 95 (Mo. App. 1981)
- Davis v. Davis, 687 S.W.2d 699, 702 (Mo. App. 1985)
- State ex rel. Robinson v. Crouch, 616 S.W.2d 587, 590 (Mo. App. 1981)
- Nakao v. Nakao, 602 S.W.2d 223, 226 (Mo. App. 1980)
- Doe v. Roman Catholic Diocese of Jefferson City, 862 S.W.2d 338, 340 (Mo. banc 1993)
- McDermott v. Carnahan, 934 S.W.2d 285, 287 (Mo. banc 1996)
- Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976)
- Maupin v. Hallmark Cards, Inc., 894 S.W.2d 688, 695 (Mo. App. 1995)
- Allard v. Allard, 856 S.W.2d 64, 69 (Mo. App. 1993)
- Payne v. Payne, 635 S.W.2d 18, 22 (Mo. banc 1982)
- Burkhardt v. Burkhardt, 876 S.W.2d 675, 678 (Mo. App. 1994)
- State ex rel. Langiano v. Langiano, 3 S.W.3d 886, 888 (Mo. App. 1999)
- Keller v. Keller, 877 S.W.2d 192, 195-196 (Mo. App. 1994)
- Bolton v. Bolton, 950 S.W.2d 268, 271 (Mo. App. 1997)
- Marshall v. Pyramid Development Corp., 855 S.W.2d 403, 406 (Mo. App. 1993)
- Johnson v. Johnson, 965 S.W.2d 943, 944 (Mo. App. 1998)
- Baird v. Baird, 843 S.W.2d 388, 390 (Mo. App. 1992)
- Opponents of Prison Site, Inc. v. Carnahan, 994 S.W.2d 573, 577 (Mo. App. 1999)
- Speight v. Speight, 933 S.W.2d 879, 881-882 (Mo. App. 1996)
- Fower v. Fower Estate, 448 S.W.2d 585, 586 (Mo. 1970)
- Racherbaumer v. Racherbaumer, 844 S.W.2d 502, 503-505 (Mo. App. 1992)
- Felton v. Hulser, 957 S.W.2d 394, 397 (Mo. App. 1997)
- King v. King, 969 S.W.2d 903, 907 (Mo. App. 1998)
- In re the Marriage of D.R.S., 817 S.W.2d 615, 618 (Mo. App. 1991)
- State ex rel. Albert v. Sauer, 869 S.W.2d 853, 855 (Mo. App. 1994)
- Fulton v. Adams, 924 S.W.2d 548, 553 (Mo. App. 1996)
- Glenn v. Glenn, 930 S.W.2d 519, 525 (Mo. App. 1996)