



In the Missouri Court of Appeals Eastern District

DIVISION THREE

JON THORP,)	No. ED97995
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable John Essner
ALISHA THORP,)	
)	
Respondent.)	FILED: January 15, 2013

Jon Thorp ("Father") appeals from the trial court's judgment of November 8, 2011, dissolving his marriage with Alisha Thorp ("Mother") and entering a child custody and support award for their minor child ("Minor"). The trial court's judgment granted joint physical custody to the parties, with Mother as the residential parent, and ordered Father to pay child support to Mother.

DISMISSED IN PART; AFFIRMED IN PART.

Division Three Holds: Because a judgment setting aside a default judgment is an independent action under Rule 74.05(d), Father was required to file a notice of appeal not later than ten days after that judgment became final. Father's notice of appeal regarding the trial court's judgment setting aside the default judgment was untimely, thus, this Court lacks jurisdiction and dismisses this portion of the appeal. Further, due to the trial court's judgment setting aside the default judgment, Father's retirement plan is considered marital property because the parties were restored to their original positions as though the default judgment had never been entered.

Also, the trial court did not abuse its discretion by awarding joint physical custody, ordering Mother as the residential parent, and adopting the GAL's parenting plan as the evidence did not clearly preponderate in favor of either parent. Additionally, including Father's average monthly income from his secondary-employment for purposes of determining Gross Income on Form 14 was not an abuse of discretion as the income was demonstrated to be consistent and reliable.

Because one spouse's greater ability to pay is sufficient to support an award of attorney's fees to the other spouse, the trial court did not abuse its discretion in awarding Mother attorney's fees since Father had a greater ability to pay. Finally, the trial court

properly exercised its broad and sound discretion in the final determination of the child support award by increasing Father's Form 14 child support payments due to Father's ability to claim the dependent tax exemption, in that Section 452.340.9 permits the trial court to account for all relevant factors in determining whether a Form 14 calculation would be unjust or inappropriate.

Opinion by: Roy L. Richter, J.

Robert G. Dowd, Jr., P.J., and Angela T. Quigless, J., concurs

Attorney for Appellant: Susan Roach, W. Edwin Roussin

Attorneys for Respondent: Karen Pittman-Pace

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