

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

C.K.,) No. ED93632
)
Petitioner/Respondent,) Appeal from the Circuit Court
) of St. Louis County
v.)
)
B.K.,) Honorable John R. Essner
)
Respondent/Appellant.) Filed: September 7, 2010

B.K. (Father) appeals from the trial court’s judgment modifying a decree of dissolution upon Father’s Motion to Modify the Modified Decree of Dissolution seeking to modify or terminate his maintenance obligation to C.K. (Mother).

Father presented three points on appeal, contending that the trial court erred in (1) failing to terminate his maintenance obligation pursuant to Herzog v. Herzog, 761 S.W.2d 267 (Mo. App. E.D. 1988), because Mother was in a relationship which constituted a “substitute for marriage”; (2) failing to impute income to Mother in determining the maintenance award, and (3) ordering Father to pay \$20,000 towards Mother’s attorney fees.

AFFIRMED.

Division Three Holds: The trial court’s judgment is supported by substantial evidence, is not against the weight of the evidence, and does not erroneously declare or apply the law. Specifically, the trial court did not err in (1) treating Mother’s relationship as one of co-habitation warranting modification of maintenance under Section 452.370, as opposed to a substitute for marriage justifying termination of maintenance under Herzog; (2) finding that it was inappropriate for Mother to work outside the home at this time; and (3) awarding Mother a portion of her attorney's fees pursuant to Section 452.355, in light of Father’s superior ability to pay the fees. We affirm.

Opinion by: Sherri B. Sullivan, P.J. Clifford H. Ahrens, J., and Lawrence E. Mooney, J., concur.

Attorneys for Appellant: Alan E. Freed

Attorneys for Respondent: Richard J. Eisen and Jennifer Growe Soshnik

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