

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

MICHAEL E. LINDSEY, Appellant,)	No. ED94281
)	Appeal from the Circuit Court of
vs.)	St. Charles County
)	Honorable Matthew E.P. Thornhill
ZINA A. LINDSEY, Respondent.)	Filed: March 22, 2011

Michael Lindsey (Husband) appeals the Circuit Court of St. Charles County's Judgment and Decree of Legal Separation. Husband first claims that the trial court erred in denying his Motion to Set Aside the Default Judgment because Husband: (1) sufficiently alleged good cause and a meritorious defense; and (2) was entitled to an evidentiary hearing to prove his allegations. Second, Husband contests the underlying judgment, claiming that the trial court erred in: (1) conducting a trial on child custody issues without the presence of the guardian ad litem (GAL); (2) granting Zina Lindsey (Wife) sole physical and legal custody of the parties' minor son, D.L.; (3) granting a disproportionate division of the marital property in favor of Wife; (4) ordering Husband to pay Wife \$1,948 per month in maintenance; and (5) ordering Husband to pay Wife \$5,000 in attorney's fees and \$1,199 in court costs.

AFFIRMED

Division Five Holds: The trial court did not err in: (1) failing to grant Husband's motion to Set Aside the Default Judgment because the trial court's Judgment and Decree of Legal Separation was a judgment on the merits and Rule 74.05 was inapplicable; (2) conducting a trial on custody issues without the presence of the GAL where the GAL's absence at trial did not result in a manifest injustice or a miscarriage of justice; (3) granting Wife sole legal and physical custody where Wife presented sufficient evidence from which the trial court could determine custody in the child's best interests under the factors enumerated in Section 452.375.2; (4) granting a disproportionate division of the marital property in favor of Wife where sufficient evidence existed of Husband's marital misconduct, as well as Husband's greater income, Wife's status as custodial parent, and Wife's significant contributions to the marital estate; (5) ordering Husband to pay Wife \$1,948 per month in maintenance when the record contained sufficient evidence of Wife's lack of finances to meet her reasonable needs and Husband's ability to pay; and (6) ordering Husband to pay Wife \$5,000 in attorney's fees and \$1,199 in court costs where sufficient evidence showed that Husband had the ability to pay, and the majority of the attorney's fees and court costs were directly caused by Husband's conduct that unfairly increased Wife's legal fees.

Opinion by: Patricia L. Cohen, J. Gary M. Gaertner, Jr., P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Michele Hammond

Attorney for Respondent: Thomas A. Burke, III

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.