



In the Missouri Court of Appeals Eastern District

DIVISION ONE

TRACY M. ATKINSON,)	No. ED99492
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Charles
v.)	
)	Hon. Richard K. Zerr
DOUGLAS D. ATKINSON,)	
)	
Appellant.)	FILED: March 4, 2014

Douglas Atkinson (Father) appeals the trial court's judgment in favor of his former spouse, Tracy Dinella (formerly Atkinson) (Mother), on his motion to terminate child support for their daughter in college (Daughter). Father sought to terminate his child support obligation when Daughter's academic course load fell below the statutory minimum of 9 credit hours while working 15 hours per week (§452.340.5). The trial court excused Daughter's non-compliance based on its finding that she was diagnosed with depression. Father asserts that the trial court's finding is not supported by substantial evidence. Both parties appeal the court's denial of their respective requests for attorney fees.

REVERSED AND REMANDED.

DIVISION ONE HOLDS: (1) The record belies the trial court's finding that Daughter was diagnosed with depression and thus excused from the statutory requirements for continued support. The only evidence presented on this issue consisted of Mother's therapist's deposition testimony that, although Daughter exhibited some signs of depression during their family counseling session, the therapist did not actually diagnose Daughter with depression, as a formal diagnosis would require more time and testing, which never occurred. On this record, the trial court's finding that Daughter was diagnosed with depression is against the weight of the evidence. Absent this exemption from the statutory requirement, Daughter effectively became emancipated, and thus Father's support obligation ceased, when Daughter's course load fell below nine hours. (2) The record supports the trial court's finding that neither party's conduct was so egregious as to warrant an award of attorney fees.

Opinion by: Clifford H. Ahrens, J.
concur.

Roy L. Richer, P.J., and Glenn A. Norton, J.,

Attorney for Appellant: Benicia Ann Baker-Livorsi

Attorney for Respondent: William E. Roussin

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IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
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