

Summary of SC89159, *Carolyn S. Weigand f/k/a Carolyn S. Edwards v. Jeffrey M. Edwards*

Appeal from the Jefferson County circuit court, Judge Troy Cardona

Attorneys: Edwards was represented by Robert K. Sweeney of Robert K. Sweeney LLC in Hillsboro, (636) 797-5600; Weigand did not file a brief or present argument in this Court. The Missouri attorney general, who filed a brief as a friend of the Court, was represented by State Solicitor James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man who filed a motion to modify a previous judgment granting him no custody of or visitation with his child challenges the constitutional validity of a statute requiring him first to post a bond because he is more than \$10,000 in arrears in paying child support. In a 7-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the trial court's judgment upholding the statute's validity. Because the statute reasonably balances the interests of the man who owes more than \$10,000 in past-due child support; the custodial parent who is owed the support and who must incur legal fees to defend the motion to modify; and the state's interest in protecting the best interests of the couple's child, the statute does not violate the man's constitutional rights to due process or equal protection. In addition, the statute's restriction on the man's right to seek to modify the previous custody and visitation decree by first requiring him to post a bond is not arbitrary or unreasonable and, therefore, does not violate the Missouri Constitution's open courts provision.

Facts: The 1998 judgment that dissolved the marriage between Jeffrey Edwards and Carolyn Weigand awarded Weigand primary physical and legal custody of the couple's child and awarded liberal temporary custody and visitation rights to Edwards, even though he failed to appear at the hearing on the dissolution petition. The decree also ordered Edwards to pay \$455.70 per month in child support. He failed to comply with the child support order, and in 2000, the state's division of child support enforcement took action to establish an arrearage amount against Edwards. In 2003, Weigand moved to modify only the custody and visitation provisions and, although Edwards received notice by publication, he failed to appear at the January 2004 hearing on the motion. The court granted Weigand's motion to modify, giving her sole custody of the child and ordering that Edwards receive neither temporary custody nor visitation with the child. The court did not change the child support amount, and Edwards did not appeal the modification judgment. Several years later, Edwards moved to modify the custody and visitation provisions to seek temporary custody and visitation. Weigand moved to dismiss Edwards' motion to modify because, at the time he filed it, he was more than \$10,000 in

arrears in child support and he did not post a bond. At the hearing on the motion, Edwards admitted he owed more than \$10,000 in past-due child support, but he challenged the constitutional validity of the statute that requires a parent with more than \$10,000 in arrearages to post bond. The trial court rejected Edwards' challenges and dismissed his motion to modify. He appeals.

AFFIRMED.

The Court en banc holds: (1) Section 452.455.4, RSMo Supp. 2007 – which requires that a parent who owes more than \$10,000 in past-due child support must file a bond before seeking modification – is constitutional. This section does not presume a parent who is more than \$10,000 in child support arrears to be unfit, thereby denying that parent the right to have custody of or visitation with a child. Rather, it requires such a parent to post a bond before seeking to modify a prior custody or visitation judgment, regardless of what that judgment's provisions might be. In determining whether this requirement of a bond is unconstitutional, this Court applies a balancing-of-interests test. *Cannon v. Cannon*, 280 S.W.3d 79, 86-88 (Mo. banc 2008); *Blakely v. Blakely*, 83 S.W.3d 537, 545-546 (Mo. banc 2002); *Troxel v. Granville*, 530 U.S. 57, 80, 88 (2000). The statute affects the parents' competing interests in their fundamental right to make decisions regarding the care, custody and control of their child; the government's interests in protecting a custodial parent whose financial resources are diminished because of having to shoulder a disproportionate share of the costs of supporting the parties' child as well as in the administration of justice; and the child's interests in having frequent, continuing and meaningful contact with both parents. The statute applies only to parents who seek to modify custody or visitation provisions of a prior decree; who are more than \$10,000 in arrears in child support; and who fail to post a bond. It does not preclude a parent from seeking to reduce the amount of the parent's child support obligation if a substantial and continuing change in circumstance makes the amount of support unreasonable. It also does not preclude a parent in arrears from defending a motion to modify custody or visitation filed by the custodial parent. Here, it is the prior decree – not the statute – that denied Edwards custody and visitation, and he has not sought to modify the amount of child support he is ordered to pay or allege he is unable to pay the support as ordered. Section 452.455.4 constitutes a reasonable balancing of the interests of Edwards, who owes more than \$10,000 in past-due child support; Weigand, the custodial parent who is owed the support; and the state's interest in protecting the best interests of the couple's child. As such, it does not violate Edwards' due process or equal protection rights.

(2) The requirement of section 452.455.4 that a parent who is more than \$10,000 in child support arrears post a bond before seeking to modify a prior custody agreement does not violate the open courts provision in article I, section 14 of the Missouri Constitution. Here, Edwards' motion to modify the prior custody and visitation judgment is a recognized legal cause of action, and the only restriction the statute places on his right to file such a motion is the requirement that he first file a bond. It does not restrict either his

ability to file a motion seeking to reduce the amount of child support or to defend a motion to modify custody or visitation filed by the custodial parent. The restriction is not arbitrary or unreasonable. It protects the interests of a custodial parent who has been denied more than \$10,000 in child support payments by requiring the parent in arrears to post a bond the custodial parent can use to help pay the legal fees incurred in defending the motion to modify.