

SC89404, J.C.W. and T.D.W., minors, by their next friend, Kelly K. Webb v. Jason L. Wyciskalla

Appeal from the Jefferson County circuit court, Judge Lisa K. Page.

Attorneys: Webb was represented by Jonathan D. Marks of The Marks Law Firm LLC in Creve Coeur. Wyciskalla was represented by Lawrence G. Gillespie of Clayton; Julie Huffman McCarver and Kourtney E. Lamb of Kramer & Hand LLC in Hillsboro; and Joan Bryan of DeSoto.

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 custodial mother appeals a trial court’s decision to modify a custody judgment by granting joint legal and physical custody, eliminating the father’s child support obligation, and determining that he owes no child support arrearage. In the appeal, the father challenges the validity of a statute that, if he owed more than \$10,000 in child support arrearages, would prevent him filing a motion to modify a custody judgment without first filing a bond. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri vacates the trial court’s judgment and remands the case for determinations of whether the challenged statute applies; and, if so, whether it is constitutional; and what relief, if any, should be provided to the parties on their respective requests for relief. The prohibition in the statute is not jurisdictional, as some cases of the Missouri Court of Appeals have held; there is no third category of jurisdiction called “jurisdictional competence.” Because it is not clear from the record whether the statute applies, the father’s challenge to it is not ripe. Due process requires that the trial court – not the division of child support enforcement – has the authority ultimately to determine the amount of child support arrearages a party owes to determine whether the statute bars that party from filing a petition to modify without posting a bond.

Facts: Mother and Father are the unmarried natural parents of twins born in June 2002. When Father did not appear at a paternity hearing, the court awarded sole legal and physical custody of the twins to Mother, scheduled Father to have parenting time; and ordered Father to pay \$1,092 per month in child support plus nearly \$10,930 in retroactive support to Mother. The parents subsequently agreed to modify, by increasing Father’s temporary custody and parenting time gradually, and the court entered a consent judgment accordingly. Between July 2005 and April 2006, Mother sent Father four notices of her intent to relocate with the twins. Father filed a motion to prevent relocation and to modify the consent judgment to grant him sole legal custody, joint physical custody and make-up parenting time and to reduce the amount of child support. Following a hearing, the court denied Mother’s request to relocate, vested joint legal and physical custody in both parents, eliminated Father’s monthly child support obligation (ordering that neither parent shall pay child support to the other), and determined that

Father owed nothing in child support arrearage because he had overpaid support in the years after the consent judgment was entered. Mother appeals.

VACATED AND REMANDED.

Court en banc holds: (1) The prohibition in section 452.455.4, RSMo 2000 – that a parent who is more than \$10,000 in arrears in paying child support must post a bond, in the greater of the amount of arrearage or the custodial parent’s legal fees, before filing a motion to modify a judgment of custody or parenting time – is not a matter of jurisdiction, as previous decisions of the Missouri Court of Appeals have characterized. Personal jurisdiction is a matter of due process that refers to a court’s power to require a person or entity to respond to a legal proceeding that may affect the person or entity’s rights or interests. Subject matter jurisdiction, on the other hand, is a matter of a court’s authority to render a judgment in a particular category of case. The United States Constitution permits Congress to increase or decrease the kinds and categories of cases heard in the federal courts. The Missouri Constitution, however, provides that Missouri’s circuit courts shall have original jurisdiction over all cases and matters, civil and criminal. There are cases that, in *dicta* (comment that is not part of the holding of a case and, therefore, is not binding law), purport to recognize a third concept they call “jurisdictional competence.” Elevating statutory restrictions to matters of “jurisdictional competence,” however, erodes the constitutional boundary established by article V of the Missouri Constitution, as well as the separation of powers doctrine, and robs the concept of subject matter jurisdiction of the clarity the constitution provides. The courts of this state should confine their discussions of circuit court jurisdiction to the constitutionally recognized doctrines of personal and subject matter jurisdiction; there is no third category of jurisdiction called “jurisdictional competence.”

(2) Because it is unclear from the record whether section 452.455.4 applies, Father’s challenge to the constitutional validity of the statute is not ripe. If, as Mother claims, Father did owe more than \$10,000 in child support arrearages, the plain language of section 452.455.4 would prohibit him from filing a motion to modify. The statute, however, provides no opportunity for a noncustodial parent to be heard as to the amount owed. As a matter of due process, therefore, there must be a hearing to determine whether the amount of arrearages is more than \$10,000. Under article I, section 14 of the Missouri Constitution – which provides that the “courts of justice shall be open to all” – a noncustodial parent cannot be barred from judicial relief by a factual determination made by the division of child support in the absence of an opportunity for judicial review of the issue. Due process requires that the trial court has the authority ultimately to determine the amount of child support arrearages a party owes to determine whether section 452.455.4 bars that party from filing a petition to modify without posting a bond. If the arrearages amount to more than \$10,000, the trial court then must determine what the custodial parent’s reasonable legal fees would be to determine the amount of bond required by the statute. Here, neither parent requested a recalculation of arrearages in

their pleadings and, therefore, apparently neither parent presented evidence at the modification hearing regarding the amount of arrearages Father owed. Without specific evidence regarding the arrearage calculation, the trial court's conclusion that Father owed nothing in child support arrearage is unsupported by the evidence, and this Court cannot determine whether section 452.455.4 would bar Father's motion to modify in the absence of a bond. The circuit court's judgment, therefore, is vacated, and the case is remanded for a new hearing. On remand, the trial court will be able to determine whether the challenged statute applies; and, if so, whether it is constitutional; and what relief, if any, should be provided to the parties on their respective requests for judicial relief.