

MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

CATHERINE D. CARLSON,  
RESPONDENT,

v.

TIMOTHY R. CARLSON,  
APPELLANT.

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WD68783

DATE: December 23, 2008

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Appeal From:  
MILLER COUNTY CIRCUIT COURT  
THE HONORABLE KENNETH L. OSWALD, JUDGE

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Attorneys:  
Dennis J. Owens, Esq. and Jonathan Sternberg, Esq., Kansas City, MO., **for appellant.**

Ann Kern, Esq., Springfield, MO., **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY  
COURT OF APPEALS – WESTERN DISTRICT

CATHERINE D. CARLSON,

RESPONDENT,

V.

TIMOTHY R. CARLSON,

APPELLANT.

WD68783

Miller County

Before Division Four Judges: Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

Appellant Timothy Carlson (“Father”) and Respondent Catherine Carlson (“Mother”) were married on or about July 26, 1998. Father and Mother had two children together. On December 15, 2005, Mother filed a Petition for Dissolution of Marriage in the Circuit Court of Miller County. Father responded with a Counter-Petition.

On January 23, 2006, Mother served Father’s counsel with a Motion for Sanctions, which argued that the allegations in Father’s Counter-Petition were false, made without good-faith basis, and “will serve only to delay the finalization of this case and increase the cost of litigation.” Mother’s sanctions motion was filed with the court on July 6, 2006, and was originally noticed to be heard on July 13. After being rescheduled multiple times, the parties ultimately agreed on December 14, 2006, that the motion would be taken up with the case during trial.

The case was tried before the circuit court beginning on February 1, 2007. The trial court’s Judgment and Decree of Dissolution of Marriage awarded Mother sole legal custody of the children, with the parties sharing joint physical custody. Father was ordered to pay child support, including one-half of certain costs for the children’s college education. The circuit court’s Judgment required Father to pay all of the guardian *ad litem*’s fees, and imposed an attorney’s lien for the collection of such fees upon Father’s option to purchase a 20% share in the company for which he works. The circuit court also ordered Father to pay \$15,000 of Mother’s attorney’s fees as a sanction.

On appeal, Father argues that he did not have sufficient notice that the trial constituted the hearing on Mother’s Motion for Sanctions. In addition, Father argues that the trial court erred in ordering him to pay the entirety of the guardian *ad litem*’s fees.

Father also argues that the trial court's imposition of an attorney's lien in favor of the guardian *ad litem* on certain of his personal property was erroneous. Finally, Father contends that the trial court's order for him to pay one-half of the childrens' postsecondary educational expenses is too indefinite and uncertain to be enforceable.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS TO MODIFY THE JUDGMENT IN SPECIFIED RESPECTS.**

**Division Four holds:**

Although Father claims that he was not afforded an opportunity to defend himself against Mother's Motion for Sanctions, the Motion was at least twice specifically noticed for hearing, and the parties eventually agreed that it would be taken with the case at trial, a fact Father himself acknowledges. The only objection Father interposed at trial to evidence relevant to the sanctions issue (but only on the *second* occasion when the issue arose) did not assert lack of notice. Moreover, Father did not: introduce any evidence, testimony, or arguments regarding the issue; cross-examine Mother as to the amount or nature of the attorney's fees she sought; or make any indication (much less an offer of proof) as to what evidence or arguments he would have offered on the sanctions issue if given greater notice (nor does Father identify such omitted evidence or arguments here). In these circumstances, Father's argument that he was not afforded notice and a reasonable opportunity to respond is not credible. The sanctions award is affirmed.

Father's argument that the trial court erred in ordering him to pay the entirety of the guardian *ad litem*'s fees as a further sanction ignores that § 452.423.5, RSMo gives the trial court discretion to award guardian *ad litem* fees against either party to a dissolution proceeding. In light of the trial court's unchallenged findings that the guardian *ad litem* was appointed at Father's request, that she spent the majority of her time investigating Father's allegations (at his insistence), and that she found no support for those allegations, we cannot say that the trial court abused its discretion in ordering Father to pay the entirety of her fees.

The trial court cited no authority to support its imposition of an attorney's lien against Father's personal property in favor of the guardian *ad litem*. Neither of the Missouri statutes under which attorney's liens may be created to which we have been cited by Father, §§ 484.130 and 484.140, RSMo, are applicable here. The trial court's imposition of an attorney's lien on Father's interest in certain personal property is accordingly vacated.

The trial court's order requiring Father to pay one-half of the children's postsecondary education expenses must be remanded for modification in two limited respects. First, the decree should specify the type of college housing for the cost of which Father is 50% responsible. Second, the decree should specify that Father's financial obligation is limited to the children's tuition costs net of financial aid.

**Opinion by: Alok Ahuja, Judge**

December 23, 2008

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR  
CITED.**