

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

STATE OF MISSOURI, DEPARTMENT OF SOCIAL SERVICES,  
FAMILY SUPPORT DIVISION,  
v.

Appellant

THOMAS EDWARD DILLOW.

Respondent

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DOCKET NUMBER WD78218

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: November 10, 2015

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Daniel Richard Green, Judge

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Appellate Judges:

Division Two  
Mark D. Pfeiffer, P.J., Lisa White Hardwick, and James Edward Welsh, JJ.

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Attorneys:

Justin Mettlen, Kansas City, MO

Counsel for Appellant

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Attorneys:

Gaylin Carver, Jefferson City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, DEPARTMENT OF SOCIAL SERVICES, FAMILY  
SUPPORT DIVISION, Appellant, v. THOMAS EDWARD DILLOW, Respondent**

**WD78218**

**Cole County**

Before Division Two Judges: Pfeiffer, P.J., Hardwick, and Welsh, JJ.

The Family Support Division of the Missouri Department of Social Services (Division) appeals the circuit court's judgment granting Thomas Edward Dillow's motion to abate his child support arrearages. The Division contends that the circuit court erred in abating Dillow's child support arrearages because he failed to satisfy the requirements of section 452.340, RSMo Cum. Supp. 2013, for abating child support.

**Reversed and Remanded**

**Division Two holds:**

(1) The Division has standing in this case to defend its rights to the assigned arrearages. The Division, however, has no standing to assert a claim to child support arrearages above and beyond that claimed to be owed as State debt.

(2) Pursuant to section 452.340, RSMo Cum. Supp. 2013, the circuit court may abate child support under two circumstances only: (1) for those periods of time over thirty day where the custodial parent "has voluntarily relinquished custody of a child to the parent ordered to pay child support," section 452.340.2, or (2) when the custodial parent "without good cause, fail[s] to provide visitation or physical and legal or physical or legal custody to the other parent pursuant to the terms of a judgment of dissolution, legal separation or modifications thereof," section 452.340.7. Dillow neither pleaded nor presented evidence that Mother voluntarily relinquished custody of a child to him or that Mother failed to provide visitation pursuant to the terms of a judgment of dissolution or legal separation or modifications thereof.

(3) To the extent that the circuit court found that abatement was proper because "the Division did not present evidence of the amount, types, and specific recipient of state assistance provided on behalf of the minor child or Mother," it was an improper shifting of the burden of proof. Dillow bore the burden of establishing that his circumstances fell within section 452.340 to be entitled to abatement of his child support arrearages.

(4) The fact that Dillow served two and a half years in the Department of Corrections for his failure to comply with the child support order does not justify abating his child support arrearages. Holding Dillow responsible to pay child support is not an additional punishment for the criminal nonsupport case in which Dillow was incarcerated. Supporting one's child is not punishment.

(5) The fact that Dillow claims that he was improperly served with the original paternity petition and that he did not become aware of the 1996 child support order until 2001 does not support abatement of his child support arrearages. Dillow did not seek to set aside the judgment entered on the paternity petition, and the circuit court did not set aside the judgment as void under Rule 74.06(b)(4) for lack of personal jurisdiction.

Opinion by James Edward Welsh, Judge

November 10, 2015

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