

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**SUSAN ANN TAORMINA,
APPELLANT**

vs.

**MARC KENNETH TAORMINA,
RESPONDENT**

DOCKET NUMBER WD84334

DATE: DECEMBER 21, 2021

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable James F. Kanatzar, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

Attorneys:

Susan D. Szczucinski, for Appellant

Jonathan Sternberg, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**SUSAN ANN TAORMINA, APPELLANT,
v.
MARC KENNETH TAORMINA, RESPONDENT.**

WD84334

Jackson County

Before Division Three Judges: Lisa White Hardwick., Presiding Judge, Gary D. Witt, Judge, and Edward R. Ardini, Jr., Judge

Susan Taormina (“Wife”) and Marc Taormina (Husband) were divorced in 2006. Pursuant to the divorce decree, Husband was ordered to pay maintenance to Wife. In November 2019, following their daughter’s wedding, Husband ceased paying maintenance. Wife filed a motion for contempt, and, in April 2020, Husband filed a motion to terminate or modify the maintenance award. Husband alleged that maintenance should be terminated or modified based on substantial and continuing changes in Wife’s circumstances, including that she was in a relationship that was a substitute for marriage. Following a bench trial in the Circuit Court of Jackson County, the trial court granted Husband’s motion, terminating maintenance retroactive to October 2019.

Wife appeals, raising three points of error. In her first point, she claims that the trial court erred in terminating Husband’s maintenance requirement retroactive to October 2019, arguing that maintenance could only be terminated for payments accruing after she had been served with Husband’s motion. In Point II, Wife alleges that the trial court erred in denying her motion for contempt, and in Point III, she asserts that the trial court erred in terminating maintenance.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division Three holds:

The trial court did not err in terminating maintenance. The evidence, in the light most favorable to the trial court’s judgment, supported a finding that Wife’s current relationship was a substitute for marriage resulting in changed circumstances so substantial and continuing as to make the terms of the original maintenance award unreasonable.

However, the trial court erred in terminating maintenance retroactive to October 2019. Under section 452.370.6, RSMo, an order modifying maintenance can only be made as to “maintenance installments accrued subsequent to the date of personal service.” Here, personal service on Wife was never obtained, but she filed a response to Husband’s motion on April 24, 2020. Therefore, the trial court was authorized to terminate maintenance retroactive to that date,

at the earliest. We remand to the trial court to determine a date on or after April 24, 2020, on which maintenance terminated.

Finally, the trial court erred in denying Wife's motion for contempt. The trial court's denial of the motion was premised on Husband not owing maintenance from the time he voluntarily stopped paying. Because the trial court erred in terminating maintenance retroactive to October 2019, and because Husband therefore owes some amount of maintenance that he willfully failed to pay, we must reverse and remand for the trial court to reconsider Wife's motion for contempt.

Opinion by: Edward R. Ardini, Jr., Judge

Date: December 21, 2021

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