Modified Opinion:
June 25, 2025

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

FELISHA DESPAIN, Plaintiff,
v.
NATHAN DESPAIN and BRANDI JUDAH, Guardian *ad litem*, Respondents,
ROSE C. BRISCOE, Appellant.

DOCKET NUMBER WD87182 (Consolidated with WD87268)

DATE: June 17, 2025

Appeal From:

Andrew County Circuit Court
The Honorable Emily M. Bauman, Judge

Appellate Judges:

Division Three: Edward R. Ardini, P.J., Alok Ahuja and Thomas N. Chapman, JJ.

Attorneys:

Jonathan Sternberg, Allyson Ralls, Kansas City, MO, for Appellant,

Terri D. Lowdon, St. Joseph, MO, for Respondent Brandi Judah
Nathan DeSpain, Savannah, MO, Respondent Acting Pro Se.

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

FELISHA DESPAIN, Plaintiff,

v.

NATHAN DESPAIN and BRANDI JUDAH, Guardian *ad litem*, Respondents, ROSE C. BRISCOE, Appellant.

WD87182 (Consolidated with WD87268) Andrew County

Before Division Three Judges: Edward R. Ardini, P.J., Alok Ahuja and Thomas N. Chapman, JJ.

Felisha DeSpain ("Mother") filed a petition to dissolve her marriage to Nathan DeSpain ("Father") in the Circuit Court of Andrew County. Mother was represented by attorney Rose Briscoe. The circuit court appointed Brandi Judah to serve as guardian ad litem (or "GAL") for the parties' two minor children.

During the dissolution proceeding, the parties' fourteen-year-old Son recorded meetings he had with GAL Judah and a court-appointed family Therapist. Son shared the recordings with Mother, who shared them with her attorney Briscoe. Briscoe referenced the recordings in correspondence with Judah, and in a motion filed with the circuit court seeking to remove Judah as guardian ad litem.

Judah filed a motion for sanctions against Briscoe, which the circuit court granted. The circuit court found that Judah's communications with Son were subject to the attorney-client privilege and work product protection, and that Son's meetings with Therapist were protected by the therapist-patient privilege in § 337.636, RSMo. The court also found that Son was incapable of waiving the privileges. The court awarded Judah monetary sanctions against Briscoe based on Briscoe's retention and use of the audio recordings. Briscoe appeals.

REVERSED, AND REMANDED FOR FURTHER PROCEEDINGS.

Division Three holds:

Independent of any rule or statute, Missouri courts have the inherent authority to impose sanctions against litigants and attorneys where the parties or counsel act in bad faith. In this case, the circuit court's finding of bad faith depended on its conclusion that the recordings Briscoe exploited contained information which was privileged.

The recordings were not subject to the attorney-client privilege, because a guardian *ad litem* does not operate as the attorney for the child whom they represent. Instead, a guardian *ad litem* operates in the manner of a court-appointed investigator or expert, and is expected to provide the court with *independent* recommendations, which may include testifying to the facts learned by the guardian *ad litem* during their investigation. The expectation that a guardian *ad litem* will testify to facts that they have learned, without obtaining consent from any other person to such testimony, is inconsistent with the attorney-client privilege.

The work product protection cannot justify the sanctions award, either. The recordings involve conversations between the guardian *ad litem* and persons with whom she was not in an attorney-client relationship. Those recordings were lawfully recorded by another participant, and voluntarily shared with Mother and then with Briscoe. The circuit court pointed to no particular aspect of the recordings which was particularly revealing or deserving of protection.

Because Therapist was court-appointed to evaluate and report to the court concerning the relationship between Father and his children, Son was not consulting Therapist for the purpose of therapeutic treatment. Therefore, the therapist-patient privilege found in § 337.636 did not apply to Therapist's sessions with Son.

Even if the recordings were not privileged, however, Briscoe's conduct may warrant the imposition of sanctions in the discretionary exercise of the circuit court's inherent authority. A circuit court has the inherent authority to sanction conduct which is intended to, or has the effect of, improperly interfering with a guardian *ad litem*'s independence or with the guardian's relationship with their wards. A remand to the circuit court is appropriate for it to decide, in the first instance, whether imposition of sanctions on Briscoe is warranted (independent of any claims of privilege).

Opinion by: Alok Ahuja, Judge June 17, 2025

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