In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

ANDREW R. VOLLMER, Appellant, v. KATHY D. VOLLMER, Respondent.	)))))))))	ED113666 Filed: August 11, 2026

Appeal from the Circuit Court of Franklin County
The Honorable Matthew Houston, Judge

Introduction

Andrew R. Vollmer (Husband) appeals from the trial court's judgment of dissolution of marriage to Kathy D. Vollmer (Wife). Husband raises four points on appeal. In Point One, Husband argues the trial court's award of child support retroactive to the date of filing, was unsupported by substantial evidence because the award failed to credit Husband for the child support amounts he paid pursuant to a consent *pendente lite* order. In his second point, Husband contends that the trial court's award of attorney's fees to Wife for tardy trial attendance was against the weight of the evidence, as it was Husband's counsel, and not Husband, who was late to the proceeding. In Point Three,

Husband asserts the trial court erred in awarding sole legal custody to Wife because there was no substantial evidence to support a finding that this custody arrangement was in the children's best interests. In his fourth and final point, which Husband concedes is unpreserved, he claims the trial court erred in signing Wife's proposed findings of fact and conclusions of law verbatim and that this indicates the trial court did not consider the evidence before it.

Because the trial court should have given Husband credit for child support paid under a consent *pendente lite* order, we enter the judgment the trial court ought to have given pursuant to Rule 84.14[1] and modify the judgment to reflect the correct amount of retroactive support Husband owes. Point One is denied. Because the actions of an attorney are imputed to the client, the trial court did not err in awarding Wife attorney's fees for Husband's counsel's tardiness to trial. We deny Point Two. Regarding Husband's third point, we exercise our discretion to review this point despite significant briefing deficiencies and find that the record is replete with substantial evidence to support a custody determination of sole legal custody to Mother. Consequently, we deny Point Three. Finally, because Husband failed to file a post-trial motion raising a claim that the form of the judgment is defective, Point Four is not preserved. We decline to conduct plain error review, and deny Point Four. Accordingly, we affirm the trial court's judgment with this Court's modifications to its retroactive child support award.

[1] All Rule references are to Missouri Supreme Court Rules (2026) unless otherwise indicated.

Factual and Procedural Background

Husband and Wife married on December 30, 2006, and three children were born of the marriage, the eldest of which is diagnosed with Down Syndrome. Beginning in 2011, the marriage allegedly declined in affection and Husband alleged this led him to engage in several extramarital affairs. From July 2022 to late summer 2023, Husband spent approximately $40,000 on encounters with thirty to 100 prostitutes. Wife found a fingernail in the family home belonging to one of these prostitutes, resulting in the couple separating in May 2023. In June 2023, Husband through his retained counsel (Trial Counsel), filed a petition to dissolve the marriage. In November 2023, the trial court issued a consent *pendente lite* order requiring Husband to pay $1,350 per month for child support.

The court appointed a Guardian ad Litem (GAL), and the case proceeded to trial. The court set the matter for trial at 9:00 a.m. on March 4, 2025. Husband was present at 9:00 a.m. Trial Counsel did not arrive until after noon and evidence did not begin until 1:00 p.m. because of her tardiness. The delay caused the court to add a second trial day on March 28, 2025.

At trial, Husband testified he complied with the terms of the November 2023 consent *pendente lite* order by paying $1,350 monthly in child support. Husband admitted he has not made the children's medical care or educational needs a priority. Husband claimed he knew the names of most of the children's teachers, yet he could only remember one teacher's name. Husband explained that he purchased a cell phone for the children to contact them when it was not his custody time, but he gave up trying to

contact them because he was unhappy with the frequency of their response. Husband conceded that Wife informed him of most medical appointments before they took place, but he did not attend them.

At the time of trial, the eldest child was thirteen, the middle child was eleven, and the youngest child was eight. Wife testified Husband has only attended three doctors' appointments for the children throughout the entirety of their lives. The eldest child attended a cooperative school which provides support for her special education needs, develops individual education plans (IEP), and holds parent meetings to discuss the IEP. Wife attended an IEP meeting in December 2024; Husband did not. Both Husband and Wife agree that Husband has not attended parent-teacher conferences for any of the three children. Wife attempted to communicate via a parenting app with Husband about sending the eldest child to the cooperative school and about the children participating in sports, but Husband responded belatedly or not at all. When Husband has custody of the children, Wife stated the children spend most of that time by themselves because Husband is either on his phone or watching television in the living room or in his bedroom. Additionally, Wife testified that Husband has never bought the children Christmas or birthday presents.

Wife conceded that during the marriage no disagreements arose between her and Husband about the children's health, education, and welfare as Husband deferred to Wife on these issues. The GAL stated the children have a stronger bond with Wife as she has been present for them. Additionally, the GAL opined that the children need the consistency and the type of love and affection that Wife has been providing for them their

entire lives. The GAL also reported the middle child would prefer to spend less time with Husband than she has been spending under the consent *pendente lite* order. In his recommendation, the GAL stated he would support joint legal custody, but noted "there has been such a deferral of parenting responsibilities as it relates to health and education …, in the event that they cannot agree, … [Wife's] final decision should engage."

At the end of trial, the court gave the parties an opportunity to submit a proposed judgment. Wife submitted a proposed judgment, and Husband did not. On May 23, 2025, the trial court adopted Mother's proposed judgment, as the judgment of the court.

In its judgment, the trial court awarded Wife $2,940 in attorney's fees "due to the actions of Petitioner and his attorney" referencing the late start of the trial and the addition of a second day of trial. The trial court adopted Wife's parenting plan, awarding joint physical custody and sole legal custody to Wife. The judgment awarded Wife $2,051 monthly child support for three children, $1,823 for two children, and $1,363 for one child. The judgment also awarded Wife child support retroactive to the date of filing, but made no mention of the child support payments Husband made pursuant to the consent *pendente lite* order. Husband filed no post-trial motion. This appeal follows.

Standard of Review

"As with any court-tried case, our review of a dissolution of marriage action is guided by the standards set forth in *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)." *Noble v. Noble*, 731 S.W.3d 528, 540 (Mo. App. W.D. 2026) (internal quotation omitted). "Accordingly, the dissolution judgment will be affirmed unless it is not supported by substantial evidence, it is against the weight of the evidence, it erroneously

declares the law, or it erroneously applies the law." *Id.* (internal quotation omitted). "We view the evidence, and permissible inferences therefrom, in the light most favorable to the trial court's judgment, and we disregard all contrary evidence and inferences." *Woolery v. Woolery*, 679 S.W.3d 17, 22 (Mo. App. W.D. 2023). As the trier of fact, the trial court "can believe all, part, or none of the evidence presented." *Wilkerson v. Wilkerson*, 707 S.W.3d 79, 84 (Mo. App. S.D. 2025) (internal quotation omitted).

Points One and Three—Substantial Evidence

"Substantial evidence is that which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case." *Grabb v. Grabb*, 689 S.W.3d 207, 212 (Mo. App. W.D. 2024) (internal quotation omitted).

> On appeal, a successful not-supported-by-substantial-evidence challenge requires completion of three sequential steps where the appellant must: (1) identify a challenged factual proposition necessary to sustain the trial court's judgment; (2) identify all the favorable evidence in the record supporting that position; and (3) demonstrate why that supporting evidence, when considered with the reasonable inferences drawn therefrom, is so lacking in probative value that the trier of fact could not reasonably believe the proposition.

Carpenter v. Carpenter, 689 S.W.3d 765, 773 (Mo. App. W.D. 2024) (internal citation omitted). "Failure to follow the applicable framework means the appellant's argument is analytically useless and provides no support for their challenge." *Id.* (internal quotation and alterations omitted).

Point Two—Against-the-Weight-of-the-Evidence

"A judgment is against the weight of the evidence only if the trial court could not have reasonably found, from the evidence at trial, the existence of a fact that is necessary

to sustain the judgment." *Severn v. Severn*, 567 S.W.3d 246, 255 (Mo. App. W.D. 2019) (internal quotation omitted). "A claim that the judgment is against the weight of the evidence presupposes that there is sufficient evidence to support the judgment." *Prevost v. Silmon*, 645 S.W.3d 503, 512 (Mo. App. W.D. 2022) (quoting *Ivie v. Smith*, 439 S.W.3d 189, 205 (Mo. banc 2014)) (internal quotation marks and alterations omitted). An against-the-weight-of-the-evidence challenge has four steps:

> (1) identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;
>
> (2) identify all the favorable evidence in the record supporting the existence of that proposition;
>
> (3) identify the evidence in the record contrary to the belief of that proposition, resolving all conflicts in testimony in accordance with the trial court's credibility determinations, whether explicit or implicit; and,
>
> (4) demonstrate why the favorable evidence, along with the reasonable inferences drawn from that evidence, is so lacking in probative value, when considered in the context of the totality of the evidence, that it fails to induce belief in that proposition.

Id. at 512–13 (internal quotation omitted).

Point Four—Plain Error Review

"Under plain error review, plain errors affecting substantial rights may be considered on appeal, in the discretion of the court when the court finds that manifest injustice or miscarriage of justice has resulted therefrom." *Schuman v. Schuman*, 612 S.W.3d 232, 238 n.6 (Mo. App. W.D. 2020) (quoting Rule 84.13(c)) (internal quotation marks and alterations omitted). Absent a showing that "the claimed error facially establishes substantial grounds for believing that manifest injustice or miscarriage of

justice has resulted[,]" we should not exercise our discretion to conduct plain error review. *Querry v. Querry*, 382 S.W.3d 922, 926 (Mo. App. W.D. 2012) (quoting *State v. Brown*, 902 S.W.2d 278, 284 (Mo. banc 1995)) (internal quotation marks and alterations omitted).

Analysis

Point One: Because the trial court ought to have given Husband credit for child support amounts paid under the consent *pendente lite* order, and failure to do so is error, we modify the judgment pursuant to Rule 84.14

Husband does not challenge the retroactive award of child support to Wife. Instead, Husband states the trial court should have given him credit for child support paid toward the retroactive award. We agree.

A trial court may order child support, "including an award retroactive to the date of filing the petition" after considering six factors. Section 452.340.1.[2] "[U]nder Missouri law a party ordered to pay retroactive support is generally entitled to receive a credit for voluntary child support ...." *Eichacker v. Eichacker*, 596 S.W.3d 177, 188 (Mo. App. E.D. 2020) (internal citation omitted). "One should not be required to make double payments for child support." *Runge v. Runge*, 103 S.W.3d 804, 807 (Mo. App. E.D. 2003) (internal citations omitted).

Here, the trial court erred in failing to give Husband credit for the child support he paid in accordance with the consent *pendente lite* order. Hence, we enter the judgment the trial court ought to have given pursuant to Rule 84.14 and modify the judgment to reflect the correct amount of retroactive support Husband owes. Husband paid $1,350

[2] All statutory references are to RSMo (2016) unless otherwise indicated.

pursuant to the *pendente lite* order from December 2023 to May 2025, when the dissolution judgment was entered, for a total of $22,950.[3] The trial court's failure to give credit for these voluntary child support payments creates reversible error. *See Eichacker*, 596 S.W.3d at 188–89 (finding a parent entitled to partial credit of $41,978 against the court's ordered retroactive child support of $47,035); *see also Runge*, 103 S.W.3d at 807–08 (finding a parent entitled to credit for the $600 monthly child support payment to the court's award of $615 monthly retroactive award). While cases like *Runge*, and *Eichacker* indicate that a trial court should award credit for support paid between the time of separation and the date of trial, common sense and sound public policy require that this credit be extended to temporary support payments made until the entry of the final judgment. This approach ensures fairness for the paying spouse and encourages obligors to abide by *pendente lite* orders, which is precisely why it reflects the approach most trial judges already apply as a matter of practice. Moreover, this process aligns directly with section 452.315 which provides that temporary orders terminate upon the entry of a final dissolution judgment.

Rule 84.14 allows this Court to "give such judgment as the court ought to give." The trial court awarded Wife $2,051 in child support and the total retroactive award amounts to $45,122. After giving Husband credit for the amount he has paid, we find

[3] The November 2023 consent *pendente lite* order required Husband to begin his child support payments on December 1, 2023. In his brief, Husband states he paid $24,300 in child support between the entry of the *pendente lite* order and the May 2025 dissolution judgment, a period of 18 months. Our record establishes a payment period of 17 months, as the payment obligation under the *pendente lite* order did not begin until December 1, 2023.

Husband owes $22,172 in retroactive child support and modify the dissolution judgment to reflect this. Point One is denied.

Point Two: The trial court did not err in awarding Wife attorney's fees due to Husband's Trial Counsel's actions because such actions are imputable to Husband

Husband argues the trial court's award of attorney's fees due to Trial Counsel's actions was against the weight of the evidence and constitutes an abuse of discretion. However, Husband fails to lay out the against-the-weight-of-the-evidence framework making his argument analytically useless. *Carpenter*, 689 S.W.3d at 773. Additionally, Husband presents a multifarious point by combining two different standards of review.[4] We review this non-compliant point *ex gratia* as we can readily understand his argument. *Id.*

Husband urges us not to hold him responsible for Trial Counsel's failure "to perform the most fundamental function of a lawyer[:] to show up timely to court …." While we acknowledge the harsh consequences of the trial court's decision, we find no error in its appropriate exercise of discretion to award Wife attorney's fees under these circumstances.

"In awarding attorney's fees, we follow the American Rule, which provides that orders requiring one party to pay another party's attorney's fees or other expenses ordinarily are not permitted unless the parties' contract or a statute authorizes the court to

[4] "A multifarious point … groups together multiple, independent claims rather than a single claim of error." *Barbieri v. Barbieri*, 633 S.W.3d 419, 432 (Mo. App. E.D. 2021) (citing *Ivie v. Smith*, 439 S.W.3d 189, 199 n.11 (Mo. banc 2014)). "Generally, multifarious claims of error preserve nothing for appeal and are subject to dismissal." *Id.* (emphasis removed).

make such an award." *Vogel v. Schoenberg*, 620 S.W.3d 106, 116 (Mo. App. W.D. 2021) (internal quotation and quotation marks omitted). Section 452.355.1 authorizes the trial court "to award attorney's fees arising out of a dissolution proceeding …." *Wagner v. Wagner*, 542 S.W.3d 334, 343 (Mo. App. E.D. 2017) (internal citations omitted). In awarding attorney's fees, the trial court may consider "the financial resources of both parties, the merits of the case and **the actions of the parties during the pendency of the action** …." Section 452.355.1 (emphasis added).

"Generally, actions of a party's attorney, including procedural neglect that precludes a client's substantive rights, are imputed to the client." *GFS, II, LLC v. Carson*, 684 S.W.3d 170, 186 (Mo. App. W.D. 2023) (internal quotation and quotation marks omitted). "A narrow exception to the rule imputing an attorney's neglect to a client applies when an attorney abandons a client without notice[,]" but "[n]eglience is not equivalent to abandonment." *Frontenac Bank v. GB Invs., LLC*, 528 S.W.3d 381, 393 (Mo. App. E.D. 2017) (quoting *Cotleur v. Danziger*, 870 S.W.2d 234, 238 (Mo. banc 1994)). "Courts have held that an attorney does not abandon his client when, [] the attorney engages in representation of the client but fails properly to handle the matter …." *Id.* (internal citations omitted).

Here, the trial court appropriately awarded Wife attorney's fees because the general imputation rule applies as Trial Counsel engaged in representation of Husband, but failed to properly handle the matter. Trial Counsel appeared more than three hours late to trial, forcing the court to set an additional day of trial, resulting in Wife incurring additional legal fees. *See Cotleur*, 870 S.W.2d at 238 (imputing to a client his attorney's

failure to appear at trial); *see also Frontenac Bank*, 528 S.W.3d at 393 (imputing to clients their attorney's failure to appear at a rescheduled deposition and a hearing on a motion to compel). Husband does not argue Trial Counsel abandoned him. Point Two is denied.

Point Three: The trial court did not err in awarding Wife sole legal custody because substantial evidence supports the sole legal custody determination

Husband contends the trial court's award of sole legal custody was unsupported by substantial evidence because Husband and Wife share commonalities on religion, education, and medical care for the children. Additionally, Husband claims that despite tension between the parties, this Court should follow Missouri's preference for joint physical and legal custody.

As a threshold issue, we note that Husband's brief is noncompliant with the necessary analytical framework as he fails to identify the favorable evidence to the trial court's custody determination as required in a no-substantial-evidence challenge. Failure to follow the required framework makes an argument analytically useless. *Carpenter*, 689 S.W.3d at 773. Nevertheless, despite the significant deficiencies in Husband's argument, we will review his point on the merits as is consistent with our preference. *Id.*

We find the record replete with substantial evidence necessary to support a sole legal custody determination, not all of which will be repeated here. Section 452.375.2, RSMo (2024), permits a trial court to determine what custody arrangement serves the best interest of the child after considering eight statutory factors. "Generally, the legislature has expressed a public policy preference for joint custody where such an

arrangement is in the best interests of the child." *J.W. by K.C.G. v. N.R.W.*, 695 S.W.3d 231, 247 (Mo. App. W.D. 2024) (internal quotation, quotation marks, and alterations omitted); *see also* Section 452.375.4. "A judgment granting sole legal custody must be based on a finding that the parties lack a commonality of beliefs concerning parental decisions, and **lack the willingness and ability to function as a unit in making those decisions**." *Moore v. Moore*, 645 S.W.3d 705, 711 (Mo. App. W.D. 2022) (internal citation omitted) (emphasis added).

Our review of the record indicates the trial court considered all relevant factors pursuant to section 452.375.2 in making its custody determination. Husband was a disinterested parent throughout the marriage and beyond. Husband had opportunities to be involved in decisions about the children's medical, educational, and social activities, but showed little if any interest in actively engaging with Wife on these issues. Even after the parties separated, there was evidence Husband continued to lack interest in truly co-parenting with Wife. Wife made Husband aware of an IEP meeting for their special needs child, but he did not attend, Husband provided the children a phone to communicate with him outside of his custody time but rarely called them, and he has never attended a parent teacher conference for any of the children.

The trial court credited Wife's testimony that that Husband is often unresponsive or there is a significant delay in his response when she attempts to communicate with him about the children's activities or needs via a parenting app. The trial court found credible the reports that that Husband does not interact much with the children during his custody time, as well as the GAL's opinion that the children do not have a strong bond with

Husband. "This Court affords greater deference to a [trial] court's custody determination than in other matters." *S.W. v. K.H.*, 727 S.W.3d 839, 852 (Mo. App. E.D. 2025) (citing *Hightower v. Myers*, 304 S.W.3d 727, 732 (Mo. banc 2010)).

Under this record, there was substantial evidence that Husband's history of shunning his parental responsibilities and his continued inability or unwillingness to fully engage in decision making with Wife make the parties unable to act as a parental unit and cooperate to make decisions for the children. "If the parents are unable to make shared decisions concerning the welfare of the children, joint custody is not in the best interests of the children." *Irving v. Angstrom*, 702 S.W.3d 248, 254 (Mo. App. W.D. 2024) (internal quotation and quotation marks omitted). We will not reweigh the evidence presented at trial, and we will not reverse the trial court's decision because the evidence could have supported a different conclusion. *Carpenter*, 689 S.W.3d at 777. Point Three is denied.

Point Four: This Court declines to engage in plain error review as Husband failed to preserve this Point because he did not file a post-trial motion

Husband asserts the trial court's judgment is defective because the trial court adopted Wife's proposed judgment verbatim. Husband acknowledges this Point is not preserved. This Court declines to conduct plain error review of this Point.

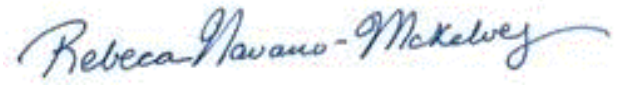
"Issues relating to the form or language of a judgment must have been presented in a Rule 78.07(c) motion to amend the judgment in order to be preserved for appeal." *Brown v. Haley*, 687 S.W.3d 27, 32 (Mo. App. S.D. 2024) (internal citation omitted). "The purpose of Rule 78.07(c) is to ensure that complaints about the form and language

of judgments are brought to the attention of the trial court where they can be easily corrected, alleviating needless appeals, reversals, and rehearings." *J.W. by K.C.G.*, 695 S.W.3d at 242 (internal quotation omitted). This Court rarely grants plain error review in civil cases. *Gonzales-Flaharty v. Flaharty*, 727 S.W.3d 156, 165 (Mo. App. W.D. 2025) (internal quotation omitted).

Here, Husband failed to preserve this issue for appeal because he did not file a post-trial motion. *See Brown*, 687 S.W.3d at 32. Husband attempts to excuse the failure to preserve this Point by pointing to Trial Counsel's unprofessional behavior. We find this argument without merit as our analysis in Point Two shows the behavior of counsel imputes to the client. Point Four is denied.

Conclusion

The judgment of the circuit court is affirmed.



Rebeca Navarro-McKelvey, Presiding Judge

James M. Dowd, Judge., concurs
and Gary M. Gaertner, Jr., Judge concurring in a separate opinion.

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Appeal from the Circuit Court of Franklin County
The Honorable Matthew W. Houston

Concurring Opinion

I concur with the majority opinion's ruling on all points. However, I write separately concurring on Point One to emphasize the period for which Appellant is owed a credit.

Section 452.315.1 provides that during a dissolution proceeding, either spouse may request a *pendente lite* (PDL) order for temporary maintenance and/or child support. As well, the trial court shall enter a PDL order requiring child support "pending the **final judicial determination**." Section 452.315.7 (emphasis added). The purpose of a PDL order is to maintain the status quo between the spouses pending final judgment. *In re Marriage of Kovach*, 873 S.W.2d 604, 607 (Mo. App. E.D. 1993).

A trial court may in its final dissolution judgment award child support retroactive to the time of service, even if a separate PDL child support order was in place during the pendency of the dissolution. *See Colquitt v. Muhammad*, 86 S.W.3d 144, 152 (Mo. App. E.D. 2002). However, the spouse paying child support is entitled to receive a credit against the retroactive child support award in the final judgment for amounts paid during the pendency of the dissolution pursuant to a PDL order. *See Eichacker v. Eichacker*, 596 S.W.3d 177, 188 (Mo. App. E.D. 2020). "One should not be required to make double payments for child support." *Runge v. Runge*, 103 S.W.3d 804, 807 (Mo. App. E.D. 2003) (internal citations omitted).

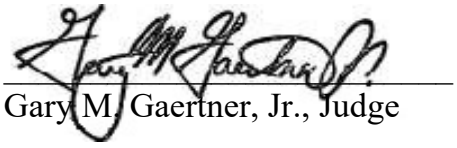
The purpose of allowing the child-support-paying spouse credit against a retroactive award is to prevent double child support payments, and Section 452.315 contemplates that the PDL award of child support will continue until the final judgment. Nevertheless, all Missouri Court of Appeals Districts maintain that the child-support-paying spouse is only entitled to receive credit for temporary child support under a PDL order paid between the date of filing the request for PDL child support and "the time of the trial." *See*, *e.g.*, *Plager v. Plager*, 426 S.W.3d 689, 699 (Mo. App. E.D. 2014)[1]; *In re Marriage of Altergott*, 259 S.W.3d 608, 615 (Mo. App. S.D. 2008); *Foraker v. Foraker*, 133 S.W.3d 84, 99 (Mo. App. W.D. 2004). Allowing credit for payments made until "the

[1] I recognize that, as the author of *Plager v. Plager*, I am partly responsible for this continuing error.

time of trial" rather than until the final judgment is contrary both to the language of Section 452.315 and the reason behind requiring the credit.

I am unsure why Missouri appellate courts initially began using the language "until the time of trial" or "final hearing" rather than "final judgment." Trial courts years ago often awarded a spouse without income temporary maintenance during the pendency of the dissolution to allow that spouse to pursue or defend a dissolution, and those temporary payments were only needed until the trial ended. *See Berbiglia v. Berbiglia*, 442 S.W.2d 949, 951 (Mo. App. 1969) ("purpose of these temporary allowances is to afford the defendant [spouse] an opportunity to adequately prepare for a trial on the merits"); *Glick v. Glick*, 336 S.W.2d 528, 529, 531 (Mo. App. 1960) (upholding grant of suit money for defendant [spouse] who was without funds to defend action for dissolution during pendency of case until "final hearing").

As *Runge* made abundantly clear, to avoid double child support payments, a spouse should receive credit against any retroactive child support award for child support payments made pursuant to a PDL order: thus, credit to the date of the final judgment. This is a very esoteric issue that appellate courts rarely address as a practicality because most trial courts now generally grant credit for temporary child support payments under a PDL order made through the date of final judgment. Nevertheless, it is important to address this issue now to avoid results that are contrary to language and purpose of Section 452.315.



Gary M. Gaertner, Jr., Judge