

OPINION SUMMARY
MISSOURI COURT OF APPEALS – EASTERN DISTRICT

DIVISION FOUR

WENDY ANDREWS,)	No. ED91820
)	
Plaintiff/Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	06FC-010075
)	
JEFFREY ANDREWS,)	Honorable Douglas Beach
)	
Respondent/Appellant.)	FILED: June 23, 2009

Jeffrey Michael Andrews (Husband) appeals from the Judgment on Wendy Christina Andrews' (Wife) Motion Pendente Lite for Attorney's Fees on Appeal (Motion Pendente Lite) awarding Wife \$10,000 in appellate attorney fees. Wife's attorney fees are in relation to Husband's pending appeal¹ with this court concerning the Findings of Fact, Conclusions of Law, and Judgment of Dissolution of Marriage (Judgment of Dissolution) entered by the trial court on October 3, 2007. On appeal, Husband argues the trial court abused its discretion in awarding Wife \$10,000 in attorney fees because: (1) Wife failed to present evidence of her own and Husband's income and financial history since the Judgment of Dissolution, as required by Section 452.355.1, RSMo 2000,² and; (2) the trial court disallowed testimony evidence of Husband's lack of financial resources since the Judgment of Dissolution.

REVERSED.

Division Four holds: The trial court erred in awarding Wife \$10,000 in attorney fees on appeal because there was no substantial evidence to support the award. Moreover, the trial court abused its discretion in awarding Wife \$10,000 in attorney fees because she failed to meet her burden of proving her own and Husband's income and financial history from the date of the Judgment of Dissolution, as required by Section 452.355.1. Pursuant to Rule 84.14, we reverse outright and decline to exercise our discretion to remand since the award is not only unsupported by substantial evidence and against the weight of the evidence, but also Wife repeatedly objected to Husband's presenting evidence of his post-dissolution financial condition, which was a prerequisite to the trial court making an award of appellate attorney's fees.

Opinion by: Mary K. Hoff, Judge Kathianne Knaup Crane, Presiding Judge and Kenneth M. Romines, Judge, concur.

Attorney for Appellant	Jeffrey Kent Elnicki
Attorney for Respondent	Wendy Andrews

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.

¹ On May 12, 2009, this court affirmed the trial court's decision in Andrews v. Andrews 2009 WL 1285887 (Mo. App. E.D.).

² Unless otherwise indicated, all further statutory references are to RSMo 2000.

