

Summary of SC92872, *In re the Marriage of: Charles Matthew Soehlke and Angela Maria Soehlke, Charles Matthew Soehlke v. Angela Maria Soehlke, a/k/a Angela Maria Crumer-Soehlke*

Appeal from the Scott County circuit court, Judge W.H. Winchester III
Argued and submitted Feb. 28, 2013; opinion issued May 14, 2013

Attorneys: The mother was represented by Greg L. Roberts and Thomas H. Rolwing Jr. of The Roberts Law Firm PC in Chesterfield, (636) 530-9199, and Daniel R. Schramm of Daniel R. Schramm LLC in Chesterfields, (636) 532-2300. The father was represented by Michael L. Jackson of the Law Offices of Michael L. Jackson LC in Jackson, (573) 204-8770.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A mother appeals a judgment modifying the child custody and support provisions of the judgment dissolving her marriage. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the judgment. The trial court did not abuse its discretion in determining a guardian ad litem was not necessary based on the allegations the parties raised, the mother did not object to proceeding to a trial on the motion to modify without a guardian ad litem and the mother failed to demonstrate the lack of a guardian ad litem resulted in material prejudice to the child's best interest. The trial court properly considered all the relevant "best interest" statutory factors and is limited to making its decision to the evidence the parties presented. Evidence a party knew about but chose not to present cannot play a role in either the trial court's decision or this Court's review of that decision. There is no ground for this Court to strike the trial court's October 2011 clarification of its modification judgment. Although that clarification is not authorized by the rule permitting clerical errors to be corrected, it is authorized by the rule continuing a court's control over its judgment for 30 days after entering judgment.

Facts: When Charles and Angela Soehlke's marriage was dissolved in February 2005, they were awarded joint legal and physical custody of their only child. The judgment designated the mother's residence as the child's primary residence for mailing and educational purposes and required that parenting time be shared equally. At the time, both lived in Missouri. The mother subsequently moved to Kansas, and the court entered a judgment modifying the custody and support provisions of the original 2005 judgment. The new judgment, entered in July 2008, incorporated a new parenting plan to which the parties had agreed. The judgment continued the joint legal and physical custody provisions but eliminated the week-to-week custody exchanges, instead designating the mother's residence in Kansas as the child's primary residence for mailing and educational purposes and provided that the child would reside with the father during specified periods during the school year and longer periods during the summer.

The father later sought to modify the judgment, making a number of allegations that the mother was not complying with the 2008 judgment. In August 2011, both parties appeared in person and by counsel and announced they were ready to proceed to a trial. In September 2011, the court entered a judgment modifying the 2008 modification. The court continued the parties' joint legal and physical custody but imposed new custody terms that essentially were the mirror-image of

those in the 2008 judgment, changing the child's primary residence to that of the father and specifying certain times during the school year and summer when the child would stay with the mother. The mother refused to comply with the September 2011 judgment, alleging the custody provisions were vague. The father filed a motion asking the court to clarify that the child was to reside with the father at all times not specifically set apart for the mother. Two days later, in October 2011, the court entered a judgment stating that the child "shall be primarily in [the father's] physical care, custody and control at all times not specifically set aside" under the parenting plan, which also was amended with one paragraph clarifying when the child was to be with each parent and incorporating an attached schedule listing the days set aside for the child to stay with the mother. The mother later filed a motion objecting to the father's motion to modify and seeking a new trial or an amendment of the judgment. The court overruled her motion, and she appeals.

AFFIRMED.

Court en banc holds: (1) The mother is not entitled to a new trial on the ground that the court did not appoint a guardian ad litem for the child during the 2011 trial. Section 452.423, RSMo, plainly and unambiguously mandates the appointment of a guardian ad litem only when allegations of child abuse or neglect are raised in one or both parties' pleadings. When the court told the parties it concluded no guardian ad litem was required under section 452.423, both implicitly agreed, and the mother did not insist the court was wrong or object to proceeding to trial without a guardian ad litem. The father's allegations do not constitute allegations of abuse or neglect sufficient to trigger section 452.432.2, and the court did not abuse its discretion in so concluding. Merely alleging facts showing the status quo is not in the child's best interest – required to justify a custody modification – does not obligate courts, on their own motion, to appoint guardians ad litem. Although the court warned the parents that, if they continued to put the child in the middle of their ceaseless quarreling, they risked harming the child, this statement was merely an admonition and not a finding of fact or anything suggesting the court believed there was evidence of abuse sufficient to trigger section 452.432.2. In fact, the court expressly found that there was no evidence of abuse at all. Further, even if the court had erred in not appointing a guardian ad litem, the mother failed to demonstrate this resulted in material prejudice to the child's best interest.

(2) The trial court properly considered all the relevant "best interest" factors under section 452.375.2, RSMo. A trial court is required to include in its judgment a written finding based on the public policy in section 452.375 and the best interest factors listed in section 452.375. Here, the trial court's extensive written findings were more than adequate to fulfill this obligation. The trial court was obligated to decide the father's motion based solely on the evidence presented, and this Court must consider only the evidence presented in reviewing the trial court's findings on appeal. Evidence a party knew about but chose not to present cannot play a role in either decision.

(3) There is no ground for this Court to strike the October 2011 modification. This judgment – titled a "Judgment and Order for Amendment of Parenting Plan Nunc Pro Tunc" – was not authorized by Rule 74.06(a) because it did not – and did not even purport to – correct a "clerical error." Rule 75.01, however, provides that a trial court retains control over judgments for 30 days

after entering judgment and may clarify a judgment for good cause shown and after giving the parties an opportunity to be heard. Here, it is undisputed that every one of the events relating to the court's clarification of its September 2011 judgment occurred within this 30-day period. Additionally, the mother does not contend the court lacked "good cause," as the modification was the result of the father's efforts to eliminate the mother's disingenuous grounds for refusing to comply with the custody provisions of the September 2011 judgment. Further, the mother had the opportunity to be heard and was heard.