

**Summary of SC93238, *Karen M. Brown v. Anthony T. Brown***

Appeal from the St. Charles County circuit court, Judge Ted House

Argued and submitted October 8, 2013; opinion issued March 11, 2014

**Attorneys:** The father was represented by Alan Kimbrell, an attorney in Wildwood, (636) 273-0442; and the guardian ad litem was represented by Benicia Baker-Livorsi of The Family Law Group LLC in St. Charles, (636) 947-8181. The mother, who did not submit a brief or argue, represented herself.

*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 father appeals a judgment awarding fees to the guardian ad litem for her services rendered during his appeal of a judgment deciding the divorced parents' custody and visitation rights and ordering the father to pay child support, court costs and guardian ad litem fees. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri denies the appeal and affirms the judgment. The father is precluded from asking this Court to review issues he failed to raise or otherwise pursue properly in either the circuit court or the appeals court; as such, he cannot raise them for the first time on appeal now.

**Facts:** A 2006 decree entered in Texas dissolved a couple's marriage and established custody and support requirements for their six minor children. The mother now lives in Missouri, and the Texas decree was registered in the St. Charles County circuit court in 2007. Two years later, the father filed in St. Charles County a family access motion, a motion to modify custody and/or child support, and a motion for contempt. A guardian ad litem was appointed for the minor children. In January 2011, the circuit court entered its judgment deciding the parents' custody and visitation rights and ordering the father to pay child support, court costs and the guardian ad litem fees. The father appealed that judgment. In response to the father's notice of appeal, the guardian ad litem filed a motion to secure costs on appeal, seeking payment from the parents so she could draft and file an appellate brief responding to six issues the father raised on appeal. In October 2011, the circuit court sustained the motion, directing the parents to advance to the guardian ad litem \$2,500 each, to be held in trust pending further court order. In the appellate proceeding, the father did not object to or move to strike the guardian ad litem's brief, nor did he make any argument regarding the guardian ad litem fees other than to argue that the circuit court should have required the mother to pay a larger percentage of those fees. The appeals court affirmed the circuit court's judgment. In February 2012, the guardian ad litem moved for payment of fees for her services rendered on appeal and subsequently revised her fee statement, increasing the amount she sought for her services. In April 2012, the circuit court entered judgment granting the guardian ad litem's motion and awarding her a total of \$6,228 in fees. It authorized her to disburse the \$2,500 she held in trust from the father, ordered the mother to pay \$2,500 and ordered the father to pay the additional \$1,228. The father appeals.

**APPEAL DENIED AND JUDGMENT AFFIRMED.**

**Court en banc holds:** (1) The father cannot raise in this Court, for the first time, his objections to the guardian ad litem's participation in the first appeal. He could have raised his objections or otherwise sought legal remedies in the circuit court, when the guardian ad litem moved to secure costs and essentially sought the circuit court's permission to spend the parties' money drafting an appellate brief, or in the appellate court, where she filed her brief and made the children's arguments. Under Rule 78.09, his failure to raise the issue earlier precludes this Court's review.

(2) The father's alternative argument – that, even if the guardian ad litem was authorized to participate in the first appeal, the circuit court's judgment ordering payment of her fees was not supported by substantial evidence – also fails. There is nothing in the record to show that the father's counsel, who represented the father at both hearings regarding the guardian ad litem's fees, objected to the final fee award or properly challenged the award with the circuit court in any manner. As such, the father fails to preserve this issue for appellate review.