

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DUDLEY O. NEVINS,  
RESPONDENT  
vs.**

**FELICIA A. GREEN,  
APPELLANT**

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DOCKET NUMBER WD71750

DATE: AUGUST 24, 2010

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Appeal from:

The Circuit Court of Jackson County, Missouri  
The Honorable Wesley B. Powell, Judge

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Appellate Judges:

Division Three: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

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Attorneys:

Sandra G. Hessenflow, for Respondent

Felicia A. Green, Appellant Pro-se

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DUDLEY O. NEVINS, RESPONDENT**

**v.**

**FELICIA A. GREEN, APPELLANT**

WD71750

Jackson County, Missouri

Before Division Three Judges: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Father filed a petition for determination of paternity, child support, and child custody in July of 2008. The trial court adopted Mother's proposed parenting plan, which included a provision stating that Mother would provide health insurance for the child and that Father would claim the child as a dependent on his tax returns during odd-numbered years. The trial court ordered Father to pay child support in the amount of \$315.00 per month and included a 29% overnight visitation adjustment based on the number of days Father would keep the child overnight. The court made the award retroactive to the date Mother was served with the petition. Although the retroactive award included a reduction for visitation that Father did not exercise during the pendency of the case, the court found that the award was justified because the testimony at trial indicated that Mother had not allowed Father to exercise visitation. Mother appeals.

**AFFIRMED IN PART, REVERSED IN PART, REMANDED.**

**Division Three holds:**

- (1) Where the testimony at trial did not establish that Father's visitation ceased because Mother denied him the visitation he previously enjoyed, the trial court erred in including a 29% overnight visitation credit in its retroactive child support award and the inclusion of the credit in the award is reversed and remanded for a recalculation of child support.
- (2) Where the parenting plan adopted by the trial court provided Father with 155 overnight periods with the child and Mother did not present evidence rebutting the overnight visitation adjustment, the trial court did not err in awarding Father a 29% adjustment based on expenditures resulting from overnight periods of custody.
- (3) Where there was evidence presented that Father would incur an expense of \$354.00 in maintaining health insurance for the child until Father could drop the child from his health insurance plan, the trial court did not err in awarding Father a \$354.00 credit toward future child support.
- (4) Because the trial court's Form 14 child support calculation is based in part on an assumption that the parent entitled to receive child support claims the tax exemption for the child, the trial court must rebut the presumed child support amount as being unjust or inappropriate in order to

award the tax exemption to the child support obligor. Therefore, on remand, the trial court must either make a finding that the presumed child support amount is unjust or inappropriate or it must reverse the tax exemption award to Father. Additionally, if the trial court chooses to allocate the tax exemption to Father, it must order Mother to sign a declaration that she will not claim the child as a dependent for each odd-numbered year in order to comply with § 152(e) of the Internal Revenue Code.

(5) Where Mother did not cite any applicable authority for her contention that a parenting plan must be signed by the parent before being submitted to the trial court, Mother failed to demonstrate error on the part of the trial court in accepting her parenting plan.

**Opinion by: Victor C. Howard, Judge**

Date: August 24, 2010

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