

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ANDREA L. VILLINES

APPELLANT-RESPONDENT,

**v.
COMER "REX" PHILLIPS**

RESPONDENT-APPELLANT.

DOCKET NUMBER WD71926 Consolidated with WD71974 and WD72036

DATE: October 25, 2011

Appeal From:

Jackson County Circuit Court
The Honorable Vernon E. Scoville III, Judge

Appellate Judges:

Division Two: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Cynthia L. Martin,
Judges

Attorneys:

Hugh F. O'Donnell III and Michael L. Belancio, Kansas City, MO, for appellant-respondent.

Nancy A. Garris, Blue Springs, MO, for respondent-appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ANDREA L. VILLINES,

APPELLANT-RESPONDENT,

v.

COMER "REX" PHILLIPS,

RESPONDENT-APPELLANT.

No. WD71926 Consolidated with WD71974 and WD72036

Jackson County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, Victor C. Howard and Cynthia L. Martin, Judges

Andrea Villines ("Mother") appeals from the trial court's amended judgment of paternity claiming that the trial court erred in: (1) failing to find either Mother or Comer "Rex" Phillips ("Father") responsible for medical insurance coverage for their minor child; (2) ordering Mother to notify Father of any change in address and phone number even though Father was not awarded custodial or visitation rights; and (3) crediting Father's child support obligation by derivative Social Security retirement benefits received by Child.

Father cross-appeals claiming that the trial court erred in: (1) ordering Father to pay Mother's medical expenses and attorney's fees in violation of his due process rights; (2) its calculation of Father's child support obligation; and (3) ordering Father to pay the attorney's fees of Sandra Hessenflow.

AFFIRMED.

Division Two holds:

(1) Section 454.603.1 imposes a statutory obligation on a trial court to make a finding as to the availability of a health insurance plan and to assign responsibility to one of the parties to maintain health insurance coverage for the Child. However, Mother did not file a Rule 78.07(c) post trial motion requesting the trial court amend its Judgment to make the statutorily required findings. Even if the trial court's obligation to assign responsibility for health insurance does not fall within the scope of Rule 78.07(c), Mother has not been prejudiced as she testified she would be providing health insurance for the Child.

(2) Paternity orders are subject to section 452.377. The plain language of section 452.377.11 imposes an unfettered obligation to incorporate the statutory relocation language into every court order establishing or modifying custody or visitation and does not except from its reach orders that award one parent no custodial or visitation rights. In addition, because Mother did not file a Rule 78.07(c), this issue was not preserved for appeal.

(3) The Social Security retirement benefits received by Child were correctly credited to Father's child support obligation as Father contributed to Social Security through deductions from his wages. Thus the derivative benefits paid to Child were earned by Father.

(4) Section 210.841.3 provides that a judgment of paternity may direct Father to pay the reasonable expenses of the Mother's pregnancy and confinement but does not impose an obligation on Mother to specifically plead a right to recover these expenses as a condition to their recovery. The trial court made it abundantly clear that it intended to later determine whether it was authorized to award Mother her birthing costs whether or not they had been specifically pled; evidence of the birthing expenses was received by the trial court during trial, subject to Father's objection; Father had been aware for some time that Mother was claiming her birthing expenses; and Father has not demonstrated any prejudice with regard to expenses that were awarded.

(5) Father submitted at least three Form No. 14's to the trial court for its consideration in calculating child support, all of which suggested a child support calculation employing the same "error" Father now claims the trial court committed. Invited error at trial cannot serve as the basis for a claim of trial court error on appeal.

(6) Mother, not Father, was explicitly ordered to pay Sandra Hessenflow's attorney's fees.

Opinion by: Cynthia L. Martin, Judge

October 25, 2011

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