

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JOHN M. KOHL,  
APPELLANT  
vs.**

**JILL M. KOHL,  
RESPONDENT**

---

DOCKET NUMBER WD74592

DATE: APRIL 2, 2013

---

Appeal from:

The Circuit Court of Cole County, Missouri  
The Honorable Patricia S. Joyce, Judge

---

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

---

Attorneys:

Paul T. Graham, for Appellant

Daniel E. Hunt, for Respondent

---

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JOHN M. KOHL, APPELLANT**

**v.**

**JILL M. KOHL, RESPONDENT**

WD74592

Cole County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

John Kohl ("Father") appeals from a judgment entered in the Circuit Court of Cole County granting Jill Kohl's ("Mother") motion to modify child support. In its judgment, the circuit court found that a substantial and continuing change in circumstances had occurred including, but not limited to: (1) an agreement by the parties to exercise a "visitation" schedule different than that ordered by the court, (2) a change in the incomes of the parties giving rise to a change of more than twenty percent in the presumed child support amount, and (3) the passage of more than three years since the last modification. The circuit court averaged Father's gross yearly income from the previous four years and thereby determined that his monthly gross income, including bonuses, was \$16,143.00. The court found that Mother's "gross wage of \$2,073.00 per month most accurately reflects [Mother]'s grossly [sic] month [sic] income taking into account all sources of income including but not limited to bonuses and interest income." The court found that Father was not entitled to a line 11 credit for overnight visitation because Mother's gross income fell below the \$2,100.00 threshold for a parent with four children. Based on those findings, the court adopted a Form 14, prepared by Mother's attorney subsequent to trial, calculating Father's presumed child support to be \$2,647 per month and ordered Father to pay that amount retroactive to September 1, 2010. The court also altered the previous division of the dependency tax exemptions to award Mother all four and ordered Father to pay Mother \$2,000.00 in attorney's fees. Father brings eight points on appeal, several of which are interrelated.

**REVERSED AND REMANDED.**

**Division Two holds:**

(1) Where the prior child support amount was established based upon a stipulation by the parties that a jointly prepared Form 14 was accurate and represented the amount of child support that is just, reasonable and appropriate under the circumstances and the trial court found that the Form 14 was accurate and represented an amount of child support that is just, reasonable, and appropriate under the circumstances, the trial court cannot be deemed to have implicitly found the Form 14 amount to have been rebutted. Because the prior

judgment establishing the child support amount was based upon the presumed amount pursuant to the child support guidelines, the twenty-percent provision of § 452.370.1 was applicable to this case.

(2) Mother's petition averred a substantial and continuing change in the circumstances based upon a twenty-percent change in the presumed child support amount as provided for in § 452.370.1 and, therefore, sufficiently pleaded her claim.

(3) The trial court did not abuse its discretion in determining that Mother was not underemployed where she testified that she obtain more than 32 to 35 hours per week with her employer, that she had the children 90% of the time despite the parenting plan, and that Father had asked her to quit working a waitressing job she had so she could watch the children on one of the nights Father was supposed to have the children.

(4) The trial court erred in failing to include interest income of \$208.00 per month that Mother admitted receiving in calculating her monthly gross income. The trial court's finding that Mother's monthly gross income was \$2,073.00 is against the weight of the evidence as Mother's own evidence cannot support a finding of monthly gross income less than \$2,256.00.

(5) Because the record does not support a finding that Mother had a monthly gross income of \$2,100.00 or less per month, the trial court erred in finding that Father was not entitled to a Line 11 overnight visitation credit in its Form 14 calculations.

(6) Because circumstances might change, the trial court's award of all four dependency exemptions to Mother cannot be deemed improper per se. However, neither equity nor the best interests of the children can be served by taking away exemptions previously granted to Father only to have one or both go unused, as the evidence reflects is highly likely to occur in this case. Bearing this in mind, on remand, the trial court may re-evaluate its award of all dependency exemptions to Mother and attempt to structure the award to maximize the overall financial benefit of the exemptions to the family unit.

(7) The trial court was not required to accept Father's testimony about bonuses he had received and the likelihood of receiving similar bonuses in the future as credible. Affording the trial court the level of deference required by our standard of review, the trial court's finding that Father's monthly gross income is \$16,143.00 is supported by the evidence and is not against the weight of the evidence.

(8) Because the judgment would allow for Father to seek credit for amounts he voluntarily paid in addition to the prior child support amount during the retroactive period of the modification of the child support award and the issue has

yet to be decided by the trial court, the issue is not ripe for appellate review; however, the trial court is free to address the issue of such credit on remand.

Opinion by Joseph M. Ellis, Judge

Date: APRIL 2, 2013

**This summary is *UNOFFICIAL* and should not be quoted or cited.**