

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

JOHN M. KELLY,

Appellant,

v.

MISSOURI DEPARTMENT OF SOCIAL SERVICES, FAMILY SUPPORT DIVISION,

Respondent.

DOCKET NUMBER WD77544

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 10, 2015

APPEAL FROM

The Circuit Court of Caldwell County, Missouri
The Honorable R. Brent Elliott, Judge

JUDGES

Division I: Martin, P.J., and Pfeiffer and Witt, JJ.

CONCURRING.

ATTORNEYS

John M. Kelly
Braymer, MO

Appellant, *pro se*,

Chris Koster, Attorney General
Jefferson City, MO

Nicolas Taulbee, Assistant Attorney General
Kansas City, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JOHN M. KELLY,)
)
) **Appellant,**)
) **v.**) **OPINION FILED:**
) **March 10, 2015**
MISSOURI DEPARTMENT OF SOCIAL)
SERVICES, FAMILY SUPPORT)
DIVISION,)
)
) **Respondent.**)

WD77544

Caldwell County

Before Division I Judges: Cynthia L. Martin, Presiding Judge, and Mark D. Pfeiffer and Gary D. Witt, Judges

John M. Kelly appeals, *pro se*, from the judgment of the Circuit Court of Caldwell County, Missouri, affirming an administrative ruling suspending Kelly’s driver’s license for his failure to pay child support and spousal support.

Kelly raises six points on appeal:

1. The trial court applied an improper standard when it reviewed the Director’s Decision.
2. Because the New York court ordered in excess of 60% of his wages garnished, and 15 U.S.C. § 1673 prohibits the garnishment of more than 60% of an individual’s aggregate disposable earnings for a workweek, the Division had no authority to rely upon a final judgment from the State of New York or the Registration of Foreign Support Order to suspend his driver’s license.
3. The Division erred in approving suspension of his driver’s license because his children have all reached the age of emancipation; any “current” obligation to pay child support has been terminated; and section 454.1003.1(1) does not apply to

him because he does not owe any *current* child support obligations, only *arrearages*.

4. The Division erred by holding that section 454.1005.4 barred Kelly from asserting “the protection of section 454.1003 and other controlling legal authority at a license suspension hearing.
5. The Division erred by not following the requirement of section 454.1003 that there must be an arrearage to suspend a driver’s license.
6. The Division was without statutory authority to bring an enforcement action and suspend his driver’s license because his children are no longer minors.

AFFIRMED.

Division I holds:

1. We review the decision of the agency and not the judgment of the circuit court; therefore, Kelly’s first point must be dismissed.
2. The Division’s enforcement action in suspending Kelly’s driver’s license is not a garnishment action and 15 U.S.C. §§ 1671-1673 are inapplicable to it; Kelly’s attempt to challenge the validity of the New York Judgment in this case constitutes an impermissible collateral attack.
3. Section 454.1003 authorizes the Division to issue an order suspending the driver’s license of a person who owes *past-due* child support; the statute does not require the obligor to have a “current” or “continuing” support obligation or order.
4. The Division conducted its hearing and made its determination as it is statutorily authorized and directed to do pursuant to section 454.1005.4.
5. The arrearage finding is supported by substantial evidence in the record and is clearly in excess of the statutory minimum in section 454.1003.1(1) of an amount greater than or equal to three months support or \$2500, whichever is less.
6. The emancipation of a child does not extinguish the obligation of a parent to pay any amount of child support in arrearage at the time of emancipation.

Opinion by: Mark D. Pfeiffer, Judge

March 10, 2015

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.