

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**AARON BIRDSONG**

**RESPONDENT,**

**v.  
CHILDREN'S DIVISION, MISSOURI  
DEPARTMENT OF SOCIAL SERVICES**

**APPELLANT.**

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DOCKET NUMBER WD78049

DATE: May 19, 2015

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Appeal From:

Cole County Circuit Court  
The Honorable Daniel R. Green, Judge

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Appellate Judges:

Division Three: Mark D. Pfeiffer, Presiding Judge, Gary D. Witt, Judge and Anthony Rex Gabbert, Judge

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Attorneys:

David J. Moen, Jefferson City, MO, for respondent.

Daniel W. Follett, Jefferson City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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**RESPONDENT,**

**v.**

**CHILDREN'S DIVISION, MISSOURI  
DEPARTMENT OF SOCIAL SERVICES,**

**APPELLANT.**

No. WD78049

Cole County

Before Division Three: Mark D. Pfeiffer, Presiding Judge, Gary D. Witt, Judge and Anthony Rex Gabbert, Judge

Aaron Birdsong was a teacher and track coach at Eldon High School and was found by the Missouri Department of Social Services Children's Division to have committed "child sexual abuse" of a seventeen-year-old female student. Following an administrative review, the Division's decision was affirmed by the Child Abuse and Neglect Review Board. Birdsong then appealed the decision of the Child Abuse and Neglect Review Board to the Circuit Court of Cole County. The circuit court found that the Division had used an improper definition of "child sexual abuse" in reaching its determination and therefore its decision must be overturned. The circuit court granted Birdsong summary judgment on the underlying issue that he had committed "child sexual abuse" and awarded him attorney's fees against the State in the amount of \$34,451.84.

The State, on behalf of the Division, brings two points on appeal challenging the circuit court's award of attorney's fees but does not challenge the grant of summary judgment to Birdsong on the reversal of the determination that he committed "child sexual abuse." In Point I, the State argues that the trial court erred in awarding attorney's fees because there was no statutory authority to do so and Birdsong does not fall within any recognized exception to the American Rule. In Point II, the State contends that the trial court further erred by including in the award of attorney's fees amounts related to DESE's separate disciplinary action and the underlying criminal matter because Birdsong's defense of those actions did not fall within the "collateral litigation" exception, nor any other exception, to the American Rule.

**REVERSED AND VACATED**

Division Three holds:

Because the decision of the Child Abuse and Neglect Review Board was not in a "contested" case, its decision does not fall under section 536.087, which authorizes attorney fee's awards against a state agency where its position is not substantially justified. Birdsong points to no other statute or contractual provision which would support an award of attorney's fees.

Without statutory authority or a contractual provision allowing an award of attorney's fees, the award must fall within a recognized exception to the American Rule. Here, neither the "unusual circumstances" nor the "collateral litigation exception" applies. Because we agree with the State on Point I and reverse the award of fees on that basis, we do not reach Point II. The award of attorney's fees is reversed and vacated.

Opinion by Gary D. Witt, Judge

May 19, 2015

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