



Missouri Court of Appeals
Southern District

Division Two

In Re the Marriage of:)
)
BRIAN E. METTLACH,)
)
 Petitioner/Appellant,)
)
 vs.) No. SD31242
)
RHONDA METTLACH,)
)
 Respondent/Respondent.)

APPEAL FROM THE CIRCUIT COURT OF NEWTON COUNTY

Honorable Kevin L. Selby, Associate Circuit Judge

REVERSED AND REMANDED WITH DIRECTIONS.

Appellant Brian E. Mettlach (“Husband”) appeals from a judgment of the motion court denying his “Motion to Set Aside Default Judgment” and subsequent “Motion to Reconsider.” We reverse and remand.

Respondent Rhonda Mettlach (“Wife”) filed a “Motion to Modify Judgment of Dissolution of Marriage and Mediated Agreement *and* Application for Order to Show Cause” on

February 2, 2010. A default judgment was entered in favor of Wife on August 16, 2010.¹ Husband filed a Motion to Set Aside Default Judgment, which was overruled without an evidentiary hearing. He then filed a Motion to Reconsider, which was also overruled without an evidentiary hearing. Husband filed a timely notice of appeal.

Husband asserts two points claiming error in denying his motions and for denying him an evidentiary hearing.

On October 25, 2011, Wife, in lieu of a brief, forwarded correspondence to this Court stating that while denying “any negative behavior, which resulted in the Court entering a Judgment in the civil court[,]” . . . [Wife] agrees that the matter should be remanded to the Trial Court for hearing on the merits of [Wife]’s Motion to Modify Child Support.”

Accordingly, pursuant to Wife’s announcement, and Rule 84.14,² we reverse the motion court’s Judgment denying Husband’s Motion to Set Aside Default Judgment and Motion to Reconsider and remand this matter to the motion court for an evidentiary hearing on Wife’s Motion to Modify Judgment of Dissolution of Marriage and Mediated Agreement *and* Application for Order to Show Cause.

William W. Francis, Jr., Presiding Judge

Bates, J. - Concur

Scott, J. - Concur

¹ The motion court was in error to enter a default judgment for Husband’s failure to file a responsive pleading because none is required to a Motion to Modify, as thoroughly explained in *Schwermer v. Schwermer*, 350 S.W.3d 460 (Mo.App. W.D. 2011).

² All rule references are to Missouri Court Rules (2011).

Opinion Filed: December 8, 2011

Appellant's Attorney: Jared L. Thomas, of Neosho, Missouri

Respondent's Attorney: Tina M. Longnecker, of Joplin, Missouri

Division II