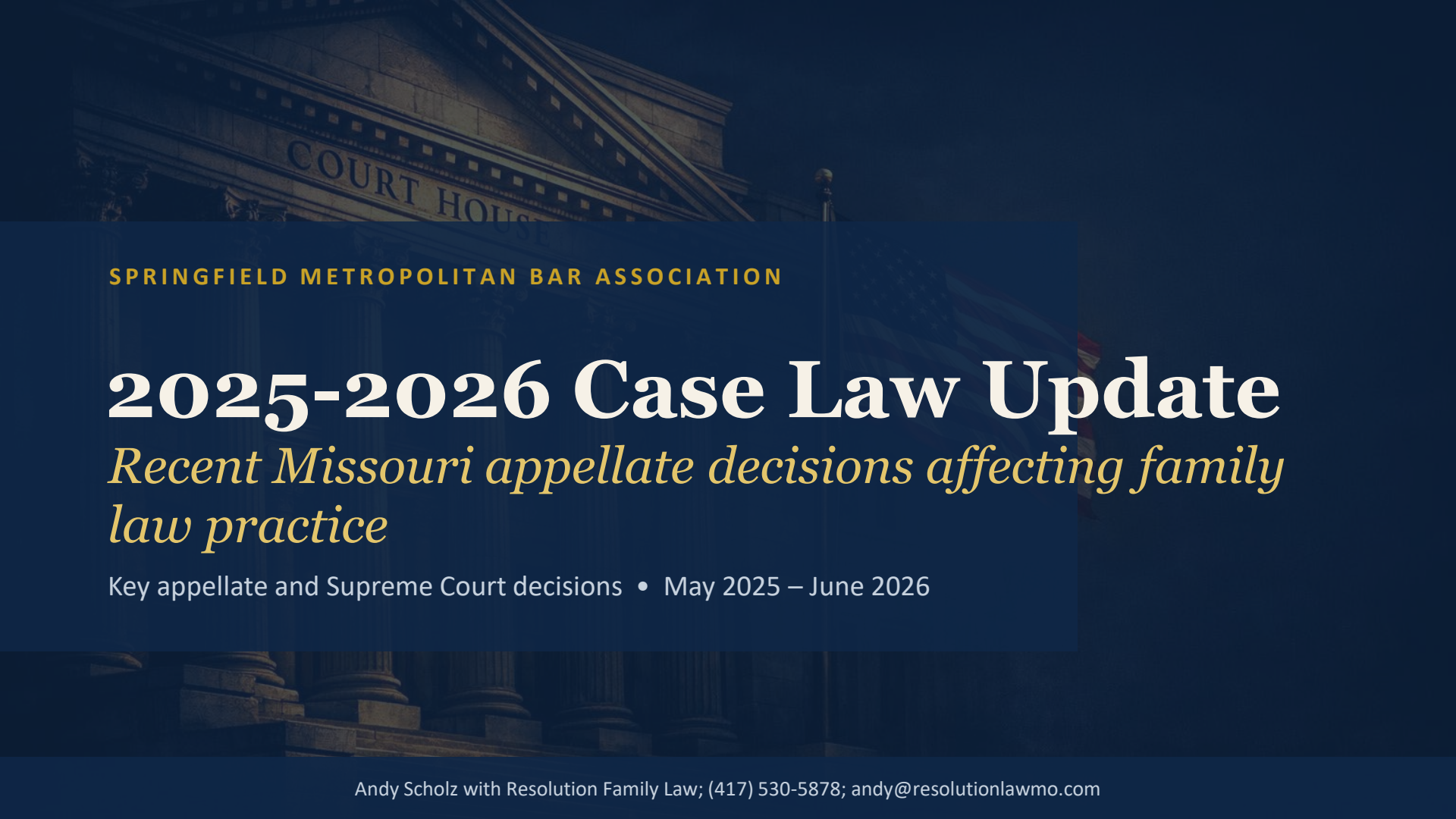




SPRINGFIELD METROPOLITAN BAR ASSOCIATION

2025-2026 Case Law Update

Recent Missouri appellate decisions affecting family law practice

Key appellate and Supreme Court decisions • May 2025 – June 2026

DeSpain v. DeSpain

Mo. Ct. App., Western District, 717 S.W.3d 796 • June 17, 2025

FACTS

DeSpain arose from a Missouri dissolution and custody case involving allegations of abuse. Because custody and child welfare issues were contested, the trial court appointed a guardian ad litem for the parties' two minor children and also appointed a family therapist to work with the children and Father and testify about the family dynamics. The parties' teenage son secretly recorded two sessions: one involving the son, the GAL, and the therapist, and another involving the son, Father, and the therapist. Mother gave the recordings to her attorney. The attorney listened to the recordings, referenced them in communications with the GAL, quoted portions of one recording, and filed a motion seeking to continue the trial, remove the GAL, stop further therapy sessions, and have the judge interview the children. The trial court sanctioned Mother's attorney, finding that she had used privileged recordings to pressure the GAL or gain a strategic advantage in the custody litigation.

DeSpain v. DeSpain

Mo. Ct. App., Western District, 717 S.W.3d 796 • June 17, 2025

HOLDING

The Western District reversed the sanctions order. The court held that communications between a guardian ad litem and a child are not protected by attorney-client privilege because a Missouri GAL does not serve as the child's traditional attorney. Instead, the GAL acts as an arm of the court, investigates the child's best interests, and may report facts and recommendations to the court. The court also held that the recordings were not protected by the GAL's work-product privilege and that the therapist-patient privilege did not apply because the therapist was court-appointed to evaluate and testify about child-welfare issues. The case was remanded, however, because sanctions could still be considered if Mother's attorney's conduct improperly interfered with the GAL's independence or relationship with the child.

DeSpain v. DeSpain

Mo. Ct. App., Western District, 717 S.W.3d 796 • June 17, 2025

TAKEAWAY

In Missouri, the GAL is not the child's traditional attorney, and GAL-child communications are not automatically protected by attorney-client privilege. Additionally, the counselor is not functioning as a purely private treating therapist whose communications are automatically protected from disclosure. Because the therapist in DeSpain was court-appointed to work with the family and testify about child-welfare issues, the therapist-patient privilege did not prevent disclosure or use of the recorded sessions. However, this case should not be read as permission to use secretly recorded GAL or therapy sessions without caution. Even if the communications are not privileged, an attorney may still face sanctions if the use of the recordings interferes with the GAL's independence, damages the GAL-child relationship, pressures the GAL for a recommendation, or disrupts the custody process.

S.H.P. v. Martinez (In re A.L.P.)

Mo. Sup. Ct., 729 S.W.3d 236 • February 24, 2026

FACTS

In re A.L.P. involved a dispute between two former partners, Smith and Martinez, over twin girls for whom they had previously served as joint guardians. After their relationship ended, they continued sharing custody under the guardianship. In 2019, both filed competing adoption petitions. The circuit court granted Martinez's adoption petition in 2020 and terminated the guardianship, making Martinez the legal parent. Smith appealed the adoption judgment unsuccessfully. While that appeal was pending, Smith filed a separate petition seeking third-party custody or visitation under Section 452.375.5(5), alleging Martinez was unfit or that the children's welfare required custody or visitation with Smith. The parties later signed visitation documents, and the circuit court entered a judgment granting Smith third-party visitation. Martinez appealed, arguing that Smith could not bring an independent third-party custody or visitation action after the adoption had already established Martinez's parental rights.

S.H.P. v. Martinez (In re A.L.P.)

Mo. Sup. Ct., 729 S.W.3d 236 • February 24, 2026

HOLDING

The Missouri Supreme Court reversed the judgment granting Smith third-party visitation. The Court held that Section 452.375.5(5) does not create an independent cause of action for third-party custody or visitation. Instead, the statute allows a third party to be added or to intervene only in an existing case where custody is already at issue, such as a dissolution, legal separation, or paternity case. Because Martinez's adoption had already been granted and the guardianship had been terminated, custody was no longer at issue. Martinez was the legal parent, and Smith could not file a separate third-party visitation action after losing the adoption case. The Court also reversed the related family access judgment because it depended on the invalid visitation judgment.

S.H.P. v. Martinez (In re A.L.P.)

Mo. Sup. Ct., 729 S.W.3d 236 • February 24, 2026

TAKEAWAY

In re A.L.P. is a major limitation on third-party custody and visitation claims in Missouri. Section 452.375.5(5) does not allow a person to file a freestanding custody or visitation case simply because they have had a significant relationship with the child. A third party can seek custody or visitation under that statute only within an existing case where custody is already being decided. Once an adoption is complete, the adoptive parent has full parental rights, and the losing adoption petitioner cannot use Section 452.375.5(5) to relitigate access to the child through a separate third-party visitation action.

Campbell v. Campbell

Mo. Ct. App., Western District, 716 S.W.3d 10 • May 27, 2025

FACTS

Campbell was a dissolution and custody case involving two young children. Mother requested sole legal and physical custody, while Father requested joint custody. The trial court heard evidence that Father was controlling, manipulative, and emotionally abusive toward Mother, sometimes in front of the children. The evidence included monitoring Mother through cameras, taking her keys or phone, flattening her tires, threatening litigation tactics, belittling Mother, failing to consistently pay support, and being less than credible at trial. The trial court found Mother credible, found Father evasive, and awarded Mother sole legal and sole physical custody with visitation to Father.

Campbell v. Campbell

Mo. Ct. App., Western District, 716 S.W.3d 10 • May 27, 2025

HOLDING

The Western District affirmed the trial court's award of sole legal and sole physical custody to Mother. The court held that the trial court properly rebutted the statutory presumption that equal or approximately equal parenting time was in the children's best interests. The presumption can be rebutted by a preponderance of the evidence based on all relevant factors under Section 452.375.2, and the trial court was not limited to considering only abuse or neglect directed at the children. Father's controlling, manipulative, and emotionally abusive conduct toward Mother, particularly when it occurred in front of the children, was relevant to the custody analysis. The court also held that substantial evidence supported the finding that extended periods of contact with Father were not in the children's best interests, including Father's conduct toward Mother, his work schedule, his lack of consistent financial support, his unstable housing situation, his reliance on others during parenting time, and the trial court's credibility findings.

Campbell v. Campbell

Mo. Ct. App., Western District, 716 S.W.3d 10 • May 27, 2025

TAKEAWAY

Campbell confirms that Missouri's presumption in favor of equal or approximately equal parenting time is rebuttable and does not require proof that a parent directly abused or neglected the children. A parent's controlling, manipulative, intimidating, or emotionally abusive conduct toward the other parent can be relevant to physical custody, especially when it occurs in front of the children or affects the children's stability and best interests. The case also reinforces that custody decisions are highly fact-specific, and appellate courts will defer heavily to the trial court's credibility findings when the court makes detailed findings under Section 452.375.

Juv. v. T.W. (In the Int. of S.R.W.)

Mo. Ct. App., Western District, 715 S.W.3d 223 • May 27, 2025

FACTS

In Interest of S.R.W. was a termination of parental rights case. The child was born in 2020 and initially lived with Mother. When the child was only a few months old, law enforcement raided Mother's residence and found drugs and drug paraphernalia, resulting in Mother's arrest and the child being placed in Children's Division custody. The court later ordered Mother to participate in reunification services, including drug testing, maintaining contact with the Division, and paying support. More than two years later, the Juvenile Officer filed a petition to terminate Mother's parental rights. The trial court terminated Mother's rights based on abuse or neglect, failure to rectify the conditions that brought the child into care, and parental unfitness. Mother appealed pro se, but did not provide a trial transcript and filed a brief with multiple Rule 84.04 deficiencies.

JUVENILE LAW • TERMINATION OF PARENTAL RIGHTS

Juv. v. T.W. (In the Int. of S.R.W.)

Mo. Ct. App., Western District, 715 S.W.3d 223 • May 27, 2025

HOLDING

The Western District dismissed Mother's appeal without reaching the merits. The court held that Mother's failure to provide the trial transcript violated Rule 81.12 and made meaningful appellate review virtually impossible. The court also held that Mother's pro se brief failed to comply with Rule 84.04 because her points relied on did not properly state the legal reasons for reversal, her statement of facts was argumentative and lacked record citations, and her argument section did not explain how the law applied to the facts or show preservation and standard of review. Although termination of parental rights is a serious matter, the appellate court would not act as Mother's advocate by searching the record or constructing arguments for her.

JUVENILE LAW • TERMINATION OF PARENTAL RIGHTS

Juv. v. T.W. (In the Int. of S.R.W.)

Mo. Ct. App., Western District, 715 S.W.3d 223 • May 27, 2025

TAKEAWAY

In Interest of S.R.W. is a reminder that appellate procedure matters, even in termination of parental rights cases. A parent appealing a TPR judgment must provide a record that allows review, including the trial transcript when the claims depend on trial evidence. The case also reinforces that pro se appellants are held to the same briefing standards as attorneys. Even though termination of parental rights is one of the most serious actions a court can take, the appellate court will not search the record, supply missing arguments, or act as the appellant's advocate when the brief and record do not comply with the rules.

ORDERS OF PROTECTION • STALKING

S.M. v. Deierling

Mo. Ct. App., Western District, 717 S.W.3d 790 • June 17, 2025

FACTS

S.M. v. Deierling involved a full order of protection entered in favor of a landlord against her former tenant. After the tenant failed to vacate and rent issues developed, his conduct escalated beyond a landlord-tenant dispute. The evidence showed that he posted a warning referencing the Castle Doctrine, threatened to shoot S.M., used racial slurs, openly carried firearms around the apartment building, blocked an alley with his car, and paced outside with a rifle. After moving out, he continued to follow S.M., sent racially harassing emails, posted disparaging material about her and her business, repeatedly drove by her downtown business, and photographed the building. S.M. testified that she feared physical harm and even created a safety plan because of his conduct. The trial court entered a full order of protection based on stalking.

ORDERS OF PROTECTION • STALKING

S.M. v. Deierling

Mo. Ct. App., Western District, 717 S.W.3d 790 • June 17, 2025

HOLDING

The Western District affirmed the full order of protection. The court held that S.M. presented sufficient evidence that Deierling engaged in stalking under the Adult Abuse Act. His conduct showed a repeated, unwanted course of conduct that caused S.M. to fear physical harm, and that fear was reasonable under the circumstances. The court considered the entire course of conduct, including threats to shoot S.M., open display of firearms, following her, sending racially harassing communications, repeatedly driving by her business, and photographing the building. The court also held that the appeal was not barred as moot even though the order had expired, because Section 455.007 applies the public-interest exception to appeals from expired full orders of protection.

ORDERS OF PROTECTION • STALKING

S.M. v. Deierling

Mo. Ct. App., Western District, 717 S.W.3d 790 • June 17, 2025

TAKEAWAY

S.M. v. Deierling shows that stalking under the Adult Abuse Act is evaluated by looking at the entire course of conduct, not by isolating each individual incident. Conduct that might be argued as lawful or explainable in isolation, such as posting a notice, openly carrying a firearm, driving by a business, or taking photographs, can support an order of protection when combined with threats, harassment, surveillance, racial intimidation, and conduct that causes reasonable fear of physical harm. The case also confirms that an expired full order of protection can still be reviewed on appeal under the public-interest exception in Section 455.007.

ORDERS OF PROTECTION • FEAR OF HARM

C.Y.L. v. Z.L.

Mo. Ct. App., Eastern District, 712 S.W.3d 450 • April 22, 2025

FACTS

C.Y.L. v. Z.L. involved a full order of protection entered against Respondent's father-in-law. The case arose after a family altercation at Respondent's home involving Respondent's husband, brother-in-law, and father-in-law. Respondent alleged harassment based on two contacts with Appellant: first, when he came to the home and argued with her husband, and second, when he later returned and yelled and cursed at Respondent while calling her disparaging names. Respondent testified that Appellant did not physically harm her, and she did not testify that she feared physical harm or suffered substantial emotional distress. The trial court entered a one-year full order of protection, and Appellant appealed.

ORDERS OF PROTECTION • FEAR OF HARM

C.Y.L. v. Z.L.

Mo. Ct. App., Eastern District, 712 S.W.3d 450 • April 22, 2025

HOLDING

The Eastern District reversed and vacated the full order of protection. The court held that Respondent did not prove harassment under the Adult Abuse Act because she failed to establish both required components of substantial emotional distress. First, she did not testify that Appellant's conduct actually caused her substantial emotional distress. Second, Appellant's conduct, consisting of yelling, cursing, and calling her disparaging names during a family argument, would not cause a reasonable person to suffer substantial emotional distress. The court emphasized that the Adult Abuse Act is not intended to address ordinary or minor arguments between adults.

ORDERS OF PROTECTION • FEAR OF HARM

C.Y.L. v. Z.L.

Mo. Ct. App., Eastern District, 712 S.W.3d 450 • April 22, 2025

TAKEAWAY

C.Y.L. v. Z.L. shows that not every heated family argument supports a full order of protection. When harassment is alleged under the Adult Abuse Act, the petitioner must prove more than yelling, cursing, insults, or offensive language. The evidence must show that the conduct actually caused the petitioner substantial emotional distress and that a reasonable person would also suffer substantial emotional distress under the circumstances. The case is useful for distinguishing genuinely protective cases from ordinary adult conflicts that do not meet the statutory threshold.

ADOPTION • SERVICE AND NOTICE

In Interest of A.D.S.

Mo. Ct. App., Southern District, 712 S.W.3d 827 • April 23, 2025

FACTS

In Interest of A.D.S. was a Chapter 453 adoption case filed by the child's guardian. The guardian sought to adopt the child without Father's consent under Section 453.040(7), alleging Father had abandoned the child. Father was incarcerated in Arkansas when the petition was filed. He was served, filed a pro se answer stating that he was incarcerated, but did not appear at the adoption hearing either remotely or through counsel. The circuit court granted the adoption. On appeal, Father argued that his due process rights were violated because the summons did not notify him of a right to appointed counsel under Section 211.462, the notice provision used in termination of parental rights cases.

ADOPTION • SERVICE AND NOTICE

In Interest of A.D.S.

Mo. Ct. App., Southern District, 712 S.W.3d 827 • April 23, 2025

HOLDING

The Southern District affirmed the adoption judgment. The court held that Father was not entitled to the summons notice required by Section 211.462 because this was not a Chapter 211 termination of parental rights case. It was a Chapter 453 adoption proceeding in which the guardian alleged that Father's consent was not required under Section 453.040(7) due to abandonment. Although adoption can have the effect of terminating parental rights, Chapter 211's notice requirements apply only when Chapter 211 termination claims are actually pleaded or specifically incorporated. Because Section 453.040(7) does not cross-reference Section 211.462, the failure to include that notice in the summons was not reversible error.

ADOPTION • SERVICE AND NOTICE

In Interest of A.D.S.

Mo. Ct. App., Southern District, 712 S.W.3d 827 • April 23, 2025

TAKEAWAY

In Interest of A.D.S. draws an important distinction between adoption without consent under Chapter 453 and termination of parental rights under Chapter 211. A Chapter 453 adoption can eliminate the need for a parent's consent and can have the effect of ending parental rights, but that does not automatically make it a Chapter 211 TPR case. If the petition proceeds under Section 453.040(7), the Chapter 211 summons notice requirement for appointed counsel under Section 211.462 does not apply unless a Chapter 211 termination claim is actually pleaded or specifically incorporated. For practitioners, the key is to plead the statutory basis carefully and understand which notice and counsel provisions are triggered by the chosen statutory route.

ADOPTION • ABANDONMENT

A.R.H. v. E.R.T.

Mo. Ct. App., Southern District, 711 S.W.3d 887 • April 3, 2025

FACTS

A.R.H. involved a Chapter 453 adoption filed by the child's guardians. The guardians alleged that Father's consent was not required because, during the six months before the adoption petition was filed, Father willfully, substantially, and continuously failed to provide the child with necessary care and protection. Father was incarcerated during the relevant period and claimed he attempted to maintain contact and provide support. The trial court granted the adoption. On appeal, Father did not challenge the substantive abandonment/neglect findings. Instead, he argued that his appointed trial counsel in the adoption case was ineffective because counsel failed to challenge defects in the earlier juvenile case and failed to properly prepare for or participate in the adoption hearing.

ADOPTION • ABANDONMENT

A.R.H. v. E.R.T.

Mo. Ct. App., Southern District, 711 S.W.3d 887 • April 3, 2025

HOLDING

The Southern District affirmed the adoption judgment. The court held that birth parents have a statutory right to effective assistance of counsel in Chapter 453 adoption proceedings, but Father did not show that his counsel denied him a meaningful hearing. Counsel cross-examined the guardians, elicited testimony about Father's attempts to communicate with the child, and presented Father's testimony by phone. The court also rejected Father's argument that counsel should have collaterally attacked the earlier juvenile case, finding no supported jurisdictional defect that would have made that judgment void. Father's complaints about lack of preparation, communication, discovery, settlement efforts, objections, witnesses, and closing argument were either unsupported by the record or insufficient to show ineffective assistance.

ADOPTION • ABANDONMENT

A.R.H. v. E.R.T.

Mo. Ct. App., Southern District, 711 S.W.3d 887 • April 3, 2025

TAKEAWAY

A.R.H. confirms that birth parents have a right to effective assistance of counsel in Chapter 453 adoption proceedings, but the standard is whether counsel provided a meaningful hearing. Ineffective assistance will not be found merely because appellate counsel can identify things trial counsel might have done differently. The parent must show, from the record, that counsel's performance actually deprived the parent of a meaningful opportunity to be heard. The case also reinforces that prior juvenile or guardianship judgments generally cannot be collaterally attacked in a later adoption case unless the earlier judgment was void for lack of jurisdiction.

MAINTENANCE • CHILD SUPPORT

Callow v. Callow

Mo. Ct. App., Eastern District, 728 S.W.3d 551 • November 25, 2025

FACTS

Callow was a dissolution case involving maintenance, child support, property division, uninsured medical expenses, and post-trial evidence. The parties married in 2012, separated in 2021, and had one unemancipated child. Mother had previously worked as a real estate agent and dog groomer, but stopped working in 2020 and claimed she could not work because of Ehlers-Danlos Syndrome and Fabry's Disease. The trial court denied maintenance, imputed income to Mother for child support, divided the marital property equally, ordered the parties to equally share the child's uninsured medical expenses, and denied Mother's request to reopen the case based on a later Social Security disability determination. Mother appealed each of those rulings.

MAINTENANCE • CHILD SUPPORT

Callow v. Callow

Mo. Ct. App., Eastern District, 728 S.W.3d 551 • November 25, 2025

HOLDING

The Eastern District affirmed the dissolution judgment. The court held that the trial court did not abuse its discretion by denying maintenance because Mother's own testimony supported a finding that her medical conditions did not prevent all meaningful employment and that she failed to prove her reasonable needs. The court also upheld the imputation of income to Mother for child support because she had marketable skills, had recently brokered a home sale, and testified she would not seek employment while her disability claim was pending. The court further affirmed the equal division of marital property, finding that Father's sobriety since 2019 and post-separation relationship did not establish marital misconduct that placed extra burdens on Mother. The court also upheld the equal division of uninsured medical expenses and

MAINTENANCE • CHILD SUPPORT

Callow v. Callow

Mo. Ct. App., Eastern District, 728 S.W.3d 551 • November 25, 2025

TAKEAWAY

Callow reinforces the broad discretion trial courts have in dissolution cases involving maintenance, child support, property division, and post-trial evidence. A spouse's medical diagnosis or unemployment does not automatically require maintenance or prevent imputation of income, especially where the evidence shows the spouse has marketable skills or recent work-like activity. The case also confirms that marital misconduct affects property division only when the misconduct places additional burdens on the other spouse. Finally, a later Social Security disability determination is not binding on the dissolution court and will not necessarily justify reopening the evidence.

CHILD SUPPORT • VOLUNTARY EMPLOYMENT TERMINATION

McKenna v. McKenna

Mo. Ct. App., Western District, 717 S.W.3d 634 • June 24, 2025

FACTS

McKenna was a post-dissolution modification case involving custody, parenting time, child support, and school expenses. Mother moved to modify the prior judgment, seeking sole custody, reduced parenting time for Father, and increased child support. During the case, Father voluntarily left a managing engineer position where he had earned an average of \$273,758 over the prior three years. He remained unemployed throughout the litigation, rejected job opportunities involving travel, and argued that income should be imputed to him at only \$80,000. The trial court found Father's explanation not credible and imputed income to him based on his prior earnings. The court also awarded Mother sole custody, limited Father to supervised visitation, and ordered Father to pay half of the children's parochial high school tuition as an

CHILD SUPPORT • VOLUNTARY EMPLOYMENT TERMINATION

McKenna v. McKenna

Mo. Ct. App., Western District, 717 S.W.3d 634 • June 24, 2025

HOLDING

The Western District affirmed in part and reversed in part. The court affirmed the imputation of Father's income at \$273,758, holding that substantial evidence supported the trial court's finding that Father voluntarily left employment and remained unemployed without credible justification. The timing of his resignation, his failure to apply for jobs, his rejection of opportunities, and the trial court's credibility findings supported the imputation. However, the court reversed the order requiring Father to pay half of parochial high school tuition. Because the parties had only agreed to parochial school through eighth grade, and Father did not agree to parochial high school, Mother had to prove that the parochial high school met a particular educational need of the children. Evidence that the children were successful in parochial elementary

CHILD SUPPORT • VOLUNTARY EMPLOYMENT TERMINATION

McKenna v. McKenna

Mo. Ct. App., Western District, 717 S.W.3d 634 • June 24, 2025

TAKEAWAY

McKenna is useful on two separate issues. First, a court may impute a parent's prior high income when the evidence supports that the parent voluntarily became unemployed or underemployed to avoid support. A claimed desire to spend more time with the children may not carry weight if the parent is not actually taking steps to improve parenting time or address barriers to custody. Second, private or parochial school tuition is not automatically an extraordinary educational expense. If one parent does not agree, the requesting parent must show that the school meets a particular educational need, not merely that the school is preferred, faith-based, familiar, or beneficial in a general sense.

LEGISLATIVE UPDATE

HB 1908 – Divorce During Pregnancy

Effective August 28, 2026, Missouri courts may enter a judgment of dissolution of marriage or legal separation even when a party is pregnant. The legislation amends Missouri law to expressly provide that pregnancy does not prevent entry of a dissolution or legal separation judgment.

Prior to HB 1908, many Missouri courts followed the longstanding practice of refusing to finalize a divorce until after the child was born because issues of paternity, custody, support, and parenting plans could not be fully adjudicated. HB 1908 eliminates that barrier.