FAMILY LAW

T. LYNN WARD

KATIE MCCLAFLIN

I. Introduction

The Kansas Supreme Court issued several important and high-profile decisions in the past year, but none dealt directly with family law. The Court's decision interpreting the nature of a wife's property interest as detailed in a journal entry of judgment is relevant to family law and is covered here below. The Court of Appeals issued six published decisions relevant to the family law practitioner, including a valuable reminder that procedural safeguards are crucial to the administration of family law cases. While not favored for citation, unpublished opinions related to family law do tend to have persuasive value with respect to issues not otherwise addressed in published opinions, and can be helpful to district court judges even though not binding precedent. Accordingly, this chapter will briefly summarize the unpublished opinions considered to be generally helpful to the domestic practitioner.

II. Kansas Supreme Court

A. Interpretation of Journal Entry of Divorce

In *Einsel v. Einsel*, 304 Kan. 567, 374 P.3d 612 (2016), the Kansas Supreme Court was asked to determine the correct interpretation of a journal entry issued in a 1994 divorce. At the time of divorce, wife was awarded 40% of husband's remainder interest in the inheritance he received toward the end of the marriage. The inheritance consisted mostly of land and mineral interests and husband's property interest was subject to his mother's life estate. The district court received a valuation and the parties agreed the value of husband's remainder interest, reduced to a present value at the time of divorce, was $68,802.95. The divorce court issued its written journal entry of divorce, in which wife was awarded, among other things 40% of the remainder interest of the inheritance received by husband during the marriage, on the condition that husband may opt to pay wife the sum of $22,500.00 within six months of the date of hearing, in which case husband was to receive all of the remainder interest. Husband failed to pay the $22,500.00 within six months, and his remainder interest became a possessory interest when his mother died in 2008. Husband's fee simple interest was then subject to partition, and wife filed a partition action claiming she had an interest in real property. The nature of wife's award in the divorce proceedings became the primary issue in the partition action, as husband argued wife had been granted only an interest in a money judgment. The partition court agreed with husband, denying wife's request for partition and holding that the journal entry of divorce awarded her a money judgment. The

district court hearing the partition action was reversed by the court of appeals. The panel declined to look beyond the journal entry of divorce and found the plain meaning of the divorce decree's language was sufficient to discern the divorce court's intent. The divorce decree awarded wife an interest in real property, with the stipulation that husband could buy this interest back within six months for $22,500. He failed to do so, thus the nature of wife's interest continued to be in real property. On appeal to the Kansas Supreme Court, the primary question was the correct interpretation of the journal entry of judgment. The Court agreed with the panel's rational and found the three relevant clauses in the decree, when read together, show the divorce court intended to award wife an interest in real property. The primary rule in interpreting written instruments is to ascertain the intent of the parties, and thus, in interpreting an order the primary rule is to ascertain the intent of the court. As a general rule, if the language of a written instrument is clear and can be carried out as written, the intent of the maker is made clear and there is no room for rules of construction. If the language cannot be carried out as written, rules of construction must be applied. In placing a construction on a written instrument, reasonable rather than unreasonable interpretations are favored by the law. Results which vitiate the purpose or reduce the terms to an absurdity should be avoided. The meaning of a written instrument should always be ascertained by a consideration of all pertinent provisions and never be determined by critical analysis of a single or isolated provision. *Id.* at 567.

Husband's attempts to sway the Court with equitable arguments were unsuccessful. A district court cannot disregard legal ownership under an instrument of law, such as a decree of divorce, in the name of equity. Likewise husband's attempts to portray the award as a secured transaction or an equitable mortgage were also rejected because the decree did not set forth a judgment amount or make any provision for interest.

III. Court of Appeals- Published Decisions

A. Doctrine of Necessaries

St. Catherine Hosp. v. Alvarez, 53 Kan. App. 2d 125, 383 P.3d 184 (2016) is an important reminder that Kansas continues to recognize the doctrine of necessaries. Under the doctrine, a spouse can be held liable when the other spouse obtains necessary items, like food or medical care, on credit.

More than a year after physically separating from his wife of 17 years, but before a decree of divorce was entered, husband was injured in a car accident and left a $6,456 unpaid hospital bill. The hospital sued wife and obtained summary judgment. The court of appeals reversed the district court's grant of summary judgment in favor of the hospital. The elements required to recover under the doctrine were set out in *Harttmann v. Tegart*, 12 Kan. 177, 178 (1873). There are

several valuable nuggets in this 1873 case, in which husband insisted he should not be held liable for his wife's medical bill because she had "left his residence without his consent, and against his remonstrance." *Id.* at 178. At a time when women did not generally (although as the court of appeals notes, had a right under the Kansas Constitution to) own property in their own names, the *Harttmann* court noted that it was never the policy of the law to "cast burdens upon individuals without some corresponding benefits" and that "it would shock human nature to say that a husband who has done no wrong should support a wife without having a benefit of her company or society." *Id.* at 181. These words illustrate the troublesome history of the doctrine; it recognized a husband's duty to support the wife and the wife's corresponding duty to provide certain services to husband. Kansas did not make the doctrine applicable to both husbands and wives until 119 years after *Harttmann*, with the decision in *St. Francis Regional Med. Center, Inc. v. Bowles*, 251 Kan. 334, 836 P.2d 1123 (1992). Regardless of the historical context of the doctrine, marriage has evolved. Now more than ever, many individuals entering marriage value privacy and personal autonomy and eschew limitations on personal choice, particularly in intimate relationships. The doctrine of necessaries continues to rely on, and provide government enforcement of, traditional, predetermined gender roles that have limited application in many modern marriages. The Kansas Supreme Court's *Harttmann* decision, however, remains binding precedent. In evaluating its application here, the court of appeals reiterated the requirement that a creditor seeking to collect from the absent spouse must show that it extended credit based upon the creditworthiness of that absent spouse when it provided the goods or services.

B. Due Process

Procedural safeguards are commonly a topic on appeal in family law cases, but rarely are such cases reversed for violating a party's due process rights. In *In re Marriage of Fuller*, 52 Kan. App. 2d 721, 371 P.3d 964 (2016), the court of appeals sent a clear and decisive message to family law practitioners: **Even a party opposing a motion to modify child support must file a domestic relations affidavit (DRA) and a child support worksheet in advance of the hearing on the child support modification.** Failure to do so violates the moving party's right to due process.

The court trustee filed a motion to modify child support on behalf of mother after father's maintenance obligation terminated. Both parties filed DRAs but father never filed a proposed child support worksheet or otherwise indicated he was requesting a child support adjustment. At hearing, father's counsel orally requested a long-distance parenting time cost adjustment. The request was granted and mother appealed to the district court. The district court observed that since mother had created the issue of travel expenses by moving to Missouri, it should not have been a surprise to her that the issue would be raised at the child support modification hearing. The district court also held that by not personally appearing at the hearing, mother waived her right to be heard on a "normal and expectable

consideration" in setting child support. *Id.* at 967. In reversing the district court's decision, the court of appeals held the portion of the district court's child support order granting the long-distance parenting time cost adjustment is void because Mother did not receive adequate notice of father's request. Due process requires that notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

The court of appeals reiterated a well-established instruction encapsulated in Supreme Court Rule 139(f). The Kansas Supreme Court requires a party opposing a modification of child support to apprise the proponent in advance of any area of possible disagreement, whether it be a dispute concerning any fact contained in the proponent's domestic relations affidavits (DRAs) or any dispute with regard to the calculation of child support which would be revealed in the opposing party's child support worksheet. In other words, **a person challenging a motion to modify a support order is explicitly required to file and serve a DRA and proposed child support worksheet prior to the hearing on the motion to modify.** A court violates a child support modification proponent's due process right to adequate notice when it grants the opposing party an adjustment to child support without requiring the opposing party to give advance notice of his or her requested adjustment.

C. Marital Settlement Agreement and Spousal Maintenance

In *In Re Marriage of Knoll,* 52 Kan.App.2d 930, 381 P.3d 490 (2016), the parties were divorced and husband was ordered to pay spousal maintenance. In his appeal, husband claimed wife had cohabitated with another man and sought to terminate his maintenance obligation. The district court found that despite former wife's cohabitation beginning May 2015, husband's maintenance obligation would not end until October 1, 2015. Husband appealed and wife cross-appealed, contending the district court erred in completely terminating the maintenance obligation and by denying her request for attorney's fees.

On appeal, the court applied a bifurcated standard in reviewing the motion to modify maintenance. *In re Marriage of Strieby*, 45 Kan. App. 2d 953, 961, 255 P.3d 34 (2011). The court reviewed the district court's factual findings for substantial competent evidence (reasonable person might accept as sufficient) and whether the district court abused its discretion.

Because the property settlement agreement did not contain a definition of cohabitation, the court applied the following definition: "[To live] together as former husband and former wife [and] mutual assumption of those marital rights, duties and obligations which are usually manifested by married people, including but not necessarily dependent on sexual relation." *In re Marriage of Kuzanek*, 279 Kan. 158, 105 P.3d 1253 (2005).

Wife argued cohabitation did not exist because she and her boyfriend kept separate bank accounts and financial responsibilities, had a roommate agreement, and only lived together a short while. The court disagreed, citing evidence that she

was in a romantic relationship with boyfriend before living together, they eventually moved in together, the wife intended to move all her belongings into boyfriend's residence, and she referred to her and her boyfriend as having a "blended family." The court found substantial competent evidence of cohabitation and affirmed the district court's ruling.

Because the parties' separation agreement provided that maintenance would terminate upon the wife's cohabitation, the trial court lacked authority to terminate maintenance at any date other than the date cohabitation began. Therefore, the court held the district court did err in terminating the maintenance obligation effective October 2015 instead of May 2015.

D. Void/Voidable Marriage and Annulment

In *In the Matter of the Marriage of Kidane and Araya*, ____ Kan. App. ____, 389 P.3d 212, (2017), Araya filed for an annulment from Kidane in the state of Nevada. After the parties were married, Kidane claimed the only reason he married Araya was to obtain a green card. The Nevada court dismissed the case due to an inconvenient forum. Kidane subsequently filed for divorce in Kansas, and Araya countered with a petition for annulment claiming the was void because Kidane was married to another person at the time of his marriage to Araya. The district court granted Araya's counter-petition for annulment and Kidane appealed.

There were two issues on appeal: 1) Which party bears the burden of proving that a marriage was void or induced by fraud; and 2) whether an annulment is appropriate when the party requesting the same has unclean hands. The court of appeals held there was sufficient evidence to find the parties entered into a sham marriage and affirmed the district court's decision. The marriage was entered for an illegal purpose (to obtain a green card), and both parties engaged in fraud, rendering it a sham marriage. The Court clarified that a sham marriage is voidable not void. Nonetheless, the Court of Appeals held that is must grant a decree of annulment if it finds that a marriage was induced by fraud and therefore affirmed the district court's decision.

E. Protection from Abuse

In *Baker v. McCormick*, 52 Kan. App. 2d 899, 380 P.3d 706 (2016), review denied (Dec. 15, 2016), the court of appeals clarified what it means for a child to be "residing with" an adult in order for the adult to file a petition on behalf of the child under the Protection from Abuse Act (PFAA). A grandparent filed an action on behalf of two minor children while the children and their mother were living with the grandparent. But the mother moved out of the home before trial on the PFA petition. In her testimony at trial, mother's testimony was unclear at one point and the trial judge understood her testimony to indicate she was not living in the home with her parents at the time her father filed the PFA action on behalf of her minor children. On appeal, the transcript demonstrated this was not the case, and that although mother did move out of, then back in to her parents' home more than once,

she was living there with the children at the time the action was filed. She and the children had been in the home for approximately five weeks. Under K.S.A. 2015 Supp. 60-3104(b), an adult "residing with a minor child" can seek orders of protection of that child. The court of appeals determined that as a general rule, **if the child is residing with that adult at the time the PFA petition is filed, the district court has proper jurisdiction to consider the claim**. The court applied a flexible definition of the term "residence," noting the importance of context in evaluating this question, particularly under the PFAA, which is to be liberally construed to promote the protection of domestic violence victims. The fact that mother and the children left the home after the action was filed, but before trial, did not eliminate jurisdiction. To hold otherwise would be contrary to the directive of the PFAA to facilitate access to judicial protection of domestic violence victims.

The court was also asked whether the district court correctly determined that an action for grandparent visitation could not be heard in the context of a PFA action. Grandparents contended the case interpreting grandparent visitation in the context of paternity actions pursuant to K.S.A. 2015 Supp. 23-3301 (a) should be applied to grandparent visitation under the PFAA. In *In re T.N.Y.*, 51 Kan.App.2d 956, 360 P.3d 433 (2015), the court of appeals struck the opening phrase of 2015 Supp. 23-3301(a), thus allowing grandparents and stepparents to seek visitation rights in paternity actions, as well as divorce actions. The court declined to further extend *T.N.Y.* beyond a request for grandparent visitation within a paternity case. The PFAA authorizes a court to grant certain orders in the case of abuse, including restraining orders, child support, and parenting time, but does not authorize orders related to grandparent visitation. See. K.S.A. 2015 Supp. 60-3107(a). It may be noteworthy that the catch-all provision found in 60-3107(a)(10) authorizes the court to enter an order "ordering or restraining any other acts deemed necessary to promote the safety of the plaintiff or of any minor children of the parties." In a situation where grandparents are providing a safe haven for children subjected to abuse as defined by the PFAA, such an order may be entirely appropriate in order to promote the safety of the children. It does not appear this argument was advanced at the district court level so it was not specifically evaluated on appeal. Ultimately the court did conclude that, in situations in which a grandparent qualifies as the adult who "resides with" a minor child and files the PFA action, the court might direct that the child should stay with the grandparent for the child's protection. The court also acknowledged that "even in other cases, the court can determine custody and residential placement based on the child's need for protection." While the court did not cite K.S.A. 2015 Supp. 60-3107(a)(10) in support of this acknowledgment, the catch-all provision would provide statutory authority for such an order, and practitioners should take note of this potential remedy for grandparents seeking to protect their grandchildren from abuse as defined by the PFAA.

In another published decision related to the Protection from Abuse Act (PFAA), the court of appeals affirmed a district court's finding that **unwanted sexual touching causes bodily injury as defined by the PFAA.** *Kerry G. v. Stacy C.*, _ Kan. App.___, 386 P.3d 921 (2016). It was undisputed that Kerry and Stacy had been in a dating relationship. Kerry sought criminal charges against Stacy after three separate incidents during which he had unwanted sexual contact with her in her home. While he was awaiting trial on the criminal charges, Kerry believed Stacy violated the no contact bond provision by attempting contact with her on several occasions. She filed a petition for an order of protection under the PFAA. At trial, she described three separate encounters with Kerry. During the first incident, Kerry woke from sleep to find Stacy performing oral sex on her with digital penetration as he pinned her legs down. She repeatedly told him to stop, told him no and became "hysterical." Stacy left her home and subsequently apologized by email and text message, which exhibits were entered into evidence and supported Kerry's description of the incident. Kerry testified that Stacy came back to her house a few days later, visibly upset and wanting to talk about getting back together. Again, Kerry awoke some time later to find Stacy performing oral sex on her. On a third occasion, Stacy came over and Kerry awoke for a third time to find Stacy performing oral sex on her. She also testified that she had taken Ambien, a powerful sleep aid, on one of the occasions, and only remembered bits and pieces of the second and third incidents. The district court concluded that abuse had occurred as it is defined by the PFAA. The court of appeals declined to reweigh the evidence considered by the district court as to the sufficiency of evidence that Stacy had committed the unwanted sexual acts. The court's strong reluctance to substitute its judgment for that of the district court judge who heard the testimony reflects the "complicated and highly personal factual issues that are presented" in cases under the PFAA. *Id.* at 924. Applying the lesser standard for the burden of proof in a civil proceeding, Kerry proved Stacy's conduct met the definition of rape as Kansas law defines it. The court unequivocally held that **any unwanted sexual touching causes bodily injury under the PFAA.**

B. Court of Appeals- Unpublished Decisions

Hernandez v. Rider, No. 114,102, 2016 WL 1546426 (Kan. App. Apr. 15, 2016) (unpublished opinion). Rider was a licensed attorney who represented himself in an attempt to modify his child support. The district court found Rider had a juris doctor, two master's degrees, had been a professor, was a qualified mediator and had been a domestic case manager, and yet took a job with "Teach for America." Based on Rider's underemployment, the district court imputed income of $60,000, retroactive to the first day of the month after Rider had filed his motion to modify. Rider appealed, claiming that the imputation of his income was in error.

On appeal, the court reviewed the Kansas Child Support Guidelines, which provide that income may be imputed to the parent without primary residency in appropriate circumstances. Guidelines § II.F (2015 Kan. Ct. R. Annot. 114). One such circumstance found in the nonexhaustive list within the guidelines is when a parent is deliberately underemployed. However, the court clarified that imputation of income is not limited to the circumstances within this list and the decision to impute income to the noncustodial parent is within the discretion of the district court. The court also reviewed K.S.A. 2015 23-3005(b), which grants the district court discretion to make a modification retroactive to the first day of the month following a motion to modify. Ultimately, the court held that the district court did not abuse its discretion when imputing income to Rider and in making the child support modification retroactive to the first day of the month after Rider filed his motion to modify.

McBride v. Pfannenstiel, No. 113,691, 2016 WL 2611094 (Kan. App. May 6, 2016) (unpublished opinion). Soon after Pfannenstiel and McBride divorced in 2014, Pfannenstiel filed a protection from abuse (PFA) action against McBride and obtained a temporary PFA order. McBride subsequently sought a protection from stalking (PFS) order against Pfannenstiel, claiming McBride was attempting to induce him to violate the temporary PFA order. The district court found evidence of stalking, and issued a final PFS order, which expired February 5, 2016. Pfannenstiel appealed. The court of appeals held that because the PFS order had already expired, and was not reinstated or extended, the issue was moot. The court clarified that even when an issue is moot, the court can still review the appeal if its dismissal would adversely affect rights vital to the parties. However, because there was no evidence that failing to address Pfannenstiel's appeal would affect rights vital to the parties, the case was dismissed as moot.

State ex. Rel., Secretary v. Smith, No. 114,306, 2016 WL 3031277 (Kan. App. May 27, 2016) (unpublished opinion). The district court concluded that, as a matter of law, Smith was not the biological father of the minor child because Smith and the child's biological mother, Gafford, both had actual knowledge that Smith was not the child's biological father. However, because Smith acknowledged paternity in a Paternity Consent Form for Birth Registration (Consent), the district court found that he was the presumptive, "legal father" of the minor child. Smith appealed. On appeal, the court reviewed *State ex. Rel., Secretary v. Kimbrel*, 43 Kan.App.2d 790, 231 P.3d 576 (2010):

> First, when a man executes a voluntary acknowledgment of paternity under K.S.A. 38–1138 a presumption of paternity arises and he is established in a permanent father-child relationship. Second, if a man successfully brings a timely action under K.S.A. 38–1115(e) to revoke his voluntary acknowledgment of paternity, the presumption of paternity ends by court order and he is no longer established in the permanent father-child

relationship. Third, if a man does not successfully bring such a timely action, the presumption of paternity remains along with the established father-child relationship, and it is subject to challenge by genetic testing only where permitted by K.S.A. 38–1118(a) and Ross. Finally, if a district court determines, based on genetic testing ordered pursuant to K.S.A. 38–1118(a) and Ross, that clear and convincing evidence proves a man who has executed a voluntary acknowledgment of paternity under K.S.A. 38–1138 is not the biological father of the child, the court may find the presumption of paternity is rebutted, end the father-child relationship, and deny a petition for child support."

Both Smith and Gafford had acknowledged at trial that they knew at the time the Consent was executed that Smith was not the father of the minor child. Both confirmed that the paternity acknowledged in the Consent was false. As a result, the court held that Smith, by clear and convincing evidence, was successful in rebutting the presumption of paternity that arose from K.S.A. 38–1138 when he executed the Consent, and reversed the district court's decision.

In the Matter of the Marriage of Herrera, No. 114,466, 2016 WL 3365981 (Kan. App. June 17, 2016) (unpublished opinion). The parties were divorced in 2012. The divorce decree directed former wife to refinance the marital home in her sole name within 24 months or sell the property. When she failed to do so, former husband filed a motion to compel former wife to sell the home. Wife argued husband was not timely on child support payments, and therefore, the "clean hands" doctrine should prevent the district court from granting his motion. Two separate district court judges found and agreed that wife must sell the home by auction within 60 days. On appeal, the court declined to reweigh the evidence presented in the district court. The court also clarified that the clean hands doctrine should be applied in very limited situations. In affirming the district court, the court found husband's delay in making his payments did not shock the moral sensibilities of the court sufficient to warrant imposition of the clean hands doctrine.

In Re Marriage of Lynn, No. 114,154, 2016 WL 3856630 (Kan. App. July 15, 2016) (unpublished opinion). The parties divorced with shared residency of their minor children. Both parties subsequently sought modification and requested primary residency of the children. The district court held that Mother would be primary resident and Father appealed. In analyzing the district court's ruling, the Court of Appeals cited K.S.A. 2015 Supp. 23-3201, and *In re Marriage of Rayman*, 273 Kan. 996, 999, 47 P.3d 413 (2002), stating that a district court must decide custody and placement issues in a divorce to foster the best interest of the children. The evidence presented before the district court showed the father to have alcohol and anger control issues and the mother to occasionally lack maturity or judgment. However, the father also argued that an affidavit admitted as evidence contained inaccurate factual statements. The court concluded that even if this affidavit was

completely discounted, there was sufficient evidence to support the district court's factual findings that it was in the best interest of the children that they be placed with the mother.

Matter of Marriage of South, No. 114,846, 2017 WL 840233 (Kan.App. Mar. 3, 2017) (unpublished opinion). Former wife appealed the district court's decision classifying the parties' vacation home and certain items of personal property as Marital property rather than Joint property as defined by the parties' Pre-Marital Agreement. Wife also appealed the district court's ruling ordering her to reimburse husband for a portion of the parties' 2014 tax liability. The parties' Pre-Marital Agreement created three categories of property: Joint, Marital, and Separate. Joint property was defined as "any property acquired by the parties and titled with the other party as joint tenants and not tenants in common". Marital property was defined as "property that is acquired by the parties during marriage and not jointly titled or deemed Separate Property." Joint property was to be equally divided. The agreement also provided that if the marriage lasted five years or more, wife would receive $500,000 or one-half the fair market value of the Marital property, whichever is greater. Finally, the agreement included a provision that it would be governed and enforced in accordance with the laws of the State of Kansas. The parties' Florida vacation home was conveyed by warranty deed to "Alan E. South and Grace Ann Stout South, Husband and Wife." In Florida, the effect of such a conveyance was to place the property in tenancy by the entireties, which includes rights of survivorship. On appeal, Wife argued that the nature of the parties' interest in the vacation home should be determined by the application of Florida law because under Kansas choice of law rules, the doctrine of *lex loci situs*, i.e. the law of the land where the real estate is located governs. Therefore, Florida substantive law should apply and the vacation home was Joint property under the Pre-Marital Agreement. The court of appeals found that Kansas substantive law, rather than Kansas choice of law rules governed the classification of the vacation home. Under Kansas substantive law, because the parties did not formally place the vacation home in joint tenancy, the home was classified as Marital Property. The Court utilized the same reasoning with regard to the items of personal property. The Court remanded the case for clearer factual findings regarding wife's share of the 2014 tax liability.

In *In Re Marriage of Irons*, No. 114,055, 2016 WL 3856636 (Kan. App. July 15, 2016) (unpublished opinion), former husband appealed, among other things, the district court's interpretation of the parties' 1989 prenuptial agreement. The third paragraph of the prenuptial agreement provides as follows:

> WHEREAS the parties are now the owners in their own right of real estate and personal property which have been fully disclosed and set forth in Exhibits A and B attached hereto and made part hereof and the said parties desire to keep all of his and her property now owned or hereafter acquired by each of them, free from any claim of each against the other in the event of death, separation or divorce, one from the other, otherwise acquired by reason of the marriage or by reason of surviving him or her as widow or widower or by reason of separation or divorce, one from the other, and...."
>
> Another recital states:
>
> WHEREAS, it is the desire and intention of the parties that each shall continue to own separately all of the property real and personal, that each owns at the time of the marriage of the parties to each other or thereafter acquired or coming to them during the marriage.

Each of the parties waived and relinquished all of their rights, and specifically all marital rights which he or she would acquire by reason of the marriage in any and all property, real or personal, owned by the other party at any time in the event of death, divorce or separation. The district court interpreted the prenuptial agreement to only protect the separate property specifically listed by the parties' on the attachments to the agreement itself. The court of appeals affirmed the district court, and found that the parties did not intend to make any property acquired during their marriage nonmarital. The fact that the parties each waived any right each would have in the property of the other by reason of the marriage was insufficient to protect such property from division in the divorce.

In Re Marriage of Crouse, No. 113,831, 2016 WL 3856677 (Kan. App. July 15, 2016) (unpublished opinion). Following the parties' divorce, former wife sought to set aside the order and requested a new trial. The district court denied both requests, as well as a subsequent motion to alter or amend. On appeal, wife claims that 1) the district court failed to comply with Supreme Court Rules 170, 133 and 134 in the manner in which the order was filed, 2) the district court engaged in prohibited ex parte communication with former husband's counsel; and 3) former husband failed to comply with Supreme Court Rule 139 by failing to submit a DRA before trial. The court of appeals held that Rule 170(d)(2) was not violated because former husband's attorney made reasonable efforts to contact her to resolve her objection to the order, and the district court did address her objection in its 11-page opinion. The court further denied former wife's claim that the district court violated Rule 133 by not holding an oral argument on her objection to the proposed order. The court stated that Rule 170(d)(3) permits the district court to resolve an objection to a proposed order with or without a hearing. Wife's claim regarding ex parte communication was also rejected because the Kansas Code of Judicial

Conduct Rule 2.9 permits ex parte communication if it is for scheduling, administrative, or emergency purposes and do not address substantive matters. Finally, the court rejected wife's claim that the husband violated rule 139 by failing to submit a DRA before trial. While it was true that former husband failed to submit a DRA before trial, the former wife was the only party who did not file a DRA at all, and former husband did bring one to court, which was admitted into evidence.

Faubion v. Phillips, No. 113,709, 2016 WL 3856668 (Kan. App. July 15, 2016) (unpublished opinion). The district court found former wife in contempt for failing to comply with its order dividing personal property when she failed to return to many of the items awarded to husband in the settlement agreement. Former wife appealed claiming that she only violated provisions of a settlement contract, not any orders of the court, and therefore, the district court did not have subject matter jurisdiction to find her in contempt. On appeal, the court reviewed the indirect contempt statute, K.S.A. 2015 Supp. 20-1204a, which says that "when an order in a civil action has been entered, the court that rendered the same may order a person alleged to be guilty of indirect contempt of such order to appear and show cause why such person should not be held in contempt . . ." Under this statute, the court found that the district court had jurisdiction to find the wife in contempt because the district court at least heard evidence and ordered that husband was entitled to certain property. Wife also argued that the court lacked subject matter jurisdiction over the personal property that belonged to husband's father and daughter because they were not parties to the action. The court of appeals noted that this was a partition action, and failure to name all property owners as parties to a partition action does not necessarily deprive the district court of subject matter jurisdiction to partition the interests of the property owners who are named parties. *McGinty v. Hoosier*, 291 Kan. 224, 232, 239 P.3d 843 (2010). Because the personal property at issue was physically present on the real property that was partitioned by the district court, the district court had jurisdiction over the division of the personal property as well.

In Re Marriage of Gilliam, No. 113,265, 2016 WL 3856869 (Kan. App. July 15, 2016) (unpublished opinion). The District court found former husband to be in indirect civil contempt for failing to pay a property judgment, and imposed a sanction of a flat 90 day suspended jail sentence, and suspended the sentence for 24 months on the condition that appellant make the required payments. In analyzing the district court's ruling, the court of appeals referred to *In re Conservatorship of McRoy*, 19 Kan. App. 2d 31, 34, 861 P.2d 1378 (1993), which held that in an indirect contempt case, the punishment of imprisonment is to be used to coerce the party in contempt to fix their contempt so as to avoid imprisonment. However, *McRoy* further clarifies that flat prison sentences provide the contemnor no opportunity to fix their contempt and avoid imprisonment. Instead, the court explained, **the**

contemnor should have the opportunity to cure their contempt and avoid prison. Because a fixed prison sentence is not a coercive remedy that provides the contemnor **a key to unlock the jail door**, but is strictly a punishment for failing to do what the court has ordered, it is an improper punishment for indirect civil contempt. The court of appeals concluded that the district court was correct in finding the appellant in indirect civil contempt for failing to pay the property judgment, but erred in imposing a flat jail sentence as punishment, and remanded this issue for correction.

In Re Marriage of Sinks, No. 114,609, 2016 WL 3961479 (Kan. App. July 22, 2016). Following the first appeal in this case, on remand, the district court was to recalculate husband's income and clarify its orders concerning maintenance. Former wife filed a second appeal, claiming the district court's decision exceeded the mandate by reexamining a $100,000 it had previously considered marital debt to pay for marital and child expenses, and credited husband $18,831.44. She also claimed the district court incorrectly recalculated husband's income and improperly provided him travel expenses to visit their daughter. Husband argued that the district court improperly calculated is yearly income by failing to provide him a credit for certain business travel expenses and depreciation.

The court of appeals reexamined its instructions to the district court, which were "to clearly explain [its] treatment of marital funds used by wife for her own support . . . and how it relates, if at all, to [its] final determination as to the length of the maintenance award." *Sinks I*, 2014 WL 4627495. The court found nothing in the appellate opinion implied that the district court should reexamine the $100,000. Finding the district court exceeded the mandate, the court of appeals reversed the district court's decision to reconsider the previously approved $100,000 for marital debt and to set aside the additional $18,831.44 credit given to husband. The court affirmed the district court's recalculation of husband's income for child support purposes, finding the district court's actions reasonable. The court remanded for the district court to reconsider its decision to exclude expenses from husband's income for spousal maintenance purposes. The court advised the Douglas County guidelines for calculating maintenance is 17% of the difference between the parties' respective gross incomes or earning capacities. This figure includes depreciation and other income. K.S.A. 2012 Supp. 23-2902(a). Per these guidelines, the maintenance calculations should have included depreciation of husband's income. The court vacated the district court's *sua sponte* order granting husband travel expenses as a credit against child support for potential visits to see daughter because the husband never requested said credit, as is required by the Kansas Child Supprt Guidelines, Section IV.E. (2015 Kan. Ct. R. Annot. 126).

Frakes v. Frakes, No. 114,954, 2016 WL 4414021 (Kan. App. Aug. 19, 2016) (unpublished opinion). The district court issued a default decree of divorce to former wife and awarded her sole custody of the parties' minor child. The decree provided

father parenting time at mother's discretion and supervision. Mother alleged father sexually abused one of the children, and the district court temporarily suspended his parenting time. The following month, father asked the court to modify custody, change primary residence of both children, and to modify child support because mother was always thwarting his parenting time, failed to answer his calls to the children, made baseless allegations against him, fought with her new husband, allowed the children to fall behind in school, failed to take the "parenting through divorce" class mandated by the court, and alienated the children's affection toward him. The district court agreed with father and awarded him primary custody of the minor children because he understood the importance of fostering a relationship between the two parents, and mother did not. On appeal, the court reviewed K.S.A. 2015 Supp. 23-3203, which provides the "best interest of the child" factors. Mother argued not all factors were considered, however, she failed to raise this objection at the trial court level so as to preserve this issue for appeal. The court found the district court made adequate findings of fact to support its judgment, and affirmed its decision to award father primary custody.

Walker v. Brizendine, No. 114,776, 2016 WL 5012505 (Kan. App. Sep. 16, 2016) (unpublished opinion). District court granted Walker's petition for an order of protection from stalking against Brizendine. Brizendine appealed claiming the district court erred in failing to advise the parties of their right to be represented by counsel at the hearing on the petition for an order of protection from stalking. On appeal, the court reviewed K.S.A. 2015 Supp. 60–31a05(a), which states that the district court "shall advise the parties of their right to be represented by counsel" at a hearing on a petition for an order of protection from stalking. Specifically, the court interpreted the legislature's use of the word "shall" to indicate that they intended this advisement be mandatory rather than directory. The district court was fully aware Brizendine was pro se and yet failed to advise him of his right to assistance of counsel at the hearing. Therefore, the court reversed the district court's decision and remanded the case for a new hearing before a different district court judge.

In re Paternity of A.T. by and through Anderson v. Tesfu, No. 115,783, 2016 WL 5853088 (Kan. App. Sep. 30, 2016) (unpublished opinion). Father requested additional parenting time, however, the district court determined that Kansas was an inconvenient forum for this request and stayed the case pending proceedings in Washington. On appeal, the court acknowledged that K.S.A. 2015 Supp. 23-37,207 (a) provides that when a court has jurisdiction in a child custody matter, it has the power to decline to exercise its jurisdiction at any time if it finds that another court would be a more convenient forum. However, the court clarified that before making such a decision, it must give the parties an opportunity "to submit information" and "shall consider all relevant factors" in K.S.A. 2015 Supp. 23-37, 207 (b). These factors include: (1) whether domestic violence occurred; (2) the length of time the child has resided out of state; (3) the distance between the two forums; (4) the

parties' financial circumstances; (5) any choice-of-jurisdiction agreement between the parties; (6) the location of the evidence; (7) the ability of the two courts to decide the issue; and (8) the familiarity of the two court with the facts and issues of the litigation. The court found that the district court failed to allow the parties to submit information and did not consider all relevant factors in K.S.A. 2015 Supp. 23-37, 207 (b), when it made its decision to decline jurisdiction based on inconvenient forum. For this reason, the court reversed the district court and remanded the matter.

In the Matter of the Marriage of Nemec, No. 115,474, 2016 WL 6031300 (Kan. App. Oct. 14, 2016) (unpublished opinion). The parties were divorced, and both were living in St. John, Kansas with their three minor children at the time of divorce. Mother wished to move to Pratt, which resulted in father filing a motion asking the district court to find Pratt was not a reasonable distance from St. John, and that this was a violation of the terms of the divorce decree. The district court ruled that mother's move would terminate the shared residential custody order resulting in father becoming the residential custodial parent. On appeal, the court reviewed the best interest of the child factors found in K.S.A. 2015 Supp. 23-3203. The evidence showed that the district court found that mother presented a plan proving it was within the realm of possibility for her to move to Pratt and continue a shared custody arrangement. However, the district court still found mother's proposed arrangement contrary to the best interests of the children. Mother was moving from a large house to a two-bedroom apartment and the children would have to spend two hours a day at the library after school during her weeks of parenting time, which resulted in the district court's decision to find that such an arrangement was impracticable, inconvenient and unworkable, and thus, not in the best interests of the children. The court found that the district court's order explicitly considered many of the factors, and the evidence considered by the district court clearly supported the decision.

In re Marriage of Brin, No. 114,746, 2016 WL 6139620 (Kan. App. Oct. 21, 2016) (unpublished opinion). Mother filed a motion to modify the parties' agreement regarding child support, division of medical expenses and parenting time. The district court ordered father to pay child support of $1,129 per month, which did not include a parenting time adjustment or calculation of child support based on equal or nearly equal parenting time. Father appealed, claiming the district court should have either calculated child support based on a shared custody determination or granted him a parenting time adjustment. On appeal, the court reviewed the Kansas Child Support Guidelines. First, "when parents share the children's time equally or nearly equally, **the district court has discretion to use either the shared expense formula or the equal parenting time formula in calculating child support**." Guidelines § III.B.7. Father argued the district court erred in including the children's non-waking hours in determining whether the parties shared the children's time on an equal or nearly equal basis. The court disagreed, noting

father had the children 30% of their non-school/daycare time, which is not equal or nearly equal. Alternatively, father argued the district court should have made a parenting time adjustment under the Guidelines § IV.E.2. To make such an adjustment, the district court must use either the actual cost adjustment or time formula adjustment. Father's argument was based merely on the time he spent with the children, not cost. Pursuant to the guidelines, the time formula is discretionary, unless the children spend 35% or more of their time with a parent, rendering such analysis mandatory. Guidelines § IV.E.2.b. Here, because father had the children only 30% of the time, the district court was not required to consider a time formula adjustment.

In the Matter of the Marriage of Grigsby, No. 115,279, 2016 WL 7178858 (Kan. App. Dec. 9, 2016) (unpublished opinion). Husband was incarcerated in federal prison at the time of his divorce, as a result of being convicted of sexual exploitation of a minor child and possession of child pornography. He appealed the district court's ruling in his divorce claiming: (1) the district court failed to rule on two poverty affidavits he filed; (2) the district court erred in holding hearing without his participation by phone; and (3) the district court allowed prejudice against him throughout the divorce. On appeal, the court reviewed K.S.A. 2015 Supp. 60-2001(b), which provides the requirements for a poverty affidavit. The court found neither of the affidavits filed by former husband complied with the statutory requirements as they failed to contain a statement of his average account balance or deposits, and were not signed or sworn to by husband. The court also found that husband failed to provide any facts that indicated the district court prevented him from participating in any hearings, and he failed to provide any justification as to why he failed to appear at these hearings. Finally, the court found husband was not improperly prejudiced due to the parties' knowledge of and reference to his federal convictions, as these convictions were relevant to the divorce proceedings. The court held there was no error on the part of the district court and affirmed all of its rulings.

Shokaryev v. Shokaryev, No. 114,965, 2016 WL 7178276 (Kan. App. Dec. 9, 2016) (unpublished opinion). Husband obtained a default divorce. Former wife filed a motion to set aside the default, which was denied by the district court because the motion was filed 11 months after the default divorce judgment was entered, and former wife was unable to provide sufficient justification for the delay. On appeal, the court reviewed K.S.A. 2015 Supp. 60–255(b), which says that a motion to set aside a default judgment may be granted for any reason found in K.S.A. 2015 Supp. 60–260(b), which includes excusable neglect. A motion to set aside a judgment must be filed within a reasonable time. In *State ex rel. Stovall v. Alivio*, 275 Kan. 169, 61 P.3d 687 (2003), the Supreme Court held that a motion to set aside a default judgment may be granted if the district court finds "'(1) that the nondefaulting part will not be prejudiced by the reopening, (2) that the defaulting party has a meritorious defense; and (3) that the default was not the result of inexcusable

neglect or a willful act.'" Wife argued she had sufficient justification for her delay because she struggled with depression and suicide attempts, which resulted in hospitalization. However, because she had sufficient notice of the default proceedings, received copies of the judgment and decree, and never filed any responsive pleadings despite being out of the hospital for seven months before meeting with an attorney, the court affirmed the district court's decision.

In the Matter of the Marriage of Williamson, No. 115,518, 2016 WL 7429527 (Dec. 23, 2016) (unpublished opinion). The parties entered into a divorce property settlement agreement, which included provision to equally share the college expenses for their two children. Father filed a motion to modify the agreement after one of the children turned 18. The district court held it lacked jurisdiction to modify the agreement regarding education expenses after one of the children turned 18. Husband appealed and also contended the district court should have determined the education expense agreement was unconscionable and ambiguous, and therefore unenforceable. The court of appeals reviewed its decision in *Morrison v. Morrison*, 14 Kan. App. 2d 56, 781 P.2d 745 (1989), wherein the court held that under K.S.A. 1988 Supp. 60–1610(a)(1), which is now K.S.A. 2015 Supp. 23–3001, **when the child support obligations of a parent are agreed by the parties to extend past the age of majority, and such agreement is incorporated into the decree of divorce, the district court is without jurisdiction to modify such an agreement after the child has turned 18.** The only exception would be if the parties were to reserve the court's jurisdiction to modify within the agreement, or the parties mutually agreed to a subsequent modification, neither of which was the case here.

A similar factual scenario was considered in *In re Marriage of Guthrie-Craig*, No. 113,410, 2016 WL 3128692 (Kan. App. June 3, 2016). The parties' Property Settlement Agreement required father to pay child support until May 31, 2022, at which point the parties' youngest daughter would be 22 years old and the older daughter would be 28. The agreement acknowledged its contractual nature and provided that it would not be easily set aside. It was approved by the district court and incorporated in the Decree of Divorce. Father later sought to vacate the child support orders because they were not fair, just or equitable. The district court declined to modify the support for the child who had emancipated, but did increase the child support amount for the minor child. The court of appeals rejected father's "fair, just and equitable" argument, pointing out the standard to apply to separation agreements is that they be valid, just and equitable, and finding he failed to provide any evidence in support of his argument. Citing *Morrison* again, the court of appeals noted that if parents have a written agreement for post majority support incorporated into the decree of divorce, the trial judge has no jurisdiction to modify the periodic support payments after the child has attained the age of 18.

In the Matter of the Marriage of Gerleman, No. 114,855, 2017 WL 66339 (Kan. App. Jan. 6, 2017) (unpublished opinion). The district court issued Qualified Domestic Relations Order (QDRO) to Defense Finance and Accounting Services (DFAS) for 50% of former husband's military pension for the benefit of former wife. Former husband appealed claiming the divorce decree was ambiguous and did not award the former wife 50% of his military pension, and that the decree was unclear regarding the date he was to begin paying former wife from his pension.
On appeal, the court reviewed case law for the standard to determine whether a written instrument is ambiguous. The court reviewed *Iron Mound v. Nueterra Healthcare Management*, 298 Kan. 412, 313 P.3d 808 (2013), which says an ambiguity exists when "two or more meanings can reasonably be construed from the contract." Upon reviewing the facts, the court found that the decree of divorce, in discussing property division, made reference to a "Marital Separation and Property Agreement." The court found that these documents were neither executed by the parties nor included with the divorce decree. Further, the language in the divorce decree was insufficiently clear to determine how the pension was to be divided. Therefore, because an ambiguity existed, the court held that the division of former husband's pension was a question of fact that should be remanded back to the district court for clarification. However, the court held that the divorce decree was clear that former husband's responsibility to pay former wife her portion of the pension was to begin immediately upon him receiving payments from his pension.

In the Matter of the Marriage of Tubbesing, No. 115,232, 2017 WL 383412 (Kan. App. Jan. 27, 2017) (unpublished opinion). Following the parties' divorce, former wife filed a Motion to Modify Child Support. After being continued multiple times, the district court dismissed her motion for lack of prosecution. On appeal, she contends the district court's dismissal was an abuse of discretion. The court of appeals reviewed K.S.A. 2015 Supp. 60-241(b)(1), which provides the following:

> If the plaintiff fails to prosecute or to comply with this chapter or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this paragraph and any dismissal not under this section, except one for lack of jurisdiction, improper venue or failure to join a party under K.S.A. 60-219, and amendments thereto, operates as an adjudication on the merits.

The court found this language was broad enough to include dismissal for failure to prosecute a motion to modify child support under K.S.A. 2015 Supp. 23-3005.

Roberts v. Weaver, Nos. 114,423 and 114,434, 2017 WL 462175 (Kan. App. Feb. 3, 2017) (unpublished opinion). Roberts filed a PFA against Weaver and obtained temporary restraining orders. The district court found the evidence did not support a PFA order, but found there was evidence presented to support a PFS order, which the court entered. Weaver appealed, claiming the district court

violated his due process rights by converting Roberts' PFA petition into a PFA action and a PFS order. On appeal, the court reviewed the PFA (K.S.A. 2015 Supp. 60-3104) and PFS (K.S.A. 2016 Supp. 60–31a04) statutes. The court found that the PFA and PFS statutes have different elements and require different proof. Therefore, the issuance of the PFS order without a PFS petition being filed and served on Weaver violated his due process rights.

In the Matter of the Marriage of Brizendine and Randall, No. 115,265, 2017 WL 836827 (Kan. App. Mar. 3, 2017) (unpublished opinion). The district court dismissed Brizendine's petition for divorce based on lack of jurisdiction because Brizendine had not been a resident of the state of Kansas for at least 60 days prior to filing of his petition. On appeal, the court reviewed the Kansas long-arm statute, found at K.S.A. 2016 Supp. 60-308 (b)(1)(H). Kansas courts can exercise personal jurisdiction over an out-of-state person if that person has lived in the marital relationship in Kansas before moving out of state **and** the other party to the marital relationship continued to reside in Kansas. In this case, both parties lived in Kansas during the marriage, however they both had moved to and established residence in California at the time the divorce was filed. Neither party reestablished residence in Kansas for the requisite period of time prior to filing the petition for divorce. The court held that there was no reversible error and affirmed the district court's judgment and order.

In the Matter of the Marriage Crainshaw, No. 114,470, 2017 WL 839521 (Kan. App. Mar. 3, 2017) (unpublished opinion). Former husband appealed the district court's decision in calculating his child support income because it failed to include deductions for transportation, mobile phone service, internet, bookkeeping and accounting, and depreciation. He argued the district court failed to reduce his spousal maintenance to a nominal amount and did not make the modification retroactive to the date of the filing of the petition. On appeal, the court reviewed Kansas Child Support Guidelines, Administrative Order No. 261, which defines income for a self-employed person as "self-employment gross income less reasonable business expenses." The Guidelines define reasonable business expenses as "actual expenditures reasonably necessary for the production of income." The court agreed with the district court that substantial competent evidence existed to deny former husband's claim that the requested deductions were reasonable business expenses. Additionally, the court held the district court did not abuse its discretion when it declined to reduce spousal maintenance to a nominal amount. The court clarified that the district court has discretion in reducing maintenance and making the modification retroactive. However, the court still remanded this issue for the district court to make specific findings why it did not make the modification of maintenance retroactive.

Another child support obligor made a similar argument in the *Matter of the Marriage of Friars*, No. 113,512, 2016 WL 2609622 (Kan. App. May 6, 2016). Father

appealed the district court's order denying his motion to modify his child support obligations. He argued, among other things, the district court failed to account for his reasonable business expenses in determining his income. The court of appeals noted the parties had been litigating child support sporadically since 2005 and that father had appealed a prior child support order less than two years ago. The child support order on appeal in the present case seems to have been issued via e-mail, which was not included on the record of appeal. In order to perform a meaningful review of district court decisions, journal entries based upon a ruling must be timely filed and must include as much information as possible. The court of appeals determined that based on the information available, any change in father's employment, salary or parenting time during the period in question appear to have been temporary in nature and father had failed to establish a material change of circumstances that would warrant a modification of support. His claimed business expenses had been addressed in a March 2015 child support order which he did not appeal. Accordingly, the district court was affirmed on all issues.

In re Marriage of O'Neil, No. 114,035, 2016 WL 3128784, (Kan. App. June 3, 2016). Former wife appeals the district court's ruling denying her motion to enforce a divorce decree. Husband had been ordered to pay a portion of his monthly military retirement pay to wife. The parties included language to that effect in their Separation and Property Settlement Agreement, which was approved by the court and incorporated in the Decree of Divorce. The parties agreed on the dollar amount to be paid to wife and agreed the sum would be paid directly from the Defense Finance and Accounting Service (DFAS) each month. Unbeknownst to the parties and counsel, the military would not pay wife's portion of husband's military retirement pay directly to wife because the "10/10 rule" had not been satisfied. The rule is found at 10 U.S.C. § 1408(d)(2) (2012) and requires 10 years of marriage during which the military member performed 10 years of creditable service in order for wife to receive her portion of husband's military retirement pay directly from DFAS. When the parties and counsel discovered the problem with the mechanism for payment, wife sought to enforce the Decree. Husband acknowledged he had agreed to pay wife her share of his retirement pay, but argued the district court lacked authority to grant wife relief from judgment under K.S.A. 60-260. The district court agreed and denied wife's motion. The court of appeals pointed out that the parties had mis-framed the issue as one of jurisdiction to *modify* the Agreement rather than as a question of the court *enforcing* its own order. The district court had jurisdiction and authority over husband, but not the DFAS. He had submitted to the district court's jurisdiction by filing for divorce, unlike the federal agency which never appeared in the divorce proceeding. Husband was also an individual litigant, not an agency of the federal government. When wife appeared and asked the district court to enforce the Decree against husband, the district court erred by refusing to do so based on the provisions of K.S.A. 60–260. The matter was reversed and remanded with directions to enforce the Decree by ordering husband to pay wife

each month, including arrearages and interest, commencing from the first month any military retired pay was paid to husband.

Three unpublished court of appeals decisions involve parties dissatisfied with the division of net worth and maintenance awards. In *Matter of Marriage of Thummel*, No. 115,303, 2017 WL 262039 (Kan. Ct. App. Jan. 20, 2017), *Matter of Marriage of Barbee*, No. 115,134, 2017 WL 1198496, (Kan. App. Mar. 31, 2017) as well as in the *Matter of Marriage of Hamdeh*, No. 111,998, 2016 WL 6651514 (Kan. App. Nov. 10, 2016), the court of appeals reiterated the broad discretion the district court has in adjusting the property rights and financial affairs of parties involved in a divorce action. A just and reasonable division does not require an equal division. The divorce court is required to consider the eight factors set out in K.S.A. 2015 Sup 23-2802(c). The all three cases, the court of appeals found the district court considered the statutory property division factors and did not abuse its discretion with respect to property division or maintenance. In *Hamdeh*, the district court denied wife's request for attorney fees related to fighting the prenuptial agreements, the enforcement of which the court later concluded would have been unconscionable. The court of appeals did find that husband had caused protracted litigation over the date of marriage for the purpose of attempting to enforce an alleged prenuptial agreement executed by the parties in June 2003 when they had been married since January 7, 2003. Justice and equity require that husband reimburse wife her reasonable attorney fees and expenses incurred as a result of the litigation over the date of marriage. The portion of the district court related to attorney fees was reversed, with instructions to hold an evidentiary hearing on the reasonable amount of such fees and expenses.

Howard-Page v. Page, No. 115,071, 2016 WL 7031962 (Kan. App. Dec. 2, 2016). The parties were divorced in 2010. The parties shared joint legal custody and wife was awarded residential custody. By June 2011, the parties were having difficulty jointly parenting their children, so the district court ordered them to mediate. Conflict between the parties continued to escalate and at husband's request, the district court ordered a child custody evaluation in July 2012 and appointed a GAL. After wife filed two unsubstantiated PFA's and the GAL expressed concerns to the court, the district court became concerned about wife's mental health, ordered her to undergo a psychological evaluation and set the case for review hearing. At the review hearing, after hearing testimony from wife's psychologist, the district court ordered wife to undergo mental health treatment and awarded primary residential custody to husband, with supervised parenting time to wife. The district court abated husband's child support obligation and stated it would issue new child support orders at a later date. In May 2014, wife filed a pro se motion asking that all orders previously entered in the case be rescinded and

that she be awarded primary custody. At a review hearing the district court maintained the temporary orders issued in April. In December 2014, husband filed a motion asking the district court to order wife to pay child support. A final hearing on the parenting plan was held in May 2015. In a journal entry filed in June 2015, the district court granted husband's motion for wife to pay child support and stated it would issue a separate order as to the amount. In August 2015, the district court issued its order on child support, finding wife earned $60,000 per year. In response, wife filed a motion for new trial or to alter or amend judgment, which the district court denied and treated as a motion to modify future child support. Wife appealed. Wife claimed that when the district court issued its journal entry modifying child support in August 2015, no evidence as to the parties' incomes had been presented. The court of appeals found the district court did not abuse its discretion when it denied wife's motion without conducting a hearing after it stated in its journal entry that oral argument would not materially aid the court. The Court further found that the district court's finding that wife made $60,000 per year was supported by substantial evidence because the court used wife's own figures as reflected in her March 2014 motion to modify support and May 2014 pro se motion.

In *Saathoff v. Saathoff*, No. 114,594, 2016 WL 3202948 (Kan. App. June 10, 2016), child support obligor challenged the method of calculating the cost of insuring the minor child for purposes of child support. The relevant portion of the Kansas Child Support Guidelines is Section IV.D.a, which provides:

> "The cost to the parent or parent's household to provide for health, dental, orthodontic, or optometric insurance coverage for the child is to be added to the Gross Child Support Obligation. If coverage is provided without cost to the parent or parent's household, then zero should be entered as the amount. If there is a cost, the amount to be used on Line D.4 is the actual cost for the child or children.

In affirming the district court's decision, the court of appeals found the undisputed evidence demonstrated the additional cost associated with insuring the minor child under the employer-sponsored family insurance coverage. For the purposes of determining the actual cost of the minor child's insurance coverage, the employee/spouse plan offered by Mother's employer was equivalent to single coverage. Mother was entitled to credit for the increased cost above her employee/spouse coverage.