

I. INTRODUCTION

This chapter provides a summary of family law cases decided in the appellate courts for the State of Kansas between April 1, 2020 and April 2, 2021.

II. KANSAS SUPREME COURT CASES

A. *In the Matter of the Parentage of W.L. and G.L., By and Through M.S. and E.L.*

Filed: November 6, 2020

No. 119,536

Crawford District Court, Richard M. Smith, judge.

Same-sex partners lived together and had a serious relationship from 2012 to approximately 2015. The couple discussed children early on and one of the partners, Mother, later became impregnated. Nine months after the birth of twins, the couple separated, and the partner filed a parentage petition through K.S.A. 23-2208(a)(4). The District Court ruled that the partner had no parenting rights. It used a parentage test from Wisconsin because the KPA was not “tailored to the situation before him.” The Court of Appeals affirmed this decision. The partner appealed.

The Supreme Court reversed in accordance with the guidelines set out by *In Re M.F.*, which held that “same-sex partner of a woman who conceives through artificial insemination may establish a legal fiction of biological parentage by asserting the KPA presumption of maternity” in K.S.A. 23-2208(a)(4). A written or oral co-parenting agreement is not required to establish parentage, only proof that an individual “notoriously recognized” parentage and the duties arising from it. *In re M.F.* also established, the quality of parenting is not relevant to these types of case. Requiring clear and convincing evidence, as opposed to a preponderance of evidence was an error by the district court. The birth mother also should not change their opinion regarding who is considered the child’s legal parent as time progresses.

The case was remanded and reversed because the district court applied an incorrect legal standard.

B. *In the Matter of the Parentage of M.F., By and Through K.L. and T.F.*

Filed: November 6, 2020

No. 117,301

Butler District Court, David A. Ricke, judge.

Same-sex partners lived together and had a serious relationship from 2007 to approximately 2014. Throughout that time, the couple discussed artificial insemination, and one of the partners was inseminated - referred to here on out as “Mother.” After they separated, the other partner sought parenting time in absence of a co-parenting agreement, but the Mother allegedly made it very difficult. The partner sought “judicial recognition of legal parentage” through K.S.A. 23-2208(a)(4), which permits a

presumption in favor of parentage if the party can prove that they openly and notoriously recognized parentage. Both the district court and the court of appeals ruled that she had no parenting rights because she failed to meet the burden of proof established in *Frazier v. Goudschaal*. The partner appealed and argued that the lower courts failed to apply the correct legal standard.

The Supreme Court began with establishing jurisdiction, an extensive analysis of the applicable rules, and relevant case law. It recognized that even though the partner was not asserting a biological link in the traditional sense, the law permits parties to claim parentage by legal fiction.

It also analyzed *Frazier* and ruled that the district court's use of the case to determine that the partner failed to show parentage was an error because it applied the wrong legal standard. Instead of examining whether an individual became a parent, the lower court examined whether the partner was a fit parent.

The Supreme Court wrote that when ruling on these types of cases, the court must analyze whether the individual became a parent and not whether they are a fit parent. *Frazier* did not demand a higher evidentiary standard than this, unlike what the lower courts enforced. Other relevant case law has established that parties do not need to establish that there was a "meeting of the minds" to support that a co-parenting agreement was established. Tests that measure an individual's parenting abilities are irrelevant. The evidence that is permitted in these types of cases to establish parentage through (a)(4) includes "evidence material and probative of it." The partner need only to establish that she "open[ly] and notorious[ly]" recognized parentage and the duties arising from it. The lower courts should have first determined whether she did this. It further noted that it seems clear the mother "implicitly or explicitly consented to share parenting time with K.L." Deference to the mother should still take place though. Going forward, the court should also consider the party's intentions at the time of the child's birth because this is the "crystallization" which "configures the family."

The district court "erred as a matter of law by failing to apply the correct legal standards" and the Court of Appeals failed to fix this. Reversed and remanded. The dissent, by J. Stegall, stated that the legal fiction enforced in this case and *In re W.L* is unsupported by the Kansas Parentage Act because it is contrary to the plain meanings of paternity. A third party's acknowledgment of parentage does not necessarily equate with the truth. By construing that parentage may exist without biological ties is forcing the KPA to do more than intended. The KPA and the artificial insemination act also do not work together to support this, according to the dissent. Last, the majority has engaged in policy making and legislature has remained silent on this issue.

C. *In the Matter of the Adoption of Baby Girl G.*

Filed: July 10, 2020

No. 121, 051

Margie J. Phelps, of Topeka, and Jordan E. Kieffer, of Dugan & Girous Law, Inc. were on the briefs for appellant natural father.

Martin W. Bauer, of Martin, Pringle, Olive, Wallace & Bauer, L.L.P. were on the brief for appellees adoptive parents.

This opinion of the court was delivered by Rosen, J:

An adopted baby was born on September 19, 2018. The next day the natural mother consented to the adoption and relinquished her parental rights to the child. A few days later, the adoptive parents filed a petition to terminate the mother and the possible two father's parental rights. The appellant attempted to prevent the termination by arguing that he supported the mother during her last six months of pregnancy per K.S.A. 59-2136(h)(1)(D). The court terminated the father's parental rights to the adoptive baby after discovering that evidence suggested he did not support the mother and due to his drug addiction.

The father appealed the decision, and the appellate court affirmed the order. On appeal, the father argued that the termination had an insufficient factual basis, and he objected to the constitutionality of K.S.A. 59-2136(h)(1)(D).

Regarding the constitutionality of the relevant provision, the father argued that: (1) as a biological parent, he had a "substantive liberty interest in participating" with his child's life, (2) father receive more protection in CINC proceedings than a father in adoption matters, and (3) he was deprived of access post-birth.

The failure to preserve issues for appeal caused the court to decline the review of the constitutional issue raised. The court did note that precedent has clarified that have a biological claim to a child does not create a right to participate in that child's life and that the father can appeal this issue in the future when he complies with preservation rules.

The court affirmed the determination that the father failed to provide adequate support to the mother six months before the birth. The father's assistance did not qualify as the support necessary for the statutory provision to apply. He inconsistently contacted the mother, and the court noted that the communications he did have with the natural mother were "at worst, actively harmful" to her.

Stegall, J., dissenting:

Rather than withhold consideration of the constitutional issues raised, it would have been better to consider it to "serve the ends of justice." The case "strikes at the most cherished rights protected by the constitution - a parent's fundamental right to his or her parental relationship with the child." In the dissent's perspective, the issues raised in this case are too important to disregard, and the court should have exercised its discretion in permitting review of the unpreserved issue. Here, the father has been held to a higher standard in proving his parental interests compared to mothers in a similar situation. Mothers must show a biological link only, whereas fathers must show more in addition to the biological link for their rights to be preserved. The difference in burden to show

between mothers and fathers reveals "assumptions about gender roles" within the state's laws.

III. KANSAS COURT OF APPEALS CASES—PUBLISHED

A. *In the Matter of the Marriage of Davis and Garcia-Bebek*

Filed: July 24, 2020

Appeal from Sedgwick District Court, Seth L. Rundle, judge
Michael P. Whalen, of Law office of Michael P. Whalen, for appellant
No appearance by appellee

Before Schroeder, P.J., Hill and Gardner, JJ

Mother and father divorced in 2014 with a joint custody award. Father eventually was charged with illegally voting because he was not a citizen. Shortly after, the father obtained a job in Peru and moved. He also motioned to change the custody arrangements for his children to have them in Peru with him having sole custody. The district court permitted the father to take the children to Peru yearly, but the mother was concerned with this due to the children's inability to speak Spanish and the father's outstanding criminal investigation. After a hearing, the district court determined it would not be in the children's best interests to send them to Peru yearly considering all the relevant facts. The father timely appealed that decision and alleged that the district court abused its discretion by not making proper findings to support their denial of his parenting time in Peru.

The appellate court found that the district court made proper factual findings to support their decision to deny parenting time outside the United States. The father's ability to exercise his parental rights remained, the court simply denied the exercise of such rights in Peru. The father failed to carry the burden of showing that the district court abused its discretion and denied him parenting time. The decision to limit parenting time within the United States was further supported by the federal indictment which "outweighed all other factors favoring parenting time in Peru." Affirmed.

B. *In re Marriage of Nelson*

Filed October 2, 2020

No. 122,190

Marion District Court, Michael F. Powers, judge
Stephen M. Turley, of Wagle & Turley LLC for appellant
Paul E. Dean, for appellee

Before Buser, P.J., Hill and Warner, JJ

Wife and husband had a premarital agreement. Wife appealed the property division entered by the district court on the basis that the division was contrary to the premarital agreement.

The appellate court agreed that the division was inconsistent with the premarital agreement, but set aside the division because the district court considered parole evidence when reaching its decision. Therefore, the case was reversed and remanded.

The appellate court noted as follows:

“This result may seem harsh, particularly given the court's findings regarding the various witnesses' credibility. But if courts were allowed to question parties' intent in executing deeds, despite the language of those recorded documents, whenever a person disputed land ownership, the goals of certainty and notice in real-estate transactions would be thrown into chaos. Written deeds would have little, if any, meaning. There would be no way for a potential purchaser of land to know who owned that property and to what extent.

Fortunately, that is not the world in which we live. Thus, the Marion County deeds must be enforced as written—conveying ownership of the Marion County properties to Terry and Sherry as joint tenants with rights of survivorship. Under Section 9(c) of the agreement, those properties must be divided evenly between the parties upon their divorce. We therefore reverse the district court's judgment to the contrary and remand the case with directions that the court divide the Marion County properties between the parties under the portions of the agreement governing jointly held property.”

C. *In the Matter of the Marriage of Doud and Modrcin*

Filed: December 23, 2020

No. 120,987

Johnson District Court, Judge Robert J. Wonnell

Ronald Nelson of Ronald W. Nelson, PA for appellant

Gregory Dean for appellee

The husband and wife divorced in 2007. Their settlement agreement attempted to divide their personal property and govern their jointly shared University of Kansas Williams Education fund. The district court entered a journal entry reflecting this settlement agreement in July 2008.

Later in July 2015, the wife sought enforcement of the judgment since the husband allegedly had not followed the property division terms and failed to pay his required portion of the Williams Fund. After much deliberation, the district court determined that the journal entry was a final judgment. However, the journal entry was dormant since neither party “sought to revive” the judgment. The court also ruled that the doctrine of laches would have also prohibited enforcement. The court equally and separately divided the Williams Fund between both parties.

The wife appealed the district court's ruling. She argued on appeal that the 2008 journal entry was a final judgment and that the court did not have the authority to change the guiding terms of the Williams Fund if it were an extinguished judgment.

The appellate court reversed the district court's decision that the journal entry was a final judgment because it did not qualify as such under Kansas law. The journal entry failed to resolve all the merits within the parties' dispute, specifically the parties' personal property division. It, therefore, was not "subject to dormancy and extinguishment." The district court also never indicated that the entry served as a final judgment.

The district court's decision that the doctrine of laches would have barred enforcement was an abuse of discretion because that decision was rooted in the inaccurate dormancy and extinguishment analysis. The appellate court did not analyze the merits of the laches claim but remanded for further deliberation.

The division of the Williams Fund by the district court was appropriate. The settlement agreement granted permitted the court to exercise authority when resolving Williams Fund disputes. The record indicated that many disagreements existed regarding this property, and the district court's decision to separate the property was reasonable considering the issues that arose from jointly sharing it.

D. *Frost v. Kansas Dept. for Children and Families*

Filed: March 5, 2021

No. 122,737

Johnson County District Court, Judge Paul W. Burmaster

Linus L. Baker, of Stilwell, for appellants

Marc Altenbernt, Corliss Scroggins Lawson, and Rae A. Nicholson, of Kansas Department for Children and Families, for appellee.

Before Malone, P.J., Hill and Buster, JJ.

The grandparents, in this case, filed an independent petition for visitation of their grandchildren while a child in need of care matter was pending. After determining that the grandparent's involvement in the children's lives was hurting the children and parent's ability to come together, the CINC court ordered limited visitation from the grandparents. The district court denied their petition because the CINC court had jurisdiction over the parties' situation and the court could not override those orders. Precedent established that grandparents may only seek visitation in divorce and paternity cases, since this was a CINC case the grandparents did not have jurisdiction for their petition. The grandparents appealed the dismissal and argued that the court wrongly interpreted the relevant laws.

The appellate court determined that this case was different from prior precedent because the grandparents here sought visitation rights from the Department of Children and Families through an independent petition, not during a paternity and custody matter.

However, the court decided that grandparents are not limited to only seeking visitation in particular cases. Grandparents may file an independent action for visitation in whichever county the child is. Legislative changes done in 2011 to the relevant statutes did not limit or create more rights for grandparents seeking visitation.

Since the matter was still too ripe to be considered a controversy with a judicially available remedy, the appellate court affirmed the dismissal. The CINC proceedings remain ongoing, and the CINC court's order limiting the grandparent's visitation takes precedent at this point. Furthermore, the Department of Children and Families was not the correct party to bring this matter against because it did not have the authority to grant visitation rights due to the CINC court order, and even after the conclusion of the CINC matter, DCF will not have the ability to grant or deny their visitation. The court concluded that the alleged injury did not appear to be due to DCF's actions.

IV. KANSAS COURT OF APPEALS CASES—UNPUBLISHED

A. *In the Matter of the Marriage of Plowman*

Filed April 24, 2020

No. 121,471

Appeal from Stevens Court, Bradley E. Ambrosier, judge

Michael P. Whalen, of Law offices of Michael P. Whalen, of Wichita, for appellant

No appearance by appellee

Before Hill, P.J., Buser and Bruns, JJ

Mother and father divorced in 2018, and the district court awarded the mother primary residency of the couple's daughter in 2019. After carefully reviewing the case, the appellate court determined that there appeared to be no reversible error of law from the district court's custody decision.

Affirmed.

B. *In the Matter of the Marriage of Nelson*

Filed May 8, 2020

No. 120,745

Appeal from Saline District Court, Paul J. Hickman, judge

Jennifer Wyatt, of Wyatt & Sullivan, LLC, for appellant

No appearance by appellee

Before Hill, P.J., Green and Warner, JJ.

Mother and Father divorced in 2013 when the district court approved the mediation agreement that held no party would make payment to the other while their children were minors. The couple decided to withhold such payments because their support obligations "off-set" one another. The parties had joint custody with the father as the primary residence. Later, primary residential custody switched to the mother after she

sought the adjustment through an emergency temporary order due to the father's upcoming move.

Two years later, mother filed a motion to modify the parenting plan and their support obligations. The court adjusted the support obligations but did not permit the mother to receive unpaid support from years prior. The court noted that it would be incredibly problematic to request maintenance payments from the past two years because the court had "no idea what the actual child support obligations might have -should have been at that time, had it been properly addressed." The mother appealed the failure to grant her request because it allegedly surmounted to an impermissible modification per K.S.A. 23-2712(b).

The appellate court affirmed the decision from the district court because it found the language of the mediation agreement still controlled and that the effect of the motion to modify was to create a "proxy" for a previously nonexistent child-support obligation."

Affirmed.

C. *In the Matter of the Marriage of Brownback*

No. 121,089

Filed: May 8, 2020

Appeal from Linn District Court, Terri L. Johnson, judge

Sara S. Beezly and Sarah A. Mills, of Girard for appellant

Michael P. Whalen, of Law Office of Michael P. Whalen, for appellee

Before Green, P.J., Powell, and Schroeder, JJ.

Husband and wife divorced, and the court-ordered joint legal custody of their child. The district court required the parties to enter into mediation. Eventually, a GAL proposed a plan that awarded residential custody to the mother. The mother sought modification of the order due to alleged domestic violence that had taken place in the past. The court held a hearing to consider the motion, combined with the parties' divorce trial. The court eventually ordered that the parties have shared custody without one residential parent because of concerns with the weaponization of custody privileges against the other parent and did not find the mother's testimony of domestic violence credible. The wife argued on appeal that because the district court did not have sufficient evidence, an abuse of discretion happened. The wife alleged that the court should not have ordered shared custody due to the lack of peaceful communication and the domestic violence issues.

Despite arguing that precedent shows an abuse of discretion when parents oppose shared custody, the court disagreed with the wife and found that the district court's decision was reasonable with the child's best interests in mind. The wife additionally failed to show that the district court findings lacked evidentiary support. Her arguments primarily focused on having the appellate court reweigh evidence rather than revealing a

lack of evidence. Despite this, the court still reviewed the relevant factors required for the determination, and though a reasonable person may disagree with its decision to grant shared residency, that did not mean no reasonable person would. The court's concern with the parent's weaponization of custody was valid, and the GAL shared a similar worry. The custody order sought to remove that possibility. The appellate court did not abuse its discretion.

Affirmed.

D. *In the Matter of the Marriage of Ray and Fellers*

No. 121,011

Filed: May 15, 2020

Appeal from Saline District Court, Paul J. Hickman, judge
Julie McKenna, of McKenna Law Office, for appellant
Wade M. Carter, of CAD Law, for appellee

Before Green, P.J., Powell, and Schroeder, JJ.

The mother and father divorced in 2018, and while it pended a temporary order required the parents to remain in Saline. The mother explained to the court her intention to move, and the father responded by requesting residential custody. After a hearing, the court denied the requested move, stated that it would be adverse to the child's relationship with the father and that the mother had not shown an interest in preserving that relationship. The mother appealed and argued abuse of discretion had taken place when the district court denied her move.

The appellate court discovered that though the district court did not cite and explain the ruling clearly, it sufficiently considered the relevant custody factors. If a party has an issue with an ambiguous court order, it must object to provide the court an opportunity to offer a remedy to later appeal. The record revealed that the district court appropriately considered domestic abuse allegations, relationship with extended family, and other required statutory considerations.

The appellate court was unable to review the temporary child custody order because it lacked jurisdiction. No final order yet existed on the record, which limited the reviewability by the appellate court.

The attorney fees request on behalf of the father was denied because the father did not provide evidence showing that the mother's appeal was in bad faith or frivolous enough.

Affirmed.

E. *In the Matter of the Marriage of Weyhrich*

Filed June 5, 2020

No. 122,183

Appeal from Montgomery District Court; Jeffery D. Gossard, judge
Stephen S. Weyhrich, appellant pro se
Paul M. Kritz, of Hall, Levy, Devore, Bell, Ott & Kritz, P.A.

Before Standridge, P.J., Hill, and Atcheson, JJ

In April of 2018, the mother and father divorced in Arkansas. Under the Uniform Child Custody Jurisdiction and Enforcement Act, K.S.A. 23-37201 the district court granted temporary child custody and support with the mother as the primary residence. The father was only allowed to visit the children every other week while supervised and call regularly. The father appealed the custody determinations and alleged that the district court had a bias against him that negatively affected the court proceedings, that the children suffered from parent alienation syndrome which the court ignored, and that the court relied on insufficient evidence to limit his parenting time. Due to this alleged bias, the father sought primary residential custody of the children.

Upon review, the appellate court found no exercise of bias against the father throughout the custody and support deliberations. The district court had a goal of joint custody and encouraged the parties to receive counseling to improve the familial relations. The father failed to provide evidence in support of his parent alienation claim and nothing in the record seemed to indicate support for this. While interviewed the other children explicitly mentioned their uncomfortableness while at their father's house too. The allegation of insufficient evidence for the limited parenting time received by the father was also not supported by the evidentiary record.

Affirmed.

F. *In the Matter of the Marriage of Goodpasture*

Filed June 5, 2020

No. 121, 512

Appeal from Atchison District Court, Robert J. Bednar, judge

John Goodpasture, appellant pro se

Philip L. Goetz, of Topeka, for appellee Kansas Dept for Children and Families

Before Bruns, P.J., Green J., and Timothy J. Chambers, District Judge, assigned.

Father and mother divorced in 1997 when the district court ordered the father to pay weekly \$100 in child support for their three children. Kansas Department for Children and Families (DCF) sought to collect on the father's support payments due to the mother. In 2018, the father moved to set the support arrangements aside by alleging that Kansas no longer had continued jurisdiction over the matter when the mother moved from the state.

The appellate court found that because both parents made a personal appearance in the court, the district court had personal jurisdiction. Kansas' adoption of UIFSA

provides that the district court's jurisdiction for child support continues once initially received.

Affirmed.

G. *In the Matter of the Marriage of Calvert*

Filed June 12, 2020

No. 121,724

Appeal from Johnson District Court, Kevin P. Moriarty, judge
Weston R. Moore, of Moore Law Center for appellant
Christopher C. Barnds, of Barnds Law LLC for appellee

Before Powell, P.J., Gardner, J., and Walker S.J.

The wife and husband divorced in April 2018 with a court order for the husband to pay spousal maintenance monthly \$2,400 for 121 months. The husband sought to terminate this after becoming unemployed, but the district court refused to do so and instead lowered the required payment to \$1,050 per month. The husband appealed the denial of support modification.

The appellate court found that the district court's decision sufficiently relied on statutorily required factors in their decision and modification of spousal maintenance. Typically, when modifying maintenance, the court requires a material change in circumstances to justify such. Here, however, the appeal was only reviewed for abuse of discretion because the divorce was granted by default due to the husband's lack of appearance and trial of facts. After reviewing the support order, it was clear that the district court examined the relevant factors when making their custody decision, and the evidence supports the findings. For example, the court explicitly recognized the difficulties in paying his prior maintenance payments and graciously lowered the support payments for a temporary amount of time.

Affirmed.

H. *In the Matter of the Marriage of Berry*

Filed: June 19, 2020

No. 121,479

Appeal from Sedgwick District Court, Sean M.A. Hatfield, judge
Tony A. Potter, of Ward Potter LLC, for appellant
No appearance by appellee

Before Powell, P.J., Gardner, J., and Walker, S.J.

Parents divorced in 2015 when the district court awarded the father with sole custody. Grandparents had been heavily involved in the grandchild's life, but when the grandfather confronted the father about his decision to spank the grandchild and after a subsequent DCF investigation into abuse allegations the father cut off contact. After resuming visitation and discussions regarding a written agreement for visitation, the court

granted the father's motion to remove the step-grandmother from the case. Limited case management created two written agreements which the father refused to sign. The case manager recommended to the court that it was in the child's best interests to grant visitation and the court granted the case manager's recommended visitation. Approximately a month later, the child had a "heated exchange" in the bathroom that resulted in the grandfather hosing the child off in the shower to "disrupt his thinking." The father subsequently reported the incident as abuse to DCF, but it was unsubstantiated. Following this, visitation failed to be as consistent as before and another incident happened where the child cut himself by breaking a window with a bat. The father stopped visitation due to abuse concerns he reported to DCF again, which were also unfounded after further inquiry by DCF. After a trial, the district court refused to grant the grandparents visitation and noted its belief that the father was a fit parent capable of determining visitation for the child best. It also awarded the father attorney fees. The grandfather alleged on appeal that the district court erred when it denied visitation and granted the father attorney fees.

The appellate court determined that the father had a reasonable position regarding the grandparent visitation, but that the court should have adopted the therapeutic visitation plan that the father preferred. By not ordering a grandparent visitation, the district court abuse its discretion. Considering the substantial relationship between the grandparents and the grandchild, the father's reasonable visitation plan, and the turbulent visitation issues in the past the district court should have adopted the therapeutic visitation plan proposed by the father.

The appellate court affirmed the attorney fees award because it found that a reasonable person could argue that the father proceeded in good faith and that justice and equity did not qualify the grandfather to receive attorney fees.

Affirmed in part, reversed in part, remanded with instructions.

I. *In the Matter of the Marriage of Meier*

Filed July 24, 2020

No. 121,497

Appeal from Wyandotte District Court, Constance M. Alvey, judge

Amy E. Elliot of Law Office of Amy E. Elliot, for appellant

H. Reed Walker, of Reed Walker, PA, for appellee

Before Standridge, P.J., Hill, and Atcheson, JJ

Husband and wife signed a separation agreement in 2017 after nine years of marriage. The separation agreement required the husband to yearly pay the wife at least \$42,000 for 20 years, continue paying their home mortgage that would eventually be in the name of the wife alone after being paid off, take responsibility for the debt from the marriage, and pay the undergraduate education of the wife's son who was from another marriage. The husband signed the agreement while in the attorney's office of the wife and

waived all possible objections and defenses. He later contested the agreement as unconscionable and alleged that the signing was not voluntary. No domestic relations affidavit was filed either.

Husband timely appealed and argued that the district court should have required a domestic relations decree, the court failed to analyze whether the agreement was just, that it was an effort by the court to deny his motion to set the agreement aside, and that the court erred when it did not modify the unconscionable segments of the separation agreement. The wife noted on appeal that the motion to set aside was untimely because it was filed after the decree by 16 months.

The appellate court reversed and remanded for further consideration on whether the father's motion to set aside the decree was timely. More relevant evidence was needed to determine this. However, incorporating the separation agreement into the decree failed to be supported by any required documentation with relevant financial details, like a domestic relations affidavit. Prohibitions against modifications of separation agreements set out in K.S.A. 23-2712(b) did not apply to this case because the husband sought relief under K.S.A. 60-260 for an unconscionable agreement. If the husband's motion to modify was filed timely, then the court on remand must determine whether the parties' agreement was just, and equitable considerable relevant financial inquires.

Reversed and remanded.

J. *In the Matter of the Marriage of Huffman*

Filed: July 31, 2020

No. 116,751

Appeal from Jefferson District Court, John E. Sanders, judge

Donna L. Huffman, appellant pro se

Stephen P. Weir, of Stephen P. Weir, P.A., for appellee

Before Buser, P.J., Atcheson, J., and Walker S.J.

The mother's motion to increase child support failed due to a five-year lapse in time from when the motion was filed and when a hearing was "secured." The mother also received a hearing after the children had already reached the age of majority. After the denial of a support increase, the mother then appealed.

The appellate court found that a lack of evidence prevented a sound explanation for the lapse in time between filing and having a hearing for the motion to increase support. Precedent placed a legal bar on the mother's claim because parties may not seek support modification when a child reaches the age of majority, which constitutes what the mother did here.

Affirmed.

K. *In the Matter of the Marriage of Pierce and Rogers*

Filed: August 14, 2020

No. 121,850

Appeal from Johnson District Court, Robert J. Wonnell, judge

Linus L. Baker, o Stilwell, for appellants

No appearance by appellees

Before Arnold-Burger, C.J., Bruns, and Schroeder, JJ.

The mother's parents sought visitation rights in the district court during their daughter's divorce proceedings, but the district court denied their motion because of their lack of standing. The parents divorced in 2011, and in 2018 the mother entered a co-parenting agreement with the grandparents after moving in with them. The agreement permitted the mother and grandparents to share parenting responsibilities. After the mother and the grandparents signed the co-parenting agreement, the grandparents sought enforcement by the court. The district court denied enforcement due to a lack of standing because the co-parenting agreement went beyond statutorily permitted visitation rights typically granted to grandparents. After the court denied enforcement of the co-parenting agreement, the grandparents motioned for reconsideration and requested the court to make additional findings. The court denied their motion for reconsideration, and the grandparents timely appealed.

The appellate court affirmed the district court's decision for the same reasons. The agreement sought more than visitation as statutorily permitted per K.S.A. 23-3301(a). The grandparents lacked standing because the court cannot grant grandparents with more than visitation rights, and the co-parenting agreement did just that. Affirmed.

L. *In the Matter of the Marriage of Madrigal*

Filed: August 21, 2020

No. 120,930

Appeal from Sedgwick District Court, Jeff Dewey, judge

Terry L. Malone, of Martin, Pringle, Oliver, Wallace & Bauer, L.L.P., for appellant

Brian R. Carman, of Stinson, Lasswell, & Wilson, L.C., for appellee

Before Malone, P.J., McAnany, S.J., and Burgess, S.J.

The husband and wife divorced in May 2010. Later that year, the court reduced child support from \$1,500 per month to \$799 per month due to changes in the husband's income. In 2017 the wife moved to alter support because the husband's income had changed and qualified as a material change in circumstances. In response to this, the district court increased the husband's required monthly support payments to \$1,800. After the husband disclosed his income tax documents, the court learned that his income had increased every year since 2012, and he did not inform the court of such changes. The court-imposed sanctions for the income increase from 2014 to 2017 that the husband failed to disclose, and the husband's monthly support requirement increased to \$4,164.

The husband appealed the increase in child support and the imposed sanctions. He contends that the court should not have used an extended income formula for the child support calculations and that the sanctions should be reduced when he knew his income increased.

The appellate court found that the extended income formula correctly applied, despite the district court failing to clearly explain the circumstances that caused the court to use the formula. After reviewing the record, it became clear to the appellate court that the formula was correctly chosen to ensure the children “had a similar lifestyle at both parents’ homes.”

Imposing sanctions against the husband had support from the record as well. Parents must inform the court when their income sustains a substantial change in circumstances. Child support guidelines suggest parties in support cases to inform the court when an individual’s income has undergone an increase or decrease of 10%. Despite the husband’s argument that as a self-employed individual, he lacked knowledge of his precise income increases, the record showed the contrary. The husband submitted estimations of his salary to the court and tax returns which indicate further awareness. The district court properly credited the husband for paying other related expenses for the children, and a reasonable person would have agreed with the district court’s decision to impose sanctions considering the factual context of the case.

Affirmed.

M. *In the Matter of the Marriage of Guha*

No. 119,312

Filed: August 21, 2020

Appeal from Douglas District Court Sally D. Pokorny, judge

Amit S. Guha, appellant/cross-appellee pro se

Mathew K. Mantyla, Mantyla Family Law, LLC, for appellant/cross-appellee

Jody M. Meyer, of Lawrence, for Appellee/cross-appellant

Before Gardner, P.J., Buser, and Lahey, S.J.

Husband and wife divorced in 2013. In February 2014, the parties signed a handwritten agreement that gave the husband primary residential custody without child support obligations and required him to pay the direct expenses of the child. The court found that the father's income was \$495,222 after his eventual compliance with discovery requests. In doing so, the court determined that 70% of the father’s S-Corporation income, which he was the sole owner and distributor of, would be included for child support calculations.

The court’s income determination was remanded for reconsideration using the proper tax returns. The mother filed a motion to increase child support, and after two bifurcated hearings, the court used a child support worksheet. In 2018, the court found that the father now made \$686,999 yearly, and the court granted the mother's request for

garnishment of the father's wages. Father filed an appeal, and the mother cross appealed. The father alleged that the district court erred when it used equal parenting time and the extended income formula to determine his child support obligations.

Evidence that the parents had engaged in 50/50 parenting time supported the district court's use of the parenting time formula. The record revealed that both parties acknowledge their relatively equal parenting time, and the district court correctly used its discretion when applying the formula to the parties' case.

The extended income formula correctly fit the parties' financial situation because the father made more than the child support schedule guidelines provided for which adequacy supports the district court's application for this formula.

The district court correctly applied the extended income formula because the father's income exceeded the child support schedule guidelines, hence triggering the need for the formula instead. The use of the formula also followed statutory requirements. It appropriately considered the child's potential lifestyle against the risk of a windfall.

Husband appealed the district court's calculation of income for child support order because (1) he claims the court failed to make the income calculation with and without the extended income formula, (2) that the district court arbitrarily picked 30% as the amount to be taken from his S-Corp income as retained earnings, (3) the district failed to exclude 30% of the income taxes he paid for the business and (4) the court erred in calculating the wife's income.

(1) Husband failed because the court did not have an obligation to use both formulas, but the district court makes it clear in its opinion that it balanced the child's standard of living against a potential windfall based on the parties' financial situation.

(2) Husband failed because the district court relied on the expert testimony provided as evidence when deciding the 30%. Both parties presented different expert testimony on the amount of cash reserves an S-Corp the size of the father's should generally have on hand. The district court found the wife's expert more credible and based its ruling, in part, on figures he provided.

(3) Husband failed because he did not establish a record sufficient to present his points to the appellate court. At the district court, the father made an oral request to exclude the taxes on retained earnings but was told an additional hearing would be needed but failed to follow up.

(4) Husband failed because he failed to cite any legal authority or supporting facts, and the issue is therefore abandoned.

Wife cross-appealed the district court's denial of Husband's 2015 tax return is counted as income for child support. The wife failed because she failed to present expert testimony to support that the tax return should be counted as income. The district court

instructed both Husband and Wife that an additional hearing would be needed to examine the complexities of the tax law implicated in this case and neither chose to file an additional hearing.

Husband also made an unsuccessful request for attorney's fees. The court determines he is not the winner of an affirmative judgment, and his request is denied.

- N. *State of KS ex. Rel. Secretary, Dept for Children and Families and R.N., A Minor Child, by and through his Mother and Next Friend, L.D. v. Estate of Nicholas Sands*
Filed: October 18, 2020
No. 121,754
Johnson District Court, J. O'Grady

The alleged father's Estate appealed the district court decision to deny their motion to set aside a default judgment for a paternity action. Kansas Department for Children and Families filed a paternity petition and expense reimbursement. On October 8, 2014, the alleged father was served, failed to answer, and on December 2, 2014, a default judgment was entered. On February 2, 2015, the father attended a conference stating that he intended to have the default judgment set aside and requested no parenting time. He never sought to have the default judgment set aside and passed away on August 24, 2017. His Estate filed a motion to set aside the default judgment on July 11, 2018.

The Estate asserted on appeal that the district court abused its discretion when it decided to deny its motion to set aside default judgment because it did not allow genetic evidence "in support of its motion." DCF argued that the father's motion to set aside the judgment was unreasonably delayed and that the Estate also failed to "prove the necessary factors to establish good cause to set aside the judgment of paternity."

The Estate failed to argue on appeal that they filed the motion "timely ... under the circumstances," therefore, this was considered waived. The court of appeals still analyzed whether the district court abused its discretion by dismissing the Estate's motion. The court noted alleged father did not file within a reasonable time because he was aware of the action on October 8, 2014, and the ruling on December 2, 2014, yet never filed a motion to set aside the default judgment even years later. The Estate did not file the motion until three and a half years after the ruling that declared parentage. The district court's decision to deny the Estate's motion due to the unreasonable delay was also congruent with the state's case law. Since the Estate failed to show the district court abused its discretion, and the decision was legally proper, the court of appeals affirmed.

- O. *State of Kansas, ex. Rel. Secretary of Department for Children and Families; J.F., Minor Child By and through the Mother and Natural Guardian, E.F., v. M.R.B.*
Filed: October 16, 2020
No. 122,696
Douglas District Court, J. Pokorny

The father appealed the trial court's decision to deny his motion to modify custody and argued that the denial was unsupported by evidence. He resided in Pennsylvania and the mother in Kansas with the child. Neither were ever married. The child's psychologist and the Guardian ad Litem both recommended the father have custody of the child due to the unstable living conditions the child had while living with the mother. For example, the mother moved the child quickly various times within a short period without the ability to say goodbye, made the child lie, and physically punished the child despite being prohibited by the parenting plan.

The court of appeals reversed and ruled that the trial court abused its discretion by retaining the mother's custody despite evidence on the record indicating this was contradictory to the child's best interests. The district court's "unwillingness to acknowledge the unchallenged testimony and reports" from child welfare professionals was an error. The child's therapist and the Guardian ad Litem reported that it would be better for the child to live with the father because the mother had shown concerning patterns that negatively affected the child. The trial court's decision that the child was "well-adjusted to her home with her mother" was overall unsupported by evidence.

The trial court also stated that it was best for the child to remain with the mother because if the father were to have custody, the mother would be unable to "exercise parenting time" due to her financial limitations. The court of appeals ruled that this perception was too narrow because the trial court had the ability to make the father responsible for travel expenses necessary for the mother's parenting time. Furthermore, the record provided no evidence that accurately suggested the mother lacked the financial capacity to "exercise long-distance parenting time." Therefore, the trial court's determination on this was unsubstantiated. The district court's silence on whether there was domestic abuse while the child was in the mother's custody was appropriate because it weighed the allegations and evidence as needed. Its finding that neither parent properly respected the other was proper because the record indicated such. For example, the mother would tamper with the child's ability to freely have phone calls with the father, the father consistently complained about the mother, the father displayed accusatory tones toward the mother, etc. The court of appeals granted the father custody for the preceding reasons.

P. *In the Matter of the Marriage of Ruda*

Filed: October 30, 2020

No. 121,746

Sedgwick District Court, Michael J. Hoelscher and Sean M.A. Hatfield, Judges

The parties married in August of 2001 and later commenced divorce proceedings in 2012, which finalized in November 2013. The couple had five case managers throughout these proceedings. After settling the educational decisions for the children with the case manager at issue on appeal, the father continued to object, and after warnings from the case manager, his parenting time was eventually revoked for a period. The father attempted to have the most recent case manager replaced due to an alleged bias, but the trial court found no evidence to support this assertion. The court also gave

the mother “sole authority to decide education issues.” After this, the father moved for relief seeking a new trial because the trial court’s decision was allegedly “contrary to evidence” and because there was also newly discoverable evidence that displayed the most recent case manager’s bias. This motion was denied, and the father appealed.

The appellate court affirmed the trial court’s decision to deny the father’s motion for relief. The father failed to object to the district court’s evidentiary findings and hence was unable to raise the issue of a deficiency of evidence on appeal. The father’s newly discoverable evidence, which consisted of commentary questioning the case manager’s professional abilities, was not considered to meet the standard needed to grant his motion because it would not have “resulted in an outcome more favorable” to the father.

The appellate court affirmed the trial court’s decision to deny the father’s motion to replace the case manager because the father did not meet the burden of proof necessary. The father was unable to prove an abuse of discretion on behalf of the trial court when it evaluated the claim and the case manager’s decision to revoke parenting time. The evidence showed a “neutral explanation” for the case manager’s decisions that could be considered reasonable.

The father did not raise a due process claim before the district court and, therefore, the appellate court was unable to consider it. The father also failed to explain why he fell into the exception of this guiding rule.

The appellate court affirmed the trial court’s decision to give the mother sole decision-making power over the children’s schooling because case law showed that courts may “designate one major parenting issue that was subject to parental conflict and place decision-making” power for that issue on one parent.

The mother was awarded attorney’s fees on equitable grounds, but not because the appeal was frivolous or was for the purpose of harassment or delay. The father’s unique and “novel” issues raised on appeal proved to the appellate court that the appeal was not frivolously raised or for unacceptable purposes. The mother was entitled to attorney fees on equitable grounds because the fees and time taken to plan for the case were reasonable.

Q. *In the Matter of the Marriage of Wood*

Filed: November 13, 2020

No. 122,211

Sedgwick District Court, Linda Kirby, J.

The wife filed for divorce after 41 years of marriage in April 2017. However, the parties separated around 2008, and the husband paid the wife monthly payments from 2009 to 2016. The husband used his retirement fund after 2008 to help their children, pay off a joint home loan, purchase a garage for his own home, and a motorcycle for himself. The district court ruled that the husband dissipated marital assets and failed to pay spousal support, which all merited equal division of their property beginning from their

2008 separation date. The husband argued on appeal that the court abused its discretion by failing to follow a county rule requiring a pretrial conference and a pretrial conference order. He additionally contends the district court's 2008 valuation date and its decision to label some of his purchases after separation as dissipation of the marital estate.

Despite the husband's assertion that the district court failed to hold a mandatory pretrial conference, the appellate court found that the record proved a pretrial conference had happened appropriately on July 16, 2018, and that the court filed a civil pretrial conference order. It also did not require their attended because a joint pretrial conference order was submitted that same day. The wife's service and submission to amend the record to include the pretrial order was also done accurately.

The district court properly determined a valuation date and correctly characterized the husband's spending as dissipation of the marital estate in accordance with substantial evidence. When a valuation date is at issue, the court must address it during the pretrial conference. The husband failed to show that he "disputed" the valuation date until after the pretrial conference when he presented "conflicting testimony" during the trial. The 2008 valuation date was also the date the husband originally requested to be used. The evidence supported the determination that the parties separated in 2008 after the husband's retirement and the husband failed to bring a claim designating the record differently.

The parties' testimony and the husband's spending decisions proved that substantial evidence supported the trial court's decision to treat the husband's spending activities as a dissipation of the marital estate. The husband concealed the majority of the marital assets and the wife was unable to consent to monthly maintenance because of this. His garage and motorcycle purchases were mentioned as evidence of his misuse of their funds.

Last, the appellate court decided that the district court's valuation of some marital assets, according to the present estimated value, was not an abuse of discretion either because the governing statute states that a trial court may do so.
Affirmed.

R. *In the Matter of the Marriage of Humphries*

Filed November 20, 2020

No. 121,442; 122,223; and 122,224

Wyandotte District Court, Constance, M. Alvey, Judge.

Ronald Nelson, of Ronald W. Nelson PA for appellant

Myndee M. Lee, of Lee Law LLC, for appellee

The father and mother divorced in 2007, with one child born during their marriage. In 2016 the district court issued a child support order that required the father to pay 82% of unreimbursed medical expenses. At a hearing in October 2018 that the father was absent from, the district court held the father in indirect contempt because the GAL appointed to their case alleged he failed to take required courses. The court also ordered

him to pay for the GAL's requested fees and his share of the medical expenses at the hearing. The father argued on appeal that the district court erred when it found him in contempt, required him to pay the GAL fees, and the medical expenses.

The appellate court determined that the district court's decision to hold the father in contempt was an error because statutes guiding contempt procedures require the party to be present. Despite the father's argument that the district court no longer had the capability of holding him in contempt since the couple's child had reached the age of majority, case law has established that the court may still hold parties accountable for failing to fulfill their duty to comply with court orders. This issue was remanded for a rehearing.

Due to insufficient notice given to the father for the October 2018 hearing, the district court's decision to require the father to pay for the GALS fees was vacated by the appellate court. The father's due process rights were violated when he was given only one day notice prior to the hearing because K.S.A. 60-206(c) states that he should have been served at least 7 days prior to the hearing.

The appellate court ruled that the husband was liable for his portion of the unreimbursed medical expenses owed in accordance with the party's child support agreement. The father's argument that the district court retroactively modified their agreement when it granted the mother's oral request at the hearing for reimbursement failed. By ordering reimbursement, the district court was not modifying the agreement but merely enforcing the 2016 support order that required his payment. Therefore, even though the district court erred by permitting the mother's oral request, these errors were harmless and do not qualify as a modification to the party's child support agreement.

The husband's request for attorney's fees was denied because he failed to file his motion in a timely manner. Furthermore, justice and equity did not warrant granting this request because the father's medical reimbursement claim failed.

S. *In the Matter of the Marriage of Asten*

Issued November 25, 2020

No. 121,350

Miami District Court, Steven C. Montgomery, judge.

Joseph Booth and Janine Hassler for appellant

Ronald Wood, Clyde & Wood, L.L.C., for appellee

The wife filed for the couple's third divorce in 2017. This appeal concerned the distribution of marital property and spousal maintenance. The district court, when determining both issues, did not rely on the couple's past divorce settlement agreements but instead followed precedent and guiding statutes. The court considered all property as marital and required 35 months of spousal maintenance for the wife. The husband argued that the court should have followed past divorce agreements that allocated some property as separate and waived maintenance. He lastly argued that the court erred when it used the couple's past marriages as a relevant factor when establishing the award.

The appellate court found that the district court correctly applied past precedent and properly followed statutory requirements when dividing property in the most recent divorce. In accordance with K.S.A. 2801 and *In re Marriage of Allen*, the past divorce agreements that allocated some property as separate merely defined the property that was brought into their third marriage. It did not define the property upon their third divorce. When the couple filed for the most recent divorce, all of their property was considered marital and subject to the court's wide-ranging division powers. The district court also considered all relevant factors when dividing the couple's property as required in K.S.A. 23-2802.

The previous settlement agreements did not waive support in the most recent divorce and the court accurately determined maintenance requirements. Even though the wife waived maintenance in the first two divorces, *In re Marriage of Allen* establishes that this does not affect the third divorce. The record proved the husband's allegations that the district court utilized the couple's past marriage as a basis for establishing the maintenance award as false. The district court in fact denied the wife's request to do so and considered statutorily required factors appropriately. Its decision to order maintenance from a four-year marriage was also supported by precedent and the court's citing of a reversed case was a harmless error.

Affirmed.

T. *In the Matter of the Marriage of Stegman*

Filed: December 18, 2020

No. 122,344

Seward District Court, Linda P. Gilmore, judge.

Kelly Premer Chavez of Tahirkheli & Premer-Chevez Law Office, for appellant

Tessa French of Miller & French, for appellee

Husband and wife divorced after 34 years of marriage with a generally agreed-upon property settlement agreement. However, the parties disagreed on the amount of spousal maintenance for the wife. The district court awarded the wife \$1,700 per month for 10 years due to various factual findings. Some findings include the husband's salary of \$90-100,000 per year, the wife was primarily a homemaker throughout the marriage, and he wife suffered a brain injury that prohibited her from fully utilizing her associate degree within the job market. The husband appealed the district court's maintenance order for abuse of discretion.

After finding no abuse of discretion, the appellate court affirmed the trial court's award because there was no mistake of law, it appropriately considered the facts, and a reasonable person could have also awarded this amount. Despite the husband's assertion that the district court made a mistake of law because the award failed to be "fair, just and equitable," evidence indicated that the lower court considered the appropriate factors when making its decision, and it specifically determined the amount award to be fair. The husband argued that the district court did not correctly consider their earning capabilities,

their needs, and the overall financial situation as noted in *Williams v. Williams*. The record showed that the district court considered each of these when it specifically analyzed the wife's ability to eventually work a minimum wage job, her level of education, her injury, his salary, her spending habits, and their financial patterns. Considering all of this, the appellate court stated that a reasonable person could have awarded the wife \$1,700 for 10 years.

U. *In the Matter of the Marriage of Bailey*

Filed: January 8, 2021

No. 121,309

Pottawatomie District Court, Jeffrey R. Elder, judge

Husband appellant pro se

No appearance by appellee

The wife filed for divorce while the husband was serving time for an abuse conviction relating to their daughter. She alleged the husband had abused their young daughter and sought sole custody. The husband acknowledged service but later filed a motion for a continuance due to improper service. The district court denied the motion, awarded the wife sole custody, and ordered the husband to pay monthly child support. The husband appealed the district court's jurisdiction because of the alleged improper service. He also argued the district court erred when it denied his motion for continuance, ordered him to pay child support, and when it considered his abuse conviction.

The appellate court determined that there was sufficient evidence of proper service because there was "substantial compliance." The missing seal and late filing of the return of service do not "defeat that service." The technical deficiencies did not substantially impair the husband's service rights.

Since service was sufficient, the appellate court affirmed the denial of the husband's motion for continuance. The husband failed to provide other reasons besides improper service for why the district court erred when denying this motion.

Due to a lack of evidence showing a termination of the husband's child support duties, the appellate court affirmed the child support order. The husband argued that he contested paternity and that his parental rights had been terminated. He failed to raise these issues with the district court and, therefore, lost the ability to appeal this. Furthermore, there was no evidence showing that his parental rights were ever terminated.

The husband's argument that the district court improperly considered his conviction was unsuccessful. The district court's consideration of the child abuse conviction was proper due to its relevance to the proceedings.

Affirmed.

V. *In the Matter of the Marriage of Dickson*

Filed: January 8, 2021

No. 122, 595

Geary District Court, Courtney D Boehm, Judge

Autumn L. Fox of Jacobson & Fox, LLC for appellant

Phon Sounakhen and Lowell Paul of Kansas Legal Services for appellee

The husband, a military service member, filed for divorce three times throughout the parties' marriage, and eventually a divorce decree was entered. The district court awarded the wife primary custody of the parties' children after reducing the husband's parenting time from the initial temporary order. The court also denied the husband's motion to alter residential placement and parenting time. On appeal, the husband argued that the court erred by granting the wife primary custody, reducing his parenting time as initially prescribed in the temporary order, and denying his motion to alter the residential placement.

The husband's timely motion to alter custody permitted the appellate court to review the husband's appeal, despite the wife's argument that he failed to preserve the issue. The appellate court affirmed the custody determination after reviewing the district court's consideration of all 18 statutorily required factors. The custody decision was properly supported by the children's bonds with the mother as a primary caregiver, their ability to cooperate, the children's connection to Kansas, the parties' work obligations, and many other factors.

The district court's decision to limit the husband's parenting time from the initial temporary order was appropriate considering that a hearing had not yet taken place, nor was this a final order. The husband was not entitled to the same amount of parenting time as originally given in the temporary order as this was not a final order and the court had not yet heard all relevant information. The district court's reduction of parenting time was not punishment for the husband's military obligation either. The court appropriately managed the predicament like how other courts do throughout the state.

Appropriate protocol permitted the district court to deny the husband's motion to amend without an oral argument. There was no obligation from the district court to grant the husband the ability to orally argue, per Supreme Court Rule 133(c)(1).

Affirmed.

W. In the Matter of the Marriage of Boles

Filed: February 26, 2021

No. 122,330

Appeal from Thomas District Court, Keven Berens, judge.

Jeffrey Leiker, of Overland Park for appellant

Charles A Peckham for Brown, Creighton & Peckman, of Atwood, for appellee

Father and Mother divorced in 2017 after six years of marriage and two children. Mother has had primary custody, but Father contested this due to the Mother's alleged

abusive signification who had a criminal record and her decisions to move frequently. The father sought modification of the custody agreement in response to his allegations. He argued that the mother's testimony did not represent the instability truthfully, that their son had a broken arm from abuse in her home, and the abusive relationship had continued despite the mother testifying that it had ended. An appointed guardian ad litem urged that custody should be with the father because the stability would be best for the children. The District Court later discovered that the guardian ad litem did not investigate all pertinent questions, and the court was unable to hear all relevant testimony.

Because of this, a hearing was scheduled. Before the hearing, the father motioned for the court to reconsider its decision and claimed that a material change in circumstances had taken place because the mother moved again. The District Court ultimately determined that the Father did not present enough evidence of any misrepresentation from the Mother to the court nor that her actions "negatively affected the children's best interests." The court also found that the mother's situation had improved, and the father testified to these improvements as well. The father appealed the denial of his motions.

The cases the father used to support his appeal did not directly relate to the matter at hand since they considered incorrect evidentiary standards in civil cases with 12(b)(6) issues. Considering that the best interests of the children are the "foremost concern in any custody determination," the court specifically considered the stability in the child's relations and mentioned the preference to avoid repetitive adjustments with custody. After a brief review of the District Courts' decision, the appellate court affirmed the District Court's ruling because a proper statutory analysis took place when evaluating the father's motions without any abuse of discretion. Furthermore, the appellate court noted that the father admitted the mother's situation had improved many times and he failed to provide enough evidence to show that the mother's actions were negatively impacting the children.

X. *In the Matter of the Marriage of Lucas*

No. 122,204

Decision issued on March 19, 2021.

Appeal from Johnson District Court, Paul C. Gurney, judge

Before Hill, P.J., Gardner, J., and Burgess, S.J.

James Lucas, appellant pro se

Ellen S. Goldman, Overland Park, for appellee

Husband appealed the district court's decision to uphold his settlement agreement with the wife and alleged that the court abused its discretion by disregarding and falsifying facts.

Before the divorce settlement, the husband lost a suit for breach of contract against the wife and was financially liable. After this, the parties entered a "walk-away" settlement in which they each kept their individual "possessions," including their debts.

The husband moved to set aside the agreement and sought maintenance; neither requests were granted by the district court. After this, the husband moved for sanctions against the wife but was later instead sanctioned.

The appellate court affirmed the district court's decision because the husband failed to "meet his burden of persuasion" by not submitting evidence from the record and the necessary documents for relevant hearings. Despite claiming that the district court misrepresented important facts, the husband failed to offer any evidence, and after further review of the record, nothing supported this assertion. The district court appropriately determined that their settlement was "valid, just, and equitable" when it found that the settlement qualified as an enforceable contract and that it was "fair and just." K.S.A. 23-2712(a). The valuation of the couple's travel, homes, business, and other marital assets were all properly done. The district court also appropriately denied the husband's maintenance request considering his education, career, financial capabilities, and his earnings which qualified for the "vast majority" of the parties' income when they were married.

Y. *In the Matter of the Marriage of Evans*

Filed: March 26, 2021

No. 122,924

Appeal from Reno District Court, Trish Rose, judge.

Cody R. Smith, of Hutchinson, for appellant

Shannon S. Crane of Hutchinson, for appellee

Before Hill, P.J., Gardner, J., and Burgess, S.J.

Mother and father divorced in 2019 when the district court awarded residential custody to the father for their daughter. On appeal, the mother alleged that the district court abused its discretion when it ruled based on an error of law by not considering the history of domestic abuse allegedly perpetrated by the father and the relationship between the daughter and her half-sister.

Upon reviewing the record, the appellate court found that the district court considered the domestic abuse allegations in the custody proceedings. The father acknowledged his anger issues in court, to which the court explained the concerns with his anger issues and recommended the father tend to this issue. Though the district court did not explicitly mention its domestic violence deliberations in the ruling, that did not necessarily mean that the court did not engage in proper analysis.

The district court explicitly considered the relationship between the daughter and her half-sister while balancing all the relevant statutory factors in the custody determination. The record explicitly referred to the contemplation of the importance of this relationship, as well as the daughter's relationship with other extended family members. After balancing the relevant factors, the court felt that it was in the daughter's best interest to remain in Kansas. It also noted the confusion at the mother's decision to move to Texas recently, despite the negative effects it would have on the sisters' ability to optimally spend time together. Considering these findings,

the appellate court found the district court followed K.S.A. 2303203 when weighing the daughter's relationship with her half-sister in its decision.

The district court's analysis of the relevant custody factors in total was also sufficiently done and awarding the father with residential custody was affirmed. The father's request for attorney's fees due to the mother's allegedly frivolous appeal was denied because the court found that the mother raised multiple claims with merit worthy of analysis.