This year, we have three published decisions from the Kansas Supreme Court on family law matters. They deal with weighing of evidence in a child custody dispute, the proper registration of an out-of-state child support order under UIFSA, and the ability of a Trial Court to order payment of prenatal care and birth expenses in a paternity decree.

***State ex rel. Sec'y of Dep't for Children & Families v. M.R.B.*, ___ Kan. ___, 491 P.3d 652 (2021).** Father moved the Trial Court to modify residential custody of his daughter, who resided in Kansas with Mother. The Trial Court reasoned that Father failed to meet his burden to show there were substantial changes in circumstances that required a change of custody. The Trial Court noted that Father, who lived in Pennsylvania, should not have custody because Mother could not financially afford to travel to Pennsylvania for visitation. This was despite the Guardian ad Litem's recommendation to the Court that Father have residential custody. Father appealed, arguing that the Trial Court abused its discretion.

The Kansas Court of Appeals found that the Trial Court had abused its discretion so egregiously that it warranted reversing the Trial Court decision and ordered a change of custody of the child to Father. This was based primarily because the Court of Appeals felt the Trial Court had disregarded the guardian ad litem recommendation. Mother filed a petition for review to the Kansas Supreme Court.

The Supreme Court determined that the Court of Appeals panel erred by failing to view all of the evidence in a light most favorable to Mother as the prevailing party and improperly re-weighed the evidence. The Supreme Court determined that it could not find it was unreasonable for the Trial Court to reach its conclusion. However, it remanded the case to the Trial Court for it to make additional findings of fact regarding a material change in circumstances and the best interests of the child.

***Chalmers v. Burrough*, 58 Kan. App. 2d 531, 472 P.3d 586 (2020).** Father was a professional basketball player and living in Florida. His daughter and her Mother lived in Kansas. Father's professional basketball career was drawing to a close and he wanted to amend his child support from $10,000 a month to a lower amount. He attempted to register the Florida child support order in the State of Kansas under UIFSA, which is model legislation allowing for the interstate enforcement of child support. The Trial Court temporarily modified Father's child support obligation from $10,000 a month to $1000 per month.

Unfortunately, Father neglected to attach a copy of the Florida order to his petition to register and modify child support in Kansas. Upon discovering the omission, he filed a motion for an order allowing an addition to the record and requested the Court allow him to amend the petition to include the order.

The Trial Court refused, ruling that the failure to attach copies of the Florida order to the petition was a critical failure that deprived it of jurisdiction. Accordingly, it set aside the registration and modification of child support and dismissed the case.

The Court of Appeals agreed with the Trial Court. Father filed a petition for review to the Kansas Supreme Court.

In its decision, the Kansas Supreme Court discuss the requirements of UIFSA, and particularly whether the registration of an out-of-state order is the act through which subject matter jurisdiction is conferred on the receiving Court. The Supreme Court determined that subject matter jurisdiction is obtained more broadly than through the accurate filing of a Petition to register an out-of-state order. The Court noted, "not only is there no language in the UIFSA depriving the Trial Court of subject matter jurisdiction and hinging it on registration, there is explicit language in the Act acknowledging the Court's power to consider an order even if it has not been registered." The Court also noted, "parties face many procedural requirements throughout the course of litigation; The failure to meet those requirements does not necessarily create a jurisdictional void."

The Court found that Father's failure to properly register his order had no effect on the Trial Courts subject matter jurisdiction period accordingly, it reversed the Trial Court's dismissal of the case and remanded the case so that the Trial Court could consider the parti.es' outstanding motions and proceed with the case.

***Carman v. Harris*, 313 Kan. 315, 485 P.3d 644 (2021).** Mother gave birth in 2014. She assigned her support rights to DCF. DCF then brought a paternity action. A Journal Entry of Paternity was filed in April 2015, finding that Mr. Harris was the Father of the child, and ordered him to pay prospective child support. It also found that he owed DCF $818 for support it had already provided. The order was silent as to prenatal care or birth expenses for Mother.

In August 2016, sixteen months after the journal entry of paternity was entered, Mother filed a motion requesting reimbursement for prenatal care and birth expenses. The Trial Court denied Mother's request because such expenses were controlled by the Journal Entry of Paternity. The Kansas Court of Appeals affirmed.

The Kansas Supreme Court agreed. The Supreme Court noted that it felt the authority of the Trial Court to award reimbursement of Mother's prenatal care and birth expenses had lapsed at the time she requested it. The journal entry of paternity was filed In April 2015. Mother could have sought a review of the decision, initially made by a hearing officer, within 14 days after the hearing officer's decision was entered. Further, Mother could have requested a new trial or moved to alter or amend the judgment within 28 days after the journal entry was filed under K.S.A. 60-259(b) and (f). Further, she could have filed a motion for relief from the judgment under K.S.A. 60-260(b)(1), (b)(6), or (c). Because she did not avail herself of these opportunities, the Supreme Court held that the Trial Court lacked authority to award prenatal care and birth expenses by the time Mother filed her motion in 2016.

We turn, next, to decisions from the Kansas Court of Appeals. We have two published decisions from them.

***J.B.B. v. J.L.B.*, 60 Kan.App.2d 310, 495 P.3d 1036 (2021)** J.L. appealed a District Magistrate Pro Tem Judge's decision to grant a Protection from Abuse (PFA) order against J.B. J.L. initially appealed the District Magistrate Judge's decision to Trial Court. The Trial Court ruled that the appeal must be filed with the Court of Appeals. J.L. appealed to the Appellate Court alleging that

the Trial Court erred in rejecting J.L.'s appeal and alleged that there was not substantial competent evidence to support the issuance of the PFA. The Appellate Court noted that there is an inherent conflict which exists in the plain language of K.S.A. 20-301(a)(d) which states that any party aggrieved by any order of a Judge pro tem under this subsection may appeal such order and such appeal shall be heard by a district judge de novo and with other provisions in K.S.A.

In this case, the Appellate Court found that the District Magistrate Pro Tem Judge in this case was a "regularly admitted" member of the Kansas Bar and was appointed to hear matters "within the jurisdiction of a district magistrate judge" as provided in K.S.A. 20-302(b). The statute provides that "except as otherwise specifically prohibited in this section, a district magistrate judge shall have jurisdiction over actions filed under the code of civil procedure for limited actions, K.S.A. 61-2801 et seg., and amendments thereto, and all other civil cases." All other civil cases include protection from abuse cases. Therefore, the Court of Appeals found that the proper Court in which to pursue an appeal is before the Appellate Court.

J.L. also challenged the sufficiency of the evidence the judge relied on in issuing a PFA Order. On the day of the incident between J.L. and J.B., J.L. was upset over J.B.'s failure to remit payment on the vehicle in which J.B. was driving but which was owned by J.L. J.L. forcibly entered the passenger side of the vehicle, climbed over J.B.'s girlfriend, and grabbed the keys from the ignition. The Trial Court find that the act of entering into J.B.'s vehicle constituted a threat. The Appellate Court determined that the Trial Court's factual findings were not supported by substantial competent evidence and therefore vacated the PFA order against J.L.

***Frost v. Kan. Dep't for Children & Families*, 59 Kan.App.2d 404, 483 P.3d 1058 (2021).** The Frosts filed a grandparent visitation petition while their grandchildren were in State's custody under a Child in Need of Care (CINC) case and the grandparents were bound by a no-contact order issued in the CINC case. The Trial Court dismissed their petition for lack of jurisdiction.

When dismissing the petition, the Trial Court followed a ruling of a prior panel of the Appellate Court *(T.N.Y. 51 Kan. App. 2d at 963)* that held that the 2011 codification of the Family Code and the 2021 amendments to that Code limit grandparent visitation only to divorce cases. The Appellate Court disagreed with the panel's prior decision and therefore disagreed with the reason stated by the Trial Court for the dismissal, but the Appellate Court concluded that the petition was properly dismissed, just not for the reason cited. While the Trial Court was duty bound to follow *T.N.Y.*, the Appellate Court is not because it is horizontal precedent and not binding.

In this case, the Appellate Court believed that the legislature did not restrict grandparent visitation to divorce cases only and that grandparents are able to have visitation in more than just divorce cases. However, in this specific case, dismissal of the petition for grandparent visitation was appropriate because by law CINC cases take priority over orders from other Courts and therefore, the issue was not ripe. Because of the CINC case, it was unknown what the children's custodial status would be once the CINC case closed and the CINC Court's no contact order governs until the CINC case closes or until the CINC Court modifies that order. Because the CINC case's orders take precedence, there is nothing DCF could do even if the Trial Court ordered visitation and once the CINC case concludes, DCF will no longer have custody over the children. Any injury to the Frosts does not appear attributable to any actions by DCF and any

ruling by the Trial Court could only be contingent or hypothetical, making dismissal the proper remedy. Therefore, the Appellate Court upheld the Trial Court decision which reached the correct result for the wrong reason.

Next, we turn to unpublished opinions from the Kansas Court of Appeals.

***C.B. v. Bailey*, ___ Kan.App. ___, 487 P.3d 380 (2021)(unpublished opinion).** Father appeals the granting of a lifetime extension of a PFA against him. He argued, in part, that the extension was improper because he had pled no contest to felony child abuse for causing bleeding in the brain and behind the eyes of the parties' child. He argued his plea of no contest prevented the Court from considering his conviction. The Court of Appeals disagreed and affirmed the Trial Court.

***In re Biernacki*, ___ Kan.App. ___, 488 P.3d 527 (2021)(unpublished opinion)**. Parents were divorced in 2012. Father was granted primary residency of the child in 2015. At a hearing in May 2019, on Mother's motion for primary residential custody of the child, the Trial Court overruled the Mother's motion and allowed the child to continue living with Father. Trial Court interviewed the 12-year-old child, and the child said he wanted to live with Mother. However, the Trial Court discounted the child's desire. The Court of Appeals noted the parents' disagreeableness did not appear to have a material negative impact on the child. The Court of Appeals affirmed the Trial Court, finding that Mother had not met the burden of showing an abuse of discretion on the part of the Trial Court. Interestingly, the Court of Appeals noted that the case was one in which, under an abusive discretion standard, the Appellate Court would likely have affirmed to the Trial Court even if it had modified custody to Mother.

***In re Leming*, ___ Kan.App. ___, 487 P.3d 769 (2021)(unpublished opinion).** This is an incredibly sad case in which Husband has filed multiple appeals in an effort to thwart the Trial Court's original order that assets set aside to him be liquidated and placed into an account for Wife to use for child support. Husband is incarcerated for sexual abuse of the parties' daughter. Wife is terminally ill with breast cancer. At two separate hearings before two separate Trial Courts, the judges imposed sanctions for Husband's failure to comply with the property division order from the original divorce case. Husband appealed. The Kansas Court of Appeals affirmed the decisions of the two Trial Court judges ordering sanctions against Husband. The case involves discussion of the power of Trial Courts to order sanctions and discussion of supersedeas bonds during appeals.

***In re Parentage of N.P.,* No. 123,842, 2022 Kan. App. Unpub. LEXIS 64 (Kan.App. Feb. 4, 2022)(unpublished opinion).** Court of Appeals affirms decision of Trial Court denying Father's motion to modify the original child support order entered in a paternity action, principally because Father's motion was filed more than one year after the child support order was filed.

***In re Nusz*, No. 123,788, 2022 Kan. App. Unpub. LEXIS 88 (Kan.App. Feb. 18, 2022)(unpublished opinion).** Wife appealed decision of Trial Court based upon abuse of discretion, judicial bias, and insufficiency of the evidence. The Court of Appeals did not consider Wife's claim of judicial bias because Wife had not followed procedural requirements requesting recusal of the judge. The Court of Appeals discussed the application of depreciation to an

outfitting business located in Pratt, and found that the Trial Court did not abuse its discretion when allowing depreciation in the calculation of Husband's income. Wife had other complaints about the Trial Court's decision but the Appellate Court upheld the Trial Court.

***In re Name Change of Burnett*, No. 124,217, 2022 Kan. App. Unpub. LEXIS 75 (Kan.App. Feb. 4, 2022)(unpublished opinion).** Mr. Ronnell Jerome Burnett petitioned the Court to change his name to Mfalme Hodari Durojaiye Akhalu-Al. The petition was dismissed because Burnett filed to pay the filing fee or prosecute the petition for name change. Burnett is incarcerated. While he filed a poverty affidavit, the Trial Court disapproved it and ordered him to pay the docket fee of $195 or face dismissal of his action. The Court of Appeals agreed that the affidavit was legally insufficient and properly dismissed his petition.

***Mboumi v. Horton*, No. 123,546, 2022 Kan. App. Unpub. LEXIS 37 (Kan.App. Jan. 28, 2022)(unpublished opinion).** In this case, Mother moved for contempt and sanctions against Father's counsel, Bryant Brown. She claimed that he had violated local Court rules by giving his client, the Father, a copy of the guardian ad litem investigative report. The Trial Court denied the contempt, but sanctioned Mr. Brown by ordering him to complete six CLE hours on civility in litigation and awarded monetary sanctions. The Court of Appeals found that the Trial Court was authorized to impose sanctions and did not abuse its discretion in sanctioning Mr. Brown. It thus affirmed the Trial Court.

***In re Matter of Marriage of DePriest & Weaver*, No. 121,506, 2021 WL 1589267 (Kan. App. April 23, 2021) (unpublished opinion).** The Husband failed to file a brief in accordance with the Kansas Supreme Court Rule 6.02(a); however, the Court still addresses the issues, and finds there is no requirement for a person to list their premarital assets or accounts that the person had during the marriage but did not own at the time of filing on the Domestic Relations Affidavit, and affirms the Trial Court's finding that the Husband dissipated $130,127.59 in marital funds as a result of his wrongful conduct.

***In re Matter of Marriage of Anderson*, No. 123,840, 2021 (Kan. App. Dec. 30, 2021) (unpublished opinion).** When a party does not expressly object to the entry of a journal entry, that party is precluded from assailing such proceeding and ruling on appellate review; however, this appeal did not involve a frivolous motion because of the suggestion that the Trial Court did not fully familiarize itself with the record in advance.

***In re Marriage of Murphy*, No. 123,569, 2021 (Kan. App. Dec. 23, 2021) (unpublished opinion).** Affirmed the Trial Court's finding that the maintenance order reflected the parties' oral property settlement agreement, even though the Husband failed to include the oral agreement in the journal entry that he personally prepared, and there is not a void judgment because of a divorce decree failing to insert a statement, that extending maintenance under a separation or property settlement agreement does render the maintenance order void.

***D.G., v. M.G.,* No. 123,342, 2021 (Kan. App. Dec. 17, 2021) (unpublished opinion).** The Court held that the issue in this appeal is not moot, even though the protection from stalking order expired pending appeal, because the PFS still resulted in consequences to his reputation and employment, which is sufficient show cause for providing continuous review, but affirmed that

the Husband sending a string of texts on March 14, 2021, and on April 19, 2021 caused the Wife to fear for her safety and are sufficient for issuing a PFS order.

***In re Matter of Marriage of Blosser*, No. 123,225, 2021 WL 2493205 (Kan. App. June 18, 2021) (unpublished opinion)**. The Court reversed and remanded because the divorce decree provision is ambiguous and requires an evidentiary hearing, since both meanings ascribed to the provision by the parties can reasonably be construed from its language, and there is no extrinsic or parole evidence available to construe it.

***DCF v. Cares*, No. 121,976, 2021 (Kan. App. June 11, 2021) (unpublished opinion).** Outside of the 60-day safe harbor and after the child's first birthday afforded under K.S.A. 2020 Supp. 23-2209(e), a signatory cannot rescind a voluntary acknowledgment of paternity for any reason.

***In re Matter of Marriage of Poplin*, No. 123,241, 2021 WL 3701345 (Kan. App. Aug. 20, 2021) (unpublished opinion).** Affirmed the Trial Court granting certain supplemental maintenance payments to the Wife based on the plain language of the parties' property settlement agreement, but reversed the Trial Court, granting the Wife attorney fees for preparing a motion to quash, because the Wife failed to present evidence of a record specifying tasks that were billed.

***In re Matter of Marriage of McAllister*, No. 122,612, 2021 WL 3439166 (Kan. App. Aug. 6, 2021) (unpublished opinion)**. Court lacks jurisdiction over this appeal because the McAllister's divorce action was not final and was still pending when the Trial Court set aside a default decree of divorce previously entered.

***In re Matter of Marriage of Rees*, No. 123,206, 2021 WL 3042363 (Kan. App. July 16, 2021) (unpublished opinion)**. The Trial Court erred by using the outdated Kansas Supreme Court Child Support Guidelines in determining whether the Husband's child support payment could be reduced, but the decision would have resulted in the same outcome had the Trial Court applied the correct guidelines.

***J.R. by L.G., v. I.R.,* No. 122,219, 2021 WL 2633045 (Kan. App. June 25, 2021) (unpublished opinion).** The Court vacated the punitive contempt sanctions against L.G. for violating the parenting plan because the sanctions imposed – pay $500 fine and serve 15 days in jail – were more aligned and appropriate for indirect criminal contempt rather than civil contempt sanctions.

***Daniels v. Yasa*, No. 122,080, 2021 (Kan. App. Dec. 3, 2021) (unpublished opinion)**. The Court reversed the Trial Court and found that the Husband's child support obligation ended upon his son's graduation from high school because his son failed to comply with Missouri law requirements entitling him to extended child support; thus, the Husband is entitled to a refund, plus interest, of child support payments made after it became apparent that his son failed to comply with Missouri law requirements for extended child support.

***In re Matter of Marriage of Robinson*, No. 123,219, 2021 (Kan. App. Nov. 12, 2021) (unpublished opinion).** The Trial Court's property distribution did not amount to an abuse of

discretion and correctly applied a "fault standard" dissipation as part of its property division calculus.

***In re Matter of Marriage of Green*, No. 123,760, 2021 (Kan. App. Nov. 12, 2021) (unpublished opinion).** Affirmed that the Trial Court's discretion in dividing up the parties' assets was reasonable and not based on mistake of law or fact, but reversed and remanded on the issue that the Trial Court failed to provide reason for not awarding the Wife attorney fees on her successful motion to compel.

***In re Matter of Marriage of Lee*, No. 123,508, 2021 (Kan. App. Nov. 5, 2021) (unpublished opinion).** The separation agreement created through mediation is a valid contract, but the Trial Court erred in incorporating the separation agreement into the divorce degree because there is insufficient evidence supporting the finding that the separation agreement is just and equitable when the agreement fails to mention the value of significant assets, and when the record fails to show consideration of the parties' domestic relations affidavits or financial situations prior to approving the agreement.

***In re Matter of Marriage of McNutt and Gates*, No. 123,507, 2021 WL 4224660 (Kan. App. Sep. 17, 2021) (unpublished opinion).** Affirmed the Trial Court's finding that the Husband moving to Alaska constitutes a material change in circumstances allowing evaluation of the parenting plan and that the Trial Court applied relevant evidence to grant the Wife residential placement of their twin daughters.