

This chapter provides a summary of Kansas legislative changes and family law cases decided in the Kansas appellate courts between March 1, 2023, through February 29, 2024, including both published and unpublished decisions.

## **I. LEGISLATIVE CHANGES**

### **A. House Bill 2065**

House Bill 2065 was signed into law by Governor Kelly on April 18, 2023, at the end of the 2023 Legislative Session and became law effective July 1, 2023. The Bill sought to amend K.S.A. 23-2716 to allow either party to a divorce to change their last name to a name other than a former or maiden name, at or after the time that the decree of divorce become final.

K.S.A. 23-2716 no longer references restoration of a maiden name, but only restoration of a former name. It also gives the court discretion to change a party's last name to an entirely different last name.

### **B. Senate Bill 217**

Senate Bill 217 was signed into law by Governor Kelly on April 24, 2023, at the end of the 2023 Legislative Session and became law effective July 1, 2023. The Bill sought to add the conduct of “utilizing any electronic tracking system or acquiring tracking information to determine the targeted person's location, movement or travel patterns” to K.S.A. 21-5427 (criminal), K.S.A. 23-2707 (family law code), K.S.A. 38-2243 (revised code for care of children), K.S.A. 38-2244, K.S.A. 38-2255, K.S.A. 60-3107 (protection from abuse act), and K.S.A. 60-31a06 (protection from stalking, sexual assault, or human trafficking act). It was amended by the Senate Committee to also authorize orders to prohibit such conduct under K.S.A. 23-2224 (parentage act). It was amended again by the House Committee of the Whole to increase the amount of time an initial restraining order and possible extensions based on non-verified motions issued in PFA and PFS cases are effective from “not to exceed one year” to “not less than one year and not more than five years.”

Ultimately, the SB217 was enrolled with language adding the conduct of “utilizing any electronic tracking system or acquiring tracking information to determine the targeted person's location, movement or travel patterns” to K.S.A. 21-5427 (criminal), K.S.A. 23-2707 (family law code), K.S.A. 38-2243 (revised code for care of children), K.S.A. 38-2244, K.S.A. 38-2255, K.S.A. 60-3107 (protection from abuse act), and K.S.A. 60-31a06 (protection from stalking, sexual assault, or human trafficking act), and with language increasing the amount of time an initial

restraining order is effective in PFA and PFS cases to “not less than one year and not more than two years” and the amount of time possible extensions based on non-verified motions are effective in PFA and PFS cases to “not less than one year and not more than three years.” Extensions based on verified motions, with personal service and evidence presented with the opportunity to cross-examine, where the defendant has violated a valid protective order, previously violated a valid protective order, or has been convicted of a person felony, shall still be granted for not less than one additional year, and may be granted for the lifetime of the defendant.

## **II. PUBLISHED KANSAS SUPREME COURT DECISIONS**

### **A. Common Law Marriage**

*In re Common-Law Marriage of Heidkamp*, 317 Kan. 125, 526 P.3d 669 (2023): Wife appealed to the Court to affirm the district court’s finding that she was common-law married to her now deceased husband. The district court found that Wife and Husband met the three essential elements for a common law marriage based on their personal and financial affairs being carried out in the manner of a marital relationship. Because the United States Supreme Court ruled in *Bosch* that the IRS and Federal courts are not bound by lower state court decisions, Wife needed the district court’s finding of common law marriage to be affirmed. Here, the Court found that the uncontested evidence presented to the district court was sufficient to show Wife and Husband were in a common law marriage. AFFIRMED AS TO THE DISTRICT COURT.

### **B. Division of Retirement Benefits**

*In re Marriage of Holliday*, \_\_\_ Kan. \_\_\_, 531 P.3d 1216 (2023): The parties divorced in 2009 and divided the Husband’s not-yet-payable KPERs retirement account equally between the parties. The District Court directed Wife to prepare a DRO to effectuate the division, but she did not do so until Husband retired in 2021. When Husband retired in 2021, he asked the district court to extinguish Wife’s interest in his KPERs account because she failed to send a copy of the judgment to KPERs as instructed so the judgment is now dormant. The district court denied Husband’s argument, but the Court of Appeals agreed with it. The Kansas Supreme Court found that K.S.A. 60-2403(c) tolled the dormancy period until Husband’s benefits from his KPERs account became payable. The Kansas Supreme Court found that the district court’s division of Husband’s KPERs account constituted a final judgment under K.S.A. 60-254(a), which meant that judgment was subject to dormancy under K.S.A. 60-2403(a)(1) because the dormancy statute spoke to “any judgment.” However, the dormancy statute’s tolling provision in 60-2403(c), states that dormancy

“does not run during any period in which the enforcement of the judgment by legal process is stayed or prohibited.” The Court of Appeals found that Wife’s direction to file a DRO with KPERS was “a form of execution on that judgment” to divide Husband’s KPERS. The Kansas Supreme Court disagreed because unlike ERISA retirement plans that require QDROs, under K.S.A. 74-4923(b), KPERS does not operate as a plan subject to needing a QDRO prior to the funds being payable. Further, under K.S.A. 2403(c) there was no legal process available for Wife to enforce her judgment until Husband started receiving his benefits. Wife filing the district court’s order with KPERS any earlier than when Husband retired would have had no effect. Thus, the dormancy period tolled until Husband’s retirement benefits became payable to him from his account because KPERS does not operate in the same manner as a plan that is subject to ERISA. REVERSED AS TO THE COURT OF APPEALS AND AFFIRMED AS TO THE DISTRICT COURT, WITH DIFFERENT REASONING.

*In re Marriage of Shafer*, \_\_\_ Kan. \_\_\_, 531 P.3d 524 (2023): The parties divorced in 2007 and the district court ordered that Wife shall receive a share of her Husband’s Army Reserve and National Guard retirement pay based on the months of their marriage. Husband retired 15 years later, which is when Wife submitted the court’s division order to the federal office overseeing Husband’s retirement. The office told Wife that they needed more detail to calculate her share. The district court denied Wife’s request to clarify its order because it believed the original judgment had gone dormant under state law and Wife waited too long to seek changes. The Court of Appeals reversed because it believed the division order was not a final judgment subject to dormancy. The Kansas Supreme Court found that the division order was a final judgment subject to the dormancy statute. However, K.S.A. 60-260, which is the statute regarding relief from a judgment, was not applicable because Wife’s clarification request did not require a substantive change to the original property division. The Kansas Supreme Court found that the divorce decree with its incorporation of the 2006 memorandum decision, constituted a final judgment under K.S.A. 60-254(a)’s definition of “judgment.” Because the Kansas Supreme Court found there was a final judgment, that judgment was subject to the dormancy statute under K.S.A. 60-2403, but that was in direct contradiction with the Kansas Supreme Court’s finding in *In Re Marriage of Holliday*. However, because the effect of the tolling provision that was analyzed in *Holliday* was not briefed, that issue will be remanded to the district court should the parties choose to make it an issue. Ultimately, the relief statute of K.S.A. 60-260(b) was not applicable because Wife’s request to identify the length

of the marriage in months was not asking for any relief from the final division order and her request did not demand any substantive change in the final judgment. AFFIRMED AS TO THE COURT OF APPEALS, WITH DIFFERENT REASONING.

### **III. PUBLISHED KANSAS COURT OF APPEALS DECISIONS**

#### **A. Same Sex Parentage**

*In re Parentage of W.L. & G.L.*, \_\_ Kan. \_\_, 532 P.3d 447 (Ct. App. 2023): Wife 2 appealed the district court's dismissal of her petition for parentage. Mother and Wife 1 began a same-sex relationship in January 2012, had twins via the artificial insemination of Mother in December 2014, and permanently separated in January 2016. Mother and Wife 2 began dating in January 2017. Wife 1 filed a Petition for Parentage in October 2017, asserting parentage of the twins under K.S.A. 2017 Supp. 23-2208(a)(4). Mother answered, denying Wife 1's parentage, then cut off Wife 1's parenting time. Mother and Wife 2 married in January 2018. Wife 1's parentage action was tried in April 2018, during which Wife 1, Mother, and Wife 2 testified. Wife 2 testified that she intended to adopt the twins, but never asserted a presumption of parentage. The district court denied Wife 1's petition, finding her involvement with the twins was incidental rather than an intentional sharing of full parenting responsibilities. The Court of Appeals affirmed the district court's decision in April 2019, but the Kansas Supreme Court reversed and remanded the case back to the district court in November 2020.

In August 2018, Wife 2 filed a Petition for Adoption, but never completed the adoption. Mother filed for Divorce from Wife 2 in October 2019; Wife 2 answered, and counter petitioned in December 2019, claiming there were two children of the marriage, and that Wife 2 was a parent to them; Mother answered denying Wife 2's parentage, but admitting Wife 2 was a stepparent. In Fall 2020, while the divorce was still pending, Mother and Wife 2 reached a coparenting agreement for joint legal and physical custody of the twins.

Wife 1's remanded parentage action was assigned back to the district court in February 2021; Wife 2 was not a party, so she was not notified. Wife 2 later learned on the remanded parentage action and attended pretrial conferences in February and March 2021; at those conferences, Wife 2 stated her intent to intervene but never asserted her parentage or moved to intervene. The district court set Wife 1's parentage action for trial in April 2021, but Wife 1 and Mother mediated an agreement. Prior to trial, in April 2021, the district court entered an order,

declaring Wife 1 to be the legal parent of the twins, awarding joint legal custody to the parties, and adopting a reintegration parenting plan for Wife 1.

In July 2021, three months after Wife 1 was declared the legal parent of the twins, Wife 2 motioned to intervene in Wife 1's parentage action, asserting a presumption of parentage for the first time. Mother and Wife 2's divorce was finalized in August 2021. The same day, the district court granted Wife 2's motion to intervene, gave Wife 2 temporary stepparenting time, and ordered mediation. In November 2021, the district court entered final orders for parenting time and child support in Wife 1's parentage action.

In December 2021, eight months after Wife 1 was declared the legal parent of the twins, Wife 2 filed a Petition for Parentage, asserting all three women should have legal custody of the twins. Wife 1 and Mother, jointly, motioned to dismiss Wife 2's parentage action, stating Wife 2 failed to state a claim upon which relief could be granted for several reasons, including that no legal framework exists in Kansas under which a child can have three legal parents (stepparents aside), that stepparent visitation should be handled in Mother and Wife 2's divorce case rather than in a parentage case, and that Wife 2 knew of Wife 1's parentage action and that Wife 1 was declared the legal parent of the twins by the time Wife 2 filed her own parentage action. The district court dismissed Wife 2's parentage action, and Wife 2 timely appealed.

On appeal, the Court of Appeals found that Wife 2 did not argue that Kansas law recognizes or should recognize three legal parents or that she had a presumption of maternity under K.S.A. 2022 Supp. 23-2208(a)(4), so Wife 2 abandoned those claims. Wife 2 argued that the district court improperly relied on Wife 1's assertions of collateral estoppel and/or res judicata because Wife 1 never asserted those doctrines on remand. The Court of Appeals found that Wife 1 waived the affirmative defenses of the doctrines because she did not assert them in her answer and that there was no record of the district court relying on those doctrines to dismiss Wife 2's parentage action. The Court of Appeals agreed with the district court that Wife 2 filed too late because another person had already been adjudicated as legal parent and Wife 2 failed to timely assert any competing presumption at the time of birth or after birth under statute.

The Court of Appeals also agreed that Wife 2's parentage action was an improper collateral attack on Wife 1's final judgment. Wife 1's judgment was entitled to the presumption of finality, which disfavors collateral attack for any reason except lack of jurisdiction. Wife 2 never challenged

the district court's jurisdiction, nor showed that she was a necessary party to Wife 1's parentage action. AFFIRMED.

#### **IV. UNPUBLISHED KANSAS COURT OF APPEALS DECISIONS**

##### **A. Division of Property**

###### **i. New Evidence**

*In re Lozada*, No. 124,235, 2023 WL 4672108 (Kan. App. July 21, 2023) (unpublished opinion): Husband appealed the district court's decision to set aside a settlement agreement and to not tax treat an IRA awarded to him. After trial in 2019 and before the district court issued a final order, parties entered a settlement agreement on the record. Later, Wife moved to set the settlement agreement aside upon learning new information about the assets that was not included at trial or in settlement negotiations. The district court found that the settlement agreement was non-binding as there was not a true meeting of the minds and held a second trial.

Husband argued that some of the missing assets were premarital property awarded to his prior ex-wife. The Court of Appeals found no evidence or record of the missing assets being awarded to Husband's ex-wife, the missing assets were not outside the marital property scope, and therefore, the meeting of the minds condition was not met so the settlement agreement was not valid and enforceable.

Husband also argued that the district court should have tax treated the IRA that was awarded to him. Husband withdrew approximately \$185,000 to cover accrued liability from short selling the marital residence and an additional \$127,000, which he pocketed. The district court found that Husband's overdraw was a violation of the temporary orders. Husband argued it was not a violation because pursuant to the temporary orders, the parties were allowed to withdraw money for "day-to-day business or personal expenses." The Court of Appeals found that Husband's overdraw was a violation because the total amount was well outside the scope of what is contemplated by day-to-day business and personal expenses, as wrongful and met the definition of dissipation of assets that deprived the marital estate of potential future tax deferred growth. AFFIRMED.

###### **ii. Parol Evidence**

*In re Wessley*, No. 125,358, 2023 Kan. App. Unpub. LEXIS 374 (Kan. App. Sept. 15, 2023) (unpublished opinion): Husband appealed the district court's ruling that ambiguity existed in their decree as to the division of an asset. During their divorce, parties reached a mediated agreement,

and parties and counsel all signed a handwritten settlement document, which the district court incorporated by reference into a divorce decree. In short, during their marriage, Husband owned 53.11% of a company and contracted to sell 20,000 of his 53,110 stock shares to a man for \$2,250,000. The Purchase Agreement for the stock shares stated that Husband would receive \$1,250,000 over 60 months for the first 10,000 shares and the second 10,000 shares would transfer in increments of 2,000 shares and be paid for in 65 equal payments of \$17,307.39, in a four-week interval until paid in full. Upon the transfer of the first 10,000 shares, Husbands ownership dropped to 43.11%. The divorce decree provided that the parties were awarded 50% each of the “Note Receivable” and that parties would dived the payments 50/50, that Husband was awarded the 43.11% interest in the company, and 100% of the payments to be received on the Note Receivable during the period of January 2020 through May 2020. The decree never defined which document from the stock sale was the “Note Receivable.”

Wife filed a motion regarding her one-half share monthly payouts directly from the company after the company had a new attorney become involved who notified Wife that the company would no longer pay her the monthly one-half share and that she would need to collect from Husband. The district court granted Wife’s motion to be paid directly by the company, but also ruled that she was not entitled to half of the entire remaining balance of the Purchase Agreement because she was only entitled to half of the first payment stream and the remaining balance was awarded the Husband as part of his 43.11% interest award. Wife filed a motion to reconsider and argued that the divorce decree was ambiguous, and the district court should consider parol evidence to resolve the ambiguity. Husband argued that the divorce decree was unambiguous and that the district court could not consider parol evidence and lacked jurisdiction to modify the decree. The district court ruled that the decree was ambiguous as to what payments are due and when, considered Wife’s parol evidence, determined that the parties intended to receive one-half of the total purchase price, set aside its prior order, and order that each party receive one-half of the total remaining balance.

On appeal, Husband argued that the district court erred in determining that the decree was ambiguous, considering parol evidence, and modifying the property division because the matter was settled by agreement and incorporated in the decree. The Court of Appeals found that both the decree and the incorporated, separately enforceable settlement agreement were ambiguous because they both failed to define “Note Receivable” or state the amount Wife was owed. The Court of

Appeals also found that the district court appropriately considered parol evidence to determine that the parties intended to evenly divide the remaining total purchase price, and that Husband never disputed the accuracy of the parol evidence, simply that the parol evidence should not be considered at all. Lastly, the Court of Appeals found that the district court had jurisdiction because it did not modify the matters settled by an agreement incorporated into the decree; it only interpreted the parties' intent to clarify ambiguous terms of the agreement.

Wife motioned for reimbursement of appellate attorney fees on the basis that Husband's arguments were disingenuous and frivolous, but the Court of Appeals disagreed and denied her motion because Husband's arguments were not so frivolous to warrant an award of fees and that Wife bore some responsibility for the ambiguity. **AFFIRMED AND DENIED.**

### **iii. Valuation of Assets**

*In re Stewart*, No. 125,850, 2023 WL 8499235 (Kan. App. Dec. 8, 2023) (unpublished opinion): Husband appealed, and Wife cross-appealed, the district court's division of marital assets. At trial, Husband argued against some valuations specified by Wife in her DRA, despite including the same valuations in his DRA. Ultimately, the district court itemized, valued, and divided the marital assets based on detailed spreadsheets, exhibits, and testimony offered at trial, and ordered Husband to make an equalization payment to Wife. At a later hearing, the district court clarified that Wife would receive future rental payments from the rental property awarded to her, but Husband could keep prior payments, ordered Husband to provide all financial information on the properties awarded to Wife, and clarified that Husband would have to pay an excess amount over the amount Wife was assessed on a USDA loan.

Husband claimed that the district court abused its discretion in dividing the marital assets, failing to give premarital credit, misvaluing assets, failing to give him authority to make distributions from a donor fund, and failing to award his labor and management of the parties' ranch. The Court of Appeals found that the district court appropriately acknowledged that the parties combined premarital assets to buy various property and gave neither party premarital credit for those properties. The district court also appropriately relied upon DRAs filed by the parties over Husband's assertion that his later testimony was more credible than the DRA in which he copied Wife's valuations, despite taking no steps to correct the valuations until trial. The Court of Appeals found that the district court appropriately addressed the donor fund and that the parties agreed Husband could make distributions from the portion of the fund over Wife's initial,

premarital deposit. Lastly, the district court correctly determined that Husband was not entitled to compensation for his labor and management of the parties' ranch when it was never a condition of the marriage or divorce. The Court of Appeals disagreed with Husband that the district court's division of marital assets evidenced bias towards Wife because the parties' awards of assets were nearly equal after the equalization payment and were not arbitrary, unreasonable, or unfair.

Wife claimed in her cross-appeal that the district court should not have permitted Husband to keep past payments from the rental property she was awarded in the divorce. However, the Court of Appeals found that Wife did not properly preserve the issue for appeal. Both parties requested an award of appellate attorney fees, and the Court of Appeals denied both requests. AFFIRMED.

### **B. Spousal Maintenance**

*In re Nance*, No. 125,271, 2023 WL 2720849 (Kan. App. Mar. 31, 2023) (unpublished opinion): Husband appealed the district court's order for him to pay his wife \$600 per month in spousal maintenance for 36 months. Wife filed for divorce after being married to Husband for 11 years. At trial, the district court found that based upon the disparity in the parties' income, length of marriage, and division of property, Husband shall pay wife spousal maintenance. Husband argued that the district court erroneously only considered the length of marriage and failed to consider the amount of the debts awarded to him. However, the Court of Appeals found that the district court has wide latitude to decide spousal maintenance and that the record reflected that the district court considered the parties' earning capabilities, needs, and financial situations. AFFIRMED.

### **C. Special Master Fees**

*In re Chandler*, No. 126,083, 2024 WL 139573 (Kan. App. Jan. 12, 2024) (unpublished opinion): Husband appealed the district court's judgment against him and orders to pay Wife's attorney and special master fees. At trial, the district court ordered the parties' guns, collectible coins, gold and silver to be sold and proceeds to be divided equally. Due to disagreements on an appraiser and reseller, a special master was appointed with costs to be split equally. It was eventually discovered that Husband sold items during the temporary orders and had not provided a full accounting of the items sold. Upon Wife's motion to enforce, the district court ordered Husband to file an affidavit detailing the items he sold and amounts he received; Husband's "confusing and argumentative...nonresponsive" affidavit was seven pages long with 40 pages of attachments. Ultimately, the district court ruled that Husband's actions, testimony, and affidavit

were misleading and Wife did not receive the full value of the property division. The district court granted judgment against Husband, reapportioned the special master fees, and granted Wife attorney fees. Husband argued at appeal that the district court's decision was based on factual errors that challenge whether the district court's decision was based on substantial competent evidence. The Court of Appeals found that Husband tried to reinterpret his affidavit and that his reinterpretations were not supportive and did not account for discrepancies with his trial testimony upon which the district court based its decision; therefore, the Court of Appeals determined that the district court's decision was supported by substantial competent evidence. The Court of Appeals also found that Husband failed to meet his burden regarding the special master and attorney fee awards. AFFIRMED.

#### **D. Contempt**

*In re Navrat*, No. 124,856, 2023 WL 6170924 (Kan. App. Sept. 22, 2023) (unpublished opinion): Husband appealed the division of marital property and the award of a retirement account to Wife to reimburse her for an arrearage of joint child expenses he failed to pay. Husband argued that district court lacked jurisdiction over any contempt proceedings and violated his due process rights. While he did not dispute the district court's finding of contempt, he argued that the district court abused its discretion by awarding the retirement account to Wife.

Through the divorce case and up to trial, Husband failed to pay his portion of the joint child expenses, for which Wife filed multiple contempt motions. Wife also filed contempt motions against Husband for his refusal and failure to respond to discovery. At trial, district court found Husband in contempt for failure to pay, failure to cure prior contempt, and an ongoing failure to provide accurate information to the Court and counsel.

The Court of Appeals found that Husband failed to assert claims that the district court lacked jurisdiction and violated his due process rights in the district court, and in fact, appeared and defended himself on some allegations, conceded on others, and acquiesced to some court orders, and therefore, Husband waived his arguments about jurisdiction and due process. Husband also argued that the district court abused its discretion in awarding a retirement account to Wife to satisfy his arrearage because it was a criminal, rather than civil, sanction and led to an inequitable division of property. A civil contempt sanction is intended to be remedial or to compensate the other party for the contemptuous act; a criminal contempt sanction is typically punitive in nature and imposed in vindication for the contemptuous act. The Court of Appeals found the award of the

retirement account to be remedial in nature and intended to ensure Husband's compliance with previous court orders. The Court of Appeals also found that the award of the retirement account did not lead to an inequitable division because the district court specifically removed the account from the division calculation, and that the district court's ability to make an equitable division was hampered by Husband's refusal to provide accurate information. AFFIRMED.

## **E. Child Custody**

### **i. Hearsay Testimony**

*In re J.H.*, No. 125,823, 2023 WL 5662769 (Kan. App. Sept. 1, 2023) (unpublished opinion): Mother appealed district court's dismissal of her motion to reconsider the custody order awarding her sole legal custody and Father graduated parenting time that would eventually lead to unsupervised parenting time on the weekends. Mother argued that the district court erred in excluding a police officer's testimony about Father's alleged sexual abuse of Mother's child from a previous relationship as hearsay because the alleged child-victim was present and available for cross-examination. She also argued that the unsupervised parenting time was unreasonable, not in the best interest of the children, and an abuse of the district court's discretion.

The Court of Appeals found that the district court erred as a matter of law in deciding to exclude the police officer's testimony, should have admitted the police officer's hearsay statements because the child was present and available for cross-examination, and failed to inquire whether the child was qualified to testify or whether the harm of testifying outweighed the benefit of the testimony, relying only on the child's age to determine the hearsay exception did not apply. The Court of Appeals also found that the district court's erroneous hearsay exclusion violated Mother's due process right to be meaningfully heard regarding her fundamental right to the care, custody, and control of the children. The Court of Appeals declined to resolve Mother's argument that the parenting plan was not in the best interest of the children, because they remanded the case for a new trial, which will address the issue. REVERSED AND REMANDED.

### **ii. Servicemembers Civil Relief Act**

*In re S.D.II*, No. 125,231, 2023 WL 6531059 (Kan. App. Oct. 6, 2023) (unpublished opinion): Mother appealed the district court's ruling granting temporary primary residential custody to Father and modifying residential custody to favor Father. Parties married and divorced four times before the instant case arose. In last divorce, Mother was granted primary residential custody of the children. In December 2020, Mother told Father that she was going away to "school"

from January to June 2021; Mother failed to tell Father that she was reporting to basic training because she joined the Army Reserves. Mother and Father could not agree on who would provide childcare while Mother was at “school” and Father was deployed to Greece. Eventually, Mother left the children with her friend over Father’s objection. Father filed multiple emergency motions for *ex parte* temporary orders; Mother did not respond. Ultimately, Father returned home, took custody of the children, and was granted temporary primary residential custody. Father motioned for a permanent change to custody because Mother was no longer willing to co-parent with him, left the children with a friend over his objection, and refused to provide him with an address. At trial, the district court found that there was a material change to grant residential custody to Father.

Mother argued that the district court violated the Servicemembers Civil Relief Act by granting Father temporary residential custody while she was in basic training. The Court of Appeals found that Mother failed to timely file her appeal within 30 days of the district court’s judgment, so the issue was not preserved, and the Court of Appeals lacked jurisdiction to hear the issue. Then, Mother argued that the district court abused its discretion by granting the change of residential custody to Father because Father failed to present evidence of a material change of circumstances, because outside joining the Army, no material change of circumstances existed. The Court of Appeals found that the district court correctly determined that there was a material change of circumstances based on Mother’s behavior of concealing her enlistment, leaving the children with a friend over Father’s objection, and refusal to provide her address, not simply her enlistment. Lastly, Mother argued that the district court made an improper evidentiary ruling at trial by excluding her military file. The Court of Appeals found that this was a harmless error because the district court actually relied on her refusal to provide her address as the basis for its decision. Father moved for appellate attorney fees, but the Court of Appeals found that Mother presented a judiciable issue and denied his request. DISMISSED IN PART AND AFFIRMED IN PART.

### **iii. Domestic Conciliation Fees, Disqualification of Judge**

*In re C.A.*, No. 126,195, 2023 WL 8521195 (Kan. App. Dec 8, 2023) (unpublished opinion): Mother appealed the district court’s child custody and support decisions. Mother and Father were granted shared residential custody under the temporary orders of the divorce. At trial, the district court again granted shared residential custody to the parties and offset Father’s \$1,300 child support arrearage against Mother’s \$1,600 outstanding share of the domestic conciliation

bill; the district court did not order Mother to pay Father the difference between the arrearage and domestic conciliation bill. Mother claimed that (1) the district judge was biased against her and should have recused himself, (2) the district court misapplied the child custody statutory factors, and (3) the district court erred in calculating the child support arrearage.

The Court of Appeals found that despite Mother failing to follow the prescribed procedure for disqualifying a judge under K.S.A. 20-311d, she preserved the issue since she was complaining of remarks made by the district judge at the bench trial. However, Mother's claim failed because she did not demonstrate actual bias or prejudice sufficient to warrant reversal. The Court of Appeals also found the district court appropriately applied the statutory child custody factors and the district court's decision to grant shared residential custody was supported by substantial competent evidence. Lastly, the Court of Appeals found that the district court did not err in calculating Father's child support arrearage by basing its calculation on prior support orders filed during the pendency of the case. AFFIRMED.

#### **F. Child Support Modification during Temporary Orders**

*In re Stallbaumer*, No. 124,259, 2023 WL 2940143 (Kan. App. Apr. 14, 2023) (unpublished opinion): Husband appealed the district court's order of child support, spousal maintenance, and division of debts. Husband and wife were married for 12 years, where Husband was primarily the stay-at-home parent. Husband argued: (1) the district court erred in modifying the temporary child support order during the divorce proceeding because Wife had not shown a material change in circumstances, (2) the district court erred by ordering Wife to pay all direct expenses for the children, except for clothing kept in the respective parental residences, (3) the district court erred in the divorce decree by reducing his spousal maintenance based upon Wife's child support obligation, and (4) he court erred in awarding him 25% of the marital debt and Wife 75% of marital debt.

The Court of Appeals found (1) the district court may modify temporary child support orders without showing a change of circumstances and because any temporary orders were superseded by the orders in the divorce decree, (2) Husband failed to bring forward any legal error as to the assignment of direct expenses, (3) Husband failed to offer any authority that child support should be disregarded for setting spousal maintenance, and (4) Husband failed to show that the district court's division was unlawful or grossly unfair. AFFIRMED.

#### **G. Paternity**

### **i. Two Presumptive Fathers**

*In re Parentage of A.S.*, No. 125,595, 2023 WL 4540443 (Kan. App. July 14, 2023) (unpublished opinion): The District Court held a paternity hearing to determine the interest of two presumptive fathers: the Biological Father and the Presumptive/Stepfather (by way of marriage to the child's Mother). The child resided with Presumptive/Stepfather and Mother, but the child kept a relationship with Biological Father since he was born. The fathers contested paternity of the child after Mother passed away from cancer. At trial, the GAL stated that it was not in the child's best interest to establish paternity with Presumptive/Stepfather because the child was raised in the home by Presumptive/Stepfather and the child viewed Presumptive/Stepfather as his father. After hearing from Presumptive/Stepfather's counsel, the district court terminated the trial without hearing any additional evidence. Presumptive/Stepfather's counsel moved to alter or amend judgment because the court failed to conduct a full evidentiary hearing. The district court denied the motion and stated there was "no evidence that would change my mind." Presumptive/Stepfather appealed the manner in which the district court terminated the paternity hearing.

The Court of Appeals found that the trial court failed to honor Presumptive/Stepfather's right to due process when it terminated the paternity hearing prematurely and declined to hear other evidence. Presumptive/Stepfather's involvement with the child rose to a sufficient level of responsibility where he is entitled to constitutional protection of parental rights. Thus, a full evidentiary hearing was required to ensure that the matter was properly litigated. The Court of Appeals found the district court abused its discretion and directed the district court to conduct a full evidentiary hearing. REVERSED AND REMANDED.

### **ii. Genetic Testing for Child**

*In re Marriage of K.U.*, No. 124,967, 2023 WL 2818724 (Kan. App. Apr. 7, 2023) (unpublished opinion): Husband appealed 1) the district court's finding that it was not in the best interest of the child to order genetic testing and 2) the district court denial of his motion for relief from a judgment, arguing that the district court denied him the ability to present evidence and witnesses showing that Wife/Mother either misrepresented or was fraudulent in her testimony about the child's biological father.

Husband and Wife married in 2016, eight months after their first date, and had their first child. In March 2020, Wife/Mother filed for divorce. In July 2020, Husband performed a paternity

test on the child and found that he was not the biological father of the child. The district court held two *Ross* hearings, where Husband stated that he did not view the child the same way and no longer wished to continue in the role of the child's father and requested that the court order genetic testing.

The district found that it was not in the child's best interest to conduct genetic testing. Under *Greer v. Greer*, there are approximately 10 factors that a district court must consider in making decisions for the best interest of the child in paternity cases. It was uncontested that the district court considered all 10 factors set out in *Greer*, but Husband argued that the district court should have considered additional factors. The Court of Appeals disagreed with Husband and found that the district court did not abuse its discretion when deciding that genetic testing was not in the child's best interest after hearing testimony.

Husband filed a motion under K.S.A. 60-260(b)(3), in which he argued that Wife/Mother lied in her testimony about the child's biological father and attached exhibits contradicting Wife/Mother's testimony. A GAL motioned the court urging it to grant Husband's motion because it would be in the child's best interest to know and have a relationship with his biological father. The district court dismissed Husband's motion, found that neither additional evidence nor oral arguments was needed, and found that Wife/Mother's testimony was not fraudulent. The Court of Appeals disagreed with the district court and found that it did not provide rationale for denying Husband the opportunity to present evidence that cast doubt on the credibility of Wife/Mother's testimony. Due to the district court's arbitrary and unreasonable denial, the Court of Appeals remanded the issue of Husband's motion for reconsideration. AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

## **H. Stepparent Adoption**

### **i. Failure to Assume Parental Duties**

*In re H.S.*, No. 125,946, 2023 Kan. App. Unpub. LEXIS 338 (Kan. App. Aug. 11, 2023) (unpublished opinion): Mother appealed the district court's decision to terminate her parental rights and grant Stepmother's adoption petition. The district court found that Mother failed or refused to assume her parental duties for two consecutive years preceding the filing of the petition for adoption, despite extensive evidence and testimony from Mother regarding her attempts to maintain contact with the minor child. Mother argued that the district court ignored her attempts to provide for and maintain her relationship with the child, as well as Father and Stepmother's interference with those attempts. The Court of Appeals found that Mother's calls, while frequent,

were incidental and of little consequence in developing her relationship with the child or exercising her parental duties. The Court of Appeals also found that Mother failed to do as the district court repeatedly ordered (i.e., enter drug/alcohol treatment and provide proof of consistent clean UAs), which would have allowed her to get in-person parenting time. AFFIRMED.

*In re L.M.*, No. 125,070, 2023 WL 3143657 (Kan. App. Apr. 28, 2023) (unpublished opinion): Mother appealed the district court's decision terminating her parental rights and granting the Stepmother's petition for stepparent adoption. Mother argued that the district court improperly found that she failed or refused to assume the duties of a parents for two consecutive years immediately preceding stepmother's petition. The Court of Appeals found the district court was correct because for the preceding 25 months 1) Father and Stepmother were the sole caretakers for the child; 2) Mother had no in person parenting time with the child; and 3) Mother did not provide any financial support for the child. Mother also argued that Father prevented her from fulfilling her parental duties. However, the Court of Appeals disagreed and found that Mother failed to provide any evidence indicating that she made attempts to care for or even communicate with her daughter for the preceding two years. AFFIRMED.

### **ii. Payment of Child Support**

*In re R.H.*, No. 125,525, 2023 WL 5320906 (Kan. App. Aug. 18, 2023) (unpublished opinion): Stepfather appealed district court's denial of his stepparent adoption petition and denial of his request to terminate Biological Father's parental rights. Stepfather argued that the district court incorrectly construed the provisions of the Kansas Adoption and Relinquishment Act. The district court found that Stepfather failed to prove a statutory basis for termination by clear and convincing evidence, largely because Biological Father consistently paid child support. It was uncontroverted that, despite paying his child support obligation, Biological Father did not have any visits, communication, or relationship with the child for four years. The Court of Appeals found that the district court's reasoning was legally insufficient and incomplete to reject Stepfather's claims because consistently paying child support is not sufficient to establish a lack of neglect or failure to assume his parental duties under K.S.A. 2022 Supp. 59-2136(h)(1)(A) and (G). REVERSED AND REMANDED.

### **iii. Failure to Pay Direct Expenses**

On appeal, Stepfather argued that the district court's decision was not supported by substantial competent evidence, misinterpreted the matter as an action to terminate paternal

grandparents' visitation rights, and abused its discretion by giving Biological Father credit for support provided by paternal grandparents. The Court of Appeals found that Stepfather failed to meet his burden to prove that Biological Father failed or refused to assume parental duties because Biological Father was incarcerated for the entire two-year period on which Stepfather relied and that Stepfather's "two-sided ledger approach" (with support on one side and love and affection on the other) was overturned in 2011. The district court's decision was supported by evidence that Biological Father paid as much support as he could while incarcerated and that the PFA contributed to his lack of contact with the children, but that Biological Father made reasonable attempts to maintain his relationship with the children given the circumstances. The Court of Appeals declined to address whether the district court abused its discretion in giving Biological Father credit for support provided by paternal grandparents because the issue was not determinative as Biological Father's testimony alone about his support contributions while incarcerated were sufficient. While the Court of Appeals found that the district court erred in believing that stepparent adoption would terminate grandparent visitation rights, as no such issue has been litigated and no statutory language to that effect could be found in K.S.A. 23-3301 or K.S.A. 59-2136, the Court of Appeals found the error harmless because the district court's decision was supported by substantial evidence. AFFIRMED.

*In re Adopt. of D.A., D.A., and Y.A.*, No. 126,802, (Kan. App. Feb. 2, 2024) (unpublished opinion): Biological Father appealed the district court's granting of Stepfather's stepparent adoption. Stepfather petitioned for stepparent adoption without the consent of Biological Father, alleging that Biological Father's consent was unnecessary because he failed or refused to assume parental duties for the preceding two consecutive years. In Mother and Biological Father's divorce case, the district court granted joint legal custody to the parties, granted Mother primary residency and Biological Father liberal parenting time, but failed to order specific child support given the parties' agreement to waive child support in exchange for a shared expense plan. Mother sought sole legal custody and to terminate Biological Father's parenting time following his arrest on multiple charges, which was granted by the district court, but the district court's order did not mention child support. At trial on the stepparent adoption, the district court granted Stepfather's petition for adoption because Biological Father had not been paying for the children's direct expenses, and as such Biological Father failed to assume parental duties for the preceding two years.

Biological Father appealed on the basis that the district court erred in applying the rebuttable presumption and relied on a mistake of law. The Court of Appeals only considered the first challenge and found that the district court erred in applying the presumption of failing or refusing to assume parental duties in this case and that in so doing, the district court improperly shifted the burden of proof from Stepfather to Biological Father. In determining whether Biological Father failed to assume parental duties, there is a rebuttable presumption that if Biological Father knowingly failed to provide a substantial portion of the child support as required by judicial decree, for the preceding two years, then he has failed or refused to assume the duties of a parent. Because the district court never established child support by judicial decree, the rebuttable presumption was not applicable. REVERSED AND REMANDED.

#### **iv. Impact of Adoption on Grandparent Visitation Rights**

*In re Adopt. of J.A.E.*, Nos. 125,210 and 125,211, 2024 WL 392289 (Kan. App. Feb. 2, 2024) (unpublished opinion): Stepfather appealed the district court's denial of his stepparent adoption petitions. Stepfather petitioned for stepparent adoption without the consent of Biological Father, alleging that Biological Father's consent was unnecessary because he failed or refused to assume parental duties for the preceding two consecutive years. The district court ruled that Stepfather failed to meet his burden to prove that Biological Father failed or refused to assume parental duties for two years because Biological Father was incarcerated during that time and was under a PFA order, but he paid as much child support as he could while incarcerated and that paternal grandparents provided support to the children attributable to Biological Father. The district court refused to terminate Biological Father's parental rights and subsequently the paternal grandparents' visitation rights and denied Stepfather's petitions for adoption.

#### **I. Protection from Abuse**

##### **i. Granted for Wife, not Child**

*I.P. v. J.P.*, No. 125,735, 2023 Kan. App. Unpub. LEXIS 473 (Kan. App. Dec. 1, 2023) (unpublished opinion): Husband appealed the district court's award of a final Protection From Abuse order for Wife and the child. In January 2022, Wife filed PFA for her and the child claiming Husband caused her bodily injury and put her and the child in fear of imminent bodily injury in 2021 and 2016. At the hearing, both parties were represented by counsel and testified. The district court noted that the Act does not have a statute of limitations, found that the Xray admitted to evidence showed subluxation and swelling of Wife's arm, ruled that Husband abused Wife and

granted a one-year PFA. Husband argued that the district court lacked jurisdiction because (1) it was time-barred under the two-year statute of limitations that applies to civil orders of protection as set out in K.S.A. 60-513(a)(4) and (2) the Petition was neither signed nor verified. Since Husband failed to raise these issues in the district court and failed to state why they should be considered for the first time on appeal, the issues are deemed waived and abandoned.

Husband also argued that there was insufficient evidence to support the district court's decision because the district court only relied on a medical document admitted at trial, showing bruising that could not be attributed to him. The Court of Appeals found that since Husband failed to include the medical document in the appellate record, the Court of Appeals could not examine it. The Court of Appeals, then, found that Wife's testimony was sufficient evidence to support the district court's ruling as to the Wife, but Wife's testimony was insufficient evidence to support the district court's ruling as to the child because there was no separate showing of abuse towards the child. REVERSED IN PART AND AFFIRMED IN PART.

## **ii. Extension of PFA Orders**

*In re M.G.*, No. 126,253, 2023 Kan. App. Unpub. LEXIS 523 (Kan. App. Dec 15, 2023) (unpublished opinion): M.G. appealed the district court's one-year extension of a PFA order. In August 2021, M.G. filed for protection from abuse against D.N. and received a one-year final PFA order. In December 2021, M.G. alleged that D.N. violated the PFA order and the district court entered default judgment against D.N. when he failed to appear, finding he violated the PFA order, and extending the PFA order for another year. Prior to its expiration in January 2023, M.G. motioned to extend the PFA due to multiple violations by D.N., which had been reported to the police, and argued that the district court had to extend the PFA order for at least two more years and could extend the order up to D.N.'s lifetime under K.S.A. 30-3107(e)(2). The district court took the matter under advisement, continued the case on the PFA docket three times, then issued its written order extending the PFA order for another year. On appeal, M.G. argued that the district court erred in interpreting the word "shall" in K.S.A. 60-3107(e)(2) as being directory rather than mandatory. The courts generally consider the word "shall" to be mandatory when (1) legislative context and history conveys it as such, (2) the statute substantively affects a party's rights, (3) consequences exist for noncompliance, and (4) the subject matter of the statutory provision is serious. The Court of Appeals found that the word "shall" was mandatory rather than directory because the Kansas Legislature clearly distinguished between how the court "may" extend for a

lifetime, but “shall” extend for two years under K.S.A. 60-3107(e)(2), the statute clearly effects M.G.’s safety and D.N.’s freedom, and while the statute fails to state any consequences for noncompliance, the subject matter of the statute is serious. The Court of Appeals found that the district court was required to extend M.G.’s PFA order for at least two years and could extend up to D.N.’s lifetime. REVERED AND REMANDED.

#### **J. Protection from Stalking**

*D.A.W. v. B.R.S.*, No. 124,787, 2023 WL 2346342 (Kan. App. Mar. 3, 2023) (unpublished opinion): B.R.S. appealed the issuance of a Protection from Stalking order; however, the order expired prior to the appeal being heard. Kansas appellate courts do not decide moot questions or render advisory opinions. A case is moot when a court determines that it is clearly and convincingly shown the actual controversy has ended, the only judgment that could be entered would be ineffectual for any purpose, and it would not impact any of the parties' rights. The court must conclude that the requested relief would not affect any of the appellant's rights, with the understanding that the range of collateral interests that may preserve an appeal is wide. Even for times when a case is seemingly moot, the Court of Appeals may reach the merits if an exception applies in that the district court's judgment continues to affect the "vital rights" of a party. A party attempting to invoke this exception carries the burden to identify specific adverse collateral consequences attributable to the expired order. B.R.S. offered no argument that the expired order would have negative consequences for him or affect his vital rights. DISMISSED.

*M.G. v. C.H.*, No. 124,450, 2023 WL 5668659 (Kan. App. Sept. 1, 2023) (unpublished opinion): M.G. appealed the magistrate’s finding that M.G. failed to meet her burden and dismissal of her Protection from Stalking orders. M.G. argued: (1) the magistrate erred as a matter of law in finding that C.H. had a legitimate purpose for his behavior, (2) the magistrate erred as a matter of law in finding that C.H.’s behavior was constitutionally protected, and (3) the magistrate’s arbitrary 20-minute time limit for evidence presentation violated M.G.’s due process rights.

The Court of Appeals found that M.G.’s allegations met the definition of stalking and only arbitrary disregard of the undisputed evidence could support the magistrate's finding that M.G. failed to meet her burden of proof, unless C.H.’s behavior served a legitimate purpose or was constitutionally protected. The Court of Appeals disagreed with the magistrate that C.H. had a legitimate purpose in contacting M.G. after M.G.’s husband contacted C.H. asking him to stop. To

be legitimate, the purpose claimed must be supported by evidence and objectively reasonable. C.H.'s behavior served no legitimate purpose, so the magistrate erred as a matter of law.

The Court of Appeals also disagreed with the magistrate that C.H.'s behavior was constitutionally protected under the right to travel or the right to remain in a public place. The right to travel only applies to interstate travel, and the right to remain in a public place only extends to situations when doing so is entirely harmless in both purpose and effect. While C.H. may have had the constitutionally protected right to travel to M.G.'s city, his behavior of driving down her street, taking pictures, and maintaining a log of vehicles and license plates was only intended to harass, so the magistrate erred as a matter of law. The Court of Appeals found that the magistrate court arbitrarily disregarded the uncontroverted facts that showed M.G. had proven by a preponderance of the evidence that C.H.'s actions constituted stalking. As M.G. did not raise the issue of due process for the court's arbitrary time limit in the lower court and failed to explain why she did not raise the issue, the Court of Appeals declined to hear the claim. REVERSED AND REMANDED.