In the Matter of the MARRIAGE OF Katrina Lynn COOK, Appellee,
and
Jeffrey Alan COOK, Appellant.
No. 90,949.
Court of Appeals of Kansas
May 28, 2004

Editorial Note:

This case does not have precedential value under Kansas supreme court rule 7.04 (f) and may only be cited as persuasive authority on a material issue not addressed by a published Kansas appellate court decision.

Appeal from Jackson District Court; Gary L. Nafziger, judge. Opinion filed May 28, 2004. Affirmed.

Jeffery A. Cook, appellant pro se.

Randy M. Barker, Department of Social and Rehabilitation Services, for the appellee.

Before MARQUARDT, P.J., PIERRON and GREEN, JJ.

MEMORANDUM OPINION

PER CURIAM.

Jeffrey Alan Cook appeals the district court's adoption of the case manager's recommendation that the order of child support remain in effect. We affirm.

Katrina Lynn Cook and Jeffrey married in 1984 and had three children: Nicole, born October 12, 1985; William, born March 20, 1989; and Jeffrey, born May 25, 1992. Katrina petitioned for divorce. Jeffrey was incarcerated at the time of the parties' divorce in December 1999. For this reason, the district court awarded Katrina residential custody of the children but did not order Jeffrey to pay child support. The decree stated: "[T]he amount of child support payable in this case is $0 per month, until modified by Court order."

In May 2002, the Kansas Department of Social and Rehabilitation Services (SRS), as Katrina's assignee, moved successfully for a modification of child support. The district court found a material change of circumstances occurred when Jeffrey began earning income while incarcerated. Accordingly, the court increased Jeffrey's child support obligation to $224 per month. Jeffrey did not appeal the modification.

Later that year, the district court appointed a case manager to review disputes between Jeffrey and Katrina and make recommendations to the court. In February 2003, the case manager recommended that the May 2002 child support order remain in effect. Jeffrey filed a written objection to the case manager's recommendation, claiming he no longer earned income while incarcerated. The district court overruled Jeffrey's objection, however, and adopted the case manager's recommendation.

Jeffrey appeals, arguing the district court erred in refusing to modify his child support obligation. An appellate court reviews a district court's decision regarding child support payments and whether a material change of circumstances existed by an abuse of discretion standard. *In re Marriage of Schoby,* 269 Kan. 114, 120-21, 4 P.3d 604 (2000).

Preliminarily, we note that Jeffrey asserts modification of his child support obligation was warranted based on the following purported material changes in circumstance: (1) termination of his income while incarcerated due to a change in custody level; (2) failure by Katrina to comply with the visitation agreement; and (3) emancipation of Nicole. Although Jeffrey briefly referenced these alleged changes in his correspondence with the district court, there is nothing in the record to support these conclusory

allegations. Accordingly, this claim of error must fail. See *Unrau v. Kidron Bethel Retirement Services, Inc.,* 271 Kan. 743, 777, 27 P.3d 1 (2001) (appellant has duty to designate record sufficient to establish claimed error; without adequate record, claim of alleged error must fail); *Inscho v. Exide Corp.,* 29 Kan.App.2d 892, 895, 33 P.3d 249 (2001), *rev. denied* 273 Kan. 1036 (2002) (material included as appendix to appellate brief is not substitute for record on appeal).

Further, it appears Jeffrey is attempting to challenge the district court's May 2002 decision to increase his child support obligation in addition to attacking the court's later refusal to decrease the child support amount. As previously noted, Jeffrey failed to appeal the initial modification; accordingly, the propriety of that order is not properly before this court for review. Hence, we must confine our analysis to whether the district court abused its discretion by leaving Jeffrey's child support obligation unchanged.

Jeffrey argues he should not be obligated to pay child support because the divorce decree was a binding contract and did not require him to pay child support due to his incarceration. As Jeffrey notes, the decree provided that, in the event Jeffrey was released from jail, "child support shall be set at that time." Jeffrey is still incarcerated.

Again, Jeffrey's argument really goes to the district court's initial modification of child support. Nevertheless, analyzing his argument in relation to the court's decision that the child support order remain in effect, it is clear the court had jurisdiction to make that determination, despite any language in the divorce decree suggesting otherwise. A district court maintains continuing jurisdiction to modify an order made in a divorce action concerning child support when the facts and circumstances make modification proper. *Schoby,* 269 Kan. at 121, 4 P.3d 604; see also K.S.A.2003 Supp. 60-1610(a)(1) (authorizing court to modify prior order providing for support and education of minor children); Supreme Court Administrative Order No. 128 (2003 Kan. Ct. R. Annot. 114) (courts have continuing jurisdiction to modify child support order to advance welfare of child when there is material change in circumstance).

Modification of a parent's child support obligation rests within the discretion of the district court. 269 Kan. at 121, 4 P.3d 604. Certainly, the district court had discretion to determine that a downward modification was not warranted. Jeffrey's continued incarceration, standing alone, did not justify suspension or modification of his child support obligation. See *In re Marriage of Thurmond,* 265 Kan. 715, 729-30, 962 P.2d 1064 (1998). As previously noted, there is nothing in the record to substantiate Jeffrey's claim that his income had terminated and, if so, why.

The district court did not abuse its discretion in continuing the child support order and refusing to modify Jeffrey's child support obligation based on the evidence before it.

Affirmed.