

**NOT DESIGNATED FOR PUBLICATION**

**No. 90,862.**

**In re Matter of the Marriage of Michael REEDER, Appellant,**

**and**

**Darryl BRAZILL, Appellee.**

**Court of Appeals of Kansas**

**September 3, 2004**

Appeal from Leavenworth District Court; Gunnar A. Sundby, judge. Opinion filed September 3, 2004. Reversed.

Michael D. Gibbens, of Gibbens, Levinson & Levinson, LC., of Basehor, for appellant.

Darryl J. Brazill, appellee pro se.

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

MEMORANDUM OPINION

PER CURIAM.

This divorce action is on appeal for the second time. In the first appeal, Darryl J. Brazill appealed the trial court's judgment regarding the division of marital property,

the apportionment of marital debt, and the award of spousal maintenance in the action dissolving her marriage to Michael Reeder. This court affirmed the award of spousal maintenance. In addition, this court reversed and remanded that part of the trial court's judgment dividing marital property and apportioning debt for further proceedings. *In re Marriage of Reeder*, No. 86,269, unpublished opinion filed September 13, 2002 (*Reeder I* ).

On appeal, Reeder contends that the trial court exceeded our mandate when it modified the spousal maintenance to be paid by Reeder to Brazill. We agree. Moreover, under K.S.A.2003 Supp. 60-1610(b)(2), the trial court did not have the authority to modify the original maintenance award. Accordingly, we reverse.

Reeder and Brazill were married in 1979 and divorced in 2000. The trial court initially ordered Reeder to pay \$200 per month maintenance for 7 years, divided the property, and awarded the marital residence to Reeder with mortgage debt.

Brazill was injured in an accident in January 1998, and she was awarded a \$50,000 lump sum workers compensation settlement in December 1999. Brazill actually received approximately \$26,000 after deducting attorney fees and medical expenses. In addition, Brazill received a net lump sum social security disability payment of \$8,940, representing disability benefits for the period of July 1998 through September 1999. Thereafter, Brazill received a social security disability monthly payment of \$798.

On first appeal, Brazill argued that the trial court erroneously found that a portion of her lump sum workers compensation settlement was marital property. This court agreed and reversed and remanded that part of the trial court's judgment dividing

marital property and apportioning debt for further proceedings. We affirmed the award of spousal maintenance for Brazill. *Reeder I*, slip op. at 10.

The trial court and the parties understood that the case was remanded for a limited issue of determining the division of assets and allocation of debts without considering any portion of the workers compensation settlement as marital property. Brazill's counsel stated that Brazill did not agree with the maintenance award, "but I don't read the Court of Appeals' decision as raising that issue anew." The court took the matter under advisement.

The trial court later ordered Reeder to pay \$1,480 to Brazill within 90 days of the order to offset the difference in the property division and ordered Reeder to pay \$458 per month for 56 months for maintenance starting November 1, 1999.

"When a district court decision is reversed and remanded for further proceedings, the district court is obliged to effectuate the mandate from the appellate court and may not consider additional matters not necessary to implement the ruling of the appellate court. Upon a second appeal, an appellate court must consider only whether the district court properly implemented the mandate, which is a question of law, giving the appellate court unlimited review. [Citation omitted.]" *In re Marriage of Bahr*, 29 Kan.App.2d 846, 847, 32 P.3d 1212 (2001), rev. denied 273 Kan. 1035 (2002).

Reeder argues that because the issue of maintenance was not within the

mandate of this court, the trial court was precluded from reconsidering it. Brazill does not address this issue in her pro se brief.

In the prior appeal, this court affirmed the maintenance, stating that "the trial court's mischaracterization of a portion of the settlement as marital property did not alter the calculation of the appropriate amount to award as spousal maintenance." *Reeder I*, slip op. at 9. We noted that the amount of equity in the home was approximately \$12,000 and the social security lump sum payment for Brazill was \$8,940. We stated: "While this is not an even split, it is not so unreasonable as to constitute an abuse of discretion." Nevertheless, we remanded the case for a determination of "whether the division of assets and allocation of debts is just and equitable without considering any portion of the workers compensation settlement as marital property." Slip op. at 10.

The trial court in this case, on its own initiative, modified the maintenance payment. As Reeder correctly argues in his brief, he did not have opportunity to present evidence regarding his maintenance obligation. Brazill did not file a motion, nor did she present any new evidence to justify an increase in her maintenance. Moreover, it is apparent that the trial court did not have the authority to modify the maintenance award. Under K.S.A.2003 Supp. 60-1610(b)(2), the trial court may not modify a maintenance award without the consent of the party liable for the maintenance if it has the effect of increasing or accelerating the liability for unpaid maintenance beyond that prescribed in the original decree. The trial court both increased and accelerated Reeder's liability for unpaid maintenance beyond what was prescribed in the original decree without Reeder's consent.

The trial court's consideration of the maintenance payment was not within our mandate. Where the appellate court has decided a particular issue, by explicit language or by necessary implication, the trial court is foreclosed from reconsidering such an issue.

*State v. Reed*, 31 Kan.App.2d 1025, 1026, 77 P.3d 153 (2003).

Reversed.