

NOT DESIGNATED FOR PUBLICATION

No. 91,236

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

DAVID LANCE TAH,
Appellee,

and

ANN MARIE TAH,
Appellant.

MEMORANDUM OPINION

Appeal from Douglas District Court; JEAN F. SHEPHERD, judge. Opinion filed
October 29, 2004. Affirmed.

Jody M. Meyer, of Meyer & Davis, L.L.C., of Lawrence, for the appellant.

Sherri E. Loveland, of Stevens & Brand, L.L.P., of Lawrence, for the appellee.

Before PIERRON, P.J, MARQUARDT, J., and BUKATY, S.J.

Per Curiam: Ann Maire Tah appeals the district court's child support order
contained within the final divorce decree. We affirm.

In November 2000, David Lance Tah petitioned for divorce from Ann. In January 2001, the district court granted a decree of divorce and deferred a ruling on the issues of child custody and support, as well as other post-divorce matters unrelated to this appeal.

Previous to the divorce filing, Ann had filed a protection from abuse case against David. The district court in that case granted custody to Ann and ordered David to pay \$951 per month in child support. Those orders expired in February 2001.

In March, 2001, the district court in the divorce action ordered that the previous custody and parenting time orders in the protection from abuse case in force. Later, following the filing of a motion for support by the Kansas Department of Social and Rehabilitation Services, the court ordered David to pay \$922 per month in temporary support effective October 15, 2001.

In December 2001, Ann advised the district court that she had given David custody of their children on December 7, 2001. On December, 18, 2001, David filed a motion to modify the prior orders of temporary custody and child support. Pursuant to this motion, the court ordered joint custody, and designated David as the primary residential parent.

On January 23, 2002, David filed a motion requesting that Ann be ordered to pay child support. For reasons unknown, the district court did not hear the motion until February and March 2003 when it considered other post-trial issues. On May 20, 2003, the court issued its memorandum decision which granted David sole legal custody, and ordered Ann to pay \$618 per month in child support retroactive to March 1, 2002, and then \$699.05 per month beginning June 1, 2003.

Ann filed a motion to amend which challenged the district court's order making her child support obligation retroactive almost 15 months. In overruling the motion the court stated:

"The court ordered that Respondent's [Ann's] child support be retroactive to thirty days after the father's filing of his motion for temporary support. There was a prior order of temporary support in this case ordering the father to pay child support to the mother. The father's child support terminated when the children went to live with him and the order that the mother pay child support to him is a modification in temporary child support."

We agree.

Ann argued below and now on appeal that the district court did not have authority under either K.S.A. 2003 Supp. 60-1607 or K.S.A. 2003 Supp. 60-1610(a)(1) to make its

support order retroactive. Specifically, she asserts that K.S.A. 2003 Supp. 60-1610(a)(1) does not authorize such retroactivity because there was no prior order requiring her to pay support and without such there was nothing for the court to modify. Accordingly, she claims that the order could be effective no earlier than June 2003. As for K.S.A. 2003 Supp. 60-1607, she asserts that it only allows the court to issue temporary orders for support while an action is pending and not "after the pendency of an action," which she claims the district court did here.

Ann's arguments raise an issue of statutory interpretation. "Interpretation of a statute is a question of law, and an appellate court's review is unlimited. An appellate court is not bound by the district court's interpretation of a statute." *State v. Maass*, 275 Kan. 328, 330, 64 P.3d 382 (2003). "Ordinary words are to be given their ordinary meaning, and a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it." *GT, Kansas, L.L.C. v. Riley County Register of Deeds*, 271 Kan. 311, 316, 22 P.3d 600 (2001.)

K.S.A. 2003 Supp. 60-1610(a), states, in relevant part:

"(1) *Child support and education.* The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date

of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. . . . The court may make a modification of child support retroactive to a date at least one month after the date that that motion to modify was filed with the court."

Ann inexplicably argues that K.S.A. 2003 Supp. 60-1610(a)(1) only authorizes modifications with retroactive provisions of this length to decrees or final orders and not to temporary orders. Consequently, she claims the district court could not modify the October 2001 temporary order (requiring David to pay child support) because it was not a decree or final order.

This argument is not supported by the plain language of the statute. K.S.A. 2003 Supp. 60-1610(a) specifically states that "[t]he court may modify or change *any* prior order." (Emphasis added.) It does not follow from this language that the district court may modify or change only a decree or final order. Moreover, Ann cites no case law to the contrary.

Ann also asserts that K.S.A. 2003 Supp. 60-6010(a)(1) is inapplicable because there never was a prior order requiring her to pay support and the district court cannot "modify or change" a nonexistent order. True, there never was such an order. However,

there previously was an order in effect requiring David to pay support. After he obtained an order designating him as residential parent, he filed a motion requiring Ann to pay him support. There is no sound policy reason that David's motion should not be considered a motion to modify "any prior order" under K.S.A. 2003 Supp. 60-1610(a)(1). The statute does not limit the modification here to a change in the amount to be paid. Changing the payor of support is no less a modification of a support order than is a change in the amount. The statute contains no limitation on the nature of the modification it refers to.

We need not consider the contention that K.S.A. 2003 Supp. 60-1607(a)(3) does not allow the district court to grant a temporary order for support as part of its final decree in light of our ruling that the district court's support order was proper under K.S.A. 2003 Supp. 60-1610.

Affirmed.