

## NOT DESIGNATED FOR PUBLICATION

No. 94,703

## IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of  
JANICE LYNN ZIEGLER (now King),  
*Appellant,*

and

PAUL JOSEPH ZIEGLER,  
*Appellee.*

## MEMORANDUM OPINION

Appeal from Shawnee District Court; RONALD D. INNES, judge. Opinion filed  
March 3, 2006. Dismissed in part and affirmed in part.

*Janice Lynn King*, appellant pro se.

*Susanna vanGelder Coxe*, of Family Law Practice, P.A., for appellee.

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

*Per Curiam:* Janice Lynn King (formerly Janice Lynn Ziegler) appeals the trial court's residential custody order for her children. We dismiss in part and affirm in part.

Janice and Paul Ziegler were married in July 1987. Two children were born to this marriage, D. and M. Janice filed for divorce in December 1999. The divorce decree was final in April 2000. The settlement agreement incorporated in the decree granted the parties joint legal custody of the children, with Janice as the primary residential parent. Paul was ordered to pay child support, and a visitation schedule was established.

Janice moved the children to Missouri in December 2000. Because of ongoing problems surrounding custody, visitation, residency, and parenting time, the trial court ordered conciliation for the parties. Janice did not attend court-ordered conciliation. The trial court threatened to impose a temporary change of residency for the children and issued a citation in contempt for Janice's failure to participate in the conciliation.

In May 2001, Janice filed a motion to transfer temporary residential custody to Paul. Janice claimed that she was "exhausted" from the process, and alleged that the trial court was biased in favor of Paul. Prior to hearing the motion, the trial court issued an order forbidding Janice from removing the children from Shawnee County. The children were temporarily placed in Paul's care. Paul's child support obligation was suspended while the children were

residing with him.

In September 2001, Janice requested that she be the primary residential parent for M. Janice claimed that Paul had anger issues, needed counseling, was violent, and had threatened her, their children, and the people with whom she resided. The trial court ordered a mediation session. Ginger Napue was assigned as the case manager.

Napue recommended that both children immediately reside with Janice and that Paul have appropriate parenting time. Napue also recommended that Paul attend an anger management class and have a psychological evaluation. Paul objected to Napue's recommendations.

Janice assumed primary residential custody of both children in July 2003 and asked for child support. Paul responded by claiming that Janice was living with another man and his wife in a polygamous relationship. Janice countered by alleging that Paul was forcing D. to live with him. D. sent a letter to Napue indicating that he did not wish to live with Janice because he was disturbed by her sexual relationship with the many people who lived in her home.

In November 2004, Paul filed a motion requesting primary residential custody of D.

and M. In the motion, Paul mentioned Janice's adulterous relationship and her intention to remove the children to another state. Paul alleged that Janice's partner was hitting the children with a paddle and bullying them.

Janice responded by filing a motion to remove the case to federal district court. The motion was denied, and Janice was ordered to pay the costs of the frivolous litigation. The trial court ordered both parties to complete a series of child support worksheets. Janice was barred from exposing D. to her boyfriend and his wife.

A hearing was held in March 2005. The children were ordered to write the court and express their desires regarding residency and parenting time. The trial court renewed the order which forbade Janice from having her parenting time with D. in the presence of her boyfriend and his wife.

Another hearing was held in April 2005 and the trial court ordered joint legal custody of the children, with Paul as the residential parent of D. and Janice as the residential parent of M. The trial court made arrangements for both parents to contribute ideas to a parenting plan. The trial court modified its order regarding Janice's parenting time with D.; the time and place of visitation was to be agreed upon by Janice and D. Janice timely appeals the trial court's decision.

Janice's lengthy list of issues on appeal are:

"(1) Are the acts of Mr. Ziegler in direct violation of the Parental Kidnapping Act?

"(2) Do the actions of Mr. Ziegler constitute the deliberate evasion and avoidance of Child Support Obligations Payments?

"(3) Are the actions of Mr. Ziegler in violation of the Protection from Abuse Act?

"(4) Is the Shawnee County District Court promoting and granting incentive for the Acts of Violence Mr. Ziegler displays upon Ms. King and the minor children?

"(5) Is K.S.A. 60-3110 et seq. a valid statute within the State of Kansas?

"(6) Does a 'Letter Decision' carry equal weight as an 'Order,' 'Memorandum and Order,' or 'Journal Entry'?

"(7) Is the Order granting Mr. Ziegler automatic custody of both minor children 'If the Petitioner decides to move out of Shawnee County, Kansas again in the future, residency will automatically change back to the Respondent without further Order of the Court' Constitutional?

"(8) Is it in the best interests of the Parties to continually be reassigned into Case Management when the Court refuses to address Mr. Ziegler's displaced anger problem, and admits that Case Management has jurisdiction over that which the Court does not?

"(9) Are Mr. Ziegler's actions toward the Party's oldest child defined as Parental Alienation?

"(10) Is it 'in the child's best interest' for the Party's youngest child to be forced to reside with Mr. Ziegler, just to be subjected to his displaced anger, as well as, involuntary Servitude towards [sic] the Petitioner?

"(11) As a question of law, should Earned Income Credit be applied as 'income' on the Child Support Computation Worksheet when it has been granted to Ms. King during the times in which she had physical and residential custody of both minor children without any child support from Mr. Ziegler?

"(12) Does the submitted Child Support Computation Worksheet provided by Mr. Ziegler's Counsel meet as to form and legality?

"(13) Is it Constitutional by the Kansas Supreme Court Rules to continually rule against Ms. King (a *Pro Se Litigant*) during the times in which Mr. Ziegler has Counsel present?

"(14) Do the Party's minor children have any rights by local, State, or Federal Rule, Statute or Law to protect them from the abuse of Mr. Ziegler's displaced anger?

"(15) Were the actions of July 16, 2005, uniformly applied in accordance to Kansas State Laws?"

Janice points this court to several provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, K.S.A. 38-1336 *et seq.* to support her issues. She also claims that the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2000), *et al.*, criminalizes parental abduction of a child, and she states that Paul's actions were in "violation of the Parental Kidnapping Act, as well as State Laws."

The journal entry from the April 2005 hearing gave Paul residential custody of D. There is simply no evidence in the record on appeal to support Janice's claim of kidnapping.

Janice contends that Paul did everything in his power to avoid payment of child support, including his failure to return D. to her. Janice refers to a case management recommendation which discussed Paul's alleged underemployment and failure to pay child support. However, no such document exists in the record on appeal.

An appellant has the duty to designate a record sufficient to establish the claimed error. Without an adequate record, the claim of alleged error fails. *State ex rel. Stovall v. Alivio*, 275 Kan. 169, 172, 61 P.3d 687 (2003). Accordingly, this issue is dismissed.

Janice claims that the trial court "refus[ed] to address the displaced anger of Mr. Ziegler towards Ms. King and the minor children." She claims that the trial court was not willing to address emotional abuse. The record on appeal shows that Janice sought an order under the Protection from Abuse Act, K.S.A. 60-3101 *et seq.* However, there is nothing in the record on appeal to support the fact that a protection order was ever entered by the trial court. Janice's claim is without merit.

Janice argues that the 2003 appointment of a Topeka mayor and Paul's retention of

residential custody of D. proves that the Shawnee County District Court gives abusers "incentive" for the continuance of their violent acts. There is nothing in the record on appeal to support Janice's claim regarding Shawnee County District Court's promotion of domestic violence. Neither the case manager's final report nor the trial court's final order mentions domestic violence. Janice's claim is without merit.

Janice claims that a letter decision from September 2003 indicates she should have residential custody of both D. and M., and claims that the subsequent decision of the trial court was a critical error.

The record on appeal contains a letter decision from September 2004. However, the decision at issue is the memorandum order filed by the trial court on May 23, 2005. That is the only order referenced in Janice's notice of appeal. We do not have jurisdiction to consider the September 2004 letter decision. The time to file a notice of appeal on that issue expired a long time ago. See K.S.A. 60-2103(a). The right to appeal is entirely statutory and is not contained in the United States or Kansas Constitutions. Subject to certain exceptions, Kansas appellate courts have jurisdiction to entertain an appeal only if the appeal is taken in the manner prescribed by statute. *Butler County R.W.D. No. 8 v. Yates*, 275 Kan. 291, 299, 64 P.3d 357 (2003). This issue is not properly before this court and is therefore dismissed.



In January 2001, Paul informed the trial court that Janice had moved the children to Missouri. In May 2001, the trial court issued a restraining order to prohibit Janice from moving the children out of Shawnee County.

Janice contends that the trial court's ruling regarding her movement outside of Shawnee County puts her in a "state of involuntary servitude" as she attempts to "protect her children" from Paul's abuse.

In a prior decision of this court, we concluded that while citizens of this nation ordinarily have the right to travel from one state to another, there is a legitimate State interest in restricting the residence of a custodial parent. *Carlson v. Carlson*, 8 Kan. App. 2d 564, 566, 661 P.2d 833 (1983). In the case at bar, the trial court had the authority to limit Janice's travel with the children. However, this issue is moot because the trial court removed the residence restriction from the modified journal entry.

Janice notes that she and Paul have participated in case management since 2001. Janice argues that Paul attempted to have a different case manager appointed, leading to "kaos [*sic*] and havick [*sic*]." Janice continues to ask why the trial court insists on pursuing case management, when the real issue that must be addressed is Paul's anger.

Janice's claim that Paul somehow orchestrated Napue's ouster is incorrect. The record on appeal shows that Napue voluntarily requested that she be relieved of her duties as case manager in this case. The trial court appointed Amanda Smith to take her place, noting that an outstanding order required the parties to continue in case management. Janice's claim that Smith is biased against her is without support in the record on appeal. In fact, Smith appeared eager to work with Janice, even though Janice refused to attend case management meetings. In addition, the parties are required to work with case management only when they cannot reach a satisfactory solution between themselves. There is no evidence in the record on appeal to support Janice's argument regarding case management.

Janice, referring to transcripts which have not been included with the record on appeal, contends there is ample evidence to show that she and the children have been harmed by Paul's anger. Janice contends that she is unable to communicate directly with D. Janice's alleged inability to communicate directly with D. is not the fault of the trial court because the journal entry from the April 2005 hearing clearly allows Janice to have regularly scheduled parenting time with D. Therefore, her complaint is without merit.

The record on appeal contains a letter written by D. in which he indicates he does not want to live with his mother. The trial court viewed documents in camera from both children regarding their residential preferences. This court is in no position to reweigh the trial court's

determination concerning those letters. See *State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 275 Kan. 763, 775, 69 P.3d 1087 (2003). We do not believe parental alienation is an issue in this case.

Initially, Janice claims that it is not in M.'s best interest to reside with Paul. That is clearly not an issue in this case, as the journal entry from the April 2005 hearing grants Janice primary residential custody of M. Janice argues that M. has refused to participate in parenting time with Paul since June 2005 and believes M. has the right to decide whether she wants visitation with Paul.

The judgment of the trial court regarding visitation will not be disturbed absent an affirmative showing of abuse of discretion. *In re Marriage of McNeely*, 15 Kan. App. 2d 762, 764, 815 P.2d 1125, *rev. denied* 249 Kan. 776 (1991). We find no abuse of discretion; therefore, we will not review this issue.

Janice contends that a noncustodial parent who is not receiving child support payments is entitled to an Earned Income Credit (EIC) when filing income taxes. Janice contends that while she did not receive child support from Paul, she received the EIC, and Paul then counted that credit as income on her child support worksheet.

The standard of review of a trial court's order determining the amount of child support is whether the trial court abused its discretion, while interpretation and application of the Kansas Child Support Guidelines is subject to unlimited review. *In re Marriage of Paul*, 32 Kan. App. 2d 1023, 1024, 93 P.3d 734 (2004), *affirmed* 278 Kan. 808, 103 P.3d 976 (2005).

The record on appeal shows that Janice's 2004 income tax return includes the earned income credit. However, Janice's child support worksheet shows her gross annual income as \$10,488, while Paul computed Janice's gross annual income at \$10,716. This difference cannot be explained by inclusion of the EIC, as it was calculated at \$2,310 on her income tax return.

We do not believe that there is adequate evidence in the record on appeal to show that the EIC was included as part of Janice's gross annual income. Therefore, we will not revisit the trial court's decision regarding the allocation of child support obligations to each parent.

Janice argues that the history of this case shows the Shawnee County District Court routinely ruled against her as a pro se litigant. She questions the constitutionality of this practice.

A pro se litigant in a civil case is required to follow the same rules of procedure and

evidence which are binding upon a litigant who is represented by counsel. A pro se litigant in a civil case cannot be given either an advantage or a disadvantage solely because of proceeding pro se. *Mangiaracina v. Gutierrez*, 11 Kan. App. 2d 594, 595-96, 730 P.2d 1109 (1986).

We see no evidence in the record on appeal which would indicate that Janice has faced bias or prejudice as a result of her pro se status. The fact that the trial court rules in a manner that is contrary to Janice's position should not be confused with bias or prejudice. Janice's argument is without merit.

Janice "seeks clarification" as to how much money Shawnee County and the State of Kansas are required to spend to protect children from domestic abuse.

There is no evidence in the record on appeal to suggest that Paul has an unchecked anger problem or that the children are in a situation where they are being harmed physically, mentally, or emotionally. Apparently, Janice does not understand the function of this court. It is not within this court's jurisdiction in this case to review the spending habits of either Shawnee County or the State.

Janice argues that the final residential custody hearing was obviously "staged" because

the turn of events were "convenient." Janice provides this court with information about M. which is not included in the record on appeal. We understand that Janice has a strong difference of opinion with the Shawnee County District Court. However, that difference of opinion is not anything that can be remedied through this appeal.

Janice's second and sixth issues are dismissed; all other issues are affirmed.