

NOT DESIGNATED FOR PUBLICATION

No. 93,639

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Paternity of  
ALAYSHA DELGADO, A Minor Child, *et al.*,  
*Appellees,*

v.

JOSEPH B. MABBITT,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Reno District Court; RICHARD J. ROME, judge. Opinion filed  
March 31, 2006. Affirmed.

*R. Matthew Lane*, of Treadwell Lane, LLC, of Wichita, for appellant.

*Trish Rose*, of Forker, Suter & Rose, of Hutchinson, for appellee.

Before BUSER, P.J., LARSON, S.J., and WAHL, S.J.

*Per Curiam*: Joseph B. Mabbitt appeals the district court's order increasing child support, contending the court failed to make sufficient written findings to support

deviation from the child support guidelines.

The record furnished to us does not include the transcript of any hearing and is limited to the filings and orders of the court from October 28, 1992, down to the order of the court finding that respondent is "capable of earning income sufficient to justify a child support amount of \$500 per month" dated September 17, 2004, and filed October 27, 2004, from which Mabbitt has appealed.

The minor, A.D., was born October 25, 1989. The record reflects that on December 16, 1993, Mabbitt acknowledged that he is A.D.'s biological and legal father. The initial judgment provided for support payments by Mabbitt of \$425 per month commencing January 1, 1994, and for a lump sum judgment of \$9,510 for child support for the months of October 1992 through December 1993.

Thereafter, the record reflects numerous motions, hearings, and orders relating to collection, reduction, and increase of support.

The subject proceeding appealed from herein resulted from a motion filed by A.D.'s mother, J.D. in May 2004 requesting modification of child support. The court was asked to impute income to Mabbitt because he was deliberately unemployed or underemployed. The child support worksheet attached imputes a domestic gross income

of \$2,128 to Mabbitt which resulted in a net parental child support obligation of \$367 per month.

A hearing was held on the motion on June 18, 2004. A transcript of the hearing was not furnished by the appellant. The order entered by the court contains a specific finding that states, "Respondent is capable of supporting his minor child in the amount of \$500 per month and that amount is so ordered." The record also reflects the court in its own handwriting crossed out the \$367 figure as the net parental child support obligation and entered "\$500.00 mth."

In August 2004, Mabbitt filed a motion to set aside the court's order contending the court failed to make sufficient written findings to deviate from the child support guidelines as required by *In re Marriage of Mellott*, 32 Kan. App. 2d 1031, 93 P.3d 1219 (2004). He also asked the court to create a parenting plan with a specific schedule of visitation. The motion further alleged he was not served prior to the June hearing with a domestic relations affidavit or a proposed child support worksheet.

The court held a hearing on Mabbitt's motion on September 17, 2004. No transcript of this hearing is presented by the appellant for our review. The journal entry in the file reflects the presence of the parties and their attorneys and that the court heard argument of counsel and found as follows:

"1. Respondent has requested specific parenting time with the minor child. The parties are ordered to mediation to consider such issues as required by local rules. Each party shall contact Jennifer England, Court Mediator, Telephone Number (620) 669-8700.

"2. Respondent's motion to set aside the Court's order of June 22, 2004, is denied. The Court reaffirms its finding in the order of June 22, 2004, that respondent is capable of earning income sufficient to justify a child support amount of \$500 per month."

Mabbitt argues on appeal that the trial court abused its discretion in increasing the amount of child support from \$367 per month to \$500 per month, in not explaining how the adjustment is in the best interests of A.D., and in failing to use the worksheet or section E to arrive at the \$500 figure.

J.D. alleges that the motion for increase in child support alleged Mabbitt was not complying with the existing order in that he had (1) failed to notify SRS and J.D. upon finding employment, (2) failed to notify SRS and J.D. of his change of address, (3) failed throughout the life of A.D. to provide health insurance as ordered, and (4) failed to pay his share of uninsured medical expenses. The request was based on the fact that A.D. was then 13 years old and Mabbitt had claimed to be attending school or unemployed for most of A.D.'s life, and it was appropriate to impute income to Mabbitt.

At the hearing, J.D. alleges the court in its own handwriting amended the child support worksheet and made the specific finding that "[r]espondent is capable of supporting his minor child in the amount of \$500 per month."

Our standard of review of a district court's order determining child support is whether the district court abused its discretion, while interpretation of the Kansas Child Support Guidelines is subject to unlimited review. *In re Marriage of Mellott*, 32 Kan. App. 2d 1031, Syl. ¶ 1.

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

The record presented to us by the appellant fails to show transcripts of the hearings where the alleged errors occurred and our rules clearly require that in the absence of an objection, omission in findings will not be considered on appeal. While there has been no such objection, the trial court is presumed to have found all facts necessary to support the judgment. *Gilkey v. State*, 31 Kan. App. 2d 77, 78, 60 P.3d 351, *rev. denied* 275 Kan. 963 (2003).

Mabbitt's reliance on the *Mellott* case is misplaced. The trial court there had

ordered a reduction simply based on the father's claim that he did not have enough money to live on, and we held that an explanation in how the adjustment was in the best interests of the children was required.

While the trial court here might have been more expansive in its findings, a specific change in the worksheet was handwritten by the trial court and the journal entry contained the finding of capability of earning sufficient income to justify the support ordered.

Mabbitt has failed to present to us a record showing error, and his failure to object below when the opportunity may have clearly existed to do so requires us to find the trial court did not abuse its discretion in its order of child support in the amount of \$500 per month.

Affirmed.