

NOT DESIGNATED FOR PUBLICATION

No. 95,367

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

KRISTIN BRINKMAN and JACOB RYAN BRINKMAN,  
A MINOR CHILD BY HIS NEXT FRIEND  
KRISTIN BRINKMAN,  
*Appellees,*

v.

BRYAN POWELL,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Johnson District Court; KEVIN P. MORIARTY, judge. Opinion  
filed August 11, 2006. Affirmed.

*Keven M. P. O'Grady*, of Ferree, Bunn, O'Grady & Rundberg, Chtd., of Overland  
Park, for appellant.

Before MALONE, P.J., CAPLINGER and BUSER, JJ.

*Per Curiam:* Bryan Powell appeals the district court's order denying his motion to modify child support. We affirm.

On January 21, 2004, the Johnson County District Court entered an order establishing Bryan Powell as the father of Jacob Brinkman, born May 26, 2002, and ordering Powell to pay child support to Kristin Brinkman, the child's mother. In February 2004, Kristin filed a motion to increase child support.

On August 30, 2004, a hearing officer granted Kristin's motion to increase child support, and on January 21, 2005, the district court affirmed the decision with some modifications. On March 3, 2005, Powell filed his own motion to modify child support, seeking a reduction of his child support based upon an order of a Colorado district court increasing his maintenance obligation to his ex-wife, Lori Powell.

The hearing officer granted Powell's motion, but the district court reversed, reasoning the Colorado maintenance increase was not a "court-ordered" increase because the Colorado court merely adopted and approved a stipulation entered into between Powell and his ex-wife. Therefore, the district court concluded Powell could not use that Colorado order to obtain a reduction in his child support obligation. Noting Powell was aware of the motion to increase his child support obligation in Kansas prior to entering into the stipulation in Colorado, the district court reasoned it would be fundamentally

unfair to permit Powell to decrease his child support obligation based upon the stipulated order. Powell timely appeals.

This court reviews a trial court's determination of child support for abuse of discretion. *In re Marriage of McCollum*, 30 Kan. App. 2d 651, 652, 45 P.3d 398 (2002). "Judicial discretion is abused only when no reasonable person would hold the view adopted by the district court." 30 Kan. App. 651, Syl. ¶ 1. However, the interpretation of the Kansas Child Support Guidelines is a question of law over which this court exercises unlimited review. 30 Kan. App. 651, Syl. ¶ 2.

"The Kansas Child Support Guidelines are the basis for establishing and reviewing child support orders in the district courts in Kansas. Judges and hearing officers must follow the guidelines," and failure to do so is reversible error. *In re Marriage of Thurmond*, 265 Kan. 715, 716, 962 P.2d 1064 (1998). Further, "[c]ourts have continuing jurisdiction to modify child support orders to advance the welfare of the child when there is a material change in circumstance." Kansas Child Support Guidelines § V (2005 Kan. Ct. R. Annot. 121). ""What constitutes a material change [in circumstances] depends on the case. . . . Most courts agree that the change should be material, involuntary, and permanent in nature."" *In re Marriage of Johnson*, 24 Kan. App. 2d 631, 633, 950 P.2d 267, rev. denied 264 Kan. 821 (1998) (quoting *In re Marriage of Case*, 19 Kan. App. 2d 883, 889, 879 P.2d 632, rev. denied 255 Kan. 1002 [1994]).

Section I of the child support guidelines instructs trial courts to calculate child support by completing a child support worksheet. 2005 Kan. Ct. R. Annot. 103. On appeal, Powell argues the district court erred by not following section IV, C.3 of the guidelines, which provides:

"IV. SPECIFIC INSTRUCTIONS FOR THE WORKSHEET

....

C. Adjustments to Domestic Gross Income (Section C)

... The following adjustments to Domestic Gross Income *may be appropriate in individual circumstances*:

....

3. Court-Ordered Maintenance Paid (Line C.3)

The amount of court-ordered maintenance paid pursuant to a court order in this or a prior divorce case shall be deducted to the extent that the maintenance is actually paid." 2005 Kan. Ct. R. Annot. 111.

Powell argues his increased maintenance obligation in Colorado was "court-ordered" because the Colorado District Court adopted the stipulation as its own order. Powell thus concludes the Johnson County District Court was required to consider the effect of the increased maintenance obligation on his gross income.

We find Powell's argument unpersuasive for several reasons. First, the record on appeal does not even include the order of the Colorado court, much less indicate whether

Powell has actually paid any increased maintenance pursuant to the adopted stipulation. Second, because the stipulation was voluntarily entered into, it was within the district court's discretion to deny Powell's motion to modify due to a lack of a material change in circumstances. See *Johnson*, 24 Kan. App. 2d at 633 ("Most courts agree that the change should be . . . involuntary . . . in nature."). Finally, Section IV, C of the guidelines specifically recognizes an adjustment "may be appropriate in individual circumstances" for court-ordered maintenance paid pursuant to a court order in a prior divorce case. 2005 Kan. Ct. R. Annot. 111.

Here, the district court carefully specified the individual circumstances which made consideration of the Colorado maintenance increase inappropriate in this case. Therefore, we hold the district court did not abuse its discretion in denying Powell's motion to modify child support.

Affirmed.