NOT DESIONATED FOR PUBLICATION

No. 95,643

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF

KRJSTI KAY. LAURIDSEN.
Appellee,

and

KENT ARTHUR LAURIDSEN,
Appellant.

MEMORANDUM OPINION

Appeal from Montgomery District Court; ROGER L. GOSSARD, judge. Opinion filed September 22, 2006
Affirmed in part and reversed in part.

Kent A. Lauridsen, appellant pro Sc.
Sally D. Pokorny, of Independence. for appellee.

Before JOHNSON, PJ, ELLIOTT AND BUSER, JJ.

Per Curiam: Kent Arthur Lauridsen, proceeding pro se, appeals the district court's division of property, child support order, and custody and visitation order in the divorce action filed by Kristi Kay Lauridsen. We affirm in part and reverse in part.

Kristi filed the divorce petition on July 1, 2002, but the final hearing on the petition was net held until August 19, 2005. At least part of the 3-year delay in resolving the matter resulted from the parties' joint bankruptcy petition in March 2004.

The record does not contain any of the temporary orders for child support or maintenance. However, from the minute sheets we glean that the parties agreed to temporary child support of $1,124 per month and temporary maintenance of $1,372 per month. In October 2003, a temporary mediation agreement was filed, establishing joint legal custody of the two minor children with Kristi being the primary custodian. Kent had visitation every weekend, except for the fifth weekend The agreement provided for a return to mediation after 6 months, although that apparently did not happen.

In January 2005, the parties agreed to terminate spousal maintenance. In July 2005, Kristi filed a motion to modify temporary support, citing to the termination of maintenance. Apparently, Kent agreed to

increase temporary support to $1,508 per month for August and September 2005. Kristi contends the parties had not agreed on the effective date of the modification. Kent's attorney withdrew before an agreed order could be filed.

Kent appeared pro se at the August 19, 2005, divorce hearing. The district court ordered joint custody of the children with Kristi being the custodial parent. Kent was granted visitation every other weekend, alternate holidays, summer visitations, and one evening per week for 3 hours.

At the hearing, Kristi argued for a division of property which would include awarding her $15,853 as her share of the sale proceeds of certain restricted stock units (RSUs) and stock options (Options) which Kent had received as part of his employment. She also asked that the increased child support be retroactive to February 1, 2005, when her maintenance terminated. The court reserved ruling on a division of property and child support to permit Kent to submit further information.

Kent filed his pro se proposed division of u property and a memorandum on September 6. 2005. He challenged Kristi's assertion that the income from the sale of RSUs and Options should be divided because they were earned and attributable to his postpetition employment. Kent also pointed out that a good portion of the stock sale proceeds was invested in the marital home with the plan to later recoup the equity in the residence.

In its October 7, 2005, memorandum decision, the district court ordered child support in the amount of $1,468 per month effective February 1, 2005. The district court determined that Kent was in arrears in the amount of $448 per month for 8 months or $3,584 through September 2005. The district court also found that the Options and RSUs flowed from Kent's employment during the marriage and while the couple lived together. The district court ordered Kent to pay Kristi $6,500 as her equitable and fair share of the $65,879 in proceeds from sale of the stock paid to Kent during the marriage. The memorandum does not set forth a valuation date for any of the divided marital property.

Inexplicably, a journal entry dated October 13, 2005, was filed, purporting to modify the temporary support to $1,508 per month with the issue of the amount of final child support to be determined at the final hearing. As noted, at that point, the final hearing had been conducted, and the district court had already made its decision on the final child support.

Kent timely appealed. In his pro se brief, Kent co that (1) the district court erroneously included as

marital property the RSUs and Options which were not earned until after the divorce petition was filed; (2) the district court erred in applying improper valuation dates to the marital property; (3) the district court retroactively increased his temporary child support obligation; and (4) the district court should have continued the parties' temporary custody and visitation arrangement.

PROPERTY DIVISION

The district court has broad discretion in adjusting the property rights of parties involved in a divorce action, and its exercise of that discretion will not be disturbed by an appellate court absent a clear showing of abuse. *In re Marriage of Wherrel,* 274 Kan. 984, 986, 58 P.3d 734 (2002). "Judicial discretion is abused only when no reasonable person would take the view adopted by the trial court. [Citations omitted.]" *Varney Business Services, Inc. v. Pottroff*, 275 Kan. 20, 44, 59 P.3d 1003 (2002).

However, Kent's argument is that the RSUs and Options were not marital property and, therefore, were not subject to division, Me relics on K.S.A. 2005 Supp. 23-201(b), which provides in relevant part:

> "All property owned by married persons, including the present value of any vested or unvested military retirement pay.. . . shall become marital property at the time of commencement by one spouse against the other of an action in which a final decree is entered for divorce, separate maintenance, or annulment. Each spouse has a common ownership in marital property which vests at the time of commencement of such action, the extent of the vested interest to be determined and finalized by the court, pursuant to K.S.A. 60-1610 and amendments thereto."

Therefore. to the extent our decision turns on statutory interpretation, our review is unlimited. *In re Marriage of Day*, 31 Kan. App. 2d 746, 751, 74 P.3d 46 (2003).

Kent argues that the RSUs were not issued until after the divorce petition was filed and that the Options did not vest, and therefore had no value, until after the filing date. Therefore, pursuant to statute, those items were not marital property. Kristi counters with arguments that are, quite simply, unpersuasive.

Kent raises an intriguing question as to the extent unvested stock options constitute marital property subject to division, which would apparently be an issue of first impression in this State. One might also ponder whether one should be permitted to aver to a United States Bankruptcy Court that a marriage still exists in order to derive any marital advantage to be bad in a bankruptcy proceeding, while contending in a State court divorce proceeding that the marriage has ceased to exist for purposes of acquiring marital property. However, we need not consider either question, because the record does not support Kent's assertion that his Options had no value prior to the July 11, 2002. filing date of the divorce petition.

Kent and Kristi continued to file joint income tax returns during the pendency of the divorce, and their

2003 and 2004 returns were admitted into evidence at trial. Both returns include attachments entitled, "Statement of Taxable Income," from Kent's employer, which describe W-2 income from restricted/nonqualified transactions. Two of the four items on the 2003 W-2 recite a grant date of October 22, 2001, indicating that. Kent obtained the property before the divorce petition was filed Both items on the 2004 W-2 show the same grant date of October 22, 2001 *i.e.*, prepetition.

Interestingly, all four of the transactions involving the prepetition items reflect a price per share tax basis of $84,350. That per share price is multiplied by the number of. shares involved in the particular transaction, and the total is then subtracted from the value of the stock on the transaction date to yield the amount on which taxes must be paid, *i.e.*, the profit. In other words, the transactions were reported as if Kent's stock options had a value of $84350 per share when he acquired them on October 22, 2001. The four transactions involved a total of 3000 shares with a tax basis, or acquisition value, of $25,305.

Kent's employer reported to the Internal Revenue Service that stock options worth $25,305 were granted to Kent prior to the filing of the divorce petition. Therefore, even if we accept Kent's arguments on the application of K.S.A. 2005 Supp. 23-201(b), the marital estate included stock or stock options with a value of at least $25,305. Certainly, then, no reasonable person could find an abuse of discretion in awarding Kristi approximately one-fourth of the tax basis value of those stock options.

VALUATION DATE

Next, Kent argues that the district court chose a valuation date for the property to be divided which did not conform with the permissible dates set by statute. He contends that we should review the issue as the de novo review of the interpretation of statutes, citing *Pieren-Abbott v. Kansas Dept. of Revenue*, 279 Klan 83, 88, 106 P.3d 492 (2005).

K.S.A. 60-1610(b) provides that "request, the trial court shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing or trial as the facts and circumstances of the case may dictate." However, nothing in the record reflects that anyone requested the district court to set a valuation date, At trial, the valuation date was not discussed, and the court did not recite that it was setting a valuation date. Kent did not seek any posttrial relief under K.S.A. 60-260. In short, the issue is not properly before us. *See Board of Lincoln County Comm'rs v. Nielander*, 275 Kan. 257, 268, 62 P.3d 247 (2003) (issues not raised before district court cannot be raised on appeal).

Kent also complains that the district court miscalculated the total Options and RSUs receipts as $65,879, when the actual amount was $62,895. The difference is attributable to including a 2002 tax return as a stock option disbursement. Again, Kent did not complain at the district court level. Further, given the minimal amount awarded to Kristi, we perceive that the miscalculation, even if correct, would not have changed the outcome.

RETROACTIVE CHILD SUPPORT

Kent challenges the district court ruling that its October 7, 2005, final determination of child support would be effective retroactively to February 1, 2005. In some instances, the amount of child Support is subject to an abu5c of discretion standard. *In re Marriage of Karst*, 29 Kan. App. 2d 1000, 1001, 34 P.3d 1131 (2001), *rev.denied* 273 Kan. 1035 (2002). Here, however, the issue is resolved via statutory interpretation, subject to unlimited review. *See In re Marriage of Day*, 31 Kan. App. 2d at 751

K.S.A. 60-1610(a)(1) provides, in relevant part:

> "The court may modify or change any prior order, including any order issued in a title IV 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. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown. The court may make a medication of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court." (Emphasis added.)

Kristi filed her motion to modify the temporary support order on July 7, 2005. Clearly, the district court did not have the statutory authority to backdate the modification of the existing support order any earlier than August 7, 2005. Kristi's contention that the support orders are amenable to unlimited retroactive modification is simply contrary to the plain language of the statute. Moreover, her reliance on *Edwards v. Edwards*, 182 Kan. 737. Syl. ¶ 2, 324 P.2d 150 (1958). which predated the enactment of K.S.A. 60-1610(a)(1), is similarly unavailing.

Given Kristi's July 2005 modification motion, the district court could have made its $1,468 "monthly support order effective for the months of August and September 2005. However, Kent concedes that he agreed to pay $1,508 for those 2 months and did, in fact, pay that amount for August. Kristi's brief refers us to the October 13, 2005, journal entry purporting to modify the temporary child support to $1,508 per month, albeit at that point the court had already set the final support at $1,468, retroactive to February 1, 2005. We are unclear as to the purpose of this after-the-fact journal entry an are concerned that it. would be filed at all,

when a prepared journal entry was not signed by Kent's counsel at the time of the agreement.

Nevertheless, we will hold Kent to his concession that he owes $h508 for August and September 2005. Therefore, the district court's child support order of $1,468 per month is effective prospectively from and including October 2005. Support for the months of August and September 2005 is to be computed at the agreed amount of $1,508. The temporary support for July 2005 and preceding months shall be at lie amount originally ordered, i.e., $1,124 per month. We reverse the district court and remand with directions to effect child support orders in conformance with this opinion.

CHILD CUSTODY AND PARENTING TIME

Kent challenges the district court's denial of his shared custody request und the seizing of his visitation. An appellate court utilizes an abuse of discretion standard of review when reviewing a district court's child custody determination. *In re Marriage of Rayman*, 273 Kan. 996, 999, 47 P.3d 413 (2002). "Judicial discretion is abused only when no reasonable person would take the view adopted by the trial court. [Citations omitted.]" *Varney*, 275 Kan. at 44. The party asserting the district court abused its discretion bears the burden of showing such abuse of discretion. *Molina v. Christensen,* 30 Kan App. 2d 467, 470, 44 P.3d 1274(2001).

Kent requested shared custody, alternating each week with each parent. He contends the district court, in denying the request, improperly presumed that it was in the best interests of the children to be with their mother. The record does not support this argument. The district court opined that, unless the parties both agree and really want shared custody, such an arrangement does not work. The evidence of discord between the parties would support a finding that shared custody was not a viable alternative in this case.

Kent also complains about the absence of findings by the district court. Specifically, he contends that the district court obviously did not consider the statutory factors set forth in K.S.A. 60-1610(a)(3)(B), because it made no findings on those factors. However, Kent did not object to inadequate findings.

> "[A] litigant must object to inadequate findings of fact and conclusions of law in order to give the trial court an opportunity to correct them. In the absence of an objection, omissions in findings will not be considered on appeal. Where there has been no such objection, the trial court is presumed to have found all facts necessary to support the judgment.' *Hill v. Farm Bur. Must. Ins. Co.,* 263 Kan. 703, 706, 952 P.2d 1286 (1998)." *Gilkey v. State*, 31 Kan. App.2d 77, 77-78, 60 P.3d 351, *rev, denied* 275 Kan. 963 (2003).

Finally. Kent complains that the district court ignored the fact that the mediated visitation schedule had worked successfully for 2 years. However, we note that Kent did not argue for a continuation of the

existing plan, but rather sought to change to an alternating week shared custody plan. Further, one might question the success achieved by the prior arrangements. Nevertheless, the district court's parenting time order was reasonable and in no respects an abuse of discretion.

ATTORNEY FEES

As a final matter, we address the issue of Kristi's request for attorney fees. Her counsel followed the procedure to seek attorney fees under Supreme Court Rule 5.01 (2005 Kan. Ct. R. Annot. 32) and Supreme Court Rule 7 (2005 Kan. Ct. R. Annot. 56). The request contends that Kent's appeal is frivolous, that the district court's decision was based on substantial and competent evidence, and that the appellant's income is more than appellee's income.

We find that Kent's appeal raised credible arguments. Indeed, as evidenced by our reversal on the issue, the district court clearly erred in awarding retroactive child support Given that Kristi's counsel specifically requested the erroneous retroactive modification, we find that an award of attorney fees to Kristi would be particularly inappropriate on that point. Kristi's motion for attorney fees is denied.

Affirmed in part and reversed in part.