NOT DESIGNATED FOR PUBLICATION

No. 96,134

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of
DAVID G. WOOLSEY,
Appellee,

and

LEIGH M. WOOLSEY,
Appellant.

MEMORANDUM OPINION

Appeal from Miami District Court; AMY L. HARTH, judge. Opinion filed March 16, 2007. Affirmed.

Lee H. Tetwiler, of Law Office of Lee H. Tetwiler, of Paola, for appellant.

Sheila M. Schultz, of Winkler, Domoney & Schultz, of Paola, for appellee.

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

Per Curiam: Leigh M. Woolsey appeals the child support orders in this divorce case. She asserts the district court erred in calculating the income of her former husband, David G. Woolsey, under a union contract. We affirm.

The district court held a child support hearing on October 7, 2005. The record on appeal contains only the judge's ruling, and not the arguments of counsel. The district court also referred to "admitted exhibits" in a later journal entry regarding this hearing, but the identity of these exhibits is unclear from the record.

After the hearing, Leigh moved "for an Order allowing the parties to present additional factual evidence on . . . the correct amount of [David's] employment benefits to be used to calculate his gross income for child support purposes." Leigh alleged that "[n]either party presented sufficient factual information, including [David's] employment documents, to allow the Court to make an informed, knowledgeable decision with regard to the inclusion of [David's] employment benefits in his gross income for child support computation purposes."

David opposed the motion, arguing Leigh "wants to submit [David's] Union contract and documents explaining [David's] employment benefits and that could have been submitted at the prior hearing." In this regard, we note the union contract does not

appear in the record on appeal. The district court denied the motion, stating "[t]he parties were given ample opportunity to present evidence at the trial on October 7, 2005."

On appeal, Leigh does not contest the denial of her motion to present additional evidence. Instead, she seeks our review of the district court's decision with the previously mentioned limited record. "'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.' [Citations omitted.]" *State ex rel. Stovall v. Alivio*, 275 Kan. 169, 172, 61 P.3d 687 (2003). Even if we were to consider the issues Leigh raises we do not find error.

Specifically, Leigh contends the district court misconstrued the Kansas Child Support Guidelines. This is an issue of law subject to unlimited review. *In re Marriage of Paul*, 32 Kan. App. 2d 1023, 1024, 93 P.3d 734 (2004), *aff'd* 278 Kan. 808, 103 P.3d 976 (2005). When the guidelines do not address a specific factual situation, however, the appellate court reviews the district court's decision under an abuse of discretion standard. *In re Marriage of Benoit*, 26 Kan. App. 2d 659, 661, 992 P.2d 1259 (1999).

In its child support ruling, the district court held that most of David's union benefits were not income under the Guidelines because he could not access them. The district court found this was true of the pensions and funds for industry development,

education, and internal training. The one union benefit David could access, according to the district court, was his health insurance.

The district court held the health insurance was not income, however, because David was "providing that for the minor children" and "there's no deduction for medical." The district court also stated generally that the health insurance "has to be figured . . . either as a deduction or as a benefit." The district court finally found David was a seasonal employee because "historically over the past three years, he has not worked 2080 hours of straight time."

We first address Leigh's issue on appeal that David's union benefits are income for child support purposes. Leigh cites no case law directly on point, but simply claims the term "income" should be broadly interpreted to include union benefits.

Section II.D. and Appendix VI of the Kansas Child Support Guidelines (2006 Kan. Ct. R. Annot. 106, 154) provide that benefits must be regularly or periodically received or be part of a salary reduction arrangement in order to be considered as part of a parent's gross income. See *In re Marriage of Brand*, 273 Kan. 346, 359, 44 P.3d 321 (2002) (corporate income not considered for child support purposes unless it is regularly received). With regard to David's pension and funds for industry development, education,

and internal training benefits, Leigh fails to prove that the district court misapplied the guidelines.

First, Leigh did not establish that these benefits were regularly or periodically received by David. In his brief, for example, David argues he will only receive his pension benefits if he quits, passes away, or becomes 59 1/2 years old. Second, Leigh fails to present evidence to show that the pension benefits from the union contract are similar to a salary reduction arrangement in a cafeteria plan. Instead, the evidence shows that the union provided these fringe benefits at no cost to its members.

With regard to education benefits, our court held in *In re Marriage of Mellott*, 32 Kan. App. 2d 1031, 1033-34, 93 P.3d 1219 (2004), "[t]he expense of adult college education does not fall into the same category as expenses for housing, food, and transportation, which are included as imputed income if reimbursed." Accordingly, our court held that no abuse of discretion occurred when the district court declined to include the employer tuition reimbursement in the father's gross income.

In the present case, as in *Mellott*, David's educational benefits do not appear to reduce his personal living expenses. First, the benefits appear to cover specified work-related situations, such as industry development, education, and the international training

fund. Second, the district court determined that the father was unable to exercise these options immediately to increase his income. As a result, the district court did not abuse its discretion in not including the educational benefits when calculating David's gross income.

Turning to the health insurance component of David's union benefits, the Guidelines do not specifically provide that such benefits should be considered as income. See Guidelines § II.D. The Guidelines do explicitly address "health, dental, orthodontic or optometric insurance coverage" as a cost, however. Guidelines § IV.D.4 (2006 Kan. Ct. R. Annot. 115). While the district court provided only a general explanation for its ruling, on this record we do not find error.

The cost of health insurance coverage is aggregated with other costs and the "Gross Child Support Obligation" to determine the "Parents' Total Child Support Obligation." Guidelines §§ IV.D.4 and IV.D.6 (2006 Kan. Ct. R. Annot. 117). The level of the Gross Child Support Obligation is determined in part by income. See Guidelines § IV.D.3 (2006 Kan. Ct. R. Annot. 114). The Parents' Total Child Support Obligation is then apportioned between each parent to determine the "Parental Child Support Obligation." Guidelines § IV.D.7 (2006 Kan. Ct. R. Annot. 117). The Parental Child Support Obligation for the parent "actually making the payment" for insurance coverage

is credited by the amount of the payment. Guidelines § IV.D.8 (2006 Kan. Ct. R. Annot. 117). Where the coverage is provided without cost to the parent, as appears to be the case with David's union benefit, then the coverage is neither added to the Parents' Total Child Support Obligation nor credited to Parental Child Support Obligation. See Guidelines §§ IV.D.4(a) and IV.D.8.

In this case, the district court noted that David's union benefit provided coverage to Leigh and David's children, and that he had not received a credit (or deduction) for the benefit in the child support calculation. If the benefit were *also* counted as income, as Leigh argues, the Gross Child Support Obligation would then be increased. This would increase the Parental Total Child Support Obligation. But the Parental Total Child Support Obligation is increased by health insurance only if it is provided *at cost* to the parent, and then it is deducted for the parent making the payment to determine the Parental Child Support Obligation. In short, Leigh's suggestion would increase David's obligation without allowing the deduction. The Guidelines did not require this result.

Next, Leigh contends the trial court abused its discretion by calculating David's income as a seasonal employee and averaging his last 3 years of income as an apprentice pipefitter rather than as a journeyman pipefitter.

Leigh asserts that David was not a seasonal employee. She also claims the district court should not have used David's work history as an apprentice pipefitter, since he had recently been promoted to journeyman pipefitter. Finally, she contends the district court should have only used the last year figures in computing David's overtime pay, since he had a history of regular overtime. In summary, Leigh argues that the district court's basis for calculating the father's gross income was arbitrary.

In its ruling the district court stated, "[David] is a seasonal employee because historically over the past three years, he has not worked 2080 hours of straight time." The district court arrived at an average of 1926 straight-time hours by considering David's work history for 2002, 2003, and 2004.

In determining a parent's gross wages, "[i]t may be necessary for the court to consider historical information and the seasonal nature of employment. For example, if overtime is regularly earned by one of the parties, then a historical average of one year should be considered." Kansas Child Support Guidelines § II.D. (2006 Kan. Ct. R. Annot. 107). This provision does not prohibit consideration of more than one year, but merely points out that overtime may skew parental income if a shorter period of time is considered.

Moreover, in *State ex rel. Secretary of SRS v. Huffman*, 22 Kan. App. 2d 577, 584, 920 P.2d 965 (1996), our court reviewed the issue of whether a self-employed person's current wage, which was higher than the wage reflected in his past year's tax return, should constitute the party's domestic gross income. The court examined Guidelines § II. D. and held that since the trial court possessed the discretion to determine a party's self-employment gross income, its discretion also included the consideration of a party's historical income information when the income varied on a yearly basis. Consequently, the court held that there was no abuse of discretion in the district court's utilization of the party's past year's tax return amount as his gross income. 22 Kan. App. 2d 584.

The remainder of Leigh's arguments turn on facts, such as whether the district court properly considered David's current income as a journeyman pipefitter. As noted earlier, we are unable to review such contentions without the exhibits and arguments before the district court. Accordingly, the record does not show the district court misconstrued the Guidelines, and Leigh has not otherwise shown error.

Affirmed.