

NOT DESIGNATED FOR PUBLICATION

NO. 95,804

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

DONNA HUFFMAN, on Behalf of ELIZABETH HUFFMAN,  
a Minor Child,  
*Appellants,*

v.

CHRISTOPHER HUFFMAN,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Jefferson District Court. JACK L. LIVELY, judge. Opinion filed  
April 6, 2007. Affirmed.

*Donna L. Huffman*, appellant pro se.

*William F. Ebert*, of William F. Ebert, P.A., of Topeka, for appellee.

Before RULON, C.J., MALONE and HILL, JJ.

*Per Curiam:* Petitioner Donna Huffman appeals from the district court's denial of her motion for sanctions pursuant to K.S.A. 60-211. We affirm.

Petitioner and respondent Christopher Huffman are divorced parents of one minor child, E.H. While divorce proceedings were pending, petitioner filed two separate petitions for a protection from abuse (PFA) order against respondent on behalf of E.H. Both petitions were ultimately dismissed for lack of evidence.

After the divorce was final, petitioner filed another PFA, alleging physical abuse of the parties' minor child. The Kansas Department of Social and Rehabilitation Services (SRS) found the allegations to be unsubstantiated. Eventually, respondent filed a motion to dismiss the PFA, which was granted by a magistrate judge and affirmed by the district court on appeal.

While respondent's motion to dismiss was still before the district court, petitioner filed a motion for sanctions under K.S.A. 60-211, alleging respondent had misrepresented certain facts in his motion to dismiss. The district court denied the petitioner's motion for sanctions.

We review this issue to determine whether there was substantial competent

evidence to support the district court's decision. *Evenson Trucking Co. v. Aranda*, 280 Kan. 821, 835-36, 127 P.3d 292 (2006); *In re Marriage of Stockham*, 23 Kan. App. 2d 197, 201, 928 P.2d 104 (1996), *rev. denied* 261 Kan. 1085 (1997). After review of this record we firmly conclude the district court's findings are supported by substantial competent evidence.

Because we agree with the district court's findings there was no K.S.A. 60-211 violation, we need not reach the issue of what sanctions should have been imposed.

Both parties have filed motions for appellate attorney fees and costs. Petitioner argues because respondent and his attorney's unethical conduct forced her to take this appeal, petitioner should be compensated for her time and filing costs. Because petitioner's contentions are unsupported, we conclude no costs or fees should be awarded to petitioner.

Respondent argues he should receive attorney fees because petitioner's appeal was frivolous. Respondent's motion for fees was untimely and therefore cannot be granted. Supreme Court Rule 7.07(b) (2006 Kan. Ct. R. Annot. 57) provides that a motion for fees "shall be filed no later than fifteen (15) days after . . . the date of the letter assigning the case to a nonargument calendar . . ." The summary calendar letter in this case was

issued on September 9, 2006, but respondent's motion was not filed until October 20, 2006. Consequently, even under the most generous possible time calculation, respondent's motion is still out of time.

We affirm the district court's decision as to petitioner's K.S.A. 60-211 motion but deny appellate attorney fees and costs to either party.

Affirmed.