Before HILL, P.J., McANANY, J., and BRAZIL, S.J.

Per Curiam: This case presents the issue of whether a father can evade his obligation to support his daughter because the child's great-grandmother had been appointed her permanent guardian. Recent legislative enactments clearly require support payments to be made by a parent after such an appointment. Accordingly, we reverse.

Case Background and Prior Proceedings

The facts of this case are not disputed. Timothy R. Bohrer is the father of S.L.B; her mother is Tracy Saxton. A child in need of care (CINC) proceeding concerning all of Ms. Saxton's children, including S.L.B, was filed in August 1999. Ultimately, in 2001, both Bohrer and Ms. Saxton consented to the appointment of Ellen L. Holmes, maternal great-grandmother, to be permanent guardian for S.L.B. Without terminating either parent's rights to S.L.B., the court approved the permanent guardianship. The CINC case was then closed.

As guardian, Holmes received child care assistance for the care of S.L.B. from the State of Iowa during the years 2001 to 2005. Then, in 2005, by filing an action under the Uniform Interstate Family Support Act (UIFSA), Iowa sought reimbursement from

Bohrer for those expenditures as well as future child support and health insurance coverage for S.L.B. through the Secretary of Social and Rehabilitation Services in Kansas (the SRS). The district court ruled that the permanent guardianship appointment effectively terminated Bohrer's duty to provide child support.

In this appeal, the SRS, contends that the district court erred in finding that the permanent guardianship relieved Bohrer from his responsibility to support S.L.B. The SRS asserts that the district court misconstrued the permanent guardianship statutes to be equivalent to the termination of parental rights. Thus, in the view of the SRS, the court incorrectly held that a parent's obligation to pay child support ceased once a permanent guardian was appointed. The SRS argues that in the absence of express statutory language to support the district court's decision, this court should find Bohrer liable for the assistance provided to S.L.B.

Recent Enactments

While this appeal was pending, our legislature enacted Laws of Kansas 2006, Ch. 200, effective January 1, 2007. This enactment revised the Kansas Code for Care of Children (Code). The new enactment expressly states that the appointment of a permanent guardian, now called a permanent custodian, is not equivalent to a termination

of parental rights. See K.S.A. 2006 Supp. 38-2272(h), (i). When a permanent custodian is appointed after a judicial finding of parental unfitness without termination of parental rights, a parent must continue to pay child and medical support.

The pertinent new statutes follow:

> Definition. K.S.A. 2006 Supp. 38-2202(w) replaced the term "permanent guardian" with "permanent custodian," which is defined as "a judicially approved permanent guardian of a child pursuant to K.S.A. 2006 Supp. 38-2272, and amendments thereto."
>
> Appointment. K.S.A. 2006 Supp. 38-2272(a) authorizes a permanent custodian to be appointed:
>
> > "(1) *With the consent and agreement of the parents and approval by the court;*
> >
> > "(2) after a finding of unfitness pursuant to K.S.A. 2006 Supp. 38-2269, and amendments thereto; or
> >
> > "(3) after termination of parental rights pursuant to K.S.A. 2006 Supp. 38-2270, and amendments thereto." (Emphasis added.)
>
> Role of permanent custodian. K.S.A. 2006 Supp. 38-2272(c) describes the

role of the permanent custodian, stating that "a permanent custodian shall stand *in loco parentis* and shall exercise all of the rights and responsibilities of a parent except the permanent custodian shall not:

"(1) Consent to an adoption of the child; and

"(2) be subject to court ordered child support or medical support."

Parental rights and responsibilities/without the termination of parental rights. K.S.A. 2006 Supp. 38-2272(h) states: "If a permanent custodian is appointed after a judicial finding of parental unfitness without termination of parental rights, *the parent shall retain only the following rights and responsibilities*:

"(1) *The obligation to pay child support and medical support*; and

"(2) the right to inherit from the child.

"(3) The right to consent to adoption of the child. All other parental rights transfer to the permanent custodian." (Emphasis added.)

Parental rights and responsibilities/with the termination of parental rights. K.S.A. 2006 Supp. 38-2272(i) states: "If a permanent custodian is appointed after termination of parental rights, the parent retains no right or

responsibilities to the child."

Analysis

Our standard of review on this question is unlimited because the interpretation of a statute is a question of law, and this court's review over questions of law is unlimited. See *Foster v. Kansas Dept. of Revenue*, 281 Kan. 368, 374, 130 P.3d 560 (2006).

Furthermore, when an applicable statute is amended while an appeal is pending, and counsel for both sides have had an opportunity to brief and argue the amended statute, the appellate court will consider and construe the amended version of the statute. *State ex rel. Stephan v. Board of Lyon County Comm'rs*, 234 Kan. 732, Syl. ¶ 1, 676 P.2d 134 (1984). We have given such an opportunity to both sides in this case. Therefore, we apply the new statute.

As a general rule, a statute operates prospectively unless its language clearly indicates the legislature intended it to operate retrospectively. *Owen Lumber Co. v. Chartrand*, 276 Kan. 218, 220, 73 P.3d 753 (2003).

In this instance, such language exists. K.S.A. 2006 Supp. 38-2283(a) states:

"In addition to all actions concerning a child in need of care commenced on or after January 1, 2007, *this code also applies to proceedings commenced before January 1, 2007*, unless the court finds that application of a particular provision of the code would substantially interfere with the effective conduct of judicial proceedings or prejudice the rights of a party or an interested party, in which case the particular provision of this code does not apply and the previous code applies." (Emphasis added.)

Therefore, according to K.S.A. 2006 Supp. 38-2283(a), the legislature intended for K.S.A. 2006 Supp. 38-2272(h) to apply retroactively so long as its application does not prejudice the rights of Bohrer. See also *State v. Montgomery*, 34 Kan. App. 2d 511, 515, 120 P.3d 1151 (2005) (stating that even when the legislature clearly intends the statutory amendment to operate retroactively, courts must still question whether the application of a statute affect a defendant's vested or substantive rights to violate a defendant's due process).

We now examine the question of whether the retroactive application of the statute prejudices Bohrer. A factual review is useful here. In 1999, Kansas initiated care proceedings on behalf of S.L.B. Those proceedings ended in 2001 when the district court accepted Bohrer and Ms. Saxton's agreement to appoint Ellen Holmes, S.L.B.'s maternal great grandmother, as the permanent guardian of S.L.B. The order of permanent

guardianship did not terminate either parents' rights to S.L.B. or find the parents unfit. Subsequently, S.L.B. resided with Holmes in Iowa. During this time, the State of Iowa provided S.L.B with child care assistance in excess of $10,200.

In Kansas, our courts have long recognized a common-law duty on the part of parents to provide for their children. *State ex rel. Secretary of SRS v. Rice*, 34 Kan. App. 2d 535, 538, 121 P.3d 458 (2005).

> "'"The duty of parents to provide for the maintenance of their children, is a principle of natural law; an obligation . . . laid on them not only by nature herself, but by their own proper act, in bringing them into the world; for they would be in the highest manner injurious to their issue, if they only gave their children life that they might afterwards see them perish. By begetting them therefore, they have entered into a voluntary obligation, to endeavor, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children will have a perfect right of receiving maintenance from their parents.' [Citations omitted.]"' [*State ex rel. Secretary of SRS v.*] *Castro*, 235 Kan. [704,] 712, [684 P.2d 379 (1984)]." *Rice*, 34 Kan. App. 2d at 538-39.

In making its decision, the district court relied upon the statutory changes and the legislative history that occurred with the permanent guardianship statutes from 1998 to 2000. The statutes in place in 2005 were as follows.

> Definition. K.S.A. 2005 Supp. 38-1502(w) defined the term "permanent guardianship" to be "a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention by the secretary. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent. A permanent guardian may be appointed after termination of parental rights or without termination of parental rights, if the parent consents and agrees to the appointment of a permanent guardian. Upon appointment of a permanent guardian, the child shall be discharged from the custody of the secretary."

Using this language the district court reasoned:

> " If a natural parent's voluntary agreement to allow the awarding of a permanent guardianship to a third party in the absence of a formal termination of parental rights does not amount to the functional equivalent of a termination of parental rights for child support purposes, when such award gives the permanent guardian 'all rights and responsibilities of a parent', allows the permanent guardian to stand *in loco parentis*, and defines a permanent guardian as a 'parent', then one must ask what residual parental rights are left."

We note initially that the district court has left the needs of the child out of its reasoning. Child support is an obligation to a child. Unless parental rights are terminated the obligation continues until the child reaches the age of majority, or the child dies, or

the payor parent dies. See *In re Marriage of Schoby*, 269 Kan.114, 116, 4P.3d 604 (2000). Thus, a support obligation continues even though the minor marries, *Schoby* 269 Kan. at 116, when the minor has enlisted in the Navy, *Baker v. Baker* 217 Kan. 319, 321, 537 P.2d 171 (1975), and the obligation cannot be contracted away. See *Grimes v. Grimes* 179 Kan. 340, 343, 295 P.2d 646 (1956). S.L.B.'s need for support continued after her grandmother became her guardian.

Next, we point out that Bohrer's parental rights have not been terminated. Our Supreme Court clearly has confined termination to three statutory methods and the appointment of a voluntary permanent guardian is not one of them:

> "Three statutory methods for termination of parental rights are: (1) adoption, K.S.A. 59-2101 *et seq.*; (2) termination of parental rights, K.S.A. 38-1581 *et seq.*; and, (3) relinquishment of rights, K.S.A. 38-125 *et seq.*" *State ex rel. Secretary of SRS v. Clear,* 248 Kan.109, 116, 804 P.2d 961 (1991).

In fact, the court has stated that "the termination of parental rights is an extremely serious matter and may only be accomplished in a manner which assures maximum protection to all of the rights of the natural parents and of the child involved." *In re A.W.*, 241 Kan. 810, 814, 740 P.2d 82 (1987).

The district court asked the rhetorical question, "[w]hat residual rights are left?" The answer is, even without the recent enactments, with no termination of parental rights, a parent could inherit from the child, could consent to the adoption of the child, could visit the child, and could support the child. Termination of parental rights clearly erases all of these.

Since it is a fundamental duty of parents to provide child support to their children, Bohrer's rights will not be prejudiced with the retroactive application of K.S.A. 2006 Supp. 38-2272(h). Bohrer has had and continues to have an obligation to support his child. We reverse and remand with directions to enter judgment in favor of the State of Iowa and establish a current support order and an order to provide the minor with health insurance.

Reversed and remanded with directions.

McANANY, J., dissenting: I respectfully suggest that the 2006 enactment of K.S.A. 2006 Supp. 38-2272(c) resulted in a substantive change in the law with respect to the obligation of a parent to support a child for whom a permanent guardian has been appointed. This statutory change imposed a financial burden on Bohrer which he had not had since he consented to the permanent guardianship for his child in 2001. Accordingly, it is my view, contrary to the view of the majority, that the statutory change in 2006 should not retroactively apply to Bohrer.

At the time a permanent guardian was appointed for S.L.B. in 2001, K.S.A. 38-1502(w) included in the definition of "permanent guardianship" the following: "The permanent guardian stands in loco parentis and exercises all rights and responsibilities of a parent." Those responsibilities include providing for the support of S.L.B. The majority criticize the district court for leaving the needs of the child out of its reasoning. I respectfully suggest that it did not. Upon taking on her guardianship duties the permanent guardian assumed that duty of support. The district court appointed S.L.B.'s permanent guardian. No claim has been made that the district court appointed an unsuitable permanent guardian.

In 2006, our legislature enacted K.S.A. 2006 Supp. 38-2272(c) which created a substantive change in the role of the guardian. The permanent guardian, now

denominated the permanent custodian, is no longer saddled with all the responsibilities of a parent. The law was changed to relieve the permanent guardian from the payment of court-ordered child support and medical support. At the same time, K.S.A. 2006 Supp. 38-2272(h) specifically imposed upon the parents in the case of a permanent guardianship the obligation to pay child support and medical support, but only after a finding of parental unfitness. In fact, no such finding was ever made with respect to Bohrer.

We cannot ignore the plain and unequivocal language of the statutes in effect in 2001 and in 2006. It is our responsibility to give effect to that clearly expressed legislative intent. The legislature's revision of the statutory scheme in 2006 was not simply an exercise akin to rearranging the living room furniture. It was undertaken with the specific purpose of changing existing law when it redefined the obligations of the permanent guardian. See *Pieren-Abbott v. Kansas Dept. of Revenue*, 279 Kan. 83, 88-89, 106 P.3d 492 (2005). It acknowledged this fact when it tempered any retroactive application only to instances in which the rights of a party would not be prejudiced. See K.S.A. 2006 Supp. 38-2283(a).

When S.L.B.'s permanent guardianship was created, the appointed guardian undertook the obligation of support. She has now been relieved of that obligation by the 2006 statutory change. The majority would impose a double-dipping child support

obligation for the 2001-2006 period whereby both the guardian and the parents owe a duty of support. It is my view that between 2001 and 2006 the support obligation was on the permanent guardian, not Bohrer. The retroactive application of K.S.A. 2006 Supp. 38-2272(c) prejudiced his substantial rights. Accordingly, I would affirm the district court.