

NOT DESIGNATED FOR PUBLICATION

No. 96,993

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF  
DENIS DWIGHT KNIGHT,  
*Appellant,*

and

DAWN C. KNIGHT,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; TIMOTHY G. LAHEY, judge. Opinion  
filed August 24, 2007. Affirmed.

*T. Michael Wilson and Ashely Davis*, of Stinson, Lasswell & Wilson, L.C., of  
Wichita, for appellant.

*Dawn Colleen Knight*, appellee pro se.

Before CAPLINGER, P.J., ELLIOTT, J., and BUKATY, S.J.

*Per Curiam:* In this post-divorce proceeding, Denis Dwight Knight appeals the district court's order denying his motion to establish child support. We affirm.

Denis filed for divorce from Dawn Knight on July 23, 2004. In the journal entry of judgment and decree of divorce entered on August 24, 2005, Denis was given primary residential custody of the couple's three minor children and ordered to pay Dawn spousal maintenance of \$3,000 per month for 120 months.

The parenting plan adopted by the court awarded Dawn parenting time every other weekend, every Wednesday evening, and "any other reasonable times to be agreed by the parties." Pursuant to a child support worksheet, the district court determined Dawn owed child support to Denis in the amount of \$825 per month; however, after Denis voluntarily waived support, the district court ordered that no child support would be paid at that time.

On September 21, 2005, the district court entered an order changing custody and modifying parenting time after determining Dawn had failed to exercise her parenting time on several occasions and had refused to communicate with Denis. The court granted Denis sole custody of the children and allowed Dawn parenting time with the children only as determined by Denis.

On June 13, 2006, Denis filed a motion to establish child support, requesting Dawn be ordered to contribute to the support of the children in light of the court's previous order changing custody and modifying parenting time. Denis attached a proposed child support worksheet and a domestic relations affidavit to his motion, requesting \$500 per month from Dawn. Following a hearing, the district court denied the motion.

In this appeal, Denis contends the district court erred in denying his motion to establish child support because Dawn has a statutory and common-law duty to support the children. Further, Denis argues the district court abused its discretion in denying his motion because it ignored the child support guidelines.

A district court maintains continuing jurisdiction to modify an order made in a divorce action concerning child support when the facts and circumstances make modification proper. *In re Marriage of Schoby*, 269 Kan. 114, 121, 4 P.3d 604 (2000). The court may change a prior support order within 3 years of the date of the original order or modification order upon a showing of a material change in circumstances. K.S.A. 2006 Supp. 60-1610(a)(1). The phrase "a material change in circumstances" has no precise definition, but it requires consideration of a variety of factors and circumstances. *Johnson v. Stephenson*, 28 Kan. App. 2d 275, 280, 15 P.3d 359 (2000), *rev. denied* 271 Kan. 1036 (2001). A material change in circumstances must be of such a

substantial and continuing nature as to make the terms of the initial decree unreasonable.  
28 Kan. App. 2d at 280.

We review for abuse of discretion the district court's determination as to whether a material change in circumstances existed so as to warrant a modification of child support. *Schoby*, 269 Kan. at 120-21; see *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). Judicial discretion is abused only when no reasonable person would take the view adopted by the district court. *In re Marriage of Whipp*, 265 Kan. 500, 505, 962 P.2d 1058 (1998).

As Denis correctly points out, parents have a common-law duty to support their children. However, in suggesting the district court failed to recognize this duty, Denis ignores the fact that he waived support at the time of the entry of the original divorce decree. Denis cites no authority to support his suggestion that the duty to support requires a change in support where the custodial parent has expressly waived the right to child support from the noncustodial parent. And while Denis also correctly notes that child support is the right of the child, not the parent, this does not mean a parent may not waive the right to child support. Rather, it requires that child support be terminated by order of the court rather than by agreement of the parties. See *Schoby*, 269 Kan. at 117.

The issue on appeal, then, is whether Denis established a material change in circumstances sufficient to justify a change in the district court's initial order of non support. At the hearing on Denis' motion, Denis' counsel cited several reasons for the support request: (1) Denis had experienced "a bunch of attorney fees and expenses"; (2) Denis now had primary residential custody of the couples' two minor children (one child had reached the age of majority); and (3) Dawn had not requested parenting time as identified in the initial order.

In denying Denis' motion, the district court found Denis failed to provide "any reasonable explanation" for his request for support payments from Dawn. The court stated:

"[T]he appearances of the situation here when I asked your client who makes—whose income dwarfs the respondent's in this case agreed to waive child support and so what I wanted to know was what is the change in his financial circumstance that causes him to now come in and ask for money. You didn't provide me with any reasonable explanation of why that's necessary now.

"Simply given, the appearance of it is exactly what the respondent says. That this is a form of harassment to cause her financial hardship because of the appeal. So all I'm doing is recognizing the realities of it. I'm not going to grant your client's request for child support under those

circumstances because it's not—it doesn't appear to me to be just based on what I heard here today. I don't know the full history of it. It doesn't appear to be something that's going to benefit the children. That's what the entire purpose of the child support is. And so that's the point of my ruling."

Denis does not suggest that either party has experienced a change in financial circumstances, or allege any other specific example of a material change in circumstances as set forth in the child support guidelines. See Kansas Child Support Guidelines § V. (2006 Kan. Ct. R. Annot. 123). Rather, Denis argues he is entitled to child support from Dawn because she failed to exercise her parenting time under the original parenting plan. Denis also argues he has been forced to incur attorney fees and expenses resulting from Dawn's pursuit of an appeal and "constant filing of nearly unintelligible documents" with the district court, as well as Dawn's actions in suspending disbursement of the proceeds from the sale of certain marital real estate.

The guidelines define and explain child support as "[providing] for the needs of the child." Kansas Child Support Guidelines § IIA (2006 Kan. Ct. R. Annot. 105) However, the needs of the child are not limited to direct expenses for food, clothing, school, and entertainment. Rather, child support is also used to provide for housing, utilities, transportation, and other indirect expenses related to the day-to-day care and well-being of the child. Kansas Child Support Guidelines § IIA .

Denis' proposed child support worksheet, which requests \$500 per month in child support from Dawn, indicates he earns a gross monthly salary of \$19,061, while Dawn has no income other than the \$3,000 per month she receives in spousal support. Further, since the entry of the initial order of nonsupport, the number of minor children residing with Denis has decreased from three to two.

Under these circumstances, we hold the district court did not abuse its discretion in concluding Denis' request for child support to compensate for attorney fees and other litigation expenses was not based upon, or necessary for, the well-being of the minor children. Further, we note "[t]here is no authority within the guidelines to increase the noncustodial parent's child support obligation . . . based solely upon the noncustodial parent's failure to exercise visitation or spend quality time with a minor child." *Barnett v. Cusimano*, 30 Kan. App. 2d 680, 681, 46 P.3d 568 (2002).

Finally, Denis' complains the district court failed to make written findings explaining its deviation from the child support guidelines. In the divorce decree, the district court calculated the amount of child support due Denis to be \$825 per month pursuant to the child support worksheet, as required by the guidelines. The court then found that based on Denis' waiver of child support, no support would be required at that time. In denying Denis' subsequent motion to establish child support, the district court did not deviate from the original child support calculation or otherwise make any

decisions which departed from the guidelines. Accordingly, we find no error in this regard.

We conclude the district court did not abuse its discretion in denying Denis' motion to establish child support.

**Affirmed.**