

NOT DESIGNATED FOR PUBLICATION

No. 96,746

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF

KATRINA M. FAIR,
Appellee,

and

JAMES MATTHEW FAIR,
Appellant.

MEMORANDUM OPINION

Appeal from Riley District Court; DAVID L. STUTZMAN, judge. Opinion filed
September 14, 2007. Affirmed.

Autumn L. Fox, of The Law Office of Autumn L. Fox, of Abilene, for appellant.

Grant D. Bannister, of Knopp & Bannister, PA, of Manhattan, for appellee.

Before RULON, C.J., BUSER, J., and KNUDSON, S.J.

Per Curiam: James Matthew Fair appeals two district court orders arising out of his divorce from Katrina M. Fair. He challenges the court's refusal to authorize paternity tests and its determination of his domestic gross income for calculating child support. We affirm.

James and Katrina met in January 2002. They married on September 21, 2002. A daughter, Jacqueline Denise Fair, was born on October 15, 2002. In September 2003, James was deployed to Iraq on military duty. On November 12, 2003, he suffered severe injuries in combat, including the loss of both hands, the loss of his vision, a skull injury, and numerous broken bones. He recovered at Walter Reed Army Hospital in Washington, D.C. until he transferred to the Veteran's Administration Hospital in Minneapolis, Minnesota, in April 2004. Katrina stayed nearby both hospitals during her husband's recovery. On March 2, 2004, Katrina gave birth to a daughter, Zionna Renee Fair.

In June 2004, James returned to Kansas where he and Katrina bought a house in Odgen. However, in August, James moved in with his mother in Pittsburgh, Pennsylvania, because he did not believe Katrina adequately met his needs. Katrina filed for divorce on September 2, 2004. James responded with a motion to submit to paternity tests. In his motion, James alleged that while he was at Walter Reed, Katrina told him he

should "doubt" Jacqueline's paternity. He also expressed doubts about Zionna's paternity because of the limited sexual contact he had with Katrina prior to his deployment to Iraq. After the hearing, the district court denied James' motion for paternity tests.

Thereafter, the parties agreed to joint custody, giving Katrina primary parenting time. The district court then granted their divorce on February 10, 2006, and, *inter alia*, determined child support.

Denial of Motion for Paternity Tests

James argues that the district court erred in refusing his request for paternity tests. He asserts our standard of review is whether the district court abused its discretion in denying his motion, citing *In re D.B.S.*, 20 Kan. App. 2d 438, 455-56, 888 P.2d 875, *aff'd* 258 Kan. 396, 903 P2d 1345 (1995). However, we also note that the issue of paternity is to be considered only if the trial court concludes that such consideration is in the best interest of the child. *In re Marriage of Ross*, 245 Kan. 591, 783 P.2d 331 (1989).

In determining whether paternity tests are in the best interests of the children, the district court must consider the physical, mental, and emotional needs of the children. 245 Kan. 591 at 602.

The district court entered detailed findings of fact based on the evidence presented and concluded paternity testing would not be in the best interests of the minor children. We conclude the district court's findings are supported by substantial competent evidence and support the district court's decision.

In essence, James' argument is that the court did not give appropriate weight to his testimony and the information provided by the court-appointed guardian ad litem for the children. We readily acknowledge there was conflicting evidence before the district court. However, we cannot as an appellate court weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact. *State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 275 Kan. 763, 775, 69 P.3d 1087 (2003).

Domestic Gross Income Determination

James claims the district court should not have included all of his monthly VA benefits as domestic gross income under the Kansas Child Support Guidelines. (See Kansas Child Support Guidelines, § II.D, Administrative Order No. 180 (2006 Kan. Ct. R. Annot. 105, 106-07). He argues \$2,497 of his monthly benefits are designated for his care and rehabilitation and should not be considered domestic gross income.

The district court made two key determinations: (1) the Kansas Child Support Guidelines do not provide for an exclusion, and (2) James failed to present evidence sufficient to demonstrate what benefits are paid strictly for care and rehabilitation.

Interpretation of the child support guidelines is a question of law and affords this court unlimited review. Failure of proof, on the other hand, is a negative finding and will not be disturbed on appeal absent proof of an arbitrary disregard of undisputed evidence. See *Cf. In re Marriage of Kuzanek*, 279 Kan. 156, 160, 105 P.3d 1253 (2005).

In its order denying James' motion to reconsider, the district court observed:

"As the Court noted in the memorandum of decision, '[James] presents neither a statutory, regulatory, or child support guideline rationale for exclusion.' The letters from Veterans Affairs do not specify some amount attributed to necessary care provided by others. Even if they did, however, without a statutory or case law exclusion there is no basis for removing that portion of Respondent's income from the calculations."

We conclude that in reaching its finding of a failure of proof, the district court did not arbitrarily disregard undisputed evidence, nor has there been a showing of an extrinsic consideration such as bias, passion, or prejudice. Accordingly, the district court's

decision that James' failed to meet his burden of proof must be sustained and the order of child support affirmed as in the best interests of his minor children.

Our decision makes it unnecessary to determine whether benefits for care and rehabilitation, if shown by substantial competent evidence to exist, are excludable as domestic gross income or subject to a supplemental child support adjustment.

Affirmed.