

NOT DESIGNATED FOR PUBLICATION

No. 98,518

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS ex rel.,  
DIANA G. BAKER,  
*Appellee,*

v.

JACK LAWRENCE RICHARDSON,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JAMES R. FLEETWOOD, judge. Opinion filed August 8, 2008. Reversed and remanded with directions.

*Jerry D. Bogle*, of Young, Bogle, McCausland, Wells & Blanchard, P.A., of Wichita, for appellant.

*Randy M. Barker*, of Kansas Dept. of SRS, Child Support Enforcement, of Topeka, for appellee.

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

*Per Curiam:* This appeal raises the question of whether a court must order the return of money collected on a child support judgment after the court decided that judgment is void because it was not properly revived. Void judgments are a nullity. Parties cannot take legal action on that which does not exist. Therefore, we hold the court incorrectly denied the defendant's motion to reconsider. Money collected on a void judgment must be returned. We reverse and remand.

*The case history shows no action by the State for many years and then an incomplete attempt to revive the judgment.*

Jack Richardson appeals the district court's denial of his motion for repayment of money collected by three income withholding orders issued in this paternity action after the State obtained a default judgment. We paraphrase the fact stipulations of the parties.

At a hearing on January 28, 1981, the State successfully sought a default judgment for paternity and child support against Richardson for a child born June 23, 1980. The court ordered Richardson to pay \$160 per month as child support. The State took no steps to collect the judgment until January 8, 1998, when the State moved to revive its

judgment for past due child support. Then on January 28, 1998, the court simply ruled the "dormant judgment's, principal amount of \$24,930.00 due and owing from January 1981 to February 1994 shall be revived." The court entered this revivor order on February 20, 1998. But the State made no immediate attempt to execute on the judgment as required by the revivor statute, K.S.A. 60-2404. The child turned 18 on June 23, 1998.

With the passage of 5 more years, on August 14, 2003, the State moved to revive the past due child support judgment of \$24,930.00, plus statutory interest. The State requested payments of \$300 per month. On October 8, 2003, the court granted this motion. The December 22, 2004, journal entry memorializing these findings provided:

- "1. The Court finds and confirms that Respondent is in arrears in the making of payments as previously ordered in the sum of \$24,930.00 for the time period from January 28, 1981 to August 14, 2003. Said dormant judgments are hereby revived.
  
- "2. The Court finds that the child of this case is emancipated."

Following this ruling, the district court issued income withholding orders to Richardson's employer for \$300 per month on December 27, 2004; April 11, 2005; and March 11, 2005. From the record on appeal, we believe that these three orders are the only orders

that recovered any money. We cannot tell from the record, however, how much money was collected.

On January 9, 2006, Richardson filed a motion asking the district court to set aside both the original child support judgment and the following orders reviving that judgment. In an order filed August 28, 2006, the district court granted his motion, ruling the following:

- "A. Respondent's motion is not a collateral attack on the Court's orders.
- "B. The State of Kansas's failure to execute forthwith on the 1998 default order of revivor was a violation of the jurisdictional limitation set forth in K.S.A. 60-2404 and is not subject to waiver.
- "C. Respondent's motion to set aside the Court's order of February 2, 1981 as dormant and orders of revivor dated February 20, 1998 and October 8, 2003 as void is granted.
- "D. *Respondent may not, however, be reimbursed for the monies collected to date.*" (Emphasis added.)

Richardson moved to alter or amend the August 28, 2006, order asking for the return of his withheld wages, but the district court denied his motion in an order filed March 14, 2007. The March 14, 2007, order pointed out that Richardson requested reexamination of the August 28, 2006, order only on the issue of whether he could recover his withheld wages:

"[T]his matter comes on for hearing upon the respondent's motion to alter or amend the trial court's ruling *that respondent is not entitled to be reimbursed for the execution of monies post-dormancy.*" (Emphasis added.)

Richardson appealed the March 14, 2007, order. The State made no cross-appeal.

*We address the new law on child support judgments and the failure of the State to cross-appeal.*

We note the legislature has clarified this issue by enacting a statute that rules child support judgments do not become dormant. K.S.A. 2007 Supp. 60-2403(b) states:

"Except for those judgments which have become void as of July 1, 2007, no judgment for the support of a child shall be or become dormant for any purpose except as provided in this subsection." Obviously, the new law does not apply to this case.

The State in its brief argues the district court misapplied the dormancy and revivor statutes, K.S.A. 60-2403 and K.S.A. 60-2404, in finding that the child support judgments were void. These arguments concern the district court's rulings in its August 28, 2006, order. The State failed to appeal those rulings. Further, in Richardson's notice of appeal, he identified only the March 14, 2007, order as the judgment he was appealing.

Our statute, K.S.A. 60-2103(h) requires an appellee to file a notice of cross-appeal from adverse rulings in order to obtain appellate review of those issues. *Mid-Continent Specialists, Inc. v. Capital Homes*, 279 Kan. 178, 191-92, 106 P.3d 483 (2005). In addition, it is a fundamental proposition of Kansas appellate procedure that an appellate court only obtains jurisdiction over the rulings identified in the notice of appeal. *Hess v. St. Francis Regional Med Center*, 254 Kan. 715, Syl. ¶ 1, 869 P.2d 598 (1994). As a result, we will not consider the State's arguments which fall outside the framework of the March 14, 2007, order, especially the State's request for this court to remand the case to the district court to correctly apply the dormancy and revivor statutes.

*Fundamentally, we deal here with an order denying a motion to alter or amend.*

The district court refused to order the refund of the money withheld from Richardson's wages. In turn, he asked the court to alter or amend that portion of its judgment. The purpose of a motion to alter or to amend under K.S.A. 60-259(f) is to allow a trial court an opportunity to correct prior errors. *Antrim, Piper, Wenger, Inc. v. Lowe*, 37 Kan. App. 2d 932, 939, 159 P.3d 215 (2007). We review such denials of motions using an abuse of discretion standard. *Exploration Place, Inc. v. Midwest Drywall Co.*, 277 Kan. 898, 900, 89 P.3d 536 (2004); *Wenrich v. Employers Mut. Ins. Co.*, 35 Kan. App. 2d 582, 585, 132 P.3d 970 (2006). Abuse of discretion is found when

the trial court's decision goes outside the framework of or fails to properly consider statutory limitations or legal standards. *State v. Edgar*, 281 Kan. 30, 38, 127 P.3d 986 (2006).

*A party cannot take action on a void judgment.*

Obviously, the issue in this case centers on void judgments. We point out first, "[a] void judgment may be attacked at any time. [Citation omitted.] A judgment is void if the court that rendered it lacked subject matter jurisdiction, personal jurisdiction, or *acted in a manner inconsistent with due process*. [Citation omitted.]" (Emphasis added.) *Waterview Resolution Corp. v. Allen* 274 Kan. 1016, 1024, 58 P.3d 1284 (2002). Therefore, the district court could entertain Richardson's attack on this old order.

Three Kansas cases, cited by the district court, are instructive on void judgments. They are *Clark v. Glazer*, 4 Kan. App. 2d 658, 609 P.2d 1177 (1980); *Long v. Brooks*, 6 Kan. App. 2d 963, 636 P.2d 242 (1981); and *Cyr v. Cyr*, 249 Kan. 94, 815 P.2d 97 (1991).

***Clark***

In *Clark*, the judgment involved alimony ordering the husband to pay \$450 per month to the wife until her death or remarriage. So long as the husband's income was \$700 per month or less, there would be no execution levied on that order. Until he earned over \$700 per month, the judgment directed the husband to pay \$100 per month, with the unpaid balance accumulating. The husband continued to pay \$100 per month, despite earning over \$700 per month, until his former wife remarried in August 1969. By then, the unpaid amount was \$4,550. The wife made no attempt to enforce the judgment until March 1978, when she filed an action for declaratory judgment. The trial court found the judgment to be enforceable because the husband failed to inform his former wife about his income level.

A panel of this court reversed. 4 Kan. App. 2d at 661. In reversing the trial court's ruling, *Clark* noted that revivor statutes demand strict compliance, distinguishing these statutes from ordinary statutes of limitations. 4 Kan. App. 2d at 660. Furthermore, *Clark* made plain that a declaratory judgment cannot be used to revive a dormant judgment. Therefore, *Clark* held that the wife's alimony judgment was extinguished after 7 years of inaction and, thus, "there was nothing left to which equitable principles could be applied." 4 Kan. App. 2d at 661.



### *Long*

*Long* was a 1973 divorce case where the court ordered Bonnie Brooks to hold Richard Long harmless from payment of two debts. When she failed to do so, he sought enforcement of the order through a contempt citation. In 1980, the trial court found Brooks in contempt but gave her the opportunity to purge herself of contempt by paying Long \$100 per month for the debts he had paid on her behalf. Instead, Brooks claimed the debt obligation was a dormant judgment which had not been revived.

This court, following the holding in *Clark*, determined that Long had inadequately revived the debt portion of the judgment. Because it would be unlawful to punish Brooks for failing to pay an extinguished judgment, *Long* reversed the trial court's order. 6 Kan. App. 2d at 966-67.

### *Cyr*

Goldie and Darrell Cyr were divorced in 1964. Darrell was ordered to pay alimony in the amount of \$25 per month until July 1972 and child support in the amount of \$35 per week. The last execution to collect past due child support occurred on July 22, 1974. In March 1979 and January 1980, Goldie filed accusations and affidavits of contempt

against Darrell for failure to pay the alimony and child support judgments. Because Darrell was in arrears on both judgments in the amount of \$17,203.74, the district court ordered Darrell to make \$25 weekly payments. Darrell did not appeal this order, which occurred on September 22, 1980.

On May 2, 1981, the Cyrs' youngest child reached majority. Goldie filed a third motion for contempt against Darrell for failing to pay support on July 1, 1981. Notably, Goldie withdrew her contempt motion upon Darrell's agreement to pay \$100 per month on the arrearage. On November 3, 1982, the parties announced a settlement to the court in which Darrell acknowledged an arrearage of \$16,375.74, together with \$6,667.59 in accrued interest. Subsequently, the district court decided those sums constituted a judgment against Darrell. Darrell did not appeal this finding; however, on rehearing, the district court vacated the November 3, 1982, order and reaffirmed the September 22, 1980, judgment.

Two years later in March 1983, Goldie filed an accusation in contempt against Darrell for failure to pay the \$100 per month on the arrearage. On April 13, 1987, Darrell was found in contempt. In order to purge himself of contempt, Darrell was to pay the arrearage of \$13,015.46 plus interest. Darrell did not appeal this order.

When Darrell failed to make his payments, Goldie filed a motion to incarcerate him. The hearing officer found the April 13, 1987, order constituted a new judgment. Upon appeal of the hearing officer's report, the district court determined there could be no new judgment after May 2, 1981, for past due child support and no new judgment for past due alimony after July 1972. But, the district court held that Goldie's accusations in contempt were proceedings in aid of execution under K.S.A. 60-2403, thereby keeping alive the judgments for past due support.

On review, the Supreme Court affirmed the lower courts' conclusions that the past due support judgments were alive. 249 Kan. at 101. But *Cyr* reaffirmed that contempt proceedings to enforce support are not one of the proceedings enumerated in K.S.A. 60-2403 to keep a judgment alive. 249 Kan. at 99-100. Nevertheless, because no appeal was taken on the April 13, 1987, judgment, *Cyr* held that this judgment was valid and could not be collaterally attacked. Upon this conclusion, *Cyr* determined that Darrell's statute of limitations argument lacked merit, entitling Goldie to the issuance of the execution to enforce the judgment of April 13, 1987. 249 Kan. at 101.

The district court simply brushed these cases aside because the determination that the judgments were void came before any attempts to collect on them. We believe the court should have looked deeper. While these cases do not control under the facts of this

case, they illuminate the subject. In *Clark and Long*, the debtors never made payments to their judgments before they were held to be extinguished. Once the judgments were extinguished, the parties could take no actions to bring them back to life. Then in *Cyr*, the judgment was not extinguished but found valid due to court action entering a *new* judgment.

*We analyze this case.*

Here, the district court ruled that Richardson's child support judgments were void. *In re Marriage of Jones*, 22 Kan. App. 2d 753, 755, 921 P.2d 839, rev. denied 260 Kan. 993 (1996), noted:

"Prior to July 1, 1988, a judgment was considered dormant 5 years from the date of the judgment, and after remaining dormant for 2 years, the clerk of the court could release the judgment. See K.S.A. 1987 Supp. 60-2403; K.S.A. 1985 Supp. 60-2403; K.S.A. 1984 Supp. 60-2403. Thus, prior to 1988, all judgments that were more than 7 years old would have been void."

In 1988, however, the legislature amended K.S.A. 60-2403 and removed child support judgments from the general rule. Since 1988, child support judgments do not become extinguished unless they have "remained dormant for the period prior to the

child's emancipation plus two years.' L. 1988, ch. 218, § 2; *In re Marriage of Williams*, 21 Kan. App. 2d 453, 454, 900 P.2d 860 (1995)." *Gardner v. Gardner*, 22 Kan. App. 2d 314, 316, 916 P.2d 43, *rev. denied* 260 Kan. 992 (1996). Accordingly, only child support judgments older than 7 years as of July 1, 1988, should be considered void. See *Gardner*, 22 Kan. App. 2d at 316.

Here, the original child support judgment was entered on January 28, 1981, and filed on February 2, 1981. The motion to revive this judgment did not occur until January 8, 1998. Consequently, on July 1, 1988, Richardson's child support judgment was more than 7 years old; thus, under the previous versions of the dormancy statute, the district court was correct in ruling that the original child support judgment is void.

This type of void judgment has been determined to be "absolutely extinguished and unenforceable." See *Cyr*, 249 Kan. at 97; *Gardner*, 22 Kan. App. 2d at 316. In addition, "all proceedings founded on the void judgment are themselves regarded as invalid." 46 Am. Jur. 2d, Judgments § 29 (2006).

The issue of whether an obligor can be reimbursed for a child support judgment found later to be void appears to be a matter of first impression in Kansas. We believe Richardson should be reimbursed for his child support payments because the original

child support judgment was wrongfully revived. Richardson's obligation to pay that money died when the judgment expired. This is sound since the judgment was determined void and that finding was not subsequently challenged by the State. It is unjust for the State to keep the money it collected on the expired order. We hold the trial court abused its discretion here by not observing the legal standards of void judgments. We reverse.

The record on appeal is silent about the amounts collected from Richardson's wages by the income withholding orders. We remand for the court to determine that amount and enter judgment accordingly for Richardson.

Reversed and remanded with directions.