NOT DESIGNATED FOR PUBLICATION

No. 99,707

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF
TALENA M. DAVIS, K/N/A TALENA ERREBO-FUCHS,
Appellee,

and

RICHARD DAVIS III,
Appellant.

MEMORANDUM OPINION

Appeal from Barton District Court; RON L. SVATY, judge. Opinion filed December 19, 2008. Affirmed in part, reversed in part, and remanded with directions.

Douglas W. McNett, of Larned, for appellant.

No appearance by appellee.

Before GREENE, P.J., MALONE, J., and KNUDSON, S.J.

Per Curiam: Richard Davis III appeals the district court's orders in connection with a review of child support for his 10-year-old son, including the court's refusal to

order reimbursement of certain medical expenses due to the untimeliness of his request and the court's imposition of a training condition on the son's possession or discharge of a firearm. We affirm the firearm training condition, but we reverse the order on reimbursement of medical expenses and remand for further proceedings.

Factual and Procedural Background

The district court granted a decree of divorce to Davis in June 1999 and entered orders regarding custody and support of his son, Jaxen Davis. The court awarded the parties joint custody, designating Talena M. Davis, now Talena Errebo-Fuchs, the primary residential parent subject to reasonable visitation by Davis. The court divided the parties' financial responsibility, ordering Davis to pay child support in the amount of $368 per month and to provide health insurance and 57% of any medical expenses not covered by health insurance. Child support was later adjusted to $282.50 per month.

In September 2006, Davis filed a motion to change custody. In his motion, Davis' main reason for changing custody involved Jaxen's behavioral problems, which Davis contended were based more on the environment in Errebos-Fuchs' home than on Jaxen's ADHD diagnosis.

On January 10, 2007, the district court heard testimony on Davis' motion to change custody. During this hearing, an issue was raised regarding access to firearms in Davis' residence by Jaxen, then nearly 9 years of age. Davis' counsel presented the following in support of educating children Jaxen's age on the use of firearms: (1) Internet sources are available to support teaching firearm safety to children as young as 2 years of age and (2) Jim Daily, the current police chief of Newton, advised Davis that he believes children as young as Jaxen should be taught gun safety when firearms are in the home. The court was also informed that Davis purchased Jaxen a .410 shotgun for Christmas, but Davis testified that Jaxen's access to the firearm was limited to those occasions when they went shooting together at the shooting range. Furthermore, Davis testified that he stored all the firearms and ammunition in his home in a locked firearm safe and that he himself is an expert in firearms, having learned to shoot as a child from his father, a Marine Corps marksmanship instructor, and having worked as a law enforcement officer. Nevertheless, the court reprimanded Davis for his "cavalier attitude" toward its concerns about Jaxen's access to firearms; the court also found no basis for a change in custody and denied Davis' motion for change of custody.

In June 2007, Davis filed a pro se motion to review child support, which included a request for allocation of past medical expenses (dating back to January 20, 2004) and future medical expenses. The district court held a hearing on Davis' motion and (1)

modified Davis' child support obligation to $220 per month; (2) ordered Davis to continue to pay for Jaxen's health insurance; (3) split the financial responsibility for all of Jaxen's uninsured medical expenses arising after January 1, 2007 (Davis - 42.6%, Errebo-Fuchs - 57.4%); (4) denied Davis' request for reimbursement of medical expenses incurred prior to January 1, 2007, because Davis had failed to promptly seek such reimbursement at the time the expenses were incurred; and (5) forbid Jaxen from possessing or discharging a firearm until he passes the Kansas Hunter Education Program, which a child cannot complete until age 11.

After filing several other motions, including an objection to Errebo-Fuchs' proposed journal entry and a motion to change medical insurance, Davis timely filed this appeal.

Did the District Court Err in Denying Davis' Belated Request for Partial Reimbursement of Jaxen's Medical Expenses?

The district court denied Davis' request for 43% reimbursement of medical expenses incurred for counseling, medication, and other medical services since January 2004, all of which expenses totaled $2,992.82. The court concluded that such reimbursement should be limited to those expenses incurred on or after January 1, 2007,

"for the reason Respondent failed to promptly seek a medical judgment at the time said expenses were incurred."

The original decree of divorce specifically provided that "*any* non-covered medical, dental and optometric expenses not covered by said insurance be paid 43% by [Davis]." (Emphasis added.) There is apparently no dispute regarding general eligibility of these expenses for reimbursement pursuant to the original order, but rather a dispute because of Davis' delay in presenting the medical bills for reimbursement.

Davis argues on appeal that the original decree of divorce granted him a judgment for medical expense reimbursement that should be enforced and collected as any other judgment, including application of the dormancy and revivor statutes, K.S.A. 60-2403 and K.S.A. 60-2404. We agree.

In Kansas, child support installment payments become final judgments once they are due, and they may be enforced and collected as any other judgment. *Summitt v. Summitt*, 31 Kan. App. 2d 812, 817, 74 P.3d 854, *rev. denied* 277 Kan. 928 (2003). Moreover, another panel of this court has reasoned that payment of uninsured medical expenses is akin to child support and may not be retroactively awarded to either parent. *In re Marriage of Ames*, No. 93,696, unpublished opinion filed January 13, 2006. This holding was based in part on the broad definition of child support included in the Child

Support Guidelines, II. A (2008 Kan. Ct. R. Annot. 111) which provide:

> "The purpose of child support is to provide] for the needs of the child. The needs of the child are not limited to direct expenses for food, clothing, school, and entertainment. Child support is also to be used to provide for housing, utilities, transportation, and other indirect expenses related to the day-to-day care and well-being of the child."

Consistent with both *Summit* and *Ames*, we hold that an order of medical expense reimbursement contained in a decree of divorce is a child support judgment that may be enforced when reimbursement is due and payable by its terms.

As noted by Davis, the order for medical reimbursement was not dormant under K.S.A. 60-2403 inasmuch as Davis sought enforcement within 5 years from the date the first such expense was incurred. Davis filed his request for reimbursement in June 2007, less than 5 years after the date of the first expense, January 20, 2004. Because medical reimbursement was not "due" until the expense had been incurred, the judgment was not dormant and was subject to enforcement.

Davis also argues that his enforcement rights were not subject to the bar of laches. We are unable to discern from the record on appeal whether this was a basis for the district court's order, but it is clear the doctrine has no application here.

> "'The doctrine of laches is an equitable principle designed to bar stale claims. When a party neglects to assert a right or claim for an unreasonable and unexplained length of time and the lapse of time and other circumstances cause prejudice to the adverse party, relief is denied on the grounds of laches. The mere passage of time is not enough to invoke the doctrine. For laches to apply, the court must consider the circumstances surrounding the delay and any disadvantage to the other party caused by that delay.' *Steele v. Guardianship & Conservatorship of Crist*, 251 Kan. 712, Syl. ¶ 9, 840 P.2d 1107 (1992)." *In re Marriage of Jones*, 22 Kan. App. 2d 753, 755-56, 921 P.2d 839, *rev. denied* 260 Kan. 993 (1996).

In *Jones*, this court examined several child support cases barred under the theory of laches, noting that it had not been used to bar a single child support claim involving a minor child. But in the *Jones* case involving a 12-year delay in filing, this court refused to apply the doctrine of laches to a child support claim involving a minor child. 22 Kan. App. 2d at 758-61.

We conclude the district court erred in refusing to enforce Davis' rights under the divorce decree to medical expense reimbursement. Accordingly, we reverse and remand for further proceedings on this issue.

Did the District Court Err in Imposing a Training Condition on the Child's Possessing or Discharging a Firearm?

Davis next argues that the district court's imposition of a training condition on his son's possession or discharge of a firearm infringes on his parental rights to properly educate his child as he sees fit. Although we have unlimited review of any purported violation of the Constitution, we employ an abuse of discretion standard in reviewing the court's conditions on visitation. See *In re Creach*, 37 Kan. App. 2d 613, 618, 155 P.3d 719 (2007) (de novo review of purported due process violations); *In re Marriage of Kimbrell*, 34 Kan. App. 2d 413, 419, 119 P.3d 684 (2005) (visitation terms and conditions will not be disturbed absent an affirmative showing of abuse of discretion).

Although parents have a fundamental right under the Fourteenth Amendment to the United States Constitution to make decisions concerning the care, custody, and control of their children, the State has an interest in protecting children; thus, parental rights concerning such matters are not absolute. *In re J.D.C.*, 284 Kan. 155, 166, 159 P.3d 974 (2007). Although the United Sfates Supreme Court has recognized the right of parents to choose schools where their children will receive appropriate mental and religious training, the Court has also recognized the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; and to require that all children of proper age attend school. See, *e.g.*, *Pierce v. Society of Sisters*, 268 U.S. 510, 69 L. Ed. 1070, 45 S. Ct. 571 (1925). We reject Davis' suggestion that he has an absolute right "to properly educate his child as he sees fit." See, *e.g.*, *In re Sawyer*, 234 Kan. 436, 442, 672 P.2d 1093 (1983).

Regarding Davis' constitutional claim, we simply do not perceive the district court's training condition as any infringement on whatever limited right Davis has to control and direct gun education for his child. At the outset, we recognize and respect Davis' strong desire to be involved in this aspect of his child's maturation process; undoubtedly, Davis' own experience in gun handling would be invaluable to this process. But we do not perceive the district court's training condition to infringe upon parental education. The court expressly excluded air rifles from the condition, so it is difficult for the court to understand how the condition does not allow Davis to generally educate his son in how to safely handle a gun. In fact, Davis may begin such parental education at any time, either before or after the required education course; the only restriction is that Jaxen may not possess or discharge the firearm until he has successfully completed the training required by the district court. There has been no unreasonable restriction on parental education by reason of the training condition, and no constitutional implications by reason of the training condition.

Most importantly, however, is that we must employ a limited standard of review under these circumstances. The district court's imposition of this condition on Davis' visitation may not be disturbed on appeal absent a clear abuse of discretion. Judicial discretion is abused when judicial action is arbitrary, fanciful, or unreasonable. If reasonable persons could differ as to the propriety of the action taken by the district court,

then it cannot be said that the district court abused its discretion. *In re Marriage of Bradley*, 282 Kan. 1, 7, 137 P.3d 1030 (2006). In weighing mother's concerns against father's desires under all the relevant circumstances, we believe reasonable persons could differ as to the propriety of the action taken. We conclude there was no abuse of the court's discretion in imposing the training condition. For these reasons we must affirm the district court on this issue.

We conclude there is no constitutional implication regarding the court's imposition of this training condition, and we also conclude there was no abuse of discretion in its imposition. Although we understand and appreciate Davis' zeal to be involved in his son's firearm training, we do not believe the district court restriction was arbitrary, nor was it beyond what a reasonable person might find appropriate under all of the circumstances present here.

Affirmed in part, reversed in part, and remanded with directions for further proceedings regarding the medical reimbursement issue.