

NOT DESIGNATED FOR PUBLICATION

No. 100,169

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

RHONDA L. JANZEN,
Appellee,

and

KELLY D. JANZEN,
Appellant.

MEMORANDUM Opinion

Appeal from Sedgwick District Court; ROBB RUMSEY, judge. Opinion filed March 13, 2009. Reversed in part, dismissed in part, and remanded with directions.

Kelly D. Janzen, appellant pro se.

Rhonda L. Janzen Lamberi, appellee pro se.

Before BUSER, P.J, ELLIOTT and GREEN, JJ.

Per Curiam: Rhonda L. Janzen and Kelly D. Janzen were divorced in February 2008; Kelly appeal's the award of child. support and several other matters. We reverse in part, dismiss in part, and remand with directions.

Rhonda and Kelly had two children during their marriage; one of which was under 18 at the time the petition was filed and over 18 at the time the divorce was granted. Both parties were pro se litigants.

The parties were awarded joint custody of the children, and Rhonda was designated the primary residential custodial parent. Kelly was ordered to pay \$250 per month in child support, although this amount bears no obvious relationship to the child support worksheets filed in the case. Further, we can find nothing in the record to explain how this amount of child support was derived. Spousal maintenance was not awarded.

The decree also divided various property and debts of the parties; the only item relevant to this appeal was \$800 in "past due state tax," which Rhonda was ordered to pay.

Kelly appeals the journal entry of judgment and the issues as presented by Kelly in his brief are that the trial court erred in ordering plaintiff to pay child support, and in failing to notify the Kansas Department of Revenue (KDR) of defendant's court ordered debt. In the arguments in his brief, Kelly raises numerous other issues.

As a preliminary matter, both parties throughout their briefs make factual assertions not supported by the record on appeal. Material not contained in the record on appeal will not be considered by the appellate court. See *City of Mission Hills v. Sexton*, 284 Kan. 414, 435, 160 P.3d 812 (2007). Further, an appellate brief is not a substitute for the record on appeal. See Supreme Court Rule 6.02 (2008 Kan. Ct. R. Annot. 38); *State v. Edwards*, 39 Kan. App. 2d 300, 309, 179 P.3d 472 (2008). Accordingly, the assertions made in the briefs but not supported by the record cannot be considered.

Kelly claims the trial court erred in awarding child support. We will reverse a child support award only where the trial court abused its discretion. A child support award entered without complying with the child support guidelines is an abuse of discretion. And any award deviating from the guidelines must be supported by written findings and must be included in the journal entry. *Shaddox v. Schoenberger*, 19 Kan. App. 2d 361, 363, 869 P.2d 249 (1994).

Here, the child support award does not comply with the guidelines. The amount awarded does not seem to correspond with either the amount appropriate when the worksheet was prepared, or the amount that would be appropriate if support is only paid for one child.

In his brief, Kelly states N.J. was living with him when the decree was filed, and K.J. was living with Rhonda. He argues that although N.J. was over 18, he was still in high school and, therefore, support should still be paid for N.J. Rhonda, on the other hand, argues N.J. is working part time.

But the decree does not reflect any of these alleged "facts." Frankly, nothing in the record shows where N.J. was living or whether he was in high school.

As discussed above, we cannot consider these alleged facts. But simply put, there is no way for us to tell whether the trial court considered these "facts"—or not. The child support award was made without any written findings. This was an abuse of discretion.

As in *Shaddox*, the record here is sparse, and guided by *Shaddox*, we reverse and remand for calculation of child support in accordance with the guidelines. See *Shaddox*. 19 Kan. App. 2d at 363.

Kelly also claims the KDR intercepted his tax refund to pay a past due state tax debt that Rhonda had been ordered to pay. Kelly argues the trial court should have notified the KDR that Rhonda was to pay the debt. Rhonda, on the other hand, claims she has paid back part of the money and intends to pay back the rest.

Kelly offers no support for his claim the trial court must notify the KDR about the matter, and we are not aware of any rule or statute requiring it (as opposed to, for example, child support where K.S.A. 60-1613 provides for income withholding orders).

We simply lack jurisdiction over this claim. Whether Rhonda has paid the debt is not an act or judgment and is certainly not a final decision. See K.S.A. 60-2102(a)(4).

This does not mean Kelly is without a remedy. Should Rhonda actually pay him back as she apparently intends to do, the issue is moot. If Rhonda does not pay the debt, Kelly can seek appropriate relief in district court.

This analysis also applies to Rhonda's apparent claim that Kelly has not paid some amount he is obligated to pay.

The parties also make several new factual assertions in their briefs which might be considered claims of changed circumstances. For example, Kelly claims K.J. has been removed from Rhonda's custody because Rhonda was arrested, and that both children are now living with him. Rhonda disputes this claim and independently claims various changes in the parties' financial circumstances and mentions K.J. is being home schooled, a fact not appearing in the record on appeal.

As discussed previously, we cannot consider these facts and have no jurisdiction over the claims. These are new matters, not final decisions that may be appealed. Kelly or Rhonda may ask the trial court

to modify prior child custody or child support orders if they can show facts resulting in a material change of circumstances. But we lack jurisdiction to make those factual findings.

Reversed and remanded for calculation of child support under the guidelines. Other issues raised by the parties are dismissed for lack of appellate jurisdiction.

Reversed in part, dismissed in part, and remanded.