NOT DESIGNATED FOR PUBLICATION

No, 100,524

IN THE COURT OF APPEALS OF TI-IF STATE OF! KANSAS

IN THE MATTER OF TUE MARRIAGE OF:

SHARON KAY HARVEY,
Appellee,

and

HARLEY WILLIAM HARVEY,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; R. WAYNE LAMPSON, judge. Opinion filed April 3, 2009. Reversed and remanded with directions.

JR. Russell, of Kansas City, for appellant.

Bruce W. Beye, of Overland Park, for appellee.

Before MCANANY, P.J., MARQUARDT and MALONE, .11.

Per Curiam: Harley William Harvey appeals the district court's entry of judgment against him for $39,879.20 for unpaid spousal maintenance. We are compelled to reverse the district court on grounds only obliquely hinted at by Harley when he stated in his appellate brief: "[T]he 1982 version of KSA 60-1610(b) controlled the preparation of the parties' divorce decree. We do this because we have an independent duty to question subject matter jurisdiction whether or not it has been raised by the parties. See *State* v. *Denney,* 283 Kan. 781, 787, 156 P.3d 1275 (2007). Further, the issue of subject matter jurisdiction may be raised at any time. *Vorhees v. Baltazar,* 283 Kan. 389, 397, 153 P.3d 1227 (2007). Whether jurisdiction exists is a question of law over which we exercise unlimited review. *Bruch* v. *Kansas Dept. Of Revenue,* 282 Kan. 764, 774, 148 P.3d 538 (2006).

Sharon Kay Harvey sued her husband, Harley, for divorce. The case was tried on November 12, 1981. Following the trial, a decree of divorce was not presented to the court for signature and filing. Rather, the trial court simply made the following entry on the appearance docket sheet:

> "11/12/81 COURT TRIAL PLAINTIFF GRANTED DJVORCE
> GROUNDS INCOMP PLAINTIFF AWRDED CUSTODY MINOR
> CHILD SB.TCT TO DEFENDANT REASNBL RTS VISITATION
> DEFENDANT ORDER PAY $100/W X CHILD SUPPORT & $100/WK
> ALIMONY PLAINTIFF AWRDED HOME & ALL OTHER PROPERTY
> COST VS DEFENDANT COST VS DEFENDANT $35 DOCKET FEE
> DUE TOTAL COST $35"

The court's entry on the docket sheet is not an effective substitute for a decree of divorce. K.S.A. 60-258 provides: "No judgment shall be effective unless and until a journal entry or judgment form is signed by the trial judge and filed with the clerk of the court." K.S.A. 60-258 in its current form was enacted in 1976 and applied to the Harvey divorce. Before then, a judge's entry on the appearance docket could be an effective judgment. See In re Estate of Penn, 216 Kan. 153, 531 P.2d 133 (1975). However, since 1976 no judgment is effective until a journal entry or judgment form is signed by the judge and filed with the court. See In re Marriage of Wilson, 245 Kan. 178, 777 P.2d 773 (1989).

It was not until October 8, 1985, that a formal decree of divorce was approved by counsel, submitted for the court's signature, and filed. In the meantime, on January 1, 1983, an amended K.S.A. 60-1610(b)(2) became effective. No longer could the district court enter an order requiring one party to pay maintenance until the other party either dies or remarries. The amended statute provided:

> "In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves *the power* of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have *jurisdiction* to hear a motion by the recipient of the maintenance to reinstate the maintenance payments." (Emphasis added.) K.S.A. 1983 Supp. 60-1610(b)(2),

Since the entry on the appearance docket was ineffective to create a judgment for maintenance, Harley's maintenance obligation began with the filing of the divorce decree in October 1985. At that time, the revised form of K.S.A. 60-1610(b)(2) controlled, and the district court had no jurisdiction to enter a maintenance award in the first instance for a period of more than 121 months. Thus, Harley's obligation for maintenance would end 121 months later, absent a prior motion by Sharon to extend maintenance. Sharon filed no such motion.

In 1999, Sharon, now represented by a different attorney, moved the court for a determination of the current amount of her unpaid maintenance judgment. (A maintenance payment becomes a final judgment when it becomes due and unpaid. *In re Marriage of Evans,* 37 Kan. App. 2d 803, *805,* 157 P.3d 666 [2007].) The court determined that as of September 10, 1999, Harley owed $9,727.20 plus interest in past due maintenance. Sharon pursued a similar motion in 2007, this time represented by yet another attorney. At that time the court determined that Harley owed $39,879.20 in past-due maintenance and memorialized the judgment against Harley in that amount on December 13, 2007. It is the appeal of that order which brings the matter to us.

Based on the analysis described above, it is clear to us that to whatever extent Sharon's $39,879,20 judgment represents payments due after Harley already made 121 months of maintenance payments following entry of the October 8, *1985,* decree, the judgment is void. In other words, Sharon's judgment is effective with respect to payments Harley failed to make prior to the expiration of this 121-month period, but not thereafter. This is because the court lacked the power to enter a judgment for maintenance beyond the statutory 121 month period since the decree did not reserve for the court the power to do so.

Harley argues that Sharon's judgment became dormant and was never revived when no action was taken on it between March 1992 and March 1997. A cursory review of Harley's payment history and Sharon's various garnishment proceedings suggest otherwise. Nevertheless, this argument was not presented to the district court. We will not consider it further because Harley has raised it for the first time in this appeal. *Miller* v. *Bank,* 283 Kan. 108, 119, 150 P.3d 1282 (2007).

Accordingly, we reverse the district court's order of December 13, 2007, and remand the case for the district court to calculate the amount, if any, due Sharon for unpaid maintenance. While it seems to us that under these unusual facts equitable estoppel may have some possible application with respect to any excess payments Harley may have made to Sharon before challenging the maintenance order, we leave such equitable considerations to the sound discretion of the district court.

Reversed and remanded for further proceedings.