

NOT DESIGNATED FOR PUBLICATION

No. 101,869

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF
KIMBERLY J. IRELAND,
Appellant,

and

KEVIN A. IRELAND,
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS E. FOSTER, judge. Opinion filed May 14, 2010.

Affirmed.

Kimberly J. Ireland, of McKee & Ireland, of Olathe, for appellant.

Michael W. Lucansky, of Overland Park, for appellee.

Before HILL, P.J., PIERRON, J., and BUKATY, S.J.

Per Curiam: In this appeal of her hotly contested divorce case, Kimberly J. Ireland alleges several due process violations. She complains about a number of interim orders made by the district court during the course of the litigation, but she does not want us to remand the case for a new trial. In fact, Kimberly Ireland does not challenge any of the district court's findings. Further, she does not contest any of the terms of the divorce or the custody rulings. Therefore, we must conclude many of the matters she raises are either harmless errors or are moot. We do address her request for attorney fees made in the conclusion of her brief.

We do not give advice nor do we decide cases where there is no actual controversy.

Unequivocally, appellate courts do not have authority under the statutes or the constitution to render advisory opinions in cases where the controversy between the parties no longer exists and any judgment of the court would be ineffective. *Rodarte v. Kansas Dept. of Transportation*, 30 Kan. App. 2d 172, 183, 39 P.3d 675, rev. denied 274 Kan. 1113 (2002). Furthermore, an appeal will be dismissed for mootness if it is "clearly and convincingly shown that the actual controversy has ended and the only judgment that could be entered would be ineffectual for any purpose and an idle act insofar as rights involved the case are concerned. [Citation omitted.]" *State ex rel. Slusher v. City of Leavenworth*, 285 Kan. 438, 454, 172 P.3d 1154 (2007).

To sum up:

"The general rule is that an appellate court does not decide moot questions or render advisory opinions. The mootness doctrine is one of court policy which recognizes that it is the function of a judicial tribunal to determine real controversies relative to the legal rights of persons and properties which are actually involved in the particular case properly brought before it and to adjudicate those rights in such manner that the determination will be operative, final, and conclusive." *Smith v. Martens*, 279 Kan. 242, 244, 106 P.3d 28 (2005).

We give a factual summary.

Kimberly Ireland filed for divorce from Kevin Ireland in March 2007. Initially she was represented by her law partner, Aaron McKee, and then a different lawyer, Karen DiVita. Kevin also changed lawyers during the proceedings. Most of Kimberly's concerns arise from actions taken by Edward Byrne, Kevin's second counsel.

The matter was first heard by Judge Slater and then by Judge Foster. The court tried the matter and issued the divorce decree in December 2008. There were numerous proceedings conducted by the court during the course of this litigation, and the court made several rulings upon various motions. It is these rulings that serve as the basis of Kimberly's due process complaints.

We will briefly review them and explain why we will not address them.

Contemporaneous ethical investigation.

Because of various ethical complaints and a contemporaneous ethical investigation, Kimberly contends she was denied a fair trial due to a lack of due process. Specifically, Kimberly focuses on Edward Byrne's threats to file numerous ethical complaints against her, Judge Slater, Judge Foster, and her law partner, McKee, who represented her at first.

Kimberly does not show how Byrne's threats of filing and actually filing of ethical complaints prejudiced her. Nor does she tell us what relief she is entitled to if these actions did amount to misconduct. This appears to be harmless error if it is error at all. We define harmless error to be an error that does not prejudice the substantial rights of a party. It affords no basis for reversal of a judgment and may be disregarded. *Drake v. Kansas Dept. of Revenue*, 272 Kan. 231, 238, 32 P.3d 705 (2001). Going further, we must point out that our statute, K.S.A. 60-261, clearly commands that no error or defect in any ruling or order of the court or in any action *by the parties* is ground for granting a new trial, setting aside a verdict, or otherwise disturbing a judgment unless refusal to take such action is inconsistent with substantial justice. Courts must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

We offer no opinion on this alleged error as it is harmless.

Disqualification of her law partner from representing her.

Kevin Ireland sought the disqualification of McKee, who was representing Kimberly. McKee was also her law partner. Kevin contended that Kimberly's income was in issue and therefore McKee could be called as a witness. Ultimately the court disqualified McKee.

Kimberly advances several reasons why McKee should not have been disqualified. But she fails to show how McKee's disqualification prejudiced her case. After his disqualification, she retained different counsel and proceeded with her litigation. Even if we decided the district court erroneously disqualified McKee, the error is harmless because Kimberly does not contest any of the results of the trial. See *Drake*, 272 Kan. at 238.

Deposition of McKee.

Kimberly contends the district court erred when it ruled McKee could be deposed. But, according to her brief, McKee was never deposed. We see no relief that we could order on this point. Therefore, the matter is moot.

False allegations by Byrne.

Kimberly complains about an email sent by Byrne that made, in her opinion, several false allegations to the district court. But that email was sent after the divorce was granted and is therefore not relevant to this appeal. Ordinarily the remedy for a party not receiving a fair trial due to attorney misconduct is a new trial. But Kimberly does not want a new trial. In our view, this is a harmless error. See K.S.A. 60-261.

Court sanctioned Kimberly but did not sanction Kevin.

The district court evidently sanctioned Kimberly but she fails to identify the sanction that was erroneously applied against her. We note that at the conclusion of the trial, all sanctions were set aside. That means this issue is moot.

Failure of Judge Foster to recuse.

Kimberly contends Judge Foster was biased and he should have recused himself from the case. He did withdraw sometime after the trial. Because she does not challenge the results of the trial, Kimberly cannot show any prejudice from Foster's failing to recuse. See *State v. Sappington*, 285 Kan. 176, 193, 169 P.3d 1107 (2007).

Attorney fee request.

Kimberly claims to have been entitled to attorney fees under to K.S.A. 2008 Supp. 60-1610(b)(4), which states that "[c]osts and attorney fees may be awarded to either party as justice and equity require." When the district court has authority to grant attorney fees, its decision on whether to do so is reviewed under the abuse of discretion standard. *Tyler v. Employers Mut. Cas. Co.*, 274 Kan. 227, 242, 49 P.3d 511 (2002). The trial court has wide discretion to determine the amount and the recipient of an allowance of attorney fees. When reviewing an award of attorney fees, the appellate court does not reweigh the testimony or evidence or reassess the credibility of witnesses. An award of attorney fees will not be set aside on appeal when supported by substantial competent evidence. *In re Marriage of Burton*, 29 Kan. App. 2d 449, 454, 28 P.3d 427, rev. denied 272 Kan. 1418 (2001). "Fees which are not supported by 'meticulous, contemporaneous time records' identifying the specific tasks being billed should not be awarded. *Davis v. Miller*, 269 Kan. 732, 748, 7 P.3d 1223 (2000); accord *State ex rel. SRS v. Cleland*, 42 Kan. App. 2d 482, 495, 213 P.3d 1091 (2009).

We find nothing in the record that shows Kimberly ever submitted any evidence of her legal expenses. The district court decided that neither party caused more litigation. Kimberly does not show that the district court's finding is incorrect. Kimberly's contention about attorney fees is unconvincing.

Affirmed.