

NOT DESIGNATED FOR PUBLICATION

No. 103,758

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF:  
KRISTIN L. BROWN,  
*Appellant,*

and

JOHN JARED BROWN,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; ANTHONY J. POWELL, judge. Opinion filed October 8, 2010. Affirmed.

*Stephen P. Weir*, of Stephen P. Weir, P.A., of Topeka, and *Donald Lambdin*, of Wichita, for appellant.

*John Jared Brown*, appellee pro se.

Before MCANANY, P.J., CAPLINGER, J., and LARSON, S.J.

*Per Curiam*: This appeal follows a protracted divorce action that Kristin L. Brown commenced in February 2006. She and her husband, John Jared Brown (Jared), had been married a little over 3 years and had two daughters, ages 19 months and 3 months. The court granted Kristin a divorce in March 2008 and reserved for another day the disputed issues involving property, custody, child placement, parenting time, and child support. In

November 2009, the court granted Kristin sole custody and residential placement of the children with a regular schedule of parenting time for Jared, to be conducted under the supervision of Jared's current wife, Keely. The court also entered orders that disposed of the accrued arrearage in child support. Kristin appeals, claiming the district court abused its discretion in its parenting time order and in the disposition of the child support arrearage.

### *Custody, Placement, and Parenting Time*

At the time this action commenced the court ordered psychological evaluations of the parties by Dr. David Mouille. Immediately after completing his initial interview with Jared in February 2008, Dr. Mouille requested that the court consider suspending Jared's further parenting time. Dr. Mouille found Jared to be quite ill, with symptoms of psychosis and delusions, little or no impulse control, and little or no sensitivity for the needs of his children. Dr. Mouille concluded that Jared had a high probability of injuring his children.

Days later, in his full report to the court, Dr. Mouille found Kristin to be a normal, healthy mother. He opined that Jared suffered from Narcissistic Personality Disorder and was psychotic. He reviewed the affidavit of Jared's sister in which she reported that Jared had sexually molested her for a period of 8 years beginning when Jared was 8 years old. He also reviewed a police report of Jared's domestic violence towards Kristin and other statements of his violent conduct towards her. Dr. Mouille recommended that the children be placed with Kristin with Jared having limited nonresidential parenting time supervised by a psychiatrist or psychologist "who is quite experienced and quite able to maintain control over a situation that is potentially damaging to the children." He also recommended that Jared undergo psychiatric treatment.

The resulting temporary order for parenting time granted Jared supervised visits for 2 hours each week at the Wichita Children's House.

Beginning in January 2009 and continuing until the hearing in October 2009, Jared saw Dr. Lance Parker for psychiatric treatment. Dr. Parker reported that Jared did not exhibit any signs of delusional thinking or hallucinations that would support a diagnosis of psychosis. Further, he reported that psychological testing does not support a diagnosis of Narcissistic Personality Disorder, though Jared does exhibit symptoms of Obsessive-Compulsive Personality Disorder. He observed: "These traits cause [Jared] to be argumentative and rigid, demanding, unrelenting and cause him to appear to be self centered, arrogant, and perhaps even grandiose depending on the argument his [*sic*] is engaged in." Dr. Parker concluded that Jared poses no danger to his children and should be granted unsupervised parenting time but should continue with psychiatric treatment.

Jared appeared pro se at the final hearing on the issues of child custody, placement, and parenting time. The court heard the testimony of the parties and the competing psychologists. A police officer testified about the incident of Jared's domestic violence towards Kristin. Jared's sister testified about being repeatedly sexually abused by Jared when she was a child.

Jared's first wife, Mindy Mooneyham-Gray, testified about his physical, emotional, and sexual abuse of her during their marriage of less than 3 years. Since his divorce from Kristin in March 2008, Jared had remarried. His current wife, Keely, and her former husband testified. Keely's children by this former marriage are permitted in Jared's house only when Keely is present. Keely testified that Jared has an anger management issue, but she does not fear for the safety of her children.

Keely testified about an incident in August 2009 in which she took her three children as well as Jared's older daughter to Keely's parents' home after a heated conversation she had with Jared. After taking the children, Keely immediately called both her ex-husband and Jared's ex-wife to inform them of what had happened and how she had responded. When the court asked her whether she currently had any problem allowing Jared to be alone with her children, she replied that she had no problem with it and that she regularly allowed Jared unsupervised access to her children.

Following the conclusion of the testimony the court examined the following factors listed in K.S.A. 60-1610(a)(3)(B) and made the following findings:

- (1) The length of time the children have been under the actual care and control of any person other than a parent.

The court did not consider this an important factor under the circumstances.

- (2) The desires of the children's parents.

The court found that the parents "have opposing views as to what is in their children's best interests." Kristin "has an honest and deeply felt concern about the welfare of her children. And that given the incidents that she's had with [Jared], I believe that her views are not unjustified. . . . [Jared] has indicated . . . that both [Kristin] as well as his first wife, and he made references to a sister as being out to get him, I don't think are supported by the record." The court found that Jared loves his children and believes he is a good father, and that he has been treated unfairly in these proceedings.

- (3) The desires of the children.

The court noted that these children are too young to express a view on the matter. However, "the record supports the fact that the children have been harmed by the conflict between mother and father. . . . [D]espite the conflict and some of the . . .

abuse that's gone on . . . by [Jared] directed against [Kristin], that these two girls very much want to . . . see their father and have a relationship with him."

- (4) The interaction and interrelationship of the children with parents, siblings, and any other person who may significantly affect the children's best interests.

The court found that Kristin is a good mother. With regard to Jared, "in the protected environment of the supervised visits that's gone on for the past couple of years, that that has been a positive thing, that there have been no incidents." There were "a number of disturbing incidents, that those incidents have had a negative impact on the girls. And I think as we have gotten further away from those incidents, the better it's been."

- (5) The children's adjustment to their home, school, and community.

The court stated: "[T]he protected environment that the children have had over the past two years has, I think, shielded them from any additional harm, and I think it's allowed them to continue to grow and mature in a way that it should be. It's also allowed them to have positive interactions with their father."

- (6) The willingness and ability of each parent to respect and appreciate the bond between the children and the other parent.

The court found: "I think [Kristin] can be forgiven for basically wanting to suspend [Jared's] relationship with the girls in light of the facts presented in the case. . . . I can't really blame her for wanting that position."

- (7) Evidence of spousal abuse.

The court found: "The record in this case is replete with evidence of spousal abuse committed by [Jared] against not just [Kristin], but against his first wife."

The court noted the testimony of Jared's current wife of "disturbing acts" and Jared's sister's testimony of sexual abuse created "a pattern that is disturbing to this Court," suggesting that the court found this testimony credible. In fact, in

discussing Jared's sister's testimony in detail, the court found her to be "a credible witness." Nevertheless, the court found it hard "to gauge what those acts mean . . . in the context of [Jared's] ability to be a good parent. I don't know, it's certainly cause for this Court to act cautiously, and I think that's what's going to happen in this case."

The court noted, however, Jared's "desire to change," which is evidenced by his ongoing treatment with Dr. Parker and attending anger management classes.

The court found Dr. Mouille's testimony lacked credibility on a number of key points. The court was "more persuaded by Dr. Parker's testimony." With respect to Keely, Jared's current wife, the court found her to be "the strongest witness I think I have ever seen on the witness stand. . . . [S]he probably saved the day for [Jared] . . . . [Keely] showed me . . . she is willing to put the interest of her children and the interest of [Jared's] children before her relationship with [Jared]."

The court concluded that it would not be in the best interests of Jared's daughters for them to lose contact with their father. Accordingly, the court granted Kristin sole custody of the children with primary residential placement with her, subject to Jared's parenting time on alternating weekends, on holidays as Jared proposed, and 1 week in the summer. The court ordered Keely to serve as the supervisor of Jared's parenting time, directing that if "she feels the need that both for her safety and the safety of the children she needs to leave the home or get away from [Jared], that she's . . . authorized to take [Jared's] children with her . . . and to immediately notify the other parents should some incident occur." Jared was ordered to continue treatment with Dr. Parker.

### *Child Support*

Jared's first wife testified that at the time of their divorce Jared was ordered to pay maintenance and child support, which he failed to pay. After Jared married Kristin, Kristin paid from her own separate funds \$15,000 to satisfy Jared's maintenance and support obligation from his first marriage.

When Kristin commenced this current divorce action, the court entered temporary support orders which Jared failed to pay. At the time of the final hearing on the issues regarding the children, there was an arrearage of \$15,524 for unpaid temporary support.

Further, according to the parties' prenuptial agreement, Kristin claimed she was entitled to \$26,000 from the proceeds of the sale of the marital home and the balance of the sale proceeds was to be divided equally between the parties. The sale proceeds of approximately \$46,000 were placed in the trust account of Kristin's counsel, who used the proceeds to pay joint bills, leaving a little over \$19,000 in sale proceeds.

Finally, Jared was ordered to pay the home mortgage during the pendency of the divorce. Kristin claimed he did not, and she paid approximately \$10,000 in mortgage payments Jared should have paid.

Kristin requested a judgment against Jared for the child support arrearage, the \$15,000 she paid Jared's former wife for unpaid child support, for an additional \$7,000, which is the difference between what she is owed under the prenuptial agreement and the available funds after paying joint bills, and \$10,000 for the mortgage payments Jared failed to make.

Jared countered with a number of issues and arguments, including the contention that the bills paid from the trust account were Kristin's separate bills, not joint obligations of the parties.

The court ruled:

"I've heard enough. . . . I think it's in both [parties'] best interest to make a clean break on this thing, and so here's what we are going to do. I'm calling it good. [Kristin] can keep all of the money from the proceeds from the sale of the house. . . . And so I'm calling it clean as of December 1 of 2009. There are no arrearages. All of the \$19,000 [leftover from the home-equity proceeds] can go to satisfy whatever arrearages there exist. The \$15,000 on the [Jared's first wife] amount I construe as a gift, and I'm calling it good as of December 1, 2009. [Kristin] can keep all the money from the proceeds of the sale of the house. . . .

. . . .  
". . . There were lots of monies paid from that equity for debts that I'm not sure were [Jared's] debts, and we haven't - - the parties didn't present evidence on all of this stuff. And I just really do not think it's the way to handle this, to go duke it out over 5 to \$10,000, I just don't think it's worth it. I know [Kristin] has got significant funds. It's just not worth the fight, so that's why I'm calling it good. I think it's better for these parties to move forward without having any outstanding financial issues going at each other over . . . . She can have the 20,000, we are calling it good. I'm now going to expect [Jared] is going to pay his child support in full every month on a timely basis; and if he doesn't, he's going to have to answer to me."

Kristin appeals.



### *Supervised Parenting Time*

The sole issue raised on appeal regarding the issue of supervised parenting time is whether the district court erred in predicating its ruling on the wrong legal standard.

A trial court's judgment regarding parenting time will not be disturbed absent an affirmative showing of abuse of discretion. See *In re Marriage of Kimbrell*, 34 Kan. App. 2d 413, 419, 119 P.3d 684 (2005). "Judicial discretion is abused only when no reasonable person would take the view adopted by the trial court. [Citations omitted.]" *Varney Business Services, Inc. v. Pottroff*, 275 Kan. 20, 44, 59 P.3d 1003 (2002). If a trial court fails to follow the law, it necessarily abuses its discretion. See *State v. Moore*, 287 Kan. 121, 135, 194 P.3d 18 (2008). The party alleging an abuse of discretion bears the burden of demonstrating the abuse of discretion. *Harsch v. Miller*, 288 Kan. 280, 293, 200 P.3d 467 (2009).

Kristin points out that the district court correctly determined that it was in the children's best interests that she be awarded their sole custody based upon Jared's history of physical, mental, and sexual abuse of women and of young girls when not in a protected environment. However, she contends that the court abandoned the "best interest of the child" standard when the court considered the issue of parenting time. Kristin argues that the court erroneously turned to the much more stringent legal standards applicable in proceedings to terminate the parental rights of a parent.

In support of this contention Kristin points to the court's statement, uttered more than once, that "I'm not going to give up on [Jared] as a father, I'm not. I'm not prepared to make that judgment, to give up." She also notes the court's observation that the

reported incidents of improper conduct "do not justify a severing or a termination of his contact with his girls."

In fact, Kristin was seeking to sever Jared's contact with his children for a period of time. In the pretrial order Kristin proposed that Jared should have supervised parenting time for a period of 5 years. However, in his opening statement at the final hearing, Kristin's counsel informed the court that Kristin was requesting that "parenting time terminate at this point in time until [Jared] has received proper psychological and psychiatric counseling that has been effective and will hopefully in some way create a change in this man's behavior and actions towards women." In his direct testimony, Dr. Mouille opined: "I have reached the point of thinking that it's in the best interest of the children to sever [Jared's] parental rights."

This is clearly what the district court was referring to in making the statement about not giving up on Jared. These comments by the district court do not evidence an abandonment of the best-interest-of-the-child standard in favor of the more stringent termination-of-parental-rights standard.

A few lines in the trial transcript following the court's observation about "severing or a termination of his contact," the court stated, "I find it's in the best interest of [the children] that to cut off their relationship with their father would not be in their best interest. In fact, I believe it would do them more harm than good."

Examining the totality of the court's 29 transcript pages of findings and conclusions on the custody and parenting time issues, we do not conclude that the district court abused its discretion by applying the wrong legal standard to the issue of parenting time. Rather, the references cited by Kristin appear to apply to the position Kristin and

her expert took at the final hearing regarding Jared's parenting time with the children.

### *Child Support*

Kristin's sole argument with respect to the child support issue is that the district court erred in "wiping out" her previously accrued judgments for child support.

Relying on *In re Marriage of Schoby*, 269 Kan. 114, Syl. ¶ 1, 4 P.3d 604 (2000), Kristin contends that "modification of the amount of child support may only operate prospectively" and that she had accrued \$15,524 in unpaid child support judgments under the district court's temporary orders which the district court "wiped out" in its ruling. She asks that we "reverse the Lower Court's 'calling it good' and enter Judgment against [Jared] for \$15,524.00 plus Judgment interest from the dates each payment was due."

*Schoby* does not apply. *Schoby* involved the parties' property settlement agreement which was incorporated into the court's final decree of divorce. The issue was whether the father's child support obligation continued after the child married at age 16 or whether the marriage automatically emancipated the child and rendered a nullity the court's order for support in the final decree.

Unlike in *Schoby*, we are dealing with the district court's interlocutory order for support pending the final hearing in the divorce action. Installments of temporary support *pendent lite* do not become a final judgment on their due date. They are subject to review and modification by the district court and do not automatically become a final judgment. See *Edwards v. Edwards*, 182 Kan. 737, 324 P.2d 150 (1958). The district court's temporary order for support, for which an arrearage of \$15,524 had accumulated before

the final hearing, did not mature into a judgment. Because Kristin makes no other claim of error with respect to the court's disposition of the accumulated temporary support, we find no error in the court's ruling in this regard.

Affirmed.