NOT DESIGNATED FOR PUBLICATION

No. 102,167

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

CARLA LEE-GUIHER-WHITE,
Appellant,

and

CHRISTOPHER W. WHITE,
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; DAVID W. HAUBER, judge. Opinion filed March 26, 2010. Affirmed.

Carla Guiher, appellant pro se.

Chris White, appellee pro se.

Before ELLIOTT, P.J., MARQUARDT and HILL, JJ.

Per Curiam: In this appeal, Carla Guiher-White (Wife) claims the district court erroneously calculated the interest on her ex-husband, Christopher White's (Husband), unpaid maintenance. We affirm.

In the divorce decree entered on January 28, 2004, the district court incorporated the parties' separation and property settlement agreement, which included Husband's obligation to pay Wife maintenance in the amount of $350 per month for 44 months (later reduced to 43 months). Since then, the parties have appeared pro se in numerous enforcement and/or contempt proceedings—some of which were previously reviewed and affirmed by this court in *In re Matter of the Marriage of White*, Case No. 98,772, unpublished opinion filed July 18, 2008.

In August 2008, Husband filed a motion for the district court to determine the amount of his unpaid maintenance. On October 31, 2008, the district court ordered Husband to pay $493 interest on the $4,933 judgment for unpaid maintenance. Wife filed a motion to reconsider the district court's interest calculations on November 13, 2008, which was denied. There is no dispute that the unpaid maintenance from November 2005 through June 2007, less Husband's payments during that period, is $4,933. Wife appeals the district court's denial of her motion to reconsider the interest calculation.

Wife claims that the district court erred in calculating interest at 10 percent of the total amount Husband owes on unpaid maintenance. Wife claims that the district court

should have calculated the interest each month on the arrearage because each monthly payment that was not paid became a final judgment.

I. JURISDICTION

Husband argues that the district court lacked jurisdiction to consider Wife's November 13, 2008, motion to reconsider because she failed to file that motion within 10 days of the district court's October 31, 2008, order as required by K.S.A. 60-259(f). He further argues that since the motion was untimely, her appeal to this court is untimely because it was not filed within 30 days of the judgment as required by K.S.A. 60-2103.

If the record on appeal shows that this court does not have jurisdiction, the appeal must be dismissed. *In re Guardianship of Sokol*, 40 Kan. App. 2d 57, 60, 189 P.3d 526 (2008). Whether jurisdiction exists is a question of law over which this court's scope of review is unlimited. See *Harsch v. Miller*, 288 Kan. 280, 286, 200 P.3d 467 (2009). When Wife docketed her appeal, she did not order a transcript of the February 4, 2009, hearing. Husband did request a copy of the transcript. However, this court considered Husband's request for that transcript withdrawn after he did not respond to the court reporter's demand for payment and instead filed his brief. Without an adequate record on appeal, this court must reject Husband's argument that the district court lacked jurisdiction to consider Wife's motion to reconsider. See Supreme Court Rules 6.02(d) and 6.03(c) (2009 Kan. Ct. R. Annot. 38, 42).

Even if the district court had denied Wife's motion as untimely, such a ruling would be incorrect. The journal entry with the interest calculation was filed on October 31, 2008. Wife filed her motion to reconsider that order on November 13, 2008. K.S.A. 2009 Supp. 60-206(a) provides that when the period prescribed or allowed by statute is less than 11 days, intervening Saturdays, Sundays, and legal holidays are excluded from the computation of time. See *ARY Jewelers v. Krigel*, 277 Kan. 464, 473, 85 P.3d 1151 (2004). Excluding the intervening weekend, Wife's motion to reconsider was filed within the 10-day deadline set forth in K.S.A. 60-259(f).

Wife's appeal to this court from the denial of her motion to reconsider is also timely. Both Wife and Husband filed motions to reconsider, or for a new trial, after the district court's October 31, 2008, order. Those motions stopped the running of the appeal time. See K.S.A. 60-2103(a). The district court denied Wife's motion to reconsider at a hearing on February 4, 2009. Wife filed her notice of appeal on March 2, 2009, which is within 30 days, as required by K.S.A. 60-2103, of the district court's denial of her motion to reconsider. Although the district court's journal entry of that decision was not filed until May 14, 2009, Wife's premature notice of appeal was deemed timely upon the filing of the journal entry. See Rule 2.03 (2009 Kan. Ct. R. Annot. 10).

Accordingly, we find that this court has jurisdiction to consider Wife's appeal.

II. CALCULATION OF INTEREST ON UNPAID MAINTENANCE

Wife correctly states that under Kansas law, each monthly maintenance obligation becomes a final judgment when it becomes due and unpaid. See *In re Marriage of Evans*, 37 Kan. App. 2d 803, 805, 157 P.3d 666 (2007). As a result, Wife insists that the district court was required to calculate interest for each month of maintenance that was past due.

Wife's challenge of the district court's interest calculation requires us to interpret K.S.A. 16-204(e)(3), which governs interest on judgments for unpaid maintenance. This court has unlimited review over such questions of law. See *Evans*, 37 Kan. App. 2d at 805.

In construing a statute, this court's goal is to ascertain the legislative intent from the language in the statute. Where the legislature uses plain and unambiguous language in a statute, this court must give effect to the intention of the legislature as expressed, rather than speculate or determine what the law should or should not be. *In re Marriage of Kimbrell*, 34 Kan. App. 2d 413, 422, 119 P.3d 684 (2005). It is only if the statute's language is unclear or ambiguous will this court apply the canons of statutory construction or consult the legislative history of the statute in order to discern legislative intent. See *Double M Constr. v. Kansas Corporation Comm'n*, 288 Kan. 268, 271-72, 202 P.3d 7 (2009).

Prior to 1996, interest on judgments arising from a duty of support were not separately addressed as they are now in K.S.A. 16-204(e)(3). Rather, such judgments were lumped together with all other civil judgments, against which interest was assessed at varying rates per annum pursuant to a statutory formula tied to interest rates published yearly by the Secretary of State. See K.S.A. 16-204(e) (Furse 1995).

However, in 1996, our legislature amended the statute to separately address interest on judgments arising from a person's duty to support another person. See L. 1996, ch. 229, sec. 160. The current statute, K.S.A. 16-204(e)(3), reads:

> "On and after July 1, 1996, it shall be presumed that applying interest at the rate of 10% per annum will result in the correct total of interest accrued on any judgments, *regardless of when the judgments accrued*, arising from a person's duty to support another person. The burden of proving that a different amount is the correct total shall lie with any person contesting the presumed amount." (Emphasis added.)

The only Kansas case to explicitly consider the calculation of interest due on judgments for maintenance since the 1996 amendment is *In re Marriage of Ormsbee*, 39 Kan. App. 2d 715, 186 P.3d 806 (2008). Wife cites *Ormsbee* as support for her position on calculating interest. However, *Ormsbee* is not helpful because the interest calculation disputed in that case involved the interpretation and application of Illinois law.

Similarly, in *Pursley v. Pursley*, 144 S.W.3d 820 (Ky. 2004), the Kentucky Supreme Court also reached a contrary decision. Specifically, *Pursley* held that because past due payments for child support and maintenance in Kentucky become vested when due and each payment is a fixed and liquidated debt which a court has no power to modify, the recipient was entitled to *prejudgment* interest as a matter of law from the date each payment was due. 144 S.W.3d at 828-29. But Kentucky's statute governing interest (Ky. Rev. Stat. Ann. § 360.010 [Lexis 2008]), does not treat interest on support judgments separately like K.S.A. 16-204(e)(3). Moreover, prejudgment interest under K.S.A. 16-201 does not follow as a matter of law in Kansas as it does in Kentucky. Rather, allowance of prejudgment interest on a liquidated claim under K.S.A. 16-201 (even assuming it applies to support judgments) is a matter of judicial discretion. *Owen Lumber Co. v. Chartrand*, 283 Kan. 911, 925, 157 P.3d 1109 (2007).

The plain language of our statute does not consider the date on which the separate support judgments may have accrued for purposes of assessing interest on support judgments. Because legislative intent can be determined from the language of the statute, this court cannot resort to statutory construction.

Given our legislature's express intent to deem the date of a support judgment's accrual irrelevant in calculating the interest on support judgments under K.S.A. 16-204(e)(3), the district court did not err in computing interest at 10 percent ($493) of the total judgment ($4,933) for Husband's maintenance arrears.

Wife argues that K.S.A. 16-204(e)(3) provides that the burden of proving a different amount of interest is correct lies with the party contesting the presumed amount. She alleges that the district court was required to accept her calculations because Husband did not file a separate suggestion, and the court did not meet its own burden to establish the amount of interest it assessed was the correct total.

Wife misinterprets the statute. The sentence on which she relies concerns the burden of proof on any person seeking to rebut the presumed 10 percent per annum interest rate. In the journal entry assessing the 10 percent interest, the district court stated: "Petitioner attached to her amended motion, a document purporting to be a calculation of interest. This Court is not persuaded that the calculation is correct." By denying Wife's calculations, the district court essentially ruled that Wife failed to meet her burden of proving that any amount other than $493 was the correct amount of interest.

A finding that a party did not meet its burden of proof is a negative factual finding that this court will not disturb absent proof of an arbitrary disregard of undisputed evidence or some extrinsic consideration such as bias, passion, or prejudice. See *In re Marriage of Kuzanek*, 279 Kan. 156, 159-60, 105 P.3d 1253 (2005). Given the above interpretation of K.S.A. 16-204(e)(3), there is no indication in the record on appeal that the district court arbitrarily disregarded undisputed evidence or was improperly influenced by some extrinsic consideration when it found Wife did not meet her burden

of proving a different amount of interest was correct. If this is not the intention of the legislature, it should revisit this stautute.

Affirmed.