

NOT DESIGNATED FOR PUBLICATION

No. 106,293

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF:

CHARLIE E. HELBERT, JR.,
Appellee,

and

RENEE M. HELBERT,
Appellant.

MEMORANDUM OPINION

Appeal from Riley District Court; PAUL E. MILLER, judge. Opinion filed March 30, 2012.

Affirmed.

Peter Charles Rombold, of Hoover, Schermerhorn, Edwards, Pinaire & Rombold, of Junction City, for appellant.

V. Linnea Alt, of Altenhofen & Alt, Chartered, of Junction City, for appellee.

Before LEBEN, P.J., MALONE and BRUNS, JJ.

LEBEN, J.: Charlie and Renee Helbert were married on July 4, 2008. Charlie is a soldier in the United States Army, and he shipped out for a year's tour in Iraq on August 29, 2009. Renee left her military housing at Fort Riley and moved back to Virginia in April 2010. According to Charlie's testimony, Renee also asked him for a divorce during that time, and he filed for divorce in September 2010 upon his return to Kansas.

The parties eventually settled all issues except one—Renee wanted Charlie to pay maintenance to her, and Charlie objected. The court sided with Charlie, and Renee has appealed.

This appeal is procedurally unusual, and the procedural aspects of this case necessarily frame our review. No evidence was presented to the district court regarding the maintenance issue. Instead, the district court ruled at the pretrial conference—attended only by the parties' attorneys—that maintenance would not be awarded. This left only one disputed issue—who would get four guns apparently received during the marriage from Renee's father. That issue was resolved before trial, so the trial consisted only of brief testimony from Charlie establishing the required facts to establish jurisdiction for the court to grant a divorce here in Kansas.

On the maintenance issue, Renee complains that the district court decided not to award maintenance based on only one consideration—that the marriage was a relatively short one. Indeed, in the written pretrial order, prepared by the attorneys, the district court cited only that basis for its ruling:

"WHEREUPON, the Court, upon reviewing the pleadings and papers filed herein and having duly and fully considered the parties' separately filed Pretrial Questionnaires finds the duration of the marriage is insufficient to justify an award of maintenance as requested by Respondent, so that the issues remaining for determination at the final hearing consist of the allocation of the guns owned by the parties."

When deciding whether to award maintenance, a district court should consider all of the relevant factors that might be applicable. See *In re Marriage of Hair*, 40 Kan. App. 2d 475, 484-85, 193 P.3d 504 (2008), *rev. denied* 288 Kan. 831 (2009).

But the pretrial order also noted that the district court had reviewed the papers filed with it, including pretrial questionnaires that set out the parties' positions on the maintenance issue. Charlie's domestic-relations affidavit had told the court that this was the third marriage for both Charlie and Renee, and that Renee was receiving \$1,367 per month in Social Security disability payments, while Charlie received wages of \$2,925 per month and other benefits raising his total monthly income to \$4,138. So the court at least had that information. Charlie argues in his appellate brief that the district court asked questions during the pretrial conference about the length of the parties' separation and whether Renee had been on disability before the marriage. Charlie suggests that the district court noted not only the short duration of the marriage but also that Renee was in no worse position coming out of the marriage than she had been in when she entered it, since she had already been receiving disability benefits before the marriage.

The next procedural aspect of note is that we have no transcript or other record of the pretrial conference, aside from the written order prepared by the attorneys. That leads to a problem in Renee's appeal that we find decisive because the appellant has the duty to provide a record on appeal sufficient to demonstrate error; without such a record, the claim of error fails. See *City of Mission Hills v. Sexton*, 284 Kan. 414, 435, 160 P.3d 812 (2007).

We don't know what happened at the pretrial conference. The judge may have asked Renee's attorney to state in detail all of the facts he would rely upon at trial in support of her maintenance request, and her attorney may have done so. The judge may have commented—as Charlie's attorney suggests on appeal—about factors other than the length of the parties' marriage. We simply don't know.

It's also important to note the specific issue Renee has raised on appeal. She argues only that the court singled out only one factor—and failed to consider others—when it decided that maintenance would not be awarded. Renee does not challenge the district court's decision to rule on this issue at the pretrial conference rather than waiting until evidence had been presented at trial to rule. That choice—deciding the maintenance issue at the pretrial conference—may have been another subject discussed at the pretrial conference. After all, Renee was by then living in Virginia, and she may have wanted to avoid the expense and inconvenience of traveling back to Kansas if the trip was unlikely to make any difference at trial. We express no opinion on the practice of deciding an issue like this at the pretrial conference; that is not the issue raised in this appeal.

One final procedural matter should be addressed. When the trial was held, Renee's attorney objected "as to the Court's determination at the pretrial conference that this marriage was of insufficient duration to justify an award of maintenance." But Renee's attorney did not provide any summary, or proffer, of the evidence that she had intended to present on the issue.

So where does this leave us? Renee is right that a district court should consider all of the relevant factors when making decisions about maintenance. See *Hair*, 40 Kan. App. 2d at 484-85. But after considering the applicable factors, the district court might well conclude that one factor is the decisive one in a particular case. It certainly appears that the district court here decided that the duration of this marriage was the deciding factor in its decision to deny maintenance. But without a record of the pretrial conference, we can't tell whether the district court considered all of the relevant factors before coming to its decision. Renee had the obligation to demonstrate error, and she hasn't done so.

It may well be that the pretrial conference was held without a court reporter or an electronic recording so that a full transcript of it could not have been prepared. Even so, Supreme Court Rule 3.04 (2011 Kan. Ct. R. Annot. 26) provides a way to create a record in that situation: a party may prepare a statement of what took place from the best available means, including the recollection of the party or an attorney. That statement is then presented to opposing counsel, and eventually to the district court, for resolution and approval.

The judgment of the district court is affirmed.