NOT DESIGNATED FOR PUBLICATION

No. 105,421

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

CHRISTOPHER ARVIDSON,
Appellee,

and

SHANNON ARVIDSON,
Appellant.

MEMORANDUM OPINION

Appeal from Bourbon District Court; STEVEN C. MONTGOMERY, judge. Opinion filed May 4, 2012. Affirmed.

Daniel F. Meara, of Fort Scott, for appellant.

Robert L. Farmer, of Nuss & Farmer, P.A., of Fort Scott, for appellee.

Before ARNOLD-BURGER, P.J., MALONE and HILL, JJ.

Per Curiam: Shannon Arvidson appeals the district court's decision holding her in indirect civil contempt because she refused to allow her ex-husband, Christopher Arvidson, to have parenting time with their son, D.A., on Father's Day weekend. She raises several challenges to the legality of the case manager's recommendations—which became the court order she was held in contempt of—and insists that she was not required to comply with it. She also maintains that the district court improperly changed venue by holding the contempt hearing in Miami County instead of Bourbon County,

where the divorce action had been filed. And finally, Shannon maintains that the court committed reversible error by overruling her motion to terminate the case manager. Finding no error, we affirm the district court's contempt finding and the denial of Shannon's motion to terminate the case manager.

FACTUAL AND PROCEDURAL HISTORY

Since their divorce proceedings began in 2005, Christopher and Shannon have incessantly disagreed about and litigated issues relating to the custody of D.A. We need not rehash the entire tortured history of the parties' past litigation. However, we do need to review the facts as they relate to this appeal, which are also extensive.

The parties were divorced in early 2006. The divorce decree awarded joint custody of D.A., with Shannon designated as the residential parent. The decree incorporated the terms of a "Normal Parenting Time" schedule that was attached as an exhibit. See Sixth Judicial District Local Court Rule 23.25 (setting forth sample parenting time and contact schedule that district court judges normally consider minimally consistent with child/ren's best interests). The decree also included arrangements specific to this case, such as granting Christopher visitation rights every other weekend, setting forth an alternating holiday schedule, and leaving open the issue of summer visitation for a future hearing.

By the following summer, the parties had filed several motions and lodged numerous complaints with the court concerning D.A.'s custody. For example, Shannon moved to restrict Christopher's parental access, and Christopher moved to change residential custody from Shannon to him. As a result, the court ordered an evaluation of their parenting skills. The court ultimately granted Christopher residential custody and again incorporated in its order a Local Court Rule 23.25 parenting time schedule. But this would not be the end of their ongoing custody dispute.

In 2008, Christopher discovered a video of a tearful D.A. discussing his custody preferences on the YouTube website (later determined to have been posted by a friend and coworker's of Shannon), which resulted in a barrage of court filings regarding the custody of D.A. The ultimate result as it relates to this appeal was that Shannon was not allowed parenting time with D.A. for 9 months, and, at Shannon's request, the case was reassigned from the Honorable Judge Richard Smith (the chief district court judge of the Sixth Judicial District and the only district court judge with chambers in Bourbon County, where the divorce action was filed) to the Honorable Judge Steven Montgomery (a district court judge of the Sixth Judicial District with chambers in Paola, which is in Miami County).

The district court ultimately allowed Shannon 55 days of make-up time for the visitations that she missed during the dispute surrounding the video. Needless to say, the parties could not agree on the make-up dates, so Christopher filed yet another motion requesting that the court order mediation.

On September 9, 2009, the parties entered a mediation agreement regarding the specific time Shannon would be allowed the following summer to compensate for her missed parenting time. That agreement—signed by both Shannon and Christopher and approved by Judge Montgomery—is key to several of Shannon's contentions in this appeal and stated:

> "1. During the summer of 2010, Christopher shall have every other weekend visitation with the child and Shannon shall have all remaining time.
>
> "2. This period of time shall begin at the end of school on the 21st of May and continue until the 13th of August.
>
> "3. There shall be no regard for holidays or birthdays.
>
> "4. Shannon shall have the child on October 22nd, 2009, at 6:00 p.m. until October 23rd, 2009 until 6 p.m.
>
> "5. The parties agree to be flexible with each other concerning visitation."

The mediated agreement further provided that if "communications break down [and] the parties cannot work through their differences, they shall attempt to re-negotiate through mediation prior to initiating any Court Action."

Post-mediation proceedings

It took less than 2 weeks after the mediated agreement was entered for communications to break down. That was when Shannon's counsel notified the court by letter that unless Christopher was willing to agree that D.A. should live with Shannon, he doubted further mediation would be helpful. Counsel anticipated that he would be filing yet another motion for change of custody and attached to his letter four pages of single-spaced complaints Shannon had prepared to detail her extensive and ongoing complaints against Christopher.

Based on this letter, Judge Montgomery entered an order appointing a case manager under the authority of K.S.A. 23-1001 *et seq*. In his order, Judge Montgomery explicitly found that case management was an appropriate method for resolving post-decree disputes, "due to the parties' repetitive conflict which resists other forms of dispute resolution" and that it would best serve D.A.'s best interests. See K.S.A. 23-1002(b)(3). The order also extensively detailed the case manager's authority to make recommendations to the court when the parties were unable to agree about various types of issues, including: parenting time; the methods available for the parties to dispute or object to his recommendations via written motion filed within 10 days; and the legal effect of any recommendations the case manager makes to the court, *i.e.*, that they were considered temporary court orders for the first 10 days after filing, after which they became permanent court orders if no proper objections were lodged. See K.S.A. 23-1003. By agreement of the parties, Ronnie Beach was appointed as case manager.

Subsequently, Christopher received information that his employer, Burlington Northern Railroad, was going to provide an opportunity for children of the employees to go on a special train ride on June 3, 2010. He requested additional parenting time so that D.A. could participate because under the mediated agreement, Shannon had parenting time from May 31 to June 11. As required by the court's order appointing the case manager, Christopher directed his request for modification of his parenting time to Beach. E-mails were then exchanged among Beach, Shannon, and Christopher in April 2010.

After Christopher and Shannon could not reach an amicable resolution, Beach filed formal recommendations to the court on May 25, 2010. Beach recommended that the visitation schedule be modified to allow D.A. to go with Christopher on the train ride from June 2-6 and to allow Christopher parenting time on Father's Day weekend, June 18-20. In recommending these changes, Beach explicitly acknowledged and supported the parties' September 2009 mediated agreement "as an opportunity for [Shannon] to make up time from past schedule inequities," but he believed the changes to that agreement were in D.A.'s best interests. Beach also noted that modifications had previously been made in the alternate-weekend schedule in April and May to accommodate Shannon's birthday.

On June 1, 2010, Shannon notified Christopher and Beach that she was not going to drop D.A. off for the train excursion the next day. She stated she was instead going "to stick to" the September 9, 2009, mediation agreement. Beach immediately notified Judge Montgomery that Shannon did not agree with his recommendations and had indicated she would not comply. So even though no formal objection had been filed, as required by the order appointing Beach, the court convened a telephone conference on June 2, 2010, with all parties present, "to address this time sensitive event and to avoid possible contempt scenarios and their related punitive sanctions." The court filed a journal entry on June 7

memorializing the telephone hearing and "Affirming and Clarifying Case Manager's Temporary Orders." The court found that it was in D.A.'s best interest to participate in the train ride. However, the court noted, as argued by Shannon, that since the time recommended by the case manager would "supersede the originally scheduled parenting time," Shannon was entitled to 7 days to compensate for the adjustment. Thus, the court affirmed Beach's recommendations but clarified that Shannon would be allowed an additional 7 days sometime before the start of the school year to make up for this additional time granted to Christopher. In that regard, the court ordered that within 10 days, Shannon was to submit her *suggestions* to Beach for when she would like to have the additional time and Beach was ordered to be responsible for "implementing this clarification" to his May 25 recommendations regarding those 7 additional days. The court reiterated that pursuant to its prior Order Appointing Case Manager, Beach's recommendations become final permanent court orders if no written objections are filed within 10 working days after the recommendations are filed with the court. The court further ordered "that the parties shall conduct themselves in such a manner as to implement and comply with the Court's orders." No other objections or concerns were noted regarding the order, and no written objection was filed to it.

On June 15—more than 10 working days after Beach's May 25 recommendations were filed allowing Christopher to have Father's Day weekend—Beach set up a conference call with Shannon and Christopher to determine the 7 days of make-up time. Shannon's attorney had previously submitted, on her behalf, an e-mail asking that the 7 days be the weekends of June 11, June 25, July 9, and July 23, which added up to more than 7 days. There was no mention of Father's Day weekend (June 18). During the call, which was recorded by Shannon and later transcribed, Beach, with a calendar in front of him, indicated that he wanted to go through and designate who had which weekends in June, July, and August. He started with the upcoming weekend, June 18. For the first time, Shannon indicated that the weekend of June 18 was her weekend, and she made it

clear that she was not going to comply with the Father's Day weekend visitation set out in the May 25 final order because she believed that weekend should be part of her 7 make-up days. Beach then pointed out that the May 25 order that had not been contested showed the weekend of June 18, Father's Day weekend, to be Christopher's. Shannon responded by telling Beach that she wanted him to call the judge to get an emergency order to force her to comply, like the last time. Beach explained to Shannon that "you can't go to court every time there's an issue. You've got to find a way to start working these out." She replied that she was not going to give up any more time unless she spoke to the judge first. Beach also pointed out that by adding June 18 to the dates her attorney had submitted, it would total 10 days. Beach advised the parties that he was "going to workup some proposed plan and . . . give it to the judge." He also indicated that Shannon should be available in case the judge wanted to call her about Father's Day weekend. Finally, Beach made it clear that he was going to continue to list June 18 as Christopher's weekend.

Beach did not arrange a telephone call with the judge as Shannon requested, but the next day—only 2 days before Father's Day weekend—he did file additional recommendations with the court, particularly related to the 7 make-up days. Those recommendations also again included Christopher having D.A. on Father's Day weekend. To make up for this time, he recommended that Shannon and Christopher should swap their scheduled weekends. He further noted that immediate action would be necessary to enable the parents to arrange the transfer.

When Shannon did not bring D.A. to their regular custody-exchange location that Father's Day weekend, Christopher initiated the contempt proceedings that are the genesis of this appeal. The sole basis for his contempt allegation was that Shannon violated Beach's May 25 recommendations and the court's June 7 order affirming those recommendations with regard to Father's Day weekend. Thus, on July 7, 2010, the district

court ordered Shannon to appear on August 4, 2010, and show cause why she should not be punished for contempt.

The contempt proceedings and Shannon's motion to terminate the case manager

Five days before the scheduled contempt hearing, Shannon moved to terminate Beach as the case manager. Shannon alleged in support: Beach misunderstood his function as a case manager and Shannon's right to the advice and assistance of counsel; he had lost the ability to remain neutral and objective or to act in D.A.'s best interests; and he had threatened her with garnishment proceedings to collect his fees despite knowledge of her financial difficulties. In response, Christopher asked the court to retain Beach as the case manager and suggested it was Shannon who had been uncooperative with the case management process.

On the morning of the August 4 show cause hearing, with no prior notice to the court or Christopher's counsel, Shannon's attorney filed a motion to dismiss the contempt proceedings because she had not been properly served with process and she refused to waive that defect. After an off-the-record chambers discussion with counsel conducted with counsel's agreement, the district court announced on the record that it would grant the motion to dismiss. In support, the court explained that its decision was based largely on the parties' assurances to the court that a new show cause order would be filed and served on Shannon and that the contempt hearing could be held in Paola on August 24, 2010, which hearing date and location the court had coordinated with both counsel in chambers. Indeed, Christopher's counsel caused a new contempt citation to be served on Shannon that same day. Shannon made no contemporaneous objection to the hearing being held in Paola.

After rescheduling the contempt proceeding, Judge Montgomery (who, along with Beach, had travelled to Fort Scott without knowing of Shannon's plan to seek dismissal) agreed to go ahead and hear evidence on Shannon's motion to terminate Beach as the case manager, which mostly consisted of testimony from Beach and Shannon. In denying the motion, the district court initially reiterated its reasons for appointing Beach in the first place. The court then held that the evidence was insufficient for it to find that Beach was not acting as a neutral case manager or was otherwise acting inappropriately or outside of his authority. Pointing out that both the court and Beach were focusing upon D.A.'s best interest, the court reminded the parties of their obligation to do the same.

Following that hearing and prior to the August 24 contempt hearing, Shannon filed three more motions seeking to avoid the contempt hearing. First, she filed an Objection to Change of Venue, arguing the court lacked statutory authority to transfer venue of the action from Bourbon County to Miami County. Second, Shannon again moved to dismiss the contempt proceeding. In support, she challenged Beach's authority to change her parenting time as provided in the September 2009 mediated agreement, which she insisted remained the controlling parenting plan. Third, Shannon moved for a continuance until such time as the hearing could be held in Fort Scott to avoid her increased travel expenses.

After responses from Christopher, the district court issued a letter ruling on all three of Shannon's motions on August 17, 2010. First, the court held that it had not changed venue but simply scheduled a hearing in Paola—without objection—to better convenience both the court and Beach. Second, the court held that it would take the motion to dismiss under advisement and rule on it at the close of the evidence at the contempt hearing. Third, the court denied the motion for continuance because it had coordinated the August 24 hearing date with both counsel, no contemporaneous objection

was made, and the hearing in Paola would save the parties additional fees for Beach's travel to Fort Scott.

The August 24 contempt hearing went forward as scheduled. During the hearing, the court repeatedly confined the evidence to Christopher's sole allegation that Shannon was in contempt of Beach's May 25 recommendations concerning Father's Day weekend, as affirmed by the court in its June 7 order following the June 2 telephone conference. The evidence presented during that hearing will be discussed in more detail below where necessary. In short, the parties presented evidence in support of their opposing positions on the issue of who was entitled to parenting time with D.A. that Father's Day weekend.

In denying Shannon's motion to dismiss, the court first admitted as its own exhibit the September 17, 2009, letter from Shannon's counsel, basically informing the court that Shannon would not submit to any more mediation. Judge Montgomery explained that the letter was what prompted him to assign Beach because counsel had indicated that the parties had not resolved all of their issues in mediation, including parenting time. The court's concern with regards to continuing conflict was supported by Shannon's list of complaints against Christopher that were attached to the letter. The court then referred to the specific terms of its order appointing Beach and his recommendations that became orders of the court as well as the court's June 7 order affirming the recommendation concerning Father's Day, noting that none of them had been appealed from and, therefore, had became final orders of the court. As to Shannon's due process argument, the court found that the parties were given sufficient notice and had an opportunity to object to any of the case manager's recommendations. In fact, a hearing was provided concerning the May 25 order before it became final. Shannon was also represented by counsel throughout the proceedings and kept in close communication with him, so sufficient due process was provided.

After the court denied Shannon's motion to dismiss, Shannon proceeded to present evidence through her own testimony in support of her defense that she was not in contempt of any valid court order when she did not deliver D.A. to Christopher for Father's Day weekend.

The district court's finding of contempt

At the close of the evidence, the district court found Shannon guilty of indirect civil contempt "by failing to comply with the Court's order initiated by [Beach] for [Christopher's] parenting time to be executed around Father's Day."

The court then imposed sanctions of a 10-day jail sentence. However, the court held that Shannon could purge that sanction if she: (1) remained in compliance with all court orders for 1 year; (2) paid Beach's fees relating to the contempt proceeding; and (3) paid Christopher's counsel's reasonable attorney fees relating to the contempt proceeding. Thus, the court asked Beach and Christopher's counsel to submit affidavits and itemizations of their fees to it and Shannon's counsel to allow for any objections. The court also directed Christopher's counsel to prepare the journal entries reflecting these rulings. Not surprisingly, given the history of the case, the parties fought over the proposed journal entry, which was not finally approved until November 3, 2010. Shannon then appealed the court's decisions to this court.

ANALYSIS

Venue was not transferred from Bourbon County to Miami County

Shannon first argues that the district court improperly changed the venue in this action from Bourbon County to Miami County when it ordered her contempt hearing held

in Miami County, thereby divesting itself of jurisdiction over the contempt action. Thus, she maintains that the contempt action taken without jurisdiction must be dismissed.

In order to change venue, a party must file a motion with the court to change venue and the court must find that such transfer would better serve the convenience of the parties and witnesses and the interests of justice. K.S.A. 60-609(a). The court then enters an order transferring the case and all related matters to the new location. That is not what happened here.

Rather, K.S.A. 2010 Supp. 60-612 controls what happened in this case. That statute provides, in pertinent part, that "[w]ithout changing venue, a judge may conduct any hearing or nonjury trial in any county agreed upon by all parties." K.S.A. 2010 Supp. 60-612(a). As Judge Montgomery stated in his letter ruling denying Shannon's objection to the change of venue, the holding of the contempt hearing in Miami County—which, like Bourbon County, is located in the Sixth Judicial District—was not a change of venue. Rather, venue remained in Bourbon County, and the court changed "merely the situs of the singular hearing on the contempt matter" to Miami County. This was ordered after an in-chambers discussion and agreement among all parties and their counsel about how to proceed. Accordingly, Shannon's contention that the court lacked jurisdiction because there was an improper change of venue is without merit.

The mediated agreement was not a parenting plan and was superseded, in part, by the case manager's recommendations, which became a final court order when no written objections were filed

Shannon's next argument on appeal—one that permeates many of her other arguments in this case—is that the May 25, 2010, order that she is accused of violating was not a valid order under K.S.A. 60-1610(a)(3)(A).

Resolution of this issue requires statutory interpretation, which raises a question of law subject to unlimited review on appeal. *Unruh v. Purina Mills*, 289 Kan. 1185, 1193, 221 P.3d 1130 (2009).

The statute in issue provides:

> "If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child." K.S.A. 2010 Supp. 60-1610(a)(3)(A).

According to Shannon, the mediation agreement was an agreed parenting plan governed by K.S.A. 60-1610(a)(3)(A), so it could only be modified by specific findings of fact *by the district court* that it was not in the best interests of the child. She contends that because no such findings were made, the mediation agreement was the only parenting-time plan with which she was required to comply. She further argues that Beach had no statutory authority to modify the mediation agreement. Therefore, she cannot be held in contempt for failure to comply with an invalid order, and the court erred in not dismissing the action.

Shannon's position totally disregards the law and the facts of this case. K.S.A. 60-1623 defines a "permanent parenting plan" in divorce proceedings as:

> "an agreement between parents which is incorporated into an order at a final hearing or an order or decree issued at a final hearing without agreement that establishes legal custody, residency, parenting time and other matters regarding a child custody arrangement in a matter in which a parenting plan may be entered."

The initial parenting plan in this case was entered with the divorce decree. That plan was later modified by the court's order finding it was in the best interests of D.A. to change residential placement from Shannon to Christopher. In support, the court's order set out specific findings of fact regarding Shannon's disruptive and alienating behavior that required a change to the initial parenting plan in the best interests of D.A.

Despite Shannon's argument to the contrary, the September 2009 mediated agreement was not a "parenting plan" governed by K.S.A. 2010 Supp. 60-1610(a)(3)(A). Rather, the mediated agreement only addressed the parties' rights to parenting time for the summer of 2010. Unlike the parenting plan contemplated in K.S.A. 2010 Supp. 60-1610(a)(3)(A), K.S.A. 60-1616(c) generally governs parenting time. Under that statute there is no presumption as to parenting time decisions, and a district court may modify parenting time anytime it serves the child's best interests.

When the parties continued to argue over parenting time and Shannon indicated through her attorney that she would not comply with the mediated agreement, the district court entered a finding that "due to the parties' repetitive conflict which resists other forms of dispute resolution" *it was in the best interests of D.A.* for a case manager to be appointed to resolve all further parenting disputes. The court had the authority to enter such an order on its own initiative under K.S.A. 23-1002. In addition, K.S.A. 23-1003(d)(1) provides that if the parties have been ordered to attempt to settle their disputes with the assistance of a case manager, and they are unable to do so, the parties are required to follow the case manager's recommendations as ordered by the court.

Accordingly, once the district court entered its order appointing Beach as the case manager and set out the rules to follow related to any recommendations he made to the court, the parties were bound to follow the court's order. Neither party to this proceeding challenged the court's order establishing case management. That final order indicated that

if no written objections were filed to the case manager's recommendations within 10 working days, they became the final orders of the court. So contrary to the position that Shannon has taken throughout this case, Beach was acting within both his statutory authority and his court-ordered authority to make recommendations that would supersede the mediated summer parenting time agreement if no written objections were filed. In this case, no written objections were filed. We find that the parenting time as set out in the May 25, 2010, court order was a valid and final order, with which the parties were required to comply.

Shannon's due process rights were not violated

Shannon next contends that due process required that she be given prior notice and an opportunity to respond before Beach filed any recommendations with the court. According to Shannon, her "parenting rights were . . . denied to her by [a] stroke of the case manager's pen," and the court improperly shifted the burden of proof on the issue of D.A.'s best interests to her. Because the May 25 recommendations, which were considered a temporary court order, were filed before she had a meaningful opportunity to be heard by the court, she argues the order that Christopher have D.A. on Father's Day weekend was invalid and she cannot be subjected to sanctions for her failure to comply with it.

Appellate courts exercise unlimited review when determining whether due process was provided in specific circumstances. *Alliance Mortgage Co. v. Pastine*, 281 Kan. 1266, 1272, 136 P.3d 457 (2006).

Shannon bases her argument on several faulty legal and factual premises. First, she characterizes the mediated agreement as a parenting plan that required a hearing before the district court could change it, a characterization that we have already rejected above.

Second, she asserts that Beach's actions were made without any request by the parties, were abrupt and unilateral, and were made for reasons known only to him. She fails to cite from the record to support any of these allegations, and, in fact, the record is inapposite to these assertions. Christopher initiated a request to adjust parenting times based on the special train trip, which also set in motion the modification regarding Father's Day. This request was sent sometime before April 27, 2010, when Beach sent an e-mail to both Shannon and Christopher that included Beach's proposal for the train trip and Father's Day and requested input from Shannon. So when Beach's recommendations were filed with the court on May 25, Shannon was aware of those issues. The recommendations did not appear abruptly and unilaterally.

Moreover, Shannon was not denied any parenting time as a result of the court's orders; it was merely the distribution of that time that was at issue. In other words, Shannon received all the parenting time to which she was entitled with only some minor temporal adjustments. Our Supreme Court has recognized that a parent's right to make decisions regarding the care, custody, and control of his or her child is a fundamental liberty interest protected by the Fourteenth Amendment and a parent is entitled to due process of law before he or she is deprived of that right. *In re J.D.C.*, 284 Kan, 155, 166, 159 P.3d 974 (2007). In addition, parents have a statutory right to parenting time with their children. *In re Marriage of Kimbrell*, 34 Kan. App. 2d 413, 421, 119 P.2d 684 (2005). But in this case, Shannon was never deprived of any parenting time, therefore her procedural due process claim naturally fails.

Nonetheless, even if we were to consider Shannon's procedural due process argument, it fails. The basic elements of procedural due process are (1) notice, and (2) an opportunity to be heard at a meaningful time and in a meaningful manner. *Alliance Mortgage*, 281 Kan. at 1275.

Shannon's complaint on appeal is that the process used in this case provided her notice and an opportunity to be heard only *after* the parenting time was changed, but she was entitled to due process *before* the action was taken. Again, Shannon's position ignores the facts in this case. Shannon was not deprived of due process before her parenting time with D.A. was changed. To the contrary, Beach's challenged recommendation was first made by e-mail almost 2 months prior to Father's Day weekend. Once Beach's recommendations were filed, they were only considered temporary orders, subject to change upon the filing of an objection. Shannon did not file any written objection. Moreover, she had an opportunity to raise the issue with the judge in a telephone conference, specifically called by the judge to address her stated refusal to comply with the recommendations, but she did not do so. She was represented by counsel at all times, including during the telephone conference. And during that telephone conference, the court "entertain[ed] the arguments of counsel in the context of an objection by Mother to the formal recommendation of the case manager." Shannon was not denied procedural due process.

Perhaps to avoid the conclusion that Shannon was afforded but failed to take advantage of her procedural due process rights, Shannon maintains that requiring her to file an objection to Beach's recommendations "had the effect of shifting the burden of proof from the case manager to [Shannon]. . . . On the other hand, if [she] filed an objection, she then had the burden of *disproving*" Beach's determination that it was in the best interest of D.A. to spend Father's Day weekend with Christopher.

This court has previously recognized that the burden is on the opposing party to prove a case manager's recommendations are erroneous or inappropriate, not on the case manager or concurring parties to prove the propriety of the recommendations. *In re Marriage of Gordon-Hanks*, 27 Kan. App. 2d 987, 995, 10 P.3d 42, *rev. denied* 270 Kan. 898 (2000). Shannon cites no relevant authority to support her suggestion that there was

an improper burden shifting at play here. Failure to cite supporting authority is the equivalent of failure to brief an issue. See *State v. Holmes*, 278 Kan. 603, 622, 102 P.3d 406 (2004) (holding that where appellant cites no authority to support his position on appeal and only makes conclusory legal allegations, issue has not been adequately briefed and is deemed abandoned).

Accordingly, we find Shannon has not established any denial of procedural due process that would affect the validity, finality, and enforceability of the May 25 order.

There was sufficient evidence for the court to find Shannon to be in contempt of court

Shannon also argues that she found herself in an ambiguous situation with two conflicting orders, *i.e.*, the mediation agreement concerning parenting time and Beach's May 25 recommendations, the latter of which, she contends, she had a legitimate reason to believe did not apply to her. More specifically, she argues that because she had a good-faith belief that her conduct was compliant with the September 9 mediation agreement, she lacked the intent to disobey the court orders, so the court lacked sufficient evidence to find her conduct contemptuous.

In reviewing a district court's contempt finding, we first examine the district court's findings of fact to determine if the findings are supported by substantial competent evidence and are sufficient to support the district court's conclusions of law, *i.e.*, that the alleged conduct was contemptuous. Substantial competent evidence means "such legal and relevant evidence as a reasonable person might regard as sufficient to support a conclusion." *Hodges v. Johnson*, 288 Kan. 56, Syl. ¶ 7, 199 P.3d 1251 (2009). We do not weigh conflicting evidence, evaluate witnesses' credibility, or redetermine questions of fact. 288 Kan. 56, Syl. ¶ 7. We do, however, exercise unlimited review over the court's

legal conclusion that Shannon's conduct was contemptuous. See *In re M.R.*, 272 Kan. 1335, 1342, 38 P.3d 694 (2002).

Shannon cites two cases in support of her position: *Threadgill v. Beard*, 225 Kan. 296, 590 P.2d 1021 (1979), and *Ensch v. Ensch*, 157 Kan. 107, 138 P.2d 491 (1943). In *Ensch*, the Kansas Supreme Court held that before one can be punished for contempt for not complying with a court order, the order must be clearly and definitely stated. 157 Kan. 107, Syl. ¶ 2. *Threadgill* stands for the proposition that whether a particular act is contemptuous depends upon intent, good faith, and the surrounding circumstances. 225 Kan. at 304. Under its holding, a person's failure to obey a court order "may be excusable, where for any number of reasons the person misunderstands the order, believes the order is no longer in effect, or is misled by the terms of the order itself or by court personnel, persons serving the order or others." 225 Kan. at 304. We find both cases distinguishable.

First, unlike the court in *Ensch*, the district court here found that its order was "crystal clear," and we find there is substantial evidence in the record to support that finding. It is hard to imagine how the May 25 order could more clearly state that Christopher was to have parenting time with D.A. over Father's Day weekend. Under the heading "WEEKENDS FOR MAY & JUNE" it contained the following: "JUNE 18-20 – DAD - FATHER'S DAY WEEKEND." Although the subsequent order allowed Shannon an additional 7 days of parenting time before the start of the school year—to be determined at a later time it did not adjust any of the dates in the May 25 order. In fact, as the district court noted, in its June 7 order, it clearly stated that it affirmed Beach's recommendations, which superseded the originally scheduled parenting time. It was certainly clear to Shannon's attorney that June 18 was not up for consideration for make-up time because he did not list it in the e-mail he sent to Beach on Shannon's behalf suggesting make-up dates.

As to Shannon's intent and the factors set out in *Threadgill*, the court found that the parents knew of Beach's authority; the procedure for objecting; and the fact that if they failed to object, Beach's recommendations would become a final court order. Shannon's own testimony established that she knew of the court's order appointing Beach and knew that any recommendations he filed would become final if no written objections were filed within 10 days. Shannon had sufficient time to file an objection to the May 25 order before the Father's Day weekend arrived. She also had an opportunity to discuss all of the May 25 recommendations with the court in the telephone conference on June 2. In fact, she did discuss the only item with which she indicated she would not comply, the train ride. After the telephone conversation, she complied with the order. Shannon agreed that Beach, a representative of the court system, had advised her on June 15 that there was a court order requiring her to allow Christopher to have parenting time with D.A. on Father's Day. She was also aware Beach had filed another set of recommendations on June 16 that established her make-up dates and still listed June 18 as Christopher's parenting time.

The district court found that it was likewise "crystal clear" that the court's June 7 order gave Beach the authority and responsibility to figure out when Shannon would receive her 7 days of additional parenting time, "and he did just that." It did not give her authority to determine the dates on her own. This finding is supported by the clear language of the court's order which required Shannon to submit her *suggestions* to Beach.

The district court further found that Beach's recommendations were consistent with the mediation agreement, which required by its terms that the parties agree to be flexible with each other concerning visitation. This finding comports with the terms of mediation agreement.

The district court next found that Shannon failed to deliver D.A. to Christopher for his Father's Day parenting time. This was undisputed. In fact, Shannon did not deliver D.A. to Christopher for any of his assigned parenting time in July, even though the mediation agreement upon which she claimed to rely would have allowed Christopher parenting time in July.

Finally, the district court found that Shannon's disobedience of the court's orders regarding Christopher's parenting time on Father's Day weekend was intentional, vindictive, contemptuous, and retaliatory against Christopher and without regard to D.A.'s best interests. In support, the court pointed to the transcript of the June 15 telephone conversation with Beach—specifically Shannon's insistence that Father's Day was part of her make up time which the court found included "repeated reflections that [Shannon was] acting in a manner that places her personal interests ahead of the child." The same was true with regard to her refusal to agree to the train excursion and "her own version and interpretation of the mediation agreement." Although Shannon now argues that she lacked the requisite intent and was confused when faced with conflicting orders, the district court obviously did not believe her. Without weighing credibility or reweighing the evidence—which this court cannot do—we conclude after a review of the record that substantial competent evidence supports the district court's findings. The court had repeated opportunities to observe the parties' testimony, behavior, and demeanor. Judge Montgomery noted that Shannon had also previously been admonished about parenting time issues, and indicated that he "[felt] compelled to find some way to reach" her.

We also find that the facts support the district court's legal conclusion that Shannon's conduct was contemptuous because there were no competing court orders or ambiguities. There is no dispute that throughout this proceeding, Shannon doggedly insisted that she did not have to comply with the May 25 order, but there is sufficient

evidence to support a finding that she did not have a legitimate and reasonable belief that the court order did not apply to her. She, therefore, failed to comply at her own risk.

We note Shannon does not challenge the sanctions imposed, so we need not address that issue.

The district court was not statutorily mandated to grant Shannon's motion to terminate the case manager

Shannon's next argument challenges the district court's denial of her motion to terminate Beach as the case manager.

There is no dispute regarding the district court's authority to entertain such motions. The argument involves what actions the court can or must take upon the filing of such a motion.

At issue is K.S.A. 23-1003(c), which provides that a party may "request reassignment of a case manager by filing a motion with the court." The statute further directs that "[t]he court shall consider such requests upon review."

According to Shannon, this statutory language means that a case manager can be "'reassigned' at any time . . . without cause." She supports this argument by reviewing the next-preceding subsection of the statute, K.S.A. 23-1003(b), which governs the ability of a case manager to withdraw from a court appointment. That subsection provides a nonexclusive list of sufficient grounds for a case manager to withdraw, including the general statement that a case manager may seek to withdraw for "any other reason which shall be stated to the court in writing and considered adequate and sufficient reason by the court." K.S.A. 23-1003(b). Because the legislature did not also statutorily list grounds

for reassignment or termination of a case manager, Shannon insists no such showing was required, and the mere filing of a motion by a party is sufficient to trigger an obligation of the district court to terminate the case manager.

Although Shannon did not raise this argument before the trial court and issues not raised before the trial court generally cannot be raised on appeal, we have recognized an exception when the newly asserted theory involves only a question of law arising on proved or admitted facts and is finally determinative of the matter. That is the case here, so we will address this newly asserted argument. See *In re Estate of Broderick*, 286 Kan. 1071, 1082, 191 P.3d 284 (2008), *cert. denied* 555 U.S. 1178 (2009).

Shannon's argument relies upon statutory interpretation, which, again, is a legal question subject to unlimited review on appeal. See *Unruh*, 289 Kan. at 1193. The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 607, 214 P.3d 676 (2009). We must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. *Padron v. Lopez*, 289 Kan. 1089, 1097, 220 P.3d 345 (2009). When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it. Where there is no ambiguity, we need not resort to statutory construction. Only if the statute's language or text is unclear or ambiguous does the court use canons of construction or legislative history to construe the legislature's intent. *Double M Constr. v. Kansas Corporation Comm'n*, 288 Kan. 268, 271-72, 202 P.3d 7 (2009).

After reviewing the statute, we find that when common words are given their common meaning the clear and unambiguous language fails to support Shannon's position. The statute allows a party to *request* reassignment by *filing a motion*, and the

court shall *consider* such request upon *review*. The italicized terms all indicate the exercise of discretion on the part of the court to either grant or deny the motion after review. To "request" something is to ask for it and to "ask" for something is to call on someone for an answer. See Webster's Ninth New Collegiate Dictionary 107, 1001 (1991). There would be no need to request the reassignment of the case manager, if such action was automatic. Rather, in situations where no action is required by the court, the filing is more appropriately called a "notice." See, *e.g.*, 28 U.S.C. § 1446 (2006) and D. Kan. Rule 81.1 (discussing notice process for removal of case to federal court from state court). Moreover, a "motion" is an application to the court for an order, again indicating that the party is requesting the court to use its discretion to either grant or deny the motion. K.S.A. 60-207(b). To "consider" is to think about something carefully with regard to taking some action. Webster's Ninth New Collegiate Dictionary 273 (1991). And finally, to "review" means to examine critically. Webster's Ninth New Collegiate Dictionary 1010 (1991).

Therefore, it is clear from the plain and unambiguous language of K.S.A. 23-1003(c) that upon Shannon's filing of her motion, the district court was called upon to exercise its discretion in determining whether Beach should be reassigned. This interpretation is further supported by this court's decision in *Marriage of Gordon-Hanks*, 27 Kan. App. 2d at 991, where we found that the decision to grant or deny a motion to remove a case manager is clearly committed to the discretion of the court and ought not to be overruled absent evidence of abuse of discretion.

For these reasons, we reject Shannon's argument that the district court was statutorily obligated to terminate Beach upon Shannon's motion.

The district court did not abuse its discretion by denying Shannon's Motion to Terminate the Case Manager

Shannon further contends that even if the district court was not statutorily obligated to grant her motion, the court abused its discretion in not terminating Beach as the case manager.

A judicial action constitutes an abuse of discretion if the action (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; or (3) is based on an error of fact. *State v. Ward*, 292 Kan. 541, 550, 256 P.3d 801 (2011).

Shannon, without objection, submitted to a full evidentiary hearing to determine if there was sufficient evidence to terminate Beach from the case based on the allegations in her Motion to Terminate Case Manager. She claims on appeal that she submitted sufficient evidence in support of her motion that Beach should be terminated because he: (1) fomented disputes where none existed; (2) demonstrated a lack of understanding of his role and authority; (3) lost his ability to be fair and objective; and (4) failed to adjust his hourly rate to reflect the income of the parties.

At the hearing, Shannon testified that by recommending that D.A. take the train ride with Christopher and spend Father's day with Christopher, Beach was interfering with her compensatory time with D.A. She further alleged that he had cancelled one meeting because of her inability to pay his fees and that he had not yet been able to establish regular face-to-face exchanges between both parents or get them "conversing to each other." Shannon further testified that Beach's adjustments to parenting time for Easter weekend, Mother's Day, and Shannon's birthday were inconvenient for her. She also alleged that Beach did not appropriately enforce his recommendation that Christopher stop spanking D.A., but instead chastised her for drawings she made on

greeting cards she sent D.A. Shannon felt Beach was not neutral because "everything that's been brought up has leaned towards [Christopher]."

At the conclusion of the hearing, the district court made several findings in support of its decision to retain Beach as the case manager. First, the court reminded the parties that they had agreed to the appointment of Beach as the case manager, after Shannon failed to recommend anyone and Christopher recommended two other people. The court further reminded the parties that in the 27 months prior to the court's decision to appoint Beach, there had been 11 filings with the court regarding custody, 5 by Shannon and 6 by Christopher. The court found Shannon's request to replace Beach was just another indication of her ongoing conflict with Christopher, and it was inevitable that one of the parties would object to Beach. The court also found that Beach was a qualified case manager, who had conducted himself in a manner to promote contact between the parties and acted in the best interest of the child. After further examining "mother's litany of dissatisfaction with Mr. Beach," the court announced there was insufficient evidence to support a finding that Beach had not been neutral or to justify his removal. And finally, the court ended by reiterating the process available to Shannon for challenging Beach's recommendations, which she had not availed herself of; noted that Shannon had not suggested a substitute case manager; and pointed out that by continuing to denigrate each other, the parents themselves both fall short of considering the best interests of D.A.

Based on our thorough review of the hearing conducted in this matter, we find that there is substantial competent evidence in the record to support the trial court's findings. The court's refusal to remove Beach as the case manager was not arbitrary, fanciful, or unreasonable, nor was it based on any errors of law or fact.

In addition, to the extent that the court's finding that Shannon failed to present sufficient evidence to support removal of Beach is a negative fact finding, Shannon has

not proven—as she is required to on appeal—that the district court arbitrarily disregarded undisputed evidence or that it was influenced by 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) (setting forth appellate standard of review of negative factual findings).

The judgment of the district court is affirmed.