

NOT DESIGNATED FOR PUBLICATION

No. 107,623

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF

ANITA MARTIN,
Appellee,

and

CHRISTOPHER MARTIN,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; ALLEN R. SLATER, judge. Opinion filed December 14, 2012.
Affirmed.

Christopher Martin, appellant pro se.

Lewanna Bell-Lloyd, of Olathe, for appellee.

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

Per Curiam: Christopher Martin appeals the district court's denial of his motion to reduce child support. We affirm.

Martin and Anita Martin were married on March 27, 1986. They have two children from the marriage. Martin was a football player in the National Football League (NFL). Anita filed for divorce in May 2004 based on grounds of incompatibility. Martin had an attorney for a portion of the proceedings, but has, for the most part, appeared pro se. Martin's failure to make support payments has been a source of contention from the

beginning of the divorce. As of May 15, 2006, Martin was in arrears on his child and maintenance payments of approximately \$159,000.

Martin filed a motion to modify support on April 6, 2006. The court ordered him to provide substantial proof of income. The court found from the evidence presented that it was reasonable to find that Martin had earned at least \$250,000 in 2004 from which the temporary orders were originally set. Martin did not work in 2005, but received a pension from the NFL in the amount of \$1,218.53 per month. Martin filed for bankruptcy in February 2005. The court ordered him to pay \$750 per month or he would be jailed for indirect civil contempt of court.

The trial court entered a decree of divorce on August 15, 2006. The court granted joint custody of the two children and gave Anita primary residential custody. The court stated that Martin had repeatedly failed to produce any income information and figured his annual income at \$100,000 per year. The court ordered Martin to make the following monthly payments: child support—\$1,030; maintenance—\$1,333; and past due support—\$710. Martin's arrearage at the time of the divorce decree was \$172,808. Upon sale of the parties' marital residence, a lien was granted in the amount of \$120,000 on Martin's portion of the \$240,000 equity in the residence.

In July 2009, Martin filed a motion for modification of support and modification of temporary orders. On August 19, 2009, a hearing officer denied Martin's motion stating:

"This Court notes that the arrearage issue has been considered previously and ruled upon by the District Court and the Hearing Officer. This Court will not once again entertain a review of the previous arrearages.

"Concerning [Martin's] request for modification of child support this Court finds that [he] has failed to disclose fully his income from all sources. [Martin] has failed to produce records as directed. [His] expenditures far exceed his alleged income. This

causes concern for the Court and the Court's ability to enter fair and just orders.

[Martin's] motion is denied. [Martin] is advised of appellate time limits."

The district court affirmed the hearing officer's denial by finding that a motion requesting modification of a prior order requires a party requesting an order to present the court with a Domestic Relations Affidavit and Child Support Worksheet. Martin failed to present a Child Support Worksheet.

In 2010, Martin again filed a motion to modify his support and maintenance payments. On August 6, 2010, a hearing officer granted his request and stated:

"[Martin's] motion for modification of support and maintenance is sustained. Effective September 1, 2010, [Martin] shall pay maintenance in the amount of \$745.00 per month and child support in the amount of \$941.00 per month. [Martin] shall further pay the amount of \$200 per month on arrears effective that same date. Petitioner is awarded attorney fees in the amount of \$1,000.00."

Martin appealed to the district court. At a hearing in September 2010, the court affirmed the hearing officer's decision and determined that Martin was deliberately unemployed to avoid support obligations, that he had an annual income of \$100,000 imputed to him in 2006, and that it was reasonable to impute an annual income to him in the amount of \$60,000. The district court also awarded attorney fees to Anita in the amount of \$2,000.

Martin filed the next motion to modify child support in June 2011. On August 18, 2011, a hearing officer held that Martin failed to establish that a material change in circumstances had occurred since the court's previous order modifying his support. The hearing officer denied Martin's motion. At this point, Martin's arrearage exceeded \$163,000. In January 2012, the district court affirmed the hearing officer's decision that there had been no material change in circumstances and Martin's child support should

remain the same. The court also stated that given the evidence in the case, the substantial arrearage and Martin's payment history, he was in contempt of court for nonpayment of child support and the previous jail order was appropriate. Martin appeals.

The only ruling we have jurisdiction to consider on appeal is the January 2012 decision that there had been no material change in circumstances to modify Martin's support obligations. Martin was specifically informed of his right to appeal in September 2010, but he failed to appeal the decision (filed December 2010). See *Board of Sedgwick County Com'rs v. City of Park City*, 293 Kan. 107, 111, 260 P.3d 387 (2011) (The time for filing a civil appeal is specified in K.S.A. 60-2103(a), which requires the appeal to be filed 30 days from the entry of judgment.). Rather, we must consider whether the district court erred in finding there had been no material change in circumstances since the December 2010 reduction of Martin's support orders.

We review a district court's determination of child support for abuse of discretion. *In re Marriage of Case*, 19 Kan. App. 2d 883, 889, 879 P.2d 632, *rev. denied* 255 Kan. 1002 (1994). If reasonable persons could disagree with each other about the propriety of the action taken by the district court, the court did not abuse its discretion. *In re Marriage of Cray*, 254 Kan. 376, 387, 867 P.2d 291 (1994).

A district court has continuing jurisdiction to change or modify an order made in a divorce action concerning the custody and support of minor children. K.S.A. 2011 Supp. 23-3005; *In re Marriage of Schoby*, 269 Kan. 114, Syl. ¶ 4, 4 P.3d 604 (2000). In the end, what constitutes a material change in circumstances depends on the facts of a specific case, but the change should be material, involuntary, and permanent in nature. 1 Elrod, *Kansas Family Law Handbook* § 14.042B, p. 14-23 (rev. 1990); see also *In re Marriage of Johnson*, 24 Kan. App. 2d 631, 633, 950 P.2d 267 (1997), *rev. denied* 264 Kan. 821 (1998).

A material change in circumstances is simply a precondition that must be met by a party seeking adjustment of their child support obligation. The essence of the district court's ruling in September 2010 was that an annual income of \$60,000 was imputed to Martin because he was deliberately unemployed to avoid child support although capable of working full-time, that he was unemployed because of the criminal effects of his failure to pay support, and that he was drawing on an income from his new wife of \$100,000 a year. Under Section II(F)(b) of the Kansas Child Support Guidelines, income may be imputed to the noncustodial parent if that parent is deliberately unemployed or underemployed. 2011 Kan. Ct. R. Annot. 120; *In re Marriage of Scott*, 263 Kan. 638, 645, 952 P.2d 1318 (1998). At the hearing, in deciding to impute income, the district court specifically considered Martin's claim that he was only able to earn approximately \$37,500 per year working for the school district. We find no abuse of discretion in the district court's denial of the motion to modify. See *In re Marriage of Bradley*, 282 Kan. 1, 8, 137 P.3d 1030 (2006)

We are hard pressed to find any violation of Martin's due process rights throughout these proceedings. The fundamental elements of procedural due process are notice and an opportunity to be heard in a meaningful way. *State v. Moody*, 282 Kan. 181, 188, 144 P.3d 612 (2006). Martin was given a hearing on each of his motions to modify. The crux of his argument is that the hearing officer and the district court have given or imputed to him an inflated, unreasonable income for determination of his child support obligation. We do not find that to be the case. Martin has not challenged the constitutionality of the child support guidelines, only the amount used to determine his obligations. Whether a statute is constitutional as applied is a question of law over which this court has unlimited review. See *State v. Laturner*, 289 Kan. 727, 735, 218 P.3d 23 (2009). There is no evidence of a violation of either a procedural or substantive due process violation in this case.

Last, Martin argues that the district court failed to apply the "current first" rules of reporting his NFL retirement benefits. He claims the benefits should be applied to current month's support first and amounts exceeding current support should be applied to arrearages. Martin cites the Kansas Child Support Enforcement Manual. It appears that Martin's claim is related to the multiple contempt charges against him, but he cites no facts that the district court has allegedly failed to follow the "current first" rule. A point raised incidentally in a brief and not argued there is also deemed abandoned. *Cooke v. Gillespie*, 285 Kan. 748, 758, 176 P.3d 144 (2008). The burden is on the party making a claim to designate facts in the record to support that claim; without such a record, the claim of error fails. *National Bank of Andover v. Bankers Surety Co.*, 290 Kan. 247, 283, 225 P.3d 707 (2010).

Affirmed.