NOT DESIGNATED FOR PUBLICATION

No. 107,971

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS *ex rel.* SECRETARY OF SOCIAL and REHABILITATION SERVICES, K. M. L., a Minor Child, by and through the Next Friend and Mother, GENIVA GOLSTON, and GENIVA GOLSTON,
Appellant,

and

VERNON K. LANE,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; ROBB W. RUMSEY, judge. Opinion filed March 15, 2013. Affirmed.

Jerry D. Bogle, of Young, Bogle, McCausland, Wells & Blanchard, P.A., of Wichita, for appellant Geniva Golston.

Susan Ellis and *Joan M. Bowen*, of Conlee, Schmidt & Emerson, LLP, of Wichita, for appellee.

Before ATCHESON, P.J., PIERRON, J., and LARSON, S.J.

Per Curiam: This is an appeal by Geniva Golston, mother of K.M.L. and K.T.L. from the district court's March 7, 2012, order denying her motion to modify a prior child support order issued against the children's father, Vernon K. Lane.

Golston contends the district court erred in refusing to modify Lane's child support obligations based on the amended shared custody formula in the 2012 Kansas Child

Support Guidelines (KCSG) (2012 Kan. Ct. R. Annot. 121), which became effective April 1, 2012.

For the various reasons set forth in our opinion, we affirm the district court's order denying Golston's motion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case began in 1999 with the Kansas Department of Social and Rehabilitation Services (SRS) initiating a paternity/child support action which eventually was on behalf of K.M.L. and K.T.L. Lane was determined to be the father of both children. Over the years up to 2010, the district court has issued various parenting time and child support orders directed to the children's parents, Golston and Lane.

The proceedings involving the parties beginning in July 2010, which we will recount in some detail, form the history behind and the basis for the appeal before us.

In July 2010, Lane filed a motion seeking adoption of a limited case management report that recommended a shared custody arrangement with each parent having nearly equal blocks of time with the children. After this motion was filed, Golston filed a motion seeking permission to move to Georgia with the children because of other employment opportunities available to her; Lane objected to Golston's request. The court reassigned the matter to the prior case manager to attempt to mediate residency and parenting time.

The assigned case manager submitted an additional report in September 2010 to the court with her recommendation. The report evaluated the benefits and downsides of permitting Golston to move the children versus requiring the children to remain in Wichita. Ultimately, the case manager recommended Golston's request to move should be denied, with a primary concern being Golston's apparent unwillingness to respect and

appreciate the children's relationship with their father. Following a hearing, the court adopted the case manager's recommendations, denied Golston's request to move the children to Georgia, and adopted the recommended shared parenting schedule.

In January 2011, Lane moved to review his support obligations. He asserted that due to the new shared custody arrangement and Golston's possible change in income, the child support calculations should be reviewed. Lane attached a domestic relations affidavit to his motion. Golston responded with a renewed motion for permission to move the children to Georgia with her; she reported she had been employed in Georgia since November 2010 and the children had been spending at least some of her parenting time with her family in Wichita.

The court again denied Golston's motion on the grounds of res judicata and because she failed to show a substantial change in circumstances. In addition, the court altered parenting time, making Lane the primary residential parent and giving Golston visitation when she was in Wichita. The order provided parenting time would return to shared parenting if Golston returned full time to Wichita. During the pendency of these motions, a modified income withholding order was issued reducing Lane's child support to $0.

Several months later on March 31, 2011, Golston filed a motion to reinstate child support. Attached to this motion was a domestic relations affidavit indicating that Golston was again living in Wichita and that she had no income. Following a hearing, the court held that Golston and Lane should continue to have shared residency of their children. In calculating prospective child support, the court imputed minimum wage earnings to Golston. The court then ordered Lane to pay child support for the next 12 months of $1,002 per month and that beginning in April 2012, Golston would pay child support for 12 months as to be determined. The court held that child support payments

would alternate every 12 months as long as they shared residence of the children. An income withholding order was issued to Lane's employer shortly after this hearing.

On February 2, 2012, approximately 2 months before the time set for Golston to start her year of child support payments, she filed a motion to recalculate shared child support. Golston specifically requested the court to apply the revised shared child support guidelines that were scheduled to go into effect on April 1, 2012. The record does not show that Golston filed a domestic relations affidavit or proposed child support worksheet with her motion.

A hearing on Golston's motion was held on March 6, 2012. Golston's attorney noted the March 2011 order required the court trustee to prepare the new child support worksheet effective April 1, 2012. Golston further asserted that the child support guidelines scheduled to change effective April 1, 2012, provided that the higher income earning parent—in this case, Lane—was obligated to pay child support in shared custody arrangements. Golston's counsel noted that "the details of the numbers" could be worked out by the parties after the court made its ruling regarding the applicability of the new guidelines.

Lane's counsel objected, noting that Lane had paid full support for a year with the understanding Golston would then pay a share of support beginning in April 2012; according to Lane, changing that process after Golston had received full support for the last year was fundamentally unfair.

After hearing both parties, the court denied Golston's motion. The judge remembered making the prior order and found it would be fundamentally unfair to change the order under the circumstances. Instead, the judge indicated that he would "[l]et the Court of Appeals tell me I've done wrong." A minute sheet entry of judgment

form was filed on March 7, 2012, denying the motion. The income withholding order to Lane's employer was withdrawn the same day.

Golston filed a timely notice of appeal several days later.

On April 16, 2012, a journal entry prepared by Golston's attorney was filed concluding that applying the 2012 KCSG amendments would be manifestly unjust and denying Golston's motion.

The district court did not err in denying Golston's motion to recalculate child support

Golston first argues the district court erred in failing to follow the KCSG that went into effect on April 1, 2012. She further contends the use of the guidelines was mandatory, and it was reversible error for the amended KCSG not to have been utilized by the court below.

The standard of review of a district court's order determining the amount of child support is whether the district court abused its discretion, while interpretation and application of the KCSG are subject to de novo review. *In re Marriage of Matthews*, 40 Kan. App. 2d 422, 425, 193 P.3d 466 (2008), *rev. denied* 288 Kan. 831 (2009). Use of the KCSG is mandatory and failure to follow them is reversible error. Any deviation from the amount of child support determined by the use of the KCSG must be justified by written findings in the journal entry, and failure to justify deviations by such written findings is reversible error. *In re Marriage of Thurmond*, 265 Kan. 715, 716, 962 P.2d 1064 (1998); see *In re Marriage of Atchison*, 38 Kan. App. 2d 1081, 1089, 176 P.3d 965 (2008).

Golston makes the questionable assumption that the 2012 amendments to the KCSG control even though her February motion and the March hearing and entry of

judgment occurred prior to the time Supreme Court Administrative Order 261 was promulgated on March 26, 2012.

The record presented to us clearly shows that Judge Rumsey entered a record of hearing/entry of judgment on March 6, 2012, which was filed March 7, 2012, showing Golston's motion to recalculate shared CHSP was denied. This is the judgment Golston appealed from in her notice of appeal which was filed March 12, 2012.

The reason for the April 16, 2012, journal entry of judgment is unclear as the court had previously entered judgment and had not directed that either party was to prepare an additional order.

We recognize the well-known general rule that the journal entry is the official pronouncement of judgment. *Valadez v. Emmis Communications*, 290 Kan. 472, 482, 229 P.3d 389 (2010). Also, a journal entry takes precedence over and may differ from the trial court's oral pronouncement from the bench. *Radke Oil Co. v. Kansas Dept. of Health & Environment*, 23 Kan. App. 2d 774, 782, 936 P.2d 286 (1997); see K.S.A. 60-258.

The confusion between the two documents does not ultimately end up establishing which version of the KCSG applied to Golston's motion. It remains undisputed that the amended guidelines, by their own terms, did not go into effect until April 1, 2012. Until that date, the proposed guidelines were subject to modification or rescission. Even after the hearing on Golston's motion, the Supreme Court issued Administrative Order No. 261 on March 26, 2012, making additional revisions to the guidelines. Thus, at the date of her motion and hearing, the pre-2012 KCSG were in effect and controlling in the case.

Golston's second premise for reversal and relief is that the amended KCSG created grounds justifying a modification of a prior child support order.

Lane contends, however, that Golston's motion to recalculate child support was, in fact, a motion to modify a prior child support order. Citing various cases issued in chapter 60 divorce proceedings, Lane contends Golston was required to establish a "material change in circumstances" in support of her motion to recalculate child support.

It appears that both parties may be misguided on this point. First, Golston has not presented any convincing authority for the premise that a mere change in the guidelines justifies modification of a preexisting child support order. Likewise, under the facts of this case, Lane may have misstated the proper standard for modifying the particular child support order which had been entered.

Based on the information we have from the record presented to us, it appears that Golston and Lane were never married. Accordingly, this action was initiated by SRS under the Kansas Parentage Act (KPA), K.S.A. 38-1110 *et seq.* In 2011, the KPA was recodified at K.S.A. 2011 Supp. 23-2201 *et seq.* The KPA has several relevant provisions relating to the issuance of child support orders. First, K.S.A. 2011 Supp. 23-2215(c) allows the court to order either or both parents to pay child support. Second, the statute provides:

> "The court may at anytime during the minority of the child modify or change the order of support, including any order issued in a title IV-D cases, within three years of the date of the original order or a modification order, *as required by the best interest of the child.* If more than three years has passed since the date of the original order or modification order, a requirement that such order is in the best interest of the child need not be shown." (Emphasis added.) K.S.A. 2011 Supp. 23-2215(c).

Our court has recognized that the KPA and the divorce code have different standards regarding modification of child support. See *State ex rel. Dix v. Plank*, 14 Kan. App. 2d 12, 14, 780 P.2d 171 (1989) (finding the best interests of the child standard, not a

material change in circumstances standard, applies when seeking modification of a support order issued under the KPA).

The Kansas Supreme Court has recognized that the KCSG applies to actions under both the KPA and the divorce code in determining the amount of child support to be ordered. See *Rupp v. Grubb*, 265 Kan. 711, 713, 962 P.2d 1074 (1998) (holding that incarceration of a parent, standing alone, was not a legal justification for modification of a parent's child support obligation determined under either the KPA or divorce code). Despite the broad language in *Rupp*, however, that case only addressed the no justification rule from *In re Marriage of Thurmond*, 265 Kan. 715. The language of K.S.A. 2011 Supp. 23-2215(c)—allowing modification based on the best interests of the child—is unambiguous. The Supreme Court cannot alter the statutory standard through the KCSG to a material change in the circumstances.

There is no question Golston's motion sought to modify an existing order. While a recalculation of child support under the 2011 order would have been required, that calculation was to determine the amount Golston would be required to pay for the next 12 months. In the appeal of the denial of Golston's motion, she is seeking to modify the 2011 child support order by asking the court to recalculate support under amended standards and contending Lane should be required to be the person continuing to pay support.

However, nowhere in her cursory written motion or in her counsel's arguments below did Golston present or even argue the requested modification would be in the best interests of the children.

In seeking a modification of the 2011 child support order, Golston was required by the KPA to establish the modification would be in the best interests of the children. She made no such showing or even attempted to do so. The district court properly denied her motion. Where the district court reaches the correct result, we uphold its decision even

where we rely on other reasons to do so. *Hockett v. The Trees Oil Co.*, 292 Kan. 213, 218, 251 P.3d 65 (2011).

Lane also contends the district court properly denied Golston's motion because she failed to file a domestic relations affidavit with her motion or prior to the hearing. Golston's counsel acknowledged at the hearing that financial information had not been provided. Instead, he asserted that counsel could "work" the "details of the numbers" after the court determined whether the order should be changed to adopt the formula allowed in the 2012 KCSG.

Supreme Court Rule 139 (2012 Kan. Ct. R. Annot. 242) provides the procedure for filing motions to modify child support orders. A party filing a motion to modify an existing order of support shall serve a copy of the domestic relations affidavit along with the motion on the adverse party. Rule 139(f). Likewise, when child support is required, a child support worksheet must accompany the domestic relations affidavit. Rule 139(g). Similarly the KCSG, both pre- and post-April 1, 2012, require completed child support worksheets and a domestic relations affidavit to be presented to the court. See KCSG III.A (2012 Kan. Ct. R. Annot. 125).

Our appellate decisions have shown that only the motion is necessary to confer jurisdiction on the court to modify child support under the statute. The affidavit and worksheet are evidentiary requirements imposed by Supreme Court rules. *In re Marriage of Jones*, 45 Kan. App. 2d 854, 858, 268 P.3d 494 (2010). However, the purpose of a domestic relations affidavit is to ensure that the district court is provided with the necessary financial information to make determinations that are fair, just, and equitable or in the best interests of the children.

While these requirements can be waived by the parties or the court in its discretion, see *Cook v. Cook*, 231 Kan. 391, 395, 646 P.2d 464 (1982), such was not the

case here where no financial information of any kind was presented to the court and no waiver was made by Lane or on his behalf.

In this case no earnings or expenses were presented to the court either by affidavit, worksheet, or testimony. This amounts to a total failure by Golston to establish a modification was in the best interests of the children or what appropriate amount should be set, no matter what guideline might be in effect.

For all the reasons set forth, we hold the district court did not abuse its discretion in denying Golston's motion.

Affirmed.