

NOT DESIGNATED FOR PUBLICATION

No. 108,314

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

DOUGLAS J. ROBY,
Appellant,

and

KYETTA A. WOODLEY,
Appellee.

MEMORANDUM OPINION

Appeal from Franklin District Court; PHILIP L. SIEVE, judge. Opinion filed April 5, 2013.
Affirmed.

Douglas J. Roby, for appellant pro se.

Kyetta A. Currier, for appellee pro se.

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

Per Curiam: Douglas J. Roby and Kyetta A. Currier (f/k/a Woodley) were divorced in 2003. They had one daughter, K.R., born in November 1998. The parties were granted joint custody of K.R., with neither being designated as the custodial parent. Roby was to pay \$200 per month in child support. Roby was apparently happy with this arrangement, and his current action has, at its core, his desire to return to that arrangement. But given all that had happened in the case in almost 10 years of litigation, the district court found that returning to the prior arrangement would not be possible until Roby retained a case manager and submitted to a Level Three Psychological Evaluation.

In the meantime, his visitation with his daughter was terminated, and he was allowed recorded telephone contact only. His request to set aside prior orders made by judges who had since recused themselves was denied. It is from that order that he filed this pro se appeal.

Roby's complaints can be grouped into three general categories: (1) complaints that the district court's refusal to process his requests for transcripts deprived the court of jurisdiction to act; (2) complaints about misrepresentations allegedly made by Currier or her attorney to the court related to Currier's income for child support purposes; and (3) complaints about the district court's failure to journalize an alleged ruling in Roby's favor that modified the amount of monthly child support from \$207 per month to \$200 per month. We find Roby's complaints are either wholly unsupported by or refuted by the record. Moreover, we can find no error that substantially affected Roby's substantial rights to the care and custody of his child. Accordingly, we affirm.

PRELIMINARY DISCUSSION OF BRIEFING IN THIS CASE

Before discussing the facts and issues raised in this case, we find it necessary to make some preliminary comments regarding the briefing. Both parties are acting pro se. Unfortunately, neither party includes a sufficient factual background to provide context for the arguments on appeal as required by Supreme Court Rules. And the record, which exceeds 18 volumes and 1,600 pages, makes it particularly difficult to succinctly summarize that background. What we are faced with is 10 years of litigation, most of which has little to do with the real issues before the court. In addition, the briefing fails to present any legally cogent argument.

First, Roby's three-page statement of facts consists only of a laundry list of complaints he has against his ex-wife, her counsel, and the various district court judges who have presided over the ongoing litigation in this case, without any particular

coherence. Currier's brief includes several factual statements without any citation to the record. Neither brief complies with Supreme Court Rule 6.02(a)(4) (2012 Kan. Ct. R. Annot. 39), which requires "[a] concise but complete statement, *without argument*, of the facts that are material to determining the issues to be decided in the appeal," and provides that the court can presume that "facts included in the statement" that are not "keyed to the record on appeal by volume and page number" have "no support in the record on appeal." (Emphasis added.) We note that any arguments improperly mentioned in the parties' factual statements that are not raised as separate issues and properly briefed are deemed abandoned in this appeal and will not be addressed. See *Manhattan Ice & Cold Storage v. City of Manhattan*, 294 Kan. 60, 71, 274 P.3d 609 (2012) (noting that point raised incidentally in appellate brief and not argued therein is deemed abandoned).

Second, Roby's four issues on appeal each begin with capitalized statements of the standard of review as "DE NOVO" (Issues 1-3), or "CLEARLY ERRONEOUS" (Issue 4). Without citation to authority or explanation of why these standards apply to his arguments, these brief statements do not comply with the requirement of Supreme Court Rule 6.02(a)(5) (2012 Kan. Ct. R. Annot. 39) that "[e]ach issue must begin with citation to the appropriate standard of appellate review."

Roby's reply brief alleges that Currier's brief is noncompliant with Supreme Court Rules and should be rejected. He then proceeds to dispute factual allegations without citing to the record, also in violation of Supreme Court Rules.

As a panel of this court has previously noted: "A party untrained in the law takes considerable risk in attempting self-representation because failing to comply with court rules or failing to appreciate standards of review and other legal principles can hamper and often derail an argument." *In re Marriage of Smith and Lohman*, No. 105,142, 2011 WL 5526565, at *1 (Kan. App. 2011) (unpublished opinion). Supreme Court Rule 6.02 and Rule 6.03 (2012 Kan. Ct. R. Annot. 43) ensure that we are fully apprised of the

parties' contentions and what legal authority supports the parties' assertions of error or lack thereof. See *In re Marriage of McMorris v. Hoostal*, No. 97,827, 2007 WL 4578004, at *2 (Kan. App. 2007) (unpublished opinion). We are certainly within our authority in situations such as this to simply strike the briefs and affirm the district court. We should not be forced to guess at the issues and the relative positions of the parties. But because our courts liberally construe pro se filings, we have conducted an independent and complete review of the extensive record in an effort to understand and address Roby's concerns. In an attempt to provide clarity, we will highly summarize only those facts necessary for our ruling.

FACTUAL AND PROCEDURAL HISTORY

The record reveals these parents' contemptuous relationship is long-lived, much to the detriment of their daughter.

This case concerns numerous court orders entered in postdivorce proceedings over the past several years that concern the care and support of Roby and Currier's minor daughter, K.R. Up to and since the initiation of the parties' underlying divorce proceedings in 2002, Roby and Currier have a long history of making disturbing allegations against each other—some substantiated, others not—both before and after their daughter was born. It would serve no useful purpose, so no attempt is made here, to detail all of those allegations. Many are reflected in the court's confidential file, which includes records of counseling sessions and court-ordered psychological evaluations.

It took less than 6 months after their divorce was final for it to become clear that the parties' agreed parenting plan, under which they shared joint legal and residential custody of their daughter, was not going to work. This led to an onslaught of litigation to modify child custody and child support.

By 2008, the relationship between Roby and his daughter had soured and K.R. made allegations against Roby, which he largely denied, but that, nonetheless resulted in Roby's parenting time being reduced to supervised visitation while the parents and K.R. attended court-ordered counseling. The parties seemed to be making progress, and matters even progressed enough for Roby to resume his unsupervised periods of parenting time with K.R. while they continued to attend joint family therapy sessions. But that did not last long either, because 4 months later Currier filed an emergency motion to suspend Roby's parenting time based on new allegations by K.R., which Roby again denied.

Litigation on the emergency motion, several allegations of contempt lodged by the parties against one another, and other procedural issues that developed in the ensuing litigation—particularly once Roby began to represent himself—ultimately served as the impetus for the complaints Roby now raises in this appeal. During this time, Roby lost his job and was unable to find other employment, was diagnosed with severe depression, and was ordered to have no contact with K.R. except for weekly recorded telephone calls, which will remain the case until Roby obtains a court-ordered psychological evaluation. See K.S.A. 2012 Supp. 23-3218(b) (authorizing court to order mental examination of party in proceeding to modify custody, if requested, pursuant to K.S.A. 2012 Supp. 60-235).

We pause here to note that, despite these unfortunate developments in the custody arrangement, it has never been disputed that both Roby and Currier love their daughter. It suffices to say that this case has been, and remains today, extremely acrimonious and emotionally charged.

The case is now here upon a denial of Roby's motion to have prior orders of the court set aside by the third district court judge assigned to this case.

Turning to the postdivorce proceedings that ultimately bring the case here before us, those proceedings were initiated by Roby's motion to set aside or vacate previous orders of the court. Roby filed that motion after District Court Judges Sachse and Godderz had recused themselves, which resulted in the assignment of Senior Judge Phillip Sieve to the case. During a hearing on Roby's motion to set aside prior court orders, Judge Sieve patiently allowed both Currier's counsel and Roby extensive leeway in providing their opposing views of the prior proceedings and summarizing the issues. At the close of that hearing, Judge Sieve announced that he would adopt Judge Godderz' prior rulings concerning the appointment of a case manager and Roby's need to obtain a psychological evaluation to facilitate the process of restoring his unsupervised parenting time with K.R. This is Roby's appeal from Judge Sieve's final judgment denying his motion to set aside previous orders.

ANALYSIS

The district court did not lose jurisdiction by its actions regarding Roby's numerous requests for transcripts.

Roby's first two issues, which are considered together here, concern his attempts below to obtain transcripts of hearings. The record is replete with requests for transcripts of various hearings that Roby has filed throughout this litigation. In his brief, however, Roby focuses upon only two requests for transcripts that he filed after Judge Godderz was assigned to preside over the case, so this analysis is limited to those requests.

Turning to Roby's arguments, Roby summarily contends in his first issue on appeal that by refusing or delaying those requests, Judge Godderz violated the Kansas Open Records Act, K.S.A. 45-215 *et seq.* (KORA). In his second related issue, Roby argues that because Godderz violated the KORA, he became a "trespasser of the law" and his orders are void as lacking jurisdiction.

Standard of review

Whether the district court had subject matter jurisdiction to act presents a legal question subject to de novo review on appeal. See *Mid-Continent Specialists, Inc. v. Capital Homes*, 279 Kan. 178, 185, 106 P.3d 483 (2005). Likewise, to the extent that Roby is arguing he was denied access to the courts or access to legal materials, that argument concerns a denial of due process, which is also a question of law reviewed de novo by this court. See *State v. Hall*, 287 Kan. 139, 143, 195 P.3d 220 (2008).

The court had jurisdiction over this cause of action and Roby's requests for transcripts.

In support of his argument that Judge Godderz lost jurisdiction and, therefore, his judgments were void, Roby cites three authorities. The first relates to the general principles governing a court's subject matter jurisdiction as discussed long ago in *Elliott v. Peirsol*, 26 U.S. (1 Pet.) 328, 340, 7 L. Ed. 164 (1828), which recognized:

"Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers."

The remaining authorities cited by Roby discuss the doctrines of qualified and absolute immunity of government officers for tort liability. See *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974), *overruled on other grounds Davis v. Scherer*, 468 U.S. 183, 104 S. Ct. 3012, 82 L. Ed. 2d 139 (1984), and *Yates v. Village of Hoffman Estates, Illinois*, 209 F. Supp. 757 (N.D. Ill. 1962).

These authorities are wholly inapposite to the issue at hand.

"Subject matter jurisdiction refers to the power of a court to hear and decide a particular type of action. Jurisdiction over subject matter is the power to decide the general question involved and not the exercise of that power." *Frazier v. Goudschaal*, 296 Kan. ___, Syl. ¶ 1, ___ P.3d ___ (No. 103,487, filed February 22, 2013). There is no question of Judge Godderz' subject matter jurisdiction and authority to act in these postdivorce proceedings. See K.S.A. 20-301 (district courts have general original jurisdiction of all civil and criminal matters unless otherwise provided by law); K.S.A. 20-302. Accordingly, he had the authority to rule on all motions and requests related to the case, including requests for transcripts.

Application of the Kansas Open Records Act (KORA)

Next, Roby alleges that Judge Godderz violated the KORA by "[failing] to allow Plaintiff to request estimates for transcripts and order transcripts." This is supported by his argument before Judge Sieve that the transcripts should have been provided within 3 days. See K.S.A. 45-218(d) (open records requests to be acted upon within 3 business days).

Court records are generally open public records. See *Stephens v. Van Arsdale*, 227 Kan. 676, 686-88, 608 P.2d 972 (1980). The KORA requires all public records to be open for inspection. See K.S.A. 45-218(a). Transcripts of open court proceedings that are filed with the court would generally be open records subject to reproduction upon request, absent any statutorily recognized exceptions such as privacy concerns. See K.S.A. 45-218(e); K.S.A. 45-221; Supreme Court Administrative Order No. 156. But when Roby made his request to the court for transcripts, the transcripts did not exist. Accordingly, the KORA does not apply to his request.

Instead, the issue here is not access to an existing transcript of an open court proceeding, but the request by a party during the course of a proceeding for the transcription by the court reporter of the court reporter's notes or digital recordings. There does not appear to be any statutory time restrictions related to preparation of a transcript in a case pending in the trial court. The overarching concern would be whether transcripts were necessary to address issues before the court and whether the failure to prepare them in a timely manner would impinge on a litigant's due process rights. Roby makes no such claim here, arguing solely a violation of the KORA.

Moreover, contrary to Roby's claims on appeal, Judge Godderz did not unconditionally deny Roby access to the estimates or transcripts that he sought. Instead Judge Godderz ruled that, if necessary for Roby to prosecute other motions, Roby could "receive a transcript of a prior hearing upon proper application, approval by the Court, and payment in full in advance by [Roby]." This does not appear to be an unreasonable restriction on Roby, particularly in light of his numerous court filings. In fact, several district courts in Kansas have court rules that require requests for the preparation of transcripts to be made through the judge, as Judge Godderz ordered here. See, e.g., Twenty-Fifth Judicial District Court Rule 105; Twenty-Sixth Judicial District Court Rule 113.

As to the specific transcripts requested, Roby requested a copy of the transcript of the May 24, 2011, hearing where he sought the recusal of Judge Godderz. Judge Godderz denied that request. His order indicates that the hearing was "informal" and conducted "off the record," so it is unclear if the hearing was capable of transcription, although there does appear to have been some sort of audio recording. Roby also requested a copy of the transcript of the January 10, 2012, hearing regarding his failure to pay child support. Judge Godderz did not rule on that motion prior to recusing himself from the case on February 8, 2012. A review of the record reveals that in response to an allegation from Roby that Judge Godderz was improperly denying or, at a minimum, dragging his feet on

approving his transcript requests, Judge Sieve agreed to make sure Roby received all the transcript cost estimates he needed. Immediately after Judge Sieve's promise, Roby again filed requests for transcripts from the May 24, 2011, and January 10, 2012, hearings. The court reporter responded with the necessary information, and one of the transcripts is contained in the record on appeal. Roby does not contend that he did not ultimately get all the transcripts he requested and paid for.

Finally, we fail to see how Judge Godderz' order impaired Roby's ability to prosecute his requests for change of custody, an increase in parenting time, or a reduction in child support, which were the real issues in the case. Even if the judge did commit error, and we find he did not, no error by a court is grounds for disturbing a judgment or order unless there is a reasonable probability it affects a party's substantial rights. See K.S.A. 2010 Supp. 60-261. It did not here. There is no evidence to suggest, and Roby does not argue, that the delay in receiving transcripts impaired his full and ample opportunity to be heard on the merits of his claims regarding child custody, parenting time, and child support. See *In re K.E.*, 294 Kan. 17, 22, 272 P.3d 28 (2012) (fundamental due process requirement is the opportunity to be heard at a meaningful time and in a meaningful manner).

Accordingly, Roby is not entitled to relief on this claim of error.

Roby is not entitled to relief from the judgment due to alleged misconduct by Currier's counsel.

Roby argues in his third issue that he presented evidence of attorney misconduct by Currier's counsel and the court was required to and failed to act on that information. He contends Currier's counsel either assisted or condoned Currier's "income tax evasion" by allowing her to testify during a September 1, 2010, hearing on a motion to modify child support about certain deductions from her income, which Roby believes were

improper. The purpose of this testimony, Roby contends, was an "attempt to get inflated child support payments." Roby also briefly suggests the district court violated a canon of judicial conduct or violated Roby's due process rights by not allowing Roby to conduct discovery to substantiate his claim or by not otherwise taking "appropriate action."

Standard of Review

Since Roby is arguing that Judge Sieve erred in denying his motion to set aside prior court orders, the standard applied in reviewing a denial of a motion to set aside a prior judgment under K.S.A. 2010 Supp. 60-260 is appropriate. That standard calls for this court to review any decision on such a motion for an abuse of discretion. See *State ex rel. Stovall v. Alivio*, 275 Kan. 169, 172-73, 61 P.3d 687 (2003). 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. *Critchfield Physical Therapy v. The Taranto Group, Inc.*, 293 Kan. 285, 292, 263 P.3d 767 (2011).

However, allegations of judicial misconduct are subject to unlimited review on appeal. See *State v. Kirkpatrick*, 286 Kan. 329, 348, 184 P.3d 247 (2008). The party alleging judicial misconduct bears the burden of showing prejudice. 286 Kan. at 348.

The record reveals no court orders subject to being set aside.

Roby bears the burden of proving his claim that the court abused its discretion in not granting him the relief he requested. See *Harsch v. Miller*, 288 Kan. 280, 293, 200 P.3d 467 (2009). He claims it was error for Judge Sieve not to set aside prior court orders. But it is unclear exactly what relief he seeks because we cannot locate any court orders related to this issue. Some additional background is in order.

Roby filed a motion to modify his child support payments because he lost his job. The court granted his motion, and his child support was lowered from \$379 per month to \$284 per month. Roby claims Carrier's attorney assisted Carrier in testifying at the modification hearing about "her illegal activity in the form of income tax evasion and presented to the Court pay stubs and timecards." Because he was apparently not provided with copies of the exhibits, immediately after the hearing Roby filed several motions related to his desire to see the exhibits, including discovery motions. He wanted to "provide the exhibits to the IRS and the Kansas Department of Revenue in hopes of getting a reward to fulfill his child support obligations." He subsequently withdrew *all* those motions. He was provided with copies of all exhibits. He also filed an ethical complaint against Carrier's attorney with the Disciplinary Administrator's office. The Disciplinary Administrator found no misconduct on the part of Carrier's counsel. We are unable to locate any active motions that the court denied related to this claim of error.

Roby was not prevented from serving discovery on this matter, he withdrew his motions for discovery, and he was provided with the requested documents. He was able to pursue his claims of misconduct, and he advised the court that he had filed a complaint with the Disciplinary Administrator.

Roby has not shown prejudice.

Moreover, we have no evidence of any prejudice to Roby's case as a result of this tax issue. Roby requested that his child support be modified downward and it was. If the attempt was to lie to get more child support, it obviously did not work, and the court was not deceived. Roby's child support was subsequently modified downward again to \$207. So even if this was error, and we find it was not, Roby's substantial rights were not affected.

The district court did not commit judicial misconduct by refusing to sign an order reducing Roby's child support from \$207 to \$200 per month.

Roby's fourth issue on appeal concerns a comment Judge Sieve—the third district court judge assigned to preside over this case—made on the record at the final hearing held in this case on April 10, 2012, about how much child support Roby must now pay. As already noted, allegations of judicial misconduct are subject to unlimited review on appeal. See *Kirkpatrick*, 286 Kan. at 348.

Following a long exchange about why Roby had not been paying the \$207 in monthly child support and why he was in arrears for almost \$6,000 (neither of which Roby disputed), Roby explained to Judge Sieve that he was unemployed and could not pay. He indicated that he only wanted to pay the \$200 per month that he had agreed to pay when the parties divorced. The following brief exchange occurred between Judge Sieve and Roby after Currier's counsel had made his argument regarding Roby's lack of payment:

"MR. ROBY: All right. Um, well [Currier's counsel] was saying I [want to] do thing[s] my way. And, and I think that's a mischaracterization. I [want to] do the thing—I [want to] do things the way that we had agreed to do. Um, as far as paying the \$200.00 a month or 207—I don't care. You [want to] make it 210? Fine. You know as long as, as long as we can get an amount—we had agreed to 200, the Court said 207, we [want to] run it up to 210? Fine. Um—"

"THE COURT: If you'd start paying that 200 bucks I'd knock seven off of it."

Roby believes this statement amounted to a modification of his child support obligation. Thus, he complains that Judge Sieve committed judicial misconduct when he did not journalize that judgment and asks this court for an order of mandamus directing Judge Sieve to do so. In support, Roby complains that a "[f]ailure of a judge to do what

he states in Court is not promoting confidence in the judiciary and is acting in a way that is prejudicial to the administration of justice."

On the contrary, it appears that Roby is taking the judge's comments out of context. Judge Sieve was merely commenting on the fact that regardless of whether the amount due was \$200 or \$207, Roby was not paying anything. He was not modifying the future amount due, and he did not commit misconduct for refusing to sign a journal entry presented by Roby. Accordingly, this claim of error also fails.

For the above and foregoing reasons, the decision of the district court is affirmed.