

NOT DESIGNATED FOR PUBLICATION

No. 107,055

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

ASHLY ANDREWS n/k/a ASHLY WILLIAMS,  
*Appellant,*

and

JOEL ANDREWS,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; MARK A. VINING, judge. Opinion filed April 19, 2013.  
Affirmed.

*Stephen M. Turley*, of Cleary, Soderberg, Wagle & West, of Wichita, for appellant.

No appearance by appellee.

Before ATCHESON, P.J., BUSER, and STANDRIDGE, JJ.

*Per Curiam:* This is an appeal of the district court's denial of a contempt motion made by Ashly Andrews, n/k/a/ Ashly Williams (Williams), to enforce provisions of a divorce decree against her former husband, Joel Andrews (Andrews), in a post-divorce proceeding. For the reasons discussed below, we affirm the district court's ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Williams and Andrews were married on March 29, 2008. They have two children born in 2005 and 2007. On November 13, 2008, Williams filed a petition for divorce with

a domestic relations affidavit. The district court issued an ex parte temporary order which required Andrews to pay Williams \$460 per month in child support and \$400 per month in spousal maintenance beginning on December 1, 2008, and continuing throughout the divorce action. The district court attached a child support worksheet, prepared by Williams' attorney, showing the basis for the support computation.

A few months later, Andrews filed a counter petition for divorce, a motion for modification of the temporary order, a domestic relations affidavit, and a proposed child support worksheet. Andrews showed that he owed child support to Williams in the amount of \$194 per month.

After a hearing on the temporary order, the district court modified Andrews' child support and spousal maintenance obligations. With regard to maintenance, the district court ordered Andrews to pay Williams \$400 per month for the months of December 2008 and January 2009, and it temporarily terminated his obligation as of February 1, 2009. With regard to child support, the district court ordered Andrews to pay Williams \$460 per month for the months of December 2008 and January 2009, but reduced his support obligation to \$242 a month for the remainder of the proceedings. No child support worksheet was attached to the order to substantiate the new child support amount.

The divorce trial was held on December 10, 2009. Although Williams appeared in person with her attorney, Andrews failed to appear in any capacity. As a result, the district court found that Andrews was "wholly in default." After Williams presented evidence in support of her petition, the district court granted the divorce. On December 21, 2009, the district court issued a formal Judgment and Decree of Dissolution of Marriage.

Relevant to this appeal, Andrews was ordered to pay \$289 a month in child support beginning January 1, 2010. No child support worksheet, however, was filed to explain the calculation of this monthly amount. The district court also awarded Williams

a domestic support judgment of \$5,897, for child support and maintenance arrearages incurred as a result of the court's temporary order.

On September 14, 2010, Williams filed a motion and affidavit for an order to appear and show cause alleging that Andrews should be found in contempt of court for his failure to comply with the divorce decree. Relevant to this appeal, Williams alleged that Andrews failed to pay the domestic support judgment and he had accumulated an outstanding child support arrearage of \$1,935.63. Williams also sought attorney fees and expenses. Based on these filings, the district court ordered Andrews to appear and show cause why he should not be held in contempt.

On September 29, 2011, an evidentiary hearing was held on the contempt motion. Williams testified that Andrews violated the divorce decree because he currently owed her \$15,306.88. This amount included Andrews' outstanding domestic support judgment and his current child support arrearage. Williams testified that Andrews sporadically paid his child support payments and every payment she received was an underpayment. As a consequence, Williams requested a contempt finding and punishment "as the court sees fit."

Andrews also testified at the hearing. He stated that he was not present at the divorce trial and did not sign the divorce decree, but he acknowledged that under the decree, he was obligated to pay Williams \$289 per month in child support. Andrews recalled that the district court reduced his support obligation, at his request, based on his employment situation. Andrews clarified, however, that he did not believe "\$289 for two children [was] too much for [him] to pay." He attributed his inconsistent payment record to periods of unemployment and his assumption that when he was working, income withholding orders "would kick in" at some point. Andrews contended that the figures used to calculate Williams' domestic support judgment were inaccurate and that the divorce decree did not require that he make monthly payments or pay off the amount by a

certain date. Andrews conceded, however, that he did not appeal from the orders in the divorce decree, and he never filed a motion to modify his child support obligation.

Andrews' counsel questioned the accuracy of the figures relating to the child support and maintenance arrearages and domestic support judgments. He also indicated that he was currently "researching whether [Andrews] still [had] any possible remedy under [K.S.A.] [2011 Supp.] 60-260(b) to go back and have those arrearage figures reconsidered." Andrews' counsel also questioned the legality of Andrews' current child support obligation of \$289 a month because the district court did not file a child support worksheet with the divorce decree, substantiating this amount. Andrews' counsel explained that the failure to comply with the Kansas Child Support Guidelines (Guidelines), was an abuse of discretion and Andrews should not be held in contempt for failure to comply with an erroneous ruling.

Although Williams and her counsel essentially acknowledged the existence of discrepancies in the calculation of the domestic support judgment and the absence of a child support worksheet, Williams' counsel insisted that the divorce decree was still a valid order. He noted that Andrews never appealed from the decree or filed a motion under K.S.A. 2011 Supp. 60-260(b) seeking to have the decree set aside.

The district court denied the contempt motion. At the outset, the court observed, "the judges that handled this case in the domestic department fell woefully short of establishing a baseline or adequate basis for matters such as the contempt issue." Upon the district court's review of the underlying orders and journal entry of judgment it found, "there's no valid, enforceable court order to base an allegation that [Andrews] has willfully failed to pay pursuant to a court order." In particular, the district court noted that the decree was "a default journal entry" issued after a hearing from which Andrews was absent, and "although he [was] required to be put on notice, if he's made an appearance . . . there is no valid court order that is supported by a child support worksheet other than an agreement . . . between the parties."

The district court also found:

"[t]here's been evidence that income withholding orders as further ordered in that journal entry were required immediately, and so there's some reason to believe that the respondent could have believed that he was complying simply because payments were being taken out of his check pursuant to the work income withholding order."

Because the district court found that Andrews' actions were not contemptuous, it did not assess any sanctions and denied Williams' request for attorney fees.

The district court then found it "would be remiss when it has the parties here in not making orders sufficient to carry the parties through." Based on the evidence presented, the court held that the parties had an enforceable contract requiring Andrews to pay Williams \$289 a month in child support commencing January 1, 2010. Accordingly, the court found that Andrews owed Williams a child support arrearage in the sum of \$5,491, less any payments Andrews had made. Subsequently, the parties agreed that Andrews, in fact, had paid a total of \$2,863.86 which resulted in the district court awarding Williams a domestic support judgment of \$2,627.14. Additionally, the parties were ordered "to exchange income information and establish a child support amount beginning October 1, 2011, based upon the [G]uidelines and current incomes."

Williams filed a timely appeal.

#### DENIAL OF THE CONTEMPT MOTION

On appeal, the crux of Williams' arguments is that the district court erred when it found Andrews not guilty of contempt for nonpayment of child support arrearages. Of note, Andrews did not file a responsive appellate brief.

This case is most appropriately categorized as an indirect civil contempt proceeding, because the primary objective of Williams' action is to enforce her right to

child support and compel Andrews' compliance with the divorce decree. See *In re J.T.R.*, 47 Kan. App. 2d 91, 95-97, 271 P.3d 1262 (2012).

When reviewing a contempt proceeding, appellate courts utilize a dual standard of review. *In re M.R.*, 272 Kan. 1335, 1342, 38 P.3d 694 (2002). First, the court examines the factual findings underlying the district court's contempt decision by a substantial competent evidence standard and the ultimate legal conclusion drawn from those factual findings, *i.e.*, whether the alleged conduct is contemptuous, under a *de novo* standard. See *Hodges v. Johnson*, 288 Kan. 56, Syl. ¶ 7, 199 P.3d 1251 (2009); *In re M.R.*, 272 Kan. at 1342; *In re Marriage of Brotherton*, 30 Kan. App. 2d 1298, 1301, 59 P.3d 1025 (2002). Second, appellate courts review the appropriateness of the sanctions imposed in a contempt proceeding under an abuse of discretion standard. *In re Marriage of Brotherton*, 30 Kan. App. 2d at 1301.

At the outset, Williams appears to only challenge the district court's ruling with regard to the child support arrearage Andrews accrued *after* the divorce was finalized. She does not address Andrews' failure to satisfy the domestic support judgment. An issue not briefed by the appellant is deemed waived and abandoned. *State v. McCaslin*, 291 Kan. 697, 709, 245 P.3d 1030 (2011). Moreover, failure to support an argument with pertinent authority or show why it is sound despite a lack of supporting authority or in the face of contrary authority is akin to failing to brief the issue. *State v. Berriozabal*, 291 Kan. 568, 594, 243 P.3d 352 (2010).

Although Williams divides her brief into several issues, she describes the district court's denial of contempt as "the central issue in this appeal." More particularly, she argues, "[the district court] may have correctly noted that because the Decree was not supported by a child support worksheet, the Decree was erroneously issued . . . . However, . . . although the Decree may have been erroneous it was still enforceable through contempt proceedings."

The Guidelines require that "[a] worksheet approved by the court shall be filed in every case where an order of child support is entered." Administrative Order No. 261, Kansas Child Support Guidelines, § III A. (2012 Kan. Ct. R. Annot. 125). Moreover, Kansas appellate courts have consistently held that use of the Guidelines is mandatory, and a district court's failure to follow the Guidelines or to justify deviations from the presumptive amount of support by either completing Section E of the worksheet or making specific written findings in the journal entry constitutes reversible error. See *In re Marriage of Thurmond*, 265 Kan. 715, 716, 962 P.2d 1064 (1998); *In re Marriage of Schletzbaum*, 15 Kan. App. 2d 504, Syl. ¶ 3, 809 P.2d 1251 (1991); *In re Marriage of Patterson*, 22 Kan. App. 2d 522, 529, 920 P.2d 450 (1996). In other words, district courts are required to attach a child support worksheet to the journal entry "for certain calculations of child support," *i.e.*, those involving an adjustment or deviation from the Guidelines. See *In re Marriage of Leedy*, 279 Kan. 311, 317-18, 109 P.3d 1130 (2005).

In the present case, the district court found that because the decree was not supported by a child support worksheet, the order was not valid and enforceable. Williams essentially concedes that the child support order was erroneous because the district court failed to attach a child support worksheet. However, Williams relies on *Koch Engineering Co. v. Faulconer*, 227 Kan. 813, 829-30, 610 P.2d 1094 (1980), for the proposition: "Even if a court issues an erroneous order, the parties to the litigation must obey the order when it was within the court's jurisdiction, and, for the sake of orderly administration of justice, any disobedience with that order *may* be punished as contempt. [Citation omitted.]" (Emphasis added.)

Of course, just because the district court may have the authority to hold an individual in contempt for failing to comply with an erroneous order does not require the district court in the exercise of its discretion to find that party in contempt. In order to hold a party in contempt, the district court must find that the party's disobedience was intentional. See *Barnesco, Inc. v. Liftco, L.L.C.*, No. 98,867, 2008 WL 4291634, at \*3-4 (Kan. App. 2008) (unpublished opinion).

In this case, Andrews testified that the gaps in the history of his child support payments resulted from periods of unemployment. He also testified that when he was working he was subject to withholding orders for payment of child support. When asked why he didn't make direct payments, Andrews replied that, "Just, like, the withholding orders [were] set, so I figured that it would kick in." The evidence also revealed that wages were withheld from Andrew's paychecks because of the withholding orders, yet those funds may not have been forwarded by the employer to the Kansas Payment Center.

In declining to find Andrews in contempt, Judge Vining specifically highlighted Andrew's testimony in this regard:

"There's been evidence that income withholding orders as further ordered in that journal entry were required immediately, and so there's some reason to believe that [Andrews] could have believed that he was complying simply because payments were being taken out of his check pursuant to the work income withholding order."

Applying our standard of review, we have examined the factual findings underlying the district court's contempt ruling and find they are supported by substantial competent evidence. Under the unique circumstances of this case and for all the reasons provided by the district court, we find no error in the district court's legal conclusion denying the contempt motion.

In a related issue, Williams contends the district court's decision "rendered the child support orders in the Decree unenforceable which also had the effect of relieving [Andrews] from the Decree."

We disagree. On the contrary, the record shows that the district court ordered Andrews to comply with the child support obligation as set forth in the parties' settlement agreement and he then proceeded to enforce its provisions. As summarized earlier, the

district court held that the parties had an enforceable contract requiring Andrews to pay Williams \$289 a month in child support commencing January 1, 2010. The district court found that Andrews' child support was currently \$2,627.14 in arrears and, as a result, Williams was provided a domestic support judgment in that amount plus interest. The district court also began the process to establish a new, enforceable child support obligation to commence on October 1, 2011. This new child support obligation was to be enforced by an income withholding order. Finally, Williams was "specifically authorized to pursue any other collection methods available under the law to collect on the arrears the Court has determined."

The relief provided to Williams was significant and not unlike relief provided to parties who are successful in bringing motions for indirect civil contempt in child support cases.

Finally, Williams complains that the district court erred in characterizing the indirect civil contempt proceedings as being "penal" in nature. We find no reversible error in the district court making this characterization. In a civil contempt proceeding, for example, a party may be imprisoned as long as the sentence is designed to coerce the party to rectify the contempt. See *Comprehensive Health of Planned Parenthood v. Kline*, 287 Kan. 372, 417-18, 197 P.3d 370 (2008). In appropriate cases, indirect civil contempt may result in imposition of a penalty or punishment, thus the district court's statement that "[c]ontempts are considered penal in nature" was not an inaccurate characterization.

Finding no error in any of the issues raised by Williams, we affirm the district court.

Affirmed.