NOT DESIGNATED FOR PUBLICATION

No. 108,545

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

LATRINA R. MOORE,
Appellee,

and

DONALD R. MOORE,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; DAVID W. BOAL, judge. Opinion filed June 7, 2013. Affirmed.

John P. Biscanin, of Kansas City, for appellant.

Chris J. Kellogg, deputy director, and *Adam C. Mansfield*, of Kansas Department for Children and Families, for appellee.

Before ARNOLD-BURGER, P.J., GREEN, J., and LARSON, S.J.

Per Curiam: Kansas law recognizes the common-law principle of constructive emancipation, which extinguishes a parent's support obligation. Donald Moore asks this court to reverse the district court's order that he must pay child support for his 17-year-old son, D.M., arguing D.M.'s actions demonstrate that he is a constructively emancipated adult. Because Donald has failed to show that the district court arbitrarily disregarded undisputed evidence or improperly relied on some extrinsic consideration in finding that D.M. was not constructively emancipated, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Donald and Latrina Moore divorced in 1999. They have two sons. The oldest son is now an adult. Whether their other son (D.M.), born in September 1994, should also legally be considered an adult for purposes of child support is the issue on appeal.

This issue of Donald's obligation to pay child support arose after then 15-year-old D.M. ran away from Donald's home in Kansas City, Kansas, following an altercation in May 2010 and went to live with Latrina in her Missouri home. Up until that point, Donald and Latrina had been parenting under an agreement reached in 2008 that suspended Latrina's child support obligation after they split residential custody of their sons, with the oldest living with Latrina and D.M. living with Donald. Though the parties presented this agreement to the district court, they were acting pro se, and the record does not indicate that agreement was ever memorialized in a written court order.

The issue is now before this court as a result of Latrina's motion to modify child support for D.M. filed in Wyandotte County District Court on January 20, 2012. See K.S.A. 2012 Supp. 23-3005 (providing for permissible modification of prior child support orders). That motion was filed on Latrina's behalf by the agency formerly known as the Kansas Department of Social and Rehabilitation Services (SRS) under the authority of the Uniform Interstate Family Support Act (UIFSA), now codified at K.S.A. 2012 Supp. 23-36,101 *et seq.* See K.S.A. 2012 Supp. 23-36,205(a)(1); *State ex rel. SRS v. Ketzel*, 47 Kan. App. 2d 536, 536-37, 539, 275 P.3d 923 (2012) (recognizing that under UIFSA, formerly codified at K.S.A. 23-9,101 *et seq.*, "a Kansas court has continuing, exclusive jurisdiction to modify a child support order if any one of the following is a Kansas resident: the one who pays the support, the one who receives the support, or the child"). D.M. was 17 years old at the time.

A hearing officer denied Latrina's motion to modify. See Wyandotte County District Court Local Rule 105 (establishing position of hearing officer for purpose of providing expedited process in modification of support orders, among other things). In support, the hearing officer reasoned that D.M. had left Donald's custody without permission and there was no formal court order changing residential custody to Latrina.

The district court conducted a de novo hearing on Latrina's timely appeal from the hearing officer's decision. See Wyandotte County District Court Local Rule 209 (governing appeals from hearing officers' orders). The only pertinent evidence presented at that hearing was Latrina's testimony that D.M. has been living in her Missouri home since May 2010; that she has been supporting D.M. while he is attending high school; and that D.M. is scheduled to graduate high school in 2013. Donald did not testify or present any other evidence. Nonetheless, he argued in support of the hearing officer's finding that Latrina is not legally entitled to support because she is the noncustodial parent. Donald further argued that even if Latrina is now considered D.M.'s legal custodian, the court should find D.M. is an emancipated adult. In support, Donald argued D.M. was treated as an adult by the State of Missouri in relation to a criminal charge and he otherwise acts as an adult not subject to parental control. At the close of the hearing, the district court took the matter under advisement to consider a jurisdictional question not at issue in this appeal.

The district court subsequently entered judgment granting Latrina's motion and ordering Donald to pay child support of $402 per month commencing January 20, 2012. This is Donald's timely appeal from that decision.

ANALYSIS

In his sole issue on appeal, Donald contends the district court erred in concluding he is obligated to support D.M. and should have instead found D.M. is a legally

emancipated adult. Latrina, of course, disagrees and urges this court to affirm the child support order.

The parties do not dispute the governing law.

The parties do not dispute that Kansas law applies to this child support modification under UIFSA. In addition, regardless of the type of court-ordered custodial arrangement, the parties have a statutory duty to support D.M. See K.S.A. 2012 Supp. 23-3001(b) (court can order either or both parents to support a child until the latter of his 18th birthday; or, if the child remains enrolled in high school when the child turns 18, until June 30 following the child's high school graduation).

With one limited exception not applicable here, 18 is the date of "legislative emancipation. See K.S.A. 38-101; *Baker v. Baker*, 217 Kan. 319, 321, 537 P.2d 171 (1975). But if a child is under the age of 18, he or she may petition for rights of majority through his or her next friend. See K.S.A. 38-109. No such petition has been filed in this case, so that statute is inapplicable here. See *In re Marriage of George*, 26 Kan. App. 2d 336, 337, 988 P.2d 251 (1999) (rejecting father's argument that trial court was authorized to determine whether child was emancipated under K.S.A. 38-101, K.S.A. 38-108, and K.S.A. 38-109, where no petition had been filed seeking emancipation by the procedure set forth in those statutes).

Instead, Donald asks us to consider D.M. constructively emancipated. Kansas courts have recognized constructive emancipation under the common law. See *Marriage of George*, 26 Kan. App. 2d at 338.

Constructive emancipation is generally inferred from circumstances that demonstrate "the freeing of a child for all the period of minority from the care, custody, control, and service of the parents; the relinquishment of parental control, conferring on

the child the right to his or her own earnings and terminating the parent's legal obligation to support the child.'" 26 Kan. App. 2d at 338 (quoting 67A C.J.S., Parent and Child § 5). Accordingly, our courts look to the totality of the circumstances to determine whether they demonstrate a minor child's intent to be free of the parents' custody, control, and support. See *In re Marriage of Schoby*, 269 Kan. 114, 118-20, 4 P.3d 604 (2000) (discussing various cases in Kansas and other jurisdictions that have held circumstances such as minor's marriage, parenthood, quitting school, and enlistment in the military do not automatically terminate a parent's support obligation but are factors for district court to consider in determining whether to modify child support obligations). See generally Annot., 55 A.L.R.5th 557 (discussing various jurisdictions' approaches to what voluntary acts of minor child, other than marriage or entry into military service, terminate parental support obligations).

This court's standard of review is restrained.

Although an appellate court generally reviews an order modifying child support for an abuse of discretion, see *Marriage of Schoby*, 269 Kan. at 120-21, under the unique facts in this case our primary task is limited to reviewing the district court's implicit finding that constructive emancipation has not occurred here, which is a negative finding. Our appellate courts will not reject a negative finding "unless the party challenging the finding proves arbitrary disregard of undisputed evidence, or some extrinsic consideration such as bias, passion, or prejudice." *In re Marriage of Kuzanek*, 279 Kan. 156, 159-60, 105 P.3d 1253 (2005).

To the extent this court must also review the district court's affirmative factual findings in support of the child support order, our courts generally review factual findings to determine whether they are supported by substantial competent evidence. See *Venters v. Sellers*, 293 Kan. 87, 93, 261 P.3d 538 (2011). Substantial competent evidence ""is such legal and relevant evidence as a reasonable person might accept as being sufficient

to support a conclusion.'" [Citations omitted.]" 293 Kan. at 93. Notably, in reviewing for substantial competent evidence, this court cannot reweigh the evidence, resolve evidentiary conflicts, or assess credibility. See *Progressive Products, Inc. v. Swartz*, 292 Kan. 947, 955, 258 P.3d 969 (2011).

Donald has not met his burden of proof for this court to disturb the district court's implicit negative finding of no emancipation under these circumstances.

Donald urges this court to find the district court erred in not finding sufficient circumstances to conclude that D.M. was constructively emancipated.

The district court did not make findings specifically tied to Donald's emancipation argument. Nonetheless, by finding 17-year-old D.M. resides with Latrina, that she has de facto custody, and that Donald is obligated under Kansas law to pay child support for D.M., the district court implicitly found that D.M. is not a constructively emancipated minor.

Donald's attempts to rebut the district court's negative emancipation finding on appeal wholly disregard this court's standard of review. His contention that D.M. is emancipated is based on the following factual allegations:

- Latrina testified that D.M. was enrolled in high school, but "[t]o the best of [Donald's] knowledge, [D.M.] had dropped out of school when he left [Donald's] house." Quitting school is a factor supporting constructive emancipation.
- Despite Latrina's testimony that D.M. lived with her, Donald understands that D.M. only lives with her "from time to time."
- D.M. was not adjudicated as a juvenile offender after he served 2 weeks in jail without Latrina bailing him out.

- D.M. left Donald's house "because he did not want to abide by the rules of [Donald's] home."
- "It appears that neither parent had control over [D.M.] or his day-to-day life."

The problem is that the majority of these allegations are either wholly unsupported by the record or they call upon this court to improperly step outside the confines of its standard of review to reweigh the evidence or assess credibility. Regardless, these allegations certainly do not prove that the district court arbitrarily disregarded undisputed evidence in finding that D.M. is not emancipated or that its decision is based upon any extrinsic consideration such as bias, passion, or prejudice.

This leaves one remaining argument by Donald: He contends it is incongruous and against Kansas public policy to require him to support D.M. in light of the fact that Kansas common law does not obligate a parent to support an adult incompetent child beyond the age of 18. Accordingly, because parents are not required to support incompetent children beyond the age of 18, they should not be required to support a competent child once he or she reaches the age of 18. We reject this argument for two reasons. First, D.M. is neither constructively emancipated nor had he turned 18 by the time of the district court's order. Second, the statutory scheme discussed above that governs a parent's support obligation after the child turns 18 under certain circumstances supersedes any common-law duty of support. *Cf. Schoenholz v. Hinzman*, 295 Kan. 786, 789, 289 P.3d 1155 (2012) (recognizing that, "[a]s a general principle, a statutory remedy will supersede a common-law remedy so long as the statute provides an adequate substitute remedy").

Because Donald's claim of error fails, we affirm the district court's order.