

NOT DESIGNATED FOR PUBLICATION

No. 107,665

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF

XEM T. TRAN,
Appellant,

and

HARRY T. DUONG,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; CHRISTOPHER M. MAGANA, judge. Opinion filed July 26, 2013. Reversed and remanded with directions.

David L. Nelson, of Wichita, for appellant.

Stephen J. Ternes, of Wichita, for appellee.

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

BUSER, J.: This is an appeal of a post-divorce ruling by the district court, which granted Harry T. Duong's motion to deny Xem T. Tran's request for interest on a domestic support judgment. Tran appeals the ruling, and we conclude that her appeal is meritorious. Accordingly, we reverse and remand with instructions to the district court to order Duong to pay interest on the domestic support judgment from the date the divorce decree was filed, January 19, 2007, until paid in full.

FACTUAL AND PROCEDURAL BACKGROUND

Tran and Duong were divorced after about 12 years of marriage. The couple agreed upon a disposition and settlement of their property rights, maintenance obligations, and custody of their two minor children. After finding the settlement agreement to be "valid, just, [and] equitable," the district court incorporated it into the final divorce decree, which was filed on January 19, 2007.

Relevant to this appeal, the divorce decree provided that "in exchange for keeping the marital home, his 401k, and personal household items," Duong agreed to pay Tran \$45,000, "in cash or certified funds," upon the filing of the divorce decree and "to an automatic judgment against him in the event this amount of money [was] not timely tendered." Duong was also obligated to pay Tran \$500 per month in spousal maintenance for a period of 28 months.

Subsequent to the divorce, Tran and Duong "continued to reside in the marital home, and to hold [themselves] out as husband and wife." Tran and Duong remarried on August 9, 2007. Three years later, however, in June 2010, Tran filed another petition for divorce.

On December 13, 2010, while the second divorce proceeding was pending, Tran filed a motion to set aside the 2007 divorce decree because the "division of property and obligations" therein were not "fair, just or reasonable." Tran alleged that although counsel represented her throughout the proceedings, she did not understand the property division set forth in the decree due to her inability to read or understand English. Tran also asserted that at the time of the 2007 divorce, she did not have any information regarding Duong's financial accounts and only recently had discovered that the property distribution substantially favored Duong. Finally, Tran claimed that Duong had never paid the \$45,000 domestic support judgment or any of her spousal maintenance.

In response, Duong alleged that Tran's motion was untimely under K.S.A. 2010 Supp. 60-260(b). Alternatively, Duong argued that Tran's request should be denied because the district court specifically found that their settlement agreement was "fair, just and equitable," Tran was represented by bilingual counsel throughout the divorce proceeding, and while the property distribution was unequal, Tran received "the bargain that she sought."

On September 7, 2011, the district court held a hearing to consider Tran's motion. (A transcript of this hearing was not included in the record on appeal.) On October 13, 2011, the district court issued an order finding the "division of property and obligations" set forth in the divorce decree were not "fair, just and equitable, due to the overly broad differences resulting in the net proceeds awarded to [Duong] (\$79,995) and [Tran] (\$47,500)." In order to equalize the property distribution, Tran was awarded \$15,000 from Duong's "Boeing VIP" account, effective January 19, 2007. According to the district court, this resulted "in a reduction in the net proceeds to [Duong] to \$64,995 and an increase in the net proceeds to [Tran] to \$62,500." Additionally, the district court found the \$45,000 equalization payment had "become a judgment on behalf of [Tran] and against [Duong]." With respect to the unpaid spousal maintenance payments, the district court deferred its decision until the trial of the 2010 divorce action because the parties had continued to live together after the finalization of the 2007 divorce.

The parties were apparently divorced for the second time, in December 2011. Shortly thereafter, on January 3, 2012, Tran filed a "Renewal Affidavit" to "extend the life" of the "judgments" set forth in the 2007 divorce decree—the \$45,000 equalization payment and the spousal maintenance award ($\$500 \times 28 \text{ months} = \$14,000$)—for an additional 5 years. Tran alleged the entire balance remained unpaid, plus interest on the judgments amounting to \$16,701.86, for a total amount owed of \$75,701.86.

Duong filed a motion to set aside the interest claimed by Tran. According to Duong, Tran was not entitled to interest because the district court did not award interest in the 2007 divorce proceedings and interest on a divorce judgment is "not automatic" under K.S.A. 16-204. Duong also pointed out that, despite numerous opportunities during the two divorce proceedings to request interest, Tran had never made such a request.

On January 31, 2012, the district court held a hearing on Duong's motion. At the hearing, Tran's counsel argued that she was entitled to postjudgment interest because K.S.A. 16-204 automatically provides for the accrual of interest on "[a]ny judgment rendered by a court of this state on or after July 1, [19]86" unless the accompanying order contains "some affirmative finding" by the district court indicating otherwise. Thus, Tran contended that pursuant to K.S.A. 16-204, interest began accruing on the judgment immediately after the district court filed the 2007 divorce decree. Tran also asserted that although the parties remarried, interest continued to accrue on the judgment because the district court never absolved Duong of his obligations under the 2007 divorce decree.

Duong, on the other hand, argued that interest only accrues on a judgment in a domestic action, under K.S.A. 16-204 and K.S.A. 2006 Supp. 60-1610, if the district court specifically provides for such an award. Duong asserted that Tran was essentially making a second request to modify the 2007 divorce decree. Duong's counsel explained that it was "at [the very] least disingenuous" for Tran to say, "[B]y the way I know I remarried him but [the judgment] was still accruing interest during that time." Finally, Duong pointed out that Tran's request for interest on the assets awarded to her in the 2010 divorce was denied by the district court after noting, "traditionally this court does not recognize[] interest on judgments."

The district court granted Duong's motion. It found that whether to grant interest on a judgment in a divorce proceeding is a matter within the sound discretion of the court, and interest on a domestic support judgment is "not automatic." Because there was

no order for interest when Tran received the \$45,000 judgment and there was no "request [made] for interest on the judgment," either in the 2007 divorce proceedings or the 2010 proceedings to set aside the divorce decree; the district court concluded that it had no jurisdiction to award interest. Tran filed a timely appeal.

DISCUSSION

On appeal, Tran contends the district court erred when it ruled that she was not entitled to postjudgment interest on her \$45,000 domestic support judgment. Tran argues that K.S.A. 16-204 provides that interest automatically attaches to a domestic support judgment unless, at the time of the divorce, the district court affirmatively declares its intention to exclude interest. As a result, because the divorce decree is silent regarding the application of postjudgment interest, Tran asserts that K.S.A. 16-204 authorizes her to collect interest, at the statutory rate, beginning January 19, 2007—the day the judgment was rendered—until paid in full.

Preliminarily, although Tran's renewal affidavit also requested interest on the past-due spousal maintenance payments, the district court's ruling was limited solely to the \$45,000 domestic support judgment. Moreover, Tran does not mention the past-due spousal maintenance payments on appeal, and as a general rule, an issue not briefed by the appellant is deemed waived and abandoned. See *Superior Boiler Works, Inc. v. Kimball*, 292 Kan. 885, 889, 259 P.3d 676 (2011). Accordingly, our analysis is limited to whether K.S.A. 16-204 provides for interest on the unpaid \$45,000 judgment.

Resolution of this issue requires interpretation of K.S.A. 16-204. Appellate courts exercise unlimited review over questions involving the interpretation or construction of a statute. *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 607, 214 P.3d 676 (2009). "The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. [Citation omitted.]" 289 Kan. at 607.

When interpreting a statute, an appellate court must first attempt to "ascertain the legislature's intent through the statutory language it employs, giving ordinary words their ordinary meaning." [Citation omitted.] *Padron v. Lopez*, 289 Kan. 1089, 1097, 220 P.3d 345 (2009). Where there is no ambiguity in the statutory language, the court need not resort to statutory construction; an appellate court does not speculate as to the legislative intent and will not read into the statute something not readily found within it. *Double M Constr. v. Kansas Corporation Comm'n*, 288 Kan. 268, 271, 202 P.3d 7 (2009).

As our Supreme Court has recognized, "the loss of the use of money ought to be compensated, whether occasioned by delay or default of an ordinary citizen or of the State or one of its political subdivisions. [Citation omitted.]" *Greenhaw v. Board of Johnson County Comm'rs*, 245 Kan. 67, 74, 774 P.2d 956 (1989). "Interest is the compensation allowed by law or fixed by the parties for the use, detention, or forbearance of money. [Citation omitted.]" *Herman v. City of Wichita*, 228 Kan. 63, 67, 612 P.2d 588 (1980).

In keeping with these principles, "[e]xcept as otherwise provided in accordance with law," K.S.A. 16-204(d) authorizes the assessment of interest on "[a]ny judgment rendered by a court of this state on or after July 1, 1986." Postjudgment interest accrues "on and after the day on which the judgment is rendered," at the specified statutory rate, until the judgment is paid in full. K.S.A. 16-204(d), (e). Any judgment that is considered "a final determination of the rights of the parties in the action and specifies a 'readily determinable' sum" carries postjudgment interest liability under K.S.A. 16-204. *Bluestem Telephone Co. v. Kansas Corporation Comm'n*, 38 Kan. App. 2d 1092, 1097, 176 P.3d 231, *rev. denied* 286 Kan. 1176 (2008).

Tran claims the plain language of K.S.A. 16-204 renders an award of interest mandatory for *any* judgment issued in Kansas. In *Bluestem Telephone Co.*, our court addressed a similar argument and held "[a]ny entitlement to postjudgment interest under

K.S.A. 16-204 *attaches automatically* and is not waived by a litigant's failure to previously plead or otherwise request such interest." (Emphasis added.) 38 Kan. App. 2d 1092, Syl. ¶ 3.

In *Bluestem Telephone Co.*, the district court awarded interest, under K.S.A. 16-204, to a group of rural telecommunication companies. This award of interest was based upon restoration payments the companies received from the Kansas Corporation Commission (KCC) after the KCC improperly adjusted their subsidies from the Kansas Universal Service Fund (KUSF). On appeal, the KCC contended that the companies waived their right to collect postjudgment interest, under K.S.A. 16-204, by failing to plead or otherwise request such interest from the outset of the proceedings. Our court disagreed based upon the following general rule:

"[W]here interest attaches automatically until the judgment is paid, interest may be awarded whether or not it is prayed for in the petition, or mentioned in the judgment. Thus where interest is payable by virtue of statute or rule of court and not by virtue of a contract, it generally is not necessary to make a specific claim for interest in the declaration or complaint." [Citation omitted.] 38 Kan. App. 2d at 1096.

Additionally, our court explained that other states with statutes similar to K.S.A. 16-204 and federal authorities have generally determined that postjudgment interest accrues automatically regardless of whether interest was mentioned in the judgment and/or specifically requested by the litigant.

On the other hand, Duong argues that interest does not automatically attach to divorce judgments because K.S.A. 16-204 is not applicable in domestic actions. Relying on *In re Marriage of Roth*, 28 Kan. App. 2d 45, Syl., 46-48, 11 P.3d 514 (2000), Duong contends, and the district court found, that interest awards are not mandatory on domestic judgments under K.S.A. 16-204 because K.S.A. 2006 Supp. 60-1610 gives district courts broad discretion in dividing marital property, including whether to award interest.

In *In re Marriage of Roth*, James Roth and Lori Roth were divorced, and as part of the property distribution, James received a judgment lien on the marital residence for one-half of the equity therein. The divorce decree deferred Lori's payment of James' judgment lien until the earliest of any of the following events: "when Lori sells the house, when Lori no longer resides in the house, or when the parties' youngest child attains the age of 18." 28 Kan. App. 2d at 46. The district court refused to award interest on James' judgment lien, and on appeal, James claimed that the district court was required, under K.S.A. 16-204, to award him interest.

Presented with an issue of first impression, our court explored the caselaw of other jurisdictions and concluded: "A [district] court may, in its discretion, award interest on the principal balance of an award of marital property, but is not required to do so under K.S.A. 1999 Supp. 16-204." 28 Kan. App. 2d 45, Syl. The panel explained that while K.S.A. 16-204 "appears to make an award of interest mandatory,"

"Kansas law gives broad discretion to a [district] court in dividing marital property, and it follows that a [district] court also has discretion to award interest on a judgment. Moreover, there is no provision for awarding interest in K.S.A. 1999 Supp. 60-1610(b)(1)(B). Instead, the statute provides that if real or personal property is awarded to one of the parties, he or she must pay the other party 'a just and proper sum.' As a result, the decision of whether to award interest on a judgment lien in a divorce proceeding is a matter that is within the sound discretion of the [district] court." 28 Kan. App. 2d at 46-48.

Six years later, our court applied *In re Marriage of Roth* to deny a divorced party's request for statutory interest on a judgment lien against the marital residence because the divorce decree specified that the lien would be without interest. *In re Marriage of Fulton*, No. 94,482, 2006 WL 3589798, at *9 (Kan. App. 2006) (unpublished opinion).

Tran argues that *In re Marriage of Roth* is distinguishable because she received a domestic support judgment rather than a judgment lien. Additionally, she asserts that *In re Marriage of Roth* simply stands for the proposition that a district court has discretion to avoid the mandatory language of K.S.A. 16-204 by affirmatively refusing to award interest. In contrast, Duong asserts that *In re Marriage of Roth* clearly establishes that interest does not automatically attach, under K.S.A. 16-204, to any type of property judgment in a domestic action unless the district court affirmatively declares otherwise.

We are persuaded that *In re Marriage of Roth* may be read harmoniously with *Bluestem Telephone Co.* and *Greenhaw*. *In re Marriage of Roth* established the precedent that a district court has discretion whether to award interest on a domestic support judgment. 28 Kan. App. 2d at 46-48. Should the district court determine that the equities of a particular marital property division require it, the court, consistent with *In re Marriage of Roth*, may decline to award interest on the judgment. On the other hand, in the event the district court orders judgment and does not exercise the discretion to limit the application of K.S.A. 16-204 by denying interest on the judgment, we are persuaded that interest shall accrue by operation of the plain language of K.S.A. 16-204.

Under the facts of the present case, when the original divorce decree was filed, the district court did not exercise its discretion to specify that the judgment lien was payable without interest. As a result, effective January 19, 2007—the filing date of the divorce decree—Duong's failure to pay the agreed-upon \$45,000 meant that Tran was automatically entitled to postjudgment interest "on and after the day on which the judgment [was] rendered," at the statutory rate, until Duong satisfied the monetary judgment in full. See K.S.A. 16-204(d).

Accordingly, because the district court did not decline to order interest at the time of the filing of the original divorce decree, we conclude the district court erred when it

later denied Tran's request for postjudgment interest upon the court's determination that it lacked jurisdiction to enforce the automatic award of interest.

Reversed and remanded with instructions to the district court to order Duong to pay interest on the domestic support judgment from January 19, 2007, until paid in full.