NOT DESIGNATED FOR PUBLICATION

No. 108,601

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of
ELLA MULLOKANDOVA,
Appellee,

and

NISON KIKIROV,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; ALLEN R. SLATER and JOHN E. SANDERS, judges. Opinion filed September 27, 2013. Affirmed.

Judith C. Hedrick, of Lenexa, for appellant.

Ronald W. Nelson, of Ronald W. Nelson, PA, of Lenexa, for appellee.

Before MALONE, C.J., ATCHESON, J., and LARSON, S.J.

Per Curiam: Nison Kikirov appeals to us complaining that he never got a fair hearing in the divorce action Ella Mullokandova filed against him in Johnson County District Court and that, as a result, he has been saddled with questionable financial obligations. Kikirov didn't respond to the divorce petition, and a decree was entered by default. Only then did Kikirov take action by trying to set aside the default. Based on the record evidence, he could not have demonstrated sufficient legal grounds to do so. We, therefore, affirm the rulings of the district court in entering the default decree and in denying Kikirov's efforts to vacate that decree.

Kikirov contends the way he was treated in the district court violated his constitutional right to due process, failed to conform to the statutory requirements for entry of default judgments, and improperly rejected his motions to set the judgment aside. In resolving those contentions, we take the facts and the law in a light favoring Kikirov. We do so not necessarily because that is the correct standard—we don't decide the standard and simply assume it—but because Kikirov could be entitled to no more favorable a standard. In other words, we give Kikirov the best shot he possibly could have whether the law requires it or not. As we have already indicated, even with that deferential consideration, he fails.

In keeping with our approach, we recount the facts favorably to Kikirov. Kikirov and Mullokandova were married in New York City in 2007 and lived there. They had two young children. Kikirov owned and operated a furniture store specializing in futons, while Mullokandova worked as a dental hygienist. Their relationship became strained, so in March 2011 Mullokandova and the children moved to Overland Park in Johnson County, where her parents reside.

Kikirov hired a New York lawyer to try to secure the return of the children. The lawyer wrote Mullokandova a letter dated June 8, 2011, demanding that she bring the children back to New York to live with Kikirov. The lawyer sent a similar letter dated November 7, 2011.

Mullokandova filed a petition for divorce in Johnson County District Court on November 8, 2011, and unsuccessfully attempted to serve Kikirov by mail. She filed an amended petition later that month and had a special process server appointed. Shortly before Christmas, Kikirov traveled to Johnson County ostensibly to visit the children. Mullokandova asked that they meet at a shopping mall in Overland Park. When Kikirov arrived there, he was served with the divorce petition and a summons. The next day,

Kikirov and Mullokandova had dinner together to discuss their marriage. In an affidavit filed later in the divorce proceeding, Kikirov stated that he left the dinner with "hope" that he and his wife might reconcile. He also stated he was "confused" and unsure whether Mullokandova "was serious about getting a divorce."

Kikirov did not file an answer or otherwise respond to the divorce petition. In his affidavit Kikirov explained: "I did not consult with any attorney after being served the papers because I was not very happy with the attorney I had retained, as she had still not filed anything that would help get my children back to New York." He also stated that he "sincerely believed that if [Mullokandova] was going through with the divorce I would receive some notice of a court hearing."

By not responding, Kikirov was in default in the divorce action. The district court held a hearing on February 13, 2012, to grant the divorce, to fix child custody, to establish spousal maintenance and child support, and to enter a division of property. Kikirov did not appear in person or through a lawyer. Mullokandova and her lawyer were there, and Mullokandova testified as to the couple's financial affairs and other matters. She valued the futon store at $100,000. The district court awarded her $50,000, reflecting half that value. She also testified that she had paid off a $100,000 loan Kikirov had obtained from his relatives before their marriage. The district court ordered Kikirov to pay Mullokandova that amount, although no documentary evidence supported the existence of the loan. Based on Mullokandova's representations as to Kikirov's annual income as roughly $100,000 and her own as $36,600, the district court set spousal maintenance at just over $1,000 a month for 18 months and child support at $2,339 a month. Mullokandova was given custody of the children.

After learning of the decree and the obligations it imposed on him, Kikirov hired a Johnson County lawyer. On March 22, 2012, the lawyer filed a motion to set aside the default judgment. The motion was scheduled for a "nonevidentiary hearing" on May 31,

2012, at which the district court heard argument from counsel for each party. Kikirov's lawyer tried to submit evidence, and the district court rebuffed that effort because the hearing had not been set for that purpose. The lawyer didn't proffer the evidence; but, based on the discussion in the record, it appeared to include documents related to Kikirov's income and the family's finances. The district court denied the motion to set aside from the bench and later signed a journal entry to that effect.

Kikirov then filed a motion to reconsider. His affidavit was attached to that motion as an exhibit. A visiting district court judge denied the motion to reconsider on August 20, 2012, after a hearing at which counsel for the parties argued their respective positions. A third district court judge signed a one-paragraph journal entry about a week later. Kikirov has timely appealed the denial of his motion to set aside the default judgment and his request for reconsideration.

The Kansas Code of Civil Procedure addresses defaults in K.S.A. 60-255 and permits a district court set them aside for "good cause" as permitted in K.S.A. 60-260(b). In turn, K.S.A. 60-260(b) contains five specific grounds and a sixth catch-all ground warranting a district court in granting a party relief from a final judgment "upon terms that are just." In this case, Kikirov sought to set aside the default under K.S.A. 60-260(b)(1) based on his "mistake, inadvertence, surprise, or excusable neglect" in failing to respond in a timely fashion to the divorce petition that had been served on him. He focuses on excusable neglect, although each of the bases in K.S.A. 60-260(b)(1) is governed by the same standard. He made an alternative argument the judgment was void under K.S.A. 60-260(b)(4).

To show excusable neglect of the sort justifying setting aside a judgment, the moving party must establish: (1) the party having obtained the judgment will not be prejudiced by reopening the case; (2) the defaulting party can advance a meritorious defense; and (3) the default was not the result of inexcusable neglect or willful conduct.

State ex rel. Stovall v. Alivio, 275 Kan. 169, 172-73, 61 P.3d 687 (2003); *First Nat'l Bank in Belleville v. Sankey Motors, Inc.*, 41 Kan. App. 2d 629, 634, 204 P.3d 1167 (2009). Those enumerated criteria are not treated as factors to be considered in an evaluation of the totality of the circumstances, such that relief might be granted even if one of them favored the party with the judgment. They are, rather, effectively elements, meaning each of them must be proven to set aside a default judgment. *Alivio*, 275 Kan. at 173; *First Nat'l Bank*, 41 Kan. App. 2d at 634.

There is some tension in Kansas law as to the burden of proof on the party seeking to set aside a default judgment in marshalling evidence on those elements in the district court. In *First Management v. Topeka Investment Group*, 47 Kan. App. 2d 233, 239, 277 P.3d 1150 (2012), this court stated they must be proven by clear and convincing evidence. But the single case the court cited for that proposition, *Montez v. Tonkawa Village Apartments*, 215 Kan. 59, 64, 523 P.2d 351 (1974), simply outlines what must be shown and ascribes no burden of proof. In *First Nat'l Bank in Belleville*, 41 Kan. App. 2d at 634, another panel noted the moving party had the burden "to show all three elements" but didn't describe the burden. The failure to mention the burden strongly suggests it is the typical civil requirement of a preponderance of the evidence. In *Lee v. Brown*, 210 Kan. 168, 170, 499 P.2d 1076 (1972), the Kansas Supreme Court stated that the grounds for a motion under K.S.A. 60-260(b) must proven by clear and convincing evidence and cited generally *Cool v. Cool*, 203 Kan. 749, 457 P.2d 60 (1969). But *Cool* dealt with relief under K.S.A. 60-260(b)(3) based on fraud. 203 Kan. 749, Syl. ¶ 6. Fraud typically must be proven by clear and convincing evidence, and K.S.A. 60-260(b)(3) is no exception. 203 Kan. at 755. Nonetheless, the overly broad generalization in *Lee* has crept into Kansas caselaw. At the same time, the Kansas Supreme Court has recognized that a district court "should resolve any doubt in favor of [a] motion" to set aside a judgment under K.S.A. 60-260(b)(1). *Bazine State Bank v. Pawnee Prod. Serv., Inc.*, 245 Kan. 490, 495, 781 P.2d 1077 (1989), *cert. denied* 495 U.S. 932 (1990).

When applying K.S.A. 60-260, the Kansas appellate courts have frequently relied on persuasive federal authority construing Federal Rule of Civil Procedure 60, a nearly identical provision. See *Montez*, 215 Kan. at 62-64; *In re Marriage of Larson*, 19 Kan. App. 2d 986, 990, 880 P.2d 1279 (1994), *aff'd* 257 Kan. 456, 894 P.2d 809 (1995). The United States Court of Appeals for the Tenth Circuit recently recited that "all doubts" in analyzing a motion to set aside a judgment for excusable neglect under Rule 60(b)(1) "are to be resolved in favor of the moving party." *Marcus Food Co. v. DiPanfilo*, 671 F.3d 1159, 1172 (10th Cir. 2011). That measure for a motion to set aside would seem inconsistent with imposing an elevated burden of proof on the party seeking relief. See *In re OCA, Inc.*, 551 F.3d 359, 372 (5th Cir. 2008). In the *OCA* case, the Fifth Circuit Court of Appeals held that applying a clear-and-convincing standard to a Rule 60(b)(1) motion runs counter to the purpose of the rule and recognized that a preponderance-of-the-evidence standard should govern. 551 F.3d at 372.

The district court, in its bench ruling on Kikirov's motion to set aside the default judgment, imposed a clear-and-convincing standard.

An appellate court reviews the denial of a motion under K.S.A. 60-260(b) for abuse of discretion. *Bazine State Bank*, 245 Kan. at 495; *First Nat'l Bank in Belleville*, 41 Kan. App. 2d at 634. The same standard governs motions to reconsider. See *Exploration Place, Inc. v. Midwest Drywall Co.*, 277 Kan. 898, 900, 89 P.3d 536 (2004); *In re Marriage of Holifield*, No. 95,773, 2007 WL 1175851, at *5 (Kan. App. 2007) (unpublished opinion), *rev. denied* 285 Kan. 1174 (2007). A district court may be said to have abused its discretion if the result it reaches is "arbitrary, fanciful, or unreasonable." *Unruh v. Purina Mills*, 289 Kan. 1185, 1202, 221 P.3d 1130 (2009). That is, no reasonable judicial officer would have come to the same conclusion if presented with the same record evidence. An abuse of discretion may also occur if the district court fails to consider or to properly apply controlling legal standards. *State v. Woodward*, 288 Kan. 297, 299, 202 P.3d 15 (2009). A district court errs in that way when its decision "'goes

outside the framework of or fails to properly consider statutory limitations or legal standards.'" 288 Kan. at 299 (quoting *State v. Shopteese*, 283 Kan. 331, 340, 153 P.3d 1208 [2007]). Finally, a district court may abuse its discretion if a factual predicate necessary for the challenged judicial decision lacks substantial support in the record. *State v. Ward*, 292 Kan. 541, Syl. ¶ 3, 256 P.3d 801 (2011) (outlining all three bases for an abuse of discretion), *cert. denied* 132 S. Ct. 1594 (2012).

For purposes of resolving this appeal, we assume without deciding that the district court abused its discretion both in applying a clear-and-convincing standard to Kikirov's motion to set aside the judgment—that arguably would be an incorrect legal standard—and in refusing to allow his lawyer to present evidence in support of the motion or continuing the hearing from the nonevidentiary setting to a time when evidence could be considered—that arguably would be a deficiency in the factual predicate.

A visiting district court judge heard the motion to reconsider because the district court judge who had granted the divorce and denied the motion to set aside the default had retired. After listening to the argument of counsel on the motion to reconsider, the visiting judge explained that he was "not going to sit here and second guess" the district court judge's decision to deny the motion to set aside. The visiting judge twice offered that explanation for rejecting the motion to reconsider and never directly addressed the arguments raised in support of either the motion to reconsider or the motion to set aside the judgment. Again for purposes of resolving the appeal, we assume but do not decide the visiting judge abused his discretion in two respects. First, by deferring to the earlier ruling, the visiting judge effectively incorporated the presumed defects in it. And, second, that deference amounted to a failure to exercise the authority or discretion a district court may wield in looking at a motion to reconsider. See *State v. Horton*, 292 Kan. 437, 440, 254 P.3d 1264 (2011); *State v. Parker*, 48 Kan. App. 2d 68, 76, 282 P.3d 643 (2012) ("[A]n abuse of discretion occurs if the judge refuses to exercise discretion or fails to appreciate the discretion he or she has.").

Having cleared away much of the procedural thicket, we turn to the arguments Kikirov has raised for setting aside the judgment against him. An appellate court need not remand what amount to questions of law. Here, by taking the facts in the best light for Kikirov, his arguments present pure legal issues. If he cannot prevail as a matter of law on his best set of facts, we may properly affirm the denial of his motion to set aside the divorce judgment. Our approach is simply a particularized application of the general rule that a district court may be affirmed if it reaches the correct result for the wrong reason. *Rose v. Via Christi Health System, Inc.*, 279 Kan. 523, 525, 113 P.3d 241 (2005) ("If a trial court reaches the right result, its decision will be upheld even though the trial court relied upon the wrong ground or assigned erroneous reasons for its decision.").

We first look at the elements for setting aside a judgment for mistake, inadvertence, or excusable neglect as allowed in K.S.A. 60-260(b)(1). There would be no discernible prejudice to Mullokandova if the divorce judgment were set aside. The loss of a judgment obtained by default does not establish prejudice. *Bateman v. United States Postal Service*, 231 F.3d 1220, 1224-25 (9th Cir. 2000) ("The prejudice to the Postal Service was minimal. It would have lost a quick victory and, should it ultimately have lost the summary judgment motion on the merits, would have had to reschedule the trial date. But such prejudice is insufficient to justify denial of relief under Rule 60(b)(1)."); *Augusta Fiberglass Coatings v. Fodor Contracting*, 843 F.2d 808, 812 (4th Cir. 1988) (no unfair prejudice to party where granting relief from judgment would cause the nonmoving party to suffer only the disadvantages ordinarily accompanying litigation rather than a "quick victory"). The circularity of reasoning for a contrary rule would invariably doom a motion to set aside judgment in a quintessential Catch-22—if the loss of a judgment were sufficient prejudice to defeat a motion to set aside that judgment, then no such motion could ever succeed. The district court suggested Kikirov could hide or dissipate assets if the divorce proceeding were reopened, but the purported harm is speculative and would always be a possibility in a given case regardless of when a

judgment might be rendered. For purposes of this appeal, we assume Mullokandova would not suffer substantial legal prejudice if Kikirov's motion were granted.

Based on the representations of Kikirov's counsel regarding the couple's finances, we assume Kikirov could have supported a "meritorious defense." In this context, the defense would not be evidence to prevent the divorce but evidence raising material questions about Mullokandova's representations at the divorce hearing concerning the marital debts and assets. We obviously venture no suggestion about how his evidence might ultimately fare in supporting the motion. Kikirov did not request relief from the judgment based on fraud under K.S.A. 60-260(b)(3), which *would* require clear and convincing evidence that the marital finances had been deliberately misrepresented.

The pivotal element for 60-260(b)(1) relief is the third one: whether Kikirov's default resulted from excusable neglect. In considering that element, we take the representations in Kikirov's affidavit as true and accept them as his explanation for failing to respond to the divorce petition. Several of the paragraphs in the affidavit plainly outline Kikirov's statement of the reasons. At oral argument, Kikirov's appellate counsel assured us that had Kikirov testified at the hearing to set aside the judgment, his testimony would have been as represented in the affidavit. As we mentioned, the affidavit was submitted as an exhibit supporting Kikirov's motion for reconsideration. Under the circumstances, we consider the affidavit to be at least the equivalent of a proffer of what Kikirov's testimony would have been.

In *Jenkins v. Arnold*, 223 Kan. 298, 299, 573 P.2d 1013 (1978), the Kansas Supreme Court characterized "inexcusable neglect" that would preclude a motion to set aside a judgment as "closely akin to 'reckless indifference,'" evincing "more than unintentional inadvertence or neglect." That is a common and often recited formulation of the definition or standard in the Kansas appellate courts. See *Montez*, 215 Kan. at 65 (collecting cases); *Board of Sedgwick County Comm'rs v. City of Park City*, 41 Kan. App.

2d 646, 662, 204 P.3d 648 (2009), *aff'd* 293 Kan. 107, 260 P.3d 387 (2011); *In re Estate of Eccelston*, No. 105,779, 2012 WL 2476984, at *2 (Kan. App. 2012) (unpublished opinion); *French v. Moore*, No. 102,170, 2010 WL 481280, at *5 (Kan. App. 2010) (unpublished opinion), *rev. denied* 291 Kan. 911 (2011). Federal courts applying Rule 60(b)(1) use comparable definitions tied to negligence. *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 394, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993) ("[A]t least for purposes of Rule 60(b), 'excusable neglect' is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence."); *Noah v. Bond Cold Storage*, 408 F.3d 1043, 1045 (8th Cir. 2005) ("excusable neglect" entails "neglect . . . accompanied by a showing of good faith and some reasonable basis for not complying with the rules"); *Cintron-Lorenzo v. Departamento de Asuntos*, 312 F.3d 522, 527 (1st Cir. 2002) ("At bare minimum, a party who seeks relief from judgment on the basis of excusable neglect must offer a convincing explanation as to why the neglect was excusable.").

Kikirov's argument founders on mistake, inadvertence, and excusable neglect. Accepting the statements in the affidavit, Kikirov knew that he had been served with legal papers Mullokandova had filed to end their marriage. Nonetheless, he did not consult with a lawyer. Kikirov's stated reason was his unhappiness with the work of the lawyer he had already retained to secure the return of his children. Put another way, Kikirov recognized he needed to get legal advice about the divorce papers, but he made a conscious choice not to. Dissatisfaction with the lawyer then representing him isn't a reasonable justification for doing nothing. There were other lawyers he could have talked to either in New York or in Kansas. Kikirov's failure to timely respond to the divorce petition cannot be treated as inadvertent or neglectful; it was the product of a deliberate decision to do nothing—a distinctly calculated choice, albeit a poor one especially in hindsight. In short, Kikirov recognized he needed to get legal advice and simply chose not to.

Those circumstances reflect a quintessential example of inexcusable neglect or more precisely the sort of reckless indifference recognized in *Jenkins* as being insufficient to warrant relief from a default judgment. If Kikirov were permitted to set aside the default judgment in this case for his stated reason, it is hard to imagine something that would be sufficiently deliberate and heedless as to warrant denying relief under K.S.A. 60-260(b)(1).

Kikirov offers two subsidiary excuses for his indifference in responding to the divorce petition. He argues Mullokandova seemed to be ambivalent about pursuing the divorce. But Kikirov largely concedes that was a hope he took away from their dinner the day after he was served with the petition and summons. In his affidavit, he cites nothing concrete Mullokandova said or did after that dinner to fan his hope. Had Kikirov alleged Mullokandova later told him she intended to dismiss the petition and suggested to him he didn't need to respond, we would be moving into excusable neglect territory. (If that kind of allegation had been made and Mullokandova disputed it, we would confront conflicting evidence and a credibility contest necessitating remand to the district court for resolution.) Second, Kikirov stated in his affidavit that he assumed he would receive some additional notice if the divorce action went forward. But the assumption doesn't amount to a form of excusable neglect—it has no basis in Kansas civil procedure, since a party failing to appear is not entitled to notice before a court enters default judgment unless the petition includes an general demand for more than $75,000 in damages—so much as it underscores the myriad pitfalls facing legal do-it-yourselfers.

In sum, even giving Kikirov the benefit of every favorable standard of review and every favorable reading of the record evidence, he cannot establish a legally sufficient claim for setting aside the default judgment under K.S.A. 60-260(b)(1).

Kikirov also argues that under K.S.A. 60-260(b)(4) the judgment in the divorce action was void. He submits the judgment was entered in violation of K.S.A. 60-254(c),

the statute requiring that a party demanding in excess of $75,000 in damages give an opposing party in default at least 10 days' notice that judgment will be requested on a particular date. The argument fails. Mullokandova's divorce petition is not one for money damages, so K.S.A. 60-254(c) does not apply. The Kansas Supreme Court rejected the argument that a divorce proceeding entails a claim for damages in *In re Marriage of Welliver*, 254 Kan. 801, 810, 869 P.2d 653 (1994).[*]

[*]Kikirov first argued the judgment was void on this basis in his motion for reconsideration. We doubt a motion for reconsideration is a proper vehicle for asserting new legal arguments as opposed to alerting the district court to some factual or legal error it has made in considering the arguments already before it. Again, giving Kikirov every benefit, we have considered his contention on the merits. A party could challenge a judgment as void at any time on the grounds the district court lacked subject matter jurisdiction. *Bradley v. Bear*, 46 Kan. App. 2d 1008, 1012, 272 P.3d 611 (2011), *rev. denied* 297 Kan. ___ (May 20, 2013). The notice requirement of K.S.A. 60-254(c) does not implicate the district court's subject matter jurisdiction.

Finally, Kikirov argues he has been denied procedural due process under § 18 of the Kansas Constitution Bill of Rights and the Fourteenth Amendment to the United States Constitution. The state and federal constitutional rights to procedural due process are functionally the same. *In re J.D.C.*, 284 Kan 155, 166, 159 P.3d 974 (2007). This court recently reiterated the scope of constitutionally protected procedural due process:

> "As outlined by the United States Supreme Court, constitutionally protected procedural due process requires that a person be afforded a right to be heard in a meaningful way before being deprived of 'life, liberty, or property.' U.S. Const. amend. XIV, § 1; *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) ('The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." [Citation omitted.]'); *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 94 L. Ed. 2d 865 (1950) (The Due Process Clause 'at a minimum' requires that 'deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.'). The Kansas Supreme Court similarly defines due process rights. *State v. King*, 288 Kan. 333, 354, 204 P.3d 585 (2009); *Winston v. Kansas Dept. of SRS*,

274 Kan. 396, 409-10, 49 P.3d 1274 (2002)." *Taylor v. Kansas Dept. of Health & Environment*, 49 Kan. App. 2d ___, 305 P.3d 729, 735-36 (2013).

Kikirov essentially argues he was denied due process because he was never given an opportunity to present evidence as to both his marital finances and his bases for setting aside the judgment apportioning those assets and liabilities. Kikirov undoubtedly had constitutionally protected property interests triggering due process rights.

As to the substantive issues resolved in the divorce action and reflected in the decree, Kikirov had an *opportunity* to be heard satisfying his right to constitutional due process. He was properly served with the divorce petition, thereby affording him notice. He could have answered the petition and appeared at the hearing settling the marital rights and obligations. By choosing not to answer or otherwise participate, Kikirov effectively relinquished that opportunity to be heard. The Kansas Supreme Court has recognized that a party defaulting in a civil action cannot later claim a due process violation attendant to that default. See *Bazine State Bank*, 245 Kan. at 494. Kikirov, therefore, cannot prevail on a due process claim as to the hearing on the divorce petition.

When a state affords parties a statutory right to set aside judgments, it must provide a party attempting to do so a meaningful opportunity to be heard. As we have throughout this decision, we assume without holding that neither the hearing on the motion to set aside the judgment nor the hearing on the motion to reconsider afforded Kikirov a constitutionally meaningful opportunity to be heard. But a deprivation of procedural due process must result in some tangible prejudice to warrant relief. See *Tennessee Secondary School Athletic Assn. v. Brentwood Academy*, 551 U.S. 291, 303-04, 127 S. Ct. 2489, 168 L. Ed. 2d 166 (2007) (party may not obtain relief for procedural due process violation found to be harmless beyond a reasonable doubt); *Walker v. U.S.D. No. 499*, 21 Kan. App. 2d 341, 344-45, 900 P.2d 850, *rev. denied* 257 Kan. 1097 (1995);

see also *Perry v. Blum*, 629 F.3d 1, 17 (1st Cir. 2010) ("[A] party who claims to be aggrieved by a violation of procedural due process must show prejudice.").

The essence of Kikirov's due process claim as to the motion to set aside the judgment rests on the notion that if he had been allowed to present his evidence, the district court would have granted the motion either in the first instance or on reconsideration. But our analysis of the K.S.A. 60-260 issues forecloses the due process argument. Giving Kikirov the best possible rendition of his factual representations, he could not prevail on the motion to set aside the judgment under K.S.A. 60-260 (b)(1) or (b)(4). In turn, Kikirov cannot have suffered an actionable denial of procedural due process on the theory he was deprived of an opportunity to present evidence that would not have changed the ultimate result as a matter of law.

Affirmed.