NOT DESIGNATED FOR PUBLICATION

No. 109,289

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Paternity of
ADELINE JADE LANK, a Minor Child, by and through the Natural Mother and Next Friend,
LESA LANK,
Appellee,

and

PANTALEON FLOREZ, JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; ROBB W. RUMSEY, judge. Opinion filed January 10, 2014. Affirmed.

Pantaleon Florez, Jr., of Topeka, appellant pro se.

Elaine Reddick, of Reddick Law office, of Wichita, for appellee.

Before HILL, P.J., STANDRIDGE, J., and LARSON, S.J.

Per Curiam: This is the third appeal arising from this paternity case, and the child is only 5 years old. Pantaleon Florez, Jr., contends the district court erred when it decided his travel expenses did not warrant a change of his monthly child support obligation and when it refused to modify its prior order requiring him to pay attorney fees. Because Florez has failed to show us an abuse of discretion by the district court, we affirm.

A brief case history provides a proper perspective.

In the first appeal, *In re Paternity of A.L. v. Florez*, No. 104,684, 2011 WL 2801080, at *1 (Kan. App. 2011) (unpublished opinion), *rev. denied* 293 Kan. 1106 (2011), the factual history reveals:

> "In 2008, Lank and Florez had a baby girl, A.L. During their relationship, Lank split her time between Wichita and Topeka. Florez, a solo law practitioner in Topeka, saw Lank during the week in Topeka. Their relationship ended before A.L.'s birth. Florez remarried his former wife, and Lank stayed in Wichita. Although Florez initially disputed his paternity of A.L., genetic testing proved that he was the father. Lank filed a paternity action against Florez, seeking child support and costs for maternity and genetic testing expenses."

In that first appeal, Florez sought reversal of the district court's order denying him parenting time due to the court's order that imposed a smoking ban while his daughter was with him and an order directing him to pay attorney fees. This court affirmed the district court. We also upheld the district court's decision to impute income to Florez after he failed to provide his tax returns as ordered. 2011 WL 2801080, at *4-6.

Then, in the second appeal, *In re Paternity of A.L.*, No. 106,336, 2012 WL 2045373 (Kan. App. 2012) (unpublished opinion), Florez contended that the district court erred by failing to lower his child support obligation due to increased costs and by ordering him to pay attorney fees. In ruling on that appeal, the panel determined that certain increased costs for health insurance and daycare costs for his daughter were borne entirely by Lank, her mother. Therefore, Florez' contention that the district court's refusal to modify his child support order could not have caused him any prejudice. The panel did, however, remand the case to the district court for the limited purpose of considering whether Florez' long-distance parenting time expenses constituted a material change in circumstances warranting a modification of child support. This was ordered because when the initial child support obligation was set, Florez was not receiving parenting time.

The panel vacated the order for attorney fees for any possible modification the district court might deem proper. 2012 WL 2045373, at *4-7.

On remand, Florez argued his monthly travel expenses were $964, a figure that exceeds his child support obligation of $918 per month. The district court rejected Florez' request for an adjustment for transportation expenses and refused to modify its prior award of attorney fees.

Now, in this appeal, Florez claims the district court erred as a matter of law in determining he was not entitled to an adjustment for long distance transportation expenses under these facts. Florez also contends the district court erred in refusing to reconsider its award of attorney fees. Florez argues no award is appropriate here.

We are guided by our standards of review.

In cases involving challenges to child support obligations, the district court is vested with wide discretion to award attorney fees. When reviewing an award of attorney fees, this court does not reweigh the testimony or evidence presented or reassess the credibility of witnesses. An attorney fee award will not be set aside on appeal as long as it is supported by substantial competent evidence. *In re Marriage of Burton*, 29 Kan. App. 2d 449, 454, 28 P.3d 427, *rev. denied* 272 Kan. 1418 (2001).

What the district court heard and did.

Florez claimed Lank should be responsible for *all* the travel expenses (as opposed to his prior request for only half the expenses and his hotel expenses. Florez argued to the district court that because Lank was the one who moved away, and Lank was unwilling to share in the travel expenses, an adjustment to his support obligation was warranted. Florez recognized that his total travel expenses of $964 per month exceeded his support obligation of $918 per month, but nevertheless he asked the court to consider an adjustment for the full amount of $964.

In response, Lank explained that Florez originally had parenting time on alternating weekends and that she shared the transportation expenses. But Florez' parenting time was terminated entirely when he refused to follow the court's prior no-smoking order. Lank said that when Florez' parenting time was eventually reinstated and the matter was submitted to case management, the possibility of sharing transportation expenses was considered. However, Lank was reluctant to share in those expenses at that time since Florez was $12,000 behind on his child support obligation.

Thus, in her view, Florez' own actions resulted in him bearing the transportation expenses. Lank said the district court only reinstated Florez' parenting time to occur in Wichita (*i.e.*, outside of Florez' house in Topeka) in order to protect A.L. from the cigarette smoke in Florez' house. Lank argued Florez' transportation expenses would be cut in half if he would simply agree to the case management recommendation, which suggested that Florez have parenting time on alternate weekends as opposed to every weekend. Lank said Florez only refused to agree to the recommendation because it included a provision prohibiting him from consuming alcohol around his visitation time. Lank claimed she sent emails to Florez in which she offered to share transportation expenses if Florez would simply agree to the alcohol restrictions, but she said Florez refused to agree.

In announcing its decision on this point, the district judge referred to two emails. The first was an email from Lank to Florez indicating that if Florez would agree to the alcohol restriction, he could have parenting time on alternate weekends and Lank would share in the transportation expenses. The second was another email in which Lank similarly said she would be "happy" to share in the expenses if Florez would simply agree to alternating weekends.

When the court asked Florez about these emails, his only response was that he felt the case manager's recommendations were extremely restrictive in terms of what was

allowed and that he could not put the emails into context. The court suggested that Florez have his objection to the case management recommendation set for a hearing, as the case was currently "in limbo." The court suggested that if Florez' objection was dealt with by the parties, it was possible that Florez could ultimately obtain additional parenting time—and then the court could potentially adjust Florez' support obligation for transportation expenses at that point. But the court said that at the present time, there had been an offer to share the transportation expenses if Florez would only agree to the alcohol restriction—and the court believed this was a reasonable restriction.

The judge went on to point out that he had considered the factors set forth in *In re Marriage of McPheter*, 15 Kan. App. 2d 47, 50, 803 P.2d 207 (1990), when deciding whether a modification of support was necessary in this case. Applying those factors, the court said the "most compelling" factor here was Lank's offer to assist with the transportation costs. The court also pointed out that under the current custody arrangement, Lank was already responsible for all of A.L.'s meals, events, and trips to doctor's appointments and dentists.

The court emphasized that both Florez and Lank were aware that at the time of their intimacy, Lank had two residences—one in Topeka and one in Wichita—but that Lank primarily resided in Wichita and returned to Wichita from Topeka on the weekends. Thus, the court said this was not a case where Lank moved away.

As far as the attorney fee award was concerned, the judge stood by his decision to award the fees to Lank, noting this issue was contingent on the transportation issue. The court also pointed to a local district rule which permitted the court to invoke its inherent powers to award attorney fees whenever appropriate.

The record supports the court's findings.

Florez criticizes the district court's finding that Lank did not move away—claiming this is not supported by any evidence. Florez is incorrect. At the hearing on Florez' motion after remand, Florez acknowledged that Lank had two residences and that before A.L.'s birth Lank spent 5 days in Topeka and weekends in Wichita. Lank contended she did not move to Wichita, but that she had always lived in Wichita prior to A.L.'s birth. Lank explained that she was on a temporary job assignment in Topeka when she became pregnant with A.L. but the job ended. Lank said she had always had a residence in Wichita, that her other two children reside in Wichita, and that A.L. was born in Wichita and has always resided there.

Under these facts, the district court reasonably determined Lank did not "move away" from Topeka. Instead, Lank simply discontinued residing in Topeka on weekdays once her temporary job there ended. Florez presents no evidence to dispute this conclusion and merely points to the fact that Lank lived in Topeka through the week until 1 month before A.L. was born. A fair assessment of the specific facts of this case as a whole supports the district court's finding that Lank did not move away from Topeka.

Florez also argues that the district court's comment that he may receive, in the future, an adjustment for transportation expenses, is "contradictory" to the denial of this request. Florez says there is no "legitimate explanation" for the court's statement. But Florez fails to look at the context in which the court made the comment.

The statement came when the court brought up Lank's two emails that stated she would share in the transportation expenses if Florez would simply agree to the alcohol restriction and he could then have parenting time on alternate weekends. When the court asked Florez about these emails, Florez did not complain about the fact that he would have parenting time on alternate weekends. Instead, his only response was that he felt the case manager's recommendations were too restrictive in terms of what was to be allowed

and that he could not put the emails into context. Florez lodged a formal objection to the case management recommendation in October 2010, but the record on appeal does not disclose why his objection was not set for hearing in the 2 years that had elapsed since filing it. The court informed Florez that if he were to follow up on the formal objection he lodged to the case manager's recommendation by setting it for hearing, the objection potentially could be resolved, Florez could obtain additional parenting time in the future, and the court could at that time reconsider adjusting Florez' support obligation for transportation expenses.

Thus, the district court's comments were not contradictory, but were in fact quite reasonable under the circumstances. Florez, as a licensed lawyer, knows how to have objections set for hearing and bears some responsibility to resolve this dispute.

Under these facts, the court was unwilling to give Florez the transportation adjustment. We cannot say that this holding was an abuse of discretion. Notably, a district court is only required to consider any "reasonable" long distance transportation expenses. Kansas Child Support Guidelines, § IV. E.1 (2013 Kan. Ct. R. Annot. 138).

Turning to the attorney fees issue, we first note that in cases involving challenges to child support obligations, the district court is vested with wide discretion to award attorney fees. In turn, when reviewing an award of attorney fees, this court does not reweigh the testimony or evidence presented or reassess the credibility of witnesses. An attorney fee award will not be set aside on appeal as long as it is supported by substantial competent evidence. *In re Marriage of Burton*, 29 Kan. App. 2d at 454.

In standing by its decision to award attorney fees to Lank, the district court noted that its decision was contingent on the transportation issue. The court also pointed to its local district court rule, which permitted it to invoke its inherent powers to award attorney fees whenever appropriate. The judge said, "No showing of bad faith on the

offending party need be made under such circumstances, only if the party caused the other party to incur attorney's fees needlessly. This case—I made that finding, I believe, initially; I believe it is still appropriate in this case."

In his challenge to the award, Florez first argues the district court misinterpreted this court's remand directions when it ruled the attorney fee issue was contingent upon a favorable decision on the transportation issue. Florez says the award is "contrary to the direction of this court."

But Florez fails to explain how the district court's decision conflicts with this court's directions. This court said that because it was remanding for the district court to reconsider Florez' long-distance transportation costs, "the action *may* affect the district court's determination as to whether Lank is entitled to an award of attorney fees." (Emphasis added). This court said Florez' motion to modify child support was not necessarily frivolous and vacated the attorney fees so it could be reconsidered, but the court did *not* simply vacate the award. *Florez*, 2012 WL 2045373, at *6-7. This court's only direction was for the district court to reconsider the award—and on remand, the district court did so.

Florez also contends that the award permits Lank to recover duplicate fees. We are not convinced this is so. Florez cites page 44 of Volume 11 of the record when he claims Lank's counsel "failed to comply with the court's directive to submit a fee statement for the fees associated with the motion to modify child support." However, this page of the record contains no such directive by the court. It is Florez' duty to designate a record sufficient to establish the claimed error. Without an adequate record, the claim of alleged error fails. See *Unrau v. Kidron Bethel Retirement Services, Inc.*, 271 Kan. 743, 777, 27 P.3d 1 (2001). Florez has failed to demonstrate that Lank failed to comply with a directive by the court, and we will not consider his repeated claims to that effect.

Next, the record contains a copy of Lank's attorney's detailed billing statement. Florez complains it was a "full fee statement" that included everything the attorney had done for Lank; including work that was done prior to the time he filed his motion to modify support. Florez says the bill was not supposed to include work performed for anything other than the motion to modify, and he says the bill should have excluded work related to the contempt action—since he had already agreed to pay $10,000 in attorney fees for that action. Florez claims Lank's attorney recovered "double payment" for the same services.

It is true that some entries in Lank's billing statement are dated prior to September 30, 2010, the date on which Florez filed his motion to modify support. Also, these entries indeed indicate they relate to the contempt issue and the issue of child support arrearage. However, at the hearing on Florez' challenge to the attorney fee amount, Lank's attorney explained that she had informed the court that she included all of her "time" on the bill, but that she also showed the court where the "bill end[ed]" as far as her work on the contempt issue. Lank's attorney claimed the court did not "allow her" any of that time and that the court "[b]asically went from that period of time forward" to come up with the award amount. Lank's attorney noted that the court carefully reviewed the bill and removed the attorney fees associated with the contempt issue, beginning with February 2. Lank's attorney acknowledged that the first few pages of the bill related to the contempt matter but explained that the court "drew a line" as to when the bill calculation began.

Our examination of the billing statement contained in the record convinces us that Lank's attorney's explanation makes sense. The total bill was $19,033, yet Lank was awarded $4,983. Florez' apparent suggestion that the court blindly awarded Lank her entire request for attorney fees without analyzing those fees or segregating fees that should not have been part of the award is unpersuasive.

Attached to the billing statement was a letter from Lank's attorney acknowledging that some of the entries related to the contempt issue. On appeal, Florez has presented absolutely no evidence in the record that counters Lank's explanation of how the court handled the attorney fee calculation. Florez has presented nothing that demonstrates the court was unaware of the intermingling of the bills and that it failed to ensure only the appropriate fees were included in the award. While Florez says the court was merely speculating as to what bills related to the motion to modify, it is really Florez who is speculating about the district court's assessment of the bill. The district judge who presided over the case was in the best position to sort through the billing statement and make an appropriate determination as to what should be included in its award. Florez has presented absolutely no evidence that the district court in this case failed to do so.

Indeed, when Florez made the arguments he makes now to the district court, the district court responded that the appropriate amount of attorney fees was "clear." The court explained that it had reviewed the billing statement and that its award was based on Florez' failure to provide discovery in the case, his failure to present new evidence at trial, his actions in continuing to present the same arguments, and his attempts to incur unnecessary attorney fees. On appeal, Florez offers no response to these comments by the court.

Florez also complains that he sought an opportunity to reply to the requested attorney fee award but that he was denied the chance to make an objection. Florez cites nothing in the record to establish that he was denied an opportunity for a judicial review. His objection to the attorney fee amount was presented with considerable thoroughness to the court. The court entered its award on March 3, 2011. Florez filed his motion for relief from that award on March 15, 2011, and in his motion he raised the same arguments he makes now. On April 12, 2011, the district court held a hearing on Florez' motion and heard lengthy arguments from Florez regarding his objection to the billing statement. Florez cannot validly say he was deprived of the opportunity to voice his objections.

K.S.A. 2012 Supp. 23-2715, a section within the Kansas Family Law Code, states "attorney fees may be awarded to either party as justice and equity require." Given the history of this case and the record on appeal, we find no abuse of discretion in making this award. We need not consider the efficacy of any local rule relied upon by the district court because K.S.A. 2012 Supp. 23-2715 supports its action.

Affirmed.