

NOT DESIGNATED FOR PUBLICATION

No. 110,282

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

RICHARD KROPP,  
*Appellee,*

and

VIRGINIA KROPP,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Wyandotte District Court; CONSTANCE M. ALVEY, judge. Opinion filed April 4, 2014. Reversed.

*Jeffrey Leiker*, of Leiker Law Office, of Overland Park, for appellant.

No appearance by appellee.

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

*Per Curiam:* On April 21, 2009, Richard and Virginia Kropp were divorced. The parties negotiated a partial agreement of the terms of separation, including spousal maintenance, which the district court adopted as "fair, just, and equitable" and incorporated into the final decree of divorce.

The spousal maintenance portion of the agreement provided that Virginia Kropp would pay to Richard Kropp \$310 per month for a period of 96 months beginning May 20, 2009. The agreement outlined the following conditions for the termination of spousal

maintenance: "[Virginia Kropp's] maintenance obligation shall terminate upon the first of the following; the death of either party, remarriage of [Richard Kropp], the unintentional termination of employment of [Virginia Kropp], or cohabitation of [Richard Kropp] with a non-relative female in a marriage-like situation for a cumulative period in excess of 30 days."

On October 24, 2012, Virginia Kropp filed a motion requesting termination of her maintenance obligation because she had involuntarily lost her job. Following a hearing, the district court granted her motion. The termination order, however, required her to give Richard Kropp notice if she obtained "alternate employment, including details of compensation to be paid."

Sometime in 2013, Virginia Kropp obtained new employment and notified Richard Kropp pursuant to the court's order. In May, Richard Kropp filed a motion for reinstatement of maintenance. At the hearing, Richard Kropp argued that at the termination hearing, the district court had indicated it would consider reinstatement of maintenance if Virginia Kropp got another job, as evidenced by the order requiring notice should this occur. Richard Kropp also argued that the divorce decree provision at issue was a "real injustice." Virginia Kropp argued that the maintenance agreement adopted by the divorce decree was unambiguous and must be strictly enforced. After considering these arguments the district court granted Richard Kropp's motion to reinstate the previously terminated maintenance obligation. Virginia Kropp now appeals.

The only issue raised on appeal is Virginia Kropp's contention that the district court lacked jurisdiction to enter the order reinstating the previously terminated spousal maintenance. Whether a court has jurisdiction to take a judicial action is a question of law over which our review is unlimited. *Mid-Continent Specialists, Inc. v. Capital Homes*, 279 Kan. 178, 185, 106 P.3d 483 (2005).

This case is controlled by K.S.A. 2013 Supp. 23-2712:

"If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the [divorce] decree. . . . Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: (1) As prescribed by the agreement; or (2) as subsequently consented to by the parties."

It is well-settled law in Kansas that "a court is powerless to modify a valid, just and equitable separation agreement, except as to matters authorized by statute, unless the agreement provides for or the parties consent to such power." *Lewis v. Lewis*, 4 Kan. App. 2d 165, 166, 603 P.2d 650 (1979). As such, a "trial court does not have subject matter jurisdiction to modify a maintenance agreement if the agreement specifies the only manner by which it can be modified." *In re Marriage of Gurganus*, 34 Kan. App. 2d 713, 716-17, 124 P.3d 92 (2005); see also *Bair v. Bair*, 242 Kan. 629, 634, 750 P.2d 994 (1988) (spousal maintenance agreement incorporated in divorce decree, which provided that any modification or waiver of its terms would be invalid unless in writing and executed with same formalities as agreement itself, could not subsequently be modified by district court on grounds of changed circumstances).

The trial court could only have had jurisdiction to reinstate Virginia Kropp's spousal maintenance obligation if either (1) the parties consented or (2) the agreement itself provided for conditions of reinstatement which had been met. Neither is present in this case. It is undisputed that the parties did not consent to the reinstatement order. Moreover, the agreement itself is clear and unambiguous and makes no provision for reinstatement of spousal maintenance after it has been terminated. In such circumstances, the agreement "must be given its plain and ordinary meaning." *In re Marriage of Gurganus*, 34 Kan. App. 2d at 717.

Where a party has sought and obtained "approval of a separation agreement and the incorporation thereof in a decree of divorce and thereafter accepts the benefits of the decree [that party] cannot avoid its disadvantages by a motion to modify except as to those matters over which the court has continuing jurisdiction." *Spaulding v. Spaulding*, 221 Kan. 574, Syl. ¶ 1, 561 P.2d 420 (1977). Because this is not a matter over which the court has continuing jurisdiction—either by statute, the terms of the divorce decree, or the consent of the parties—the order of reinstatement must be set aside for lack of jurisdiction.

Reversed.