NOT DESIGNATED FOR PUBLICATION

No. 109,797

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

TONYA ANJARD,
Appellee,

and

RONALD ANJARD JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS KELLY RYAN, judge. Opinion filed June 13, 2014. Affirmed.

Ronald Anjard, Jr., appellant pro se.

No appearance by appellee.

Before GREEN, P.J., PIERRON and STEGALL, JJ.

Per Curiam: This case and its companion case, *In re Marriage of Anjard*, No. 109,812 (Kan. App. 2014) (unpublished opinion), also decided this day, are the fourth and fifth appeals Ronald Anjard, Jr. ("Anjard") has brought arising out of his obvious dissatisfaction with the judicial resolution of his divorce. Anjard is representing himself, while Tonya, his ex-wife, has not filed a brief in the proceeding. After a careful review of the record and based on the issues presented by Anjard, we find his claims to be groundless. Thus, we affirm the district court.

We begin by reciting the facts of Anjard's repeated attempts to find appellate relief as set forth in *In re Marriage of Anjard (Anjard III)*, No. 107,990, 2013 WL 4404179, at *1 (Kan. App. 2013) (unpublished opinion):

> "Ronald [Anjard, Jr.,] filed for divorce in 2006. The assigned district court judge entered various temporary orders related to child custody, support, real property the parties owned, and various other financial matters. In late 2007 and early 2008, the district court judge entered additional orders culminating in the sale of a residence the couple owned in Johnson County, referred to in the litigation as the Lamar property. About 2 weeks later, Ronald filed a motion to dismiss the divorce action. The district court judge granted that motion. On February 7, 2008, Tonya filed a petition for divorce in Johnson County. The same district court judge entered new temporary orders in that case, mirroring the ones entered in the 2006 case. Tonya's divorce action for all practical purposes picked up where Ronald's had left off.
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> "In April 2008, the district court judge granted Tonya a default divorce but reserved ruling on the division of property. The parties filed a series of motions related to the property and other matters. They disposed of a second residential property they owned in Johnson County. Along the way, a different district court judge had taken over the case. The newly assigned district court judge conducted a 2-day trial in March 2009 and on July 31, 2009, entered a journal entry dividing the assets and liabilities of Ronald and Tonya, granting limited spousal support to Tonya, setting child support, and resolving other issues. Ronald disputed the reasonableness of the price paid for the Lamar property and disputed the allocation of costs related to the second property [referred to in the litigation as the Hemlock property], but the district court disagreed.
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> "After both parties' motions to alter or amend were decided, Ronald filed an appeal challenging the division of assets and liabilities and the allocation of litigation costs. This court affirmed the district court's rulings in an unpublished opinion. *In re Marriage of Anjard (Anjard I)*, No. 103,426, 2011 WL 5389679 (Kan. App. 2011) (unpublished opinion), *rev. denied* 294 Kan. 943 (2012).

> "While the appeal in *Anjard I* was pending, Ronald filed a separate action in Johnson County District Court against Tonya, her lawyer, the real estate agents involved in the sale of the Lamar property, and the purchaser [,] alleging they engaged in improper dealings in that transaction. Ronald alleged Tonya's lawyer had impermissible ex parte contact about the sale with the first district court judge handling the divorce. A third district court judge dismissed the suit based on res judicata and collateral estoppel. This court affirmed the judgment in *Anjard v. Anjard–Hillard (Anjard II)*, No. 105,892, 2012 WL 1920375 (Kan. App. 2012) (unpublished opinion), *rev. denied* 296 Kan. 1129 (2013). This court found that Ronald had an appropriate forum in the divorce action to challenge the sale of the property and to seek an adjustment in the property division if the price were demonstrably too low. Because Ronald and Tonya were parties to both suits and the remaining parties in *Anjard II* were effectively in privity with Tonya, collateral estoppel barred the independent action related to the sale. 2012 WL 1920375, at *3-5. In short, Ronald had a full and fair opportunity to challenge the sale of the property during the trial in *Anjard I* and did so."

Because this appeal concerns the sale of the Lamar property, we recite additional facts regarding that sale from *In re Marriage of Anjard (Anjard I)*, No. 103,426, 2011 WL 5389679, at *2-3 (Kan. App. 2011) (unpublished opinion), *rev. denied* 294 Kan. 943 (2012):

> "[Ronald and Tanya Anjard] agreed early in the case that the Lamar property, which had been the primary marital residence, needed to be sold. However, after a year on the market, the property succumbed to a foreclosure action while the divorce was pending. Ronald and Tonya had 90 days to sell or redeem the property before it would be sold at a loss to the marital estate. The parties were actively seeking buyers in hopes of realizing some profit from the sale. A buyer was secured for a $350,000 purchase price along with the waiver of half of the real estate fees. However, Ronald still believed the house was worth more than the offer, even though the end of the redemption period was within a few weeks and the offer was approximately $100,000 above the redemption price. At Ronald's request, the district judge allowed Ronald 1 week to present a bona fide purchaser to the court. Ronald met the deadline and submitted an offer from a buyer to purchase the house for $380,000, with some contingencies attached to the offer.

> "Unbeknownst to Ronald or his attorney, the district judge and Tonya's attorney met to review Ronald's new offer. The district court rejected Ronald's buyer and accepted the $350,000 offer previously made. The district court ruled that the offer presented by Ronald contained unacceptable contingencies. Because of these contingencies, the district court determined that the original offer was superior to Ronald's offer and ordered the property sold pursuant to the $350,000 contract. . . .
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> "Prior to a final distribution in this case, the district court held a 2-day evidentiary hearing regarding the marital assets. A new judge provided Ronald a full opportunity to present evidence on the value of the Lamar property. At trial, Ronald presented testimony regarding the ex parte discussion and order. The district court, at the time of the final decision on the case, was able to review the factual circumstances surrounding the ex parte discussion and order. The district court was able to review Ronald's testimony and the copies of both contracts considered by the court. After considering all the evidence, the district court found that the sale of the Lamar property was properly considered and ordered under the exigent circumstances of pending foreclosure and loss of marital equity in the real estate." 2011 WL 5389679, at *2-3.

In *Anjard I*, this court affirmed the district court's rulings with respect to the Lamar property. 2011 WL 5389679, at *3.

After this court found in *Anjard II* that Anjard's attempt to collaterally attack the sale of the Lamar property was barred by the doctrine of collateral estoppel, Anjard persevered and raised the issue at the next available opportunity. When a dispute arose over child support payments, Anjard reasserted his already decided claims and pursued them once again to this court. In *Anjard III*, we found that as these matters had been fully litigated and decided within the divorce proceeding, they were barred by the doctrine of law of the case:

> "To the extent Ronald [Anjard, Jr.,] has some other complaints about [the] temporary orders . . . his effort fails under law of the case. Law of the case functions much the same way as res judicata in the sense that it bars a party from proceeding on

> issues he or she has already had a full and fair opportunity to litigate. See *State v. Collier*, 263 Kan. 629, Syl. ¶ 3, 952 P.2d 1326 (1998) (describing law of the case); *Cornwell v. Moss*, 99 Kan. 522, Syl. ¶ 2, 162 P. 298 (1917) (same). Res judicata prevents a party from pursuing a new suit against an adverse party against whom it has already litigated an action to a judgment on the merits when the suits arise from the same circumstances, even if the second one relies on different theories. See *Estate of Belden v. Brown County*, 46 Kan. App. 2d 247, 259, 261 P.3d 943 (2011). Res judicata operates across cases. Law of the case essentially does the same within a single case. Thus, a party who has once appealed in a case may not raise in a later appeal issues he or she did raise or could have raised in the first appeal. *Cornwell*, 99 Kan. 522, Syl. ¶ 2 ('Ordinarily, a decision of questions which were presented upon a former appeal or which were involved and might have been raised therein will be deemed to be the law of the case in a subsequent appeal where the issues are substantially the same. . . .'); *JGR, Inc. v. Thomasville Furniture Industries*, 550 F.3d 529, 532 (6th Cir. 2008) (law of the case bars challenge to ruling that could have been asserted in an earlier appeal and was not); *United States v. Abreu-Cabrera*, 94 F.3d 47, 49 (2d Cir. 1996) ('[U]nder a corollary to the law-of-the-case doctrine, appellate courts will refuse to consider trial court rulings that could have been raised on an earlier appeal.')." 2013 WL 4404179, at *3.

Undaunted by this string of setbacks, on January 8, 2013, Anjard filed a motion in the original divorce proceeding pursuant to K.S.A. 2012 Supp. 60-260(b)(6). In the motion, Anjard sought relief from the orders related to the sale of the Lamar property on the grounds that Tonya Anjard's attorney had committed fraud on the court due to the ex parte conversation. On March 29, 2013, the district court conducted a hearing on a motion for fees filed by Reece & Nichols. Anjard was present at that hearing and took the opportunity to argue his K.S.A. 2012 Supp. 60-260(b) motion. The district court, in addressing Anjard's arguments, stated:

> "I think we're straying way far away from [consideration of Reece & Nichols' fees]. The issue, as it started back in September 2011 after the Court of Appeals ruled on Mr. Anjard's appellate issues, was that the trial and the issues and determinations made at trial in this case were affirmed. . . .

. . . .

"This record that I am dealing with, this case 08 cv 1121, there are now, through this week, 332 documents in the court file. And I have not gone back and tried to count how many but I know that the court file is replete with [the issue of the ex parte communication] being raised. It was raised at the time of trial. I ruled on it at that point. I made the determination of commission owed with regard to the sale by which Reece and Nichols facilitated that sale and that the commission was properly owed to Reece and Nichols. That's also, I know, raised apparently in the appeal that–I didn't read the appellate briefs but in reading the opinion of the Court of Appeals–that issue was included.

"The issue of whether Mr. Beye has not been forthright with the Court or committed fraud, deception, all the points that you raise, Mr. Anjard, that's been considered, It's been considered by the Court of Appeals and it's been considered by the Supreme Court not to overturn that decision. So it is res judicata at this point.

"Those issues you're raising, that you continue to raise even in other post-trial, post-divorce filings, it's included in almost every one of your motions, no matter what it's about, short of the child custody issues or parenting time issues, anything to do with financial matters. And I think even in the child support motions, that issue you keep raising. It's been decided."

Immediately following the hearing, the district court memorialized its summary denial of Anjard's K.S.A. 2012 Supp. 60-260(b) motion regarding the Lamar property. Though the procedural history is less than clear, we can glean from the record that the district court had previously communicated its denial of Anjard's motion to the parties in an email dated January 22, 2013. In keeping with his habitual practice, Anjard appealed.

On appeal, Anjard makes two basic arguments: (1) The district court erred when it summarily denied his K.S.A. 2012 Supp.60-260(b) motion for relief from the orders related to the Lamar property without hearing oral arguments; and (2) the district court

erred when it determined that Anjard's claims had been previously decided. We have no difficulty deciding—based on a burgeoning record of extensive and duplicative litigation along with numerous prior court rulings addressing this question—that the district court did not err in summarily denying Anjard's motion.

Supreme Court Rule 133 (c)(1) provides: "A party may request oral argument—either in the motion or in a response filed by the adverse party. . . ." 2013 Kan. Ct. R. Annot. 241. The rule goes on to state that if no party requests oral argument, the court has the option of setting the matter for a hearing or ruling on the motion immediately and communicating the ruling to the parties. Supreme Court Rule 133(c)(2). Even if a party requests oral argument, a court is not required to grant the request and may simply state "in the ruling or by separate communication that oral argument would not aid the court materially." Kansas Supreme Court Rule 133(c)(1) (2013 Kan. Ct. R. Annot. 241). When no request for oral argument is made, a court is free to rule on the pleadings as submitted by the parties. See *George v. Capital South Mtg. Investments, Inc.*, 265 Kan. 431, 461-62, 961 P.2d 32 (1998). Here, Anjard's motion did not request oral argument. The district court cited Rule 133 in its order denying Anjard's motion. Finally, as a practical matter, Anjard did, in fact, take the opportunity of the March 29 hearing on Reece & Nichols' fee request to present his arguments to the the district court. We find nothing procedurally improper in the manner the district court denied Anjard's motion.

With respect to Anjard's primary and substantive argument on appeal, we cannot improve upon the district court's succinct statement: "It's been decided." We agree with the *Anjard III* panel of this court that when a party has previously raised an issue on appeal and that issue has been decided, the doctrine of law of the case precludes the issue from being heard again *in the same case*. Such is the case here. Though the district court's denial of Anjard's motion does not provide a clearly articulated rationale, it is apparent to this court that the district court correctly surmised that Anjard's motion amounted to little more than a refusal to take no for an answer. But a person's refusal to accept the outcome

of a fully and fairly fought judicial contest does not obligate the courts to continually reweigh and redecide the issue. The district court's summary denial of Anjard's motion was not improper.

Affirmed.