

NOT DESIGNATED FOR PUBLICATION

No. 111,073

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

TODD CHARLES DICUS,  
*Appellee,*

and

RENA JO DICUS,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Johnson District Court; JAMES F. VANO, judge. Opinion filed July 18, 2014.  
Reversed and remanded.

*Gregory A. Dean*, of Johnston, Ballweg & Modrein, L.C., of Overland Park, for appellant.

*John J. Bengt*, of Bengt Law Firm, of Lenexa, for appellee.

Before SCHROEDER, P.J., MCANANY, J., and LARSON, S.J.

*Per Curiam:* Rena Jo Dicus timely filed a motion to extend and reinstate her maintenance order for another 121 months before the initial order to pay maintenance for 121 months expired. We find the district court had jurisdiction to hear the motion and erred in denying the motion, in violation of K.S.A. 2013 Supp. 23-2904. We reverse and remand.

FACTS

Todd Charles Dicus and Rena Jo Dicus were married on May 28, 1976. Todd filed for divorce in the district court of Johnson County on January 2, 2003.

In a memorandum decision filed on October 15, 2003, the district court granted the parties a divorce on the grounds of incompatibility. The district court granted Rena a maintenance award of "\$6,500 per month for 36 months, followed by maintenance of \$7,000 per month for 85 months." The district court reserved jurisdiction "to consider a motion to extend maintenance beyond 121 months" and to "increase maintenance by no more than 3% per year after 48 months" to account for inflation.

On October 7, 2008, the district court filed a journal entry in which it increased Rena's monthly maintenance award to \$7,160. On April 18, 2013, Rena filed a motion to reinstate maintenance "at the termination of its current term pursuant to K.S.A. 23-2904."

At an evidentiary hearing on Rena's motion, the district court judge prefaced the proceeding by characterizing Rena's motion "as a motion to reinstate maintenance" and stated, "I think the parties agree factually that there's been no suspension of maintenance during the original period, and there's no arrearage." The parties each offered a proffer of the evidence they would present at the evidentiary hearing before the district court asked them to argue whether the court had jurisdiction to proceed.

Rena's counsel argued the only jurisdictional requirement to reinstate maintenance is filing the motion prior to the expiration of the original term of maintenance. Rena's counsel also noted the text of the statute allowed for maintenance to be extended beyond 121 months. Todd's counsel argued that allowing an extension of maintenance would constitute an impermissible increase in maintenance, citing *In re Marriage of Monslow*, 259 Kan. 412, 912 P.2d 735 (1996). Todd's counsel also argued the term "reinstate"

should be read literally to mean a motion to reinstate maintenance may only be filed if there is a "break in the maintenance."

The district court concluded Rena's "motion to reinstate maintenance is actually a motion to extend maintenance" and denied the motion, finding the "121-month limitation on maintenance" created a jurisdictional bar to Rena's request. The journal entry was filed on December 20, 2013, and stated the court had "no jurisdiction to extend maintenance beyond the original obligation set forth in the original divorce, 121 months."

Rena now timely appeals.

#### ANALYSIS

*Did the District Court Err in Ruling It Did Not Have Jurisdiction to Consider Rena's Reinstatement Motion?*

On appeal, Rena argues the district court erred in concluding a maintenance award could never be extended beyond 121 months. Todd argues the word "reinstatement" should not be interpreted to mean "extension."

The underlying issue raised on appeal is whether the district court had jurisdiction to consider Rena's motion. Whether a court has jurisdiction to take judicial action is a question of law over which this court's 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. 23-2904:

"The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event,

the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months."

"[S]tatutory interpretation begins with the language selected by the legislature. If that language is clear, if it is unambiguous, then statutory interpretation ends there." *Martin v. Kansas Dept. of Revenue*, 285 Kan. 625, 629, 176 P.3d 938 (2008). "An appellate court merely interprets the language as it appears; it is not free to speculate and cannot read into the statute language not readily found there." [Citation omitted.]" *State v. Hopkins*, 295 Kan. 579, 581, 285 P.3d 1021 (2012).

K.S.A. 2013 Supp. 23-2904 does not state maintenance cannot be reinstated unless it has previously been terminated. It specifically requires the motion for reinstatement or to extend maintenance to be filed before the expiration of the stated period of time for maintenance to be paid in either the initial time period for payment or any extension thereof. In essence, the statute provides for successive periods of 121 months at the district court's discretion based on all of the circumstances of the parties. The district court therefore erred in interpreting the statute to require the initial payment of maintenance to have been suspended during the original term and subject to a total limitation of 121 months.

CONCLUSION

The district court erred in creating a distinction between a "reinstatement" of maintenance and an "extension" of maintenance pursuant to K.S.A. 2013 Supp. 23-2904. Clearly, with the timing of Rena's motion, the district court had jurisdiction to consider the motion and determine whether it should be extended for any period of time up to 121 months.

Reversed and remanded.