

NOT DESIGNATED FOR PUBLICATION

No. 112,050

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

TRACI S. WELLS,
Appellee,

v.

BRADLEY S. ASHBAUGH,
Appellant.

MEMORANDUM OPINION

Appeal from Scott District Court; WENDEL W. WURST, judge. Opinion filed April 17, 2015.
Affirmed.

Andrew J. Walter, of Ryan, Walter & McClymont, Chtd., of Norton, for appellant.

John M. Lindner, of Lindner, Marquez & Koksals, of Garden City, for appellee.

Before LEBEN, P.J., ARNOLD-BURGER, J., and BUKATY, S.J.

Per Curiam: Brad Ashbaugh filed a motion in the district court to modify the permanent parenting plan in place between him and Traci Wells regarding their minor child, J.A., who was born in 2004. Following a somewhat lengthy evidentiary hearing, the court denied the motion. Brad appeals arguing the court abused its discretion in keeping the primary residence of the child with Traci and in ordering that he pay Traci's attorney fees. We find no abuse of discretion by the trial court in its rulings and affirm.

Facts

Because resolution of this appeal is so fact driven, we will set forth a rather detailed recitation of the evidence the district court considered in rendering its decision.

At the time of the hearing, J.A. was 10 years old and in fourth grade. The couple conceived J.A. in 2004 during a short-term relationship they were involved in at the time. They had no contact with each other at the time Traci found out she was pregnant with J.A. Traci testified that when she did find out, she attempted to contact Brad multiple times but was unsuccessful.

The Kansas Social and Rehabilitation Services (SRS) brought a paternity action against Brad in September 2004 to establish paternity and child support. Brad had no involvement with Traci and J.A. between the time of J.A.'s birth and the commencement of the paternity case. Brad was reluctant to acknowledge he might be the father without a DNA test. In March 2005, after completion of the testing, the district court entered an agreed order establishing paternity and ordering Brad to pay child support. Brad did not request or obtain visitation rights at that time. Brad testified he did not contact Traci immediately after the paternity testing revealed he was the father because he was in shock and was trying to get his life on track after just going through a divorce with the mother of his two oldest children. He was also in a new relationship at the time SRS filed the paternity action. Brad's attorney sent Traci a letter which raised the possibility of relinquishing Brad's parental rights and asking Traci if she thought it was in J.A.'s best interest; however, Brad ultimately never followed through on relinquishing those rights.

Traci attempted to involve Brad's mother, Vickie Ashbaugh, in J.A.'s life in February 2006, when Traci called her to inquire about the Ashbaugh family allergies.

During the first 4 years of J.A.'s life, Traci was his sole parent. When J.A. was 3 months old he contracted respiratory syncytial virus (RSV) and almost died. Traci dealt with the RSV and the resulting respiratory issues alone. J.A. has also had chronic allergies necessitating that he take Alimentum formula until he was 3 1/3 years old. Traci was very active in finding out to which foods J.A. was allergic and reintroduced foods to J.A.'s diet one at a time to test for reactions. J.A. began walking at 10 months old and was an extremely active boy. Traci was also active in trying to address J.A.'s hyperactivity issues. Brandy May, J.A.'s daycare provider, testified Traci was an amazing single mother.

In 2007, Brad contacted Traci and indicated a desire to be involved in J.A.'s life. J.A. was almost 4 years old when he first met Brad. After making the initial contact with Traci, Brad began having periodic visitation. Traci testified Brad's contact was still very limited until July 2008 with only a few daytime visits.

In April 2008, SRS was contacted concerning an altercation in Traci's home when Traci's then boyfriend, Robert Gonzalez, hit J.A. in the face. Although the investigation resulted in an "unsubstantiated finding," the allegation was confirmed by J.A. during the course of the investigation. Due to the investigation, SRS developed a safety plan stating Traci was not to have anyone residing in her home besides herself and J.A.

Following the incident, Traci decided to break up with Gonzalez. For unknown reasons, Traci left J.A. with a friend, Marla Williams, for 2 weeks while she attempted to break up with Gonzalez. Traci testified J.A. knew Marla very well and was comfortable with her. After the relationship with Gonzalez ended, J.A. returned to live with Traci.

In July 2008, Traci had another altercation with Gonzalez which led to her being arrested and J.A. being removed from her home. The State ultimately charged Traci with aggravated burglary, two counts of aggravated assault, two counts of criminal threat,

theft, and criminal damage to property. Traci entered no contest pleas. After her release from jail, she moved in with Michael Fink.

When Traci was arrested, she left J.A. with a woman living in her apartment complex, with whom neither J.A. nor Traci were acquainted. Due to Traci's criminal actions, leaving J.A. with a stranger, and the fact that she was unable to post bond for 41 days, the State filed a child in need of care petition (CINC) on July 25, 2008, in Finney County.

Only days after Traci's arrest in July 2008, Michael, to whom she was now married, also was arrested and charged with aggravated battery and domestic battery against his wife at the time, Heather Fink. Michael entered *Alford* pleas to the charges and was convicted of three counts of battering his wife.

During the initial hearing in the CINC proceeding, the court determined temporary placement of J.A. would be with Brad. During the hearing on the amended motion to modify the permanent parenting plan, Traci argued J.A.'s best interests would have been better served by placing him with her ex-husband's wife, Melissa Wells.

Following J.A.'s placement with Brad, the parties agreed on an order that Brad become the residential parent with Traci being allowed parenting time on alternate weekends and alternate holidays. Traci testified she only signed the agreement because Brad was denying her visitation and she thought signing the agreement was the only way to see her son.

J.A. attended preschool during this period he primarily resided with Brad. During this time, J.A. apparently had at times become disrespectful, did not follow directions, and was putting his hands on other children. Brad testified he attempted to correct these behaviors by putting J.A. in time out and discussing with him why his behaviors were not

appropriate. Traci testified she had serious concerns about J.A. living with Brad during this time period because she found bruises on J.A.'s buttocks and legs from Brad spanking him. Traci testified Brad told her he spanked J.A. with a belt. Brad denied this at trial.

In February 2009, Brad agreed to return primary custody of J.A. to Traci. Traci testified this was because Brad could not handle J.A.'s behavioral issues. Brad testified he did not believe he had any other choice but to allow J.A. to again reside primarily with Traci because he thought that when Traci had completed her sentence, custody would revert to her. Brad testified at that time he was not concerned for J.A.'s safety in living with Traci on a primary basis because he had been informed Traci had turned her life around and was trying to make life better for herself and J.A. Although Brad knew Traci was dating and living with Michael, Brad did not know him very well and was unaware at that time of Michael's arrest in July 2008.

Even after J.A. was returned to Traci, J.A. continued to exhibit troubled behavior in school. In the fall of 2011, J.A. was eventually transferred out of his elementary school and into a therapeutic education program (TEP) for general defiance and a major incident that resulted in him tearing apart the principal's office. These incidents also required Traci to seek the assistance of the Area Mental Health Center (AMHC).

TEP is designed to assist students whose mental health issues and behaviors make it impractical to educate them in a regular classroom setting. J.A. struggled at first in the program but by the fall of 2012, he exhibited "tremendous growth" by showing improvement in his mental health and academic performance.

During J.A.'s time in TEP, Traci apparently had active involvement with him while Brad did not. When J.A. had an incident, Traci went to TEP to help calm down J.A.

She brought in treats for J.A.'s birthday and was always available for meetings with J.A.'s teachers regarding his progress.

After J.A. graduated from TEP and returned to a regular third-grade classroom in January 2013, Traci continued to be very involved in J.A.'s education according to the testimony of witnesses. J.A.'s third-grade teacher testified Traci was a very active and involved parent and visited her classroom two or three times per week to coordinate J.A.'s schoolwork with practice work at home. J.A.'s fourth-grade teacher testified Traci was very involved and frequently communicated with her regarding J.A. She also testified she noticed negative behavior in J.A. after he spent spring break with Brad and Brad had been a no-show at a scheduled parent-teacher conference. Traci testified she informed Brad about various school functions and parent-teacher conferences but he did not attend.

In contrast, Brad testified he was unable to participate actively in J.A.'s academics because he could not receive any records from the school or AMHC because he was not listed as J.A.'s father or as an authorized individual to receive records. To receive information from the school and AMHC, he had to provide both institutions with birth certificates, court documents, social security cards and other documents showing he was in fact J.A.'s father. He said Traci denied his requests for copies of these things until after the status conference that was held in October 2013. Brad attempted to help J.A. progress academically by doing flash cards and writing assignments out of writing books Brad had purchased. J.A.'s third-grade teacher testified that if J.A.'s homework had been sent with J.A. on Brad's weekends, it was possible J.A. would have progressed faster academically. Traci admitted she had not listed Brad as J.A.'s father on his school records but that it was just a mistake and would not happen in the future.

Brad testified that because he began having difficulties in coparenting with Traci, he called her to discuss the possibility of J.A. residing primarily with him. Specifically,

Brad was frustrated with Traci making nonemergency medical decisions concerning J.A. without consulting him, she did not promote a relationship between Brad and J.A., and she scheduled activities during Brad's parenting time. He was also concerned that Traci did not allow telephone contact and Traci's relationship with Michael put J.A. in danger due to Traci's and Michael's history of domestic violence.

Brad filed his motion to modify the permanent parenting plan on August 22, 2013. Before that date, Traci and Brad's current wife, Tawny, communicated almost daily regarding a variety of topics, including J.A. After Brad filed the motion, Tawny continued to attempt communication with Traci, but Traci did not cooperate.

In October 2013, J.A. was involved in an alleged domestic violence situation between Traci and Michael. Michael was "blackout drunk" and began pushing and verbally abusing Traci with derogatory and demeaning profanity in front of J.A. and J.A.'s friend. J.A. felt he had to come to the defense of his mother and he pushed Michael in order to end the altercation. J.A. stated that in order to keep him or Traci from calling the police, Michael threw a cell phone across the street. Traci eventually was able to get J.A. and his friend out of the home. They went first to a neighbor's residence and then to a friend's house to stay the night. J.A. described the incident to Brad in a recording played for the district court.

The Department of Children and Families (DCF) (previously SRS) ultimately investigated the incident. On October 21, 2013, DCF received an intake report of emotional abuse with J.A. as the alleged victim and Michael and Traci as the alleged perpetrators. In a somewhat confusing action, DCF found the abuse allegation to be unsubstantiated but determined there was still the possibility physical abuse occurred in front of J.A.

Both Brad and Tawny testified J.A. reported there was fighting between Michael and Traci almost every other day. It apparently became so bad at one point that J.A. revealed to Brad and Tawny that he told Traci and Michael he was going to kill himself if they did not stop arguing.

Brad and Traci had very different opinions on the necessity of J.A.'s ADHD medication. Traci, with the support of J.A.'s school teacher, believed that J.A. exhibited major impulse control and behavior problems when not on his medication. Brad and Tawny did not think J.A. needed medications on his weekend visits with them, and they scheduled a second evaluation of J.A. with another mental health professional. The parties highly contested the results of that evaluation at trial. Also, Brad and Tawny believed a natural remedy would suffice for J.A.

To the credit of Traci and Brad, the district court heard several pieces of uncontested evidence at trial that demonstrated both were good parents in some respects and a positive influence in their children's lives.

In Brad's favor, J.A. had a great relationship with Brad's other children. J.A. also has many age-appropriate friends living within a couple blocks of Brad's house. Brad's family got together with Brad's parents at least four times a week for a family dinner. Brad's parents, J.A.'s paternal grandparents, also enjoyed a close relationship with J.A. and made sure they saw him almost every time he stayed with Brad. Vickie Ashbaugh, Brad's mother, included Traci in the activities Vickie and J.A. participated in together by sending Traci pictures. Brad and Tawny lived in a large house with five bedrooms that allowed each child to have their own bedroom. There was a fenced-in backyard that gave the children plenty of room to run and play in a secure environment.

In Traci's favor, there was evidence presented that showed Traci was, and had been, a good mother to J.A. With the exception of the 6 months J.A. lived with Brad,

Traci had been J.A.'s primary caretaker. J.A. was Traci's number one priority, and she had even quit her job to better address J.A.'s ADHD. Traci testified that when J.A. was little, she read to him and played with him. As he got older, she enrolled him in various sports and other activities. Melissa Wells, the wife of Traci's ex-husband, described Traci as a wonderful mother who placed J.A. as her number one priority. Brandy, J.A.'s daycare provider, testified J.A. was well adjusted with lots of friends at school and in the community. Debra Carter, Traci's neighbor, testified Traci and Michael seemed to have a great relationship between themselves and with J.A. She also testified she had never seen or heard any kind of domestic violence between Traci and Michael. Ember Dortch, Michael's brother, testified Michael was great with J.A. and was very focused on his family. Ember testified he had no concerns about domestic violence and felt completely safe leaving his children with Traci and Michael. Traci testified Michael was a wonderful, loving, and caring individual and was the "best provider I have ever known for anybody for us." Traci testified she had a safe home environment for J.A., with his own room in their duplex.

Neither party presented evidence at trial as to their income, expenses, daycare expenses, or parenting time expenses. Traci offered a child support worksheet that Brad apparently stipulated to. The district court admitted it without objection. Approximately 2 weeks after trial, the court received a fee affidavit from Traci's counsel itemizing \$9,879.00 in fees and expenses. Brad filed no responsive pleading or affidavit, and neither party requested a hearing on the issue of assessment of attorney fees.

In its detailed and comprehensive written decision, the district court first mentioned its primary concern in determining the custody of minor children must be the best interests of the child or children. The court then mentioned the relevant factors in K.S.A. 2013 Supp. 23-3203 that it had to consider. Additionally, the court mentioned other items it should consider in this case: J.A.'s health problems, the stability of the primary caretaker and the status quo, the quality of affection and feeling for J.A. by a

given parent, and which parent would be better able to advance J.A.'s moral and ethical upbringing. The court then denied Brad's motion to make him the residential custodian of J.A.

In addition, the district court assessed Brad \$2,500 of the attorney fees Traci had incurred in this matter. While the district court found Brad's motion was in no way without merit or frivolous due to the substantial evidence that raised concerns about the stability of Traci's home environment, it held Brad responsible for a portion of her attorney fees because Brad earned substantially more than Traci. The court also indicated that if Brad had been more dedicated and active in coparenting, there may have been no need for litigation.

Scope of Review and the Relevant Law Pertaining to Child Custody Determinations

In *Cheney v. Poore*, 301 Kan. 120, 128, 339 P.3d 1220 (2014) (quoting *Harrison v. Tauheed*, 292 Kan. 663, Syl. ¶ 1, 256 3d 851 [2011]), the Kansas Supreme Court affirmed that

"[w]hen an initial custody issue lies only between the parents, the paramount consideration of the court is the welfare and best interests of the child. The district court is in the best position to make the inquiry and determination, and, in the absence of abuse of sound judicial discretion, its judgment will not be disturbed on appeal."

In reviewing a decision on a motion to change custody of a child, the appellate court should only look to evidence supporting the decision of the trial court and determine if there was an abuse of discretion. *In re Marriage of Whipp*, 265 Kan. 500, 502, 962 P.2d 1058 (1998). Judicial action constitutes an abuse of discretion if it is arbitrary, fanciful, or unreasonable; based on an error of law; or based on an error of fact. *Frazier v. Goudschaal*, 296 Kan. 730, 755, 295 P.3d 542 (2013). The party asserting the trial court abused its discretion bears the burden of showing such. *Northern Natural Gas*

Co. v. ONEOK Field Services Co., 296 Kan. 906, 935, 296 P.3d 1106, cert. denied 134 S. Ct. 162 (2013).

"[An appellate court's] function is not to delve into the record and engage in the emotional and analytical tug of war between two good parents over [their child]. The district court [is] in a better position to evaluate the complexities of the situation and to determine the best interests of the child[]. Unless we were to conclude that no reasonable judge would have reached the result reached below, the district court's decision must be affirmed." *In re Marriage of Bradley*, 258 Kan. 39, 45, 899 P.2d 471 (1995).

Also, we review challenges to specific factual findings of a district court in custody determinations to assure they are supported by substantial competent evidence and that they support the court's legal conclusions. *In re Marriage of Kimbrell*, 34 Kan. App. 2d 413, 420, 119 P.3d 684 (2005). In our review we should not reweigh the evidence, pass on witness credibility, or redetermine questions of fact that were presented to the district court. *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 705, 229 P.3d 1187 (2010)

K.S.A. 2013 Supp. 23-3203 provides factors for the district court to consider when deciding changes in residency and parenting time:

"[T]he court shall consider all relevant factors, including, but not limited to:

- "(a) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;
- "(b) the desires of the child's parents as to custody or residency;
- "(c) the desires of the child as to the child's custody or residency;
- "(d) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;
- "(e) the child's adjustment to the child's home, school and community;
- "(f) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;

"(g) evidence of spousal abuse;

"(h) whether a parent is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law;

"(i) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 2013 Supp. 21-5602, and amendments thereto;

"(j) whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; and

"(k) whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 2013 Supp. 21-5602, and amendments thereto."

Analysis of the Decision to Deny the Motion to Change Primary Custody

On appeal, Brad argues the district court's decision was not only an abuse of discretion but it was "completely absurd in that it was contradictory to the evidence presented and the findings of fact made by the District Court Judge." Brad's argument essentially invites us to view the evidence in a light most favorable to him, to reweigh the evidence, to pass on witness credibility, and/or to redetermine questions of fact presented to the district court.

The district court's very thorough and lengthy (24 page) memorandum decision reflects that it first found both Brad and Traci were fit parents and awarded them joint legal custody of J.A. The court then proceeded to determine the issue of residential placement. In doing so, it acknowledged that residency is to be determined in accordance with the best interests of the child. While the court did not specifically address every factor listed under K.S.A. 2013 Supp. 23-3203, it is clear the court carefully considered all those that were relevant. It also considered other factors such as J.A.'s health problems, the stability of the primary caretaker and the status quo, the quality of affection

and feeling for J.A. by a given parent, and which parent would better be able to advance J. A.'s moral and ethical upbringing.

Facts in support of the district court's decision to keep primary residential custody of J.A. with Traci include the fact that Traci was J.A.'s sole parent for the first 4 years of his life. When J.A. was 3 months old he contracted RSV from which he almost died. Traci dealt with the RSV and the resulting respiratory issues by herself. J.A. had chronic health issues including allergies necessitating Alimentum formula until he was 3 1/3 years old. Traci was active in finding out to which foods J.A. was allergic and made sure to reintroduce foods one at a time to test for reactions. J.A. began walking at 10 months old and was an extremely active boy. Traci was active in trying to address J.A.'s hyperactivity issues.

The evidence presented at trial showed Traci was, and had been, a very good mother to J.A. With the exception of the 6 months J.A. lived with Brad, Traci had been J.A.'s primary caretaker. J.A. was Traci's number one priority, and she quit her job to better address J.A.'s ADHD. When J.A. was little, Traci read to him and played with him. As he got older, she enrolled him in various sports and other activities. Melissa described her as a wonderful mother who viewed J.A. as her number one priority. Brandy testified J.A. was well adjusted with lots of friends at school and in the community. Traci's neighbor testified Traci and Michael seemed to have a great relationship between themselves and with J.A. Michael's brother testified Michael was great with J.A. and was very focused on his family. Traci described Michael as a wonderful, loving, and caring individual. At Traci's duplex, J.A. had his own room and a safe living environment.

The district court found J.A. had special health problems which required special parenting skills and dedication. The court found the evidence was overwhelming that, due primarily to Traci's hard work and dedication, J.A. had made remarkable progress in

dealing with his ADHD, avoiding problems resulting from his food allergies, and adjusting to and succeeding at school. The district court also had serious concerns about

"Brad's seeming lack of understanding and acceptance of [J.A.'s] diagnosis, Brad's resistance to administer medication clearly beneficial to [J.A.], Brad's lack of understanding as to how to best deal with [J.A.'s] behaviors and until recently, Brad's unwillingness to commit himself to investing the time and commitment to fully understand and lovingly deal with [J.A.'s special] problems."

While the district court acknowledged there was a disturbing pattern of alleged spousal abuse when Michael drank, the court found no actual evidence of spousal abuse. The DCF investigation of the one alleged incident found it to be unsubstantiated. The social worker who testified determined there was still a possibility that physical abuse had occurred in front of J.A. However, she also testified Traci had acted correctly in immediately removing J.A. from an unsafe situation.

Ultimately, the district court held:

"Viewing each parent's current home environments in the abstract, without consideration of the past, could lead one to conclude Brad offer[s] a better home for [J.A.] However, given the absence of Brad's long term commitment to [J.A.] and the length and exclusivity of the bond between [J.A.] and his mother, it is doubtful that, considering all the circumstances in this case, [J.A.'s] best interest would be served by weakening that bond with his mother.

"Based upon the totality of the circumstances in this family, it remains in [J.A.'s] best interest that he continue in Traci and Brad's joint custody and that Traci remain [J.A.'s] primary residential parent. As a result, Brad's motion, to the extent it seeks to change primary residential parent, should be denied."

When we review the evidence in support of the district court's decision, we conclude the district court did not abuse its discretion in denying Brad's motion for

primary residential custody. The decision was not arbitrary, fanciful, or unreasonable; was not based on an error of law; nor was it based on an error of fact. See *Frazier*, 296 Kan. at 755. Brad has failed to meet his burden to show an abuse of discretion.

The Order that Brad Pay a Part of Traci's Attorney Fees

The district court assessed Brad \$2,500 of the attorney fees Traci had incurred in this matter. While the court found Brad's motion was in no way without merit or frivolous due to the substantial evidence raising concerns about the stability of Traci's home environment, it held that Brad should be responsible for a portion of the attorney fees because he earned substantially more than Traci. The court also found that dedicated, active coparenting may have obviated the need to fully litigate the matter. On appeal, Brad argues the court abused its discretion by awarding attorney fees to Traci despite no evidence of attorney fees being presented at trial.

The issue of whether the district court has authority to award attorney fees is a question of law over which an appellate court has unlimited review. *Rinehart v. Morton Buildings, Inc.*, 297 Kan. 926, 942, 305 P.3d 622 (2013); see also *Bussman v. Safeco Ins. Co. of America*, 298 Kan. 700, 718, 317 P.3d 70 (2014) (attorney fees under K.S.A. 40-908); *Thoroughbred Assocs. v. Kansas City Royalty Co.*, 297 Kan. 1193, 1215-16, 308 P.3d 1238 (2013) (appeals); *Hodges v. Johnson*, 288 Kan. 56, 70-71, 199 P.3d 1251 (2009) (appeals from small claims court); *In re Marriage of Risley*, 41 Kan. App. 2d 294, 300-01, 201 P.3d 770 (2009) (child support). Where the trial court has authority to grant fees, we review its decision under the abuse of discretion standard. *Rinehart*, 297 Kan. at 942

We begin our analysis of this issue by noting that a district court may not award attorney fees without statutory authority or an agreement by the parties. *Snider v. American Family Mut. Ins. Co.*, 297 Kan. 157, 162, 298 P.3d 1120 (2013). Brad does not

argue that the court did not have the requisite statutory authority to order the fees. Rather, he asserts the court abused its discretion in ordering them under the circumstances of this case.

As to the district court's authority to award attorney fees, there is no question that the Kansas Parentage Act provides in K.S.A. 2014 Supp. 23-2216 that "[c]osts and attorney fees may be awarded to either party as justice and equity may require." While there is no specific statute or case that has extended that authority to award attorney fees in later proceedings to modify custody in *paternity* cases, the law pertaining to attorney fee authority in *divorce* cases provides guidance. In providing a district court the authority to award attorney fees in divorce cases, K.S.A. 2014 Supp. 23-2715 contains identical language to that in K.S.A. 2014 Supp. 23-2216 which we quoted above. That authority to award attorney fees in divorce situations has then specifically been extended to later proceedings for the modification of child custody orders after the divorce was granted. See *Tyler v. Tyler*, 203 Kan. 565, Syl. ¶ 5, 455 P.2d 538 (1969). Since the *Tyler* court was construing virtually the same language that is included in both the current Parentage Act and the current divorce statute, we know of no reason why its holding should not apply to cases such as this where one parent seeks to modify child custody orders some time after paternity has been established. We agree with the district court that it had the authority to assess attorney fees in this case.

Turning to Brad's argument, he claims the district court abused its discretion in awarding attorney fees because no evidence was presented to the court regarding Traci's attorney fees and the only evidence regarding the parties' incomes was a child support worksheet admitted upon stipulation of the parties.

The district court is vested with wide discretion to determine the amount and the recipient of an award of attorney fees. When reviewing an award of attorney fees, the appellate court does not reweigh the testimony or the evidence presented or reassess the

credibility of witnesses. An award of attorney fees will not be set aside on appeal when supported by substantial competent evidence. *In re Marriage of Strieby*, 45 Kan. App. 2d 953, 973, 255 P.3d 34 (2011.)

The district court itself is an expert in the area of attorney fees and can draw on and apply its own knowledge and expertise in determining their value. An appellate court is also an expert on the reasonableness of attorney fees. *Snider*, 297 Kan at 169. However, an appellate court does not substitute its judgment for that of the district court on the amount of the attorney fee award unless in the interest of justice the appellate court disagrees with the district court. *Johnson v. Westhoff Sand Co.*, 281 Kan. 930, 940, 135 P.3d 1127 (2006); see also *Citizens Utility Ratepayer Bd. v. Kansas Corporation Comm'n*, 47 Kan. App. 2d 1112, 1129, 284 P.3d 348 (2012) (deferring to administrative agency's assessment of attorney fees).

Traci argues that following the trial, simultaneously with the submission of her proposed parenting plan, she submitted an itemized fee affidavit showing all time expended in the defense of Brad's motion. Further, Traci argues this is common practice as such fees are not known until the conclusion of the trial. No objection was made or response filed.

The record in this case contradicts Brad's argument that no evidence was before the district court regarding attorney fees. Here, the court considered the significant income difference between the two parties as reflected in a child support worksheet that was undisputed. It also received an itemized list of Traci's legal expenses totaling \$9,879 prior to deciding this issue. While the court found that Brad's motion was not frivolous, it also found that it could have been resolved by better coparenting. The court mentioned in its memorandum decision the eight factors set forth in Rule 1.5(a) (2014 Kan. Ct. R. Annot. 515) of the Kansas Rules of Professional Conduct that are to be considered in deciding the reasonableness of an attorney fee request. It then awarded Traci a fee that

was only slightly more than 25% of the amount of her attorney's time and expenses reflected in the fee affidavit she had filed. We find no abuse of discretion in the award of those fees.

Affirmed.