NOT DESIGNATED FOR PUBLICATION

No. 111,878

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF

RACHEL HAVEN RUSNAK, A MINOR,
BY and THROUGH HER MOTHER and NEXT FRIEND, KRISTINA MARIE RUSNAK,
Appellee,

and

STEPHEN KENDRICK,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; ERICA K. SCHOENIG, judge. Opinion filed June 19, 2015. Appeal dismissed.

Christopher T. Wilson, of Beam-Ward, Kruse, Wilson & Fletes, L.L.C., of Overland Park, for appellant.

Rolland J. Exon, of YoungWilliams Child Support Services, of Olathe, for appellee.

Before MALONE, C.J., HILL, and BUSER, JJ.

Per Curiam: Stephen Kendrick, Rachel Rusnak's biological father, appeals the district court's ruling that the expedited judicial process developed by judges of the Tenth Judicial District and utilized by the Johnson County District Court to inquire into his alleged child support arrearage complies with Kansas law. We conclude that an actual case or controversy no longer exists between the parties and, as a result, we dismiss Kendrick's appeal as moot.

On September 26, 2013, the Johnson County District Court Trustee, Mary A. Winter, served an order on Kendrick—signed by a judicial hearing officer—directing him to appear before the judicial hearing office on November 13, 2013, for failure to pay child support. The order further stated: "**Failure to appear may result in a warrant for your arrest in addition to other penalties and sanctions.**"

Although Kendrick did not appear before the hearing officer because he was residing in New Jersey, his counsel, Christopher T. Wilson, appeared on his behalf. After Wilson informed the hearing officer that he had filed a motion to modify Kendrick's payment obligation, however, the hearing officer continued the matter until January 7, 2014.

Shortly thereafter, Kendrick requested de novo review of the "judgment entered by the hearing officer" relating to the November 13, 2013, hearing. Kendrick alleged that Winter's attempt to coerce him to appear before the judicial hearing officer should be set aside because the expedited judicial process was "improperly coercive" and met the criteria for an abuse of process. Kendrick further insisted that a "person in [his] shoes may certainly incur damages in the form of lost work time, travel expense, and attorney's fees."

In light of the pending district court hearing, Wilson contacted the judicial hearing officer to seek a cancellation of the delinquency hearing scheduled for January 7. The hearing officer granted Wilson's request and continued the hearing until March 4, 2014.

Subsequently, on February 19, 2014, the district court held a hearing on Kendrick's request for de novo review. Although Kendrick failed to provide this court with a transcript from the hearing, the journal entry indicates that after "hearing arguments," the district judge took the matter under advisement, directed the parties to

file legal memoranda, and scheduled another hearing for April 18, 2014. Additionally, it appears the district court cancelled the delinquency hearing scheduled for March 4, 2014.

In the meantime, on March 17, 2014, the Secretary of the Department for Children and Families (DCF) notified all parties that DCF had been assigned "any and all accrued, present and future rights to support (including medical support)" in this case. Consequently, because DCF would be providing child support enforcement services under Title IV-D of the Federal Social Security Act, 42 U.S.C. § 651 *et seq.* (2012), DCF directed the parties to disburse all support payments to the Secretary and to provide timely notice of any action related to said support until further notice.

On April 19, 2014, the district court issued a memorandum decision, finding the expedited judicial process was neither unlawful nor an abuse of process because, according to the district judge, the procedure was fully consistent with Kansas law, *i.e.*, K.S.A. 2014 Supp. 20-378 (articulating responsibilities of court trustee), K.S.A. 2014 Supp. 20-379 (enumerating court trustee's powers), and Kansas Supreme Court Rules 105 (2014 Kan. Ct. R. Annot. 216) (authorizing judicial districts to adopt local rules) and 172 (2014 Kan. Ct. R. Annot. 280) (outlining rules pertaining to expedited judicial process, support, and visitation). Kendrick subsequently filed this timely appeal, challenging the legality of the expedited judicial process.

After the parties submitted their appellate briefs, it appeared Kendrick's issues on appeal may be moot. Consequently, we issued a show cause order, directing Kendrick to explain why his appeal was not moot. Kendrick filed a timely response.

A summary of Kansas law regarding the mootness doctrine is necessary to address the mootness question in this appeal. An appellate court does not decide moot questions or render advisory opinions. *State v. Hilton*, 295 Kan. 845, 849, 286 P.3d 871 (2012). A case is moot where the controversy between the parties no longer exists, any judgment of

the court would be ineffective, and it would not impact any of the parties' rights. *State v. Montgomery*, 295 Kan. 837, 840-41, 286 P.3d 866 (2012). Nevertheless, because the mootness doctrine is not jurisdictional, appellate courts will sometimes entertain moot issues. For example: "'Where a particular issue, although moot, is one capable of repetition and one of public importance, an appellate court may consider the appeal and render an opinion.' [Citation omitted.]" *Smith v. Martens*, 279 Kan. 242, 244-45, 106 P.3d 28 (2005).

Having considered Kendrick's response to the show cause order and reviewed the full record in this case, we find that Kendrick's claims are moot because a controversy between the parties as to the issues presented on appeal no longer exists, and any judgment of this court would not impact the parties' legal rights. We further find no applicable exception warranting us to consider the legality of Johnson County's expedited judicial process.

Two reasons compel our determination that this appeal is moot. First, Kendrick has not alleged that he suffered any actual damages because of the Court Trustee's procedures. In fact, Kendrick did not appear before the judicial hearing officer on several occasions, and the district court found that Kendrick has not proven that he has incurred or suffered any damages. "It is undisputed that [Kendrick] has not paid the judgment balance as he agreed and as the court ordered him to do." Moreover, Kendrick's response to our show cause order does not overcome his failure to allege that he suffered damages. While Kendrick is now attempting to allege damages in the form of unspecified attorney fees, this is not an argument he raised below. See *State v. Kelly*, 298 Kan. 965, 971, 318 P.3d 987 (2014) (issues not raised before the district court may not be raised on appeal).

Second, the rights to support Rachel Rusnak in this action have been assigned to DCF, and counsel for DCF, YoungWilliams Child Support Services, has advised that this matter has been forwarded to the State of New Jersey for enforcement action. Likewise,

the district court's bench note of April 18, 2014, states: "No further settings need to be set due to YoungWilliams pursuing IV-D enforcement." Although Kendrick now claims—in an attempt to save his appeal from mootness—"there is nothing that stops or prohibits dual enforcement" by DCF and the Court Trustee, he cites no legal or statutory authority for this assertion. Furthermore, Kendrick's emphasis on the fact that the Court Trustee *may* become involved in enforcement efforts in the future if DCF terminates the assignment is unpersuasive because the legality of the expedited judicial process is not ripe for review unless such a circumstance actually arises. At this point, the issue Kendrick presents is purely hypothetical and abstract.

In summary, due to the absence of any actionable controversy between the parties, we need not address whether the district court's order declaring the legality of Johnson County's expedited judicial process was erroneous. This appeal is moot.

Finally, we note Kendrick's concern that the dismissal of this appeal will place him in the position of being confronted with the defenses of res judicata and collateral estoppel in possible future actions. But our decision to dismiss this appeal as moot should not be interpreted in such a manner. As the Restatement (First) of Judgments § 69(2) (1942) states: "Where a party to a judgment cannot obtain the decision of an appellate court because the matter determined against him is immaterial or moot, the judgment is not conclusive against him in a subsequent action on a different cause of action."

Appeal dismissed.