

NOT DESIGNATED FOR PUBLICATION

No. 112,188

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

WEI LIU
Appellant,

and

JINGFANG LIU, N/K/A JINFANG LI,
Appellee.

MEMORANDUM OPINION

Appeal from Geary District Court; STEVEN L. HORNBAKER, judge. Opinion filed July 24, 2015.
Affirmed.

Russel B. Prophet, of Hampton & Royce, L.C., of Salina, for appellant.

Christine M. Smith, contract attorney, of YoungWilliams CSS, of Junction City, for appellee, and
Jingfang Li, appellee pro se.

Before LEBEN, P.J., SCHROEDER and GARDNER, JJ.

Per Curiam: This case comes before the court on Wei Liu's appeal from the district court's denial of his motion to modify child support and reduce spousal maintenance. Finding no abuse of discretion in the former and no due process denial in the latter, we affirm.

Procedural Background

Because this is Liu's second appeal of the district court's denial of his motion to modify child support and spousal maintenance, the facts are well known to the parties. See *In re Marriage of Liu*, No. 109,822, 2014 WL 1796152 (Kan. App. 2014) (unpublished opinion) (*Liu I*). Accordingly, we do not set forth in detail the facts of the case, but review its procedural background.

When Liu and Jingfang Liu, now known as Jingfang Li, were divorced, the district court ordered Liu to pay child support for their one child, and spousal maintenance. After Liu filed a motion to modify payments, the district court held a hearing at which Liu appeared by telephone. The district court denied Liu's motion, and Liu appealed.

In *Liu I* we held the district court's findings were incomplete and did not permit meaningful appellate review. 2014 WL 1796152, at *2-3. Accordingly, we reversed the district court's decision and remanded "for the limited purpose of entering an order specifically correlating legal conclusions to facts found at the hearing in a manner consistent with this opinion." 2014 WL 1796152, at *3.

On remand, the district court reviewed the transcript of the hearing and issued a new order:

- "1. The court finds that in judging the credibility of witnesses, the testimony of Mr. Liu was not credible or believable.
- "2. The court finds that Mr. [Liu] is intentionally unemployed and has failed to seek meaningful employment. Noting Mr. [Liu] has a 20% service related disability, the court finds that the disability does not affect his ability to work in the civilian population.

"3. The court finds that Mr. [Liu] has a Master's Degree from Notre Dame University which should be a beneficial effect on his ability to gain employment."

After entering these findings, the district court again denied Liu's motion to modify child support and spousal maintenance, giving rise to this appeal.

Child support

Liu first argues the district court erred by denying his motion to modify child support, given his uncontradicted testimony regarding his decreased income. He claims the "undisputed fact" that his monthly income had decreased from \$3,264 to \$250 was "a substantial change in circumstances" entitling him to modification of his child support obligation. Additionally, he contends that although the district court could have imputed income to him, it did not do so.

We use an abuse of discretion standard to review the district court's determination of child support payments and its determination whether there has been a material change of circumstances making modification proper. *In re Marriage of Schoby*, 269 Kan. 114, 120-21, 4 P.3d 604 (2000). Judicial discretion is abused if the action is (1) arbitrary, fanciful, or unreasonable; (2) based on an error of law; or (3) based on an error of fact. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106, *cert. denied* 134 S. Ct. 162 (2013). Liu, as the party asserting the district court abused its discretion, bears the burden of showing such abuse. See 296 Kan. at 935.

The interpretation and application of the Kansas Child Support Guidelines (KCSG) (2014 Kan. Ct. R. Annot. 127), however, are subject to unlimited review. *In re Marriage of Matthews*, 40 Kan. App. 2d 422, 425, 193 P.3d 466 (2008), *rev. denied* 288 Kan. 831 (2009). As a general rule, use of the KCSG is mandatory and failure to follow the KCSG is reversible error. Any deviation from the amount of child support determined

by the use of the KCSG must be justified by written findings in the journal entry, and failure to justify deviations by such written findings is reversible error. *In re Marriage of Atchison*, 38 Kan. App. 2d 1081, 1089, 176 P.3d 965 (2008).

The KCSG permit a district court to impute income if a parent is capable of working full-time but is deliberately unemployed or is deliberately underemployed. "When a parent is deliberately unemployed, although capable of working full-time, employment potential and probable earnings may be based on the parent's recent work history, occupational skills, and the prevailing job opportunities in the community." KCSG § II.F.1.b (2014 Kan. Ct. Annot. 130). "When there is evidence that a parent is deliberately underemployed for the purpose of avoiding child support, the court may evaluate the circumstances to determine whether actual or potential earnings should be used." KCSG § II.F.1.c (2014 Kan. Ct. Annot. 130).

Although the district court did not expressly state it was imputing income to Liu, it implicitly did so by finding Liu was not credible, was intentionally unemployed, and had the ability to gain employment due to his education. Liu has not shown that these factual findings are unsupported by the evidence, and we cannot make our own determination regarding witness credibility. When reviewing factual findings, appellate courts do not reweigh evidence, resolve evidentiary conflicts, or make determinations regarding witness credibility. See *State v. Betancourt*, 301 Kan. Syl. ¶ 11, 342 P.3d 916 (2015); *In re Marriage of Strieby*, 45 Kan. App. 2d 953, 973, 255 P.3d 34 (2011).

Nor has any error of law been shown in the court's tacit imputation of income, since we have previously found that a district court may implicitly impute income to a party. See *In re McKinley*, No. 110,882, 2015 WL 423813, at *6-7 (Kan. App. 2015) (unpublished opinion) (finding no abuse of discretion when the district court implicitly imputed income to a party and denied his motion to modify support); see also *In re Marriage of Waggoner and Lambert*, No. 99,138, 2009 WL 1591394, at *3 (Kan. App.

2009) (unpublished opinion) (approving imputed income approach where parent left his job voluntarily).

Liu focuses on the undisputed facts that his income decreased and he had a 20% disability rating. Nonetheless, we reject Liu's assertion that these two facts compel the district court to modify his child support payments. Although a material change in circumstances is necessary, it is not alone sufficient to warrant such an adjustment. "A material change in circumstances is simply a precondition that must be met by a party seeking adjustment of their child support obligation. *In re Marriage of Waggoner and Lambert*, 2009 WL 1591394, at *3. Liu fails to appreciate that the district court, at least in part, based its decisions to impute income to Liu and to deny his motion to modify support on its explicit finding that Liu lacked credibility. This court cannot overturn that credibility finding.

Having reviewed the record, we find no abuse of discretion in the district court's denial of Liu's motion to modify his child support.

Spousal maintenance

Liu next argues the district court refused to consider his motion for modification of spousal maintenance. He claims he "was never allowed an opportunity to present his argument for reduction of spousal maintenance." He accurately notes that the trustee informed the district court he would present argument only on the issue of child support. The parties thus understood that they were left to present their own arguments on spousal maintenance. Liu admits he participated in the hearing by telephone, but he alleges the district court did not give him any real opportunity to make an argument on spousal maintenance.

Liu implicitly argues his due process rights were violated because he did not have an opportunity to be heard. Yet he fails to support his point with pertinent authority. Failure to support a point with pertinent authority or show why it is sound despite a lack of supporting authority is akin to failing to brief the issue. *State v. Tague*, 296 Kan. 993, 1001, 298 P.3d 273 (2013). This issue, since not briefed by Liu, is deemed waived or abandoned. See *Superior Boiler Works, Inc. v. Kimball*, 292 Kan. 885, 889, 259 P.3d 676 (2011).

In the alternative, even had the issue been properly supported with citation to legal authority, it is not properly before this court. This issue is barred by the law of the case doctrine since Liu raised it in his first appeal and we ruled on its merits. This court found in *Liu I*:

"Liu also claims he was denied an opportunity to speak on his own behalf in favor of either the motion to modify child support or the motion to modify spousal maintenance. However, Liu does not indicate any additional facts or evidence that he would have presented to the trial court. A deprivation of procedural due process must result in some tangible prejudice to warrant relief. See *Tennessee Secondary School Athletic Assn. v. Brentwood Academy*, 551 U.S. 291, 303-04, 127 S. Ct. 2489, 168 L. Ed. 2d 166 (2007) (party may not obtain relief for procedural due process violation found to be harmless beyond a reasonable doubt); *Walker v. U.S.D. No. 499*, 21 Kan. App. 2d 341, 344-45, 900 P.2d 850, *rev. denied* 257 Kan. 1097 (1995); see also *Perry v. Blum*, 629 F.3d 1, 17 (1st Cir. 2010) ('[A] party who claims to be aggrieved by a violation of procedural due process must show prejudice.')." *Liu I*, 2014 WL 1796152, at *3.

Under the law of the case doctrine, once the court decides an issue, that issue should not be relitigated or reconsidered unless it is clearly erroneous or unless some manifest injustice has been imposed. *Steele v. Guardianship & Conservatorship of Crist*, 251 Kan. 712, 721, 840 P.2d 1107 (1992).

Here, no clear error or manifest injustice has been shown. Now, as before, Liu fails to indicate any additional material facts he would have presented to the district court had he been given more time in which to speak on the telephone. Liu merely states he could have discussed the nature of his disability, immigration fees and expenses he paid on behalf of his ex-wife, his understanding of his ex-wife's employment situation, and whether she had any continuing need for spousal maintenance. But his disability was raised at the hearing, as Liu explained his disability and told the court he had received a 20% disability rating for issues with his back and ear. The immigration fees and expenses were awarded separately from the spousal maintenance in the divorce decree, so further discussion of them would have made no difference to the amount of his spousal maintenance. Moreover, Liu's opinion regarding his ex-wife's employment is merely an opinion and not an additional fact which could have been material to the issue. We therefore find that Liu was granted sufficient opportunity to be heard on the modification of spousal maintenance and child support, thus his due process rights were not violated.

We find no abuse of discretion in the district court's denial of Liu's motion to modify child support and spousal maintenance and no procedural or constitutional error in the manner in which the court permitted him to make an argument on spousal maintenance.

Affirmed.