

NOT DESIGNATED FOR PUBLICATION

No. 115,852

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

STEVEN MALLEIN,
Appellee,

and

MADELYN MALLEIN,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; KEVEN M.P. O'GRADY, judge. Opinion filed August 18, 2017. Affirmed.

David W. Chowins, of Chowins Law Firm, LLC, of Olathe, for appellant.

Christina E. Gondring, of Berkowitz, Cook, Gondring & Driskell, LLC, of Kansas City, Missouri, for appellee Steven Mallein.

Casey E. Forsyth, of YoungWilliams Child Support Services, of Olathe, for appellee Kansas Department for Children and Families.

Before GREEN, P.J., POWELL and GARDNER, JJ.

POWELL, J.: Steven and Madelyn Mallein were divorced in Missouri, and Steven was ordered to pay child support for their two children, who are both now over the age of 18. Madelyn subsequently moved to Indiana and then New York, while Steven moved to Kansas. The Department for Children and Families (DCF), on behalf of the State of New

York, filed a motion to modify child support, requesting that child support be extended because one of the children suffers from a brain injury. Steven filed a motion to emancipate and terminate child support in response. The district court ultimately ordered Steven to continue paying child support for the injured child but awarded an adjustment. Madelyn now appeals the district court's downward adjustment to child support. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1996, Steven and Madelyn were divorced in Missouri. At the time of their divorce, they had two minor children—Steven Gerald and Julian. As part of the divorce decree, Steven was ordered to pay Madelyn child support. Subsequent to the divorce, Madelyn moved to Indiana, where the Missouri child support order was registered, and then to New York. Steven moved to Kansas. Also subsequent to the divorce, Julian was in an accident when he was 12 years old and suffered a severe brain injury. Due to his injury, Julian continues to live with Madelyn and requires ongoing medical care.

In June 2014, Steven sought to have the Missouri and Indiana child support orders registered in Kansas and filed a motion to emancipate the children and terminate child support. Madelyn filed an objection and motion to dismiss. A month later, DCF, on behalf of the State of New York, requested that a foreign child support order be registered in Kansas for the purpose of modification or enforcement. The cases were consolidated, and in October, the district court registered the foreign child support orders under the Uniform Interstate Family Support Act (UIFSA). In December, the district court denied Steven's motion to emancipate and terminate child support.

In May 2015, DCF filed, at the request of the State of New York, a motion for extension or modification of child support. The actual petition, which was filed in June, was forwarded from New York and listed Madelyn as the petitioner. Steven filed a

countermotion to emancipate and terminate child support. Steven also filed a short form domestic relations affidavit, in which he listed his monthly income and requested that child support be adjusted based on the parties' overall financial condition. The district court held a hearing on these competing motions and, on December 2, 2015, issued a written order finding Julian insolvent and ordering Madelyn to submit a domestic relations affidavit so that it could determine whether to modify child support. Madelyn did so and included an addendum that Steven had not disclosed his full income.

On February 11, 2016, the district court held another hearing at which both Madelyn and Steven testified. On March 1, 2016, the district court issued an order and two child support worksheets which: (1) found that Steven's income was \$125,000 per year; (2) found that Madelyn's income was \$58,000 per year; (3) determined that the application of the interstate pay differential was inappropriate; (4) denied Madelyn's request for a special needs adjustment; (5) denied Madelyn's request for upward overall financial adjustment; (6) found that no allowance was made for the child tax credit or the standard deduction benefit; and (7) found that it was appropriate to deviate from the rebuttable presumption of a reasonable child support order. The district court based its decision to deviate from the rebuttable presumption on several factors and awarded Steven an overall financial condition adjustment of \$400. Because Julian was required to repay some social security benefits due to Steven not paying child support for a time, the deviation was reduced to \$200 for 2016. The district court ultimately ordered Steven to pay child support of \$1,203 per month in 2016 and \$1,003 per month in 2017. Madelyn timely appeals from this order.

Parenthetically, we note that Steven filed a cross-appeal challenging the district court's determination that he still owed a child support obligation even though Julian is over 18 years old. But Steven appears to have abandoned his cross-appeal by failing to address the issue in his brief. See *Superior Boiler Works, Inc. v. Kimball*, 292 Kan. 885, 889, 259 P.3d 676 (2011). Accordingly, we render no opinion on whether the district

court was correct on this point and merely assume Steven's child support obligation for the purposes of this appeal.

DID THE DISTRICT COURT ERR IN ASSERTING JURISDICTION?

Madeline first argues the district court lacked both subject-matter and personal jurisdiction to decide child support. Whether jurisdiction exists is a question of law subject to our unlimited review. *In re N.A.C.*, 299 Kan. 1100, 1106, 329 P.3d 458 (2014). Likewise, we have unlimited review over issues of statutory interpretation. *Nationwide Mutual Ins. Co. v. Briggs*, 298 Kan. 873, 875, 317 P.3d 770 (2014). "Subject matter jurisdiction is vested by statute and establishes the court's authority to hear and decide a particular type of action." *Kingsley v. Kansas Dept. of Revenue*, 288 Kan. 390, 395, 204 P.3d 562 (2009). "Personal jurisdiction is defined as the '[p]ower which a court has over [a] person and which is required before a court can enter a personal or in personam judgment.'" *Carrington v. Unseld*, 22 Kan. App. 2d 815, 817, 923 P.2d 1052 (1996) (quoting Black's Law Dictionary 854 [6th ed. 1990]).

All 50 states have adopted the UIFSA. See 42 U.S.C. § 666(f) (2012); K.S.A. 23-36,101 *et seq.* K.S.A. 2016 Supp. 23-36,611(a), a UIFSA provision, states in part:

"[U]pon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing the tribunal finds that:

"(1) The following requirements are met:

- (A) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;
- (B) a petitioner who is a nonresident of this state seeks modification; and
- (C) the respondent is subject to the personal jurisdiction of the tribunal of this state."

Accordingly, for the district court to have subject matter jurisdiction to decide the parties' child support dispute, the following must be true: (1) Neither Julian nor either parent reside in Missouri; (2) Madelyn is not a resident of Kansas and seeks modification of child support; and (3) Steven must be subject to the personal jurisdiction of the district court. The first and third conditions are not in dispute as no one resides in Missouri and Steven is a resident of Kansas.

Madelyn focuses her attack on the second condition and claims that she is somehow not the petitioner because she did not file the motion to modify and that DCF was not acting as her agent. We disagree. DCF filed the motion to modify at the request of the State of New York, and it appears from the record that the New York support enforcement agency filed a uniform support petition on Madelyn's behalf, which DCF forwarded to the district court. In the uniform support petition, Madelyn was listed as the petitioner. Pursuant to UIFSA, proceedings may be initiated by either the individual petitioner or a support enforcement agency by filing a petition in the initiating tribunal, which in this instance is the New York state court, then forwarding the petition to the responding tribunal, in this instance the Johnson County District Court. See K.S.A. 2016 Supp. 23-36,301(b). Although DCF was acting on behalf of the New York support enforcement agency, the New York agency was acting on behalf of Madelyn, who is listed as the petitioner. Accordingly, the district court had subject matter jurisdiction to consider the matter under K.S.A. 2016 Supp. 23-36,611(a)(1).

Madelyn also argues that the district court lacked personal jurisdiction over her. Steven counters, and we agree, that Madelyn submitted to jurisdiction in Kansas by the filing of the motion to extend or modify child support in a Kansas court. See *Carrington*, 22 Kan. App. 2d at 819-20 (party submitted to personal jurisdiction of the court by invoking its power to seek relief). As we have already explained, DCF and the State of New York were acting as Madelyn's agents, and DCF's affirmative act of filing a motion

in a Kansas court meant that Madelyn was voluntarily submitting to the personal jurisdiction of a Kansas court. The district court had personal jurisdiction over Madelyn.

DID THE DISTRICT COURT ERR IN DETERMINING CHILD SUPPORT?

In addition to objecting to the district court's jurisdiction, Madelyn makes a number of challenges to the child support order. We review a district court's decision as to the amount of child support to be paid under an abuse of discretion standard, but we exercise unlimited review over the interpretation and application of the Kansas Child Support Guidelines. *In re Marriage of Skoczek*, 51 Kan. App. 2d 606, 607, 351 P.3d 1287 (2015). A district court abuses its judicial discretion when its action is (1) unreasonable, (2) based on a legal error, or (3) based on a factual error. *Wiles v. American Family Life Assurance Co.*, 302 Kan. 66, 74, 350 P.3d 1071 (2015). An action is unreasonable if "no reasonable [person] would take the view adopted by the trial court." *Richardson v. Richardson*, 3 Kan. App. 2d 610, 611, 599 P.2d 320, *rev. denied* 226 Kan. 792 (1979).

A. *The district court did not err in setting Steven's income.*

Madelyn first asserts the district court erred in calculating Steven's income, specifically arguing that the court should have found Steven's annual income to be \$186,000, not \$125,000, because the only evidence Steven presented was an unnotarized and incomplete short form domestic relations affidavit.

When reviewing a district court's child support order, we consider whether the order was supported by substantial competent evidence. *In re Marriage of Brand*, 273 Kan. 346, 350, 44 P.3d 321 (2002). In doing so, we will not reweigh conflicting evidence, redetermine witness credibility, or redecide questions of fact. *In re Marriage of Skoczek*, 51 Kan. App. 2d at 608. "Substantial evidence is such legal and relevant evidence as a

reasonable person might accept as sufficient to support a conclusion.' [Citation omitted.]" *Gannon v. State*, 298 Kan. 1107, 1175, 319 P.3d 1196 (2014).

Although the district court cited Steven's domestic relations affidavit in its March 2016 order, it indicated in its December 2015 order that Steven's income was determined by his paychecks, which were apparently presented to the district court. And the December 2015 order followed a hearing in October 2015, at which the district court may have heard argument or testimony about Steven's income. Unfortunately, neither Steven's paychecks nor a transcript of that hearing have been included in the appellate record. It was Madelyn's burden to designate facts in the record to support her claim. See *City of Mission Hills v. Sexton*, 284 Kan. 414, 435, 160 P.3d 812 (2007). Without such a record, we cannot determine exactly what evidence the district court relied on in finding that Steven had an annual income of \$125,000 per year or whether that evidence was substantial. Accordingly, we must reject Madelyn's claim.

B. *The district court did not err in deviating from the presumptive child support amount.*

Madelyn next claims the district court erred in deviating from the presumptive child support amount by granting an overall financial condition adjustment.

The Kansas Child Support Guidelines provide that

"[t]he calculation of the respective parental child support obligations . . . is a rebuttable presumption of a reasonable child support order. If a party alleges that the . . . support amount is unjust or inappropriate in a particular case, the party seeking the adjustment has the burden of proof to show that an adjustment should apply." Guidelines § I (2017 Kan. S. Ct. R. 79).

Use of the Guidelines is mandatory. *In re Marriage of Skoczek*, 51 Kan. App. 2d at 608; Guidelines § I (2017 Kan. S. Ct. R. 79). A district court may deviate from the presumptive amount of child support stated in the Guidelines, but it must make written findings explaining how the deviation is in the child's best interests. 51 Kan. App. 2d at 608. If the district court determines that a deviation is in the child's best interests, it should complete Section E of the child support worksheet which constitutes the required written findings. Guidelines § I (2017 Kan. S. Ct. R. 79). A district court's failure to make written findings is reversible error. *In re Marriage of Thurmond*, 265 Kan. 715, 716, 962 P.2d 1064 (1998). In deviating from the Guidelines, all relevant factors, including the overall financial condition of the parties, should be considered. *In re Marriage of Leoni*, 39 Kan. App. 2d 312, 323, 180 P.3d 1060 (2007), *rev. denied* 286 Kan. 1178 (2008); Guidelines § IV.E.6. (2017 Kan. S. Ct. R. 100).

Madelyn argues the district court's deviation from the presumptive child support amount was improper because (1) Steven did not request an adjustment based on overall financial condition, (2) Steven did not meet his burden of proving the basis for the adjustment, and (3) the district court did not find that the adjustment would be in Julian's best interests. We disagree.

First, Steven requested an adjustment by checking the appropriate box in his short form domestic relations affidavit. See generally *In re Marriage of Fuller*, 52 Kan. App. 2d 721, 371 P.3d 964 (2016) (desired child support adjustment not contained in either domestic relations affidavit or child support worksheet is inadequate notice to other party). Second, the record shows that Steven met his burden by presenting a domestic relations affidavit, pleadings, testimony, and exhibits to the district court.

Third, although the district court did not use the phrase "best interests," it clearly stated its reasons for deviating from the rebuttable presumption in both its March 2016

order and its December 2015 order. The district court addressed, among other things, the issue of its power to modify child support in its December 2015 order:

"These unique circumstances [a parent being legally obligated to support a child well beyond the age of majority contrary to Kansas law] require a consideration of Julian's income, assets, and expenses before establishing support. Unlike the situation of a minor child where one would not contemplate a contribution to his own support, here we have an adult child who receives some state assistance and is the beneficiary of a substantial trust. But for the accident, Julian would be expected to be self-supporting."

Because the original divorce decree was issued in Missouri, the district court held that Missouri law governed the question of whether Steven still owed a duty to support Julian beyond the age of majority and cited to both Missouri and Colorado law in support of the proposition that consideration of a child's assets, income, and expenses could be factored in the setting of child support as both those states can require child support for children who have reached the age of majority in certain instances. See *Morton v. Myers*, 21 S.W.3d 99, 108 (Mo. Ct. App. 2000); *In re Marriage of Cropper*, 895 P.2d 1158, 1160 (Colo. App. 1995).

In its March 2016 order, the district court ordered a deviation from the presumptive child support amount due to the overall financial conditions of the parties based upon the following factors:

- "a. Julian's actual need is around \$1,989 per month.
- "b. Julian has a trust account containing approximately \$40,000.
- "c. After the social security over payment is repaid it is possible that Julian will once again start receiving some governmental assistance. (The Court notes that the overpayment was as a result of Steven catching up his support arrears in August 2015. It is unknown if Julian would have received social security and other benefits, or how much, had Steven paid the support on time.)

- "d. For at least the near term, Julian will have health, dental, and vision insurance provided by Steven.
- "e. The evidence is persuasive that Steven provides spending money and other cash assistance directly to Julian from time to time.
- "f. Evidence was presented at prior hearings that with some cooperation between parents that a restructuring of the payments could make Julian eligible for benefits that he is not now receiving.
- "g. Steven is supporting a family in Kansas.
- "h. Steven bears the majority of any costs for him to spend time with Julian."

The child support worksheets adopted by the district court also reflected the deviation from the presumptive amount.

Given the record just cited, it is readily apparent the district court made the findings required when deviating from the Guidelines by completing Section E of the child support worksheet and by making numerous written findings in its accompanying orders. See Guidelines § I (2017 Kan. S. Ct. R. 79). It was the district court's considered view that the unique circumstances of this case required consideration of Julian's income, assets, and expenses before establishing support, and it emphasized that unlike the typical child support case in Kansas—where a minor could not be expected to be self-supporting—Julian was an adult with some resources. As the district court is in the optimum position to make best-interests findings concerning a child for child support purposes, *In re Marriage of Skoczek*, 51 Kan. App. 2d at 607, we agree with the district court's approach and find implicit in the court's findings a consideration of Julian's best interests. See *In re Marriage of Leoni*, 39 Kan. App. 2d at 323 (child support cap in child's best interests because it allowed parent to provide "extras" to child).

In addition, Madelyn argues that some of the district court's reasons for deviating from the rebuttable presumption were already accounted for in the Guidelines. For instance, Madelyn claims the district court should not have considered Steven's costs to

spend time with Julian, Steven's support of his own family, and Steven's payment of Julian's health insurance because the Guidelines take such expenses into account. Madelyn also claims that the district court should not have considered the extra spending money that Steven gave Julian.

However, as previously stated, all relevant factors are to be considered when granting a deviation from the presumptive child support amount. And while it is true that reasonable persons could disagree with the district court's use of expenses already accounted for in the Guidelines, we cannot say that no reasonable person would agree with the district court's order because it is possible for some expenses to qualify for multiple adjustments. The district court did not abuse its discretion in granting an overall financial conditions adjustment.

C. *The district court did not err in refusing to apply the interstate pay differential.*

Finally, Madelyn argues that the district court should have granted her an interstate pay differential, given the high cost of living in New York as compared to Kansas. However, "[t]he application of the Interstate Pay Differential [IPD] is discretionary." Guidelines § III.B.9. (2017 Kan. S. Ct. R. 91).

The IPD's purpose is to reach a fair amount of child support by adjusting a party's income in another state to match what the party's income in Kansas would be. *Rumbaugh v. Park*, No. 113,660, 2016 WL 854465, at *5 (Kan. App. 2016) (unpublished opinion). Our court has held that if the district court rejects the application of the IPD "without giving it any reasonable consideration," it is an abuse of discretion. 2016 WL 854465, at *5.

Madelyn argues the district court erred because its decision was based on her failure to provide evidence for the reasons why she relocated, implicitly adding a

requirement that is not included in the Guidelines. Although the district court did note that Madelyn did not present any evidence for why she moved, it also noted that the IPD's application would have little effect on the amount of Steven's child support and that Steven was not requesting or receiving any long distance parenting time costs. In light of these findings, the court concluded that application of the IPD was not appropriate based on the totality of the circumstances. Based upon the record, we cannot conclude that the district court abused its discretion in not applying the IPD.

Affirmed.