

NOT DESIGNATED FOR PUBLICATION

No. 104,779

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

VANCE EDWARD WHITE,
Appellant,

and

CHRISTINE WHITE,
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS KELLY RYAN, judge. Opinion filed July 15, 2011.
Reversed and remanded.

Vance E. White, of Fulton, appellant pro se.

Christine White, of Overland Park, appellee pro se.

Before GREEN, P.J., MARQUARDT and ATCHESON, JJ.

Per Curiam: Vance Edward White appeals the district court's order modifying child support. We reverse and remand.

On October 9, 2007, Vance filed for divorce from his wife, Christine White, after nearly 11 years of marriage. The district court entered a divorce decree on February 28, 2008, which incorporated a marital settlement agreement and permanent parenting plan.

Although neither this agreement nor the parenting plan is in the record on appeal, the parties evidently agreed to share custody and expenses for their two daughters, and Christine agreed to pay Vance \$333 per month in child support.

The district court held a hearing on January 27, 2009, to determine whether the parties' children should reside primarily with Christine based on Vance's current living conditions. Although Vance did not attend the hearing, Christine testified that Vance was an alcoholic, "an obsessive hoarder," and lived in a studio-type motel room with only one bed. After hearing this testimony, the district court entered a temporary order that designated Christine as the primary residential custodian and abated her monthly child support obligation.

On July 17, 2009, apparently in response to several motions filed by Christine to modify the divorce decree regarding the parenting plan and child support, the district court entered a journal entry incorporating by reference a "Stipulated, Modified Settlement Agreement Regarding Children's Residency, Parenting Time and Child Support." Although this agreement is not in the record on appeal, the parties evidently agreed that Vance would begin paying \$105 per month in child support starting August 1, 2009, and Christine should have permanent primary custody of their children.

On February 23, 2010, Christine filed another motion to modify child support—although neither this motion nor Vance's response is in the record on appeal—claiming Vance should pay the "regular" child support obligation based on Vance's continued employment as a contract attorney defending indigent criminals in Bourbon County, Kansas. A hearing officer held a hearing on April 19, 2010, sustained Christine's motion to modify, and ordered Vance to increase his monthly child support payment to \$345. The hearing officer's notes incorporate a child support worksheet, but this worksheet is

not included in the record on appeal. Vance subsequently appealed the hearing officer's decision to the district court.

The district court held an evidentiary hearing on June 28, 2010. Christine testified she earned "slightly less than 85,000, 84,000-something per year," although there is no evidence she prepared a domestic relations affidavit. The district court questioned Christine regarding the amount of her monthly income, noting her employer verification form indicated a "gross monthly income of \$6,619.48," which indicated her annual income was \$79,434. Christine again stated "84,000-something."

Vance also failed to file a domestic relations affidavit but testified concerning his "poor" financial condition. Vance contended his gross monthly income was \$2,100, but stated he owed approximately \$70,000 in credit card debt, he was delinquent on his 2009 and 2010 taxes, he was paying a \$250 per month car payment on an "old, ragged Ford truck," and the gas company had recently disconnected his gas after he could not pay the \$500 bill.

After determining other expenses for the children, including health and dental insurance premiums and work-related childcare costs, the district court ordered Vance to pay \$358 per month in child support. Vance appeals, claiming the district court erred in calculating his child support obligation and erred in determining a material change of circumstance had occurred under the Kansas Child Support Guidelines (Guidelines).

CHILD SUPPORT CALCULATION

The standard of review of a district court's order determining the amount of child support is whether the district court abused its discretion; however, the district court's

interpretation and application of the Guidelines are subject to unlimited review. *In re Marriage of Branch*, 37 Kan. App. 2d 334, 336, 152 P.3d 1265, rev. denied 284 Kan. 945 (2007).

"Use of the Guidelines is mandatory, and a failure to follow the Guidelines is reversible error. Further, any deviation from the amount of child support determined by the use of the Guidelines must be justified by written findings in the journal entry, failure to justify deviations by written findings is reversible error, and deviations must serve the best interests of the children." *In re Marriage of VanderVoort*, 39 Kan. App. 2d 724, 732, 185 P.3d 289 (2008).

Vance primarily complains that the district court improperly calculated Christine's gross income when it determined his child support obligation. He contends the district court overlooked Christine's pay stub—which was attached to her employer verification form—that stated her monthly pay was "\$7,171.10." Thus, the "\$6,619.48" figure listed on the front of the form was erroneous. Christine fails to brief the issue.

After a review of the record, it is clear that the district court's reliance on the \$6,619.48 figure was misplaced. The payroll assistant who compiled the employer verification form appears to have utilized an incorrect monthly wage figure. According to Christine's pay stub, Christine's gross pay for January 2010 was \$6,619.48. However, because Christine receives a biweekly paycheck (26 annual paychecks), and not two paychecks per month (24 annual paychecks), her average monthly pay rate is \$7,171.10.

Consequently, the district court deviated from the amount of child support determined by the Guidelines, if using the appropriate figures, without justifying the deviation in its written findings. See *VanderVoort*, 39 Kan. App. 2d at 732. The issue of the modification of Vance's child support obligation is remanded for the correct

calculation using affidavits from both parties, Christine's actual gross monthly income, verification of Vance's income, and evidence of each party's indebtedness.

MATERIAL CHANGE OF CIRCUMSTANCES

This court reviews an order modifying child support, and the district court's determination as to whether a material change in circumstances existed to justify a modification of child support, for an abuse of discretion. *In re Marriage of Schoby*, 269 Kan. 114, 120-21, 4 P.3d 604 (2000).

Without citing authority, Vance claims the district court erred by modifying the child support order without specific findings indicating a material change in circumstances. In response, Christine cites *In re Marriage of Jennings*, 30 Kan. App. 2d 860, 863, 50 P.3d 506, *rev. denied* 274 Kan. 1112 (2002), for the proposition that no finding was necessary because the district court did not hold a prior evidentiary hearing to determine child support.

K.S.A. 60-1610(a) gives the district court authority to award child support and to make modifications "when a material change in circumstances is shown." Nevertheless, several Kansas cases have held that the district court does not need to find a material change in circumstances before modifying orders or decrees that are the product of default or the parties' stipulations. See *Hill v. Hill*, 228 Kan. 680, 685, 620 P.2d 1114 (1980); *Stovall v. Stovall*, 10 Kan. App. 2d 521, 522, 707 P.2d 1082 (1985).

According to the record on appeal, the district court's previous orders regarding custody, parenting time, and child support were the result of stipulated agreements

through mediation; the district court made no findings of fact or conclusions of law at any prior hearing.

Consequently, the district court was not required to find a material change of circumstances before modifying Vance's child support obligation. Thus, it follows that the district court did not err with its lack of specific findings when it modified Vance's child support obligation based on a material change of circumstances.

We reverse and remand for a correct calculation of Vance's child support obligation.