

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 124,529

In the Matter of the Marriage of LISA MICHELLE SHAFER (nka WEBSTER),
Appellant,

and

JON FRANCIS SHAFER,
Appellee.

SYLLABUS BY THE COURT

1.

A district court's division of a retirement account in a divorce proceeding constitutes a judgment subject to dormancy under K.S.A. 2022 Supp. 60-2403 when the division order qualifies under K.S.A. 60-254(a) as a final determination of the parties' interests in the marital estate.

2.

The relief from judgment statute, K.S.A. 2022 Supp. 60-260, is not applicable when a movant merely requests to clarify the original property division order that does not require any substantive change to the order.

Review of the judgment of the Court of Appeals in an unpublished opinion filed September 23, 2022. Appeal from Johnson District Court; K. CHRISTOPHER JAYARAM, judge. Oral argument held May 16, 2023. Opinion filed June 30, 2023. Judgment of the Court of Appeals reversing the district court is affirmed. Judgment of the district court is reversed, and the case is remanded to the district court.

Bruce W. Beye, of Overland Park, argued the cause and was on the briefs for appellant.

Ronald W. Nelson, of Ronald W. Nelson, PA, of Overland Park, argued the cause, and *Joseph A. DeWoskin*, of Kansas City, was with him on the briefs for appellee.

The opinion of the court was delivered by

BILES, J.: When Jon Shafer and Lisa Webster divorced in 2007, the district court ordered she receive a share of Jon's Army Reserve and National Guard retirement pay based on the months of their marriage. He retired about 15 years later, which was when Lisa submitted the court's division order to the federal office administering Jon's retirement benefits. But that office said it needed more detail to calculate Lisa's share, and the district court denied her request to clarify its order. It reasoned the original judgment had gone dormant under state law, and that Lisa had waited too long to seek changes. A Court of Appeals panel reversed that ruling because it believed the division order was not a final judgment subject to dormancy. On review, we affirm the panel's judgment, although our reasoning differs from the panel's.

We hold: (1) the division order was a final judgment, subject to the dormancy statute; and (2) the relief from judgment statute, K.S.A. 2020 Supp. 60-260, was not applicable because Lisa's clarification request does not require substantive change to the original property division. Our rationale on the dormancy issue under K.S.A. 2022 Supp. 60-2403(a)(1) follows *In re Marriage of Holliday*, 317 Kan. __ (No. 124,116, this day decided). We remand the case to the district court for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

In 2006, the district court awarded Lisa a share of Jon's military retirement benefits. The ruling states: "Army Reserve Retirement Pays equal to 50% of months of marriage divided by the total months in the Reserves" and "National Guard Retirement

Pay equal to 50% of months of marriage divided by the total months in the Guard." It also confirmed Jon and Lisa married on February 1, 1992. Their divorce decree, entered in 2007, incorporated the 2006 division of assets and liabilities by reference. Jon retired from service about 14 years after the divorce.

To process her share of Jon's benefits, Lisa submitted the court's division order to the Defense Financial Accounting Services office. But it asked for more information, including how long, in months, the parties were married. Lisa returned to the district court for that clarification, asking that it specify the total months of marriage. Jon opposed the motion.

At a hearing, Lisa's attorney explained that DFAS had written asking "the Court issue an order to clarify . . . the number of the months of the marriage." Counsel claimed the division order was "not a final order until that number is clarified" and said Lisa was "not asking for a modification of the order" but just asking for a "simple clarification." Her attorney explained, "All I am seeking the Court to do is to plug in the number that [DFAS] is requesting in order to enforce the order."

Jon's attorney argued the court had no authority to modify the division order under K.S.A. 2021 Supp. 60-260(b) (imposing one-year time limit for filing a motion for relief from a judgment), and that the original judgment giving Lisa a share of Jon's benefits had expired under the dormancy statute, K.S.A. 2021 Supp. 60-2403(a)(1) (stating that if a renewal affidavit is not filed or execution is not issued within five years from the date of the judgment's entry, the judgment becomes dormant; noting after two years of being dormant with no attempts to revive it, the judgment permanently expires on request). The court asked Lisa's counsel if anything had prevented Lisa from filing a qualified domestic relations order for the military retirement benefits shortly after filing of the divorce decree. Counsel answered, "No."

The court denied Lisa's motion. Its journal entry states:

"The basis for the Court's decision denying Petitioner's Motion for Clarification is as follows:

"a. That under K.S.A. 60-260(b), the mistake that Petitioner's Motion is trying to correct was not brought within one year of the Judgment being entered;

"b. The Decree was entered in [2007] and no action appears to have been taken until April of 2021 when Petitioner filed her Motion to address the issue raised in the Motion for Clarification;

"c. Petitioner did not submit a QDRO or take any enforcement steps until 2021, despite admissions on the record that there was nothing prohibiting her from affirmatively taking steps to seek the same prior to this year;

"d. The Decree issued in [2007] is not an interlocutory order but was a final judgment for all purposes;

"e. The Judgment was extinguished in 2011 and no action was taken to revive the judgment; and

"f. The Court finds [*In re Marriage of Larimore*, 52 Kan. App. 2d 31, 362 P.3d 843 (2015), and *In re Marriage of Porterfield*, No. 118,479, 2019 WL 847671 (Kan. App. 2019) (unpublished opinion),] to be persuasive to the Court;

"g. The Court is obviously empathetic to Petitioner's current situation and acknowledges that previously awarded property may no longer be available to her; the Court recognizes the inherent injustice that this result may present. However, the Court simply lacks any legal basis, given the significant lapse in time during which no action was taken, to amend, alter, or modify the prior judgment. Moreover, litigants have an

affirmative obligation to assert their rights, and a party may not simply sit idly by and only years later seek to vindicate such rights. There are counterbalancing interests of finality and certainty, as well as timely adjudication that are involved in situations such as this. Thus, as a matter of law, this Court simply cannot grant the requested relief, as much as it might wish at this time."

Lisa appealed, and a Court of Appeals panel reversed. It held the division order was not a final judgment subject to the dormancy statute because "[t]he precise length of the parties' marriage was not readily discernible from either the decree or the division of assets," so the order did not have a complete calculation mechanism to apportion Jon's military retirement benefits. *In re Marriage of Shafer*, No. 124,529, 2022 WL 4390875, at *1, 6 (Kan. App. 2022) (unpublished opinion). The panel remanded the case to the district court "to consider the merits of Lisa's motion for clarification." 2022 WL 4390875, at *1. We granted Jon's petition for review.

Jurisdiction is proper. See K.S.A. 20-3018(b) (providing for petitions for review of Court of Appeals decision); K.S.A. 60-2101(b) (Supreme Court has jurisdiction to review Court of Appeals decisions upon petition for review).

DISCUSSION

This case presents three issues: (1) whether the property division is a final judgment subject to the dormancy statute, (2) whether the relief statute applies, and (3) whether inactivity rendered the judgment dormant. All three are questions of law involving statutory interpretation, which are subject to unlimited review. *Neighbor v. Westar Energy, Inc.*, 301 Kan. 916, 918, 349 P.3d 469 (2015).

The judgment was final.

The panel held the division order was not final as "[t]he precise length of the parties' marriage was not readily discernible from either the decree or the division of assets." *In re Marriage of Shafer*, 2022 WL 4390875, at *1. We disagree. The district court's 2006 memorandum decision states, "The parties were married on Feb. 1, 1992 in Louisville, KY." The Decree of Divorce is file-stamped November 16, 2007, so this means the precise length of this marriage was 15 years, 9 months, and 15 days—or 189.5 months.

K.S.A. 60-254(a) defines a "judgment" as "the final determination of the parties' rights in an action." See *Honeycutt v. City of Wichita*, 251 Kan. 451, Syl. ¶ 1, 836 P.2d 1128 (1992) ("A final decision is one that finally decides and disposes of the entire merits of the controversy and reserves no further questions or directions for the future or further action of the court."); *Bandel v. Pettibone*, 211 Kan. 672, 677, 508 P.2d 487 (1973) ("It is a fundamental rule that a judgment should be complete and certain in itself, and that the form of the judgment should be such as to indicate with reasonable clearness the decision which the court has rendered, so that the parties may be able to ascertain the extent to which their rights and obligations are fixed, and so that the judgment is susceptible of enforcement in the manner provided by law."). And the 2007 decree of divorce, which incorporates by reference the 2006 memorandum decision, provides all the information needed to establish the precise length of Jon and Lisa's marriage in months.

When read together, the two documents dispose of the division of these marital assets. Lisa's motion to the district court did not require the court to alter or amend its original property division. The panel erred when it found "the division of Jon's military retirement pay contained an incomplete calculation mechanism" as its rationale for

holding "the order was not susceptible to enforcement and was therefore not subject to dormancy." *In re Marriage of Shafer*, 2022 WL 4390875, at *1.

We hold the 2007 divorce decree, with its incorporation of the 2006 memorandum decision, constitutes a final judgment under K.S.A. 60-254(a).

K.S.A. 2021 Supp. 60-260 is not applicable.

Lisa's motion for clarification is not part of the appellate record. But the hearing transcript suggests she filed her motion under K.S.A. 2021 Supp. 60-260(b)(1). It provides:

"(b) *Grounds for relief from a final judgment, order or proceeding.* On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise or excusable neglect;

....

"(c) *Timing and effect of the motion.* (1) *Timing.* A motion under subsection (b) must be made within a reasonable time, and for reasons under paragraphs (b)(1), (2) and (3) no more than one year after the entry of the judgment or order, or the date of the proceeding." K.S.A. 2021 Supp. 60-260.

In any event, the district court cited K.S.A. 2021 Supp. 60-260(b) as part of its ruling. But as discussed, Lisa's request to identify the length of the marriage in months should not be deemed as asking for any relief from the final division order, as her request does not demand any substantive change in the final judgment. In other words, the relief statute is inapplicable.

The judgment is subject to the dormancy statute.

Our determination that there was a final judgment here necessarily leads us to conclude that same judgment is subject to the dormancy statute, K.S.A. 2022 Supp. 60-2403. As we explained in *In re Marriage of Holliday*, 317 Kan. ___, Syl. ¶ 1: "A district court's division of a retirement account in a divorce proceeding constitutes a judgment subject to dormancy under K.S.A. 2022 Supp. 60-2403 when the division order qualifies under K.S.A. 60-254(a) as a final determination of the parties' interests in the marital estate."

But we also held in *Holliday* that under the facts of that case involving division of a spouse's benefits with the Kansas Public Employees Retirement System that K.S.A. 2022 Supp. 60-2403(c)'s tolling provision prevented the divorce judgment from becoming dormant because benefits were not yet payable from that account. *In re Marriage of Holliday*, 317 Kan. ___, Syl. ¶ 3. This holding contradicts the underlying assumption of the district court that Lisa was obligated under K.S.A. 60-2403 to file appropriate paperwork with the Defense Financial Accounting Services office earlier than she did to avoid dormancy.

We hesitate, however, to apply our holding in *Holliday* concerning subsection (c)'s tolling provisions with these military retirement accounts on this record because that question was understandably not briefed with us or addressed below. The discussion at oral argument with counsel about similarities between these military benefits and KPERS suggests *Holliday* resolves this case entirely, but we will leave that to the district court on remand should the parties make it an issue.

We affirm the panel although our reasoning differs. The case is remanded to the district court for further proceedings.

Judgment of the Court of Appeals reversing the district court is affirmed.
Judgment of the district court is reversed, and the case is remanded to the district court.