I. INTRODUCTION

Although Kansas family law has not changed radically in the last three years, there have been several noteworthy statutory changes. For example, federal legislation now requires states to issue child support guidelines resulting in an increase in the amount of child support ordered by Kansas courts. The Kansas Legislature has extended the life of child-support judgments to two years beyond a child's majority, provided for an expedited procedure to enforce visitation rights, and the Kansas Supreme Court has issued rules allowing attorneys to act as mediators.

The United States Supreme Court also continues to become more involved in family-law issues. The Court struck down a six-year statute of limitations for paternity actions, declared unconstitutional certain restrictions on the rights of prisoners to marry, and refused to recognize an independent cause of action under the Parental Kidnapping Prevention Act. In addition, the Kansas courts reviewed the rights of prisoners to exercise visitation rights to their children, the custody rights of parents of children born out of wedlock, and the necessity of parental consents in adoption cases.

* Professor of Law, Washburn University School of Law. B.A (1972); J.D. (1975), University of North Dakota; LL.M. Harvard Law School (1979). The author thanks Elizabeth L. Marietta, Washburn Law School, Class of 1990, for her research assistance on this article.

1. This article surveys family law cases and statutory changes from January 1986 to January 1989. This article does not discuss juvenile law cases, which include the Juvenile Offender Code and Children in Need of Care Code.


This article will review and comment on the major developments in Kansas family law within this three-year period. Because of the diversity of family law issues, an analysis of the recent changes is most productive by separating the changes under broad topics, such as marriage, divorce, paternity, and adoption.

II. MARRIAGE

A. Premarital Contracts

1. Statutes

The 1988 legislature enacted the Uniform Premarital Agreement Act. The Act allows perspective spouses to enter into a written premarital contract covering all their present and future property, income, and earnings. The contract is effective upon marriage and requires no consideration. The agreement may provide for the disposition of the property upon separation, divorce, and death, including the elimination of spousal support. The parties' agreement, however, may not affect adversely the right of a child to support. The agreement is unenforceable against a party who did not execute the agreement voluntarily. It also is unenforceable if it is unconscionable and three factors are present when the parties sign the agreement: (1) did not receive a reasonable disclosure of assets; (2) did not waive the disclosure voluntarily and in writing; and (3) did not have adequate knowledge of the assets. In addition, the agreement may be unenforceable in some circumstances if it violates public policy. Also, the court can override the parties' agreement to modify or eliminate spousal support if one of the spouses would become eligible for public support.

13. "A premarital agreement shall be in writing and signed by both parties." Id. § 23-803.
14. "[P]roperty means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings." Id. § 23-802(b).
15. "A premarital agreement becomes effective upon marriage." Id. § 23-805.
16. "It is enforceable without consideration." Id. § 23-803.
17. Id. § 23-804(a).
18. Id. § 23-804(b).
19. Id. § 23-807(a).
20. Id.
21. Id. § 23-807(b).
assistance at the time of the separation or divorce.\textsuperscript{22} If the marriage is void, the agreement is enforceable "to the extent necessary to avoid an inequitable result."\textsuperscript{23} The parties may revoke or amend the agreement if the revocation or amendment is in writing.\textsuperscript{24}

The Uniform Premarital Agreement Act codifies the general principles of Kansas case law on prenuptial agreements.\textsuperscript{25} The major difference is that the Act can prevent a spouse from avoiding spousal support under the terms of the agreement if the other spouse becomes eligible for public assistance.

2. Kansas Cases

The wife attacked a prenuptial agreement in \textit{In re Adams}.\textsuperscript{26} According to the trial court's facts, the parties had families from previous marriages. The husband was a multimillionaire and the wife was a self-sufficient real estate agent. The husband had discussed the antenuptial agreement with the wife, and he provided her and her attorney a copy of a proposed agreement. The wife told her husband she did not agree with the terms of the agreement, and she objected to any antenuptial agreement. The parties met with the wife's attorney, who presented the wife's objections to the agreement. One week before the wedding the wife told her attorney to redraft the agreement, "indicating that she objected to antenuptial agreements but would sign one."\textsuperscript{27}

Apparently this was the last time the parties discussed the agreement until an hour before the wedding, when the husband arrived at his mother's house where the wife was dressing for the wedding. He asked her to accompany him to his office to sign the agreement. The husband told the wife he would not marry her unless she signed the agreement. The wife testified she was sur-

\textsuperscript{22} "If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility." \textit{Id.} \$ 23-807(b).

\textsuperscript{23} \textit{Id.} \$ 23-808.

\textsuperscript{24} \textit{Id.} \$ 23-806.

\textsuperscript{25} "[T]he general rule in this state [is] that persons competent to contract may execute an antenuptial agreement and determine for themselves what rights they will have in each other's property during their marriage and after its termination by death, and such a contract will be upheld where it is fairly and understandably made, is just and equitable and is not obtained by fraud or overreaching." \textit{Herman v. Goetz}, 204 Kan. 91, 94, 460 P.2d 554, 557 (1969) (citations omitted).

\textsuperscript{26} 240 Kan. 315, 729 P.2d 1151 (1986).

\textsuperscript{27} \textit{Id.} at 317, 729 P.2d at 1154.
prised by the husband’s demand that she sign the agreement, and she cried during the car ride to the attorney’s office and back to her mother-in-law’s home. She claimed she signed the agreement under duress and her husband agreed to change the agreement when they returned from their honeymoon. The husband, however, denied these facts. It was not until a week after the wedding that the wife’s attorney forwarded her version of the agreement to the parties.

Ten years later the husband filed for divorce, seeking enforcement of the antenuptial agreement. The agreement provided the wife with 24,000 dollars a year in maintenance until either party died. In the divorce, the wife attacked the agreement alleging the agreement was not fairly and understandably made, obtained by fraud and overreaching, and against public policy.

The trial court upheld the agreement and the wife appealed. Although the supreme court acknowledged that the wife’s testimony differed radically from her husband’s, the court stated that its review of the case was limited to determining whether there was sufficient evidence in the record to support the trial court’s holding. The evidence at the trial supported the trial court’s finding that the agreement was understandable and fairly made because the wife had been familiar with the husband’s business interests for a number of years, and she testified she knew what she was signing. The court also rejected the wife’s claim of fraud and overreaching. The court noted that cases differ on whether a husband’s request to sign an antenuptial agreement on the wedding day was overreaching. The court stated, however, that these cases turn on individual facts. Because there was evidence to support the trial court’s ruling, the supreme court could not set aside the lower court’s ruling. Finally, the court stated that the agreement did not violate public policy by promoting separation or divorce. The court noted that the maintenance provision in the agreement was identical to the one proposed by the wife’s attorney and followed the standard language and terms of many maintenance provisions in antenuptial agreements. Consequently, there was sufficient evidence to support the trial court’s determination that the agreement was valid.

28. Id. at 320, 729 P.2d at 1156.
29. Id. at 323, 729 P.2d at 1158.
30. Id. at 320, 729 P.2d at 1157.
31. Id.
32. Id. at 323, 729 P.2d at 1158.
33. Id. at 323, 729 P.2d at 1159.
Justice Herd dissented from the majority opinion, stating the agreement was a product of duress. He argued that the husband's ultimatum that the wife sign the agreement or there would be no wedding forced the wife to sign the agreement to "avoid embarrassment, humiliation, and a quarrel." Thus, Justice Herd found that the husband's conduct overcame the will of the wife. Because there was no meeting of the minds, the contract was voidable and unenforceable.

B. Forming a Marriage

1. Right to Marry

The United States Supreme Court struck down a regulation issued by the Missouri Division of Corrections that required prisoners to get approval from the prison superintendent before they could marry in *Turner v. Safley*. The superintendent gave permission only if there were "compelling reasons," such as pregnancy or the birth of a child out of wedlock. Although the Supreme Court has acknowledged that the right to marry is a fundamental right, the Court did not decide if prisoners had a fundamental right to marry, because the regulation failed the "reasonable relationship test." The state justified the regulation on security and rehabilitation grounds. According to the state, in prisons that housed both male and female prisoners, the regulation prevented prisoners from marrying one another and avoided "love triangles." Writing for the majority, Justice O'Connor noted that love triangles can form without marriage and that the regulation swept too broadly because it also prohibited civilian as well as prisoner marriages.

The Court also rejected the state's justification that marriages interfered with rehabilitation. According to the warden, female inmates generally were abused or were dependent on male figures and these factors were connected to the women's crimes. Therefore, the warden argued, by prohibiting female prisoners from

34. Id. at 324, 729 P.2d at 1159 (Herd, J., dissenting).
35. Id. at 325, 729 P.2d at 1160.
39. Id. at 97, 99.
40. Id. at 97.
41. Id. at 98.
42. Id. at 97.
marrying male prisoners, the state was furthering the rehabilitation goal of teaching the women independence. In striking down this regulation as over broad, Justice O'Connor noted that, prior to the regulation, no restrictions were placed on marriages of male prisoners or on marriages to civilians. According to O'Connor:

'The Missouri prison system operated on the basis of excessive paternalism in that the proposed marriages of all female inmates were scrutinized carefully even before the adoption of the current regulation—only one was approved . . . from 1979-1983—whereas the marriages of male inmates during the same period were routinely approved. This kind of lopsided rehabilitation concern cannot provide a justification for the broad Missouri marriage rule.'

2. Annulment

In State v. Fitzgerald the defendant claimed he did not commit the crime of bigamy because his second "marriage" was annulled as void and therefore there was no "marriage . . . by a person who shall have another spouse living at the time of such marriage." The court rejected this argument, stating the defendant committed bigamy when he entered into "a purported marriage contract or relationship" while he already had a living spouse. The annulment of the second "marriage" was no defense to the crime of bigamy.

C. Marital Issues

1. Marital Property

a. Statutes

The legislature amended the marital property statute in 1987 to include "the present value of any vested or unvested military retirement pay" as "marital property." This amendment over-

43. Id. at 99.
44. Id. at 98-99.
45. Id. at 99.
49. KAN. STAT. ANN. § 23-201(b) (1988).
50. Property of spouses becomes marital property:
   at the time of commencement by one spouse against the other of an action in
   which a final decree is entered for divorce, separate maintenance, or annulment.
   Each spouse has a common ownership in marital property which vests at the
   time of commencement of such action, the extent of the vested interest to be
determined and finalized by the court, pursuant to K.S.A. 60-1610.
Id. § 23-201(b).
turns the decision in *Grant v. Grant*,\(^{51}\) which held that military retirement pay was not property to be divided at the time of the divorce.\(^{52}\)

b. Kansas Supreme Court Rules

The Kansas Supreme Court amended Rule 164, which requires the filing of an inventory and fact sheet in divorce actions, to include in the inventory:

> [L]iquid assets, and retirement benefits (including, but not limited to, qualified plans such as profit-sharing, pension, 401[k], or other savings-type employee benefits, non-qualified plans and deferred income plans), and ownership thereof (joint or individual) . . . [and] [h]ealth insurance coverage and the right, pursuant to ERISA §§601-608, 29 U.S.C. §§1161-1168 (1986), to continued coverage by the spouse who is not a member of the covered employee group.\(^{53}\)

The supreme court amended the rule to alert attorneys about the rights of divorcing spouses to divide employee benefits and retain medical coverage.\(^{54}\)

c. Kansas Cases

*Smith v. Aifam Enterprises, Inc.*,\(^{55}\) addressed whether a judgment creditor could execute against marital property. In this case, the husband filed for divorce. During the pendency of the action the husband's creditor obtained a judgment against the husband and attempted to attach a lien against property the divorce court eventually awarded to the wife. The court held that when the husband filed the divorce action, the property became "marital property" pursuant to section 23-201(b) of Kansas Statutes Annotated, giving the wife a vested interest in the property during the pendency of the divorce action.\(^{56}\) Therefore, after the husband filed for divorce, a judgment in favor of the creditor could not gain superiority over the wife's right to the property. When the court awarded the wife this property, she received it as her separate property, insulating the property from attachment to satisfy the husband's creditors.


\(^{52}\) For a further discussion on marital property in the context of divorce see *infra* notes 194-234 and accompanying text.

\(^{53}\) KAN. CT. R. 164.

\(^{54}\) See Minutes of the Family Law Advisory Committee of the Kansas Judicial Council (Oct. 2, 1987).


\(^{56}\) *Id.* at 256, 737 P.2d at 474.
2. Interspousal Immunity

In *Flagg v. Loy*\(^{57}\) the Kansas Supreme Court abolished interspousal immunity. The court allowed the children of a deceased mother to sue the estate of her husband for the wrongful death of their mother, which resulted from the car accident that killed the couple.

III. Divorce

A. Jurisdiction and Venue

The *In re Powell*\(^{58}\) case discussed issues of venue and jurisdiction involving an incapacitated respondent in a divorce action. The husband was physically and mentally incapacitated. His wife was his court-appointed guardian and conservator at the time she filed for a divorce in a county other than the county of the couple's residence. The husband was served personally with the divorce petition in his residence county. Before the divorce hearing, the wife requested the court to remove her as her husband's guardian and conservator. The court granted this request and appointed the husband's sister instead. At the divorce hearing, the husband personally appeared with his attorney and actively participated in the divorce proceedings. Fifteen days after the divorce hearing, the husband requested the court to restore his capacity, and the court did so on that date. The divorce court issued the decree on February 1, but neither the husband nor his attorney filed any posttrial motions. In his reply brief on appeal, however, the husband objected to the venue and asserted that the divorce court did not have personal jurisdiction over him because he was incapacitated at the time of the service and the divorce hearing.

In ruling against the husband's claims, the appellate court reviewed the venue statute as it applies to divorces.\(^{59}\) This statute requires the respondent to object to venue before the action begins on the merits. Although the court recognized that the husband was incapacitated during the hearing, it noted that he made no objection to the venue after he regained capacity and he did not file any objections even after the court issued the judgment.\(^{60}\) Finally, the husband did not raise the issue in his appellate brief. Rather, he waited until his reply brief to raise the venue question.


\(^{60}\) Powell, 13 Kan. App. 2d at 177, 734 P.2d at 830.
for the first time. The appellate court found that this silence constituted a waiver of the venue issue. 61

The appellate court also found that the divorce court obtained personal jurisdiction over the husband, even though he was served while he was incapacitated. The court cited the statute 62 that sets out the requirements for serving process on an incapacitated person. 63 This statute requires service on the conservator and the incapacitated person. Here, the husband was served personally and his wife, the conservator, had notice of the service because she was the petitioner. Although this statute was not followed accurately, the court found substantial compliance with the notice requirement of serving a summons under section 60-204 of Kansas Statutes Annotated. Section 60-204 provides:

In any method of serving process, substantial compliance therewith shall effect valid service of process if the court finds that, notwithstanding some irregularity or omission, the party served was made aware that an action or proceeding was pending in a specified court in which his or her person, status or property were subject to being affected. 64

Because the husband appeared and participated in the hearing, the appellate court found that there was valid service, particularly because the method of service did not prejudice the husband’s case. 65

B. Child Support

1. Kansas Supreme Court Administrative Order 59—Child Support Guidelines

In October 1987 the Kansas Supreme Court issued child support guidelines. 66 The guidelines were the result of a congressional mandate that all states establish child support commissions to study child support guidelines. The guidelines were required by Congress for the states to continue receiving welfare funding under Title IV-D of the Social Security Act. 67 There were several reasons for establishing the child support guidelines. Recent research had disclosed that present child support awards were not adequately

61. Id.
62. KAN. STAT. ANN. § 60-304(c) (Supp. 1988).
64. KAN. STAT. ANN. § 60-204 (1983).
supporting children of divorce and substantial numbers of these children were living below the poverty line\textsuperscript{68} even though the noncustodial parent could afford to pay more.\textsuperscript{69} Also, the judges were inconsistent in ordering levels of child support.\textsuperscript{70} And in jurisdictions that had child support guidelines, these guidelines did not consider the cost of raising a child nor were the guidelines consistent within similar geographical areas.\textsuperscript{71}

The new guidelines try to avoid the previous problems in child support orders by using the income shares approach. The child support is based on the family's lifestyle prior to divorce and the current resources of both parents. The drafters of the guidelines believed both parents had an obligation to share the support of their children.\textsuperscript{72} Therefore, the children received the same proportion of their parents' income they would have received if the parents lived together. For example, the total income of the family and the age of the child are used to determine the amount of child support for the child.\textsuperscript{73} The parents then pay a percentage of the child support based on each parent's percentage of the total family income. Thus, if the father's income represented sixty-five percent of the total family income, he would pay sixty-five percent of the child support figure. In general, the new guidelines have resulted in an increase in child support amounts because the support orders more accurately reflect the cost of raising children.\textsuperscript{74}


\textsuperscript{69} One study discovered that noncustodial parents' monthly car payments were more than court-ordered payments for child support. Yee, What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court, 57 DEN. L.J. 21, 36 (1979).

\textsuperscript{70} Not only was there disparity between judges in the same state or city, but one study found that an individual judge ordered a parent earning $900 to pay $50 per month to support 2 children, but then ordered a parent earning $450 to pay $120 per month for 2 children. Id. at 21.

\textsuperscript{71} Before the Kansas Supreme Court issued its guidelines, the existing child support guidelines in the different judicial districts in Kansas ranged from $90 to $132 for a parent earning $600 per month. Elrod, Kansas Child Support Guidelines: An Elusive Search for Fairness in Support Orders, 27 WASHBURN L.J. 104, 112 n.71 (1987).

\textsuperscript{72} KANSAS COMMISSION ON CHILD SUPPORT, REPORT ON CHILD SUPPORT at 5 (1987).

\textsuperscript{73} This amount is based on economic data on the cost of raising a child as well as data on how much parents generally spend on a child given their present income level. The amounts are adjusted for the number of children and the ages of the children. Elrod, supra note 71, at 114.

\textsuperscript{74} For a more detailed discussion on the Kansas Child Support Guidelines, see Elrod, supra note 71.
2. Statutes

In 1988 the legislature amended sections 60-2403(b)(1),(2) and 60-2404 of Kansas Statutes Annotated to extend the life of child support judgments. The amendments extended the dormancy of child support arrearage judgments to two years beyond the age of emancipation.

The 1986 legislature extended child support beyond the age of majority for some high school students. Amendments to sections 60-1610(a)(1) and 38-1121(c)(2) of Kansas Statutes Annotated extend child support beyond majority to June first of the year the child reaches eighteen if the child is attending high school. In 1988 the legislature explicitly applied this amendment retroactively to all prior orders of child support.

3. Kansas Cases

The *Hill v. Hill* case involved an interpretation of the 1986 legislation. The child in this case had completed his junior year of high school and turned eighteen on the sixth of August. The father stopped paying child support after the birthday and filed a motion to terminate the support. The trial court first held that because the school year began on the first of July, before the child turned eighteen, it was conceivable the child support could continue until the first of June of the following year. The trial court did not order the father to continue paying child support, however, because the judge held that the mother must request an extension of the child support beyond the age of majority to receive continued support. Because the mother did not apply for an extension

78. It should be noted that this statute does not extend support during the time a child is enrolled in high school, but terminates support the first of June after the child reaches eighteen. Because many parents enroll children in kindergarten one year later than the minimum age of five, or children may repeat a grade, it is conceivable a child could be a junior in high school when the child reaches eighteen. Consequently, under this statute, after the first of June the obligation to pay child support ceases, even though the child has another year of high school. See *Hill v. Hill*, 13 Kan. App. 2d 107, 763 P.2d 640 (1988).
before the child turned eighteen, the trial court found it did not have jurisdiction to extend the support. The trial court also held that the amendment did not have retroactive application to support ordered prior to 1986.

The Kansas Court of Appeals reversed the last two determinations of the trial court. First, the court held that the statute did not require the mother to seek an extension of the child support if the child reached eighteen while the child was still in high school. Because the statute states, "the support shall not terminate, unless otherwise ordered by the court," the plain meaning of the statute was that there must be an order terminating the support for the child support to end, not that there must be a court order for the child support to continue. Second, the court reviewed the legislative history of the amendment and found that the legislature intended retroactive application of the amendment to child support ordered before 1986. In fact, the 1988 legislature clarified this initial legislative intent by amending the statute specifically to provide for retroactive application of the statute.

4. Contempt and Child Support

a. Kansas Cases

In Johnson v. Johnson, the father objected to the contempt proceedings because there was no affidavit accompanying the citation for contempt and the court did not keep a record of the proceedings. The court of appeals agreed with the father that an affidavit must accompany a citation in contempt. The affidavit was necessary for the father to know "the nature and the cause of the accusation against him." The respondent in a contempt proceeding, however, can waive this defect by filing an answer, appearing and not raising the issue, or by some other affirmative action. Because Mr. Johnson failed to object to this improper procedure when he appeared, he waived all technical defects in the contempt proceeding.

81. Id. at 108-09, 763 P.2d at 641.
84. Id. at 109-10, 763 P.2d at 641-42.
85. See supra text accompanying note 79.
87. Id. at 319, 721 P.2d at 293 (quoting Hartman v. Wolverton, 125 Kan. 202, 205, 263 P. 789, 790 (1928)).
89. Id. at 320, 721 P.2d at 293.
On the other hand, the failure of the lower court to keep a record of the proceedings resulted in a void citation. Without a record, the appellate court cannot review the validity of the trial court's decision. For example, the appellate court noted that economic hardship, inability to work, and lack of assets were insufficient grounds for a contempt citation. Therefore, lower courts must keep records of proceedings so appellate courts can determine if trial courts have accurately applied the law in issuing contempt citations. Because the father could not waive this defect, the court of appeals held that the district court did not have jurisdiction to issue the citation.

The father also alleged he was entitled to court-appointed counsel because of his status as an indigent. The court did not decide this issue because the case was reversed on other grounds. The court of appeals, however, cited *Walker v. McLain*, a Tenth Circuit case that required the court to appoint an attorney to represent an indigent respondent in a contempt proceeding.

The father in *Crumpaker v. Crumpacker* appealed a contempt citation based on his failure to pay child support. He argued that because the child had reached the age of majority, the court had lost jurisdiction to enforce the order. According to the father, the court only had jurisdiction to issue a contempt citation for failure to pay child support during the child's minority. In its opinion, the Kansas Supreme Court reviewed holdings in other jurisdictions and discovered that the courts were equally divided on whether a court loses contempt jurisdiction to enforce unpaid child support when a minor attains majority. The supreme court noted, however, that child support in Kansas "has been a major consideration in domestic relations cases." The court also noted that recent and extensive legislation on child support did not include a prohibition against enforcing unpaid child support after a child reached majority. Therefore, because the court could not find a statute that restricted the court's jurisdiction, the court held that the trial courts do not lose contempt jurisdiction to enforce child support orders when the child reaches majority.

90. *Id.*
91. *Id.* at 320, 721 P.2d at 294.
92. *Id.* at 321, 721 P.2d at 294.
93. 768 F.2d 1181 (10th Cir. 1985).
95. *Id.* at 184-85, 718 P.2d at 297.
96. *Id.* at 185, 718 P.2d at 297.
99. *Id.* at 185, 718 P.2d at 298.
The father also argued that he did not owe any child support because the mother had accepted child support checks that contained the statement "paid in full." According to the husband, the mother's acceptance of these checks was an accord and satisfaction. The court disagreed because accord and satisfaction only applies to unliquidated and disputed claims.\textsuperscript{100} Because due and unpaid child support payments become final judgments, they are neither unliquidated nor disputed claims and therefore not subject to accord and satisfaction.\textsuperscript{101}

In \textit{Yoder v. Yoder}\textsuperscript{102} the mother had assigned her rights to child support to the Secretary of Social and Rehabilitation Services ("SRS"). She brought a contempt action against the father to enforce support and included notice of the proceeding to SRS. The father objected, contending SRS was the proper party to bring the action. The Kansas Court of Appeals disagreed, citing section 39-754(f) of Kansas Statutes Annotated, which states that SRS "shall be considered a necessary party in interest concerning any legal action to enforce . . . an assigned support obligation."\textsuperscript{103} The court interpreted this language as recognizing the right of the parent to file an action in contempt as long as SRS is included as a necessary party.\textsuperscript{104}

\textbf{b. United States Supreme Court Cases}

The United States Supreme Court has considered two cases dealing with contempt proceedings resulting from a parent's failure to pay child support. In \textit{Rose v. Rose}\textsuperscript{105} the father, who received veterans disability benefits, appealed a contempt citation for his failure to pay child support. He argued that federal law forbids the court from using his benefits to satisfy his child-support obligation. Although the Court agreed that the benefits cannot be alienated before the federal government paid the benefits to the father, once the father received the benefits, the court could force him to use the benefits to satisfy his child support obligation through a citation in contempt.\textsuperscript{106}

The United States Supreme Court reviewed a constitutional challenge to the California contempt statute in \textit{Hicks v. Feiock}.\textsuperscript{107}

\begin{itemize}
  \item \textsuperscript{100} \textit{Id.}
  \item \textsuperscript{101} \textit{Id.}
  \item \textsuperscript{102} 11 Kan. App. 2d 330, 721 P.2d 294 (1986).
  \item \textsuperscript{103} KAN. STAT. ANN. § 39-754(f) (1986).
  \item \textsuperscript{104} \textit{Yoder}, 11 Kan. App. 2d at 334, 721 P.2d at 298.
  \item \textsuperscript{105} 481 U.S. 619 (1987).
  \item \textsuperscript{106} \textit{Id.} at 653.
  \item \textsuperscript{107} 108 S. Ct. 1423 (1988).
\end{itemize}
The father was served with an order to show cause why he should not be held in contempt for failing to make support payments. The mother made a prima facie case at the contempt hearing by complying with the California statute that stated "when a court . . . makes an order compelling a parent to furnish support, . . . proof that . . . the parent was present in court at the time the order was pronounced and proof of noncompliance therewith shall be prima facie evidence of a contempt of court."\(^{108}\) The court sentenced the father to twenty-five days in jail, but suspended the sentence and put the father on informal probation for three years on the condition he make his child support payments and pay arrearages.

The father appealed, claiming the California contempt statute violated his due process rights because it shifted to the defendant the burden of proving his inability to comply with the order, which is an element of the offense of contempt. The Supreme Court noted, however, that there are two types of contempt—civil contempt and criminal contempt. If the father's punishment was remedial in nature, the contempt was a civil action and there was no violation of the due process clause by shifting the burden to the defendant.\(^{109}\) If the punishment was punitive, however, the proceeding was a criminal action and the shifting of the burden of proof was impermissible.\(^{110}\) In determining whether the father's punishment was remedial or punitive the court stated, "[i]f the relief provided is a sentence of imprisonment, it is remedial if 'the defendant stands committed unless and until he performs the affirmative act required by the court's order,' and is punitive if 'the sentence is limited to imprisonment for a definite period.'"\(^{111}\) The Court found that the lower court's order had both remedial and punitive characteristics, so the Court remanded the case for a clarification on whether the defendant could purge himself of the sentence.\(^{112}\) If the defendant was allowed to purge himself of the sentence, the procedure would not violate the due process clause because the punishment would be remedial in nature.

5. Child Support Jurisdiction

In *Warwick v. Gluck*\(^{113}\) the parties divorced in St. Maarten, a protectorate of the Netherlands. The mother and child later moved

---

108. *Id.* at 1428 n.1 (citing *CAL. CIV. PROC. CODE* § 1209.5 (West 1982)).
110. *Id.*
111. *Id.* (quoting *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 422 (1911)).
112. *Hicks*, 108 S. Ct. at 1429.
to Kansas, but the father remained a resident of St. Maarten. The mother brought an action under the Uniform Child Custody Jurisdiction Act ("UCCJA"), requesting the court to restrict the father's visitation rights. The father hired an attorney and appeared at the hearing. At a later hearing, the father filed a motion to extend visitation. The mother then requested an increase in child support, arguing the father had submitted to the jurisdiction of the Kansas court.

The Kansas Court of Appeals held that although the Kansas district court had subject matter jurisdiction, the father did not submit to personal jurisdiction by appearing and defending an action under the UCCJA. Jurisdiction under the UCCJA is based on the status of the residency of the child and appearing in a UCCJA action does not subject the father to personal jurisdiction for ordering child support. Because the father was never personally served with an action for increasing child support, the Kansas court did not have jurisdiction to consider child support issues.

_Wornkey v. Wornkey_ involved conflicting orders of support in two Kansas counties that resulted from the intrastate application of the Uniform Reciprocal Enforcement of Support Act ("URESA"). In this case the divorce court in Pawnee County ordered the father to pay 125 dollars per month in child support. The father then moved to Geary County and fell behind in his child support payments. The mother filed a petition under URESA in Pawnee County and, pursuant to the statute, Pawnee County forwarded the petition to Geary County. The Geary County court, despite having subject matter jurisdiction, could not order the father to pay child support because the father was not personally served.

---

114. The court had subject matter jurisdiction "based on the common-law duty of the parent to support his or her child, Keller v. Guernsey, 227 Kan. 480, 608 P.2d 917 (1980); and on equity principles, Burnworth v. Hughes, 234 Kan. 69, 670 P.2d 917 (1983)."  
115. The UCCJA specifically excludes the issues of child support. "'Custody determination' means a court decision and court orders and instructions providing for the custody of a child . . . [and] it does not include a decision relating to child support or any other monetary obligation of any person." KAN. STAT. ANN. § 38-1302(b) (1986).  
116. In dictum, the court cited Burnworth v. Hughes, 234 Kan. 69, 670 P.2d 917 (1983), for the proposition that the court has equity powers to make visitation and child support contingent upon each other. The legislative history of KAN. STAT. ANN. § 60-1612 (Supp. 1988), however, specifically rejects the position that visitation and child support are contingent considerations. Courts should handle the denial of visitation or the failure to pay child support through contempt proceedings rather than making one contingent upon the other. Maxwell, In the Best Interest of the Divided Family: An Analysis of the 1982 Amendments to the Kansas Divorce Code, 22 WASHBURN L.J. 177, 235 (1983).  
however, ordered the father to pay seventy-five dollars in support. According to the Geary County order, the father was to pay 25 dollars of the 75 dollars on the 1000-dollar arrearage and pay the remaining 50 dollars for present support. When the father had paid the arrearages, the support payment would be 75 dollars.

The father paid 75 dollars in support until the mother brought a declaratory judgment action alleging the Geary County court order did not modify the Pawnee County order of 125 dollars. The Kansas Court of Appeals agreed and found the husband in arrears on the original order. The court held that under the intrastate application of URESA, the Geary County court order for child support did not modify the previous order because the Geary County court order did not specifically mention and modify the previous order.\textsuperscript{119} The court also rejected the father’s argument of laches because Kansas has a strong public policy to provide for the support of children.\textsuperscript{120} The court reversed the computation of the arrearages, however, because the trial court had (1) used compounded interest instead of simple interest and (2) misapplied \textit{Dallas v. Dallas}\textsuperscript{121} in allocating the child-support payments after the husband had paid the 1000-dollar arrearages.

In \textit{Swarts v. Dean}\textsuperscript{122} the parties were married in Kansas, but moved to Texas, where they divorced. The mother and the two children returned to Kansas while the father moved to Louisiana. The mother filed a common-law child support action to modify the Texas child-support order and personally served the summons on the father when he came to Kansas to visit the children. The trial court dismissed the action, finding the Kansas courts did not have personal jurisdiction over the father because the father did not have minimum contacts with the state. The Court of Appeals reversed. Although \textit{Shaffer v. Heitner}\textsuperscript{123} required the defendant to have minimum contacts with the forum state, the appellate court noted that this decision did not address the situation in which the defendant was personally served inside the forum state.\textsuperscript{124} Instead the court cited several cases\textsuperscript{125} that held minimum contacts unnec-

\textsuperscript{119} \textit{Wornkey}, 12 Kan. App. 2d at 512, 749 P.2d at 1050. "A support order made by a court of this state pursuant to this act does not nullify and is not nullified by a support order made by a court of this state . . . unless otherwise specifically provided by the court." \textit{Kan. Stat. Ann.} § 23-480 (1988).

\textsuperscript{120} \textit{Wornkey}, 12 Kan. App. 2d at 512-13, 749 P.2d at 1050-51.


\textsuperscript{122} \textit{12 Kan. App. 2d} 228, 766 P.2d 1291 (1989).

\textsuperscript{123} 433 U.S. 186 (1977).

\textsuperscript{124} \textit{Swarts}, 13 Kan. App. 2d at ___, 766 P.2d at 1292.

\textsuperscript{125} \textit{Opert v. Schmid}, 535 F. Supp. 591 (S.D.N.Y. 1982); \textit{Amusement Equip., Inc. v.}
necessary if the defendant was personally served within the boundaries of the forum state. The court also relied on the language in *International Shoe v. Washington* that said "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend notions of fair play and substantial justice." Consequently, *International Shoe* specifically states that minimum contacts are necessary only if the defendant is not within the state. Here, because the defendant was within Kansas when he was served, the court obtained personal jurisdiction over him to determine child support.

The appellate court also instructed the trial court that the mother need not file an action under URESA before she brings a common-law action for support, as the trial court had intimated. These actions are merely alternative methods of obtaining child support and neither has priority over the other.

6. Combined Orders of Child Support and Maintenance

The father and mother in *Beard v. Beard* had a separation agreement that stated the father would make payments to the mother "for the support and maintenance" of the mother and the two minor children. The mother later filed a motion to increase child support. The father argued that the court did not have the power to modify the agreement because the Kansas statutes forbid the court from modifying maintenance agreements unless the parties agreed to the modification, or unless the terms of the agreement gave the court the power to modify the agreement. The Kansas Court of Appeals agreed that, in general, courts do not have the power to modify the maintenance agreement. The court cited the 1984 *Carey v. Carey* decision that held as follows:

> Where a property settlement agreement incorporated in a divorce decree fixes a sum to be paid as "family support and alimony," with [appor-

---

128. Id. at 316 (citing Milken v. Meyer, 311 U.S. 457, 463 (1940)) (emphasis added).
tionment between child support and spousal maintenance not indicated,]
the trial court has no authority to modify the order in the absence of
a provision in the agreement or [by] consent of the parties.134

Yet the Carey court also stated, "[w]e express no opinion on the
result in a case in which the agreement contains internal indicators
that apportionment of alimony and child support within a family
support agreement was intended."135 The court of appeals noted
that the Beard agreement contained internal indicators that apportioned
the child support and the maintenance because the support for
the two children was reduced twenty-five percent when each
reached majority and the support was reduced by fifty percent if
the mother married.136

In addition, the appellate court found that even if the agreement
contained no internal indicators that apportioned the support, the
trial court did have the power to issue an independent order of
child support.137 According to section 60-1610(a)(1) of Kansas
Statutes Annotated, the court has the power to order child support,
and under section 60-1610(b)(3), the parents cannot divest the
court of this power through an agreement.138 Consequently, a trial
court can issue an independent order of child support without
modifying the maintenance agreement.

7. Garnishment Actions

In Mariche v. Mariche139 the father claimed his federal social
security disability benefits, which he had deposited in his bank
account, were exempt from a garnishment order to collect a child
support judgment. The Kansas Supreme Court disagreed and cited
several federal statutes140 that specifically allowed garnishment of
social security benefits to pay child support.141 The father also
relied on a Kansas statute142 that exempted federal pensions from
garnishment if the pension was needed to support the pensioner's

134. Id. at 779, 689 P.2d at 917.
135. Id. at 781, 689 P.2d at 919.
137. Id. at 545, 750 P.2d at 1063.
138. "Matters settled by an agreement incorporated in the decree, other than matters
pertaining to the custody, support or education of the minor children, shall not be subject
to subsequent modification by the court except: (A) As prescribed by the agreement or (B)
as subsequently consented to by the parties." KAN. STAT. ANN. § 60-1610(b)(3) (Supp.
1988).
142. KAN. STAT. ANN. § 60-2308(a) (Supp. 1988).
family. The court disagreed with the father’s interpretation of the statute, noting that the purpose of the statute was to provide support to the family.\(^{143}\) Because the purpose of the garnishment in this case was to support the pensioner’s children, the exemption statute did not apply and the garnishment was proper.\(^ {144}\) Finally, the father argued that section 60-2310 of Kansas Statutes Annotated limited the garnishment to sixty-five percent of his benefits. The court pointed out, however, that the statute only restricted the percentage of garnishment on “earnings” of the father.\(^ {145}\) Because the benefits were not earnings (i.e., compensation for personal services), there was no limit on the amount that could be garnished.

The Kansas Court of Appeals reversed a trial court’s order that stayed the execution of a judgment on unpaid child support in *Hooks v. Hooks*.\(^ {146}\) The trial court had stayed the execution as long as the father continued to make a weekly payment of forty dollars. The court of appeals found no statutory authority\(^ {147}\) to stay an execution as long as the debtor makes regular payments on the judgment.\(^ {148}\) Therefore, the trial court did not have jurisdiction to stay the execution.

8. Interception of Taxes to Pay Child Support

In *Sorenson v. Secretary of the Treasury*,\(^ {149}\) the federal government intercepted the father’s earned income credit and applied the money to his unpaid child support obligation, which had been assigned to a state’s welfare department. The taxpayer objected, claiming only tax refunds could be intercepted to pay child support. The United States Supreme Court disagreed, interpreting the federal legislation that allowed the interception of “overpayments” to include earned income credits.\(^ {150}\)

C. *Child Custody and Visitation*

1. Statutes

The Kansas Legislature added one more factor that the court must consider in awarding child custody. The new factor requires

---

\(^{143}\) *Mariche*, 243 Kan. at 551, 758 P.2d at 749.

\(^{144}\) *Id.* at 552, 758 P.2d at 749.

\(^{145}\) *Id.* at 553, 758 P.2d at 750.


\(^{149}\) 475 U.S. 851 (1986).

\(^{150}\) *Id.* at 856 (citing 42 U.S.C. § 664(a); I.R.C. § 6402(c)).
the court to consider "the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent."  

In 1986 the legislature enacted an expedited visitation procedure. This procedure allows a parent to enforce visitation rights, granted in divorce and paternity actions, without hiring an attorney. The clerk of the court provides forms to the parent seeking enforcement of visitation and the matter is set immediately before a district judge or the court trustee. The person hearing the dispute has the option of sending the parties into mediation under section 23-601 of Kansas Statutes Annotated or holding a hearing within twenty-one days of the filing of the motion to enforce visitation. The case must be resolved within forty-five days of the filing of the motion. Remedies under this provision include ordering (1) a specific visitation schedule; (2) visitation time to compensate for the visitation lost because of wrongful denial or interference; (3) posting bond; (4) assessment of attorneys fees, mediation costs, and court costs; (5) attendance at counseling or educational sessions; and (6) supervised visitation.

Two more provisions were added to the visitation provision in the divorce code, providing more grounds for modification of child custody. "Repeated unreasonable denial of or interference with visitation rights" and "repeated child support misuse" may be material changes in circumstances that justify a change in custody.

2. Visitation

Because the father in In re Brewer was incarcerated at Lansing State Penitentiary at the time of the divorce, the court did not award visitation rights to the father. Eighteen months later, however, the father moved to a minimum security facility at Ottawa. He filed for a modification of the court order, seeking visitation rights.

152. Id. § 23-701 (1988).
153. Id. § 23-701(a).
154. Id. § 23-701(b).
155. Id. § 23-701(b)(1).
156. Id. § 23-701(b)(2).
157. Id. § 23-701(h).
158. Id. § 23-701(f)(1)-(7).
159. Id. § 60-1616 (Supp. 1988).
160. Id. § 60-1616(e),(f).
rights with his two children, ages four and two. The trial court
denied the order, finding that the prison visitation would not be
in the social and psychological best interests of the children. The
court also noted that the children had not seen their father for
over eighteen months and therefore, may not remember him. The
court of appeals affirmed the trial court, holding that there was
sufficient evidence to support the trial court’s finding.\textsuperscript{162}

The appellate court also rejected, without analysis, the father’s
constitutional challenge to the order in which he alleged protected
familial rights.\textsuperscript{163} The court did note, however, that the Kansas
Supreme Court has held in \textit{Burnworth v. Hughes}\textsuperscript{164} that visitation
rights may be conditioned upon the payment of support and stated,
“If the right of visitation with children were a protected consti­
tutional right, such conditions as those in \textit{Burnworth} could not be
established.”\textsuperscript{165} The court of appeal’s reliance on the \textit{Burnworth}
case, however, appears to be misplaced. The language in the
\textit{Burnworth} case was not only dictum, it directly contradicts a
Kansas statute. The legislative history\textsuperscript{166} of section 60-1612 of
Kansas Statutes Annotated specifically rejects the position that
visitation and child support are contingent considerations, and the
\textit{Burnworth} case failed to mention, or reconcile, this statute with
its position.

3. Contempt and Child Custody

In \textit{Yoder v. Yoder}\textsuperscript{167} the mother filed a contempt action against
the father for interfering with her sole custody rights to their
daughter. The daughter, who was fourteen years old, was pregnant,
and the mother forbade the daughter from having any contact
with her seventeen-year-old boyfriend. The mother also requested
the daughter obtain an abortion. The daughter and her boyfriend
got to Oklahoma to marry, but discovered they needed a parent’s
consent. The boyfriend called his father, who in turn called the
daughter’s father, with whom she had little contact. Both fathers
gave written consent to the marriage and the couple married.

At the contempt hearing the trial court found that the father
“had abandoned his family and thus had forfeited his right to
make decisions affecting his minor children independent of the

\begin{footnotes}
\item[162] \textit{Id.} at 46-47, 760 P.2d at 1227.
\item[163] \textit{Id.}
\item[165] \textit{Brewer,} 13 Kan. App 2d at 47, 760 P.2d at 1227.
\item[166] See Maxwell, supra note 116.
\end{footnotes}
... custodial parent. 168 The trial court told the father that he could purge himself of the contempt by either withdrawing his consent to the marriage or bringing a proceeding to have the marriage annulled. The court of appeals reversed on two grounds. First, the court found that the statute allowed either the father or the mother to consent to a marriage and it did not distinguish between custodial and noncustodial parents. 169 Because the language of the statute was clear and unqualified, the father had the statutory authority to consent to the marriage.

Second, the court held that a court order granting the mother sole custody of the child did not divest the father of all of his rights to his child. 170 In particular, the noncustodial parent retains the rights of visitation, inheritance, consent to adoption, and consent to marriage. 171 Only a finding of unfitness can alter these parental rights. 172 Therefore, because the father had not violated a court order, there were no grounds for the contempt citation.

4. Court-Ordered Home Studies

The Kansas Court of Appeals decided the parameters of the admissibility of a court-ordered home study in a child custody case in In re Talkington. 173 The father objected to the use of the home study because neither party called the preparer of the report as a witness and, therefore, the report was hearsay and inadmissible. The appellate court, however, looked at the language of section 60-1615 of Kansas Statutes Annotated, which allows the court to receive the report in evidence if the report was available to the parties before the hearing and the parties were given the opportunity to cross-examine the investigator or any person interviewed by the investigator. In this case, the father’s attorney had the report before trial and the court did not prevent the father’s attorney from calling any witnesses. Consequently, the report was admissible, pursuant to section 60-1615. 174

The father also alleged the court abused its discretion by changing custody from the father to the mother because the trial court applied the maternal preference doctrine, in violation of the statute that states "there shall be no presumption that it is in the best

168. Id. at 331, 721 P.2d at 296.
169. Id. at 333, 721 P.2d at 297.
170. Id.
171. Id.
172. Id.
174. Id. at 92-93, 762 P.2d at 845-46.
interests of any infant or young child to give custody or residency to the mother.\textsuperscript{175} The mother had been incarcerated at the time of the divorce, and the judge awarded custody to the father. At the hearing on the mother's motion to modify, however, the district court held that the children needed an opportunity to be reunited with their mother. The judge also found that the mother had married again and could stay home with the children during the day. Therefore, the appellate court found sufficient reasons to support the trial court's order and affirmed the custody award to the mother.\textsuperscript{176}

5. Custody Jurisdiction

a. Kansas Cases

\textit{In re Nasica}\textsuperscript{177} involved a custody dispute between a Kansas mother and French father. The children were born in France, but the mother returned with the children to Kansas on July 4, 1986. On November 20, 1986, the father filed for a divorce in a French court after his wife told him she did not intend to return to France. The wife was notified by mail of the proceedings on January 28, 1987. She then filed for divorce in Kansas on February 11, 1987, requesting sole custody of the children. The father filed a motion to dismiss the action, arguing that the Kansas court did not have jurisdiction to determine the custody of the children. The district court first held that Kansas was the home state of the child under section 38-1302(e) of Kansas Statutes Annotated, because the children had been in Kansas for six months preceding the filing of the wife's request for sole custody.\textsuperscript{178} The husband argued that even if the court had jurisdiction, the court should not exercise jurisdiction according to two statutes: (1) under section 38-1306 of Kansas Statutes Annotated\textsuperscript{179} because there was a child custody proceeding pending in France and (2) under section 38-1308 of

\textsuperscript{175} KAN. STAT. ANN. § 60-1610(a)(3)(B) (Supp. 1988).
\textsuperscript{176} Talkington, 13 Kan. App. 2d at 93-94, 762 P.2d at 846.
\textsuperscript{178} Section 38-1302(e) defines "home state" as "the state in which the child immediately preceding the time involved lived with the child's parents, a parent, or a person acting as a parent, for at least six consecutive months . . . ." KAN. STAT. ANN. § 38-1302(e) (1986).
\textsuperscript{179} "A court of this state shall not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act . . . ." Id. § 38-1306(a) (1986).
Kansas Statutes Annotated because the wife obtained home state jurisdiction by taking the children from France without informing her husband of her intentions to remain in the United States. 180 The Kansas Court of Appeals rejected the first argument because section 38-1306 requires France to have jurisdiction statutes similar to the UCCJA and the husband never submitted evidence of the French law. 181 The second argument also failed because the husband did not submit any evidence concerning the wife's intentions when she left France. 182

b. United States Supreme Court Cases

The Thompson v. Thompson 183 case resolved an issue that had split the courts of appeal 184 involving the Parental Kidnapping Prevention Act ("PKPA"). 185 The PKPA establishes when a state should give full faith and credit to a sister state's custody order. Several of the courts of appeal had interpreted the Act as providing a federal cause of action that allowed a federal district court to enjoin a state from exercising jurisdiction if that state's action violated the provisions of the Act. The Supreme Court rejected these decisions and held that the PKPA does not establish a federal cause of action to resolve conflicting interstate custody decrees. 186 The Court found that the Act was merely a full faith and credit provision. 187 If a state exercises child-custody jurisdiction in violation of the Act, the proper challenge is an appeal through the

---

180. Section 38-1306 reads in part as follows:
(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.
(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

182. Id. at 797-98, 758 P.2d at 244.
186. Thompson, 108 S. Ct. at 520.
187. Id. at 517-18.
state courts followed by a writ of certiorari to the United States Supreme Court rather than filing a declaratory action or injunction in the federal district court.188

The Supreme Court also examined the PKPA in conjunction with the Extradition Act in California v. Superior Court.189 In this case the parents had conflicting child custody orders in California and Louisiana. The California father and grandfather snatched the children while the children were waiting for the school bus in Louisiana. The Louisiana mother, who had disappeared with the children after the California divorce, filed kidnapping charges against the two men. Louisiana requested extradition of the two men under the Extradition Act of 1793.190 The California Supreme Court held that California did not have to honor the extradition request because the father had legal custody under a valid California court order and the Louisiana court, which gave the mother custody, had issued its order in violation of the PKPA.191 The United States Supreme Court reversed, holding that the asylum state (California) may not look to the PKPA to determine the validity of the demanding state's (Louisiana) allegation that a parent has violated the state's kidnapping statute.192 Instead, any defenses to the substantive charge must be litigated in the demanding state's criminal courts.193

D. Property Division, Maintenance, Property Agreements

1. Statutes

In 1986 the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA")194 went into effect. This Act provides that certain specified employers must continue to offer health insurance coverage to an employee's divorced spouse (or a widowed spouse or a spouse of a retiree, as well as dependent children) for up to three years following the divorce. An employee's spouse who wishes to continue the health insurance coverage must inform the employer's plan administrator within sixty days after the divorce.

188. See id.
193. Id. at 2441.
2. Kansas Cases

a. Military Retirement Survivor Benefits

The *In re Morton*\(^{195}\) case involved the husband’s military retirement survivor benefit option. In a written separation agreement the parties agreed that the husband would pay the wife one-half of his military retirement pay. The wife also claimed the husband orally agreed to elect to receive his survivor benefit option and name his wife as the beneficiary of the annuity if he should predecease her. Although the divorce decree provided that the husband elect the survivor benefit option and name his wife the beneficiary at his death, the husband denied the parties entered into this oral agreement. Sixteen months after the divorce, the husband filed a motion to set aside this provision in the divorce judgment. The trial court refused to set aside the judgment, but the court of appeals reversed.

In setting aside this portion of the judgment, the Kansas Court of Appeals reviewed federal legislation\(^{196}\) on survivor benefit options. The court found that federal law required the military retiree to agree voluntarily in writing to make the election before the election could be incorporated into the divorce decree and enforced.\(^{197}\) Although the court noted that Kansas law did not require property settlement agreements be in writing before the court incorporate the agreement into the decree, federal law controlled military retirement benefits.\(^{198}\) Therefore, because there was no written agreement in this case, federal law prevented the court from ordering the husband to make the election.

b. Personal Injury Settlements

The husband in *In re Powell*\(^{199}\) had received a personal injury settlement during his marriage. When he divorced, the trial court awarded half of the assets, which included his personal injury settlement, to his wife. The husband appealed the trial court’s division of the property, arguing the settlement was separate property and not subject to division on divorce. The Kansas Court of Appeals reviewed the case law in equitable distribution states and found that the majority of the states classified personal injury

---

198. *Id.* at 477, 726 P.2d at 300.
settlements as marital property, subject to division at the time of the divorce.\textsuperscript{200} The appellate court also found that the Kansas marital property statute did not exclude personal injury settlements in the definition of marital property.\textsuperscript{201} In addition, a personal injury settlement not only compensates the husband for his personal expenses, but it includes support for his family.\textsuperscript{202} Therefore, the court held that the spouse should be entitled to a portion of the settlement.\textsuperscript{203} Finally, the appellate court found that there was no reason to distinguish between the personal injury settlement and military retirement pay, which is specifically listed as marital property in the Kansas statute.\textsuperscript{204}

The husband also alleged the wife squandered his settlement while she was his conservator; therefore the trial court erred in awarding her half of the couple's assets. The appellate court rejected this argument, finding that the wife had paid for family expenses out of her inheritance and she had "devoted considerable energy" to her husband's care.\textsuperscript{205}

c. Court-Ordered Maintenance Under Section 60-1610(b)(2)

In \textit{Lambright v. Lambright}\textsuperscript{206} the Kansas Court of Appeals decided against retroactive application of the amended maintenance statute, section 60-1610(b)(2) of Kansas Statutes Annotated. The amendment limited the court's power to award maintenance to 121 months at a time. The court held that the amendment, by itself, was not a sufficient basis to terminate maintenance awards that a divorce court ordered prior to 1983, when the amendment took effect.\textsuperscript{207} The court also noted that open-ended maintenance, awarded prior to the amendment, may have been a fair method of equalizing an unequal property division at the time of the divorce.\textsuperscript{208} Consequently, the court refused to apply the present rationale of awarding limited maintenance for the purpose of rehabilitating the former spouse. The court also rejected the ex-husband's argument that his former wife's standard of living had improved since the divorce and, consequently, there was no need

\begin{itemize}
\item \textsuperscript{200} \textit{Id.} at 178-79, 726 P.2d at 830-31.
\item \textsuperscript{201} \textit{Id.} at 179, 726 P.2d at 831.
\item \textsuperscript{202} \textit{Id.} at 180, 726 P.2d at 832.
\item \textsuperscript{203} \textit{Id.}
\item \textsuperscript{204} \textit{Id.}
\item \textsuperscript{205} \textit{Id.} at 180, 766 P.2d at 831.
\item \textsuperscript{206} 12 Kan. App. 2d 211, 740 P.2d 92 (1987).
\item \textsuperscript{207} \textit{Id.} at 212-13, 740 P.2d at 93.
\item \textsuperscript{208} \textit{Id.} at 213-14, 740 P.2d at 94.
\end{itemize}
for continued maintenance. The court found that, because the ex-husband's standard of living had increased even more than the ex-wife's, continued maintenance was justified.209

d. Separation Agreements Under Section 60-1610(b)(3)

In a proceeding to hold the ex-husband in contempt for failing to pay alimony, the ex-husband in *Bair v. Bair*210 requested court modification of the alimony provision of the separation agreement. The husband argued his severe financial reverses made it impossible for him to comply with the terms of the agreement. The Kansas Supreme Court refused to modify the agreement because section 60-1610(b)(3) of Kansas Statutes Annotated prohibits the court from modifying alimony provisions in a separation agreement unless the terms of the agreement give the court the power to modify or the parties agree to the modification.211 The court also reaffirmed the ex-wife's right to use whatever means necessary to collect alimony arrearage judgments.212 In addition, the court held that the most recent contempt citation superseded a citation issued several years earlier.213

The property settlement agreement in *In re Arndt*214 allowed the wife to remain in the family home "until such time as she remarries or the parties sell the property by mutual agreement, or until she moves out, whichever is the sooner." The husband brought an action to force the sale of the house because the wife was cohabiting in the house with her boyfriend, who paid half of the utilities and groceries and 200 dollars in rent. The Kansas Supreme Court held that the terms of the agreement controlled.215 Because there was no "remarriage," the trial court was powerless to force the sale of the house. The court also rejected the ex-husband's argument that cohabitation was against public policy and the court cited *Fleming v. Fleming*216 as precedent.217 In *Fleming* the ex-husband requested termination of his former wife's alimony because he claimed she was cohabiting with her paramour. The ex-husband analogized this situation with a remarriage. The ex-

209. *Id.* at 214, 740 P.2d at 94.
211. *Id.* at 634, 750 P.2d at 998.
212. *Id.* at 636, 750 P.2d at 999.
213. *Id.* at 632, 750 P.2d at 996-97.
215. *Id.* at 357, 719 P.2d at 1237-38.
husband relied upon *Herzmark v. Herzmark*, which stated "[i]t is repugnant to a sense of justice for one man to be supporting the wife of another who has recently assumed the legal obligation for her support." The *Fleming* court rejected the ex-husband’s argument and held that because the paramour had no legal obligation of support, the ex-wife was not receiving support from two men.

Chief Justice Schroeder dissented in the *Arndt* case, distinguishing the *Fleming* decision. He believed that because the paramour was paying for rent and half of the living expenses, the ex-wife was receiving support similar to a marriage. Therefore, because the parties intended to sell the house when the ex-wife remarried, her present relationship was sufficiently similar to a remarriage, requiring the sale of the house.

The Kansas Court of Appeals also examined the issue of cohabitation in *In re Wessling*. In this case, the property settlement agreement allowed the ex-husband to reduce the amount of maintenance he paid to his ex-wife upon her "continuous or continual cohabitation with an unrelated male." When the ex-wife began a sexual relationship with another man, the ex-husband argued she was "continuously or continually" cohabiting with an unrelated male because she periodically spent the night with the male. The court rejected this interpretation of the agreement, finding that the word "cohabitation" meant "[t]o live together as husband and wife" including the "mutual assumption of those marital rights, duties and obligations which are usually manifested by married people." The court held that there was no cohabitation in this case because the parties:

> have not held themselves out as husband and wife, and they have no plans to marry. They have never maintained a home together and have kept separate residences. They have not shared living expenses. They have not jointly owned any property. In short, they have never 'live[d] together as husband and wife.'

---

219. *Id.* at 55, 427 P.2d at 470.
223. *Id.* at 429, 747 P.2d at 189.
224. *Id.* at 432, 747 P.2d at 190 (quoting BLACK'S LAW DICTIONARY 236 (5th ed. 1979)).
225. 12 Kan. App. 2d at 432, 747 P.2d at 191 (citation omitted). Although the court of appeals cites authority that requires the parties in the cohabitation to "live together as husband and wife," the court fails to distinguish this definition of cohabitation from common law marriage.
In *Jarvis v. Jarvis*\(^{226}\) the husband, who was an attorney, and the wife signed an agreement in 1982 in which the wife agreed she would not hire Bernis G. Terry as an attorney for her or the children in any action against her husband resulting from their pending divorce. The wife later filed an action to set aside the agreement. The Kansas Court of Appeals found that the agreement violated discipline rule 2-108 of the Code of Professional Responsibility and section 5.6 of the Model Rules of Professional Conduct.\(^{227}\) Both of these provisions forbid attorneys from signing or participating in agreements that restrict an attorney's right to practice law. Consequently, the agreement was struck down as void and unenforceable.

The separation agreement in *Pierce v. Pierce*\(^{228}\) provided that the father would maintain a life insurance policy "and keep the two (2) minor children as beneficiaries thereon."\(^{229}\) The father remarried and changed the beneficiary to his second wife. At his death, the second wife argued the children were no longer minors and, therefore, she should receive the benefits under the policy. The Kansas Court of Appeals disagreed, finding that the words "'minor children'" merely described the children's status at the time of the decree and did not make them beneficiaries only during their minority.\(^{230}\)

**E. Attorneys' Fees Under Section 60-1610(b)(4)**

In *In re Marks*\(^{231}\) the wife filed for divorce. The journal entry filed after the divorce hearing granted the wife's attorney a judgment against the wife for attorney's fees. The court gave the wife's attorney permission to withdraw from the case before the divorce became final. Based on the language in the journal entry, the wife's attorney attempted to garnish the wife's child support, which a former husband had paid to the court trustee. The court trustee was holding these funds because the trustee was unable to locate the wife. The Kansas Court of Appeals affirmed the trial court's order exempting the child support payment from garnishment.\(^{232}\) The court interpreted the language of section 60-1610(b)(4) of Kansas Statutes Annotated, which states "'[c]osts and attorneys

\(^{227}\) Id. at 802, 758 P.2d at 247.
\(^{229}\) Id. at 810, 758 P.2d at 253.
\(^{230}\) Id. at 811, 758 P.2d at 253-54.
\(^{232}\) Id. at 1, 758 P.2d at 257.
fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney who may enforce the order in the attorney’s name in the same case.” 233 The court found that the intent of this statute was to award attorney’s fees to the opposing party’s attorney, not to give a judgment against a client in favor of the client’s own attorney. 234 Consequently, the divorce court had no jurisdiction to issue a judgment in the decree in favor of the wife’s attorney against the wife.

IV. ADOPTION

A. Consent

1. Statutes

The 1987 legislature amended section 59-2102 of Kansas Statutes Annotated so that an adoption no longer requires the consent of a parent who has relinquished the child to SRS or an agency. 235 Also, section 59-2278 of Kansas Statutes Annotated no longer requires the adoptive couple to give notice of the adoption to a parent who has relinquished the child to SRS or an agency. 236

2. Kansas Cases

In In re Baby Girl H., 237 a judge and an attorney obtained an adoption consent from a mother shortly after the birth of her child. The mother attempted to attack the validity of the consent in the adoption proceedings. The trial court granted summary judgment against the mother, however, because a consent taken before a judge is “irrevocable” under section 59-2102(c) of Kansas Statutes Annotated. The Kansas Court of Appeals reversed and remanded for a determination of whether the mother gave her consent freely and voluntarily. The court held that merely because a parent gives consent before a judge, the parent’s consent is not necessarily free and voluntary. 238 When a consent is attacked, the

238. Id. at 230, 739 P.2d at 6.
evidence must show the person consented "to all the legal consequences of the adoption with an understanding of the meaning and effect thereof." The court refused, however, to require the judge to advise the parents of the consequences of their acts, as is provided in the relinquishment statute under section 38-127 of Kansas Statutes Annotated. Also, the court refused to require the judge to take the consent on the record, although the court recommended the judge follow this procedure. In addition, the court would not hold that, as a matter of law, a mother's consent taken immediately after birth was void or voidable. Rather, the adoption court must decide, on a case-by-case basis, whether a consent was invalid by considering the mother's ability to understand and fully comprehend her actions based on the medication she was under and the stress or pain she experienced with the birth.

The Kansas Supreme Court, in *In re F.A.R.*, addressed whether an incarcerated natural father's failure to assume parental duties for two years made his consent to the adoption unnecessary. The stepfather, who petitioned for the adoption, argued the court should apply the same standard to all parents and not give special consideration to an incarcerated parent when it determines whether a parent had failed to assume parental duties for two years. The court refused to set the same standard by stating "[w]hen a nonconsenting parent is incarcerated and unable to fulfill the customary parental duties required of an unrestrained parent, the court must determine whether such parent has pursued the opportunities and options which may be available to carry out such duties to the best of his or her ability." The court also stated the trial court properly considered the mother's attempts to keep the children from visiting the father in prison as a factor preventing him from assuming his parental duties. Finally, the court held that the trial court did not err in admitting evidence of events occurring prior to the two-year period because those events helped explain conduct of the parties during the two years immediately preceding the filing of the petition to adopt.

239. *Id.* at 225-26, 739 P.2d at 3.
242. *Id.* at 230-31, 739 P.2d at 7.
244. *Id.* at 236, 747 P.2d at 150.
245. *Id.* at 237, 747 P.2d at 150.
246. *Id.* at 237-38, 747 P.2d at 150-51.
The Kansas Court of Appeals also found that a father had sufficient contacts with his child to require his consent to a stepfather's petition for adoption in \textit{In re B.J.H., Jr.}.\textsuperscript{247} The appellate court reversed the trial court's finding that the father had failed to assume parental duties for two years prior to the filing of the petition, a finding that made the father's consent unnecessary. The trial court had held the father's payment of less than half of the court-ordered support, one gift, a four-hour visit and five attempts to locate the child by telephone were "incidental" contacts. The trial court applied the 1983 amendment to the adoption consent statute, which states "the court may disregard incidental visitation, contacts, communications or contributions."\textsuperscript{248} The trial court also stated it considered the effect of the adoption on the child and viewed the adoption from the standpoint of the child. The court of appeals reversed this decision because the trial court appeared to apply the "best interests of the child" standard in determining whether the father's consent was necessary.\textsuperscript{249} Instead, the standard is to view the evidence in favor of maintaining the natural father's rights, which are constitutionally guaranteed.\textsuperscript{250} According to the appellate court, the father's contacts were not incidental, particularly because the mother had convinced the father not to exercise his visitation and she made it difficult for the father to find her by having an unlisted telephone number and changing residences.\textsuperscript{251}

\textbf{B. Equitable Adoption}

In \textit{In re Estate of Robbins}\textsuperscript{252} the Kansas Supreme Court refused to recognize the doctrine of equitable adoption. A woman claimed to be the "adopted" daughter of the deceased, basing her claim


\textsuperscript{248} \textit{KAN. STAT. ANN.} § 59-2102(b) (Supp. 1988).

\textsuperscript{249} \textit{B.J.H., Jr.}, 12 Kan. App. 2d at 751, 757 P.2d at 1272.

\textsuperscript{250} \textit{Id.}

\textsuperscript{251} \textit{Id.} at 753-54, 757 P.2d at 1273-74. It is interesting to note that, in deciding whether the father's consent was necessary, the appellate court relied on the case precedents of \textit{In re Steckman}, 228 Kan. 669, 620 P.2d 319 (1980) and \textit{In re Harrington}, 228 Kan. 636, 620 P.2d 315 (1980). In these two cases the court found that the father's consent was necessary for the stepparent adoption even though the father had limited contact with the children during the two years prior to the filing of the adoption petition. These two decisions prompted the legislature to enact the provision that a court may ignore a parent's "incidental contacts" in considering whether the parent had failed to assume parental duties for two years. Consequently, the legislative intent of this statute appears to undermine the precedential value of these two cases.

on a contract between her parents and the deceased. The court refused to recognize the adoption because it did not comply with the statutory requirements for a valid adoption. The court, however, reaffirmed its position that a person can submit an equitable contract claim against the estate based on the breach of the contract to adopt.

V. PATERNITY

A. Kansas Cases

In LaGrone v. LaGrone the Kansas Supreme Court established the standards for determining a custody dispute between parents of children born out of wedlock. The court found, "the unwed parent . . . should be treated the same as any other parent for the purposes of determining custody." Therefore, the court must look to the best interests of the child when resolving disputes between unwed parents. The court also held that the lower court did not err in awarding divided custody by placing the oldest child with the father and the youngest child with the mother. The court accepted the divorce code provision that restricts divided custody to cases involving exceptional circumstances and found that the case met this criterion because the custody award modeled the prelitigation custody arrangement of the parents.

Three justices dissented from the majority's position that the trial court did not err in awarding divided custody of the two children. Justice Lockett noted that although the father had custody of one of the daughters during the night, both children stayed with their mother during the day. Both parties testified

253. See id. at 623-26, 738 P.2d at 461-62.
254. Id. at 624, 738 P.2d at 462.
256. Id. at 632, 713 P.2d at 476. Although the divorce custody standard of "best interests of the child" applies to paternity custody disputes, it is questionable whether the divorce statute preference for joint custody should be read into the paternity custody law. This preference makes sense when the parties have had a marriage and therefore, an ongoing relationship as a family unit. Many children born out of wedlock are not born into an ongoing relationship, however, and a preference for shared custody between these individuals, who may not even know each other well, may be detrimental to the child.
257. Id. at 255, 713 P.2d at 477.
259. LaGrone, 238 Kan. at 255, 713 P.2d at 477.
260. Id. at 255, 713 P.2d at 477. (Lockett, J., concurring in part and dissenting in part).
261. Id.
the two girls, ages two and three, had a good relationship with each other, loved each other and played well together. Also, a few weeks before the trial the Navy transferred the father to San Diego. Therefore, under the trial court’s order, the girls would be together only two weeks out of the year if the oldest child went with the father. Finally, the dissent noted that the father took the oldest child with him to San Diego, in violation of the temporary custody order placing custody of both children with the mother. Therefore, the “pre-litigation custody arrangement” was a result of a violation of a court order. Based on these facts, the dissenting opinion did not find sufficient evidence of “exceptional circumstances” justifying the trial court’s order dividing the two children between their parents.262

B. United States Supreme Court Cases

Two United States Supreme Court cases reviewed state paternity procedures. In Rivera v. Minnich263 the father claimed the preponderance of the evidence standard in Pennsylvania paternity actions violated his due process rights. He argued that because the Supreme Court required clear and convincing evidence to sever parental rights,264 this same standard should apply to actions to establish parental rights and obligations. The Court rejected this argument on several grounds. First, the Court noted that the majority of the states applied the preponderance of the evidence standard, which is the standard most frequently used in civil actions.265 Therefore, the preponderance of the evidence standard was “not only consistent with the ‘dominant opinion’ throughout the country but it was also in accord with the ‘traditions of our people and our law’ . . . [and] is entitled to a powerful presumption of validity when it is challenged under the Due Process Clause of the Four­teenth Amendment.”266

Second, the Court stated that establishing a parental relationship was distinguishable from terminating a parental relationship. Unlike parents who run the risk of having their rights terminated, the putative father in a paternity proceeding has “no legitimate right and certainly no liberty interest in avoiding financial obligations to his natural child.”267

262. Id. at 635, 713 P.2d at 478.
265. Rivera, 107 S. Ct. at 3003.
266. Id. (citing Lochner v. New York, 198 U.S. 45, 76 (1905) (Holmes, J. dissenting)).
Third, the Court noted that in a termination proceeding the parents must face the superior resources of the state in the state's attempts to terminate their parental rights, whereas in a paternity action, the parties are private citizens who have equal interests in the outcome.\textsuperscript{268} Also, in termination actions, double jeopardy does not apply if the parents succeed in keeping the child because the state can bring a later action to show the parents are unfit.\textsuperscript{269} A paternity action, on the other hand, ends with the final judgment, which bars subsequent litigation of the issue.\textsuperscript{270} Consequently, because the parties are on equal footing, as are any parties in a civil suit, the standard in civil suits of preponderance of the evidence is appropriate in paternity actions.\textsuperscript{271}

In \textit{Clark v. Jeter}\textsuperscript{272} the United States Supreme Court struck down a six-year statute of limitations for paternity actions in Pennsylvania. The Court held that the statute of limitations violated the equal protection clause of the fourteenth amendment because six years was not a reasonable length of time for persons with an interest in the child to assert their claims.\textsuperscript{273} The Court also held that the six-year statute of limitations was not reasonably related to the state's interest in preventing stale claims because the most recently developed paternity tests did not depend upon the age of the child for reliability.\textsuperscript{274}

\section*{VI. PROTECTION FROM ABUSE ACT}

There were several amendments to the Protection from Abuse Act in the 1988 legislative session. The legislature amended section 60-3107(a)(1) of Kansas Statutes Annotated to allow the court to restrain any party, not just the defendant, "from abusing, molesting or interfering with the privacy rights of each other or any of the minor children of the parties."\textsuperscript{275} Under subsection (a)(2), the legislature provided for a restraining order preventing a party from entering or remaining in the residence if the party was not

\begin{thebibliography}{9}
\bibitem{268} \textit{Id.} at 3005.
\bibitem{269} \textit{Id.} at 3005-06.
\bibitem{270} \textit{Id.} at 3006.
\bibitem{271} \textit{Id.} Justice Brennan dissented, stating "[w]hat is at stake for a defendant in such a proceeding is not merely the prospect of a discrete payment in satisfaction of a limited obligation. Rather, it is the imposition of a life-long relationship with significant financial, legal and moral dimensions." \textit{Id.}
\bibitem{273} \textit{Id.} at 1915.
\bibitem{274} \textit{Id.} at 1915-16.
\end{thebibliography}
granted possession of the residence. Finally, the amendment to subsection (a)(6) limits support orders under the Act to six months, with the right of the court to extend the support for another six months, on the plaintiff's motion.

VII. MEDIATION

A. Supreme Court Rule for Attorney-Mediators

Supreme Court Rule 901 sets out the ethical rules for attorneys who mediate. The first section of the new rule defines mediation using the definition found in the statute governing court-ordered mediation of child custody disputes. The second section sets out the ground rules for attorneys who mediate. The attorney-mediator must inform the parties of the mediator's role, including the requirements of the confidentiality statute and the parties must agree to this role in writing. The mediator can define legal issues only if all parties are present, and the mediator must encourage the parties to obtain independent legal advice before signing any agreement the mediator drafts. Also, a person cannot act as a mediator if the person acted as an attorney for any of the parties and that representation involved an issue in the mediation. Likewise, the mediator cannot act as an attorney for any of the parties following the mediation if the representation involves any matter related to the mediation. Upon request of any party, the mediator must withdraw from the mediation and is prevented from acting in any capacity on behalf of any of the parties if the issues were part of the mediation.

The rule not only sets out the requirements for the mediation, but it also distinguishes mediation from the activities of an attorney representing clients. For example, the rule states that the mediator "is not the legal representative of the parties and there is no attorney-client relationship between the parties and the attorney-mediator." The rule does not restrict attorneys representing

---

276. Id.
277. Id.
279. Id. § 60-452a (Supp. 1988).
281. Id.
282. Id.
283. Id.
284. Id. 901(c).
285. Id. 901(d).
clients in negotiations nor an attorney acting as an "intermediator" as defined by the Model Rules of Professional Conduct.\textsuperscript{286}

The last provision of Rule 901 incorporates the Standards of Practice for Lawyer Mediators in Family Disputes.\textsuperscript{287} These comprehensive standards were adopted from the American Bar Association Standards, which the House of Delegates approved in 1984. Although the Kansas Standards model the ABA Standards in most respects, the Kansas Standards are not as restrictive in certain areas. For example, the ABA Standards prohibit an attorney from acting as a mediator if the attorney represented any of the parties, even though that representation is distinct from the issues in the mediation.\textsuperscript{288} Also, the ABA Standards forbid an attorney from ever acting as an attorney for any of the parties if the attorney acted as a mediator for that party, regardless of the nature of the later representation.\textsuperscript{289} The Kansas standards reject these positions as being too restrictive on the use of mediation.\textsuperscript{290} Therefore, an attorney may act as a mediator for former clients, or a mediator may act as an attorney for former mediation parties, if the issues are clearly distinct from the each other.\textsuperscript{291}

VIII. Conclusion

It is difficult to make any general statements about the trends in family law within the last three years. For example, the courts have recognized an incarcerated father's constitutional rights to his children by refusing to grant a stepfather's adoption petition,\textsuperscript{292} yet in another case denied an incarcerated father visitation rights to his children.\textsuperscript{293} Perhaps the best way to analyze this contradiction is to recognize that family law cases turn on their own peculiar facts. Also, because the appellate courts will reverse cases only if there is an abuse of discretion, the majority of these decisions do not involve rigorous legal analysis but, rather, merely review the sufficiency of the evidence to support the findings of the trial court. Perhaps the only guidelines in family law cases are the broad principles of equity and discretion. Consequently, a practi-

\textsuperscript{286} Model Rules of Professional Conduct Rule 2.2 (1983).
\textsuperscript{287} Kan. Ct. R. 901 app.
\textsuperscript{288} See id.
\textsuperscript{289} See id.
\textsuperscript{290} Id.
tioner must prepare a family law case by showing the court what is fair and just for all parties.