NOT DESIGNATED FOR PUBLICATIONS

No. 119,333

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JANET S. KAELTER,
Appellee,

v.

STEVEN L. SOKOL,
Appellant,

and

IN RE PARENTAGE OF BENJAMIN SARBEY SOKOL,
A Minor Child, by His Mother Janet S. Kaelter,

v.

STEVEN L. SOKOL.

MEMORANDUM OPINION

Appeal from Johnson District Court, KEVEN M.P. O'GRADY, judge. Opinion filed March 22, 2019. Appeal dismissed.

Richard W. Martin, Jr., of Martin & Wallentine, LLC, of Olathe, for appellant.

Ronald W. Nelson and *Ashlyn L. Yarnell*, of Ronald W. Nelson PA, of Overland Park, for appellee.

Before BRUNS, P.J., MALONE and POWELL, JJ.

PER CURIAM: Janet S. Kaelter sent postjudgment interrogatories and requests for the production of documents to Steven L. Sokol in an effort to execute and collect on an

unpaid child support debt. Sokol failed to properly respond to these discovery requests and instead merely objected, thus prompting Kaelter to seek an order from the district court compelling him to respond. After a hearing, the district court issued such an order and further sanctioned Sokol by ordering him to pay Kaelter's attorney fees. Sokol now appeals, arguing that the normal rules of discovery are inapplicable to postjudgment proceedings. Kaelter responds that we lack jurisdiction to consider Sokol's appeal because the district court's order was not a final decision under K.S.A. 60-2101. For reasons more fully explained below, we agree with Kaelter and dismiss Sokol's appeal.

FACTUAL AND PROCEDURAL BACKGROUND

The parties to this appeal have had ongoing litigation for many years over the unmarried couple's separation, division of property, and support of their now adult son. In *Kaelter v. Sokol*, 301 Kan. 247, 340 P.3d 1210 (2015), our Supreme Court dismissed Sokol's prior appeal upon finding a lack of jurisdiction because the district court entered a nonfinal judgment. In March 2016, the district court entered final judgment from which Sokol appealed and Kaelter cross-appealed to this court. On January 26, 2018, another panel of this court affirmed the district court's decision in *Kaelter v. Sokol*, No. 115,704, 2018 WL 561017 (Kan. App.) (unpublished opinion), *rev. denied* 308 Kan. 1594 (2018).

After the district court's final decision in March 2016, the district court trustee filed motions for nonwage garnishment of Sokol's bank accounts on behalf of Kaelter in an amount not to exceed $94,221.54 for unpaid child support. The district court trustee continued garnishment efforts and, on January 25, 2018, ordered Sokol to appear at a March 13, 2018 hearing for failure to pay child support on a judgment of $92,029.51. The journal entry for the March 13, 2018 hearing shows Sokol was not present.

On February 2, 2018, Kaelter filed a notice with the district court that she had sent interrogatories and requests for the production of documents to Sokol and she emailed the

requests to Sokol's attorneys of record, Richard S. Wetzler and Richard W. Martin, Jr. Kaelter requested discovery on Sokol's income, including information on his employment, investments, financial accounts, and real property. Kaelter requested Sokol to respond by March 5, 2018. On February 28, 2018, the district court permitted Martin to withdraw as Sokol's attorney. On March 5, 2018, Sokol, now without counsel, requested pro se an extension to respond to Kaelter's discovery requests. Over Kaelter's objection, the district court granted Sokol an extension to respond by March 15, 2018.

On March 16, 2018, Kaelter moved the district court to compel Sokol to comply with and provide adequate responses to her discovery requests. Kaelter included Sokol's responses to her discovery requests, which revealed that he did not respond but instead lodged the same objection to every interrogatory and request for the production of documents: "Objection. Irrelevant in that this request is not reasonably calculated to lead to the discovery of admissible evidence because there is no pending motion or other matter before the court and there are no minor children over which the court can exercise continuing jurisdiction. No jurisdiction." Kaelter argued that because judgments were pending against Sokol, the district court should find his objections lacked legal and factual foundation, compel his immediate response, and award Kaelter attorney fees. Sokol responded by opposing Kaelter's motion to compel discovery.

The district court conducted a hearing, held the rules of civil procedure did not limit the discovery methods to prejudgment matters, and ordered Sokol to respond to the interrogatories and requests for production of records without objection. The district court also held that a proceeding to execute on a judgment is not a new action but a continuation of the original action. The district court sanctioned Sokol by ordering him to pay $1,615 of Kaelter's attorney fees, with enforcement in the name of Kaelter's attorney.

Sokol timely appeals.

DO WE HAVE JURISDICTION?

Kaelter argues we lack jurisdiction over Sokol's appeal because the district court's order was a nonfinal one and because Sokol failed to request interlocutory certification of his appeal under K.S.A. 2018 Supp. 60-2102(c). In response, Sokol argues we should find the district court's order compelling his compliance with postjudgment discovery was a final decision, thus permitting his appeal. Alternatively, he argues the collateral order doctrine applies. We will address each issue in order.

A. *Was the district court's order a final decision?*

We exercise unlimited review over jurisdictional issues. *Frazier v. Goudschaal*, 296 Kan. 730, 743-44, 295 P.3d 542 (2013). Moreover, we have a duty to question jurisdiction on our own initiative and dismiss the appeal if the record discloses a lack of jurisdiction. *Wiechman v. Huddleston*, 304 Kan. 80, 84-85, 370 P.3d 1194 (2016).

The right to appeal is purely statutory and there is no constitutional right to an appeal under the United States or Kansas Constitutions. Accordingly, we may only exercise appellate jurisdiction over a case where permitted by statute. *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 609-10, 244 P.3d 642 (2010).

> "As part of the Kansas Legislature's desire to reduce the chances of piecemeal appeals, it limited civil appeals to certain circumstances. See K.S.A. 2009 Supp. 60-2102. As discussed in *Flores*, [283 Kan. 476], these legislative categories of appeal include: (1) final decisions and certain court orders under K.S.A. 2009 Supp. 60-2102(a) and (b), which are of right, and (2) interlocutory appeals under K.S.A. 2009 Supp. 60-2102(c), which require findings that are within the discretion of a district court, and acceptance of the appeal by the Court of Appeals, which is a determination within its discretion. The legislature has not authorized parties to 'unilaterally appeal from any or all orders of the district court in the middle of litigation with the hope, perhaps vain, that the appellate

court will ultimately decide that the order is indeed properly appealable.' [Citations omitted.]" *Kansas Medical Mut. Ins. Co.*, 291 Kan. at 610.

For an appeal from a final decision, our Supreme Court has explained:

"An appeal may be taken to the Court of Appeals as a matter of right from any 'final decision.' K.S.A. 2013 Supp. 60-2102(a)(4). A 'final decision' generally disposes of the entire merits of a case and leaves no further questions or possibilities for future directions or actions by the lower court. The term 'final decision' is self-defining and refers to an order that definitely terminates a right or liability involved in an action or that grants or refuses a remedy as a terminal act in the case. *In re T.S.W.*, 294 Kan. at 433." *Kaelter*, 301 Kan. at 249-50.

An appeal of a pretrial discovery and monetary sanction order imposed against a party to the litigation under K.S.A. 2018 Supp. 60-237 "are normally deemed interlocutory and thus nonappealable by the parties as interlocutory appeals because these orders can be reviewed and corrected when final judgment is entered by including them in the appeal from the final judgment." *Reed v. Hess*, 239 Kan. 46, 53, 716 P.2d 555 (1986).

Because Sokol has not requested our review of the district court's order as an interlocutory appeal, Kaelter argues we cannot exercise jurisdiction over Sokol's claims according to K.S.A. 2018 Supp. 60-2102(c). See *Harsch v. Miller*, 288 Kan. 280, 290-91, 200 P.3d 467 (2009). K.S.A. 2018 Supp. 60-2102(c) requires the appellant to request permission from the Court of Appeals to hear an interlocutory appeal. See 288 Kan. at 288; *Wilkinson v. Shoney's, Inc.*, 265 Kan. 141, 146-147, 958 P.3d 1157 (1998).

Instead, relying on *Kansas Dept. of Revenue v. Coca Cola Co.*, 240 Kan. 548, 549, 731 P.2d 273 (1987), Sokol argues that the district court's postjudgment discovery order is a final decision, thus allowing his appeal. There, our Supreme Court vacated our court's

dismissal for lack of appellate jurisdiction over Coca Cola's appeal of the district court's order compelling its compliance with the Kansas Department of Revenue's interrogatories and subpoena duces tecum in an administrative proceeding. Our Supreme Court held the appeal was from a final order, citing *Kansas Commission on Civil Rights v. Sears, Roebuck & Co.*, 216 Kan. 306, 309, 532 P.2d 1263 (1975).

In *Sears*, William Minner filed a civil rights claim with the Kansas Commission on Civil Rights (Commission), alleging Sears engaged in discriminatory practices in determining whether to extend credit to customers. The Commission issued a subpoena duces tecum on Sears, who refused to comply, and the Commission moved the district court to compel Sears' production of records under K.S.A. 44-1004(5). Over Sears' motion to quash the subpoena, the district court ordered Sears to comply with discovery. On appeal, our Supreme Court held that because the Commission—not Minner—filed the action in the district court, the appeal was from a final order under K.S.A. 60-2102(a)(4). 216 Kan. at 309.

> "This action was initiated by the commission to force compliance with its subpoena. Mr. Minner did not file this lawsuit; he merely filed the complaint which is before the commission. *The only relief sought in* this *lawsuit is to compel Sears to comply with the subpoena.* This *lawsuit has nothing to do with the merits of Minner's complaint; it is the commission which ultimately must investigate and determine the merits of the complaint in the first instance. The only issue before the trial court was whether Sears, through its credit manager, should be required to comply with the commission's subpoena*. The district court ruled on that issue, and that issue alone. The court overruled Sears' motion to quash, and ordered Sears to comply therewith in substantial part. *That ruling, as we see it, is in effect a final order—it effectively disposed of the only issue before the trial court*." (Emphases added.) 216 Kan. at 309.

Unlike in *Sears*, the postjudgment proceedings here were not started in the district court solely to compel Sokol's compliance with discovery. Instead, as the district court

properly held, Kaelter's postjudgment discovery requests were considered a continuation of the original cause of action and not a new action. See, e.g., *Elkhart Co-op Equity Exchange v. Hicks*, 16 Kan. App. 2d 336, 338-39, 823 P.2d 223 (1991) (holding K.S.A. 60-2419 hearing in aid of execution not new and separate but continuation of original action, so district court retained jurisdiction over case and parties until judgment satisfied). Moreover, the district court's order compelling Sokol's compliance with discovery only allowed Kaelter to proceed with the action to try to locate Sokol's assets to collect on her judgments. See *In re Martin v. Phillips*, No. 111,985, 2016 WL 1169419, at *1-3 (Kan. App. 2016) (unpublished opinion) (holding order denying motion to quash postjudgment discovery nonfinal decision because it did not terminate collection proceedings).

In our view, *Coca Cola Co.* and *Sears* are unhelpful to Sokol as the two decisions review an administrative agency's statutory authority to obtain discovery within an administrative proceeding. See *Coca Cola Co.*, 240 Kan. at 548-51 (K.S.A. 79-3233); *Sears*, 216 Kan. at 308-09 (K.S.A. 44-1004). Sokol offers no additional authority to support his claim the district court's order compelling his compliance with postjudgment discovery is a final decision.

In response, Kaelter points to this court's decision in *In re Martin v. Phillips* as authority for the proposition that the district court's order compelling Sokol's compliance with postjudgment discovery was a nonfinal decision. There, Martin filed a notice of registration of a child support order entered in a Washington court against Phillips. The parties had divorced in Johnson County in 1989, and the child for whom Phillips was ordered to pay support had reached adulthood. The district court held the order could be registered, and Phillips appealed. Our court affirmed the decision, and our Supreme Court denied review.

Martin then served Phillips with interrogatories and requests for the production of documents. Phillips did not respond but moved to quash the discovery. The district court denied Phillips' motion to quash, ordered him to comply, and granted Martin's request for attorney fees. Phillips again appealed, arguing the district court erred in denying his motion to quash because Martin should have requested an aid in execution hearing under K.S.A. 60-2419, instead of seeking postjudgment discovery. Our court concluded that because the collection proceedings against Phillips had not been completed, the district court's order compelling Phillips to comply with discovery was a nonfinal decision. 2016 WL 1169419, at *3. Stated the panel:

> "This issue arises in the context of post-judgment proceedings instituted by Martin to facilitate the execution of her judgment against Phillips. In post-judgment litigation, such as this, the 'final decision' is not the underlying judgment that Martin is attempting to enforce but is actually the subsequent judgment that concludes the collection proceedings. See also *In re Joint Eastern & Southern Dist. Asbestos Lit.*, 22 F.3d 755, 760 (7th Cir. 1994) ('[A] postjudgment proceeding, for purposes of appeal, must be viewed as a separate lawsuit from the action which produced the underlying judgment. Consequently, the requirements of finality must be met without reference to that underlying judgment . . . . [A]s a general rule, an order authorizing discovery in aid of execution of judgment is not appealable until the end of the case.'). Moreover, the final decision requirement was created to prevent this type of appeal. See *Cunningham v. Hamilton County*, 527 U.S. 198, 209, 119 S. Ct. 1915, 144 L. Ed. 2d 184 (1999) (expressing concern that allowing immediate appeal as of right from orders fining attorneys for discovery violations would result in 'the very sorts of piecemeal appeals and concomitant delays that the final judgment rule was designed to prevent')." 2016 WL 1169419, at *2.

See also *Central States Pension Fund v. Express Freight*, 971 F.2d 5, 6 (7th Cir. 1992) ("The judgment entered pursuant to Fed. R. Civ. P. 58 ends the proceeding to determine liability and relief, but it begins the collection proceeding if the defendant refuses to pay. A contested collection proceeding will end in a judgment or a series of judgments

granting supplementary relief to the plaintiff. The judgment that concludes the collection proceeding is the judgment from which the defendant can appeal.").

Like *Martin*, the order compelling Sokol's compliance with Kaelter's postjudgment discovery requests did not end the collection proceedings against Sokol. Instead, the order would allow Kaelter to obtain information on Sokol's assets to execute on the judgments in the collection proceedings. In addition, according to the record before us, Sokol has not complied with the district court's order and Kaelter has filed two additional discovery motions which remain pending at the time of this appeal. The district court's discovery order is a nonfinal decision.

Because Sokol's appeal concerns a nonfinal decision, and because Sokol never requested certification for an interlocutory review under K.S.A. 2018 Supp. 60-2102(c), we lack the jurisdiction to consider his appeal.

B. *Does the collateral order doctrine apply?*

Sokol next argues we should apply the collateral order doctrine to review the district court's discovery order. To apply the collateral order doctrine, "the order must '(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment.' [Citation omitted.]" *Kansas Medical Mut. Ins. Co.*, 291 Kan. at 612. Kansas courts apply the doctrine sparingly, and our Supreme Court has advised that parties relying on the collateral order doctrine to assert an appeal in the middle of litigation are in a risky position. *Kansas Medical Mut. Ins. Co.*, 291 Kan. at 612; *Harsch*, 288 Kan. at 290.

We find *Martin* dispositive on this point as well. Although the *Martin* panel held that the first two steps were met, it held Phillips had failed to show the doctrine applicable under the third step:

> "[T]he trial court's decision conclusively determined the disputed issue—*i.e.*, whether to permit post-judgment discovery. Further, the denial of Phillips' motion to quash discovery resolved an issue wholly separate from the merits of the underlying enforcement action. Therefore, the first two requirements have been met. Nevertheless, it is clear that Phillips' appeal fails the third requirement. As Martin correctly points out, if we decline to review the trial court's order denying Phillips' motion to quash discovery, that decision will still be reviewable through a later appeal once the proceedings are terminated. As a result, Phillips has failed to show that the collateral order doctrine applies to this case." 2016 WL 1169419, at *3.

Like *Martin*, the postjudgment discovery and collection proceedings against Sokol have not ended. Thus, Sokol's appeal of the district court's order compelling his compliance with postjudgment discovery will likely be reviewable after the collection proceedings.

Last, Sokol argues the doctrine applies because once he discloses the information requested in Kaelter's discovery, an appeal from the order will be moot and ineffectual on the parties' rights since his compliance will end the sole controversy in the district court. But the record does not support his claim. The record shows that Kaelter's postjudgment discovery and collection efforts have not ended. While Sokol cites authority generally describing the mootness doctrine, Sokol provides no authority to support his claim that his compliance with the postjudgment discovery order renders the issue moot in future proceedings. Accordingly, the collateral order doctrine is inapplicable and fails to save Sokol's appeal.

Appeal dismissed.