

NOT DESIGNATED FOR PUBLICATION

No. 124,856

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of  
VICTORIA LUISE NAVRAT n/k/a WIEBE,  
*Appellee,*

and

NICHOLAS ALAN NAVRAT,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Harvey District Court; MARILYN M. WILDER, judge. Opinion filed September 22, 2023. Affirmed.

*Michael P. Whalen*, of Law Office of Michael P. Whalen, of Wichita, for appellant.

*Andrew L. Foulston and Jennifer M. Hill*, of McDonald Tinker PA, of Wichita, for appellee.

Before SCHROEDER, P.J., MALONE, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: Nicholas Alan Navrat appeals from the district court's division of marital property following his divorce from Victoria Luise Wiebe, in which the court awarded a retirement account to Wiebe to reimburse her for a \$6,853.63 arrearage of joint child expenses he had not paid during the case. For the first time on appeal, Navrat claims the district court lacked jurisdiction over any contempt proceedings and violated his due process rights because of alleged procedural defects. Additionally, although he does not contest the court's decision finding him in contempt, he argues the district court abused its discretion when it awarded a retirement account (which it treated separately from the

property division) to Wiebe in order to reimburse her for the unpaid child expenses. We find that Navrat has waived any objection to procedural defects in the contempt proceedings and find that the district court did not abuse its discretion in ordering him to pay the child expenses he owed Wiebe. Thus, we affirm the district court's judgment.

## FACTS

On June 4, 2020, Wiebe petitioned for divorce from her husband, Navrat. The couple had married in 2006 and had two minor children, but they separated several months before her filing. The same day that she filed the petition, Wiebe also asked the court to enter ex parte temporary orders relating to child custody, parenting time, and child support. She also filed a proposed parenting plan, child support worksheet, UCCJEA affidavit, and a domestic relations affidavit.

The district court later issued temporary orders, which contained provisions regarding legal custody of the children, parenting time, child support, possession of marital property and financial accounts, and the sharing of child-related expenses. Those orders required Navrat to continue to provide health insurance for Wiebe and the children, to continue to make payments on Wiebe's car, and prohibited him from cashing out any of his investment accounts without permission of the court or Wiebe's consent. Navrat personally entered an appearance, waived formal service requirements, and acknowledged his receipt of the petition, temporary orders, and other documents; soon after, an attorney entered an appearance on Navrat's behalf.

Navrat filed his answer and a counter-petition as well as a motion to modify the court's ex parte temporary orders on June 24, 2020. He sought an adjustment to the child support obligation because he was, unbeknownst to Wiebe, unemployed. The district court held a hearing on Navrat's motion, at which the parties notified the court that they had reached an agreement regarding Navrat's motion. On September 3, 2020, their

agreement was memorialized in an agreed order. As part of that order, Wiebe and Navrat agreed to a joint expense plan under which each would pay for food, housing, and general welfare expenses while the children were in their custody and they would equally divide "all other expenses"—including health and dental insurance, activity expenses, school expenses, shoes, and clothing. No other substantive portions of the original ex parte order were modified.

By November, Navrat's initial attorney requested to withdraw from the case. A new attorney entered her appearance on his behalf by the end of the month. The day after Navrat obtained new counsel, Wiebe moved to hold Navrat in contempt, alleging that he had violated the conditions of the temporary ex parte orders—specifically, by failing to pay his share of their joint expense plan. She asked the court to enforce Navrat's compliance with the temporary order and asked it to order the immediate payment of the various bills and expenses that Navrat had not paid, which totaled about \$2,036.04. Wiebe filed an affidavit in support of her motion. And the district court later issued to Navrat an order to appear and show cause, which was personally served on him. Wiebe also moved to compel Navrat to respond to various discovery requests that he had either ignored or answered incompletely.

Around four months later, on March 12, 2021, after Navrat's continued nonpayment of the joint expenses and alleged noncompliance with her discovery requests, Wiebe filed an amended motion to hold him in contempt. In the amended motion, she alleged that Navrat had now failed to pay an additional \$4,032.38 owed under the temporary orders. Wiebe also filed a motion requesting a bifurcation of their divorce and the issues of property division, spousal maintenance, and child custody. Her motion once more outlined Navrat's continued nonpayment of expenses, his refusal to comply with court orders, and his alleged harassment of her.

On March 19, at Navrat's request, the district court held an emergency hearing regarding his request to modify the parenting plan. At the hearing, the parties also addressed Wiebe's amended motion for contempt. Navrat's attorney conceded that Navrat had not paid any of the money he was required to pay under the temporary orders but asked the court to modify the temporary order to eliminate certain expenses, including retroactively removing expenses related to Wiebe's car payments. He did not challenge the amount that he owed related to any other expenses and agreed with Wiebe's allegation that the arrearage totaled \$6,068.42.

Navrat agreed to make payments to Wiebe on the outstanding expenses and asked the court for time to cure his contempt. The court noted that it would only make a pending finding of contempt against Navrat, and it would provide him the opportunity to purge himself of contempt by making the required payments to Wiebe under the temporary order, which it found to equal the amount Wiebe asserted, \$6,068.42. But the court declined to make any specific contempt orders or issue sanctions against Navrat. The record contains no order or journal entry memorializing the court's ruling.

Next, the district court addressed Navrat's failure to provide complete discovery and Wiebe's concerns that Navrat was hiding investments and withdrawing money from his various accounts. Navrat demurred, but he agreed to respond to any outstanding discovery requests and an explanation for any items that he could not provide information about. The court then scheduled a status conference for the next month.

On April 19, 2021, Navrat did not appear at the status conference due to a recent COVID exposure, but Wiebe's counsel informed the court that Navrat had only made \$64 in payments to her since the prior hearing. The court noted that it appeared Navrat had continued to ignore its orders but explained that it could not hold him in contempt or sanction him without his presence. Despite Navrat's absence, the court granted the parties' request for bifurcation and granted their divorce.

On April 26, 2021, the district court entered the parties' decree of divorce, noting that the issues of child custody, parenting time, child support, spousal maintenance, and division of assets would be addressed at a later trial. The court also entered a journal entry, in which it recounted that it had tried to take "up the matter of the pending contempt findings made by this Court on the 19th day of March 2021 for failure to provide discovery to [Wiebe] and for failure to reimburse expenses as ordered by this Court to [Wiebe]" but concluded that Navrat's absence made it impossible to order sanctions. The court's order granted Navrat 30 days to provide any remaining discovery to Wiebe, ordered him to make "significant and consistent payments" of the expenses that he owed under the temporary order, and reserved any issue of sanctions, including the potential payment of Wiebe's attorney fees, for a later date.

Over the next months, Navrat made three \$500 payments to Wiebe—one each in May, June, and July. But Navrat then ceased making any further payments of the amount owed, and accruing, under the temporary orders. Another new attorney entered an appearance on Navrat's behalf in September 2021.

On September 10, 2021, Wiebe filed another motion to hold Navrat in contempt for his continued nonpayment of child expenses and for her attorney fees. She attached an affidavit in support of her motion. That same day, Wiebe moved to hold Navrat in contempt for his refusal to provide requested discovery materials, and she filed an affidavit in support of her motion. Three days later, the district court issued orders to appear and to show cause at a hearing on September 29, 2021. At that hearing, which both parties attended, the district court again deferred all contempt related issues for trial.

At the start of the trial, held on December 16, 2021, Wiebe's counsel informed the court that Navrat had that morning produced additional documents regarding his income, student loans, and other financial information that he had not disclosed. She argued that Navrat's repeated failure to comply with discovery had hampered her ability to present

evidence, but yet he had never been sanctioned by the court. She stated that Navrat had provided updated information about his salary, the value of his vehicle, and his student loan debt—he had originally stated that his debt was \$1,030.40 but had updated his account to say his debt was about \$54,000. The court noted that it would deal with any last-minute discovery issues as they arose during the hearing, and it would make its ruling about the pending contempt issue after the parties presented their evidence.

Navrat informed the court that he had misvalued the cost of his vehicle and student loans. He also testified that he had withdrawn approximately \$12,000 from certificates of deposits he held as well as more than \$5,000 from investment accounts, without court approval or Wiebe's consent. Navrat also stated that he did not personally know how much money was in the various accounts he held and that he did not have any current documentation of their value. But he estimated that one of the accounts—the Vanguard Account—was worth about \$104,000 (although it had been worth about \$73,000 when the divorce proceedings began), and that of the two CD accounts that he had made withdrawals from, one was worth \$23,000 and one was worth \$12,000. Navrat also revealed that he also had a previously unreported HSA account worth about \$10,000.

The district court noted that Navrat's apparent refusal to provide information about his assets and liabilities was troubling and made it difficult to make a fair, equitable, and just division of property. The court explained it had never seen a "party just absolutely refuse[] to provide information or apparently knowingly provide[] information that was false. That appears to be what is happening here[.]" The court then held a recess during which it spoke with both parties' counsel in chambers about the best way to proceed—ultimately, the judge continued even without full and accurate information "because I have no assurance that accurate information would be forthcoming[.]" Navrat resumed his testimony and agreed that the total value of his assets was about \$149,370.43. Later, Wiebe testified about her assets and liabilities as well as Navrat's continued nonpayment

of joint expenses owed under the temporary orders, which she stated now totaled \$6,853.63. She also requested a spousal maintenance award of \$216.45 per month.

After hearing the parties' testimony and taking a brief recess, the court announced its ruling from the bench. It explained that Navrat had made it "extremely difficult" to make an equitable division of the parties' assets and liabilities due to his failure to provide accurate information. And it added that he had "made some poor choices in this process" and "failed to follow court orders." The court then announced that it found the net value of the parties' marital estate to be \$149,370.43—it again noted that it reached this valuation based on the somewhat limited evidence it had before it. After valuing and assigning both parties' assets and debts (excluding the Vanguard account), Navrat had \$88,378.49 in assets and \$24,902 in debt, leaving him a total of \$63,476.49, while Wiebe had a total of \$43,617 in assets and \$43,372.35 in debt, for a total of \$244.65. The court noted that it had not included Navrat's updated student loan debt information in the division because it had not been disclosed until the day of trial. Finally, the court awarded Wiebe the first \$73,000 from the Vanguard account—the estimated value of the account on the date of filing—and assigned the estimated remainder of the account to Navrat in the amount of \$25,000 and the remaining \$15,000 to Wiebe. The court's division left both parties with approximately \$88,000. Finally, based on their incomes, the court ordered Navrat to pay \$200 per month in maintenance for 54 months.

While announcing the division of assets, the judge also made several comments about its prior contempt findings and awarded the funds in a retirement account to Wiebe to satisfy the outstanding money Navrat owed for joint child expenses:

"There was a judgment previously entered by this Court, after contempt finding, and the information today is that borrowing some out, plus additional expenses, Mr. Navrat owes \$6,853.63 to Ms. Navrat. So I'm basically giving her that account to assure that amount is paid. So I'm not counting that as property division."

The judge later expanded:

"I recognize that like looking at the entire picture that is not a equal or nearly equal division, but the reason that it is not truly equal or nearly equal is because of the failure to disclose information repeatedly, and it's also to assure payment on a judgement.

"I am, for the record, finding Mr. Navrat in contempt of court, but I'm not awarding any attorney's fee because I have no evidence as to a fee request."

Despite these statements, the district court did not indicate that it was sanctioning Navrat for his contempt, nor did it ever enter an order regarding sanctions. Following the trial, the district court issued a journal entry memorializing its rulings. Navrat timely appealed the district court's judgment.

#### IS THE DISTRICT COURT'S CONTEMPT FINDING INVALID DUE TO A LACK OF JURISDICTION OR VIOLATION OF NAVRAT'S RIGHT TO PROCEDURAL DUE PROCESS?

For the first time on appeal, Navrat argues the district court's finding of contempt was invalid due to (1) a lack of jurisdiction and (2) the violation of his right to due process. As for jurisdiction, Navrat argues several procedural defects deprived the district court of jurisdiction over any contempt proceedings. He also contends his procedural due process rights were violated because he did not receive adequate notice of the allegations against him, nor an opportunity to defend himself. Navrat concedes that he did not raise either of these issues before the district court.

Wiebe first responds by suggesting that Navrat was never formally held in contempt by the district court and, even if he was, he was not actually sanctioned for his actions. Second, she asserts that Navrat has waived any procedural-based challenges because he appeared at several hearings where her contempt motions were addressed, defending himself against some of her allegations and conceding to others.

Courts may exercise their authority to hold parties in contempt to maintain decorum in proceedings, to punish those obstructing the administration of justice, and to enforce judgments. This power is inherent to the judiciary and necessary to the due exercise of the court function. *In re J.T.R.*, 47 Kan. App. 2d 91, 94, 271 P.3d 1262 (2012). That said, the procedural requirements in a contempt of court action are regulated by statute: "No inherent power to punish for contempt exists independent of K.S.A. 20-1201 *et seq.*" *State v. Jenkins*, 263 Kan. 351, 352, 950 P.2d 1338 (1997). Thus, the applicable statutes must be followed before a sanction may be imposed on a contemnor. *State v. Delacruz*, 307 Kan. 523, 529-30, 411 P.3d 1207 (2018). A contempt order that results from procedures that violate the statutes may be void for lack of jurisdiction. See, e.g., *Padron v. Lopez*, 289 Kan. 1089, 1106-07, 220 P.3d 345 (2009). The question of whether the applicable statutory procedures were followed is subject to unlimited review on appeal. *In re Paternity of S.M.J. v. Ogle*, 310 Kan. 211, 212, 444 P.3d 997 (2019).

K.S.A. 2022 Supp. 20-1204a governs the procedure for indirect contempt—that is, conduct that occurs outside the presence of a judge, such as Navrat's failure to follow the court's temporary orders or cooperate with Wiebe's discovery requests. The statute provides:

"(a) When an order in a civil action has been entered, the court that rendered the same may order a person alleged to be guilty of indirect contempt of such order to appear and show cause why such person should not be held in contempt if there is filed a motion requesting an order to appear and show cause which is accompanied by an affidavit specifically setting forth the facts constituting the alleged violation.

"(b) Except as provided in subsection (e), the order to appear and show cause shall be served upon the party allegedly in contempt by the sheriff or some other person appointed by the court for such purpose. Such order shall state the time and place where the person is to appear and shall be accompanied by a copy of the affidavit provided for in subsection (a). The court shall hear the matter at the time specified in the order, and upon proper showing, may extend the time so as to give the accused a reasonable opportunity to purge oneself of the contempt. If the court determines that a person is

guilty of contempt such person shall be punished as the court shall direct." K.S.A. 2022 Supp. 20-1204a(a), (b).

The Kansas Supreme Court has described the rationale for the affidavit requirement, explaining that because the alleged contemnor could be punished by fine or imprisonment, they are entitled to know the nature and cause of the accusations against them. *Hartman v. Wolverton*, 125 Kan. 202, 205, 263 P. 789 (1928). More recently, the court has commented that "[s]trictly speaking, [K.S.A. 20-1204a] provides more than the minimum notice and opportunity to be heard required to uphold civil contempt sanctions under the federal constitutional due process rubric." *In re Paternity of S.M.J.*, 310 Kan. at 214. Finally, the court has stated the statute must be strictly construed against the moving party. *Alpha Med. Clinic v. Anderson*, 280 Kan. 903, 926-27, 128 P.3d 364 (2006).

Relevant here, this court has held that the failure to file an affidavit with the motion seeking an order to hold a party in contempt—as required under K.S.A. 2022 Supp. 20-1204a(a)—may deprive a court of jurisdiction. *Johnson v. Johnson*, 11 Kan. App. 2d 317, 319, 721 P.2d 290 (1986) (citing *Weber v. Sutorius Bread Company*, 185 Kan. 178, 341 P.2d 965 [1959]; *In re Smith, Petitioner*, 52 Kan. 13, 33 P. 957 [1893]). "However, the court will have jurisdiction if the person allegedly in contempt waived the filing of an affidavit either by filing an answer and proceeding to trial or by some other affirmative action." *Johnson*, 11 Kan. App. 2d at 319-20 (citing *State v. McPherson*, 208 Kan. 511, 518, 493 P.2d 228 [1972]; *Hartman*, 125 Kan. at 205; *Butler v. Butler*, 82 Kan. 130, 107 P. 540 [1910]; *State v. Walker*, 78 Kan. 680, 97 P. 862 [1908]).

Navrat's claims that any contempt finding was invalid due to a lack of jurisdiction or a violation of his procedural due process rights are interrelated and can be addressed together. Navrat argues that the district court lacked jurisdiction over any contempt proceeding due to several procedural defects, including: (1) He was not properly served with affidavits supporting Wiebe's contempt motions; (2) the order to appear was issued

by a clerk of the court, not the district court; and (3) Wiebe's amended motion did not include the requisite affidavit. See K.S.A. 2022 Supp. 20-1204a(a), (b).

Navrat acknowledges that he did not raise any of these alleged procedural issues with the district court as they arose over the many months of proceedings. But jurisdiction may be raised for the first time on appeal. *State v. Johnson*, 309 Kan. 992, 995, 441 P.3d 1036 (2019). But as Wiebe points out, Navrat's failure to raise these issues creates a problem beyond preservation. Navrat's appearance at the hearings and trial on the allegations, where he not only defended himself but also conceded to his contemptuous conduct, effectively waived any objection to procedural flaws.

Several decisions from this court support Wiebe's argument. As noted above, strict compliance with the procedural requirements of K.S.A. 2022 Supp. 20-1204(a) may be waived by a contemnor. See *Johnson*, 11 Kan. App. 2d at 319-20. Prior panels of this court have repeatedly found that a party's affirmative actions of either responding to a contempt motion or defending against the allegations, without raising alleged procedural defects, waives the requirements of K.S.A. 2022 Supp. 20-1204a. Such was the case in *Johnson*, 11 Kan App. 2d at 320, where the appellant had repeatedly appeared in court and defended against motions for contempt, none of which had been accompanied by the requisite affidavit. Similarly, in *In re Marriage of Gottlieb*, No. 66,480, 1991 WL 12018918, at \*2 (Kan. App. 1991) (unpublished opinion), the contemnor, who was alleged to have failed to pay money owed under a separation agreement, was found to have waived any objection to procedural defects by testifying and defending against the allegations without raising objections. Again, in *In re Marriage of Brotherton*, 30 Kan. App. 2d 1298, 1300, 59 P.3d 1025 (2002), a contemptuous party argued, for the first time on appeal, that personal jurisdiction was lacking because she had never been served with the notice of hearing. While the *Brotherton* court found the record did not support her argument, it also noted that the contemnor had voluntarily submitted herself to the

jurisdiction of the court by appearing at three different contempt hearings without raising her jurisdiction-based argument.

In contrast, in *Padron*, 289 Kan. at 1107, although the contemptuous party defended himself against the contempt accusation, he also repeatedly raised jurisdiction-based procedural arguments both at the hearing and in later motions. These repeated objections could preserve the jurisdiction-based argument for appellate review. Here, Navrat raised no such objection at the hearings or the trial where the district court heard the contempt matters.

Navrat personally appeared at the initial hearing on Wiebe's allegations of contempt on March 19, 2021. His attorney explained to the court that he and Wiebe's counsel had reached an agreement about the contempt allegations. Navrat conceded that he had not been paying his share of joint expenses under the temporary order and even agreed to the amount Wiebe alleged he owed—\$6,068.42. He also agreed that he had not fully responded to Wiebe's discovery requests but asked for time to cure his contempt by making payments and providing the requested materials. The court agreed with his request, finding Navrat in contempt but allowing him to purge himself through compliance. Navrat did not seize this opportunity, paying only \$64 to Wiebe and providing no additional discovery. And he did not appear at the later hearing; the district court noted that it could not sanction him in absentia and deferred to a later date, but it ordered him to comply with its orders.

Over the next few months, Navrat did make several payments, totaling \$1,500. Navrat was personally present at the next hearing when the district court announced that the contempt issues were again deferred until trial, about three months later. Finally, at trial Navrat both acknowledged his continued nonpayment of the joint expenses and conversely stated that he had tried to give checks to Wiebe. In short, Navrat had notice of the allegations against him throughout the proceedings, at times acquiesced to the district

court's orders regarding his noncompliance, and testified in defense of his actions at trial. And at no point during these proceedings did he raise the jurisdictional and due process arguments he presently asserts.

Ultimately, Navrat's actions resemble those cases in which the contemnor waived later procedural challenges by taking affirmative actions without objecting to allegedly defective procedures. The record shows that Navrat was fully apprised of the charges against him concerning his failure to make payments as required under the temporary order and to comply with Wiebe's discovery requests. He personally appeared at most of the hearings, was represented by counsel at all of them, and—considering that he admitted to the allegations against him and made partial attempts to comply with the court's orders—he was aware of the nature of the allegations that had been repeatedly made against him for well over a year. Finally, Navrat was given ample opportunity to defend himself against the accusations, even though he ultimately appeared to stipulate to them. Most importantly, despite attending multiple hearings and a trial where the matters were discussed, at no time before this appeal did Navrat raise these procedural claims.

Although the record perhaps reveals that certain procedures under K.S.A. 2022 Supp. 20-1204a were not strictly followed, we find that Navrat waived his arguments about jurisdiction and due process by taking affirmative actions against Wiebe's contempt allegations. Further, it cannot be said that Navrat's procedural due process rights were violated; he was given ample notice of the allegations, time to prepare a defense, to raise procedural objections, and an opportunity to defend himself.

DID THE DISTRICT COURT ABUSE ITS DISCRETION BY REQUIRING NAVRAT TO  
REIMBURSE WIEBE FOR THE MANDATED JOINT CHILD EXPENSES?

Navrat makes several arguments challenging the district court's decision to award the remainder of a retirement account to Wiebe to reimburse her for the amount that he

owed under the joint child expenses provision of its temporary order. He contends that the district court erred by imposing a criminal, rather than civil, sanction against him when it distributed a retirement account to Wiebe to satisfy the \$6,853.63 arrearage that he owed Wiebe for joint child expenses. He also argues the district court imposed an inequitable division of property that is unreviewable by this court because the payment of that judgment as a sanction was imbedded in the parties' property division.

Wiebe maintains that the district court did not abuse its discretion and asserts that the district court's award of the retirement account was not a penalty amounting to a criminal sanction because it only covered an amount that Navrat already owed under the court's prior rulings. She also argues that, assuming the award was a sanction, the court acted within its discretion.

This court applies a dual standard of review to challenges to a district court's contempt finding. The district court's determination that the alleged conduct constituted contempt is reviewed *de novo*, while the imposition of sanctions is reviewed for abuse of discretion. *In re M.R.*, 272 Kan. 1335, 1342, 38 P.3d 694 (2002). Discretion is abused when a judicial action is (1) arbitrary, fanciful, or unreasonable; (2) based on a legal error; or (3) based on a factual error. See, e.g., *Biglow v. Eidenberg*, 308 Kan. 873, 893, 424 P.3d 515 (2018). The party asserting the district court abused its discretion bears the burden of showing it. *Gannon v. State*, 305 Kan. 850, 868, 390 P.3d 461 (2017).

Navrat has not challenged the district court's conclusion that his conduct was contemptuous. The only question before this court is whether the district court abused its discretion in crafting the remedy it did by granting Wiebe a retirement account in satisfaction of the arrearage on the joint child expenses covered in the temporary orders.

Kansas recognizes two types of contempt: direct and indirect. K.S.A. 20-1201. Direct contempt must be committed in front of a judge, and all other forms of contempt

outside the court are classified as indirect. K.S.A. 20-1202. Navrat's actions—not paying his share of the parties' joint child expenses and failure to provide complete discovery—occurred outside the presence of a judge and thus constitute indirect contempt.

Contempt is further divided into two more categories: criminal and civil. The categories "are distinguished by the intent of the penalty imposed and not necessarily the nature of the underlying legal or equitable action that the court is dealing with." *In re J.T.R.*, 47 Kan. App. 2d at 95. "Civil contempt proceedings are remedial in nature and designed to advance the private right of a litigant won by court order. Any civil contempt penalty is intended to be coercive, and relief can be achieved only by compliance with the order." 47 Kan. App. 2d at 95. A sanction for civil contempt is ultimately intended to be remedial or to compensate the other party for the contemptuous act. *Jenkins*, 263 Kan. at 358-59. On the other hand, criminal contempt is conduct directed against the dignity and authority of a court that tends to obstruct the administration of justice. 263 Kan. at 358. And penalties for criminal contempt are typically punitive in nature and imposed in vindication for the contemptuous act. 263 Kan. at 358.

The distinction between criminal and civil contempt is not always easy to define, but because Navrat contends that the district court abused its discretion by improperly furnishing a criminal sanction, the nature of the court's order must be addressed. This court has provided two questions to help illuminate the nature of a sanction: (1) Is the court attempting to enforce its orders? (2) Is the court attempting to punish an actor for disrespect or disobedience? Generally speaking, "[i]f the former is true, then the answer is usually civil contempt; if it is the latter, then the contempt action is criminal." *In re J.T.R.*, 47 Kan. App. 2d at 95.

Here, the district court's alleged sanction for Navrat's contempt was its award of the retirement account to Wiebe "to reimburse [her] for the Children's billings and satisfaction of the previous judgment entered by this Court, both now totaling \$6,853.63."

Although the district court stated during trial that it was finding Navrat in contempt, it did not explain whether its contempt finding was based on his discovery violations or his failure to pay the mandated child expenses. The nature of its order clarifies that it focused on Navrat's nonpayment of the children's expenses. As the judge explained,

"There was a judgement previously entered by this Court, after contempt finding, and the information today is that borrowing some out, plus additional expenses, Mr. Navrat owes \$6,853.63 to Ms. Navrat. So I'm basically giving her that account to assure that amount is paid. So I'm not counting that as property division."

In essence, the award of the retirement account to Wiebe appears to have been remedial in nature—it was crafted to ensure Navrat's compliance with its previous orders and judgment. Although it did so from the bench, the district court's journal entry of its ruling never references any contempt finding, nor does it state that the ruling on the matter was a sanction. It simply states that it was awarding Wiebe the account to reimburse her for the expense Navrat owed.

The distinction between a criminal and civil sanction boils down to whether the court is seeking to punish the contemnor for their disobedience or attempting to coerce compliance. Here, the court's order was not penal, but instead a method to ensure the payment of the amount that Navrat owed under the temporary order in place during the proceedings. It is undisputed that—other than three \$500 payments—Navrat did not tender any payment to Wiebe towards the amounts of joint child expenses owed and accrued during the proceedings. The district court granted Navrat the opportunity to purge his contempt by simply paying the amounts that had accrued, but Navrat did not do so. By the time the parties reached the trial, Navrat owed Wiebe \$6,853.63, and the court ordered the retirement account to satisfy that debt. Navrat would have owed Wiebe that amount even if the district court were determined to impose a punitive sanction. Thus, the ruling cannot be fairly classified as a penalty, and Navrat's argument that the district court

erred by imposing a criminal sanction must fail. The district court was merely seeking compliance with its prior orders after finding Navrat to be in contempt.

Finally, Navrat argues that the district court abused its discretion because its award of the retirement account improperly occurred within its division of the marital property. He asserts that "there was no showing by the district court in its orders as to what assignments to [him] were for property division and what assignments were made as sanctions against [him]." It is perhaps important to note that Navrat does not actually contend that the division of property was inequitable for any substantive reason, he merely asserts that this court should order a remand because the matter is "unreviewable" as the sanction was comingled along with the property division.

Contrary to Navrat's assertion, the district court delineated its award of the retirement account to reimburse Wiebe as separate from the property division, both in its ruling from the bench and in its journal entry. From the bench, the court explained that it was not considering the reported amount in the retirement account in its division of property and was instead "basically giving [Wiebe] that account to assure that amount is paid." Similarly, in the journal entry the court stated that the retirement account "shall not be considered property settlement." In other words, after already assigning the account as part of Navrat's property, the district court removed it from the division calculations and applied it towards satisfying its prior judgment of unpaid child expenses.

Moreover, Navrat's assertion that the district court openly stated that its division was inequitable is also misplaced. The district court explained that the property division possibly looked unequal, but that it was making its ruling based on the somewhat limited information it had before it due to Navrat's lacking disclosures and his outstanding judgment for unpaid child expenses. The district court acknowledged that its ability to properly value and divide the marital estate had been hampered by Navrat's actions, but that it had arrived at the most equitable distribution under the circumstances.

While the district court's ruling could have been crafted in a more precise manner, perhaps by explicitly delineating whether it was sanctioning Navrat or merely enforcing a prior judgment (or even handling the contempt issue separately from the property division all together), we find that Navrat cannot show that the district court's order was based on an error of fact or law, nor that no reasonable person would agree with its decision. Thus, we conclude the district court did not abuse its discretion by requiring Navrat to reimburse Wiebe for the mandated joint child expenses.

Affirmed.