NOT DESIGNATED FOR PUBLICATION

No. 125,015

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

PATRICK DOYLE,
Appellant,

v.

BLACK AND VEATCH CORPORATION,
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; ROBERT J. WONNELL, judge. Opinion filed March 17, 2023. Affirmed.

Patrick Doyle, appellant pro se.

Michael T. Raupp and *Brian J. Zickefoose*, of Husch Blackwell LLP, of Kansas City, Missouri, for appellee.

Before ARNOLD-BURGER, C.J., GARDNER and CLINE, JJ.

ARNOLD-BURGER, C.J.: Patrick Doyle filed a breach of contract lawsuit against his former employer, Black and Veatch Corporation, in the Wyandotte County District Court, arguing that the company failed to follow a grievance process outlined in the company's code of conduct before terminating his employment. After the Wyandotte County District Court transferred the case to Johnson County, the Johnson County District Court entered an order (1) denying Doyle's motion to alter or amend the order transferring venue; (2) denying Doyle's motion for default judgment; and (3) granting

Black and Veatch's motion to dismiss for being filed outside the statute of limitations. Doyle now appeals, raising several claims of error. Finding no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

In June 2016, Black and Veatch terminated Doyle's employment for violating the company's code of conduct policy. Just under five years later, Doyle filed a petition against Black and Veatch in the Wyandotte County District Court based on a breach of contract for failing to follow the company's code of conduct before termination of employment. As shown by an exhibit attached to Doyle's petition, the code of conduct contained the following relevant provisions:

> "At times, the company may find it necessary to take appropriate action regarding a professional who has violated our Code of Conduct. In such cases, discipline can range from warning and reprimand to termination. Professionals will be informed of the charges against them and will be given the opportunity to explain their actions before any disciplinary action is imposed.
>
> "Nothing in this Code is intended or shall be construed to create an expressed or implied contract of employment. Failure to comply with the provisions of the Code of Conduct may also represent a breach of prevailing law and lead to civil or criminal actions against individuals."

While Doyle agreed that the code of conduct alone did not create a written contract, he nonetheless asserted that an agreement he signed in January 2016 to "conform to the standards in the [code of conduct]" created a contract between himself and Black and Veatch. Thus, because Black and Veatch denied him the opportunity to explain his actions before terminating his employment, Doyle contended he was entitled to monetary compensation based on a breach of a written contract. Doyle served Black and Veatch's registered agent with a copy of the petition on June 14, 2021.

On July 9, 2021, Doyle moved for a default judgment because Black and Veatch failed to timely respond within 21 days of service as required by K.S.A. 2021 Supp. 60-212. Doyle served a copy of the motion on Black and Veatch's registered agent by certified mail on July 12, 2021.

On July 16, 2021, Black and Veatch opposed Doyle's motion for default judgment, explaining that their in-house employment counsel "simply missed" the email from the registered agent notifying them of the lawsuit and was not fully aware of Doyle's filings until July 13, 2021. Black and Veatch then "acted immediately" by requesting an extension to respond from the clerk that same day. See Kansas Supreme Court Rule 113 (2022 Kan. S. Ct. R. at 200). Alternatively, Black and Veatch argued that even without the extension, default judgment would not be proper because of the general rule disfavoring default judgments given Black and Veatch's active involvement in the case.

Three days later, Black and Veatch filed two motions: a motion to transfer venue to Johnson County, based on either K.S.A. 60-404, K.S.A. 60-609(a), or K.S.A. 60-611; and a motion to dismiss for failure to state a claim upon which relief can be granted. For the venue transfer, Black and Veatch argued that transferring the case to Johnson County would be appropriate because the cause of action arose there and because Black and Veatch's headquarters is located there—and therefore nearly all the testifying witnesses who worked for Black and Veatch, were in Johnson County. As for the motion to dismiss, Black and Veatch asserted that Doyle's breach of contract claim stemmed from an implied contract and therefore controlled by a three-year statute of limitations under K.S.A. 60-512. Alternatively, Black and Veatch argued that Doyle's implied contract claim still failed because Kansas law disfavored interpreting an employee's code of conduct policy as an express or implied employment contract. See *Johnson v. National Beef Packing Co.*, 220 Kan. 52, 55, 551 P.2d 779 (1976).

Doyle responded. As for Black and Veatch's response to the motion for default judgment, Doyle raised two primary objections: (1) based on K.S.A. 60-212 and K.S.A. 60-255, Black and Veatch needed to file any response within 21 days of service, otherwise Doyle had a right to default judgment; and (2) based on K.S.A. 60-260, Black and Veatch could not show they were entitled to relief from a default judgment. As for the motion to dismiss, Doyle argued that a five-year statute of limitations applied because his claim was based on a written contract. The register of actions shows Doyle also responded to the motion to transfer venue, but the filing itself is unavailable in the record on appeal.

Wyandotte County District Court Judge Timothy Dupree held a hearing on the pending motions in August 2021, first addressing the request for venue transfer. After considering the parties' arguments, Judge Dupree announced that he agreed with Black and Veatch and would be transferring venue to Johnson County. Specifically, the judge found that since "everything took place in Johnson County, the business is located in Johnson County, [and] the witnesses are located in Johnson County[,] . . . justice will be best served by having venue transferred to Johnson County pursuant to [K.S.A.] 60-609(a)." Judge Dupree further noted the other pending motions should be considered in Johnson County. Following the hearing, the court entered a written order memorializing these findings and transferring venue to Johnson County.

Upon transfer, Doyle moved to alter or amend Judge Dupree's order, arguing he was entitled to a new hearing under K.S.A. 60-259 and suggesting that Black and Veatch procured the venue transfer "by corruption" and making false statements that Black and Veatch was not conducting business in Wyandotte County. Black and Veatch opposed Doyle's motion for four reasons, arguing (1) it would be improper to review Judge Dupree's venue determination; (2) K.S.A. 60-259 could not be used to modify the order transferring venue because it is not a final judgment; (3) Doyle cited the wrong statute as

the basis for Judge Dupree's decision; and (4) Judge Dupree ruled correctly because Doyle is the only party in Wyandotte County.

Later, Johnson County District Court Judge Robert Wonnell presided over a hearing on the pending motions, beginning with Doyle's motion to alter or amend the order transferring venue. After considering the parties' arguments, Judge Wonnell announced he was denying that motion for lack of jurisdiction since the court was "not aware of any statute or case that would give me the jurisdiction and authority to alter or amend another district court judge's decision." Next, the judge denied Doyle's motion for default judgment, agreeing with Black and Veatch and finding that "[i]n Kansas default judgments are not favored" and noting Black and Veatch's continued involvement also precluded default judgment. Finally, the judge granted Black and Veatch's motion to dismiss, finding that the three-year statute of limitations applied to Doyle's claim because it stemmed from an implied oral contract. Following the hearing, the court entered a written journal entry in October 2021 memorializing its rulings.

Doyle moved to alter or amend the October 2021 judgment under K.S.A. 60-259, repeating his previous argument that Black and Veatch procured the venue transfer by misleading the court, and adding that stare decisis required granting his motion for default judgment. After holding a hearing, Judge Wonnell denied Doyle's motion, finding no error in his previous rulings.

Doyle timely appealed.

ANALYSIS

I. DOYLE FAILS TO ESTABLISH THAT THE COURT ABUSED ITS DISCRETION IN TRANSFERRING VENUE TO JOHNSON COUNTY

Doyle's first argument is that the district court "err[ed] in failing to grant Plaintiff venue in Wyandotte County in conformance with K.S.A. 60-604."

We review a motion to alter or amend for an abuse of discretion.

Appellate courts review the denial of a motion to alter or amend a judgment for an abuse of discretion. *AkesoGenX Corp. v. Zavala*, 55 Kan. App. 2d 22, 30-31, 407 P.3d 246 (2017). But if a district court lacked jurisdiction to enter an order, an appellate court does not acquire jurisdiction over the subject matter on appeal. *In re Care & Treatment of Emerson*, 306 Kan. 30, 39, 392 P.3d 82 (2017); see also *Via Christi Hospitals Wichita v. Kan-Pak*, 310 Kan. 883, 889, 451 P.3d 459 (2019) (whether jurisdiction exists is a question of law subject to unlimited review). Thus, if the district court lacked jurisdiction—as Judge Wonnell concluded when ruling on Doyle's motion to alter or amend the order transferring venue—this court would have to dismiss Doyle's claims related to venue.

Judge Wonnell did not lack the authority or jurisdiction to review the order transferring venue.

Although Black and Veatch moved for transferring venue on several grounds, Judge Dupree granted their request solely under K.S.A. 60-609(a). That statute authorizes a district court to transfer a civil case "to any county where it might have been brought upon a finding that a transfer would better serve the convenience of the parties and

witnesses and the interests of justice." K.S.A. 60-609(a). The statute is silent on the effect of a change of venue on jurisdiction.

Kansas Supreme Court precedent discussing statutory predecessors to K.S.A. 60-609 seems to hold that the court to which a case is transferred simply steps into the shoes of the original court. For example, *Hazen v. Webb*, 65 Kan. 38, 68 P. 1096 (1902), involved an action for partition of a jointly owned property subject to judgment liens. The original action involved several co-owners of only part of the entire property and was filed in Shawnee County—the location of the property. After the court transferred venue to Jackson County, the lienholders on the portion of the disputed property filed an answer and cross-petition that included a demand for other portions of the property to be partitioned as well, which would require joinder of additional co-owners. The Kansas Supreme Court determined that the receiving court acquired "co-extensive" jurisdiction with the original court "and may inquire into anything connected with the subject-matter of the action, and render any judgment which might have been rendered by the court in which the case originated." 65 Kan. 38, Syl. ¶ 2; see also *Moore v. Hopkins*, 112 Kan. 345, 347, 210 P. 1095 (1922) (citing *Hazen*, 65 Kan. 38) ("[T]he court to which [a case] is removed acquires full jurisdiction and may render any judgment which the court in which it originated could have rendered.").

Based on the holdings from *Hazen* and *Moore*, the Johnson County District Court did not lack the authority or jurisdiction to review the order transferring venue just because it was a decision rendered by another district court. Stated another way, the Johnson County District Court could render any judgment—including to review an order transferring venue by the Wyandotte County District Court—once the case was transferred. So we turn to the merits of Doyle's claim.

Doyle fails to establish an abuse of discretion.

Appellate courts review a court's decision to change venue under K.S.A. 60-609 for an abuse of discretion. *Bicknell v. Kansas Dept. of Revenue*, 315 Kan. 451, 462, 509 P.3d 1211 (2022). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *Biglow v. Eidenberg*, 308 Kan. 873, 893, 424 P.3d 515 (2018). As the party asserting error, Doyle bears the burden of establishing an abuse of discretion. *Gannon v. State*, 305 Kan. 850, 868, 390 P.3d 461 (2017).

Doyle relies on K.S.A. 60-611 as support for his venue challenge but appears to misunderstand its applicability. That statute provides:

> "If an action is commenced in good faith and a subsequent timely objection to the venue is sustained, or if before trial on the merit commences, it is found that no cause of action exists in favor of or against a party upon whom venue was dependent, the action shall be transferred to a court of proper jurisdiction of any county of proper venue. If there is more than one such county, the transfer shall be to the court of a county selected by the plaintiff." K.S.A. 60-611.

As this court has noted—and as Black and Veatch correctly notes—K.S.A. 60-611 only governs when a court determines that an action was *initially* filed in an improper venue. See *Johnson v. Zmuda*, 59 Kan. App. 2d 360, 365, 481 P.3d 180 (2021). Judge Dupree specifically based the decision to transfer venue on K.S.A. 60-609(a), which allows a court to change venue to "any county where it might have been brought upon a finding that a transfer would better serve the convenience of the parties and witnesses and the interests of justice." Put simply, there is nothing in the record even suggesting that the district court determined Wyandotte County was an improper venue. Nor does Doyle make any attempt to challenge whether Johnson County was a proper venue. See K.S.A.

60-604 (allowing a case against a corporation to be brought in several counties, including where "the cause of action arose").

Accordingly, Doyle's claim on this issue fails.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY DENYING DOYLE'S MOTION FOR DEFAULT JUDGMENT

Doyle next argues the district court erred by denying his motion for default judgment.

The key facts related to Doyle's motion for default judgment are undisputed. Black and Veatch was properly served with this lawsuit on June 14, 2021. Under K.S.A. 2021 Supp. 60-212(a)(1)(A)(i) Black and Veatch had 21 days to file an answer, or until July 5, 2021. It did not do so. "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the party is in default." K.S.A. 2021 Supp. 60-255(a); see also *Bazine State Bank v. Pawnee Prod. Serv., Inc.*, 245 Kan. 490, 493, 781 P.2d 1077 (1989) ("Failure to file an answer is prima facie a default."). Thus, Black and Veatch was in default. But that does not end the matter.

Once a party is in default the opposing party must file a motion with the court seeking a default judgment. The party must show that the defaulting party's actions justify the entry of such a judgment. K.S.A. 2021 Supp. 60-255(a) ("On request and a showing that a party is entitled to a default judgment, the court must render judgment against the party in default for the remedy to which the requesting party is entitled.").

Even when faced with a party in default, a judge need not enter a default judgment. In fact, default judgments are not favored in the law. *Smith v. Philip Morris Companies*, 50 Kan. App. 2d 535, Syl. ¶ 18, 335 P.3d 644 (2014). Such judgments are

particularly disfavored when the lawsuit involves large sums of money. *Montez v. Tonkawa Village Apartments*, 215 Kan. 59, 63, 523 P.2d 351 (1974) (quoting *Tozer v. Charles A. Krause Milling Co.*, 189 F.2d 242, 245 [3d Cir. 1951]). ("'Matters involving large sums should not be determined by default judgments if it can reasonably be avoided.'"). Nor should a litigant be unnecessarily penalized for the simple neglect of their counsel. *Montez*, 215 Kan. at 64.

What happened after the default is also not in dispute. Doyle did not dispute that Black and Veatch's failure to respond was because of a clerical mix-up—he simply argued that it was not a sufficient reason to avoid entry of a default judgment. After it was alerted to the filing, Black and Veatch acted the next day to seek permission to have an answer on file by July 19, or two weeks after it was due. It filed a response to Doyle's motion for default judgment four days after it was served. And, on July 19, it moved to dismiss Doyle's claim asserting its statute of limitations defense that the court ultimately found to be meritorious. After a hearing, Doyle's motion for default judgment was denied.

We review the denial of a motion for default judgment for abuse of discretion. *Smith*, 50 Kan. App. 2d 535, Syl. ¶ 18. A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *Biglow*, 308 Kan. at 893. As the party asserting an abuse of discretion, Doyle bears the burden of showing such abuse of discretion. *Gannon*, 305 Kan. at 868. In determining whether the district court's decision was reasonable, we examine whether reasonable persons could differ as to the propriety of the action taken by the trial court. If reasonable persons could differ, then it cannot be said the trial court abused its discretion. *State v. Ballou*, 310 Kan. 591, 616, 448 P.3d 479 (2019). We do not substitute our judgment for that of the district court.

Here, in denying the motion, Judge Wonnell correctly noted that default judgments are not favored in the law and that it is preferable that cases be decided on their merits. In the same vein, he noted that extensions of time should be freely given. He pointed out that this was a case in which the defendant had entered an appearance, filed documents objecting to the default, showed a willingness to litigate the case, and the delay was short. He said that the granting of default judgment seemed to be reserved for cases of gross negligence and complete noncompliance.

Doyle on the other hand, who bears the burden here, offers no authority to contest the district court's primary reason for denying his motion for default judgment—that they are not favored in the law and a decision on the merits is preferred. He cites only to cases that set forth elements that must be established to set aside a default judgment. This is the denial of a motion for default judgment, not the setting aside of a default judgment already entered. So the caselaw Doyle cites has no application to these facts.

In reaching his decision, Judge Wonnell did not commit an error of fact or of law. And we find that his decision was not unreasonable. Not only was the delay short, and the desire to defend evident, the amount of money demanded by Doyle exceeded $425,000, and the reason for the short delay was simple carelessness. Because reasonable people could differ on whether the motion should have been granted, we cannot find that Judge Wonnell abused his discretion.

III. THE DISTRICT COURT DID NOT ERR BY DISMISSING DOYLE'S PETITION BASED ON THE STATUTE OF LIMITATIONS

Lastly, Doyle presents two arguments related to the merits of his breach of contract claim: (1) whether the district court correctly determined there was no written contract; and (2) whether the district court applied the correct statute of limitations.

Our standard of review is de novo.

Appellate courts review a ruling on a motion to dismiss de novo. *Hill v. State*, 310 Kan. 490, 500, 448 P.3d 457 (2019). In doing so, this court must accept as true any facts alleged by the plaintiff, along with any reasonable inferences which may be drawn from those facts. 310 Kan. at 500. What's more, this court exercises unlimited review over questions of law, including interpretation of statutes or contracts, and owes no deference to the district court's interpretation of them. *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019) (statutory interpretation); *Trear v. Chamberlain*, 308 Kan. 932, 936, 425 P.3d 297 (2018) (contract).

The parties concede that an employment agreement existed, the only issue is whether it was express or implied.

Kansas law generally favors at-will employment, meaning that "employees and employers may terminate an employment relationship at any time for any reason, unless there is an express or implied contract governing the terms of employment." *Peters v. Deseret Cattle Feeders*, 309 Kan. 462, 469-70, 437 P.3d 976 (2019). Normally, the existence of a contract is a question of fact. *U.S.D. No. 446 v. Sandoval*, 295 Kan. 278, 282, 286 P.3d 542 (2012). But here, Black and Veatch concedes that some form of a contract existed by only arguing about whether the contract was express or implied. Moreover, this court's standard of review requires us to resolve factual allegations in Doyle's favor, so this court must accept Doyle's allegation as true that he had an employment contract with Black and Veatch.

But determining whether a contract existed does not fully resolve this appeal, because the ultimate conclusion reached by the district court was that Doyle's claim was barred by a three-year statute of limitations since it stemmed from an implied or oral contract contained within Black and Veatch's employee code of conduct. Compare

K.S.A. 60-511 (five-year statute of limitations applies to "[a]n action upon any agreement, contract or promise in writing") with K.S.A. 60-512 (three-year statute of limitations applies to "[a]ll actions upon contracts . . . expressed or implied but not in writing"). The interpretation and application of a statute of limitations is a question of law over which this court's review is unlimited. *Smith v. Graham*, 282 Kan. 651, 655, 147 P.3d 859 (2006). That necessarily means Doyle must show to this court that his breach of contract claim arises from an express written contract to overcome the district court's judgment.

Doyle's position is that he had a written contract with Black and Veatch, which was created when he agreed to adhere to the company's code of conduct in January 2016. In contrast, Black and Veatch contend—and the district court agreed—that even under Doyle's theory of the case, any contract would have been implied since there was no fixed term of employment. On this point below, the district court relied on similar cases involving breach of contract claims against former employers. See *Johnson*, 220 Kan. at 55; *Emerson v. Boeing Co.*, No. 92-1279-MLB, 1994 WL 149191, at *4 (D. Kan. 1994) (unpublished opinion). In both cases, the court rejected attempts by the plaintiff to argue a breach of an express or implied contract based on an employee handbook. Notably, in *Johnson*, our Supreme Court observed the lack of a fixed term of employment was critical to the plaintiff's claim. *Johnson*, 220 Kan. at 54. Following that reasoning, the district court here likewise concluded that even after resolving all the facts and inferences in Doyle's favor, "the Court would be looking at whether or not an oral contract for employment was made, and that would be subject to a three-year statute of limitations."

Although Doyle cites several cases discussing the interpretation of written contracts, only one seems to test the district court's primary conclusion and reliance on *Johnson*. See *Morriss v. Coleman Co.*, 241 Kan. 501, 738 P.2d 841 (1987). In that case, former employees filed a wrongful discharge action based in part on an implied contract, but the district court granted defendant's motion for summary judgment after finding no

factual dispute about the parties' intent to create an implied employment contract. Part of the trial court's conclusion stemmed from an express disclaimer in an employee policy manual stating that the policy "'should not be construed as an employment contract or guarantee of employment.'" 241 Kan. at 506. As Doyle notes, the Kansas Supreme Court reversed the summary judgment ruling as to the implied contract claim, holding that the disclaimer alone "does not as a matter of law determine the issue." 241 Kan. at 514. Even so, the court limited its holding by noting "[t]here has been no trial in this case, and we only hold that the evidence presented in the record at the time summary judgment was granted was insufficient to require summary judgment in favor of defendants as a matter of law." 241 Kan. at 514.

Doyle cannot rely on *Morriss* because it fails to support his argument that a written employment contract existed. The plaintiffs in *Morriss* relied solely on a breach of an *implied* contract as a basis for their action, so it is easily distinguished. To that end, Doyle provides no persuasive authority to counter the district court's conclusion that the lack of a fixed term defeats his assertion that there was a written employment contract in this case. In fact, this court has held that "'personnel rules which are not bargained for cannot alone be the basis for an express or implied contract of employment.'" *Kastner v. Blue Cross & Blue Shield of Kansas, Inc.*, 21 Kan. App. 2d 16, 26-27, 894 P.2d 909 (1995) (quoting *Conyers v. Safelite Glass Corp.*, 825 F. Supp. 974, 978 [D. Kan. 1993]).

Although Doyle suggests that determining whether an implied contract existed based on his agreement to follow the code of conduct policy presents "a question of fact for a jury," he offers no authority in support of that proposition. Failure to support a point with pertinent authority or show why it is sound despite a lack of supporting authority or in the face of contrary authority is akin to failing to brief the issue. *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018).

And as a final effort, Doyle contends for the first time on appeal that the contract is an "electronic adhesion contract with both click-wrap and sign-in-wrap steps." Yet he fails to elaborate on this point or explain why it alters the outcome. Issues not adequately briefed are considered waived or abandoned. *Russell v. May*, 306 Kan. 1058, 1089, 400 P.3d 647 (2017).

Because Doyle establishes no errors in the district court's rulings transferring venue, denying his motion for default judgment, and granting a motion to dismiss, we must affirm the district court's judgment.

Affirmed.