

NOT DESIGNATED FOR PUBLICATION

No. 126,253

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of M.G. and D.N.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; CAROL BACON and JAMES BEASLEY, judges pro tem. Submitted without oral argument. Opinion filed December 15, 2023. Reversed and remanded with directions.

Julia A. Leth-Perez, of O'Hara & O'Hara LLC, of Wichita, for appellant.

No appearance by appellee.

Before HILL, P.J., MALONE and ISHERWOOD, JJ.

PER CURIAM: M.G. appeals the district court's one-year extension of a protection from abuse (PFA) order. She claims the district court erred by interpreting the word "shall" in K.S.A. 2022 Supp. 60-3107(e)(2) as being directory rather than mandatory. She argues that under a correct interpretation of the statute, the district court had to extend her PFA order for at least two years rather than one.

Under Kansas Supreme Court precedent, "shall" is mandatory when (1) legislative context and history conveys it as such, (2) the statute substantively affects a party's rights, (3) consequences exist for noncompliance, and (4) the subject matter of the statutory provision is serious. These factors support a finding that the word "shall" in K.S.A. 2022 Supp. 60-3107(e)(2) is mandatory rather than directory. Thus, we reverse the district

court's one-year extension order and remand with directions for the district court to extend M.G.'s PFA order consistent with the statute's language.

FACTS

In early August 2021, M.G. petitioned for a PFA order against D.N., alleging he abused her. At that time, the parties were in a dating relationship. They also were residing in the same residence and had children in common, though D.N.'s paternity of the children had not been established. The district court issued a temporary order, and on August 26, 2021, it issued a final PFA order by consent effective until August 26, 2022.

In December 2021, M.G. alleged in an affidavit of contempt that D.N. had violated the PFA order by communicating with her and sending her gifts. On January 13, 2022, the district court held a hearing on the matter in which only M.G. appeared. Because D.N. failed to appear at the hearing, the district court entered default judgment against him and found he violated the PFA order "by sending text messages & flowers" to M.G. Likewise, it extended the PFA order for another year, this time set to expire on January 13, 2023.

On January 11, 2023, M.G. filed a verified motion to extend the final PFA order. She noted that D.N. had violated the order several times and that she had reported these violations to the Wichita Police Department. Based on these violations, M.G. asserted that under K.S.A. 2022 Supp. 60-3107(e)(2) the district court had to extend the PFA order for at least two more years and could extend the order up to D.N.'s lifetime. M.G. requested the district court to "extend the protective order in this case to the lifetime of Defendant under K.S.A. 2022 Supp. 60-3107(e)(2)." D.N. was personally served with the motion the next day.

On January 19, 2023, the district court held a hearing on M.G.'s motion, presided over by the Honorable Carol Bacon, pro tem judge of the 18th judicial district. At the

beginning of the hearing, the district court acknowledged M.G.'s request to extend the PFA order for D.N.'s lifetime. M.G. and D.N. both testified about the alleged violations of the order, and D.N. also called his sister as a witness. After hearing the evidence, the district court made no findings or ruling from the bench. Instead, the judge announced the court was taking the case under advisement and would notify the parties of the ruling.

The case was continued on the district court's PFA docket three times with notations that the court's decision was "under advisement." Then, on March 9, 2023, the district court filed a written order extending the PFA order for one additional year, effective until January 13, 2024. The order, signed by a different judge, states that the extension was based on "the findings of Judge Carol Bacon at the hearing held on January 19[,] 2023." Neither party filed any motion for reconsideration or modification. The next day, M.G. filed a notice of appeal from the district court's order.

DID THE DISTRICT COURT ERR IN INTERPRETING K.S.A. 2022 SUPP. 60-3107?

On appeal, M.G. claims the district court erred by extending her final PFA order for only one year. More specifically, she argues that the district court erred by interpreting the word "shall" in K.S.A. 2022 Supp. 60-3107(e)(2) as being directory rather than mandatory. She argues that under a correct interpretation of the statute, the district court had to extend her final PFA order for at least two years rather than one. M.G. asks that we remand the case for the district court to extend her final PFA order consistent with the language in the statute. D.N. has failed to file a brief on appeal.

Resolution of M.G.'s claim requires this court to interpret and apply K.S.A. 2022 Supp. 60-3107. Appellate courts exercise plenary review of statutory meaning. *Hanson v. Kansas Corp. Comm'n*, 313 Kan. 752, 762, 490 P.3d 1216 (2021).

The most fundamental rule of statutory construction is that the intent of the Legislature governs if that intent can be ascertained. *John Doe v. M.J.*, 315 Kan. 310, 320, 508 P.3d 368 (2022). An appellate court must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. 315 Kan. at 320. When a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words. *Schmidt v. Trademark, Inc.*, 315 Kan. 196, 200, 506 P.3d 267 (2022). Where there is no ambiguity, the court need not resort to statutory construction. Only if the statute's language is unclear or ambiguous does the court use canons of construction or legislative history to construe the Legislature's intent. *Chalmers v. Burrough*, 314 Kan. 1, 8, 494 P.3d 128 (2021).

To resolve the issue at hand, we must examine the word "shall" in K.S.A. 2022 Supp. 60-3107(e)(2). K.S.A. 2022 Supp. 60-3107(e) states the following:

"(e) Subject to the provisions of subsections (b), (c) and (d), a protective order or approved consent agreement shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, except as provided in subsection (e)(1) and (e)(2).

"(1) Upon motion of the plaintiff, such period may be extended for one additional year.

"(2) Upon verified motion of the plaintiff and after the defendant has been personally served with a copy of the motion and has had an opportunity to present evidence and cross-examine witnesses at a hearing on the motion, if the court determines by a preponderance of the evidence that the defendant has violated a valid protection order or (A) has previously violated a valid protection order, or (B) has been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, committed against the plaintiff or any member of the plaintiff's household, *the court shall extend a protective order for not less than two additional years* and may

extend the protective order up to the lifetime of the defendant. No service fee shall be required for a motion filed pursuant to this subsection." (Emphasis added.)

M.G. asserts that the district court incorrectly determined that the word "shall" in K.S.A. 2022 Supp. 60-3107(e)(2) is directory, rather than mandatory. We begin by pointing out that the record does not reflect how the district court interpreted the statutory language because there are no explicit findings in the record to support the court's one-year extension of the PFA order on March 9, 2023. But the record reflects that M.G. was requesting an extension under K.S.A. 2022 Supp. 60-3107(e)(2). In fact, she was requesting an extension for D.N.'s lifetime. For the district court to extend the PFA order for only one year, the court must have implicitly found that the word "shall" in K.S.A. 2022 Supp. 60-3107(e)(2) was directory rather than mandatory and that the court had discretion to grant the extension for only one year.

While there is no bright-line test to determine whether "shall" is mandatory or directory, courts generally consider (1) legislative context and history, (2) whether the statute substantively affects a party's rights, (3) the existence or nonexistence of consequences for noncompliance, and (4) the subject matter of the statutory provision. *State v. Raschke*, 289 Kan. 911, 921, 219 P.3d 481 (2009). To be clear, however, "[e]ach case must stand largely on its own facts." [Citation omitted.]" 289 Kan. at 921.

Beginning with the first factor, courts "must consider various provisions of an act in pari materia with a view toward reconciling and bringing them into harmony if possible." *Raschke*, 289 Kan. at 914. Relevant here, under K.S.A. 2022 Supp. 60-3107(e)(2), the Legislature distinguished between a two-year extension and a lifetime extension. Indeed, for the latter, a district court "may" extend a PFA order, but for the former, a court "shall" extend a PFA order. K.S.A. 2022 Supp. 60-3107(e)(2). Likewise, in K.S.A. 2022 Supp. 60-3107(e)(1), the Legislature used the word "may" regarding a one-year extension. The statutory text demonstrates that the Legislature knows the

difference between "may" and "shall" and that it intended the word "shall" in K.S.A. 2022 Supp. 60-3107(e)(2) to be mandatory.

Similarly, the Legislature stated that the Protection from Abuse Act, K.S.A. 60-3101 et seq., is meant to be "liberally construed to promote the protection of victims of domestic violence from bodily injury or threats of bodily injury and to facilitate access to judicial protection for the victims, whether represented by counsel or proceeding *pro se*." K.S.A. 60-3101(b). A liberal construction of the statutory provisions supports finding "shall" to be mandatory, as it better satisfies the statute's purpose.

Turning to the second factor, "where strict compliance with the provision is essential to the preservation of the rights of parties affected and to the validity of the proceeding, the provision is mandatory." *City of Hutchinson v. Ryan*, 154 Kan. 751, Syl. ¶ 1, 121 P.2d 179 (1942). But when the statute merely touches on procedural issues, such as the mode of proceedings, the provision is directory. 154 Kan. 751, Syl. ¶ 1. Here, K.S.A. 2022 Supp. 60-3107(e)(2) governs the extension of PFA orders. Not only does this affect a victim's safety, but it also affects a defendant's freedom. For these reasons, the second factor supports finding the word "shall" to be mandatory.

As for the third factor, when the Legislature fails to include consequences for noncompliance, the statute is likely meant to be directory. *Ambrosier v. Brownback*, 304 Kan. 907, 914, 375 P.3d 1007 (2016). K.S.A. 2022 Supp. 60-3107(e)(2) establishes no consequences for noncompliance. As a result, the third factor supports finding "shall" to be directory.

Moving to the final factor, the more serious a statute's subject matter of the statutory provision, the more likely "shall" is meant to be mandatory. See 304 Kan. at 914-15. As discussed, the statutory scheme at issue deals with protection from abuse. It

stands to reason, then, that K.S.A. 2022 Supp. 60-3107(e)(2) involves serious subject matter and supports finding "shall" to be mandatory.

Our court has addressed this issue before in *Dreiling v. Dreiling*, No. 115,469, 2017 WL 1426046 (Kan. App. 2017) (unpublished opinion). In that case, the district court extended a final PFA order for two years under K.S.A. 2015 Supp. 60-3107(e)(2), and the main issue was whether the district court properly exercised its discretion to exclude the couple's minor children from the PFA order. In addressing that issue, this court analyzed whether the word "shall" in K.S.A. 2015 Supp. 60-3107(e)(2) is mandatory or directory. The language in the 2015 version of the statute is the same as we are construing here. In *Dreiling*, this court reviewed the same four factors as we have considered and determined that the word "shall" in K.S.A. 2015 Supp. 60-3107(e)(2) is mandatory. Indeed, outside of factor three, the court found that the factors used in determining whether "shall" is mandatory or directory all support finding the word to be mandatory. *Dreiling*, 2017 WL 1426046, at *5.

Consistent with our prior ruling in *Dreiling*, we hold that the word "shall" in K.S.A. 2022 Supp. 60-3107(e)(2) is mandatory rather than directory. Under a correct interpretation of the statute, we agree with M.G. that the district court erred by extending the PFA order for only one year on March 9, 2023. M.G. filed a verified motion to extend her PFA order under K.S.A. 2022 Supp. 60-3107(e)(2), and she personally served D.N. with the motion. D.N. appeared at the hearing and had a chance to present evidence and cross-examine witnesses. The record reflects that the district court had found in January 2022 that D.N. violated the original PFA order by sending text messages and flowers to M.G. Consequently, M.G. had satisfied all the requirements to receive an extension of the final PFA order under K.S.A. 2022 Supp. 60-3107(e)(2).

Under K.S.A. 2022 Supp. 60-3107(e)(2), based on D.N.'s previous violation of the PFA order, the district court had two choices in terms of extending the final PFA order.

First, the district court was *required* to extend the order for at least two additional years. Second, the district court could extend the order for up to D.N.'s lifetime in the exercise of the court's discretion. The district court misapplied the plain language of the statute by extending the final PFA order for only one year until January 13, 2024.

It appears from our review of the record that this case may have fallen through the cracks in district court. M.G. filed a verified motion to extend the final PFA order and requested the district court to extend the order for D.N.'s lifetime under K.S.A. 2022 Supp. 60-3107(e)(2). Judge Bacon held an evidentiary hearing on the motion on January 19, 2023, and took the case under advisement. Then, on March 9, 2023, the district court filed a written order, signed by a different judge, extending the PFA order for one additional year, effective until January 13, 2024. We note that the district court used a printed form for extending the PFA order under K.S.A. 2022 Supp. 60-3107(e)(1), rather than under K.S.A. 2022 Supp. 60-3107(e)(2). The March 9, 2023 order states that the extension was based on "the findings of Judge Carol Bacon at the hearing on January 19[,] 2023." But there are no such findings in the record. Neither party filed any motion for reconsideration or modification. The next day, M.G. filed a notice of appeal from the district court's order.

Based on the record for our review, we reverse the district court's one-year extension order and remand for the district court to extend M.G.'s final PFA order consistent with the language in K.S.A. 2022 Supp. 60-3107(e)(2). The case should be reassigned to the same judge who heard the evidence on M.G.'s motion, if possible. On remand, the district court must extend the final PFA order for at least two additional years, but it may extend the final PFA order up to D.N.'s lifetime based on the evidence presented and within the district court's sound discretion.

Finally, we observe that K.S.A. 2022 Supp. 60-3107 was amended by the 2023 Kansas Legislature. L. 2023, ch. 78, § 7, effective July 1, 2023. This amendment does not affect M.G.'s verified motion to extend the final PFA order filed on January 11, 2023.

Reversed and remanded with directions.