

295 P.3d 542 (2013)

Marci FRAZIER, Appellee,
v.
Kelly GOUDSCHAAL, Appellant.

No. 103,487.

Supreme Court of Kansas.

February 22, 2013.

545 *545 T. Bradley Manson, of Manson & Karbank, of Overland Park, argued the cause, and Elizabeth Rogers Rebein and Kelli M. Broers, of the same firm, were with him on the briefs for appellant.

Dennis J. Stanchik, of Olathe, argued the cause and was on the brief for appellee.

Stephen Douglas Bonney, chief counsel and legal director, of ACLU of Kansas & Western Missouri, of Kansas City, Missouri, Rose A. Saxe, of Lesbian Gay Bisexual Transgender & AIDS Projects, of ACLU Foundation, of New York, New York, and Catherine Sakimura, of National Center for Lesbian Rights, of San Francisco, California, were on the brief for amici curiae American Civil Liberties Union, American Civil Liberties Union of Kansas and Western Missouri, and the National Center for Lesbian Rights.

Linda Henry Elrod, director, was on the brief for amicus curiae Washburn University School of Law Children and Family Law Center.

Stephanie Goodenow, of Law Office of Stephanie Goodenow, LLC, of Olathe, was on the brief for amicus curiae National Association of Social Workers.

The opinion of the court was delivered by JOHNSON, J.:

Kelly Goudschaal and Marci Frazier were committed to a long-time, same-sex relationship, during which they jointly decided to have two children via artificial insemination. In conjunction with the birth of each child, the couple executed a coparenting agreement that, among other provisions, addressed the contingency of a separation. A few months after the couple separated, Goudschaal notified Frazier that she was taking the children to Texas, prompting Frazier to file this action, seeking *inter alia* to enforce the coparenting agreement. The district court's final order divided all of the women's property, awarded the couple joint legal custody of the two children, designated Goudschaal as the residential custodian, established unsupervised parenting time for Frazier, and ordered Frazier to pay child support. Goudschaal appeals, questioning the district court's division of her individually owned property and challenging the district court's jurisdiction and authority to
546 award joint custody and *546 parenting time to an unrelated third person. We find that the district court had the legal authority to enter its orders, but we remand for further factual findings.

FACTUAL AND PROCEDURAL HISTORY

The Parties' Relationship

The relationship of Frazier and Goudschaal began in 1995. At some point, the couple decided to start a family, utilizing assisted reproductive technologies (ART) in the form of artificial insemination. Originally, the plan was for both women to become pregnant, so that they could share a child from each partner. But when Frazier was unable to conceive, they mutually agreed that Goudschaal would bear both children. In 2002, Goudschaal gave birth to their first daughter; their second daughter was born in 2004.

Before the birth of their first daughter, Frazier and Goudschaal signed a coparenting agreement. In 2004, the couple executed another coparenting agreement that made provisions for the second child. That agreement identified Frazier as a *de facto* parent and specified that her "relationship with the children should be protected and promoted"; that the parties

intended "to jointly and equally share parental responsibility"; that each of the parties "shall pay the same percent of [child] support as her net income compares to [their] combined net incomes"; "that all major decisions affecting [the] children... shall be made jointly by both parties"; and that in the event of a separation "the person who has actual physical custody w[ould] take all steps necessary to maximize the other's visitation" with the children. In addition, both a consent for medical authorization and a durable power of attorney for health care decisions were executed. Further, each woman executed a last will and testament that named the other as the children's guardian.

Goudschaal, Frazier, and the two children lived together as a family unit. The adults jointly purchased a home, jointly owned personal property, and shared bank accounts. Although Frazier was primarily responsible for handling the couple's financial transactions, both parties contributed to the payment of bills and to the educational accounts for the children. For their part, the children used their legal surname of "Goudschaal-Frazier," and, notwithstanding the absence of a biological connection, both children called Frazier "Mother" or "Mom." The teachers and daycare providers with whom the family interacted treated both Frazier and Goudschaal as the girls' coequal parents.

At some point, the adults' relationship began to unravel, and by September 2007, Frazier and Goudschaal were staying in separate bedrooms. In January 2008, Goudschaal moved out of their home. For nearly half a year thereafter, the women continued to share parenting responsibilities and maintained equal parenting time with the girls. In July, however, Goudschaal began to decrease Frazier's contact with the girls, allowing her visitation only 1 day each week and every other weekend. Finally, in October 2008, Goudschaal informed Frazier that she had accepted a new job in Texas and intended to move there with both girls within a week. Frazier responded by seeking relief in the Johnson County District Court.

Proceedings in the District Court

Frazier first filed a petition to enforce the 2004 coparenting agreement. She also filed a separate petition for equitable partition of the couple's real and personal property. The first petition was later dismissed, and the petition for partition was amended to include the request to enforce the coparenting agreement. Goudschaal responded with a motion to dismiss, claiming that the district court lacked subject matter jurisdiction to address Frazier's requests for child custody or parenting time and arguing that the court could not properly divide certain portions of the parties' individually titled property.

The district court denied Goudschaal's motion to dismiss, opining that the district court had "two separate and independent bases for jurisdiction." First, the court held that the petitioner had invoked the court's equitable jurisdiction to determine whether "highly unusual or extraordinary circumstances" existed which would permit the court to apply the best interests of the child test to grant Frazier *547 reasonable parenting time, notwithstanding the parental preference doctrine.

Secondly, the district court found jurisdiction under the Kansas Parentage Act (KPA), K.S.A. 38-1110 *et seq.*, to consider Frazier's claim that she is a nonbiological parent. Specifically, the district court pointed out that K.S.A. 38-1126 provides that "[a]ny interested party may bring an action to determine the existence or nonexistence of a mother and child relationship." (Emphasis added.) The court considered Frazier as having interested party status by virtue of her claim that she has notoriously and in writing acknowledged the mother and child relationship with these children. See K.S.A. 38-1113(a) (motherhood can be established "under this act"); K.S.A. 38-1114(a)(4) (paternity can be established by notoriously or in writing recognizing that status); and K.S.A. 38-1126 (insofar as practicable, the provisions of the KPA applicable to the father and child relationship also apply to the mother and child relationship).

At the hearing on the petition, in addition to presenting the coparenting agreement, the parties stipulated to the value of the house and proffered evidence regarding all their assets and liabilities, such as retirement accounts, tax returns, mortgages, and income. The district court concluded that the parties lived and operated as a couple who had comingled their assets and thus each had an equitable interest in the other's financial accounts. The court noted that "[e]ach party received the benefit of sharing bills and responsibilities in a family setting." As a result, the court concluded it would result in unjust enrichment if the assets and liabilities were not equitably divided. Accordingly, the court ordered an equalization payment of \$36,500 to Frazier and assigned \$60,000 of the second mortgage debt on the house to Goudschaal. The debt assignment was required because, as the court acknowledged, Goudschaal's retirement account could not be divided with a nonspouse.

Regarding the children, the district court determined that an award of joint custody was in the best interests of the children. Goudschaal was awarded residential custody. Frazier was ordered to pay monthly child support and was granted

reasonable parenting time. After Frazier resumed visitation with the girls, they began to experience behavioral problems that prompted their being placed in therapy. However, the record does not contain any reports from that therapist.

Goudschaal appealed the district court's decision. The appeal was transferred to this court on its own motion. K.S.A. 20-3018(c).

Arguments on Appeal

Given the manner in which the arguments have been presented to us and to assure the parties that we have considered all of their respective arguments, we take the liberty of beginning by summarizing the parties' arguments on appeal.

Appellant

Goudschaal's brief to this court asserts two issues, albeit the first issue is divided into subparts. The overarching complaint on the first issue is that the district court violated Goudschaal's constitutionally protected parental rights when it awarded joint custody and parenting time to a nonparent, *i.e.*, Frazier. Goudschaal summarily dismisses the coparenting agreement by declaring that "an action to enforce a co-parenting agreement... is not a cause of action recognized by Kansas courts."

Citing to *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982), Goudschaal starts with the premise that child custody is a parent's fundamental right, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and that such protection includes the right to make decisions concerning one's children's care, custody, and control. See *Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). Relying on state law applying a parental preference doctrine and the notion that parents are presumed to do what is best for their children, Goudschaal then contends that the State cannot interfere with a biological parent's fundamental right to the care, custody, and control of his or her children unless there has been a judicial finding that the *548 natural parent is unfit, which did not occur in this case.

Goudschaal asserts that she is the only person with the constitutionally protected status of parent of her children and that Frazier is simply an unrelated third party. Goudschaal refuses to accept that the KPA would permit a person who is not the biological mother of a child or who has not legally adopted the child to become a "mother" within the meaning of the KPA. Specifically, she contends that any presumption arising from a notorious or written acknowledgment of maternity is always rebutted if there is another female who is the known and undisputed birth mother. In other words, Goudschaal argues that known biological lineage always and definitively trumps any statutory presumption of parenthood. She suggests that nothing in the KPA provides for there to be two mothers, as the district court suggested. Finally, and perhaps more fundamentally, Goudschaal suggests that the question of whether Frazier *could* be a parent under the KPA is academic because the district court never made that explicit finding in this case.

Goudschaal then argues that, by not qualifying as a legal parent, Frazier has no standing to petition for custody of a child who is not a child in need of care and who has a natural parent who is not alleged to be unfit. Goudschaal points out that this court has said that "[i]n the absence of an adjudication that a natural parent is unfit to have custody of a child, the parent has the paramount right to custody as opposed to third parties...." *In re Guardianship of Williams*, 254 Kan. 814, 826, 869 P.2d 661 (1994) (quoting *Herbst v. Herbst*, 211 Kan. 163, 163, 505 P.2d 294 [1973]). Likewise, Goudschaal recites that

"[t]here is no mechanism for a third party to intervene in the relationships of an intact family that has not subjected itself to judicial intervention or failed society's minimal requirements for adequate parenting." *Morris, Grandparents, Uncles, Aunts, Cousins, Friends: How is the court to decide which relationships will continue?*, 12 Family Advocate 11 (Fall 1989). *In re Hood*, 252 Kan. 689, 691, 847 P.2d 1300 (1993).

Continuing in the same vein, Goudschaal avers that the district court erred in finding that it had equitable jurisdiction to award visitation to a third party such as Frazier. Pointing to *Hood*, Goudschaal contends that there is no common-law right of third-party visitation, but rather those rights have to originate with the legislature. See 252 Kan. at 693-94, 847 P.2d 1300. Additionally, she quotes from our Court of Appeals, in *State ex rel. Secretary of Dept. of S.R.S. v. Davison*, 31 Kan.App.2d 192, Syl. ¶ 3, 64 P.3d 434 (2002): "Third-party visitation is a creature of statute and in derogation of a parent's constitutional right to direct the upbringing of his or her children. Third-party visitation statutes must, therefore, be strictly construed."

Moreover, Goudschaal warns that if courts entertain visitation requests based on what is in the best interests of the children, that will "open[] a floodgate without establishing any boundaries," and the result will be an increase in the intrusion by the courts into a family's private life caused by "ex-boyfriends, ex-girlfriends, aunts, uncles, guardians, teachers, daycare providers, nannies, or any other individuals who have formed a relationship with the child."

The remedy Goudschaal seeks is for this court to vacate the district court's order granting Frazier joint custody and parenting time. She does not mention vacating the portion of the order that requires Frazier to pay her child support.

For her second issue, Goudschaal complains that the district court treated the division of the parties' assets as if it were a marital dissolution by adding up all of the assets, subtracting all of the debts, and dividing the remainder in half. She contends that our caselaw has invested district courts with authority to divide the property of cohabitants only to the extent that such property was "jointly accumulated by the parties or acquired by either with the intent that each should have an interest therein." *Eaton v. Johnston*, 235 Kan. 323, Syl. ¶ 2, 681 P.2d 606 (1984). Although Goudschaal concedes that the largest asset, the residential real estate, was a jointly acquired, divisible asset, she complains that the parties' retirement accounts and insurance policies were separate, *549 individual accounts. She asks for the case to be remanded for a reconsideration of the division of assets, applying the appropriate standard.

As an aside, the parties appear to overlook the irony of Goudschaal's concession that Kansas courts have jurisdiction over the jointly acquired property of cohabiting adults, while arguing that those same courts cannot acquire jurisdiction over the children brought into existence by the same cohabiting adults. Nevertheless, that is Goudschaal's position on appeal.

Appellee

Frazier sets up her brief with seven issues, six of which address various aspects of the overarching question of whether the district court had the jurisdiction and authority to award her joint custody and parenting time. The final issue discusses the division of property.

In her first issue, Frazier asserts that the KPA provided a basis for the district court's exercise of jurisdiction in this case. She acknowledges the absence of an explicit statement from the district court declaring Frazier to be a parent within the meaning of the KPA. Nevertheless, she argues that such a finding can reasonably be inferred from the court's orders and the record as a whole.

Pointing to this court's decision in *In re Marriage of Ross*, 245 Kan. 591, 783 P.2d 331 (1989), Frazier disputes Goudschaal's contention that biology is the paramount question in this state. *Ross* held that a district court cannot order genetic testing to determine whether a man is the biological father of a child for whom the man had previously acknowledged paternity, unless the court first determines that such testing will be in the best interests of the child. 245 Kan. at 597, 783 P.2d 331. *Ross* found that the Uniform Parentage Act, upon which the KPA was based, is designed to provide for the equal and beneficial treatment of all children, regardless of their parents' marital status. 245 Kan. at 597, 783 P.2d 331. Consequently, Frazier characterizes the holding in *Ross* to be that in any action under the KPA, the court must always act in the best interests of the child "when imposing legal obligations or conferring legal rights on the mother/child relationship and the father/child relationship." 245 Kan. at 597, 783 P.2d 331.

Frazier also argues in favor of the district court's interpretation of the KPA provisions to permit the establishment of maternity through the presumption in K.S.A. 38-1114(a)(4), *i.e.*, where parenthood has been recognized "notoriously or in writing." She points out that Goudschaal voluntarily created and fostered Frazier's public persona as a mother of the two children. Accordingly, Frazier labels Goudschaal's "open the floodgates" argument as "simply a time worn red herring."

Finally in her first issue, Frazier contends that the district court was correct in observing that there is nothing in the KPA to prevent a finding that these children had two mothers. Frazier then points out that, if the court cannot utilize the statutory presumptions, the children will be precluded from ever having two parents because of K.S.A. 38-1114(f), which does not recognize a sperm donor as the child's father without a written agreement between mother and donor. See *In re K.M.H.*, 285 Kan. 53, 72-73, 169 P.3d 1025 (2007) (upholding constitutionality of K.S.A. 38-1114[f]), *cert. denied* 555 U.S. 937, 129 S.Ct. 36, 172 L.Ed.2d 239 (2008).

In her next issue, Frazier addresses Goudschaal's major premise that the court's exercise of jurisdiction over child custody and parenting time violated Goudschaal's constitutional due process rights. Frazier contends that Goudschaal knowingly

and voluntarily waived those rights when she entered into the coparenting agreement and continued to abide by the agreement even after the couple separated. Frazier points to *In re Marriage of Nelson*, 34 Kan.App.2d 879, 125 P.3d 1081, rev. denied 281 Kan. 1378 (2006), where the Court of Appeals upheld a waiver of the constitutionally based parental preference rights in this state.

Alternatively, in the next issue, Frazier contends that cases from the United States Supreme Court dealing with a parent's liberty interest have not focused on the biological connection, but rather they turn upon the relationship between parent and child. See *550 *Lehr v. Robertson*, 463 U.S. 248, 266-67, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983) (mere existence of biological link does not merit due process protection; father who fails to develop relationship with child not automatically entitled to direct where child's best interests lie). Frazier then creatively argues that if a natural parent is not entitled to due process protection in the absence of a parent and child relationship, the corollary must also be true, *i.e.*, a meaningful and well-established relationship with a nonbiological parent should be afforded constitutional protection. She points out that the presumption that a parent will always act in the best interests of his or her child only makes sense where the natural bonds of affection between parent and child have developed over time, rather than merely through genetics. Finally, she argues that *Troxel* cannot be read as making unfitness of the biological parent a mandatory condition precedent to State intervention in custody and visitation disputes with a nonbiological parent, but rather a court must always balance the competing interests.

In her fourth issue, Frazier separately addresses the parental preference doctrine and contends that it does not bar her request to enforce the coparenting agreement. She devotes considerable space in her brief arguing why this court was wrong in *Sheppard v. Sheppard*, 230 Kan. 146, 149-54, 630 P.2d 1121 (1981), cert. denied 455 U.S. 919, 102 S.Ct. 1274, 71 L.Ed.2d 459 (1982), when it declared unconstitutional a 1980 amendment to K.S.A. 60-1610(b), which modified the parental preference doctrine. Elsewhere, Frazier argues that if the parental preference doctrine really creates inviolable rights in biological parents, then a court could not refuse to do DNA testing based on the best interests of the child, as the *Ross* court held.

For her fifth issue, Frazier presents reasons she believes the district court had equitable jurisdiction to consider this case. She contends that her pleadings can be construed as an action seeking specific performance of the coparenting agreement. She counters the argument that the agreement is unenforceable as an unlawful assignment of parental duties by pointing out that Goudschaal did not abdicate any of her responsibilities but rather simply agreed to share the children's parenting. Moreover, Frazier argues simply that there are times when the best interests of the child outweigh the need to strictly adhere to the biological connection.

For her last issue on child custody and parenting disputes, Frazier attempts to find jurisdiction in this state's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), K.S.A. 38-1336 *et seq.* Specifically, Frazier asserts that she fits within the definition of "[p]erson acting as a parent" under K.S.A. 38-1337(14). But she acknowledges that the district court did not base its jurisdiction on that statute and did not make any factual findings in that regard.

With respect to the division of property, Frazier conceded in her brief that the district court did not make any findings as to which items of the couples' property were jointly acquired or acquired with the intent that they both would share it, as required by *Eaton*, 235 Kan. 323, 681 P.2d 606. Accordingly, Frazier also asks that the case be remanded to permit the district court to make the requisite findings.

Amici Curiae

Three *amicus curiae* briefs were filed in this case. One on behalf of the American Civil Liberties Union, American Civil Liberties Union of Kansas and Western Missouri, and the National Center for Lesbian Rights (collectively ACLU); one by Linda Henry Elrod, Director of the Washburn University School of Law Children and Family Law Center; and one by the National Association of Social Workers (NASW). All three briefs were proffered in support of Frazier's claims.

The ACLU brief suggests factors to consider in determining whether a person has become a *de facto* or functional parent. The ACLU argues that Frazier should be deemed such a parent either because of extraordinary circumstances or because Goudschaal waived her superior rights as a biological mother and the waiver must be acknowledged to prevent harm to the children. The brief points out that there is a fundamental difference between the circumstance where a third-party is seeking

551 to supplant or supercede *551 the biological mother's rights and the current circumstance where a nonbiological caretaker seeks to *share* parental duties and responsibilities with the biological mother.

The Elrod brief points us to *In re Guardianship of Williams*, 254 Kan. at 820-21, 869 P.2d 661, which held that courts may intervene to prevent harm to a child in extraordinary or unusual circumstances. Elrod contends that the use of ART necessarily creates extraordinary circumstances in parent and child relationships. Moreover, Elrod argues that enforcing ART agreements, such as the coparenting agreement in connection with the artificial insemination in this case, protects children by providing clarity and predictability. The brief also shares three theories which have been used by other states to grant nonbiological caretakers custody and parenting rights: (1) estoppel; (2) recognition of a parent-like status, whether labeled functional parent, psychological parent, or de facto parent; and (3) a finding that the person is a presumed parent under the applicable state parentage acts. The brief also points us to our decision in *In re K.M.H.*, 285 Kan. at 72-73, 169 P.3d 1025, where we found that, without a written agreement, a sperm donor has no standing to assert parental rights to the child born via artificial insemination.

The NASW brief provides us with a number of reasons why the law should be what that amicus would like it to be, *i.e.*, investing a person in Frazier's circumstances with rights akin to a natural parent. NASW informs us that the formation of attachment bonds is critical to a child's healthy development; that attachment relationships develop despite the absence of a biological or legal connection between parent and child; that sexual orientation is irrelevant to the development of strong parent and child attachments; and that children experience severe emotional and psychological harm when their attachment relationships are severed.

JURISDICTION AND STANDING

Goudschaal contends that the most fundamental flaw in these proceedings is that Frazier lacked standing to request the relief she sought, which is a jurisdictional question, and that the district court generally lacked subject matter jurisdiction to entertain Frazier's amended petition. At times, Goudschaal appears to equate jurisdiction with the efficacy of Frazier's claims for relief. Which party should win a lawsuit is an altogether different question from that of whether the court has the power to say who wins. Moreover, a person's claim to be protected by rights under the federal Constitution does not deprive the district court of subject matter jurisdiction to determine the applicability of those rights. As we said recently in *Miller v. Glacier Development Co.*, 293 Kan. 665, 669, 270 P.3d 1065 (2011):

"Subject matter jurisdiction refers to the power of a court to hear and decide a particular type of action. *Wichita Eagle & Beacon Publishing Co. v. Simmons*, 274 Kan. 194, 205, 50 P.3d 66 (2002). Jurisdiction over subject matter is the power to decide the general question involved, and not the exercise of that power. *Babcock v. City of Kansas City*, 197 Kan. 610, 618, 419 P.2d 882 (1966)."

Standard of Review

"The existence of jurisdiction and standing are both questions of law over which this court's scope of review is unlimited. *Schmidtlien Electric, Inc. v. Greathouse*, 278 Kan. 810, 830, 104 P.3d 378 (2005) (jurisdiction); *312 Education Ass'n v. U.S.D. No. 312*, 273 Kan. 875, 882, 47 P.3d 383 (2002) (standing). *Mid-Continent Specialists, Inc. v. Capital Homes*, 279 Kan. 178, 185, 106 P.3d 483 (2005).

Analysis

Goudschaal does not question the district court's jurisdiction to hear and decide Frazier's request for a property division. In this state, a district court has the authority to make an equitable division of property that nonmarried cohabitants accumulated while living together. See, *e.g.*, *Eaton*, 235 Kan. at 328, 681 P.2d 606. Consequently, Frazier's petition stated a claim upon which relief could be granted by the district court, and dismissal of the entire case would have been improper.

552 Cf. *Nungesser v. Bryant*, *552 283 Kan. 550, 559, 153 P.3d 1277 (2007) (appellate court must reverse dismissal for failure to state a claim if alleged facts and inferences support a claim on any possible theory).

Instead, Goudschaal contends that our courts only have the authority to address Frazier's issues on child custody, parenting time, and support when such issues are presented in a divorce action involving two married persons, who would necessarily

have to be a man and a woman in this state, or when considering a visitation request by a grandparent or stepparent. See K.S.A. 60-1610; K.S.A. 60-1616; K.S.A. 38-129. She argues that the district court read too much into K.S.A. 60-201(b) when it found therein a grant of equitable jurisdiction over these issues.

The parties' arguments over whether the district court had "equitable jurisdiction" may be misdirected. Equitable jurisdiction refers to the authority of the court to impose a remedy that is not available at law. See Stauth v. Brown, 241 Kan. 1, 11, 734 P.2d 1063 (1987) (quoting 27 Am.Jur.2d, Equity § 70, p. 593) (where "'there is no adequate remedy by an action at law ..., a court of equity, in the furtherance of justice, may [impose a remedy]'"). In Place v. Place, 207 Kan. 734, Syl. ¶ 3, 486 P.2d 1354 (1971), this court suggested that even a court of equity must first have "acquired jurisdiction of a subject matter," intimating that something more than a need to do justice is required. But once that subject matter jurisdiction is established, the court "will reach out and draw into its consideration and determination the entire subject matter and bring before it the parties interested therein, so that a full, complete, effectual and final decree adjusting the rights and equities of all the parties in interest may be entered and enforced." 207 Kan. 734, Syl. ¶ 3, 486 P.2d 1354.

An aspect of the equitable relief sought by Frazier was to have Goudschaal specifically perform under the coparenting agreement. "The jurisdiction of equity to grant specific performance of contracts, or to reform or cancel them in a proper case, is well settled." Stauth, 241 Kan. at 11, 734 P.2d 1063 (quoting 27 Am.Jur.2d, Equity § 70, p. 593). Goudschaal summarily dismisses that jurisdictional basis on the ground that the coparenting agreement was an unenforceable contract. But a court may exercise its jurisdiction over a contractual dispute in order to evaluate the contract's legality. See National Bank of Andover v. Kansas Bankers Surety Co., 290 Kan. 247, 257, 225 P.3d 707 (2010) (quoting Kansas Gas & Electric Co. v. Will Investments, Inc., 261 Kan. 125, 129, 928 P.2d 73 [1996]) ("[c]ontracts are presumed legal and the burden rests on the party challenging the contract to prove it is illegal"). Accordingly, the district court clearly had jurisdiction to address the consequences of the termination of the parties' cohabitation arrangement and to determine whether the coparenting agreement in this circumstance unlawfully violated public policy.

Frazier also contended that she had a mother and child relationship with both children, in all respects other than biology. Accordingly, the trial court looked to the KPA provision that permits any interested party to bring an action to determine the existence or nonexistence of a mother and child relationship. K.S.A. 38-1126. Goudschaal challenges that holding by pointing to the definition of parent and child relationship in K.S.A. 38-1111, which speaks to the legal relationship between the child and the child's *biological or adoptive* parents. In essence, Goudschaal argues that one must claim to be a biological or an adoptive parent in order to invoke the jurisdiction of the court pursuant to K.S.A. 38-1126.

But the only constraint to bringing an action to determine the existence of a mother and child relationship set forth in K.S.A. 38-1126 is that the petitioner be an "interested party." Goudschaal's suggestion that only a biological or an adoptive parent can be an "interested party" under 38-1126 fails to consider the other provisions of the KPA. Specifically, K.S.A. 38-1114(a) provides for the presumptive establishment of a father and child relationship in certain circumstances, to-wit:

"(a) A man is presumed to be the father of a child if:

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*553 "(1) The man and the child's mother are, or have been, married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death or by the filing of a journal entry of a decree of annulment or divorce.

"(2) Before the child's birth, the man and the child's mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable and:

(A) If the attempted marriage is voidable, the child is born during the attempted marriage or within 300 days after its termination by death or by the filing of a journal entry of a decree of annulment or divorce; or

(B) if the attempted marriage is void, the child is born within 300 days after the termination of cohabitation.

"(3) After the child's birth, the man and the child's mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable and:

(A) The man has acknowledged paternity of the child in writing;

(B) with the man's consent, the man is named as the child's father on the child's birth certificate; or

(C) the man is obligated to support the child under a written voluntary promise or by a court order.

"(4) The man notoriously or in writing recognizes paternity of the child, including but not limited to a voluntary acknowledgment made in accordance with K.S.A. 38-1130 or 65-2409a, and amendments thereto.

"(5) Genetic test results indicate a probability of 97% or greater that the man is the father of the child.

"(6) The man has a duty to support the child under an order of support regardless of whether the man has ever been married to the child's mother."

Obviously, except for subsection (5), the parental relationship for a father can be legally established under the KPA without the father actually being a biological or adoptive parent. That is important because K.S.A. 38-1113 states that a mother "may be established... under this act [KPA]" and K.S.A. 38-1126, dealing with the determination of the mother and child relationship, specifically incorporates the provisions of the KPA applicable to the father and child relationship, insofar as practicable. A harmonious reading of all of the KPA provisions indicates that a female can make a colorable claim to being a presumptive mother of a child without claiming to be the biological or adoptive mother, and, therefore, can be an "interested party" who is authorized to bring an action to establish the existence of a mother and child relationship.

Moreover, what is conspicuously absent from Goudschaal's jurisdictional arguments is any consideration of the power of Kansas courts to protect the interests of our children. We have declared that the public policy in Kansas requires our courts to act in the best interests of the children when determining the legal obligations to be imposed and the rights to be conferred in the mother and child relationship. See *In the Marriage of Ross*, 245 Kan. 591, Syl. ¶ 2, 783 P.2d 331 (1989). Further, after the family unit fails to function, "the child's interests become a matter for the State's intrusion," in order to avoid jeopardizing the child if "a parent's claim for the child is based solely or predominantly on [selfish] motives." 245 Kan. at 602, 783 P.2d 331. In order to accomplish this *parens patriae* function of protecting our children, the district court must necessarily be invested with subject matter jurisdiction.

In short, we find that the district court had the authority to divide the parties' property; to determine the existence or nonexistence of a mother and child relationship between Frazier and the two children; to determine the validity and effect of the coparenting agreement; and to enter such orders with respect to child custody, parenting time, and child support that are in the best interests of the children.

554 *554 **VALIDITY OF COPARENTING AGREEMENT**

Key to our decision is a consideration of the efficacy of the parties' coparenting agreement. As noted, Goudschaal summarily dismisses the agreement as unenforceable, apparently believing that such an agreement is always contrary to public policy and, thus, invalid as a matter of law. We disagree with that blanket condemnation.

Standard of Review

"[T]he interpretation and legal effect of written instruments are matters of law, *Dutta v. St. Francis Regional Med. Center, Inc.*, 254 Kan. 690, 693, 867 P.2d 1057 (1994), and our standard of review is unlimited on a question of law. *Gillespie v. Seymour*, 250 Kan. 123, Syl. ¶ 2[, 823 P.2d 782 (1991)].' *Kansas Gas & Electric Co. v. Will Investments, Inc.*, 261 Kan. 125, 128, 928 P.2d 73 (1996). 'Regardless of the construction given a written contract by the trial court, an appellate court may construe a written contract and determine its legal effect.' *Federal Land Bank of Wichita v. Krug*, 253 Kan. 307, Syl. ¶ 2, 856 P.2d 111 (1993)." *Sunflower Park Apts. v. Johnson*, 23 Kan.App.2d 862, 863-64, 937 P.2d 21 (1997).

Analysis

More than a half century ago, in *In re Estate of Shirk*, 186 Kan. 311, Syl. ¶ 7, 350 P.2d 1 (1960), this court found that not all contracts in which a parent shares or transfers child custody to a nonparent are unenforceable on public policy grounds.

There, a mother of a small child orally agreed with her mother — the child's grandmother — to consent to the grandmother's

adoption of the child, in return for the grandmother's promise that the mother and child would inherit the grandmother's estate in equal shares with the grandmother's son, *i.e.*, one-third each. In addition, grandmother agreed that, if mother married a suitable person who wished to adopt the child, grandmother would consent to mother's readoption. Later, grandmother added the additional requirement that mother leave the city in which grandmother was raising the child. Mother fully performed her part of the bargain, including relocating to another city. Grandmother partially performed, including giving her consent to mother's readoption of the child after mother remarried, but she failed to provide for the inheritance to the mother and child. Mother sought to enforce the contract against the grandmother's estate, but the district court granted a demurrer, finding the contract unenforceable as violating the statute of frauds and contravening public policy.

On appeal, after finding that the oral contract was supported by adequate consideration and was otherwise enforceable by the mother, the *Shirk* court ultimately opined that "[the] controversy resolves itself down to the question whether the contract with respect to the mother's rights violated public policy." 186 Kan. at 323, 350 P.2d 1. In that regard, *Shirk* noted that it was so "fundamental that parents may not barter or sell their children nor may they demand pecuniary gain as the price of consent to adoptions... that citation of authority is unnecessary." 186 Kan. at 323, 350 P.2d 1. But the court then quoted from 39 Am.Jur., Parent and Child § 30, pp. 621-22, emphasizing that in some jurisdictions an adoption contract or an agreement for the transfer of child custody is not contrary to public policy

"merely because it provides for the surrender by a parent of his [or her] child to another in consideration of the latter's promise to give or leave money or property to the parent or to the child, where it appears that the contract is in fact one which is promotive of the welfare and best interests of the child...." 186 Kan. at 323, 350 P.2d 1.

Enroute to finding "nothing in the contract as alleged which renders it illegal or void or as against public policy," 186 Kan. at 326, 350 P.2d 1, *Shirk* related the following principles:

"Public policy forbids enforcement of an illegal or immoral contract, but it equally insists that those contracts which are lawful and which contravene none of its rules shall be enforced, and that they shall not be set aside or held to be invalid on a suspicion of illegality. A contract is not void as against public policy unless injurious to the interests of the public or contravenes *555 some established interest of society (17 C.J.S., Contracts, § 211d, p. 570). Illegality from the standpoint of public policy depends upon the facts and circumstances of a particular case (Stewart v. Fourth Nat'l Bank, 141 Kan. 175, 39 P.2d 918 [1935]), and it is the duty of courts to sustain the legality of contracts where possible (Foltz v. Struxness, 168 Kan. 714, 215 P.2d 133 [1950]). There is no presumption that a contract is illegal, and the burden of showing the wrong is upon him who seeks to deny his obligation thereunder. The presumption is in favor of innocence and the taint of wrong is a matter of defense (Mosher [Grain] v. Kansas Coop. Wheat Mkt. Ass'n, 136 Kan. 269, 15 P.2d 421 [1932]; Okerberg v. Crable, 185 Kan. 211, 341 P.2d 966 [1959])." 186 Kan. at 326, 350 P.2d 1.

A review of the facts and circumstances of the agreement convinced the *Shirk* court that "[w]hat was done for [the child] was highly commendable and [the child's] interests were best served by the family agreement." 186 Kan. at 325, 350 P.2d 1. The court opined that to find grandmother's promise of an inheritance to be "contrary to public policy, we must ascribe the basest of motives and the most evil of intentions to the mother." 186 Kan. at 326, 350 P.2d 1. *Shirk* declined to do so and refused to declare the contract unenforceable as a matter of law. Accordingly, the matter was remanded to the lower court to proceed to trial.

Much more recently, our Court of Appeals upheld a child custody agreement that placed the custody of children with a nonparent. In re Marriage of Nelson, 34 Kan.App.2d 879, 125 P.3d 1081, rev. denied 283 Kan. 1378 (2006). In *Nelson*, a divorcing mother and father agreed to place custody of their children with the father's sister — the children's aunt — and memorialized the parenting agreement in the final divorce decree. Placement was not made with the mother because of her continuing relationship with a boyfriend who was on diversion for engaging in sexually inappropriate contact with a 4-year-old child. After the divorce, mother married the boyfriend and sought to modify the parenting plan, claiming a material change in circumstances. The district court dismissed the modification motion for failure to show a material change in circumstances. Mother appealed, asserting that the parental preference doctrine entitled her, rather than the aunt, to have custody of her biological children, notwithstanding the circumstances. In essence, mother was asserting that her parental preference trumped any risk of harm to the children.

On appeal, the Court of Appeals embraced the district court's reasoning that a parent can waive his or her rights under the parental preference doctrine. The panel noted that the mother's express waiver of her rights under the parental preference doctrine was accompanied with an acknowledgement that she had been advised by counsel "'of the Kansas Constitutional provisions concerning parental preference,'" and "'that the facts and circumstances warrant the third party placement and that the third party placement is in the best interest of the minor children.'" 34 Kan.App.2d at 884, 125 P.3d 1081. The panel upheld the district court's enforcement of the parenting agreement. 34 Kan.App.2d at 888, 125 P.3d 1081.

Obviously, *Shirk* and *Nelson* are not perfect analogs with the instant case. For instance, both of those cases involved a transfer of child custody to a family member, *i.e.*, a grandmother and an aunt, respectively. On the other hand, both *Shirk* and *Nelson* involved the outright transfer of custody by the biological parent, whereas, here, the biological mother created a coparenting arrangement that simply shared her parenting duties with another without relinquishing her responsibilities as a parent. Moreover, as a matter of law, Goudschaal would be deemed to have retained certain parental duties because her parental rights had not been terminated. *Cf. State ex rel. Secretary of SRS v. Bohrer*, 286 Kan. 898, 908-09, 189 P.3d 1157 (2008) (natural parent has certain common-law duties which cannot be relieved by consenting to the appointment of a permanent guardian).

556 Despite factual distinctions, we discern that *Shirk* instructs us that the coparenting agreement before us is not rendered unenforceable as violating public policy merely *556 because the biological mother agreed to share the custody of her children with another, so long as the intent, and effect, of the arrangement was to promote the welfare and best interests of the children. Likewise, *Nelson* counsels that where two fit parents knowingly, intelligently, and voluntarily waive their parental preference by entering into a custody agreement with a third party that is in the best interests of the child, the court will enforce the agreement rather than second guess the parents' decision. See 34 Kan.App.2d at 884-88, 125 P.3d 1081.

Goudschaal nevertheless suggests that this court's holding in *In re Hood*, 252 Kan. 689, 847 P.2d 1300 (1993), precludes a district court from granting a nonparent any parental rights except for those specifically set forth by statute. *Hood* interpreted the grandparent visitation statute, K.S.A. 38-129, and determined that someone who was merely "grandparent like" did not have standing to seek grandparental visitation. In so holding, the *Hood* court wielded a broad brush, declaring:

"We will not create a new common-law right of third-party visitation. The legislature is the forum to entertain sociological and policy considerations bearing on the well-being of children in our state. Any expansion of visitation rights to unrelated third parties ought to originate with the legislature." 252 Kan. at 693-94, 847 P.2d 1300.

It is difficult to square *Hood's* abdication to the legislature of the court's responsibility for the well-being of this state's children with *Ross'* declaration that "[p]ublic policy requires courts to act in the best interests of the child when determining the legal obligations to be imposed and the rights to be conferred in the mother/child relationship and the father/child relationship." 245 Kan. 591, Syl. ¶ 2, 783 P.2d 331. Nevertheless, *Hood* is factually distinguishable. We are not presented with a circumstance where an unrelated third party wants to become involved with a child who commenced life with two biological parents. The situation presented here is an agreement between two adults to utilize artificial insemination to bring children into the world to be raised and nurtured by the both of them. The biological mother is not abdicating her duties and responsibilities as a parent; she is sharing them. There is not a biological father to displace. See K.S.A. 38-1114(f) (semen donor to inseminate nonwife "is treated in law as if he were not the birth father of a child thereby conceived"); see also *In re K.M.H.*, 285 Kan. 53, 73, 169 P.3d 1025 (2007) (sperm donor must have written agreement with mother to have standing to assert parental rights), *cert. denied* 555 U.S. 937, 129 S.Ct. 36, 172 L.Ed.2d 239 (2008).

Further, the court in *Hood* was presented with the question of whether it should create the designation of "psychological parent" based on the facts and circumstances of the case. 252 Kan. at 693-94, 847 P.2d 1300. But here we need not decide on a label to be applied to Frazier because the parties have done that for us. The coparenting agreement designates Frazier as a "de facto parent." As indicated above, reading K.S.A. 38-1114(a)(4) in conjunction with K.S.A. 38-1113 and K.S.A. 38-1126, the KPA permits the creation of presumptive motherhood through written acknowledgement.

Goudschaal would have us ignore the coparenting agreement and the parental designation therein because of both the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Kansas parental preference doctrine. But we disagree with Goudschaal's application of those concepts to this factual scenario.

Granted, in *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000), the United States Supreme Court struck down a Washington state statute that gave *anyone* the right to petition the court for child visitation. In doing so, the

Supreme Court reiterated that parents have a fundamental right to make decisions regarding the care, custody, and control of their children. 530 U.S. at 65-66, 120 S.Ct. 2054. Likewise, the well-established parental preference doctrine in this state recognizes that

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"a parent who is able to care for his children and desires to do so, and who has not been found to be an unfit person to have their custody in an action or proceeding where that question is in issue, is *557 entitled to the custody of his children as against others who have no permanent or legal right to their custody."

. . . .

"The best interests of the child test ... has long been the preferred standard to apply when the custody of minor children is at issue between the natural parents of the child or children. However, absent highly unusual or extraordinary circumstances it has no application in determining whether a parent, not found to be unfit, is entitled to custody as against a third-party nonparent." *In re Guardianship of Williams*, 254 Kan. 814, 818, 826, 869 P.2d 661 (1994).

But what Goudschaal overlooks is the fact that she exercised her due process right to decide upon the care, custody, and control of her children and asserted her preference as a parent when she entered into the coparenting agreement with Frazier. If a parent has a constitutional right to make the decisions regarding the care, custody, and control of his or her children, free of government interference, then that parent should have the right to enter into a coparenting agreement to share custody with another without having the government interfere by nullifying that agreement, so long as it is in the best interests of the children. Further, as *Nelson* recognized, parental preference can be waived and, as Frazier points out, the courts should not be required to assign to a mother any more rights than that mother has claimed for herself.

Looking at the coparenting agreement from the other side, the children were third-party beneficiaries of that contract. They would have a reliance interest in maintaining the inherent benefits of having two parents, and severing an attachment relationship formed under that contract would not only risk emotional and psychological harm, as the NASW asserts, but also void the benefits to the children that prompted the agreement in the first instance. So what Goudschaal really wants is to renege on the coparenting agreement without regard to the rights of or harm to the children, all in the name of constitutionally protected parental rights. Surely, her constitutional rights do not stretch that far.

Indeed, we rejected the equivalent of Goudschaal's effort in *Ross*. There, a mother permitted a presumptive father to develop a familial relationship with her child but then placed that relationship in jeopardy by seeking to have paternity testing. We refused to allow the mother to destroy the familial relationship she had permitted to develop between her child and the presumptive father, without a court first finding that it would be in the best interests of the child. In other words, notwithstanding the parental preference doctrine and the biological parents' constitutional rights, *Ross* required the district court to consider the rights and determine the best interests of the child before allowing the mother to get what she wanted. That rationale is equally compelling here. It is one thing to assert that a nonbiological, same-gender party to a coparenting agreement has to accept the state of the law at the time of contracting, but quite another to say that children who are the objects of that agreement must suffer the consequences of their biological mother's change of heart. Before Goudschaal can assert her parental rights to assuage her own psychological or emotional needs, she must convince the court that her proposed course of action is in the best interests of the children.

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Moreover, as we have pointed out, without the coparenting agreement these children would have only one parent. See K.S.A. 38-1114(f) (semen donor not birth father). Denying the children an opportunity to have two parents, the same as children of a traditional marriage, impinges upon the children's constitutional rights. Creation of the 1973 Uniform Parentage Act (UPA), 9B U.L.A. 377 (2001), upon which our KPA is based, was prompted in part by a series of United States Supreme Court cases that held that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution required that all children — both legitimate and illegitimate — be afforded equal treatment under the law. See, e.g., *Gomez v. Perez*, 409 U.S. 535, 537-38, 93 S.Ct. 872, 35 L.Ed.2d 56 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, *558 173-76, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972); *Levy v. Louisiana*, 391 U.S. 68, 70-72, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968). The UPA drafters noted that "in providing substantive legal equality for all children regardless of the marital status of their parents, the [UPA] merely fulfills the mandate of the Constitution." 9B U.L.A. 377 (2001) UPA (1973), Prefatory Note, p. 379. Accordingly, the constitutional rights of the children, as well as those of the parents, must inform our determination of the validity of a coparenting agreement. Here, the agreement effects equality by giving the children two parents. Moreover, the UPA and, in turn, the KPA are gender-neutral, so as to permit both parents to be of the same sex.

To summarize, the coparenting agreement before us cannot be construed as a prohibited sale of the children because the biological mother retains her parental duties and responsibilities. The agreement is not injurious to the public because it provides the children with the resources of two persons, rather than leaving them as the fatherless children of an artificially inseminated mother. No societal interest has been harmed; no mischief has been done. Like the contract in *Shirk*, the coparenting agreement here contains "no element of immorality or illegality and did not violate public policy," but rather "the contract was for the advantage and welfare of the child[ren]." See 186 Kan. 311, Syl. ¶ 7, 350 P.2d 1. Further, the agreement provides the children with "substantive legal equality ... regardless of the marital status of their parents." See Ross, 245 Kan. at 596, 783 P.2d 331 (quoting 9B U.L.A. 288-89 [1987]); K.S.A. 38-1112. Consequently, the coparenting agreement in this case does not violate public policy and is not unenforceable as a matter of law.

DISTRICT COURT'S RULINGS

Because the coparenting agreement was enforceable, the district court had the discretion to make appropriate orders addressing child custody, reasonable parenting time, and child support. Judicial action constitutes an abuse of discretion if it (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; or (3) is based on an error of fact. State v. Ward, 292 Kan. 541, Syl. ¶ 3, 256 P.3d 801 (2011), *cert. denied* ___ U.S. ___, 132 S.Ct. 1594, 182 L.Ed.2d 205 (2012).

We acknowledge that the district court was exploring new territory in this case. Although it made the finding that its custody and parenting time orders were in the best interests of the children, we discern an absence of sufficient evidence to make that determination. For instance, the reason that the children allegedly began experiencing problems after recommencement of visitation with Frazier is unexplained in the record. Accordingly, we deem it appropriate to remand the case to further explore the best interests of the children and, in that regard, to appoint an attorney to represent the children's interests.

With respect to the division of the parties' property, the district court made a blanket finding that the parties intended to share everything. But, pursuant to Eaton v. Johnston, 235 Kan. 323, Syl. ¶ 2, 681 P.2d 606 (1984), the court should conduct an asset-by-asset determination of whether each item was "jointly accumulated by the parties or acquired by either with the intent that each should have an interest therein." Accordingly, the request of both parties to remand for a redetermination of the property division, utilizing the *Eaton* standard, is granted.

Affirmed in part and remanded with directions.

BRUCE T. GATTERMAN, District Judge, assigned.^[1]

BILES, J., concurring in part:

I would hold that the Kansas Parentage Act (KPA), K.S.A. 38-1110 *et seq.*, governs this case and provides sufficient statutory framework to resolve the legal issues advanced by Frazier in her favor as to whether she is a nonbiological parent under the law *559 and entitled to enforce the coparenting agreement. Therefore, I believe it is unnecessary for this court to delve further into what authority it may have under the common law or advance some other public policy rationale to decide the issues presented. I express no opinion on the analysis adopted by the majority.

In my view, we start with jurisdiction. A plain reading of K.S.A. 38-1126, which states that "[a]ny interested party may bring an action to determine the existence or nonexistence of a mother and child relationship" gives Frazier standing to present her case. And with jurisdiction established, the district court's finding that Frazier recognized maternity in writing is supported by substantial competent evidence and invokes the KPA's statutory presumptions regarding parenthood under K.S.A. 38-1114(a)(4).

K.S.A. 38-1113(a) provides that a child's mother "may be established by proof of her having given birth to the child *or under this act.*" (Emphasis added.) Looking further into the statutory scheme, K.S.A. 38-1114(a) provides certain statutory presumptions of paternity. And while those statutory presumptions are written in the context of a man being declared the father of a child, K.S.A. 38-1126 instructs that those presumptions are to be read in a gender-neutral manner "insofar as practicable" in an action to determine under the act the existence of a mother and child relationship. In addition to being mandated by statute, this gender-neutral reading is consistent with what this court has found to be one purpose of the KPA, which is to provide for equal and beneficial treatment of all children, regardless of their parent's marital status. See *In re*

Marriage of Ross, 245 Kan. 591, 597, 783 P.2d 331 (1989); K.S.A. 38-1112. Children resulting from assisted reproductive technologies should enjoy the same treatment, protections, and support as all other children.

From this juncture, we need only look to K.S.A. 38-1114(a)(4), which provides for a presumption of parentage when the child's paternity has been recognized "notoriously or in writing." As outlined in the court's majority decision, substantial competent evidence most certainly supports the district court's finding that the coparenting agreement and other facts were sufficient to invoke that statutory presumption. Put simply, there is no question Goudschaal and Frazier entered into written agreements that recognized Frazier's status as a coparent and recited that Goudschaal consented to and fostered a parent and child relationship between the children and Frazier.

And to the extent Goudschaal argues now that the statutory presumption in K.S.A. 38-1114(a)(4) should be rebutted due to her biological status over Frazier, K.S.A. 38-1114(c) provides the court with discretion to determine which presumptions should control within "the weightier considerations of policy and logic, including the best interests of the child." Examining the children's best interests, the district court found that it was in the children's best interests to have a parent and child relationship with Frazier. That decision is also supported by substantial competent evidence.

In short, I find the KPA's statutory scheme sufficient to address the issues presented and agree with the analysis adopted in Chatterjee v. King, 280 P.3d 283 (N.M. 2012), and Elisa B. v. Superior Court, 37 Cal.4th 108, 33 Cal.Rptr.3d 46, 117 P.3d 660 (2005). And based on the KPA, I concur in the majority's result affirming Frazier's parent and child relationship and her rights, duties, and obligations arising therefrom. I agree further with the order to remand for the district court to explore further the best interests of the children and the appointment of an attorney to represent the children's interests. Finally, I agree with the majority as to the division of the parties' property under Eaton v. Johnston, 235 Kan. 323, 681 P.2d 606 (1984).

[1] REPORTER'S NOTE: Pursuant to the authority vested in the Supreme Court by art. 3, § 6(f) of the Kansas Constitution, Judge Gatterman was appointed to hear case No. 103,487 to fill the vacancy on the court created by the retirement of Chief Justice Robert E. Davis.

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HOT TOPICS IN DOMESTIC LAW

June 28, 2018, 2:00 p.m.

- I. Bio – Sandy Norris
 - a. Prior to my legal career, I worked as an accountant for large corporations such as Sprint and General Dynamics. Became licensed to practice law in Missouri in 2007 and Kansas in 2008. I practiced solo for several years in the area of family law. I’ve recently partnered with two other family practitioners forming Lawson Norris Sorensen, LLC. Our firm practices in family law, probate, estate planning, trademark, and traffic law.
 - b. I am a member of the Kansas City Metropolitan Bar Association (KCMBA), Secretary for the KCMBA Domestic Law Committee. The Missouri Bar Association’s Family Law Section, The Johnson County Bar Association, the Johnson County Family Law American Inn of Courts, and the Association for Women Lawyers of Greater Kansas City.
- II. General Overview of a Dissolution/Divorce Case
 - a. Initial Client Handout
 - b. Checklist Handout
 - i. Kansas and Missouri requirements
 - ii. Trial – Domestic law follows the Rules of Civil Procedure
- III. Specific Issues in Dissolution/Divorce Cases
 - a. Maintenance – Kansas Calculation vs. Missouri’s lack of formula
 - b. Child Support – Can we agree? Yes, but no.
 - c. Property Division
 - i. Family Gifts
 - ii. Real Estate
 - iii. High Asset Estates
- IV. Third-Party Custody
 - a. The devastating effects of the parental preference doctrine

CLIENT INTAKE AND PRELIMINARY STEPS

By: Sandy A. Norris

A. Client Interview and Initial Analysis

The first client contact that I typically have is by phone or by email. The majority of time the client has been screened by the administrative assistant and a conflict check made using the following form. I retain these sheets in the client folder or if we do not end up meeting in a separate “prospective client” file. The assistant keeps a list of the prospective client for future conflict checks.

Date: _____

PROSPECTIVE CLIENT FORM

Name: _____

Address: _____

Phone Number: _____

Home

Cell

Okay to leave message? Yes _____ No _____

Email: _____

____ Spouse: _____

____ Ex-Spouse: _____

____ Ex-Boy/Girl: _____

Counties in Missouri:

____ Jackson ____ Platte

____ Cass ____ Other

____ Clay _____

Counties in Kansas:

____ Johnson

____ Wyandotte

Referred by: _____

Type of Case: _____

Notes: _____

Returned Call: _____ Date: _____

____ busy ____ no answer ____ left message

If they potential client has left a message after hours or sent an email, I will usually respond to them by phone, first requesting to know the type of case and the other party. I will have a conflict check done before proceeding.

I use the initial contact to somewhat get a feel for the client, to schedule a consultation appointment, and to tell the client about my consultation fee and often an estimate of retainer. While I have a minimum retainer fee on certain matters, I do not have a set retainer fee and such depends on the complexity of the case. I do NOT give any legal advice over the phone and I make very clear that I do NOT give any legal advice and to have such, they need to schedule an appointment. I sometimes say that “my malpractice provide does not allow me to give advice over the phone.”

While many attorneys within their office, do not initially have contact with the client until the first meeting, with my practice and my personality, having had that initial phone contact has worked out well for me. I have always used it as way of determining whether the case is likely to be on the “contested” or “uncontested” track. That is not always how they turn out but the majority of the time they do.

There are also certainly key words that I take note of and that send red flags, such as “custody battle” and often times determine whether or not the client has a case that I am willing to take and whether or not the client has appropriate financial resources to fund such a case.

When the client meets with me in my office, I have them complete an Initial Client Intake Form which has been provided below.

LAWSON NORRIS SORENSEN, LLC

CLIENT INFORMATION SHEET

Today's Date: _____

Full Name: _____
First Middle Last

Address: _____

Employer's Name _____

Employer's Address _____

Home Phone: _____

Cell Phone: _____

Work Phone: _____

Fax: _____

Email: _____

Birth Date: _____ Social Security Number: _____

Referred By: _____

Notes:

ALWAYS enter into an employment agreement so that everyone is clear as to the expectations and the fees required to work on case. Do not hesitate to get off of a case where you are not being paid. It is on rare occasion that you will have attorney fees awarded and it is difficult to get money from clients after the case is over.

Many attorneys these days are requiring that the client either keep their advance fee deposit paid in full or a credit card on file.

Other contract provisions that I have seen is that client's accept copies of pleadings and correspondence by email, a provision which set forth specific areas of law such as tax and bankruptcy in the attorney is not an expert nor will render legal advice in that area and that the client should seek advice elsewhere, and a provision stating that potential for Guardian Ad Litem fees in a custody case. The following is a copy of my standard contract.

LAWSON NORRIS SORENSEN, LLC

9001 State Line Road, Suite 220
Kansas City, Missouri 64114
Phone: 816.524.3838

ATTORNEY EMPLOYMENT CONTRACT AND FEE DEPOSIT

_____ (“Client”) agrees to employ Lawson Norris Sorensen LLC (“LNS”) to provide legal representation under the following terms:

1. Purpose of Employment

This representation is limited to the following matter(s):

_____ Divorce
_____ Original Suit Affecting the Parent-Child Relationship (not in a divorce)
_____ Modification of a Prior Order
_____ Enforcement of a Prior Order
_____ Protective Order
_____ Other: _____

Unless specifically stated in this Contract, the representation does not include any presentation of this case to any appellate court nor does it include any motions for enforcement or motions to modify following the final order in the matter(s) described above. Should Client’s needs expand beyond the scope of this representation, a new contract for legal services will be necessary.

2. Scope of Service

Some, but not all, of the professional services for which Client agrees to pay LNS include court appearances, travel, legal research, conferences, telephone conferences, investigative work, review of material received from all sources, drafting pleadings, e-mail and other correspondence, discovery requests and all other litigation documents, participation in all settlement negotiations, and furnishing Client legal counsel and advice on all matters touching upon this matter both during and immediately after its pendency.

Client should be aware that LNS bills for time spent discussing the case with Client, opposing counsel, or other persons who can assist in the matter, whether these conferences occur in person or by phone.

LNS’s representation does not include tax advice. Client is advised that a wide variety of events may trigger tax consequences for Client, including, but not limited to:

- divorce
- sale of stock and other assets

- division of retirement plans, including individual retirement accounts (IRAs) and 401K plans
- spousal maintenance (alimony)

LNS strongly recommends that Client seek the assistance of a qualified tax advisor if making decisions regarding property division and before filing Client's next tax return.

3. Attorney's Fees and Expenses

A. Attorney's Fees

Attorney's fees will be calculated and billed on an hourly basis and will be charged for all time spent by attorney and legal assistants on client's matter. **EACH PORTION OF ONE-TENTH OF AN HOUR IS BILLED AS ONE-TENTH OF AN HOUR. FOR EXAMPLE, 8 MINUTES IS BILLED AS 12 MINUTES. DUE TO ADMINISTRATION COST, THERE WILL BE A MINIMUM CHARGE OF ONE-TENTH OF AN HOUR ON ANY SERVICE PERFORMED.**

Client agrees to pay for the professional services of the attorneys and legal assistants of LNS at the hourly rates regularly charged for these attorneys and legal assistants' services. In particular, Client agrees to pay for the professional services of the following attorneys, whose current hourly rates are listed below:

LESLIE LAWSON:	\$250.00 per hour
SANDY NORRIS:	\$200.00 per hour
SHANNON SORENSEN:	\$285.00 per hour

Client further agrees to pay for the professional services of the following legal assistants, whose current hourly rates are listed below:

PARALEGAL	\$120.00 per hour
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Client agrees that Client's responsibility for the payment of attorney's fees and expenses is not affected by an award of attorney's fees and expenses to LNS or by the promise of another person to pay those attorney's fees and expenses for Client. In the event that the court awards attorney's fees, the amount awarded does not limit the amount Client owes LNS. Client will receive a credit from LNS for any attorney's fees and expenses received from an opposing party or any other person. An award of attorney's fees and expenses to LNS by a court or the promise of another person to pay Client's attorney's fees and expenses does not mean Client may postpone the timely payment of attorney's fees and expenses owed to LNS. If a court awards LNS attorney's fees and expenses and Client pays Client's balance

in full, LNS will assign the judgment for attorney's fees and expenses to Client at Client's request.

If the court costs or attorney's fees are assessed against Client, Client agrees to be solely responsible for their payment.

B. Expense Reimbursement

In addition to compensation for legal services, Client agrees to reimburse LNS for expenses incidental to the conduct and handling of their legal representation. The following are the amounts for which LNS will bill Client:

Document Retrieval:	Amount charged by provider
Filing Fees and Court Costs:	Amounts set by the particular Court or County.
Certified Mailings:	Amount charged by mail carrier
Overnight Mailings:	Amount charged by mail carrier
Courier Service:	Amount charged by courier service
Photocopying:	\$0.20 per page
Imaging (i.e. scanning):	\$0.05 per page
Depositions:	Amount charged by court reporter
Appraisal Fees:	Amount charged by appraiser
Expert Witness Fees:	Amount charged by expert

These fees are subject to change by LNS without notice. Client may be required to reimburse LNS for expenses not listed above.

C. Billing

All payments pursuant to this contract shall be made to _____ at 9001 State Line Road, Suite 220, Kansas City, Missouri 64114

LNS bills its clients on a monthly basis. It has the option to bill more frequently. Client's failure to make a reasonable payment to LNS each month that there is an amount owing shall be an indication to LNS that Client no longer wishes to retain LNS's services. **Client agrees to pay the balance on the billing**

statement in full within fifteen days after receipt of the bill. Client agrees that the failure to pay this balance when due gives LNS the option to terminate its representation of Client. Client has the option to pay with any majorly-accepted credit card, cash, or by check. Please note that any transaction under \$250 using a credit card will be subject to an additional processing fee.

Client agrees to deposit with LNS the amount of _____ for future attorney's fees and expenses. **Client agrees that LNS's representation of Client will not commence and work will not begin until LNS receives these deposits in full.** At the end of the representation, LNS agrees to refund to Client any portion of the deposit not applied to the final billing statement.

Unless specifically stated in this Contract, this deposit is not a flat fee nor is it a representation of how much LNS will charge Client for this representation.

If Client's balance owing to LNS is unpaid and more than thirty days delinquent, Client agrees that LNS may pursue all lawful means to collect this balance, including but not limited to the use of collection agents.

If Client's balance owing the LNS is unpaid and more than thirty days delinquent, Client agrees that LNS may charge interest of 12% per annum on the delinquent balance until that balance is paid.

If the amount of Client's initial deposit falls below 20% of its original amount at any time, Client agrees to deposit additional money with LNS so that the amount on deposit is brought up to the amount of the initial deposit. For example, if the initial deposit was \$5,000.00, when that deposit is depleted down to \$1,000.00, the client will deposit an additional \$4,000.00. **Client agrees to make such additional deposits within twenty days after notice by LNS of the need to do so.**

Client agrees that at the option of LNS, LNS may demand payment of any outstanding balance before final disposition of Client's case.

D. No Estimate of Fees

Client understands that since each case is different and no one can predict how the adverse party will react to events, LNS cannot provide an accurate estimate of the total fees for the legal services in this matter. Client is cautioned at the outset that sometimes (and not infrequently) complexities develop in areas where they are not expected by a client. Sometimes because of extreme bitterness or hurt feelings, or because of substantial property interests, family law cases become extraordinarily time-consuming. LNS makes no express or implied representations or guarantees concerning the outcome of Client's case or how long Client's case will take to complete.

E. Collection Costs

In the event LNS is compelled to initiate legal action to recover any fees or expenses due to it pursuant to this Contract, Client agrees to pay, in addition to the fees and expenses as set out herein, the reasonable attorney's fees incurred by or on behalf of LNS in recovering amounts due to it pursuant to this Contract, together with all costs of court and other expenses incurred.

4. Attorney-Client Relationship

A. No Representations or Guarantees of Outcome of Case

Client acknowledges that LNS has not and cannot make any representations or guarantees concerning the outcome of this case or how long the case will take to complete.

B. Confidentiality and Candor

Almost all confidential communications between the attorney and Client are privileged and protected by law. The privileged communication may be waived when a third party is present. LNS, therefore, strongly discourages the presence of anyone other than Client, LNS attorney and LNS staff during any client meeting.

To protect Client's rights and interests, Client agrees to communicate to the attorney all relevant facts, particularly those that may be damaging to Client's case. Client agrees that absolute candor is essential to LNS providing effective representation. To maintain the confidentiality of communications with the attorney, Client is advised not to share these communications with any person not employed by LNS.

C. Agreement to Cooperate

Client agrees to assist LNS in the preparation and presentation of Client's case including providing information in a timely manner and assisting in furnishing necessary witnesses.

D. Electronic Mail and Facsimile Transmissions

Electronic mail (*i.e.* e-mail) and facsimile transmissions (*i.e.* faxes) can be an effective means of communication between Client and LNS. Information and documents can be exchanged in dramatically less time than by telephone or mail, and Client's case may benefit substantially through their use. The use of e-mail and faxes can, however, jeopardize the attorney-client privilege if persons other than Client are able to review these communications. These persons may include secretaries, supervisors, and family members. If Client authorizes LNS to send e-mails and faxes to Client, Client agrees to ensure that no other person may view these e-mails, attachments, and faxes. In view of the benefits and risks of these methods of communications, Client:

☐ Does

☐ Does not authorize LNS to send information and attachments to Client by e-mail, and

☐ Does

☐ Does not authorize LNS to send documents to Client by fax

Additionally, LNS has the ability to provide information through a secure client portal through Clio. Clio Connect is a secure way of transmitting information and LNS will use this means of transmission when necessary. I have attached information regarding Clio Connect to this correspondence.

D1. Cloud Base Storage

Client acknowledges that he/she is aware that LNS uses Gmail and other cloud-base storage companies, such as Google Drive, RocketMatter, Clio and QuickBooks to store Client's information and for email communication. **Client consents to Attorneys storing his/her information and confidential communication/file on a cloud-based storage system. Client also consents to LNS sending confidential communication via text or email to Client.** Client agrees that should a breach of confidentiality be the result of hacking and/or the result of actions taken by the cloud-based storage companies and/or outside of the control of LNS that Client shall hold LNS harmless of any resulting damages.

☐ Yes, I consent and agree to store my information/communications on cloud base systems.

☐ No, I do not consent or agree.

E. Notice of Dissatisfaction

Client agrees that if Client should at any time become displeased or dissatisfied with any aspect whatsoever of LNS's legal representation or has any serious question concerning that representation, Client shall immediately notify LNS **by hand delivery or by certified mail, return receipt requested**, of that fact. This notification allows LNS the opportunity to immediately resolve any misunderstanding, correct any errors, or withdraw from representation and so minimize the expense and inconvenience to both Client and LNS.

F. Termination of Representation

Both Client and LNS agree that each has the right to terminate the attorney-client relationship, with or without cause. Notification of the termination shall be effective if made in writing and sent **by hand delivery or by certified mail, return receipt requested**. In the event of such termination, Client agrees to promptly pay LNS for all other fees, charges, and expenses incurred pursuant to

this Contract before the date of the withdrawal. LNS agrees to promptly refund Client any unearned portion of the deposit if Client is entitled to a refund.

Client agrees that LNS may terminate the attorney-client relationship and withdraw from further representation of Client for any of the following reasons:

- a. Client's failure to cooperate and comply fully with any reasonable request of LNS about Client's case;
- b. Client's engaging in conduct or making statements that render it unreasonably difficult for LNS to carry out the purposes of its employment;
- c. Client's insistence that LNS engage in conduct that is contrary to LNS's judgment and advice;
- d. Client's failure to pay fees and costs as provided in this agreement.

G. File Retention

At the conclusion of representation, LNS will notify Client that file will be closed and all original documents will be available for retrieval by Client. Client's file will be relinquished to Client upon reasonable request, submitted in writing to LNS. Client understands that to the limited extent LNS has paid out of pocket expenses for items, which have not yet been reimbursed by Client, LNS will be reimbursed for that particular expense before releasing the item. Files not retrieved by Client within 30 days of written request for retrieval will be stored by LNS, in an electronic format, for three years after conclusion of representation

H. Power of Attorney

Client assigns to LNS a lien against any and all sums of money coming into the possession of Client to which LNS may be entitled to the extent of all unpaid attorney's fees and expenses. Client appoints LNS as Client's attorney-in-fact to endorse, negotiate, cash, deposit, and apply those funds to the payment of those outstanding attorney's fees and expenses.

5. General Contract Provisions

A. Entire Contract

Client and LNS agree that this Contract, including any attachments hereto, embodies the entire agreement of the parties and supersedes any prior understanding or written or oral agreement between the parties respecting the subject of this representation. **The terms of this Contract may not be modified or revoked except by written agreement signed by Client and LNS.**

B. Contract Binding on All Parties

This Contract is binding on Client and LNS and their respective heirs, assigns, successors, executors, administrators, and legal representatives.

C. Legal Construction

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Contract shall be construed as if the invalid, illegal, or unenforceable provisions had never been contained herein.

D. Place of Performance

Client and LNS agree that the place of performance and payment of this Contract is Kansas City, Jackson County, Missouri.

E. Privacy Policy

The privacy of your personal information, including your social security number, is important to LNS. By law, LNS may be required to include some of that information in some final orders and to provide it to the government agencies. LNS may also be required to disclose this information in response to discovery requests or court orders in a lawsuit.

Opposing parties therefore may gain access to this information, and by law, some of this information may become part of public records. Included in this personal information may be your social security number and the social security numbers of minor children who are the subject of a suit. LNS will also release this information at the request of the client.

Because of its need for personal information to represent its clients properly, LNS collects this information from its clients at the initial consultation. This information is kept in the clients' physical files and may also be kept on LNS's computer servers. They physical files are stored in the offices of LNS, to which only LNS employees are permitted access. The computer server is protected against unauthorized access by advanced electronic methods. Physical access to the computer server is also restricted to employees of LNS.

If Client's balance owing to LNS is unpaid and more than thirty days delinquent, LNS may share some of Client's personal information, including social security numbers, with collection agencies as part of LNS's effort to collect the delinquent balance.

It is the policy of LNS to shred drafts of documents containing personal information, including social security numbers. After a client's case is completed

or if a potential client does not employ LNS, the information will be stored by LNS in a secure facility for 3 years. Eventually, the confidential information will be shredded when the in which it is contained is destroyed.

If you have any questions about LNS's privacy policy, please do not hesitate to ask your attorney.

F. Notice of Medical Information

Because LNS gathers, stores, and electronically transmits medical records, also known as Protected Health Information (PHI), LNS is required to post a notice to clients that their protected health information is subject to electronic disclosure.

Federal Law prohibits any electronic disclosure of a client's protected health information to any person without a separate authorization from the client for each disclosure. This authorization for disclosure may be made in written or electronic form in oral form if it is documented in writing by LNS.

The authorization for electronic disclosure of protected health information described above is not required if the disclosure is made to: a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of: treatment; payment; health care operations; performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or as otherwise authorized or required by state or federal law. In other words, no further release is necessary for electronic disclose to other health care providers, insurance companies, governmental agencies, or lawyers representing adverse parties.

G. Social Media Warning

LNS strongly encourages Client to refrain from participating in social media (Facebook, Twitter, Tumblr, Flickr, Skype, and the like during the course of representation. Information found on social media websites is not private, can be discoverable, and may be potentially damaging to Client's interests. Understand that information shared with others be it verbally; in writing via e-mail, text message or letter; or even posted online could lead to the loss of attorney-client privilege if that information related in any way to the legal matter that LNS is handling for Client.

Given this, LNS advises Client to refrain from communicating with LNS on any device provided by Client's employer or any computer, smart phone, or other device that is shared with someone else. In addition, when communicating with LNS, do not use a work e-mail address or a shared e-mail account. Client should only use a private e-mail account that is password protected and only accessed through Client's own personal smart phone or computer.

Client acknowledges that Client has read this Contract in its entirety, Client understands this contract, and Client agrees to each provision of this Contract. Client further states that Client considers the contract and each of its provisions to be fair and reasonable and that Client voluntarily and knowingly signed this contract.

SIGNED AND AGREED TO on this, the _____ day of _____, 2018.

Client's Signature

Attorney's Signature

Some Attorneys will have the client in the initial meeting complete a complex worksheet as shown below before meeting. I provided the form to my client during the meeting and have them complete it home and either have them email or fax it back to me. Depending on the complexity of the case, I have shorter versions of the intake form.

DOMESTIC RELATIONS INFORMATION
Dissolution of Marriage with Children

The following information is needed in order to properly advise you and handle your case. Please **print** and fill out every applicable question. If a question is not applicable, please write N/A in the same. **Do not leave blanks.** This information will help me help you. **This information will be kept confidential.**

Today's Date: _____

1. PERSONAL INFORMATION - CLIENT

A. Please provide your full name:

(Last) (First) (Middle) (Maiden)

B. Social Security Number: _____

C. Date of birth: _____ State of Birth: _____ Race _____

D. Have you ever been know by any other name(s)? If so, what name(s):

E. Current address:

(Street)

(City) (County) (State) (Zip Code)

F. Mailing Address during pendency of case where your spouse will not have access (if different from above):

(Street)

(City) (County) (State) (Zip Code)

G. _____
(Home Phone) (Work Phone) (Cell Phone)

H. How long have you lived at current address? _____

I. How long have lived in the State? _____

J. Do you : _____ own _____ rent, or _____ live with relatives?

K. Provide a brief summary of your educational, professional background and credentials: _____

L. How many times, including the current marriage, have you been married? _____ If married previous, please list the date each marriage ended and whether it ended due to the death of your spouse or through divorce.

M. Do you pay alimony or maintenance to a former spouse? Is so, state the amount per month and the date the obligation ends.

N. Have there been any discussions or agreement between the you and your spouse concerning child support or maintenance?

_____ Yes _____ No

Please describe any tentative agreements:

2. CLIENT'S EMPLOYMENT INFORMATION:

A. Are you currently employed? _____ Yes _____ No

B. Name, full address of employer, or business if self employed:

C. How long have you been so employed? _____

D. What is your job title? _____

E. Are there any circumstances you are aware of which may now or in the future preclude you from engaging in full time employment? If so, please describe in detail.

F. If you are not currently employed or have been employed at your current job less than one year, please provide the following information regarding your last employment:

Name of former employer: _____

Dates of employment: _____

Title: _____

Salary at time of employment termination: _____

Date and reason why employment was terminated: _____

G. Do you have any source of income other than from your employment?

_____ Yes _____ No

If yes, explain in detail:

3. MARRIAGE INFORMATION

- A. Date you were married. _____
- B. City and State where you were married. _____

- C. County in which your marriage was registered. _____
- D. Date of Separation. _____

4. PERSONAL INFORMATION - SPOUSE

- A. Please provide full name of spouse:

(Last) (First) (Middle) (Maiden)
- B. Social Security Number: _____
- C. Date of birth: _____ State of Birth: _____ Race: _____
- D. Please provide spouse's current address:

(Street)

(City) (County) (State) (Zip Code)
- E. _____
(Home Phone) (Work Phone) (Cell Phone)
- F. How long has your spouse lived at current address? _____
- G. How long has spouse lived in the State? _____
- H. Does spouse: _____ own, _____ rent, or _____ live with _____ relatives?
- I. Provide a brief summary of spouse's educational, professional background and credentials: _____

J. How many times, including the current marriage, has your spouse been married? _____

If married previous, please list the date each marriage ended and whether it ended due to the death of your spouse or through divorce.

K. Does your spouse pay alimony or maintenance to a former spouse? Is so, state the amount per month and the date the obligation ends.

5. SPOUSE'S EMPLOYMENT INFORMATION:

A. Is spouse employed? _____ Yes _____ No

B. Name, full address of spouse's employer, or business if self employed:

C. How long has spouse been so employed? _____

D. What is spouse's job title? _____

E. Are there any circumstances you are aware of which may now or in the future preclude spouse from engaging in full time employment? If so, please describe in detail.

F. If spouse is not currently employed or has been employed at his/her current job less than one year, please provide the following information regarding your last employment:

Name of former employer: _____

Dates of employment: _____

Title: _____

Salary at time of employment termination: _____

Date and reason why employment was terminated: _____

G. Does spouse have any source of income other than from his/her employment?

_____ Yes _____ No

If yes, explain in detail:

6. CHILDREN OF THE MARRIAGE

Beginning with the oldest child, list children born to you and your spouse. Include children adopted by you and your spouse. Indicate whether child was born to you or adopted. Do not include children of your previous marriages or relationship who have not been adopted by your spouse.

Full Name (born or Adopted)	Date of Birth	Soc. Sec. #

A. Does any child listed above have special educational or health needs that requires extra time or expense? If so, describe in detail.

7. OTHER CHILDREN

A. Do you or your spouse have any children from other marriages or relationships? If so, please provide the following information and indicate with a "*" children who are yours.

Full Name (born or Adopted)	Date of Birth	Soc. Sec. #

B. State who has custody of each child listed above: _____

C. Describe in detail the child support paid by you or your spouse for each child listed above. Give the expected ending dates for each.

D. Describe in detail the child support received by you or your spouse for each child listed above. Give the expected ending dates for each.

E. Does any child listed above have special educational or health needs that requires extra time or expense? If so, describe in detail.

F. Please provide information on any child living in your household who has not been listed above.

Full Name (born or Adopted)	Date of Birth	Soc. Sec. #

8. CUSTODY OF CHILDREN (who are the subject of this proceeding):

A. Who has actual physical custody of the minor child(ren) at this time?

_____ Myself _____ Spouse _____ Joint

Please describe any formal or informal arrangement regarding custody in place at this time. Explain.

B. Who do you feel is best suited to have legal custody (decision making authority) of the minor child(ren)? Think about religion, choice of schools and medical care.

_____ Myself _____ Spouse _____ Joint

C. Is your spouse a good parent to the minor child(ren)?

_____ Yes _____ No.

D. Have you and your spouse generally agreed or disagreed on the major aspects of parenting such as discipline, schooling, religion, etc.? Describe disagreements.

E. State if the minor child(ren) ever lived with anyone other than you and your spouse. If yes, please explain.

_____ Yes _____ No

F. Please list the addresses where the child(ren) have lived for the last five (5) years and the dates of residence of such addresses:

Address

Date

G. Provide name, address and telephone number of the child(ren)'s primary care physician.

H. Provide name, address and telephone numbers of any mental health specialist to whom the child(ren) have gone for treatment, evaluation or counseling.

I. Have there been any discussions or agreement between the you and your spouse to concerning child support or maintenance?

_____ Yes _____ No

Please describe any tentative agreements:

9. HISTORY AND PROBLEMS:

A. Please state briefly your view of the basic problems between you and the spouse.

B. Please state briefly any complaints your spouse would have against you at this time.

C. Does your spouse have any physical disabilities? If so, describe and explain how this impacts his/her ability to work, if any.

D. Do you have any physical disabilities? If so, describe and explain how this impacts your ability to work, if any:

E. Do you or your spouse have any health problems or medical conditions? If so, describe and explain in detail.

F. Provide name(s), address and telephone number of all mental health specialists you or your spouse have seen individually in the past five years. Describe reason for services, duration or frequency.

G. Do you and/or your spouse have any history of alcohol or drug abuse or misuse? Is so, please describe in detail.

H. State how much alcohol you and your spouse consume on a daily and weekly basis. Do you and/or your spouse currently have a problem with alcohol or drug abuse or misuse? If so, please describe in detail.

I. Have you and your spouse sought counseling together? If so, please explain and describe. Provide name, address and telephone number of all persons providing counseling and give approximate dates.

J. Do either you or your spouse take prescription medication for any mental condition? If so, please explain and provide name of treating physician.

K. If there a possibility of reconciliation with your spouse? Explain.

L. Have you and your spouse entered into any ante-nuptial agreement (before marriage) or post-nuptial agreement (after marriage)?

M. Do you have a will _____ Yes _____ No

N. Are you or your spouse involved in any legal actions or proceedings? If so, describe in detail.

O. Have you or your spouse ever filed for an Order of Protection against the other? If so, please provide detailed information about each such filing and the results including whether any Order of Protection is currently in place.

P. Has there been any history of domestic violence in your relationship with your spouse. If so, please describe in detail. In answering this questions, consider the following:

- Have you been physically hurt or threatened by your spouse?
- Has your spouse ever destroyed things that you care about?
- Has your spouse ever forced you to have sex?
- What happens when you and your spouse fight or disagree?
- Are you ever afraid of your spouse?
- Are there guns in the house? If so, has your spouse ever threatened to use them against you?

- Does your spouse constantly belittle or criticize you or embarrass you in front of others?

10. HEALTH INSURANCE

A. Who has health insurance benefits through employment?

_____ self _____ spouse

B. Who currently provides coverage for you and/or the minor child(ren)?

_____ self _____ spouse _____ other

C. What is the cost? \$ _____

_____ weekly _____ biweekly _____ monthly _____ semi-monthly

D. If the health insurance is provided through an employer, what would the cost be for the employee only? \$ _____

_____ weekly _____ biweekly _____ monthly _____ semi-monthly

E. List all individual covered by the policy?

11. ADDITIONAL INFORMATION

A. State the name, address and telephone number of your mother and father

Name	Address	Phone No.
------	---------	-----------

B. Provide the name, address, telephone number and relationship of someone most likely to know where you are in the event the office must contact/locate you on short notice.

C. If you know that your spouse has retained an attorney, please provide the name, address and telephone number, if available.

D. Do you plan on returning to a former name?

_____ Yes _____ No

If yes, Name: _____

List the City and State in which you were born _____

List your father's full name _____

List your mother's maiden name _____

E. Is there any child involved in these proceedings whose name you desire to change? Is so, provide name of child and name exactly as you wish it to appear on the birth certificate.

F. Please provide any other information which you believe your attorney should know regarding this matter. Please provide additional pages or materials if necessary.

12. SERVICE

If you are the party filing this action, the other party must consent to service or be served either by the Sheriff in the County of his/her residence or by some other means.

A. How do you suggest services be accomplished?

_____ Request Consent to Service by Spouse though Certified Letter

_____ Sheriff/Deputy

_____ Spouse to pick up at Sheriff Department

_____ Spouse's Attorney to accept service

_____ Special Process Service

B. If service is to be by Sheriff or Special Process Service, provide address for service and suggest best time for service.

B. Answers to Common Client Questions

The most common question asked is “how long is this going to take”? When it comes to timing of divorce, be realistic with your clients. It is also better to overestimate than underestimate. I always explain the process in general and then the timing of such. Make sure that the client knows what time periods that you can control, what the court controls and how the other party can affect time periods. With a divorce case in Jackson County that goes to trial, a year time period is not unrealistic and it may even be more time depending on the Judge that is assigned, the courts schedule, the complexity of the issues, discovery required, whether or not a Guardian Ad Litem is involved. Even on an uncontested divorce case, it will generally take three to four months before a hearing is held.

With technology increasing peoples’ expectation of immediate results, make sure the client knows that is not the case with a civil case and that is no way to speed up the process.

C. Venue and Jurisdiction Considerations

Procedure and venue.

452.300 (5) RSMo.

An original proceeding pursuant to sections 452.300 to [452.415](#) shall be commenced in the county in which the petitioner resides or in the county in which the respondent resides. If an original proceeding is commenced in the county in which the petitioner resides, upon motion by the respondent filed prior to the filing of a responsive pleading, the court in which the proceeding is commenced may transfer the proceeding to the county in which the respondent resides if:

(1) The county in which the respondent resides had been the county in which the children resided during the ninety days immediately preceding the commencement of the proceeding; or

(2) The best interest of the children will be served if the proceeding is transferred to the county in which the respondent resides because:

- (a) The children and at least one parent have a significant connection with the county; and
- (b) There is substantial evidence concerning the present or future care, protection and personal relationships of the children in the county.

Missouri UCCJEA

Mo. Rev. Stat. § 452.700 et seq.

ARTICLE I

GENERAL PROVISIONS

§ 452.700

Sections 452.700 to 452.930 may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act".

§ 452.705 Definitions

As used in sections 452.700 to 452.930:

- (1) "Abandoned" means left without provision for reasonable and necessary care or supervision;
- (2) "Child" means an individual who has not attained eighteen years of age;
- (3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, or modification order. The term shall not include an order relating to child support or other monetary obligation of an individual;
- (4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term shall not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under sections 452.850 to 452.915;
- (5) "Commencement" means the filing of the first pleading in a proceeding;
- (6) "Court" means an entity authorized under the law of a state to establish, enforce, or

modify a child custody determination;

(7) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(8) "Home state" means the state in which a child has lived with a parent or a person acting as a parent for at least six consecutive months immediately prior to the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child has lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of such period;

(9) "Initial determination" means the first child custody determination concerning a particular child;

(10) "Issuing court" means the court making a child custody determination for which enforcement is sought under sections 452.700 to 452.930;

(11) "Issuing state" means the state in which a child custody determination is made;

(12) "Litigant" means a person, including a parent, grandparent, or stepparent, who claims a right to custody or visitation with respect to a child;

(13) "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;

(14) "Person" includes government, a governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

(15) "Person acting as a parent" means a person, other than a parent, who:

(a) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately prior to the commencement of a child custody proceeding; and

(b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state;

(16) "Physical custody" means the physical care and supervision of a child;

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(18) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

§ 452.740

1. Except as otherwise provided in section 452.755, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months prior to the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) A court of another state does not have jurisdiction under subdivision (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 452.770 or 452.775, and:

(a) The child and the child's parents, or the child and at least one parent or person acting as a parent have a significant connection with this state other than mere physical

presence; and

(b) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(3) All courts having jurisdiction under subdivisions (1) and (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 452.770 or 452.775; or

(4) No state would have jurisdiction under subdivision (1), (2) or (3) of this subsection.

2. Subsection 1 of this section is the exclusive jurisdictional basis for making a child

custody determination by a court of this state.

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

E. Pleading and Responses (w/Samples)

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
FAMILY COURT DIVISION
AT INDEPENDENCE OR KANSAS CITY**

IN RE THE MARRIAGE OF:)	
)	
FULL NAME)	
ADDRESS)	
CITY, STATE, ZIP)	Case No
)	Division
Petitioner,)	
)	
and)	
)	
FULL NAME)	
ADDRESS)	
CITY, STATEZIP)	
)	
Respondent.)	

PETITION FOR DISSOLUTION OF MARRIAGE

COMES NOW Petitioner, _____, and for HIS/her cause of action, states to the Court as follows:

1. Petitioner is and has been a resident of the State of Missouri continuously for more than 90 days immediately preceding the commencement of this proceeding and now resides at _____.

2. Respondent is and has been a resident of the State of Missouri for more than 90 days immediately preceding the commencement of this proceeding and now resides at _____.

3. Petitioner is presently employed with _____ located at _____, and her social security number is on file with the court.

4. Respondent is presently employed with _____ located at _____, and her social security number is on file with the court.

5. Petitioner and Respondent were married on _____ in _____ with said marriage registered in _____.

6. Petitioner and Respondent separated on or about _____.

7. Petitioner and Respondent are not members of the Armed Forces of the United States of America or its allies.

8. There is no reasonable likelihood that the marriage of Petitioner and Respondent can be preserved and, therefore, the marriage is irretrievably broken.

9. There were _____ children of the marriage of Petitioner and Respondent to wit: Name, age _____ etc...

10. The Petitioner is not now pregnant.

11. During the term of the marriage, the parties hereto acquired certain marital property which the Petitioner requests the Court to divide in a fair and equitable manner, pursuant to Section 452.330 R.S.Mo., or approve the Parties' Settlement Agreement and find the same not unconscionable if the Parties are able to reach an agreement.

12. The Parties have acquired marital debts which Petitioner requests the Court divide in a fair and equitable manner.

13. The non-marital property of each party should be set aside to that party as his or her separate property pursuant to Mo. Rev. Stat. Section 452.330.

14. Petitioner and Respondent should be awarded joint legal and physical custody of the unemancipated children with Petitioner's address designated as the children's address for mailing and educational purposes.

15. The unemancipated children are in need of support from Petitioner and Respondent and the court should enter an appropriate order for the support of said minor children.

16. The children shall reside with Petitioner and Respondent and have resided in _____ County, Missouri for the six months immediately preceding the filing of the Petition.

17. Petitioner has not participated, at any time, in any capacity in any other litigation concerning the custody of the children in this or any other state; nor does

Petitioner know of any custody proceeding that is pending in any court of this state or any other state concerning the children; nor does Petitioner know of any person not a party to these proceedings who had physical custody or who claims to have custody or visitation rights with respect to the children.

18. Neither party is entitled to maintenance in that they are each self-supporting and have sufficient income to provide for his or her reasonable needs. OR Petitioner requires maintenance from Respondent to provide for his/her needs and support in accordance with the standard of living of the parties during their marriage in that he/she lacks sufficient property to provide for his/her reasonable needs and is unable to adequately support him/herself through employment. Respondent has sufficient resources to assist Petitioner in his/her support and still provide for his/her reasonable needs.

19. Petitioner and Respondent are financially able to pay their own attorney's fees and Petitioner shall pay Court costs in relation to this proceeding. OR Petitioner/Respondent lacks funds to pay attorney fees and the cost of this action whereas Respondent has the ability to pay same and he/she should be ordered to do so pursuant to Mo. Rev. Stat. Section 452.355.

20. Petitioner's maiden name of _____ should be restored to her since she will no longer be married to Respondent.

21. No fraud or misrepresentation is involved in this request.

22. No judgment for money is pending against Petitioner which has not been satisfied.

23. Petitioner was born on _____ in Missouri.

24. WHEREFORE, Petitioner requests that the marriage of Petitioner and Respondent be dissolved; that the Court approve the Marital Settlement Agreement submitted by the parties but in the event the parties cannot agree, that the Court fairly and equitably divide the marital property and marital debts; that each party be awarded his or her non-marital property; that Petitioner and Respondent should be awarded joint legal and physical custody of the unemancipated children with Petitioner's address designated as the children's address for mailing and educational purposes; that the Court approve and order Petitioner's

Parenting Plan; that the court enter an appropriate order for the support of the children; that the Court determine that neither party is entitled to maintenance OR that Respondent be ordered to pay maintenance to Petitioner; that each party pay his or her own attorney fees OR that Respondent be ordered to pay Petitioner's attorney fees and costs; that Petitioner's prior name of _____ be restored to her; and that the Court make such other orders as are just and proper.

Respectfully submitted,

Sandy Norris, MO Bar No. 60091
9001 State Line Rd, Suite 220
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Phone: 816-524-3838
Fax: 816-569-9120
Email: sandy@lnslawkc.com
ATTORNEY FOR PETITIONER

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF JACKSON) **ss.**

_____, being duly sworn upon his/her oath and over the age of 21, stated that he/she is the Petitioner in the foregoing Petition for Dissolution of Marriage, and that he/she has read the same and that it is true to the best of his/her knowledge and belief.

Subscribed and sworn before me, a Notary Public, this _____ day of _____, 2018.

Notary Public

My Commission Expires:

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
FAMILY COURT DIVISION
AT INDEPENDENCE OR KANSAS CITY**

IN RE THE MARRIAGE OF:)	
)	
FULL NAME)	
)	Case No
)	Division
Petitioner,)	
)	
and)	
)	
FULL NAME)	
)	
Respondent.)	

ANSWER TO PETITION FOR DISSOLUTION

COMES NOW Respondent and states:

1. Respondent admits each allegation contained in paragraph 1 of the Petition for Dissolution.
2. Respondent denies each allegation contained in paragraph 2 of the Petition for Dissolution.
3. Respondent is without information in which to admit or deny each allegation contained in paragraph 3 of the Petition for Dissolution and therefore denies the same.

WHEREFORE, Respondent having answered, requests such orders and relief as are appropriate in the circumstances.

Respectfully submitted,

Sandy Norris, MO Bar No. 60091
9001 State Line Rd, Suite 220
Kansas City, MO 64114
Phone: 816-524-3838
Fax: 816-569-9120
Email: sandy@lnslawkc.com
ATTORNEY FOR PETITIONER

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF JACKSON) **ss.**

_____, being duly sworn upon his/her oath and over the age of 21,
stated that he/she is the Petitioner in the foregoing Petition for Dissolution of Marriage,
and that he/she has read the same and that is it true to the best of his/her knowledge and
belief.

Subscribed and sworn before me, a Notary Public, this _____ day of _____, 2018.

Notary Public

My Commission Expires: