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657, 407 N.W.2d 747 (1987), *overruled on other grounds, Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010); *Hammond v. Hammond*, 3 Neb. App. 536, 529 N.W.2d 542 (1995), *overruled on other grounds, Smeal Fire Apparatus Co. v. Kreikemeier, supra*. In the case before us, the juvenile court makes findings of suitability but does not make an order either appointing Martha or removing the State as guardian. Thus, the order makes no change in the status of the child's placement or guardian. This order, like the order in a contempt proceeding making findings but imposing no sanction, is not a final, appealable order.

CONCLUSION

The juvenile court's order made findings of Martha's suitability as a potential guardian but did not remove the State or appoint Martha as guardian. The order left that question for a later day. Although the order was made in a special proceeding, it did not affect a substantial right of the State. Thus, it was not a final, appealable order and we lack jurisdiction of the instant appeal.

APPEAL DISMISSED.

MARCENA M. HENDRIX, APPELLEE, V.
ROBERT J. SIVICK, APPELLANT.
803 N.W.2d 525

Filed August 9, 2011. No. A-10-1174.

1. **Divorce: Judgments: Appeal and Error.** The meaning of a decree presents a question of law, in connection with which an appellate court reaches a conclusion independent of the determination reached by the court below.
2. **Judges: Recusal: Appeal and Error.** A motion to recuse for bias or partiality is initially entrusted to the discretion of the trial court, and the trial court's ruling will be affirmed absent an abuse of that discretion.
3. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
4. **Courts: Jurisdiction.** A court that has jurisdiction to make a decision also has the power to enforce it by making such orders as are necessary to carry its judgment or decree into effect.

5. **Statutes: Intent: Words and Phrases.** While the word "shall" may render a particular statutory provision mandatory in character, when the spirit and purpose of the legislation require that the word "shall" be construed as permissive rather than mandatory, such will be done.
6. **Child Support: Rules of the Supreme Court.** The main principle behind the child support guidelines is to recognize the equal duty of both parents to contribute to the support of their children in proportion to their respective net incomes.
7. **Divorce: Modification of Decree: Child Support.** The paramount concern and question in determining child support, whether in the initial marital dissolution action or in the proceedings for modification of decree, is the best interests of the child.
8. **Actions.** Any doubt about whether a legal position is frivolous or taken in bad faith should be resolved in favor of the one whose legal position is in question.
9. **Appeal and Error.** A party that assigns error in a proceeding must point out the factual and legal bases that show the error.
10. **Judges: Recusal.** A trial judge should recuse himself or herself when a litigant demonstrates that a reasonable person who knew the circumstances of the case would question the judge's impartiality under an objective standard of reasonableness, even though no actual bias or prejudice was shown.

Appeal from the District Court for Douglas County: PAUL D. MERRITT, JR., Judge. Affirmed.

Robert J. Sivick, pro se.

Edith T. Peebles and Jessica L. Finkle, of Brodkey, Cuddigan, Peebles & Belmont, L.L.P., for appellee.

IRWIN, SIEVERS, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Robert J. Sivick appeals from a judgment entered against him for his share of his child's childcare and uninsured medical expenses, which expenses were incurred by his ex-wife, Marcena M. Hendrix. Although Hendrix failed to submit documentation supporting childcare expenses on a monthly basis as directed by the decree, we conclude that such failure did not excuse Sivick's obligation to reimburse her for his proportionate share. Finding no error in the other respects urged by Sivick, we affirm.

BACKGROUND

A decree filed in February 2005 dissolved the parties' marriage. As pertinent to this appeal, the decree provides in part:

> e. ***CHILD-CARE EXPENSES***. The Court finds that the parties shall pay child care expenses actually incurred by [Hendrix] for employment purposes in proportion to their net monthly incomes as the same is determined for child support purposes. Accordingly, [Sivick] shall reimburse [Hendrix] for said expenses in the following manner:
>
> i. Monthly [Hendrix] shall submit to [Sivick] copies of all statements and/or receipts for employment-related daycare.
>
> ii. Regardless of whether [Hendrix] has paid said statements or not, [Sivick] shall reimburse [Hendrix] for 23% of the total monthly expenses incurred by [Hendrix] within ten days.
>
> . . . .
>
> j. ***UNINSURED MEDICAL/DENTAL EXPENSES***. [Hendrix] shall be responsible for the first $480.00 of medical related expenses incurred on behalf of the minor child annually. Thereafter, any uncovered medical, dental, orthodontia, pharmaceutical, or optical expenses shall be paid 77% by [Hendrix] and 23% by [Sivick]. Said medical expenses shall specifically include psychological or therapeutic treatment of the parties' minor daughter. [Sivick] shall reimburse [Hendrix] within ten days of a request that accompanies documentation demonstrating the expense.

A December 2009 order of modification changed the allocation of childcare expenses and uninsured medical expenses so that Hendrix was to pay 68 percent of such expenses and Sivick was to pay 32 percent.

On March 12, 2010, Sivick filed a motion to recuse. The court addressed the motion during a hearing on March 18 and overruled it.

On May 28, 2010, Hendrix filed a "Verified Motion to Liquidate to a Sum Certain Unreimbursed Expenses Owed to Plaintiff by Defendant." Hendrix alleged that for the years 2007

to 2009, Sivick's allocation of the expenses was $1,647.18 for childcare expenses and $2,203.62 for uninsured medical expenses. Hendrix alleged that on May 17, 2010, she sent Sivick a request for reimbursement of the childcare and uninsured medical expenses incurred from 2007 to date and that she submitted receipts and other verifying documentation of the expenses. She stated that Sivick refused to reimburse her for expenses other than childcare expenses for March and April 2010 and a $20 medical bill incurred on April 2, claiming that the request was untimely. Hendrix requested judgment in her favor "in a sum certain representing the sums owed by [Sivick] to [Hendrix]."

The district court conducted a hearing on July 13, 2010, and received evidence. On November 8, the court entered judgment in favor of Hendrix against Sivick in the amount of $3,130.50.

Sivick timely appeals. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENTS OF ERROR

Sivick assigns that the court erred in entering a judgment against him for childcare and uninsured medical expenses because (1) the terms of the decree were not followed by Hendrix in making demand for such expenses, (2) Hendrix acted in bad faith in making and litigating the demand for such expenses, (3) Hendrix presented insufficient evidence to support the judgment, and (4) the court acted in a biased manner in favor of Hendrix and refused to recuse itself.

STANDARD OF REVIEW

[1] The meaning of a decree presents a question of law, in connection with which an appellate court reaches a conclusion independent of the determination reached by the court below. *Fry v. Fry*, 18 Neb. App. 75, 775 N.W.2d 438 (2009).

[2] A motion to recuse for bias or partiality is initially entrusted to the discretion of the trial court, and the trial court's ruling will be affirmed absent an abuse of that discretion. *Huber v. Rohrig*, 280 Neb. 868, 791 N.W.2d 590 (2010).

ANALYSIS

Jurisdiction.

[3] Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *Carmicheal v. Rollins*, 280 Neb. 59, 783 N.W.2d 763 (2010).

[4] In *Strunk v. Chromy-Strunk*, 270 Neb. 917, 708 N.W.2d 821 (2006), a 2001 decree provided that the husband would receive an additional $75,000 judgment if the wife sold or conveyed certain marital property awarded to her. She later conveyed the property to her new husband and herself in joint tenancy, and the former husband thereafter filed a "Motion to Determine Amounts Due," requesting the court to determine the amount due to him based upon the dissolution settlement and decree. *Id.* at 922, 708 N.W.2d at 829. On appeal, the wife argued that the proper method to satisfy the controversy was through a separate action for declaratory judgment. The Nebraska Supreme Court stated:

> A district court, in the exercise of its broad jurisdiction over marriage dissolutions, retains jurisdiction to enforce all terms of approved property settlement agreements. See *Zetterman v. Zetterman*, 245 Neb. 255, 512 N.W.2d 622 (1994). A court that has jurisdiction to make a decision also has the power to enforce it by making such orders as are necessary to carry its judgment or decree into effect. *Laschanzky v. Laschanzky*, 246 Neb. 705, 523 N.W.2d 29 (1994). [The husband's] motion to determine amounts due was proper under the circumstances in this case.

Strunk v. Chromy-Strunk, 270 Neb. at 925, 708 N.W.2d at 831. See, also, *Davis v. Davis*, 265 Neb. 790, 660 N.W.2d 162 (2003) (characterizing ex-husband's application to determine amounts due pursuant to decree as attempt to enforce decree).

Under the circumstances of this case, we see nothing improper about Hendrix's motion to liquidate to a sum certain the unreimbursed expenses owed to her. Her motion was an attempt to enforce the terms of the decree, over which the district court had jurisdiction. Accordingly, we also have jurisdiction.

Terms of Decree.

Sivick first argues that the court erred in entering judgment against him for childcare and uninsured medical expenses pursuant to the terms of the decree because Hendrix did not follow the terms of the decree in making demand for those expenses.

The decree contained separate provisions for childcare expenses and for uninsured medical expenses. The childcare provision stated in part that "[m]onthly [Hendrix] shall submit to [Sivick] copies of all statements and/or receipts for employment-related daycare" and that Sivick shall reimburse Hendrix for his percentage of the total monthly expenses incurred by Hendrix within 10 days. The provision for uninsured medical expenses similarly stated that "[Sivick] shall reimburse [Hendrix] within ten days of a request that accompanies documentation demonstrating the expense," but it did not require Hendrix to submit copies of statements on a monthly basis or other timeframe.

[5] Even though the evidence shows that Hendrix did not submit any statements to Sivick on a monthly basis, we conclude that Sivick is not entitled to relief because the language of the decree was directory. We are guided by principles of statutory construction, which we find equally applicable here as both the meaning of a statute and meaning of a decree present questions of law. See, *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010) (meaning of statute is question of law); *Strunk v. Chromy-Strunk*, 270 Neb. 917, 708 N.W.2d 821 (2006) (meaning of decree presents question of law). As a general rule, in the construction of statutes, the word "shall" is considered mandatory and inconsistent with the idea of discretion. *Forgey v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. 191, 724 N.W.2d 828 (2006). Nonetheless, while the word "shall" may render a particular statutory provision mandatory in character, when the spirit and purpose of the legislation require that the word "shall" be construed as permissive rather than mandatory, such will be done. *Id.*

> "'If the prescribed duty is essential to the main objective of the statute, the statute ordinarily is mandatory and a violation will invalidate subsequent proceedings under

> it. If the duty is not essential to accomplishing the principal purpose of the statute but is designed to assure order and promptness in the proceeding, the statute ordinarily is directory and a violation will not invalidate subsequent proceedings unless prejudice is shown.'"

State v. $1,947, 255 Neb. 290, 297, 583 N.W.2d 611, 616-17 (1998).

[6] The time limitation contained in the decree for Hendrix to submit documentation of expenses to Sivick is not essential to the purpose of the decree. The main principle behind the child support guidelines is to recognize the equal duty of both parents to contribute to the support of their children in proportion to their respective net incomes. Neb. Ct. R. § 4-201. Thus, like in *State v. $1,947, supra*, it appears that the time limitation was included to ensure order and promptness. In *Forgey*, this court concluded that the requirement that a peace officer shall forward to the director a sworn report within 10 days was directory and not mandatory and we noted that "there is no sanction attached to an officer's failure to file the sworn report with the Department within 10 days." 15 Neb. App. at 197, 724 N.W.2d at 833. Similarly, the decree does not state that Hendrix forfeits her right to reimbursement for failing to send a request and supporting documentation on a monthly basis. Further, the provision for uninsured medical expenses did not require Hendrix to submit documentation within any particular timeframe.

[7] Obviously, the parties should abide by the terms of the decree, but it is the obligations of support and not the procedures for documentation which are critical to the child's best interests. It is in the best interests of the child for each parent to pay his or her proportionate share of the child's childcare and uninsured medical expenses. This is best accomplished by Hendrix's timely submitting requests and documentation for reimbursement and by Sivick's then promptly paying his share. Both requirements are enforceable by contempt proceedings, but as a practical matter, Sivick is unlikely to be aware of expenses that Hendrix has incurred but failed to communicate to Sivick. The paramount concern and question in determining child support, whether in the initial marital dissolution action

or in the proceedings for modification of decree, is the best interests of the child. *Gangwish v. Gangwish*, 267 Neb. 901, 678 N.W.2d 503 (2004). The support of one's children is a fundamental obligation which takes precedence over almost everything else. *Id.* Hendrix's failure to timely provide such documentation may be relevant to a court's determination of whether Sivick's subsequent failure to timely pay is willful and contumacious, but it provides no reason to entirely discharge Sivick's reimbursement obligation.

Although Hendrix did not timely submit her requests for reimbursement to Sivick, we conclude that the court did not err in ordering Sivick to reimburse her for Sivick's proportionate share of childcare and uninsured medical expenses.

Bad Faith.

[8] Sivick next contends that judgment should not have been entered against him because Hendrix acted in bad faith in making and litigating the demand for reimbursement. He speculates that Hendrix waited "for years before suddenly making a claim for thousands of dollars in childcare and uninsured medical expenses," brief for appellant at 19, so that Sivick "would be required to pay that claim within 10 days, . . . would likely not be able to do so, and ultimately . . . would be held in contempt and incarcerated," *id.* at 20. Any doubt about whether a legal position is frivolous or taken in bad faith should be resolved in favor of the one whose legal position is in question. *TFF, Inc. v. SID No. 59*, 280 Neb. 767, 790 N.W.2d 427 (2010). Although we do not condone Hendrix's failing to submit requests for reimbursement in a timely manner, we cannot say that she instituted this enforcement proceeding in bad faith. Hendrix is entitled to reimbursement from Sivick for his share of the expenses incurred on their child's behalf, and it was Sivick's action in declining to pay the expenses that led to this proceeding. This assignment of error lacks merit.

Insufficient Evidence.

Sivick argues that Hendrix presented insufficient evidence to support the judgment. During the July 13, 2010, hearing, the court received into evidence exhibit 53, a 98-page document

containing 8 pages of an "unreimbursed expenses grid" covering years 2007 to 2009 and various statements to support the expenses. The court also received exhibit 58, an unreimbursed expenses grid for expenses incurred in 2010, and exhibit 59, composed of documents to support the expenses listed in exhibit 58.

The district court's calculation of Sivick's contribution amount for childcare expenses as of April 15, 2010, can be summarized as follows:

2007:	$2,328.22	×	.23	=	$ 535.49
2008:	2,591.68	×	.23	=	596.09
2009:	2,241.75	×	.23	=	515.60
2010:	509.00	×	.32	=	162.88
					$1,810.06

The court stated that Sivick's contribution toward uninsured medical expenses was more difficult to calculate. Hendrix claimed total uninsured expenses of $12,859.99 as of April 2, 2010 ($2,882.68 for 2007, $5,591.24 for 2008, $2,547.02 for 2009, and $1,839.05 for 2010). However, the district court agreed with Sivick that expenses incurred for the child's private tutoring were not medical expenses under the terms of the decree and that Sivick was not required to contribute money toward that expense. The district court therefore excluded those expenses, and its calculation of Robert's contribution is summarized as follows:

2008:	$5,591.24	–	$480	–	$ 871.25	×	.23	=	$ 975.20
2009:	2,547.02	–	480	–	1,312.50	×	.23	=	173.54
2010:	1,839.05	–	480	–	822.50	×	.32	=	171.70
									$1,320.44

[9] Sivick's argument refers to testimony during an earlier proceeding for contempt and complains of the absence of statements from Hendrix's health insurance carrier. However, he has not directed us to any particular expenses that should not be included in the calculation. In such circumstance, it is not our duty to sift through the numerous pages of documentation to find expenses that Sivick speculates might be excludable if only we would find them—when he has not found, or could not find, any of such. A party that assigns error in a proceeding must point out the factual and legal bases that show the error.

Mandolfo v. Mandolfo, 281 Neb. 443, 796 N.W.2d 603 (2011). We conclude that the record, particularly the exhibits identified above, supports the court's determination.

Bias.

[10] Finally, Sivick asserts that the court acted in a biased manner in favor of Hendrix and erred in refusing to recuse itself. A trial judge should recuse himself or herself when a litigant demonstrates that a reasonable person who knew the circumstances of the case would question the judge's impartiality under an objective standard of reasonableness, even though no actual bias or prejudice was shown. *Huber v. Rohrig*, 280 Neb. 868, 791 N.W.2d 590 (2010). After reviewing the record, we find nothing demonstrating bias or demonstrating that a reasonable person aware of the circumstances would question the judge's impartiality. We conclude that the judge did not abuse his discretion in denying Sivick's motion for recusal.

CONCLUSION

We conclude that Hendrix's failure to submit documentation supporting childcare expenses on a monthly basis as directed by the decree did not relieve Sivick of his obligation to reimburse her for his proportionate share of childcare and uninsured medical expenses within 10 days of the request. We determine that Hendrix presented sufficient evidence to support the court's award of expenses and that Hendrix did not act in bad faith in bringing this action to obtain reimbursement from Sivick. Finally, we conclude that the district court judge did not display bias and did not abuse his discretion in denying Sivick's motion for recusal. Accordingly, we affirm.

AFFIRMED.