

NOT DESIGNATED FOR PUBLICATION

No. 93,018

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

DEBRA ANN DAVIS,
Appellee,

and

MICHAEL C. DAVIS,
Appellant.

MEMORANDUM OPINION

Appeal from Shawnee District Court; DAVID E. BRUNS, judge. Opinion filed
January 13, 2006. Affirmed.

Kevin J. Cook, of Law Office of Kevin J. Cook, of Topeka, for the appellant.

Randy Baird and *David M. Hobbs*, of Topeka, for the appellee.

Before MARQUARDT, P.J., PIERRON, J., and BUKATY, S.J.

Per Curiam: This case involves a divorce action between Michael C. Davis and Debra Ann Davis. Michael appeals the trial court's decisions regarding division of debt, division of property, and maintenance. We affirm.

Michael and Debra married in June 1999, in Garden City, Kansas. No children were born to the union. Debra has three children from a previous marriage. Debra filed a petition for divorce in November 2002. The trial court conducted a bench trial in June 2003. The court granted the request for divorce on the grounds of incompatibility but took under advisement the issues of debt division, property division, and maintenance. In July 2003, the court issued a letter decision dividing the parties' debt and property and awarding maintenance to Debra. A final decree of divorce bears a filing date of January 7, 2004.

Soon thereafter, Michael filed a motion for new trial or in the alternative, to modify judgement. The trial court requested that the parties should confer in good faith to negotiate a compromise over the issues raised in Michael's motion.

With the parties unable to agree, the court subsequently issued a memorandum decision and order addressing the issues raised in the motion. Michael now appeals. Additional facts will be provided as needed.

In Kansas, the trial court has broad discretion in adjusting the property rights of parties involved in a divorce action, and its exercise of that discretion will not be disturbed by an appellate court absent a clear showing of abuse. *In re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002). Judicial discretion is abused only when

no reasonable person would take the view adopted by the trial court. *In re Marriage of Rodriguez*, 266 Kan. 347, 352, 969 P.2d 880 (1998).

Michael argues that the trial court's division of the unsecured debt constituted an abuse of discretion because the court did not first utilize the parties' available assets to satisfy it. The parties owned a house in Iola, Kansas, that they both agreed was the only asset with any significant equity in this case. The parties also stipulated that Debra should be awarded the house in Iola, subject to any indebtedness on such property. The court awarded Michael one-half of the equity in that house and determined the amount to be \$2,460.

Michael now argues that the trial court erred by not ordering the liquidation of the house in Iola for the satisfaction of the unsecured debt. He argues in the alternative, that if Debra wanted to keep the house in Iola, the court could have awarded it to her with the caveat that she also be burdened with the unsecured debt.

In its July 10, 2003 letter decision, the trial court stated:

"Unless otherwise addressed in this Letter Decision, the parties shall be equally responsible for all unsecured debt. Although the Court recognizes that unsecured debt is often divided on a pro rata basis, using the parties' incomes, the evidence presented at trial of this case confirmed that some of the unsecured debt

was incurred for the benefit of the Petitioner's three (3) teenage daughters. Since the Respondent had no legal obligation to support the children and the Petitioner is receiving child support from the children's father, the Court finds that an equal division of unsecured debt is just and reasonable under the facts of this case."

The record here reveals that Debra's gross income amounted to \$1,938 per month and Michael's gross amounted to \$4,330 per month. The trial court decided not to divide the unsecured debt on a pro rata basis which, of course, would have rendered Michael responsible for significantly more of it than Debra. Instead, the court found that since some of the unsecured debt went to support Debra's children, it should be divided equally. We find no clear showing of abuse. The trial court did not abuse its discretion, and Michael's claim fails.

Michael next argues in his brief that the trial court erred in dividing the property because it did not consider all of the factors in K.S.A. 60-1610(b)(1). He does not specify which factors he believes the court did not consider and makes no mention in his brief of the factors in K.S.A. 60-1610(b)(1) that are relevant to his issue on appeal. Michael only makes the broad statement that the court erred by not considering all of the factors enumerated in K.S.A. 60-1610(b)(1). There is no further discussion of this statute in his brief. An issue not briefed by the appellant is deemed waived or abandoned. *Roy v. Young*, 278 Kan. 244, Syl. ¶ 2, 93 P.3d 712 (2004).

Michael seems to only take issue with the fact that the trial court in determining the amount of equity to be divided used the tax value of the Iola house instead of the price for which it was listed for sale. Michael also argues that the trial court should have directed a fair market value or appraisal of the property.

At the time of trial, the Iola house had been listed for sale for 2 years with no offers at a price of \$66,000. The tax valuation on the property for the year 2002 was \$52,000. The trial court found that it was unreasonable to conclude that the Iola house was worth \$66,000, since there had been no offers at that price for 2 years. It found it more realistic to use the 2002 county appraiser's valuation of \$52,000, since the parties had separated in September 2002. Using the Shawnee County Family Law Guidelines, the court then found the equity in the house to have been \$4,920 at the time the parties separated. It then awarded Michael one-half of that amount as his share.

Michael's claim in this regard lacks any merit. The trial court reasoned that since the property had been listed for sale for 2 years at a price of \$66,000, it was unlikely worth that amount. Instead, it used the value for the Iola house as determined by the county tax appraiser. This constituted an appraisal, and it was within the court's discretion whether to order an additional one. The court did not abuse its discretion in computing the amount of equity of the parties to be divided.

Michael next takes issue with the trial court's decision to award maintenance to Debra and also with the amount of maintenance awarded. He argues the court erred because it did not "itemize or designate what factors, if any, that the Court considered in making such an award."

The trial court has wide discretion regarding spousal maintenance, and a judgement awarding maintenance will not be disturbed absent a clear abuse of discretion. *In re Marriage of Day*, 31 Kan. App. 2d 746, 758, 74 P.3d 46 (2003). Judicial discretion is abused only when no reasonable person would take the view adopted by the trial court. *In re Marriage of Rodriguez*, 266 Kan. at 352.

In its July 10, 2003, letter decision, the trial court stated:

"After reviewing the evidence in light of the factors set forth in Kansas law, as well as those set forth in the Shawnee County Family Law Guidelines, the Court finds that an award of spousal maintenance is appropriate in this case. Although the Court recognizes that the Respondent has substantial debt, there is a large disparity in the parties' incomes. In his Supplemental Factual Statement, the Respondent states that the Petitioner's gross income is \$1,938 per month while his gross income is \$4,330 per month.

"If the Shawnee County Family Law Guidelines were strictly followed in this case, the Respondent could be required to pay the Petitioner the sum of \$598

for a period of nearly a year and a half. However, based on the overall financial conditions presented, including the ramifications resulting from each party separately filing their 2002 income tax returns, the Court finds that it is fair, just and equitable under all the circumstances for the Respondent [to] pay the Petitioner the sum of \$300 per month in spousal maintenance for a period of twelve (12) months, beginning on August 1, 2003."

K.S.A. 60-1610(b)(2) states: "The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances."

It is clear from the trial court's July 10, 2003, letter decision that it considered the parties' income, the parties debt, the fact that they were to file separate 2002 tax returns, and "the overall financial conditions presented" in determining a maintenance award that was "fair, just and equitable under all the circumstances." The trial court did not abuse its discretion. Michael's argument is without merit.

Affirmed.