

NOT DESIGNATED FOR PUBLICATION

No. 95,395

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF
LINDA "JANE" VIERSEN LANOUE,
Appellee,

and

LARRY KEITH LANOUE, SR.,
Appellant.

MEMORANDUM OPINION

Appeal from Cloud District Court; THOMAS M. TUGGLE, judge. Opinion filed
October 20, 2006. Affirmed.

C. Richard Comfort, of Condray & Comfort, L.L.C., of Concordia, for appellant.

Jerry L. Harrison, of Beloit, for appellee.

Before CAPLINGER, P.J., ELLIOTT and JOHNSON, JJ.

Per Curiam: Larry Lanoue, Sr., appeals the district court's division of property in this divorce action. We affirm, finding the district court did not abuse its broad discretion in dividing the parties' property.

Factual and procedural background

Larry Lanoue, Sr., and Linda "Jane" Viersen Lanoue began living together in 1992. Larry and Jane each had been married and divorced twice before. When they began living together, Larry owned two semi-trucks and a vehicle, furniture, appliances, firearms, a home he had purchased for \$7,500, and had some indebtedness on the vehicles and home. Jane had \$41,000 from the sale of her prior marital home, an IRA account worth \$16,000, and 91 shares of stock in Viersen Ranch, Inc. (Viersen), a corporation which owns the Viersen family ranch located in Nebraska. Over the years, Jane's parents had gifted the shares to her as part of their estate plan to avoid inheritance tax.

Prior to their marriage, the parties purchased two homes and an apartment house, which they intended to use as rental properties to supplement their income. The properties were purchased with a loan from Tri-County Bank, which was secured by funds from the sale of Jane's previous marital home. In 1994, the parties sold two of the properties after earning minimal profits from the venture. At about this same time, the parties obtained another loan from Tri-County Bank to purchase a truck.

The parties married on April 1, 1995.

In 1997, after Tri-County Bank called their notes due, Larry and Jane successfully obtained a write-down of their obligation on the notes from \$138,000 to approximately \$85,000. To settle this debt, the parties borrowed \$95,000 from Viersen and secured the obligation with Jane's shares in the company. The excess funds were used to pay past due utilities and purchase insurance, tags, and fuel for one of Larry's trucks. According to the record, Jane agreed that her inheritance would be reduced by whatever portion of the loan she did not pay back.

Both parties held a variety of jobs during the marriage. At the time of trial, Jane had been employed as a facility supervisor for 8 years. Larry's jobs included truck-driving, general carpentry work, operating medium to heavy equipment, and restoring homes. Larry also owned a trucking business at some point during the marriage, but it provided little or no additional income. At the time of trial, Larry was truck-driving and earned an average of \$700 per week. Based on the parties' employment and education, the court found they each had a present and future earning capacity of approximately \$22,000 a year.

In February 2005, Jane filed for divorce. Not including the value of the shares Jane owned in Viersen, the parties' debts outweighed their combined assets. Their debts included back taxes, amounts owed on various credit cards, and the remaining \$87,000 balance on the Viersen loan. Jane no longer owned any of the assets she owned at the start of the parties' relationship.

Following trial, the district court awarded the parties the personal property in their respective possessions along with any accompanying debt on that property, and found both parties equally responsible for back taxes. In addition, while the court awarded Jane all of the Viersen shares, it also ordered Jane to pay the credit card debt and the \$87,000 balance on the Viersen loan.

Larry timely appeals, essentially arguing the trial court abused its discretion in awarding Jane all of the Viersen shares. Larry's argument is somewhat unclear, as he devotes much of his brief to a discussion of the various factors considered by the trial court in making the property division. Yet neither party disputes that K.S.A. 60-1610(b) directs district courts "to make a just and reasonable division of property" and to consider the following factors in doing so:

"the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and

manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property."

Nor do the parties dispute our standard of review. The district 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 on appeal absent a clear showing of abuse. *In re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002).

Abuse of discretion

In arguing the district court abused its discretion, Larry suggests the property division was so "one-sided" in Jane's favor that the trial court's award was inequitable and unjust. In support of this assertion, Larry argues (1) the trial court was biased and prejudiced by evidence of Larry's alleged expenditures on illegal drugs; and (2) the trial court's decision was based upon an unsupported finding that Larry dissipated the parties' assets.

Neither allegation is supported by the record. While evidence was admitted regarding Larry's alleged expenditures for illegal narcotics, the trial court made no findings regarding petitioner's alleged drug use or expenditures for illegal drugs. Nor did the court indicate that this evidence had any impact upon the court's conclusions. Moreover, the trial court found that *both* parties contributed to the dissipation of assets and their negative net worth. The court specifically also found:

"[Jane] came to the marriage with probably seventy-five thousand dollars in both tangible and intangible property and is now leaving the marriage with an indebtedness of at least eighty-seven thousand dollars. [Larry] will have certain debt he is obligated on and the Court feels that that is an adequate division of property.

In arguing the property division was "one-sided," Larry's complaint clearly centers upon the trial court's award of all of the Viersen shares to Jane. Yet Larry fails to point out that the trial court specifically stated its rationale for this award:

"The Court does not feel that this is an appropriate case for a portion of this stock to be assigned to [Larry]. There are two reasons. One, [Jane] is leaving the marriage with a substantial indebtedness that she'll ultimately pay, either by repaying the loan or by it being treated as an advancement on her inheritance. The other thing is that the Court does [not] have before it any evidence of the value of the stock before marriage and the value of the

stock now and as attorneys are aware, the Court in some cases will assign a portion of the increase or appreciation in the asset during the marriage to the other party although there are other ways it can be done. But the Court does not think that would result in a fair, just and equitable division."

Larry does not dispute either of the specific reasons cited by the trial court for awarding the Viersen shares to Jane, *i.e.*, (1) that Jane will be substantially responsible for the parties' jointly incurred indebtedness, and (2) that no evidence was produced as to the increase in the value of the stock during the parties' marriage and, in any event, the court did not feel division of the stock would be fair or equitable.

We hold the district court did not abuse its broad discretion in dividing the parties' property in this case.

Affirmed.