MANDATE

COURT OF APPEALS, Appellate Court No. 05-94482-A

ss.

STATE OF KANSAS, District Court No. 01CV7031

The State of Kansas, to the District Court within and for the County of JOHNSON in the State of Kansas, Greeting:

WHEREAS, In a certain civil action lately pending before you, wherein IN THE MATTER OF THE MARRIAGE OF PAULA KARTUS FULTON, petitioner, and, MICHAEL S. FULTON, respondent, a judgment was rendered by you against the said respondent from which judgment said respondent prosecuted an appeal in the Court of Appeals within and for the State of Kansas;

AND WHEREAS, on December 8, 2006, on consideration of the said appeal, it was ordered and adjudged by the said Court of Appeals that the judgment of the District Court be affirmed. An attested true copy of opinion attached.

YOU ARE THEREFORE COMMANDED, That without delay you cause execution to be had of the said judgment of the Court of Appeals, according to law.

Costs

Fees of Clerk of the Appellate Courts	$	130.00
Other Costs	$	
Total	$	

WITNESS my hand and the seal of said Court of Appeals affixed hereto, at my office, in the City of Topeka, on JAN 11 2007

Carol G. Green

CAROL G. GREEN, *Clerk of the Appellate Courts*

MANDATE RECEIVED BY CLERK
TRIAL JUDGE NOTIFIED Date: _____

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS.
2007 JAN 12 PM 2:46

NOT DESIGNATED FOR PUBLICATION

No. 94,482

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

PAULA KARTUS FULTON,
Appellee,

and

MICHAEL S. FULTON,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; KEVIN P. MORIARTY, judge. Opinion filed December 8, 2006. Affirmed.

Melanie S. Morgan, of Kansas City, for the appellant.

Bruce D. Mayfield, of Bruce D. Mayfield, Chartered, of Overland Park, for the appellee.

Before JOHNSON, P.J., PIERRON and GREEN, JJ.

Per Curiam: Michael S. Fulton appeals from the district court's order ruling on post-divorce motions dividing the retirement account of Paula Kartus Fulton, dividing their artwork and collectibles, and limiting the amount of interest allowed on his equalization payment. Kartus contends the district court did not abuse its discretion in its rulings and also claims Fulton acquiesced to the court's judgment. We affirm the court's decision.

Fulton and Kartus were married in 1987 in Alabama. Fulton has a master's degree in mathematics with a concentration in computer science and physics. He was a systems analyst earning $50,000 per year. Kartus was a manager in the Research Administration Services Department at the University of Alabama at Birmingham earning $47,500 per year.

The couple moved to Kansas in 1998 to assist Kartus' elderly parents. Kartus' father agreed to pay Fulton and Kartus $60,000 each to help the parents with home maintenance, meals, transportation, and bookkeeping. The parents were beneficiaries of a very large trust from which Fulton and Kartus were paid.

After moving to Kansas City, Fulton changed careers and became a decorative artist and gave seminars on decorative art. The couple formed a corporation, Prairie Decorative Arts, for Fulton to use for this career.

Fulton and Kartus separated in 2001. In October 2001, Kartus filed a petition for divorce and requested a division of property. At about this time, both Fulton and Kartus ceased being employed by her parents. At the time of the divorce, Kartus was employed by a corporation she owned with her brother and earned $21,000 per year. At trial, Fulton testified he worked for Tilesource, Incorporated, doing computer work and was paid $20,000 per year. He also earned a small amount of income from his decorative arts business and made an unspecified amount of income by buying and selling items on eBay and giving art seminars.

An evidentiary hearing on the divorce petition was held on May 28, 2002. A decree of divorce was filed in June 2002 granting the divorce and reinstating Kartus' maiden name; however, the court took the issue of division of property and maintenance under advisement.

In July 2002, the district court filed a supplemental journal entry dividing the parties' property and denying both parties maintenance. In this order, the court awarded

Kartus the certificate of deposit valued at $10,568, which was created with a $10,000 gift from her parents. The order divided furniture and household items as proved in Kartus' trial exhibit 7. Each party was awarded a vehicle of approximately the same value. Kartus was awarded the marital residence--which had been purchased with gifts from Kartus' parents--and Fulton was given a $53,480 lien on the property. Although there is no explanation of the basis for the $53,480 lien, it appears to be approximately 1/2 of the proceeds from the sale of the parties home in Alabama. After the Alabama house was sold, the $106,960 proceeds were paid into the Kartus Trust.

Kartus' retirement plan was ordered divided by a qualified domestic relations order (QDRO) with Kartus to receive the premarital value of $5,043 and Fulton to receive the balance. Fulton was also awarded all interest in Prairie Decorative Arts valued at $6,120.

With respect to collections, antiques, and artwork, the district court determined there were 30-50 painted pieces, 12-14 original paintings, an unknown number of additional paintings, and 30 or more sterling silver snowflake ornaments; all of these items were of unknown value. The court ordered the parties to equally divide these items based upon Kartus' trial exhibit 6.

Fulton appealed from the supplemental journal entry. He challenged the district court's treatment of certain property--assets obtained from disbursements from Kartus' parents' trust--as property gifted to Kartus and awarding that property solely to her. This court concluded the trial court made insufficient findings of fact to permit meaningful appellate review of the issues on appeal; therefore, the case was reversed and remanded for additional findings. *In re Marriage of Fulton*, case No. 89,390, unpublished opinion filed June 6, 2003 (*Fulton I*).

Following remand, the district court issued a memorandum decision dated August 6, 2003. The court concluded that it had divided all the personal property, collections, antiques, and artwork in accordance with Kartus' xhibits 6 and 7 and "[n]either party brought to the court's attention any lingering post-trial dispute regarding the division of this personal property." The court noted that Fulton was 10 years younger than Kartus and had a greater opportunity to pursue a meaningful future career. The court also concluded that both parties were employed throughout the marriage and made relatively comparable incomes. However, the court concluded the parties' home in Alabama had been obtained, in part, with a $25,000 gift from Kartus' parents and that their $590,000 home in Kansas had been paid for by gifts from the Kartus Trust. In addition, the certificate of deposit was created by a 1998 gift from Kartus' father. Based on these findings, the court reaffirmed its earlier distribution of the assets.

Fulton appealed from this judgment and again challenged the district court's decision to award the certificate of deposit and marital house to Kartus as property inherited or gifted to her. He also appealed the court's refusal to consider the Kartus Trust as a marital asset. This court reviewed the district court's decision and found the court had not abused its discretion in dividing the property. *In re Marriage of Fulton*, case No. 91,209, unpublished opinion filed April 9, 2004 (*Fulton II*). The Supreme Court denied a petition for review on September 14, 2004.

In December 2004, Kartus filed a motion to modify the district court's prior judgment dividing the property. She noted that neither party had prepared a QDRO to divide her retirement benefits. Kartus' counsel, however, learned that the retirement plan could not be divided pursuant to a QDRO. Kartus sought guidance on how to comply with the court's prior order. Fulton filed a response also requesting additional time to come up with a proposal for dividing the retirement account.

At the same time, Kartus filed a motion to issue citation in contempt contending Fulton had failed and refused to divide up the collections, artwork, and snowflake ornaments as ordered by the district court. Kartus averred that Fulton had been selling a substantial number of the items.

At a hearing in December 2004, the parties discussed dividing the retirement account and agreed to get statements from the plan and try to work out a plan for the division. Fulton's counsel also indicated that all the collectible items still in dispute would probably be valued at $8,000. However, Kartus' estimate of the value of the personal property was $40,000. The court directed the parties to prepare an inventory list, including all items that Fulton had sold. The court also directed Kartus to deposit the value of Fulton's lien on the residence--$53,480)--with the clerk of the court.

In a journal entry following this hearing, the district court referred to the failed QDRO and ordered Kartus to pay the dollar amount equivalent of what had been ordered plus the pro rata amount of any increase or decrease since the time the order was made transferring the interest to Fulton. The journal entry also memorialized other aspects of the court's ruling at this hearing. The journal entry was approved by both counsel.

The parties apparently were not able to resolve their differences and a hearing was scheduled for February 18, 2005. The day before the hearing, Kartus filed proposed findings of fact and conclusions of law. She proposed that Fulton be awarded the entire post-marriage increase in cash value of her retirement account. Kartus calculated this amount as the cash value less taxes as either $20,634 (based on the cash value of October 2001) or $22,675 (based on the cash value as of December 2004).

At the hearing, Fulton's counsel did not want to lose the benefit of the employer's contributions to the retirement plan, which would occur if the cash value was withdrawn. The district court suggested an evidentiary hearing, but Kartus' counsel objected, saying the evidence had already been presented in the first trial and the court had ordered a specific sum certain be allocated to Fulton. Kartus asserted another evidentiary hearing was not warranted.

At the conclusion of the hearing, the court gave Fulton an opportunity to file a response to Kartus' arguments. In his response, Fulton argued he was entitled to a comparable substitute benefit that "can only be determined once a value has been assigned to the benefits." Fulton used a calculator on the retirement plan's website and determined that using district court's earlier allocation based upon a percentage, he would have received $1,133.30 per month if a QDRO could be issued. Fulton suggested that Kartus be required to purchase a commercial defined benefit plan from a reputable company that would duplicate these benefits. To achieve this, Fulton recognized Kartus might dispute the calculations and requested an evidentiary hearing.

In a journal entry filed March 18, 2006, the district court directed that Fulton would receive a cash payment from Kartus of 80% of the gross increase in her pension plan, less taxes. The court calculated this amount to be $22,268. With respect to the

collectibles dispute, the court refused to establish specific values for each item. Using the average and general values from the original trial exhibit 6, the court valued the remaining personal property not in Kartus' possession at $21,000. The court found Kartus was entitled to one-half or $10,500. Finally, the court ruled Fulton was entitled to interest at the statutory judgment rate on his $53,480 lien beginning November 4, 2003, 90 days after the original judgment became final after the first appeal; this totaled $4,332. In the order, the court clerk was directed to release the $53,480 representing the lien on the house to Fulton. The court ordered Kartus to deliver to Fulton $16,100 as final resolution of all issues. This figure appears to be the $22,268 retirement benefits owed to Fulton, plus the $4,332 in interest on the lien, reduced by the $10,500 he owed to Kartus for the collectibles.

On March 24, 2005, Fulton accepted a check from Kartus in the amount of $16,100 and filed a satisfaction of judgment. On March 25, 2005, the district court clerk released the $53,480 lien fund to Fulton.

Fulton filed a timely notice of appeal.

Before addressing the merits of Fulton's claims, we must first address Kartus' claim that Fulton has acquiesced to the judgment. Kartus claims that Fulton's acceptance

of the home lien proceeds from the court clerk, his acceptance of the $16,100 check finalizing the property division, his filing of a satisfaction of judgment, and his delivery of precious stones to Kartus was full compliance with the district court's March 18, 2005, journal entry and, therefore, he has acquiesced to every part of the judgment.

While this appeal was pending, Kartus filed a motion to dismiss based upon acquiescence. Fulton did not file a response to this motion. The appellate court denied the motion on present showing. Although Fulton filed a motion for extension of time to file a reply brief, such a brief was never filed. Thus, Fulton has not responded to Kartus' acquiescence argument in any fashion.

Acquiescence is the result of the appellant's voluntary compliance with the judgment and cuts off the right of appeal. To find acquiescence in a judgment, appellate courts must be shown that the appellant either assumed burdens or accepted benefits of the judgment contested in the appeal. A party who voluntarily complies with a judgment cannot thereafter adopt an inconsistent position and appeal that judgment. *Layne Christensen Co. v. Zurich Canada*, 30 Kan. App. 2d 128, 137, 38 P.3d 757 (2002).

The rule that acquiescence cuts off the right of appeal is not strictly applied in divorce cases because of the peculiar situations of the parties and the equitable

considerations involved. *In re Marriage of Powell*, 13 Kan. App. 2d 174, 176, 766 P.2d 827 (1988), *rev. denied* 244 Kan. 737 (1989). In *Powell*, the district court divided the parties' property and awarded the wife maintenance. On appeal, the husband challenged those rulings and argued the petition for divorce was filed in the wrong county. The wife argued her ex-husband acquiesced to the judgment when he accepted his allocation of assets without reservation. The husband claimed the wife transferred funds into his accounts of her own volition and that he did not voluntarily accept them. The Court of Appeals concluded that the wife failed to show how the transfer had been accomplished and failed to show the judgment had been entirely satisfied. In the absence of a clear showing of voluntary acquiescence, this court refused to dismiss the appeal. 13 Kan. App. 2d at 176-77.

The Court of Appeals also addresses the issue of acquiescence in *Martin v. Martin*, 5 Kan. App. 2d 670, 623 P.2d 527, *rev. denied* 229 Kan. 670 (1981). In that case, the husband also appealed from the district court's order dividing the parties' property and awarding maintenance to the wife. On appeal, the wife contended the husband had acquiesced to the judgment by remarrying. Although prior cases prevented a party from challenging a divorce if the party remarried, this court noted that the husband was not challenging the validity of the entire divorce decree, but was solely challenging financial

issues. Accordingly, the court found the husband had not acquiesced to the judgment with respect to these issues. 5 Kan. App. 2d at 671-72.

In *Gordon v. Gordon*, 218 Kan. 686, 691, 545 P.2d 328 (1976), the Supreme Court held that the determinative factors of acquiescence in domestic cases revolve around the consistency with which the litigant is attacking the judgment or the severability of the provision of the judgment under which the benefits have been accepted or burdens assumed. 218 Kan. at 690. In that case, the wife appealed from the divorce claiming the evidence failed to establish incompatibility and the divorce should have been denied. The husband claimed the wife had acquiesced to the judgment by accepting alimony payments. Noting that a husband has a duty to support his wife during the marital relationship, the court found that the acceptance of alimony while an appeal was pending did not constitute acquiescence. 218 Kan. at 692. Significantly, however, the *Gordon* court noted that if there is an agreed divorce and property division or if there is a judgment entered "awarding specific personal property to the wife by way of alimony, the court might conclude from the evidence presented in the particular case that she has voluntarily waived her right to appeal from the judgment by her voluntary acceptance of the property awarded." 218 Kan. at 692.

These cases do not preclude the application of the acquiescence doctrine in appropriate family law cases. In *Vanover v. Vanover*, 26 Kan. App. 2d 186, 987 P.2d 1105, *rev. denied* 268 Kan. 896 (1999), the husband appealed from an judgment for past due child support and maintenance claiming the judgments had become dormant. In posting a supersedeas bond, husband agreed the court could distribute over $21,000 in garnished funds to his ex-wife to be applied to some of the past due payments. On appeal, this court concluded that the husband's voluntary partial payment of the child support or maintenance judgment clearly was inconsistent with his position on appeal that the judgments on the past due payments had become dormant; thus, the voluntary payment constituted acquiescence as to those parts of the judgment involving child support and maintenance. 26 Kan. App. 2d at 188-89.

In the instant case, the record reflects that the clerk of the district court issued a check for $53,480 to Fulton on March 25, 2005, and there is no claim the check was not cashed by Fulton. Likewise, Fulton accepted and cashed a check from Kartus which covered Fulton's share of her retirement account and interest on the residential lien, less a setoff for amounts Fulton owed Kartus on the personal property. Fulton even filed a satisfaction of judgment with the court. Kartus also contends Fulton surrendered the semiprecious stones to her.

Therefore, Fulton has accepted all the burdens and all the benefits of the district court's judgment. He has not claimed, as in *Powell*, that he did not voluntarily accept the payments. Moreover, this is not a case like *Martin* where Fulton has accepted a portion of the judgment and is challenging a different aspect of the court's ruling. His acceptance of less than he wanted for Kartus' retirement benefits and for the statutory interest, and a greater offset for Kartus' share of the personal property is clearly inconsistent with his position on appeal that the district court's decisions were incorrect.

Finally, there are no obvious inequities in this case that justify allowing Fulton to accept the benefits of the judgment and still seek more of the assets on appeal. Here, there are no minor children who will "go without" if he did not accept the payments. Moreover, it appears both parties took serious cuts in their incomes when they left Alabama to come to Kansas City. Despite Fulton's claims of disparity in the property division, this court previously affirmed the district court's prior decision to set aside Kartus' assets obtained through gifts from her parents' trust; he cannot again challenge that portion of the division in this appeal. Except for Kartus' inchoate future interest in her parents' trust, the parties appear to be in relatively equal positions.

Although we could dismiss this appeal due to acquiescence, we will deal with the merits of the appeal. Fulton contends the district court abused its discretion in not holding an evidentiary hearing to determine the method of division of Kartus' retirement plan. He contends the issue presented questions of fact for which an evidentiary hearing was required. Fulton also appears to argue the district court abused its discretion in the method by which it chose to divide Kartus' retirement account.

A district court's distribution of a marital estate in a divorce action is reviewed for abuse of discretion. *In re Marriage of Sadecki*, 250 Kan. 5, 8, 825 P.2d 108 (1992). It cannot be said that the district court abused its discretion if reasonable persons could differ as to the propriety of the district court's action. 250 Kan. at 8. "The breadth of this discretion was recognized in *LaRue v. LaRue*, 216 Kan. 242, 250, 531 P.2d 84 (1975), where the court stated: 'Nowhere in any of our decisions is it suggested that a division of all the property of the parties must be an equal division in order to be just and reasonable.'" *In re Marriage of Cray*, 254 Kan. 376, 386, 867 P.2d 291 (1994).

With respect to Fulton's claim that an evidentiary hearing was necessary, the record reflects that he had ample opportunity for a hearing on the proper valuation and method for dividing the retirement account.

During the original trial, it was established that Kartus had worked for the University of Alabama at Birmingham and participated in its retirement program long before her 1987 marriage to Fulton. At the time of her marriage, the equity balance of her retirement account was $5,043. As of October 31, 2001, the refund amount of the retirement account was $37,513.05 as reflected in a letter from the retirement system. During the trial, Fulton attempted to present expert testimony as to the value of the retirement account, but the testimony was not allowed because the expert's calculations were based on hearsay documents and no foundation was established for the documents. In the initial order, the district court held that Kartus would maintain her interest in $5,043.00 in the plan and Fulton would receive the balance. Fulton did not challenge this determination in *Fulton I.*

Following remand of *Fulton I*, the district court reaffirmed the property division and specifically allocated $20,634 of Kartus' retirement account (net of taxes) to Fulton. Again, Fulton did not challenge this division or valuation in *Fulton II.*

After *Fulton II*, when Kartus advised the district court that her retirement plan would not accept a QDRO, the issue of the proper method of dividing the retirement account arose again. At that point, the district court held a hearing in late December 2004, at which the court instructed the parties to try to develop an alternative plan. When

it could not be worked out, Kartus issued a notice of hearing for February 18, 2005. Again, the parties just argued for their different proposals for dividing the account; Fulton made no proffer of evidence at this time. After this hearing, the court gave Fulton time to file a response to Kartus' proposed findings of fact and conclusions of law. In his response, Fulton calculated his interest based on his proposed method of valuation. With this calculation, Fulton requested the matter be set for an evidentiary hearing because "Wife may disagree with the monthly benefit calculation although it is calculated based on information provided in her discovery responses."

Fulton did not challenge the district court's valuation of the retirement plan in the first two journal entries. The initial journal entry implies a possible fixed figure for Fulton's share. The second journal entry clearly allocates Fulton a fixed sum of $20,634 net of taxes. Fulton did not challenge these determinations in his first two appeals. He had ample opportunity from and after December 2, 2004, to schedule an evidentiary hearing, but made no proffer of evidence at any of the hearings provided.

Moreover, the dispute was not about the actual value of the retirement plan, but the *method* with which it should be divided--giving Fulton a sum certain (Kartus' plan) or setting up a mechanism to give him future monthly benefits (Fulton's plan). The district court apparently concluded that Kartus' plan was more reasonable and consistent with the

court's prior orders. The court even awarded Fulton an increased amount above the original journal entries to include the increase in value between October 2001 and December 2004.

Under all the circumstances, it appears the district court did not abuse its discretion in not giving the parties another evidentiary hearing or in the method by which it opted to divide the retirement account.

On appeal, Fulton also challenges the district court's order awarding Kartus a monetary offset for the value of collectibles and artwork that had not been actually divided by the parties, although the original journal entry ordered the items be divided equally. Fulton objects because the trial court failed to establish a specific value for each item; he claims any attempt to divide them otherwise is improper.

At the original hearing in 2002, Kartus' exhibit 6 set forth the couple's various collections, antiques, and artwork. She testified these items were difficult to value. Fulton agreed the value of the items was unknown. During the original trial, Fulton did not object to Kartus' estimates of the number of pieces or estimated value of them. Instead, he simply objected to Kartus receiving any of the decorative painted pieces or the

original paintings by Leisure, Johnson, or Clarke. Fulton agreed to split the Roush and Higdon paintings and the snowflake Christmas ornaments.

In 2002, the district court ordered the parties to divide these unvalued assets evenly based on Kartus' trial exhibit 6. Although the journal entry did not value the items, Exhibit 6 listed 30 to 50 pieces of decorative painted pieces with an average value of $500 each; 10-12 Roush paintings purchased for $150 to $450 each; two Higdon paintings each bought for $900 each; original paintings by various artists (number of pieces and value unknown); and 30 or more pieces of sterling silver snowflakes with a purchase price of $50 each. Although Exhibit 6 indicated the value of the pieces were unknown, the total value of the items based upon purchase prices or estimated values would range from $21,000 to at least $31,900 depending upon the actual number of pieces and the unknown value of various paintings. The division of these assets were not challenged in *Fulton I* or *Fulton II.*

In December 2004, Kartus filed her contempt motion challenging Fulton's refusal to divide up these miscellaneous art pieces. Kartus claimed she had not seen the items since she and Fulton separated in 2001 and could not come up with a list of all the pieces because of the long lapse in time. Fulton claimed he sold the items after giving notice to Kartus that he would no longer continue to store them.

At the February 2005 hearing, Fulton's counsel indicated Fulton had prepared a list of the collectibles that had been sold and provided the sales records. They prepared an exhibit listing the purchase price and sale values of the items (whether sold or not) and came up to a total figure of $11,648. These exhibits reflect that Fulton had sold all but 5 of the 44 decorative painted pieces he listed in his inventory, 5 of the 7 paintings by other artists, and all but 10 of the 31 sterling silver snowflakes. Most of these sales occurred in 2003 and early 2004 while Fulton's appeals were pending.

In its journal entry the district court expressly refused to value individual pieces of property, but relied upon the average and general values stated in trial Exhibit 6 from the original trial. Taking into account the property Kartus had received, the court valued the remaining property at $21,000 and ordered an offset of one-half of that amount ($10,500).

As noted above, district courts have broad discretion to fashion an equitable division of the parties' property in a divorce proceeding. *In re Marriage of Harrison*, 13 Kan. App. 2d 313, 315, 769 P.2d 678 (1989). Here, the parties did not initially express concern about the actual value of the collectibles and artwork, and the court adopted Kartus' exhibit 6; Fulton did not challenge this in the first two appeals. It is only 4 years after the initial order and after selling the bulk of the items that Fulton now claims each piece should be independently valued.

Although the district court did not directly explain its calculations in giving a total value of $21,000 for the collectibles, that number is well within the range of $21,000 to at least $31,900 which may be calculated from Kartus' original trial exhibit. In light of Fulton's actions in selling most of the items while his first two appeals were pending, and Kartus' inability to determine if there were additional pieces or whether they were sold at a reasonable value, the district court did not abuse its discretion in estimating the values based upon the original unchallenged trial exhibit.

On appeal, Fulton argues he was entitled to interest on his $53,480 lien against the marital residence on or after October 2002. He asserts the district court's oral pronouncement before the first journal entry ordered that interest should accrue on the lien after 90 days.

In the original journal entry, Kartus was directed to sell the marital home and Fulton was given a $53,400 lien against the residence. In this decree, the court stated: "Husband's lien shall be *without* interest and shall not be foreclosable for 90 days following the filing of this Journal Entry." (Emphasis added.) Although Fulton's counsel did not sign the journal entry, no timely objection was made to the journal entry and this language was not challenged in either of the prior appeals.

After *Fulton II*, Fulton responded to Kartus' various motions and requested statutory interest on his lien on the residence. In December 2004, the district court directed Kartus to deposit the value of the lien with the court. Counsel opposed Fulton's request for interest indicating Kartus had attempted to sell the property, but was unable to do so because of Fulton's appeals. After the various hearings, the court held that Kartus was entitled to statutory interest on his lien beginning November 4, 2003, which was 90 days following the order on remand.

Fulton contends this issue involves an interpretation of the district court's written documents and poses a question of law. However, the court's initial journal entry is clear and unambiguous. It clearly stated Fulton's lien on the house would be without interest. Although he relies on the court's oral pronouncement from the initial trial, a district court's findings and conclusions contained in the journal entry control over the oral pronouncement at the hearing. *Radke Oil Co. Kansas Dept. of Health & Environment*, 23 Kan. App. 2d 774, 782, 936 P.2d 286 (1997). Fulton did not timely challenge that portion of the initial journal entry.

The appropriate standard of review is abuse of discretion.

"Kansas law gives broad discretion to a trial court in dividing marital property, and it follows that a trial court also has discretion to award interest on a judgment. Moreover, there is no provision for awarding interest in K.S.A. 1999 Supp. 60-1610(b)(1)(B). Instead, the statute provides that if real or personal property is awarded to one of the parties, he or she must pay the other party 'a just and proper sum.' As a result, the decision of whether to award interest on a judgment lien in a divorce proceeding is a matter that is within the sound discretion of the trial court." *In re Marriage of Roth*, 28 Kan. App. 2d 45, 47-48, 11 P.3d 514 (2000).

In this case, the initial journal entry specified the lien would be without interest. Moreover, there was some evidence that Kartus was unable to sell the home because Fulton's appeals placed a cloud on the title (both appeals involved whether the home should be treated as marital property or as a gift to Kartus). Under these circumstances, it was not an abuse of discretion for the district court to not allow interest until after the second journal entry was entered.

Affirmed.

A true copy ATTEST

Carol G. Green

Clerk Supreme Court