

NOT DESIGNATED FOR PUBLICATION

No. 95,866

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF:

DENISE M. ANDERSON,  
*Appellant,*

and

PATRICK M. PLATTS,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS E. FOSTER and JANICE D.

RUSSELL, judges. Opinion filed July 20, 2007. Affirmed.

*Allan E. Coon and Joe L. Norton*, of Norton, Hubbard, Ruzicka & Creamer, L.C.,  
of Olathe, for appellant.

*Karen L. Shelor and Keith C. Sevedge*, of Sexton, Shelor & Latimer, of Shawnee  
Mission, for appellee.

Before RULON, C.J., GREENE, J., and KNUDSON, S.J.

*Per Curiam:* In this post-divorce dispute, Denise M. Anderson (Denise) appeals the district court's judgment in favor of her ex-spouse Patrick M. Platts (Patrick) and against her for half of an Internal Revenue Service (IRS) assessment of additional federal income taxes for the last full year they had filed a joint tax return, together with half of the penalties and interest thereon. Concluding that the district court did not abuse its discretion in awarding the judgment, we affirm.

#### *Factual and Procedural Background*

Denise and Patrick were married in 1991; Denise filed for divorce in October 2001. The divorce action was pending for more than 30 months when the court entered the final decree of divorce on April 29, 2004. In early 2005, the IRS asserted an additional joint tax liability of \$75,751.89 (including penalties and interest) for tax year 2000, which amount was later adjusted to \$67,576.16. Patrick paid the assessment and then sought judgment against Denise for half of the liability thereon.

The district court conducted an evidentiary hearing and then stated it would have allocated the additional tax liability 50/50 if it had been presented at the time of trial and that Denise should reimburse Patrick for half of the amount paid the IRS, which included penalties and interest. After Denise's post-judgment motion was denied, and other post-

judgment proceedings were concluded, she appealed.

### *Standard of Review*

There is no dispute regarding our standard of review in this appeal. Orders pertaining to the division of marital property and debt are generally within the discretion of the district court and may be reversed only if there has been an abuse of that discretion. *Bohl v. Bohl*, 232 Kan. 557, 561, 657 P.2d 1106 (1983). Judicial discretion in such matters is abused when no reasonable person would take the view adopted by the district court. *In re Marriage of Roth*, 28 Kan. App. 2d 45, 48, 11 P.3d 514 (2000).

### *Did the District Court Abuse Its Discretion in Awarding Judgment Against Denise for Half of the Additional Tax Liability?*

Denise argues the additional tax liability was principally attributable to an "income probe" of Patrick's farming operations, and that Denise had nothing to do with the farming operation or the tax reporting thereon. Moreover, Denise argues that the district court had already set aside the farming operation to Patrick and allowed him to continue its operation just as he had before the marriage. Finally, Denise argues that if Patrick had not "short-circuited" her legal defense by an early payment of the entire

assessment, she would have qualified for "innocent spouse relief," and that the court's judgment unfairly "saddled" her with an obligation for which she had no legal liability.

The district court rejected these arguments, commenting from the bench:

"[T]he Court . . . feels and finds that the Court would have allocated that debt 50/50 between the parties if it was presented to the Court at the time of the trial.

"The Court finds that the parties mutually benefitted from income from receipts that each of the parties received during the marriage; that they spent money, they spent common money; they purchased things together, they went on trips together; they built up assets together in this Mission Hills home. The Court feels that it would have divided that debt 50/50 and, therefore, I'll do that now."

On appeal, Denise seems to confuse the district court's rationale for dividing the actual tax liability with the court's rationale for dividing the penalties and interest. We view the district court's rationale for dividing the tax liability as one of fairness given the mutual benefit of the income upon which the additional assessment was based. Denise does not address this rationale in her brief on appeal.

Instead, Denise argues that her eligibility for "innocent spouse relief" from the IRS makes it "unreasonable" for her to share in the liability. She concedes, however, that the only authority she cites is contrary to her position. In *Bormaster v. Bormaster*, 177 Kan. 1, 6, 274 P.2d 757 (1954), our Supreme Court held that a spouse "should contribute her proper share to the payment of the actual taxes" despite the claim that she had no involvement in tax reporting. No other case authority is cited by Denise in support of her position.

We conclude that the district court did not abuse its discretion in awarding judgment against Denise for half of the additional tax assessment. We note, in particular, that in response to previous post-decree motions, the district court expressed an intent to divide the marital property and indebtedness equally between the parties and ordered a 50/50 split of Denise's adjusted 2001 tax liability. We agree with the district court in its focus on the mutual benefit from the income that led to the additional assessment, and we are unable to conclude that no reasonable person would adopt the position of the district court. Denise's argument that the court abused its discretion in dividing the actual tax liability is rejected.

*Did the District Court Abuse Its Discretion in Awarding Judgment Against Denise for Half of the Penalties and Interest?*

Denise next argues that the district court abused its discretion in awarding judgment against her for half of the penalties and interest associated with the additional tax liability for tax year 2000. She argues that the court "should have been guided by applicable controlling precedent and by considerations of equity and culpability," again relying exclusively on *Bormaster*. Finally, she argues that she was involved in neither the farming operation nor the tax reporting thereon, and that *Bormaster* should have controlled.

The district court rejected these arguments, commenting from the bench:

"The Court feels that [Denise] is a sophisticated person, very well educated, an attorney, a licensed attorney, a person who really understands the obligations to accurately report income taxes. The Court feels that she knows what it means when she signs the line on a tax return, that these are true and accurate. These two folks knew what was going on with each other. She can see how much money they're spending. She saw what they were doing with the money. She decided to trust [Patrick] to be accurate or provide accurate information to their accountant. That was her choice. . . .

" . . . During this marriage, they decided to put things together, and do it together, and she could have said, Well, I'm going to do my own tax returns in the marriage and you go file the returns for the farm and all that, because I don't trust you to be accurate. I'm not going to get into that bed with you, but they made their decisions."

In *Bormaster*, our Supreme Court addressed a similar factual scenario, distinguished only by (i) the fact there was no finding that the wife was sophisticated in legal matters; and (ii) the fact that the district court had refused to divide liability for the penalties and interest after dividing responsibility for the actual tax liability. The Supreme Court affirmed the district court, holding that "[wife] was not responsible for [omitting to make full returns] and . . . it seems clear that [husband] alone should be responsible." 177 Kan. at 6.

Patrick argues on appeal that *Bormaster* is not controlling because of the standard of review; in other words, it may have been within the trial court's discretion to *refuse* a division of penalties and interest, but it may also be within the trial court's discretion to *award* a division of penalties and interest. We agree, but we also affirm on two alternate bases.

*First*, Patrick makes a compelling argument that the division of penalties and interest for tax year 2000 was consistent with both a prior ruling of the district court in

imposing joint liability for Denise's adjusted personal 2001 tax liabilities, and with the general expressed intent of the court to divide assets and liabilities equally between the parties. The district court's decision to divide liability for the tax year 2000 penalties and interest appears to have maintained consistency throughout the proceedings as to similar issues.

*Second*, we conclude that the district court's findings regarding Denise's degree of sophistication in legal matters, coupled with her own conduct for the succeeding tax year (resulting in penalties) significantly distinguishes these facts from *Bormaster* and demonstrates that her signature on the tax return was meaningful and had known consequences. We believe that Denise's technical eligibility for "innocent spouse relief" was far from clear. See Rev. Proc. 2000-15, sec. 4.03(2), 2000-1 C.B. 449; *Feldman v. Commissioner of Internal Revenue*, 86 T.C. 50, 52 (2003) (citing among six factors weighing *against* granting innocent spouse relief: (i) the requesting spouse knew or had reason to know that the reported liability would be unpaid at time return was signed; (ii) requesting spouse significantly benefitted from the unpaid liability; and (iii) requesting spouse has not made a good faith effort to comply with tax law in years following the tax year to which the deficiency relates). Moreover, attorneys hold a position of quasi-public character and should generally be held to a higher standard of private conduct in such matters. See, e.g., *State v. Bieber*, 121 Kan. 536, 538, 247 Pac. 875 (1926).



We are unable to conclude that no reasonable person would adopt the view of the district court. Denise's argument that there was an abuse of discretion in awarding judgment against her for half of the penalties and interest associated with the additional income tax assessment is rejected.

Affirmed.