

NOT DESIGNATED FOR PUBLICATION

No. 96,908

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF:

LOARN JEANNERET,
Appellee,

and

PAMELA JEANNERET,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; GEORGE A. GRONEMAN, judge.

Opinion filed July 20, 2007. Affirmed.

Bill L. Klapper, of Kansas City, for appellant.

Elizabeth M. Goodwin, of Kansas City, for appellee.

Before HILL, P.J., McANANY, J., and BRAZIL, S.J.

Per Curiam: This is an appeal from an award of maintenance and division of property in a divorce case. Because the appellant failed to appeal from the district court's judgment awarding maintenance, we have no jurisdiction to decide that matter and dismiss that portion of the appeal. Our review of the record reveals that the district court considered all of the statutory factors in arriving at a just and reasonable division of the parties' property, and we find no abuse of discretion. We affirm that part of the court's order.

Factual Background and Prior Proceedings

The parties are well aware of the facts and they need not be repeated here extensively. Pamela Jeanneret (Wife) and Loarn Jeanneret (Husband) married in May 1996 and divorced in December 2005. In January 2006, the parties presented their evidence on the issues of maintenance and division of property to the district court. The district court awarded Wife 32 months' maintenance in the amount of \$527 per month; divided the parties' real property; set aside to each party their separate inherited and gifts and any growth thereon; divided assets that Husband had received upon his retirement in 2002; set over to Husband bonds acquired with his nonmarital funds; gave Husband credit for an advancement of Wife's attorney's fees; divided various items of personal property; and awarded Husband the parties' 2004 income tax refund.

No Valid Maintenance Appeal

Because the right to appeal is entirely statutory, appeals must be taken in the manner prescribed by statute to invoke this court's jurisdiction, subject only to certain exceptions not applicable here. *Butler County R.W.D. No. 8 v. Yates*, 275 Kan. 291, 299, 64 P.3d 357 (2003). Although the parties do not challenge our jurisdiction to consider the issue of maintenance, this court is duty bound to question jurisdiction on its own initiative and must dismiss if the record reveals a lack of jurisdiction. *Cole v. Mayans*, 276 Kan. 866, 870, 80 P.3d 384 (2003). Jurisdiction is a question of law over which this court has unlimited review. *Wichita Eagle & Beacon Publishing Co. v. Simmons*, 274 Kan. 194, 205, 50 P.3d 66 (2002).

K.S.A. 60-2102(a)(4) grants Wife the right to appeal the district court's final decision. K.S.A. 60-2103 sets forth the mandatory procedure for invoking this court's jurisdiction to consider such appeals. *Snodgrass v. State Farm Mut. Auto. Ins. Co.*, 246 Kan. 371, 378, 789 P.2d 211 (1990). K.S.A. 60-2103(b) mandates, in pertinent part, that the required notice of appeal "shall designate the judgment *or part thereof* appealed from." (Emphasis added.) See also Supreme Court Rules 2.01 (2006 Kan. Ct. R. Annot. 9) and 2.02 (2006 Kan. Ct. R. Annot. 9) (specifying the form of notice of appeal to include a required designation of "the judgment or part thereof appealed from"). "It is a

fundamental proposition of Kansas appellate procedure that an appellate court only obtains jurisdiction over the rulings identified in the notice of appeal." *In re Marriage of Galvin*, 32 Kan. App. 2d 410, 411, 83 P.3d 805 (2004) (citing *Hess v. St. Francis Regional Med. Center*, 254 Kan. 715, 718, 869 P.2d 598 [1994]); see also *Brady Fluid Service, Inc. v. Jordan*, 25 Kan. App. 2d 788, 795, 972 P.2d 787 (1998) ("[t]his court has jurisdiction only over rulings identified in the notice of appeal"); but see *Douglas County Bank v. Elena*, No. 90,079, unpublished opinion filed December 19, 2003 (wherein a panel of this court, citing *Hess*, 254 Kan. at 720, determined that the liberal construction accorded to K.S.A. 60-2103[b] afforded it latitude to decide a case on the merits despite the fact that the notice of appeal did not identify the judgment appealed from because the defendant admitted it had not been prejudiced or harmed by the appellant's noncompliance with K.S.A. 60-2103[b]).

Wife's notice of appeal designates only that part of the district court's judgment dividing the parties' property. K.S.A. 2006 Supp. 60-1610(b) governs financial matters allowed in divorce decrees. The division of property and the award of maintenance are treated thereunder as separate and distinct financial matters governed by separate subsections: K.S.A. 2006 Supp. 60-1610(b)(1) requires the district court to divide real and personal property pursuant to that subsection's provisions; K.S.A. 2006 Supp. 60-1610(b)(2) allows the district court, in its discretion, to award either party maintenance.

Because Wife's notice provides that she appeals from the March 23, 2006, "Journal Entry," in that the division of property therein is inequitable, she has invoked this court's jurisdiction to consider only that *part* of the judgment concerning the district court's allegedly inequitable division of property, not the separate part of the judgment awarding Wife maintenance.

We dismiss that portion of the appeal.

Property Division

The district court entered extensive findings in this case concerning its division of property and at the conclusion of the hearing on the parties' motion for reconsideration. The district court explained that it had awarded Wife one-half of the marital property accumulated during their 10-year marriage and otherwise detailed its reasoning for the various divisions of marital property. Because of the broad discretion afforded a district court in dividing property in a divorce, this court will not disturb the district court's property division absent a clear showing that it abused that discretion. *In re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002). This court will find the district court abused its discretion only upon a showing that its actions were arbitrary, fanciful, or unreasonable. If reasonable persons could differ as to the propriety of the district court's

actions, no abuse of discretion will be found. *In re Marriage of Bradley*, 282 Kan. 1, 7, 137 P.3d 1030 (2006).

We examine Wife's four issues:

- first the valuation of Husband's awarded assets;
- second, Husband's expenses for improvement of one of their properties;
- third, valuation of Wife's awarded assets; and,
- finally, fourth, some property requests made by Wife and denied by the district court.

Husband's retirement accounts and buyout for sick, vacation, and comp time

In this issue, Wife argues the district court erred in calculating the value of two ING retirement accounts and the amount Husband received as a buyout of his sick and vacation time accrued. She also challenges the district court's percentage calculation of the marital portion thereof. Wife further claims that her portion of the ING accounts

should have been calculated pretax because of her contributions to the taxes in 2002—the year the accounts were distributed.

Wife first takes issue with the district court's allegedly erroneous reliance on Husband's exhibits F and G and his proposed findings of fact and conclusions in determining the value of his ING accounts and of the buyout of his accrued sick, vacation, and comp time. Wife labels these exhibits as "non documentary evidence" that "were simply typed documents prepared by [Husband or his] counsel," and claims that the court should have instead used the values reflected in her exhibit 13. But neither of Husband's exhibits appear in the record on appeal to allow for a meaningful review of Wife's arguments challenging that evidence. As the appellant, Wife had the duty to designate a record sufficient to support the claimed error. Without an adequate record, her claim of alleged error in dividing the retirement accounts fails. *State ex rel. Stovall v. Alivio*, 275 Kan. 169, 172, 61 P.3d 687 (2003).

Also, we note that Wife did not object to the admission of either of Husband's exhibits from which Husband testified about the values of his ING account (exhibit F) and of the buyout of his vacation, sick, and comp time (exhibit G). If Wife thought these exhibits were improper or lacked adequate foundation, she had to lodge a specific and timely objection to admission of the exhibits and Husband's testimony concerning the

figures taken from the exhibits. See *McKissick v. Frye*, 255 Kan. 566, 582, 876 P.2d 1371 (1994).

Actually, for the most part, Wife challenges the credibility and weight of Husband's evidence versus her evidence concerning the values of these assets. We will not reweigh evidence or make credibility determinations. *In re Marriage of Kuzanek*, 279 Kan. 156, 160, 105 P.3d 1253 (2005).

Some of Wife's arguments also misstate the evidence. For example, in arguing the district court should have instead relied upon her exhibit 13 in assessing the value of Husband's retirement account, Wife states that she and Husband had agreed to a valuation date of September 30, 2005. A close review of the record supports Husband's reply that no such agreement existed. When asked by Wife's counsel if such an agreement existed, Husband's counsel noted that they may have at one time had such an agreement during settlement negotiations but only if the case settled. Wife disagrees with Husband's counsel's comments in her reply brief, but this court will not get involved in credibility determinations.

Furthermore, Wife also misstates the evidence in claiming Husband testified that he agreed to use the balance in the accounts as of September 30, 2005. Prior to the

portion of Husband's testimony on cross-examination that Wife cites in support, Wife's counsel premised his line of questioning with, "I'm not saying you agree, but you understand that that's her position." Likewise, Wife indicates that Husband testified she should receive 21% of the accounts rather than the 20% the district court awarded her. However, prior to eliciting the testimony Wife cites, Wife's counsel acknowledged, "I know that you want to use the figure of 20." Despite Wife's argument to the contrary, Husband's failure to object to her exhibit does not equate to his admission that the exhibit reflected the proper value of these assets. His disagreement with her figures and evidence in support was noted throughout the record.

Wife next argues the district court erred in not awarding her 21% as the marital portion of Husband's retirement assets. The district court found Husband was employed by the Kansas City Kansas Fire Department for a total of 367 months and that the parties were married 75 of those months, or 20% of his total employment. In her initial brief, Wife acknowledges the district court's figures, but she commits mathematical error by arguing the result therefrom is 20.84%, which should have been rounded up to 21%. But as Husband points out in his brief, using the district court's figures, the proper calculation of the percentage to the one-hundredths is 20.43%, which, rounding down, equals the 20% figure arrived at by the district court. Wife argues in reply that she determined the 21% figure by considering the length of their marriage in terms of days, resulting in a

figure of 76.25 months, which, when divided by the 367 total months of Husband's employment, equals 20.77 months. At the conclusion of the hearing on the motions to reconsider, the district court stated:

"The Aetna and ING accounts, . . . I think they are clear. I thought that I treated them properly and made the division based upon a logical and practical look at when those parts of that lump summary time for vacation and so forth, when they were made, and finding a percentage of them to be marital. And I stand by the calculations that I had there."

We conclude that the district court was within its broad discretion in calculating and awarding wife 20% of Husband's retirement assets.

Next Wife contends that the district court erroneously divided the amount Husband received as a buyout for his accrued vacation, sick, and comp time. Wife suggests that Husband did not present evidence to substantiate his claim that he received \$50,015 of the buyout, after taxes, except for his exhibit G. Again, this exhibit is not in the record, so Wife has not preserved any challenge to the sufficiency thereof. *Alivio*, 275 Kan. at 172. Wife also did not object to the foundation of Husband's evidence and testimony concerning taxes paid on the distribution. *McKissick*, 255 Kan. at 582. Thus, this claim was not properly preserved. Also, she repeats her argument that the amount should have

been divided pretax, without citation to supporting authority. We hold the district court did not abuse its discretion in finding the parties should share equally in that tax.

Our review of the district court's findings of fact and conclusions of law as well as its discussion at the conclusion of the subsequent hearing sheds light on its exercise of discretion in dividing the parties' property and its consideration of Wife's minutely-detailed arguments to the contrary, which she now repeats on appeal. Most of Wife's arguments involve credibility determinations or assessing weight to the evidence, which is in the district court's province. This court has no way to consider the foundation for and sufficiency of the evidence to support the district court's findings where the record on appeal does not include Husband's evidence. Wife, as the appellant, had a duty to provide that record. Wife has not demonstrated that the district court's actions were arbitrary, fanciful, or unreasonable. Thus we affirm the division of Husband's retirement accounts and the money received from the buyout of his sick, vacation, and comp time.

Husband's expenses for improvements on the 18th Street property

Wife's next issue on appeal concerns the sufficiency of the evidence to support the district court's finding that Husband made \$22,056 worth of improvements to marital property on 18th Street. Wife again challenges the sufficiency of one of Husband's exhibits to support the district court's finding, but the exhibit is not in the record on appeal

for this court's consideration. Because the record is inadequate for this court to review the claim, Wife's argument fails. *Alivio*, 275 Kan. at 172.

Valuation of property awarded Wife

Wife next argues that the district court erred in failing to give her the appropriate credit for premarital and nonmarital funds she claimed to have expended to improve the marital home which she received in the division. The district court concluded she was entitled to 70% and Husband 30%. She seeks to reduce Husband's portion of equity in the home. In support, Wife cites certain exhibits and her testimony concerning her use of nonmarital inheritance money, car accident settlement proceeds, and proceeds from the sale of her home to improve the property's value. She claims that if the district court allowed Husband credit for undocumented expenditures on one piece of property (the 18th Street property), it was an abuse of discretion to not give her the same credit for documented use of nonmarital funds.

In its findings and conclusions about this property, the district court found Wife was entitled to reimbursement of a substantial amount of nonmarital funds she invested in the home, but it did not allow her credit for all claimed expenditures, many of which it concluded did not add to the home's equity. In so concluding, the district court explained

in detail the reasons for its denial of the additional credits requested by Wife. For example, the district court found that Wife was entitled to reimbursement of certain non-marital funds she invested in the home. It then considered Wife's requests for additional credit totaling \$53,347 for the house payments she made in addition to the \$39,067 she claimed she paid for improvements to the property. After noting some duplications in Wife's documented expenses, that some expenditures were not really for improvements, and Husband's payment of all other joint expenses out of his income, the district court concluded, "[b]ased on the substantial disparity in the income of the parties and the fact that all the living expenses of the parties paid for by [Husband] far exceeded the house payments and improvements paid for by [Wife], Wife is not entitled to a credit for the house payments and improvements." The district court also went to great lengths to explain its findings and conclusions at the hearing on the motions to reconsider. Clearly, the district court did not disregard or ignore Wife's request.

Wife again wants this court to reweigh the evidence or assess credibility to her claimed expenditures, which this court will not do. Wife has not shown any abuse of discretion in the district court's refusal to grant her the additional credits she sought.

Denied Requests for Division of the Marital Property

In this issue, Wife combines all of the additional property division requests she made at trial that were not awarded by the district court. These arguments were each considered and denied by the district court. For example, she claims the district court erred in the following categories:

- *Household expenses:* Wife claims Husband should have been ordered to reimburse her for household expenses that he allegedly agreed to reimburse. Wife's only evidence of an alleged agreement was her testimony, which the district court, as the arbiter of credibility, was free to disregard.
- *Incidental damages to marital property awarded Wife:* Wife argues the district court failed to consider the damages Husband did to her home on Nebraska Avenue. However, the record shows that the district court did consider these damages as reflected in the appraisals to arrive at a value of the property.
- *2004 Income Tax Refund:* Wife argues she should have received one-half of the 2004 tax refund because she testified about her charitable contributions and interest payments on the marital home that made the refund possible. However,

the district court concluded all of the refund was withholding paid by Husband and awarded it to him. This court will not disturb the district court's decision arrived at by weighing the evidence and assessing credibility.

It is unnecessary to respond to each of Wife's arguments. The above three are representative. The district court either assessed more weight to Husband's evidence than Wife's or found Husband more credible than Wife on these issues. These are matters on which this court will defer to the district court.

The record reflects that the district court considered the factors in K.S.A. 2006 Supp. 60-1610(b)(1) and arrived at a just and reasonable division of the parties' property, and Wife has not demonstrated that the district court abused its discretion.

Affirmed.