

NOT DESIGNATED FOR PUBLICATION

No. 96,258

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

ANTHONY L. GAMINO,
Appellant,

and

SHARLA J. GAMINO,
Appellee.

MEMORANDUM OPINION

Appeal from Pottawatomie District Court; TRACY D. KLINGINSMITH, judge.

Opinion filed November 9, 2007. Affirmed.

Dean J. McWilliams, of Topeka, for appellant.*Anne Burke Miller*, of Manson & Karbank, of Overland Park, for appellee.

Before HILL, P.J., GREEN and MARQUARDT, JJ.

Per Curiam: Anthony L. Gamino appeals the trial court's decision regarding various terms of the property division in this divorce case. We affirm.

Anthony and Sharla were married in 1973 and divorced in May 1981. Even though they divorced in 1981, they did not physically separate at that time. The relationship has been characterized as volatile with frequent periods of separation. The couple have six adult children.

The couple remarried in June 1989. Sharla purchased a home in 1981 for \$37,500 and it is titled in her name only. Sharla testified that she made all of the house payments and paid for all of the repairs, real estate taxes, and insurance.

Sharla and Anthony separated in 2002 and Anthony left the marital residence. In July 2003, Sharla refinanced the home so she could make improvements and pay credit card debt. She also paid off Anthony's vehicle.

Anthony filed for divorce in February 2005. Because the parties could not agree on property division, the matter was tried to the court. The trial court awarded Anthony his truck, the contents of the garage, and all property in his possession. The trial court also acknowledged that certain items from the home were to be given to Anthony in the event that

Sharla agreed. Sharla was awarded the home, her automobile, her basket collection, and most of the items in the home. The credit card debt was divided between the parties. Anthony was ordered to pay \$850 per month in maintenance for 60 months or until either party died or Sharla remarried.

Anthony filed a motion for reconsideration, claiming that the trial court erred when it found he had been at his current employment for 6 years and neglected to make findings regarding the couple's 2004 income tax returns. The trial court found that it did neglect to make appropriate findings related to the 2004 taxes. The trial court ordered that Anthony receive \$574 of an expected refund while Sharla was to receive \$163, which would equalize their payments and refunds from the 2004 taxes. The trial court denied Anthony's request to alter the property division but further refined the parties' obligations relating to credit card debt. Anthony appeals.

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). The trial court has similar discretion regarding maintenance orders. *In re Marriage of Day*, 31 Kan. App. 2d 746, 758, 74 P.3d 46 (2003). Judicial discretion is abused when judicial action is arbitrary, fanciful, or unreasonable. If reasonable persons could differ

as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion. *In re Marriage of Bradley*, 282 Kan. 1, 7, 137 P.3d 1030 (2006).

Division of Real Estate

Anthony acknowledges that Sharla paid the entire purchase price of the marital residence. However, Anthony contends that he is entitled to some of the equity in the home, given his assistance with the home's completion and upkeep in subsequent years.

The undisputed testimony at trial was that Anthony was not listed on the deed. Sharla testified that she wanted to be the sole owner because Anthony had a habit of forbidding her to use things which were solely in his name. Sharla acknowledged that Anthony did "a few things" around the house. However, Anthony did not make mortgage payments or pay the real estate taxes. Anthony testified that he put a great deal of work into the home and believed that after 34 years, he was entitled to get some of the equity.

Generally, on the date the divorce is filed, each spouse becomes the owner of a vested, but undetermined, interest in all the property individually or jointly held. The court is obligated to divide the property in a just and equitable manner, regardless of the title or origin of the property. K.S.A. 2006 Supp. 23-201(b); K.S.A. 60-1610(b); *Nicholas v. Nicholas*, 277 Kan. 171, 178, 83 P.3d 214 (2004).

The fact that the house is titled only in Sharla's name is somewhat inconsequential. Anthony does not claim that Sharla ended up with a bigger portion of the marital assets, or that he should receive other property in exchange for Sharla receiving all of the equity in the home. In the absence of such an argument, we are not prepared to find that the trial court's decision was an abuse of discretion.

Personal Property

Anthony argues that the trial court failed to make sufficient findings relating to the value of the property located both inside the garage and inside the residence. Anthony contends that the garage contents were worth "a couple thousand dollars" while Sharla's basket collection was worth approximately \$16,000. Anthony argues that the trial court's failure to consider the value of property located inside the house resulted in an unjust division of property.

Anthony's argument is belied by the record on appeal. The initial memorandum decision from the trial court valued the marital home at \$119,000. The trial court noted that Sharla's basket collection was valued at \$18,000. The trial court also noted that there is approximately \$69,300 left on the mortgage, which had included \$22,180 that was used to pay off the loan on Anthony's vehicle. There was also evidence that the contents of the garage were valued at approximately \$16,000.

When dividing property, the trial court also took notice of Anthony's extensive gambling. The trial court made adequate findings of fact regarding the assets and liabilities awarded to each party. We do not believe the trial court's division of property was an abuse of discretion.

Spousal Maintenance

The trial court awarded Sharla \$850 per month maintenance based on the parties' income disparity. Anthony believes the maintenance award was in part motivated by the trial court's mistaken belief that he had been at his current employment for 6 years. Anthony argues it was an abuse of discretion for the trial court to fail to consider Sharla's needs, manner of property acquisition, family ties, and obligations.

Generally, either party may be awarded maintenance in an amount the court finds to be fair, just, and equitable under the circumstances. K.S.A. 60-1610(b)(2); *In re Marriage of Harbutz*, 279 Kan. 359, 361, 109 P.3d 1191 (2005).

Anthony's domestic relations affidavit listed an average monthly income of \$1,947, with an additional yearly income in 2004 of \$3,216 from the Prairie Band Pottawatomie Nation. Anthony's 2004 W-2 shows a yearly income of \$33,312.30. In 2005, Anthony began a new job where his gross income was \$5,800 per month. Anthony submitted additional

evidence estimating his yearly income at \$68,287.96.

Sharla's domestic relations affidavit includes a copy of her 2004 W-2, showing an annual income of \$26,486.94. Sharla testified that she earns \$10 per hour, working an approximately 40-hour week. Sharla also receives monthly bonuses from her employer ranging from \$50 to \$500. Sharla testified that she would lose her health insurance after the divorce was final. She receives a monthly insurance stipend of \$300 from her employer; however, Sharla could not find an individual insurance policy for that amount of money. Sharla also testified that a great deal of the credit card debt during the marriage was because Anthony would not contribute to the household expenses, which required Sharla to charge basic necessities.

We agree with Anthony that the trial court erred when it found that he had been at his current employment for a period of years; however, that finding is not material. At the time the maintenance award was entered, Anthony's income exceeded Sharla's by roughly \$40,000 per year. In addition, much of the debt Sharla assumed after the divorce was caused by Anthony's inability or unwillingness to supply financial assistance to his family. Thus, we believe it was fair, just, and equitable for the trial court to award Sharla \$850 per month in maintenance.

Affirmed.