NOT DESIGNATED FOR PUBLICATION

No. 97,396

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

MICHAEL L. MILLER,
Appellee,

and

KRISTI MILLER,
Appellant.

MEMORANDUM OPINION

Appeal from Rush District Court; BRUCE T. GATTERMAN, judge. Opinion filed May 23, 2008. Affirmed.

Richard M. Blackwell, of Blackwell, Blackwell, & Struble, Chtd., of Salina, for appellant.

John T. Bird and *Carol M. Park*, of Glassman, Bird, Braun & Schwartz, L.L.P., of Hays, for appellee.

Before BUSER, P.J., MALONE and McANANY, JJ.

Per Curiam: Kristi Miller appeals the district court's rulings in this divorce case. We affirm.

On June 10, 2005, Kristi's husband, Michael L. Miller, filed for divorce in Ellis County. Kristi moved for a change of venue to Rush County. Michael agreed, and on June 28-29, 2006, the trial court heard evidence on the division of property.

After entry of judgment, Kristi moved for a new trial or amendment of judgment. At the hearing on Kristi's motion, the trial judge explained his prior ruling, referenced his notes regarding the trial evidence, and stated his reasons for overruling her motion. Kristi appeals.

For her first issue on appeal, Kristi broadly suggests "the sub-conscious bias that pervades a close community" adversely affected the trial court's decision.

Preliminarily, we note that Kristi did not raise her concerns below or seek recusal of the trial judge. See *Miller v. Bartle*, 283 Kan. 108, 119, 150 P.3d 1282 (2007) (issues not raised before the trial court cannot be raised on appeal); *State v. Brown*, 266 Kan.

563, 570, 973 P.2d 773 (1999) (a litigant's failure to timely file a motion for change of judge will usually preclude the consideration of such an issue on appeal). Kristi's general contention is also vague and speculative. Moreover, while it is true that both Michael and Kristi grew up in Rush County, Kristi requested the transfer to that particular venue.

In support of her contention, Kristi notes that the trial court assured the parties of "no hard feelings" if they were to appeal. This did not show, however, that "such [hard] feelings . . . protruded into the proceedings," as Kristi now claims. To the contrary, this comment showed the opposite, which was consistent with the overall tone of judicial restraint and decorum reflected in the entire record.

Kristi next briefly argues that the trial court abused its discretion by adopting Michael's proposed journal entry without making any independent findings based on the evidence of the case.

Even a verbatim adoption of a party's proposed findings is not error so long as the findings have been individually considered and are supported by the record. *Ortiz v. Biscanin*, 34 Kan. App. 2d 445, 455, 122 P.3d 365 (2004). Although a comparison of Michael's proposed journal entry with the court's journal entry reveals that the court adopted much of Michael's language verbatim, the court did adjust the language and

dollar amounts in several of the paragraphs to reflect its judgment. The trial court's thorough explanation of the property division at the hearing on Kristi's posttrial motion further reflects the court's independent findings and judgment based on the evidence presented at trial.

With regard to the property division itself, Kristi contests a deduction of $13,000 from the value of Michael's business for the cost of litigation then pending against his trucking company in Rush County. Characterizing the trial court's decision as a "future set off," Kristi argues both that the trial court lacked jurisdiction and that it abused its discretion.

We disagree that the issue is jurisdictional, as it was in *In re Marriage of Crane*, 36 Kan. App. 2d 677, 143 P.3d 87 (2006), which Kristi cites on appeal. In *Crane*, a district court purported "to delay the final division of property for an indeterminate number of years to see if a spouse will gain a retirement or pension plan not in existence at the time of the divorce." 36 Kan. App. 2d at 682. In the case at bar, however, the trial court made a present division of property.

Kansas courts have previously approved the inclusion of a "contingent liability," the term used by Michael and the trial court below, in a division of property. In

Openshaw v. Openshaw, 213 Kan. 197, 197-98, 515 P.2d 740 (1973), the contingent liability was a guaranty which, according to the opposing party, would never be invoked. A guaranty was also at stake in *Martin v. Martin*, 5 Kan. App. 2d 670, 673, 623 P.2d 527, *rev. denied* 229 Kan. 670 (1981), and in that case the party to whom it was assigned characterized it as "'a rather speculative liability that may or may not occur.'" Our appellate courts nevertheless applied an abuse of discretion standard. *Openshaw*, 213 Kan. at 198; *Martin*, 5 Kan. App. 2d at 673. Consistent with this precedent, we will also review this issue for abuse of discretion. See *In re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002) (division of property); *Ives v. McGannon*, 37 Kan. App. 2d 108, 121, 149 P.3d 880 (2007) (motion for new trial).

Kristi complains that the trial court ruled based on "speculations," but as *Openshaw* and *Martin* show, some uncertainty is permitted the district court in its "broad discretion in adjusting the property rights of [the] parties." *Wherrell*, 274 Kan. at 986. There were also facts to support the trial court's decision. Michael testified about the litigation, explaining that a competitor sought to enforce an alleged noncompete agreement against a new employee hired by his trucking company. Michael agreed that he was defending the case "[v]igorously," and that it was costing "a significant amount of money." Michael also filed a domestic relations affidavit on the first day of trial which

gave an existing debt of $1,240 in attorney fees and an estimated total cost of $20,000 for this business litigation.

When explaining its ruling at the hearing on the motion for new trial, the trial judge stated that $13,000 was the amount "at minimum the corporation was going to have . . . to bring that case to a close." As is well recognized, a trial court is considered to be an expert "on the issue of attorney fees." *Johnson v. Westhoff Sand Co.*, 281 Kan. 930, Syl. ¶ 4, 135 P.3d 1127 (2006). We hold the trial court did not abuse its discretion in this matter.

Affirmed.