NOT Designated FOR PUBLICATION

No. 99,682

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

TRACY STANDISH,
Appellant,

V.

ROBERT EARL STANDISH,

Appellee.

MEMORANDUM OPIIMON

Appeal from Stafford District Court; MIKE ICEELEY, judge. Opinion filed~ March 13, 2009, Affirmed.

Frock R. McPherson and *Jeff Lee McVey~* of McPherson & McVey Law Offices, Chtd., of Great Bend, for appellant.

John T. Bird and *Carol Par/c,* of Glassman, Bird, Braun & Schwartz, L.L.P., of Hays, for appellee.

Before BUSER, P.J., ELLIOTT and GREEN, JJ.

Per Curiam: Tracy Standish appeals the division of property in her divorce from Robert Earl Standish. We affirm.

Factual and Procedural Background

Robert and Tracy were married in 1987. Robert was 37 years old, and Tracy was *25* years old. The couple had one son, Allen~ who had reached the age of majority and was farming with Robert by the time of the divorce trial.

Robert comes from a farm family, and at trial he estimated the value of the farmland and equipment he owned in 1987 to be $i,5OO~OOO. During the marriage, Robert inherited more farmland in the form. of life estates, some farmland in fee, and mineral interests.

There was no evidence of assets Tracy owned in 1987. She inherited a residential lot in Florida during the marriage. The parties agreed at trial that Tracy had helped with the fanning operations, but they disagreed on the amount of her contribution. Tracy separated from Robert in 2006 and was working as a pilot when she filed the divorce. petition on January *5,* 2007.

At trial on October 9 and 10, 2007, Tracy agreed under cross-examination that her proposal was to "take everything that's owned~ give it the value that you proposed. . and cut it in half"; and that she had "not discounted for the source of it!' Although the trial court made a substantial award to Tracy, she received no farmland. The trial court reasoned that Tracy had overvalued Robert's life estates and both parties intended Allen "to take over the farming operation in the future and to pass it on down to his heirs as it has been passed down from [Robert's] family in the past." Allen also held the remainder interests in the life estates. Tracy appeals.

Division of Property

Tracy contends the marital estate was not divided equally. She specifically challenges the trial court's treatment of the life estates, the duration of the marriage, and the source and manner of the property acquisition.

The trial court "is vested with broad discretion in adjusting the property rights involved in divorce actions and that the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse. [Citations omitted.]" *In re Marriage of Merrill,* 274 Kan. 984, 986, 58 P.3d 734 (2002).

Tracy's arguments all assume the trial court made a significantly unequal division of property. She bases this on a valuation of $4,874,290 for the marital estate. The trial court rejected this figure, however, for the reasons stated in its memorandum decision of October 22, 2007.

Among the trial court's reasons was its finding that little market existed for life estates. Because Tracy challenges none of the trial court's remaining reasons, she has waived or abandoned any of these issues on appeal. See *Cooke v. Gillespie,* 285 Kan. 748, 758, 176 P.3d 144 (2008).

Tracy's expert on life estates, Larry L. Can, reduced the expected price of the land if sold in fee by a percentage derived from. Robert's life expectancy. Without regard to Carl's arithmetic, the trial court rejected his opinion:

"[Can] testified [that] in his 40 years of selling real estate be has only sold one to two parcels of land in a life estate because generally there is very little market and people do not want to take the risk of buying land when the person who owns the life estate could die within the next day, next year or 10 years."

This finding was well-supported. Carl testified he had sold a single life estate in 1987, but remembered little about it. He agreed under cross-examination that a purchaser of a life estate "would have [to be] a gambler, somebody who is willing to bet on somebody else's life." Another of Tracy's witnesses, Kenneth A.C. Woods, Jr., a loan officer and branch manager with High Plains Farm Credit, testified that because life estates cannot be mortgaged, they are "a way to generate income but they're not truly an asset to us."

Regardless, Tracy complains that Robert "will still receive the profit from working that [life estate] acreage." Carr, however, did not base his opinion on the profitability of the life estates. We believe the trial court was within its discretion in rejecting Tracy's proposed valuation of the marital estate, including the value she placed on the life estates.

Turning now to the duration of the marriage, the trial court explicitly considered this factor as required by K.S.A. 2007 Supp. 60-1610(b)(1). . Tracy claims error based on a provision of the probate code, K.S.A. 59-6a20l *et seq.* To the extent statutory interpretation is required., our review is unlimited. See *Genesis Health Club, Inc. v. City of Wichita,* 285 Kan. 1021, 1031, 181 P.3d *549* (2008).

Tracy notes that a surviving spouse's elective share is 50% when a marriage lasts 15 years or more. See K.S.A. *59-6a202(a)(2)*. She does not provide any authority linking this probate statute, however, to divorce proceedings. We are of the opinion that K.S.A. 59-6a202(a)(2) and K.S.A, 2007 Supp. 60-1610(b)(1) are distinct in structure and purpose. An elective share is a simple calculation based on the length of marriage at death, whereas a division of property is a judgment based on several factors to achieve "a just and reasonable" result in a divorce~ See K.S.A. 59-6a202(a)(1); K.S.A. 2007 Supp. 60-1610(b)(1). The mechanical approach of the elective share would not achieve a just and reasonable result in every divorce.

Even if the elective share statute could provide some guidance in a divorce action, the record does not show that Tracy cited it below. Accordingly, she is precluded from complaining that the trial court failed to consider this unrelated probate statute. See *Miller* v. *Bartle,* 283 Kan. 108, 119, 150 P.3d 1282 (2007) (issues not raised below); *Butler County it W.D. No. 8 v. Yates, 275* Kan. 291, 296, 64 P.3d 357 (2003) (invited error).

As for the source and manner of acquisition of the assets, Tracy contends that "a majority of the assets were obtained after the marriage. . . and were acquired by the joint efforts of the parties." The Trial court was required to consider this factor under K.S.A. 2007 -Supp~ 60-1-610(b), yet Tracy admitted at trial that her proposed division did not do so, And on appeal, Tracy fails to identify particular assets and specify how her efforts contributed to their acquisition.

Tracy argues generally that she did farm work, but Robert had purchased 160 acres of farmland, in the year he graduated from high school, and he farmed full-time job 17 years before marrying Tracy, Tracy then spent at least part of her time during the marriage obtaining her commercial pilot's license and working elsewhere to purchase airplanes. It was reasonable to grant the farming assets to Robert and the non-farm assets to Tracy, especially given the parties' agreement that Allen should have an opportunity to continue the farming operation.

"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) (quoting LaRue *v. LaRue,* 216 Kan. 242, 250, 531 P.2d 84 *[1975]).* Although the division in the present case may have been unequal to some degree, it was not so unequal as Tracy contends. Tracy does not make a clear showing that the trial court abused its discretion.

Tracy next challenges the trial court's decision to use the date of filing as the valuation date. She argues instead that the date of trial should have been used.

The trial court has "broad discretion in determining the date to value marital assets. *In re Marriage of Cray, 254* Kan. at 386.Upon request, the trial court shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing or trial as the facts and circumstances of the case may dictate." K.S.A. 2007 Supp. 60-1610(b)(1).

Tracy does not directly attack the trial court's reasoning but instead offers two justifications for the trial date. She contends Robert failed to provide discovery in a timely manner, and the value of the farmland "increased substantially in the ten (10) months between the filing of the petition and the trial date."

In considering the trial court's rationale, it valued the property from the date of filing, January *5,* 2007, because the parties had separated in June or July 2006. A reasonable person could agree with this, especially given that another 10 months passed before trial.

Turning .to-Tracy[1]s-arguments, she provides no citations to the record showing...'" delays in discovery, and as a result, we presume the assertions are without support. See Supreme Court Rule 6.02(d) (2008 Kan. Ct. R. Annot. 38). The district court's appearance docket also shows no motions to compel production. Tracy's counsel did complain on the morning of trial that he had just received Robert's interrogatory responses, but he declined the trial court's offer of time to review them, The interrogatory responses are also missing from the record, meaning we cannot evaluate any prejudice to Tracy. See *City of Mission Hills* v. *Sexton,* 284 Kan. 414, 435, 160 P.3d 812 (2007) (appellant has the burden to designate a record showing error).

Tracy's assertion that the farmland had increased in value is also not cited to the record. The appraisal by Tracy's expert, Can, was dated May 8, 2007, and Can did not modify these valuations when testifying at trial on October 9, 2007. A reasonable person could conclude that any increase in land value from the date of filing did not require a valuation on the date of the trial itself.

Affirmed.