

NOT DESIGNATED FOR PUBLICATION

No. 107,908

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

KRISTOPHER G. JONES,
Appellant,

and

MOLLY I. JONES,
Appellee.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; CONSTANCE M. ALVEY, judge. Opinion filed January 11, 2013. Affirmed.

Gerald N. Jeserich, Law Offices of Gerald N. Jeserich, of Kansas City, for appellant.

Stanley R. McAfee, of Kansas City, for appellee.

Before STANDRIDGE, P.J., ATCHESON, J., and DANIEL L. HEBERT, District Judge Retired, assigned.

Per Curiam: Kristopher G. Jones and Molly I. Jones divorced after nearly 18 years of marriage. Kristopher argues that the district court abused its discretion in making its division of property by burdening him with substantially all of the marital debt and awarding him little of the marital property. He also argues that the district court ignored the parties' financial circumstances in making an award of maintenance and attorney fees to Molly.

The parties presented substantial testimony and documentary evidence regarding their property and income during an original divorce hearing on May 3 and 5, 2011. It was established that they had separated in July 2010, after nearly 18 years of marriage. Throughout the majority of their marriage, Kristopher had owned and operated KJ Construction, which is an S corporation. While Molly assisted with the business and was named as its secretary, the business never employed her or paid her. Kristopher, through his ownership of the business, provided substantially all their support, although Molly did work at part-time jobs occasionally.

Kristopher and Molly owned two houses located next door to each other. Prior to separating, they both lived in the house on 34th Street, which was subject to two mortgages. Kristopher operated the business out of the 34th Street house, and he took a second mortgage on that property in part to purchase the land next door and build a second house. The second house had an upstairs apartment that Kristopher rented out and a shop area for the business downstairs. After Kristopher filed for divorce, the tenant moved out of the apartment and Molly moved in. Because Kristopher lost income from the tenant's rent payments, he decided to convert the downstairs shop into another apartment. He removed the garage doors and began construction on the apartment, but stopped the work when Molly protested.

Each party submitted exhibits and testified as to their property and incomes. Kristopher testified that he was a licensed contractor and had been working in the profession for 16 years. Since 1997, he had owned and operated KJ Construction. According to the corporation's tax returns, some years the company made profits and some years it had losses. His accountant testified that even a loss on a tax return does not mean the business is not performing well. In 2010, a relatively bad year due to the economy, Kristopher reported personal income of \$47,986.09. He admitted he made more than that in prior years, and conceded that his income in 2009 was \$71,000.00.

Income from the business was able to provide for the couple's living expenses as well as for other things. Kristopher had a truck, and they were making \$550 per month payments on Molly's Jeep, which Kristopher wrote off as a business expense. Additionally, they had a classic Camaro worth \$32,160 and a classic Mustang worth \$29,325, on which they owed nothing. Moreover, Kristopher had a boat and engine worth \$10,040. Both had IRAs, but Kristopher had taken a loan from Molly's IRA to pay for business debt, incurring a tax penalty for the early withdrawal.

At the conclusion of the hearing, the district court granted the divorce and took the remaining issues under advisement. On May 11, 2011, the district court read and explained from the bench its decision regarding property division and also announced its decision awarding maintenance to Molly and requiring Kristopher to pay Molly's attorney fees. The court granted Kristopher the entire business and all of its debt. It awarded Kristopher the 34th Street house where he was living and running the business, subject to the mortgage. Molly received the other property next door where she was currently living. The court required Kristopher to repair the garage on Molly's property which he had started to convert into an apartment. Kristopher received the Camaro and his truck, and Molly received the Mustang and her Jeep. The court ordered Kristopher to sell his boat and engine to help pay off the Jeep's debt, for which he was held responsible in its entirety. Each got to keep the value of their own IRAs, and the court required Kristopher to pay back the amount he borrowed from Molly's IRA plus the tax penalty. The court split the parties' personal debt amounting to \$5,147 equally between them.

In determining maintenance, the court concluded that Kristopher could make \$30 per hour over and could work 50 weeks a year. When compared to Molly's minimum-wage income, the court determined that reasonable maintenance would be \$748 per month for 72 months. The court also ordered Kristopher to pay Molly's attorney fees.

In making its oral rulings, the district court stated that its decision was based on the testimony presented to the court, plus the documentation that was submitted into evidence.

On December 19, 2011, Kristopher filed a motion to reconsider the property division. The district court held a hearing on the motion and advised the parties that a primary consideration was Kristopher's request for the business, along with the disparities of income and the future pensions of the parties and the court's attempt to not leave either party homeless. The motion for reconsideration was denied and Kristopher filed this appeal.

A district court's division of property after a divorce is reviewed for an abuse of discretion. *In re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002). In asserting his claim that the district court abused its discretion in this case, Kristopher assumes the burden to show that the decision appealed from was (1) arbitrary, fanciful, or unreasonable such that no reasonable person would agree with it, (2) based on an error of law, or (3) based on an error of fact. Although a property division must be just and reasonable, it does not have to be equal. *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, Syl. ¶ 11, 229 P.3d 1187 (2010).

In the instant case, Kristopher specifically requested that the court award him sole ownership of the business, and the court gave him what he asked for: the business and all its assets and liabilities. The court awarded each party the house in which they were living. The court awarded each party a means of transportation and one of the classic cars owned during the marriage. The court awarded each party their own IRA, requiring Kristopher to repay a business loan against Molly's IRA together with the early withdrawal penalty. The remaining personal debt was divided equally. While it would appear at first blush that Molly received more assets than debt, this is an indication that most of the debt was business related.

Kristopher makes a brief complaint that the district court did not expressly state how it weighed each of the factors enumerated in K.S.A. 2010 Supp. 60-1610(b)(1). Although the district court did not specifically refer to each statutory factor, it is clear from its pronouncements both after the trial and at the motion for reconsideration that the relevant statutory factors had been fully considered. Further, Kristopher made no objection at trial and filed no posttrial motion suggesting inadequate findings of fact or conclusions of law. The court is presumed to have found all the facts to support its judgment, and nothing in the present case suggests otherwise.

While reasonable persons could disagree with the district court's division of property, the decision is certainly not so arbitrary, fanciful, or unreasonable that no reasonable person would agree with it. The decision is based on substantial evidence and an appropriate application of law.

Accordingly, we find that the district court did not abuse its discretion in making its division of marital property and debt.

Kristopher next asserts that in making an award of maintenance, the district court ignored the parties' financial circumstances. This court reviews an award of maintenance for an abuse of discretion. *In re Marriage of Monslow*, 259 Kan. 412, 414, 912 P.2d 735 (1996); *Vandenberg*, 43 Kan. App. 2d at 706. Again, as the party advancing the claim, Kristopher assumes the burden of establishing an abuse of discretion.

According to K.S.A. 2010 Supp. 60-1610(b)(2) maintenance should be "an amount the court finds to be fair, just and equitable under all of the circumstances." The district court, in setting forth its judgment regarding maintenance, considered and referred to most of the considerations reiterated in *In re Marriage of Hair*, 40 Kan. App. 2d 475, 484, 193 P.3d 504 (2008), *rev. denied* 288 Kan. 831 (2009). The court considered substantial evidence regarding the age of the parties, their present and prospective

earning capabilities, the length of the marriage, the property of the parties, the parties' needs, and the parties' overall financial situation.

While Kristopher obviously disagrees with the result of the district court's analysis of the evidence, it cannot be said that no reasonable person would agree with the district court's award of maintenance to Molly. The district court did not abuse its discretion.

Finally, Kristopher argues that the district court penalized him by awarding Molly attorney fees. Again, this court reviews an award of attorney fees for an abuse of discretion. The district court clearly considered the parties' needs and ability to pay. Considering the disparity of income and the other factors relied upon in making rulings on property division and maintenance, the award of attorney fees to Molly was not an abuse of discretion.

The judgments of the district are affirmed.