

NOT DESIGNATED FOR PUBLICATION

No. 106,446

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

JOHN WAYNE MCKENNEY,
Appellant,

and

PAULA JEAN MCKENNEY,
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS SUTHERLAND, judge. Opinion filed January 11, 2013. Reversed and remanded with directions.

Ronald W. Nelson, of Ronald W. Nelson, PA, of Lenexa, for appellant.

James E. Kiley, Jr., of The Kiley Law Firm, LLC, of Overland Park, for appellee.

Before HILL, P.J., BUSER, J., and KNUDSON, S.J.

Per Curiam: John Wayne McKenney (Wayne) and Paula Jean McKenney (Jean) have been divorced in this proceeding. On appeal, Wayne argues that the district court's division of the marital estate constitutes an abuse of discretion. Jean has filed a motion for allowance of attorney fees and costs pursuant to Supreme Court Rule 7.07(b) (2011 Kan. Ct. R. Annot. 64).

We reverse and remand because on this record we are unable to determine what K.S.A. 60-1610(b)(1) factors were considered and how the consideration of these factors

resulted in the district court's findings regarding a fair, just, and equitable division of the parties' marital estate. We deny Jean's request for attorney fees and costs incurred on appeal.

Wayne and Jean met in September of 2003 and were married on September 25, 2004. They were divorced on March 11, 2009. Thereafter, over a period of several days, evidence was presented on the remaining issues of property division, spousal maintenance, and attorney fees. On appeal, the only issue is whether the district court abused its discretion in dividing the marital estate.

The district 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). A judicial action constitutes an abuse of discretion if the action (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; or (3) is based on an error of fact. *Jordan v. Jordan*, 47 Kan. App. 2d 300, 306, 274 P.3d 657 (2012) (citing *State v. Ward*, 292 Kan. 541, 570, 256 P.3d 801 [2011]). Likewise, an abuse of discretion occurs if discretion is guided by an erroneous legal conclusion or goes outside the framework of or fails to consider proper statutory limitations or legal standards. *O'Brien v. Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 331, 277 P.3d 1062 (2012). The party asserting that the district court abused its discretion bears the burden of showing such abuse. *In re Marriage of Hair*, 40 Kan. App. 2d 475, 480, 193 P.3d 504 (2008), *rev. denied* 288 Kan. 831 (2009).

In Kansas, the law governing division of property in a divorce action is well settled. A district court divides marital property according to K.S.A. 60-1610(b), making a "just and reasonable division." The statute states, in relevant part:

"The decree shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property." K.S.A. 60-1610(b).

Although the ultimate division of property must be just and reasonable, it need not be equal. *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 715, 229 P.3d 1187 (2010).

After a review of the evidence and the district court's memorandum decision dated January 13, 2010, we conclude the lower court's decision must be reversed and remanded for application of the factors in K.S.A. 60-1610(b)(1) and to accomplish a just and reasonable division of the marital estate.

We do not arrive at this decision lightly. In the abstract, we do not fault the district court for its efforts to determine if either party was entitled to a cash award to balance the division of property. However, what occurred in this proceeding is that the district court failed to see the forest for the trees. By that we mean it is unclear and unstated in the record what were the statutory factors the district court considered, what its reasons were in its determination of the value of tangible and intangible property assigned to each party, and how the court arrived at a fair and reasonable division of property.

Both parties and the district court are well aware of the underlying facts. Extensive evidence was presented, and it is apparent from the record before us that the district court

was fully engaged and aware of the outstanding issues presented by the parties. Ignoring personal property of limited value, we agree with Wayne that the district court's division of property resulted in Jean being awarded \$379,337 (the value of her house and the lake house proceeds) and Wayne receiving \$141,450 (the estimated value of the Bayonet, Florida property) and obligated to pay the marital debt of \$246,000. Without the district court stating what factors it considered and the underlying reasons to support this division of property, we are unable to make a reasoned judgment as to whether the division is fair and reasonable.

The undisputed evidence before the district court was that at the time the parties first met, Wayne had substantial assets of significant value and Jean had none. However, we recognize that early in the relationship, due in part to Wayne's solvency and willingness to give Jean financial help, the Overland Park home and the Carndenton home were repurchased literally pennies on the dollar from a family friend of Jean's who had ostensibly helped bail her out in an earlier time of financial trouble. Even so, although that may support the award of the Overland Park home to Jean, what remains legally untenable is the gross imbalance in distributing the marital estate. There are no findings entered by the district court suggesting Wayne had done anything to support punitive measures. Indeed, as is Wayne's point, the district court simply reasoned, "[Wayne] is entitled to credits that equal approximately \$124,000.00; and [Jean] is entitled to credits that equal approximately \$112,500.00. Although these amounts are not equal, under the facts of this case, this Court finds that a cash or *equalization payment* is not warranted." (Emphasis added.) Thus the district court simply weighed competing claims of cash credits based on an array of financial transactions before and after the marriage and concluded that because the credits were essentially equal, a fair and just division of the marital estate had been accomplished. In our opinion, the district court failed to thereafter explain how its determination was a fair and equitable division of the marital estate.

In summary, we conclude the district court did not adequately demonstrate in its memorandum opinion how such a disparate division of the parties' marital estate is just and reasonable. We recognize Wayne may not have explicitly asked the district court to provide additional findings under K.S.A. 60-1610(b)(1) in his motion to alter or amend the judgment or to grant a new trial. Without such an objection, we generally presume the district court found all of the facts needed to support its judgment. See *Dragon v. Vanguard Industries*, 282 Kan. 349, 356, 144 P.3d 1279 (2006). However, we may still remand when the lack of factual findings prevent meaningful appellate review, 282 Kan. at 356. Moreover, remand is appropriate because our review of the record does not support a presumption that the district court found all of the facts needed to support a just and reasonable division of the marital estate. See *In re Estate of Cline*, 258 Kan. 196, 206, 898 P.2d 643 (1995).

Accordingly, we reverse and remand with directions that the district court review the evidence that was presented at trial and explicitly consider the factors deemed relevant under K.S.A. 60-1610(b)(1), including "such other factors as the court considers necessary." The district court's findings and conclusions of law should demonstrate that the marital estate has been divided in a just and reasonable manner after giving consideration to all of the parties' property and debts.

Finally, we deny Jean's request for attorney fees. Under the circumstances, it is manifestly fair that each of the parties pay their own fees and costs.

Reversed and remanded with directions.