

NOT DESIGNATED FOR PUBLICATION

No. 107,434

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

DAVID BRENT LAWSON,
Appellant,

and

VICKI LAWSON,
Appellee.

MEMORANDUM OPINION

Appeal from Cherokee District Court; OLIVER KENT LYNCH, judge. Opinion filed March 8, 2013.
Affirmed.

Robert E. Myers, of Columbus, for appellant.

Larry A. Prauser, of Columbus, for appellee.

Before ARNOLD-BURGER, P.J., GREEN, J., and HEBERT, S.J.

Per Curiam: David Brent Lawson (Husband) filed a divorce petition against Vicki Lawson (Wife). Husband raises two issues on appeal. First, he argues that the trial court abused its discretion in seven different respects concerning the valuations, divisions, or credits applied to various marital assets. Second, Husband argues that the court abused its discretion by awarding maintenance to Wife. We disagree and affirm.

Husband filed a petition for divorce on February 25, 2011, a few months short of what would have been Husband's and Wife's 25th wedding anniversary. Husband

requested a fair and reasonable division of property accumulated during the marriage. Wife, in response, similarly requested an equitable division of property, and she also requested maintenance payments from Husband. Although the record does not seem to specify the respective ages of the parties, the appellate briefs indicate that Wife was 55 and Husband was either 48 or 49 years old. They also had one child who was of majority age.

Throughout the proceedings, Husband and Wife disagreed largely on the division of their assets, the valuation of personal property, and the earnings potential of each party. Husband and Wife, however, agreed on the distribution of three noteworthy assets. First, both parties had recently sold their marital home, at 2616 Hickory Hills, and split the proceeds equally. Second, Husband and Wife each kept their respective personal vehicles, both of which were new and had comparable amounts of debt and equity. Third, Husband and Wife each inherited homes during marriage and would keep the homes after divorce: Wife inherited her Mother's home at 306 Galena; Husband inherited a share of his mother's home in Duenweg, Missouri, and purchased the remainder interest in the home from his siblings. Husband and Wife thus argued that these two properties would offset one another.

The parties litigated their differences at trial. Both Husband and Wife stipulated to the admission of each other's exhibits. The trial court used February 25, 2011, as the valuation date of all marital property. Because the allocation and valuation of many assets from the marital estate are not disputed on appeal, we consider the seven assets subject to dispute before this court:

- Improvements to Wife's nonmarital home: After Wife inherited the 306 Galena home from her deceased mother, Husband purchased and installed a furnace at the home with Wife's son. At trial, Husband claimed his efforts increased the value of the home by \$3,000. Husband, however, did not produce

any evidence of valuations of the home before and after the installation.

Husband testified the furnace cost \$1,500; Wife testified the furnace cost \$600.

- Valuation of personal property kept by each party: Before trial, Husband and Wife each took possession of personal property items they hoped to retain after the divorce. Both parties, however, disputed the valuation of those items. Husband claimed that the items were worth a total of \$12,000 and that the net distribution of these items favored Wife by about \$11,000. Wife, however, contended that the items were worth only \$9,000 and that the net distribution favored Husband by \$3,000.
- Credit for marital savings and checking accounts: Wife retained joint savings and checking accounts. Husband testified that as of February 28, 2011, or 3 days after he filed the divorce petition, the savings account held a balance of \$8,668 and the checking account held a balance of \$4,433.55. Although a bank statement of the savings account listed its balance on that day at \$5,768.07, the checking account balance was the same as specified by Husband. Wife did not testify or submit any evidence to the contrary regarding the couple's bank accounts.
- Credit for state and federal income tax returns: Husband submitted an exhibit of the couple's federal and state joint income tax filings for the 2010 fiscal year. Wife did not submit any evidence on this matter. At trial, Husband testified that, as stated in the filings, the couple received a federal tax refund of \$8,887 and a state refund of \$733. From those two sums, Husband received \$2,000; Wife received \$5,000; and their child received \$2,600.
- Credit for Husband's use of \$7,500 of his inheritance to pay off marital debt: Husband's mother died on January 13, 2011. Husband then received a \$7,500

life insurance benefit. Husband and Wife used this money to pay two of their creditors.

- Division of Husband's Inheritance: In addition to both the life insurance benefit and the home in Duenweg, Missouri, Husband inherited a \$10,000 certificate of deposit (CD) and \$14,000 in cash from his mother's estate. Husband cashed the CD on February 25, 2011, and deposited the proceeds and the \$14,000 in cash in a separate bank account. He did not include this inheritance in his exhibits submitted to the trial court.
- Valuation and distribution of marital estate: On appeal, Husband takes issue with the distribution of the marital estate, claiming that, in totality, the distribution was an abuse of the court's discretion.

Two other marital assets are worth mentioning. First, Husband had a retirement plan valued at \$115,216, and the trial court ultimately set aside \$48,270 of this plan for Wife. Second, in addition to the 306 Galena home, Wife inherited about \$63,000 from her mother. Husband and Wife spent that money during their marriage.

Husband and Wife also disputed Wife's request for maintenance. In short, Husband contended that Wife did not need maintenance largely because the two purportedly earned equal salaries. Wife, in rebuttal, asserted that she did not have stable employment and that Husband earned significantly more than she did.

With respect to Husband's earnings, the couple's 2010 joint income tax filing showed that Husband earned \$43,083 and that Wife earned \$44,783. Wife, however, argued that those figures were misleading. First, she elicited testimony from Husband that he "could have" told Wife that he earned \$60,000 per year. Second, a review of recent

paycheck stubs showed that Husband could be on pace in 2011 to earn \$63,210 or as much as \$69,911 in 2011.

With respect to Wife's earnings, she contended that her 2010 income of \$44,783 was artificially high because she worked a significant amount of overtime and that her future employment was unstable. Wife predicted that she would earn \$36,608 in 2011. She also stated that she had a bachelor's degree in industrial psychology—a field which, she claimed, did not pay as well as her current profession. Wife, however, did not need further education to ensure she could continue to earn her current wage.

After trial, the court granted the divorce. Then, in a letter dated to both parties on October 11, 2011, the court determined that Husband's paycheck on July 28, 2011, showed he was on pace to earn an annual income that year of \$69,911. This letter, however, is not included in the appellate record. Nonetheless, the letter directed Husband to prepare a journal entry in accordance with the letter's findings.

The trial court then filed its journal entry on November 16, 2011, which ordered the distribution of marital property. The court determined Husband and Wife, respectively, had annual incomes of \$69,911 and \$44,286 and that, based on the length of marriage and discrepancy between those incomes, Husband should pay maintenance to Wife of \$327 per month for 100 months. The court, however, did not assess a value to the personal property because the two parties' valuations claims were "so far apart." Also, though the court credited Husband with Wife's savings account balance, the court was "unable to make a determination for the value of the checking account" and, accordingly, did not credit Husband for the balance awarded to Wife. Finally, the court divided Husband's recent monetary inheritance—the \$10,000 CD and \$14,000 in cash—because both parties had spent the \$65,000 from the Wife's inheritance.

Did the District Court Abuse Its Discretion In Its Division of the Marital Estate?

A. Standard of Review

A trial court is granted wide discretion in dividing property in a divorce action, and the court's discretion will not be reversed unless the decision was fanciful, arbitrary, or unreasonable. See *In re Marriage of Hair*, 40 Kan. App. 2d 475, 483, 193 P.3d 504 (2008), *rev. denied* 288 Kan. 831 (2009); see also *In re Marriage of Cray*, 254 Kan. 376, 388, 867 P.2d 291 (1994) (trial court's date for valuation of marital assets is also subject to abuse-of-discretion standard of review). The party asserting that the trial court abused its discretion bears the burden to prove such abuse occurred. See *In re Marriage of Larson*, 257 Kan. 456, 463-64, 894 P.2d 809 (1995).

B. Application

Husband contends that the trial court abused its discretion in seven different respects. Specifically, he argues the court erred by (1) failing to account for his improvements to the 306 Galena home inherited and retained by Wife, (2) failing to place any value on personal property received by each party, (3) failing to credit Husband for marital funds set aside in the checking account, (4) failing to credit Husband for the marital tax refund, (5) failing to credit Husband for the \$7,500 life insurance benefit that he spent on the marital estate, (6) dividing Husband's inheritance money—the \$10,000 CD and \$14,000 in cash—that he purportedly received after he and Wife had separated but before the two were divorced, and (7) determining the value and distribution of assets in the manner specified by the journal entry.

Wife, meanwhile, simply argues to the contrary.

Statutory and Caselaw

First, K.S.A. 2010 Supp. 60-1610(b)(1) states that a divorce 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." (Emphasis added.) Under this statute, the trial court is not required to award each party the property inherited by each during marriage, though the court is required to make a "fair and equitable division of the property." See *In re Marriage of Hair*, 40 Kan. App. 2d at 480-81 (citing 60-1610[b][1]). Second, K.S.A. 2010 Supp. 60-1610(b)(1) authorizes the trial court to "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." Finally, K.S.A. 2010 Supp. 60-1610(b)(1) states:

"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."

A trial court, however, need not make express findings on all issues subject to dispute. For example, in a child custody case, our Supreme Court observed that the trial court's "failure to specifically articulate the evidence that supports its finding is not fatal." *In re Marriage of Whipp*, 265 Kan. 500, 508, 962 P.2d 1058 (1998). Indeed, in the absence of an objection to the trial court, omissions in findings will not support reversal because the court is presumed to have found the facts necessary to support its judgments. 265 Kan. at 508-09. Thus, an appellate court's function is to review the record and see if it supports a presumption that the trial court found all facts necessary to support the

judgment. 265 Kan. at 509. These same principles are applicable to situations like that of the present case in which an appellant challenges the trial court's division-of-property order. See, e.g., *In re Marriage of Ginavan*, No. 100,014, 2009 WL 1393758, at *3-4 (Kan. App. 2009) (unpublished opinion).

Husband's Argument

In light of the applicable statute and caselaw, the trial court did not abuse its discretion here. There are two principal reasons for this. First, the court's journal entry demonstrates that it conducted the proper inquiry under K.S.A. 2010 Supp. 60-1610(b)(1). Second, several competing facts undermine Husband's seven specific contentions of error.

The trial court's journal entry evidences that it expressly considered several if not all of the property-division factors specified by K.S.A. 2010 Supp. 60-1610(b)(1). The court considered the duration of the marriage, properly observing Husband and Wife had been married for almost 25 years. The court thoroughly considered the property of the parties: Each received household goods and furnishings in his or her possession, personal effects and belongings, personal vehicle, and Wife received part of Husband's retirement assets and part of his cash and CD inheritance. The court determined each party's annualized income, which shows that the court accounted for Husband's and Wife's earning capacities. The court showed a degree of sensitivity to the time, source, and manner in which property was acquired by ensuring each party would keep their current vehicles and inherited homes. This evidence strongly suggests the court conducted the appropriate inquiry under K.S.A. 2010 Supp. 60-1610(b)(1) even though it did not specifically articulate each factor under the statute.

Other facts also undermine Husband's seven assertions of error:

- First, Husband contends that the trial court erred by failing to credit him purchasing and installing the furnace at the 306 Galena home. Wife, however, testified that the furnace cost \$600 and that her son helped install it. This indicates that the value of the furnace was minimal and thus did not need to be specifically accounted for in the court's journal entry.
- Second, though Husband argues that the court erred by failing to assess value to the household items, the court's journal entry expressly declined to value the items because the parties' valuations were "so far apart." This shows the court considered the items' value to the best of its ability but, based on the available evidence, could not reasonably assess their worth.
- Third, Husband asserts that the court failed to credit him for marital funds set aside in the checking account. Although the court seemed to have evidence of checking account balance of \$4,433.55, this amount is rather minimal when compared to a \$150,000 marital estate, the value of which does not include Husband and Wife each keeping their inherited homes, personal vehicles, and splitting the proceeds of their marital home. Thus, even if the court overlooked the checking account balance, this omission would not invalidate the court's overall distribution of the marital estate, especially under an abuse-of-discretion standard of review.
- Fourth, Husband argues that the court failed to credit him for the disparity, in Wife's favor, for the federal and state income tax refunds. Husband, however, seems to overstate the disparity because the evidence suggests that he and Wife mutually agreed to give \$2,600 of their refunds to their child. But more importantly, the court wrote in its journal entry that it allocated some of the \$10,000 CD and \$14,000 in cash to Wife because she previously inherited \$65,000 that was mutually spent by the couple. This indicates that the court

considered the couple's cash assets in totality and made an informed decision in favor of Wife on the division of those assets.

- Fifth, though Husband contends that he should have been credited for a \$7,500 life insurance policy he used to pay two of the couple's creditors, the evidence indicates that these payments benefitted both Husband and Wife. And, as stated in the fourth point earlier, the court's consideration of Wife's \$65,000 inheritance suggests the court considered the couple's total cash earnings and assets in its division of property.
- Sixth, Husband argues that the court erred by dividing part of his inheritance—the \$10,000 CD and \$14,000 cash. And again, as stated previously, the court presumably awarded Wife some of this inheritance in light of the \$65,000 she had spent for the couple's benefit during their marriage.

Husband, without citing to the record or applicable caselaw, also argues that these assets were not part of the marital estate because he did not take possession until after his dates of legal separation and filing of the divorce petition. Nevertheless, the record shows that Husband's mother died on January 13, 2011, or about 6 weeks before he filed the petition for divorce. It is possible that Husband's rights to the CD and cash, presumably nonprobate assets, were vested immediately upon his mother's death and thus would have been part of the marital estate.

Finally, K.S.A. 23-201(b) arguably permits the trial court to consider, as part of the marital estate, any property acquired when the divorce action was commenced.

- Seventh, Husband raises somewhat of a cumulative error argument, taking issue with the trial court's determination of value and distribution of the parties'

assets. This argument is essentially a reiteration of his six preceding arguments.

The record shows that the court considered the necessary factors under K.S.A. 2010 Supp. 60-1610(b)(1) when dividing the marital estate between Husband and Wife. Moreover, several of Husband's specific arguments are undermined by evidence to the contrary contained in the record. Although the trial court could have made more specific findings favorable to appellate review, the record's "failure to specifically articulate the evidence that supports its finding is not fatal." See *In re Marriage of Whipp*, 265 Kan. at 508. As a result, Husband's arguments fail.

Did the Trial Court Abuse Its Discretion by Awarding Maintenance to Wife?

A. Standard of Review

Maintenance awards are also reviewed under an abuse-of-discretion standard of review. See *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 706-07, 229 P.3d 1187 (2010).

B. Application

Husband argues that the trial court abused its discretion by awarding any maintenance to Wife, ultimately awarding \$327 per month for 100 months. In support of this claim, he takes issue with the court's calculation of his annualized income.

Statutory and Caselaw

K.S.A. 2010 Supp. 60-1610(b)(2) states: "The decree [of divorce] may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances." The purpose of spousal maintenance is "to provide for the future support of a divorced spouse, and the amount of maintenance is based on the needs of one of the parties and the ability of the other to pay." *In re Marriage of Hair*, 40 Kan. App. 2d at 484. In awarding maintenance, a trial court should take the following factors into consideration:

"(1) the age of the parties; (2) the parties' present and prospective earning capabilities; (3) the length of the marriage; (4) the property owned by the parties; (5) the parties' needs; (6) the time, source, and manner of acquisition of property; (7) family ties and obligations; and (8) the parties' overall financial situation." 40 Kan. App. 2d at 484. (Citing *Williams v. Williams*, 219 Kan. 303, 306, 548 P.2d 794 [1976] [establishing the use of these eight factors]).

These factors are similar to those used to guide trial courts in dividing marital property. See K.S.A. 2010 Supp. 60-1610(b)(1); *In re Marriage of Collins*, No. 105,217, 2012 WL 140219, at *2, 6 (Kan. App. 2012) (unpublished opinion).

Husband's Argument

Although Husband contends that Wife should not have received any maintenance, the trial court did not abuse its discretion here. First, the record shows that the court expressly considered the parties' earning capacities, length of the marriage, and overall financial situation. And, as stated in the previous issue, the trial court's review also suggests the court took into account several of the other relevant factors that may be considered in determining whether to award maintenance.

Second, substantial competent evidence supports the court's determination of both Husband's annualized income and Wife's need for maintenance. Although Husband cites evidence suggesting that his income should be lower than \$69,911, this projection was not unreasonable: Husband's most recent paycheck showed he was on pace to earn this amount. Although Husband would prefer the incomes specified on the 2010 joint income tax filings to determine the issue of maintenance, the court's reliance on more recent evidence was supported by the evidence and was not arbitrary, capricious, or unreasonable.

And with respect to Wife's need for maintenance, she testified that her employment was not stable and that her earnings in 2010 were artificially high because she worked a significant amount of overtime. Nonetheless, the trial court determined her annualized income to be on the high end of Wife's projections, at \$44,286. This indicates that the court treated both parties fairly and within its sound discretion. As a result, Husband's argument fails.

Affirmed.