

NOT DESIGNATED FOR PUBLICATION

No. 107,276

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

DOUGLAS R. CLARK,
Appellee,

v.

DIXIE G. MCGINNIS,
Appellant.

MEMORANDUM OPINION

Appeal from Ford District Court; VAN Z. HAMPTON, judge. Opinion filed April 5, 2013.
Affirmed.

J. Scott Koksai, of Lindner & Marquez, of Garden City, for appellant.

Larry D. Tittel, of Tittel Law Office, of Ness City, for appellee.

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

Per Curiam: Dixie McGinnis appeals from the trial court's judgment in favor of Douglas Clark in the amount of \$9,525 after the parties ended their cohabitation. The judgment represented the remaining value that McGinnis owed to Clark for a shop he built on her property. Finding that the trial court did not abuse its discretion in dividing their property, we affirm.

McGinnis and Clark began seeing each other in the late 1990's. At the time, Clark owned a home in Montezuma, Kansas, and McGinnis lived with her mother in Dodge City, Kansas. Clark sold his home and moved in with McGinnis. McGinnis' mother died

shortly after Clark moved in, leaving McGinnis with the house and an inheritance of approximately \$90,000. When the trial occurred, McGinnis had about \$50,000 of her inheritance left. Clark's father also died, leaving him an inheritance of \$154,000. At the time of trial, Clark had about \$30,000 of his inheritance left.

During the relationship, the parties acquired numerous vehicles, a camping trailer, and three dogs. On May 2, 2011, the trial court heard evidence on who owned the jointly acquired property. Clark also presented evidence that he spent \$35,000 to build a shop on McGinnis' property, and that an appraisal report showed that the shop's estimated value of improvement to McGinnis' home was \$13,000.

On August 9, 2011, the trial court filed a journal entry and memorandum decision dividing the parties' property. The trial court divided the property almost evenly, but it determined that Clark owed McGinnis an equalization payment of \$3,475 after the division of the property. The trial court awarded McGinnis the residence, but it held that she owed Clark \$13,000 for the improvements to the property. This \$13,000 judgment was reduced by the \$3,475 equalization payment that Clark owed McGinnis, leaving McGinnis with a remaining balance of \$9,525 owed to Clark.

McGinnis moved to reconsider or alter and amend judgment. The trial court conducted a full hearing on the matter. McGinnis argued that the trial court incorrectly counted the value of the shop twice and that it incorrectly included other property as jointly-acquired property. The trial court denied McGinnis' motion, finding it had reviewed all the evidence and arguments presented to alter or amend the judgment, and reaffirmed its previous decision.

Did the trial court abuse its discretion in making an equitable division of the property?

McGinnis first argues that the trial court abused its discretion when it counted the value of the shop twice, once when it equitably divided the property and then again when it ordered her to reimburse Clark for the whole value of the shop. McGinnis further contends that the trial court abused its discretion in considering two vehicles as jointly acquired property. McGinnis maintains that the 1998 Ford Ranger and the 1988 GMC pickup were both purchased by her solely, were never titled in Clark's name, and Clark testified that he had no interest in them. Therefore, McGinnis argues that the values of those two vehicles should not have been included in her net value of jointly-acquired property. And finally, McGinnis argues that the trial court abused its discretion in giving Clark custody of Dinky, one of their three dogs. McGinnis maintains that considering the basic principles of child custody, her interests in the dogs as a whole, and the health of the dogs together, the trial court should have given her custody of Dinky. McGinnis further argued that "[a]s in child custody, divided custody rarely works and is often detrimental to each dog's health."

The trial 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). Even if the parties were not married and merely cohabitated, the court may, in its discretion, make an equitable division of property either jointly accumulated by the parties or acquired with intent that both parties have an interest in the property. *Eaton v. Johnston*, 235 Kan. 323, 328-29, 681 P.2d 606 (1984). "Judicial discretion is abused when judicial action is arbitrary, fanciful, or unreasonable. If reasonable persons could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion. [Citation omitted.]" *Unruh v. Purina Mills*, 289 Kan. 1185, 1202, 221 P.3d 1130 (2009).

The parties presented evidence regarding the amount of money spent on items during their cohabitation. The trial court had the duty to make an equitable division of the property jointly accumulated by the parties. This court does not review these equitable division of property cases for a determination of what would be an equal division. Rather, we examine whether the trial court abused its discretion in determining what it found to be an equitable division.

At the hearing on McGinnis' motion to reconsider, the trial judge stated:

"I want to identify that my intention in the order was to equitably divide the property. And, in addition to the equitable division, to order a reimbursement.

"That was my intention, the value of the house that was improved by the building of the shed. Or, it was increased by the building of the shed. I know that resulted in a hybrid division and made it difficult to clearly identify how to divide the values of the property, but . . . the intention of my order was to divide equitably the property set over, the values, and then order reimbursement after all the property was divided.

"So, it did, in fact, leave a small advantage in the hands of the Plaintiff [Clark], because I was ordering a reimbursement. So, that is the intent of the order.

....

"The pickup, the 1998 Ranger, I did intend to include in the property to be divided. So, I found that it was acquired during the time . . . the parties were—had gathered things together during their full time of cohabitation. So, it was my intention to divide that."

....

"Now, as for the dogs . . . It appeared from the evidence presented to me that both parties had a loving relationship with the first dog that they acquired. And, it was—it appeared to be fair to let Dixie [McGinnis] have the other two. So, I don't think there is any easy way to address that."

Based on the record, the value of the property items discussed earlier was acquired during the parties' relationship. The record contains evidence that indicates the parties accumulated the property either jointly or with the intent that both parties have an interest

in the property. Moreover, the trial court has wide equitable powers to award assets and assign debt to make an equitable division. It is clear that the trial court tried to equitably divide the property based on the evidence presented. The trial court explained that it was the court's intent to divide the property equally and then order a reimbursement. We see no abuse of discretion in that ruling. Additionally, McGinnis' argument that child custody laws should be applied to dogs is a flawed argument. McGinnis argues that "[a]s in child custody, divided custody rarely works and is often detrimental to each dog's health." One relevant difference between children and dogs is that children are human beings and dogs are domestic animals. Does not the great difference between children and dogs bar all comparison or inference? Thus, children are not relatively similar to dogs to justify applying the child custody law to this situation.

Affirmed.