

NOT DESIGNATED FOR PUBLICATION

No. 109,497

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

ANTHONY K. STEVENSON,  
*Appellee,*

and

PAMELA S. STEVENSON,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Grant District Court; BRADLEY E. AMBROSIER, judge. Opinion filed May 16, 2014.

Affirmed.

*Linda Gilmore and Grant Shellenberger*, of Gilmore & Shellenberger, P.A., of Liberal, for appellant.

*Wayne R. Tate*, of Tate & Kitzke L.L.C., of Hugoton, for appellee.

Before MALONE, C.J., ATCHESON and STEGALL, JJ.

*Per Curiam:* Anthony and Pamela Stevenson were married in 1982 and farmed for the duration of their marriage. The marriage failed, and Pamela Stevenson left the farm at the end of June, 2010. Anthony Stevenson filed for divorce on January 24, 2011. Between the time Pamela Stevenson left the farm and the initiation of formal divorce proceedings, Anthony Stevenson planted approximately 344 acres of triticale and 1,616 acres of wheat. In the pretrial order, the parties stipulated January 24, 2011, as the

valuation date for the marital assets and debts, however, they could not agree on the value of the growing crops.

At trial, Anthony Stevenson argued that the value of the growing crops should be measured by the input costs. He claimed a total value of \$110,748. Pamela Stevenson argued that the value of the crops should be measured by the gross proceeds less the harvest expenses. Included in Pamela Stevenson's calculation of gross proceeds was \$120,274 of insurance and government subsidy payments received by Anthony Stevenson between July 15, 2011 and October 21, 2011. She claimed a total value of \$261,583.07.

Also disputed at trial was the value of a tractor owned by the parties. In 2010, after the parties had separated but before the divorce was filed, the tractor was damaged when it got entangled in an electrical line. The tractor was repaired at the cost of \$13,537 after the parties filed for divorce. Following the repairs, the parties separately appraised the tractor, with Anthony Stevenson's appraiser valuing the tractor at \$28,500 and Pamela Stevenson's appraiser valuing it at \$46,000.

At the conclusion of a 2-day trial, the district court divided the property. After noting the difficulties associated with valuing a growing crop, the court reasoned that its true value should be "somewhere above the actual input price and somewhere below the gross return." The court set the value of the growing crops at \$152,500. According to the court's ruling, this amount included the value, if any, of the potential to receive insurance and subsidy payments, reasoning: "It seems unjust to this Court to allow the [insurance and subsidy payments] to be counted as an asset of the parties when the Court has previously valued that crop." As for the tractor, the district court valued the repaired tractor at \$32,000; however, the court included the repair bill of \$13,537 as a marital debt.

After the property was divided, Anthony Stevenson's net equity was calculated to be \$450,899.97 and Pamela Stevenson's was calculated to be \$188,380.10. In order to equalize the division of property, the district court then ordered Anthony Stevenson to pay a total of \$131,000 to Pamela Stevenson in 10 equal payments of \$13,100 a year for 10 years. There was no interest awarded on the equalization payments, but the district court did order that the payments were to be made on the first of November each year, and if any payment was 30 or more days late, the entire balance would become due and subject to interest at the current judgment rate. In addition to this property division, the district court ordered Anthony Stevenson to make maintenance payments to Pamela Stevenson of \$1,200 per month for 92 months.

Pamela Stevenson then filed a motion to alter or amend the judgment. She argued again that the proper way to value growing crops should have been the gross proceeds minus the harvest expenses. The court responded that because the parties stipulated to a January 24, 2011, valuation date, the gross proceeds could not be realized until sometime after that date and such proceeds could very well have been losses. Because Anthony Stevenson had exclusively borne the risk of raising the crops, the court stated, "[T]here's got to be some value, it seems to me, associated with the risk for that period of time."

Pamela Stevenson also argued that the court should not have considered the tractor repair bill as a marital debt as it had been incurred after the valuation date. The district court noted that because the tractor was appraised after it had been repaired, the court felt it necessary to allow the repair bill as a marital debt because the court "looked at the money that was expended to get the tractor in the condition that it was in when it was valued [and that money] needed to be accounted for, and that's how I did it, as opposed to showing a separate, in essence, worksheet on the tractor."

At the conclusion of the hearing, the district court reaffirmed its order. Pamela Stevenson now brings this appeal claiming that the district court abused its discretion by:

(1) failing to value the growing crops according to a gross proceeds method; (2) failing to include crop insurance and subsidy payments as part of the gross proceeds; (3) including the tractor repair expense as a marital debt; and (4) failing to award post-judgment interest on the equalization payments.

In Kansas, marital property can be divided in a number of ways, including dividing the property in kind, awarding the property or part of the property to one spouse and requiring the other spouse to pay a "just and proper sum," or ordering the sale of the property and dividing the proceeds. K.S.A. 2013 Supp. 23-2802(a). A district court has broad discretion when dividing the property of a marital estate, and its decision will not be disturbed absent a clear showing of abuse. *In Re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002). Judicial discretion is abused only if the action taken was arbitrary, fanciful, or unreasonable—if reasonable people could differ as to the propriety of the action, it is not an abuse of discretion. *In re Marriage of Bradley*, 282 Kan. 1, 7, 137 P.3d 1030 (2006). While the division of property must be just and reasonable, it does not need to be equal. *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 715, 229 P.3d 1187 (2010). The burden of showing the district court abused its discretion is on the party asserting such abuse. *In re Marriage of Hair*, 40 Kan. App. 2d 475, 480, 193 P.3d 504 (2008); *rev. denied* 288 Kan. 831 (2009). With these principles in mind, we will address each of Pamela Stevenson's claims in turn.

#### THE VALUE OF THE GROWING CROPS

Pamela Stevenson contests the district court's determination of the value of the growing crops. She argues that the lower court erred both in the method by which it valued the crops and by failing to properly account, within that method, for the value of the crop insurance and subsidy payments. She does not argue that the lower court failed to consider, or misapplied, the statutory factors district courts must consider when dividing marital property. See K.S.A. 2013 Supp. 23-2802(c).

To arrive at the value of the growing crops, the district court relied on *Sayers v. Railway*, 82 Kan. 123, 107 P. 641 (1910). In *Sayers*, a farmer suffered damage to his growing corn when a bridge piling built by the railroad caused a river to flood his fields. The *Sayers* court conceded that while it was difficult to value growing crops, it was not impossible:

"It is argued that an immature crop is incapable of valuation; that a crop which had been growing but a few weeks is no more than green blades or stalks, which, if then severed, would be of no practical use or value, and that therefore it would be unjust to measure the damages as of the time of the injury. We all know that growing crops are frequently bought and sold and their value at the time is estimated by the contracting parties. Valid chattel mortgages are given on growing crops, under which they may be sold, and they are also subject to sale upon attachment or execution, where they are appraised and their value estimated in their immature condition, and this seems to be done without any particular difficulty." 82 Kan. at 127.

*Sayers* ultimately determined that there was no formula for arriving at the value of the damaged crops; rather, it was a fact like any other, to be determined by the fact finder based on all of the evidence:

"Such a crop has an actual and also a potential existence, and a fair valuation can be made by witnesses of experience who are acquainted with the character of the land on which it is growing, the product derived from such land when properly cultivated, the ordinary course of agriculture and the climatic conditions in the region, the market price of ripened grain or product in the vicinity, when mature, and also how far the crop had progressed toward maturity when injured or destroyed. Consideration may be taken of these and perhaps other conditions in estimating the value of the crop, but these are not measures of value but only evidence to enable a jury to determine the value of the crop at the time and place of the injury and destruction. The owner is entitled to recover the actual loss which he sustained, and it was an immature crop, subject to many

contingencies and open to attack by numerous enemies, and not a mature crop, which he lost. . . .

As has already been indicated a liberal rule as to proof of the value at the time and place of the loss should be applied. . . . Such proof is received to show the value of the crop as it stood at the time it was injured and not its probable value when it should mature and be in the granary." 82 Kan. at 127-28.

Pamela Stevenson cites to numerous cases from other jurisdictions that apply other more formulaic methods for determining the value of growing crops at a particular point in time. We have no doubt that other such methods may be reasonable and valid methods of valuing growing crops. The question on review, however, is whether the method used by the district court was reasonable. If it was, it will not be disturbed on appeal.

After considering the entire record, we conclude that the district court reasonably valued the growing crops in a manner consistent with Kansas law. Following *Sayers*, the district court heard the evidence and weighed the potential economic value of a mature crop against the potential risk associated with an immature crop to arrive at a value "somewhere above the actual input price and somewhere below the gross return." The district court's valuation of \$152,500 was supported by the evidence and was well within the wide discretion a trial court must exercise when dividing marital property.

Pamela Stevenson next argues that the district court abused its discretion by arbitrarily refusing to value the proceeds Anthony Stevenson received from crop insurance and government subsidy payments as "part of the value of the crops." In its order dividing the marital property, the district court noted: "It seems unjust to this Court to allow the [insurance and subsidy payments] to be counted as an asset of the parties when the Court has previously valued that crop."

Pamela Stevenson interprets the district court's action as a refusal to attribute any value whatsoever to these payments. We agree that the district court's ruling in this regard, viewed in isolation, is not a model of clarity. It is clear, however, that when discussing the "gross return" on the crops, the district court was including in that sum the future potential for crop insurance or subsidy payments. As such, we are satisfied that, when understood in context, the district court's statement amounted to nothing more than a refusal to double count those payments. The record demonstrates that the district court did take these payments into consideration, along with the rest of the evidence of value, balanced that evidence with the evidence of risk taken by Anthony Stevenson, and arrived at a reasonable valuation as of the date of the divorce filing. The district court did not abuse its discretion when determining the value of the growing crops.

#### THE TRACTOR REPAIR EXPENSE AS A MARITAL DEBT

Pamela Stevenson next argues that the district court abused its discretion when it listed the tractor repair expense as a marital debt—essentially reducing the value of the tractor by the amount of the repair expense. She argues that the evidence presented to the district court regarding the value of the tractor had already accounted for the repair expense and to count it twice would be arbitrary and unreasonable.

At the hearing on Pamela Stevenson's motion to alter or amend the judgment, the district court stated its rationale for listing the repair expense as a marital debt. The court noted that the tractor was damaged prior to the valuation date and then appraised after it was repaired. Rather than deduct the repair expense directly from the tractor valuation, the district court explained that it chose to list the repair expense as a marital debt because "the money that was expended to get the tractor in the condition that it was in when it was valued needed to be accounted for."

While the district court's accounting method in this instance may be awkward, the net result is no different than had the court simply discounted the value of the tractor by the amount of the repair expense, thus reflecting its actual value at the time of the divorce filing. The district court did not abuse its discretion in the manner in which it accounted for the tractor repair expense.

#### POST-JUDGMENT INTEREST

For her final claim of error, Pamela Stevenson argues that the district court abused its discretion when it did not award post-judgment interest on the equalization payments. We have regularly held that "the decision of whether to award interest on a judgment lien in a divorce proceeding is a matter that is within the sound discretion of the trial court." *In re Marriage of Roth*, 28 Kan. App. 2d 45, 47-48, 11 P.3d 514 (2000). Here, the district court granted Pamela Stevenson a property equalization award of \$131,000 to be paid over 10 years. The district court explicitly ruled that no interest would accrue unless any payment was 30 or more days late, in which case, the entire balance would be come due and begin accruing interest.

Pamela Stevenson's only argument is that the district court's refusal to order post-judgment interest violated the court's own "true intent" to equally divide the "marital pot." The record does not support this contention. The plain language of the property division order shows that the district court carefully considered every aspect of the parties' financial and economic condition, including the disparate tax implications for the parties and their future income potential, to arrive at a fair and equitable property division. In addition, the district court awarded maintenance payments to Pamela Stevenson. There is no indication that the trial court did not accomplish what it set out to do. We find no abuse of discretion in the district court's refusal to order post-judgment interest on the property equalization payments.



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