

NOT DESIGNATED FOR PUBLICATION

No. 110,152

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of:

KIM P. SPRAGUE,
Appellee,

and

DAVID L. SPRAGUE,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS E. FOSTER, judge. Opinion filed August 1, 2014.

Affirmed.

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

Michael W. Lucansky, of Law Office of Michael W. Lucansky, P.A., of Overland Park, for appellee.

Before HILL, P.J., POWELL and STEGALL, JJ.

Per Curiam: In this appeal, we must answer the question of whether the district court had the authority to order the marital residence to be sold to one of the parties, Kim P. Sprague. Or, did the order illegally modify the parties' separation agreement? David L. Sprague objected and brings this appeal. Because the separation agreement stated that the "[c]ourt shall retain jurisdiction in the event the parties are unable to agree on the broker, the listing price, or other matters material to the sale of the marital residence," we hold that provision of the agreement grants the court the authority to do exactly as it

ruled. Additionally, we find that same provision enabled the court to set a value of \$265,000 on the property, a value higher than that suggested by Kim (\$250,000) and lower than the suggestion by David (\$270,000). We affirm.

This case returned to the district court from the Court of Appeals.

A panel of this court remanded this case to the district court for an evidentiary hearing to make findings of fact with respect to the sale of the marital residence and then divide the proceeds of the sale in a manner consistent with the separation agreement. *In re Marriage of Sprague*, No. 104,486, 2011 WL 3444335, at *6 (Kan. App. 2011) (unpublished opinion).

According to the separation agreement, Kim was to have possession of the marital residence. Additionally, Kim was to continue to pay the homeowners and other hazard insurance premiums and real estate taxes until the residence was sold.

Upon the case's remand, the district court held an evidentiary hearing regarding the sale of the marital residence. The district court again ordered David to sell Kim the marital residence.

David appeals, arguing the district court modified the separation agreement sua sponte. David claims the terms of the separation agreement are clear and unambiguous and it was the intent of the parties to sell the marital residence. David maintains that the district court did not have the authority to award the residence to Kim.

How we review such questions.

Separation agreements are controlled by K.S.A. 2013 Supp. 23-2712. A separation agreement is subject to the normal rules of contract law, and when the issue on appeal involves its interpretation, review is de novo. *In re Marriage of Strieby*, 45 Kan. App. 2d 953, 961, 255 P.3d 34 (2011).

K.S.A. 2013 Supp. 23-2712(b) provides: "Matters settled by an agreement incorporated in the decree . . . shall not be subject to subsequent modification by the court except: (1) As prescribed by the agreement; or (2) as subsequently consented to by the parties." Additionally, the court has held: "A court has no continuing jurisdiction to change or modify the division of property after entering an original divorce decree." *In re Marriage of Boldridge*, 29 Kan. App. 2d 581, 582, 29 P.3d 454, *rev. denied* 272 Kan. 1418 (2001).

In their separation agreement, David and Kim agreed that the marital residence "shall be placed on the commercial market for sale." The agreement does not specifically mention placing the home on the residential market. The separation agreement provides: "The Court shall retain jurisdiction in the event the parties are unable to agree on the broker, listing price, or other matters material to the sale of the marital residence."

David now argues that the parties agreed to sell the house and when the district court set the value of the house and ordered it to be sold to Kim, the court modified the agreement by not placing the residence on the open market. To the contrary, Kim contends the court did not modify the agreement because the parties agreed to sell and there was nothing in the agreement prohibiting the parties from selling to each other. We agree with Kim.

The district court correctly held the separation agreement granted the court authority to intervene "if the parties were unable to agree on issues that were material to the sale of the marital residence." David offers no support for his argument that the actual sale is not a matter material to the sale of the marital residence. Therefore, the district court did not err by ordering David to sell the marital residence to Kim.

We see no abuse of discretion in the value set by the court.

Appellate review of the division of marital assets is to determine if there is an abuse of discretion. *In re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002). It is an abuse of discretion if no reasonable person would take the view adopted by the trial court. *In re Marriage of Gurganus*, 34 Kan. App. 2d 713, 716, 124 P.3d 92 (2005).

The district court heard testimony from two appraisers who gave their opinions of the home's valuation. Kim's appraiser said the home should sell for \$250,000. David's appraiser said the home should sell for \$270,000. The district court also heard testimony regarding Kim's mortgages, potential closing costs, and commissions.

The district court determined fair market value of the marital residence was \$265,000. The district court also held that due to the likelihood of Kim selling the home in the future, based on her testimony, it was appropriate to deduct a 6 percent commission as well as an additional 1 percent to cover closing costs. The district court ordered David to execute a quitclaim deed and to sell the property to Kim.

David fails to support his argument that the district court abused its discretion by assigning the marital residence a fair market value of \$265,000. David does acknowledge that the district court divided the proceeds according to the terms of the separation agreement.

Nothing in the record shows that no reasonable person would adopt the district court's view. Therefore, the district court did not abuse its discretion when it assigned a fair market value of \$265,000 to the home, and it was not an abuse of discretion to award the marital residence to Kim.

We deny Kim's motion for attorney fees because we do not find the appeal frivolous.

Affirmed.