

NOT DESIGNATED FOR PUBLICATION

No. 111,811

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

DAVID EDWARD MARCUS,
Appellee,

and

SANDRA LYNN ORDING,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; NEAL B. FOTH, judge. Opinion filed June 5, 2015. Affirmed.

William J. Skepnek, of Skepnek Law Firm, of Lawrence, for appellant.

Katie McClaffin and *Anne E. Burke*, of Manson Karbank Burke, of Overland Park, for appellee.

Before ARNOLD-BURGER, P.J., PIERRON and BUSER, JJ.

Per Curiam: This is a divorce proceeding involving David Marcus and Sandra Ording. Ording appeals the district court's award of spousal maintenance and the division of a Charles Schwab brokerage account (Schwab account). We find the issues raised on appeal are procedurally barred and, given the limited record provided, are also not meritorious. Accordingly, we find no abuse of discretion and affirm the district court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Marcus and Ording were married on September 8, 1985, in Las Vegas County, Nevada. In 1996, the couple's only son, Benjamin, was born. After almost 26 years of marriage, however, the couple separated on March 11, 2011, and Marcus filed a petition for divorce based upon incompatibility. Ording filed a counter petition shortly thereafter.

At the time of the divorce proceedings, Marcus, who was 53 years old, worked as a radiologist for Alliance Radiology (Alliance) in Overland Park, Kansas. Marcus earned a fixed salary of \$15,000 a month at Alliance, plus bonuses. He earned \$563,299 in 2012, \$510,000 in 2011, and \$521,000 in 2010.

Fifty-three-year-old Ording, on the other hand, was unemployed. Ording has a master's degree in mathematics and architecture, but by agreement of the couple during their marriage, Ording managed the family's finances and investments while homeschooling Benjamin. As a result, Ording had not been employed since 1989.

Ording described Benjamin's homeschooling as "autodidactic self-directed learning. Autodidactic, meaning self-taught but not in a vacuum. . . . the child follows their interests, their passions. An adult . . . provides the resources, the access, whether it's technology or mentors or whatever, creates the opportunities." Benjamin's interests included competitive fencing with the goal of becoming an Olympic fencer. The costs related to his training ranged from \$30,000 to \$35,000 per year. According to Ording, these costs increased during the pendency of the divorce because Benjamin needed to travel to New York, Indianapolis, and Columbus, Ohio, to train with a fencing coach. Benjamin turned 18 in January 2014 and completed home schooling in May 2014.

After the filing of Marcus' divorce petition, the district court issued temporary orders prohibiting the parties from, among other things, making withdrawals "from

checking, savings, or other financial accounts, unless reasonably necessary for normal day-to-day business or personal expenses." Almost 1 year later, on March 5, 2012, the district court issued another temporary order, authorizing the parties to liquidate \$13,000 from their jointly owned assets and to equally split the funds between them for non-marital use. The temporary order also directed Marcus to pay Ording \$3,000 per month in child support and \$8,000 per month in maintenance beginning April 1, 2012. Finally, the district court granted Ording exclusive possession of the marital residence with the sole responsibility for the mortgage, insurance, and expenses. Of note, prior to the filing of this temporary order, from April 2011 through March 1, 2012, Marcus voluntarily provided Ording with about \$127,000 as temporary support for her and Benjamin.

The divorce trial began on May 21, 2013, and lasted 2 days. Prior to trial, the parties stipulated to several issues relating to the valuation and disposition of their sizable marital estate which was valued at about \$5 million. Relevant to this appeal, however, the issues of spousal maintenance and division of the parties' Schwab account remained in dispute.

Marcus and Ording testified at trial and each admitted numerous exhibits into evidence. In particular, the parties stipulated to the admission of Marcus' exhibits 1 through 49 and Ording's exhibits 100 through 128. Although the parties relied heavily upon the exhibits to prove their cases, Ording did not request the addition of these exhibits to the record on appeal.

With regard to spousal maintenance, Ording requested 20% of Marcus' earned income because she did not have the ability to support herself. Ording prepared two exhibits with her proposed maintenance calculations. One exhibit calculated maintenance including the time period that Ording and Marcus cohabitated with one another, and the other utilized only the duration of their marriage. Ording sought to base her maintenance upon the worksheet which included the period of cohabitation.

Ording testified that she needed maintenance because she would be unable to obtain employment in the near future due to her extended absence from the job market, and she believed a forearm injury she sustained in 2009 would inhibit her employment prospects. But Ording testified that once Benjamin began his freshman year of college she planned to start the process to attend law school.

Ording's initial Domestic Relations Affidavit (DRA) listed her living expenses as \$12,927 per month, but she later completed an amended DRA, which stated her living expenses as \$19,486 per month or about \$234,000 per year. (Ording's DRAs were not included in the record on appeal.) Ording testified she would need on a monthly basis \$1,000 for maintenance on the marital home, \$2,500 for Benjamin's "activities, lessons, and educational travel," \$1,200 for unreimbursed medical and dental expenses, and \$1,000 for food for her and Benjamin.

Ording testified that her expense calculations were reasonable because while the family spent more than \$234,000 per year to maintain the household during the marriage, she had reduced her expenses by not taking any vacations and limiting her clothing budget. When asked if her expenses would decrease when Benjamin went to college and he was no longer a minor, Ording stated, "I assume he still has to eat." Ording testified she was unable to separate out her and Benjamin's expenses, and she had not conducted an analysis of her budget in anticipation of Benjamin's impending emancipation.

After agreeing to let Ording keep the marital home, Marcus offered, as a form of spousal maintenance, to pay the mortgage on the marital residence until Benjamin finished his homeschooling in May or June 2014, but he argued that additional maintenance was unwarranted. Marcus claimed that Ording was fully capable of finding employment and supporting herself because she was smart, highly educated, and in good health. Moreover, Marcus argued that Ording's share of the marital estate equated to "millions of dollars," and she could use both the principal and the interest she earned

thereon to support herself if she chose not to pursue employment. Ording asserted the funds in the Schwab account earn at least half a percent annually, but she noted the uncertainty of the stock market.

With regard to the Schwab account, on the day before trial it contained investments with a market value of \$3,517,999. Both parties agreed that while the account was titled solely in Ording's name, the assets it contained were marital property. For purposes of this appeal, the parties' disagreement focused on whether Marcus should receive a greater portion of this account to equalize Ording's withdrawals from the account while the divorce was pending. In particular, Marcus contended that while he did not withdraw any sums from the account and the temporary orders prohibited the parties from spending marital assets unless reasonably necessary for normal day-to-day business or personal expenses, Ording withdrew "large amounts of cash" from the Schwab account during the pendency of the divorce proceedings without consulting him. Marcus alleged that even though Ording was receiving support, she frivolously and unnecessarily spent between \$563,367 and \$882,887 from the Schwab account over the course of 25 to 27 months. Because Marcus acknowledged that he and Ording were both entitled to an equal share of the monies in the Schwab account and that some of Ording's expenditures were for joint expenses, Marcus asked the district court to set aside \$464,003 of the Schwab funds to him prior to equally dividing the remaining funds in the account to the parties.

At trial, Ording testified that all of her withdrawals from the Schwab account were reasonably necessary for normal day-to-day business or personal expenses. She insisted that her expenses were identical to those incurred during the marriage because they related to maintaining marital assets, homeschooling Benjamin, and paying unreimbursed medical expenses. However, on the parties' joint statement of contested issues relating to assets, Ording stated:

"Wife is in agreement that certain sums she withdrew [from the Schwab account] should be reflected on her side of the ledger. These sums are reflected on various exhibits. The majority of the funds were used to pay for expenses related to the parties['] son and trips for his benefit, many relating to his fencing, which exceeded the child support and maintenance received."

When the district judge referred to the joint statement and asked how much money Ording believed should be reflected on her side of the ledger, Ording's attorney stated, "That's . . . our worst case scenario argument. They have [a] different worst case from my client, and then my best case is that there's none."

Ording also acknowledged that she withdrew funds from the Schwab account, rather than use the child support and spousal maintenance she received from Marcus which he deposited in a Kansas Payment Center (KPC) account. She explained:

"The [support] money started going to an account that apparently [Marcus' previous attorney] provided the wrong . . . social security number for it. Therefore when the money went into the account, one, we didn't even know it was going into the account. Two, once it did go into the account, I couldn't access it and spent a lot of hours tracking down trying to figure out how to access. I had to start—since the money was not accessible, I started writing \$11,000 from Schwab[.] . . . I was very thankful I had a trust account, Schwab trust account I could move the money from so I could pay the bills. Otherwise I couldn't pay the mortgage."

At the time of trial, Ording had \$88,000 remaining and unspent in her KPC account.

At the conclusion of trial, the district court granted the divorce on grounds of incompatibility and resolved the contested issues pertaining to the disposition of the marital estate.

With regard to maintenance, the district court determined that the amounts Marcus had previously paid, both voluntarily and under temporary orders, had provided Ording with sufficient temporary maintenance through May 2013. The district court ordered Marcus to pay Ording additional maintenance in the amount of \$8,000 per month for a period of 15 months (from June 1, 2013, through August 30, 2014).

In ordering maintenance, the district court noted that while Ording's need for maintenance was "debatable," it was appropriate to award maintenance for an additional 15-month period due to the length of the marriage and Marcus' "large income." On the other hand, the district court explained that once Benjamin left for college, Ording's spending for his "unique education and fencing career should plummet" and Benjamin had "more than enough money" to pay for his educational and fencing pursuits after graduation. Commendably, over the course of Benjamin's life, Marcus and Ording gifted him significant sums of money. At the time of trial, Benjamin had about \$600,000 in Uniform Gift to Minor Act (UTMA) accounts.

With regard to the Schwab account, prior to the division of the account, Marcus was awarded about half of the gains the account earned while the divorce proceedings were pending (\$274,000), plus one half of the value of the support payments Ording "saved external to the marital estate by spending within the marital estate," in an amount of \$44,000. While the district court explained that Marcus' claim regarding Ording's spending was "complicated," it placed considerable weight on Ording's concession that some of the sums she withdrew should be reflected on her side of the ledger, and after "spending hours studying the evidence," the district court determined that due to the lack of transparency associated with Ording's actions, "the Court [was] reduced to make a general, estimated equitable adjustment."

On January 3, 2014, Marcus moved to partially alter or amend the decree of divorce. In particular, Marcus asked that the marital residence be set aside to him because

the home no longer served as the primary residence for Ording and Benjamin. According to Marcus, after informing him she wanted to withdraw \$250,000 from the Schwab account to purchase a condominium in Ohio, Ording and Benjamin moved out-of-state.

Ording subsequently filed two untimely motions to amend the divorce decree. Relevant to this appeal, Ording challenged the spousal maintenance order, and the division of the Schwab account.

Regarding the maintenance award, Ording asserted the district court's decision to limit her support to a period of 15 months was not "fair, just, and equitable under the circumstances" because she had given up "a career of her own to allow [Marcus] to build up his own lucrative career." According to Ording, while the district court noted that her need for maintenance was "debatable," her DRA showed she had monthly expenses of about \$19,500.00, and she claimed that she should not be required to exhaust her share of the parties' substantial investments when Marcus earns an "income of \$563,299 per year and is more than capable of contributing to [her] support for much longer than 15 months." Ording also complained that the district court failed to explain why it believed she would be self-sufficient upon her son's graduation. Ording sought an amended judgment of 100 months of maintenance.

Regarding the Schwab account, Ording claimed the district court erred when it awarded Marcus offsets of \$274,000 and \$44,000 prior to dividing the account equally between the parties. Ording began by noting that the district court did not need to estimate the amount of the account's gains because Exhibit No. 43 reflected that from March 30, 2011, through March 31, 2013, the account appreciated by \$509,329, a figure that was \$38,597 less than the district court's estimate. Ording then explained that although she did not "necessarily dispute the district court's decision to equally divide the gains on the account," the offsets assigned to Marcus "single-handedly [forced her to] maintain the marital estate for two and a half years," when her exhibits and testimony

established that she used the majority of the funds to satisfy the family's joint expenses. Additionally, Ording noted the equalization award failed to account for her removal of \$13,000 of the account's gains pursuant to the district court's temporary order directing the division and distribution of these funds amongst the parties and, thus, the district court essentially funded this distribution solely from her share of the marital assets in the account.

Ording stated, however, that while she had testified that none of the funds were "wasted" or inappropriately used," she was not suggesting that Marcus was not entitled to a credit for the monies she utilized for her living expenses; instead, she was only requesting that Marcus be equally responsible for expenses related to supporting Benjamin or maintaining the marital estate. According to Ording, requiring her to pay all of the family's expenses from her half of the account's gains was an inequitable and unintended byproduct of the \$274,000 offset to Marcus. Consequently, she proposed the district court amend the divorce decree by taking "the actual gains, of \$509,329.00, less the joint expenses paid from the Schwab account (\$214,141.94), less [Benjamin]'s expenses (\$108,744.00), and divide the difference by 2, resulting in an offset to [Marcus] of \$93,221.53."

Ording also claimed the district court's award to Marcus of half of the \$88,000 that remained on her KPC debit card was erroneous because she was unable to access the KPC account, through no fault of her own, which obligated her to use her share of the Schwab account to pay her living expenses. Ording characterized the award as an improper retroactive modification of support. As a result, Ording sought the entire \$88,000 as reimbursement for the living expenses she paid from her half of the marital assets in the Schwab account.

On April 1, 2014, the district court held a hearing to consider the parties' motions to alter or amend and denied both motions. Relevant to this appeal, the district judge

found Ording's contentions regarding the Schwab account unpersuasive, and he dismissed her claim to a maintenance award because "[m]aintenance is discretionary." The district court further determined the motions to alter or amend were meritless because many of the arguments contained therein were simply a reprise of the arguments made at trial.

Ording filed a timely appeal.

APPELLANT'S FAILURE TO INCLUDE EXHIBITS IN THE RECORD ON APPEAL

As a preliminary matter, at trial Marcus and Ording admitted numerous exhibits in evidence to support their respective positions regarding the award of spousal maintenance and division of the Schwab account. Both parties relied heavily upon these exhibits below, and the district court considered this documentary evidence in arriving at its ultimate rulings. Yet, Ording has failed to include many of these important exhibits in the record on appeal. Of note, in his appellee's brief, Marcus alerted Ording to this failure: "[Ording] failed to include the very exhibits the trial court relied on in determining the division of the Schwab account. She failed to designate a record sufficient to provide for meaningful review."

This is a significant omission because both Marcus and Ording testified about spousal maintenance and the division of the Schwab account while referring to specific exhibits whose content is not found in the record. These exhibits consisted of maintenance worksheets, domestic relations affidavits, bank statements, and credit card records. For example, Ording's attorney used exhibits while examining her during trial:

"[ORDING'S ATTORNEY:] And we have provided to the Court and contained within the notebook several different varieties of child support worksheets and maintenance; is that correct?

"[ORDING:] Yes.

"[ORDING'S ATTORNEY:] And we have as Exhibit 116 just as an explanation to the Judge included not only what your husband is currently earning, but additionally one half if the Schwab account was divided equally that you each would additionally have interest from the Schwab account; is that correct?

"[ORDING:] Yes.

"[ORDING'S ATTORNEY:] And then we have as Exhibit 117 excluding any interest that you both would receive from the Schwab account; is that correct?

"[ORDING:] Yes.

....

"[ORDING'S ATTORNEY:] You've also provided to the Court today Exhibit 131, a calculation of maintenance utilizing the time period that you and Dr. Marcus have resided together more or less as husband and wife even preceding the date [of] marriage; is that correct?

"[ORDING:] Yes.

"[ORDING'S ATTORNEY:] We also have contained within our notebook as Exhibit 118 a calculation based solely on the date of marriage; is that correct?

"[ORDING:] Yes.

....

"[ORDING'S ATTORNEY:] Contained within our notebook—and we're not going to go through them, but you have provided to my office all of the Schwab records, as well as your American Express records, any other credit cards that you utilized to maintain expenses for you and your son as well as [the] household; is that correct?

"[ORDING:] Yes.

"[ORDING'S ATTORNEY:] And then what we've done is for the Court is we've broken it down showing if those as an example, the American Express was for a joint expense, an expense strictly for Benjamin or your personal; is that correct?

"[ORDING:] Correct.

"[ORDING'S ATTORNEY:] And on our Exhibit 100 which was our original proposed division, we have set forth for the Court those expenses which could be determined to be personal; is that correct?

"[ORDING:] Yes."

Similarly, with regard to the division of the Schwab account, Marcus' attorney argued to the district court with specific reference to the trial exhibits:

"[A]ll my client's asking to be restored even though we can show that she has spent over \$800,000 in the last two years. . . . And that total spending is identified in Exhibit Number 37 which we've spent some time with. And we spent a lot of time in those binders, your Honor, collecting and looking at Mrs. Ordning's credit cards for American Express, USAA, and Visa, and we looked at all of her checks from the Schwab account, and we looked at all of her bank statements from UMB, and we looked at her Capitol Federal account because it was a complicated way that she spends money. . . . the appreciation and growth on the [Schwab] account had it not been accessed would have been \$547,000. And that is reflected on Exhibit 4, and it's—and it's in all of the Schwab statements which show all the dividends, interest, and gains on the account. But she took out of the account \$563,000."

The importance of the exhibits did not end with the trial. Ordning's attorney also referred to the exhibits as the primary source of her evidence at the hearing on the parties' motions to alter or amend:

"[A]s to the gains that have been—of a half a million dollars, that that would be—you'd first reduce that by all of these clearly jointly—joint expenses that were for joint—which would be reflected in our various exhibits."

Importantly, during the trial the district judge stated his intention to review the exhibits before rendering a decision:

"[MARCUS' ATTORNEY]: Well, that's what we tried to do with all of these exhibits is show you so you as somebody whose seen these kinds of budgets over the years could say, is it reasonable over two years for somebody to spend \$882,000.

....

"THE COURT: Well, and that's what you guys are going to argue to me, and I'm going to get to go through those exhibits and see if they're—

....

"THE COURT: If that's what it is."

Moreover, the district court's memorandum decision indicates that it premised its rulings upon the information contained in these exhibits. For example, the district judge referenced Marcus' Exhibit No. 4, and in discussing his attempt to resolve the dispute over Ording's withdrawals from the Schwab account, stated that "despite *spending hours studying the evidence*, the Court is reduced to make a general, estimated equitable adjustment." (Emphasis added.)

Quite simply, the trial exhibits are critical to the determination of whether the district court accurately assessed Ording's need for spousal maintenance and appropriately divided the Schwab account. Without the trial exhibits included in the record on appeal, our court is unable to conduct a meaningful review of whether the district court found all of the facts necessary to support its rulings and if error resulted in the district court's judgment.

Ording had a duty to proffer a complete record on all matters for which she seeks review, as it is the appellant's burden to designate a record sufficient to support any claimed errors. See *Kelly v. VinZant*, 287 Kan. 509, 526, 197 P.3d 803 (2008). In the absence of such a record, this court presumes the district court acted properly. 287 Kan. at 526. By failing to provide a complete record for our review, we conclude that Ording has not carried her burden to demonstrate an abuse of discretion by the district court in either the order of spousal maintenance or the division of the Schwab account. On this procedural basis we affirm the district court with regard to this appeal.

Despite our affirmance of this appeal on procedural grounds and the limitations of the record on appeal, we will still endeavor to consider the merits of the issues Ording raises.

AWARD OF SPOUSAL MAINTENANCE

Ording contends the district court abused its discretion in awarding spousal maintenance. She presents a two-fold argument. First, Ording claims error in the district court's failure to follow the Johnson County Family Law Guidelines (Guidelines). Second, Ording complains that the district court failed to articulate reasons and make sufficient factual findings regarding the maintenance order. Marcus responds that Ording has not shown she objected to the district court's lack of findings or legal conclusions but if this issue was preserved for appellate review there was no abuse of discretion.

Preliminarily, we question whether Ording has preserved for appellate review her argument that the district court failed to follow the Guidelines in its award of maintenance. Kansas Appellate Rules require that appellants provide "a pinpoint reference to the location in the record on appeal where the issue was raised and ruled on. If the issue was not raised below, there must be an explanation why the issue is properly before the court." Supreme Court Rule 6.02(a)(5) (2014 Kan. Ct. R. Annot. 41).

Ording's appellate brief contains no pinpoint reference or an explanation why this argument was not raised in the district court. She asserts the district court failed to reference the Guidelines in its award of maintenance, but Ording fails to show where she asked for a ruling on this basis or objected below to the district court's failure to follow the Guidelines. Notably, Ording also never mentioned the Guidelines—let alone the district court's failure to comply with them—in her motion to alter or amend.

Moreover, another reason precludes our review. On appeal, Ording presents a new argument and request for relief that is markedly different than the argument and request for relief she sought in the district court. The district court awarded Ording maintenance in the amount of \$8,000 per month for a period of 15 months. In her motion to alter or amend, Ording did not object to the court-ordered monthly amount of \$8,000. The only

modification requested was that the maintenance order be extended to reflect "a duration of 100 months." (Emphasis added.)

But on appeal, Ording has changed her argument. She now claims that a proper application of the Guidelines would require Marcus to pay her \$9,388 *per month* for a period of 102 months. Thus, on appeal, Ording seeks an additional \$1,388 per month and 2 additional months more than she sought from the district court in her motion to alter or amend. As a general rule, issues not raised before the trial court may not be raised on appeal. *Wolfe Electric, Inc. v. Duckworth*, 293 Kan. 375, 403, 266 P.3d 516 (2011). Under these circumstances, Ording's argument is not properly before us.

With regard to the merits of Ording's argument about the failure of the district court to follow the Guidelines in awarding maintenance, as Marcus points out, the district court was under no obligation to follow the Guidelines. The Family Law Bench-Bar Committee of the Johnson County Bar Association created the Johnson County Guidelines. See *In re Marriage of Jones*, No. 97,714, 2008 WL 2251177, at *5 (Kan. App. 2008) (unpublished opinion). These Guidelines provide valuable assistance to practitioners. Because the Guidelines have not been adopted by any court, however, our court has held, on more than one occasion, the Guidelines are not binding on any judge, and judges are not required to explain their decision to deviate from them. See *Fiorella v. Fiorella*, No. 102,067, 2010 WL 1687864, at *6 (Kan. App. 2010) (unpublished opinion); *In re Marriage of Steiman, Cohn*, No. 100,304, 2009 WL 2762485, at *4 (Kan. App. 2009) (unpublished opinion); *In re Marriage of Jones*, 2008 WL 2251177, at *5; *In re Marriage of Hair*, 40 Kan. App. 2d 475, 481, 193 P.3d 504 (2008), *rev. denied* 288 Kan. 831 (2009). Ordings' argument relating to the Guidelines is not persuasive.

For her second argument, Ording claims the district court erred by failing to make "findings of fact required by K.S.A. 60-252 and Supreme Court Rule 165 [2014 Kan. Ct. R. Annot. 272] to support [its] maintenance decision."

Supreme Court Rule 165 (2014 Kan. Ct. R. Annot. 272) places on the district court the primary duty to provide adequate findings and conclusions on the record of the court's decision on contested matters. Likewise, K.S.A. 2013 Supp. 60-252(a)(1) obligates district courts to "find the facts specially and state its conclusions of law separately." A party, however, must object to inadequate factual findings and legal conclusions to preserve an issue for appeal. Such objections necessarily give the district court an opportunity to correct any alleged inadequacies. See *Fischer v. State*, 296 Kan. 808, 825, 295 P.3d 560 (2013). Without an objection, our court may presume the district court found all the facts necessary to support its judgment. *O'Brien v. Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 361, 277 P.3d 1062 (2012).

At the outset, it is necessary to discuss whether Ording adequately preserved this particular issue for appellate review. As mentioned earlier with regard to Ording's argument about the Guidelines, Ording was required to show us in the record where she raised this issue and objected to the lack of factual findings and legal conclusions, or explain why this issue is properly before our court. See Supreme Court Rule 6.02(a)(5). On appeal, Ording has made no such showing.

As Marcus points out, although Ording moved to alter or amend the maintenance order, she did not specifically challenge—as she does on appeal—the district court's compliance with K.S.A. 2013 Supp. 60-252 and Supreme Court Rule 165. Based on our review, we conclude that Ording did not object to the insufficiency of the district court's factual findings, nor did she move for amended or additional findings under K.S.A. 2013 Supp. 60-252(b). Accordingly, this argument was not preserved for appellate review.

Finally, Ording asserts the district court erred when it established Marcus' spousal maintenance obligation because it "failed to articulate any consideration of the factors set forth in *Williams v. Williams*, 219 Kan. 303, 306, 548 P.2d 794 (1976),] . . . let alone its

reasons for such a significant downward departure from the [Guidelines]." This argument is not persuasive.

Williams v. Williams, 219 Kan. 303, 306, 548 P.2d 794 (1976), establishes that when determining spousal maintenance, the district court may consider the parties' age, the parties' present and prospective earning capacities, the duration of the marriage, the property owned by each party, the parties' needs, the time, source, and manner of acquisition of property, family ties and obligations, and each parties' overall financial situation. *Williams*, however, does not obligate the district court to explicitly consider all of these factors in each and every case. See 219 Kan. at 306 (describing factors as "[o]ther matters which *may* be considered" [emphasis added.]); *In re Marriage of Dickson*, No. 111,504, 2014 WL 5313773, at *4 (Kan. App. 2014) (unpublished opinion) (finding *Williams* language discretionary not mandatory). Moreover, "[t]here is no fixed rule on the subject [of maintenance] and the district court in a divorce action is vested with wide discretion in adjusting the financial obligations of the parties." *In re Marriage of Sedbrook*, 16 Kan. App. 2d 668, 671, 827 P.2d 1222, *rev. denied* 251 Kan. 938 (1992) (quoting *Williams*, 219 Kan. at 306).

The district court's memorandum decision reveals that it did base the maintenance award on many of the *Williams* factors:

"The Court awards the amounts previously paid, both voluntarily and under temporary orders, as sufficient temporary maintenance and child support through May, 2013. The Court further awards additional maintenance of \$8,000 per month for 15 months from June 1, 2013 through August 30, 2014. [Ording]'s need for maintenance is debatable but the marriage approaches 30 years and [Marcus] will continue to have a large income into the future. Maintenance will consume less than one third of [Marcus]' month net. Additionally, when the parties' son goes to college next fall [Ording]'s spending on his unique education and fencing career should plummet. There is also more than enough money in [Benjamin]'s UTMA accounts to pay for college and training. Maintenance

shall be subject to modification and or reinstatement as per the statutes. Maintenance shall terminate upon the death of either party or cohabitation of [Ording] as defined by Kansas case law."

The district court's memorandum decision directly referenced the length of the marriage, and its discussion reveals the court fully considered the parties' earning capabilities, the property owned by them, the parties' needs, family ties and obligations, and the parties' overall financial situation. Our review of the district court's memorandum decision and the comments made at the hearing on the motion to alter or amend judgment convince us that the district court found sufficient facts necessary to support its judgment.

In conclusion, the district court may award maintenance to either party "in an amount the court finds to be fair, just and equitable under all of the circumstances." K.S.A. 2014 Supp. 23-2902. The intent behind spousal maintenance is to provide for the future support of the divorced spouse; consequently, the amount of maintenance awarded depends upon the need of one of the parties and the other party's ability to pay. *In re Marriage of Hair*, 40 Kan. App. 2d at 484. District courts have wide discretion regarding spousal maintenance; therefore, appellate courts also review spousal maintenance awards under an abuse of discretion standard. See *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 706, 229 P.3d 1187 (2010); *In re Marriage of Hair*, 40 Kan. App. 2d at 483-84. For all of the reasons discussed, we conclude Ording has failed to show an abuse of discretion in the district court's award of spousal maintenance.

DIVISION OF THE SCHWAB ACCOUNT

Ording contends the district court abused its discretion with respect to the division of the Schwab account. The crux of Ording's argument, which she raises for the first time on appeal, is that the district court failed to articulate its factual findings and conclusions of law in accordance with K.S.A. 23-2802(c), K.S.A. 60-252, and Kansas Supreme Court Rule 165.

Preliminarily, we once again question whether Ording has preserved this issue for appellate review. No "pinpoint reference to the location in the record on appeal where the issue was raised and ruled on" or "explanation why the issue is properly before the court" has been provided by Ording. See Supreme Court Rule 6.02(a)(5) (2014 Kan. Ct. R. Annot. 41). Moreover, our review of Ording's motion to alter or amend reveals no complaint regarding the failure of the district court to make findings in keeping with K.S.A. 23-2802(c), K.S.A. 60-252, and Kansas Supreme Court Rule 165. Rather, Ording's principal complaint, based on the trial exhibits presented to the district court, was that the district court miscalculated the appropriate equalization payment to Marcus. As a result, rather than award Marcus \$274,000, Ording argued that the district court should reduce that amount to \$93,221.53.

On appeal, Ording does not reprise her argument made below that the equalization payment should have been \$93,221.53 rather than \$274,000. Instead, for the first time, she now complains of an abuse of discretion for failure of the district court to make necessary findings. As a general rule, issues not raised before the trial court may not be raised on appeal. See *Duckworth*, 293 Kan. at 403. This argument is not properly before us.

To the extent we are able to address the merits of Ording's argument on appeal, given the limited record before us, we first review longstanding law with regard to property division in divorce proceedings.

District courts are vested with broad discretion in adjusting the property rights and financial affairs of parties involved in a divorce action. *In re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002). The district court must make "a just and reasonable division of [the marital] property." K.S.A. 2014 Supp. 23-2802(c). Because Kansas is an equitable division state, divorce courts are not required to make an equal split of all property acquired during the marriage. *In re Marriage of Rodriguez*, 266 Kan. 347, 352-

53, 969 P.2d 880 (1998). In fact, a district court "has discretion to award marital property entirely to one party so long as the overall division is fair." [Citation omitted.]" 266 Kan. at 353. In other words, 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 at 715.

When undertaking the division of property, Kansas law provides that the divorce court shall consider:

"(1) the age of the parties; (2) the duration of the marriage; (3) the property owned by the parties; (4) their present and future earning capacities; (5) the time, source and manner of acquisition of property; (6) family ties and obligations; (7) the allowance of maintenance or lack thereof; (8) dissipation of assets; (9) the tax consequences of the property division upon the respective economic circumstances of the parties; and (10) such other factors as the court considers necessary to make a just and reasonable division of property." K.S.A. 2014 Supp. 23-2802(c).

Similarly, Supreme Court Rule 165 places on the district court the primary duty to provide adequate findings and conclusions on the record of the district court's decision on contested matters. K.S.A. 2014 Supp. 60-252(a)(1) also obligates the district court to "find the facts specially and state its conclusions of law separately."

Ording urges this court to reverse and remand the district court's decision regarding the division of the Schwab account because the district court's memorandum decision lacks the requisite factual findings for meaningful appellate review of its decision to offset \$274,000 to Marcus prior to equally dividing the Schwab account. We disagree with this assertion.

At the time the district court issued its memorandum decision and decree of divorce, it provided a detailed explanation for its ruling on the division of the Schwab account:

"[Marcus]' second claim is complicated. The Court is asked to analyze [Ording]'s spending over [a] 25 month period and restore to the account those amounts that were 'excessive,' partly as evidenced by the fact that they exceed the monthly \$8,000 of maintenance and \$3,000 of child support [Ording] received. [Ording] claims the spending was for, 'ordinary household expenditures and attorney's fees,' was not excessive and did not violate temporary orders. However in [Marcus]' Exhibit 25, the parties' joint statement of contested issues relating to assets, [Ording] states that she *'is in agreement that certain sums she withdrew should be reflected on her side of the ledger. These sums are reflected on various exhibits.'* From the Court's examination of the record, [Ording] never states exactly how much she contends should be reflected on her side of the ledger. [Marcus] contends in his Exhibit 4 that \$464,003 should be set aside to him (in addition to his non-marital interest) prior to the division of the account.

"The Court finds that analyzing [Ording]'s spending for 'excessiveness' or 'ordinary household expenses' is futile. The parties are wealthy. [Ording] and [Benjamin] have an enmeshed relationship which involves very frequent and extensive travel in pursuit of [Benjamin]'s fencing career; or educational enrichment trips as part of [his] autodidactic, self-directed homeschooling plan. Large amounts of money are spent on this every year, including before the divorce, however, [Marcus] participated more before the filing.

"Although never alleged by [Marcus] during the pendency of the case, [Ording]'s activities in the account probably do constitute violations of the temporary orders, or at least their intended purpose. She essentially did what she wanted with the money, including actively manage the account, although it's hard to fault the results (belying [Ording]'s testimony in support of maintenance that she can't make more than one half of one percent on her investments). [Ording] transferred money between accounts and paid different credit cards from different accounts. She had \$88,000 still on a [KFC] debit card. She argues that support was insufficient, though she chose not to use it. Although [Ording] claims she did things in the name of transparency the Court can't see through any of it. Therefore, despite spending hours studying the evidence, the Court is reduced to make a general, estimated equitable adjustment.

"It was undisputed by [Marcus] in closing that [Ording] was entitled to spend half of the account gains that during the pendency of the action, which amounted to \$273,963. Additionally, [Ording] was entitled to spend the amounts of support she received, which was \$127,546 in voluntary payments prior to temporary orders of support

and \$154,000 under temporary orders of support from April 1, 2012 through May 30, 2013. The total exceeds the \$464,003 amount [Marcus] is requested be restored to him. As previously stated, neither party gave the Court an entry value on this Schwab account; however, [Marcus] argued in closing (supported by [Marcus'] Exhibit 4) that it was approximately the same as at the division date. There is no accurate way to assess how [Ording]'s withdrawals impacted earnings, how much of the gains are unrealized capital gains or how much has already been taxed (for example, there were approximately \$45,000 of ordinary dividends and taxable interest in 2011). Assuming most of the gains were in capital gains and tax-exempt dividends (and having no other option) the Court will use the gross gains of \$547,926 as a baseline for the only approximate equitable solution it can see. [Marcus] is awarded approximately one half of the gains in the account, \$274,000, plus the \$66,000 premarital interest discussed above, prior to the division of the remainder of the account."

The rationale behind the district court's ruling is apparent. It gave weight to Ording's concession that some of the sums she withdraw from the Schwab account should be reflected on her side of the ledger, and after carefully reviewing the disputed evidence, the district court made an equitable decision. The district court estimated gains in the account of \$547,926 during the period of March 2011 through May 2013. Marcus was then awarded \$274,000 which represented half of those gains which would have remained in the account except for some of Ording's withdrawals from the account during the divorce proceedings. The Schwab account was then divided equally between the parties.

While reasonable judges may have disagreed with the district court's approach, on this limited record, we have no basis to find it is arbitrary, fanciful, unreasonable, or based on an error of law or fact. See *In re Marriage of Thomas*, 49 Kan. App. 2d 952, 955, 318 P.3d 672 (2014). Marcus sought an equalization payment of \$464,003, in addition to his nonmarital interest, prior to the equal division of the Schwab account. After the district court's judgment awarding Marcus \$274,000, Ording suggested that, given her calculations, \$93,221.53 was a more appropriate figure. Given the wide

variance in the parties' positions, the district court's final division does not appear inequitable.

The district court explained its reasoning based on certain evidentiary facts and figures it referenced in its memorandum decision. From the district court's memorandum decision the rationale and factual basis for the division of the Schwab account is understandable and in compliance with relevant Kansas statutes and Supreme Court rules. Ording has failed to show an abuse of discretion.

AWARD OF \$44,000 TO MARCUS

Finally, Ording claims error in the district court's award of \$44,000 to Marcus. As mentioned earlier, during the divorce proceedings, temporary maintenance and child support payments were awarded to Ording. At the time of trial, \$88,000 of these payments made by Marcus to Ording were unspent and retained in her KPC account. Ording explained that she was unable to access this account and, as a result, she withdrew \$11,000 per month from the Schwab account to pay for temporary maintenance. At trial, Marcus sought one half of this amount, \$44,000, which should have been withdrawn by Ording from the KPC account, but instead was withdrawn from the Schwab account.

In its memorandum decision the district court awarded Marcus "an additional \$44,000 prior to division of the [Schwab] account equitably representing one half the value of the support payments *petitioner* [Marcus] saved external to the marital estate by spending within the marital estate." (Emphasis added.)

On appeal, Ording argues this statement is "nonsensical." But Marcus responds:

"Read in context, it is clear the trial court intended to refer to *respondent* [Ording] when stating the \$44,000 equitably represented one half the value of the support payments

petitioner saved external to the marital estate by spending within the marital estate. Wife saved \$88,000 outside the marital estate (i.e., on her [KPC] debit card) when she spent funds from the Schwab account instead of funds received for spousal and child support."

In context with the district court's memorandum decision and its remarks made in response to Ording's motion to amend, we agree with Marcus' understanding of the order. We find no abuse of discretion in the award of \$44,000 to Marcus.

Affirmed.