

## NOT DESIGNATED FOR PUBLICATION

No. 93,335

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF

CYNTHIA BEITZINGER,  
*Petitioner/Appellee,*

and

DAVID J. MARRONE,  
*Respondent/Appellant.*

## MEMORANDUM OPINION

Appeal from Crawford District Court; JOHN C. GARIGLIETTI, judge. Opinion filed October 28, 2005. Affirmed.

*Ronald P. Wood*, of Clyde & Wood L.L.C., of Overland Park, for appellant.

*Sarah Beezley*, of Girard, for appellee.

Before MARQUARDT, P.J., McANANY and CAPLINGER, JJ.

*Per Curiam:* David Marrone appeals the district court's division of property held by him and his former cohabitant, Cynthia Beitzinger. We conclude Beitzinger and Marrone jointly accumulated real and personal property while living as cohabitants and the district court did not abuse its discretion in awarding Beitzinger a \$30,000 lump sum equitable distribution as her share of the property.

### *Background*

Betzinger filed a petition for divorce in October 2001, asserting the parties had lived together since March 1995 and had a common-law marriage. In addition to seeking a divorce, Betzinger sought custody of the couple's minor child and an equitable distribution of the couple's property.

After hearing testimony on three different occasions, the trial court concluded the couple did not have a common-law marriage because they had not formed a present agreement to marry and had not sufficiently held themselves out to the community as husband and wife. The court noted, however, that its determination would have "little impact" as Beitzinger did not seek maintenance, which would have been available only if the couple had married.

The trial court then ordered Marrone to pay Beitzinger the lump sum of \$30,000 as an equitable division of property accumulated during the relationship. The court based its decision on the "length of [the parties'] relationship, the cost of purchase of [a] mobile home and other real estate and vehicles." The court also considered the fact Marrone "appears to have the ability to purchase expensive homes and luxury cars without any financing other than notes to his father."

Marrone appeals, arguing the district court abused its discretion because the lump sum awarded to Beitzinger was not supported by the evidence.

*Standard of review*

A trial court has the inherent power, independent of the statutes applicable in divorce cases, to make an equitable "division of such property as may have been jointly accumulated by the parties or acquired by either with the intent that both should have an interest therein during the period they lived together. . . ."[Citation omitted.]" *Eaton v. Johnston*, 235 Kan. 323, 328, 681 P.2d 606 (1984). The court must make this division in such a manner as the court in its discretion finds to be just and equitable. 235 Kan. at 328. Judicial discretion is abused only when no reasonable person would take the view adopted by the trial court. *Varney Business Services, Inc. v. Pottroff*, 275 Kan. 20, 44, 59 P.3d 1003 (2002).

*Equitable division of property*

On appeal, Marrone focuses upon Beitzinger's testimony that Marrone kept approximately \$200,000 in a safe at his home. Marrone argues this was not true and that he is unable to pay the \$30,000 awarded by the trial court.

Marrone's argument fails for two reasons. First, Marrone essentially asks us to reweigh the credibility of Beitzinger's testimony, which is beyond our limited scope of review. See *State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 275 Kan. 763, 775, 69 P.3d 1087 (2003). Second, the district court did not mention or rely upon Beitzinger's testimony regarding the cash Marrone allegedly kept in the safe; nor did the court indicate whether it credited Beitzinger's testimony in this regard. Rather, the court recognized the parties' joint acquisition of property and the fact that Marrone had made significant cash purchases "without any financing other than notes to his father."

There are few Kansas cases involving the division of unmarried cohabitants' property. Unlike cases involving married persons, there are no statutory factors for courts to follow. See *Eaton*, 235 Kan. at 328. In *Eaton*, the Kansas Supreme Court held that a district court "has the same power to make [an] equitable division of the property so accumulated [by unmarried cohabitants] as it would have in . . . the dissolution of a

business partnership." 235 Kan. at 328 (quoting *Werner v. Werner*, 59 Kan. 399, 403, 53 Pac. 127 (1898)). Indeed, a cohabitant, rather than asserting the rights of a spouse, wants "to recover a part of the property which [cohabitant] assisted in accumulating and which justly belongs to [cohabitant]." *Reese v. Reese*, 132 Kan. 438, 441, 295 Pac. 690 (1931).

Thus, in reviewing the propriety of the trial court's award, we must review the testimony of the parties as to the accumulation of their assets and the manner in which that accumulation was financed.

Marrone and Beitzinger began residing together in March or April 1995, and they had a child together in September 1996. Their relationship lasted for approximately 6 years, although they separated on more than one occasion. The longest period of separation lasted 6 months in 1999.

The record indicates most of the parties' income came from a vending machine business Marrone purchased approximately 1 year before he and Beitzinger began residing together. Beitzinger worked outside the home for all except two of the years the parties resided together, and she also assisted Marrone in operating his vending machine business. At one time, Beitzinger worked the graveyard shift while she was pregnant so she could help with the vending business in the daytime. During Beitzinger's 2 years of

unemployment, she took care of the couple's child and their home, when not helping with Marrone's business.

With respect to the vending business, Beitzinger assisted in recovering pool tables, picked up parts from the store, and typed labels on hundreds of CD's. Beitzinger testified she even "[ran] the route" herself when Marrone sprained his ankle. She described in detail how she would collect money from vending machines in Crown Royal bags and cash it in for stacks of \$100 bills, which she placed in Marrone's safe at the end of each week. Beitzinger estimated that Marrone grossed \$4,000 to \$7,000 per week from the business and did not report all of it on his taxes.

Beitzinger also testified the parties were together when they purchased a doublewide mobile home for \$57,000. Although Marrone made a down payment for the home, the amount of which is not specified in the record, Beitzinger testified the parties made monthly payments on the mobile home of \$2,000 to \$3000. These payments were made from the parties' joint checking account and continued until the mobile home was paid off 2 years later.

The record further establishes that not long after the parties separated, Marrone purchased a Harley Davidson motorcycle for \$6,000, which he paid in cash. Further, Beitzinger testified the parties purchased, among other items, a Chevy Blazer for

\$11,587; a Chevy truck for \$3,000; furnishings for approximately \$3,600; electronics for over \$2,000; and large appliances for more than \$1,000. In addition, the record indicates the parties jointly owned 2.5 acres of land valued at \$4,950.

Most of this real and personal property was paid for in cash, but the record does not clearly indicate who provided the funds. Marrone claims he borrowed \$65,000 from his father to purchase the mobile home, pay bills, and purchase some real estate. Beitzinger disputes this and claims Marrone made the down payment on the mobile home with the cash he kept in his safe.

Marrone's father testified consistently with Marrone, but he said Marrone has not paid anything towards the debt. The only other evidence of the debt is a note from Marrone to his father which is dated 3 months after Beitzinger filed for divorce. The district court acknowledged the belated date of the note but did not overtly comment on the credibility of Marrone and his father as to this issue.

The record indicates Marrone currently remains in possession of all the parties' property, except for items that Beitzinger took with her at the time of separation which have an approximate value of \$4,200. The district court awarded Marrone all the personal property Marrone had in his possession, in addition to all the real estate and his vending machine business.

Considering there is evidence Beitzinger helped Marrone with his vending business, contributed financially by working, and took care of the couple's child and their home during the parties' 6-year relationship, it is clear that Beitzinger at least assisted in accumulating the aforementioned assets. Moreover, considering the parties had acquired more than \$90,000 in real and personal property, and Marrone retained nearly all of that property as well as the vending machine business, the \$30,000 award to Beitzinger was appropriate.

We thus conclude the district court did not err in awarding Beitzinger \$30,000 as a lump sum, equitable distribution of the couple's property.

Affirmed.