

NOT DESIGNATED FOR PUBLICATION

No. 104,739

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF

MARIANNE HORVATH,  
*Appellee,*

and

PAUL R. HORVATH,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Douglas District Court; JEAN F. SHEPHERD, judge. Opinion filed July 15, 2011.

Affirmed.

*Suzanne Valdez*, of Smith Legal, LLC, of Lawrence, for appellant.

*John J. Immel*, of Petefish, Immel, Heeb & Hird, L.L.P., of Lawrence, for appellee.

Before GREEN, P.J., MARQUARDT and ATCHESON, JJ.

*Per Curiam:* Paul and Marianne Horvath divorced on November 14, 2006. A property division agreement was incorporated in their decree. In October 2007, the parties executed another Property Division Agreement (Agreement) which voided the agreement filed at the time of their divorce. The district court approved this Agreement on February 21, 2008. Under the Agreement, Paul was required to make various payments to Marianne. In the event Paul defaulted on his payments, Marianne was

entitled to sell real estate they had placed in an escrow account. The proceeds from the sale of real estate were to be applied first to what Paul owed her and then to payments Paul was required to make in the future. Paul defaulted on his payments and Marianne took possession of two pieces of real estate. Marianne subsequently sold both properties. The parties were unable to reach an agreement regarding the value of the properties and the degree to which the sale proceeds satisfied Paul's obligations under the Agreement. The district court issued a memorandum decision finding that the fair market value of each property was the price at which it was sold. Paul timely appeals the district court's fair market value. We affirm.

One property is a triplex located at 1222-24 Rhode Island Street in Lawrence. The second property is a duplex located at 309/311 East 11th Street in Lawrence. At the time of the transfer of the properties to Marianne, only one unit in the triplex and one unit in the duplex were rented. Marianne subsequently sold the Rhode Island property for \$65,000 and the 11th Street property for \$58,000. The properties were sold to the same buyer.

On June 16, 2009, Paul filed a motion for declaratory judgment or accounting of payments with the district court. On February 16, 2010, the district court held an evidentiary hearing.

Marianne testified that when she took possession of the Rhode Island property, she discovered that the kitchen and the bathroom in the upstairs unit had been torn out, the foundation needed repair, the heat was not adequate, and the water heater was completely rusted and had flooded the basement. Marianne stated that after the water heater broke, she had to refund the tenant's security deposit and 1 month's rent. Marianne testified that she would have had to invest a "substantial sum of money" in the property in order to

"make it the kind of house [she] want[ed] it to be," and she did not have the funds available to complete the renovations. Therefore, she decided to sell the triplex.

Marianne explained that based upon a conversation she had with an appraiser, she determined there was "no way" she could put the property on the market without making the necessary improvements. She contacted several people in Lawrence who "redo properties" and buy real estate in an "as is" condition. After Marianne showed the triplex to three different people, a realtor introduced her to Mike Randolph, who does business as Free State Properties. Randolph did an independent inspection of the triplex and ultimately agreed to purchase the property. Although Marianne consulted with a realtor, she did not sign a listing agreement.

Marianne testified that the 11th Street property, "the oldest duplex in east Lawrence," was also in a state of disrepair. She explained that the City of Lawrence had cited the property for poor upkeep, and would issue a sanction if the property was not painted. Furthermore, the foundation was "literally crumbling," it needed a new roof, and one side of the duplex had "very crooked floors," with a 6-inch variance from one wall to the other in both the bathroom and the kitchen. Additionally, the bathtub in one of the bathrooms was never hooked up to the sewer system and it drained into the crawl space under the duplex. A brick support wall under the house was caving in due to "constant drainage over who knows how many years." Marianne indicated that she sought bids for the necessary repairs and they were double the proceeds she received from the sale of the Rhode Island property. She decided to sell this property and told Randolph. After Randolph inspected the property, he agreed to purchase it "as is" for \$58,000.

At the hearing, the court admitted Marianne's list of expenses for the two properties that were owed when she took possession of the properties and the two sales contracts. These exhibits are not included in the record on appeal.

Marianne explained that she was involved in the management of properties during their marriage. She testified that she sold the two properties because she "was unwilling to own those properties in that condition and ask anyone to rent them." She was satisfied with the prices she received and felt they were fair.

Paul testified that he is a real estate investor/manager, and his job is primarily to "buy, sell, renovate, [and] manage rental properties." He had owned and managed the Rhode Island and 11th Street properties for more than 20 years. Paul stated that at the time of the transfer, the 11th Street duplex was in good condition, but it need about 3 days worth of painting and a coat of polyurethane added to the floors. He indicated that the Rhode Island triplex was also in good condition, except that renovations had begun in one kitchen and bathroom.

Paul explained that in 2009, he expected the 11th Street duplex to earn a total rental income of approximately \$1,000 to \$1,100 per month, and the Rhode Island Street triplex to net approximately \$1,495 per month. Paul testified that in his experience as a real estate investor, the fair market value of a property in Lawrence is typically 100 times the gross rent plus or minus factors such as "the history, the location of the property, the condition of the property," etc. He then estimated the fair market value of the 11th Street property to be approximately \$110,000 and the Rhode Island Street property to be about \$130,000.

On February 23, 2010, the district court issued a memorandum decision finding the fair market value of the East 11th Street property was \$58,000 and the fair market value of the Rhode Island Street property was \$65,000. The district court explained that both properties were in need of repairs, the city cited the 11th Street property for "poor upkeep," and Marianne chose to sell rather than complete the necessary repairs. The district court found that the sales were arms-length transactions and there was no evidence indicating that Marianne had any reason to sell for less than the "maximum financial gain." The district court also appointed a special master to resolve other accounting issues, and on June 21, 2010, the district court issued an order incorporating the findings of the special master. Paul timely appeals the district court's fair market value of the two properties.

Paul argues that the district court was required to interpret and apply K.S.A. 2010 Supp. 79-503a when determining fair market value. Marianne contends that K.S.A. 2010 Supp. 79-503a is not applicable because the statute is a taxation statute for the assessment of real estate ad valorem taxes.

Paul's arguments on appeal involve the interpretation of statutes. Interpretation of a statute is a question of law over which this court has unlimited review. *Unruh v. Purina Mills*, 289 Kan. 1185, 1193, 221 P.3d 1130 (2009). When interpreting a statute, an appellate court must first attempt to "ascertain the legislature's intent through the statutory language it employs, giving ordinary words their ordinary meaning." *State v. Stallings*, 284 Kan. 741, 742, 163 P.3d 1232 (2007). An appellate court does not speculate as to the legislative intent when a statute is plain and unambiguous and will not read into the statute something not readily found within it. Where there is no ambiguity in the statutory language, the court need not resort to statutory construction. Only if the statute's language or text is unclear or ambiguous does the court use canons of

construction or legislative history to construe the legislature's intent. *Double M Constr. v. Kansas Corporation Comm'n*, 288 Kan. 268, 271-72, 202 P.3d 7 (2009).

K.S.A. 2010 Supp. 79-1439(a) provides: "All real and tangible personal property which is subject to general ad valorem taxation shall be appraised uniformly and equally as to class and, unless otherwise specified herein, shall be appraised at its fair market value, as defined in K.S.A. [2010 Supp.] 79-503a, and amendments thereto." K.S.A. 2010 Supp. 79-503a defines "fair market value" as "the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion." K.S.A. 2010 Supp. 79-503a indicates that several factors should be considered when making a property valuation; a sale should not be the sole criteria of fair market value.

Paul argues, "The statutory scheme for determining fair market value, as it relates to tax assessment, also is triggered in the divorce context when the trial court must determine property value in order to equitably divide marital property." Paul provides no support for this argument other than a citation to 2 Elrod & Buchele, *Kansas Law & Practice, Kansas Family Law* § 10.2 (1999) (Practice Guide). The Practice Guide provided the following definition of fair market value: "This is the price at which property would change hands between a willing buyer and willing seller when neither are under any compulsion and both have reasonable knowledge of the relevant facts. Fair market value contemplates an arms length transaction." 2 Elrod & Buchele, § 10.2, p. 11. However, the Practice Guide never states that K.S.A. 2010 Supp. 79-503a governs fair market value determinations in divorce cases; in fact, it never mentions this statute. 2 Elrod & Buchele, § 10.2, p. 10. K.S.A. 2010 Supp. 79-503a applies to valuations for ad valorem taxation purposes. It does not apply to property valuations in divorce cases.

K.S.A. 2010 Supp. 60-1610(b) governs the valuation and division of property in divorce actions. The statute lists the following criteria the district court shall consider:

"[T]he age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property." K.S.A. 2010 Supp. 60-1610(b).

Significantly, K.S.A. 2010 Supp. 60-1610(b) does not refer to K.S.A. 2010 Supp. 79-503a, nor does it define the parameters within which determinations of value must be made. The statute gives the district court broad discretion in making divorce decisions, and that discretion will only be disturbed upon a clear showing of abuse. *Powell v. Powell*, 231 Kan. 456, 459, 648 P.2d 218 (1982).

Paul's second argument is that the district court erred by ignoring the county appraisals of fair market value of both pieces of real property.

"In a divorce action the district court is vested with broad discretion in adjusting property rights, and its exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse.' [Citations omitted.]" *Powell*, 231 Kan. at 459. However, when a party challenges the district court's factual findings, this court must determine whether the findings are supported by substantial competent evidence sufficient to support the court's legal conclusion. *Clark v. Clark*, 236 Kan. 703, 704, 696 P.2d 1386 (1985).

"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). However, an abuse of discretion may also be found if a district judge's decision goes outside the framework of or fails to properly consider statutory limitations or legal standards. *State v. Woodward*, 288 Kan. 297, 299, 202 P.3d 15 (2009). The party asserting the district court abused its discretion bears the burden of showing such abuse. *Harsch v. Miller*, 288 Kan. 280, 293, 200 P.3d 467 (2009).

Substantial competent evidence possesses both relevance and substance and provides a substantial basis of fact from which the issues can be reasonably determined. *Frick Farm Properties v. Kansas Dept. of Agriculture*, 289 Kan. 690, 709, 216 P.3d 170 (2009). "If there is substantial evidence to support the findings, it is of no consequence that there may have been contrary evidence adduced which, if believed, would have supported a different finding. [Citation omitted.]" *Clark*, 236 Kan. at 704.

In *In re Marriage of Schwien*, 17 Kan. App. 2d 498, 839 P.2d 541 (1992), a panel of this court was asked to determine whether the district court's valuation of marital property was supported by substantial competent evidence. The panel explained: "The values assigned to marital property must be within the range of evidence before the court." 17 Kan. App. 2d at 509. The panel then held that the district court's failure to value the marital property within the range of evidence presented constituted an abuse of discretion. 17 Kan. App. 2d at 510.

Paul argues that substantial competent evidence does not support the district court's decision regarding the fair market value of the two properties. Paul primarily contends that the district court erred because it "ignored" the Douglas County notices of valuation. However, copies of the notices of valuation as well as the sales contracts, Marianne's summary of expenses, and the parties' Agreement were not included in the record on appeal. Paul states in his brief that "the Douglas County, Kansas appraisal for the Rhode Island Street property was \$130,000 and the appraisal for the East 11th Street property was \$110,000." He cites to the transcript from the evidentiary hearing; however, the portion of the testimony he claims supports this argument are his statements regarding the value *he* would assign to the properties.

This court cannot speculate regarding the contents of documents that are not in the record on appeal or their potential evidentiary value. *Cf. In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 715, 229 P.3d 1187 (2010). Our decision must be based on whether the district court abused its discretion in determining the fair market value of the two pieces of real property.

"An appellant has the duty to designate a record sufficient to establish the claimed error. Without an adequate record, the claim of alleged error fails. [Citation omitted.] Assertions in an appellate brief are not sufficient to satisfy inadequacies in the record on appeal. [Citation omitted.]" *Unrau v. Kidron Bethel Retirement Services, Inc.*, 271 Kan. 743, 777, 27 P.3d 1 (2001). Thus, Paul's argument fails because he failed to provide a proper record on appeal that affirmatively establishes an abuse of discretion by the district court.

Affirmed.