

NOT DESIGNATED FOR PUBLICATION

No. 105,142

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF
TAMMY MICHELLE SMITH and RYAN LEE LOHMAN.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; DANK WILEY, judge. Opinion filed November 10, 2011. Affirmed.

Tammy Michelle Smith, appellant pro se.

Susan D. Szczucinski, of Szczucinski Law Firm, of Overland Park, for appellee.

Before ATCHESON, P.J., ARNOLD-BURGER and BRUNS, JJ.

Per Curiam: Tammy Michelle Smith appeals from various decisions the Leavenworth County District Court made in a divorce action ending her marriage to Ryan Lee Lohman. Although represented by counsel through the district court proceedings, Smith has represented herself on appeal. The issues she raises principally deal with division of assets, spousal maintenance, and child support. Those matters are typically entrusted to the sound discretion of the district judge hearing the divorce, and the appellate courts intrude only when a decision reflects an abuse of that exceedingly broad authority. Ultimately, we find no abuse and affirm the rulings of the district court.

We pause at the outset to note that the divorce proceedings appear to have been unusually acrimonious. That, of course, does not affect our review of the issues. As we have already mentioned, Smith has represented herself on appeal. In doing so, she is

required to follow the court rules in the same fashion as a lawyer would. *Mangiaracina v. Gutierrez*, 11 Kan. App. 2d 594, Syl. ¶¶ 1, 2, 730 P.2d 1109 (1986). On that score, Lohman's lawyer has filed a renewed motion asking that we strike Smith's amended appellate brief as not conforming to the rules. (Counsel had filed an earlier motion to that effect that the motions panel granted. Smith then filed a revised brief.) In particular, counsel complains that various statements in Smith's brief are not supported with citations to the record on appeal. We deny the motion to strike, but factual representations made in a brief without citation to the record may be disregarded. Supreme Court Rule 6.02(d) (2010 Kan. Ct. R. Annot. 39). A party untrained in the law takes considerable risk in attempting self-representation because failing to comply with court rules or failing to appreciate standards of review and other legal principles can hamper and often derail an argument.

There is also some dispute as to the issues properly before this court in light of the procedural history of the case in the district court. After the district court orally entered findings for the decree of divorce but before the journal entry was prepared and signed, trial counsel for Smith filed a motion to reconsider. The district court took up the motion to reconsider well after the journal entry was filed and denied it on its merits. In that posture, the motion might be construed as one to alter or amend judgment under K.S.A. 60-259(f). A motion to alter or amend stays the time for filing a notice of appeal from the underlying judgment. If so treated, the motion stayed the time to appeal from the divorce decree, and Smith timely filed her notice with respect to matters in the decree itself. This issue became somewhat confusing because on the same date the district court disposed of the motion to reconsider, it also addressed new issues regarding the mechanics of child visitation. Smith then filed her notice of appeal and, after that, filed a motion to reconsider the visitation determination. In reviewing the appeal shortly after it was filed, another panel of this court issued a show cause order aimed at the timeliness of the notice of appeal. After responses from the parties, the panel entered an order limiting the appeal to the denial of Smith's motion for reconsideration without specifying which motion.

Giving liberal construction to the first motion to reconsider, Smith requested review of the various aspects of the division of marital property, spousal maintenance, and child support. We, therefore, believe those issues have been properly preserved for appeal and consider them.

At the start of her brief, Smith alleges Lohman married her under false pretenses in that she says he had only financial interests in doing so. Without citation to the record, Smith then imputes all sorts of bad conduct to Lohman, ranging from the boorish to the despicable. We decline to recount the particulars here in part because the allegations are not tied to record evidence. Also, even if the assertions were true, they do not amount to valid legal considerations affecting how the district court must or should reconcile the financial affairs of a divorcing husband and wife.

Smith disputes the district court's division of property and allocation of debt in the decree. She raises those as separate issues, but they are part and parcel of the adjustment of the parties' financial relationship as part of the divorce proceeding so we treat them together. Smith likewise specifically challenges the district court's disposition of a 1997 Ford F-350 truck. A district court is afforded broad discretion in carrying out the task of adjusting a divorcing couple's financial affairs and will be reversed only for an abuse of that discretion. *In re Marriage of Wherrell*, 274 Kan. 983, 986, 58 P.3d 734 (2002).

A trial court may be said to have abused its discretion if the result it reaches is "arbitrary, fanciful, or unreasonable." *Unruh v. Purina Mills*, 289 Kan. 1185, 1202, 221 P.3d 1130 (2009). That is, no reasonable judicial officer would have come to the same conclusion if presented with the same record evidence. An abuse of discretion may also occur if the court fails to consider or to properly apply controlling legal standards. *State v. Woodward*, 288 Kan. 297, 299, 202 P.3d 15 (2009). A trial court errs in that way when its decision "goes outside the framework of or fails to properly consider statutory

limitations or legal standards." 288 Kan. at 299 (quoting *State v. Shopteese*, 283 Kan. 331, 340, 153 P.3d 1208 [2007]). The standard for appellate review here is a formidable one.

Smith is plainly unhappy with the district court's overall division of assets and debts of hers and Lohman's and with its handling of specific parts of the couple's financial relationship. In short, Smith believes she got significantly shorted in that process. She highlights her contention that she was saddled with essentially all of the debt, while Lohman receive a significant part of her retirement account. We can appreciate that Smith believes the allocation of assets and debts was lopsided in Lohman's favor, especially given her view of his behavior during the marriage.

Our review, however, is very limited. Under K.S.A. 60-1610(b), the district court takes account of the parties' assets, including retirement accounts and pension plans, and liabilities and apportions them based on various factors including the length of the marriage, respective earning capacities, when and from whom property had been acquired, and continuing obligations. The end result is to be a "just and reasonable division." K.S.A. 60-1610(b). The statutory standards, however, do not consider the comparative behavior of the parties or the especially good or bad conduct of either party in directing how the district court should proceed.

The district court in this case applied the correct legal considerations in dividing the assets and liabilities. There was no abuse of discretion in that respect. The district court noted that it had reservations about the accuracy of the valuations each side ascribed to certain property. Nonetheless, the district court was required to—and did—endeavor to complete its duties. Smith received real estate and motor vehicles in the property division. She also received household goods. The record evidence showed that Smith had regular, well-paying employment. Lohman's work was spotty and not nearly so remunerative. Although the district court's use of that difference in actual and potential

income seems to have been particularly galling to Smith (she repeatedly imputes indolence and profligacy to Lohman), it is a statutorily recognized factor in the allocation of assets and liabilities in a divorce proceeding. K.S.A. 60-1610(b). Smith points us to nothing in the record that demonstrates an abuse of the district court's discretion. Whether we would have come to the same conclusion on divvying up the property and the debts as the district court, Smith has not demonstrated to us that no other judge would have ruled in the same way. Accordingly, we reject her appeal on these points.

With respect to the 1997 Ford truck, the district court initially awarded the truck to the Lohman and valued the vehicle at \$2,500—consistent with his estimate. Smith originally argued it was worth more. Before the truck could be turned over to Lohman, it was apparently damaged. Each party has accused the other of being in some way responsible for the damage. At the hearing on the motion to reconsider, Smith argued the value of the truck was about \$800 in its present condition. The district court revised the decree to give the truck to Smith, who apparently still had physical custody of it, and granted Lohman a judgment for \$2,500 reflecting the previously established value of the truck.

Smith takes issue with the ultimate disposition of the truck. The district court was presented with conflicting evidence about the worth of the truck, its condition, and the cause of recent damage to it. The district court resolved those issues based on the available evidence. We find no abuse of discretion in its handling of the narrow dispute over the truck or its treatment of the truck as part of the broader property settlement. We reject Smith's appeal on this point.

Smith objects to the district court's decision to award 21 months of spousal maintenance to Lohman at a rate of \$550 a month. Our review of an award of maintenance is also for abuse of discretion. *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, Syl. ¶ 4, 229 P.3d 1187 (2010). In determining whether to award spousal

maintenance and, if so, how much, the district court looks at circumstances similar to those in dividing assets and liabilities. *In re Marriage of Vandenberg*, 43 Kan. App. 2d 698, Syl. ¶ 6 ("In the determination of maintenance, trial court may consider: the age of the parties; their present and prospective earning capacities; the parties' needs; the time, source, and manner of acquisition of property; family ties and obligations; and the parties' overall financial situation."). The district court cited the *Vandenberg* case and the criteria outlined there. We find no abuse of discretion in the choice of legal standards.

In arriving at the spousal maintenance amount, the district court used the Johnson County guidelines, given Lohman's place of residence. The district court determined the length of support as reflecting half the duration of the marriage. The district court determined Smith's annual income to be three times that of Lohman. Under the guidelines, the maintenance would have been \$760 a month. But the district court reduced that amount by \$200 a month. In addition, the district court ordered Lohman to pay Smith \$390 a month in child support, substantially reducing the financial impact of the maintenance on Smith. The district court also gave Smith a credit against the maintenance obligation for several thousand dollars in past-due child support from Lohman.

In sum, we find no abuse of discretion in the district court's decision on spousal maintenance and affirm that ruling.

Smith next disputes the decision of the district court judge to adjust the amount of child support ordered during the pendency of the divorce. In her brief, Smith argues no reduction should have been permitted because Lohman only sporadically paid support and because the reduction made no logical sense, since the reduced monthly amount was less than the monthly amount ordered in the decree. Smith points us to no authority that would support her argument. The district court explained the reduction as necessary to account for Lohman's income being substantially overstated in the materials used to

determine the temporary child support as compared to the evidence submitted later in the divorce proceeding. Smith points to nothing in the record suggesting, let alone demonstrating, the district court's determination to be factually incorrect. We, therefore, affirm that decision.

Smith makes two extremely brief arguments about a "timeline" for child support being inconsistent with a "timeline" for allocation of assets and debts and about inconsistencies in child support worksheets and maintenance worksheets. But Smith fails to cite to the documents or testimony in the record demonstrating those variances or establishing their significance. The arguments in her brief are neither fully formed nor supported in the record. We, therefore, cannot consider them. See *Cooke v. Gillespie*, 285 Kan. 748, 758, 176 P.3d 144 (2008) (A point raised incidentally in a brief and not fully argued is effectively abandoned.).

Affirmed.