

NOT DESIGNATED FOR PUBLICATION

No. 104,164

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of:

CHARLES D. HOUSE,
Appellee,

and

LORETTA LEVER HOUSE,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; THOMAS M. SUTHERLAND, judge. Opinion filed April 12, 2012. Affirmed.

Christopher T. Wilson, of Beam-Ward, Kruse, Wilson, Wright & Fletes, LLC, of Overland Park, for appellant.

John W. Nitcher and *Amy Stus*, of Rilling, Burkhead & Nitcher, Chartered, of Lawrence, for appellee.

Before BUSER, P.J., ARNOLD-BURGER, J., and BUKATY, S.J.

Per Curiam: Loretta Lever House (Lever) challenges the district court's division and distribution of marital assets in the divorce action filed by her husband, Charles D. House. She argues that the district court abused its discretion by assigning fault to her in incurring substantial legal fees during the course of the sale of a premarital asset, a radio station, and not dividing this marital debt equally. In addition, she alleges that the court abused its discretion in failing to value the radio station in line with the opinion of her

expert witness. And finally, she contends the court abused its discretion in accepting the testimony of an appraiser whose license was revoked because of her conduct in this case. Finding that the district court did not abuse its discretion and reasonably divided the substantial assets in this case, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Charles D. House and Loretta Lever were married on February 10, 2001, in Little Rock, Arkansas. After 5 years of marriage, almost 3 of which was spent living separately, House filed a petition for divorce in Johnson County District Court on February 10, 2006. The parties owned a considerable amount of property, including residences in both Kansas and Arkansas. After 3 years of haggling over the division and disposition of the marital estate, the district court granted the divorce and reserved the division and disposition of their sizeable marital estate for a later decision. The subsequent valuation and distribution of two of the marital assets, a radio station, and a property located in Little Rock, Arkansas (the Frecourt residence), is the subject of this appeal.

The radio station-FOXY

Prior to the marriage, Lever was the sole owner of the KYFX-FM (FOXY) radio station, in Little Rock, Arkansas, which she owned and operated through a corporate entity by the name of Nameloc, Inc.—Lever's maiden name spelled backwards—and its wholly owned subsidiary, Nameloc Broadcasting. Lever started the radio station in either late 1991 or early 1992. She sold it after the parties were married following protracted and expensive litigation over the details of the sale.

The Freccourt residence

Prior to the parties' marriage, Lever jointly owned a single-family residence located at 5 Freccourt Lane, Little Rock, Arkansas, with Burdett Rowe, a married man with whom Lever had a romantic relationship. Rowe purchased the Freccourt residence in 1999 for \$353,500 as a gift for Lever. Although both Lever and Rowe were listed on the Deed of Trust, the mortgage obligation on the property was solely in Rowe's name.

Lever testified that of the \$126,913.81 down payment made on the property, she contributed \$50,000 plus a \$2,000 earnest deposit. Lever and Rowe subsequently split the mortgage payments, and Lever paid all of the utilities. However, according to Rowe, when Lever became involved with House, he "was a bit upset" that another man was living in the house he purchased for her, so he told Lever he was not going to pay his portion of the mortgage, and he "wished her well in her new relationship."

Shortly after Lever and House were married, House agreed to pay off the outstanding mortgage on the Freccourt residence, \$230,629, with monies from his FELA disability settlement, a premarital asset, in exchange for the execution of a quitclaim deed conveying the property to "Loretta Lever House, formerly, Loretta Lever and Charles D. House, husband and wife." According to Rowe, because the home was a gift for Lever, he made no claim to his down payment or any equity that had accrued in the property.

The trial and the final distribution

After several days of trial and testimony from several expert witnesses as well as the parties, the district court concluded that the radio station, a premarital asset that Lever sold during the marriage, had a net marital value of \$54,757, and it set aside this gain for Lever. The district court rejected Lever's request for a reduction to the net value commensurate with the attorney fees and costs Lever's company incurred in connection

with the litigation challenging the sale. However, in an effort to effectuate an equitable distribution of property, the district court did not require Lever to pay House an equalization payment—even though Lever received \$37,878 more than House in the final overall property distribution—because it found that House was partially responsible for the litigation expenses even though he was not an officer or shareholder of Lever's company.

As to the Freccourt residence, after hearing the testimony and reviewing the depositions from the two appraisers recommended by the parties, the district court found that it was worth \$390,000 on February 10, 2001, and \$429,000 on February 9, 2006. The district court determined that the property had a marital equity of \$35,051. The court found that Lever had a premarital equity in the Freccourt residence of "approximately \$127,000" and House utilized his premarital funds to pay off the principal of the mortgage on the property in the sum of \$230,629. The district court set aside the Freccourt residence for Lever, and it required Lever to pay House the principal sum of \$230,629 as compensation for the premarital funds he expended to pay off the mortgage. Likewise, due to House's responsibility for some of the litigation expenses incurred during the sale of the radio station, the court did not require Lever to compensate House for her use of the Freccourt residence during the pendency of the divorce proceedings.

Lever contends on appeal that the district court abused its discretion in the allocation of these two assets and in accepting the appraisal report and testimony from an appraiser whose license was suspended at the time her report was issued. More facts will be set out as necessary for this analysis.

ANALYSIS

The district court is vested with broad discretion in adjusting the property rights and financial affairs of parties involved in a divorce action, and its exercise of that

discretion will not be disturbed by an appellate court absent a clear showing of abuse. *In re Marriage of Wherrell*, 274 Kan. 984, 986, 58 P.3d 734 (2002). A judicial action constitutes an abuse of discretion:

"[I]f [the] judicial action (1) is arbitrary, fanciful, or unreasonable, *i.e.*, if no reasonable person would have taken the view adopted by the trial court; (2) is based on an error of law, *i.e.*, if the discretion is guided by an erroneous legal conclusion; or (3) is based on an error of fact, *i.e.*, if substantial competent evidence does not support a factual finding on which a prerequisite conclusion of law or the exercise of discretion is based." *State v. Ward*, 292 Kan. 541, Syl. ¶ 3, 256 P.3d 801 (2011), *cert. denied* February 21, 2012.

The party asserting the district court abused its discretion bears the burden of showing such abuse of discretion. *Harsch v. Miller*, 288 Kan. 280, 293, 200 P.3d 467 (2009). The appellate court does not reweigh conflicting evidence, evaluate witnesses' credibility, or redetermine questions of fact. *LSF Franchsie REO I v. Emporia Restaurants, Inc.*, 283 Kan. 13, 19, 152 P.3d 34 (2007).

K.S.A. 2010 Supp. 60-1610(b)(1) governs the valuation and division of property in divorce actions. According to the statute, when undertaking such a task, the district court shall consider:

"the 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)(1).

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 697, 715, 229 P.3d 1187 (2010).

On appeal, Lever only alleges an abuse of discretion regarding the valuation of two marital assets—the radio station and the Freecourt residence. However, as House points out, Lever does not challenge the overall division of the parties' assets as unjust and unreasonable under K.S.A. 2010 Supp. 60-1610(b)(1).

The use of a multiplier in valuing the radio station

As part of a distribution of the marital assets, the district court was required to place a value on the radio station, both at the time of the marriage and the time of the divorce filing. Both parties employed experts to conduct an appraisal. House designated Walter S. Tucker, of MBT Enterprises, Inc., and Lever designated Susan K. Patrick, managing partner of Patrick Communications, LLC, as qualified appraisers.

Although both experts utilized several valuation methods in completing their appraisals, both utilized the cash flow multiple method of valuation to determine the value of FOXY on February 10, 2001. The cash flow multiple method of valuation requires an appraiser to calculate the radio station's adjusted net operating income based upon the station's internal financial information. The adjusted net operating income is then multiplied by the appropriate multiplier to determine the station's value. Both experts agreed that FOXY's adjusted net operating income for the year 2000 was \$237,494. The divergence in their opinions on the fair market value of FOXY rested with their determination of the appropriate multiplier.

Tucker testified that after his review of all relevant comparative data, the market and the specific factors related to FOXY, a multiplier of 8 was appropriate. Patrick

testified that based on her review of the data, she believed a factor of 14.2 was more appropriate. Both Tucker and Patrick were given the opportunity to dispute the other's choice of multiplier, and both did so. Both Tucker and Patrick submitted extensive analysis regarding their respective experience in the field and their choice of multipliers. The court settled on a multiplier of 10.8, resulting in a valuation of FOXY on the date of the marriage of \$2,564,935.

Lever contends that the district court erred by failing to adopt the appropriate multiplier. Specifically, Lever argues that the district court abused its discretion because its decision was based upon an error of fact, *i.e.*, substantial competent evidence does not support its adoption of a 10.8 multiplier.

"Substantial competent evidence possesses both relevance and substance and provides a substantial basis of fact from which the issues can be reasonably determined. [Citation omitted.]" *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 v. Clark*, 236 Kan. 703, 704, 696 P.2d 1386 (1985). When reviewing factual findings, appellate courts do not reweigh evidence, resolve evidentiary conflicts, or make determinations regarding witness credibility. *Frick Farm Properties*, 289 Kan. at 709.

In re Marriage of Schwien, 17 Kan. App. 2d 498, 509-11, 839 P.2d 541 (1992), provides considerable guidance on this issue. In *Schwien*, 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. [Citation omitted.]" 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.

Thus, it appears that a district court's valuation of marital property constitutes an abuse of discretion if the determination is outside the range of evidence presented to the court. See *Schwien*, 17 Kan. App. 2d at 509.

Under this standard, the district court did not abuse its discretion when it chose to apply a 10.8 multiplier to determine the fair market value of FOXY on February 10, 2001, as this multiplier and the fair market value it produced were within the range of evidence presented. The court characterized both experts' appraisals and testimony as credible and pointed out the general strengths and weaknesses of both opinions. The court further found that Patrick's 14.2 multiplier was not based on reliable evidence. A full review of the record does not support Lever's contention that the court ignored "objective, logical evidence." Although Lever attempts to discredit much of Tucker's testimony, the record contains evidence contrary to each of Lever's assertions, and more importantly, the record contains substantial competent evidence to support the district court's adoption of a 10.8 multiplier as within the range of evidence presented.

The sale of the radio station and the resulting litigation

After Lever married House, House began working at FOXY by doing "a little bit of everything that was going on around there while trying to get familiar with [the station]." However, House was not an owner or shareholder of the corporation, and his name was not included on any of the corporate papers as a director or officer. Lever testified that she repeatedly resisted House's request to become an owner or shareholder of FOXY.

In early 2001, concurrent with the beginning of the marriage, FOXY's revenues and cash flow started declining. In December 2001, Lever, a/k/a Nameloc, Inc., signed a letter of intent to sell FOXY to ABC Disney, and on or about March 25, 2002, the parties signed an asset purchase and sale agreement (Agreement) reflecting a final sales price of \$2,562,500. The sale to ABC Disney was a stick value sale—a sale based solely upon the value of a station's FCC license, transmitting facility, and equipment—because FOXY had a negative cash flow and ABC Disney planned to target a different demographic and was not interested in FOXY's financial potential as an urban adult contemporary smooth jazz station.

After the Agreement was signed, Lever felt that ABC Disney breached a confidentiality provision in the Agreement by advertising for employees on the Internet and using the station's call letters. Lever testified that these actions upset her employees, brought the sale to the attention of her competitors, and hurt her revenue stream; thus, Lever refused to complete the transaction by signing the FCC license transfer. A long, complicated and expensive trail of litigation followed.

Because Lever refused to transfer the FCC license, ABC Disney filed a lawsuit against Nameloc, Inc., in the United States District Court for the Eastern District of Arkansas, Little Rock Division, seeking specific performance of the agreement. The court granted summary judgment in favor of ABC Disney, awarded specific performance of the Agreement, ordered Nameloc, Inc., to sign an authorization for the FCC to transfer its broadcast license to ABC Disney, and also awarded ABC Disney equitable compensation for the monetary losses associated with the delay in the performance of the Agreement offset by the interest Nameloc, Inc., would have earned on the purchase price if the agreement had closed as anticipated, resulting in a net due to ABC Disney of approximately \$70,000. The court also awarded ABC Disney reasonable attorney fees in the amount of \$90,000 and costs totaling \$4,000.

However, following the United States District Court's order granting ABC Disney a permanent injunction, Nameloc, Inc., filed a FCC complaint against ABC Disney requesting that the FCC withhold consent of the broadcast license transfer because "ABC lacks character." Nameloc, Inc., also raised several of the issues that had already been decided on the merits by the United States District Court and it failed to disclose to the FCC that these issues had been resolved by the court. The United States District Court ultimately found Nameloc, Inc., in civil contempt for, both directly and indirectly, acting in contravention of its orders. The court sanctioned Nameloc, Inc., for its "contemptuous actions" by requiring it to compensate ABC Disney \$51,004.07 for its reasonable costs and attorney fees in bringing the contempt issue before the court and for having to defend against the FCC complaint.

After the United States District Court found Nameloc, Inc., in civil contempt, Nameloc, Inc., continued to act in contravention of the court's orders by further petitioning the FCC to withhold its consent to the broadcast license transfer, which caused ABC Disney to incur additional attorney fees and costs to defend against these filings. As a result, the United States District Court found Nameloc, Inc., in civil contempt a second time, and it awarded ABC Disney the additional attorney fees and costs of \$15,733.50.

At the conclusion of the litigation, the sale of FOXY yielded a final sales price of \$2,643,095.89. However, upon a final computation of equitable damages and the attorney fees/costs owed ABC Disney, Nameloc, Inc., received a net profit of \$2,331,342.25.

According to Lever, Nameloc, Inc., incurred legal fees and costs totaling \$648,868 in connection with the ABC Disney transaction and litigation. This amount includes \$321,344.51 in fees Lever paid to her attorneys, the equitable damages/attorney fees the United States District Court awarded to ABC Disney, and a commission fee of \$78,121 Lever paid to the Media Services Group, Inc., for brokerage services. Additionally,

Nameloc, Inc., incurred a state and federal tax obligation totaling \$713,316.89. Lever was subsequently sued by her attorneys for payment of their fees, and there was some reduction in the attorney fees paid, but the record is unclear as to the amount of the reduction.

The district court's assessment of the costs of litigation against Lever

As outlined previously, the district court valued FOXY on February 10, 2001, at \$2,564,935. The district court further found that the ABC Disney transaction yielded an actual sales price of \$2,643,096. The district court then subtracted \$78,121 (the broker's fee) and \$713,317 (state and federal taxes) to obtain a net profit of \$1,851,658. Similarly adjusting the premarital value of the radio station for the costs of sale, the district court concluded that the radio station had a net marital value of \$54,757, and it set aside all of this gain for Lever.

But Lever argued that the sale price should have been further adjusted downward commensurate with the attorney fees/costs Nameloc, Inc., incurred during the ABC Disney litigation. This would have resulted in significantly less "profit" on Lever's side of the property distribution ledger. The district court rejected Lever's request, finding that "the vast majority of the legal fees incurred were solely the responsibility of, and the result of the actions of, Ms. Lever. However, this Court is persuaded that Mr. House did have some involvement in this litigation, such that some of the fees should be attributed to him also." But the district court went on to find that it did not feel it had "sufficient evidence to calculate with any degree of precision the amount of fees that should be attributed to Mr. House, or attributed as a marital debt." As a result, although the court did not adjust the profit number downward, the court did not require Lever to pay House an equalization payment—as Lever received \$37,878 more than House in the final overall property distribution—nor did it require Lever to compensate House for her use of the Frecourt residence during the divorce proceedings, which was a claim made by

House. House proposed a rental value of \$144,000, but left it to the court's discretion to determine the appropriate credit.

On appeal, Lever contends that the district court abused its discretion by not adjusting the sale price downward based on either the attorney fees and costs combined (\$648,868) or at least by the amount Nameloc, Inc., was required to pay ABC Disney for the damages and contempt findings (\$294,969.86). Lever argues that these expenses were a marital debt that should have been apportioned equally and the failure to do so implied that Lever was somehow at "fault" for this debt and it was her sole responsibility. She presented testimony at trial that House was involved in all the litigation decisions "every step of the way." House, on the other hand, testified that he merely stood by his wife's side and that he backed out when Lever "got into the litigation stuff." He testified he told Lever he thought the litigation "was crazy" and she should just "close the deal" but he would stand by her regardless.

Lever argues that the failure of the court to make an adjustment for these marital expenses is the same as penalizing her for fault that was neither gross or extreme, in violation of *In re Marriage of Sommers*, 246 Kan. 652, 792 P.2d 1005 (1990), and *In re Marriage of Sedbrook*, 16 Kan. App. 2d 668, 887 P.2d 1222, rev. denied 251 Kan. 938 (1992). More specifically, Lever asserts that the district court abused its discretion because its decision was premised upon an error of law, *i.e.*, it improperly injected fault into the proceedings when it refused to reduce the sale price by \$648,868 or, at the very least, by \$294,969.86, the amount of equitable damages awarded ABC Disney.

At the outset, it is important to note that although Lever objected to the district court's rejection of her requested reduction in the purchase price in her motion to reconsider, Lever did not specifically object—as she does on appeal—on the basis of fault. Generally, issues not raised before the trial court cannot be raised on appeal. *In re Care & Treatment of Miller*, 289 Kan. 218, 224-25, 210 P.3d 625 (2009). Although

several exceptions have been recognized that allow an appellate court to consider a new legal theory, Lever did not brief the issue of whether an exception should be applied, and an issue not briefed by the appellant is also deemed waived and abandoned. *State v. McCaslin*, 291 Kan. 697, 709, 245 P.3d 1030 (2011); see *In re Estate of Broderick*, 286 Kan. 1071, 1082, 191 P.3d 284 (2008), *cert. denied* 555 U.S. 1178 (2009). Therefore, we are precluded from considering this issue.

But even if this issue was properly before this court, Lever's argument would fail for several reasons. First, as argued by House, "Lever confuses economic responsibility with marital fault." "[F]ault is a term of art," in domestic relations actions, which relates solely to the fault ground for divorce in "K.S.A. 60-1601(a) (failure to perform a material duty or obligation)." *Sommers*, 246 Kan. 652, Syl. ¶ 1. Although district courts shall not impose financial penalties on the basis of fault except in "extremely gross and rare situations," for purposes of adjusting the divorcing parties' financial affairs, the term fault is "confined to a term of art relative to a ground for dissolution of the marriage and penalties arising therefrom." 246 Kan. at 657. In other words, a district court may not financially penalize a party for bringing about the dissolution of the marriage due to an extramarital affair, extreme cruelty, habitual drunkenness, or other fault behavior. See 246 Kan. at 655-59.

It is clear that the district court did not consider fault as that word was defined in *Sommers*. To the contrary, the district court simply assigned primary economic responsibility for the generation of the litigation costs to Lever. Lever does not point to any evidence which indicates that the district court improperly considered fault when it made this determination; in fact, it does not appear that any evidence of fault behavior was even admitted at trial.

Second, the manner in which the district court apportioned the litigation expenses did not result in an abuse of discretion. As Lever concedes on appeal, the district court

did find that House was partially responsible for the expenses incurred during the ABC Disney litigation. As such, the district court did not require Lever to pay House an equalization payment, nor did it require Lever to compensate House for her use of the Freecourt residence during the divorce proceedings. This is a reasonable method for dividing litigation expenses, which are impossible to apportion with any degree of precision. Significantly, House was not an owner or shareholder of the corporation and his name was not included on any of the corporate papers as a director or officer. In fact, Lever testified that she resisted House's request to become an owner or shareholder of FOXY.

Furthermore, House was only entitled to share in any marital equity in the radio station, which the district court calculated at \$54,757, which is approximately a 3% increase in net value from February 10, 2001, to the date of sale. As House points out, it seems unreasonable and unjust to require him to reimburse Lever for half of the litigation expenses when he was only entitled to share in 1.5% of the radio station's equity. The assignment of \$37,878—the value of the equalization payment—plus the denial of House's request for compensation for use of the Freecourt residence, the value of which is difficult to discern from the record on appeal, is a fair and just apportionment of the litigation expenses in light of the marital equity House was entitled to share.

In conclusion, the district court did not err when it rejected Lever's request for a reduction in the value of the radio station, as of the date of sale, commensurate with the attorney fees and costs Nameloc, Inc., incurred as a result of the ABC Disney litigation.

The testimony of an unlicensed appraiser

The parties owned approximately 41 properties in Arkansas, and they could not agree on appraisers for these properties. On June 28, 2007, the district court directed each party to submit a list of three appraisers from which it would select an appraiser to

conduct an appraisal of all of the Arkansas properties. The district court indicated that if either party was dissatisfied with the appraisal submitted by the court-appointed appraiser, that party could, at their own cost, obtain a separate appraisal.

In compliance with the district court's request, Lever recommended Rebecca Lynn Chandler, of Chandler Valuation Solutions. So the district court appointed Chandler to perform retrospective appraisals of the Arkansas properties. The appraisals were retrospective because the properties were appraised on two distinct dates in the past, February 10, 2001, the date the parties were married, and February 9, 2006, the date the parties filed for divorce.

Chandler hired Teresa Stovall, a licensed appraiser, as an independent contractor to assist her, and Stovall signed off on the appraisal of the Freecourt residence on March 31, 2008. Chandler reviewed Stovall's appraisals before they were submitted. Stovall appraised the Freecourt residence at \$380,000 at the time of the marriage and \$433,000 at the time of the divorce.

Dissatisfied with Chandler's appraisals, Lever commissioned Ted Gott of Ted Gott Real Estate Appraisals, LLC, to conduct another appraisal of two of the Arkansas properties. Gott appraised the Freecourt residence at \$400,000 on February 9, 2001, and \$425,000 on February 9, 2006.

Lever filed a complaint with the Arkansas Appraiser Licensing & Certification Board (Licensing Board) against Chandler due to "[i]rregularities" she believed existed in Chandler's appraisals on the two Arkansas properties that Lever had reappraised by Gott. This complaint ultimately resulted in Chandler surrendering her appraiser's license in April 2009. The Licensing Board subsequently concluded that Chandler violated four ethics and professional rules of conduct because she failed to notify the district court or the parties that her state certified residential appraiser license was suspended from

January 10, 2008, to July 10, 2008, and she gave a deposition regarding the appraisals on July 8, 2008 (in this case), while her license was suspended. Accordingly, the Licensing Board revoked Chandler's license and assessed a civil penalty of \$4,000.

In addition, at a hearing on August 14, 2009, the Licensing Board considered the appropriateness of Stovall's appraisals and found that with respect to the three appraisals it examined and addressed, which did not include the Freecourt residence, Stovall "failed to employ those acceptable and recognized techniques used to develop credible retrospective appraisal reports," which demonstrated that she "was not competent to develop retrospective appraisal reports." Accordingly, the Licensing Board fined Stovall \$3,000 and placed her on probation for 9 months.

Lever contends that the district court erred when it received and considered the appraisals of the Freecourt residence completed by Chandler and Stovall, as Chandler failed to notify the district court or the parties that her state certified residential appraiser license was suspended and Stovall was sanctioned by the Arkansas Licensing Board for failure to employ acceptable and recognized appraisal techniques on appraisals completed for this divorce proceeding. She argues on appeal that "the appraiser commissioned by the Court should have been disqualified" and her "opinion disregarded by the Court." She further argues that the report and the information contained therein "was not even competent evidence." Interestingly, Lever's argument is limited to the Freecourt residence; she does not challenge the district court's consideration of any of the other 40 appraisals completed by Chandler and Stovall.

Lever's claim of alleged error fails for several reasons. First, Lever is the one who offered the challenged appraisal report into evidence and informed the court that the actions of the Arkansas Licensing Board primarily reflected upon the credibility of the appraisal. The sole complaint she voiced to the district court at the time was her objection to the comparable sales data used. Once an item is admitted into evidence, the weight and

credibility to be assigned to the evidence is entirely within the province of the factfinder. Lever did not argue the report was "not competent evidence," instead Lever invited the district court to weigh the credibility of the report by introducing it into evidence. "A party may not invite error and then complain of that error on appeal. [Citation omitted.]" *Butler County R.W.D. No. 8 v. Yates*, 275 Kan. 291, 296, 64 P.3d 357 (2003).

Moreover, there is no requirement in Kansas that only a licensed appraiser can testify as to the value of real estate. As House points out, in eminent domain proceedings only two of the three court-appointed appraisers are required to even have experience in the valuation of property. See K.S.A. 2010 Supp. 26-504. The mere fact that Chandler may not have had a license at the time of her deposition did not make her an incompetent witness, even if Lever had argued incompetency at the time of trial, which she did not. Issues not raised before the trial court cannot be raised on appeal. *In re Care & Treatment of Miller*, 289 Kan. at 224-25.

Finally, the matter of the weight and credibility of evidence and the decisions of the trial court will be affirmed if supported by substantial competent evidence. *Bremer v. Bremer*, 187 Kan. 225, 227, 356 P.2d 672 (1960). In this case, Chandler and Stovall set the February 10, 2001, value of the Freecourt residence at \$380,000. Gott set the value at \$400,000, and the district court found the value at the time of the marriage was \$390,000. Chandler and Stovall set the February 9, 2006, value of the Freecourt residence at \$433,000, and Gott set the value at \$425,000. The district court found the value at the time of the divorce to be \$429,000. Because district court's valuation of the Freecourt property was within the range of evidence presented to the court, Lever has failed to establish that the court abused its discretion. See *Schwien*, 17 Kan. App. 2d at 509.

In summary, Lever fails to show how the district court's ultimate division of the marital property was unjust and unreasonable, and, as such, she has not sufficiently carried her burden of demonstrating an abuse of discretion by the district court. The

district court was obligated to make "a just and reasonable division of [the marital] property," and after a careful review of the record of the lengthy bench trial held in this matter as well as the exhibits made part of the record on appeal, it is clear that the district court satisfied its obligation. As the spreadsheet attached to the district court's journal entry indicates, the marital estate was quite sizeable, and the district court clearly attempted to divide a considerable amount of property in the most equitable manner possible, by returning premarital assets and equally dividing assets obtained during the marriage. In fact, the district court undertook the painstaking task of achieving a division that resulted in a nearly equal distribution. Significantly, the inequality in the overall property disposition actually benefited Lever, as she received assets worth \$37,878 more than House, and the district court explained that the ultimate disparity was "equitable and warranted" due to House's involvement in the ABC Disney litigation.

Accordingly, the decision of the district court is affirmed.

Attorney Fees and Costs

House has also timely filed a motion with this court, pursuant to Supreme Court Rule 5.01 (2011 Kan. Ct. R. Annot. 33), Supreme Court Rule 7.07(b) (2011 Kan. Ct. R. Annot. 64), and K.S.A. 2010 Supp. 60-1610(b)(4) requesting that this court award him attorney fees and costs incurred on appeal in the total amount of \$13,385.78. He attached an appropriate supporting affidavit. Lever filed a response to the motion arguing that the appeal was not frivolous, but she did not contest the amount of the fees and costs requested. After consideration of all relevant factors and pursuant to Supreme Court Rule 7.07(b) and K.S.A. 2010 Supp. 60-1610(b)(4), we conclude that justice and equity require House should recover from Lever \$13,293.75 for reasonable attorney fees and \$92.03 in costs.

Affirmed.