

NOT DESIGNATED FOR PUBLICATION

No. 125,271

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

RACHEL NANCE,
Appellee,

and

MARIO NANCE,
Appellant.

MEMORANDUM OPINION

Appeal from Neosho District Court; DARYL D. AHLQUIST, judge. Opinion filed March 31, 2023.
Affirmed.

Robert E. Myers and Amy M. Ross, of Columbus, for appellant.

Sara S. Beezley, of Girard, for appellee.

Before HURST, P.J., BRUNS and SCHROEDER, JJ.

PER CURIAM: Mario Nance timely appeals from the district court's order requiring Mario to pay maintenance of \$600 per month for 36 months to his ex-wife Rachel Nance. Mario contends the district court abused its discretion by failing to properly consider the purpose of a maintenance award and by disregarding the totality of the parties' circumstances. Based on our thorough review of the record, we conclude the district court did not abuse its discretion in ordering Mario to pay maintenance. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mario and Rachel were married on March 11, 2010. Mario and Rachel have two minor children, though one will turn 18 years old this year.

On December 22, 2020, Rachel petitioned for divorce after nearly 11 years of marriage asking for maintenance and an equitable distribution of the parties' property and debt accumulated during the marriage. Rachel requested the district court find each party responsible for their individual debts and the debts associated with the parties' respective vehicles.

Rachel also filed a domestic relations affidavit (DRA), which was later amended because she had originally stated her biweekly gross and net income rather than her monthly income. In the amended DRA, Rachel stated her monthly gross income was \$2,898 and her net monthly income was \$1,830.60. Mario filed an answer and counterpetition for divorce with a supporting DRA.

The district court granted the parties a divorce but determined all other issues, including child custody, child support, maintenance, and the division of debts and assets would be set for a final hearing.

At the final hearing on September 21, 2021, Rachel testified she was requesting maintenance and explained, "I just feel because we had to start completely over when I had these items at the [marital] home. [Mario] didn't allow me to get in, and I had to start completely over for the kids and I." Rachel explained she needed maintenance payments as she had little room for extras or emergencies. The district court took the matter under advisement and requested each party submit proposed findings of fact and conclusions of law.

In November 2021, the district court issued a memorandum decision. The district court awarded Rachel the Parsons home valued at \$37,900, and Rachel was to assume the remaining debt related to the home of \$31,424.31. The district court awarded Mario the Erie home, valued at \$150,300, and the El Paso home, valued at \$177,211, and Mario was to assume and pay the debts of \$134,176.63 and \$145,579.96, respectively.

The district court found Mario had \$350,380.28 of assets, which consisted of the Erie home, the El Paso home, a riding lawn mower, a USAA bank account, a Bank of America account, and his retirement account. Mario's debts of \$297,175.39 consisted of his two home mortgages and three credit cards. Mario netted \$53,204.89. On the other hand, Rachel's assets included the Parsons home and her retirement account, amounting to \$43,055.99. Rachel's only debt related to the mortgage on the Parsons home of \$31,424.31. Rachael netted \$11,631.68.

The district court granted Rachel a property equalization judgment of \$20,786.60. In determining maintenance, the district court noted Mario held different jobs throughout the pendency of the divorce proceedings and was unemployed for a period. For simplicity, the district court relied on Rachel's income of \$43,000, the amount she testified to at trial, and Mario's income of \$70,000 from his most recent employer, plus \$24,000 in disability benefits for a total income of \$94,000. The income allocation reflected Mario earned in excess of \$50,000 per year more than Rachel. The district court also acknowledged Rachel could pay her bills but noted:

"[S]he has no doubt [benefitted] during the pendency of this matter from significant amounts of stimulus money received as well as advanced child tax credits. It seems to the Court that [Rachel] is highly unlikely to be able to maintain a similar standard of living to what she had while she was married without some maintenance."

The district court awarded Rachel maintenance beginning in January 2021 in the amount of \$600 per month for a total of 36 months. The district court ordered maintenance to terminate in the event of the death of either party, remarriage by Rachel, or in the event of cohabitation by Rachel. A journal entry was later filed stating the same and noting Mario was in arrears and owed maintenance for 12 months in the amount of \$7,200 plus interest.

ANALYSIS

The District Court Did Not Abuse Its Discretion in Awarding Maintenance

Mario argues the district court erred in awarding Rachel maintenance without considering the purpose of a maintenance award. Mario also argues the district court erred by not considering various factors delineated in Kansas caselaw when it decided to award spousal maintenance.

K.S.A. 2022 Supp. 23-2902(a) allows—but does not require—a district court to award maintenance to either party as an allowance for future support in an amount it finds fair, just, and equitable. Accordingly, a district court has wide latitude in determining whether to award maintenance within the constraints of K.S.A. 2022 Supp. 23-2902. See *In re Marriage of Monslow*, 259 Kan. 412, 414, 912 P.2d 735 (1996). We "will only disturb a judgment regarding maintenance if there was a clear abuse of discretion." *In re Marriage of Hair*, 40 Kan. App. 2d 475, 483, 193 P.3d 504 (2008). Judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *Biglow v. Eidenberg*, 308 Kan. 873, 893, 424 P.3d 515 (2018). The party asserting the district court abused its discretion bears the burden of establishing an abuse of discretion. *Gannon v. State*, 305 Kan. 850, 868, 390 P.3d 461 (2017). We do not "reweigh the evidence or replace our judgment for that of the district court. *In re Marriage of Knoll*, 52

Kan. App. 2d 930, 935, 381 P.3d 490 (2016)." *In re Marriage of Bean and Johnson*, No. 124,478, 2023 WL 573755, at *4 (Kan. App. 2023) (unpublished opinion).

"The purpose of maintenance is to provide for the future support of the divorced spouse." *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 709, 229 P.3d 1187 (2010). The amount of maintenance to be awarded "is based on the needs of one of the parties and the ability of the other party to pay." *Hair*, 40 Kan. App. 2d at 484. When considering whether to award maintenance, the district court may consider these factors:

"(1) the age of the parties; (2) the parties' present and prospective earning capacities; (3) the length of the marriage; (4) the property owned by the parties; (5) the parties' needs; (6) the time, source, and manner of acquisition of property; (7) family ties and obligations; and (8) the parties' overall financial situation." 40 Kan. App. 2d at 484 (citing *Williams v. Williams*, 219 Kan. 303, 306, 548 P.2d 794 [1976]).

The district court should not award maintenance based on one factor without considering all other factors. *Hair*, 40 Kan. App. 2d at 484-85.

Mario argues the district court abused its discretion by considering only the length of the marriage without considering the periods of separation, disparity in the parties' income, and Rachel's inability to maintain a similar lifestyle solely on her own income. Mario suggests the district court failed to consider the amount of debt he was responsible for in determining his ability to pay spousal maintenance.

Mario's argument is unpersuasive. The record reflects he received substantially more assets, amounting to \$350,380.28, while Rachel only had assets of \$43,055.99. Mario incorrectly asserts the district court failed to consider his expenses. We observe the district court individually considered Mario's debts in conjunction with the assets he received and the fact Mario earned in excess of \$50,000 more than Rachel per year. Further, the district court recognized Mario wanted both houses with their corresponding

debt for sentimental value. Thus, it is not unreasonable for him to be ordered to pay the two mortgages. The record also reflects the El Paso house is rented and that income contributes to the cost of maintaining the property.

Mario's claim the district court disregarded Rachel's testimony that she could pay her living expenses with her own income is unpersuasive. The district court explicitly stated in its memorandum it "acknowledges that [Rachel] is currently able to pay her bills based on her testimony, but she has no doubt [benefitted] during the pendency of this matter from significant amounts of stimulus money received as well as advanced child tax credits." The district court then explained it was unlikely Rachel could maintain a similar standard of living to what she had while married without receiving maintenance.

Mario also asserts Rachel traded in her paid-off vehicle for a vehicle with a payment obligation, voluntarily increasing her monthly expenses. After the parties separated, each of them traded in their vehicles for new 2020 vehicles, voluntarily accumulating more debt. The district court acknowledged the parties each purchased a vehicle—seemingly without the consent of the other party—and awarded each party their respective vehicle along with the associated debt. The district court explained no documentation of either parties' vehicle trade-in was produced during the hearing. The district court properly considered when dividing the marital assets both Mario's and Rachel's decisions to buy new vehicles during the pendency of the divorce.

The district court considered the parties' earning capacities, needs, and overall financial situation. There was no error of fact or law underlying the district court's ruling, and a reasonable person could find the award of \$600 per month for 36 months was fair, just, and equitable. We will not disturb the district court's broad discretion in awarding Rachel maintenance as an allowance for future support.

Affirmed.