

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**NICOLE L. HOWERY**

**RESPONDENT,**

**v.  
ROGER WILLIAM HOWERY**

**APPELLANT.**

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DOCKET NUMBER WD71596  
DATE: September 28, 2010

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Appeal From:

Saline County Circuit Court  
The Honorable Dennis A. Rolf, Judge

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Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt,  
Judges

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Attorneys:

Leonard K. Breon, Warrensburg, MO, for respondent.

James P. Barton, Jr., Marshall, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**NICOLE L. HOWERY,**

**RESPONDENT,**

**v.**

**ROGER WILLIAM HOWERY,**

**APPELLANT.**

No. WD71596

Saline County

Before Division Three Judges: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt, Judges

Roger Howery ("Roger") and Nicole Howery ("Nicole") were granted a divorce. Roger appeals the trial court's Judgment concerning the division of property.

**APPEAL DISMISSED; REMANDED.**

**Division Three holds:**

Roger alleges that the trial court failed to distribute all of his and Nicole's marital and nonmarital property. In his Motion for New Trial, Roger alleged that the trial court failed to distribute a number of assets. The trial court failed to address these assets in its Judgment. If undistributed property is discovered before the time for appeal has run, appellate courts must dismiss the appeal because the trial court has not exhausted its jurisdiction and has not rendered a final judgment. Accordingly, this court must dismiss the appeal and remand the cause back to the trial court.

In Point One, Roger further argues the trial court erred by failing to classify the assets before the court as either marital or non-marital property. Section 452.330 requires the trial court to set apart to each spouse such spouse's nonmarital property and to divide the marital property and marital debts in such proportions as the court deems just after considering all relevant factors. In this case, the court did properly classify the property as marital or non-marital by categorizing it as such in its Judgment.

In Point One, Roger also argues the trial court improperly awarded his nonmarital assets to Nicole. Roger never provided any evidence to the trial court in support of his contention that the property complained of belonged to him individually. The trial court deemed Roger's testimony to lack credibility. Further, the trial court refused to hear Roger's testimony regarding the classification and value of property as a sanction for failing to adhere to court rules and procedures regarding discovery. Because Nicole submitted the proper documentation to classify the property and the court considered her testimony regarding the property classification as credible, the trial court operated within its discretion to classify and distribute the property. Point One is denied.

In Point Two, Roger argues that the classification of real property known as the Marshall Property as marital property was not supported by or was against the weight of the evidence. The evidence established the home was owned by Roger before the marriage, the property was subsequently refinanced and Nicole's name was added to the deed. When both spouses' names are placed on a deed, it is presumed that the property was transferred to the marriage. Roger failed to rebut this presumption. Therefore, the trial court did not err because the trial court's classification of the Marshall Property as marital was supported by substantial evidence. Point Two is denied.

**Opinion by: Gary D. Witt, Judge**

September 28, 2010

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