
**IN THE
SUPREME COURT OF MISSOURI**

No. SC97984

Christine Ann (Lawson) Lollar,

Petitioner/Appellant,

v.

Richard Dwain Lollar,

Respondent/Respondent.

APPELLANT'S SUBSTITUTE BRIEF

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Jurisdictional Statement

This is an appeal of a St. Louis County Circuit Court Dissolution of Marriage Judgment entered on February 1, 2018 by the Honorable Heather Cunningham denying Appellant Christine Ann Lollar (“Wife”) any share of a marital 401(k) retirement account. The Missouri Court of Appeals for the Eastern District of Missouri granted appellate relief to Wife on an issue regarding child support, and the appellate court denied relief on the retirement account issue. This Honorable Court granted transfer of the case. This appeal is within the jurisdiction of the Missouri Supreme Court in accordance with Article V, Section 10 of the Missouri Constitution and Rule 83.04 of the Missouri Rules of Court.

Statement of Facts

On July 15, 2016, Petitioner/Appellant Christine Ann (Lawson) Lollar (hereinafter “Wife”) filed a Petition for Dissolution of Marriage in the Circuit Court of St. Louis County (hereinafter “Circuit Court”) against Respondent/Respondent Richard Dwain Lollar (hereinafter “Husband”). Legal File Document (hereinafter “D) 2. On July 12, 2017, Wife filed an Amended Petition in which she added information about the juvenile court case that had been brought against Husband. D3, p. 2-3. In her Amended Petition, she reiterated her requests for child custody, child support, division of property, and a name change for the child. D3. Wife requested sole legal and sole physical custody of the parties’ minor child because Husband had “abused, sodomized, raped, and molested” their minor child, and Husband had been charged with first degree statutory rape, statutory sodomy, and child molestation. D3, pp. 3-4. In her Amended Income and Expense Statement, Wife identified that Husband had a 401(k) retirement account through Lanter Delivery. D8, p. 2.

On July 24, 2017, Husband filed his Answer to Wife’s Petition in which he agreed with some allegations and disagreed with others. D4, pp. 3-43. At the time, Husband was confined in the St. Louis County Justice Center, and he asserted his Fifth Amendment right to remain silent regarding the charges pending against him. D4, pp. 25, 43. Husband indicated that he had been unemployed since the date of his incarceration on December 9, 2015. *Id.*, at 18. He alleged that approximately three of his last paychecks in the amount of \$1621.00 were deposited into the parties’ joint checking account. *Id.*, at 15.

On October 18, 2017, a trial was held on the dissolution of marriage case. Trial Transcript (hereinafter TT), at 4. Husband testified via a Polycom conferencing system. *Id.*

At trial, Wife testified that the parties separated on December 9, 2015. TT, at 8. She testified that one child was born during the marriage, and the child was eleven (11) years old at the time of trial. *Id.*, at 9. The trial court admitted petitions and orders for both an Adult Order of Protection and a Child Order of Protection case, by consent of the parties. *Id.*, at 12-16.

As Wife was testifying regarding why she believed she should be granted sole legal and sole physical custody of the child with Husband having no visitation of the child, Husband indicated he had no objection to such orders. *Id.*, at 24-26. Wife stated that sole custody with no visitation to the father was appropriate for the reasons she had presented in the Order of Protection and juvenile court cases. *Id.*

Wife testified that she would waive child support and maintenance from Husband. TT, at 39, 45.

Wife further testified that she was requesting one hundred percent (100%) of Husband's 401(k) retirement account. *Id.*, at 41-42. Wife testified that Husband's abuse of their daughter was a form of marital misconduct that the trial court should consider. *Id.*, at 43. Over Husband's objections, the Court allowed Wife's attorney to conduct a brief inquiry regarding why she believed she should receive the entire amount of the retirement account. *Id.*, at 44. Wife testified that Husband's marital misconduct involving his abuse of their child was what led to the Order of Protection cases, the juvenile court case, and the criminal case. *Id.*, at 45.

Wife testified that she used the proceeds from Husband's last paychecks to pay bills that Husband had left behind, pay property taxes on both her car and Husband's car, pay

utility bills, and pay other household expenses needed for herself and the parties' child. *Id.*, at 46-47. She further testified that she did not purchase any luxury items or go on extravagant trips with the money. *Id.*, at 47. She also testified that the proceeds from her 2015 and 2016 tax refunds were used to pay debt. *Id.* She stated she was unable to make payments on both her vehicle and Husband's vehicle, and she surrendered his vehicle to the loan company. *Id.*, at 48. She testified that she could not afford the rent on the marital house, and she had to vacate the premises soon after Husband was arrested. *Id.*, at 48-49. When she moved, she had to dispose of property that belonged both to Husband and her. *Id.*, at 49-50. She had to give up three pets in the move and throw out some of her personal property. *Id.*, at 49. Wife gave Husband's motorcycle, clothes, and boxes of personal items to Husband's sister. *Id.*, at 50. She disposed of living room furniture belonging to Husband's parents, with their permission. *Id.* She asked to retain property in her possession such as dishes, and items that her daughter used such as a computer, a Nintendo Wii, and a trampoline. *Id.*, at 50-51.

Wife testified that there was "[a] couple thousand, perhaps" and "less than five" thousand in the 401(k) account. *Id.*, at 65. Husband confirmed that the amount in the account was "only like a couple thousand dollars." *Id.*, at 68. The trial court determined the value of the account was "less than \$5,000.00. D14, p. 15.

Husband cross-examined Wife about her work history and the parties' property. TT, at 57-62. The Guardian ad Litem cross-examined Wife about whether a court order to pay the debt in Husband's name would cause a hardship for her and her daughter. *Id.*, at 64. Wife replied that it would be a hardship. *Id.* On redirect examination, Wife testified that

she was terminated from her job in December 2015 because she had been absent from work as a result of Husband's arrest. *Id.*, at 66.

During Husband's case, Husband requested a waiver of child support and maintenance in the dissolution of marriage case. *Id.*, at 67. He informed the trial court that he was not asking Wife to pay the debt that was in his name. *Id.*, at 66. He agreed Wife could retain all of the property, other than the 401(k) account. *Id.*, at 68. He objected to Wife receiving one hundred percent (100%) of the 401(k) account. *Id.*, at 67-68. He clarified that he was objecting to Wife receiving "anything more than 50 percent" of the marital asset. *Id.*, at 70. He also objected to the change of the child's last name. *Id.*, at 68.

The Guardian ad Litem informed the trial court she agreed that Wife should have sole legal and sole physical custody of the child. *Id.*, at 71. The Guardian ad Litem disagreed with Wife's request to change the child's last name. *Id.*

On November 17, 2017, the Court entered a judgment dissolving the marriage and granting Wife sole physical and sole legal custody of the parties' minor child. D9, pp. 13-14. Wife had waived child support and maintenance, and no support orders were entered. *Id.*, at 6, 8, 13-14. The Court abated child support back to the date Wife filed her Order of Protection case. *Id.*, at 14. The Court ordered that each party would retain the property in their possession. *Id.*, at 14-16. The Court granted Husband one hundred percent (100%) of his 401(k) account, which had an approximate value of less than \$5000. *Id.*, at 15.

The Court held that it would not award the marital property in equal shares because it found that Wife had dissipated the marital assets by using Husband's last paychecks and her tax returns to pay credit card debt, bills, and utilities. *Id.*, at p. 16.

On January 16, 2018, Wife filed a Motion for Rehearing in the Circuit Court. D10. Wife sought rehearing, *inter alia*, because (1) the Court abated child support in a case not before the Court, (2) the Court ordered that Wife would receive no share of the marital retirement account, and (3) the Court denied the name change of the minor child. D10, pp. 4-8.

On February 1, 2018, the trial court issued an Amended Judgment. D14, pp. 1-17; Appendix (hereinafter App.) at A1-A17. All orders entered on November 17, 2017 remained in effect, except the Court granted the name change of the minor child. D14, p. 17 and App. A17. In the Amended Judgment, the Court ordered the marriage was dissolved; awarded sole legal and sole physical custody to Wife; abated child support back to December 11, 2015; and ordered no maintenance. D14, pp. 14-16; App. A14-A16.

In the Amended Judgment, the Court found that, based on findings made in the two Order of Protection cases, the juvenile court case, and the criminal case, it was in the child's best interest to not have visitation with her father and it would be detrimental to the child's welfare to have frequent and meaningful contact with her father. *Id.*, at 4. The Court found there was evidence of domestic violence presented in the other cases. *Id.* The Court entered a finding that "Husband is currently incarcerated facing Statutory Sodomy in the First Degree-Felony, Child Molestation in the First Degree-Class A Felony, Statutory Rape in the First Degree-Felony." *Id.*, at 5. The Court found there was "credible evidence ... that Husband physically abused wife and abused daughter ... as set forth in" the Order of Protection and juvenile cases. *Id.*

A Petition for a Child Order of Protection had been filed on December 11, 2015 in St. Louis County Circuit Court Cause Number 15SL-PN05237. Petitioner's Exhibit (hereinafter Pet. Exh.) 8. In the Petition, Wife alleged that Husband "had sex with his daughter (vaginally and anally) over the course of 4 months." Pet. Exh. 8, at 2. A Full Child Order of Protection was entered on December 28, 2015 in the case. Pet. Exh. 9. The Order of Protection Court ordered Husband to have no contact or visitation with the child. *Id.*, at 3.

In the Amended Judgment, the trial court stated it was guided by the factors set forth in Section 452.330, R.S.Mo. in its division of marital property. D14, at 9, 10; App. A9, A10. The Court granted both parties the property in their possession, except a 401(k) account that was awarded solely to Husband, and granted a change of name for the child. *Id.*, at pp. 13-17. In its conclusions, the Court held that Wife had dissipated the marital assets by using Husband's last paychecks and her tax returns to pay her credit card debt, bills, and utilities. D14, pp. 16-17; App. A16-A17. The Court further held that "Wife also testified she discarded Husband's personal property due to the fact she had to vacate the residence as requested by the landlord, and testified that some of the items were Husband's separate property." D14, p. 17; App. A17.

On February 28, 2018, the trial court denied Wife's Motion for Rehearing as moot. D13. On March 12, 2018, Wife filed a Notice of Appeal to the Missouri Court of Appeals for the Eastern District of Missouri. D15, pp. 1-3.

On May 7, 2019, the Court of Appeals issued an Opinion affirming the trial court's ruling that granted Husband the entire 401(k) account. App. A18-26. The Court of Appeals

agreed with Wife that her use of marital funds to pay marital debt was not a dissipation of the assets. *Id.*, at A25. The Court, however, denied appellate relief to Wife by holding that the trial court had not abused its discretion in granting Husband one hundred percent (100%) of the retirement account due to the trial court's overall distribution of property in the absence of evidence to establish the actual value of the 401(k) retirement account. *Id.*, at A25-A26.

On June 17, 2019, the Court of Appeals denied Wife's Motion for Rehearing and Application for Transfer. Wife filed a timely Application for Transfer with the Missouri Supreme Court raising concerns about the retirement account distribution.

On December 24, 2019, the Supreme Court of Missouri granted Wife's Application for Transfer.

Point Relied On
Argument I

The Circuit Court erred in denying Wife any part of a marital retirement account because the trial court's ruling was an abuse of discretion and was not supported by substantial evidence to justify depriving Wife of an equitable share of the marital asset in that the Court erred as a matter of fact and law in failing to apply the relevant statutory factors in an appropriate manner thereby depriving Wife of any portion of the account when her payment of ordinary household bills was erroneously found to be the dissipation of marital assets.

In re Marriage of Geske, 421 S.W.3d 49 (Mo.App. S.D. 2013)

L.R.S. v. C.A.S., 525 S.W.3d 172 (Mo.App. E.D. 2017)

Shafer v. Shafer, 423 S.W.3d 911 (Mo.App. S.D. 2014)

Valentine v. Valentine, 400 S.W.3d 14 (Mo.App. E.D. 2013)

Section 452.330, R.S.Mo.

Argument I

The Circuit Court erred in denying Wife any part of a marital retirement account because the trial court's ruling was an abuse of discretion and was not supported by substantial evidence to justify depriving Wife of an equitable share of the marital asset in that the Court erred as a matter of fact and law in failing to apply the relevant statutory factors in an appropriate manner thereby depriving Wife of any portion of the account when her payment of ordinary household bills was erroneously found to be the dissipation of marital assets.

Standard of Review

The standard of review of the trial court's decision is that established in *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). The judgment "will be sustained unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Id.* The errors arose in the trial court's judgment, and they were fully preserved for appellate review as indicated in the Legal File and Trial Transcript.

Facts Regarding Division of Retirement Account

On February 14, 2018, following a trial in the Circuit Court of St. Louis County, the trial judge entered an amended dissolution decree dissolving the parties' marriage and granting one hundred percent (100%) of Husband's 401(k) retirement account to Husband. D14, p. 15; App. A15.

At trial, Wife had requested one hundred percent (100%) of the retirement account. TT, at 42. Wife requested a disproportionate amount of the account due to Husband's

marital misconduct that included the rape, sodomy, and sexual molestation of the parties' daughter who was nine years old at the time, as well as the subsequent abandonment of Husband when he was confined in jail that resulted in the breakdown of the marriage, loss of financial support, loss of the family home, and other losses of pets and property. Trial Transcript, at 43-45, 48-49.¹

Husband had acquired a 401(k) retirement account during the parties' marriage (TT, at 67-68). Thus, the account was considered marital property. D14, p. 15; App. A15. Such property is subject to division by courts in a dissolution of marriage action. Section 452.330.2, R.S.Mo. (App. A27).

Caselaw Regarding the Division of Marital Property

The trial court decision is in conflict with Missouri case law holding that when a trial court's property division amounted to a "division [that] is so heavily weighted in favor of one party ... [it] amount[s] to an abuse of discretion." *L.R.S. v. C.A.S.*, 525 S.W.3d 172, 183 (Mo.App. E.D. 2017).

The trial court's decision also is in conflict with Missouri case law holding that appellate relief is warranted when a "ruling is clearly against the logic of the circumstances, which are before the court, and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *In re Marriage of Geske*, 421 S.W.3d 490, 500 (Mo.App. S.D. 2013)(citations omitted).

¹ On August 22, 2018, Husband was convicted of statutory sodomy and statutory rape of the parties' daughter, and he was sentenced to an imprisonment term totaling ten years. Case.net Cause Number 15SL-CR08184-01 (St. Louis County).

The case currently before this Court is one of those rare cases that is against the logic of the circumstances, shocks the sense of justice, and amounts to an abuse of discretion. This was an appropriate case in which to grant Wife the entire 401(k) or at least a majority of the account.

Statutory Factors for Distribution of Marital Property

“[A]s a general rule, the division of marital property should be substantially equal unless one or more statutory or relevant non-statutory factors causes such a division to be unjust.” *Ballard v. Ballard*, 77 S.W.3d 112, 116 (Mo.App. W.D. 2002)(internal quotation and citation omitted). In the present case, statutory factors warrant an unequal division of the retirement account such that Wife would receive all or a majority share of the account.

In general, courts in dissolution of marriage cases divide property in an equitable manner after considering five statutory factors: the economic circumstances of the parties, the contribution of each party to the acquisition of the property including the contribution of a spouse as homemaker, the value of nonmarital property set aside to each party, the conduct of the parties during the marriage, and the custodial arrangements for the minor children. Section 452.330.1, R.S.Mo. (App. A27)

The statutory factors that must be considered in the division of marital property weigh in favor of Wife receiving more than fifty percent (50%) of the account. In particular, when considering the economic circumstances of the parties (Section 452.330.1(1), R.S.Mo. (App. A27)), Wife has been the party responsible for being the sole support of her daughter and herself, after her husband’s arrest. She received no spousal or child support. D14, pp. 7-8; App. A7-A8. Husband is incarcerated and does not require income to meet

his needs, and he is not obligated to pay either child support or maintenance. *Id.* Husband's arrest for the sexual violations of the parties' daughter resulted in Wife losing her job and the family home. TT, at 48-49, 66. Wife clearly required a disproportionate amount of the marital property to support herself and the parties' child, much more so than did Husband.

The contribution of each spouse to the acquisition of the marital property including "the contribution of a spouse as homemaker" (Section 452.330.1(2), R.S.Mo. (App. A27)) reveals both parties contributed to the account: Husband acquired the account through his employment and Wife contributed to the marital assets through her services as a stay at home mother who occasionally worked outside the home.

When considering the value of nonmarital property set aside to each spouse (Section 452.330.1(3), R.S.Mo. (App A27)), the property awarded to each party was similar and appropriate for the needs of each party. Wife required a vehicle for work, though it was encumbered with debt, and Husband did not. TT, at 41, 48. There was no need to equalize the marital assets because the division of separate property was not unfairly disproportionate. D14, at 15-16; App. A15-A16. The trial court had not found there was a need for equalization of the assets. D14; App. A18-26.

The conduct of the parties during the marriage is a consideration in the division of property. Section 452.330.1(4), R.S.Mo.; App. A27. In its factual findings, the trial court found that Husband had committed physical violence against Wife and had sexually abused their child. D14, p. 5. Instead of finding that this factor weighed in favor of Wife in its consideration of the property division, the trial court found that it was Wife who had committed misconduct by dissipating the marital assets. D14, pp. 16-17. The Court of

Appeals subsequently held that Wife's payment of household expenses using marital funds was not a dissipation of the assets. App A25.

Husband's misconduct during the marriage should have been a factor considered in awarding Wife a disproportionate share of the 401(k) account. *L.R.S., supra* 525 S.W.3d at 184. In *L.R.S.*, the appellate court held that "[t]he trial court may order an unequal division of property based upon a party's misconduct when such misconduct changes the balance so that the other spouse was burdened with a greater share of the partnership load."

In the present case, Husband's egregious misconduct burdened Wife with a greater share of the marital obligations when Husband was charged with sexual offenses he had committed against their daughter. Husband's confinement in jail for the offenses resulted in Wife having to become the sole provider for the household. Wife clearly was burdened with having to assume the entire amount of the "partnership load" due to Husband's marital misconduct.

The trial court did not indicate it was considering Husband's misconduct when dividing the marital assets. D14, pp. 16-17. The trial court focused only on Wife's alleged misconduct of paying household bills from Husband's last paychecks and her income tax refunds. *Id.*

The final factor to consider in dividing property is the custodial arrangements for the minor child (Section 452.330.1(5), R.S.Mo. (App. A27)). Mother was granted sole custody of the minor child, with no visitation to Husband due to his incarceration for the rape, sodomy, and molestation of his daughter. Thus, this factor also weighed in favor of Wife receiving a disproportionate share of the 401(k) account.

Marital Misconduct

The only specific reason provided by the trial court for granting Husband the entire 401(k) account was Wife's alleged dissipation of the assets. D14, pp. 16-17. The appellate court below acknowledged that Wife's payment of household expenses was not a dissipation of assets, citing *Valentine v. Valentine*, 400 S.W.3d 14, 26 (Mo.App. E.D. 2013). App. A25.

Although the trial court held that Wife had dissipated the marital assets by paying household bills, the trial court's ruling was erroneous as a matter of fact and law. "A spouse who uses marital funds to pay for ordinary living expenses during the divorce is not considered to have squandered assets." *Plager v. Plager*, 426 S.W.3d 689 (Mo.App. E.D. 2014). Wife simply used Husband's last paychecks and an income tax refund to meet her and her child's ordinary and reasonable household expenses after he was arrested for crimes against their daughter. TT, at 46-47.

There was no evidence that Wife had committed marital misconduct or had dissipated the marital assets. Wife testified that when Husband was arrested, she lost her home and because she missed time from work, and she subsequently lost her job. TT, at 48-49, 66. She used the proceeds of Husband's final paychecks to pay the household bills for herself and her daughter. *Id.*, at 46-47. She paid utility bills, household expenses, maintenance costs, and taxes. *Id.* She even paid Husband's bill for the personal property tax on his vehicle. *Id.*, at 48. All such expenses were ordinary and reasonable expenses for the functioning of what was once the marital home. She did not spend the money on luxury items or extravagant travels. *Id.*, at 47.

There was no evidence that Wife had dissipated the marital assets. Wife simply paid the living expenses for herself and the parties' child. This was responsible behavior. "Funds that are used to pay marital debts or ordinary living expenses are not considered dissipated." *Valentine, supra* 400 S.W.3d at 27 (citation omitted).

On the other hand, there was evidence that Husband had committed marital misconduct. Husband's marital misconduct included domestic violence against Wife, sexual abuse of their minor child, abandonment of the family unit when he was arrested which led to the loss of Wife's employment and loss of the marital home. D14, pp.4-5; App. A21-A22. Husband's marital misconduct justifies the awarding of a greater share of marital property to Wife as the injured spouse. Section 452.330.1, R.S.Mo. (App. A27).

Trial Court's Award of Account was an Abuse of Discretion

There was no evidence to support the disproportionate division of marital property to Husband. *See, e.g., L.R.S., supra* 525 S.W.3d at 183; *Shafer v. Shafer*, 423 S.W.3d 911, 915-916 (Mo.App. S.D. 2014)(case reversed in which Husband received about 94% of the marital assets). Disproportionate property divisions are questionable and subject to scrutiny. *Id.* There was insufficient evidence to support such a disproportionate division of the marital property in favor of Husband.

Appellate courts will "interfere [in marital property divisions] only where the division is so unduly favorable to one party that it constitutes an abuse of discretion." *Stone v. Stone*, 450 S.W.3d 817, 820 (Mo.App. W.D. 2014). In the present case, Wife has the burden of overcoming the presumption that the property division was correct. *Id.* "[T]he

division of marital property need not be an equal division, so long as it is fair and equitable under the circumstances.” *Valentine, supra* 400 S.W.3d at 26.

“An abuse of discretion is present when the trial court’s ruling is clearly against the logic of the circumstances, which are before the court, and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration.” *Geske, supra* 421 S.W.3d at 500 (citations omitted).

Before this Court is such a case. It shocks the sense of justice that a court would grant a spouse all of a marital asset when the other spouse had committed extreme marital misconduct, as had occurred in the present case. The trial court abused its discretion in the division of marital property. There was no substantial evidence to support the trial court’s property division. The lower court erred in how it applied the law regarding the division of property.

In the present case, the trial court abused its discretion in granting an incarcerated child abuser all of a 401(k) account when he did not have support obligations for the child, and Wife was forced to become both the sole financial provider for the family and the sole custodian for the child as a result of his arrest and subsequent incarceration. *See* TT, at 39, 45.

The property division order granting Husband one hundred percent (100%) of the 401(k) account was not supported by the substantial evidence and was erroneous as a matter of law. The trial court entered the disproportionate order on the ground that Wife had committed marital misconduct by dissipating the marital assets. D14, pp. 16-17. Evidence that Wife had used marital assets to pay household bills does not support the

lower court's position. *Valentine, supra* 400 S.W.3d at 27. The trial court abused its discretion in awarding the entire retirement account to Husband based on its improper finding that Wife had dissipated or squandered marital assets.

The other statutory factors under consideration by the trial court, as set forth above, indicate that Wife was entitled to an unequal division of the marital property such that she would receive the greater share of the property.

In the present case, Husband objected to Wife receiving one hundred percent (100%) of the 401(k) account, and he requested the trial court to grant Wife no more than fifty percent (50%) of the account. TT, at 67-68, 70. Husband did not testify that he should receive the entire fund while his Wife should receive none of the account. *Id.* The trial court's distribution of property above and beyond what Husband requested is further evidence of its abuse of discretion.

The Court made errors in fact and in law by not finding that Husband had committed marital misconduct while finding that Wife had. D14, pp. 16-17; App. A25-26. Under the facts of the present case, the Court should not have excluded Wife from receiving funds from the retirement account. Wife had waived both child support and maintenance. TT, at 39, 45. Wife required the full amount in the retirement account in order to support the family unit that Husband had destroyed. The Circuit Court abused its discretion in awarding all of the account to Husband.

Property Estimates

Although the lower appellate court held that Wife had not dissipated the marital assets, the appellate court found that Wife had failed to establish the value of the 401(k) account as needed by the trial court for the distribution of property. App. A25-26.

The trial court's finding that the account was worth less than five thousand dollars (\$5000.00) is consistent with the testimony provided by the parties. D14, p. 15; App. A15; TT, at 65, 68. The trial court used a percentage amount, and not an actual dollar amount, when it entered its order regarding the 401(k) account. D14, p. 15; App. A15. Thus, an exact dollar amount was not required for the division of the retirement account asset. The plan administrator responsible for the division of a retirement account would divide the asset in accordance with the percentages provided by the court as applied to the amounts in the account between the date of marriage and the date of dissolution.

A litigant's estimate of the value of property is sufficient for a trial court's consideration. *In re Marriage of Kovach*, 873 S.W.2d 604, 608-609 (Mo.App. E.D. 1993)(appellate court held that the trial court could rely on the wife's estimate that the value of the parties' real estate was between \$50,000 and \$60,000 without requiring an actual appraisal). Property valuations for accounts such as a 401(k) account, like real estate, may fluctuate on a frequent basis, with a specific "actual" amount being challenging to provide.

An owner of property is competent to testify as to its value. *Sinopole v. Sinopole*, 871 S.W.2d 46, 49 (Mo.App. E.D. 1993). Thus, the trial court could rely on the parties'

valuation of the asset as evidence without needing another form of property valuation to determine the value of the asset.

There was no conflict in the case about the value of the account. Both parties testified that the amount in the account was approximately two thousand dollars (\$2000.00). TT, at 65, 68. This was not a case in which no evidence was presented of the value of the account.

The Court of Appeals held that because Wife did not submit “evidence” to establish the “actual value” of the 401(k) account, it could not say that the trial court abused its discretion in awarding the entire marital asset to Husband. App. A25-26. At the trial, however, evidence regarding the estimated value of the account was offered by both Wife and Husband. Trial Transcript, at 65, 68. The trial court specifically found the value to be “less than \$5,000.” D14, p. 15.

Wife should have received an equitable share of the 401(k) account. Appellate relief is warranted.

Conclusion

For the reasons set forth above, Appellant Christine Ann (Lawson) Lollar respectfully requests that this Honorable Court reverse the Circuit Court's denial of an equitable share of the marital retirement account, and grant Wife such other relief as is just and proper.

Respectfully Submitted,

/s/ Cheryl Rafert

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**Certificate of Service and
Certificate of Compliance with Rule 84.06(b) and (c)**

The undersigned hereby certifies that on this 19th day of February 2020, one true and correct copy of the foregoing Brief and Appendix, was mailed, postage prepaid, to Respondent at: Richard Lollar, No. 1332451, Missouri Eastern Correctional Center, 18701 Old Highway 66, Pacific, Missouri 63069.

The undersigned certifies that the foregoing brief complies with the word limitation contained in Rule 84.06(b), Missouri Rules of Court, and that the brief contains 5379 words, omitting the parts of the brief excluded from the page limit calculation (cover page, signature block, and this Certificate of Compliance). The brief was written using Microsoft Word.

The undersigned certifies that the brief was filed via the Court's electronic filing system, in lieu of a floppy disk. The files submitted to the Court were scanned for viruses and found to be virus-free. Respondent is not a subscriber to the electronic court filing system, and a copy of the Brief and a copy of the Appendix were mailed on this date to Respondent at the address listed above.

/s/ Cheryl Rafert
Cheryl Rafert