

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MARGARET A. POLLARD

**v.
D.L. POLLARD**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD75647

DATE: May 28, 2013

Appeal From:

Ray County Circuit Court
The Honorable David H. Miller, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Lisa White Hardwick, Judge and Cynthia L. Martin, Judge

Attorneys:

Bruce B. Brown, Kearney, MO, for respondent.

Kimberly N. Gray, Independence, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT,

v.

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No. WD75647

Ray County

Before Division Three: Joseph M. Ellis, Presiding Judge, Lisa White Hardwick, Judge and Cynthia L. Martin, Judge

D.L. Pollard appeals from the trial court's judgment and decree of dissolution of marriage with respect to its division of property. Husband contends that the trial court erred in (1) awarding Margaret Pollard "her inheritance account," presumably as nonmarital property, though not expressly designated by the trial court as either marital or nonmarital, because the account had been commingled with marital property; (2) awarding a 1919 Studebaker to Husband presumably as marital property, though not expressly designated by the trial court as either marital or nonmarital, because it was purchased by Husband prior to the marriage and was not commingled with marital property; (3) failing to designate all property marital or nonmarital before dividing the marital property; (4) failing to designate a value for all of the marital and nonmarital property as required to determine if the marital property was divided in a just manner; and (5) dividing the marital property because the division was not just and was against the weight of the evidence.

Affirmed in part, reversed in part, and remanded for further proceedings.

Division Three holds:

(1) The trial court's judgment made express marital/nonmarital designations regarding some of the property. The judgment made additional marital/nonmarital designations, to the extent not in conflict with the judgment's express designations, by reference to an incorporated exhibit reflecting uncontested marital/nonmarital designations. However, the judgment's incorporation of the exhibit fails to completely satisfy the trial court's statutory obligation to make the required marital/nonmarital designations as many property items are not clearly designated by either the exhibit or the judgment.

(2) The incorporated exhibit identifies Wife's inheritance account as marital property and the 1919 Studebaker as Husband's nonmarital property. The judgment does not otherwise designate these items and by reference to the incorporated exhibit, adopts the designations in the exhibit.

(3) The trial court is not required to assign specific values to the marital property it divides. Neither party requested findings pursuant to Rule 73.01(c). Nonetheless, the incorporated exhibit assigned proposed values to nearly every item of property itemized, and as to any potentially sizeable item not valued, the evidence at trial supplied a value.

(4) Moreover, the trial court is not bound to accept either party's proposed valuation of property as exact. The trial court is free to find a valuation within the range of evidence offered by the parties.

(5) Until the trial court completes its task of designating all the property as either marital or nonmarital, we are unable to assess whether the division of marital assets is just and equitable.

Opinion by Cynthia L. Martin, Judge

May 28, 2013

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