

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

JAMES TAYLOR SPARKS,

Respondent,

v.

ELIZABETH ANNE SPARKS,

Appellant.

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**DOCKET NUMBER WD76014**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** November 26, 2013

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**APPEAL FROM**

The Circuit Court of Platte County, Missouri  
The Honorable James W. Van Amburg, Judge

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**JUDGES**

Division Three: Mitchell, P.J., and Hardwick and Witt, JJ.

CONCURRING.

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**ATTORNEYS**

Sarah E. Recker  
Parkville, MO

Attorney for Respondent,

William Hudnall  
Kansas City, MO

Attorney for Appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**JAMES TAYLOR SPARKS,** )  
 )  
 ) **Respondent,** )  
**v.** ) **OPINION FILED:**  
 ) **November 26, 2013**  
**ELIZABETH ANNE SPARKS,** )  
 )  
 ) **Appellant.** )

**WD76014**

**Platte County**

**Before Division Three Judges:** Karen King Mitchell, Presiding Judge, and Lisa White Hardwick and Gary D. Witt, Judges

Elizabeth Anne Sparks (Wife) appeals the trial court’s judgment dissolving her marriage to James T. Sparks (Husband). Wife raises nine points of error on appeal related to the distribution of marital assets and the award of maintenance. Finding no error, we affirm the judgment of the trial court, as amended by this opinion.

**AFFIRMED AS AMENDED.**

**Division Three holds:**

- 1) Wife’s appeal is not barred by her acceptance of the equalization payments because her acceptance constitutes an exception to the general rule prohibiting a party from voluntarily accepting the benefits of a judgment and then filing an appeal to reverse that same judgment.
- 2) Wife’s arguments that the trial court erred in “disallowing” the testimony of her expert witness fail because the trial court did not exclude the witness’s testimony, it simply discredited it.
- 3) The trial court did not err in admitting the testimony of Husband’s rebuttal witness. At trial, Wife’s only objection to the witness was that he had been her consulting expert and she never designated him as a testifying expert. On appeal, however, Wife conceded that she had designated this witness as a testifying expert. Additionally, Wife failed to properly preserve claims raised for the first

time in her reply brief and at oral argument that the expert designation had been effectively withdrawn when Wife elected not to call the witness at trial. Moreover, the witness's testimony was cumulative and any error in its admission was harmless.

- 4) The trial court did not err in its valuation of Eagle Animal Hospital because the valuation underlying a negotiated sale price for 49% of the business was substantial evidence of the property's fair market value, despite the delay between the date of the valuation report and the date of the dissolution trial.
- 5) The trial court did not err in dividing the marital property because the division resulted in awarding nearly equal value to both parties, it was fair and equitable under the circumstances, and the court did not abuse its discretion in awarding Husband the revenue-producing property and Wife an equalization payment.
- 6) The trial court did not err in awarding 4% interest on the equalization payments. Section 408.040.1 does not mandate an award of 9% interest on installment equalization payments because, under section 452.330.1, a trial court has broad discretion in dividing marital property and it is within the trial court's discretion to adjust the interest rate to accomplish an equitable distribution of marital assets.
- 7) The trial court did not err in providing that the equalization payment would be reduced by the amount of the applicable capital gains tax liability because any uncertainty in the judgment is not due to a lack of evidence, but is due, instead, to a lack of specific language in the judgment. Wife did not preserve a challenge to the language used in the judgment for appeal.
- 8) Because the trial court failed to specify which property it was referring to with regard to reducing the equalization payment by the applicable capital gains tax, we amend the judgment to reflect that the capital gains tax liability applies only to the portion of the equalization payment attributable to the sale of 49% of Eagle Animal Hospital.
- 9) The trial court's erroneous classification of BP stock as Husband's nonmarital property was not reversible error because Wife failed to demonstrate that she was prejudiced by the misclassification.
- 10) The trial court did not err in awarding Wife \$100 in modifiable monthly maintenance because the record supports that she needed, at most, only a nominal amount of maintenance to close any gap that existed between her reasonable monthly needs and her ability to provide for those needs through the use of property and appropriate employment.

**Opinion by: Karen King Mitchell, Presiding Judge**

November 26, 2013

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