

DA 22-0423

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 149N

IN RE THE MARRIAGE OF:

JACINTA HARRIS,

Petitioner and Appellee,

and

CHRISTOPHER HARRIS,

Respondent and Appellant.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DR-19-421C
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Margaret Sullivan Rose, Sheryl L. Wambsgans, Bridger Law, Bozeman,
Montana

For Appellee:

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Submitted on Briefs: June 21, 2023

Decided: August 1, 2023

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Christopher Harris (Christopher) appeals from the Decree issued on July 1, 2022, by the Eighteenth Judicial District Court, Gallatin County.¹ We affirm.

¶3 In dissolving their marriage, the parties have had protracted disagreements regarding distribution of their assets and debts, maintenance, and parenting plan issues. The parties were married in January 2009. Jacinta Harris (Jacinta) filed a dissolution petition on November 6, 2019. A bench trial was held on January 13 and 14, 2022. On June 3, 2022, the District Court issued its Findings of Fact, Conclusions of Law, and Interim Order and then issued its Decree of Dissolution of Marriage on July 1, 2022, incorporating the Findings of Fact and Conclusions of Law from the June 3, 2022 Order.² Christopher appeals, asserting the District Court abused its discretion by awarding Jacinta the marital home and "the lion's share of the equity therewith." Christopher asserts the marital estate

¹ Christopher's Notice of Appeal asserts appeal from the Decree of July 7, 2022. It is believed this is a typographical error as the Decree is dated July 1, 2022, not July 7, 2022.

² The District Court's Decree erroneously asserted its Findings of Fact, Conclusions of Law, and Interim Order were entered on June 1, 2022. While signed by the District Court on that date, the interim order was not filed until June 3, 2022.

consisted of the marital home and Jacinta's marital retirement account. The District Court equally split Jacinta's marital retirement account between the parties and awarded the marital home together with the debt thereon to Jacinta and, in turn, required Jacinta to pay Christopher the sum of \$50,000.

¶4 Christopher is a member of Harris Brothers, LLC, a business he formed with his brother, Nicholas, to manage various properties he and his brother owned in the Bozeman area. In approximately 2017, Christopher and his brother split up their real estate business—Nicholas took most of the commercial properties and left the LLC and Christopher retained most of the residential properties and maintained the LLC. While married to Jacinta, Christopher created an irrevocable trust, the Harris Sisters Trust, in 2014. Christopher drafted the trust and is its sole trustee. The sole beneficiaries of this irrevocable trust are his six daughters, which include the parties' three children, A.M.H., A.B.H., and S.A.H. Christopher contends he divested himself of his real estate holdings and their income by transferring such to the Harris Sisters Trust.³ Nicholas testified that initially rents from the LLC's properties were deposited into the LLC checking account and then transferred to the Harris Sisters Trust checking account, but he could not confirm all property income of the LLC was transferred to the trust checking account. There was

³ Although Christopher testified to transferring properties to the trust, he also testified his mother retains some interest in various properties supposedly transferred to the trust and he provided no documentation of property transfers. Further, as the District Court found Christopher not to be credible, it is difficult to determine what assets, if any, were actually transferred to the trust.

conflicting evidence at trial as to Christopher's discretion and control over the LLC's income and amounts Christopher has taken from the trust account.⁴ Christopher asserts that despite its conclusion that the irrevocable nature of the trust cannot be invaded in making a distribution of the marital estate, the District Court, in essence, did just that. Christopher alleges this is a case of first impression asserting, "[t]he central issue is whether it is an abuse of discretion for the property owned by an irrevocable trust to be deployed in the allocation of the divorcing parties' marital assets." Christopher asserts the District Court abused its discretion when it considered assets held by the Harris Sisters Trust when apportioning the marital estate, reasoning he is entitled to a greater share of the marital estate because the irrevocable trust is a separate legal entity over which he has no interest.

¶5 Jacinta counters that, pursuant to § 40-4-202, MCA, the District Court appropriately considered the irrevocable trust assets and the manner in which they were used by Christopher in determining an equitable distribution of marital assets between the parties.

¶6 The distribution of marital property in a dissolution proceeding is governed by § 40-4-202, MCA, under which a trial court is vested with broad discretion to distribute the marital property in a manner that is equitable to both parties. When dividing marital property, the trial court must reach an equitable distribution, not necessarily an equal distribution. The district court's apportionment of the marital estate will stand unless there has been a clear abuse of discretion as manifested by a substantially inequitable division of the marital assets resulting in substantial injustice.

⁴ Christopher used trust funds to pay his personal credit card, pay for continuing legal education, and to pay \$17,000 for his fiancée's college tuition. Christopher characterized these as loans he received from the trust.

In re Marriage of Paschen, 2015 MT 350, ¶ 16, 382 Mont. 34, 363 P.3d 444 (citation omitted). We review a district court’s findings of fact to determine whether they are clearly erroneous. *In re Marriage of Kesler*, 2018 MT 231, ¶ 15, 392 Mont. 540, 427 P.3d 77. We review conclusions of law to determine if they are correct. *In re Marriage of Kesler*, ¶ 15.

¶7 While *In re Marriage of Gebhardt*, 240 Mont. 165, 783 P.2d 400 (1989), involved a situation where this Court concluded an irrevocable trust created by one of the parties for the benefit of his children was not marital property and not disposable as such, it is distinguishable from the case at hand. In *Gebhardt*, during the marriage, the husband created an irrevocable trust funded primarily with inherited property and property of his brother. *In re Marriage of Gebhardt*, 240 Mont. at 167, 783 P.2d at 401. Here, as found by the District Court, Christopher did not fund the trust with inherited property, but rather contributed property owned during the marriage in an attempt “to put these properties to which Jacinta has contributed out of the reach of the marital estate[.]” In *Gebhardt*, the trustee of the trust was husband’s brother, whereas here Christopher made himself the sole trustee with full discretion to use and borrow from the trust. The District Court delineated a number of instances where Christopher used funds of the irrevocable trust for his own benefit and that of his girlfriend despite neither being beneficiaries of the trust.⁵

⁵ Although Christopher asserts expenditures for his and his girlfriend’s benefit were loans, he did not present any reliable evidence of loan accounting or loan payments.

¶8 As noted by Jacinta, Montana law empowered the District Court to invade or terminate the trust and distribute its assets as marital property where evidence demonstrates, as it could here, that it is no longer fulfilling its intended purpose. *In re Marriage of Epperson*, 2005 MT 46, ¶¶ 21-24, 326 Mont. 142, 107 P.3d 1268. In making an equitable distribution of the marital estate, it was appropriate for the District Court to consider Christopher's apparent attempt to keep assets owned during the marriage away from distribution to Jacinta and also consider the manner in which these assets were available to and used by Christopher, despite his characterization that they were not available to him.

¶9 Further, this is not a matter of first impression. At the core of Christopher's appeal, he desires that we reweigh witness credibility, reweigh the evidence presented, and substitute his assessment of such to reach a different outcome. We decline to do so. On appeal, it is not our function to reweigh conflicting evidence or substitute our evaluation of the evidence for that of the district court. *In re Marriage of Paschen*, ¶ 42. The trial court is in the best position to resolve conflicting testimony and to evaluate witness credibility with the benefit of live testimony, to become familiar with the details of the case, and to weigh the value of the evidence presented. *In re Marriage of Paschen*, ¶ 42. Upon review of the record, we find no error by the District Court. The District Court set forth detailed findings of fact. The evidence of record supports the detailed findings made by the District Court. The court thoroughly and conscientiously considered the law relating to equitable distribution of marital property. The District Court appropriately followed

Montana's statutes and well-settled precedent in its application of the facts to the law. *See generally* Title 40, chapter 4, MCA; *see also, e.g., In re Marriage of Funk*, 2012 MT 14, 363 Mont. 352, 270 P.3d 39. Thus, we conclude the District Court equitably apportioned the marital estate between the parties, its findings of fact were not clearly erroneous, and its conclusions of law were correct.

¶10 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶11 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ BETH BAKER