

DA 17-0415

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 157N

IN RE THE MARRIAGE OF:

JEANIE KONOPATZKE,

Petitioner and Appellee,

and

DENNIS KONOPATZKE,

Respondent and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DR 13-510
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jane E. Cowley, Reep, Bell, Laird & Jasper, P.C., Missoula, Montana

Kyle D. Cunningham, Cunningham Law Offices, Missoula, Montana

For Appellee:

P. Mars Scott, Jason M. Scott, P. Mars Scott Law Offices, Missoula,
Montana

Submitted on Briefs: May 30, 2018

Decided: June 26, 2018

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 Dennis Konopatzke (Dennis) appeals from the June 7, 2017 Order Granting Petitioner's Combined Post-Trial Motions of the Fourth Judicial District Court, Missoula County. We amend the caption to reflect the parties pertinent to this appeal and affirm.

¶3 Following a rather contentious two-day trial in October 2016, the District Court issued its 78-page Findings of Fact, Conclusions of Law and Decree of Dissolution (Decree) on January 24, 2017. Neither party appealed the Decree. Post-dissolution, Dennis refused to sign a listing agreement to sell the marital home, stopped paying marital debts, refused to make mortgage payments on the home pending sale, refused to sign various titles and deeds, and refused to pay funds owed to The Great Northern Brewery (the Brewery)—tasks Jeanie Konopatzke (Jeanie) believed Dennis was required to do pursuant to the Decree. As such, on April 14, 2017, Jeanie brought her Combined Post-Trial Motions requesting the court enforce the Decree. The District Court issued its Order Granting Petitioner's Combined Post-Trial Motions on June 7, 2017. Dennis appeals from this Order.

¶4 Dennis asserts the District Court modified Decree provisions relating to property without first finding conditions to justify its reopening. Dennis also asserts the District

Court: exceeded its jurisdiction by ordering him to reimburse Jeanie for the Glacier Bank mortgage payments paid out of the Brewery's account because the Brewery's property and accounts were under the exclusive jurisdiction of the bankruptcy court; prevented presentation of a factual basis for its post-trial Order when it decided the matter without hearing or presentation of affidavits; erred in awarding Jeanie vehicles and real property when Jeanie had not complied with the decree; and exceeded its authority when it awarded Jeanie her attorneys' fees from the bankruptcy action.

¶5 Jeanie asserts the District Court's post-trial Order did not modify the Decree, but rather enforced provisions of the Decree that Dennis did not comply with or which resulted from Dennis's violations of the Temporary Economic Restraining Order.

¶6 We review a district court's findings in light of the record to make certain the findings are not clearly erroneous. *In re Marriage of Jones*, 218 Mont. 441, 444, 709 P.2d 158, 159 (1985) (citations omitted). If a district court's findings are not clearly erroneous, we will only reverse its decision when an abuse of discretion is clearly demonstrated. *In re Marriage of Klatt*, 2013 MT 17, ¶ 12, 368 Mont. 290, 294 P.3d 391 (citation omitted). Upon thorough review of the entire record, including the Decree and the post-trial motions, response, and Order, we conclude the District Court did not modify the Decree as asserted by Dennis, but rather issued an order effectuating the Decree and the prior Temporary Economic Restraining Order.

¶7 Having presided over the two-day trial in which the court heard testimony regarding the entire marital estate—the parties' finances, the Brewery's finances, and Dennis's bankruptcy shenanigans—and having issued a thorough, extensive, and highly detailed

Decree, the District Court well understood the parties' property, debts, and the ordered distribution. To effectuate the Decree, which ordered the home sold, the District Court appropriately ordered Dennis to sign a listing agreement, to pay the mortgage and repairs for the marital home pending sale, and to then be reimbursed for Jeanie's half of the mortgage and repair payments from the home's sale proceeds. In the dissolution, Jeanie was awarded the Brewery without encumbering debt except for a business development loan with a balance of slightly under \$150,000. To effectuate this provision, the District Court in its post-trial Order required Dennis to reimburse the Brewery for mortgage payments made between October 2016 and January 2017, and also directed Dennis to pay the Glacier Bank loan which encumbered the Brewery. In violation of the Temporary Economic Restraining Order and without notice to the District Court or Jeanie, Dennis moved the Brewery corporation from Montana to Texas. He then filed bankruptcy proceedings in Texas Friday evening before the Monday dissolution trial. These actions required Jeanie to incur legal fees to contest the bankruptcy and required the District Court to seek an order from the bankruptcy court to release the Brewery from the bankruptcy proceedings. Given Dennis's violation of the Temporary Economic Restraining Order and the property/debt distribution of the Decree, it was appropriate for the District Court to require Dennis to pay Jeanie's legal fees associated with defending a marital asset in the bankruptcy proceeding. This was a marital debt caused by Dennis and the District Court did not abuse its discretion by allocating this debt to Dennis. Jeanie was awarded four vehicles in the Decree. To effectuate this provision, the District Court properly required Dennis to sign the vehicle titles.

¶8 We conclude the District Court’s post-trial Order did not modify the Decree, but rather enforced it; the findings and conclusion made therein were not an abuse of discretion.

¶9 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.

¶10 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ JIM RICE