

DA 19-0437

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 44

IN RE THE MARRIAGE OF:

JANE IONA LEWIS,

Petitioner and Appellee,

and

CRAIG K. LEWIS,

Respondent and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DR-17-197
Honorable Michael G. Moses, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brian M. Lebsock, Axilon Law Group, PLLC, Missoula, Montana

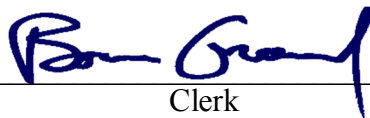
For Appellee:

Kevin T. Sweeney, Attorney at Law, Billings, Montana

Submitted on Briefs: January 15, 2020

Decided: February 25, 2020

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Craig Lewis (Craig) appeals from the Findings of Fact and Conclusions of Law entered by the Thirteenth Judicial District Court, Yellowstone County, dividing marital assets in his dissolution from his former spouse Jane Iona Lewis (Jane). Craig maintains on appeal that much of the marital estate was made up of property he inherited and that the District Court erred in distributing approximately 25 percent of the total marital estate to Jane and awarding her maintenance for ten years.

¶2 We affirm, after addressing the following restated issues:

- 1. Whether the District Court committed clear error in its findings of fact supporting its distribution of the marital estate and award of maintenance; and*
- 2. Whether the District Court abused its discretion in its division of inherited property in the marital estate.*

PROCEDURAL AND FACTUAL BACKGROUND

¶3 Craig and Jane married on September 3, 1993. They separated in December 2016, and Jane filed a petition for dissolution of marriage on February 22, 2017. During the marriage, Jane was primarily a homemaker and raised the couple's two sons, now adults. She also worked as a substitute teacher and held other part-time employment over the years but was unemployed at the time of trial. Craig worked full-time in Information Technology (I.T.) management until he was laid off in September 2016. Since December 2016, Craig has worked full-time on his family ranch, the 52 Ranch.

¶4 After a two-day trial in August 2018, the District Court entered its Findings of Fact and Conclusions of Law, distributing the marital assets between the parties. It determined

that the value of the marital estate was over \$10 million. The major asset held by the parties was the 52 Ranch, which the District Court valued at over \$8 million. Both parties expressed their desire for Craig to get the ranch in the distribution of the marital estate so it could stay in the family. The court distributed approximately \$2.5 million in assets to Jane, including an offset payment of roughly \$1 million to be funded through a loan on the ranch. The court distributed the ranch in its entirety to Craig, along with some additional investment accounts. In addition, the court awarded Jane maintenance of \$3500 per month for a period of 10 years. Further facts will be discussed as necessary below.

STANDARD OF REVIEW

¶5 We review a district court's findings of fact pertaining to the division of marital assets and award of maintenance to determine if they are clearly erroneous. *In re Marriage of Funk*, 2012 MT 14, ¶ 6, 363 Mont. 352, 270 P.3d 39. A finding is clearly erroneous if it is not supported by substantial credible evidence, if the trial court misapprehended the effect of the evidence, or if a review of the record leaves us with the definite and firm conviction that a mistake has been committed. *In re Marriage of Edwards*, 2015 MT 9, ¶ 9, 378 Mont. 45, 340 P.3d 1237. Absent clearly erroneous findings, we will reverse the district court's division of property and award of maintenance only if it abused its discretion. *In re Marriage of Funk*, ¶ 6. A district court has broad discretion to apportion a marital estate in a manner equitable to each party under the circumstances. *See* § 40-4-202, MCA; *In re Marriage of Funk*, ¶ 6. We review any conclusions of law for correctness. *In re Marriage of Funk*, ¶ 6.

DISCUSSION

¶6 *1. Whether the District Court committed clear error in its findings of fact supporting its distribution of the marital estate and award of maintenance.*

¶7 Craig challenges multiple findings of fact of the District Court on appeal. First, Craig argues the evidence at trial proved that Craig inherited the 52 Ranch and the District Court's findings to the contrary are clearly erroneous. Second, Craig challenges the District Court's decision to add \$600,000 to the appraised value of the ranch to account for the construction costs of a new ranch house. Third, Craig argues that substantial evidence did not support the District Court's finding that Craig could afford to take out a \$1,074,409 loan on the ranch to pay an offset to Jane. Fourth, Craig claims the District Court clearly erred in relying on testimony from Jane's expert witness to value livestock brands. Fifth, the District Court failed to consider all of Jane's financial resources in concluding Jane lacked sufficient property to provide for her reasonable needs. Finally, he challenges the District Court's finding that Craig could earn a six-figure salary in the I.T. field.

Legal Standard

¶8 “[I]t is exclusively within the province of the trier of fact, and not this Court, to weigh evidence, including conflicting evidence, and judge the credibility of the witnesses.” *In re Marriage of Edwards*, ¶ 18 (quoting *Owen v. Skramovsky*, 2013 MT 348, ¶ 22, 372 Mont. 531, 313 P.3d 205). “[W]e will not second-guess a district court's determinations regarding the strength and weight of conflicting testimony.” *In re Marriage of Edwards*, ¶ 18 (quoting *Owen*, ¶ 22). Further, the “district court has broad discretion in determining the value of property in a dissolution. Its valuation can be premised on expert

testimony, lay testimony, documentary evidence, or any combination thereof.” *In re Marriage of Robinson*, 269 Mont. 293, 296, 888 P.2d 895, 897 (1994) (internal quotations and citations omitted). Thus “[a]s long as the valuation . . . is reasonable in light of the evidence submitted, we will not disturb the finding on appeal.” *In re Marriage of Robinson*, 269 Mont. at 296, 888 P.2d at 897 (internal quotations and citations omitted).

The Acquisition of the 52 Ranch

¶9 The parties presented the District Court with conflicting interpretations of the evidence regarding the acquisition of the 52 Ranch. Craig testified that he paid nothing to acquire the ranch. Testimony and documents entered into evidence show that Craig became the sole shareholder of 52 Ranch, Inc., in 2008. Before that time, the shares of 52 Ranch, Inc., made up the corpus of the 52 Ranch Trust. Craig’s uncle set up this trust and Craig’s father and brother became the beneficiaries of the trust upon the uncle’s death in 2000. When it became clear that Craig’s brother was unable and/or unwilling to maintain the ranch, Craig’s father, as trustee, sought to move the ranch out of the trust. 52 Ranch, Inc., redeemed all but two shares of stock from the trust—which according to documents entered into evidence the trust sold to Craig for \$83.70 per share—in exchange for a promissory note to pay the trust \$20,050 per year for 20 years. After this transaction, Craig was the sole shareholder of 52 Ranch, Inc. At the time of the dissolution hearing, 52 Ranch, Inc., continued to make yearly payments to the 52 Ranch Trust for the cost of the redeemed shares. After reviewing the testimony and the exhibits demonstrating the transfer of the 52

Ranch corporation in 2008, it is clear Craig did not inherit, but rather purchased, the ranch, and the District Court made no error in this regard.

Value of the 52 Ranch

¶10 Next, Craig challenges the District Court’s addition of \$600,000 to the value of the ranch to account for his expenditures on a new ranch house. Craig argues the ranch appraisal determined the unfinished house and garage added \$203,250 in value to the ranch and this amount was included in the property value of the ranch in the August 2017 appraisal. He maintains the \$600,000 figure the District Court added lacks any evidentiary support. Jane presented evidence showing that at the time of trial in August 2018 Craig had spent \$813,414.09 on the construction of a new ranch home—which Craig did not refute—and anticipated spending another \$125,000 to finish it. Jane’s evidence showed that much of this had been expended after the August 2017 appraisal. The District Court made findings that Craig’s unauthorized use of cash to build the ranch house dissipated the value of the marital estate and “severely limited the cash available to address the wife’s equitable distribution of the marital estate.” The District Court explained the additional amount it added to the value of the ranch was intended to account for Craig’s inheritance from his father—which Craig testified included about \$300,000 from a brokerage account, \$257,000 in cash, and livestock valued at \$392,000. Craig testified he spent his inheritance on the construction of the new home. In the Findings of Fact and Conclusions of Law, the District Court also explained it discounted the total expenditure on the house by a third, based on previous testimony from Craig that the value added to the ranch from the new

house would equal about two-thirds of his expenditures on it. Given this two-thirds explanation, the District Court arguably intended to value the house at a total of \$600,000, rather than add an additional \$600,000 to the previously determined \$203,250 value. The District Court, however, specifically addressed this issue in its order on Craig's Motion to Alter or Amend and determined the added value of \$600,000 was equitable under all the circumstances. We will not disturb a district court's ruling if there is evidence in the record, as here, to support its decision. *In re Marriage of Edwards*, ¶ 25. As there was substantial evidence to support the District Court's \$600,000 figure for the increased value of the ranch house, the District Court did not commit clear error in determining the value of the 52 Ranch.

Offset Payment

¶11 Craig raises various alleged deficiencies in the District Court's fact finding regarding the ability of the ranch to service a loan over \$1 million to pay an offset to Jane. Craig and Jane presented conflicting experts over the ability of the ranch to service a \$1 million loan through cash flow. Jane's expert examined the income and expenses of the ranch for the two previous years and explained that the ranch could afford the payments on such a loan. Jane's expert explained that she did not include additional expenditures on fixed assets in this analysis and why this was not required. In contrast, Craig's expert did include expected expenditures on fixed assets in her analysis to argue the ranch could not service such a loan. On appeal, Craig faults the District Court for relying on Jane's expert when she did not include expenditures on fixed assets in her analysis. Craig argues the

ranch has relied on money from his father for fixed assets for the past several years and will no longer be able to do so. Contrary to Craig's contentions, Jane's expert did not rely on funds entering the ranch from outside sources in her analysis. Under her analysis it did not matter that money for fixed assets came from Craig's father in 2016 and 2017, because her analysis did not include expenditures on fixed assets in any form.

¶12 Craig's argument asks us to reweigh the testimony from the two experts in his favor. But "it is the province of the district court to weigh evidence and witness credibility." *In re Marriage of Edwards*, ¶ 25. The District Court was free to weigh one expert's testimony over another to determine whether the ranch could service a \$1 million loan. There was no clear error.

Livestock Brands

¶13 Craig also challenges the District Court's reliance on testimony from Jane's expert on the value of his inherited brands, rather than Craig's testimony on the value of the brands. Again, we will not reweigh evidence before the District Court on appeal.

Jane's Financial Resources

¶14 Craig argues the District Court erred in finding Jane lacked sufficient property to provide for her reasonable needs. Craig argues the financial resources Jane received from the property division are sufficient to cover her monthly expenses. Craig also argues the District Court failed to consider the parties' standard of living during the marriage in awarding Jane maintenance, citing his testimony about the parties' standard of living during the marriage.

¶15 First, we reject Craig’s argument the District Court did not consider the parties’ standard of living in considering an award of maintenance to Jane. The court specifically found, “The parties enjoyed a very good standard of living during the course of their marriage as is evidenced by their joint tax returns over the years. They have accumulated in excess of \$10,000,000.00 value in property and investments together over the course of 25 years.” The District Court’s finding to the parties’ standard of living is supported by the record and not clearly erroneous.

¶16 Second, Craig’s argument the District Court erred in finding Jane lacked sufficient property to provide for her reasonable needs is flawed. Craig argues the District Court did not consider the income potential of the accounts Jane received as part of the property distribution, income from her pensions, income from social security, and income from potential part-time employment. Craig argues taken together this income is sufficient to meet Jane’s monthly expenses. As the District Court explained in its order denying his Motion to Alter or Amend, however, § 40-4-203(1)(a), MCA, requires the District Court to consider not only Jane’s ability to meet her monthly expenses, but her ability to provide for her “reasonable needs.” Post-marriage, Jane is entitled to enjoy a standard of living consistent with that enjoyed by Craig, not merely a minimum standard where she meets only her bare monthly expenses. This includes the purchase of a house—which the District Court cited—or any other need outside her month-to-month expenses. There is no clear error in the District Court’s findings supporting its award of maintenance for Jane.

Craig's Employability

¶17 Craig argues there was no evidence in the record to support the District Court's finding that Craig could earn a six-figure salary in I.T. management. Prior to being laid off in September 2016, tax returns showed Craig earned a six-figure salary in I.T. management. Craig testified he had been out of the field for three years and did not know if he could get a job in I.T. again. Once again, we emphasize it is the role of the District Court to resolve conflicting evidence and we will not reweigh the evidence on appeal. Moreover, the District Court's analysis did not depend on Craig securing a position with a six-figure salary. The District Court's finding in this regard was not in clear error.

¶18 In sum, the District Court did not commit clear error in its findings of fact supporting its distribution of the marital estate and its award of maintenance.

¶19 2. *Whether the District Court abused its discretion in its division of inherited property in the marital estate.*

¶20 Craig argues the District Court abused its discretion in dividing the marital estate because the court failed to apply the factors set forth in § 40-4-202(1)(a)-(c), MCA, to his inherited assets and required Craig to share his inherited assets with Jane.

¶21 In dissolution proceedings, § 40-4-202(1), MCA, requires the district court to equitably apportion “*everything* owned jointly or by either party . . . regardless of when or how it was acquired.” *In re Marriage of Funk*, ¶ 13 (emphasis in original). When apportioning inherited property, the court must also “consider those contributions of the [non-inheriting] spouse to the marriage, including: (a) the nonmonetary contribution of a homemaker; (b) the extent to which the contributions have facilitated maintenance of the

property; and (c) whether or not the property division serves as an alternative to maintenance arrangements.” Section 40-4-202(1), MCA. These factors, however, are not “a constraint on the district court’s essential mandate, which is to equitably divide all assets of the parties, however and whenever acquired,” based on the unique factors of each case. *In re Marriage of Funk*, ¶¶ 16, 19. A party claiming ownership of inherited property, however, “is entitled to argue that it would be equitable to award him or her the entirety of such property.” *In re Marriage of Funk*, ¶ 19.

¶22 As discussed above, the District Court did not err in finding Craig did not inherit the ranch in 2008. The court acknowledged that upon the death of his father in 2016, Craig inherited various cash accounts he spent on the construction of a new house, livestock, and brands, totaling roughly \$1 million or about ten percent of the marital estate. The District Court correctly included the value of Craig’s inheritance from his father as part of the total value of the marital estate under our precedent in *In re Marriage of Funk* and § 40-4-202(1), MCA. The District Court considered the factors of § 40-4-202(1), MCA, in making its distribution. The District Court explained that Jane contributed to the marriage through her employment and as a homemaker and stay-at-home mom for their two sons. The Court found Jane made contributions to the ranch during the marriage including caring for their children while Craig worked, preparing meals, completing small projects, being at the ranch during brandings, and managing the family home in Billings when Craig was at the ranch. The court found, “Other than her contribution to the ranch as outlined above, Jane did not have a role in maintaining the inherited property.” Ultimately, based on the parties’

desire to maintain the ranch within the family, the District Court awarded approximately three-quarters of the marital estate to Craig and approximately one-quarter to Jane. The court explained a maintenance award would allow Jane to live reasonably with a smaller share of the assets. It is clear the District Court considered all the factors of § 40-4-202(1), MCA. The District Court did not abuse its discretion in distributing the couple's accumulated assets.

CONCLUSION

¶23 The District Court is affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR