

DA 21-0077

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 278N

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IN RE THE MARRIAGE OF:

CHERYL L. TARBET, f/k/a  
CHERYL L. SMITH,

Petitioner and Appellee,

and

RANDALL B. SMITH,

Respondent and Appellant.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Broadwater, Cause No. DDR-2014-09  
Honorable James P. Reynolds, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Katharine Donnelley, Attorney at Law, Helena, Montana

For Appellee:

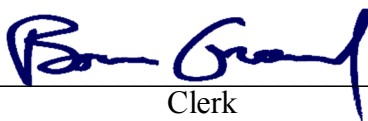
Cheryl L. Tarbet, Self-Represented, Townsend, Montana

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Submitted on Briefs: October 6, 2021

Decided: October 26, 2021

Filed:

  
Clerk

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Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, we decide this case by memorandum opinion. It 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 After pending for more than seven years, the parties' marriage dissolution returns to this Court for review of the First Judicial District Court's Amended Decree following the first appeal. In our prior review, after first sending the case back to obtain clarification of the record, including the absence of trial exhibits and an order on discovery, we reversed the dissolution decree and remanded for further proceedings "due to errors in the District Court's distribution of the marital estate, which may have been contributed to by unfortunate mistakes in the processing of the case." *In the Marriage of Smith*, DA 18-0417, 2019 MT 139N, ¶ 2, 2019 Mont. LEXIS 228. We found clear error in the trial court's findings regarding when the parties separated (Finding of Fact No. 4) and the amount of each party's debts (Finding of Fact No. 17). *Marriage of Smith*, ¶¶ 19-20. We were unable to determine from the court's findings that it properly considered and resolved conflicts in the evidence in awarding the parties the respective properties they brought to the marriage, "including what could be significant financial contributions by Cheri in the Grandview Loop property[.]" *Marriage of Smith*, ¶ 22. We concluded "from a review of the record that significant evidence was either not fully considered or sufficiently addressed within

what is otherwise detailed findings of fact and conclusions of law entered by the District Court.” *Marriage of Smith*, ¶ 24. We remanded the case with the following instructions:

The District Court may enter an amended judgment after conducting such further review, or further proceedings, if any, that it deems necessary to address the issues discussed herein. The District Court may order such further submissions from the parties as it deems necessary. Cheri has not argued that additional evidence should have been introduced; we are not ordering a new trial. Thus, the remand is for the purpose of correcting Findings of Fact #4 and #17, and to enter such additional findings that are necessary to ensure that the parties’ contributions to the marriage, as reflected in the record, have been properly considered in the equitable division of the marital estate.

*Marriage of Smith*, ¶ 25.

¶3 The Clerk of this Court issued Notice of Remittitur on July 10, 2019. After more than a year without action, Petitioner Cheryl Tarbet (Cheri) filed a request for a status conference. Cheri mailed a copy of the request to Respondent Randall Smith (Randy) by certified mail to his addresses at both 41 Grandview Loop and 7 Grandview Loop in Townsend, Montana. The Clerk of District Court entered a minute entry on August 18, 2020, with notice of a status hearing to occur on August 28, 2020. The entry advised the parties they could appear at the Townsend courthouse or by telephone.

¶4 The District Court convened the status hearing at the time set. Cheri was present, but Randy was not. The court apparently did not have a court reporter present, either. The clerk’s minute entry indicates, “Cheryl testified and will send further documents to the Court.”

¶5 The District Court entered its Amended Findings of Fact, Conclusions of Law, and Decree on October 23, 2020. It corrected Findings of Fact Nos. 4 and 17 and made

additional findings regarding Cheri's contributions to the marriage, including her uncompensated bookkeeping services for Randy's business; her care of his two children from a prior marriage; her insurance coverage for Randy and the children; and her financial contributions to the marital home at 41 Grandview Loop and the subdivision of the Grandview Loop property into two ten-acre parcels. The court added to its Conclusions of Law "that both parties made substantial contributions to the other party's premarital property and such contributions did facilitate the maintenance, improvement and preservation of this property." Based on its amended findings and conclusions, the District Court awarded Cheri "the front 10 acres at 41 Grandview Loop as platted and divided by the parties." After securing counsel, Randy filed a motion for new hearing or trial pursuant to M. R. Civ. P. 59(a). The District Court did not rule on the motion, and it was deemed denied after sixty days. He now appeals.

¶6 We review the district court's findings of fact in a dissolution proceeding to determine whether they are clearly erroneous. *In re Marriage of Crilly*, 2005 MT 311, ¶ 10, 329 Mont. 479, 124 P.3d 1151. We review its conclusions of law de novo to determine whether they are correct. *Giambra v. Kelsey*, 2007 MT 158, ¶ 28, 338 Mont. 19, 162 P.3d 134 (citations omitted). The 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. *Richards v. Trusler*, 2015 MT 314, ¶ 11, 381 Mont. 357, 360 P.3d 1126.

¶7 Randy raises a single issue, contending that he was not given notice of the District Court’s August 28, 2020 “hearing” and thus did not have an opportunity to be heard before the court entered its amended findings and decree. Cheri responds that Randy was served with her request for status hearing and that the clerk issued notice of the status hearing to both parties, Cheri by e-mail and Randy at the address on file with the clerk—the same address (7 Grandview Loop) at which he later received the Amended Findings of Fact, Conclusions of Law, and Decree of Dissolution. Cheri contends that she presented no new exhibits or testimony but brought with her documents that were missing from the record, including her prior attorney’s proposed findings and conclusions following the dissolution trial, the missing order to compel discovery, and copies of this Court’s order of remand. Cheri contends that the status conference was not consequential in determining the outcome of the case because it was held simply to determine the state of the case and the record from prior proceedings before the court. On appeal, Randy filed no reply brief and has not contested Cheri’s representations.

¶8 Randy submitted an affidavit with his Motion for New Trial or Hearing attesting that he did not receive notice of the status conference but did receive the October 23 Amended Findings of Fact, Conclusions of Law and Decree. Cheri filed a response, attaching proof of mailing of her Request for Status Conference and attesting that the Clerk had advised her that notice of the conference was sent to both parties. A deputy clerk of court also wrote a statement that she e-mailed to Cheri the minute entry setting the August 28 status hearing. The statement, placed in the District Court file, indicates that the deputy

“would have mailed [Randy’s copy] by regular mail to the address we have on file at is [sic] 7 Grandview Loop, Townsend, MT.” This is the address Randy attests is his correct mailing address. Randy did not file a reply brief with the District Court in support of his motion.

¶9 The clerk of district court keeps the official records of the court, and it is the clerk’s duty to “issue all process and notices required to be issued.” Section 3-5-501(1)(c), MCA. The law presumes that “[o]fficial duty has been regularly performed” and that “[a] letter duly directed and mailed was received in the regular course of the mail.” Section 26-1-602(15), (24), MCA. Even if we were to conclude that Randy has overcome the presumption of receipt, he must demonstrate prejudice to his substantial rights in order to prevail on appeal. *Wenger v. State Farm Mut. Auto. Ins. Co.*, 2021 MT 37, ¶ 26, 403 Mont. 210, 483 P.3d 480 (quoting M. R. Civ. P. 61: “At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights.”).

¶10 Our review of the record convinces us that the District Court did not receive new evidence without giving Randy an opportunity to be heard. The court amended its prior findings of fact and added new findings from the evidence presented at the November 13, 2015 trial and at the February 16, 2017 supplemental hearing. Randy was present at both proceedings, testified at trial, and offered exhibits. He has not pointed to anything in the trial court’s findings that is outside the record of those proceedings. Nor has he articulated any basis upon which we could conclude that the new and amended findings are clearly erroneous. The District Court simply reviewed the conflicting trial

evidence and, as we instructed, explained in its findings and conclusions how the parties' contributions to the marriage and the marital estate informed its determination of an equitable distribution as the law requires.

¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. The parties ended their relationship nearly eight years ago, and the time is long past to bring the dissolution proceeding to a close. The District Court reviewed the trial record and made sufficient findings of fact to support its amended decree. Having reviewed its findings and conclusions in light of the evidence presented at trial, we conclude that the court did not err as a matter of law or abuse its discretion in dividing the marital estate. The judgment is affirmed.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE