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FILED
01/11/2022
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 21-0006

DA 21-0006

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 7N

IN RE THE MARRIAGE OF:

JOHNETTE GAY JONES WATKINS,

Petitioner and Appellant,

and

CHARLES EDWARD WATKINS,

Respondent and Appellee.

FILED
JAN 11 2022
Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPEAL FROM: District Court of the Nineteenth Judicial District,
In and For the County of Lincoln, Cause No. DR-18-156
Honorable Matthew J. Cuffe, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Ann C. German, Attorney at Law, Libby, Montana

For Appellee:

Amy N. Guth, Attorney at Law, Libby, Montana

Submitted on Briefs: August 25, 2021

Decided: January 11, 2022

Filed:

Clerk

Justice Dirk Sandefur delivered the Opinion of the Court.

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

¶2 Johnette Gay Jones Watkins (Johnette) appeals from the December 2020 judgment of the Montana Nineteenth Judicial District Court, Lincoln County, dissolving her marriage to Charles Edward Watkins (Charles) and apportioning their marital estate pursuant to § 40-4-202, MCA. We affirm.

¶3 Johnette and Charles were first married in 1993 and then divorced in 1999.[1] They reunited in 2005 and remarried in September 2011. They separated again in February 2018 and Johnette filed for divorce in November 2018. Following an August 2020 bench trial, the District Court issued written findings of fact, conclusions of law, and a final decree of dissolution in December 2020. Johnette timely appeals.

¶4 In 2020, Johnette was 65 years-old and Charles was 48. Both were employed throughout their second marriage—Johnette continually as the manager of the State Job Service Office in Lincoln County and Charles at various times as a construction worker, mechanic, and logger. Based on the tax returns submitted at trial, Johnette earned in the

[1] For reasons neither of record on appeal, nor in dispute, the parties purportedly "divorced" in 1999 and apportioned their marital estate pursuant to a marital settlement agreement, but due to apparent oversight of their respective counsel, the 1999 dissolution decree was not entered until January 2005.

range of $46,206.77 to $52,645.47 per year from 2011 through 2017.[2] Charles earned in the range of $33,041.55 to $60,118.93 per year from 2011 through 2016, nothing in 2017, $40,985 in 2018, $26,033 in 2019, and $29,000 in 2020 as of the date of trial.[3]

¶5 Throughout their second marriage, the parties maintained separate checking and savings accounts, and each generally paid his or her own bills. Johnette also generally paid for various household expenses including home telephone service, internet access, and most of the groceries. Charles generally paid for necessary utilities.

¶6 Each party brought real property into their second marriage. Charles owned an unencumbered home on two lots in Libby (Highland Property). Johnette contributed $2,400 towards new flooring in Charles's home early-on, but presented no evidence of any other significant contribution to the maintenance or improvement of the home other than as a "carpenter's assistant" to Charles at times. The parties lived in Charles's home during the second marriage.

¶7 Johnette owned an unencumbered home in Libby (Snowshoe Property) which she had previously lived in before they remarried and then rented as income property thereafter. She personally retained all rental proceeds (approximately $500 to $1,200 per month). The parties made a number of substantial improvements to the home during the second marriage. Johnette generally paid for the materials and equipment. Charles performed all

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[2] Johnette continued to be employed but presented no employment earnings documentation for 2018-2020.

[3] At trial, Charles testified to his 2018-2020 earnings based on referenced tax documents not ultimately offered into evidence.

necessary construction and installation work and also paid for some of the materials and equipment. Charles gave unrebutted testimony that his work and contributions to the home resulted in a $75,000 increase in value over the course of the parties' relationship. He attributed $28,000 of that increase to his work and contributions during the course of their second marriage.

¶8 When the parties reunited, Johnette also owned a 40-acre tract of unimproved land (East Fisher Property) in a remote area in Lincoln County. She became the sole owner of the property when she received it as part of the parties' agreed apportionment of their marital estate in the 1999 divorce.[4] Johnette presented evidence at trial that she paid approximately $192 per month ($2,304 per year) for taxes and insurance on the property through the second marriage. During 2006 and 2007, before they remarried in 2011, Charles built a small cabin on the property with a block foundation, a "little bedroom that just fits two double beds," a "small oblong kitchen," and a "small oblong place to fit a couch and chair." The parties both paid for the cabin materials and equipment and also received various contributions from others. Charles later purchased a log home kit for $17,500 and began constructing a 3,000 sq. ft. log home on the property. Construction continued throughout the second marriage, but the project remained unfinished when the parties separated in 2018. Except for certain subcontract work, Charles performed all of

[4] They purchased the East Fisher Property together for $54,000 during their first marriage. Upon divorce in 1999, they agreed that the property had appreciated by $30,000 during their marriage. Their 1999 marital settlement agreement attributed $15,000 of the appreciated value of the property to Charles.

the construction work and paid for most of the building materials and equipment. However, Johnette paid for certain materials as well, including half of the costs of the windows and doors. Substantially complete by the time of separation were the poured concrete foundation/daylight basement, framing, roof, most of the electrical wiring/system, stairs, most of the interior ceilings, solar power system, and a substantial portion of the interior sheetrocking.

¶9 In addition to foregoing employment income for a year (2017) to work on the project, Charles testified that he spent approximately $73,000 from his own funds on the log home construction and related materials and improvements. The remaining work required to finish the home at the time of separation and dissolution included the balance of the interior sheetrocking, closet construction, 50% of the basement finishing, and various electrical wiring and lighting, *inter alia*. A real estate appraiser commissioned by Johnette testified that, when appraised in 2019, the estimated "as-is" value of the property and incomplete home was $307,000. The appraiser estimated the cost of completion as approximately $81,500, but Charles testified that he could complete it for $20,000 if he performs the work. Charles testified further that the cost of removing the partially constructed home from the property would be approximately $80,000 and that removal would further result in a $50,000 loss in construction materials.

¶10 Johnette also separately acquired and co-owns with an out-of-state partner a mortgaged multi-suite commercial rental property in downtown Libby (Mineral Plaza

Property).[5] She testified that the property has generated little profit to date. Charles remodeled two of the commercial suites in the building for new tenants (including new flooring, updated plumbing, and florescent lighting-ballast replacement). Johnette testified that he sometimes would refuse payment from her, "but other times . . . took the payment."

¶11 Upon his brother's untimely death during the parties' second marriage, Charles received approximately $84,000 in life insurance proceeds and a $17,900 cash inheritance. He testified that he spent most of that money before they separated to pay-off two vehicles (including one inherited from his brother), rebuilding his garage at the Highland Property following a fire, buying a snowmobile, and on the East Fischer Property construction project.

¶12 When they separated in 2018, the parties had separate retirement accounts/plans. Charles had $56,080 in an employment-related 401K account, which had increased by $16,000 during the marriage as of the date of trial. Johnette had two State employee retirements plans. She characterized them as a "deferred compensation" plan, in which her balance had increased by $7,313 during the second marriage prior to the parties' 2018 separation, and a "defined contribution" or "defined benefit" plan, in which her balance had increased by $152,991 during that same period. The only evidence Johnette presented as to the value of her state retirement accounts/plans were two quarterly statements for each

[5] Johnette testified that she and her partner each invested $50,000 in the purchase and the current mortgage balance is approximately $260,000.

which together showed the balance increase from September 2011 through December 31, 2017.

¶13 Based on the evidence presented at bench trial, the District Court apportioned the parties' second marital estate as specified in its December 2020 decree. *Inter alia*, Johnette received the Snowshoe Property,[6] the Mineral Plaza Property, the entirety of her state retirement accounts/plans, and various items of personal property as agreed by the parties.[7] The court expressly apportioned to Charles the Highland Property,[8] the East Fisher Property,[9] the entirety of his employment-related 401k retirement account/plan, and various items of personal property as agreed by the parties. The court recognized the various items of real property as prior or separately-acquired properties, but then characterized particular items as either included in, or excluded from, the marital estate.

¶14 Upon marital dissolution, district courts must "equitably apportion" all marital assets, property, and debts without regard to marital misconduct. Section 40-4-202(1),

[6] The court noted that Johnette brought the property into the second marriage but that Charles's financial contributions and skilled labor improved the property, facilitated its maintenance, and increased its value.

[7] The parties agreed as to the personal property distribution, but disputed the values of various items of that property. The court largely adopted Charles's asserted valuations, finding them the most credible and accurate.

[8] The court reasoned that he brought the property into the marriage and that Johnette's "minor contribution of flooring and [as a] 'carpenter's assistant'" to him "did not facilitate [the] overall . . . maintenance of the property" or result in a "value increase."

[9] The court's findings regarding the property recognized that Johnette brought it into the marriage following the parties' first divorce but, based on the parties' relative contributions, reasoned that Charles's financial contributions and labor significantly improved the property, facilitated its maintenance, and increased its value.

MCA. As a matter of law, all assets, property, and liabilities of either or both spouses, regardless of how or when acquired, whether before or during the marriage, are part of the marital estate subject to equitable apportionment under § 40-4-202, MCA. *See In re Marriage of Funk*, 2012 MT 14, ¶¶ 9, 13, and 24-26, 363 Mont. 352, 270 P.3d 39 (overruling inconsistent authority). In determining an equitable apportionment of the marital estate, the court must:

> consider the duration of the marriage and [any] prior marriage of either party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, [any] custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, . . . the opportunity of each for future acquisition of capital assets and income, . . . the contribution or dissipation of value of the respective estates[,] and the contribution of a spouse as a homemaker or to the family unit.

Section 40-4-202(1), MCA.

¶15 When apportioning property acquired separately by gift, inheritance, or otherwise before or during the marriage, "the court shall consider the contributions of the other spouse to the marriage, including[] the nonmonetary contribution of a homemaker[;] the extent to which [such] contributions have facilitated the maintenance of the property[;] and whether . . . the property division serves as an alternative to [spousal] maintenance." Section 40-4-202(1)(a)-(c), MCA. "The court's decision with respect to" such property "must affirmatively reflect" consideration and analysis of each of those additional factors and "be based on substantial evidence." *Funk*, ¶ 19.

¶16 Within the framework of § 40-4-202, MCA, district courts have broad discretion to determine an equitable apportionment of the marital estate under the totality of the

circumstances in each case. *Funk*, ¶ 6; *In re Marriage of Bartsch*, 2007 MT 136, ¶ 9, 337 Mont. 386, 162 P.3d 72. The requirement for an "equitable" apportionment does not necessarily require an equal apportionment. *Richards v. Trusler*, 2015 MT 314, ¶ 11, 381 Mont. 357, 360 P.3d 1126. We review marital estate apportionments for an abuse of discretion. *In re Marriage of Crilly*, 2005 MT 311, ¶ 10, 329 Mont. 479, 124 P.3d 1151. A court abuses its discretion only if it exercises discretion based on an erroneous conclusion or application of law, a clearly erroneous finding of material fact, or otherwise acted arbitrarily without conscientious judgment, or in excess of the bounds of reason, resulting in substantial injustice. *Albrecht v. Albrecht*, 2002 MT 227, ¶ 7, 311 Mont. 412, 56 P.3d 339. We review conclusions or applications of law de novo for correctness. *Albrecht*, ¶ 8. We review findings of fact only for clear error. *In re Marriage of Swanson*, 2004 MT 124, ¶ 12, 321 Mont. 250, 90 P.3d 418.

¶17 Johnette first asserts that the District Court erroneously included her prior-acquired East Fischer and Snowshoe properties in the marital estate, while excluding Charles's prior-acquired Highland Property, and then apportioning the East Fischer Property to him. As a threshold matter, the District Court erroneously characterized the parties' prior or separately acquired real properties as either included in, or excluded from, the marital estate instead of recognizing that those properties were all part of the marital estate subject to equitable apportionment as specified by § 40-4-202, MCA. The more salient question, however, is whether it nonetheless equitably apportioned them upon consideration of the pertinent criteria specified in § 40-4-202, MCA, in the context of the division of the marital

estate as a whole. Based on our review of the record, and the court's written findings, conclusions of law, and decree, we conclude that it did. Except for reference to spousal maintenance which neither party sought, the District Court's detailed findings, conclusions, and decree manifest that, to the extent possible based on and in accordance *with the limited evidence presented by the parties*, it gave deliberate consideration to all pertinent statutory criteria for prior or separately acquired property, both as generally specified by § 40-4-202(1), MCA, and further specified by § 40-4-202(1)(a)-(c), MCA. Notwithstanding conflicts in the evidence within the discretion of the court to resolve, its pertinent findings and apportionment rationale regarding the parties' respective prior or separately acquired real properties are supported by substantial record evidence. Regardless of the erroneous characterization of some of those properties as excluded from the marital estate, we hold that Johnette has failed to meet her burden on appeal of demonstrating that their ultimate apportionment was either inequitable or otherwise arbitrary or lacking in conscientious judgment resulting in substantial injustice.

¶18 Johnette next asserts that the District Court erroneously "valu[ed] the marital increase[s] in [her] retirement [accounts/plans] at $200,000," rather than $7,313 and $152,991,[10] respectively. However, the court did not value the marital increase in her retirement accounts/plans at $200,000. Rather, based on the only evidence of the marital increases in those accounts/plans presented by Johnette ($7,313 and $152,991 as of

[10] On appeal, Johnette lists this number as $151,991. However, the trial transcript manifests that she testified with reference to her retirement statement that the number was $152,991.

December 31, 2017), the court found that total marital increases were "more than $150,000, and probably closer to $200,000." Though not as precise as it could or should have been, the court's finding was not materially inaccurate based on the limited evidence presented and the fact that Johnette inexplicably failed to present evidence that included the additional balance increase resulting from her continued state employment in the same job for the last 2½ years of the marriage prior to trial.[11] Moreover, fairly read in context of the actual trial record and the overall apportionment of the entire marital estate, the court's written findings, conclusions, and decree simply do not support her isolated assertion that it either erroneously inflated the "marital increase" in her retirement accounts/benefits, or that it allowed her to retain the entirety of her state retirement accounts/plans in an "apparent 'trade-off' " to justify awarding the East Fischer Property to Charles.[12] We hold that Johnette has failed to demonstrate that the District Court's finding in regard to the marital increases in the balances of her state employee retirement accounts was either clearly erroneous or otherwise rendered its apportionment of the marital estate inequitable or lacking in conscientious judgment resulting in substantial injustice.

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[11] She correctly asserts with citation that district courts have discretion to value marital estates either at the time of separation or the time of dissolution, but fails to put forth any justification for her failure to present available evidence regarding her additional balance increases over the next 2½ years after separation prior to trial.

[12] Her unsupported assertions of error nonetheless warrant note of the glaring absence of any other evidence of the value of her state retirement accounts/plans. *Compare In re Marriage of Truax*, 271 Mont. 122, 125-26, 894 P.2d 936, 938 (1995) (in re time-rule valuation methodology for certain retirement accounts/benefits); *Rolfe v. Rolfe*, 234 Mont. 294, 296-98, 766 P.2d 223, 225-26 (1988) (in re present-value and time-rule retirement valuation methodologies).

¶19 Johnette finally asserts that the District Court's apportionment of the marital estate as a whole was inequitable based on its failure to "properly consider or refer to" the parties' respective ages, "employability[,] or the opportunity of each for future acquisition of capital assets and income." She specifically points out that the Court's findings make no reference to Charles's testimony that he "could earn $80,000 a year" if he worked for a referenced solar energy company that he had previously worked for at some unspecified time during the marriage. Johnette neglects to note, however, that, in contrast to her employment earnings in excess of $50,000 per year in 2015-2017, her failure to disclose her continued earnings for the last 2½ years of the marriage, and her retention of the entirety of her state employment accounts/plans, the unrebutted evidence was that Charles was not employed at the time of trial, never earned more than $62,000 per year during their second marriage, only earned more than $41,000 per year twice (once in 2011 and again in 2015) and is primarily a "logger, a mechanic, and a house builder." Nor does she point out that the referenced energy company job is in California and would require him to travel to, and at least temporarily reside in, California and to pay all associated costs except for rent. Juxtaposed against those facts, the court's findings of fact nonetheless specifically reference, *inter alia*, the parties' respective years of birth, Johnette's continued employment as a State Job Service Office manager, Charles's prior employment history, their respective marital earnings histories (Charles's through the date of trial—Johnette's through the date of separation),[13] her desire to "retire soon" "due to her age," her retention

[13] We find irreconcilable, but relatively small and thus immaterial, disparities between the trial evidence and the court's finding of fact regarding Charles' 2011 and 2015 earnings income.

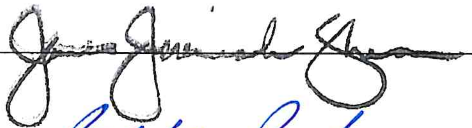
of her commercial investment/income property in downtown Libby, and the fact that she has a "significantly" greater "retirement" than Charles even without disclosure of post-separation/pre-trial increases or presentation of other retirement valuation evidence. We hold that Johnette has not demonstrated that the District Court failed to consider all pertinent factors specified by § 40-4-202, MCA, on the evidence presented, that it inequitably apportioned the marital estate as a whole, or that its apportionment was otherwise arbitrary or lacking in conscientious judgment resulting in substantial injustice.

¶20 Pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, we decide this case by non-cite memorandum opinion. Affirmed.

Justice

We concur:

Chief Justice



Justices