

DA 21-0332

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 83N

IN RE THE MARRIAGE OF:

JENNIFER S. CONROY,

Petitioner and Appellant,

and

MICHAEL SCOTT CONROY,

Respondent and Appellee.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. ADR-2020-441
Honorable Mike Menahan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brian J. Miller, Morrison, Sherwood, Wilson, and Deola PLLP, Helena,
Montana

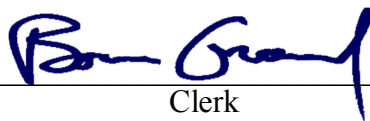
For Appellee:

Robyn L. Weber, Weber Law, Helena, Montana

Submitted on Briefs: March 16, 2022

Decided: April 26, 2022

Filed:


Clerk

Justice Jim Rice 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 Jennifer Conroy (Jennifer) appeals from the Findings of Fact, Conclusions of Law and Decree of Dissolution of the First Judicial District Court, Lewis and Clark County. She challenges the District Court's award of half of her premarital funds used as down payment for the marital home to Michael Conroy (Michael) in the distribution of the marital estate. We affirm.

¶3 Jennifer and Michael married in September 2013. In January 2014, the parties purchased a home on 10 acres in Helena. Jennifer did not qualify for a purchase loan, so Michael was the sole obligor on the home mortgage. However, Jennifer funded the entire down payment with her premarital property—approximately \$95,000 worth of precious metals that she liquidated and transferred to Michael with a document titled “gift letter,” which was submitted to the lender. Michael stopped working shortly after the home's purchase, and he remained unemployed during the marriage. Throughout the marriage, Jennifer's income paid the couple's expenses, including the mortgage payments. To remodel and furnish the home, another loan of approximately \$50,000 was obtained, again solely in Michael's name. This loan was secured by Jennifer's 70 acres of premarital land.

¶4 In August 2020, Jennifer petitioned for dissolution of the marriage, and the District Court conducted a hearing on the merits. In its Findings of Fact, Conclusions of Law and Decree of Dissolution (Decree), the District Court ordered the marital home, which had significantly appreciated in value during the marriage, to be sold, and granted Jennifer the right of first refusal. Regarding distribution, the District Court concluded: “[I]t is equitable for Michael to receive 50% of the net equity in the home, upon sale, *without subtraction for the down payment which Jennifer provided.*” (Emphasis added.) Jennifer appeals, challenging only this decision, which resulted in Michael receiving an additional approximately \$47,000 from the sale of the house.

¶5 We review a district court’s findings of fact pertaining to division of marital assets to determine if they are clearly erroneous. *In re Marriage of Lewis*, 2020 MT 44, ¶ 5, 399 Mont. 58, 458 P.3d 1009 (citation omitted). “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.” “A district court has broad discretion to apportion a marital estate in a manner equitable to each party under the circumstances.” *Lewis*, ¶ 5 (citation omitted). “Absent clearly erroneous findings, we will affirm a district court’s division of property unless there was an abuse of discretion. A district court abuses its discretion if it acts arbitrarily without conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice.” *In re Marriage of Edwards*, 2015 MT 9, ¶ 10, 378 Mont. 45, 340 P.3d 1237 (citation omitted).

¶6 Jennifer argues the District Court entered clearly erroneous factual findings unsupported by substantial evidence. Jennifer primarily disputes the findings on two issues: 1) that there existed a mutual agreement by the parties for Michael to stay home and work on the property instead of holding outside employment, and 2) the extent of Michael's contributions to the estate.

¶7 On the first point, the District Court found that “[u]pon securing the remodel proceeds, the parties mutually agreed that Michael would quit his job to devote his efforts to the remodel.” At the hearing, the parties agreed Jennifer was the breadwinner during the marriage, but provided opposing explanations for why Michael remained unemployed. Michael claimed the parties mutually agreed Jennifer would work outside of the home and he would contribute through remodeling and maintaining the home and property. He testified he quit his job on the advice of Jennifer, who thought they would save money if Michael devoted himself full time to the remodel. Michael testified he looked for a job selling firearms in 2019, but determined that the low pay would be of little net value for the couple, considering Jennifer's relatively high earnings. Michael also testified, when discussing the couple's plan to start a business,¹ “the plan had always been to have two income streams in the family. We just didn't know where that was going. And there was so much to do on the house and property, that kept me pretty busy for the first couple of years.”

¹ The business was never operational and did not produce any income.

¶8 Jennifer argues the major remodeling lasted only five months, while Michael remained unemployed for seven years. She testified she never told Michael not to work, and in fact the couple “got into many disagreements — heated arguments — about the fact that I did want him to work.” Jennifer testified Michael was offered a temporary job in Colorado that would have kept his law enforcement certification active, but he declined the offer and elected to stay home. “Every time there was some sort of opportunity for him to work, he would choose not to,” Jennifer testified. Michael testified that Jennifer did not want him to return to law enforcement or his more recent job climbing telephone poles, and insisted he “never” was offered a job in Colorado. Jennifer acknowledged during cross-examination:

Counsel: Michael hasn’t worked for seven years; isn’t that true?

Jennifer: That’s correct.

Counsel: And isn’t that because there was a mutual agreement that he would stop working and work on the remodel of the home?

Jennifer: Yes, ma’am.

¶9 Our role is to determine if substantial evidence supported the District Court’s finding. *Lewis*, ¶ 5. “[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. We have repeatedly held that we will not second-guess a district court’s determinations regarding the strength and weight of conflicting testimony.” *Edwards*, ¶ 18 (quotation omitted). Substantial evidence is “more than a scintilla of evidence, but may be less than a preponderance of the evidence . . . regardless of whether there is also substantial evidence or even a preponderance of evidence to the contrary.” *Gypsy Highview Gathering*

Sys. v. Stokes, 221 Mont. 11, 15, 716 P.2d 620, 623 (1986) (citation and quotation omitted). Here, the District Court heard directly conflicting testimony that could have supported either conclusion, and it found a mutual agreement existed between the parties. This finding was not clearly erroneous as it was supported by substantial evidence, even though presented alongside conflicting evidence. *Gypsy Highview*, 221 Mont. at 15, 716 P.2d at 623.

¶10 On the second point, Jennifer challenges the findings regarding the extent of Michael’s contributions to their property. The District Court found that “Michael did extensive remodeling to the home, as evidenced through his testimony and exhibits,” and that, in addition to the remodel, Michael contributed through “maintenance of the home” and attended to the animals and the property. Michael testified that “by mutual agreement as part of our division of labor,” he cared for the marital home, animals, security, and vehicles on their 10-acre property throughout the marriage. He presented a detailed list of projects he completed during the marriage that he prepared during discovery, which included his estimate of hours worked on each project.

¶11 Jennifer challenges Michael’s list as mainly a recitation of “basic household chores that would be reasonably expected of anyone who spends their days at home without working, and that a number of items which Michael claimed he did, were actually done by paid contractors.” She argues Michael presented “no substantial direct proof” of his claim that he “conceived, planned, designed, and executed remodel of 2 of the 3 floors of the home,” and that he instead only offered “sparse testimony,” “some photos,” and the

prepared list of projects. In support of her position, Jennifer presented a 92-page exhibit of invoices for work done by outside contractors, which were paid from her salary. She also presented a recent home inspection report demonstrating the need for further repairs. Jennifer argues that if Michael had worked on the house as he claimed, “the home would have been in much better condition by the time of the hearing.”

¶12 Michael was questioned extensively about the entries on his project list, and he admitted to hiring contractors for multiple projects he felt were beyond his abilities. He explained that he often helped alongside them and performed labor supportive of the contracted work, such as on the fireplace project. While Jennifer provided significant exhibits and testimony, her evidence does not extinguish Michael’s exhibit and testimony that the District Court credited as supporting his claimed contributions. Some of his listed projects clearly went beyond basic household chores and required a construction background, such as his work on the electrical system and in framing new rooms. The District Court’s finding that the marital home “was improved by Michael’s skill and labor” was supported by “more than a scintilla” of evidence, despite evidence from which a contrary inference could have been drawn. *Gypsy Highview*, 221 Mont. at 15, 716 P.2d at 623. “The testimony from any one witness, that the [factfinder] believes, is sufficient to prove any fact in a case.” *State v. Bowen*, 2015 MT 246, ¶ 30, 380 Mont. 433, 356 P.3d 449 (citation omitted).

¶13 Jennifer next argues the award to Michael rendered the property distribution inequitable. Jennifer testified that she believed it would be equitable for the District Court

to award her the entirety of the down payment, due to her significant financial contributions. The District Court instead determined to divide the equity in the home equally, reasoning that, while Jennifer provided her premarital funds for the down payment,

each party contributed equally, through money, good credit, and/or sweat equity, into the purchase, remodel, and maintenance of the home . . . there is significant disparity in the parties' income; Michael is waiving spousal maintenance, even though he has been unemployed, by mutual agreement, for nearly the last 7 years; and Michael is waiving any claim to the value of the 70 acre tract of land which Jennifer brought into the marriage.

¶14 In making distribution of a marital estate, a district court must consider statutory factors, including the parties' "amount and sources of income," "employability," "whether the apportionment is in lieu of or in addition to maintenance," and "the contribution of a spouse as a homemaker." Section 40-4-202(1), MCA. "[E]verything owned jointly or by either party must be equitably apportioned by the district court in a dissolution proceeding regardless of when or how it was acquired." *In re Marriage of Funk*, 2012 MT 14, ¶ 13, 363 Mont. 352, 270 P.3d 39 (emphasis in original); § 40-4-202(1), MCA. Additional factors are considered for premarital, gifted, or inherited property. *Funk*, ¶ 14. The district court must consider "those contributions of the other spouse to the marriage, including: a) the nonmonetary contribution of a homemaker; b) the extent to which the contributions have facilitated the maintenance of the property; and c) whether the property division serves as an alternative to maintenance arrangements." Section 40-4-202(1)(a)-(c), MCA; *Funk*, ¶ 19. A party claiming ownership of premarital property "is entitled to argue that it would be equitable to award him or her the entirety of such property," but the statutory factors "are not limitations on the court's obligation and authority to equitably apportion

all assets and property of either or both spouses, based upon the unique factors of each case.” *Funk*, ¶ 19. The relevant inquiry is “whether the district court adequately considered all of the relevant facts of the particular case; whether it considered the statutory factors; and then whether it equitably distributed all property and assets accordingly.” *Funk*, ¶ 15.

¶15 The District Court’s decision to evenly divide the equity in the home is supported by its findings that the parties “put forth a joint effort to obtain the funds” and “each party contributed equally, through money, good credit, and/or sweat equity, into the purchase, remodel, and maintenance of the home.” The record is clear that neither party could have accomplished the purchase of the home or its remodel alone, which each party acknowledged in their testimony. The lender conditioned the purchase loan on Michael being the sole obligor. Jennifer provided the money for the down payment with her premarital funds and made mortgage payments with her earned income. For the remodel, which no doubt increased the value of the home, Michael took out another loan, and Jennifer provided her premarital property as collateral and her income to make the loan payments. Michael supervised contractors and did a significant amount of work himself, as found by the District Court. The District Court considered Michael’s nonmonetary contributions and the extent to which his contributions maintained and improved the home, thus satisfying all necessary considerations under § 40-4-202(1)(a)-(c), MCA. “We never have set an exact formula for district courts to divide marital property.” *In re Chamberlin*, 2011 MT 253, ¶ 13, 362 Mont. 226, 262 P.3d 1097. “The statute requires an equitable, not necessarily equal, division of the marital estate The court is not required to award the

parties property of precisely equal value.” *Hutchins v. Hutchins*, 2018 MT 275, ¶ 31, 393 Mont. 283, 430 P.3d 502 (citations and quotation omitted). “[T]he court has the ultimate authority to distribute all property of both spouses; it is not required to subtract premarital assets or inheritances from the marital estate before dividing it, nor is it limited in its authority to determine how such assets are to be divided.” *Funk*, ¶ 16.

¶16 The District Court’s Decree awarded Jennifer half of the equity in the marital home, which had increased substantially, the option to purchase the home as she requested, her entire 70-acre premarital property, half of the disputed premarital funds used for the down payment, and no maintenance obligations. Given the broad discretion of the District Court, we conclude it did not act arbitrarily without conscientious judgment or exceed the bounds of reason in reaching its distribution decision. *Edwards*, ¶ 10. The District Court adequately considered all relevant facts and statutory factors as required; it then exercised its ultimate authority to equitably distribute all property accordingly, including Jennifer’s premarital funds used for the down payment. *Funk*, ¶ 15.²

² Jennifer also offers arguments that because Michael contributed nothing to the money used for the down payment, “the Court should start from the premise that Michael has no entitlement to the pre-marital \$95,460.97 unless he shows that he earned it,” citing *In re Marriage of Herron*, 186 Mont. 396, 404, 608 P.2d 97, 101 (1980), and that “[t]he mere fact of comingling [the down payment] money into the purchase of a home does not mean it is equitable to then award it to Michael,” citing *In re Marriage of Horton*, 2004 MT 353, ¶ 15, 324 Mont. 382, 102 P.3d 1276. However, the holdings of these decisions were largely altered by *Funk*, which rejected the idea that a district court cannot award premarital property “when there is no evidence that the spouse made any contribution to those assets in any form” because “[t]his unconditional statement was a departure from the dominant purpose of the statute, as it elevates the ‘considerations’ set forth in § 40-4-202(1)(a), (b), MCA, to the level of restrictions on a district court’s discretion.” *Funk*, ¶ 25 (internal citation and quotation omitted). We now recognize all property, including premarital property and gifts, as subject to equitable distribution. *Funk*, ¶ 19.

¶17 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. The District Court's findings of fact were not clearly erroneous, and it did not abuse its discretion in distributing the marital estate.

¶18 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JAMES JEREMIAH SHEA