

DA 18-0556

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 158N

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IN RE THE MARRIAGE OF:

STACEY A. STINGER,

Petitioner and Appellant,

and

BRUCE F. STINGER,

Respondent and Appellee.

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APPEAL FROM: District Court of the Twentieth Judicial District,  
In and For the County of Lake, Cause No. DR-15-117  
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Anna Hilly McGahan, SAFE Harbor, Polson, Montana

For Appellee:

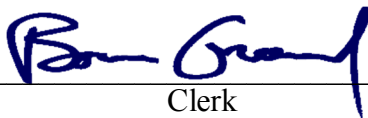
David C. Humphrey, Humphrey Law Office, Polson, Montana

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Submitted on Briefs: June 12, 2019

Decided: July 9, 2019

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, 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 Stacey Stinger appeals the District Court's final decree dissolving her marriage to Bruce Stinger. Stacey challenges the court's refusal to award her maintenance, its valuation and distribution of the marital estate, and its failure to enter judgment awarding attorney fees to Stacey on the court's prior ruling in her favor. We affirm the denial of maintenance and reverse and remand on the other two issues.

¶3 Stacey and Bruce married in 2003, but had been together raising their blended family since 1992. Stacey petitioned for dissolution in 2015, by which time the children were grown. Stacey, forty-four at the time of dissolution, earns an annual income of \$35,780. Bruce, fifty at the time of dissolution, earns \$63,740 annually, plus additional wages when he is the lead on a particular job with his employer. The District Court found Bruce's prospects for future pay raises to be good and his ability to earn outside income to be greater than Stacey's. The parties have modest assets and considerable debt. The District Court acknowledged that, even with Bruce making the mortgage payments during the pendency of the case, Stacey had difficulty paying her monthly expenses. The court awarded to Bruce his automotive and windshield replacement tools, which it found to be

the parties' only income-producing property. It concluded that, because Bruce earns roughly twice the amount of Stacey's income, "it is equitable to award Stacey a greater share of the marital assets in order to provide her a means to become self-supporting, and to pay off her substantial debt." The court thus determined to award Bruce "less property" than that awarded to Stacey and to assign him "more debt" than that assigned to Stacey. Because of its distribution of assets and debts, the court declined to award maintenance.

¶4 We review for clear error a district court's findings of fact in a dissolution case. *In re Marriage of Crowley*, 2014 MT 42, ¶ 24, 374 Mont. 48, 318 P.3d 1031. Section 40-4-202(1), MCA, requires a district court to "equitably apportion" a marital estate upon dissolution. Though not without limits, a district court has broad discretion in apportioning the estate. *In re Marriage of Clark*, 2015 MT 263, ¶ 12, 381 Mont. 50, 357 P.3d 314. "A district court does not need to make a specific finding of the net worth of the marital estate; instead, the court must make findings sufficient for this Court to determine the net worth and review whether the marital distribution is equitable." *In re Marriage of Crowley*, ¶ 26.

¶5 Stacey challenges the District Court's valuation and distribution of various assets and debts. "A district court has discretion to adopt any reasonable valuation of marital property that is supported by the evidence." *Schwartz v. Harris*, 2013 MT 145, ¶ 23, 370 Mont. 294, 308 P.3d 949 (citing *In re Marriage of Hedges*, 2002 MT 204, ¶ 21, 311 Mont. 230, 53 P.3d 1273). Having reviewed the record, we conclude that most of the valuations are supported by substantial credible evidence, but that clear error in several of the District Court's findings requires vacating the decree and remanding for additional findings and a

new analysis of the distribution of property and debt. We consider each of Stacey's challenges.

*Sale of stock car*

¶6 Bruce sold one of his two stock cars, a marital asset, for \$7,000. From the proceeds, \$3,882.93 was used to pay joint tax liability owed to the IRS. The court ordered that the remainder—\$3,112.07—be used, along with some of the proceeds from the sale of the parties' marital home, to pay down \$7,000 in joint consumer loan debt.<sup>1</sup> The court assigned the full amount of the loan to Bruce, without deducting the \$7,000 ordered to be paid down on the loan from other marital assets or attributing those assets to Bruce. We conclude that the District Court's treatment of the \$7,000 was clear error. Bruce received the benefit of the reduction of the debt assigned to him. The trial court should have accounted for this benefit either by reducing the debt assigned to Bruce accordingly or assigning to Bruce \$7,000 in assets from the sale of the stock car and the sale of the marital home.

¶7 Given the District Court's finding that Stacey should receive a greater portion of the assets and less of the debt, this error requires reversal for the court to reevaluate the distribution of property and debt. For example, the District Court calculated that it assigned \$18,285 in debt to Stacey and \$25,849 to Bruce. With the correction of \$7,000, the value of the debt assigned to Bruce is \$18,849, not \$25,849.

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<sup>1</sup>The court appears to have made a typographical error—the remaining proceeds after paying the IRS should have been \$3,117.07, not \$3,112.07.

*Value of proceeds from sale of marital home awarded to Stacey*

¶8 The parties sold the marital home during the proceedings, resulting in equity proceeds of \$19,806.41. Stacey received \$6,500 to purchase a mobile home in Missoula, and the remaining \$13,306.41 was deposited with the Clerk of District Court pending issuance of the final decree. Unlike the \$7,000 proceeds Bruce received from sale of marital assets, the District Court appropriately included the \$6,500 distribution to Stacey in itemizing the marital property it awarded to her. The court ordered that \$3,887.93 from the proceeds be used to pay down the remainder of the parties' \$7,000 consumer loan debt and that the rest would be awarded to Stacey.<sup>2</sup> After the initial distribution to Stacey, the total remaining from sale of the home was \$13,306.41. In its distribution of assets, the District Court awarded \$10,194 to Stacey. After paying \$3,882.93 on the loan debt, however, only \$9,423.48 would remain to pay to Stacey.<sup>3</sup> It appears this was a mathematical error resulting from the court's mistaken subtraction of the \$3,112.07 applied from the stock car sale, rather than \$3,882.93, which remained of the \$7,000 debt. Because we are remanding for the court's failure to account for the \$7,000 benefit discussed above, the District Court should correct this \$770.86 miscalculation on remand.

*Value of second stock car and tools awarded to Bruce*

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<sup>2</sup>The amount \$3,887.93 appears to be an error, stemming from the court's prior typographical error, *see* n.1. The amount remaining after paying \$3,117.07 would be \$3,882.93.

<sup>3</sup>The clerk of the district court issued two checks after the court issued the final decree: one check for \$10,194.34 to Stacey and a second check for \$3,112.07 to Eagle Bank. Stacey's attorney returned both checks to the clerk of the district court, citing the discrepancy in the payment to the bank in her Motion for a New Trial or Alternatively, to Amend Judgment.

¶9 Stacey argues that the values the District Court assigned to the second stock car and to the tools awarded to Bruce are not supported by the record. Stacey testified that the tools were worth \$20,000, and Bruce testified that they were worth \$10,000. Bruce testified that he would try to sell the tools for \$18,000, but doubted he “would ever get it.” The District Court valued the tools at \$10,000. Although there is evidence in the record to support a higher valuation, the record also supports the District Court’s \$10,000 valuation. The District Court’s valuation of the tools is not clearly erroneous. *See Schwartz*, ¶ 23.

¶10 In the findings of fact she proposed to the District Court, Stacey valued both stock cars at \$14,500. Bruce testified at the trial that the first stock car was worth \$6,500 and that he had \$750 of investment in the second stock car with the rest of the second stock car owned by his brother. As noted above, Bruce sold the first stock car for \$7,000. The District Court assigned the second stock car to Bruce and valued it at \$200. We find no support in the record before the District Court for its \$200 valuation. The court is directed to reexamine the valuation of the second stock car on remand.

#### *Sale of Ford Truck and Purchase of Chevrolet*

¶11 Stacey argues that the District Court erred by failing to account for \$6,300 from the sale of a Ford pickup truck that was part of the marital estate. Stacey contends that Bruce sold the truck and then used the proceeds as a down payment on a new truck. Bruce produced bank statements and financing agreements demonstrating that the \$6,300 from the sale of the truck went to pay down debt with the bank, benefiting both parties, and that his new truck, although purchased in violation of the temporary economic restraining order

issued pursuant to § 40-4-121(3), MCA, was financed one hundred percent with no down payment. Bruce also purchased a home through additional financing. Based on the evidence in the record, the District Court did not err by failing to account for the \$6,300 truck sale in valuing the marital estate and by assigning entirely to Bruce the debt associated with the new truck and new home.

### *Valuation of Pension Plans*

¶12 Stacey challenges the distribution of Bruce's pension plans. The District Court awarded the entirety of the plans to Bruce, valued at \$1,500. Stacey contends the plans should have been divided between the parties using the time rule method. She points out that Bruce had agreed to equal division of his retirement account. At the time of trial, Bruce had put money into a retirement plan, but that retirement plan had not yet vested and he was entitled only to the amount he had put into it. He also was eligible for a union retirement plan but had not signed up to receive the benefits at the time of the trial.

¶13 This Court has upheld and written approvingly of the use of the time rule method to establish the value of a pension plan that the parties are not yet receiving, explaining, "Given the numerous contingencies that ultimately determine the benefits received from a defined benefit plan when the employee spouse has not yet retired, the time rule method will generally be the better approach for these types of pensions." *In re Parenting of C.W.*, 2012 MT 212, ¶ 20, 336 Mont. 278, 291 P.3d 1092. We also have approved use of the time rule method for a non-vested retirement account. *In re Parenting of C.W.*, ¶ 21; *see also In re Marriage of Spawn*, 2011 MT 284, ¶¶ 10-17, 362 Mont. 457, 269 P.3d 887. The Court

has been consistent, however, that use of either the present value method or the time rule method is not an abuse of discretion. *See, e.g., Hutchins v. Hutchins*, 2018 MT 275, ¶ 44, 393 Mont. 283, 430 P.3d 502.

¶14 The District Court did not choose between the present value and time rule methods because it opted to award the full amount of Bruce’s pension to him. Upon remand, the District Court will need to reevaluate the division of the marital estate and determine in the first instance whether equitable distribution requires division of Bruce’s pension plan between the parties. Only then will the court determine a method for valuing it. We decline at this juncture to direct how the plans should be valued if the District Court determines to divide it.

#### *Maintenance*

¶15 Stacey contends that the District Court’s decision not to award maintenance was not supported by its findings regarding the parties’ ages, length of marriage, disparate incomes, future earning potential, and relative standard of living, and that the District Court relied on an incorrect marital estate valuation and distribution in deciding that maintenance was not appropriate.

¶16 “A district court may grant maintenance ‘only if it finds that the spouse seeking maintenance: (a) lacks sufficient property to provide for the spouse’s reasonable needs; and (b) is unable to be self-supporting through appropriate employment . . . .’” *Frank v. Frank*, 2019 MT 130, ¶ 13, 396 Mont. 123, \_\_\_ P.3d \_\_\_ (quoting § 40-4-203(1), MCA). Absent a clearly erroneous finding, the Court will affirm a district court’s decision on maintenance



unless it determines that the district court abused its discretion. *Frank*, ¶ 11. “Because district courts face a difficult task in awarding maintenance, our final analysis is not whether we would reach a different conclusion after considering the same evidence, but rather whether there is sufficient evidence to support its conclusion.” *Frank*, ¶ 24 (quoting *In re Marriage of Rudolf*, 2007 MT 178, ¶ 27, 338 Mont. 226, 164 P.3d 907).

¶17 The District Court made findings regarding the parties’ ages, length of marriage, disparate incomes, future earning potential, and relative standard of living. It found that Bruce earned twice as much as Stacey and had greater earning potential going forward. It also found that “[t]he parties have significant consumer debt, which makes it difficult to maintain their prior living standards, and limits the Court’s practical options.” It determined to award Bruce less property and to assign him more debt than the property and debts assigned Stacey, “because of his greater income and greater capacity to earn income in the future.” But it acknowledged that both parties would “have difficulty paying all this debt.” The court explained that it was granting Stacey a greater share of the marital assets “in order to provide her a means to become self-supporting, and to pay off her substantial debt.” The court was not required to make a specific finding on each factor as long as “this Court can determine the trial judge actually considered each factor.” *Frank*, ¶ 13 (quoting *Jackson v. Jackson*, 2008 MT 25, ¶ 23, 341 Mont. 227, 177 P.3d 474). Although there are clear errors in the District Court’s valuation of the marital estate, the District Court’s remaining findings are sufficient to meet this standard. Because we are remanding for reevaluation of the distribution of the marital estate, and based on the court’s findings and

consideration of the evidence, we decline to hold the District Court in error for its decision not to award maintenance.

*Attorney Fee Award*

¶18 As noted above, after the petition for dissolution was filed, and in violation of the temporary economic restraining order, Bruce sold one of the parties' vehicles. The District Court held a show cause hearing on Stacey's motion to hold Bruce in contempt. The court entered an order awarding Stacey attorney fees and costs related to the show cause matter. In accordance with the court's order, Stacey's counsel timely filed an affidavit of fees. Bruce did not object, but the District Court never entered a final order making an award. On remand, the District Court should review counsel's affidavit and enter an appropriate order on its decision to award Stacey's fees and costs.

¶19 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. The District Court's May 17, 2018 Findings of Fact, Conclusions of Law, and Decree are affirmed in part and reversed in part. The Decree of Dissolution is vacated, and the case is remanded for further consideration of the distribution of the parties' assets and debts in accordance with this Opinion and to include in its final judgment an award of attorney fees to Stacey in accordance with its prior order.

/S/ BETH BAKER

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ JIM RICE

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR