## FILEDFILED

MAR 2 1 2022 wen Greenwood

JILL PAULL, CLERK OF THE SUPREME COURT

BY GEOMETRIA DA 22-0580

# CERTIFIED

2

. 3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Hon. Ray J. Dayton
District Judge
Third Judicial District
Powell County Courthouse
409 Missouri Ave.
Deer Lodge, MT 59722

# MONTANA THIRD JUDICIAL DISTRICT COURT POWELL COUNTY

In re the Marriage of:

PEGGY LEANN SMITH,

Petitioner,

and

WILLIAM MICHAEL SMITH,

Respondent.

Cause No.: DR-19-43

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE OF DISSOLUTION OF MARRIAGE

Petitioner, Peggy Leann Smith (hereinafter "Peggy") filed her *Petition for Dissolution of Marriage* on December 19, 2019. It was duly served upon Respondent, William Michael Smith (hereinafter "Mike"). Mike filed his *Respondent's Verified Answer to Petitioner's Petition for Decree of Dissolution* on January 10, 2020.

A contested hearing was held before this Court on March 11, 2022 by Zoom. Peggy was present with her attorney, Autumn Thompson-Irish of Thompson & Steigerwalt, PLLC. Mike was present with his attorney Lewis K. Smith of Smith Law Firm, P.C.

Havin the considered the testimony and evidence presented and the documents in the court file, the Court now makes the following:

||//

### FINDINGS OF FACT

### A. Identification of the Parties & Jurisdiction

- 1. Peggy is 64 years old. She resides at 444 Hound Dog Lane, Deer Lodge, Montana 59722. She is a rancher and homemaker.
- 2. Mike is 74 years old. He resides at 444 Hound Dog Lane, Deer Lodge, Montana 59722. He is a rancher, outfitter, and fencer.
- 3. The parties married at Polson, Montana on July 10, 1977. The marriage is registered in Lake County, Montana. They have been married 44 years.
- 4. Both parties were domiciled in the state of Montana for the 90 days preceding the filing of the petition in this matter.
- 5. The marriage of the parties is irretrievably broken in that there is serious marital discord which adversely affects the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation.
- 6. The parties share four children all of whom have reached the age of majority.

#### B. Distribution of the Marital Estate.

7. The parties provided each other with their preliminary and final disclosures pursuant to Mont. Code Ann. § 40-4-252 and -253.

### **B.1. Real Property**

- 8. The parties jointly own the family home and ranch at 444 Hound Dog Lane, Deer Lodge, Montana (a total of 158 acres). This property was purchased by the parties on August 14, 1987. They have lived on this property since that time and raised their family there.
- 9. There are no loans, mortgages, or liens on this real property. However, the real property may be listed as collateral on a personal loan obtained in Husband's name with First Security Bank.
  - 10. This property and the agreed division of this property was surveyed by

Tom Moodry. A copy of that survey was provided to counsel for the parties on March 8, 2022. That survey and the agreed division of the property is attached hereto as Exhibit "1," with the parties names listed on the sections of the property that should be awarded to each of them. The parties testified that they agree to divide this real property as set forth on Exhibit "1."

- 11. The parties own the following water rights jointly at this time:
  - a. 76G 18789-00: an irrigation right for use on S2SENE (4 acres), NESE (32 acres), E2W2SE (9 acres) of Section 14 T6N, R10W, in Powell County, Montana
  - b. 76G 18790-00: an irrigation right for use on W2SE (40 acres) of Section 14, T6N, R10W, in Powell County, Montana
  - c. 76G 18791-00: an irrigation right for use on W2SE (40 acres) of Section 14, T6N, R10W, Powell County, Montana
  - d. 76G 91028-00: a stock right for use on Govt. Lot 30, more particularly identified as the S2SENE, N2NESE, S2NESE, E2NW2SE of Section 14, T6N, R10W, in Powell County, Montana
  - e. 76G 91029-00: a stock right for use on Section 14, T6N, R10W, Powell County
  - f. 76G 91030-00: a stock right for use on Govt. Lot 30, more particularly identified as the S2SENE of Section 14, T6N, R10W, in Powell County, Montana.
- 12. The parties agree that the water rights associated with their portions of the real property after it is divided according to this decree should be awarded to them. The parties further agree that Peggy shall receive the stock and irrigation water rights attached to the hayfield on her property from the storage pond on her property, and Mike shall receive the stock right attached to his property from the storage pond on Peggy's property.

#### **B.2. Businesses**

- 13. Throughout the marriage, the parties operated outfitting businesses and a fencing business.
- 14. On January 11, 2021, Mike entered into a contract for the sale of the Bob Marshall use days and outfitting business to Kvande Anderson. According to the terms of the contract Mike signed for the sale of the Bob Marshall outfitting business, Mike sold the use days, eight horses, eight mules, six tents, one trailer, one horse trailer, and a list of camping equipment for \$150,000. Upon the sale of the Bob Marshall, Mike received a \$75,000 earnest money payment. Mike told Peggy throughout the litigation that this \$75,000 payment is in the form of a cashiers' check that he has been holding in a safe deposit box. Mike stated in his discovery responses that the remainder of the \$75,000 purchase price for the Bob Marshall outfitting business (\$75,000) shall be paid over five years at 4% interest. Mike received the first payment of \$15,000 plus interest in January 2022.
- 15. The parties also own use days in Baggs Creek. The parties agreed that the Baggs Creek use days should be valued at \$75,000.
- 16. In addition, the parties own private ranch use days and lion hunt use days.

### **B.3. Equalizing Payment**

17. The parties testified that as additional consideration for a portion of Peggy's interest in the marital estate, Mike should pay to Peggy the sum of \$49,000.

### **B.4. Personal Property, Vehicles, and Equipment**

- 18. The parties have amassed a significant amount of personal property and ranching equipment throughout their marriage. The division of this personal property is contested between the parties. Both parties testified about the personal property they wish to be awarded to them.
  - 19. The parties agreed upon the division of the guns proposed by both

parties. The parties agreed that both parties have their guns in their possession with the following exceptions:

- a. Peggy has in her possession the Remington Model 700-22-250 and the Smith & Wesson Model 19.357.
- b. Mike has in his possession the Custom 30.06 and the 7 mag Centurion.
- c. These guns shall be exchanged between the parties.
- 20. Mike alleged that a gun (specifically a Winchester lever action) and some reloading supplies (specifically powder and primers) have gone missing. Both parties testified. Peggy denied taking or hiding these items.
- 21. The Court finds both parties credible. It does not find that Peggy is responsible for the alleged missing items.
- 22. Regarding the other items of personal property in dispute, both parties testified that they should be awarded the items listed below. The Court will need to determine who is awarded these items:
  - a. Metal roofing
  - b. Big flatbed trailer (Kline's)
  - c. Brown, 8 foot panels
- 23. Peggy testified that she needs the big flatbed trailer to haul hay. She needs the metal roofing for the structures on her portion of the property. She also testified that she using the brown, 8-foot panels in the existing fencing on her property, and she wishes for those panels to remain in her possession.
  - 24. Mike testified that Peggy can receive the 16 inch tires on the property.
  - 25. Peggy testified that Mike can receive the flatbed box/bed.

#### B.4. Debts

- 26. Mike has several personal loans in his name with First Security Bank of Deer Lodge. The parties agree that these debts should be awarded to Mike.
  - 27. There are three credit cards in Mike's name: a Discover credit card, a

Bank of America credit card, and a Capital One credit card. The parties agreed that these credit cards and their associated debts should be distributed to Mike. Peggy further testified that she would like her name removed from these accounts.

- 28. There is one credit card in Peggy's name: a Citi Costco credit card. Peggy testified that this debt should be distributed to her.
- 29. Mike offered no testimony on these debts. Rather, he indicated that he did not oppose Peggy's testimony regarding these debts.

From the foregoing findings of fact, the Court now makes the following:

#### **CONCLUSIONS OF LAW**

- 1. Any findings of fact which constitute conclusions of law are incorporated herein as though they had been properly designated as such.
- 2. The Court has jurisdiction over this cause, the parties, and all issues raised in the pleadings filed herein.
- 3. In a proceeding for a dissolution of marriage, the Court shall equitably apportion the marital estate between the parties. Mont. Code Ann. § 40-4-202(1). The decision regarding the equitable apportionment of the marital estate must include all "assets belonging to either or both, however and whenever acquired," and regardless of "whether the title to the property and assets is in the name of the husband or wife or both." *Id.* The 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." *Marriage of Carras*, 2012 MT 25, ¶ 33, 364 Mont. 32, 270 P.3d 48 (citing *Marriage of Funk*, 2012 MR 14, ¶ 16, 363 Mont. 352, 270 P.3d 39.
- 4. When making the apportionment of the marital estate, "the court shall consider the duration of the marriage and 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, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income." Mont. Code Ann. § 40-4-202(1).

- 5. There is no doubt that the parties jointly contributed to their marital assets and to the businesses.
- 6. Montana law, Mont. Code Ann. §§ 40-4-252 and -253, requires the full disclosure of all assets, debts, income, and expenses. Failure of either party to file a complete financial disclosure statement shall authorize the Court to accept the statement of the other party as accurate. Any deliberately false statement made on the financial disclosure statement may subject the party to penalty of perjury or other appropriate relief and may be considered a fraud upon the Court.

From the foregoing findings of fact and conclusions of law, the Court enters the following:

## IT IS HEREBY ORDERED, ADJUDGED, AND DECREED

- 1. The marriage of the parties is dissolved.
- 2. The real property located at 444 Hound Dog Lane, Deer Lodge, Montana shall be divided as follows:
  - a. Peggy shall receive:
    - i. The West Half of the Southeast Quarter of Section 14, T6N,
       R10W (approximately 80 acres) and
    - ii. The South Half of the Northeast Quarter of the Southeast Quarter of Section 14, T6N, R10W (approximately 20.83 acres and identified as "Tract 2" on the survey by Tom Moodry, a.k.a. "the hayfield") and

- iii. A 40 foot easement through Mike's property for use and access of the existing road or any replacement road to access her property from the county road.
- iv. These portions of the property are identified as "Peggy Smith" on the attached survey at Exhibit "1."

#### b. Mike shall receive:

- i. The Southeast Quarter of the Northeast Quarter of Section 14,
   T6N, R10W (approximately 40 acres) and
- ii. The North Half of the Northeast Quarter of the Southeast Quarter of Section 14, T6N, R10W (approximately 14.51 acres), not including the hayfield, as described above, which shall be awarded to Peggy.
- iii. These portions of the property are identified as "Mike Smith" and as "Tract 1" on the attached survey at Exhibit "1."
- 3. Both parties shall be responsible for one-half (1/2) of the cost of maintaining and repairing the road (including the bridge and culvert).
- 4. The survey attached hereto as Exhibit "1" shall be recorded with the Powell County Clerk and Recorder. Each party shall be responsible for one-half (1/2) of the costs of marking the new property lines created by this Agreement. Each party shall be responsible for the costs of preparing and recording the necessary deeds for their individual portion of the real property based on the survey. Until such time as each party's portion of the property is solely in their own name, neither party shall be entitled to use the property as security for any further debt.
- 5. To the extent that the real property is used as collateral for any loan in Mike's name with First Security Bank of Deer Lodge, Husband shall ensure that such debt shall only be attached only to his portion of the real property. Mike shall make whatever arrangements are necessary with First Security Bank to ensure that Peggy's

portion of the real property is not encumbered or listed as collateral. Upon request, he shall provide Peggy with documentation of the release of her portion of the property as collateral for Wife's loan(s) within 14 days.

- 6. The parties shall share equally any past due property taxes for the real property.
- 7. Each party shall be entitled to exclusive possession of their portions of the real property, including the residence and buildings. Each party shall be responsible for all utilities, real estate taxes, insurance, maintenance, repairs, and expenses related to their portion of the real property.
- 8. Immediately, Mike shall contact the power company and allow the power for the home and the irrigation pond to be placed in Peggy's name.
- 9. Mike shall move out of the home by April 15, 2022 and remove the items of property awarded to him from Peggy's portion of the property by May 1, 2022. After that date, neither party may enter the other's property without permission or a civil standby (except for the easement for the road through Mike's property to access Peggy's property).
- 10. The water rights associated with their portions of the real property shall be awarded to each party. Regarding the storage pond, Peggy shall receive the stock and irrigation water rights attached to the hayfield, and Mike shall receive the stock right attached to his property.
- 11. Within 30 days of the date of this Decree, the parties shall photograph their water rights and document the division of their water rights so that it can be properly recorded. If it is necessary to hire a water rights attorney to accomplish this, the parties shall equally share the cost of such attorney.
- 12. Mike shall be awarded the proceeds from the sale of the Bob Marshall outfitting business.
  - 13. The Baggs Creek outfitting business, the private ranch use days, and the

- e. Vet bill at Valley Veterinary Clinic for his animals
- f. Personal loans held by First Security Bank of Deer Lodge, including
  - i. Installment loan #5020773
  - ii. Agriculture loan #6020532
  - iii. Agriculture loan #6022520
  - iv. Agriculture loan #6021563
  - v. Installment loan #6022312
- g. Any other debt in his name not mentioned herein or any other debt associated with assets received by him not already mentioned herein
- 24. Peggy shall be responsible for the following debts:
  - a. Citi Card Credit Card
  - b. Any other debt in her name not mentioned herein or any other debt associated with assets received by her not already mentioned herein
- 25. The parties shall be solely liable for the debts distributed to them by this decree.
- 26. The parties shall immediately cancel all joint credit cards, joint department cards, joint gasoline cards, and any other type of joint credit card or joint account acquired during the marriage. Both parties shall destroy any card related to such account(s) and shall incur no further debt on them.
- 27. The parties shall execute any and all documents necessary to effectuate the provisions of this decree.
  - 28. All temporary orders are hereby vacated.

1	DATED this Place day of March, 2022.
2	
3	Hon. Ray
4	Cc: Autumn Thompson-Irish, Esq.
5	Lewis K. Smith, Esq.
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17.	and the state of t
18	
19.	STATE OF MONTANA }ss.
20	County Of Powell  1, JILL PAULL Clerk of the District Court of the Third  Judicial District of the State of Montana, in and for  Judicial District of the State of Montana, in and for
21	the County of Fowers and correct copy of the original as above is a full, true and correct copy of the original as
22	the same appears in the sa
23	By Clerk Deputy
24	
25	
26	
27	

TOTAL TOTAL

1	EXHIBIT "2"		
2	PERSONAL PROPERTY AWARDED TO WIFE		
3 4 5 6 7 8	<ul> <li>1998 red Sundowner trailer (VIN (VIN #135VE2521W1VAZ693)</li> <li>Cows with Bar X7 cattle brand</li> <li>Three (3) old horses (Moxie, Gypsy, &amp; Iris)</li> <li>Dog (Josie)</li> <li>1999 white horse trailer (VIN #1DVEH1820XK036150)</li> <li>33 goats &amp; 14 kids</li> <li>Chickens</li> <li>Red Thorson big cow/calf chute</li> </ul>		
9 10	<ul> <li>Red Magna Force air</li> <li>compressor</li> <li>.22 Nylon Remington (Serial #2496965)</li> </ul>		
11	Remington .22 Nylon     Remington 17 HMR (Serial #29899584M) (Model 597)		
12	• 250-3000 7 MMX (custom		
13 14	made) • 25-20 Winchester Model 65 • Schmidt Rubin Model  (Serial #1003108) • Schmidt Rubin Model  1896/11-1911-120 (Stock  #122985)		
15 16	• 1-Iver Johnson .410 single shot • Marlin .22 Mag Model 57-M (Garrett)		
17	• 7 mag Centurion • Smith & Wesson .22 long rifle (Serial #K.5613)		
18	• Ruger .22 Single 6 (Serial • Custom 30.06 (Serial #421851) #126403)		
19	• 20-gauge double barrel • .22 mag Hawthorne Model 814		
20   21	Stevens Model 240 .410     Schofield 32 Serial #2921		
22	<ul> <li>Iver Johnson .22 pistol Model</li> <li>55 (Serial #C20363)</li> <li>Garate Anitua 32-20 US</li> <li>Service (Serial #37931)</li> </ul>		
23	• Half (1/2) of the 110 Conibear • Half (1/2) of the #4 330		
24	<ul> <li>Half (1/2) of the #3 and #4</li> <li>Half (1/2) of the #2 coil</li> </ul>		
25	traps springs  Half (1/2) of the fleshing springs  Half (1/2) of fox, coyote wire		
<ul><li>26</li><li>27</li></ul>	boards stretchers  • White, plastic skunk traps • One catch pole		

- 11		
1	<ul> <li>Dewalt chainsaw with batteries</li> </ul>	<ul> <li>Big flatb (#3F624</li> </ul>
2	<ul> <li>Husqvarna chainsaw 5/N 2013</li> </ul>	• Irrigation
3	1300069 965 9683-00	D
4	Washing machine	<ul><li>Dryer</li><li>Chest free</li></ul>
5	Wooden desk	holding 1
6	<ul> <li>Small chest freezer under shed</li> </ul>	• Upright
7	Microwave	Wooden
8	Old wooden stand radio	<ul> <li>Old woo player</li> </ul>
-	Computer	<ul><li>Printer</li></ul>
9	Laptop	<ul> <li>Sewing</li> </ul>
0	Exercise bike	<ul> <li>Truck be</li> </ul>
1	<ul> <li>Rolls of bicentennial quarters</li> </ul>	<ul> <li>Rolls of</li> </ul>
	300-gallon gas tank	<ul> <li>One rou</li> </ul>
2		• One squ
3	<ul> <li>Two (2) barrel saddles</li> </ul>	• Rafter 7
4	Arena fence	• Green ca
15	Green, iron pasture drag	• Split rail 2, 12' fe
	Metal roofing	
16	<ul> <li>Bullets for guns awarded to her</li> </ul>	<ul> <li>Toyota s</li> </ul>
7	in this list	
18	<ul> <li>Tires given to Wife from Jason for babysitting (16 inch tires)</li> </ul>	<ul> <li>Plastic pused for</li> </ul>
19	Brown, 8-foot panels	
20		
21		
22		
23	<u></u>	
24		
25		

27

- ed trailer (Kline's) T6F2920431021892)
- n pipe equipment
- eezer on deck her meat & veggies
- freezer
- kitchen table
- den stand record
- machines
- ed camper
- nickels and dimes
- nd bale feeder
- are bale feeder
- horse brand
- alf creep feeder
- ls to fill gaps left by eder panels
- summer tires
- oortable dog boxes goats

1 2 3	<ul> <li>Browning .308 lever action (Serial #40913K73)</li> <li>Winchester lever Action from Hot Springs (Mike</li> </ul>	<ul> <li>Half (1/2) of the 110 Conibear traps</li> </ul>
4	won) • Half (1/2) of the #4 330	<ul> <li>Half (1/2) of the #3 and #4 traps</li> </ul>
5	Conibear traps  1 or 1 ½ jumps	• #1 ½ traps
6	• #1 ½ coil springs	<ul> <li>Half (1/2) of the #2 coil springs</li> </ul>
7	<ul> <li>#2 &amp; #3 DBL long springs</li> </ul>	MB 750 wolf traps  AX 15(1/2) = 6 fleeting boards
8	Power Ram snares	<ul><li>Half (1/2) of fleshing boards</li><li>Muskrat wire stretchers</li></ul>
9	<ul><li>Wood stretchers</li><li>Mink wire stretchers</li></ul>	<ul> <li>Half (1/2) fox, coyote wire</li> </ul>
10	William Wife Stretchold	stretchers
11	Beaver wire hoops for trapping	Trapping wax
12	Wire snare accessories	One catch pole
13	New Holland grain grinder	<ul> <li>Plow blade Model LR Series 038871</li> </ul>
14	(Model 354)  • Case International baler	Belarus tractor Model 822
15	Model 8550 (Serial # A14BBBB)	(Serial #236041)
16	Belarus tractor Model 825	<ul> <li>New Holland self-propelled</li> </ul>
17	Serial #340168	baler Model 1281 (Serial #92282)
18 19	200-gallon century weed sprayer	<ul> <li>John Deere disk (Model T0210)</li> <li>Serial # 024959A</li> </ul>
	3 reel vicon rake (Serial)	<ul> <li>2 reel vicon rake</li> </ul>
20	#4300320111)	G. 11. 1. (a. a. a. A. G. 170)
21	• Spring tooth harrow plow	• Stihl chainsaw (MS 170)
22	Model K (Serial #36871)  • 6 <sup>th</sup> Freezer	• Chest freezer on deck (holding
23	Metal desk	Husband's meat)
24	<ul> <li>Chest freezer (holding Husband's furs)</li> </ul>	• Artwork (9 pieces)
25	Hybrid mule/whitetail deer	<ul> <li>Mountain lion rug</li> </ul>
26	mount	Bobcat and bird mount
27	Lynx cat rug	Doocat and one mount

1	Grizziy bear mount
2	Mountain goat mount
1	Snowy owl mount
3	• Fax machine
4	100-gallon portable gas tank
5	<ul><li>One round bale feeder</li><li>Red calf table</li></ul>
l	• Red can table • Two (2), 12' feeder panels
6	Radial Arm Saw
7	Drill Press
8	• ¾" Socket Set
9	• 11/16-2" wrenches
	• 1/4, 3/8, 1/2 ratchets and
10	sockets
11	Large and small anvils
12	<ul> <li>Flatbed pickup box/bed</li> </ul>
13	
14	Fencing Business - Inventory
15	6 to 8 ton old barbwire
16	Approx. 50 wood posts 6 1/2' - 8'
17	New barbwire
18	New electric wire
19	Fiberglass post
20	Various parts for electric fence
21	
22	
23	
24 25	
26	
	11 ·

- Grizzly skull
- Sheep mount
- Otter mount
- Coins in leather purse
- 500-gallon gas tank
- One Square bale feeder
- Elk antlers in shed
- Books
- Reloading equipment and supplies
- Sockets and wrenches of various sizes
- Bed and dresser
- Vice and metal stand
- Wire feed welder

1	Outfitting Business - Equipment
2	1- 17' metal canoe
3	1 green tent
4	1 white tent
5	2 storage boxes
6	2 barrel stoves
7	1 – 8' water faucet
8	2 dog boxes 4' x 4'
9	4 rubber tire feeders
10	Misc. 2x6 – 20*
11	Small hay feeders
12	1 thorsen hay feeder
13	6 - 8 tent cots
14	3 packsaddles
15	4 riding saddles
	Man tys
16	
17	
18	Pack boxes
19	Lanterns
20	Kitchen boxes
21	Various kitchen utensils
22	Dishes, pots and pans
23	4 blocks salt
24	6-50lb bags of hay salt
25	Horseshoeing equipment
26	Air tank
27	Sawzall
28	
	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE

Drills Saws Grinder and misc. powertools Booth for shows Chairs rubbermat Table and display Rubbermaid box with misc. for shows 

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE OF DISSOLUTION OF MARRIAGE