

IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT CAUSE NO. DA 22-0709

IN RE THE MARRIAGE OF)
)
CHELSEA RENAE WILSON,)
)
Petitioner/Appellee,)
)
and)
)
MARK ALAN WILSON,)
)
Respondent/Appellant.)

**OPENING BRIEF OF
RESPONDENT AND
APPELLANT**

On Appeal from the Montana Thirteenth Judicial
District Court, Yellowstone County
Lower Court Docket No. DR-56-2021-409
Before District Judge Donald L. Harris

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I. INTRODUCTION

Appellant, Mark Alan Wilson (Mark) objects to the District Court's *Findings of Fact, Conclusions of Law and Final Decree of Marital Dissolution* (Decree) entered on August 26, 2022. Mark objects to the distribution of assets and liabilities by the District Court in the Decree. Mark objects to the District Court's determination to award the Appellee Chelsea Renae Wilson (Chelsea) an interest in the pre-marital equity in the residence he purchased prior to the marriage. Mark objects to the District Court's valuation of his Dodge Ram vehicle. Mark objects to the District Court's property distribution and assets that the Court erred by not adopting his proposed property distribution.

Mark objects to the District Court's award of attorney's fees and costs to Chelsea. The District Court awarded Chelsea the recovery of her attorney's fees and costs incurred in the dissolution matter, even though she had not pleaded the issue. The award of fees and inequitable and unconscionable.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the lower court erred in its distribution of marital assets and liabilities.
2. Whether the lower court erred in awarding attorney's fees that had not been plead by the awarded party.

III. STATEMENT OF THE CASE

Mark and Chelsea were married in 2016. The Decree of Dissolution of Marriage was issued in August 2022. The District Court erred when it divided the

marital estate by omitting pre-marital equity that Mark had in the marital residence and by adopting Chelsea's valuation of the parties' Dodge Ram.

The District Court erred when it awarded Chelsea her reasonable attorney's fees and costs, even though the attorney's fees and costs had not been pleaded by Chelsea, had not been requested in discovery, and were inequitably awarded.

Mark filed a timely objection to the award of attorney's fees. Mark challenged the award of attorney's fees. He challenged the reasonableness of the attorney's fees. Hearing on that matter is scheduled in District Court on February 15, 2023. There is no final Order on the attorney's fees issue at this time.

IV. STATEMENT OF FACTS

Mark and Chelsea were married on November 10, 2016. The parties have two children: A.C.W. born in May 2014 and C.A.W. born in May 2017. Parenting of the children and related matters was largely resolved via stipulation and the report of a *Guardian ad Litem*. The parties agreed to the *Guardian ad Litem*'s Proposed Final Parenting Plan.

The parties' marriage was relatively brief. The Court determined that it would divide certain assets and liabilities that were accrued prior to marriage. The District Court declined to award Mark with premarital equity in the home in the amount of \$60,837. Mark requested this amount be offset from the equity the Court analyzed due to the pre-marital nature of the asset. TR: Page 212 (lines 22-25)- Page 213(lines 1-10).

The District Court adopted Chelsea's valuation of the 2012 Dodge Ram.

Mark objected to those findings. Mark asserts that the District Court abused its discretion in adopting her valuation.

The District Court determined to “equalize” the marital estate. The District Court’s equalization figure from Mark to Chelsea was \$81,750.84. Mark objects to the District Court’s equalization as the Court’s equalization does not factor in the pre-marital equity of the home and because it uses Chelsea’s valuation of the Dodge Ram. This distribution is not equitable. Mark asserts that his proposed distribution of assets and liabilities, Exhibit A, was an equitable distribution of the actual assets and liabilities of the marriage. TR: Page 258. Lines 7-13.

Mark objects to the District Court’s award of attorney’s fees and costs to Chelsea. See Findings of Fact at Paragraph 28. The District Court found that: “At trial, Chelsea requested that Mark be required to pay for her attorney’s fees and costs.” See Findings of Fact at Paragraph 28. Mark objected to the award of reasonable attorney’s fees in his *Verified Motion to Amend Judgment and Objection to Attorney’s Fees*. See Doc. 101.

V. SUMMARY OF THE ARGUMENT

The District Court erred in its valuation of the marital estate, inclusion of pre-marital equity in the marital estate, and in awarding attorney’s fees to Chelsea which resulted in an unequal distribution of assets and liabilities.

VI. STANDARD OF REVIEW

This Court will not set aside a District Court’s Findings of Fact regarding the division of marital property unless they are clearly erroneous, giving due

regard to the opportunity of the court to judge the credibility of witnesses. *In re Marriage of Kessler*, 2011 MT 54, ¶15, 359 Mont. 419, 251 P.3d 147. A finding is clearly erroneous if it is not supported by substantial evidence, if the District Court misapprehended the effect of the evidence, or if review of the record convinces this Court that the District Court made a mistake. A District Court has broad discretion in determining the value of property in a dissolution as well as the distribution itself, as long as it is equitable. *In re Marriage of Walls*, (1996), 278 Mont. 413, 925 P.2d 483.

Absent a clearly erroneous finding of fact, a District Court's distribution of property is affirmed, unless the District Court has abused its discretion. *Kessler, supra*. A District Court abuses its discretion when it acts arbitrarily without conscientious judgment, or so exceeds the bounds of reason as to work a substantial injustice. Here, Mark asserts that the District Court's findings regarding the division of property were clearly erroneous and that the District Court abused its discretion in awarding attorney's fees and costs to Chelsea.

ARGUMENT

A. The District Court Erred in its Property Distribution

The property distribution adopted by the District Court should be dissolved. The District Court should adopt Mark's proposed property distribution. The District Court's failure to do so was error.

The District Court erred in its property distribution. Pursuant to § 40-4-202, MCA, the court must equitably apportion between the parties the property and

assets belonging to either or both. The Court awarded Chelsea approximately 87% of the marital estate based on Mark's calculations—even prior to her trial claim for attorney's fees and costs. TR: Page 248, lines 1-22; Exhibit Y. The District Court's award of attorney's fees and costs is an unconscionable distribution of assets and liabilities. This is especially the case considering Chelsea's request that Mark reimburse her for \$45,819.56 in attorney's fees and costs as of September 2, 2022. [Doc. 95.03].

The District Court improperly excluded pre-marital equity Mark had in the marital home. The District Court cited § 40-4-202(1), MCA in the Decree. Although the District Court did not cite any specific case law supporting the property distribution in the Decree, the District Court is certainly aware of *In re Marriage of Funk*, 363 Mont. 352 (2012) and Chelsea is likely to cite to that case in her Response.

But, nothing in that decision directs that gifted and inherited property be equally apportioned. Such an application would essentially abrogate the requirements of § 40-4-202(1), MCA, and move Montana toward a *de facto* community property state. That is what happened in this matter at District Court.

This Court noted that its decision in *Funk* only clarifies that pre-acquired, gifted, or inherited property is to be included in the marital estate when determining property distribution, though with specific statutory factors to be considered when determining an equitable distribution of the estate. This Court specifically noted that “[t]he party claiming ownership of the pre-acquired,

bequested or gifted property is entitled to argue that it would be equitable to award him or her the entirety of such property.” *Funk*, ¶ 19. *Rintoul v. Rintoul*, 2014 MT 210, ¶ 11, 376 Mont. 167, 170, 330 P.3d 1203, 1206, 2014 WL 3843297. The District Court considered the pre-marital equity in the residence. The District Court abused its discretion when it included all such equity in the property distribution.

The District Court erred in its conclusions regarding Mark’s income. His income of up to \$21,000 per month was based on one month’s paystub. This was a gross payment amount and did not include expenses. His pay fluctuated based on the availability of work. He earned \$100,880 in 2021. TR: Pages 163, lines 4-25; Page 164, lines 1-25; Page 165, lines 1-6; Exhibit K. Thus incorrect finding skewed the District Court’s analysis with regard to the assets and liabilities it would award the parties.

Mark’s proposed asset and liability distribution was admitted as Exhibit A. Mark’s proposed property distribution was fair, equitable, not unconscionable, and supported by the exhibits he admitted into evidence. Mark’s proposed distribution fairly and equitably divided the marital assets and liabilities. His proposed distribution was appropriate under the factors in § 40-4-202, MCA.

The District Court erred when it valued Mark’s Dodge truck. The District Court improperly excluded pre-marital value in the truck to Mark’s detriment. The District Court did not take the truck’s current state into consideration.

Mark testified that the truck has been damaged in an accident prior to trial.

The truck was not in a drive-able condition at the time of trial. TR: Page 215, lines 20-25. The truck was damaged. TR: Page 216, lines 1-10. Mark testified that the truck had negative value. TR: Page 220, lines 7-11. Mark described that the parts added to the truck post-purchase were just repairs. The truck has significant mileage. Mark provided a valuation for the truck. TR: Page 220, lines 12-25; Page 221, lines 1-25; Page 22, lines 1-4; Exhibit E. Mark's valuation was supported by the evidence and testimony.

The general rule for valuation of the marital estate is that it should be determined at or near the time of dissolution. *In re the Marriage of Swanson*, 220 Mont. 490, 716 P.2d 219 (1986). Chelsea's valuation was mere speculation and the District Court abused its discretion in not accounting for the damage of the vehicle and not adopting Mark's valuation.

B. The District Court Erred in Awarding Chelsea Her Attorney's Fees and Costs

Chelsea filed the Petition for Dissolution in this matter. See *Petition for Dissolution* (Doc. 1). Her *Petition for Dissolution* notes as follows: The parties should be responsible for their own attorney fees and costs incurred in this action." *Id.* Chelsea did not seek to amend her Petition for Dissolution to include attorney's fees. Chelsea is precluded from requesting the fees at the time of trial—which appear to have been first raised in her Proposed Findings of Fact submitted on April 1, 2022. [Doc. 62].

The parties are bound by the admissions in their pleadings. *In re the*

Marriage of Baker, 356 Mont. 363, 369, 234 P.3d 70, 74 (2010). It is a general rule that statements in a pleading are conclusive against the pleader. *Meadow Lake Estates Homeowners Ass'n v. Shoemaker*, 341 Mont. 345, 357, 178 P.3d 81, 89-90 (2008) (quoting *Anderson v. Mace*, 99 Mont. 421, 427-28, 45 P.2d 771, 771-775 (1935)). A party is bound by the party's admissions in the party's pleadings. *C.R. Waver v. Advanced Refrigeration*, 361 Mont. 233, 236, 257 P.3d 378, 381 (2011) (citing *Farm Credit Bank of Spokane v. Hill*, 266 Mont. 258, 264, 879 P.2d 1158, 1161 (1993)).

Chelsea did not present evidence that would entitle her to an award of fees. She did not provide evidence of payment for loaned attorney's fees. She was specifically asked about liabilities in discovery. She failed to list any attorney's fees debt. See Doc. 101. It was not until the post-trial property and debt position that she alleged the debt in pleadings. See Doc. 85.

Indeed, it is undisputed that Chelsea did not initially request that Mark pay her attorney's fees. TR: page 110-111. The attorney's fees issue was clearly and definitively addressed on Chelsea's cross-examination. The Petition for Dissolution was filed on May 12, 2021. [Doc. 1]; TR: Pages 149-150, lines 23-1. The Verified Petition for Dissolution specifically stated that the parties should be responsible for their own attorney's fees and costs incurred in this action. [Doc. 1].

Chelsea did not provide any documentation related to any debts for the attorney's fees as of trial. She alleged that the fees were a "loan" from her father without providing any supporting documentation of the loan, or the necessity of

paying the loan back. She did not disclose any debt as part of the marriage or a debt that she had as of the trial date. The alleged attorney's fees debt had not been produced by Chelsea as part of her discovery responses in the case. TR: Page 150, lines 2-23. Essentially, the request for attorney's fees was sprung on Mark prior to trial despite her pleadings, discovery, and trial evidence failing to provide for the amounts. The District Court's award of these fees, disclosed post-trial, was unconscionable.

Further, Chelsea acknowledged that her attorney's fees and costs were increased due to repeated communications through counsel about Mark being able to see their children and with regard to a contempt filing from Mark. TR: Pages 199 (line 1)- Page 201 (line 16). Chelsea unnecessarily increased the cost of litigation. The Court's Order requiring that Mark be responsible for her attorney's fees and costs is inequitable.

Montana is a notice pleading state. The key inquiry in evaluating a pleading's sufficiency is whether the pleading gives adequate notice to an adverse party enabling it to prepare a responsive pleading. *Fossen v. Fossen*, 2013 MT 299, 372 Mont. 175, 311 P.3d 743. Montana adheres to the notice pleading requirements of "a short and plain statement of the claim showing that the pleader is entitled to relief ..." (Rule 8(a), M.R.Civ.P.), the claim must give notice to the other party of the facts which the pleader expects to prove, and the facts must disclose the presence of all the elements necessary to make out a claim. See *Butte Country Club v. Metropolitan Sanitary & Storm Sewer Dist. No. 1 et al.* (1974),

164 Mont. 74, 77, 519 P.2d 408, 409; *Story Gold Dredging Co. v. Wilson* (1935), 99 Mont. 347, 42 P.2d 1003; *267 *Union Bank & Trust Co. v. Himmelbauer et al.* (1923), 68 Mont. 42, 216 P. 791; accord *Jones v. Community Redevelopment Agency of the City of Los Angeles* (9th Cir.1984), 733 F.2d 646 (interpreting Federal Rule 8(a)(2), Fed.R.Civ.P.). *Mysse v. Martens*, 279 Mont. 253, 266–67, 926 P.2d 765, 773 (1996).

Chelsea failed to provide notice of her intent to seek fees in her Petition for Dissolution. She never amended the Petition for Dissolution. She failed to amend her Petition to seek the recovery of fees pursuant to Rule 8 M.R.Civ.P. Thus, she is precluded from an award of fees at trial.

The Final Declaration of Disclosure statute provides that each party in a dissolution action shall serve the other party a final declaration of disclosure. See § 40-4-253, MCA. The failure of a party to disclose an asset or liability on the final declaration is presumed to be grounds for the Court, without taking into account the equitable division of the marital estate, to award the undisclosed liability to the opposing party. Chelsea’s admissions at trial demonstrate her failure to disclose the alleged liability. Further, in Chelsea’s *Post-Trial Property and Debt Position*, she appears to have failed to account for this debt. [Doc. 85]. The Court erred when it determined to apply that undefined debt, which was not plead or disclosed, to Mark.

The District Court Ordered that “It is fair and equitable to apportion their marital state equally between the parties.” See Decree at ¶27. The Court’s shifting

of Chelsea's attorney's fees to Mark resulted in a disproportionate award of the marital estate to Chelsea. The requested award of more than \$45,000 in fees was not accounted for by the District Court in its Decree. The actual number she would be entitled to was not listed nor specifically requested at trial. Thus, it is inequitable to award the requested fees.

Chelsea's award of attorney's fees and costs was also Ordered in violation of § 40-4-110, MCA. The Court may order a party to pay a reasonable amount for professional fees. *Id.* The purpose of that section is to ensure that the parties have timely and equitable access to marital financial resources incurred before, during, and after a proceeding. *Id.* The District Court did not properly analyze the parties' income with regard to earnings nor did it thoroughly address the applicable statute when it awarded Chelsea her reasonable attorney's fees and costs.

CONCLUSION

The District Court's Decree was in error. This matter should be remanded with an Order to adopt Mark's proposed property distribution. The District Court's award of attorney's fees to Chelsea should be vacated and the District Court should Order that both parties be responsible for their own attorney's fees and costs.

Dated this 8th day of February 2023.

By: /S/ DANIEL BALL
Daniel Ball
Attorney for Plaintiff/ Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed:

1) with a proportionally spaced Times New Roman text typeface of 14 points; and is double spaced, except of footnotes and quoted indented material which have a line spacing of 1.0;

2) and the word count as calculated by WordPerfect is not more than 10,000 words, excluding table of contents, table of citations, certificate of service, certificate of compliance, and appendix.

DATED this 8th day of February 2023.

HENDRICKSON LAW FIRM, P.C.
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By: /S/ DANIEL BALL
Daniel Ball
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and correct copy of the BRIEF OF APPELLANT AND RESPONDENT with the Clerk of the Montana Supreme Court and that a true and correct copy of the BRIEF OF APPELLANT AND RESPONDENT was served by mail upon all parties or opposing counsel of record at their address or addresses as follows:

James Graves
Attorney at Law
2722 3rd Avenue N., Suite 301
Billings, MT 59101

One the 8th day of February 2023.

HENDRICKSON LAW FIRM, P.C.
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By: /S/ DANIEL BALL
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Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Daniel O.C. Ball, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 02-08-2023:

James Robert Graves (Attorney)
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Dated: 02-08-2023