

FILED

07/18/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0671

APPENDIX A

HON. HOWARD F. RECHT
District Judge, Dept. No. 1
Twenty-First Judicial District
Ravalli County Courthouse
205 Bedford Street, Suite A
Hamilton, Montana 59840-2853
Phone (406) 802-7188

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

IN RE THE MARRIAGE OF:

SHERRI L. FROST,
Petitioner,

and

KEVIN ROY FROST,
Respondent

with

FROST LIMITED PARTNERSHIP,
Joined as additional Respondent

Cause No. DR 15-165
Department No. 1

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

The Petition for Dissolution of Marriage came before the Court for trial on June 13, June 14, and June 23, 2022. The Petitioner, Sherri Frost, appeared in person with her attorneys, Brandi R. Ries and Emily A. Lucas of RIES LAW GROUP, P.C. The Respondent appeared in person with his attorneys, Natalie Hammond and David Cotner of COTNER LAW LLC, and the additional Respondent, Frost Limited Partnership, was represented by counsel, Reid Perkins of WORDEN THANE.

Witnesses were sworn and testified and exhibits were introduced. The Court, having considered the pleadings filed in this matter and the evidence presented at trial, finds the following:

FINDINGS OF FACT

1. The Petitioner (“Sherri”) filed her Petition for Dissolution of Marriage on June 17, 2015. The Respondent (“Kevin”), through his attorney, Gail Goheen, acknowledged service of the Petition and Summons and Temporary Economic Restraining Order on July 16, 2015. Kevin filed his Response to the Petition for Dissolution of Marriage on August 4, 2015.
2. The parties had married on September 17, 1988.
3. In the early morning of February 9, 2016, Kevin kidnapped Sherri as she was leaving Brian Moore’s residence. During the course of the kidnapping, Kevin physically assaulted Sherri and held her against her will. Sherri believed that Kevin was going to kill her and left evidence of her DNA (in the form of spit and hair) in various locations (such as vehicles and the barn) where Kevin had kept her. Sherri testified that she believed she was going to be killed by Kevin so she left her DNA with the hope that someone would know what happened to her.
4. While Kevin was transporting Sherri during the kidnapping, Sherri tried to escape from the moving vehicle. In order to keep Sherri in the vehicle, Kevin grabbed her by the arm, pulling her arm behind her head. Kevin caused physical injury to Sherri’s shoulder and elbow.
5. Kevin ultimately turned himself into law enforcement after he dropped Sherri off at the hospital.
6. Kevin was convicted of Aggravated Kidnapping, a felony, and Partner Family Member Assault, a misdemeanor. On June 29, 2017, Kevin was sentenced to the Department of Corrections for 30 years with 25 years suspended in Ravalli County District Court Cause No.

DC-16-37. Kevin was incarcerated in the Montana State Prison following sentencing from June 9, 2017, until September 16, 2020.

7. Separately, Sherri has brought a civil suit against Kevin (Cause No. DV 18-41, MT 21st Judicial District, Ravalli County) seeking tort damages. This matter has not yet gone to trial. Herein, the Court is not adjudicating any claim made by Sherri therein, and the equitable distribution of the marital estate ordered by the Court herein is not intended to be nor should it be found to be compensation for any tort claim asserted by Sherri. Similarly, family support previously ordered herein or ordered by the Court herein is not intended to be nor should it be found to be compensation for any tort claim asserted by Sherri.

8. On April 19, 2017, Kevin and Sherri entered into a Marital Property Settlement Agreement (MPSA). The parties agreed to rescind the MPSA in August 2017.

9. In February 2018, Kevin filed a motion with the Court asking for the dissolution proceedings to be stayed pending his incarceration. On April 2, 2018, the Court entered its *Order Granting Stay*, ordering that the dissolution proceedings were stayed until January 3, 2019, when the Court would re-consider the stay.

10. On February 5, 2019, Kevin filed another motion to stay the proceedings due to his incarceration. On May 13, 2019, the Court bifurcated these proceedings and entered its *Interlocutory Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage*. As a result, the parties' marriage was dissolved as of May 13, 2019, but reserved ruling on the other outstanding issues (including distribution of the marital estate, maintenance and payment of attorney's fees and costs).

11. In February 2020, Frost Limited Partnership ("FLP") was joined as a party to this action. On May 15, 2020, Sherri filed her Amended Petition for Dissolution of Marriage. On June 5,

2020, FLP acknowledged service of the Amended Petition. The FLP filed its Answer and Counterclaims to Sherri's Amended Petition for Dissolution on or around June 26, 2020.

12. There were two children born of the marriage Katelyn Frost ("Katelyn") and Treyden Frost ("Treyden"), both of whom are not minors.

13. Kevin and Sherri were married when they were both attending college in Seattle. Following the parties' marriage, Kevin worked as a claims adjuster with Farmer's Group, Inc. and Sherri worked outside of the home, mostly as a dental hygienist. Sherri was also the primary caregiver for the parties' children. When Sherri was not working, she was providing childcare, cooking, cleaning, doing housework and otherwise taking care of the parties' home and property.

14. Kevin began his career with Farmer's Group Insurance in September 1990 in the Seattle, Washington area. At the time of the dissolution filing, Kevin was employed as a General Adjuster handling liability claims.

15. In 1996 Kevin and Sherri moved back to Montana to be closer to their families and as they planned to start their own family. Their daughter, Katelyn, was born in 1997 and their son, Treyden, was born in 1999. Kevin continued to work for Farmer's Group Insurance.

16. Although both parties had opportunities to develop their individual careers in Seattle, Kevin persuaded Sherri to relocate back to Montana so they could help Kevin's parents establish and grow the family ranch operation. The Frost family anticipated that ranch would be inherited by their children, Kevin and Randy Frost.

17. In addition to working for Farmers Insurance Group, Kevin was elected to the Board of Ravalli Electric Cooperative and served 10 years in this capacity. He was appointed as vice president for his last two years.

18. In addition, Kevin and Sherri both provided labor for FLP and the Frost Ranching Corporation (FRC).

19. When Kevin's father's (George) health began to fail in 2011 and 2012, Kevin committed more time to assist his parents with day-to-day type ranching operations. George Frost passed away on August 14, 2015.

20. George's father, Albert Frost, originated the Frost family ranch. George and his wife, Marilyn, inherited a portion of the ranch but acquired sole ownership after buying out the interests of George's siblings.

21. George and Marilyn sought legal advice concerning their estate plan, which included their desire to keep the ranch in the family. In 1998, they created Frost Limited Partnership (FLP), a Montana limited partnership, as a means of furthering their estate planning goals. Frost Ranching Corporation (FRC), a Montana corporation, was listed as the general partner, and George and Marilyn as limited partners. Such limited partnership arrangements were at the time a commonly-used estate planning tool for the purpose of minimizing the tax consequences associated with transferring a family ranch to the next generation.

22. On December 7, 1999, George and Marilyn gifted to Kevin and Randy Frost a forty percent (40%) limited partnership interest in the FLP. George and Marilyn each retained a nine and one-half percent (9.5%) limited partnership interest. FRC was granted the remaining 1% interest. Kevin's 40% partnership interest in the ranch was valued at \$480,808. This amount was documented as the parties' initial contribution into the partnership capital account.

23. Following George's death in 2015, Marilyn inherited George's interest in FLP. She is now also the sole owner of FRC.

24. The nature of Kevin's true partnership interest was disputed. He now claims to remain a limited partner but other evidence suggests that he is effectively the general partner. The MPSA filed by the parties on April 19, 2017, designated Kevin as a general partner and included a provision making the agreement contingent upon Kevin transferring to Sherri 80 acres of land owned by FLP, a transfer only a general partner could make. By filing this agreement with the expectation that the Court would accept and act upon it, the parties represented that Kevin was a general rather than a limited partner. Although this MPSA was later rescinded, it was not rescinded due to a claimed error of fact or of law. At no time did any party move the Court to amend the agreement on the basis that it contained an error of fact or of law.

25. Sherri also testified that Kevin held himself out as having general partnership authority.

26. On the other hand, evidence presented at trial included a *Consent of Spouse* signed by Sherri in 1999 indicating that Sherri understood that Kevin was a limited partner, and testimony of Gail Goheen, Esq., that the general partnership representation in the MPSA was a mistake not discovered at the time.

27. The Court finds that it does not need to resolve this dispute at this time in order to effectuate an equitable distribution of the marital estate.

28. After George's health began to fail, and especially after he died, Kevin assumed managerial operation of the ranch. Regardless of whether he was at the time and afterwards a general or limited partner, the evidence indicated that he carried out essentially all the operational functions of the ranch. His mother, Marilyn, testified that she consulted with him concerning all important matters regarding the ranch, and that he had the authority to take all the actions he took. Kevin's ranching duties included day-to-day operations of the ranch by keeping

the livestock healthy, feeding them, and overseeing breeding. Additionally, he repaired and installed fencing, irrigated, and helped to maintain the fields leased by FRC.

29. Kevin received occasional distributions from FLP during the course of the marriage.

30. Kevin and Sherri negotiated a land swap in 2007 to obtain more land to grow hay for the ranching operation. Kevin and Sherri worked together to purchase additional land in May 2015 for this same purpose. On the deeds for the properties acquired by FLP in May 2015, Kevin's name and the parties' marital residence was the person and address listed as the return address.

31. Although Kevin minimized Sherri's assistance with ranch operations, Sherri credibly testified that she did assist with various activities customarily associated with a cattle ranch. Both assisted with domestic duties such as cooking, cleaning, and taking care of the children. The Court finds that efforts of both parties to maintain their household, to provide income for the family, and to maintain their assets should be and is deemed to be of equal value.

32. Testimony at trial indicated that there was not a strict separation between certain livestock and personal property owned by the ranch and that owned separately by the parties and used on the ranch. Such blurring of ownership and use is not unusual for a family ranch.

33. Kevin is in good health and is capable of working.

34. Upon his release from prison, Kevin returned to Hamilton and began working as an employee for FRC on September 17, 2020, making \$1,500.00 per month.

35. In 1995 Sherri graduated with an associate degree in dental hygiene science from Pierce Community College in Tacoma, Washington. She worked as a dental hygienist throughout the marriage and had worked for Dr. Gannon for approximately 13 years at the time of the filing of this matter.

36. At trial, Sherri credibly testified that as a result of the kidnapping and personal injuries inflicted on her by Kevin, she is no longer able to work even though her employer, Dr. Gannon, attempted to accommodate her disabilities. She did attempt to return to work but has been unable to work since 2018.

37. Sherri suffers from Post-Traumatic Stress Disorder (PTSD), and experiences ongoing pain and physical limitations.

38. Sherri is unable to be self-supporting at this time.

39. Sherri was unable to make the \$3,300 monthly mortgage payments on the parties' marital home. The parties' real property was at risk of foreclosure. In January 2019, Sherri negotiated a modification to the mortgage on the real property so that the monthly mortgage payments were reduced to \$850 per month. As Sherri had no income, she had to deplete the funds in her retirement account to provide for the monthly mortgage payments and other living expenses.

40. Sherri also incurred significant medical and credit card debt following the kidnapping and assault by Kevin and was forced to take personal loans from her family to support herself.

41. On November 27, 2019, the Court entered an Order that provided for Sherri to receive 100% of the monthly payments that were paid into the escrow account at Insured Titles as temporary family support. The Court finds that these payments were for temporary family support as they were payments that were necessary for Sherri to be able to provide for her own living expenses and to maintain the parties' marital estate (i.e., make the monthly mortgage payments on the marital home property). The Court finds that these funds are not to be considered as an advance distribution of the marital estate to Sherri. Additionally, this Order provided for Sherri to receive 100% of the funds held by Insured Titles for payments already received from the sale of the Philipsburg property. The Court finds that based upon the parties'

agreement, these funds are for temporary family support and are not to be considered as an advance distribution of the marital estate to Sherri.

42. On December 9, 2019, the Court entered an Order in which the Court required that the parties liquidate \$100,000 from the marital estate with payments of \$40,000 being paid to each parties' attorney for payment of attorney's fees and an additional \$20,000 to be paid to Sherri for living expenses. The Court finds that it is equitable for each party to be credited in the marital estate distribution with the \$40,000 attorney's fees payment as an advance distribution to each respective party. The Court finds that the \$20,000 payment to Sherri for living expenses should be considered temporary family support and should not be considered as an advance distribution of the marital estate to Sherri.

43. On June 9, 2020, Sherri filed an Emergency Motion for Court Ordered Sale of Real Property as a result of Kevin delaying the liquidation of the funds from the marital estate. On June 12, 2020, the Court entered an Order authorizing Sherri to sell the real property located at 982 Lower Miller Creek Road in Hamilton, MT for \$200,000 pursuant to the Court's December 9, 2019 order. The parties sold real property located at 982 Lower Mill Creek Road in Hamilton, MT for \$200,000 in order to liquidate \$100,000 from the marital estate. The sales proceeds were used to pay a total of \$36,200.57 in liens placed on the property for creditor judgments against Sherri for medical and credit card debt incurred after the kidnapping and assault by Kevin. Payment of these liens should not be considered an advance distribution of the marital estate as payment of the liens was necessary to preserve and protect the marital estate. After payment of the liens and distributions to the parties' attorneys in accordance with the December 2019 Order, \$63,799.43 remained in the Insured Titles escrow account. *Pet. 's Ex. 20.*

44. On April 15, 2022, the parties entered into a Stipulation for Release of Funds from Escrow Pending Trial for each party to receive a payment of \$9,851.74 from the escrow account at Insured Titles. Those funds were disbursed to the parties, leaving \$44,095.95 in the Insured Titles escrow account.

45. The Court finds it fair and equitable for Sherri's \$9,851.74 to be considered temporary family support and not to be considered as an advance distribution of the marital estate to Sherri.

46. The Court finds that Kevin was capable of being self-supporting and was not in need of temporary family support. At the time of trial, the \$9,851.74 remained in Kevin's counsel's trust account as Kevin had not requested any amounts be distributed to him for his living expenses. Therefore, Kevin is credited with an advance distribution from the marital estate in the amount of \$9,851.74.

47. Following trial, the parties agreed that an additional distribution of \$10,295.01 would be paid to Sherri from the Insured Titles escrow account for payment of Sherri's living expenses. These funds were distributed to counsel for Sherri's trust account from the Insured Titles escrow account in accordance with the Court's July 21, 2022, Order, leaving \$33,800.94 in the escrow account.

48. The Court finds it fair and equitable for the \$10,295.01 distribution to Sherri to be considered temporary family support and not to be considered as an advance distribution of the marital estate to Sherri.

49. The real property of the marital estate consists of:

- a. Marital home located at 396 Moose Springs, Corvallis, MT 59828. This 80-acre property, which is improved by a 4,418 square foot home, is jointly owned by Kevin and Sherri. Kevin retained the services of Mark Miller to value the marital home. His

opinion was that the property should be listed at \$2,911,667 as of the time of trial. Sherri retained Julie Fillingham, who valued the property at \$1,750,000 in 2021 but expressed the opinion that, as of the time of trial, the value had increased from \$350,000 to \$525,000. Therefore, Mr. Miller valued the property at between \$636,667 to \$811,667 more than Julie Fillingham. Both experts opined that real property values in Ravalli County had significantly increased over the last few years. The Court finds that it is reasonable to value the property for the purposes of an equitable distribution at \$2,593,333, the average between Julie Fillingham's highest estimate and Mark Miller's estimate. This property is encumbered by a mortgage with a balance of \$156,363.52 and liens asserted by attorneys for the parties for attorney fees and costs. This property should be listed for sale by a licensed realtor selected by Sherri. Sherri should be entitled to continue to reside at the Wild Moose Springs property until it is sold. The property should be sold at the value acceptable to Sherri. The Court finds that it is fair and equitable for the net sales proceeds (after payment of the cost of sales and payment of mortgages, if any) to be divided as follows: 90% of the remaining sales proceeds should be paid to Sherri. Sherri should be responsible for payment of liens for her attorneys. The remaining 10% of the net sales proceeds from the sale of this property should be paid to Kevin. Kevin should be responsible for payment of his attorney fees.

- b. Kevin's 40% interest in Frost Limited Partnership (FLP). Both parties submitted evidence concerning the value of the real estate owned by FLP, which is the principal asset of the limited partnership. Sherri retained Julie Fillingham, a licensed real estate agent, and Kevin retained Larry Lund, a certified general appraiser. The Court

finds the opinion of value of Mr. Lund to more accurately reflect the probable fair market value of the real estate, which he valued at \$4,590,000. Ben Yonce, CPA, DVA, testified that Kevin's 40% interest in FLP was fairly valued at \$1,877,202, but he discounted that figure 12.5% for lack of control and 15% for lack of marketability, concluding that Kevin's 40% interest in FLP should be valued at \$1,396,169.

Although the Court recognizes that discounts for lack of control and lack of marketability are customarily used to value the interest of a limited partner in a limited partnership when the interest of the limited partner is being sold to a third party, the Court also notes that this is not the situation here. It is noteworthy that Kevin appears to have the full confidence of his mother, the sole shareholder of the general partner; she has delegated decision making to him and seriously considers his recommendations. Also, at this time no one contemplates selling the assets of FLP. Rather, Kevin and his brother stand to effectively inherit the ranch when his mother, who is elderly, dies. Thus, although the Court will accept a valuation of \$1,396,169 for Kevin's interest in FLP for the purposes of an equitable distribution of the marital estate, it notes that the valuation is generous to Kevin. The Court finds that Kevin's interest in FLP should be distributed to him; thus, the Court need not determine whether he is a general or limited partner at this time.

- c. Forty acre "Butte" property. This property (actually 40.19 acres) was gifted to Kevin by his mother in 1999. Julie Fillingham, Sherri's expert, valued the property at \$500,000, observing that the property may be of particular interest to the Bitterroot Stock Farm, a private club owning property neighboring the 40 acres. Larry Lund, Kevin's expert, valued the property at between \$240,000 to \$245,000. The Court

- finds that for the purpose of equitably dividing the marital estate, the 40-acre Butte property should be valued at \$300,000, recognizing that the property has unique characteristics not documented by Larry Lund but appropriately recognized by Ms. Fillingham. Although Kevin claims that because Sherri allegedly made no non-financial contribution to this property, therefore the property should be considered non-marital, the Court finds that the time, resources, energies, and funds of both parties were committed to the accumulation and preservation of the parties' lifestyle and assets, that the contribution of both parties should be considered equal in value, and that Sherri's contribution should not be ignored. Thus, the Court finds that 30% of the value should be distributed to Sherri and the remaining 70% to Kevin. Kevin may sell this property to satisfy this obligation or otherwise compensate Sherri.
- d. Retirement-type accounts. Kevin's 401(k) and pension plan with Farmers Insurance Group. During the marriage, Kevin contributed to his 401(k) plan through his employer, Farmers Insurance Group. At the time of trial, the plan totaled \$487,851.79. Kevin is fully vested in his Farmers Insurance Group pension plan, which has a value of \$531,000. The parties also have a Fidelity Rollover IRA Account (#1293) with a value of \$23,856.01. These accounts were acquired during the marriage and should be split equally between the parties.
- e. Bank accounts. Kevin and Sherri have various bank accounts in their names. Kevin's accounts include an account with Ravalli County Credit Union (\$597.74), a health savings account with Ravalli County Credit Union (\$112.58), and a health savings account with Stockman's Bank (\$8,405.34). The balances in Sherri's accounts were

- not clearly evidenced at trial. Nonetheless, each party is entitled to the bank accounts in their names.
- f. Escrow account balances. During their marriage, the parties acquired parcels of real property that were subsequently sold. This included property in Philipsburg and on Lower Mill Creek Road. Any remaining balance from the sale of such properties should be distributed to Sherri as family support and not an advance on her distribution of the marital estate.
 - g. The Court finds that the conduct of Kevin in kidnapping and assaulting Sherri was not *marital* misconduct but rather criminal behavior that no one, including a spouse, should be subject to. Sherri is not complaining that Kevin was untrue to their marriage vows or that he abandoned her. Nor is she complaining of behaviors constituting an irretrievable breakdown of their relationship of the type typically accompanying the separation of the parties to a marriage. Kevin's actions rendered Sherri unable to work, a factor the Court needs to consider when considering a maintenance claim. Kevin also caused Sherri to incur medical expenses, which expenses are debts to be considered as part of the equitable distribution of the marital estate. The Court finds that Sherri would have difficulty enforcing a maintenance order against Kevin and that a maintenance award would result in needless and continued litigation.
 - h. Sherri has filed a civil lawsuit against Kevin for the tort(s) he has committed against her. This lawsuit is still pending and any outcome is speculative. Further, Kevin should not be able to financially benefit from the injury he has caused Sherri. Therefore, the Court finds any funds that Sherri may receive as a result of the lawsuit

she has filed against Kevin and others are not an asset subject to division in the marital estate.

- i. Based upon the testimony and evidence presented, the Court finds that the parties have already divided their personal property (including horses and livestock) and bank accounts. The Court finds it is fair and equitable for each party to retain sole possession, right, title and interest in the personal property in his or her respective possession and for each party to retain the bank accounts in his or her name. Also, based upon the testimony and evidence presented, the Court finds the following distribution of the parties' motor vehicles to be fair and equitable:

- A. To Petitioner:

- a. 2001 Chrysler Minivan – excluded from marital estate as it was received by Petitioner as a gift post-separation.

- B. To Respondent:

- a. 2008 Ford F350 Diesel
- b. 2006 Ford F150
- c. Mustang
- d. Street Bike
- e. 1996 Titan Stock Trailer
- f. 2004 Polaris Sportsman
- g. 2003 Suzuki Quad
- h. 2010 Yamaha XTY 250 Motorcycle
- i. 2003 Honda CRF 230 Dirt Bike
- j. 1998 Yukon Black

- k. Motorcycle
- l. 2010 Camaro RS.

50. Remaining debts:

- a. Other than the mortgage on the marital residence, there are no joint marital debts.
- b. The Court finds that the following division of debt is fair and equitable:

A. To Sherri:

- a. US Bank credit card in Sherri's name;
- b. Barclays Bank Delaware credit card;
- c. Loan to Sherri's parents;
- d. Collections Professionals (medical collections);
- e. CBM Collections; and
- f. Nadine Wisniewski debt.
- g. In addition, Sherri should be responsible for any other debt in her individual name that is not otherwise distributed to Kevin.

B. To Kevin:

- a. Kristin Stoehr: 100% of the outstanding balance owed to Kristin for counseling services provided to Sherri;
- b. Personal loan from Marilyn; and
- c. Any other debt in his individual name and any other debt not to disclosed to or authorized by Petitioner.

51. Based upon the division of the marital assets and debts as set forth above, the parties have sufficient property to provide for their reasonable needs. The division of property and debts set

forth above is in lieu of any maintenance award. The Court finds that neither party should be required to pay the other party maintenance.

52. The Court finds that each party should be responsible for payment of his or her own attorney's fees and costs incurred in these proceedings.

53. The Petitioner does not wish to be restored to her former name.

54. The Court should vacate the temporary economic restraining order which was issued in this matter under Mont. Code Ann. § 40-4-121(3).

From the foregoing, the Court makes the following:

CONCLUSIONS OF LAW

1. The Court has original jurisdiction over this matter pursuant to Mont. Code Ann. § 3-5-302(b). At the time this action commenced, both parties were domiciled in this State for 90 days preceding the filing of the action.

2. Venue is proper in this Court pursuant to Mont. Code Ann. § 25-2-118(1), because both parties resided in Ravalli County at the commencement of this action.

3. In making an equitable distribution of the marital estate, including an apportionment of assets and an allocation of debts, 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. The Court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit, including nonmonetary contributions, and the extent to which the contributions have facilitated the maintenance of the property, and whether

the property distribution serves as an alternative to maintenance. Mont. Code Ann. §40-4-202(1).

4. Based on the duration of the marriage and on the parties' age, health, education, skills, and financial circumstances, the division of property and debts set forth above is fair and equitable and is not unconscionable. Mont. Code Ann. § 40-4-202; *In re Marriage of Funk*, 2012 MT 14, 363 Mont. 352, 270 P.3d 39.

5. The Court has broad discretion in determining the valuation and distribution of the marital estate. See *Sell v. Sell*, 193 Mont. 88, 630 P.2d 222 (1981).

6. Mont. Code Ann. § 40-4-202 obligates a court to equitably apportion between the parties all assets and property of either or both spouses, regardless of by whom and when acquired. This directive applies to all assets, including pre-acquired property and assets acquired by gift, bequest, devise or descent. *Marriage of Funk*, 2012 MT 14, ¶ 19, 363 Mont. 352, 270 P.3d 39. When distributing property acquired by gift, bequest, devise or descent, the court is required to consider the contributions of the other spouse to the marriage, and the three factors set forth at § 40-4-202(1)(a)-(c), MCA. *Id.*

7. Mont. Code Ann. §§ 40-4-202 and 40-4-203 provides for an apportionment of marital property in lieu of maintenance. The division of the marital estate set forth above takes into account Sherri's need for ongoing financial support in the form of maintenance from Kevin. The Court apportioned assets from the marital estate to Sherri in lieu of maintenance.

8. "Generally, maintenance is not favored. Maintenance is appropriate when a spouse has insufficient assets to cover living expenses and reasonably cannot earn a sufficient amount to maintain an appropriate standard of living." *In re Marriage of Crilly*, 2009 MT 187, ¶¶ 10, 351 Mont. 71, 209 P.3d 249 (citations omitted). Although property can be awarded in lieu of maintenance under Mont. Code Ann. § 40-4-202(1), "The term 'sufficient property' has been

interpreted to mean income-producing property rather than income-consuming property.” *In re Marriage of Tow*, 229 Mont. 483, 486, 748 P.2d 440, 441 (1987).

9. Mont. Code Ann. § 40-4-203, governs maintenance awards in a dissolution proceeding, and it provides, in pertinent part, as follows: “(1) In a proceeding for dissolution of marriage..., the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance: (a) lacks sufficient property to provide for her reasonable needs; and (b) is unable to support herself through appropriate employment...” Although the Court must consider each of the statutory factors, “it need not make a specific finding relating to each, provided that [the Montana Supreme] Court can determine the trial judge actually considered each factor.” *In re Marriage of Haines*, 2002 MT 182, ¶ 18, 311 Mont. 70, 53 P.3d 378. “These factors must be considered by the district court as a whole in the determination of a final maintenance award.” *In re Marriage of Rudolf*, 2007 MT 178, ¶ 27, 338 Mont. 226, 164 P.3d 907.

10. To grant a maintenance order under the statute, a district court needs to find: (1) that the spouse seeking maintenance lacks sufficient property to provide for her reasonable needs and (2) is unable to support herself through appropriate employment. *In re Marriage of Bee*, 2002 MT 49, ¶ 28, 309 Mont. 34, 43 P.3d 903. If such evidence exists, the Court is then to consider several factors including the ability of the spouse from whom maintenance is sought to meet the spouse’s own needs while meeting the needs of the spouse seeking maintenance. Mont. Code Ann. § 40-4-203(2)(f).

11. Kevin can earn a sufficient amount to maintain an appropriate standard of living. Sherri is unable to do so.

12. “The statutory prohibition [in Mont. Code Ann. § 40-4-202(1)] against considering marital misconduct does not foreclose the district court from considering the medical and

financial needs of a spouse which result from the other spouse's physical, mental, or emotional abuse during the marriage. Consideration of the economic effects of abuse, such as medical expenses and a person's ability to work and earn an income, is not an interjection of fault or an assignment of blame which is contemplated by the statutory prohibition of judicial consideration of marital misconduct. If the economic impact of abuse is excluded from consideration in making a division of the marital estate, a truly equitable apportionment cannot result.” *In re Petition of Fenzau*, 2002 MT 197, ¶ 29, 311 Mont. 163, 54 P.3d 43.

13. As in *Fenzau*, Kevin’s abuse of Sherri has left Sherri unable to work and earn an income. His abuse has caused Sherri to incur economic effects beyond those effects impacting her earning capacity, medical expenses and mental health care expenses. These economic impacts were considerations by the Court in determining the division of the marital estate in this case.

14. The Court has thoroughly analyzed the parties’ financial resources. Throughout these proceedings, in order to pay for her attorney’s fees and costs to maintain representation throughout these proceedings, Sherri has had to rely on the generosity of her parents to pay for her attorney’s fees and has had to deplete financial assets that were intended to provide for her living in retirement. These proceedings were delayed because of Kevin’s incarceration and his requests to stay these proceedings until his release from prison. This delay resulted in Sherri incurring additional attorney’s fees. It also exacerbated Sherri’s need for counseling services with Kristin Stoehr due to the ongoing conflict as a trigger for Sherri’s PTSD. These expenses were a necessity for Sherri in order to maintain these proceedings.

15. Any impairment in Kevin’s ability to pay attorney fees or to meet his other expenses was his own fault arising out of his criminal behavior.

From the foregoing, the Court orders the following:

DECREE OF DISSOLUTION OF MARRIAGE

1. The marriage of the parties was previously dissolved.
2. The division of the marital estate, including the distribution of assets and the allocation of debits is equitable as specifically set forth herein. The parties shall execute all documents necessary to effectuate the division.
3. Neither party shall pay the other party maintenance. The Court has distributed the marital estate in lieu of maintenance.
4. If Sherri receives Social Security payments in the future, those payments are awarded to Sherri individually as they are not a part of the marital estate.
5. If Sherri receives any award of funds in the future as a result of the civil lawsuit she filed against Kevin and others for the injury inflicted on Sherri by Kevin, such payment is awarded to Sherri individually.
6. Except as set forth above, each party shall be responsible for payment of his or her own attorney's fees and costs incurred in these proceedings.
7. The Temporary Economic Restraining Order is hereby VACATED.
8. Each party is ordered to execute any and all documents which now or in the future may be necessary to carry into full force and effect the terms and conditions of this Decree.

ELECTRONICALLY SIGNED AND DATED BELOW

cc: counsel of record

Electronically Signed By:
Hon. Judge Howard F. Recht
Mon, Oct 31 2022 01:52:21 PM

APPENDIX B

In re the Marriage of Frost - Courts Split

Assets				
	Description	Value	Kevin	Sherri
Real Property				
1	396 Wild Moose Springs	\$ 2,255,436.71	\$ 225,543.67	\$ 2,029,893.04
	6/14/2022 Court value \$2,593,333.00			
	Commission and Sales: \$181,533.31			
	Securred Debt: - \$156,363.52			
	Net: \$2,255,436.71			
	<i>Sub Total</i>	\$ 2,255,436.71	\$ 225,543.67	\$ 2,029,893.04
Vehicles				
2	2001 Chrysler Minivan	\$ 1,500.00		\$ 1,500.00
3	2003 Honda CRF230 Motorcycle	\$ 490.00	\$ 490.00	
4	1996 Titan Trailer	\$ 2,150.00	\$ 2,150.00	
5	2010 Yamaha XT 250 Motorcycle	\$ 2,300.00	\$ 2,300.00	
6	2003 Suzuki quad	\$ 200.00	\$ 200.00	
	<i>Sub Total</i>	\$ 6,640.00	\$ 5,140.00	\$ 1,500.00
Check/Savings/Investment Accounts				
7	50662 Ravalli County Federal Credit Union Checking	\$ 597.74	\$ 597.74	
8	50662 Ravalli County Federal Credit Union Savings	\$ 385.41	\$ 385.41	
9	50662 Ravalli County Federal Credit Union HSA	\$ 112.58	\$ 112.58	
10	Optum Bank HSA	\$ 8,798.28	\$ 8,798.28	
11	Farmers State Bank	\$ 3,648.60		\$ 3,648.60
	<i>Sub Total</i>	\$ 13,542.61	\$ 9,894.01	\$ 3,648.60
Other Assets				
12	First Montana Title	\$ 44,095.50		\$ 44,095.50
	<i>Sub Total</i>	\$ 44,095.50	\$ -	\$ 44,095.50
Personal Property				
13	3 horses	\$ 1,950.00	\$ 1,950.00	
14	Shop tools	\$ 1,400.00	\$ 1,400.00	
15	Tack	\$ 1,050.00	\$ 1,050.00	
16	Furniture	\$ 13,115.00		\$ 13,115.00
17	Sherri's Jewelry and Clothing	\$ 11,000.00		\$ 11,000.00
18	Kevin's Jewelry and Clothing	\$ 2,500.00	\$ 2,500.00	
19	Firearms	\$ 1,500.00		\$ 1,500.00
	<i>Sub Total</i>	\$ 32,515.00	\$ 6,900.00	\$ 25,615.00

	Retirement Accounts				
20	Farmers Group, Inc 401(k) Vanguard	\$ 479,527.99	\$ 239,764.00	\$ 239,764.00	
21	Farmers Group Pension Plan	\$ 531,000.00	\$ 265,500.00	\$ 265,500.00	
22	Fidelity Rollover IRA	\$ 21,946.05	\$ 10,973.03	\$ 10,973.03	
23	Fidelity IRA #125-511285	\$ 289.06	\$ -	\$ 289.06	
	Sub Total Retirement	\$ 1,032,763.10	\$ 516,237.02	\$ 516,526.09	
	Kevin Gifted Assets				
24	40.19 acres of unimproved land in Butte	\$ 300,000.00	\$ 210,000.00	\$ 90,000.00	
25	Frost Limited Partnership	\$ 1,396,169.00	\$ 1,396,169.00		
	Sub Total	\$ 1,696,169.00	\$ 1,606,169.00	\$ 90,000.00	
	Sherri's Advance of Estate Asssets				
	Retirement Accounts				
26	Fidelity 125-511286	\$ 67,133.84		\$ 67,133.84	
27	Merrill Lynch 9087	\$ 18,425.53		\$ 18,425.53	
	Sale of Lower Mill Creek Property	\$ -		\$ -	
28	Attorney Fees	\$ 40,000.00		\$ 40,000.00	
29	Expenses	\$ 29,851.74		\$ 29,851.74	
30	Lien Payoff	\$ 32,068.00		\$ 32,068.00	
31	Money from Philipsburg Property	\$ 89,704.06		\$ 89,704.06	
32	Kevin Advance Sale of Lower Mill Creek Property	\$ 49,851.74	\$ 49,851.74		
	Sub Total	\$ 327,034.91	\$ 49,851.74	\$ 277,183.17	
	Total	\$ 5,048,646.92	\$ 2,362,983.70	\$ 2,685,663.22	

* Shaded yellow for reference only, not included in total.

Liabilities

	Description	Value	Kevin	Sherri
	Real Property			
33	296 Wild Moose Springs			
	Credit Cards			
34	U.S. Bank	\$ (17,086.14)		\$ (17,086.14)
35	Barclays Bank Delaware	\$ (31,734.00)		\$ (31,734.00)
	Misc Debt			
36	Cotner Law	\$ (101,351.64)	\$ (130,000.00)	
37	Marilynn Frost personal loan	\$ (55,000.00)	\$ (55,000.00)	
38	Restitution	\$ (8,682.48)	\$ (8,682.48)	
39	Ries Law Group	\$ (50,000.00)		\$ (50,000.00)
40	K. Stoehr Counseling	\$ (20,594.81)	\$ (20,594.81)	
41	Parents Loan	\$ (60,000.00)		\$ (60,000.00)
42	P. Mars Scott Legal Fees	\$ (27,049.44)		\$ (27,049.44)
43	Collection Professionals	\$ (552.00)		\$ (552.00)
44	Collection Professionals	\$ (384.00)		\$ (384.00)
45	Collection Professionals	\$ (658.00)		\$ (658.00)
46	CBM Collections	\$ (1,470.00)		\$ (1,470.00)
47	CBM Collections	\$ (265.00)		\$ (265.00)
48	Lance Jasper Legal Fees	\$ (7,000.00)		\$ (7,000.00)
49	Sarah Berg/Kim Dudik	\$ (8,000.00)		\$ (8,000.00)
	Total Liabilities	\$ (389,827.51)	\$ (214,277.29)	\$ (204,198.58)
	Subtotal Estate	\$ 5,048,646.92	\$ 2,362,983.70	\$ 2,685,663.22
	Assets Less Liabilities	\$ 5,048,646.92	\$ 2,362,983.70	\$ 2,685,663.22

* Shaded yellow for reference only, not included in total.

APPENDIX C

In re the Marriage of Frost - Courts Split

Assets					
	Description	Value	Kevin	Sherri	
Real Property					
1	396 Wild Moose Springs	\$ 2,255,436.71	\$ 225,543.67	\$ 2,029,893.04	
	6/14/2022 Court value \$2,593,333.00				
	Commission and Sales: \$181,533.31				
	Securred Debt: - \$156,363.52				
	Net: \$2,255,436.71				
	<i>Sub Total</i>	\$ 2,255,436.71	\$ 225,543.67	\$ 2,029,893.04	
Vehicles					
2	2001 Chrysler Minivan	\$ 1,500.00		\$ 1,500.00	
3	2003 Honda CRF230 Motorcycle	\$ 490.00	\$ 490.00		
4	1996 Titan Trailer	\$ 2,150.00	\$ 2,150.00		
5	2010 Yamaha XT 250 Motorcycle	\$ 2,300.00	\$ 2,300.00		
6	2003 Suzuki quad	\$ 200.00	\$ 200.00		
	<i>Sub Total</i>	\$ 6,640.00	\$ 5,140.00	\$ 1,500.00	
Check/Savings/Investment Accounts					
7	50662 Ravalli County Federal Credit Union Checking	\$ 597.74	\$ 597.74		
8	50662 Ravalli County Federal Credit Union Savings	\$ 385.41	\$ 385.41		
9	50662 Ravalli County Federal Credit Union HSA	\$ 112.58	\$ 112.58		
10	Optum Bank HSA	\$ 8,798.28	\$ 8,798.28		
11	Farmers State Bank	\$ 3,648.60		\$ 3,648.60	
	<i>Sub Total</i>	\$ 13,542.61	\$ 9,894.01	\$ 3,648.60	
Other Assets					
12	First Montana Title	\$ 44,095.50		\$ 44,095.50	
	<i>Sub Total</i>	\$ 44,095.50	\$ -	\$ 44,095.50	
Personal Property					
13	3 horses	\$ 1,950.00	\$ 1,950.00		
14	Shop tools	\$ 1,400.00	\$ 1,400.00		
15	Tack	\$ 1,050.00	\$ 1,050.00		
16	Furniture	\$ 13,115.00		\$ 13,115.00	
17	Sherri's Jewelry and Clothing	\$ 11,000.00		\$ 11,000.00	
18	Kevin's Jewelry and Clothing	\$ 2,500.00	\$ 2,500.00		
19	Firearms	\$ 1,500.00		\$ 1,500.00	
	<i>Sub Total</i>	\$ 32,515.00	\$ 6,900.00	\$ 25,615.00	

	Retirement Accounts				
20	Farmers Group, Inc 401(k) Vanguard	\$ 479,527.99	\$ 239,764.00	\$ 239,764.00	
21	Farmers Group Pension Plan	\$ 531,000.00	\$ 265,500.00	\$ 265,500.00	
22	Fidelity Rollover IRA	\$ 21,946.05	\$ 10,973.03	\$ 10,973.03	
23	Fidelity IRA #125-511285	\$ 289.06	\$ -	\$ 289.06	
	Sub Total Retirement	\$ 1,032,763.10	\$ 516,237.02	\$ 516,526.09	
	Kevin Gifted Assets				
24	40.19 acres of unimproved land in Butte				
25	Frost Limited Partnership				
	Sub Total	\$ -	\$ -	\$ -	
	Sherri's Advance of Estate Asssets				
	Retirement Accounts				
26	Fidelity 125-511286	\$ 67,133.84		\$ 67,133.84	
27	Merrill Lynch 9087	\$ 18,425.53		\$ 18,425.53	
	Sale of Lower Mill Creek Property	\$ -		\$ -	
28	Attorney Fees	\$ 40,000.00		\$ 40,000.00	
29	Expenses	\$ 29,851.74		\$ 29,851.74	
30	Lien Payoff	\$ 32,068.00		\$ 32,068.00	
31	Money from Philipsburg Property	\$ 89,704.06		\$ 89,704.06	
32	Kevin Advance Sale of Lower Mill Creek Property	\$ 49,851.74	\$ 49,851.74		
	Sub Total	\$ 327,034.91	\$ 49,851.74	\$ 277,183.17	
	Total	\$ 3,352,477.92	\$ 756,814.70	\$ 2,595,663.22	

* Shaded yellow for reference only, not included in total.

Liabilities

	Description	Value	Kevin	Sherri
	Real Property			
33	296 Wild Moose Springs			
	Credit Cards			
34	U.S. Bank	\$ (17,086.14)		\$ (17,086.14)
35	Barclays Bank Delaware	\$ (31,734.00)		\$ (31,734.00)
	Misc Debt			
36	Cotner Law	\$ (130,000.00)	\$ (130,000.00)	
37	Marilynn Frost personal loan	\$ (55,000.00)	\$ (55,000.00)	
38	Restitution	\$ (8,682.48)	\$ (8,682.48)	
39	Ries Law Group	\$ (50,000.00)		\$ (50,000.00)
40	K. Stoehr Counseling	\$ (20,594.81)	\$ (20,594.81)	
41	Parents Loan	\$ (60,000.00)		\$ (60,000.00)
42	P. Mars Scott Legal Fees	\$ (27,049.44)		\$ (27,049.44)
43	Collection Professionals	\$ (552.00)		\$ (552.00)
44	Collection Professionals	\$ (384.00)		\$ (384.00)
45	Collection Professionals	\$ (658.00)		\$ (658.00)
46	CBM Collections	\$ (1,470.00)		\$ (1,470.00)
47	CBM Collections	\$ (265.00)		\$ (265.00)
48	Lance Jasper Legal Fees	\$ (7,000.00)		\$ (7,000.00)
49	Sarah Berg/Kim Dudik	\$ (8,000.00)		\$ (8,000.00)
	Total Liabilities	\$ (418,475.87)	\$ (214,277.29)	\$ (204,198.58)
	Subtotal Estate	\$ 3,352,477.92	\$ 756,814.70	\$ 2,595,663.22
	Assets Less Liabilities	\$ 2,934,002.05	\$ 542,537.41	\$ 2,391,464.64

* Shaded yellow for reference only, not included in total.